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

C-122-858
Administrative Review
POR: 04/28/2017 – 12/31/2018
Public Document
E&C/OI & III: Team

November 23, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2017 – 2018

I. SUMMARY

Commerce has completed its administrative review of the *CVD Order* on softwood lumber from Canada for the period April 28, 2017, through December 31, 2018. We determine that countervailable subsidies are being provided to producers and exporters of softwood lumber from Canada, as provided in section 705 of the Act. After analyzing the comments raised by the interested parties in their case and rebuttal briefs, we made certain changes to the *Lumber VAR1 Prelim Results*, which are fully discussed in this memorandum. Below is a complete list of the issues for which we received comments from the interested parties.

II. LIST OF ISSUES

A. General Issues

Comment 1: Whether Commerce Must Update the Regulations Implementing the NAFTA Prior to Issuance of the Final Results
Comment 2: Whether Commerce Sufficiently Considered Expert Reports
Comment 3: Whether Commerce Applied Appropriate Standards for *De Facto and De Jure* Specificity
Comment 4: Whether Commerce Properly Required Respondents to Report "Other Assistance"
Comment 5: Whether the Purchase of Electricity Is a Purchase of a Good or Service
Comment 6: Attribution of Benefits from the Sale of Electricity
Comment 7: Applying the Benefit-to-the-Recipient Standard to the Purchase of Electricity for MTAR Programs
Comment 8: Whether Electricity Curtailment Programs Are Grants
Comment 9: Revisions to Draft Customs Instructions

B. General Stumpage Issues

Comment 10: Whether Commerce Should Allocate Stumpage Benefits Over Total Sales
Comment 11: Whether Commerce Should Calculate Negative Benefits in the Stumpage for LTAR and LER Programs

- *Alberta Stumpage Issues*

Comment 12: Whether the Alberta Stumpage Market Is Distorted
Comment 13: Whether TDA Survey Prices Are an Appropriate Benchmark for Alberta Crown-Origin Stumpage

- *British Columbia Stumpage Issues*

Comment 14: Whether There Is a Useable Tier-One Benchmark in British Columbia
Comment 15: Whether Commerce Should Revise its Selection of a U.S. PNW Delivered Log Benchmark Price
Comment 16: Whether Commerce Should Account for GBC's "Stand as a Whole" Pricing as a Significant "Prevailing Market Condition"

- *New Brunswick Stumpage Issues*

Comment 17: Whether Private Stumpage Prices in New Brunswick Should be Used as Tier-One Benchmarks

- *Ontario Stumpage Issues*

Comment 18: Whether the Ontario Crown Timber Market Is Distorted

- *Québec Stumpage Issues*

Comment 19: Whether the Québec Timber Market Is Distorted
Comment 20: Whether Commerce Should Account for Spruce Budworm Infestation Conditions That Affect Resolute's SDO Sawmill

C. British Columbia Stumpage Benchmark Issues

Comment 21: Whether Commerce Should Continue to Use a Beetle-Killed Benchmark Price for the Final Results
Comment 22: Whether Commerce's Selection of a Log Volume Conversion Factor Was Appropriate
Comment 23: Whether Commerce Should Adjust the BC Log Benchmark Price for Scaling and G&A Costs
Comment 24: Whether Commerce Should Adjust for Tenure Security in British Columbia

D. Nova Scotia Stumpage Benchmark Issues

Comment 25: Whether Private-Origin Standing Timber in Nova Scotia Is Available in the Provinces at Issue

Comment 26: Whether the Tree Size in Nova Scotia, as Measured by DBH, Is Comparable to Tree Size in Québec, Ontario, and Alberta

Comment 27: Whether SPF Tree Species in Nova Scotia Are Comparable to SPF Tree Species in the Provinces at Issue

Comment 28: Whether Nova Scotia's Forest Is Comparable to the Forests of New Brunswick, Québec, Ontario, and Alberta

Comment 29: Reliability of Nova Scotia Private-Origin Standing Timber Benchmark

Comment 30: Whether High Demand for Pulplogs in Nova Scotia Creates High Demand for Sawlogs which Makes Market Conditions for Nova Scotia Sawlogs Incomparable to the Market Conditions of Sawlogs in Other Provinces

Comment 31: Classification of Timber Purchases in Nova Scotia Compared to Québec, Ontario, and Alberta

Comment 32: Conversion Factor Used in Nova Scotia Benchmark

Comment 33: Whether Differences in Nova Scotia's Harvest and Haulage Costs Impact Its Comparability or Require an Adjustment

Comment 34: Whether Commerce Should Adjust the Nova Scotia Benchmark for Differences in Logging Camp Costs

Comment 35: Whether Commerce Should Revise the Indexing Method Employed in the Derivation of the Nova Scotia Benchmark

Comment 36: Whether Commerce Should Revise the Nova Scotia Benchmark to Account for Regional Differences

Comment 37: Whether to Add a C$3.00/$m^3$ Silviculture Fee to the Nova Scotia Benchmark

Comment 38: Whether Fuelwood Should Be Included in the Stumpage Benefit Calculation

Comment 39: Whether Commerce Should Account for JDIL's Treelength Purchases in the Stumpage Benefit Calculation

Comment 40: Whether Commerce Should Revise the Product Comparisons Used in the Stumpage Benefit Calculation to Account for Log Quality

Comment 41: Whether Commerce Should Revise the Price Comparisons Used in the Stumpage Benefit Calculation Involving Crown-Origin Standing Timber in Québec, Ontario, and Alberta

Comment 42: Whether Commerce Should use Log Price Data from the HC Haynes Survey as the Basis for the Nova Scotia Standing Timber Benchmark

Comment 43: Whether Commerce Should Make Adjustments to Stumpage Rates Paid by the Respondents to Account for "Total Remuneration" in Alberta, New Brunswick, Ontario, and Québec

E. Log Export Restraint Issues

Comment 44: Whether Commerce Should Find Restrictions on Log Exports in Alberta, New Brunswick, Ontario, and Québec to Be Countervailable Subsidies

Comment 45: Whether the LER in British Columbia Results in a Financial Contribution

Comment 46: Whether the Log Export Restraint Has an Impact in British Columbia
Comment 47: Whether the U.S. Log Benchmark Is a World Market Price Available in British Columbia

F. Purchase of Goods for MTAR Issues

- *Alberta*

Comment 48: Whether AESO Electricity Purchases for MTAR Are Countervailable

- *British Columbia*

Comment 49: Whether BC Hydro EPAs Are Countervailable
Comment 50: Whether Commerce Applied the Correct Benchmark to Calculate the Benefit under BC Hydro EPAs

- *Ontario*

Comment 51: Whether Commerce's Specificity and Benchmark Analyses for the Ontario and Québec Electricity MTAR Programs Were Arbitrary
Comment 52: Whether Commerce Applied the Correct Benchmark to Calculate the Benefit under the IESO CHP III Program
Comment 53: Whether Ontario's IESO CHP III Is Specific
Comment 54: Whether Commerce Correctly Attributed Benefits Under the IESO CHP III Program

- *Québec*

Comment 55: Whether Commerce Applied the Correct Benchmark to Calculate the Benefit under the PAE 2011-01 Program
Comment 56: Whether Hydro-Québec's PAE 2011-01 Is Specific
Comment 57: Whether Commerce Correctly Attributed Benefits Under the PAE 2011-01

G. Grant Program Issues

- *Federal*

Comment 58: Whether the BC ETG / Canada – BC Job Grant Is Specific
Comment 59: Whether Funds West Fraser Received for a Lignin Plant through the SDTC, IFIT, and ABF Programs Are Tied to Non-Subject Merchandise

- *Alberta*

Comment 60: Whether the Bioenergy Producer Program Is Countervailable

- *British Columbia*

Comment 61: Whether Payments for Aerial Inventory Photography and LiDar Are Countervailable
Comment 62: Whether FRPA Section 108 Payments to Canfor Are Countervailable
Comment 63: Whether the Purchase of Carbon Offsets from Canfor Is Countervailable
Comment 64: Whether the Miscellaneous Payment from BC Hydro to West Fraser Is Countervailable
Comment 65: Whether the BC Hydro Power Smart Subprograms Provide a Financial Contribution and Are Specific
Comment 66: Whether Payments for Cruising and Block Layout Provide a Financial Contribution
Comment 67: Whether Payments for Fire Suppression Are Countervailable
Comment 68: Whether the FESBC Payment Is a Countervailable Subsidy

- *New Brunswick*

Comment 69: Whether Commerce Should Continue to Find the Silviculture and License Management Programs Countervailable
Comment 70: Whether Commerce Should Find the Workforce Expansion Programs to Be Countervailable or Specific

- *Ontario*

Comment 71: Whether Ontario's Forest Roads Funding Program Is Countervailable
Comment 72: Whether Ontario's TargetGHG Is Specific
Comment 73: Whether Ontario's IESO Demand Response Is Countervailable
Comment 74: Whether Ontario's IEI Program Is Specific

- *Québec*

Comment 75: Whether Québec's PCIP Confers a Benefit
Comment 76: Whether Québec's Paix des Braves Confers a Benefit
Comment 77: Whether Québec's MCRP Confers a Benefit
Comment 78: Whether Québec's Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances Confers a Benefit
Comment 79: Whether Québec's PIB Is Countervailable
Comment 80: Whether Québec's ÉcoPerformance Is Countervailable
Comment 81: Whether Québec's FDRCMO and MFOR Are Specific
Comment 82: Whether Québec's FDRCMO and MFOR Are Recurring
Comment 83: Whether Hydro-Québec's GDP New Demand-Side Management Program Is Specific and Conferred a Benefit
Comment 84: Whether Hydro-Québec's IEO Is Specific and Conferred a Benefit
Comment 85: Whether Hydro-Québec's Electricity Discount Program for Rate L Customers Is Countervailable
Comment 86: Whether Hydro-Québec's ISEE Is Countervailable
Comment 87: Whether Hydro-Québec's Special L Rate Is Tied to Pulp and Paper Production
Comment 88: Whether Hydro-Québec's Special L Rate Conferred a Benefit

H. Tax Program Issues

- *Federal*

Comment 89: Whether the Federal and Provincial SR&ED Tax Credits Are Specific
Comment 90: Whether the FLTC and PLTC Are Countervailable
Comment 91: Whether the Refund for the BC Logging Tax in 2017 Related to Prior Years Is Countervailable
Comment 92: Whether the ACCA Is *De Jure* Specific
Comment 93: Whether Commerce Was Correct to Treat the Both the ACCA and Class 1 Additional CCA as Individual Programs
Comment 94: Whether the AJCTC Is Specific
Comment 95: Whether the Class 1 Additional CCA Program Is Specific
Comment 96: Whether the Class 1 Additional CCA Program Provides a Benefit

- *Alberta*

Comment 97: Whether Alberta's TEFU and British Columbia's Coloured Fuel Programs Are Countervailable
Comment 98: Whether Schedule D Depreciation Constitutes a Financial Contribution and Confers a Benefit
Comment 99: Whether Schedule D Depreciation Is Specific

- *British Columbia*

Comment 100: Whether the IPTC Is Countervailable
Comment 101: Whether the BC Training Tax Credit Is Specific
Comment 102: Whether Class 9 Farm Property Assessment Rates Are Specific

- *New Brunswick*

Comment 103: Whether New Brunswick's Property Tax Incentives for Private Forest Producers Is Countervailable
Comment 104: Whether Commerce Correctly Calculated the Benchmark for New Brunswick's Property Tax Incentives for Private Forest Producers Program
Comment 105: Whether Commerce Omitted JDIL's Program Rate for the Total Capital Cost Allowance for Class 1 Acquisitions Program from JDIL's Total Net Subsidy Rate for 2018
Comment 106: Whether Commerce Should Find LIREPP Countervailable
Comment 107: Whether the Gasoline and Fuel Tax Program Provides a Financial Contribution in the Form of Revenue Forgone or Can Be Found Specific

- *Ontario*

Comment 108: Whether the OTCMP Is Specific

- *Québec*

Comment 109: Whether Québec's Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas Confers a Benefit
Comment 110: Whether Québec's Refund of Fuel Tax Paid on Fuel Used for Stationary Purposes Is Specific
Comment 111: Whether Québec's Property Tax Refund for Forest Producers on Private Woodlands Confers a Countervailable Benefit
Comment 112: Whether Québec's Tax Credit for Fees and Dues Paid to Research Consortium Is Specific

I. Company-Specific Issues

- *Canfor*

Comment 113: Whether Benefits of Unaffiliated Suppliers Should Be Cumulated with Canfor's Benefit and Whether Canfor's U.S. Sales of Subject Merchandise Produced by Unaffiliated Suppliers Should Be Included in the Denominator of Canfor's Subsidy Rate Calculation

- *JDIL*

Comment 114: Whether Commerce Should Include Sales by Cross-owned Producers of Downstream Products in JDIL's Sales Denominator When Calculating Countervailable Subsidy Rates

- *Resolute*

Comment 115: Whether Countervailing Road Credit Reimbursements Imposes a Double Remedy
Comment 116: Whether the Contracts Between Resolute and Rexforêt Confer A Benefit
Comment 117: Whether the Benefit of SR&ED Tax Credits Claimed by Resolute Was Extinguished When AbitibiBowater Emerged from Bankruptcy
Comment 118: GOO's Debt Forgiveness of Resolute's Fort Frances Mill
Comment 119: Whether Commerce Should Correct a Clerical Error in Resolute's LER Benefit Calculation

III. CASE HISTORY

The selected mandatory respondents in this administrative review are Canfor, Resolute, and West Fraser.[1] Commerce also accepted JDIL as a voluntary respondent.[2] On February 7, 2020, Commerce published the *Lumber V AR1 Prelim Results*.[3]

[1] *See* Respondent Selection Memorandum.
[2] *See* Voluntary Respondent Selection Memorandum.
[3] *See Lumber V AR1 Prelim Results*, and accompanying PDM.

Following the *Lumber V AR1 Prelim Results*, Commerce requested additional information from the GOC, provincial governments, and company respondents between February 5, 2020 and April 23, 2020.[4] Between February 19, 2020 and June 16, 2020, Commerce received timely responses from the governments and company respondents.[5] Between February 10, 2020 and March 2, 2020, various interested parties requested that Commerce hold a hearing.[6]

On February 13, 2020, Commerce issued the NSA analysis memorandum regarding the Entrustment or Direction of Crown-Origin Logs for LTAR in Alberta, New Brunswick, Ontario, and Québec.[7] On May 14, 2020, Commerce issued the post-preliminary decision memorandum for Canfor and West Fraser.[8] On May 15, 2020, Commerce issued the post-preliminary decision memorandum for Resolute.[9] On May 20, 2020, Commerce released for comment drafts of the customs instructions to be issued after these final results.[10]

On June 8, 2020, various interested parties submitted timely filed case briefs addressing all BC issues (including the provision of stumpage and log export restraint), all non-stumpage subsidy issues for all provinces, and draft customs instructions.[11] On June 25, 2020, various interested parties submitted timely filed rebuttal briefs on those case issues contained in the June 8, 2020 case briefs.[12]

On December 31, 2019, the petitioner submitted benchmark information to measure the adequacy of remuneration for Crown-origin logs.[13] On June 18, 2020, the GNB, GOA, GOQ, and JD Irving submitted benchmarks to measure the adequacy of remuneration for Crown-origin logs.[14] On June 25, 2020, the Canadian Parties filed comments on LERs in Alberta, Ontario, New Brunswick, and Québec.[15] On July 10, 2020, Commerce issued the LER post-preliminary decision memo.[16] On July 29, 2020, various interested parties submitted timely filed case briefs addressing stumpage and LER issues in Alberta, Ontario, New Brunswick, and Québec.[17] On August 10, 2020, various interested parties submitted timely filed rebuttal briefs on those case issues contained in the July 29, 2020 case briefs.[18] On October 7, 2020, Commerce held a public hearing.[19]

[4] *See* Appendix III (Case-Related Documents) attached to this memorandum for a listing of the post-preliminary supplemental questionnaires issued.
[5] *Id*., for a listing of the post-preliminary supplemental questionnaire responses received.
[6] *See* Petitioner Hearing Request; *see also* GOA Hearing Request; and Canadian Parties Hearing Request.
[7] *See* NSA Analysis Memorandum – Logs for LTAR.
[8] *See* Canfor/West Fraser Post-Prelim Decision Memorandum.
[9] *See* Resolute Post-Prelim Decision Memorandum.
[10] *See* Draft Customs Instructions.
[11] *See* Appendix III (Case-Related Documents) attached to this memorandum for a listing of the case briefs received.
[12] *Id*., for a listing of the rebuttal briefs received.
[13] *See* Petitioner Benchmark Submission.
[14] *See* GNB LER Benchmark Submission; *see also* GOA LER Benchmark Submission; GOQ LER Benchmark Submission; and JD Irving LER Benchmark Submission.
[15] *See* Canadian Parties LER Pre-Prelim Comments & Response to Petitioner Comments on Post-Prelim SQR Responses.
[16] *See* LER Post-Preliminary Decision Memorandum.
[17] *See* Appendix III (Case-Related Documents) attached to this memorandum for a listing of the case briefs received.
[18] *Id*., for a listing of the rebuttal briefs received.
[19] *See* Hearing Transcript.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[20] On June 3, 2020, Commerce extended the deadline for the final results of this administrative review.[21] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[22] The deadline for the final results of this review is now November 23, 2020.

IV. PERIOD OF REVIEW

The POR is April 28, 2017 through December 31, 2018. As a result, the POR of this review exceeds one CY. Consistent with Commerce's practice, we have calculated benefits and net subsidy rates for two periods, CY 2017 and CY 2018.[23] We based the benefit and net subsidy rate calculations for CY 2017 and CY 2018 on the respondents' subsidy usage for the entire CY. Subsidy rates calculated for CY 2017 will be used as the assessment rate for subject merchandise that entered the United States during the period April 28, 2017 through December 31, 2017, and subsidy rates calculated for CY 2018 will be used as the assessment rate for subject merchandise that entered the United States during period January 1, 2018 through December 31, 2018. Additionally, the subsidy rates calculated for CY 2018 will be used as the basis for cash deposit rates.

V. 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.

[20] *See* April 24th Tolling Memorandum.
[21] *See* Extension of Final Results.
[22] *See* July 21st Tolling Memorandum.
[23] *See, e.g., Aluminum Extrusions from China 1st AR*, 79 FR at 107 – 108.

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.

- U.S.-origin lumber shipped to Canada for processing and imported into the United States if the processing occurring in Canada is limited to one or more of the following: (1) Kiln drying; (2) planing to create smooth-to-size board; or (3) sanding.

- Box-spring frame kits if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails must be radius-cut at both ends. The kits must be individually packaged and must contain the exact number of wooden components needed to make a particular box-spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

- Radius-cut box-spring-frame components, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantially cut so as to completely round one corner.

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

4407.19.10.67; 4407.19.10.68; 4407.19.10.69; 4407.19.10.74; 4407.19.10.75; 4407.19.10.76; 4407.19.10.77; 4407.19.10.82; 4407.19.10.83; 4407.19.10.92; 4407.19.10.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; 4418.50.0010; 4418.50.00.30; 4418.50.0050; and 4418.99.10.00.[24]

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.[25]

VI. SUBSIDIES VALUATION

Allocation Period

Commerce made no changes to, and interested parties raised no issues in their case briefs, regarding the allocation period or the allocation methodology used in the *Lumber V AR1 Prelim Results*. For a description of the allocation period and the methodology used for these final results, *see* the *Lumber V AR1 Prelim Results*.[26]

Attribution of Subsidies

Interested parties raised issues in their case briefs regarding the attribution of subsidies. *See* Comments 10 and 59. For a description of the methodology used for these final results, *see* the *Lumber V AR1 Prelim Results*.[27]

Denominators

Interested parties raised issues in their case briefs regarding the denominators we used to calculate the countervailable subsidy rates for the subsidy programs described *infra*. *See*

[24] The following HTSUS numbers have been deleted, deactivated, replaced, or are invalid: 4407.10.0101, 4407.10.0102, 4407.10.0115, 4407.10.0116, 4407.10.0117, 4407.10.0118, 4407.10.0119, 4407.10.0120, 4407.10.0142, 4407.10.0143, 4407.10.0144, 4407.10.0145, 4407.10.0146, 4407.10.0147, 4407.10.0148, 4407.10.0149, 4407.10.0152, 4407.10.0153, 4407.10.0154, 4407.10.0155, 4407.10.0156, 4407.10.0157, 4407.10.0158, 4407.10.0159, 4407.10.0164, 4407.10.0165, 4407.10.0166, 4407.10.0167, 4407.10.0168, 4407.10.0169, 4407.10.0174, 4407.10.0175, 4407.10.0176, 4407.10.0177, 4407.10.0182, 4407.10.0183, 4407.10.0192, 4407.10.0193; and 4418.90.2500. These HTSUS numbers however have not been deactivated in CBP's ACE secure data portal, as they could be associated with entries of unliquidated subject merchandise.

[25] *See CVD Order*, 83 FR at 349.

[26] *See Lumber V AR1 Prelim Results* PDM at 6.

[27] *Id*. at 6 – 11.

Comments 10 and 114. For information on the denominators used in these final results, *see* the *Lumber V AR1 Prelim Results*[28] and the Final Calculation Memoranda.[29]

Benchmarks and Discount Rates

Commerce made no changes to, and interested parties raised no issues in their case briefs, regarding the benchmark interest rates used to calculate the benefit for certain subsidy programs. For information on the long-term interest rate and discount rate benchmarks used in these final results, *see* the *Lumber V AR1 Prelim Results*,[30] Resolute Post-Prelim Decision Memorandum,[31] and the Final Calculation Memoranda.[32]

VII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, we determine the following:

A. Programs Determined To Be Countervailable[33]

1. *Provision of Stumpage for LTAR*[34]

a. Provision of Stumpage for LTAR – Alberta

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[35] Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[36]

2017
Canfor: 1.25 percent *ad valorem*
West Fraser: 5.40 percent *ad valorem*

2018
Canfor: 1.10 percent *ad valorem*
West Fraser: 6.02 percent *ad valorem*

[28] *Id*. at 28 – 88.
[29] *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; Resolute Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.
[30] *See Lumber V AR1 Prelim Results* PDM at 11 – 12.
[31] *See* Resolute Post-Prelim Decision Memorandum at 2 – 5.
[32] *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; Resolute Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.
[33] For additional information on the calculated subsidy rates, *see* Canfor Final Calculation Memorandum; JDIL Final Calculation Memorandum; Resolute Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.
[34] We determine that no respondent purchased saw logs in Manitoba or Saskatchewan during the POR.
[35] *See* Comments 10 – 13 and 43.
[36] *See* Comment 35; *see also* Nova Scotia Final Benchmark Calculation Memorandum; Canfor Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.

b. Provision of Stumpage for LTAR – British Columbia

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[37] Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[38]

2017
Canfor: 1.03 percent *ad valorem*
West Fraser: 0.60 percent *ad valorem*

2018
Canfor: 0.23 percent *ad valorem*
West Fraser: 0.50 percent *ad valorem*

c. Provision of Stumpage for LTAR – New Brunswick

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[39] Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[40]

2017
JDIL: 1.63 percent *ad valorem*

2018
JDIL: 1.58 percent *ad valorem*

d. Provision of Stumpage for LTAR – Ontario

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[41] Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[42]

2017
Resolute: 3.86 percent *ad valorem*

2018
Resolute: 3.91 percent *ad valorem*

[37] *See* Comments 14 – 16.
[38] *See Lumber V AR1 Prelim Results* PDM at 12 – 36.
[39] *See* Comment 17.
[40] *See Lumber V AR1 Prelim Results* PDM at 12 – 36.
[41] *See* Comments 19 and 43.
[42] *See* Comment 35; *see also* Nova Scotia Final Benchmark Calculation Memorandum; and Resolute Final Calculation Memorandum.

e. Provision of Stumpage for LTAR – Québec

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[43] Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[44]

2017
Resolute: 9.43 percent *ad valorem*

2018
Resolute: 9.41 percent *ad valorem*

2. *British Columbia LER*

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[45] Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[46]

2017
Canfor: 0.03 percent *ad valorem*
West Fraser: 0.01 percent *ad valorem*

2018
Canfor: 0.01 percent *ad valorem*
West Fraser: 0.04 percent *ad valorem*

3. *Grant Programs*

Federal Grant Programs

1. SDTC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[47] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[48]

2018
West Fraser: 0.04 *ad valorem*

[43] *See* Comment 43.
[44] *See* Comment 31: Classification of Timber Purchases in Nova Scotia Compared to Québec, Ontario, and Alberta; *see also* Nova Scotia Final Benchmark Calculation Memorandum; and Resolute Final Calculation Memorandum.
[45] *See* Comments 45 – 47.
[46] *See Lumber V AR1 Prelim Results* PDM at 36 – 38.
[47] *See* Comment 59.
[48] *See Lumber V AR1 Prelim Results* PDM at 39 – 41.

2. BC ETG / Canada – BC Job Grant

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[49] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[50]

2017
Canfor: 0.01 percent *ad valorem*
West Fraser: Not Measurable

2018
Canfor: 0.01 percent *ad valorem*
West Fraser: Not Measurable

Alberta Grant Programs

1. BPP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[51] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[52]

2017
Canfor: 0.09 percent *ad valorem*
West Fraser: 0.18 percent *ad valorem*

2018
Canfor: 0.03 percent *ad valorem*
West Fraser: 0.05 percent *ad valorem*

2. ABF

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[53] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[54]

2017
West Fraser: 0.01 percent *ad valorem*

British Columbia Grant Programs

[49] *See* Comment 58.
[50] *See Lumber V AR1 Prelim Results* PDM at 42 – 43.
[51] *See* Comment 60.
[52] *See Lumber V AR1 Prelim Results* PDM at 43 – 44.
[53] *See* Comment 59.
[54] *See Lumber V AR1 Prelim Results* PDM at 44 – 46.

1. BC Hydro Power Smart: Energy Manager

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[55] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[56]

2017
Canfor: Not Measurable
West Fraser: Not Measurable

2018
Canfor: Not Measurable
West Fraser: 0.01 percent *ad valorem*

2. BC Hydro Power Smart: Incentives

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[57] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[58]

2017
Canfor: 0.03 percent *ad valorem*
West Fraser: 0.03 percent *ad valorem*

2018
Canfor: 0.02 percent *ad valorem*
West Fraser: 0.11 percent *ad valorem*

3. Carbon Offset Grants

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[59] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[60]

2017
Canfor: 0.03 percent *ad valorem*

2018
Canfor: 0.03 percent *ad valorem*

[55] *See* Comment 65.
[56] *See Lumber V AR1 Prelim Results* PDM at 46 – 47.
[57] *See* Comment 65.
[58] *See Lumber V AR1 Prelim Results* PDM at 47 – 48.
[59] *See* Comment 63.
[60] *See Lumber V AR1 Prelim Results* PDM at 48 – 49.

4. Other Miscellaneous Payment from BC Hydro to West Fraser

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[61] Commerce has not modified its calculation of the subsidy rate for this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[62]

2017
West Fraser: 0.02 percent *ad valorem*

New Brunswick Grant Programs

1. New Brunswick Provision of Silviculture Grants

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[63] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[64]

2017
JDIL: 0.30 percent *ad valorem*

2018
JDIL: 0.33 percent *ad valorem*

2. New Brunswick License Management Fees

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[65] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[66]

2017
JDIL: 0.32 percent *ad valorem*

2018
JDIL: 0.28 percent *ad valorem*

3. Subsidies Provided by Opportunities New Brunswick

Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[67]

[61] *See* Comment 64.
[62] *See* Canfor/West Fraser Post-Prelim Decision Memorandum at 4 – 6.
[63] *See* Comment 69.
[64] *See Lumber V AR1 Prelim Results* PDM at 50.
[65] *See* Comment 69.
[66] *See Lumber V AR1 Prelim Results* PDM at 50.
[67] *See Lumber V AR1 Prelim Results* PDM at 51.

2017
JDIL: 0.03 percent *ad valorem*

4. New Brunswick Workforce Expansion Program (OJP)

Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[68]

2017
JDIL: 0.01 percent *ad valorem*

Nova Scotia Grant Programs

1. Nova Scotia Provision of Silviculture Grants

Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[69]

2017
JDIL: 0.01 percent *ad valorem*

Ontario Grant Programs

1. IESO Demand Response

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[70] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[71]

2017
Resolute: 0.14 percent *ad valorem*

2018
Resolute: 0.08 percent *ad valorem*

2. IESO IEI

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[72] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[73]

[68] *See Lumber V AR1 Prelim Results* PDM at 51 – 52.
[69] *See Lumber V AR1 Prelim Results* PDM at 52 – 53.
[70] *See* Comment 73.
[71] *See Lumber V AR1 Prelim Results* PDM at 53 – 54.
[72] *See* Comment 74.
[73] *See Lumber V AR1 Prelim Results* PDM at 54 – 55.

2017
Resolute: 0.12 percent *ad valorem*

2018
Resolute: 0.10 percent *ad valorem*

3. TargetGHG Industrial Demonstration Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[74] Commerce has not modified its calculation of the subsidy rate for this program from the Resolute Post-Prelim Decision Memorandum.[75]

2018
Resolute: 0.16 percent *ad valorem*

4. OFRFP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[76] Commerce has not modified its calculation of the subsidy rate for this program from the Resolute Post-Prelim Decision Memorandum.[77]

2017
Resolute: 0.15 percent *ad valorem*

2018
Resolute: 0.52 percent *ad valorem*

Québec Grant Programs

1. PCIP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[78] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[79]

2017
Resolute: 0.11 percent *ad valorem*

2018
Resolute: 0.05 percent *ad valorem*

[74] *See* Comment 72.
[75] *See* Resolute Post-Prelim Decision Memorandum at 6 – 7.
[76] *See* Comment 71.
[77] *See* Resolute Post-Prelim Decision Memorandum at 7 – 8.
[78] *See* Comment 75.
[79] *See Lumber V AR1 Prelim Results* PDM at 55 – 56.

2. Paix des Braves

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[80] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[81]

2017
Resolute: 0.03 percent *ad valorem*

2018
Resolute: 0.06 percent *ad valorem*

3. FDRCMO

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[82] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[83]

2017
Resolute: Not Measurable

2018
Resolute: 0.01 percent *ad valorem*

4. MFOR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[84] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[85]

2017
Resolute: 0.01 percent *ad valorem*

2018
Resolute: 0.01 percent *ad valorem*

[80] *See* Comment 76.
[81] *See Lumber V AR1 Prelim Results* PDM at 56 – 57.
[82] *See* Comment 81 and 82.
[83] *See Lumber V AR1 Prelim Results* PDM at 57 – 58.
[84] *See* Comment 81 and 82.
[85] *See Lumber V AR1 Prelim Results* PDM at 58 – 59.

5. ÉcoPerformance

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[86] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[87]

2018
Resolute: 0.02 percent *ad valorem*

6. Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[88] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[89]

2017
Resolute: 0.03 percent *ad valorem*

2018
Resolute: 0.07 percent *ad valorem*

7. Hydro-Québec's Special L Rate for Industrial Customers Affected by Spruce Budworm

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[90] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[91]

2017
Resolute: 0.50 percent *ad valorem*

2018
Resolute: 0.46 percent *ad valorem*

[86] *See* Comment 80.
[87] *See Lumber V AR1 Prelim Results* PDM at 59 – 60.
[88] *See* Comment 78.
[89] *See Lumber V AR1 Prelim Results* PDM at 60 – 61.
[90] *See* Comment 87 and 88.
[91] *See Lumber V AR1 Prelim Results* PDM at 61 – 63.

8. Hydro-Québec's ISEE

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[92] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[93]

2017
Resolute: 0.04 percent *ad valorem*

2018
Resolute: 0.01 percent *ad valorem*

9. Hydro-Québec's IEO

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[94] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[95]

2017
Resolute: 0.08 percent *ad valorem*

2018
Resolute: 0.08 percent *ad valorem*

10. Hydro-Québec's Electricity Discount Program Applicable to Consumers Billed at Rate L

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[96] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[97]

2017
Resolute: 0.36 percent *ad valorem*

2018
Resolute: 0.46 percent *ad valorem*

[92] *See* Comment 86.
[93] *See Lumber V AR1 Prelim Results* PDM at 63 – 64.
[94] *See* Comment 84.
[95] *See Lumber V AR1 Prelim Results* PDM at 64 – 65.
[96] *See* Comment 85.
[97] *See Lumber V AR1 Prelim Results* PDM at 65 – 66.

11. Hydro-Québec's New Demand-Side Management Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[98] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[99]

2017
Resolute: 0.03 percent *ad valorem*

12. PIB

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[100] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[101]

2018
Resolute: 0.03 percent *ad valorem*

13. MCRP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[102] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[103]

2017
Resolute: 0.34 percent *ad valorem*

2018
Resolute: 0.19 percent *ad valorem*

14. Rexforêt Silviculture Works: Road Construction/Maintenance

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[104] Commerce has not modified its calculation of the subsidy rate for this program as discussed in the Resolute Post-Prelim Memorandum.[105]

2017
Resolute: Not Measurable

[98] *See* Comment 83.
[99] *See Lumber V AR1 Prelim Results* PDM at 66.
[100] *See* Comment 79.
[101] *See Lumber V AR1 Prelim Results* PDM at 66 – 67.
[102] *See* Comment 77.
[103] *See Lumber V AR1 Prelim Results* PDM at 67 – 68.
[104] *See* Comment 116.
[105] *See* Resolute Post-Prelim Decision Memorandum at 10 – 11.

2018
Resolute: 0.01 percent *ad valorem*

4. Tax and Other Revenue Forgone Programs

Federal Tax Programs

1. ACCA for Class 29 and Class 53 Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[106] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[107]

2017
Canfor: 0.28 percent *ad valorem*
JDIL: 0.28 percent *ad valorem*
Resolute: Not Measurable
West Fraser: Not Measurable

2018
Canfor: 0.14 percent *ad valorem*
JDIL: 0.11 percent *ad valorem*
Resolute: 0.01 percent *ad valorem*
West Fraser: Not Measurable

2. Apprenticeship Job Creation Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[108] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[109]

2017
JDIL: 0.01 percent *ad valorem*
West Fraser: Not Measurable

2018
Canfor: 0.04 percent *ad valorem*
West Fraser: Not Measurable

[106] *See* Comment 92 and 93.
[107] *See Lumber V AR1 Prelim Results* PDM at 69 – 70.
[108] *See* Comment 94.
[109] *See Lumber V AR1 Prelim Results* PDM at 70.

3. Atlantic Investment Tax Credit

Commerce has/has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[110]

2017
JDIL: 0.54 percent *ad valorem*

2018
JDIL: 0.11 percent *ad valorem*

4. CCA for Class 1 Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[111] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[112]

2017
Canfor: 0.02 percent *ad valorem*
JDIL: 0.05 percent *ad valorem*
Resolute: 0.02 percent *ad valorem*
West Fraser: Not Measurable

2018
Canfor: 0.02 percent *ad valorem*
JDIL: 0.05 percent *ad valorem*
Resolute: 0.02 percent *ad valorem*
West Fraser: Not Measurable

5. FLTC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[113] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[114]

2017
West Fraser: 0.06 percent *ad valorem*

2018
Canfor: 0.33 percent *ad valorem*
West Fraser: 0.26 percent *ad valorem*

[110] *See Lumber V AR1 Prelim Results* PDM at 70 – 71.
[111] *See* Comment 93, 95, and 96.
[112] *See Lumber V AR1 Prelim Results* PDM at 71 – 72.
[113] *See* Comment 90.
[114] *See Lumber V AR1 Prelim Results* PDM at 72.

6. SR&ED – GOC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[115] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[116]

2017
West Fraser: 0.05 percent *ad valorem*

2018
Canfor: 0.31 percent *ad valorem*
Resolute: 0.76 percent *ad valorem*
West Fraser: 0.06 percent *ad valorem*

Alberta Tax Programs

1. Alberta TEFU

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[117] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[118]

2017
West Fraser: 0.02 percent *ad valorem*

2018
West Fraser: 0.02 percent *ad valorem*

2. SR&ED – GOA

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[119] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[120]

2017
West Fraser: 0.01 percent *ad valorem*

2018
Canfor: Not Measurable
West Fraser: 0.01 percent *ad valorem*

[115] *See* Comments 89 and 117.
[116] *See Lumber V AR1 Prelim Results* PDM at 73.
[117] *See* Comment 97.
[118] *See Lumber V AR1 Prelim Results* PDM at 73 – 74.
[119] *See* Comment 89.
[120] *See Lumber V AR1 Prelim Results* PDM at 74 – 75.

3. Alberta Property Tax – EOA

Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[121]

2017
West Fraser: 0.02 percent *ad valorem*

2018
West Fraser: 0.02 percent *ad valorem*

4. Schedule D Depreciation

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[122] Commerce has not modified its calculation of the subsidy rate for this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[123]

2017
Canfor: 0.01 percent *ad valorem*

2018
Canfor: 0.01 percent *ad valorem*

British Columbia Tax Programs

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[124] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[125]

2017
Canfor: 0.07 percent *ad valorem*
West Fraser: 0.03 percent *ad valorem*

2018
Canfor: 0.07 percent *ad valorem*
West Fraser: 0.03 percent *ad valorem*

[121] *See Lumber V AR1 Prelim Results* PDM at 75.
[122] *See* Comment 98.
[123] *See* Canfor/West Fraser Post-Prelim Decision Memorandum at 3.
[124] *See* Comment 97.
[125] *See Lumber V AR1 Prelim Results* PDM at 76.

2. SR&ED – GBC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[126] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[127]

2017
West Fraser: 0.02 percent *ad valorem*

2018
Canfor: 0.10 percent *ad valorem*
West Fraser: 0.01 percent *ad valorem*

3. PLTC – GBC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[128] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[129]

2017
Canfor: 0.06 percent *ad valorem*
West Fraser: 0.03 percent *ad valorem*

2018
Canfor: 0.17 percent *ad valorem*
West Fraser: 0.13 percent *ad valorem*

4. IPTC[130]

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[131] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[132]

2017
Canfor: 0.02 percent *ad valorem*
West Fraser: 0.01 percent *ad valorem*

2018
Canfor: 0.01 percent *ad valorem*

[126] *See* Comment 89.
[127] *See Lumber V AR1 Prelim Results* PDM at 76 – 77.
[128] *See* Comment 90 and 91.
[129] *See Lumber V AR1 Prelim Results* PDM at 77 – 78.
[130] The IPTC may also be referred to as the British Columbia School Tax Credit, or the Class 4 Major Industry Property School Tax Credit.
[131] *See* Comment 100.
[132] *See Lumber V AR1 Prelim Results* PDM at 78 – 79.

West Fraser: 0.01 percent *ad valorem*

5. Training Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[133] Commerce has not modified its calculation of the subsidy rate for this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[134]

2017
Canfor: 0.01 percent *ad valorem*
West Fraser: Not Measurable

2018
Canfor: Not Measurable
West Fraser: Not Measurable

New Brunswick Tax Programs

1. New Brunswick LIREPP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[135] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[136]

2017
JDIL: 0.08 percent *ad valorem*

2018
JDIL: 0.08 percent *ad valorem*

2. New Brunswick R&D Tax Credit

Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[137]

2017
JDIL: 0.01 percent *ad valorem*

2018
JDIL: 0.01 percent *ad valorem*

[133] *See* Comment 101.
[134] *See* Canfor/West Fraser Post-Prelim Decision Memorandum at 3 – 4.
[135] *See* Comment 106.
[136] *See Lumber V AR1 Prelim Results* PDM at 79.
[137] *See Lumber V AR1 Prelim Results* PDM at 79 – 80.

3. GNB Gasoline & Fuel Tax Exemptions and Refund Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[138] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[139]

2017
JDIL: 0.05 percent *ad valorem*

2018
JDIL: 0.02 percent *ad valorem*

4. New Brunswick Property Tax Incentives for Private Forest Producers

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[140] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[141]

2017
JDIL: 0.11 percent *ad valorem*

2018
JDIL: 0.09 percent *ad valorem*

Ontario Tax Programs

1. SR&ED – GOO

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[142] Commerce has not modified its calculation of the subsidy rate for this program from the Resolute Post-Prelim Decision Memorandum.[143]

2018
Resolute: 0.09 percent *ad valorem*

[138] *See* Comment 107.
[139] *See Lumber V AR1 Prelim Results* PDM at 80.
[140] *See* Comments 103 and 104.
[141] *See Lumber V AR1 Prelim Results* PDM at 80 – 81.
[142] *See* Comment 89 and 117.
[143] *See* Resolute Post-Prelim Decision Memorandum at 5.

2. OTCMP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[144] Commerce has not modified its calculation of the subsidy rate for this program from the Resolute Post-Prelim Decision Memorandum.[145]

2018
Resolute: 0.01 percent *ad valorem*

Québec Tax Programs

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[146] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[147]

2017
Resolute: 0.17 percent *ad valorem*

2018
Resolute: 0.05 percent *ad valorem*

2. Property Tax Refund for Forest Producers on Private Woodlands in Québec

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[148] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[149]

2017
Resolute: 0.01 percent *ad valorem*

2018
Resolute: Not Measurable

[144] *See* Comment 108.
[145] *See* Resolute Post-Prelim Decision Memorandum at 5 – 6.
[146] *See* Comment 109 and 115.
[147] *See Lumber V AR1 Prelim Results* PDM at 81.
[148] *See* Comment 111.
[149] *See Lumber V AR1 Prelim Results* PDM at 81 – 82.

3. SR&ED – GOQ

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[150] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[151]

2017
Resolute: 0.08 percent *ad valorem*

2018
Resolute: Not Measurable

4. Research Consortium Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[152] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[153]

2017
Resolute: 0.06 percent *ad valorem*
West Fraser: 0.01 percent *ad valorem*

2018
Resolute: Not Measurable
West Fraser: 0.01 percent *ad valorem*

5. Refund of Fuel Tax Paid on Fuel Used for Certain Purposes and Stationary Purposes

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[154] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[155]

2017
Resolute: 0.01 percent *ad valorem* (Stationary Purpose)
Resolute: Not Measurable (Certain Purpose)

2018
Resolute: 0.01 percent *ad valorem* (Stationary Purpose)
Resolute: Not Measurable (Certain Purpose)

[150] *See* Comment 89 and 117.
[151] *See Lumber V AR1 Prelim Results* PDM at 82 – 83.
[152] *See* Comment 112.
[153] *See Lumber V AR1 Prelim Results* PDM at 83 – 84.
[154] *See* Comment 110.
[155] *See Lumber V AR1 Prelim Results* PDM at 84.

5. Purchase of Goods for MTAR

1. BC Hydro EPAs

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[156] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[157]

2017
West Fraser: 0.25 percent *ad valorem*

2018
West Fraser: 0.24 percent *ad valorem*

2. GOO Purchase of Electricity for MTAR under CHP III PPA

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[158] Commerce has not modified its calculation of the subsidy rate for this program as discussed in the Resolute Post-Prelim Memorandum.[159]

2017
Resolute: 2.02 percent *ad valorem*

2018
Resolute: 1.47 percent *ad valorem*

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[160] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR1 Prelim Results*.[161]

2017
Resolute: 0.98 percent *ad valorem*

2018
Resolute: 0.92 percent *ad valorem*

[156] *See* Comments 5 – 7 and 49 – 50.
[157] *See Lumber V AR1 Prelim Results* PDM at 85 – 86.
[158] *See* Comment 51, 52, 53, and 54.
[159] *See* Resolute Post-Prelim Decision Memorandum at 8 – 9.
[160] *See* Comment 51, 55, 56, and 57.
[161] *See Lumber V AR1 Prelim Results* PDM at 86 – 87.

6. Debt Forgiveness

1. GOO Debt Forgiveness for Resolute (Fort Frances Mill)

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[162] Commerce has not modified its calculation of the subsidy rate for this program as discussed in the Resolute Post-Prelim Memorandum.[163]

2017
Resolute: 0.13 percent *ad valorem*

2018
Resolute: 0.12 percent *ad valorem*

B. Programs Determined To Be Not Countervailable

Alberta

1. FRIP and CRP Sub-Programs Under FRIAA

Commerce has not made changes to the analysis of this program from the *Lumber V AR1 Prelim Results*.[164] We received no comments from interested parties on this program.

2. WCB: PIR and Surplus Distribution

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[165] We received no comments from interested parties on this program.

3. FRIAA: Wildlife Reclamation Program

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[166] We received no comments from interested parties on this program.

4. FRIAA: MPBP

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[167] We received no comments from interested parties on this program.

[162] *See* Comment 118.
[163] *See* Resolute Post-Prelim Decision Memorandum at 3 – 5.
[164] *See Lumber V AR1 Prelim Results* PDM at 88.
[165] *See* Canfor/West Fraser Post-Prelim Decision Memorandum at 6 – 7.
[166] *Id*. at 14 – 15.
[167] *Id*. at 15 – 16.

5. FRIAA: Miscellaneous Payments Made to West Fraser

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[168] We received no comments from interested parties on this program.

6. IFIT

Commerce has made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum. We received comments from interested parties on this program, which are addressed at Comment 59.

7. Forest Enhancement Society

Commerce has made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum. We received comments from interested parties on this program, which are addressed at Comment 68.

8. Purchase of Electricity for MTAR by AESO

Commerce has made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum. We received comments from interested parties on this program, which are addressed at Comment 48.

British Columbia

1. WorkSafe BC's WLB

Commerce has not made changes to the analysis of this program from the *Lumber VAR1 Prelim Results*.[169] We received no comments from interested parties on this program.

2. BC Hydro Power Smart: TMP

Commerce has not made changes to the analysis of this program from the *Lumber VAR1 Prelim Results*.[170] We received comments from interested parties on this program, which are addressed at Comment 65.

3. Class 9 Farm Property Assessment Rates

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[171] We received comments from interested parties on this program, which are addressed at Comment 102.

[168] *Id*. at 16.
[169] *See Lumber VAR1 Prelim Results* PDM at 88 – 89.
[170] *Id*. at 89 – 90.
[171] *See* Canfor/West Fraser Post-Prelim Decision Memorandum at 8.

4. LBIP and LBIS: Current Reforestation Program

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[172] We received no comments from interested parties on this program.

5. FRPA Section 108 Payments

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[173] We received comments from interested parties on this program, which are addressed at Comment 62.

6. WorkSafe BC: COR

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[174] We received no comments from interested parties on this program.

7. Payments for Aerial Inventory Photography and LiDar

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[175] We received comments from interested parties on this program, which are addressed at Comment 61.

8. Payments for Road Maintenance Activities

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[176] We received no comments from interested parties on this program.

9. Payments for Bridge Installation and Repair Projects

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[177] We received no comments from interested parties on this program.

10. Payments for Cruising and Block Layout

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[178] We received comments from interested parties on this

[172] *Id*. at 8 – 9.
[173] *Id*. at 9 – 10.
[174] *Id*. at 10.
[175] *Id*. at 11.
[176] *Id*. at 11 – 12.
[177] *Id*. at 12.
[178] *Id*. at 12 – 13.

program, which are addressed at Comment 66.

11. Payments for Fire Suppression Services

Commerce has not made changes to the analysis of this program from the Canfor/West Fraser Post-Prelim Decision Memorandum.[179] We received comments from interested parties on this program, which are addressed at Comment 67.

Ontario

1. GOO Pension Plan Funding Relief

Commerce has not made changes to the analysis of this programs from the Resolute Post-Prelim Decision Memorandum.[180] We received no comments from interested parties on this program.

2. Ontario LER

Commerce has made changes to the analysis of this program from the *Lumber V AR1 LER*. We received comments from interested parties on this program, which are addressed at Comment 11.

Québec

1. Québec LER

Commerce has made changes to the analysis of this program from the *Lumber V AR1 LER*. We received comments from interested parties on this program, which are addressed at Comments 11 and 119.

C. Programs Determined Not To Provide Measurable Benefits During the POR

The respondents reported receiving benefits under various programs, some of which Commerce initiated and others that were self-reported. Based on the record evidence, we determine that the benefits from certain programs were fully expensed prior to the POR or are less than 0.005 percent *ad valorem* when attributed to the respondent's applicable sales as discussed above in the "Attribution of Subsidies" section of the *Lumber V AR1 Prelim Results*.[181] Consistent with Commerce's practice,[182] we have not included these programs in the final subsidy rate calculations for the respondents. We also determine that it is unnecessary for Commerce to make a determination as to the countervailability of those programs.

We received no comments from interested parties on these programs.

[179] *Id*. at 13 – 14.
[180] *See* Resolute Post-Prelim Decision Memorandum at 12 – 14.
[181] *See Lumber V AR1 Prelim Results* PDM at 6 – 11.
[182] *See, e.g., CFS from China* IDM at 15; *Steel Wheels from China* IDM at 36; *Aluminum Extrusions from China 1st AR* IDM at 14; and *CRS from Russia* IDM at 31.

For the subsidy programs that do not provide a numerically significant benefit for each respondent, *see* the Final Calculation Memoranda.[183]

D. Programs Determined Not To Be Used During the POR

Each respondent reported non-use of programs under examination. For a list of the subsidy programs not used by each respondent, *see* the Final Calculation Memoranda.[184]

We received no comments from interested parties on these programs.

E. Programs Deferred Until the Next Administrative Review

As discussed in post-preliminary decision memorandum for Resolute, we determined that insufficient time remained in this review to collect the additional information needed to accurately and completely analyze the countervailability of three programs.[185] These programs are:

1. Payments Made by the GOO to Resolute Based on Fraud or "Gaming" of the IESO System

2. Ontario Scaling Reimbursements

3. Society for the Protection of Forests Against Insects and Diseases / Society for the Protection of Forests Against Fire (Québec)

These programs involve only Resolute and no other respondent. Further, these programs are unique in that Commerce has not made a determination on similar subsidy programs with parallel objectives in other provinces within this review. Therefore, pursuant to 19 CFR 351.311(c), given the complex and distinctive nature of the three programs, the insufficient time that remained before the statutory deadline for this review to collect the additional necessary information, Commerce deferred the programs to the next administrative review in which Resolute is a respondent.

We received no comments from interested parties on these programs.

VIII. FINAL *AD VALOREM* RATE FOR NON-SELECTED COMPANIES UNDER REVIEW

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limited its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-

[183] *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; Resolute Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.
[184] *Id*.
[185] *See* Resolute Post-Prelim Decision Memorandum at 1 – 2.

others rate in an investigation. We also note that section 777A(e)(2) of the Act provides that "the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section {705(c)(5) of the Act}." Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by using the weighted average countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available. As indicated in the accompanying *Federal Register* notice of the final results, dated concurrently with this memorandum, we determine that Canfor, JDIL, Resolute, and West Fraser received countervailable subsidies that are above *de minimis* and that the rates are not bases solely on the facts available. We, therefore, applied to the non-selected companies the weighted average of the net subsidy rates calculated for Canfor, JDIL, Resolute, and West Fraser during CY 2017 and CY 2018.[186] We received no comments from interested parties on the methodology to calculate the non-selected rate.

IX. ANALYIS OF COMMENTS

A. General Issues

Comment 1: Whether Commerce Must Update the Regulations Implementing the NAFTA Prior to Issuance of the Final Results

Canadian Parties' Comments[187]

- By the time Commerce issues the final results of this review, the USMCA will have come into force and replaced the NAFTA. At that time, the United States must have the proper domestic legal framework in place to implement its USMCA obligations.
- The implementing act for USMCA amends section 516A of the Tariff Act to replace provisions dealing with Chapter 19 binational review panels under the NAFTA with similar provisions for binational review panels under the USMCA, including the requirement that Commerce suspend liquidation during the pendency of binational panel reviews under certain circumstances.
- The Canadian Parties request that Commerce make similar updates to its NAFTA implementing regulations at 19 CFR Part 356 prior to the issuance of the final results, including updating the definitions under 19 CFR 356.2 to refer to binational panel review under the USMCA rather than under Chapter 19 of the NAFTA.

Commerce's Position: Although the Canadian Parties make a request in their briefs that Commerce amend its regulations, we wish to be clear that Commerce does not amend regulations through administrative review final results. There is an entire lawful procedure required for Commerce to modify its regulations, and we cannot speak to those procedures in this administrative review. That being said, Commerce is aware that the USMCA does direct the United States government to make certain changes to its regulations and procedures and, accordingly, we are currently considering potential amendments to certain regulations.

[186] Consistent with *MacLean-Fogg*, we included the net subsidy rate calculated for JDIL, a voluntary respondent, in the non-selected rate calculation.
[187] *See* GOC June 8, 2020 Vol. I Case Brief at 63 – 65.

Comment 2: Whether Commerce Sufficiently Considered Expert Reports

Canadian Parties' Comments[188]

- Commerce is required to consider all available information, regardless of whether it has been prepared for purposes of litigation. Expert reports are routinely accepted in U.S. court litigation, and there is no presumption that such evidence is deemed unreliable if presented by an expert retained by a specific party.
- Commerce routinely accepts information prepared for its proceedings, and public information is not generally available, which is specific to Commerce's proceedings, thus necessitating the use of commissioned reports.
- The CIT has upheld the use of commissioned studies in Commerce's proceedings and faulted Commerce for not addressing such information in prior cases. Commerce erroneously relied on patent-law decisions as a rationale for disregarding the Canadian Parties' evidence in the *Lumber V Final*.
- Commerce may disagree with the conclusions presented in the expert reports, but it must fully consider the underlying facts and evidence relied on in the reports.

Petitioner's Rebuttal Comments[189]

- Commerce has examined the expert reports submitted by the Canadian Parties and determined that they were less persuasive than evidence provided outside the context of this proceeding.
- The Canadian Parties dislike Commerce's findings on the reports, which is not the same as Commerce dismissing the reports. Commerce made reasoned and informed findings in discounting the expert reports prepared for this proceeding.
- Commerce's determination that the "risk of litigation-inspired fabrication or exaggeration" due to the use of expert reports is supported by both a U.S. district court and the CIT's criticism of commissioned reports.
- Commerce has routinely discounted the probative value of reports prepared for the purpose of litigation.

Commerce's Position: Section 777(i)(3)(A) of the Act states that Commerce, in its final results of administrative reviews, shall include "an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the … review, concerning the establishment of … a countervailable subsidy." As discussed in further detail below, Commerce has adequately considered all record evidence and made reasoned decisions based on that record evidence. Further, Commerce has provided an explanation of the bases for its determinations and addressed all arguments, which includes examining all relevant record evidence, including expert reports or studies commissioned for purposes of this proceeding. We note that the Canadian Parties in this section of their case brief do not specifically name the "expert reports" they find have not been sufficiently examined in this administrative review, and instead rely on statements from the investigation, in which they argue that Commerce placed less weight on studies that had been commissioned for purposes of litigation. In this administrative review, Commerce has not dismissed any expert reports outright, but has fully examined and weighed all available information in making its determinations in these final results. However, given the volume of the evidence submitted, these final results only explicitly reference those

[188] *See* GOC June 8, 2020 Vol. I Case Brief at 2 – 20.
[189] *See* Petitioner June 25, 2020 Rebuttal Brief at 276 – 282.

reports by name that were: 1) raised by interested parties in their case briefs; or 2) are relied upon by Commerce in directly addressing issues raised in this memo. While Commerce may not agree with the conclusions or underlying assertions of such reports, or we may have noted concerns of potential bias, Commerce has fully examined all of the reports on the record of this administrative review.

While we do remain concerned that documents prepared for the purposes of the investigation or review may be tailored to reach specific results, we have also considered other factors that inform the reliability of those reports in determining the weight to accord them in reaching our final results. For example, we have examined whether the methodology underlying a particular study is clearly articulated and, if so, whether that methodology appears designed to lead to a particular conclusion without adequately considering other potential outcomes. We have also assessed whether the assertions in reports and studies are supported by citations to data, other third-party studies, or otherwise corroborated by additional record evidence. We have further examined the reliability of that supporting evidence and have accorded less weight to arguments in reports and studies that are not supported by citations to any source and not otherwise corroborated by other record evidence.

There are many examples. For example:

1) In Comment 12, we considered the Brattle Report and the supporting economic analysis of Dr. Joseph Kalt in considering parties' arguments about whether Alberta's stumpage market is distorted;
2) In Comment 14, we considered and discussed Dr. Athey's report in determining whether there is a useable tier-one benchmark for BC stumpage;
3) In Comment 15, we considered whether the Dual-Scale Study was an appropriate source to quantify the percentage of utility grade logs present in the U.S. PNW or BC interior harvests;
4) In Comment 15, we also considered and discussed the Kalt/Reishaus report, in addressing parties' arguments that Commerce should revise its selection of a U.S. PNW delivered log benchmark price;
5) In Comment 18, Commerce considered the Hendricks Report in determining whether the Ontario stumpage market is distorted;
6) Similarly, in Comment 19, we considered and discussed the Marshall Report in determining whether the Québec stumpage market is distorted;
7) In Comment 20, we considered whether the DGR report provided verifiable evidence of the cost impact of the spruce budworm in Québec's North Shore region;
8) In Comment 22, we discuss the Dual-Scale Study and whether it is an appropriate source to use for determining the log conversion factor in the BC stumpage calculations;
9) In Comment 32, we discussed the IFS Report in addressing parties' arguments as to whether the conversion factor listed in the report was suitable for use in calculating the Nova Scotia private-origin standing timber benchmark;
10) In Comment 50, we discuss and considered the Rosenzweig Report in determining whether EPAs are market-based; and
11) In Comment 55, we determined that we need not address the Merrimack Study or Coyne Study, as we determined to use the benefit-to-the-recipient standard for Hydro-Québec's PAE 2011-01.

Thus, we find that we have sufficiently considered expert reports in this segment of the proceeding.

Comment 3: Whether Commerce Applied Appropriate Standards for *De Facto and De Jure* Specificity

Canadian Parties' Comments[190]

- Commerce incorrectly found several programs to be specific. The proper test for specificity is widespread availability and use, not universal availability and use. A program is only *de jure* specific if it is limited in a meaningful manner and only *de facto* specific where use is not widespread. However, Commerce has overstepped these standards by finding *de jure* specificity based on eligibility requirements and *de facto* specificity through misleading percentage comparisons.
- The SAA clearly states that URAA amendments on specificity were not meant to change Commerce's practice in that area. Thus, pre-URAA practice and case law are still relevant. The SAA also explains that the specificity test is meant to serve as a rule of reason to prevent subsidies with widespread availability and usage from being countervailed. This aligns with the use of the words "limit" and "limited" in the Act. Commerce's interpretation of the Act and SAA acknowledges that a program can be limited to a single sector (agriculture) and still not be specific.
- The *de jure* specificity test is not satisfied simply by an eligibility requirement, as the SAA acknowledges. Rather, the relevant question is whether the requirement is automatic, strictly followed, and clearly documented, and whether the program limits eligibility to a "sufficiently small" number of recipients. This requirement is consistent with WTO jurisprudence requiring a subsidy to be limited to a discrete segment of an economy. In *United States – Subsidies on Upland Cotton*, a panel supported the U.S. position that the specificity standard does not "establish any quantitative standard for determining when a subsidy is so limited" to a small number of enterprises.
- Separate from WTO jurisprudence, Commerce has repeatedly found programs that are widely available to not be *de jure* specific, even when they have eligibility requirements that exclude significant swathes of the economy
- For *de facto* specificity, the SAA makes clear that the relevant question to ask for the first factor of the four factors is whether "the actual users of the subsidy are too large in number to reasonably be considered as a specific group." This analysis requires a careful examination of the totality of the evidence. Commerce has ignored this requirement in finding various programs *de facto* specific simply by comparing their number of users to the total number of corporations filing tax returns or existing in the jurisdiction during the relevant period. The Act calls for an inquiry into the "number" of enterprises that use a program, not the "percentage."
- Given that the CVD law applies only to physical commodities, the specificity analysis should only be carried out within the goods-producing sectors of the economy. Otherwise, any government programs to goods production could be found specific given that small share of the economy such production accounts for in a mature economy like the United States or Canada. Commerce must also account for any other program-specific issues with numerator and denominator if it persists in percentage analyses.

[190] *See* GOC June 8, 2020 Vol I Case Brief at 20 – 42.

Petitioner's Rebuttal Comments[191]

- The sweeping claims against Commerce's specificity findings in the Canadian Parties' joint issues brief do not rely on specific factual evidence, but rather attempt to use WTO findings, dictionary definitions, and pre-URAA cases to supersede U.S. law.
- The Canadian Parties' neglected to mention the CAFC's holding in *Magnola*[192] that an original specificity finding holds for the duration of a subsidy benefit barring any new facts or evidence pertaining to the subsidy's bestowal. Unlike the Canadian Parties' sources, this ruling is controlling in this proceeding.

Sierra Pacific's Rebuttal Comments[193]

- Commerce's approach of analyzing *de facto* specificity by comparing the actual number of subsidy recipients to eligible users is consistent with the Act and SAA. Commerce has not applied any formula or bright-line test, but rather continued to analyze programs on a case-by-case basis.
- Prior case precedent confirms that a number that may be "limited" in one case may not be "limited" in another based on the number of eligible users and level of economic diversification. Thus, the argument that Commerce found programs with a smaller number of users not *de facto* specific in other cases is not relevant.
- That subsidy recipients may be spread widely throughout the economy does not mean that those recipients cannot be "limited" in number.
- Once a program is found to be specific under section 771(5A)(D)(iii)(I) of the Act because the recipients are limited in number, arguments regarding a lack of specificity under other sections of the Act become moot.

Commerce's Position: In these final results, Commerce applied section 771(5A) of the Act in determining whether investigated programs are specific. The case briefs of the various Canadian Parties focus on Commerce's *de facto* specificity findings for federal and provincial SR&ED tax credits and the *de jure* specificity finding for the ACCA. For our analysis of the SR&ED programs, *see* Comment 89**.** For our discussion of the ACCA, *see* Comment 92.

Comment 4: Whether Commerce Properly Required Respondents to Report "Other Assistance"

Canadian Parties' Comments[194]

- Section 702(c)(1)(A)(1) of the Act states that Commerce must determine whether the petition alleges the elements necessary for the imposition of a duty under section 701(a) of the Act, and that the burden rests with the petitioner to meet this threshold. Requiring the respondents to answer the "other assistance" question shifts the burden to the respondents, which is contrary to the plain language of the statute.
- The SCM Agreement also requires "sufficient evidence of the existence of a subsidy"[195] before Commerce may initiate a CVD investigation.

[191] *See* Petitioner June 25, 2020 Rebuttal Brief at 282 – 284.
[192] *See Magnola*, 508 F. 3d at 1358.
[193] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 18 – 24.
[194] *See* GOC June 8, 2020 Vol. I Case Brief at 46 – 53.
[195] *See* SCM Agreement at Article 11.2.

- Commerce's "other assistance" question is overly broad, and Commerce has not provided guidance as to what "other assistance" entails. "Assistance" does not necessarily equate to a "countervailable subsidy," which is defined as a financial contribution, providing a benefit to the subject merchandise, and is specific.
- The legislative history of section 775 of the Act, which pertains to programs discovered in the course of the proceeding, indicates that the same threshold requirements for initiating subsidy programs also apply to programs discovered in the course of the proceeding. This has been confirmed by the CIT.
- Commerce should not apply adverse facts available to a respondent that fails to report all assistance, as Commerce's request is overly broad and not for specific information. Thus, it would be contrary to law to find that a respondent failed to act to "the best of its ability" in not fully responding to this request.

Petitioner's Rebuttal Comments[196]

- The Canadian Parties' arguments concerning Commerce's "other assistance" question has previously been rejected by Commerce, and this practice has been upheld by the CIT.

Commerce's Position: We disagree that Commerce's request that respondent interested parties report "other assistance" received by respondents from governments is inconsistent with domestic law or the United States' international obligations. First, with respect to the Canadian Parties' argument that Commerce's "other assistance" question is incongruent with the United States' international obligations, we find that the Act is fully consistent with the international obligations of the United States. Moreover, Commerce is governed by U.S. law, and, as explained in more detail below, our "other assistance" question is fully consistent with section 775 of the Act. The Canadian Parties' reading of the SCM Agreement has no bearing upon these proceedings. Commerce's "other assistance" question is governed by, and consistent with, U.S. law.

Neither does the "other assistance" question unlawfully shift the burden from the petitioner to respondents. As explained below, the result is consistent with section 775 of the Act and 19 CFR 351.311(b), which require that Commerce investigate potentially countervailable subsidies when sufficient time remains in the proceeding to do so.[197] Here, at the outset of the administrative review, sufficient time remained in the investigation for Commerce to inquire about other forms of assistance received by the respondents during the POR, and so Commerce requested that the respondent interested parties report such information for Commerce to examine.

The Canadian Parties cite to *SolarWorld Ams. Inc.* for the proposition that Commerce's "other assistance" question unlawfully shifts the burden from the petitioner to respondents.[198] We disagree. In *SolarWorld Ams. Inc.*, the CIT held that Commerce reasonably declined to initiate an investigation into subsidy programs alleged in the petition that lacked a sufficient evidentiary

[196] *See* Petitioner June 25, 2020 Rebuttal Brief at 284 – 287.
[197] *See Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1345 ("{T}he petitioner's burden is irrelevant when Commerce chooses to exercise its independent investigative authority under {section 775 of the Act} … {and thus} Commerce did not unlawfully shift any burden from the petitioner" through its request that respondents report any other forms of governmental assistance).
[198] *See SolarWorld Ams Inc.*, 125 F. Supp. 3d at 1318; *see also* GOC June 8, 2020 Vol. I Case Brief at 48.

basis.[199] The court rejected SolarWorld's assertions that Commerce should have supplemented the allegations on its own accord, holding that "{u}nder Section {702}(b)(1), it is not for Commerce to seek out evidence supporting the interested party's petition."[200] Thus, the CIT's holding in *SolarWorld Ams. Inc.* relates to Commerce's discretion under section 702(b)(1) of the Act not to initiate where evidence is insufficient; it says nothing about the boundaries of Commerce's authority under section 775 of the Act.

Investigations into potentially countervailable subsidies to a class or kind of merchandise are initiated in one of two ways. First, an investigation can be self-initiated by Commerce.[201] Second, a domestic interested party may file a petition for the imposition of countervailing duties on behalf of an industry.[202] Under the second mechanism, those parties are obligated to support their subsidy allegations with information reasonably available to them, and those allegations must identify the elements of a countervailable subsidy (*i.e.*, specificity, benefit, and financial contribution).[203]

However, once an investigation has been initiated through one of the above mechanisms, then, under section 775 of the Act, Commerce may also investigate potential subsidies it discovers during the course of the proceeding. Specifically, in the course of an investigation, Commerce may "discover{} a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in the countervailing duty petition."[204] In such a case, Commerce "*shall* include the practice, subsidy, or subsidy program in the proceeding."[205] Thus, section 775 of the Act imposes an affirmative obligation on Commerce to "consolidate in one investigation … all subsidies known by petitioning parties to the investigation or by the {Department} relating to {subject} merchandise" to ensure "proper aggregation of subsidization practices."[206] Commerce's regulations carve out a limited exception to its obligation to investigate what "appear{}" to be countervailable subsidies: when Commerce discovers a potential subsidy too late in a proceeding, it may defer its analysis of the program until a subsequent review, if any.[207] Moreover, Commerce has broad discretion to determine which information it deems relevant to its determination, and to request that information.[208]

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[199] *See SolarWorld Ams Inc.*, 125 F. Supp. 3d at 1330.
[200] *Id.* (referring to section 702 of the Act).
[201] *See* section 702(a) of the Act.
[202] *See* section 702(b) of the Act.
[203] *See* section 702(b)(1) of the Act.
[204] *See* section 775 of the Act.
[205] *Id.* (emphasis added).
[206] *See* S. Rep. No. 96-249, at 98 (1979); *see also Allegheny I*, 112 F. Supp. 2d at 1150 n.12 ("Congress … clearly intended that all potentially countervailable programs be investigated and catalogued, regardless of when evidence on these programs became reasonably available.").
[207] *See* 19 CFR 351.311(b).
[208] *See Changzhou Trina Solar Energy*, 195 F. Supp 3d at 1341 (holding that Commerce has "independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise," and this "broad investigative discretion" permits Commerce to require respondents to report additional forms of governmental assistance). *See also, e.g., Ansaldo Componeti, S.p.A.*, 628 F. Supp. at 205; *Essar Steel Ltd.*, 721 F. Supp. 2d at 1298 – 1299, *revoked in part on other grounds*; *Acciai Speciali Terni S.p.A.*, 26 CIT at 167; and *PAM, S.p.A.*, 495 F. Supp. 2d at 1369.

Thus, consistent with the CIT's holding in *Changzhou Trina Solar Energy*,[209] we find that Commerce's "other assistance" question enables Commerce to effectuate its obligation to investigate subsidies that it discovers that appear to be countervailable in the course of a proceeding, and is consistent with its broad discretion to seek information it deems relevant to its determination.

The Canadian Parties rely on the legislative history from the 1979 legislation that first enacted section 775 of the Act to support their contention that Commerce was expected to apply the same threshold standards that apply where a subsidy is alleged by a petitioner under section 702 of the Act whenever Commerce itself "discovers" a potential subsidy under section 775 of the Act.[210] However, such an interpretation is not supported by the statute. The language quoted by the Canadian Parties is referring to the second option presented under section 775 of the Act—the requirement that Commerce will refer any discovered potential subsidies not connected to the merchandise under investigation to the public library maintained by Commerce.[211] That is, the House Ways and Means Committee expected that any potential subsidies not relating to the subject merchandise under investigation would be investigated in a separate investigation under the normal standards of an investigation initiated under section 702(a) of the Act. We find that the Committee's expectation does not preclude Commerce from investigating a program or subsidies that appear to be countervailable with respect to merchandise which is the subject of the proceeding, and that we are not precluded from asking questions that enable Commerce to effectuate this obligation.[212]

Similarly, although the Canadian Parties rely on the *Preamble* to argue that Commerce has "acknowledged that its usual initiation standard would apply under section 775" of the Act,[213] we find that this argument is misplaced. Commerce stated, in the *Preamble*, that its regulations "adequately describe the requirements for the initiation and conduct of a *countervailing duty* investigation," and thus there was no further need to describe "how {Commerce} would investigate a subsidy practice discovered *during an antidumping investigation*."[214] As this is a countervailing duty proceeding, Commerce's statement in the *Preamble* regarding investigations of subsidy practices discovered during antidumping duty investigations is irrelevant. Here, Commerce has followed the requirements for the conduct of a countervailing duty administrative review, and that the "other assistance" question is not precluded by those requirements.

The Canadian Parties also cite to *Allegheny II* to support the existence of a threshold countervailability finding requirement before including non-initiated programs in an investigation.[215] However, *Allegheny II* is distinguishable, as it concerned Commerce's decision not to investigate a late-filed subsidy allegation. In that disparate context, the CIT examined what it meant for a practice to "appear" to be countervailable within the meaning of section 775

[209] *See Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1346 ("Commerce's inquiry concerning the full scope of governmental assistance provided by the {Government of China} and received by the Respondents in the production of subject merchandise was within the agency's independent investigative authority pursuant to {sections 702}(a) and {775 of the Act}, this inquiry was not contrary to law.").
[210] *See* GOC June 8, 2020 Vol. I Case Brief at 50 – 51.
[211] *See* H. Rep. No. 96 – 317, at 75 (1979).
[212] *See* S. Rep. No. 96 – 249, at 98 (1979); *see also Allegheny I*, 112 F. Supp. 2d at 1150 n.12.
[213] *See* GOC June 8, 2020 Vol. I Case Brief at 51 (citing *1988 CVD Preamble*, 53 FR at 52344).
[214] *See 1988 CVD Preamble*, 53 FR at 52344 (emphasis added).
[215] *See Allegheny II*, 25 CIT 816, 821; *see also* GOC June 8, 2020 Vol. I Case Brief at 52.

of the Act, such that Commerce had an obligation to investigate the discovered program. Commerce explained that when an allegation was insufficient, it was not required to go on "fishing expeditions" to determine whether an alleged subsidy or practice was countervailable. However, the facts of this administrative review differ. Here, Commerce requested information regarding potentially countervailable subsidies, in order to determine whether any such assistance appeared to be countervailable (*i.e.*, the elements necessary for the imposition of countervailing duties are present) and attributable to subject merchandise. The request was within Commerce's independent investigative authority and not precluded by *Allegheny II*.[216]

Although the Canadian Parties argue that the question is too broad, and could conceivably encompass programs such as "general infrastructure …, general reduction in income taxes, or social services such as health care," without regard to countervailability, we disagree.[217] We have not faulted any party for failing to identify obvious general infrastructure spending, and have not "penalize{d} respondents" for failing to disclose unreported other assistance in this proceeding. Even if the question implicates some generally available programs, however, Commerce is not precluded from inquiring about other assistance in order to determine whether a program or subsidy is countervailable and attributable to the subject merchandise.[218]

Finally, with respect to the Canadian Parties' arguments concerning our use of AFA related to programs not reported in response to the "other assistance" question, we disagree that the Act precludes us from applying AFA to a respondent's responses to our "other assistance" questions. Our application of AFA to such "other assistance" programs is a case-by-case determination guided by the requirements of section 776 of the Act.

Comment 5: Whether the Purchase of Electricity Is a Purchase of a Good or Service

GBC and BCLTC's Comments[219]

- The statute does not authorize Commerce to countervail a foreign government's purchase of a service.
- To determine whether electricity is a "good" or a "service," Commerce must interpret these statutory terms under the governing *Chevron* framework and apply those interpretations to the record facts. Under *Chevron*, Commerce must determine whether "goods" and "services" have unambiguous meanings that the agency must follow.[220]
- The definitions of "goods" and "services" indicate that a distinguishing characteristic of a "good" is that it is something tangible that can be stored.[221] Under the statute, purchases of

[216] *See Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1343 ("{B}ecause the issue here is not whether Commerce was required to examine these additional programs pursuant to a petitioner's request that the agency invoke {section 775 of the Act}, *cf. Allegheny Ludlum*, 25 CIT at 824 …, but rather whether Commerce reasonably exercised its own independent investigative authority, *Allegheny Ludlum* is not controlling.").
[217] *See* GOC June 8, 2020 Vol. I Case Brief at 50.
[218] *See Ansaldo Componeti S.p.A.*, 628 F. Supp. at 205; *see also Essar Steel Ltd.*, 721 F. Supp. 2d at 1298-1299; *Acciai Speciali Terni S.p.A.*, 26 CIT at 167; and *PAM, S.p.A.*, 495 F. Supp. 2d at 1369.
[219] *See* GBC June 8, 2020 Vol V Case Brief at V 94 – 97. The GOA and GOQ make similar arguments within their respective case briefs. *See* GOA June 8, 2020 Vol IV Case Brief at 15; and GOQ June 8, 2020 Vol VIII Case Brief at 5 – 6.
[220] *See* GBC June 8, 2020 Vol V Case Brief at 95, citing *Hymas v. U.S.*, 810 F.3d 1318 (discussing *Chevron*).
[221] *Id.*, citing "Good," Oxford Dictionary of Economics (5th ed. 2017) and "Service," Oxford Dictionary of Economics (3d ed. 2009).

electricity are therefore purchases of services and not goods because electricity is not a tangible object.
- Commerce cannot rely on its assertion in *Lumber V Final* that electricity is a good based on past cases. In this review, Commerce must explain why it believes electricity is a good based on the legal arguments and record before it.

Resolute and Central Canada's Comments[222]
- Resolute sells a service to Hydro-Québec and IESO—additional capacity for the grid to supply electricity during peak demand. The sale of electricity is the provision of a service, not the sale of a good, and cannot be countervailed under the statute.
- "Financial contribution" is defined in section 771(5)(D) of the Act to include a government "providing goods or services, other than general infrastructure," or "purchasing goods." The definition of "benefit" in section 771(5)(E)(iv) of the Act similarly omits government purchases of services.[223]
- The *CVD Preamble* (63 FR at 65379) explains: "{I}f governmental purchases of services were intended to be treated similarly to the governmental purchase of goods, the statute and the WTO SCM Agreement would specifically mention services as they do with the provision of goods and services."
- Commerce has confirmed in this review that only government purchases of goods, not services, are potentially countervailable.[224]

West Fraser's Comments[225]
- BC Hydro EPAs are not countervailable since they involve West Fraser's sale of a service to BC Hydro rather than a good.

Petitioner's Rebuttal Comments[226]
- The Canadian Parties believe that electricity is something intangible which should be considered a service under the statute. However, it is Commerce's interpretation of the statute that controls.
- Contrary to the Canadian Parties' assertion, this is not an issue that can be resolved under the first prong of *Chevron*. Because the statute is ambiguous, Commerce enjoys the discretion to determine whether electricity should be treated as a good or service.[227]
- Commerce has consistently found that electricity is a good rather than "a service that is provided for the good of the public" that should be considered general infrastructure.[228]
- As Commerce's history of applying the statute to electricity subsidies makes clear, the agency's understanding of the statute's scope with respect to electricity is reasonable.

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[222] *See* Resolute June 8, 2020 Case Brief at 22 – 23.
[223] *Id*. at 22, citing *Eurodif v. U.S.*, 411 F. 3d 1365, aff'd on reh'g, 423 F.3d 1275 ("The plain language of {19 U.S.C. § 1677(5)(E)(iv)} does not allow for the purchase of services by a government entity from another entity to be considered a subsidy.")
[224] *Id*. at 23, citing Canfor/West Fraser Post-Prelim Decision Memorandum at 9.
[225] *See* West Fraser June 8, 2020 Case Brief at 69 – 70.
[226] *See* Petitioner June 25, 2020 Rebuttal Brief at 75 – 79.
[227] *Id*., at 78, citing *U.S. v. Eurodif*, 555 U.S. at 305 (emphasizing that "the whole point of *Chevron* is to leave the discretion provided by the ambiguities of a statute with the implementing agency," and accordingly affirming Commerce's determination that certain transactions constituted the sale of goods rather than the sale of services).
[228] *Id*. at 76, citing *Lumber V Final* IDM at 158 – 159.

Sierra Pacific's Rebuttal Comments[229]

- Commerce has rejected the argument that electricity is a service in prior cases.[230] No new information is presented in this review to warrant a consideration of the finding that electricity is a good.
- Commerce has also rejected the GBC's argument that the that the dictionary definitions of "goods" and "services" support finding that electricity is a service.[231] As Commerce noted in the *Groundwood Paper from Canada Final*, under a *Chevron* analysis, dictionary definitions do not supersede Commerce's consistent application of the Act.[232]

Commerce's Position: We disagree with the respondents that electricity is a service and not a good. Commerce has consistently found the provision of electricity to be the provision of a good.[233] While we recognize that the LTAR and MTAR analysis differs in that both goods and services sold for LTAR can be countervailed, in both *HRS from Thailand* and *Rebar from Turkey*, we clearly stated that electricity was a good.[234]

Commerce has also consistently found the purchase of electricity to be the purchase of a good. In *Lumber V Final*, and more recently in *Groundwood Paper from Canada Final*, Commerce determined, after analyzing the same evidence as presented in this review, that the purchase of electricity from a government-owned entity was the purchase of a good and not a service.[235] In this review, the respondents raise the same arguments that Commerce has already addressed in those proceedings.[236] There is no new information on the record which would cause us to reconsider the determination that electricity is a good.

With respect to specific arguments raised by the respondent parties, we continue to disagree that the dictionary definition of a "good," as provided in their case briefs, applies to electricity. Much like air (another thing that appears intangible but is not), electricity can be touched, transported (via transmission lines), and stored (inside batteries). While Commerce has used dictionary definitions to support our approach to an issue, a dictionary definition does not supersede Commerce's consistent application of the Act, under which electricity is found to be a good. In any event, the dictionary definition proffered by the GBC supports Commerce's treatment here, Further, *Chevron* holds that "if the statute is silent or ambiguous with respect to {a} specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."[237] Commerce's consistent case practice of analyzing electricity subsidies and finding electricity to be a good demonstrates an understanding and reasoned application of the statute's scope. Lastly, we disagree with Resolute that Commerce's post-preliminary finding for the GBC's LBIP and LBIS Current Reforestation Program is on point. As noted above, Commerce has been unambiguous in finding that electricity is a good,

[229] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 25 – 26.
[230] *Id*. at 25 – 26, citing, *e.g.*, *HRS from Thailand* IDM at Comment 10.
[231] *Id*. at 26, citing *Groundwood Paper from Canada Final* IDM at Comment 36.
[232] *Id*.
[233] *See, e.g.*, *HRS from Thailand* IDM at Comment 10; and *Rebar Bar from Turkey* IDM at Comment 5.
[234] *See, e.g.*, *HRS from Thailand* IDM at Comment 10 (stating "electricity at issue here is not a service, as respondents argue, but a good"); and *Rebar from Turkey Final Results* IDM at Comment 5 (stating "Cebi Enerji produces and sells a good (*i.e.*, electricity)").
[235] *See Lumber V Final* IDM at Comment 48; and *Groundwood Paper from Canada Final* at Comment 36.
[236] *Id*.
[237] *See Chevron*, 467 U.S. at 843.

not a service. Therefore, Commerce's analysis of a government's purchase of services is inapposite.

Accordingly, we continue to find that the purchase of electricity by the government-owned utilities/power authorities—BC Hydro, IESO, and Hydro-Québec— is the purchase of a good that constitutes a financial contribution under section 771(5)(D)(iv) of the Act and confers a benefit under section 771(5)(E)(iv) of the Act.

Comment 6: Attribution of Benefits from the Sale of Electricity

GBC and BCLTC's Comments[238]

- Commerce erred in countervailing West Fraser's sales of electricity under the EPAs because the law requires that any alleged subsidy provided by the EPAs must be attributed to electricity production, not to the production of subject merchandise.
- Section 351.525(b)(5)(i) of Commerce's regulations provides that if a subsidy is tied to the production or sale of a particular product, Commerce will attribute the subsidy only to that product.
- The regulation's sole exception, which extends only to subsidies tied to "the production" of an input product, does not apply here. It would be impossible for West Fraser to both sell electricity to BC Hydro and use that same electricity as an input in its production.
- Commerce may not countervail the payments for the sale of electricity in a review of a completely separate product —softwood lumber products.
- Past case decisions cannot substitute for a reasoned interpretation of the regulation and cannot support Commerce's conclusion when they do not address whether a respondent's sales of products to the government were tied to the product under investigation.

Resolute and Central Canada's Comments[239]

- The purpose of the PPAs with Hydro-Québec and IESO was the purchase of biomass cogenerated electricity from Resolute. The PPAs have no connection to the production of the subject merchandise. The electricity produced was not used as an input in the production of softwood lumber; rather, it was sold and transmitted to the electricity grid in Québec and Ontario, or it was recaptured for use in the production of pulp and paper.
- Any subsidy from the purchase of Resolute's biomass cogenerated electricity is tied to the production of the electricity sold, or to the production of paper for which a portion of that electricity could have been used as an input.
- The only exception to the attribution rule arises when the subsidy is tied to the production of an input product. However, neither the payments for the electricity, nor the recaptured electricity itself, nor the pulp and paper created at the mills with generators, were inputs in the production of softwood lumber.
- Commerce may not countervail alleged subsidies tied to the production of electricity in an investigation of softwood lumber.

[238] *See* GBC June 8, 2020 Vol. V Case Brief at 88 – 94. The GOA, GOO, and GOQ make similar within their respective case briefs. *See* GOA June 8, 2020 Vol IV Case Brief at 15 – 16; GOO June 8, 2020 Vol VII Case Brief at 37 – 38; and GOQ June 8, 2020 Vol VIII Case Brief at 5.
[239] *See* Resolute June 8, 2020 Case Brief at 23 – 25.

West Fraser's Comments[240]

- BC Hydro EPAs are tied to West Fraser's production of electricity rather than to softwood lumber.

Petitioner's Rebuttal Comments[241]

- Commerce applies its attribution rules in a way that reflects the nature of the subsidy rather than a respondent's individual business decisions.[242]
- In the investigation, Commerce found that electricity is an input to all products produced by the respondents. Therefore, subsidies bestowed on the input product, *i.e.*, electricity, should be attributed to sales of all products produced by the respondent companies under 19 CFR 351.525(a) and (b)(5)(ii).

Sierra Pacific's Rebuttal Comments[243]

- Section 701(a) of the Act requires Commerce to countervail subsidies that are provided "directly or indirectly" to the manufacture or production of subject merchandise, and electricity benefits the production of softwood lumber.
- There is no basis to treat subsidies relating to the sale of electricity as tied to electricity and such an approach is inconsistent with Commerce's practice.
- Because electricity is required to operate the respondents' production facilities, revenue earned from the sale of electricity benefits the respondents' overall operations and should be attributed to total sales pursuant to 19 CFR 351.525(b)(5)(ii).

Commerce's Position: In the *Lumber V Final* and *Groundwood Paper from Canada Final*, Commerce addressed the same arguments raised by the respondent parties in this review.[244] The respondents' argument that benefits from an electricity subsidy program are tied to electricity reflect a misunderstanding of the CVD law.

If, as the respondent parties continue to argue, a subsidy provided to the sale of electricity is tied to electricity, then electricity subsidies would escape the remedies provided under the CVD law. Under the premise of the respondents' argument, Commerce would be unable to countervail such programs as electricity subsidies, water subsidies, and land subsidies because the benefits from these programs would only benefit electricity, water, or land. This argument is at odds with 30 years of case precedent with respect to electricity alone.[245] Contrary to the arguments made by

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[240] *See* West Fraser June 8, 2020 Case Brief at 69.
[241] *See* Petitioner June 25, 2020 Rebuttal Brief at 79 – 90.
[242] *Id*. at 83, citing *CFS from China* IDM at 95.
[243] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 26 – 28.
[244] *See Lumber V Final* IDM at Comment 49; and *Groundwood Paper from Canada Final* IDM at Comment 41.
[245] *See, e.g.*, *Fresh Cut Flowers from Mexico*, 49 FR at 15009; *CRS from Korea*, 49 FR at 47292; *Textile Mill Products and Apparel from Singapore*, 50 FR at 9842; *Carbon Steel Wire Rod from Saudi Arabia*, 51 FR at 4211; *Steel Wire Nails from New Zealand*, 52 FR at 37198; *Ball Bearings from Thailand*, 54 FR at 19133; *Magnesium from Canada*, 57 FR at 30949; *Extruded Rubber Thread from Malaysia*, 57 FR at 38474; *Certain Steel Products from Korea*, 58 FR at 37350; *OCTG from Argentina*, 62 FR at 32309; *Steel Wire Rod from Trinidad and Tobago*, 62 FR at 55006; *Steel Wire Rod from Venezuela*, 62 FR at 55021; *Cut-to-Length Carbon-Quality Steel Plate from Indonesia*, 64 FR at 73162; *LEU from France* IDM at Purchase at Prices that Constitutes MTAR; *HRS from Thailand* IDM at Provision of Electricity for LTAR; *Kitchen Racks from China* IDM at Government Provisions of Electricity for LTAR; *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman* IDM at Provision of

the GBC and BCLTC, precedent matters and reflects Commerce's interpretation of its regulations and the statute. The fact that the majority of cases where Commerce found electricity subsidies involved the government provision of electricity for LTAR, and not the government purchase of electricity for MTAR, does not contest Commerce's finding on how benefits from the sale of electricity should be attributed.

As explained in the *Lumber V Final* and *Groundwood Paper from Canada Final*, Commerce has consistently attributed the benefits from electricity subsidies to all products.[246] Furthermore, the attribution of MTAR benefits over sales of all products is consistent with precedent. For example, in *CRS from Korea*, the benefit conferred from the purchase of electricity for MTAR was attributed over the respondents' total sales.[247]

Moreover, section 701(a) of the Act requires Commerce to countervail subsidies that are provided "directly or indirectly" to the manufacture or production of the subject merchandise. Electricity benefits the production and manufacture of the subject merchandise since electricity is required to operate the production facilities of the softwood lumber producer. Under the CVD regulations, if subsidies allegedly tied to a particular product are, in fact, provided to the overall operations of a company, Commerce will attribute the subsidy to sales of all products produced by the company.[248] Under 19 CFR 351.525(a) and (b)(5)(ii), subsidies bestowed on an input product, *i.e.*, electricity, should be attributed to sales of all products produced by a company. No party has contested the finding that electricity is consumed in the production of softwood lumber. Consequently, to the extent that a respondent company receives more revenue than it otherwise would have earned, Commerce will attribute that benefit to the company's total sales as mandated under 19 CFR 351.525(a) and (b)(5)(ii).

Further, section 771(5)(D) of the Act states that the government purchase of a good is a financial contribution, and section 771(5)(E)(iv) of the Act provides that the purchase of a good provides a benefit if that good is purchased for more than adequate remuneration. Therefore, the statute explicitly provides that a government purchase of a good can constitute the provision of a countervailable subsidy to a company. If we interpreted the attribution rules as suggested by respondent parties, Commerce would effectively negate the language of the statute with respect to the provision of a good.

For all these reasons, there is no cause to change Commerce's finding that the benefits from a company's sale of electricity to the government are appropriately attributed to all products of the company.

Electricity for LTAR; *Shrimp from Ecuador* IDM at Comment 3; *Melamine from Trinidad and Tobago* IDM at Provision of Electricity for LTAR; *Welded Line Pipe from Korea* IDM at Korea Electric Power Corporation (KEPCO's) Provision of Electricity for LTAR; *Chlorinated Isocyanurates from China* IDM at Electricity for LTAR; and *Cut-To-Length Plate from Korea* IDM at Provision of Electricity for LTAR.

[246] *See Lumber V Final* IDM at Comment 49; and *Groundwood Paper from Canada Final* IDM at Comment 41.

[247] *See CRS from Korea* IDM at 37. The final determination was based upon AFA. *See also SC Paper from Canada Prelim* PDM at 42 (where Commerce allocated the benefit from the purchase of land for MTAR over the respondent company's total sales).

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

Comment 7: Applying the Benefit-to-the-Recipient Standard to the Purchase of Electricity for MTAR Programs

GBC and BCLTC's Comments[249]

- Commerce's position that when "the government is acting on both sides of the transaction," all that matters is whether "there is a benefit to the recipient" ignores the statute that requires it to determine the adequacy of remuneration by considering the prevailing market conditions for the goods being purchased.
- By measuring the difference between the price at which BC Hydro purchased electricity from West Fraser, and the price at which BC Hydro sold electricity to West Fraser, Commerce measured the cost to the government. That comparison is not a measure of the benefit to the recipient, which instead must focus on what a market-determined price for the good in question would be.
- Under 19 CFR 351.503(b), the test is whether the recipient received more revenue than it otherwise would have earned. Commerce should have addressed whether West Fraser would have received more revenue than it otherwise would earn under 19 CFR 351.503(b) if it had sold electricity to an entity other than BC Hydro.
- Commerce was required to measure the benefit to the recipient of the EPAs, which required it to determine the price that West Fraser would have received for the product in question in the absence of the government program. That standard necessarily requires Commerce to select a benchmark price for the same product, in the same market, at the same time as the EPA at issue.

GOQ's Comments[250]

- Section 771(5)(E) of the Act requires that the adequacy of remuneration to be determined in relation to prevailing market conditions for the good being purchased.
- Commerce should be guided by the benchmark hierarchy in 19 CFR 351.511(a)(2) for assessing the adequacy of remuneration for government provisions (sales) when assessing the adequacy of remuneration for government purchases.
- In the *Lumber V Final* and *Lumber V AR1 Prelim Results*, Commerce employed a flawed comparison (*i.e.*, benefit-to-the-recipient). Had Commerce compared Hydro-Québec's purchase prices for biomass-sourced power to the prevailing market conditions prices for green power, no benefit would have been found. Had Commerce considered Hydro-Québec's approach to setting the price for power purchases under PAE 2011-01, it would have found Québec's pricing to be consistent with market principles.

Resolute and Central Canada's Comments[251]

- The benefit from the sale of goods to the government for MTAR must be determined in relation to prevailing market conditions for the goods being purchased in the country under investigation.
- The market conditions of price and availability for biomass cogenerated electricity sold to the government are not comparable to the conditions for electricity sold by the government to

[249] *See* GBC June 8, 2020 Vol V Case Brief at 101 – 107.
[250] *See* GOQ June 8, 2020 Vol VIII Case Brief at 6 and 15 – 17.
[251] *See* Resolute June 8, 2020 Case Brief at 9 – 21.

industrial consumers. Biomass cogenerated electricity commands a premium price over hydropower and nuclear because of the higher initial costs of generation.
- It is inconsistent with market principles for Commerce to select a benchmark price—*e.g.*, Hydro-Québec's L Rate which is 98 percent reflective of hydropower—that can never cover the costs of biomass cogenerated electricity.
- Commerce's chosen benchmark consists of a regulated government supplier selling electricity retail to a large number of industrial consumers whose demand for electricity is determined by the needs of their production. The government however is the sole purchaser in the market of wholesale electricity. The demand for Resolute's service is not a function of electricity needed to manufacture, but a function of maintaining the electricity grid.

West Fraser's Comments[252]
- A fundamental flaw in Commerce's benefit analysis is reflected in its rationale for using the retail rates that West Fraser pays to BC Hydro as the measure of the subsidy received by West Fraser in its sales of wholesale electricity to BC Hydro.
- The benefit-to-the-recipient analysis is flawed because it assumes that the "same good" is being sold by West Fraser to BC Hydro pursuant to the EPAs, and also purchased by West Fraser from BC Hydro. However, the electricity is not the same good; they differ in terms of source, market, duration and pricing method. West Fraser sells to BC Hydro biomass-generated renewable energy on a wholesale basis for the utility's energy needs. West Fraser purchases retail energy from BC Hydro that is derived from a variety of sources. As such, Commerce's benefit analysis does not reflect an accurate calculation of the remuneration received by West Fraser under the EPAs.

Petitioner's Rebuttal Comments[253]
- Commerce satisfied the statute's "benefit-to-the-recipient" standard with its focus on the windfall accruing to each respondent as they bought electricity from and sold electricity to their respective provincial utilities.
- Because the regulations and *CVD Preamble* do not address the situation where a government is both procuring a good and providing a good, the normal framework to measure the benefit conferred for the government provision of goods under 19 CFR 351.511 is not appropriate, but rather the benefit-to-the-recipient standard under section 771(5)(E) of the Act.
- There is no evidence demonstrating that the electricity purchased by the provincial authorities is any different than the electricity that these authorities sold to the respondent companies. Thus, there is no reason for Commerce to treat electricity purchased by the utilities as a different product from the electricity sold by the utilities.
- Under the statute, Commerce only needs to take into consideration certain enumerated, narrowly defined "costs" when calculating benefits,[254] and there is no evidence of any costs falling under any of the enumerated categories that would be relevant to Commerce's benefit analysis.
- Commerce's methodology does not reflect a "cost to government" standard. Though the prices under consideration reflect the provincial utilities' acquisition costs, such a result is inevitable where one of the parties to a sale is both acquiring a good at a given cost and selling the same

[252] *See* West Fraser June 8, 2020 Case Brief at 71 – 72, and 77.
[253] *See* Petitioner June 25, 2020 Rebuttal Brief at 97 – 108.
[254] *See* section 771(6) of the Act.

good using a cost-of-service model, *i.e.*, a price that incorporates the totality of its acquisition costs. That inevitability does not render Commerce's approach unlawful, however, because the focus is the benefits accruing to the respondents.

Sierra Pacific's Rebuttal Comments[255]

- The respondents are correct that section 771(5)(E) of the Act directs Commerce to take into account "prevailing market conditions" for the good or service at issue when measuring adequacy of remuneration. However, where the government is both the sole purchaser and seller of the good in question, such a unique scenario makes it unfeasible to account for prevailing market conditions.
- Commerce's selection of provincial regulated tariff rates as the benchmark for the adequacy of remuneration of the governments' purchases of electricity was a proper application of the "benefit-to-the-recipient" standard.

Commerce's Position: In the *Lumber V Final*, we explained the interpretive framework applied in conducting a benefit analysis where there is a government purchase of goods.[256] No respondent party has presented any argument that warrants Commerce to reconsider its determination that it is appropriate and reasonable to analyze the benefit conferred from the sale of electricity by a company to its government based on the benefit-to-the-recipient standard set forth in 19 CFR 351.503(b). Thus, for all the reasons discussed below, we continue to apply the benefit-to-the-recipient standard to the purchase of electricity for MTAR programs in these final results.

Section 351.512 of Commerce's regulations pertains to the purchase of goods. This section of our regulations is designated as "{Reserved}." We stated in the *CVD Preamble* that this designation was driven by our lack of experience with procurement subsidies, and that as a result, we "are not issuing regulations concerning the government purchase of goods."[257] In the *CVD Preamble*, we also stated that we expect that any analysis of the adequacy of remuneration will follow the same basic principle set forth under 19 CFR 351.511 for the provision of a good or service, with a focus on what a market-determined price for the good in question would be.[258]

Within the *CVD Preamble* discussion, Commerce referred only to "procurement subsidies;" in other words, there is nothing in the *CVD Preamble* to suggest that Commerce specifically contemplated the scenario presented here, where the government is both procuring and providing a good, *i.e.*, the government-owned power authorities are purchasing from and selling to respondent companies electricity. Therefore, not only is the regulation for purchase of a good held in reserve, but also the *CVD Preamble* does not address the situation where a government is both a provider of the good as well as the purchaser of the good.

Section 351.503(b) of Commerce's regulations outlines the principles that Commerce will follow when dealing with alleged subsidies for which the regulations do not establish a specific rule. In such instances, we will normally consider a benefit to be conferred "where a firm pays less for its inputs . . . than it otherwise would pay in the absence of the government program, or receives

[255] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 34 – 37.
[256] *See Lumber V Final* IDM at Comment 51.
[257] *See CVD Preamble*, 63 FR at 65379.
[258] *Id*.

more revenues than it otherwise would earn."[259] We have adopted this definition in our regulations because it captures an underlying theme behind the definition of benefit contained in section 771(5)(E) of the Act.[260] Specifically, section 771(5)(E) of the Act states that a "benefit shall normally be treated as conferred where there is a benefit to the recipient." In other words, section 771(5)(E) of the Act provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy and reflects the "benefit-to-the-recipient" standard, which "long has been a fundamental basis for identifying and measuring subsidies under U.S. CVD practice."[261]

Given that 19 CFR 351.512 for the purchase of a good is held in reserve, and that the *CVD Preamble* for 19 CFR 351.512 does not address or reference the unusual situation before us with respect to the purchase of electricity for MTAR programs, where a government is both the provider and purchaser of the good, we find that our benefit analysis is more appropriately based upon the standard set forth under 19 CFR 351.503(b), which is, in turn, drawn from and consistent with section 771(5)(E) of the Act and the SAA. Therefore, we have not analyzed the benchmark sources within the three-tiered hierarchy of 19 CFR 351.511(a)(2). In so doing, we note that we have reached this conclusion based on the specific facts of this case (*e.g.*, an MTAR analysis in situations where the government is both a provider and a purchaser of the same good). In this uncommon fact pattern where the government-owned utilities/power authorities are both selling and purchasing electricity, we base our finding of purchases for MTAR on the benefit-to-the-recipient standard.

During the POR, Resolute and West Fraser sold electricity to their respective government-owned power authorities under energy contracts and purchased electricity from those same entities. We find that an electricity tariff benchmark, which allows us to compare the prices that the utilities charged Resolute and West Fraser for electricity to the rates that they paid Resolute and West Fraser when they purchased electricity under the relevant agreements, best reflects the "benefit-to-the-recipient" standard that is set forth under section 771(5)(E) of the Act and the SAA, and conforms with the standard of benefit language codified within 19 CFR 351.503(b). There is no basis for not relying on the prices the utilities charge the respondents for electricity as MTAR benchmarks, consistent with our practice.

The respondents argue that the prices at which the government utilities purchase electricity under the various contracts with them are consistent with "market principles" and certain respondents have proposed different benchmarks which they argue would more accurately reflect those market principles. *See* Comments 50, 52, and 55. We, however, do not find their arguments and proposed benchmarks persuasive.

Our analysis of the appropriate benchmark is based upon 19 CFR 351.503(b), and not a tiered analysis set forth in the regulation for the government provision of a good or service under 19 CFR 351.511. Based on the record, we find that the best measure of the "benefit to the

[259] *See* 19 CFR 351.503(b).
[260] *See CVD Preamble*, 63 FR at 65359. In promulgating this provision, Commerce clarified that we will normally consider a benefit to be conferred where "a firm pays less for its inputs (*e.g.*, money, a good, or a service) than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn."
[261] *See* SAA at 927.

recipient" is the difference between the price at which a government provided the good (*i.e.*, electricity) and the price at which the government purchased that same good. As discussed in Comments 50, 52, and 55, the respondents' proposed benchmarks do not capture this difference.

The respondent parties also argue that Commerce cannot compare an "all-sources" electricity benchmark to the price of biomass-generated electricity and that, where a government has defined an energy supply-mix, the benchmark must be within the terms and conditions that would be available under market-based conditions. We are not moved by the respondents' arguments. Our determination to use the respondents' purchases of electricity as the benchmark rate is based on our interpretation of the Act regarding the calculation of benefit where a government procures a good for MTAR.[262]

Moreover, the respondents failed to provide any evidence that the provision of electricity by the government-owned utilities is differentiated based upon the manner in which the electricity is generated. While electricity can be generated using various sources—hydro, coal, gas, oil, solar, nuclear, biomass—there is no information on the record to support that the method used to generate electricity changes the physical characteristics of electricity or the fungibility of electricity. Electricity, regardless of its fuel source, is electricity as the record demonstrates.

The BC Hydro is unable to show how biomass-generated electricity bears any unique physical or qualitative characteristics such that it is a different product from electricity generated from other sources.[263] The GBC reported that BC Hydro does not track the source of the electricity that it sells to its customers.[264] Specifically, the GBC stated that "Once resources are obtained or purchased, these resources form BC Hydro's 'resource stack' and the resources' electrons become commingled for purposes of BC Hydro's sales of electricity service to its customers."[265] Also, the GBC does not distinguish electricity prices to consumers based on the fuel source of electricity because "{t}he energy supplied to the BC Hydro system by IPPs, including electricity generated from biomass, is treated the same as energy supplied to the system by BC Hydro-owned generation resources. The customer's load simply draws energy from the BC Hydro system, and BC Hydro charges the customer for the energy consumed at the applicable BCUC-approved rate."[266]

The GOQ reported that the electricity which Hydro-Québec purchased from Resolute becomes "part of a global power pool," in which "the power sources are not identified."[267] Specifically, "Hydro-Québec pools the electricity together from the various sources and sells it for a uniform price…. That is, the consumer does not know the underlying source of the electricity supplied by Hydro-Québec but knows that the price paid for the electricity is the same regardless of the source."[268] Therefore, when Resolute purchases electricity from Hydro-Québec, it does not know the type of electricity it is purchasing (*i.e.*, biomass, hydro, nuclear, etc.).

[262] *See* section 771(5)(E) of the Act.
[263] *See* GBC IQR at Exhibit BC-AR1-BCH-57.
[264] *Id*. at BC-II-40.
[265] *Id*. at BC-II-45.
[266] *Id*. at BC-II-48.
[267] See GOQ July 15, 2019 Primary QNR Response, Vol III at 10.
[268] *Id*. at 12.

Regarding Ontario, the GOO stated that the IESO does not set the price of electricity sold to consumers based on the generation or fuel source of electricity, because the GOO does not track the flow of electricity based on the generation source.[269] The GOO reported that "there were no laws or policies in place that specifically addressed the pricing of electricity generated from biomass."[270] Information submitted by the GOO shows that the IESO charges and tracks electricity prices based on the time and locations of the electricity used but not on the fuel sources in which the electricity was generated.[271] Thus, the record shows that the GOO treats electricity, regardless of fuel sources, as a single good.

We also disagree with the respondents that using the power authorities' sales of electricity to the respondents as the benchmark is a measure of the cost to the government, rather than the benefit to the respondents. As we explained above, the cost to the respondents is the cost at which they purchase electricity. It is therefore the most appropriate benchmark in determining the benefit to the recipient. Whether this approach also measures the cost to the government utility is immaterial to our analysis.

Further, we disagree with Resolute that the costs of biomass cogenerated electricity facilities should be taken into consideration. As explained above, we have determined the amount of any benefit conferred to the respondents under the benefit-to-the recipient standard. This standard requires that we calculate the benefit by comparing the price at which the government purchased electricity to the price at which the government sold electricity; the reason for any pricing difference is not part of this analysis. Therefore, we continue to determine that the appropriate benchmark rate to calculate the benefit that Resolute and West Fraser receive from the sales of electricity to their respective provincial utility is the electricity tariff rate under which they purchased electricity from their respective provincial utility. For more electricity benchmark discussion, *see* Comments 50, 52, and 55.

Comment 8: Whether Electricity Curtailment Programs Are Grants

GBC and BCLTC's Comments[272]

- Congress granted Commerce the authority to countervail certain purchases by a foreign government.[273] Congress, however, limited that power by authorizing Commerce to countervail a foreign government's purchase of goods, but not the government's purchase of a service.
- Congress' exclusion of a foreign government's purchase of a service establishes that those purchases cannot, as a matter of law, give rise to countervailable subsidies. Even Commerce has acknowledged that Congress limited its authority in this way.[274]

[269] *See* GOO November 22, 2019 NSA SQR Response at Exhibits ON-CHP-13-C, H; and Resolute November 22, 2019 NSA SQR Response at Exhibit-NSA-CHP-2 (p. 19, 21 – 23).
[270] *See* GOO November 22, 2019 NSA SQR Response at ON-61 and ON-62.
[271] *Id*. at Exhibit ON-CHP-9A-9D.
[272] *See* GBC June 8, 2020 Vol V Case Brief at V 82 – 85.
[273] *Id*. at 83, citing sections 771(5)(D) and (5)(E) of the Act.
[274] *Id*., citing *CVD Preamble*, 63 FR at 65379 ("{I}f governmental purchases of services were intended to be treated similarly to the governmental purchase of goods, the statute and the SCM Agreement would specifically mention services as they do with the provision of goods and services.").

- The Energy Manager subprogram concerns BC Hydro's purchase of a particular service and does not provide direct financial assistance to the customer and, thus, is not countervailable. Specifically, the subprogram compensates customers like Canfor and West Fraser to develop and maintain energy plans that result in energy savings for BC Hydro.
- The record similarly demonstrates that the energy studies component of the Incentives subprogram and the Load Curtailment program concerns the non-countervailable purchase of a service.

GOQ's Comments[275]

- Commerce improperly treated Hydro-Québec's GDP and IEO demand-side management programs as grants. The GDP and IEO are non-countervailable purchases of a service. Under the statute, the provision of services can be countervailed but purchases of services cannot.
- Electricity curtailment is an exchange of values, which Commerce preliminarily found when it said that payment was an "exchange for curtailing power demand during the winter."[276] The "exchange" is a purchase, not a grant.
- Hydro-Québec purchases demand reduction, or the ability to curtail the electricity services to which the companies have a contractual right.
- The Supreme Court decision in *FERC v. Electric Power Supply Association* references demand response measures as "services."[277]
- No benefit is provided to the users of demand response programs because they risk interruption to their operations.
- Further, the risk of interruptions and regular actual interruptions that occur under the IEO distinguish this program from other demand side management schemes. In the *Silicon Metal from Australia Final*, Commerce found a program to be countervailable based on a finding that it was "extremely unlikely" that curtailment of electricity use and interruption of production would ever occur.[278]

GOO's Comments[279]

- Ontario's IESO Demand Response does not provide a financial contribution (*i.e.*, grants) to participants in the market-based auction, because the payments made are provided in exchange for a valuable service. The auction involves IESO purchasing the services of participants to be available to curtail their electricity use when called upon to do so.
- The Supreme Court has found that demand response payments do not constitute the purchase or provision of a good.[280]
- U.S. law does not permit Commerce to countervail IESO's market-based purchases of demand response. The statute circumscribes the definition of a "financial contribution" to when an authority is "purchasing goods." There is no exception in the statute that otherwise would permit Commerce to countervail the purchase of a service by an authority.

[275] *See* GOQ June 8, 2020 Vol. VIII Case Brief at 43 – 51, 53 – 56, and 77 – 79.
[276] *Id*. at 78, citing *Lumber VAR1 Prelim Results* PDM at 66.
[277] *Id*. at 50, citing *FERC v. Electric Power Supply Association*, 136 S. Ct. 760 (2016); and GOQ July 15, 2019 Primary QNR Response, Vol III at Exhibit OC-IEO-21.
[278] *Id*. at 56, citing *Silicon Metal from Australia Final* IDM at Comment 2.
[279] *See* GOO June 8, 2020 Vol VII Case Brief at 23 – 27.
[280] *Id*. at 26, citing *FERC v. Electric Power Supply Association*, 577 U.S (2016) (Slip op. at 1).

Resolute and Central Canada's Comments[281]

- Hydro-Québec's GDP and IEO and IESO's Demand Response are not countervailable grants. A grant is a gift without consideration—something with value given with no expectation that anything will be given in return.[282]
- Commerce's finding that payments for electricity curtailment are grants fails to recognize that the electricity service providers receive valuable consideration in reciprocal transactions. Hydro-Québec and IESO pay for electricity curtailment. It is a service of value that Resolute sells to help the public utilities meet peak demand and maintain the integrity of the grid.
- U.S. FERC and Congress recognize that demand response is a service the buyer of electricity provides to the sellers of electricity.[283] The identical service that is a "service" in the United States cannot be a "good" in Canada.
- Commerce itself acknowledged that demand response payments were not made gratuitously, but rather "in exchange for curtailing power demand during the winter."[284]
- Commerce's treatment of electricity curtailment stands in contrast to its handling of other service transactions between government and forest companies. For example, Commerce found that purchases of forest improvement/sustainability services by the GBC through the LBIS provided no financial contribution and no benefit because "the activities covered by the LBIS are beyond the forest management obligations of existing tenure holders," "the government purchase of services is not countervailable under the statute, and the record does not contain information indicating that the GBC paid more than adequate remuneration if this were considered the government purchase of a good."[285]
- Electricity curtailment transactions (at Resolute's pulp and paper mills), likewise are beyond Resolute's forest management obligations and could not be countervailed as purchases of services.

Petitioner's Rebuttal Comments[286]

- Commerce has determined that electricity is a good not a service and has found that electricity curtailment programs are grants that confer a benefit.[287] Nothing on the record of this review warrants a change to those findings. Therefore, Commerce should reject the respondents' arguments that electricity curtailment is a service that is exchanged for valuable consideration.
- To Resolute's argument that energy curtailment programs are ubiquitous and electricity service providers receive valuable consideration through the programs, no part of Commerce's regulations requires an evaluation of benefits enjoyed by the government, nor do they stipulate

[281] *See* Resolute June 8, 2020 Case Brief at 33 – 39 and 40 – 42.
[282] *Id*. at 34, citing *Government of Sri Lanka v. U.S.*, 2018 WL 1831791 at *8. The CIT construes "grant" to have its ordinary dictionary meaning: "'Grant' is ordinarily defined as '2: something granted; esp: a gift (as of land or a sum of money) usu. for a particular purpose ... 3a: a transfer of real or personal property by deed or writing—compare Assignment 2a, Gift 2a.' Grant (Noun), Webster's Third New International Dictionary (unabridged 1981) (example sentences omitted);" and citing *United States – Large Civil Aircraft (Second Complaint)* at para. 616 – 617 ("{I}n the case of grants, the conveyance of funds will not involve a reciprocal obligation on the part of the recipient.").
[283] *Id*. at 35, citing *FERC v. Electric Power Supply Association*, 577 U.S. 136 S. Ct. 760, 763, (2016) and 136 S. Ct. 766 (citing 76 FR 16666, para. 48 – 49); and *Energy Policy Act*, 42 U.S.C. 15801 (2005).
[284] *Id*. at 36, citing *Lumber V AR1 Prelim Results* PDM at 66.
[285] *Id*. at 38, citing Canfor/West Fraser Post-Prelim Decision Memorandum at 10 – 16.
[286] *See* Petitioner June 25, 2020 Rebuttal Brief at and 174 – 175, 189 – 191, 204 – 205, and 218 – 220.
[287] *Id*. at 191 and 204, citing *Lumber V Final* IDM at Comment 58; *Groundwood Paper from Canada Final* IDM at Comment 66; *Wire Rod from Italy Final* IDM at Comment 2; and *Silicon Metal from Australia Final* IDM at Comment 2.

that an advantage conferred to the government negates any advantage to a respondent. Such arguments are not germane to Commerce's benefit analysis.
- Regarding *FERC v. Electric Power Supply Association*, Commerce "is not bound by the interpretation of different statutes made by other agencies,"[288] and thus, its treatment of the GDP, IEO, and IESO Demand Response as grants is within the scope of its administrative authority and consistent with its practice.
- Resolute's attempt to draw a parallel between electricity curtailment transactions and the LBIS is misleading because unlike the LBIS, electricity curtailment transactions directly affect the cost of electricity, a key input in the production of subject merchandise.

Commerce's Position: We disagree that curtailment of electricity usage during peak demand equates to the performance of a service by the company for the government-owned utility. As discussed in Comment 5, we have determined that electricity is a good and, therefore, not a service.

We also disagree with the respondent parties that the load curtailment programs under consideration in this review are not grants. Commerce has found in previous cases that load curtailment programs are the provision of a grant.[289] No new arguments have been presented in this review to cause Commerce to reconsider those determinations. Regardless of how the parties classify these programs, it is clear from the record that their purpose is to incentivize the companies, through electricity credits, to lower energy usage. Hence, these payments are more properly treated as grants, not as compensation. Incentive payments made as part of an electricity curtailment program benefit the recipient company in the manner of a recurring grant. Accordingly, the respondents' argument that we unlawfully countervailed compensation for services purchased by government-owned power authorities is misplaced.

Further, we disagree that the *Silicon Metal from Australia Final* supports a finding that the Canadian load curtailment programs are not countervailable. That case did not establish a requirement that there be no actual curtailments in order for the curtailment payments to be countervailable. In *Silicon Metal from Australia Prelim*, no company participating in the program curtailed its electricity consumption during the POI.[290] Commerce's analysis however did not end there; the absence of curtailment activities was only one of the factors Commerce considered when determining that the load curtailment program was a grant.[291]

We disagree that the government-owned utilities, and not the respondent companies, benefit from the load curtailment programs, or that any advantages to the utilities in administering the programs are relevant to the benefit that the companies received from those authorities. In analyzing the benefit received by a grant, Commerce considers the benefit to be amount of grant received by the company, pursuant to 19 CFR 351.504(a). Commerce's regulations at 19 CFR 351.504 do not contemplate any advantages the government might receive by administering the program, nor do our regulations require Commerce to take into account benefits other companies

[288] *Id*. at 220, citing *Groundwood Paper from Canada Final* IDM at 152.
[289] *See Groundwood Paper from Canada Final* IDM at Comment 66; *Wire Rod from Italy Final* IDM at Comment 2; *Silicon Metal from Australia Final* at Comment 2; and *CTL Steel Plate from Korea Final*, 64 FR at 73182
[290] *See Silicon Metal from Australia Prelim* IDM at 6 – 8, determination unchanged in *Silicon Metal from Australia Final* IDM at Comment 2.
[291] *Id*.

may have not received.[292] Further, the fact that companies may incur costs when interrupting energy usage does not impact the benefit calculation.

As such, we find no reason to deviate from our preliminary finding that, as payment for complying with BC Hydro, IESO, and Hydro-Québec electricity interruption notices, the participants received electricity credits in their respective electricity invoices. Because the government-owned utilities made a "direct transfer of funds" via a grant to the respondent companies, pursuant to section 771(5)(D)(i) of the Act and 19 CFR 351.504(a), we continue to find that the payments confer a benefit in the amount of the electricity credits received by Canfor, Resolute, and West Fraser. Since we have determined that load curtailment is a grant, we need not address the respondents' arguments that load curtailment programs are non-countervailable purchases of a service.

Additionally, we disagree that, consistent with the *Government of Sri Lanka v. U.S.*, Commerce must define the term "benefit" as a "gift without consideration" or that it is appropriate to consider the context in which a grant is provided. Rather, the regulations state that Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations.[293] Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[294] Under this framework, any grant payments of the associated costs incurred are, in fact, a benefit to the respondents. Additionally, while electricity curtailment programs may be commonplace in countries other than Canada, it does not follow that such programs cannot be countervailable under U.S. CVD law. Further, Commerce is not bound by the interpretations of different statutes made by other agencies and, thus, the FERC's interpretation of its own statute and finding that demand response measures are a service are not controlling here.

Lastly, we agree with the petitioner that Resolute's comparison of the GBC's LBIS to electricity curtailment programs is unfounded. Under the LBIS program, the GBC purchases from tenure holders forest improvement and sustainability services that are beyond their forest management obligation. In contrast, under electricity curtailment programs, provincial utilities provide grants in the form of electricity credits to participants. We find no equivalency between the two types of programs.

Comment 9: Revisions to Draft Customs Instructions

GNB's Comments[295]

- Because there are two distinct and unrelated legal entities under the name of "North American Forest Products Ltd." in Canada, the GNB requests that Commerce clarify that the company subject to this administrative review, which is located in Abbotsford, British Columbia, is separate from North American Forest Products located in Saint-Quentin, New Brunswick, that has been excluded from the CVD order.

[292] *See CVD Preamble*, 63 FR at 65361 ("{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the 'effect' of a subsidy.").
[293] *See* 19 CFR 351.503(a).
[294] *See* 19 CFR 351.503(c).
[295] *See* GNB Comments on Draft Customs Instructions at 2.

Carrier/Olympic/Plateau's Comments[296]

- Incorporating by reference the arguments made by the other respondents, Carrier, Olympic, and Plateau urge Commerce to modify the respondents' rates and apply those to Carrier, Olympic, and the companies in Plateau's review request accordingly.
- The companies also request that Commerce correct a minor discrepancy in the draft instructions and list "Waldun Forest Products Ltd.," the company for which the review was requested, in the final Customs instructions.

Commerce's Position: In the final cash deposit and liquidation instructions to CBP, we will add the following note next to North American Forest Products Ltd.'s name: "North American Forest Products Ltd., a firm subject to this review, is located in Abbotsford, British Columbia. Imports of softwood lumber produced and exported by North American Forest Products Ltd. of Saint-Quentin, New Brunswick, which is a separate entity, have been excluded from the CVD order and are not subject to these instructions. See message 9234309, dated 08/22/2019."

With respect to Carrier/Olympic/Plateau's request, we note that the companies requested an administrative review of "Waldun Forest Products Ltd.," but there was also a request for review of "Waldun Forest Product Sales Ltd" from the company itself. Accordingly, we will list "Waldun Forest Products Ltd." in addition to "Waldun Forest Product Sales Ltd." in the cash deposit and liquidation instructions. Further, we intend to incorporate any revisions made to the mandatory and voluntary respondents' rates as a result of these final results in calculating the rate applied to the non-selected respondents.

B. General Stumpage Issues

Comment 10: Whether Commerce Should Allocate Stumpage Benefits Over Total Sales

Resolute and Central Canada's Comments[297]

- Commerce used an improper sales denominator (*i.e.*, total softwood lumber sales and total softwood co-product sales) to calculate the subsidy margin for purchases of stumpage for LTAR and for LERs.
- Commerce has not found purchases of stumpage for LTAR or LERs to be tied to lumber production; therefore, Commerce must treat these two programs as "untied" subsidies and attribute them to Resolute's total sales.
- Commerce asserted in the *Lumber V AR1 Prelim Results* that it limited the denominator to total softwood lumber sales and total softwood co-product sales "in order to ensure that the numerator and denominator used in our calculation are on the same basis."
- However, that approach is not founded in Commerce's regulations, contravenes Commerce's practice with respect to tied and untied subsidies, and is inconsistent with Commerce's attribution of programs related to the sales and management of electricity, which are used only by Resolute's pulp and paper mills.
- According to Commerce, when a subsidy is not tied to a particular product, it is attributable to the respondent's total sales.[298] And, per Commerce's practice:

[296] *See* Carrier/Olympic/Plateau June 8, 2020 Case Brief at 2.
[297] *See* Resolute July 29, 2020 Case Brief at 20 – 23.
[298] *Id*., citing *Lumber V AR1 Prelim Results* PDM at 41.

> . . . a subsidy is tied to particular products or operations only if the bestowal documents, *e.g.*, the application, contract or approval, explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.[299]

- Commerce has made no finding that purchases of Crown-origin standing timber or logs under the LER programs are tied to the production of softwood lumber. In fact, Commerce's practice concerning the attribution of the provision of Crown-origin standing timber indicates the opposite approach.
- In the *Groundwood Paper from Canada Final*, Commerce found that the provision of Crown-origin standing timber was not tied to the production of lumber because: (1) "{t}here is no record evidence showing that at the time of bestowal of Resolute's and White Birch's stumpage, the subsidy was tied to only lumber production or only to pulp and paper products;" and (2) "stumpage is related to trees; trees are an input to woodchips and pulp, which are used to make paper. Trees are also an input into sawdust and hog fuel, which Resolute burns to make steam and electricity. A tree can, at the time it is cut, be used for any number of purposes, including both lumber and paper."[300]
- In the *Lumber V AR1 Prelim Results*, Commerce asserted that it limited the denominator to total softwood lumber sales and total softwood co-product sales "in order to ensure that the numerator and denominator used in our calculation are on the same basis,"[301] but that contention is not founded in Commerce's regulations or practice, including CVD proceedings involving the very same subsidy program at issue here.

Petitioner's Rebuttal Comments[302]

- Resolute has offered no new factual information or changed circumstances for Commerce to reconsider its dispositive finding on this issue in the investigation.
- Resolute's assertion that the denominator for stumpage and LER subsidy benefits should be the company's total sales because Commerce has not found that benefits conferred by the provision of stumpage or the LERs are tied to lumber production is incorrect for the following reasons:
- Commerce's long-established practice, which it applied in both the investigation and in *Lumber IV*, is to attribute benefits conferred by the provision for LTAR of timber or logs used in sawmills to the products produced in sawmills (*i.e.*, softwood lumber and its co-products).
- Commerce's practice is to include the value of co-products and residual products produced in sawmills, but not any value-added that may occur as these are turned into other products after the softwood lumber production process, such as pulp, paper, or electricity.
- Under 19 CFR 351.525(b)(5)(i), if a subsidy is "tied to the production or sale of a particular product, {Commerce} will attribute the subsidy only to that product," and, accordingly, Commerce's practice has been to consider only the subsidy on timber (or logs) entering sawmills, and to attribute that subsidy to the products produced in sawmills.

[299] *Id*., citing *Lumber V AR1 Prelim Results* PDM at 41.
[300] *Id*., citing *Groundwood Paper from Canada Final* IDM at 69.
[301] *Id*., citing *Lumber V AR1 Prelim Results* PDM at 28.
[302] *See* Petitioner June 25, 2020 Rebuttal Brief at 289; *see also* Petitioner August 10, 2020 Rebuttal Brief at 158–161.

Commerce's Position: The CVD rate is equal to the benefit received by a respondent divided by the respondent's appropriate sales. As the *CVD Preamble* explains, with respect to the attribution rules, a benefit generally is conferred when a firm pays less than it otherwise would pay in the absence of the government-provided input or when a firm receives more revenue than it otherwise would earn.[303] Thus, subsidies are by these rules attributed, to the extent possible, to the sales for which costs are reduced (or revenues increased). For example, an export subsidy reduces the costs of a firm's exports and is, therefore, attributed only to export sales. A subsidy provided by a government for a specific product is attributed only to sales of that product for which the subsidy was provided, and any downstream products produced from that product. Here, our calculation of the benefit was only limited to benefits conferred to Resolute's sawmills which produced lumber and lumber co-products. Thus, these subsidies reduce the production costs of lumber and lumber co-products. Therefore, we attributed benefits received by sawmills to the sales of lumber and lumber co-products.

Further, as we explained in the first administrative review of *Lumber IV*:

> {I}n the numerator of the calculation, {Commerce} included only the benefit from those softwood Crown logs that entered and were processed by sawmills during the POR (*i.e.*, logs used in the lumber production process). Accordingly, the denominator used for this final calculation included only those products that result from the softwood lumber manufacturing process. Consistent with {Commerce's} previously established methodology, we included the following in the denominator: softwood lumber, including softwood lumber that undergoes some further processing (so-called "remanufactured" lumber), softwood co-products (*e.g.*, wood chips) that resulted from lumber production at sawmills, and residual products produced by sawmills that were the result of the softwood lumber manufacturing process, specifically, softwood fuelwood and untreated softwood ties.[304]

Thus, Commerce's practice in *Lumber IV* and in the current proceeding with regard to stumpage for LTAR is to include in the stumpage denominator all subject merchandise–both softwood lumber produced in sawmills, as well as co-products of the sawmills–but not any value-added products produced from the lumber or co-products that are non-subject merchandise, such as pulp, paper, or electricity.

Resolute argues that Commerce has not found purchases of stumpage for LTAR or LERs to be tied to lumber production; therefore, Commerce must treat these two programs as "untied" subsidies and attribute them to Resolute's total sales. We agree with Resolute that we have not found stumpage to be tied. Resolute also correctly pointed out that in *Groundwood Paper from Canada*, we did not find stumpage for LTAR tied to only lumber production or only to pulp and paper products.

However, we do not agree with Resolute that we should attribute subsidies received by sawmills to all sales. While 19 CFR 351.525(b)(2) states Commerce will attribute a domestic subsidy to

[303] *See CVD Preamble*, 63 FR at 65400.
[304] *See Lumber IV Final Results of 1st AR* IDM at 7.

all products sold by a firm, as explained in *CVD Preamble*, that is because an untied domestic subsidy reduces the costs of all products sold by the firm.[305] Thus, if we are to attribute a subsidy to all sales by Resolute, we would need to make sure that we capture all domestic subsidies, *i.e.* stumpage subsidies, that reduce the costs of all products sold by Resolute. The current record indicates that Resolute's total sales values include lumber and its co-products as well as non-lumber products such as sales of pulp and paper products.[306] Thus, to utilize a total sales denominator we would need a numerator that not only captures sawtimber stumpage subsidies but also stumpage subsidies on pulp logs. The record does not contain stumpage subsidies on pulp logs delivered to Resolute's pulpmills. The record only contains stumpage subsidies for sawlogs delivered to Resolute sawmills.[307] Subsidies for lumber and its co-products can only reduce production costs for lumber and its co-products. Thus, we did not attribute stumpage subsidies on this record to all sales. Further, as stated above, consistent with *Lumber IV*, with regard to stumpage for LTAR, our practice is to include in the stumpage denominator all subject merchandise–both softwood lumber produced in sawmills, as well as co-products of the sawmills–but not any value-added products produced from the lumber or co-products that are non-subject merchandise, such as pulp, paper, or electricity.

Resolute further argued that Commerce's treatment of the denominator for Resolute's purchases of stumpage for LTAR should be no different than its treatment of the denominator for sales of electricity for MTAR, for which Commerce "divided the sum of the benefits by the total sales of Resolute during the relevant calendar year." We disagree. As we explained in Comment 6, electricity is an input that benefits all products produced by a company and, thus, benefits from electricity subsidies are attributed to a company's total sales. Further, from the sales of electricity to the provincial utilities, Resolute is receiving more revenue than it otherwise would have earned. *See* Comment 54 and 57. Because money is fungible, the revenue from the electricity sales benefit Resolute's overall production and sales of products. Thus, the proper denominator for calculating the subsidy rate from the sale of electricity for MTAR is Resolute's total sales of all products produced.

Comment 11: Whether Commerce Should Calculate Negative Benefits in the Stumpage for LTAR and LER Programs

JDIL's Comments[308]

- Commerce's practice of comparing JDIL's individual Crown stumpage transactions to an average benchmark value and zeroing out negative benefits (*i.e.*, where the Crown price exceeds the benchmark price) is distortive, inconsistent with Commerce's requirement under section 771(5)(E) of the Act to take "prevailing market conditions" into account, and finds a benefit where there would be none under an average-to-average comparison; therefore, Commerce should use an average-to-average comparison without zeroing negative benefits.

[305] *See CVD Preamble*, 63 FR at 65400.
[306] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at 7 – 8; *see also* Resolute September 6, 2019 Sales SQR Response at Exhibit RES-NS-SALES 1.2.
[307] *See* Resolute July 15, 2019 Primary Stumpage QNR Response at Exhibit RES-STUMP-ON-1 at Table 1; *see also* Resolute November 15, 2019 Stumpage SQR Response at Exhibit RES-STUMP-SUPP-QC-1.1.
[308] *See* JDIL July 29, 2020 Case Brief at 31 – 33.

Resolute and Central Canada's Comments[309]

- Commerce's LER calculation methodology found a benefit for Resolute even though a majority of Resolute's Québec Crown log purchase prices were higher than the benchmark price and Resolute's average Crown log purchase price exceeded the benchmark price.
- A comparison of average Crown log prices to the average log benchmark price, without zeroing negative benefits, would achieve a result that reflects the average of the prevailing market conditions on either side of the comparison pursuant to section 771(5)(E) of the Act.
- Similarly, Commerce should compare the average Crown stumpage price to the average stumpage benchmark price in order to calculate a benefit that reflects the entirety of the remuneration paid for the entirety of the goods received.

Petitioner's Rebuttal Comments[310]

- Commerce's statute provides for only three types of offsets to a subsidy benefit amount (*e.g.*, the deduction of application fees or deposits to qualify for or receive a subsidy, accounting for losses due to deferred receipt of the subsidy, and the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy); therefore, Commerce should reject the Canadian Parties' request because offsetting the benefit calculated with a "negative" benefit is not among the permissible offsets under the statute.
- Commerce has consistently articulated this reasoning in both prior iterations of Lumber and other proceedings, such as *SC Paper from Canada*, and should reject the Canadian Parties' arguments and leave its methodology unchanged.

Commerce's Position: We disagree with JDIL and Resolute that the stumpage analysis should offset positive benefits with "negative benefits." As we stated in the investigation:

> In a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked or otherwise offset by "negative benefits" from other transactions. The adjustment the {Canadian Parties} are seeking is essentially a credit for transaction that did not provide a benefit – this is an impermissible offset, contrary to the Act, and inconsistent with {Commerce}'s practice.[311]

As we explained in the investigation and in *Lumber IV*, the Act defines the "net countervailable subsidy" as the gross amount of the subsidy less three statutorily prescribed offsets: (1) the deduction of application fees, deposits or similar payments necessary to qualify for or receive a subsidy, (2) accounting for losses due to deferred receipt of the subsidy, and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy.[312]

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[309] *See* Resolute July 29, 2020 Case Brief at 25 – 27.
[310] *See* Petitioner August 10, 2020 Rebuttal Brief at 128.
[311] *See Lumber V Final* IDM at 45 (citing *Lumber IV Final Results of 2nd AR* IDM at Comment 43; *Lumber NSR* IDM at Comment 6; *Drill Pipe from China* IDM at Comment 3; *OCTG from China Final* IDM at Comment 14; and *SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 26).
[312] *See* section 771(6) of the Act; *see also Lumber V Final* IDM at Comment 15; and *Lumber IV Final Results of 2nd AR* IDM at Comment 43.

Congress and the courts have confirmed that the statute permits only these specific offsets.[313] Offsetting the benefit calculated with a "negative" benefit is not among the enumerated permissible offsets.

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

> {I}f there is a financial contribution and a firm pays less for an input than it would otherwise pay in the absence of that financial contribution (or receives revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit is concerned.[314]

Thus, if Commerce determines that a province has sold timber for LTAR , a benefit exists and the inquiry ends. Commerce will not "reduce" the amount of that benefit by offsetting for purported "negative" benefits. Accordingly, we have made no modifications to the final calculations for JDIL and Resolute regarding alleged "negative" benefits.

In addition to including negative benefits in the stumpage analysis, Resolute and JDIL argue that Commerce should compare the average of all Crown stumpage prices or Crown log prices to an average benchmark price in order to "achieve{} a result that reflects average market conditions on either side of the comparison" and is consistent with the statutory requirement to measure the adequacy of remuneration "in relation to prevailing market conditions."[315]

Commerce's preference is to compare the prices of individual transactions with the government to monthly average benchmark prices, where possible.[316] In making our determination regarding what comparison methodology is most appropriate, Commerce considered the specific stumpage and log data collected and reported by the respective provincial governments and the level of detail of such data within the context of the provincial stumpage regimes. Where a comparison of individual transactions to monthly average benchmark prices was not possible, Commerce developed methodologies that best adhered to Commerce's preference.[317]

The Canadian Parties have not identified any specific distortions resulting from the use of transaction-specific prices in the stumpage calculations in the *Lumber V AR1 Prelim Results*.

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[313] *See* S. Rep. No. 96-249, at 86 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 472 ("[t]he list is narrowly drawn and is all inclusive."); *see also Kajaria Iron Castings* at 11 ("we agree that 19 U.S.C. § 1677(6) provides the exclusive list of permissible offsets …."); and *Geneva Steel* at 62 (explaining that section 771(6) of the Act contains "an exclusive list of offsets that may be deducted from the amount of a gross subsidy").

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

[315] *See* Resolute July 29, 2020 Case Brief at 27; *see also* JDIL July 29, 2020 Case Brief at 32, citing section 771(5)(E) of the Act.

[316] *See Lumber V Final* IDM at Comment 13; *see also SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 25; *see also OCTG from China AR3* IDM at Comment 7; *see also Sinks from China Final* IDM at Comment 21.

[317] For example, for Resolute's Québec stumpage transactions we used an annual average price by sawmill and species because the company's Québec stumpage transactions included monthly billing adjustments as the scaling factor is updated throughout the harvest season and, for the BC respondents, we relied on a timbermark-based approach and further disaggregated the stumpage calculations by species in order to conduct the benefit analysis on a basis that is as close to a transaction-specific analysis as possible given the available record evidence. *See Lumber V AR1 Prelim Results* PDM at 33 and 35.

Therefore, we find that there is insufficient evidence to support a change in calculation methodology to rely on average prices for the final results.

Alberta Stumpage Issues

Comment 12: Whether the Alberta Stumpage Market Is Distorted

Canadian Parties' Comments[318]

- The GOA and West Fraser argue that the Alberta stumpage market is not distorted because the market concentration for control of tenure-holding companies would be considered "moderate" by HHI, expert analysis indicates that the GOA's control over the majority of the stumpage market does not distort prices, and the supply overhang of unharvested stumpage is related to non-distorting external factors.

Petitioner's Comments[319]

- The GOA controls roughly 98 percent of the stumpage market, a ratio that by consequence will distort private prices. Furthermore, a small number of tenure-holding companies dominate the market and, while their market concentration ratio may not be worthy of antitrust scrutiny, Commerce's purpose is not to assess the market from an antitrust perspective. Finally, a supply overhang remains that, despite the reasons for its existence, would force private stumpage sellers to compete against GOA administered prices.

Commerce's Position: In the *Lumber V AR1 Prelim Results*, Commerce found that the Alberta stumpage market was distorted because Crown-origin timber accounted for a majority of the harvest, small numbers of tenure-holding companies dominate the market for stumpage, and a "supply overhang" exists that limits the willingness of tenure-holding sawmills to pay for private-origin timber. As in the investigation, the Canadian Parties do not contest Commerce's statistical analysis of distortion in the Alberta stumpage market but, instead, focus on the causes or effects to argue the market is not distorted.[320] Commerce previously addressed these arguments at length and, as we stated in the investigation, Commerce is investigating whether the Alberta stumpage market "functions freely and generates market-determined prices."[321] In doing so, we examine the effect of multiple related factors for which none is singularly determinative of whether the market is or is not distorted.[322] Thus, Commerce relies on the overall and cumulative effect of multiple distorting elements, including government control of the market, combined with market concentration and supply overhang.

Regarding the effects of the GOA's control of the stumpage market, parties do not contest that the GOA controls approximately 98 percent of the market.[323] In citing to the Brattle Report and economic analysis of Dr. Joseph Kalt to explain that the effect of government control would not be to depress stumpage prices,324 the Canadian Parties misunderstand Commerce's purpose in

[318] *See* GOA July 29, 2020 Vol. II Case Brief at 96 – 104; *see also* West Fraser July 29, 2020 Case Brief at 11 – 16.
[319] *See* Petitioner August 10, 2020 Rebuttal Brief at 50 – 52.
[320] *See Lumber V Final* IDM at 47.
[321] *Id*. at 52.
[322] *See CVD Preamble*, 63 FR at 65377.
[323] *See* Alberta 1st AR Market Memorandum.
324 *See* GOA July 29, 2020 Vol. II Case Brief at 99.

analyzing the GOA's control. As we stated in the investigation, whether Crown stumpage prices are too "high" or "low" is not what Commerce is attempting to measure in its distortion analysis. Rather, our concern, reflected above, is that private prices are "effectively determined" by Crown stumpage prices, which renders any private price circularly related to the government price. As explained in Commerce's regulations, where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price.[325] Consequently, the analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.

Regarding the market concentration of tenure-holding companies, Commerce again questions the relevance of HHI to our analysis. Commerce is not seeking to identify market conditions that would be anti-competitive in violation of U.S. or Canadian laws. The legal and economic standards for antitrust investigations do not govern Commerce's practices in this review, and while the GOA has provided supporting documentation, the pertinent documents do not demonstrate for Commerce's purposes that HHI evaluations are singularly determinative of whether a market functions freely or establishes market-determined prices.

Regarding the supply overhang, the willingness of tenure-holding sawmills to pay for private-origin standing timber will be limited by their costs for obtaining standing timber from their own tenures regardless of the reasons for why certain companies chose not to harvest the entirety of their AAC. The Canadian Parties' concerns, which include a variety of issues such as the impracticality of harvesting certain stands of lumber, environmental considerations related to the harvesting of certain stands and ongoing negotiations with First Nations over certain stands, do not change the fact that, on the margin, the tenure holder has access to additional supply from Crown lands that it can harvest rather than going to the private market, not only because there is unused volume allocation during the POR, but also because mills are awarded periodic allotments that span five years. When combined with the fact that the same companies are active in both the Crown stumpage and private stumpage markets, this is further evidence that prices for standing timber from non-Crown sources would mirror the administratively-set prices charged by the GOA on Crown lands.

Comment 13: Whether TDA Survey Prices Are an Appropriate Benchmark for Alberta Crown-Origin Stumpage

Canadian Parties' Comments[326]

- Canfor, West Fraser, and the GOA argue that Commerce must use TDA prices as the benchmark for Alberta stumpage because TDA prices are the only tier-one benchmark on the record.[327]
- TDA prices are usable because Commerce itself has determined that the GOA does not have an export prohibition, salvage log prices are easily excluded and do not represent damaged or

[325] *See CVD Preamble*, 63 FR at 65377.
[326] *See* GOA July 29, 2020 Vol II Case Brief at 72 – 102. Canfor and West Fraser reiterate arguments made by the GOA on this issue.
[327] *See* GOA July 29, 2020 Vol. II Case Brief at 72 – 102; *see also* Canfor July 29, 2020 Case Brief at 4 – 6; and West Fraser July 29, 2020 Case Brief at 3 – 5, 11 – 16.

immature timber, Alberta log prices are not circularly related to stumpage, and crown liens are not enforced, exist in Nova Scotia and do not distort the market.[328]

Petitioner's Comments[329]

- TDA prices cannot be used as a tier-one benchmark because TDA prices are predominantly for logs, and the markets for logs and stumpage are distinct. The TDA prices for standing timber also cannot be used as a benchmark because they represent a very small percentage of a distorted market. Furthermore, TDA prices cannot be used as a tier- three benchmark because of flaws in the TDA.

Commerce's Position: As Commerce found in the investigation,[330] TDA prices cannot be used for Alberta stumpage because, under the benchmark hierarchy established by 19 CFR 351.511(a)(2), our first preference for determining the adequacy of remuneration is to compare the government price to a market-determined price "for the good or service resulting from actual transactions in the country in question." The good at issue in this review is stumpage. The TDA survey prices that the GOA, Canfor, and West Fraser propose using as a benchmark are, by their own recognition, primarily for a different product, *i.e.*, harvested logs, that is downstream from standing timber. As such, the TDA prices are not a tier-one benchmark "for the good or service." Furthermore, the small amount of standing timber prices contained in the TDA survey are distorted, as discussed in Comment 12, and unusable as a tier-one benchmark. At best, were Commerce to consider TDA prices for a benchmark, the TDA prices would be a tier-three benchmark by our hierarchy. As noted in Comments 25-28, Nova Scotia stumpage prices are usable as a tier-one benchmark for Alberta stumpage and render use of TDA prices as unnecessary for stumpage. Consequently, Commerce does not consider the parties' further arguments regarding the merits of the TDA prices.

British Columbia Stumpage Issues

Comment 14: Whether There Is a Useable Tier-One Benchmark in British Columbia

Canadian Parties' Comments[331]

- BCTS auctions generate valid market prices, and MPS accurately translates those auction prices to the long-term tenures.
- The *CVD Preamble* states there are instances where a government-run auction would be appropriate. Relying on Commerce's policy bulletin, the GBC developed and implemented the BCTS auction system and MPS to set market-determined prices for standing timber. Dr. Athey's report details how the BCTS auction prices meet Commerce's criteria for auction prices.
- In the *Lumber V AR1 Prelim Results*, Commerce stated that it must determine whether a market is distorted due to the presence of the government before determining whether it is appropriate to use prices from that market. In related litigation, Commerce has acknowledged this framework does not make sense. Commerce's concern about circularity between the

[328] *See* GOA July 29, 2020 Vol. II Case Brief at 84 – 93.
[329] *See* Petitioner August 10, 2020 Rebuttal Brief at 46 – 52.
[330] *See Lumber V Final* IDM at 46 – 54.
[331] *See* GBC June 8, 2020 Vol, V Case Brief at 7 – 23; *see also* West Fraser June 8, 2020 Case Brief at 20 – 23.

auction prices and the administratively set prices is not possible in the context of BCTS auctions and the MPS equations because the auction prices are used to set the stumpage prices on long-term tenures. As long as the auction prices are market-based, circularity is not a valid concern, and record evidence demonstrates that market forces, not the government, determine the results of BCTS auctions.

- Government predominance in the market is not an independent basis for Commerce to conclude the BC stumpage market is distorted; therefore, Commerce's claim that government presence in the market distorts the market "overall" must be rejected.
- In the Investigation and related litigation, Commerce has argued that government predominance is relevant for distortion when viewed in conjunction with the small number of large firms that dominate the BCTS auction market, thereby inhibiting competition. Commerce did not include this argument in the *Lumber V AR1 Prelim Results* and should not resurrect this theory for the final results.
- The LER in British Columbia does not distort the stumpage market in British Columbia. The vast majority of logs exported from British Columbia were from the Coast, where log transportation is more economical than in the interior.
- Commerce's reliance on speculation as to what would happen in the absence of the LER is insufficient evidence to support Commerce's finding that the LER results in significant distortion. Record evidence (*e.g.*, a comparison of BC coastal exports to U.S. PNW coastal exports and underutilization of export authorizations) supports the finding that the LER did not restrain exports or distort prices in the BC interior.
- Commerce's argument that the impact of the LER on coastal log prices ripples to the interior defies economic logic. Record evidence demonstrates that log markets do not obey the law of one price, and expert reports demonstrate that local markets would isolate and limit any such impact to coastal markets.
- The vast majority of log exports from British Columbia are from the coast, not because the LER suppresses exports from the interior, but because exporting from the interior is fundamentally uneconomical from most of the interior.
- Dr. Athey found that both auction theory and practice demonstrate that restrictions on auctions can be pro-competitive and is contrary to Commerce's position that the mere existence of a restriction on auction participation results in the auction being insufficiently competitive to produce market-determined prices.
- There is no basis on the record for Commerce to find that cutting rights fees would influence bidding behavior. Record evidence shows that when using surrogate bidders, the respondents undertake the same analysis to determine a bid price that they would if they were bidding under their own name.

Petitioner's Rebuttal Comments[332]

- None of the findings in the *Lumber V AR1 Prelim Results* have changed since the *Lumber V Final*: The Crown still comprises over 90 percent of the harvested timber in British Columbia, the LER program still restricts exports, and three-sale limit is still a barrier to participation in

[332] *See* Petitioner June 25, 2020 Rebuttal Brief at 14 – 35; *see also* Sierra Pacific June 25, 2020 Rebuttal Brief at 5 – 11 which largely raises the same arguments.

the BCTS system. The Canadian Parties' attempt to relitigate the findings from a previous proceeding are without merit and go against Commerce's practice[333] to not relitigate programs.
- The Canadian Parties' assertion that Commerce's use of the term government "presence" indicates a *per se* finding on government market share is false. Commerce has been clear that its finding is that the government's predominant role in the market is coupled with its findings on the LER and three-sale limit, which are the basis for determining that BCTS prices cannot serve as a tier-one benchmark.
- The MPS equation does not translate auction prices into market prices. Record evidence shows that 25 percent of the variation in auction prices cannot be explained by the variables in the MPS equation. Additionally, the time lag that is built into the MPS equation means that the resulting prices do not reflect current market conditions and results in BCTS prices being intertwined with the MPS' tenure prices, such that it cannot serve as an independent benchmark.
- Dr. Athey's statements on competitiveness are directly contradicted by another of the Canadian Parties' expert reports. Because these reports were prepared for the purpose of this litigation, they often contradict themselves and other record evidence, and Commerce should not rely on such opinions for the final results.
- The facts on the record relating to the LER are unchanged since the investigation and do not warrant a change to Commerce's findings. The record contains evidence of blocking and includes independent studies that support the law of one price.
- The Canadian Parties acknowledge that the three-sale limit was still in place during the POR, and their argument is based solely on a recycled report from the Investigation from Dr. Athey. Commerce should make clear that Dr. Athey's reports are nothing more than argumentation for the GBC and carry little probative weight as evidence.
- On its face, the three-sale limit violates the requirement that government-run auctions must be open to everyone to serve as valid benchmarks.
- Record evidence supports Commerce's findings from the Investigation that cutting rights fees lower BCTS winning prices.

Sierra Pacific's Rebuttal Comments[334]
- Commerce did not make a finding or determination that an analysis of government presence in the market is a threshold question or stand-alone issue, separate and apart from its assessment of whether it is appropriate to use a tier-one benchmark. Commerce properly applied the framework set forth in 19 CFR 351.511(a)(2) for identifying benchmarks.
- The GBC and West Fraser have submitted no new evidence demonstrating that the BCTS auction system has changed in any way since the original investigation. The additional evidence cited by the GBC and West Fraser, including the Declaration from West Fraser's Larry Gardner and the expert report prepared by Dr. Athey, is not evidence that the BCTS auctions have changed since the original investigation, but rather additional argumentation regarding how Commerce should interpret the evidence it already considered in the investigation.

[333] The petitioner cites the following cases in support: *CORE from India AR 15-16 Final* IDM at 16; *OCTG from India AR 13-14* IDM at 40; *Solar Cells from China AR 2012* IDM at 27; *Certain Pasta from Italy AR13 citing Live Swine from Canada AR 19*96.
[334] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 5 – 11.

Commerce's Position: In the *Lumber V AR1 Prelim Results*, Commerce preliminarily determined that BCTS auction prices could not serve as a tier-one benchmark because the majority of the market is controlled by the government and the GBC continues to restrict exports of logs from the province through government imposed log export restraints.[335] Commerce also preliminary determined that BCTS auctions were not competitively run government auctions that could serve as a tier-one benchmark because the GBC imposes an artificial barrier to participation through a three-sale limit.[336] As we explain below, we continue to find for these final results that the government controls the majority of the market and control combined with the existence of a province-wide LER increases the supply of logs available to domestic users, and, in turn suppresses log prices in British Columbia. We also continue to find that the three-sale limit restricts participation in BCTS auctions, which means that the auctions are not the "competitively run government auctions" envisioned under 19 CFR 352.511(a)(2)(i).

The petitioner claims that the facts have not changed since the *Lumber V Final*, and the Canadian Parties' attempt to relitigate the findings from a previous proceeding are without merit. We agree with the petitioner that the basic facts and operation of the BCTS system have not changed since the Investigation, but disagree that the respondents have not introduced new arguments or facts that attempt to rebut Commerce's determination in the *Lumber V Final*. However, in instances where Commerce addressed an identical argument relating to the exact same facts in the investigation, Commerce will note this and refer to its findings in the investigation.

The Canadian Parties argue that the overall distortion framework relating to government predominance used by Commerce is not applicable to British Columbia. We find that the respondents continue to misunderstand Commerce's determination in the *Lumber V Final* and *Lumber V AR1 Prelim Results*. In the Investigation, Commerce did not make, nor are we making in this review, a *per se* finding that the government's control of over 90 percent of the harvest in British Columbia automatically results in prices in the province being distorted. Commerce's finding is that this overwhelming government control combined with a province-wide LER has resulted in a scenario where the government controls both the supply of timber that is harvested (the BCTS determines how much land to sell through auctions each year, while FLNRORD sets annual allowable cut volumes on the non-auction tenures), and also restricts the flow of timber outside of the province through the LER. As we detail in Comment 46, the LER increases the supply of logs available to domestic users, and, thus suppresses prices in British Columbia. The fact that the government is the predominant supplier of timber does not, on its own, lead to a finding of market distortion.

The Canadian Parties also urge Commerce to not revive a finding from the *Lumber V Final* in which Commerce found that a small number of large firms dominated the BCTS auction market and, as a result, inhibited competition leading to distortion in the market.[337] This finding was not included in the *Lumber V AR1 Prelim Results* and is not included in these final results. The Declaration of West Fraser's Larry Gardner confirms that there continues to be a shortage of supply of timber in the BC interior during the POR[338] and that mills cannot satisfy demand by

[335] *See Lumber V AR1 Prelim Results* at 19 – 20.
[336] *Id.* at 20.
[337] *See Lumber V Final* IDM at Comment 18.
[338] *See* West Fraser IQR at Exhibit WF-AR1-BCST-10 at 3 – 5.

simply relying on their long-term tenures.[339] In such a scenario, Commerce's previous finding that large firms may be able to exert influence over auction prices and dampen prices at BCTS auctions is not likely.

The Canadian Parties make several arguments regarding the LER's distortion of the stumpage market in the BC interior. We have addressed the various arguments and rebuttal comments relating to distortion caused by the LER in Comment 46. As discussed in that comment, Commerce continues to find that record evidence supports the finding that the LER increases the supply of logs available to domestic users, and, as a result, suppresses prices in the BC interior.

The Canadian Parties also raised various arguments regarding Commerce's findings in both the *Lumber V Final* and *Lumber V AR1 Prelim Results* relating to the three-sale limit. The respondents' arguments mainly rely on the various submissions from Dr. Athey. As discussed in Comment 2, Commerce has not categorically dismissed the reports of experts prepared for the purpose of this review or the Investigation, but has evaluated the arguments in those reports with a consideration of how any potential bias might affect the conclusions reached in those reports. Commerce does have serious concerns of bias regarding Dr. Athey's submission. The record demonstrates that Dr. Athey was hired by the GBC to create the BCTS auction system.[340] No reasonable decision-making body would consider Dr. Athey an impartial evaluator of the BCTS system; she is essentially grading her own work in her submissions. To be clear, Commerce is not calling into question Dr. Athey's credentials, but rather taking into account her potential impartiality in assessing the weight we accord her arguments. Further, any assertions made by Dr. Athey without citations to other sources, and that are not corroborated by other record evidence, will be accorded less weight than those that are supported by citations or other record evidence.

Dr. Athey argues that both auction theory and practice demonstrate that restrictions on auctions can be pro-competitive and, therefore, the existence of a restriction does not make an auction insufficiently competitive to produce market determined prices. Dr. Athey then references examples of auctions, spectrum auctions and Treasury Bill auctions, that have what Dr. Athey describes as pro-competitive restrictions. However, there is no record evidence to back up this assertion. In fact, Dr. Athey has not described the auction theory she references other than to state that restrictions can improve "the extent to which auction outcomes reflect competitive market forces over the long run."[341] That is the entirety of the discussion. Dr. Athey has not explained this theory nor provided a single citation to any other source that discusses this auction theory to support her assertion. Later in the same paragraph, she mentions spectrum auctions and Treasury Bill auctions as examples of auctions with pro-competitive restrictions,[342] but again does not discuss what the restrictions in these auctions entail or how they are pro-competitive. Dr. Athey does not provide citations to any evidence relating to the restrictions themselves or arguing that these restrictions are considered to be pro-competitive. It is not possible for Commerce to even begin to evaluate whether the auction restrictions Dr. Athey discusses are akin to those at issue in this review because there is not enough argumentation in her reports to evaluate, nor is there citation to other studies which would allow us to assess whether her

[339] *Id*.
[340] *See* GBC IQR at Exhibit BC-AR1-ST-114 at 11 – 15.
[341] *Id*. at Exhibit BC-AR1-ST-154 at 54.
[342] *Id*.

assertions are corroborated by other evidence or experts. The lack of citations, combined with Dr. Athey's impartiality in assessing the auction that she designed, means we find these arguments on the pro-competitive nature of auction restrictions unpersuasive.

When discussing the three-sale limit, Dr. Athey's analysis is backed by data points that Commerce can evaluate. Dr. Athey argues that the three-sale limit "can serve to reduce concentration in logging, increase the number of potential bidders in the auctions, and hence increase auction competition and prices."[343] Dr. Athey points to the more than one thousand companies that were registered to bid on BCTS auctions during FY 17/18. Elsewhere, the record indicates that there were 397 bidders during FY 2017/18.[344] This indicates that a sizable portion of the registered bidders were not active during the POR. Additionally, the record indicates that there are a number of registered bidders that likely represent the same entity or bidder. Many of the details relating to our analysis relate to BPI and therefore are discussed in greater detail in a separate BC Stumpage Memorandum, which is dated concurrently with these final results. As detailed in that memorandum, it is not possible for the GBC to provide data that would allow for an accurate assessment of the actual diversity of bidders during the POR because the three-sale limit, the very rule that Dr. Athey claims increases competition, has led to parties bidding under multiple names. The record also demonstrates that even supposed independent loggers are submitting bids on behalf of mills that are prohibited from bidding directly. The information on the record allows Commerce to identify issues with the dataset used by Dr. Athey because Commerce has access to the BPI responses provided by the two mandatory respondents -- this is information to which neither the GBC nor Dr. Athey have access. Commerce only has this data for two companies, and in some instances, only for one of the respondents. Accordingly, it is not possible for Commerce, Dr. Athey, or any other party to obtain a clear picture of the actual diversification of the bidders in the BC interior using the data on this record. Thus, the record does not support a conclusion that the three-sale limit is leading to diversification of auction bids. One of the main facets of Dr. Athey's analysis of whether the BCTS auctions generate valid market prices concerns competition in the auctions. As part of this analysis, Dr. Athey classifies some of the BCTS bidders as what she terms "high-diversity bidders." As Dr. Athey explains, the importance of these high-diversity bidders are that even "a small share of bidders {that} sell{s} to multiple companies means that, if auction prices in a given area were predictably low (which would imply that potential profits to bidders in that area were predictably large), it would be possible for loggers to enter and compete away those profits. This finding further means that bidders in any particular auction cannot be certain about who else will participate and must take these potential bidders into consideration when formulating their bids."[345]

Dr. Athey defined high-diversity bidders according to two criteria: a) the maximum share of volume delivered to any one company, and b) the number of different companies receiving timber deliveries.[346] Dr. Athey then set up ranges for these two criteria and stipulated that any licensee that is above these defined ranges are high diversity bidders.[347] The rationale for how Dr. Athey established these ranges are not explained in her analysis. However, as detailed in the BC Stumpage Memorandum, record evidence shows that (1) the number of high diversity

[343] *Id*. at Exhibit BC-AR1-ST-114 at 54.
[344] *Id*. at BC-I-138.
[345] *Id*. at Exhibit BC-AR1-ST-114 at 6.
[346] *Id*. at 41.
[347] *Id*. at 41 – 42.

bidders in Dr. Athey's analysis is overstated, and (2) large mills unable to bid directly on BCTS auctions due to the three-sale limit are partnering with these independent high diversity bidders to submit joint bids in the auctions.[348] The second conclusion is important because it demonstrates that instead of fostering competition where large mills are bidding against the high diversity bidders and theoretically driving up auction prices, the restrictions caused by the three-sale limit result in these parties submitting a joint bid (in essence reducing the motivated parties participating in the auction). This demonstrates that the three-sale limit is a restriction that ensures that BCTS auctions are not competitively run auctions as described in the *CVD Preamble*.

Notwithstanding Dr. Athey's arguments regarding the three-sale limit, Commerce has been clear that the three-sale limit itself ensures that the BCTS auctions are not the competitively run government auctions contemplated by the *CVD Preamble* that might serve as a tier-one benchmark. As we explained in *Lumber V Final*:

> We note that the GBC has recognized this large-company dominance to be a problem. Specifically, the GBC introduced the so-called three-sale limit—restricting the number of active TSLs that a company may hold simultaneously to three—ostensibly to encourage competition by imposing a cap on the extent of participation by any one company and thus preventing the large companies from dominating all the auctions. However, by so doing, the GBC imposes an artificial barrier to participation in the BCTS auctions; while no companies are *per se* excluded from the auction system as a whole, the three-sale quota means that, to the extent some companies have already reached the quota, any given auction will find fewer bidders that could otherwise participate. In this manner, the BCTS auctions are not the type of "competitively run government auctions" envisioned under 19 CFR 351.511(a)(2)(i). For this reason alone, the auctions could not provide a tier-one benchmark under our regulations even if we were to find a non-distorted market overall such that the first tier in our methodology would apply.[349]

We reiterated this position in the *Lumber V AR1 Prelim Results*:

> Furthermore, in the investigation, Commerce determined that the BCTS auctions are not "competitively run government auctions" envisioned under 19 CFR 351.511(a)(2)(i) because the GBC imposes an artificial barrier to participation in the BCTS auctions through a three-sale limit. We found that, for this reason alone, the auctions could not provide a tier-one benchmark under our regulations even if we were to find a non-distorted market overall such that the first tier in our methodology would apply.[350]

The *CVD Preamble* identifies situations where it would be appropriate to use as a tier-one benchmark sales from government-run auctions, which includes those with "competitive bid procedures that are *open to everyone*."[351] Notwithstanding Dr. Athey's clams, the operation of

[348] *See* British Columbia Stumpage Memorandum at 1-5.
[349] *See Lumber V Final* IDM at Comment 18 (internal citations omitted).
[350] S*ee Lumber V AR1 Prelim Results* PDM at 20.
[351] *See CVD Preamble*, 63 FR at 65377.

the three-sale limit has not changed since the *Lumber V Final* – it remains an artificial barrier to participation in BCTS auctions that leads to scenarios where fewer bidders participate in the BCTS auctions than would participate in the absence of the restriction.

Comment 15: Whether Commerce Should Revise its Selection of a U.S. PNW Delivered Log Benchmark Price

Petitioner's Comments[352]

- Commerce erred in utilizing WDNR survey price data as the benchmark because the data reflect a compilation of offer prices, while it rejected F2M data that consist of millions of actual transactions collected in the ordinary course of business and published regularly on a subscription basis, and include all logs used to produce lumber.
- WDNR surveys include log prices from offers and not actual market transactions. Commerce's selection of offer prices over actual transactions contradicts Commerce's general practice. Under 19 CFR 351.511.(a)(2)(i), actual market-determined prices are the preferred benchmark price, and this preference is well-established in Commerce's practice.[353]
- WDNR survey data are reliant on outside sources, and the WDNR states it cannot accept responsibility for omissions and errors. The WDNR survey prices are sometimes reflective of only 1 to 2 quotes rather than a broad market average. In contrast, F2M's database provides a more accurate and comprehensive reflection of the market using actual transactions because it is composed of over 397 million actual transactions collected from producers and purchasers.
- In the *Lumber V AR1 Prelim Results*, Commerce declined to use the F2M data because the minimum diameter reported for logs excluded a substantial proportion of logs that are used to produce lumber in both the BC interior and U.S. PNW interior. Commerce's preliminary determination is not supported by record evidence and doesn't specify how F2M data fail to include the full scope of logs produced in the US PNW.
- F2M data is broadly reflective of the U.S. PNW log market, and thus, the BC log market. Commerce is not required to conjure a benchmark that reflects the exact commercial experience of BC producers.

Sierra Pacific's Comments[354]

- Commerce's rejection of the F2M pricing data because they supposedly exclude certain sizes of logs used to produce softwood lumber in British Columbia is not in accordance with the statute or Commerce's regulations. Section 771(5)(E)(iv) of the Act provides that Commerce is to determine the adequacy of remuneration in relation to "prevailing market conditions" for the good in question in the country subject to investigation or review. Nothing in the statute or regulations requires a potential "tier three" benchmark price to be for the exact same grade or size of product as the input allegedly provided for less than adequate remuneration.
- Commerce's decision to reject the F2M pricing data is unsupported by substantial evidence because the WDNR data similarly do not cover all log sizes or grades for each species at issue, let alone correspond to the sizes and grades of logs actually used to produce softwood lumber in British Columbia. Commerce found that the WDNR data "contain prices for various grades

[352] *See* Petitioner June 8, 2020 Case Brief at 23 – 31.
[353] *Id*. at 24-25, c*iting PET Resin from Oman* IDM at Comment 3; *Polyester Textured Yarn from India* IDM at Comment 11; and the CIT's decision in *Bristol Metals v. U.S*, 703 F. Supp. 2d.
[354] *See* Sierra Pacific June 8, 2020 Case Brief at 2-8; *see also* Sierra Pacific June 25, 2020 Rebuttal Brief at 16-17.

within each species category" that "do not correspond to the grades contained in the BC stumpage data provided by the mandatory respondents."
- There is no evidence on the record that the WDNR data are a superior source of tier-three benchmark prices compared to the F2M pricing data in terms of coverage of relevant grades or size of logs.
- Under 19 CFR 351.511(a)(2)(iv), in measuring the adequacy of remuneration, Commerce is required to calculate "the price that a firm actually paid or would pay if it imported" the product at issue. Commerce has stated that it has a strong preference for using prices that reflect actual transactions, when available, rather than price quotes or estimates that have not been finalized or actually agreed upon between parties.[355]

GBC/BCLTC Comments[356]
- Commerce's use of U.S. PNW delivered log prices as a benchmark price is based on the mistaken view that, because species and growing conditions are similar on both sides of the border, log prices should be the same on both sides of the border.
- Record evidence demonstrates that logs of the same species and size do not have the same price in different geographic locations. Regional variation of prices is evident in both the U.S. PNW and BC interior. These differences could be a result of log quality and defects and differences in prevailing market conditions (*e.g.*, log demand and supply, transportation, variation in government regulations) and variability in contractual terms of sale.
- A U.S. PNW benchmark is not capable of measuring the alleged subsidization of BC stumpage due to differences in log quality and transportation costs. There is no basis to assume that logs of the same species and size should have the same price in different geographic locations. Commerce's methodology is incapable of distinguishing between alleged subsidies on one hand and differences in log prices that are the result of prevailing market conditions on the other hand.
- The petitioner offers no support for its assertion that the F2M dataset includes or is "reflective of" beetle-killed timber. As Jendro and Hart have documented the petitioner's assertion is entirely unfounded.
- Record evidence demonstrates that a portion of the respondents' harvests would have been graded as utility under U.S. grading rules. However, there are no utility grade log price quotes included in the WDNR survey prices used in the *Lumber V AR1 Prelim Results* calculation. The only utility prices in the WDNR survey data are for the basket conifer category, which Commerce did not use when deriving the preliminary benchmark. If Commerce continues to reject the Dual-Scale Study, then it needs to come up with an alternative basis for adjusting the benchmark to include utility prices.[357]

Petitioner's Rebuttal Comments[358]
- According to the derived demand methodology that all parties accept, the GBC's own responses confirm that the prevailing market conditions in both the BC interior and US PNW

[355] *Id.* at 7, *citing Light Truck Tires from China AR 14-15* IDM at Comment 17 and *Violet Pigment 23 from China* IDM at Comment 5.
[356] *See* GBC June 8, 2020 Vol V Case Brief at 23 – 26, 35 – 36, and 47.
[357] This argument also appears in West Fraser June 8, 2020 Case Brief at 31.
[358] *See* Petitioner June 25, 2020 Rebuttal Brief at 45 – 51.

consist of the same market conditions, the U.S. market for softwood lumber and the U.S. housing market.
- The GBC provides revenue forecasts for Crown timber and uses information from various sources to develop harvest volumes and stumpage rates. These calculations involve U.S. dollar denominated pricing from *Random Lengths*, which is pricing for softwood lumber sold in the U.S. market, meaning that stumpage rates in British Columbia are derived from U.S. softwood lumber market conditions. Two other variables (U.S. housing starts and the exchange rate data) show that the GBC bases its pricing scheme on U.S. market conditions.
- To the extent there are any differences in local growing conditions between the BC interior and the U.S. PNW, such differences do not have an impact on the prevailing market "conditions of purchase or sale" in British Columbia, and Commerce should not make an adjustment for any cross-jurisdictional differences.
- The Canadian Parties' argument that regional differences in prices are a result of local market variations relies on log offer prices, which do not necessarily reflect actual transaction prices paid for logs.
- Even if transaction prices could be shown to vary in the short term from one region to another purely due to local factors, this would not invalidate Commerce's methodology which is based on the fundamental premise that the same or similar logs of the same species, being used in similar sawmills to produce the same lumber being sold into the same markets, are likely to have similar market values.
- The record contains several studies that show timber and log markets for similar species tend to be linked across jurisdictional boundaries.

Canadian Parties' Rebuttal Comments[359]
- The petitioner's claim relating to F2M data being comprised of hundreds of millions of transactions refers to F2M's database since its founding up to 2018 and covers all of North America. There is not record information that indicates how many transactions support the data on this record.
- In addition to Commerce's rejection based on minimum diameter, Jendro and Hart found various other issues with the F2M data, including F2M's proffered conversion factor between board feet and tons is inconsistent with public data; the F2M data show significant upward bias when compared to other prices on the record.
- The petitioner's contention that CNS log sales did not occur in the BC interior is contradicted by record evidence. WDNR survey reports include CNS prices, and each of the nine WDNR delivered log sales transactions in 2017 and 2018 contained a component of CNS logs. Therefore, it is more reasonable to infer that F2M data do not include CNS logs in areas 6 and 7, rather than that CNS were not included because of a lack of sales.

Commerce's Position: As discussed above in Comment 14, we continue to find that BCTS auction prices are not a viable benchmark price. We have previously found that private log prices in British Columbia, or prices from other provinces within Canada are not appropriate tier-one benchmark prices for British Columbia.[360] We have also previously determined that U.S. stumpage prices cannot serve as a tier-two benchmark for British Columbia.[361] There is no

[359] *See* GBC June 25, 2020 Vol I Rebuttal Brief at 9 – 13.
[360] *See Lumber V Final* IDM at Comment 21; *see also Lumber V AR1 Prelim Results* PDM at 26 – 27.
[361] *See Lumber V Final* IDM at Comment 21; *see also Lumber V AR1 Prelim Results* PDM at 26.

information on the record of this review that would lead us to a different finding for these final results. Following our established hierarchy under 19 CFR 351.511(a)(2)(iii), we found in the *Lumber V AR1 Prelim Results* that it was appropriate to continue to use U.S. log prices as tier-three benchmarks.[362] As we describe below, we continue to find that delivered U.S. PNW log prices are an appropriate benchmark under tier three of our methodology for the stumpage calculation and under tier two for our LER calculation.

As Commerce outlined in the *Lumber V Final*, since *Lumber IV*, we have found that using U.S. PNW log prices to derive a benchmark for stumpage is consistent with Commerce's market principles analysis.[363] There is no new record evidence in this review that would change our previous findings that the timber species harvested by the respondent firms in British Columbia closely correspond to the species in the U.S. PNW and that forestry conditions in the U.S. PNW and British Columbia remain comparable.

The Canadian Parties argue that the sub-regional benchmark (*i.e.*, interior U.S. PNW logs) is not an appropriate benchmark for the interior of British Columbia because pricing is determined by factors at an even more localized level. As a result, they argue, Commerce's cross-border methodology is incapable of distinguishing between the alleged subsidization and differences in log prices that are a result of prevailing market conditions. The Canadian Parties, referencing the expert report of Dr. Leamer from the investigation,[364] point to variation in prices among similar logs within both the U.S. PNW and the BC interior as evidence that markets for logs are localized.

As an initial matter, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[365] As we explained in the *Lumber V Final*, a benchmark, by nature, is not an exact match to the subsidy being evaluated.[366] Pursuant to section 771(5)(D)(iv) of the Act, Commerce shall determine the adequacy of remuneration in relation to prevailing market conditions, *i.e.*, price, quality, availability, marketability, transportation, and other conditions of purchase or sale.[367] As discussed below and in Comments 21, 23, and 24, Commerce has adjusted for these prevailing market conditions as the record allows.

The Canadian Parties' argument ignores that the record clearly demonstrates that the GBC itself has determined that prices captured across a sub-regional area (*i.e.*, the entirety of the interior of British Columbia) are an appropriate basis by which to set prices within that sub-region. Specifically, the GBC uses results of BCTS auctions throughout the BC interior to set the prices for the non-auction tenures in the BC interior. The GBC does not rely on auction results from only certain regions or districts to set the stumpage rates in those regions, but instead uses auction prices from throughout the BC interior to set prices for tenures throughout the BC

[362] *See Lumber V AR1 Prelim Results* PDM at 26 – 27.
[363] *See Lumber V Final* IDM at Comment 21, *citing Lumber IV Final Results of 2nd AR* IDM at 12 – 13, and *Lumber IV Final Results of 1st AR* IDM at 16.
[364] *See* GBC IQR at Exhibit BC-AR1-ST-203.
[365] *See HRS from India* IDM at 52.
[366] *See Lumber V Final* IDM at 63.
[367] *Id*.

interior.[368] As Dr. Athey explains, the system the GBC has established explicitly avoids making adjustments based on local markets:

> In addition to providing sound estimates of timber value, the specification of the MPS Equation is also designed to avoid including local variables (*e.g.*, regional "dummy" variables), or other variables that could conceivably facilitate the "gaming" of the system. This design limits the ability of mills with local market power to influence their own MPS stumpage rates through strategic behavior in local log and timber markets.[369]

Thus, the information above demonstrates that the Canadians Parties' argument for a localized benchmark is at cross-purposes with how the GBC itself uses BCTS prices to set the prices for Crown origin standing timber in British Columbia.

The GBC relies on interior-wide auction prices even though, as the Canadian Parties have argued, there are variations in species, quality, transportation and marketability within the province. For example, the Kalt-Reishaus report, one of the expert reports submitted by the GBC, describes how the Interior Tidewater portion of the Skeena area of the BC interior contains a different species make-up, lower log quality and different transportation costs than the rest of the BC interior.[370] This report also contains maps that show there are a variety of different forest regions and biogeoclimatic zones within the BC interior itself.[371] Yet, despite these local variations within the BC interior, the GBC has deemed it appropriate to utilize auction results from the entire interior.

In rebuttal to the respondents' arguments on localized pricing, the petitioner argues that the record also demonstrates that the GBC uses prices from *Random Lengths* to set stumpage prices in British Columbia. The petitioner's rebuttal brief reads:

> Specifically, the GBC provides "revenue forecasts" for Crown timber and uses "information from various sources to develop harvest volumes and stumpage rates."[372]

After highlighting the sources used to construct the revenue forecasts, which include various prices from *Random Lengths*, the petitioner argues that since *Random Lengths* pricing data are a benchmark for softwood lumber sold in the U.S. market, "stumpage rates set by GBC are derived from U.S. softwood lumber market conditions."[373] The text from the petitioner's rebuttal brief quoted above did not contain an accompanying citation. However, based on the citation in the following sentence in the petitioner's rebuttal brief discussing the variables used by the GBC to construct these revenue forecasts, we can infer that the petitioner is referencing language on page

[368] *See* GBC IQR at Exhibit BC-AR1-ST-114 at 6. Dr. Athey explains that mills cannot exercise market power they may possess because "system uses auction prices from other parts of the province to set prices on timber harvested on long-term tenures."
[369] *Id.* at 29.
[370] *See* Kalt-Reishus Report at 49 – 51.
[371] *Id.* at Figure 1 and Figure 3.
[372] *See* Petitioner June 25, 2020 Rebuttal Brief at 46.
[373] *Id.* at 47.

BC-I-71 of the GBC's IQR response. The problem is that language that the petitioner has placed in quotes does not exist. The actual language from the GBC's IQR response is:

> To develop forecasts, the Timber Pricing Branch gathers information from various sources to forecast harvest volumes and stumpage rates.[374]

Thus, the petitioner's argument is based on language that replaces the key word, "forecast," in the quoted language with "developed" which makes it seem like these are the stumpage rates that are being used to set prices on the non-auction tenures. However, the GBC is clearly discussing revenue forecasts and describing how it forecasts future harvest volumes and stumpage prices. In the above passage, the GBC is not discussing how it actually sets harvest volume and stumpage prices, but how it forecasts potential revenue. The prior paragraph in the GBC's questionnaire response makes this clear:

> At the outset, it is important to note that the Government of British Columbia does not determine in advance how much stumpage it will collect from the industry. Rather, given the timber pricing policies in place and an assessment of projected harvest activity, provincial forestry officials estimate or forecast how much overall revenue will be received.[375]

While we do not agree that the petitioner's argument is supported by its proffered record evidence, the record does support the contention that the GBC uses *Random Lengths* pricing, in limited instances, to construct the stumpage rates as part of the MPS equation. One of the variables in the MPS equation is the Real Stand Selling Price, which is constructed in part by using recent lumber prices. As the GBC explains, in certain situations when it is unable to obtain the necessary data, one of the means by which it fills in those data gaps is by using "comparable published data from Random Lengths..."[376] The record is not clear which specific *Random Lengths* pricing data are used in these instances, but it does indicate another potential instance where the GBC is using a broad market average in setting its own stumpage prices.

The record demonstrates that the GBC does attempt to address some of the local factors it raises through the MPS equation's inclusion of stand-specific variables that may impact the stumpage price.[377] These variables include adjustments for difficult harvesting conditions (yarding methods, slope), the proportion of certain species in the stand, timber quality in the stand (*e.g.*, fire damage, decay, etc.) and transportation cost (*e.g.*, haul time).[378] However, Commerce's derived demand methodology also adjusts for these very same factors through the use of the respondent's actual costs. Where the GBC is using auction prices (or lumber prices as described below) and adjusting for localized factors through MPS variables, Commerce is using a delivered log price benchmark and making adjustments using the actual timbermark-specific costs reported by the respondents, where available. For example, if a company reports higher harvesting costs because of a steep slope or needing to cable harvest on a timbermark, those costs are reflected in the timbermark-specific calculation through Commerce's derived demand methodology because

[374] *See* GBC IQR at BC-I-71 (emphasis added).
[375] *Id*.
[376] *Id*. at BC-I-115.
[377] *Id*. at Exhibit BC-AR1-ST-114 at 75 – 76.
[378] *Id*.

Commerce is making adjustments for the respondent's actual harvesting costs incurred on that timbermark. In any instances where Commerce has used company-wide average costs for the respondent, it is not the result of Commerce not asking for timbermark-specific costs, but a result of the respondents themselves not being able to provide the data on a timbermark-specific basis. The continued adoption of a beetle-killed benchmark price in these final results demonstrates that Commerce has adjusted the benchmark for quality differences where the record information has allowed it to do so, *see* Comment 21 for more detail.

For the reasons discussed above, we continue to find that it is appropriate to construct a benchmark price based on U.S. PNW delivered log prices for these final results.

In the *Lumber V AR1 Prelim Results*, Commerce utilized delivered log prices from WDNR surveys as the basis for its species-specific delivered log benchmark prices.[379] In selecting the WDNR survey prices, Commerce rejected F2M pricing data the petitioner placed on the record of this review. For the reasons discussed below, Commerce continues to find it appropriate to reject the F2M pricing data for these final results.

As mentioned above, the petitioner has placed on the record U.S. PNW pricing data from Forest2Market, an analytics company focused on the forestry industry. This F2M pricing data are comprised of two different datasets: (1) pricing tables prepared by F2M specifically for the purpose of this proceeding, and (2) Market Guide reports that F2M produced in the ordinary course of business.[380]

In the *Lumber V Final*, Commerce rejected a pricing study that was prepared utilizing customized F2M pricing reports because "the data and search parameters underlying the prices reported by Forest2Market (for a study conducted specifically for this investigation) are not on the record of this investigation, and are otherwise unverifiable, we cannot find those reported log prices to be complete, representative or reliable."[381] The pricing tables prepared by F2M specifically for this review suffer from the very same issues. The data and search parameters used to construct the species-specific prices are not on the record of this review and are unverifiable. Unlike the WDNR survey data, these price tables were constructed specifically for the purpose of this proceeding and it remains impossible for Commerce to determine whether these prices are complete, representative, or reliable.

As we noted in the *Lumber V AR1 Prelim Results*, the F2M data also include monthly Market Guide reports that are produced by F2M in the ordinary course of business.[382] We preliminarily determined that the F2M Market Guides were not appropriate benchmark prices because they only contained a portion of the logs used to produce softwood lumber in the U.S. PNW. Specifically, we preliminarily found that "{t}he Market Guides relating to the inland U.S. PNW area appear to have a minimum diameter that exclude a substantial proportion of logs used to produce softwood lumber in both the U.S. PNW interior and BC interior."[383] The petitioner and Sierra Pacific raised various arguments relating to this finding in their case brief. Our analysis of

[379] A discussion of the arguments relating to the beetle-killed benchmark prices can be found in Comment 21.
[380] *See* Petitioner Benchmark Submission at Exhibit 1.
[381] *See Lumber V Final* IDM at Comment 20.
[382] *See Lumber V AR1 Prelim Results* PDM at 27.
[383] *Id*.

these arguments and the case record contain BPI and, therefore, largely appear in the accompanying BC Stumpage Memorandum.[384]

Commerce agrees with the petitioner and Sierra Pacific that Commerce's regulations and practice demonstrate a preference for transaction prices over price quotes. However, this does not mean Commerce must always use transaction prices even where there are substantial concerns and defects with such prices, and a better data source exists on the record. We continue to find for these final results that the record supports our preliminary determination that a significant portion of logs used to produce softwood lumber in both the U.S. PNW and BC interior are not included in the Market Guide reports. As detailed in the BC Stumpage Memorandum, the record demonstrates that the F2M Market Guides do not include smaller, less valuable logs used to produce lumber, F2M prices skew significantly higher than the other three sources of U.S. PNW log prices on the record during the POR, and there are questions regarding the ton to board feet conversion factor F2M may have used in the Market Guides. An obvious explanation for why F2M prices are so much higher is that the F2M data are missing the lower-value, smaller logs that are used to produce lumber in both the U.S. PNW and the BC interior. Sierra Pacific argues there is no evidence on the record that the WDNR data are superior to the F2M pricing data in terms of its coverage of relevant grades or size of logs, but the record clearly shows that the WNDR pricing not only includes these smaller lower-value logs (listed in the WDNR data as chip-and-saw logs), but also includes even lower value utility logs (which are also used to produce lumber). The domestic parties are essentially asking Commerce to use a benchmark price that only includes camprun logs for comparison to stumpage purchases that cover a much wider spectrum of price and quality (*i.e.*, camprun, chip-and-saw, and utility logs).

Sierra Pacific argues that Commerce has previously found that the WDNR data similarly does not cover all log sizes or grades for each species at issue, let alone correspond to the sizes and grades of logs actually used to produce softwood lumber in British Columbia. As support for this argument, Sierra Pacific cites to Commerce's finding in *Lumber V Prelim* that the WDNR data "contain prices for various grades within each species category" that "do not correspond to the grades contained in the BC stumpage data provided by the mandatory respondents."[385] Sierra Pacific seems to miscomprehend Commerce's conclusion. In the *Lumber V Prelim*, Commerce was discussing whether it could make the LTAR comparison on the basis of a benchmark price at the grade level, and we determined that it was not possible because the grades in the WDNR did would not allow for a direct comparison to the grades in the BC stumpage purchase files. This was not because the WDNR data did not cover all the grades of logs found in British Columbia, but because there was no usable record evidence that provided a means of comparing the WDNR grades to the BC interior grades. As we stated in the very next sentence following the passage cited by Sierra Pacific, "Thus, due to the inability to match by grade and in order to calculate a benchmark that is representative of all grades, we have relied upon the overall unit price listed for each species, which we find is reflective of all grades of logs contained in the WDNR survey."[386] For instance, Grade 2 logs in Canada appear to include not only sawlogs, but some logs that would be graded utility under the U.S. scaling system. Therefore, in the investigation, it was not possible for Commerce to simply compare the WDNR camprun grades

[384] *See* British Columbia Stumpage Memorandum at 5-8.
[385] *See Lumber V AR1 Prelim Results* PDM at 53.
[386] *Id*.

to a combination of Grades 1 and 2 in British Columba. There was no usable record evidence that would allow for us to construct such a comparison, so we dropped grade from the benchmark construction and compared the species-specific benchmark to the species-specific stumpage purchases. This remains the case in this review. Accordingly, we determine that it is appropriate and will continue to utilize prices from the WDNR surveys to construct our benchmark in these final results.

The Canadian Parties argue that if we are to use WDNR survey data in the final results we must incorporate utility grades prices into our species-specific benchmark prices. As the Canadian Parties correctly highlight, the WDNR survey prices used in the *Lumber V Final* included utility prices in the species-specific average prices,[387] while the WDNR surveys in this review include utility grade prices only in a "other conifer" basket category that Commerce did not use in the *Lumber V AR1 Prelim Results*.[388]

However, the record does not contain a way for Commerce to accurately integrate these utility grade prices into the U.S. PNW that would not potentially result in a significant distortion of the benchmark prices. The WNDR survey does not include the exact number of observations, only ranges, that comprise the species-specific and conifer basket utility average prices in the surveys. Any attempt to combine the species and conifer categories together would force Commerce to guess at the number of observations included in each average. There is no precision in such a methodology and would only lead to distortions in the prices that would potentially outweigh any accuracy potentially gained by including these utility grade prices in the benchmark. This is especially true when the number of observations fall in the "5 or more quotes" category, which constitutes the majority of species-specific price averages.[389]

The alternative would be to locate record evidence that estimates the percentage of utility grade logs used to produce lumber and use that percentage to weight the utility grade prices with the species-specific averages. The only source of information on the record that attempts to quantify the percentage of utility grade logs present in the U.S. PNW or BC interior harvests is the Dual-Scale Study commissioned by the GBC.[390] As explained in Comment 22, we continue to find the Dual-Scale Study is not a reliable source of information due to potential concerns of bias in its methodology. Moreover, for the reasons described below, even if Commerce were to find that the conversion factors in the Dual-Scale Study were viable, we still would not use the utility log percentages calculated as part of the study.

The study's authors, Jendro and Hart, explained that "the Dual-Scale Study was not designed, nor intended, to replicate the harvest proportions of any particular period or subset of the total BC interior harvest…" because that information was already recorded in the GBC's Harvest Billing System.[391] While this might be true for log characteristics of logs measured under the BC scaling rules, it would not be true of log characteristics measured under the Scribner scaling rules – utility grade logs are a Scribner scale classification that does not exist in the BC Metric system. The Dual-Scale Study only attempted to ensure the study "obtained representative

[387] *See* GBC IQR at Exhibit BC-AR1-ST-203.
[388] *Id*. at Exhibit BC-AR1-ST-167.
[389] *Id*.
[390] *See* Dual-Scale Study.
[391] *See* GBC SQR2 at Exhibit BC-AR1-STSUPP2-1 at 8.

samples of all the principal species, grade, and condition categories found in the overall harvest."[392] As Jendro and Hart explained, this meant that the study did not need to ensure that the log samples matched the geographic makeup of the provincial harvest: "…regional stratification is not necessary because logs of a given species, grade, and condition are relatively homogeneous, or consistent, in respect of their aggregate characteristics wherever they are harvested in significant quantity throughout the BC interior."[393] The only geographic requirement that the study imposed on its sample collection was that there would be at least one scale site in each of the six forest regions of the BC interior.[394] The authors explained that they chose scale sites because they knew that those scaling sites historically scaled certain types of logs.[395]

As the record explains, one of the main differences between the Scribner scaling methodology and the BC Metric methodology is how defects impact the calculation of the volume of a log. Under the Scribner rules, any defect that reduces the volume of lumber recovery reduces the volume of the log,[396] while in the BC Metric system, deductions for lumber recovery are not part of the calculation; only defects where there is a void, soft-rot and char result in a loss of volume.[397] The record also demonstrates that under the U.S. rules, utility logs are not determined by the quality of the log, but by the length, diameter, and net volume as a percentage of the gross volume of the log.[398] This is similar in British Columbia where log defects do not play into the log grades until you get to Firmwood Reject logs (Grade Z).[399] The calculation of the net volume percentage is impacted by the defects present in a log – a log with defects associated with beetle-killed dry timber (*i.e.*, cracks and splits) will have a lower net volume percentage than green trees. On the BC Metric side, the logs volume would not be reduced by such cracks and splits. As we discuss in Comment 21, the record demonstrates the length of beetle infestation directly impacts how many defects appear in logs. In the first few years of a beetle infestation, the trees retain more moisture, while as time goes on, the logs dry out and become more cracked and split.[400] Forestry officials in British Columbia track the length of the MPB and spruce-beetle infestations very closely and know not only the areas where infestations are present, but also the severity of these infestations.[401]

Since the authors of the Dual-Scale Study sought to scale a sufficient number of each type of log required, they attempted to scale in areas where they knew they would encounter such logs. Therefore, the site selections are potentially biased by focusing on areas that included log types they desired. For instance, the study authors selected log sites in areas they knew included beetle infestations because they needed to collect beetle-killed samples. If the authors oversampled from sites that have long-term beetle infestations, then the number of defects in those trees will be higher than in other sites. As explained above, more defects lead to lower net volume percentages under U.S. rules and, therefore, to more utility grade trees. Accordingly, the

[392] *Id*. at 4.
[393] *Id*. at 5.
[394] *Id*. at fn. 3.
[395] *Id*. at 5.
[396] *See* Fonseca Publication at 51.
[397] *Id*. at 15.
[398] *See* GBC IQR at Exhibit BC-AR1-ST-166.
[399] *Id*. at Exhibit BC-AR1-ST-45.
[400] *Id*. at Exhibit BC-AR1-ST-169 at 16.
[401] *Id*. at BCI-2, BC-I-47, and Exhibit BC-AR1-ST-116.

percentage of utility grade trees in the Dual-Scale Study is subject to wide variation and highly dependent on the sites chosen by the study's authors, and will not be representative of the BC interior harvest. Statements from Jendro and Hart that the study was "not designed, nor intended, to replicate the harvest proportions"[402] support our conclusion on this point. As detailed in the BC Stumpage Memorandum, we find that site selection likely had a significant impact on the percentages of utility logs found in the Dual-Scale Study.[403] Therefore, even if we found that the conversion factors in the Dual-Scale Study were usable, record information indicates that the utility percentages calculated in the study are not representative of the log types (*i.e.*, species/grade/condition) throughout British Columbia.

Comment 16: Whether Commerce Should Account for GBC's "Stand as a Whole" Pricing as a Significant "Prevailing Market Condition"

Canadian Parties' Comments[404]

- Stand as a whole pricing is a condition of sale, and thus a prevailing market condition, pursuant to section 771(5)(E) of the Act, and Commerce must take this into account when measuring adequate remuneration.
- Timber stands in British Columbia are priced on a stand as a whole basis. Specifically, the GBC establishes these prices through an equation which accounts for the volume and value of different species within a stand. Invoices are sent based on the single stumpage rate for the stand. The per-unit stumpage fees that appear on the invoices are a statistical construct and not a reflection of the value that would be charged if it sold timber on a species-specific basis.
- To properly account for prevailing market conditions, Commerce must either compare a single weighted-average "all species" benchmark against a single weighted-average "all species" stumpage rate; or compare individual species-specific benchmarks against individual species-specific stumpage rates. Given the infeasibility of developing the hundreds of individual species-specific benchmarks that such an approach would require, Commerce should develop a single, weighted average "all species" benchmark.

Petitioner's Rebuttal Comments[405]

- Commerce should not depart from a species-specific benchmark for the final results. Commerce has previously rejected the arguments made by the GBC and West Frasier, as neither respondent has offered new evidence or changed circumstances to depart from the previous findings.

Sierra Pacific's Rebuttal Comments[406]

- Commerce has previously addressed and rejected the arguments that U.S. log benchmark prices must be adjusted to account for British Columbia "stand as a whole"-based pricing. Furthermore, both the GBC and West Fraser have failed to demonstrate that these adjustments are appropriate based on the evidence on the record of this review.

[402] *See* GBC SQR2 at Exhibit BC-AR1-STSUPP2-1 at 8
[403] *See* British Columbia Stumpage Memorandum at 8-9.
[404] *See* GBC June 8, 2020 Vol V Case Brief at 27 – 31; *see also* West Fraser June 8, 2020 Case Brief at 25 – 27.
[405] *See* Petitioner June 25, 2020 Rebuttal Brief at 40 – 45.
[406] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 11 – 15.

Commerce's Position: As discussed in *Lumber V AR1 Prelim Results*, Commerce found that the record did not permit us to measure the adequacy of remuneration for the provision of BC stumpage under a tier-one or tier-two analysis.[407] Thus, we used a tier-three analysis, pursuant to 19 CFR 351.511(a)(2)(iii), in which we measured the adequacy of remuneration by assessing whether the government price is consistent with market principles.[408] As such, to calculate a benefit for stumpage purchases in British Columbia, Commerce used species-specific benchmarks and compared them to the respondents' purchases of Crown-origin standing timber aggregated by timbermark and species. This was consistent with Commerce's methodology in *Lumber V Final*.[409] For purposes of these final results, we continue to find that the methodology used in *Lumber V AR1 Prelim Results* to be appropriate, and thus, we continue to aggregate the standing timber by timbermark and species in British Columbia for purposes of making a comparison with species-specific Washington state benchmarks for these final results.

In their case briefs, both the GBC and West Fraser raise the same arguments that Commerce has already addressed in *Lumber V Final*.[410] In particular, both the GBC and West Fraser argue Commerce must consider stand as a whole pricing as a prevailing market condition in British Columbia. However, similar to *Lumber V Final*, we disagree.[411] Specifically, to determine whether stumpage prices in British Columbia are consistent with market principles, we constructed a benchmark stumpage price based on log prices adjusted for the respondents' costs.[412] We found that standing timber values are largely derived from the demand for logs produced from a given tree and "{t}he species of a tree largely determines the downstream products that can be produced from a tree; the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is in turn derived from the demand for the type of lumber produced from these logs."[413] In other words, we constructed a market-based stumpage price in British Columbia using market-determined U.S. log prices, recognizing that the species of a tree is an integral part of the value of that tree. Thus, under our tier-three benchmark methodology, we find that a main condition for determining stumpage is the demand of the logs from that tree. A weighted-average combined species benchmark would not accurately assess the adequacy of remuneration for stumpage, considering how its value is evaluated according to market principles.

Moreover, in utilizing a timbermark-based approach and further disaggregating by species, Commerce is conducting the calculation on the basis that is as close to a transaction-specific analysis as possible; a transaction-specific analysis is Commerce's long-standing preference.[414] Further, by not offsetting its comparisons for negative benefits, Commerce is acting consistently

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[407] *See Lumber V AR1 Prelim Results* PDM at 26.
[408] *Id*.
[409] *See Lumber V Final* IDM at Comment 23.
[410] *Id*.
[411] *Id*.
[412] *Id*.; *see also Lumber IV Final Results of 1st AR* IDM at 17 ("We identified numerous factors affecting market conditions that needed to be adjusted for, inter alia, costs associated with the tenure contract, costs associated with accessing timber for harvesting, and costs of acquiring timber. In summary, the harvesting costs reported by harvesters of Crown and private timber in BC were deducted from market-determined log prices from the U.S. Pacific Northwest to calculate a 'derived market stumpage price' to compare with Crown stumpage."); *see also Lumber IV Final Results of 2nd AR* IDM at 16 ("{W}e subtracted from the U.S. log prices all BC harvesting costs, including costs associated with Crown tenure for calendar year 2003, and profit.").
[413] *See Lumber V Final* IDM at Comment 23; *see also Lumber IV Final Results of 1st AR* IDM at 16; *see also Lumber IV Final Results of 2nd AR* IDM at 12 – 13.
[414] *See, e.g., SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 25.

with the fact that a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked or otherwise offset by negative benefits from other transactions. Because a benefit is either conferred or not conferred, how the GBC prices its stumpage is irrelevant to our analysis. If a government chooses to set a price for a whole stand, rather than differentiating by species within a stand, that does not change the amount of the benefit conferred for purposes of our analysis.

Finally, the GBC has noted a NAFTA panel decision from *Lumber IV* to support its contention that Commerce must account for "stand as a whole" pricing as a prevailing market condition in British Columbia.[415] However, we find that this decision is not binding on Commerce in these final results.

New Brunswick Stumpage Issues

Comment 17: Whether Private Stumpage Prices in New Brunswick Should be Used as Tier-One Benchmarks

GNB and JDIL's Comments[416]

- The record of the review demonstrates that the prices for private-origin standing timber in New Brunswick are not distorted, and as such, purchases of such timber in New Brunswick are appropriate tier-one benchmarks.
- During the POR, there was net demand for standing timber from private woodlots; a negligible "overhang"; a vibrant market with a sizeable private softwood sector; a material amount of imports and exports; and a large number of buyers and sellers of private-origin standing timber.
- Prices for Crown-origin standing timber during the POR were higher than comparable private-origin standing timber prices.
- Commerce has no basis to conclude that there is an "essential linkage" that would allow Crown-origin standing timber prices to affect private-origin standing timber prices.
- Reports issued by NBFPC are more reliable than the three reports relied upon by Commerce in *Lumber V AR1 Prelim Results*.

Petitioner's Rebuttal Comments[417]

- In the *Lumber V AR1 Prelim Results*, Commerce correctly found that private-origin standing timber prices in New Brunswick are not usable as benchmarks.
- There is no "essential linkage" standard for Commerce to follow; as such, this should not be the framework for its analysis of the New Brunswick market.

[415] *See Lumber IV Second NAFTA Remand Determination* at 11 ("By comparing that {single, weighted-average} benchmark to the total revenue actually collected for the Crown harvest, we have taken account of the fact that, when selling by stand, the unitary stumpage price for the stand may be below market for some species, but above market for other species. The single stand analysis focuses on whether adequate remuneration was paid for the stand as a whole, not on a species-specific basis. We therefore consider this approach to be consistent with the Panel's instructions to recalculate the benchmark price for stumpage taking into account the actual market conditions that govern the sale of timber in B.C.").

[416] *See* GNB July 29, 2020 Vol. III Case Brief at 9 – 36; *see also* JDIL July 29, 2020 Case Brief at 4 – 16.

[417] *See* Petitioner August 10, 2020 Rebuttal Brief at 81 – 98.

- The GNB and JDIL have misconstrued the facts in their arguments regarding overhang, net demand for private woodlot stumpage, the oligopsony effect in the market, and prices mills paid for private stumpage.

Commerce's Position: In *Lumber V AR1 Prelim Results*, Commerce found the market for private-origin standing timber in New Brunswick to be distorted, and thus, private standing timber prices within the province to be not appropriate as tier-one benchmarks.[418] Specifically, we found the GNB to be the dominant supplier of standing timber within the province, and the mills to be the dominant customers of standing timber in the province, creating an oligopsony effect.[419] Additionally, Commerce found Crown lands accounted for the majority of logs harvested in New Brunswick during the POR and that consumption of private and Crown-origin standing timber continues to be concentrated among a small number of corporations.[420] Finally, we found that an "overhang" existed between the volume of Crown-origin standing timber allocated and the volume harvested.[421]

For purposes of this final, for the same reasons discussed in *Lumber V AR1 Prelim Results*, we continue to find that private standing timber prices in New Brunswick are distorted, and thus, are not suitable for use as tier-one benchmarks. Both the GNB and JDIL have made numerous arguments to support their assertion that the New Brunswick market is not distorted and the private prices within the province constitute an appropriate tier-one benchmark, which we address below. However, neither the GNB nor JDIL have made any unique arguments, or cited to information on the record that causes us to come to a different conclusion from our finding in *Lumber V AR1 Prelim Results*[422] or *Lumber V Final*[423] regarding the private stumpage market in New Brunswick.

In its case brief, the GNB argues that in the *Lumber V AR1 Prelim Results, Lumber V Final* and *SC Paper from Canada Expedited Review* Commerce created an "essential linkage" framework to evaluation whether a market was distorted. The GNB argues that under this analytical framework there is no basis for Commerce to conclude that there is an "essential linkage" that would allow Crown prices to effect prices in the private market.[424] Additionally, the GNB argues there are no indicators of an oligopsony in the province, specifically: (1) there is net demand for softwood saw material in the province; (2) there is no overhang in New Brunswick; (3) private woodlots selling softwood standing timber face competitive conditions; and (4) mills paid more on average for private standing timber than did independent contractors during the POR. Further, the GNB argues that while Crown volume represented approximately 50 percent of the total roundwood in the province, Commerce's practice is not to assume that government ownership of an input is necessarily indicative of distortion. Rather, argues the GNB, Commerce's practice is to require additional evidence before finding a market is distorted. Finally, the GNB disagrees with Commerce's reliance on the three reports cited to in the *Lumber*

[418] *See Lumber V AR1 Prelim Results* PDM at 18 – 19.
[419] *Id*.
[420] *Id*.
[421] *Id*.
[422] *Id*.
[423] *See Lumber V Final* IDM at Comment 28.
[424] *See* GNB July 29, 2020 Vol. III Case Brief at 4.

V AR1 Prelim Results to support its distortion finding, and instead argues that reports prepared by the NBFPC do not support Commerce's findings of market distortion.

Similarly, in its case brief, JDIL argues that private standing timber prices in New Brunswick are appropriate tier-one benchmarks. JDIL argues that record information demonstrates that the GNB's involvement did not significantly distort private-origin standing timber prices in New Brunswick. JDIL maintains that private-origin standing timber accounted for a large share of the softwood timber market in the province during the POR, and that the province's private timber market is vibrant and open to trade. Further, JDIL states that the record of the current review refutes several of Commerce's findings in the *Lumber V AR1 Prelim Results*. Specifically, JDIL contends that in New Brunswick during the POR: (1) the GNB did not dominate the supply of softwood timber; (2) a small number of mills were not dominant customers of standing timber; and (3) there was an insignificant amount of overhang.

For reasons discussed below, we find these arguments unpersuasive and continue to find that private stumpage prices in New Brunswick are distorted and are not suitable for use as tier-one benchmarks.

First, we address particular statements made by the GNB regarding the framework of our analysis for evaluating private standing timber prices in the province. Throughout its case brief, the GNB asserts that an "essential linkage" framework has been established by Commerce with respect to how it should evaluate the New Brunswick private stumpage market in this administrative review.[425] The GNB stipulates that in *Lumber IV 1st AR Final Results*, *Lumber V* and *SC Paper from Canada Expedited Review*, Commerce established a framework that an "essential linkage" analysis must be conducted to determine whether the private New Brunswick softwood stumpage market is distorted.[426] In particular, noting the *Lumber IV 1st AR Final Results*, the GNB argues Commerce must determine whether "essential linkage" exists that would allow Crown prices to affect prices in the private market.[427] Further, according to the GNB, under the "essential linkage" analysis Commerce employed in the *Lumber IV 1st AR Final Results*, Commerce based its distortion finding upon several factors, including whether prices for Crown-origin standing timber were set at subsidized prices and whether licensees had the ability to dictate the prices charged by sellers of private-origin standing timber.[428] On this basis, the GNB claims that in *Lumber IV 1st AR Final Results* Commerce concluded that there was no distortion in the New Brunswick market.[429] Additionally, the GNB argues that Commerce applied this type of analysis in *Lumber V* and *SC Paper from Canada Expedited Review*.[430] The GNB contends that applying the same "essential linkage" analysis in combination with the

[425] *Id*. at 9 – 12.
[426] *Id*.
[427] *See Lumber IV 1st AR Final Results* IDM at 95.
[428] *Id*. ("Further, there is no evidence to show that {New Brunswick} Crown supply is sufficient to meet all or a majority portion of the demand needs of the province, *i.e.*, the essential linkage which would allow Crown prices to effect prices in the private market. Therefore, there is no evidence to justify the Department finding that the six Crown licensees or the sub-licensees dominate the New Brunswick timber market to the extent that they can suppress private market prices.").
[429] *Id*.
[430] *See* GNB July 29, 2020 Vol III Case Brief at 10 – 11. ("The Department explained in its final determination in the investigation that both in that case and *Supercalendered Paper from Canada*…the Department found the 'essential linkage' was supplied by….").

information on the record of this review should lead Commerce to find that there is no "essential linkage" that would allow Crown-origin standing timber to affect prices in the private market or mills to dictate or materially affect prices.

We disagree that Commerce is bound to an "essential linkage" analysis as argued by the GNB. As an initial matter, establishing an "essential linkage" is not a requirement under 19 CFR 351.511(a). Further, the term "essential linkage" was not referenced in most of the CVD proceedings cited by the GNB. Commerce did not mention, let alone rely upon, an "essential linkage" framework when evaluating New Brunswick's private standing timber market in the *Lumber V AR1 Prelim Results*, *Lumber V* or *SC Paper from Canada Expedited Review*. As such, it is not accurate to claim that Commerce has consistently applied an "essential linkage" analysis when determining whether a market is distorted. Commerce referred to the term "essential linkage" a single time in the *Lumber IV 1st AR Final Results*.[431] Specifically, Commerce stated:

> Further, there is no evidence to show that {New Brunswick} Crown supply is sufficient to meet all or a majority portion of the demand needs of the province, *i.e.*, the essential linkage which would allow Crown prices to effect prices in the private market.[432]

In other words, Commerce did not use the term the "essential linkage" to establish a framework by which it would evaluate the private standing timber market in New Brunswick. Rather, Commerce used the term to elaborate and clarify its distortion finding. Therefore, we disagree that Commerce has established a practice of applying an "essential linkage" framework and that it should apply such an analysis when determining whether the market for New Brunswick's private-origin standing timber is distorted.

Next, the GNB argues that the Crown's share of the standing timber harvest in New Brunswick, which was approximately 50 percent during the POR,[433] is not large enough for Commerce to find that distortion exists. The GNB further argues that reaching an affirmative distortion determination based solely on the Crown's share of the standing timber market would constitute an inappropriate application of a *per se* rule and that substantial evidence of significant market distortion is needed for Commerce to determine that a market is distorted.

Commerce did not apply a *per se* rule in the *Lumber V AR1 Prelim Results*. Rather, in the *Lumber V AR1 Prelim Results*, Commerce based its affirmative distortion finding on multiple factors. As detailed in both the preliminary and final market memoranda regarding the New Brunswick market, Crown lands accounted for a slight majority of the softwood timber harvest volume in the province.[434] The fact that Crown-origin standing timber constitutes approximately half the supply in the province, and thus is the dominant supplier of softwood during the POR, is a factor in our decision to find the New Brunswick private-origin standing timber market to be distorted, but it is not the only factor. As explained in the *Lumber V AR1 Prelim Results*, additional factors, such as the small number of mills that dominate standing timber consumption

[431] *See Lumber IV 1st AR Final Results* IDM at 95.
[432] *Id*.
[433] *See, e.g.*, New Brunswick 1st AR Prelim Market Memorandum.
[434] *See, e.g.*, New Brunswick 1st AR Final Market Memorandum.

and the existence of an overhang of allocated Crown-origin standing timber volume, contributed to our finding that New Brunswick's private-origin standing timber market was distorted.

In the *Lumber V AR1 Prelim Results*, Commerce found that oligopsonistic conditions exist in New Brunswick that contribute to the distortion of the market for private-origin standing timber in the province.[435] Specifically, Commerce found that the GNB's dominance as the supplier of stumpage, coupled with the mills' status as the dominant consumers of stumpage created oligopsonistic conditions in the province. The GNB argues that evidence on the record does not support the description of an oligopsony in the province. Specifically, the GNB argues there are numerous large softwood mills operating in New Brunswick that compete with each other for softwood saw material and that the province features hundreds of buyers of private-origin standing timber. The GNB argues, that even if there were an oligopsony, the evidence indicates there is no path for softwood mills to dictate the prices of private-origin standing timber. The GNB further argues there is net demand for private wood supply in the province, which demonstrates that private woodlot supply is not an afterthought but rather an essential source for softwood sawmills in New Brunswick. Finally, the GNB argues that two declarations on the record of this review demonstrate how it is infeasible for mills to exert market power upon sellers of private-origin standing timber that results in lower prices.

We disagree with the GNB argument that there is no evidence indicating the existence of oligopsonistic conditions in New Brunswick. The GNB claims that the standing timber market in New Brunswick is vibrant and robust, but it ignores the GNB's dominance as a standing timber supplier as well as the fact that a small number of mills are the dominant consumers of Crown-origin and private-origin standing timber in the province.[436] The findings in Commerce's memoranda on the New Brunswick market indicate that the market for Crown-origin and private-origin standing timber is dominated by a limited number of companies, and that the GNB continues to be the market's dominant supplier of standing timber.[437] This results in oligopsonistic conditions in which private woodlot owners and the Crown are responsive to price-setting behavior by the dominant mill. Therefore, we continue to find that these market characteristics create oligopsony conditions in the province, namely the existence of the GNB as the dominant supplier of stumpage, and the mills as the dominant consumers of stumpage in New Brunswick.

Second, we disagree with the argument that even if there were an oligopsony, mills have no power to control the pricing mechanism of private woodlot owners because woodlot owners' primary customers are independent contractors, as opposed to mills. Citing to the FMV studies, both the GNB and JDIL argue that mills account for a small portion of private-origin standing timber purchases in the province. The GNB and JDIL's characterization of the data cited in the FMV studies is misleading. Referring to the reports, the GNB and JDIL argue that mills account for 10 percent of the purchases of private-origin standing timber in New Brunswick, with independent contractors accounting for the remaining 90 percent of these purchases. However, the FMV studies indicate that mills actually accounted for nearly 38 percent of the purchases of

[435] *See Lumber V AR1 Prelim Results* PDM at 18 and 19.
[436] *See* New Brunswick 1st AR Prelim Market Memorandum; *see also* New Brunswick 1st AR Final Market Memorandum.
[437] *See* New Brunswick 1st AR Final Market Memorandum. The exact percentages are proprietary.

private-origin standing timber in 2016/2017, and 30 percent of volume in 2017/2018.[438] However, regardless of the volume of private-origin standing timber harvested by non-sawmill-owing, independent contractors, independent contractors are not the final consumers of sawtimber. Such contractors will, in-turn, sell private origin standing stumpage to the mills, who are the ultimate consumers of the sawtimber. As such, the dominance of these mills will be reflected in the price they are willing to pay to the independent contractors. In other words, we find the pricing of independent harvesters for private-origin sawtimber will be responsive to the price-setting behavior of the small number of mills who dominate the market in the province.

We disagree with the GNB that declarations on the record of this review, one from a New Brunswick private harvester and the other from an operator of a large private woodlot in northwest New Brunswick, demonstrate that there are no oligopsonistic conditions within the province.[439] According to the GNB, the harvesters' declarations indicate that the mills pursue multiple market options in maximizing profit after harvesting wood from private woodlots and that private woodlots do not compete with Crown wood in the market place.[440] Further, according to the GNB, the woodlot owner's declaration demonstrates that private woodlot owners seek to maximize profits by selling logs at the highest possible price.[441] As such, the GNB contends these declarations demonstrate that the New Brunswick market is open and competitive and, thus, has no oligopsonistic characteristics. We find the conclusions contained in the declarations are unpersuasive. As noted by the GNB throughout the case brief, there are a significant number of harvesters and operators within the province.[442] However, the declarations only reflect the experience of one harvester and one operator within the province, experiences that may not necessarily reflect the entire market. Therefore, we find these anecdotal accounts are not persuasive when compared to the aggregate harvest information, sourcing patterns, and other record evidence on which Commerce relied in the *Lumber V AR1 Prelim Results* to determine that the market for private-origin standing timer in New Brunswick was distorted.

The GNB and JDIL argue that the net demand for softwood materials in the province, which requires mills in New Brunswick to source additional supply beyond the Crown-origin harvest, demonstrates that oligopsonistic conditions do not exist in New Brunswick. The GNB cites to record information indicating that mills throughout the province source logs from private woodlots and imports.[443] The GNB also notes that all 26 active softwood sawmills with Crown-origin standing timber allocations used private woodlot and/or imported private wood during the POR, adding that 22 of these sawmills required private woodlot and/or imported private wood for 12 percent or more of their supply during the POR.[444] Finally, both the GNB and JDIL argue that New Brunswick is a net importer of softwood saw material.

[438] *See* GNB Benchmark Submission at Exhibit NB-AR1-BENCH-STUMP-1. For example, the FMV report indicates that in 2016/2017, mills accounted for 183,115 m^3 (37.9 percent) out of a total of 482,875 m^3 of purchased stumpage from private owners.
[439] *Id*. at Exhibit NB-AR1-BENCH-STUMP-1; *see also* GNB LER QR at Exhibit NB-AR1-SQR-LER-10.
[440] *See* GNB July 29, 2020 Vol. III Case Brief at 24 – 25.
[441] *Id*. at 25 – 26.
[442] *Id*. at 22.
[443] *See* GNB LER QR at Exhibit NB-AR1-SQR-LER-5.
[444] *Id*.

We find that the GNB's arguments regarding net demand within the province are unpersuasive for purposes of determining whether the private stumpage prices in the province are appropriate tier-one benchmarks. While the record shows that mills sourced wood from private suppliers and imports, these facts do not address our concerns regarding the conditions of New Brunswick's market for standing timber. In particular, a single supplier, the GNB, accounts for more than half of the province's standing supply. Meanwhile, a limited number of large consumers dominate the demand for Crown-origin and private-origin standing timber in the province.[445] Neither the GNB nor JDIL have provided any information that addresses the concerns regarding the concentration of consumption of Crown and private timber among a small number of corporations. Thus, while the mills in New Brunswick sourced a portion of their timber from private woodlots and imports, it does not change the fact that supply in the province is dominated by the GNB and demand is dominated by a few large timber consuming mills. Further, in the case of JDIL, New Brunswick's largest consumer of standing timber and logs, its ability to purchase imported logs through non-arm's length transactions (*i.e.*, logs it imports from its own land holdings in Maine) adds to the market power it can exert in the province and, thus, contributes to the oligopsonistic conditions that exist in the province.

We disagree with the GNB and JDIL that: (1) Commerce's overhang calculations are "at the core" of our distortion finding within the province; (2) there was no meaningful "overhang" in New Brunswick during the POR; (3) the overhang percentage that Commerce calculated in *Lumber V AR1 Prelim Results* was overstated; and (4) the New Brunswick law that stipulates if a licensee (or sublicensee) harvests less than 90 percent of its allocated volume, it cannot make up that volume in a subsequent year undercuts the conclusions Commerce made regarding the purported overhang of crown-origin standing timber.

Our overhang calculation, while informative, is not "at the core" of our finding of significant distortion in *Lumber V AR1 Prelim Results*.[446] Consistent with our findings in *Lumber V*[447] and the *Lumber V AR1 Prelim Results*,[448] we base our conclusion that the New Brunswick private stumpage market is distorted on a number of factors including: the GNB being the dominant supplier, and the mills being the dominant consumers, of stumpage in New Brunswick (oligopsony effect); the GNB accounting for a majority of the softwood harvest volume during the POR; and consumption of both Crown-origin standing timber and private standing timber being concentrated among a small number of corporations. Thus, the GNB's assertion that our distortion finding hinges on our overhang finding is misplaced.

The GNB and JDIL argue that: (1) Commerce made a clerical error in its calculations that lowers the calculated overhang; and (2) there were context-specific reasons why certain mills were not able to harvest their full volume during the POR. As an initial matter, we agree with the GNB's argument regarding the clerical error made in *Lumber V AR1 Prelim Results*. In the New Brunswick 1st AR Prelim Market Memorandum, Commerce mistakenly relied upon the total

[445] *See, e.g.*, New Brunswick 1st AR Final Market Memorandum.
[446] *See* GNB July 29, 2020 Vol. III Case Brief at 15 ("At the core of the Department's finding of significant distortion in the New Brunswick market in the investigation and Preliminary Results was its belief that a 'significant overhang exists within the province, leading to the circular price suppression of private and Crown stumpage prices.'").
[447] *See Lumber V Final* IDM at Comment 28.
[448] *See Lumber V AR1 Prelim Results* PDM at 18 – 19.

harvested volume delivered to sawmills during the POR, instead of the total volume of Crown softwood timber harvested during the POR when calculating the volume of allocated stumpage that had not been harvested.[449] In these final results, we have corrected this error to include the total volume of Crown softwood timber harvested during the POR as appropriate.[450] While this change results in a different overhang percentage from what was calculated in *Lumber V AR1 Prelim Results*, we find our analysis continues to demonstrate overhang existed in the province during the POR.[451]

We disagree that additional revisions to our overhang calculations, as proposed by the GNB and JDIL, are warranted. The GNB argues that Commerce should make additional downward adjustments to the overhang calculation because certain mills in New Brunswick did not harvest their full allocated Crown volume during the POR.[452] However, in making this argument, the GNB simply lists reasons as to why certain mills were not able to harvest their full volume during the POR without any supporting documentation.[453] As such, we find the GNB has not adequately supported its argument.

We also disagree with the GNB's claims that provincial law forbidding mills to roll over un-harvested Crown-origin standing timber volumes when they exceed 10 percent of their allocated volume disincentivizes mills to accumulate overhang volumes. We find that allowing mills to have an annual overhang volume equal to 10 percent of their annual allocated volume creates a significant overhang that, in turn, depresses the need for the mills to obtain private-origin standing timber in New Brunswick. Further, the fact that a small number of mills dominate consumption of Crown- and private-origin standing timber, coupled with the overhang, leads us to conclude that the prices these mills are willing to pay for private-origin standing timber are impacted by the availability of additional volume of Crown-origin standing timber at prices set by the GNB. Therefore, based on record evidence, we find that mills can source timber from alternative sources (*i.e.*, Crown land allocations, and industrial freehold land) if the prices from those sources are more advantageous than the prices available from private woodlot owners in New Brunswick.
We also find that tenure holding mills have an incentive not to purchase timber from private woodlots unless the price is lower than the Crown prices, because these private purchase prices form the basis of the New Brunswick Crown stumpage prices. As such, we find that tenure-holding mills have ready access to additional Crown-origin standing timber and that private woodlot owners mainly serve as a supplemental source to large mills. As a result, we find that in New Brunswick, sellers of private-origin standing timber cannot expect to charge more than the prices charged for Crown-origin standing timber.

In *Lumber V AR1 Prelim Results*, Commerce relied on information in three reports, *Report of the Auditor General – 2008*,[454] *2012 Private Forest Task Force Report*,[455] and *Report of the Auditor*

[449] *See* New Brunswick 1st AR Prelim Market Memorandum.
[450] *See* New Brunswick 1st AR Final Market Memorandum.
[451] *Id*. The exact overhang percentages are proprietary.
[452] *See* GNB Benchmark Submission at 8 – 9; *see also* GNB July 29, 2020 Vol III Case Brief at 16 – 17 ("The 'unharvested volume' was tied to specific events – mills that did not open or that closed, unfilled mill shifts and other anomalies that caused allocated volume not to be harvested in a given year.").
[453] *Id*.
[454] *See* Petitioner Comments on IQRs at Exhibit 52.
[455] *Id*. at Exhibit 53.

General – 2015,[456] as evidence indicating that the New Brunswick stumpage market is distorted.[457] These reports confirm Commerce's analysis and conclusions about the stumpage market in New Brunswick, based on the data for the POR that the market was dominated by two parties, and that private prices in New Brunswick market cannot serve as a reliable market determined price.

In particular, the *Report of the Auditor General – 2008* states:

> {T}he fact that the mills directly or indirectly control so much of the source of the timber supply in New Brunswick means that the market is not truly an open market. In such a situation it is not possible to be confident that the prices paid in the market are in fact fair market value.

and

> {T}he royalty system provides an incentive for processing facilities to keep prices paid to private landowners low.[458]

Further, the *2012 Private Forest Task Force Report* states:

> New Brunswick's forest products market combines aspects of a bilateral monopoly (a single dominant seller, the Crown; and a single dominant buyer, JDIL) and an oligopsony (many small sellers, the private woodlot owners; and a few buyers, the mills, which purchase from both private woodlot owners and the Crown.) Two parties dominate the transactions, and prices for a large proportion of the total harvest are set administratively. Thus it is difficult to establish fair market value.[459]

Finally, the *Report of the Auditor General – 2015* which indicates that the GNB has "potentially conflicting interests" and that:

> since the most significant source of departmental revenue is Crown timber royalties, any increase in Crown timber supports the Department's efforts to balance budgets.[460]

The GNB argues that "more authoritative reports" are on the record of this administrative review.[461] Specifically, the GNB argues the FMV Studies for 2016/2017 and 2017/2018 from the NBFPC[462] more accurately reflect the private New Brunswick stumpage market. Regarding

[456] *Id*. at Exhibit 54.
[457] *See Lumber VAR1 Prelim Results* PDM at 18 – 19.
[458] *See* Petitioner Comments on IQRs at Exhibit 52.
[459] *Id*. at Exhibit 53.
[460] *Id*. at Exhibit 54.
[461] *See* GNB July 29, 2020 Vol. III Case Brief at 7.
[462] *See* GNB Benchmark Submission at NB-AR1-BENCH-STUMP-1.

the three reports Commerce has relied upon, the GNB continues to voice the same concerns regarding these reports that it raised in *Lumber V Final*.[463]

The GNB states that the three reports upon which Commerce has relied are not relevant to the POR as record evidence indicates that the level of participation of private woodlots in the New Brunswick has increased. On the other hand, the GNB contends that the FMV studies, prepared annually in the ordinary course of business, do not identify any price or market issues relating to Crown-origin standing timber or role of the mills that would affect the studies' data on the prices of private-origin standing timber. Further, the GNB argues these FMV studies address questions relating to the omission of lump sum transactions and owner operator sales[464] that Commerce cited as a concern in the *Lumber V Final*.[465] Additionally, the GNB states that an audit of these studies indicates that their conclusions are highly reliable.[466] Finally, the GNB has relied upon these FMV studies to: (1) contest the argument that there is downward pressure on prices;[467] and (2) argue that private softwood stumpage prices were lower than Crown stumpage prices paid by JDIL during the POR.[468]

We disagree with the GNB that we should rely upon the FMV studies' findings over the findings in the three reports discussed above, *Report of the Auditor General – 2008*, *2012 Private Forest Task Force Report*, and *Report of the Auditor General – 2015*. We find the FMV studies do not provide an appropriate source for price comparison purposes, and we continue to find the three reports Commerce referenced in *Lumber V AR1 Prelim Results* to be reliable for purposes of this final because they were prepared by the GNB in the ordinary course of business. We find that the three GNB-produced reports Commerce cited in the investigation provide reliable analyses of facts pertaining to private stumpage prices in the province, were conducted by individuals who were familiar with the stumpage market in New Brunswick, and were authored in the ordinary course of business during a period that pre-dated the initiation of the *Lumber V* proceeding.[469] Further, the information provided by the GNB for this POR confirms the conclusions in these reports.[470] Neither the GNB nor JDIL has provided or pointed to any unique information that would cause us to reconsider the reliability of these reports.

We disagree with the GNB's argument that because the harvest volume of private-origin timber has doubled between the time the three reports relied upon in *Lumber V AR1 Prelim Results* were issued and the POR of the instant review, the three reports are no longer relevant.[471] We find this

[463] *See* GNB July 29, 2020 Vol. III Case Brief at 31 – 32 ("The GNB renews its objections from prior proceedings and again asks the Department to consider that these reports contain conflicting and ambiguous statements and conclusions").
[464] *Id*.
[465] *See Lumber V Final* IDM at Comment 28.
[466] *See* GNB July 29, 2020 Vol. III Case Brief at 30; *see also* GNB Benchmark Submission at NB-AR1-BENCH-STUMP-1 ("to verify the transaction level data that was collected for this study, the Commission engaged PwC to carry out the specified procedures developed for the study.").
[467] *See* GNB July 29, 2020 Vol. III Case Brief at 6.
[468] *Id*. at 36 – 37.
[469] *See Lumber V Final* IDM at Comment 28; *see also SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 23.
[470] For example, the record indicates that the market continues to be dominated by a small number of companies and one supplier, the GNB (*see, e.g.*, New Brunswick 1st AR Final Market Memorandum), which is consistent with the findings in *2012 Private Forest Task Force Report* (*see* Petitioner Comments on IQRs at Exhibit 53).
[471] *See* GNB July 29, 2020 Vol. III Case Brief at 33.

information by itself is not meaningful, as the GNB has not indicated to what extent a change in private harvest volume compares to the total volume change in the province during this time. In other words, if the total harvest within the province also doubled during this time period, the total private woodlot production percent in comparison to the rest of the province would be the same, and thus, its level of participation would remain unchanged. Beyond this, the GNB has provided no information regarding how the private woodlot market has substantially changed (*i.e.*, significant increase/decrease in freehold land production) since the issuance of the three reports. Therefore, Commerce is continuing to rely on information in these reports for purposes of evaluating whether the private stumpage market in New Brunswick.

Further, similar to *Lumber V Final*, we continue to have concerns regarding the FMV studies.[472] In particular, the 2014/2015 survey from *Lumber V Final* stated that it did not include the volume of timber harvested from primary forest produced by woodlot owners/operators or the volume of stumpage sold through lump-sum transactions, which represented approximately 50 percent of the total (private) harvest in the province.[473] The omission of these transactions led Commerce to find the survey to be incomplete, and as a result, we did not rely on the findings of the 2014/2015 FMV survey in the final.[474] The GNB has stated that the 2016/2017 and 2017/2018 FMV studies on the record of this review have addressed the concerns regarding the removal of these transactions.[475] Specifically, regarding lump-sum transactions, the GNB states that lump-sum data was analyzed, and the NBFPC concluded that excluding lump-sum data had little or no effect.[476] Regarding owner operator sales, which accounted for 27 percent of the private woodlot transactions in the province, the GNB states the NBFPC conducted an analysis and concluded that the sample sizes provide an accurate account of the stumpage values being paid on private woodlots.[477] Finally, the GNB states that the results of these studies were audited by PwC.[478]

We find these arguments to be unpersuasive, and we continue to be concerned with the omissions of the woodlot owners/operators and lump-sum data. Regarding the lump-sum transactions, the NBFPC has stated that it did not include such data in its calculation as it had little or no effect.[479] The GNB states that the lump-sum volume accounted for a small percentage of the overall volume collected (*e.g.*, that only 1.57 percent of the 560,806 m^3 stumpage volume collected for the 2016/2017 study involved lump-sum transactions).[480] Thus, argues the GNB, the lack of lump-sum transactions would have little impact on the weighted-average prices reflected in the 2016/2017 study. However, these modifications do not address concerns about the total volume of lump-sum transactions within the province. Specifically, the information in the 2016/2017 and 2017/2018 studies indicates that lump-sum transactions

[472] *See Lumber V Final* IDM at Comment 28.
[473] *Id*.
[474] *Id*.
[475] *See* GNB July 29, 2020 Vol. III Case Brief at 29 – 30.
[476] *Id*. ("{d}ue to both the proximity of the results and the relatively small volume of lump-sum transactions, there is little to no impact on province-wide average stumpage values resulting from the inclusion or non-inclusion of lump-sum transactions.").
[477] *Id*.
[478] *Id*.
[479] *See* GNB Benchmark Submission at NB-AR1-BENCH-STUMP-1 (2016/2017 study) at 13.
[480] *Id*. at 6.

account for approximately 23 percent of the total private volume in the province.[481] Thus, while the lump-sum data actually collected was small, the record indicates that there is a significant amount of lump-sum transactions in the province of which very little data were collected. The lack of lump sum data is particularly concerning when comparing the averages of the lump sum data to the averages of the other transactions.[482]

Further, with regard to the volume of timber where the woodlot owner was the producer of the forest products, the GNB has stated that the NBFPC considered this issue and conducted a detailed analysis to test the robustness of the study data, and determined that it "can be confident that the sample sizes are more than adequate to give a reasonable representation of the stumpage values being paid for primary forest products on private woodlots in New Brunswick."[483] However, the harvest volumes where the woodlot owner was the producer of the forest products were not factored into this analysis. Specifically, the discussion occurs under the "How was the response data organized and interpreted?" section of the study.[484] In this section, the NBFPC discusses issues of outliers and how they addressed them. Specifically, the NBFPC evaluated transactional and contractor stumpage data.[485] but not private woodlot transactions that were conducted by the owner of the wood. As such, we find the GNB's claim that the study considered the issue of these transaction in these FMV studies, and in-turn, performed a "detailed analysis" of this data to be unsupported.

We also find inconsistencies between the volume of mill purchased stumpage in the FMV studies and the volume of mill purchased stumpage reported by the GNB in its questionnaire responses. Specifically, the FMV studies indicates that "mill submitted data represents 100% of the mill-purchased stumpage during the study period."[486] However, the total volume purchased in these studies is significantly lower than the reported volume of timber processed by sawmills sourced from private land reported by the GNB.[487] Finally, the GNB has noted that these FMV studies were audited by PwC.[488] However, we note that the 2014/2015 study, that Commerce rejected in *Lumber V Final*, was also audited by PwC.[489] Further, the fact that the studies were audited does not address these concerns discussed above.

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[481] The 2014/2015 study estimated that the total volume of woodlot owners/operators and stumpage sold through lump-sum transactions two transactions types accounted for 50 percent of the total private harvest in the province (*see* GNB Benchmark Submission at NB-AR1-BENCH-STUMP-5 at 3). However, while neither the 2016/2017 or 2017/2018 study provide an estimate of how much these transactions represent of the total private harvest in the province altogether, both of these studies estimated that 27 percent of the private woodlot transactions in the province were conducted by the owner of the wood (*see* GNB Benchmark Submission at NB-AR1-BENCH-STUMP-1 (2016/2017 study) at 6). As such, for purposes of this final, we have estimated that lump-sum transactions accounts for about 23 percent of the total private volume.

[482] *See, e.g.*, GNB Benchmark Submission at NB-AR1-BENCH-STUMP-1 (2016/2017 study) at 12.

[483] *Id.* at 8 – 10.

[484] *Id.*

[485] *Id.* ("Often, in larger collections of data, values that are significantly higher or lower than the average are commonly referred to as outliers…. Within the two largest datasets (transactional and contractor stumpage), the Commission explored methods by which to identify and deal with outliers.").

[486] *Id.* at 18.

[487] *See* GNB IQR Response at Exhibit NB-AR1-STUMP-1 at Table 2.

[488] *See, e.g.*, GNB Benchmark Submission at NB-AR1-BENCH-STUMP-5.

[489] *See Lumber V Final* IDM at Comment 28.

Finally, both the GNB and JDIL claim the data from the FMV studies indicate that mills paid more on average for SPF sawlogs and studwood than independent contractors[490] and that JDIL's crown stumpage purchases were higher than the private woodlot prices during the POR and that this information undercuts Commerce's finding that the market for private-origin standing timber in New Brunswick is distorted.[491] For the reasons discussed above, we have concerns regarding the information and figures in these FMV studies, and therefore, we have not relied on the price comparisons in the FMV studies.

Ontario Stumpage Issues

Comment 18: Whether the Ontario Crown Timber Market Is Distorted

GOO's Comments[492]

- NAFTA and WTO Panels have recognized that softwood timber is inherently local or regional in character and that the value of standing timber differs significantly based on its location and on the surrounding conditions.
- The GOO has provided Commerce with extensive evidence establishing the viability and vitality of Ontario's private market, and Commerce should use the market-determined prices of actual private market transactions in Ontario contained in the MNP Survey as a tier-one, in-province benchmark in order to account for the unique factors that govern the production of softwood lumber in Ontario.
- In addition to the MNP Survey of private loggers, the GOO also submitted multiple declarations by private harvesters attesting to the competitiveness of the market and the Hendricks Report, which concluded that "the price of Crown timber on one stand cannot affect the price of private timber on another," and (2) the private market prices for softwood timber, specifically SPF delivered to sawmills, are a valid benchmark for Crown stumpage for SPF timber.
- Commerce's reasoning for rejecting Ontario's private timber prices based on the overwhelming government share of the market, the concentration of the private market in a small number of tenure holders, the combination of tenure holders being able to harvest Crown stumpage at levels above AWS targets, and the ability to transfer timber between mills is not supported by record evidence or economic theory for the following reasons:
  - The relatively small size of the Ontario private market does not affect the validity of private market prices;
  - The Hendricks Report concluded that the price of Crown timber on one stand cannot affect the price of private timber on another, the small size of the private market does not render prices uncompetitive or distorted since a competitive timber market can exist when as few as two mills are located close to timber sellers and have identical costs, and the supply of Crown timber does not depress prices of standing private timber;
  - AWS targets are non-binding estimates that are employed solely for planning purposes and thus do not materially impact Crown harvest volumes; and

[490] *See* GNB July 29, 2020 Vol. III Case Brief at 26 ("In 2017-18, mills paid $18.78/m^3 for sawlogs and $16.72/m^3 for studwood, compared to independent contractors who paid on average $16.75/m^3 for sawlogs and $15.06/m^3 for studwood"); *see also* JDIL July 29, 2020 Case Brief at 12.
[491] *See* GNB July 29, 2020 Vol. III Case Brief at 36 – 37.
[492] *See* GOO July 29, 2020 Vol. IV Case Brief at 6 – 30.

- Sawmills in Ontario frequently process timber sourced by other companies, rather than timber from areas licensed to that mill, so the ability of Ontario harvesters to acquire logs from third parties is not relevant to Commerce's distortion analysis.
- Commerce misinterprets the *CVD Preamble* by concluding that market price is *per se* distorted when a government provider consists of a majority or a substantial portion of the market.

Resolute and Central Canada's Comments[493]
- Ontario's stumpage prices are determined by residual value, and the Hendricks Report found that the private Ontario stumpage market is undistorted and market driven.
- Commerce has not referred to any evidence or expert testimony that rebuts or contradicts the Hendricks Report.

Petitioner's Rebuttal Comments[494]
- Record evidence supports Commerce's finding in the *Lumber V AR1 Prelim Results* that the Ontario timber market is distorted on four bases: (1) the market is dominated by Crown timber; (2) the majority of private timber is sold to a handful of dominant firms, who also dominate the Crown market; (3) the structure of the Crown timber market allows companies flexibility in choosing when to harvest timber; and (4) the pricing mechanism for Crown timber is not market-based.
- Neither the Hendricks Report, which Commerce found ignores the critical fact that the GOO is the dominant price setter in the Ontario market, nor the MNP Survey, which Commerce found to be based on a small and unrepresentative sample, are reliable or refute Commerce's factual findings that the Ontario stumpage market is distorted.
- While the GOO argues that "the volumes of private timber harvested annually in the province are substantial," the absolute volume of private timber harvested annually is irrelevant to Commerce's analysis of the level of government involvement in the market and does not change the fact that it accounts for just over five percent of the market.
- Commerce properly found that the Crown's 94.8 percent share of Ontario's timber harvest, in addition to multiple other factors (*e.g.*, the Crown and private markets are concentrated in a small number of firms and the inflexible nature of Ontario's timber market) reasonably support the conclusion that the market is distorted.
- The GOO and Resolute dispute Commerce's conclusion regarding the relationship between market concentration and the validity of private market prices; however, the record conclusively demonstrates that the majority of private timber is sold to a handful of dominant firms, and that those same firms dominate the Crown market.
- I clearThe GOO and Resolute rely exclusively on the Hendricks Report, which Commerce already found to be unconvincing and to contradict the observable reality of the Ontario timber market in which the GOO is the price setter.
- The argument that the flexible structure of Ontario's timber market is not "legally or economically relevant" is also without merit because when demand for lumber products is high, companies can simply consume a greater amount of Crown timber before turning to the private market, which results in further depressing prices in the private market.
- Commerce should dismiss Resolute's claims that Ontario sets stumpage prices at market prices," that those prices are based on "residual downstream value" when in fact the GOO sets

[493] *See* Resolute July 29, 2020 Case Brief at 11 – 12.
[494] *See* Petitioner August 10, 2020 Rebuttal Brief at 56 – 66.

stumpage prices based on four factors, only one of which is based on market principles (*i.e.*, the "residual value price"), and which was only assessed in eight months over a 24-month period in 2017 and 2018.
- Commerce should dismiss the GOO's arguments for using private log prices in Ontario as a benchmark since lumber producers can choose to purchase either more Crown timber from the government at a fixed price or logs from private sources and, therefore, private log prices would be distorted for the same reasons as private timber prices.
- Finally, Commerce has met the standard of the *CVD Preamble* and the NAFTA panel by citing to evidentiary support and providing sufficient analysis to "reasonabl{y} conclude" that private prices in Ontario do not constitute a suitable tier-one benchmark.

Commerce's Position: We continue to find that Ontario's standing timber market is distorted by government intervention and, as a result, that private-origin standing timber prices in Ontario are not a suitable tier-one benchmark for measuring the adequacy of remuneration received by purchasers of Crown-origin standing timber.

In the *Lumber V AR1 Prelim Results*, we found that only one of four components of the GOO's stumpage charge was market based and that the GOO supplied the overwhelming majority of standing timber in Ontario.[495] We also found that private-origin standing timber market was dominated by a small number of tenure holders and that tenure holders were able to harvest Crown timber above AWS targets and transfer timber between mills.[496] We then found it reasonable to conclude that private market prices in Ontario were distorted by government involvement in the timber market, such as to prevent there from being any viable standing timber prices within Ontario usable as a benchmark.[497]

The GOO and Resolute contest our preliminary finding that the Ontario timber market is distorted by government intervention. The GOO cites repeatedly to the AR1 Hendricks Report, which concludes that Ontario Crown timber prices do not affect private timber prices and that private market prices for SPF delivered to sawmills are a valid benchmark for Crown stumpage for SPF timber.[498] Resolute also argues that Ontario "bases its pricing on residual value," an market-based pricing method.[499] However, Resolute's claim ignores that residual value is only one of the four components making up the GOO's stumpage charge.[500]

The GOO suggests that Commerce conducted an unfair *per se* distortion analysis to find the Ontario timber market distorted solely based on a predominant government share, without considering other evidence that Ontario's private timber prices are not distorted by government involvement.[501] The GOO acknowledges that Commerce addressed attributes of the Ontario timber market other than government predominance in the *Lumber V AR1 Prelim Results*, but

[495] *See Lumber V AR1 Prelim Results* PDM at 17.
[496] *Id.* at 17 – 18.
[497] *Id.*
[498] *See* GOO July 29, 2020 Vol. IV Case Brief at 13.
[499] *See* Resolute July 29, 2020 Case Brief at 1.
[500] *See Lumber V AR1 Prelim Results* PDM at 17; *see also* GOO July 15, 2019 Primary Stumpage QNR Response at 68 – 81.
[501] *See* GOO July 29, 2020 Vol. IV Case Brief at 19, citing *CVD Preamble.*

argues that these attributes are not relevant to a distortion finding or were misunderstood by Commerce.[502]

First, the GOO contests the finding in *Lumber V AR1 Prelim Results* that the "domination of the private market by a small number of tenure holders" supports a finding that Ontario's private timber market is distorted.[503] According to the GOO, Commerce did not support this claim with any economic analysis, while both the AR1 Hendricks Report and Investigation Hendricks Report provide clear proof that competition among sawmills in Ontario is sufficient to produce market-determined private timber prices.[504] The GOO also argues that Commerce was incorrect to find that the "tenure holders being able to harvest at levels above AWS targets and transfer Crown timber between mills expands the Crown timber market, reducing demand—and therefore, price—for timber from the private market." According to the GOO, Commerce has acknowledged AWS targets are only estimates employed for planning purposes[505] and thus are not relevant to Crown harvest volumes. The GOO also notes that sawmills can process timber harvested by other companies.[506]

We find these criticisms of the *Lumber V AR1 Prelim Results* distortion finding unconvincing. The GOO extensively quotes the AR1 Hendricks Report on the economic conditions required for a market to be competitive and on competition within the Ontario private timber market.[507] However, Commerce's distortion analysis was not intended to determine whether a market satisfies certain theoretically-established competitiveness benchmarks, but rather, whether prices are distorted by government involvement in the market. Based on our analysis of Ontario Crown- and private-origin timber consumption, we concluded that the high concentration of a small number of tenure holding firms in the private timber market made that private market subject to influence by the Crown timber market.[508] Additionally, the GOO's point that AWS targets are non-binding underscores that tenure holders in Ontario have the flexibility to harvest more Crown timber at a guaranteed price when demand for softwood lumber is high.

The core of the GOO's argument against the *Lumber V AR1 Prelim Results* distortion finding is based on the Hendricks Report's analysis of the relationship between Crown and private timber markets in the section "Assessing the impact of Crown supply on the private softwood timber market." According to this section of the AR1 Hendricks Report, Commerce's finding that Ontario private-origin standing timber prices are not a valid benchmark because the government is a dominant supplier is "contradicted by basic economic and the behavior of participants in the Ontario timber market."[509] The AR1 Hendricks Report reaches this conclusion by noting that same fact pattern cited in the Investigation Hendricks Report. First, the GOO claims that Ontario harvesters are price takers in softwood lumber markets and thus unable to affect the residual value of standing softwood timber. Second the GOO claims that Ontario sawmills are not operating at full capacity and thus have harvested all profitable Crown timber, a claim that the

[502] *Id.* at 15.
[503] *Id.* at 20, citing *Lumber V AR1 Prelim Results* PDM at 18.
[504] *Id.* at 21 – 23, citing AR1 Hendricks Report.
[505] *Id.* at 24 – 25, citing GOO July 15, 2019 Primary Stumpage QNR Response at Exhibit ON-STATS-3.
[506] *Id.*
[507] *Id.* at 21 – 23, citing AR1 Hendricks Report.
[508] *See Lumber V AR1 Prelim Results* PDM at 18, citing Ontario AR1 Market Memorandum.
[509] *See* AR1 Hendricks Report at 22.

GOO cites at several different points in its case brief.[510] Thus, the price of the remaining (unprofitable to harvest) Crown timber has no impact on the cost of private timber.[511] In the *Lumber V Final*, though, we noted:

> However, the Hendricks Report ignores the fact that there is one dominant price setter, the GOO, in the Ontario timber market. The Crown supplied 96.5 percent of the market during the POI, and, as noted above, set administered prices that do not fully consider market conditions.[512]

The AR1 Hendricks Report also fails to address this fundamental issue. In particular, the framing of AR1 Hendricks Report's conclusion that "under these prevailing conditions, the price of Crown timber on one stand cannot affect the price of private timber on another" is misleading. It is not only the *price* of Ontario Crown timber that could impact the price of private timber but also the *supply* of Ontario Crown timber. A fundamental element of market pricing is that greater demand will lead to a higher price. The GOO's Crown stumpage charge, however, is not responsive to the amount of Ontario Crown stumpage demanded.[513] The AR1 Hendricks Report ignores the effect on the Ontario timber market of over 95 percent of the timber supply not increasing price in response to demand, opting instead for a selective analysis leading to the carefully worded claim that the "price" of Ontario Crown timber has no effect on private timber prices.[514] As such, we do not find it a reliable source for understanding the relationship between Ontario's Crown timber supply and private timber market and continue to find that the Ontario timber market is distorted by government involvement so as to make private timber prices within Ontario an unsuitable tier-one benchmark.

The GOO provides multiple alternative benchmarks in the event Commerce rejects an Ontario private stumpage benchmark. First, the GOO advocates for an Ontario log benchmark calculated based on a residual value methodology.[515] However, this would be a tier-three benchmark, while Nova Scotia private stumpage prices are a preferred tier-one benchmark. The GOO also says that Commerce should consider a benchmark based on the Québec auction market, given the similarities between Québec and Ontario's forests.[516] However, as discussed in Comment 19 , we find Québec standing timber prices to be distorted by government involvement and thus not suitable as a tier-one benchmark for any province.

Québec Stumpage Issues

[510] *Id.* at 18 and 23 – 25.
[511] *Id.* at 23 – 24.
[512] *See Lumber V Final* IDM at Comment 31.
[513] *See* GOO July 15, 2019 Primary Stumpage QNR Response at 68 – 81.
[514] *See* AR1 Hendricks Report at 23 – 24.
[515] *See* GOO July 29, 2020 Vol IV Case Brief at 31 – 33.
[516] *Id.* at 35.

Comment 19: Whether the Québec Timber Market Is Distorted

GOC's Comments[517]

- Although the government owns a large share of the timber private auction bidders, not the government, determine auction prices.
- The GOQ uses the market-determined auction prices to establish the prices charged on the remaining portion of the harvest sold through TSGs. Therefore, the Crown timber market does not distort the auction prices, and, thus, the auction prices may serve as a tier-one benchmark.

Resolute and Central Canada's Comments[518]

- Commerce did not carefully analyze the empirical evidence, or the findings presented in the Marshall Report that support the conclusion that stumpage prices sold through TSGs are set using Québec's competitive auctions.
- Commerce rejected the Québec auction prices as a tier-one benchmark based on the erroneous conclusion that TSG prices determine prices paid by auction participants; rather, TSG prices are determined by auction prices, which are set through robust and open competition between sawmills and independent harvesters.

GOQ's Comments[519]

- Under 19 CFR 351.511(a)(2)(i), Commerce's preferred benchmark is "a market-determined price for the good or service resulting from actual transactions in the country in question" and "actual sales from competitively run government auctions" can serve as such a benchmark.
- Record evidence establishes that Québec's timber auctions are open and available to all market participants and yield market-determined prices; therefore, Commerce should use this in-province benchmark.
- The Marshall Report, the only analysis on the record of this review on the validity of Québec's auction system as a means of distortion-free price discovery, affirms that Québec's auctions produce "valid market prices free of government-induced distortions." This affirmation was accompanied by conclusions including those listed below:
  - There is no evidence that the GOQ is supplying excessive standing timber.
  - The timber blocks sold in auctions are a representative sample.
  - Auction bids are evaluated using the same objective criteria.
  - There are no auction entry barriers that would artificially reduce the number of bidders and thereby artificially depress auction prices.
  - There is no evidence of collusive bidding in the auction data.
  - There is no evidence that sawmills reduce their auction bids to influence the prices of their own TSGs.
  - Targeting a five-year annual average of 25 percent of public forest volume for auction generates enough data to calculate representative TSG stumpage prices.
- Commerce's determination in the *Lumber V AR1 Prelim Results* that Québec's public stumpage auctions do not produce market-based prices because they do not operate independently from the timber TSG system and thus are distorted by administratively-set stumpage rates is contradicted by record evidence.

[517] *See* GOC July 29, 2020 Vol. 1 Case Brief at 19.
[518] *See* Resolute July 29, 2020 Case Brief at 9 – 12.
[519] *See* GOQ July 29, 2020 Vol. V Case Brief at 12 – 47.

- TSG-holding mills cannot meet their residual fiber needs from their TSGs, so they are forced to compete in public stumpage auctions against other TSG-holding mills, mills operating without a TSG, independent harvesters, harvesting co-operatives, and other market participants, to secure non-TSG timber. These competitively set auction prices are used to establish stumpage rates for TSG-sourced timber through the MFFP's transposition equations.
- In addition, Commerce's finding that TSG-holders "wield market power" and that they do not need to resort to public auctions or other sources to meet their needs, and therefore they do not need to compete in the public auctions is not supported by record evidence.
- Finally, Commerce's finding that the bids of TSG-holding sawmills and independent contractors in public auctions "track" one another is unremarkable and not supported by any analysis of the record evidence; the auction bids do not track one another, instead the bids track the perceived value of the blocks being auctioned.
- In the *Lumber V AR1 Prelim Results*, Commerce relied on its finding in the final determination of the investigation that "TSG-allocated timber is concentrated among a small number of corporations" and that TSG-holders "are the predominant buyers of auctioned Crown timber and, therefore, are influencing the auction prices," but Commerce has yet to define market power, explain how TSG holders are concentrated, draw a connection between the largest TSG holders and the auction market, and explain how these findings result in concluding that there is distortion in the auction market.
- In the *Lumber V AR1 Prelim Results*, Commerce incorrectly concluded that in auctions where the estimated price – a value set based on the BMMB's stumpage calculation with adjustments made by MFFP forestry professionals based on specific qualities of the particular block – was disclosed, the estimated price distorted the bidding process and the final winning bid, rendering the auctions unusable as a tier-one benchmark.
- Estimated prices are based on the characteristics of individual auction blocks and are calculated differently in each region; therefore, estimated prices are not a common or shared variable from which comparisons can be drawn.
- Commerce incorrectly assumed that either all auction blocks are homogeneous or that the estimated price is always determined in the same manner for all blocks, when in fact the differences in bids are due to the differences in the quality of the auction blocks, not because the estimated prices were disclosed or not.
- Commerce also incorrectly attempted to reach a conclusion regarding the validity of a winning bid by focusing on the losing bids and noting that for auctions where the estimated price is disclosed, the bids cluster around the estimated price; however, the bidding behavior of bidders who do not win the auctions – and whether or not the losing bids are "clustered" or "more evenly spread" – is irrelevant to the perceived value of the block to the bidder with the winning bid and whether the winning bid is a valid market-determined price.
- In fact, when auction block quality is taken into consideration, any difference between the selling price per m^3 of auctions with undisclosed or disclosed estimated prices is explained and understandable.
- Commerce erred when it sought to derive a "market value" from an auction by taking into consideration the behavior of losing bidders vis-à-vis winning bidders. The BMMB bases market value on winning bids and doing otherwise is not supported by auction theory or by record evidence.
- Commerce's analysis of disclosed versus undisclosed estimated prices contains three technical errors: (1) it includes bids submitted in auctions for non-softwood blocks; (2) it includes

withdrawn and non-compliant bids; and (3) it uses only FY 2017. Correcting these errors yields a ratio between auctions where the estimated price is disclosed and auctions where the estimated price is undisclosed that is less than half the rate calculated by Commerce in its Québec Market Memorandum.

- The BMMB offered 37.42 percent and 32.74 percent of the available attributable softwood volume in the public forest in FY 2017-2018 and FY 2018-2019, respectively, and these volumes represent "a substantial portion" of the available standing timber in Québec's public forests and are more than sufficient to establish stumpage rates for standing timber harvested under TSGs.
- In the *Lumber V AR1 Prelim Results*, Commerce references its findings in the investigation where it found that unsold volume of timber offered at auctions was approximately 15 percent, which it found to be significant and a potential flaw of the Québec auction system. In FY 2017-18 and FY 2018-19, 20.88 percent and 18.07 percent of the volume of timber offered at auction, respectively, was unsold. To achieve a 100 percent sale rate, the BMMB would have to set the reserve and estimated price for each auction to zero and disclose such information, but such a strategy would not produce reliable price discovery.
- The Marshall Report concluded that the unsold volume shows the BMMB is setting those prices at aggressive levels and that the frequency of "no sales" in the BMMB auctions is where one would expect in a well-functioning auction system.
- Sections 92 and 93 of the SFDA authorize *transfers* of TSG timber, *i.e.*, they do not increase net available TSG timber volume for sawmills. The volumes moved under these sections are not significant and do not remove the pressures on sawmills to source timber from auctions.
- Québec's AAC has steadily declined and, because permitted public volume cannot exceed the AAC, the GOQ cannot provide more TSG timber from the public for mills. Decreases in the AAC force mills to find timber from alternative sources.

Petitioner's Rebuttal Comments[520]

- Commerce correctly found that additional information provided in this review on Québec's auction system is insufficient to change Commerce's conclusion that Québec's auction prices are distorted and thus inappropriate to serve as a tier-one benchmark.
- Record evidence continues to support Commerce's finding that the largest sawmills dominate both the allocated Crown timber consumption and softwood sawlog auction sale volumes, that these sawmills can source the vast majority of their supply needs at a fixed government-set price through TSGs such that there is little incentive for TSG-holding corporations to bid above the TSG administered price at Crown auctions, and that Québec's log export restraints force those non-sawmills to sell the majority of the timber they purchase at the auctions to Québec sawmills and have no reason to bid above the price at which they can sell logs to sawmills.
- Commerce correctly found that the fact that 50 percent of Québec's timber is sourced from TSGs under administratively set price, and that sawmills can source up to 75 percent of their supply at a government-set price, and can transfer timber at the TSG price under sections 92 and 93 of the SDFA or via contracts for "waived volumes" reduces the need for sawmill to resort to auctions and affects their bidding behavior.

[520] *See* Petitioner August 10, 2020 Rebuttal Brief at 66 – 81.

- The GOQ asserts that a "steady decline in Québec's AAC since 2000" has created a need for mills to rely more on auctions, thereby intensifying competition. This claim is contradicted by record evidence, which indicates that the AAC has steadily increased since 2014.
- Record evidence indicates that not only was there a lack of aggressive bidding, but that the behavior of bidders could be characterized as indifferent, signaling that there is not a high demand for auction timber, and consequently, competition is lackluster.
- Auctions are dominated by TSG-holding sawmills, and auction sales are concentrated among a small number of the largest TSG-holding corporations, which can obtain the vast majority of their actual need for timber at the TSG price and thus have little motivation to bid higher than the TSG price at the auctions.
- Commerce correctly found that Québec's LER was a significant factor that led to the distortion of the Québec timber market, and the GOQ's arguments against Commerce's distortion finding ignore the effect of the LER on the stumpage market.
- Commerce correctly analyzed whether auction timber competes with TSG-priced timber by examining whether bids by contractors track bids made by sawmills rather than comparing whether a particular block's auction value correlates with its stumpage value as the GOQ proposes.
- Commerce also correctly found that the GOQ's frequent disclosure of estimated price at the auctions results in lower bids that cluster around the estimated price, which distorts the bidding process and impedes the process of price discovery.
- Commerce should continue to give the Marshall Report less weight in this review as it did in the investigation because the report: (1) did not reference the requirements of the statute and CVD regulations, (2) did not provide analysis comparing Québec auction prices to stumpage prices from undistorted markets, and (3) did not analyze all of the bids submitted in auction or compare bids between TSG-holders and non-TSG holders.
- While the GOQ argues that the Québec auction system meets the benchmark standards in the *2003 Policy Bulletin*, record evidence demonstrates that the Québec auction system does not operate independently of the government stumpage system. The *Policy Bulletin* was never formally adopted by Commerce.
- Commerce should continue to find that the Québec auction prices are distorted due to government intervention in the timber market, and thus, Commerce does not need to analyze whether auction prices best represent the prevailing market conditions in Québec vis-à-vis other available tier-one benchmarks on the record.

Commerce's Position: We continue to find that Québec's timber market is distorted by government intervention and, as a result, that Québec auction prices are not a suitable tier-one benchmark for measuring the adequacy of remuneration received by purchasers of Crown-origin standing timber. Specifically, we find that:

(1) overall consumption of non-auction, Crown-origin standing timber is large relative to other sources; (2) a small number of TSG-holding corporations dominate the consumption of Crown-origin standing timber (both directly allocated *via* TSGs and sold *via* auction); (3) TSG-holding corporations can shift their allocations of Crown-origin standing timber, thereby reducing their need to acquire timber in the auction or from non-Crown sources; (4) the BMMB's disclosure of the administratively-determined estimated price impedes true price discovery at the auctions,

which are used to set TSG prices via the transposition equation; and (5) the GOQ's requirement that logs harvested in Québec be processed within Québec limits auction participation.

As an initial matter, before disputing our specific findings on Québec's stumpage market, the GOQ incorrectly claims that the Act and Commerce's regulations prefer an in-Québec benchmark. As discussed in Comment 25, "Whether Private-Origin Standing Timber in Nova Scotia Is Available in the Provinces at Issue," this ignores the plain language of the Act that a benchmark within the country of provision, *Canada*, is preferred. The GOQ notes that Commerce directed its stumpage questionnaire at the GOQ, Canadian provinces have exclusive jurisdiction over their public timber land, and the GOQ alone sells timber on public land in Québec.[521] These facts do not rewrite the Act or the CVD regulations. During the POR, Nova Scotia and Québec were both part of Canada,[522] and as such, a Nova Scotia benchmark is an appropriate tier-one, in-country benchmark. Prices for private-origin standing timber and Crown-origin auction prices in Québec are also in-country prices that could potentially be eligible for use as a tier-one benchmark under 19 CFR 351(a)(2)(i). However, as discussed below, we find that conditions in Québec's standing timber market are distorted, and as a result, Commerce cannot use private-origin or Crown-auction standing timber prices from Québec as a tier-one benchmark.

The GOQ does not contest our finding that the share of Crown non-auction timber is large relative to other sources, but rather argues that the Marshall Report found that Crown timber auctions produced viable market-based prices free of distortion and that the TSG prices are based on those market-based auction prices.[523] Resolute similarly argues that Commerce ignored the Marshall Report when it found Québec's timber market to be distorted.[524]

Given that Québec's auctions are not open to all bidders, we found these auctions do not meet the regulatory requirement for a benchmark regardless of the findings in the report on auction pricing and bidder behavior.[525] No new information or argument has been made on the record of this review to lead us to reconsider these findings. Further, Commerce has also analyzed the Marshall Report on the record of this review, particularly, the underlying data and various assumptions made by the author in order to reach his conclusions. For the following *additional* reasons, we continue to find that we cannot rely on the Marshall Report's conclusions of Crown-origin standing timber.

The Marshall Report's findings are based on several assumptions and a dataset that are not reflective of the period of review. The period of review covers 2017 and 2018; the Marshall Report is reliant upon data from 2015 for all of its conclusions. Although pre-POR data can be informative with proper context and substantiation, the Marshall Report relies on this data to rebut assumptions about specific circumstances. For example, the Marshall Report concedes that "In order for auction prices to be valid market prices, the volumes of timber offered to individual mills through supply guarantees must also not be excessive, so that all but the

[521] *See* GOQ July 29, 2020 Vol. V Case Brief at 10 – 12, citing Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, ss 92 and 92A reprinted in RSC 1985, Appendix II, No 5.
[522] *See, e.g.*, GOC July 15, 2019 Primary QNR Response at Exhibit GOC-AR1-STUMP-6.
[523] *See* GOQ July 29, 2020 Vol V Case Brief at 5 – 8.
[524] *See* Resolute July 29, 2020 Case Brief at 9 – 11.
[525] *See Lumber V Final* IDM at Comment 35.

smallest mills have a strong incentive to compete for some of their timber at government auctions."[526] In fact, this reliance on point in time evaluations, often determined with regressions and calculations which are not replicable for the POR by Commerce, is consistent across the Marshall Report. Similar point in time evaluations are made to evaluate the potential for a feedback loop. These 2015 evaluations do not provide evidence that the underlying issues with the auction identified by the Marshall Report could not come into play in 2017 and 2018 (*i.e.*, during the POR) and in doing so impact the legitimacy of the auctions.

The Marshall Report's analysis of supply guarantee caps as a method of ensuring competitive auctions is also unpersuasive. The Marshall Report notes that the GOQ limits supply guarantee distribution to 75 percent of a sawmill's residual capacity and assumes that this cap is sufficient to induce high auction participation among sawmills because that number is below 100 percent.[527] However, the Marshall Report does not provide evidence to suggest that sawmills could maintain profitability up to 100 percent of their residual capacity. This is important, because if lumber prices fall or input costs increase during any given period, it may no longer be profitable for sawmills to operate at 100 percent of their residual capacity. For example, if a sawmill could only expect to sell 70 percent of the lumber it produces at prices which would be profitable, any volume of production over that 70 percent capacity would be logically unprofitable. A 70 percent capacity is well below the 100 percent benchmark employed by the Marshall Report and GOQ. As a result, the Marshall Report's analysis is dependent on a faulty assumption.

Additionally, the Marshall Report also employs an assumption in its attempt to address the "feedback loop" concern that supply guarantee holders are incentivized to intentionally drive down the auction prices because they know that the auction prices are used to create prices for the TSGs. The Marshall Report notes that "the use of auction prices to determine the stumpage rates for a substantial portion of a mill's input requirements may, theoretically, have a depressing effect on its bids."[528] However, the report then claims "I have empirically looked for evidence of a feedback effect, and I have found no such evidence."[529] However, a lack of positive proof is not justification for an affirmative finding that no feedback loop exists. Furthermore, the empirical analysis applied is potentially unreliable and based on inappropriate assumptions. This is especially important because the distortive nature of the feedback loop is among the most significant concerns Commerce has with Québec's timber pricing system.

First, the Marshall Report tries to prove that supply guarantee holders' winning bids are not depressed in relation to the winning bids of non-supply guarantee holders.[530] To do this, the Report separates bidders into two groups, one composed of companies with no relation to supply guarantee holders, and the other composed of supply guarantee holders. The second group includes mills with supply guarantees, corporate representatives of supply guarantee holders, and companies without supply guarantees who are affiliated with supply guarantee holders.[531]

[526] *See* Marshall Report at 27.
[527] *Id.* at 27 – 31.
[528] *Id.* at 58.
[529] *Id.* at 59.
[530] *Id.* at 58 – 59.
[531] *Id.* at 59 – 62.

The nature of this assumption creates a significant divide between the two parties involved. The second group includes major lumber operations in Québec because the largest softwood timber processing corporate groups in Québec have supply guarantees.[532] The second group includes major lumber operations in Québec because the largest softwood timber processing corporate groups in Québec have supply guarantees.[533] This means that the first category is likely to be limited to companies which are smaller, and which cannot recognize the same returns to scale as their larger competitors. As a result, these smaller companies will likely need to acquire lumber at a lower price than their larger competitors in order to remain profitable.

Therefore, the price comparison in the Marshall Report between these two groups may be inappropriately influenced by the difference in returns to scale that can be achieved by the companies in each group. As such, although the bid prices for each group appear to be equal, it may actually be that this comparison does not reflect a true "equality," because in reality, supply guarantee holders are lowering their bids to maintain the low prices of the supply guarantees and preserve a price depressing feedback loop. These prices would then be comparable to the prices paid by their smaller competitors who must acquire timber at the auctions at lower prices in order to remain profitable. The Marshall Report ignores this issue.

Next, the Marshall Report argues that the benefits from bid reduction leading to a "feedback loop" of lower TSG prices would be outweighed relative to the cost of forgone stumpage.[534] However, this analysis relies on a comparison of only one company at a time and compares a reduction in price by that company to the current auction bids reported. The very nature of a feedback loop here is that lower prices in the supply guarantee market influence a company's willingness to bid a higher amount on the auctions. This feedback loop would be applicable to all companies in the system and therefore the risk of losing a bid is lower than the situation the Marshall Report described. The existence of supply guarantees gives companies participating in the auctions a price point at which they can measure the value of a plot of land. There is less incentive for companies to bid significantly above this price in the auctions if they can expect other companies to value timber in a similar manner. As such, it is uninformative to compare a hypothetical undervaluation by one company to the current market when the issue in question is whether the current market is already undervalued as a result of the presence of supply guarantees. The Marshall Report assumes the starting point on the auctions is already market determined and shows that it would be impossible for a company to unilaterally lower this value; however, this does not address the possibility (and likelihood) that the market is already depressed and companies, rather than trying to lower prices with low bids on the auction, are simply bidding at that low level to preserve the undervaluation present in the supply guarantee market.

This incentive to keep prices low would apply to supply guarantee holders and non-supply guarantee holders. Non-supply guarantee holders have no incentive to significantly raise the price of a stumpage supply when they know it is already undervalued. Instead, by keeping their bids within the undervalued universe of stumpage in Québec, non-supply guarantee holders still

[532] *See* GOQ July 15, 2019 Primary QNR Response at Exhibit QC-STUMP-11.
[533] *Id*.
[534] *See* Marshall Report. at 63 – 66.

benefit from depressed auction prices. Additionally, non-supply guarantee holders could become supply-guarantee holders in the future and benefit from lower prices in that market as a result of not driving up auction prices with unnecessarily high bids. Realistically, a rational actor will not bid significantly above the market valuation of the stumpage it hopes to obtain. The market value of timber in Québec cannot exist independently of the significant amount attributable to supply guarantees, and therefore, it is likely that supply guarantees feed into the prices companies are willing to pay at auction, and this, in turn, feeds back into the price set for supply guarantees.

These significant assumptions and shortcomings of the Marshall Report prevent Commerce from adopting its analysis as fact. The Marshall Report proports to show that auction prices in Québec are market determined, and therefore, create market determined prices in the supply guarantee market. However, the Marshall Report fails to sufficiently analyze the effect of TSG prices on effect prices. The report also fails to fully support the claim that the volume of TSG timber supplied is sufficiently limited to ensure competitive auctions. Although the Marshall Report claims that auction prices are used in other markets to set non-auction prices (used cars and metal markets),[535] it fails to make a distinction that these markets differ dramatically from the Québec market in that the government does not control the vast majority of either used vehicle sales or sales of aluminum and other metals. Furthermore, in each of these markets, there is no potential feedback from a supply guarantee system. These are some of the reasons that led Commerce to determine that the Marshall Report is not reliable as evidence that the stumpage system employed by the GOQ is market determined.

In addition to arguing that Commerce did not properly consider the Marshall Report, the GOQ criticized our finding on the market power of the largest TSG-holders on several grounds. The first ground draws attention to the specific definition of market power. According to the GOQ, Commerce failed to define market power, connect market power to auction behavior, or find that the auction market was concentrated.[536] The GOQ suggests that Commerce use the HHI to analyze Québec's auction market or to otherwise explain how market power is wielded.[537]

As noted in the *Lumber V Final*, we are "not seeking to identify market conditions that would be anti-competitive in violation of U.S. or Canadian antitrust laws,"[538] and as such we are not obligated to use the HHI. More specifically, we are not attempting to determine whether the largest consumers of timber in Québec hold enough market share to wield monopolistic pricing power. Such an analysis would be illogical, given that we are not examining the *sales* by these companies, but rather their *purchases* of an input to determine whether the auction price is independent of the administratively-set TSG price. The independent harvesters participating in the auction timber market are primarily selling timber they harvested to *other participants in the timber market*. The market power we refer to is the ability of the large TSG-holding mills to obtain timber at lower prices than they would in a fully competitive market due to the lack of options independent harvesters face when selling their timber.

[535] *Id.* at 75 – 76.
[536] *See* GOQ July 29, 2020 Vol V Case Brief at 14 – 16.
[537] *Id.* at 27 – 31.
[538] *See Lumber V Final* IDM at 51 – 52.

Furthermore, we emphasize that the analysis of market power and concentration is not meant to suggest that any market with a similar level of concentration is distorted. Rather, the concentration of timber purchasers is in the context of an already predominant government market share and a legal requirement that cut timber be processed within Québec,

With respect to the GOQ's claim that Commerce failed to connect market power to auction behavior, in the *Lumber V AR1 Prelim Results*, we found that auction bids by independent contractors closely tracked bids by sawmills.[539] This supports our finding from the *Lumber V Final* that "the non-sawmills have little motivation to bid for timber at a price above which they can sell the wood to the sawmills."[540] The GOQ claims that this merely reflects that well-informed bidders have similar valuations of auction blocks and criticizes the use of "track" to describe the bidding, given that auction bids are confidential.[541] Based on the differences in bidding behavior by type of auction participant, we do not find the GOQ's explanation persuasive.[542]

The GOQ argues that TSG-holding mills cannot fully meet their residual fiber needs from their TSGs and thus must compete to secure TSG timber, noting that Québec's AAC is determined independent of economic considerations and has steadily declined.[543] The GOQ also contests Commerce's findings in the investigation and *Lumber V AR1 Prelim Results* that the sawmills have an ability to "source up to 75 percent of {their} supply need at a government-set price," which contributes to the distortion of Québec standing timber market. On this point, the GOQ argues that the 75 percent harvest ceiling, in fact, refers to a theoretical maximum, and during the POR, Québec's largest wood processing groups did not meet their wood requirements through TSGs.[544] Additionally, the GOQ claims that TSG-sourced log volumes transferred under Sections 92 and 93 or the SFDA are small relative to other sources of logs and notes that these transfers do not change the overall volume of available TSG timber.[545]

We disagree with these assertions. First, the 75 percent harvest ceiling limit is a theoretical estimate based on five-year estimates of mill need, such that a mill still has access to fixed TSG volumes even if its actual supply need is lower.[546] Second, the GOQ describes the AAC based on a trend since 2000, when using 2005 as the starting pointing would show very little change and using 2010 or 2015 would show a modest increase, going against the GOQ's claim that available Crown-origin timber volumes in Québec are declining.[547] We also continue to find that the ability to transfer timber at the TSG price under sections 92 and 93 of the SDFA or via contracts for "waived volumes" reduces the need for sawmills to resort to auctions and affects their bidding behavior. In particular, based on data contained in the Quebec AR1 Market Memorandum, we disagree with the GOQ's contention that the volumes transferred under this

[539] *See Lumber V AR1 Prelim Results* PDM at 21 – 22; *see also* Québec AR1 Market Memorandum at Attachments 3 and 4.
[540] *See Lumber V Final* IDM at Comment 35.
[541] *See* GOQ July 29, 2020 Vol. V Case Brief at 24 – 27.
[542] *See* Québec AR1 Market Memorandum at Attachments 3 and 4.
[543] *See* GOQ July 29, 2020 Vol. V Case Brief at 16.
[544] *Id.* at 16 – 20.
[545] *Id.* at 47 – 51, citing GOQ July 15, 2019 Primary QNR Response at 48, 77 – 79, 82 – 83, and Exhibit QC-STUMP-76.
[546] *See* GOQ July 15, 2019 Primary QNR Response at Exhibit QC-STUMP-048.
[547] *See* GOQ July 29, 2020 Vol. V Case Brief at 16; *see also* GOQ July 15, 2019 Primary QNR Response at 41.

section are not significant relative to auction volumes.[548] Furthermore, while these transfers may not increase the total Crown-origin timber available to sawmills, they can increase consumption by allowing mills to obtain more.

The GOQ also asserts that Commerce's characterization of TSG-holding mills as a single entity that source from TSGs without constraint is contradicted by record evidence that both sawmills and independent contractors regularly bid above the equivalent stumpage value of auction blocks.[549] The GOQ claims this bidding behavior shows both that auction and TSG timber are not in competition and also that TSG-holders have only a limited supply of TSG timber. Additionally, the GOQ highlights that most TSG holders participated in auctions and nearly all procured least some wood from non-TSG sources during the POR.[550]

We do not find these arguments persuasive. When an auction participant wins a block, they only put down, at most, a 10 percent deposit and are not required to harvest the timber in the year of purchase.[551] Stumpage prices change yearly, while the price of timber won at auctions remains the same, so a direct comparison between stumpage and auction price does not address whether the two types of timber are competing.[552] More importantly, the fact that in some cases auction bidders may bid above the equivalent stumpage value of a block does not, as the GOQ alleges, prove that auction and TSG timber are not in competition.

In fact, the record shows that the existence of a large supply of administratively-priced wood in Québec has only one effect on competition – it *reduces* sawmills' need to procure competitively sourced timber and thus reduces, not increases, competition in Québec and the need to participate and bid in the auction market.

The GOQ criticizes our finding in *Lumber V AR1 Prelim Results* that the GOQ's disclosure of the estimated price distorts the auction prices on several grounds. First, the GOQ notes that Commerce included bids in auctions for non-softwood blocks, withdrawn and non-compliant bids, and chose to only use FY 2017-2018 data even though the POR runs from April 28, 2017 to December 31, 2018.[553] We note that FY 2017-2018 data are readily comparable with other information on the record that is only available on a fiscal year basis. However, the GOQ explicitly acknowledges that even if their adjustments are fully implemented, there is still a significant difference in bidding behavior depending on estimated price disclosure,[554] and as such we do not find these points to undermine the validity of our findings.

The GOQ claims that estimated prices are determined through heterogenous methodologies and thus are not a common variable from which analysis can be made.[555] We find this assertion both inconsistent with record evidence and irrelevant. While the estimated price calculation

[548] *See* Québec AR1 Market Memorandum at Attachments 15 through 17.
[549] *See* GOQ July 29, 2020 Vol. V Case Brief at 20 – 21, citing GOQ July 15, 2019 Primary QNR Response at Exhibit QC-STUMP-8.
[550] *See* GOQ July 15, 2019 Primary QNR Response at Exhibit QC-STUMP-12 and QC-STUMP-13.
[551] *See* GOQ July 15, 2019 Primary QNR Response at 3.
[552] *Id.* at 44.
[553] *See* GOQ July 29, 2020 Vol V Case Brief at 42 – 43.
[554] *Id.*
[555] *See* GOQ July 29, 2020 Vol V Case Brief at 33 – 34.

methodology may not be identical across different BMMB offices, the GOQ's October 2017 Wood Marketing Manual notes that the estimated price is the "BMMB's best estimate of the price it expects to get for an auction block" and "regardless of the type of sale, the principle and the usefulness of the prices do not change, even if the method of calculation differs."[556]

We also note that the Marshall Report, described by the GOQ as an authoritative analysis of Québec's auction system, treats the estimated price as a uniform variable in an analysis meant to show that the BMMB is reasonable to make estimated price the threshold price for auctions with less than three bidders.[557] This analysis and the Wood Marketing Manual's explanation above both highlight that the estimated price is meant to serve the same purpose in all auctions and is an appropriate variable to isolate for analysis.

The GOQ argues that the downward impact on auction bids of estimated price disclosure described in the *Lumber VAR1 Prelim Results* is an artifact of blocks with disclosed and undisclosed estimated prices having different quality levels.[558] We find this claim flawed in multiple regards. First, the GOQ's assertion in its case brief that the differential occurs because it is "common practice" to not disclose estimated prices for higher quality blocks is not supported by a citation or reference to the record[559] and is partially contradicted by the October 2017 Wood Marketing Manual, which states that "In some situations, for example where there is little competition, the BMMB reserves the right not to publish the estimated price."[560] As such, the GOQ's assertion appears to be a *post hoc* attempt to explain the relationship between estimated price disclosure and auction bidding.

More important than the GOQ's explanation of the BMMB's estimated price setting strategy, however, is the actual relationship between the estimated price and bidding behavior. The GOQ cites record evidence showing that during the POR, auction blocks with undisclosed estimated prices were of higher quality than blocks with disclosed estimated price levels, that is, both the BMMB and the auction bidders valued the undisclosed blocks more highly.[561] The GOQ then says that Commerce:

> . . . fails to explain how a finding of distortion can come from comparing the ratio between the estimated and selling prices for auctions of high-quality, high-value blocks, which are more desirable, with the ratios for lower quality blocks when those price estimates are prepared by different estimators in the fourteen regional offices taking account of regional circumstances. {Commerce} concluded that bidders who were exposed to an estimated price for lower-quality blocks prior to placing their bid lowered their bid as a result of knowing what the estimated price was, instead of bidding solely based on their perceived value of the block. But

[556] *See* GOQ July 15, 2019 Primary QNR Response at Exhibit QC-STUMP-30.
[557] *See* Marshall Report at 45.
[558] *See* GOQ July 29, 2020 Vol V Case Brief at 33 – 35.
[559] *Id.* at 35.
[560] *See* GOQ July 15, 2019 Primary QNR Response at Exhibit QC-STUMP-30.
[561] *See* GOQ July 29, 2020 Vol V Case Brief at 35 – 38.

> this is speculation because the conclusion is not connected to the underlying analysis.[562]

The GOQ's assertion that higher-quality blocks will sell for a higher price is reasonable. However, while the differing quality of timber between auctions where the estimated price is public versus undisclosed logically affects the absolute level of auction bids, the GOQ does not explain why this should affect the difference in the relative percentage by which the winning bid differs from the estimated price. The GOQ argues that the winning bid in estimated price per cubic meter terms does not depend on whether the estimated price is disclosed or not when controlling for block quality.[563] However, given that, as noted above, the price differential Commerce found was a relative difference between the estimated and auction price, not an absolute difference, the GOQ does not explain why it is appropriate to sharply limit the comparison of bids.

The GOQ is incorrect both in saying that Commerce found that bidders who saw an estimated price "lowered their bid as a result of knowing what the estimated price was, instead of bidding solely based on their perceived value of the block" and also in claiming that "disclosing the estimated price has no effect on bidding." First, Commerce's finding was based on the numerical results of auction bidding data, rather than assumptions,[564] and it is the GOQ itself that has added speculation about the precise intentions of bidders. Second, the GOQ's claim that estimated price disclosure has no effect on bidding is curious, as the GOQ's auction data shows significant differences in bidding behavior as a result of estimated price disclosure.[565]

The GOQ notes that when a block is put up for auction and not sold, no price discovery takes place and that blocks with an estimated price sell at a higher rate. The suggestion, however, that this higher sale rate associated with estimated price disclosure means more "price discovery" occurs through estimated price disclosure is misleading. In fact, record evidence conclusively shows that estimated price disclosure alters bidding behavior in a way that impedes price discovery.[566] This bidding behavior is not explicable through the difference in block quality that the GOQ relies on to dispute the downward effect of estimated price disclosure on auction bidding.

Furthermore, contradicting the GOQ's claim that "disclosing the estimated price has no effect on bidding," the Marshall Report, emphasizes that in low competition auctions, which are quite common among BMMB timber auctions, clearing the minimum required bid is a major consideration for bidders.[567] The Marshall Report also claims that the BMMB sets the estimated price at an appropriate level and properly uses the estimated prices as the upset price[568] in auctions with two or fewer bidders, stating that "{h}ad the BMMB used an approach

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[562] *Id.* at 43.
[563] *Id.* at 38.
[564] *See Lumber VAR1 Prelim Results* PDM at 21 – 22.
[565] *See* Québec AR1 Market Memorandum at Attachments 3 through 5.
[566] *Id.*.
[567] *See* Marshall Report at 45.
[568] Also known as the threshold price.

that did not compensate for the low demand, the prices paid for these blocks would very likely have been lower."[569]

However, this finding and the related analysis in the Marshall Report on the theory and practice of setting the appropriate level of estimated price does not touch on the effect of estimated price disclosure. The Marshall Report does not compare relative bidding behavior based on estimated price disclosure, even though, as noted above, it explicitly describes the threshold price as a crucial determinant of bidding behavior in auctions with limited competition.

The Marshall Report also claims that it is likely that Québec auction bidders are somewhat risk averse and their need to obtain sufficient timber supply affects their bidding behavior.[570] Once the estimated price is disclosed, risk-averse bidders for low competition blocks know the lowest amount they can bid and still be able to secure the timber. By contrast, if they did not know that precise amount, as risk averse bidders, they would be incentivized to bid aggressively to ensure that they obtained timber supplies.

The GOQ also asserts that Commerce erred in analyzing the impact of the estimated price on *losing* bids, noting that the BMMB bases market value on winning bids and there is no basis for doing otherwise.[571] First, given that the auctions are meant to generate price discovery,[572] we find that losing bids are relevant. Second, the conclusions reached on the effect of the estimated price on bidding behavior are true regardless of whether looking at all bids or only winning bids.[573]

The GOQ cites various pro-competitive features of BMMB auctions, such as bids being solely based on price, publication of relevant information on auction blocks, and anti-collusion measures.[574] In the *Lumber V Final*, however, Commerce took these factors into account, noting that "Québec's auction system displays several competitive features," but nonetheless found that the auction prices are not free of distortion.[575]

In this review, we have undertaken additional analysis of the BMMB auction system and the Marshall Report's claim that these auctions produce undistorted prices. The totality of the evidence still leads us to conclude that timber prices in Québec are distorted, and Crown timber auction prices are not a suitable benchmark for measuring the adequacy of remuneration for TSG-provided timber.

Comment 20: Whether Commerce Should Account for Spruce Budworm Infestation Conditions That Affect Resolute's SDO Sawmill

Resolute and Central Canada's Comments[576]

[569] *See* Marshall Report at 45 – 46.
[570] *Id.* at 51.
[571] *See* GOQ July 29, 2020 Vol. V Case Brief at 36 – 38.
[572] *See* Marshall Report at 19 – 20, and 36.
[573] *See* Québec AR1 Market Memorandum at Attachment 5.
[574] *See* GOQ July 29, 2020 Vol V Case Brief at 51 – 59.
[575] *See Lumber V Final* IDM at Comment 35.
[576] *See* Resolute July 29, 2020 Case Brief at 14 – 18.

- The spruce budworm has depressed the value of wood in the Côte-Nord region of Québec where Resolute's SDO sawmill is located.
- Spruce budworm increases: (1) harvesting costs because of lower yields and higher tree morbidity, (2) road costs due to the need to harvest affected regions more quickly, (3) transportation costs due to lower density of quality wood fiber, and (4) processing costs due to the degraded wood. Therefore, if Commerce continues to compare the SDO sawmills' stumpage to a benchmark price, it must adjust the SDO stumpage fees to factor in the additional costs per cubic meter due to the spruce budworm infestation.

GOC's Comments[577]

- There is no record evidence that Nova Scotia's forests have been degraded by the spruce budworm infestation which has decreased the quality and value of timber in Québec.

Petitioner's Rebuttal Comments[578]

- Resolute's adjustments to the "very low" price it paid for wood harvested in Québec's North Shore affected by the spruce budworm should be rejected, and Commerce should continue to treat this region equal to all other regions of the province.
- Resolute is unable to demonstrate that Commerce's conclusion that the "Nova Scotia benchmark reasonably reflects the 'price, quality, availability, marketability, transportation, and other conditions of purchase or sale' {in Québec}" is no longer valid and that wood from parts of Québec are not reasonably comparable to that in Nova Scotia.
- Moreover, in support of its proposed adjustment, Resolute relies on a report prepared by DGR which should be discounted as it was commissioned by Resolute for the purpose of seeking additional subsidies from the GOQ, and thus was commissioned with the intent of inflating the cost impact of the spruce budworm to obtain government assistance.

Commerce's Position: We find that the available record evidence with regard to Resolute's proposed adjustment to Crown stumpage prices paid by the SDO sawmill to account for the spruce budworm infestation consists of a single study that is not independent and is not based on transparent and verifiable data. Thus, we have not made any adjustments to the Québec stumpage benefit calculation.

As Commerce stated in *Lumber V Final*, in instances where parties have presented a self-commissioned report, Commerce "must carefully examine the study to ensure that it is based on sound methodologies that guard against any study bias {and} evaluate whether {the} study or report placed on the record of a proceeding by an interested party is free of data and conclusions that were tailored to generate a desired result."[579] In this case, Resolute commissioned the DGR Report to support the company's request to the GOQ for preferential electricity rates to mitigate costs related to the spruce budworm infestation.[580] The DGR report estimates the impact on the cost of harvesting, hauling, and processing timber in Québec's North Shore region due to spruce budworm.

[577] *See* GOC July 29, 2020 Vol I Case Brief at 32.
[578] *See* Petitioner August 10, 2020 Rebuttal Brief at 120 – 122.
[579] *See Lumber V Final* IDM at Comment 19.
[580] *See Lumber V Prelim Results* PDM at 61 – 63; *see also* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibit RES-NS-LRateBAPP.

We find that the underlying data in the DGR Report is not reliable for several reasons. First, Resolute's proposed adjustment is based on a single study that was commissioned by Resolute for the purpose of receiving financial support from the GOQ in the form of reduced electricity rates under the Côte-Nord Rate L agreement. Given that it is not an independent report and was commissioned by a party to this proceeding for the purpose of receiving financial support from the GOQ, we are unable to determine whether the report is free of bias and that the report's conclusions were not tailored to generate a desired result. Second, the underlying data behind those estimates in the report are not on the record of this review and therefore not verifiable. Third, the underlying data behind the conclusions in the report on the cost impact of spruce budworm are not on the record of this review and are therefore not verifiable.

Accordingly, we have not made an adjustment for spruce budworm as proposed by Resolute. We continue to conduct our stumpage benefit analysis by comparing the unadjusted annual price paid by each of Resolute's Québec sawmills to the Nova Scotia benchmark prices as described in Comment 31.

C. British Columbia Stumpage Benchmark Issues

Comment 21: Whether Commerce Should Continue to Use a Beetle-Killed Benchmark Price for the Final Results

Petitioner's Comments[581]

- As it did during the *Lumber V Final*, Commerce should use a species-specific benchmark without an adjustment for Mountain Pine Beetle unless an MPB benchmark is established by reliable evidence.
- As Commerce explained in the *Lumber V Final*, Commerce is not required to achieve a precise match in its benchmark analysis. Commerce has previously determined that the selection of benchmarks does not require perfection because benchmarks are not an exact match to the subsidy being evaluated.[582]
- The Canadian Parties have argued for a level of granularity in the benchmarks that would ultimately render the benchmark meaningless. Commerce has rejected this argument, taking the position that benchmarks do not need to reflect every possible variation in the product at issue or market conditions in the country under investigation.
- Even if Commerce determines that WDNR survey prices do not include beetle-killed prices, Commerce would not be required to adjust the benchmark.
- A 2010 report from WOOD MARKETS contained detailed estimates of the actual increased harvesting and processing costs and resulting decreased lumber value associated with processing dead lodgepole in BC interior mills.[583] The analysis of the WOOD MARKETS report is corroborated by a GBC commissioned study which found that lumber recovery from beetle-killed logs was only 1 percent less than lumber recovery from green logs in 2008.[584] Given the likely increases in technology and resulting production efficiency since 2008, the

[581] *See* Petitioner June 8, 2020 Case Brief at 12 – 23.
[582] *Id.* at 16 – 17, citing *HRS from India* and Commerce's arguments at the WTO in the underlying investigation.
[583] *See* Petitioner Comments on IQRs at Exhibit 45.
[584] *Id.* at Exhibit 43.

difference between an accurate MPB-specific benchmark price and one for green timber could only expect to be less than what was calculated in the WOOD MARKETS study. Therefore, the price difference between the beetle-killed and green benchmarks used in the *Lumber V AR1 Prelim Results* is inconsistent with record evidence and is unreasonable.

- Jendro and Hart's claim that the WDNR survey does not include any prices for logs produced from beetle-killed timber is a gross overstatement and confirms that the authors' analysis of beetle-killed pricing failed to consider important aspects of the issue.
- The question asked of a WDNR official was whether the WDNR survey included "prices for blue-stained logs from beetle-killed timber." The answer to this response does not support Jendro and Hart's contention that the WDNR survey "specifically and intentionally exclude prices for so-called 'fall-down' sorts, such as logs with blue stain (beetle-killed), logs of non-preferred species, or logs that do not meet a sawmill's preferred size specifications."[585]
- According to the Harper Affidavit, "blued" logs can refer to "logs that are defective in a number of ways" beyond just beetle kill, and the lower prices for such logs may be a result of a mill's specialization in appearance grade lumber as opposed to industrial studs.[586]
- Inconsistencies in how Jendro and Hart defined and understood the factors underlying "blue-stained" pricing raise serious concerns about whether Jendro and Hart's collection of price quotes was representative and reliable.
- As highlighted by the United States during the WTO litigation relating to the *Lumber V* investigation, a significant percentage (63.2 percent) of dead lodgepole was grade 2 (*i.e.*, sawlog quality) according to the Dual-Scale Study (this is more pronounced for spruce where 80.9 percent was determined to be grade 2 quality). As the United States argued, grade 2 logs are of higher quality and price than utility-grade, non-sawlogs. Jendro and Hart's contention that beetle-killed logs are so fundamentally distinct from green timber to require their own benchmark is contradicted by Jendro and Hart's own study.
- In the preliminary calculations, Commerce used data reported by the GBC to approximate species-specific volumes of green and dead wood purchased by the respondents. The ratios that Commerce calculated are deeply flawed.
- In its initial questionnaires, Commerce never asked the respondents nor the GBC to identify the share of green and dead logs in the stumpage purchase tables or harvest information.
- In a supplemental questionnaire, Commerce requested that the GBC provide a revised version of respondent-specific tables that included a species-specific breakdown of green logs by diameter so that the tables would incorporate all logs.[587] In response to this supplemental, Jendro and Hart explained it was not possible to provide a version of the sawmill usage tables that included green and dead logs because the underlying data sources did not include dead logs in their calculations.[588] Nevertheless, the GBC submitted new exhibits with Canfor and West Fraser's volumes and usage percentages for both green and dry logs by species and diameter class.[589]
- In the *Lumber V AR1 Prelim Results*, Commerce used these revised tables to create species-specific ratios that were used to determine the volume of the respondents' purchases that would

[585] *Citing* GBC IQR at Exhibit BC-AR1-ST-164 at 17.
[586] *Citing* GBC IQR at Exhibit BC-AR1-ST-187.
[587] *See* GBC January 6, 2020 SQ at Question 6.
[588] *See* GBC SQR3 at Exhibit BC-AR1-STSUPP3-2 at 23 – 24.
[589] *Id.* at Exhibits BC-AR1-STSUPP3-4 and BC-AR1-STSUPP3-5.

be compared to the beetle-killed benchmark.[590] It is unclear why Commerce did not request information on green and dead timber purchases from the respondents, but instead relied on inconsistent and unreliable data from the GBC.

- The species-specific beetle-killed volumes reported in Canfor's revised table[591] are inconsistent with the species-specific beetle-killed volumes reported previously on this record.[592] The change in the species-specific beetle-killed volumes result in Commerce comparing a percentage of Canfor's stumpage purchases to the lower beetle-killed benchmark and not the sawlog benchmark.
- For West Fraser, there were inconsistencies between the volumes reported in these revised tables and information previously placed on the record. Commerce cannot reasonably rely on volume data that are inconsistent with other record evidence given the impact such data have on West Fraser's stumpage benefit.
- Commerce's efforts to create a beetle-killed price based on unreliable and irrelevant offer prices and species-specific ratios for "dead" wood based on unreliable classifications have only introduced further distortions that mask the true extent of the GBC's subsidization.

GBC/BCLTC Comments[593]

- The record evidence supports Commerce's determination to develop a beetle-killed benchmark price for the *Lumber V AR1 Prelim Results*.
- The Taylor affidavit explains that the WOOD MARKETS report was hypothetical in nature and not an appropriate reference for estimating an MPB discount in the POR due to differences in market conditions, the state of the beetle infestation, and knowledge of its impact in the two periods. Mr. Taylor's concerns apply even more so in the POR.
- Jendro and Hart also refuted the petitioner's argument that the WOOD MARKETS report suggests a significantly lower discount for beetle-killed logs than the beetle-killed prices collected in the U.S. PNW mill quote survey.
- The 2016 Joint Montana Study demonstrates that by itself, the increased manufacturing costs of processing beetle-killed logs as compared to green logs is sufficient to justify a value reduction for beetle-killed logs. This reduction does not even account for the reduced yield selling value of lumber produced from beetle-killed logs. The 2016 Joint Montana Study reported that gray-stage beetle-killed timber stumpage values were more than 90 percent lower than stumpage values for green timber.
- In his email response, the WDNR official was confirming what was already evident from the WDNR prices on the record (that the WDNR prices were too high to have incorporated beetle-killed prices). To the extent that Commerce would like to contact WDNR directly to confirm Mr. Richards' statement, it is obviously free to do so.
- Many BC grade 2 logs cut from green trees scale as "Utility" grade "non-sawlogs" when measured using the Scribner scale. The fact that some beetle-killed logs are grade 2 in the BC system does not change the fact that beetle-killed logs are generally of even lower value than logs graded as "Utility" in the U.S. Scribner system, as is evident from the beetle-killed prices

[590] *See* West Fraser Preliminary Calculation Memorandum at 6; *see also* Canfor Preliminary Calculation Memorandum at 5.
[591] *See* GBC SQR3 at Exhibits BC-AR1-STSUPP3-4.
[592] *See* GBC IQR at BC-I-104-105 and Exhibits BC-AR1-ST-175, BC-AR1-ST-176, BC-AR1-ST-192, and BC-AR1-ST-193.
[593] *See* GBC June 8, 2020 Vol V Case Brief at 38 – 40 and 44 – 47.

on the record, which in all but one instance are lower than the WDNR prices for "Utility" grade logs.

Petitioner's Rebuttal Comments[594]

- The Taylor affidavit supports the petitioner's argument that because Commerce's methodology deducts the respondents actual harvesting costs in deriving the stumpage benchmark, the value reduction from longer-dead MPB-killed timber is already in the subsidy calculation and does not need to be accounted for a second time.
- The Taylor affidavit also supports Commerce's fundamental finding that since the price of logs are largely derivative of the price of softwood lumber, it would be impractical and superfluous to require adjustments to reflect the impact of certain differences in market conditions that do not have any manifest or demonstrated effect on the comparability of goods.

GBC/BCLTC Rebuttal Comments[595]

- The data on which Commerce relied for the green/dead ratios originated with the respondents. The respondents provided Jendro and Hart with species-specific green vs. dead/dry log volumes by diameter class which were included in the GBC's initial questionnaire response as Exhibits BC-AR1-ST-175 and BC-AR1-ST-176. Jendro and Hart used the data to construct tables to calculate respondent-specific conversion factors originally presented in Exhibits BC-AR1-ST-194 and BC-AR1-ST-195.
- There is no inconsistency between the revised tables submitted in response to Commerce's supplemental and information previously on the record. The only difference in the data included in Exhibits BC-AR1-ST-175/BC-AR1-ST-176 compared to the revised tables in the supplemental response is that the tables now include, per Commerce's request, combined green/dead values. The petitioner's assertion that dead/dry volumes appeared for the first time in the supplemental response is incorrect because the dead/dry volumes were included in Exhibits BC-AR1-ST-175/176.
- The petitioner also raises concerns with data relating to West Fraser's volumes. As explained in West Fraser's Rebuttal Brief, there is a reasonable explanation for the discrepancies the petitioner notes.

West Fraser Rebuttal Comments[596]

- The variances the petitioner identified have simple explanations that can be easily dealt with by applying the corrected schedules provided.
- There is a difference in the way the various stumpage volumes on the record are reported. Per Commerce's instructions, the purchase files are based on invoices from the GBC's Harvest Billing System. In order to fulfill Jendro and Hart's request for condition and diameter data, which is not included in the HBS data, West Fraser provided the GBC with data from its Log Inventory Management System. The LIMS data are based on additional scaling samples, including from cruise-based stands, that are not included in the HBS data, which means the HBS data will not precisely match the LIMS data.
- The variances raised by the petitioner are largely attributed to the differences between the HBS and LIMS data. The remaining disparity is attributable to two factors: (1) for both the 2017

[594] *See* Petitioner June 25, 2020 Rebuttal Brief at 38 – 39.
[595] *See* GBC June 25, 2020 Volume I Rebuttal Brief at 6 – 8.
[596] *See* West Fraser June 25, 2020 Rebuttal Brief at 4 – 19.

and 2018 data, the petitioner only tallied HBS volumes from certain stumpage purchase tables, while the LIMS data reflects the volumes across all stumpage tables; and (2) the 2018 data contained a copy and paste error that affected the volumes reported for two species. When accounting for these two factors, the variances pointed to by the petitioner are significantly reduced and readily explainable by the differences in the source data.
- The variances do not distort Commerce's calculation. The LIMS data only serve to establish a green-to-dead ratio by diameter for the purpose of applying Commerce's beetle-killed benchmark and the Fonseca adjustment. For the purposes of Commerce's calculations, what matters is that the LIMS data reported the correct green-to-dead ratios by diameter; the reported volumes are inconsequential.
- West Fraser has provided corrected versions of the tables with the filing of this rebuttal brief.
- The CAFC has instructed Commerce to consider information correcting reporting errors provided that (1) the reporting party seeks correction prior to the final results; and (2) adequately proves the need for the requested corrections.[597] This requirement is a corollary to the recognition by the courts that Commerce should calculate duties accurately.[598]
- West Fraser has met the first requirement of seeking correction before Commerce issues its final results. There is plainly a need for the requested corrections because they are central to the accurate calculation of the beetle-kill benchmark.
- If Commerce were to reject the corrected tables, Commerce should apply the green-to-dead ratios for lodgepole and spruce from 2017 as neutral facts available in place of the 2018 ratios.

Commerce's Position: In *Lumber V Final*, Commerce declined to adjust the U.S. PNW benchmark price for beetle-killed logs because: (1) there was no evidence that the WDNR survey prices did not incorporate beetle-killed prices; and (2) there were concerns with the mill offer prices placed on the record by the respondents.[599] At no point in Commerce's determination did it determine that beetle-killed prices were not a necessary part of the benchmark. In fact, Commerce had previously determined in *Lumber IV Final Results of 2nd AR* that it was appropriate to account for beetle-killed prices as part of the U.S. PNW benchmark:

> Further in deriving market determined stumpage prices from U.S. log prices…we have also taken into account other market conditions, such as the mountain pine beetle infestation which afflicted trees in the BC interior. To do this, we have, for these final results, incorporated into the BC interior benchmarks all blue stain U.S. log prices available on the record.[600]

In *Lumber V AR1 Prelim Results*, we preliminarily determined that new record evidence indicated that the WDNR survey did not include beetle-killed prices.[601] We also preliminarily found that the record contained usable beetle-killed pricing in the form of a more robust collection of mill price offer sheets, which were accompanied by documentation supporting the methodology used to collect the price offers.[602] Accordingly, Commerce preliminarily

[597] *Id*. at 13, *citing Timken*.
[598] *Id*., *citing Al Tech*.
[599] *See Lumber V Final* IDM at 27.
[600] *See Lumber IV Final Results of 2nd AR* IDM at 82.
[601] *See Lumber V AR1 Prelim Results* PDM at 27.
[602] *Id*.

determined that it was appropriate to incorporate a beetle-killed price into the U.S. PNW benchmark for the *Lumber V AR1 Prelim Results*.[603]

The petitioner has argued that a beetle-killed benchmark is not necessary because Commerce is not required to achieve a precise match in its benchmark analysis, and the inclusion of a beetle-killed benchmark is a level of granularity that is not required. We agree with the petitioner, and have previously found, that Commerce is not required to achieve a precise match in our benchmark analysis.[604] However, Commerce has previously distinguished the impact of MPB on the comparability of goods from other more superfluous factors that do not have any manifest or demonstrated effect on the comparability of goods.[605] The record evidence in the instant review continues to support the determination that the prevalence of beetle infestations have had a significant impact on harvesting decisions in the BC interior, and infested timber has a lower value than green timber in both the BC interior and the U.S. PNW.[606] For example, a 2016 study on the impact of the MPB on sawmill operations in Montana found that the value of a standing beetle-killed tree (*i.e.*, stumpage price) was 90 percent less than that of a green tree.[607]

The petitioner asserts that since Commerce's derived demand methodology deducts the respondent's harvesting and hauling costs, the value reduction from beetle-killed timber is already included in the subsidy calculation and does not need to be accounted for a second time. This appears to be a misunderstanding of our derived demand methodology. In prior Lumber cases, including the *Lumber V* investigation, Commerce has stated, in reference to the timber market, that "it is generally accepted that the market value of timber is derivative of the value of the downstream products… Lumber manufacturers start with finished lumber prices and subtract their own, non-wood, production costs to determine the maximum amount they would be willing to pay for logs…"[608] For stumpage, the value of the standing tree is the value of lumber that can be produced from that standing tree minus the costs associated with producing lumber. Therefore, a stumpage price (*i.e.*, value) would be reflective of all harvesting and hauling costs, plus mill processing costs that are necessary to produce lumber. However, our benchmark prices are for delivered logs and, as noted above, based on the market dynamics of the timber market, the value of the logs (*i.e.*, the price a mill is willing to pay for a delivered log) is concerned with the lumber that can be produced from that log and any cost the *mill* will incur in producing said lumber. In this pricing equation (mill price for logs = pricing of finished lumber – mill production costs), and given the market power of downstream producers, the processing costs prior to the logs arriving at the mill gate are not considered. This means that a delivered log price would not already be reflective of the respondent's actual harvesting/hauling costs. Commerce's subtraction of certain costs from the log benchmark price to calculate a benchmark stumpage price, which we did in the *Lumber V* investigation and *Lumber V AR1 Prelim Results*, is only done once, and the inclusion of beetle-killed prices does not suddenly mean these costs are "double-counted," as the petitioner argues.

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[603] *Id*.
[604] *See Lumber V Final* IDM at 64, citing *HRS from India* IDM at 52.
[605] *See Lumber IV Final Results of 2nd AR* IDM at 82.
[606] *See, e.g.*, Petitioner Comments on IQRs at Exhibit 43. *See also* GBC IQR at Exhibits BC-AR1-ST-88, BC-AR1-ST-116, and BC-AR1-ST-165.
[607] *See* GBC IQR at Exhibit BC-AR1-ST-169 at 21.
[608] *See Lumber V Final* IDM at Comment 24, citing *Lumber IV First NAFTA Remand Redetermination* at 11-12.

The petitioner argues that record evidence does not support the price difference between green logs and beetle-killed logs as calculated by Commerce in the *Lumber V AR1 Prelim Results*. The petitioner highlights two pieces of record information to substantiate its claim: (1) a single table from a 2010 WOOD MARKETS report on the effect of the MPB;[609] and (2) a 2009 Forestry Innovation Investment report that relates to lumber recovery and value yields from one mill in late 2008.[610] Since the petitioner has only placed on the record a chart from the WOOD MARKETS report (and also a corrected version of the same chart), it is impossible for Commerce to evaluate the methodology of the report itself. However, the record also contains an affidavit from Mr. Russell Taylor, one of the authors of the 2010 WOOD MARKETS report, cautioning against using the report for adjusting a U.S. benchmark during the *Lumber V* investigation for various reasons.[611] For example, Mr. Taylor warns that the report is a snapshot of 2008 and that further degradation of the beetle-killed stands in ensuing years means that it should not be used in the investigation.[612] The record contains additional pieces of evidence to support Mr. Taylor's claim regarding how differences in the period of infestation can impact the value of beetle-killed timber. For example, the 2016 Montana mill study states that "{a}ffected trees can be harvested at any stage. However, in the green and red stages and potentially into the early gray stage, the trees retain some portion of their commercial value, depending on species and condition, allowing for financially feasible beetle-kill salvage harvests."[613] Mr. Taylor also warns that the analysis would be different in 2015 given the changes in the market between 2008 (when market prices were "near the bottom of the recession") and in 2015 when prices had risen.[614] This is even more true for the POR where prices have risen even further between the POI and POR.[615]

In its rebuttal brief, the petitioner asserts that Mr. Taylor's affidavit supports its argument that Commerce should not apply an MPB discount from Canadian to U.S. prices. However, Commerce reads Mr. Taylor's affidavit as arguing that we should not use the report he helped produce to *determine* such a discount. At the top of the affidavit, Mr. Taylor states that "for the reasons discussed below" it is "inappropriate to use our 2009 report in the manner that the COALITION attempt to do."[616] In the very next paragraph, Mr. Taylor states "{t}he COALITION is correct that there certainly is a significant discount associated with the value of MPB affected timber as compared to green timber."[617] Mr. Taylor states that he would be "reluctant to apply a MPB discount from Canada to U.S. log prices" and provides various reasons.[618] Mr. Taylor is discussing using the specific discount calculated in his report and the problems he sees in applying that discount to a green log U.S. benchmark price to determine a beetle-killed benchmark price. In discussing why his report should not be used, Mr. Taylor states, in part, that conversions between the scaling methodologies and grading systems "are complex" and "would need to be dealt with in attempting to apply findings from one side of the

[609] *See* Petitioner Comments on IQRs at Exhibit 45; *see also* a corrected version of the table at Exhibit 46.
[610] *Id.* at Exhibit 43.
[611] *See* GBC Comments on Petitioner's IQR Comments at Exhibit BC-AR1-RPR-2.
[612] *Id.* at 2 – 3.
[613] *See* GBC IQR at Exhibit BC-AR1-ST-169 at 16.
[614] *See* GBC Comments on Petitioner's IQR Comments at Exhibit BC-AR1-RPR-2 at 2.
[615] *See* GBC IQR at Exhibit BC-AR1-ST-151.
[616] *See* GBC Comments on Petitioner's IQR Comments at Exhibit BC-AR1-RPR-2.
[617] *Id.*
[618] *Id.*

border to the other."[619] Mr. Taylor is not arguing that Commerce should not attempt to calculate a beetle-killed benchmark, just that Commerce should not use his report to calculate that benchmark price.

Further, Commerce disagrees with the conclusions that the petitioner draws from a 2009 Forestry Innovation Investment report. This report undertakes an analysis of a sawmill in Princeton, British Columbia, from November and December 2008.[620] The petitioner cites to the finding that lumber recovery from beetle-killed trees at this mill were 1.5 percent less than recovery from green trees as support for its claim that Commerce did not need to adjust for beetle-killed logs because technology adaptation in the BC interior mills allowed mills to process beetle-killed logs efficiently. However, this same report notes that this was the fourth mill study that the authors had undertaken in the BC interior and the Princeton mill had by far the lowest lumber recovery percentage of the four mills.[621] The study authors cautioned that the results of the Princeton mill were likely different from the previous mills because the Princeton mill was located in an area of the southern interior where the MPB infestation had not been as severe as it was in the north-central region (where the other three mills the authors studied were located), but warned that the full impact of the MPB infestation would be felt in the area around Princeton in the near future.[622] As we have discussed above, the record demonstrates that timber in the early stages of a beetle infestation retain much more value than in the later stages when the timber dries out and develops cracks and splits.

The study authors also noted that the mill located in Quesnel, which had a beetle-killed lumber recovery factor 4.5 times worse than the Princeton mill, had comparable milling equipment to the Princeton mill. The authors speculated that the difference in lumber recovery between the mills was likely the result of the different log mixes at the two mills. As discussed above, the beetle-killed logs in Princeton were in better condition than the beetle-killed logs in Quesnel.[623] In the case of all four mills, the study authors found that the combined recovery and value loss between green and beetle-killed logs ranged from 15.6 percent (Princeton) to 29 percent (Quesnel).[624] This disparity in both the lumber recovery and value of green and beetle-killed logs in mills with similar equipment undercuts the petitioner's assertion that increased technology adoption in the interior of British Columbia would mitigate the difference between green and beetle-killed logs. In fact, the record indicates that lumber recovery is more impacted by the severity of the beetle infestation than mill improvements.

As the GBC notes, the record also contains the 2016 Montana Mill study, which is more contemporaneous than the two studies cited by the petitioner.[625] The results of this study show that there is an increase in cost from green logs to grey logs (*i.e.*, logs beyond the initial years of a beetle-infestation) for logging (a cost increase of 60 percent), loading and hauling (an increase of 61 percent) and sawmilling (a cost increase of 57 percent), while there is a 90 percent decrease

[619] *Id*.
[620] *See* Petitioner Comments on IQRs at Exhibit 43.
[621] *Id*. at Table 8.
[622] *Id*. at 1.
[623] *Id*. at 25.
[624] *Id*. at Table 8.
[625] *See* GBC IQR at Exhibit BC-AR1-ST-169.

in the stumpage price (*i.e.*, value of the standing tree) between green and grey timber.[626] Thus, we find the record demonstrates that beetle-killed timber has significantly lower value than green timber.

The petitioner contests Commerce's preliminary finding that the WDNR price survey did not include beetle-killed logs. The petitioner highlights Jendro and Hart's conclusion that the WDNR log survey prices "specifically and intentionally exclude prices for so called 'fall-down' sorts, such as logs with blue stain (beetle-killed), logs of non-preferred species or logs that do not meet a sawmill's preferred size specifications."[627] Jendro and Hart cite to one piece of evidence to back this claim, an email with a WDNR official. In this email, Jendro and Hart asked whether the WDNR log survey prices "do not include prices for blue-stained logs from beetle-killed timber."[628] The WDNR official responded, "To the best of my knowledge they do not."[629] We agree with the petitioner that Jendro and Hart's conclusion, described earlier in this paragraph, is overstated based on the question asked of the WDNR official in this email. However, Commerce's preliminary results did not repeat the same overstatement in its position. Commerce preliminarily determined that based on the statement from the WDNR official, "the WDNR log surveys did not include blue-stained pricing."[630] Commerce made no conclusion regarding fall-down sorts, logs of non-preferred species or logs that do not meet a sawmill's preferred size specification. Commerce simply concluded that beetle-killed prices were not included in the WNDR log price survey, which is consistent with the record evidence.

We agree with the respondents that beyond the WDNR email, pricing information on the record also supports the presumption that beetle-killed prices are not included in the WDNR log survey prices. The record contains beetle-killed/blue stained prices, in the form of mill price offer sheets, for eleven mills during 2018.[631] Only the mill offer sheets from one mill had a beetle-killed/blue-stained price above the lowest prices included in the WDNR survey during the same period.[632] Alternatively, there is no record evidence that Commerce is aware of that supports the contention that the WDNR survey prices include blue-stained pricing.

The petitioner argues that Jendro and Hart's overstated conclusion based on the WDNR email discussed above is a result of the authors' inconsistencies in how they defined and understood the factors underlying "blue-stained" pricing. The petitioner points to record evidence that the term blue-stained can refer to not only beetle-killed logs, but also ponderosa pine that is discolored by a fungus during certain periods of the year.[633] and Commerce's arguments against using the mill offer sheets in the *Lumber V Final*.[634] The petitioner also cites the United States' argument in the corresponding WTO proceeding that Jendro and Hart's collection of price quotes in the investigation were not representative and reliable. [635]

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[626] *Id*. at 21.
[627] *See* GBC IQR at Exhibit BC-AR1-ST-164 at 17.
[628] *Id*. at Exhibit BC-AR1-ST-187.
[629] *Id*.
[630] *See Lumber V AR1 Prelim Results* PDM at 27.
[631] *See* GBC IQR at BC-AR1-ST-165.
[632] *Id*.
[633] *Id*. at Exhibit BC-AR1-ST-185.
[634] *See Lumber V Final* IDM at Comment 25
[635] *See* Petitioner Rebuttal to GBC SQR5 at Exhibit 2 at para. 51.

Despite Commerce's agreement with the petitioner that Jendro and Hart's framing of the emailed statement from the WDNR official appears overstated, there is no record evidence that supports the petitioner's contention that there are concerns regarding Jendro and Hart's collection of mill log price quotes being representative and reliable. As Commence explained in the *Lumber V AR1 Prelim Results*, the respondents have provided a description of the methodology used to survey the mills in the U.S. PNW,[636] copies of communication with the mills,[637] and an estimate of the percentage of mills in the U.S. PNW that are covered by the blue-stained pricing on the record.[638] While the petitioner has raised arguments about the use of the mill quote prices (discussed directly below), it has not raised any specific claims or pointed to record evidence that calls into question the methodology used to collect the mill price quote sheets themselves.

The petitioner argues that the mill price quote sheets used to construct the beetle-killed benchmark price do not reflect market determined prices. As discussed in Comment 22, while Commerce's preference is for actual transaction prices, the record does not contain useable transaction prices for constructing our benchmark. We disagree with the petitioner that the WDNR survey and mill price quote sheets are not market prices. Commerce agrees with the Canadian Parties that the record evidence indicates the prices in the mill price quote sheets are prices that the mills are actually willing to pay for logs. As Mr. Harper of the Idaho Forest Group states in his affidavit, the offer sheets are for "logs that we are willing to purchase from log sellers."[639] The petitioner argues that, because Mr. Harper states that certain mills will pay less for blued logs because the mills do not process those log types, those offer prices are not real market prices because these prices would not reflect the value of the downstream products that another mill could make from those logs. We disagree with this contention. As Mr. Harper explains, even if a mill was not producing lumber using a certain type of log, the mill would still offer to buy the log (at a lower price than a mill that produces lumber from that type of log) and would ship the log to a mill that was producing lumber using that type of log.[640] While the lower price would likely discourage many sellers from selling that log type to that mill, there is no record evidence to support that this is not a market price available to a log seller. There are various scenarios that Commerce can envision where a seller may choose to take the lower price. For example, if a log seller has a small population of a particular log type that gets a lower price than at other mills within a larger sort, it may not be worth it to the log seller to transport that small volume of logs to a different mill.

The petitioner also raises concerns with the mill price quote sheets because, in some instances, the sheets simply refer to blue logs and do not specify whether these logs are blue because of a beetle infestation or some other category. We agree with the petitioner that the record supports the fact that these prices include not just beetle-killed logs, but also include blued ponderosa pine.[641] However, as the respondents have noted, on the sheets where there were separate lines

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[636] *See* GBC IQR at Exhibits BC-AR1-ST-164 and BC-AR1-ST-165; *see also* GBC SQR4 at Exhibit BC-AR1-STSUPP4-1.
[637] *See* GBC IQR at Exhibit BC-AR1-ST-165; *see also* GBC SQR4 at Exhibit BC-AR1-STSUPP4-3.
[638] *See* GBC IQR at Exhibits BC-AR1-ST-164 at n.39, BC-AR1-ST-183, and BC-AR1-ST-184; *see also* GBC SQR4 at Exhibits BC-AR1-STSUPP4-1 and BC-AR1-STSUPP4-2.
[639] *See* GBC IQR at Exhibit BC-AR-ST-185.
[640] *Id*.
[641] *Id*., "Some of our price offer sheets refer to 'blued' logs. These logs may include pine logs killed by the mountain pine beetle but could include logs that are defective in a number of ways. For example, ponderosa pine can turn blue from fungus if not properly watered in the summer months."

for blued lodgepole and/or spruce and for ponderosa pine, Commerce only used the prices for the beetle-killed logs (*i.e.*, lodgepole and spruce) to construct the benchmark.[642] For the price sheets that only had a line that referenced "blued pine" or "All Blued Pine" or "Blue Stain,"[643] there is no record evidence to suggest that this price was exclusive of lodgepole or spruce logs that were blued (*i.e.*, this was the price the mill was offering to pay for beetle-killed logs and blued ponderosa logs).[644] There is one mill price quote sheet used in the preliminary calculations that lists the category as "Blue Stain PP/WP."[645] Since this price does not include the two species for which the record contains significant evidence of beetle infestation (*i.e.*, lodgepole and spruce) we have removed this one mill price quote sheet from the beetle-killed benchmark price for these final results.[646]

Since the prices are from mill offer sheets and are not transaction prices, this is not an instance where the benchmark is comprised of transaction prices for non-beetle killed logs. However, since these are mill offer prices, there is not a discrepancy between beetle-killed and ponderosa prices in instances where there is a single blued price because the mill is *offering* the same price for both beetle-killed and ponderosa logs. This is not an average of prices, but what the mill is offering to pay when logs are brought to their mill gate.

The petitioner argues that an inconsistency in the Dual-Scale Study that the United States raised in its WTO arguments undermines the Canadian Parties' claim that beetle-killed timber is distinct enough from green timber to require its own benchmark. The argument cited by the petitioner in the United States' First Written Submission in DS533 at the WTO is as follows:

> Additionally, Canada's assertion, based upon the price quotes collected by its consultants, that beetle-killed timber are lower quality than Utility grade logs, is contradicted by other evidence in Jendro and Hart's report. For instance, as indicated in Table 14 of Canada's first written submission, the BC Dual Scale Study found that 72.6 percent of beetle-killed lodgepole pine were grade 2 under the BC quality guidelines, *i.e.*, sawlogs. Thus, according to Canada's proffered evidence, beetle-killed logs are typically of higher quality and price than utility-grade, non-sawlogs.[647]

As our understanding of the Dual-Scale Study and the record has developed and evolved during this first review, we find we now have a different interpretation of the record evidence than presented in this argument made at the WTO. The United States' argument did not fully recognize the nuance that a "sawlog" under the scaling systems in British Columbia and in the U.S. PNW differ and, as a result, the United States made a conclusion that conflated the classifications of two different scaling systems. While it may be true that a Grade 2 log in

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[642] *See* GBC IQR at Exhibit BC-AR1-ST-165 at 5 and 6; *see also* Canfor Preliminary Calculation Memorandum, and West Fraser Preliminary Calculation Memorandum.
[643] *See, e.g.*, GBC IQR at Exhibit BC-AR1-ST-165 at 4, 16, and 36.
[644] In fact, one of the offer sheets lists the category as "All Blued Pine," but the accompanying scaling instructions note "Blued Pine Species & Blued Spruce Species will be scaled as Blue 'BP.'" *See* GBC IQR at Exhibit BC-AR1-ST-165 at 20–21.
[645] *See* GBC IQR at Exhibit BC-AR1-ST-165 at 27.
[646] *See* Canfor Final Calculation Memorandum; *see also* West Fraser Final Calculation Memorandum.
[647] *See* Petitioner LER SQR at Exhibit 1 at para. 457 (internal citations omitted)

British Columbia is considered a sawlog under the rules used in British Columbia, that log may not be considered a sawlog under the rules used in the U.S. PNW. As Jendro and Hart explain, "the minimum standard of quality for the lowest Sawlog grade is higher (that is, it requires superior quality characteristics) than for sawmill grade logs in the BC Metric scale grading system."[648] Accordingly, there will be logs that are scaled as Grade 2 sawlogs in British Columbia that would not be considered sawlogs under the U.S. rules. While Jendro and Hart's comparison of the two scales is unsourced, the individual log measurements in the Dual-Scale Study, of which Commerce has never disputed the accuracy, confirm that Grade 2 logs in British Columbia (therefore considered sawlogs under that system) often scale as utility grade under the Scribner rules.[649] Our current understanding of the record evidence as developed since the WTO submission cited above is that the term "sawlog" means different things depending on the scale used to measure the log.

Finally, Commerce disagrees with the petitioner that the ratios used to calculate the beetle-killed benchmark in *Lumber V AR1 Prelim Results* were deeply flawed. The petitioner's assertions are either not supported by the record or can be corrected for the final results with record evidence.

To calculate respondent-specific green/dead logs ratios used in the preliminary results, Commerce relied on data from revised respondent-specific log condition and diameter tables that were submitted in response to a supplemental questionnaire.[650] The petitioner is incorrect in asserting that the revised tables[651] were: (1) based on data that did not originate from the mandatory respondent companies; and (2) that the "dead/dry" volumes in the revised tables first appeared in those revised tables. Record evidence demonstrates that the data in the revised tables were originally included in the GBC's initial questionnaire response (and the tables included in the initial questionnaire response included green and dead/dry volumes) and originated from Canfor and West Fraser's own internal reporting systems.[652]

The petitioner also highlights Jendro and Hart's response in GBC SQR3 in which Jendro and Hart state that they cannot provide an updated version of the tables requested by Commerce "because the underlying sources did not include dead logs in their calculations."[653] The petitioner argues that this response is evidence that the revised tables are unreliable.[654] The petitioner appears to misinterpret the meaning of Jendro and Hart's response in GBC SQR3. Jendro and Hart were stating that it was not possible for them to provide an updated version of Table II in Exhibits BC-AR1-ST-194 and BC-AR1-ST-195, as Commerce had requested in the supplemental question, because those tables were constructed using ratios from a publication relating to conversion factors that only used green logs in its calculation.[655] However, Jendro

[648] *See* GBC IQR at Exhibit BC-AR1-ST-94 at 25.
[649] *See* Dual-Scale Study at 37 – 56.
[650] *See* West Fraser Preliminary Calculation Memorandum at 6; *see also* Canfor Preliminary Calculation Memorandum at 5.
[651] *See* GBC SQR3 at Exhibits BC-AR1-STSUPP3-4 and BC-AR1-STSUPP3-5.
[652] *See* GBC IQR at Exhibits BC-AR1-ST-175 and BC-AR1-ST-176.
[653] *See* GBC SQR3 at Exhibit STSUPP3-2 at 23 – 24.
[654] *See* Petitioner June 8, 2020 Case Brief at 21.
[655] *See* GBC SQR3 at Exhibit BC-AR1-STSUPP3-2 at 23 – 24. Specifically, "…it is not possible to provide a version of the tables in Exhibits BC-AR1-ST-194 and BC-AR1-ST-195 that includes both green logs and dead logs."

and Hart did provide updated versions of the underlying condition and diameter log data,[656] originally provided to Jendro and Hart by Canfor and West Fraser.[657] Table II in Exhibits BC-AR1-ST-194 and -195 are concerned with calculating a conversion factor and are not relevant to the discussion here pertaining to the beetle-kill adjustment. However, Commerce did use the revised underlying condition and diameter data originally supplied by the respondents to calculate respondent-specific ratios of green-to-dead logs. In *Lumber V AR1 Prelim Results*, we used this ratio to allocate a portion of each respondent's stumpage purchase volumes to the appropriate benchmark. As described above, the revised tables are simply updated versions of the original underlying data that was placed on the record in the GBC IQR response.[658]

The petitioner also argues that the data in the revised tables are inconsistent with record evidence that appear elsewhere on the record. Commerce's analysis and position relating to this argument contains business proprietary information and can be found in the British Columbia Stumpage Memorandum.[659] For the reasons stated in that memorandum, Commerce disagrees with the petitioner and finds that record evidence continues to support Commerce's use of the respondents' log condition and diameter tables to calculate a green/dead ratio in the preliminary calculations. As discussed in the British Columbia Stumpage Memorandum, we are revising the green/beetle-killed ratios used in the preliminary results for each respondent. For Canfor, we are removing the ratios relating to species other than lodgepole pine and spruce. For West Fraser, Commerce determines that it is appropriate to accept the corrected information provided by West Fraser relating to its 2018 data.[660] It is within Commerce's discretion to accept corrective information to data on the record submitted before the final results.[661] Because it is evident that the error in West Fraser's original submission was due to a simple error in copying and pasting information, the magnitude of the error is small, and it is obvious and easily corrected, we find it appropriate to accept West Fraser's corrected data in these circumstances.

Comment 22: Whether Commerce's Selection of a Log Volume Conversion Factor was Appropriate

Petitioner's Comments[662]

- Record evidence demonstrates that U.S. government agencies use 4.525 as a standard conversion factor. The ITC and Commerce use this conversion factor in reporting U.S. exports of logs, and the USDA uses this conversion factor in its reporting on the forestry industry in the northwest region of the United States.

[656] *See* GBC SQR3 at Exhibits BC-AR1-STSUPP3-4 and BC-AR1-STSUPP3-5.
[657] *Id*. at Exhibit BC-AR1-STSUPP3-2 at 24, where it is stated "the underlying source data for Exhibits BC-AR1-ST-194 and BC-AR1-ST-195 have been resubmitted at Exhibits BC-AR1-STSUPP3-4 and BC-AR1-STSUPP3-5 to include both green and dead logs combined." (emphasis added).
[658] The only update to the revised tables was that the data for the green and dead/dry categories were cumulated and added to the tables. *See* GBC IQR at Exhibits BC-AR1-ST-175 and -176; *see also* GBC SQR3 at Exhibits BC-AR1-STSUPP3-4 and -5.
[659] *See* British Columbia Stumpage Memorandum at 9-12.
[660] *See* West Fraser June 25, 2020 Rebuttal Brief at Exhibit WF-AR1-BCST-33.
[661] *See Timken*, 434 F. 3d at 1353 ("Commerce is free to correct any type of… error—clerical, methodology, substantive, or one in judgment—in the context of making… {a} determination, provided that the {party} seeks correction before Commerce issues its final results and adequately proves the need for the requested corrections.")
[662] *See* Petitioner June 8, 2020 Case Brief at 32 – 42; *see also* Sierra Pacific June 25, 2020 Rebuttal Brief at 15-16.

- In the *Lumber V AR1 Prelim Results*, Commerce relied on information submitted by the GBC immediately prior to the issuance of the preliminary results to reject the standard conversion factor used by the ITC and the USDA. Contrary to Commerce's findings, the GBC's own evidence (*e.g.*, the 2002 USFS study by Henry Spelter) demonstrates that a factor of 4.53 m3/MBF has become established as the standard conversion factor. A statement from Mr. Spelter, an economist from the USDA, acknowledging that 4.53 is the established conversion factor should be conclusive for Commerce's fining of a definitive U.S. government standard.
- In addition to the U.S. government agencies, *Random Lengths*, the leading industry publication for the softwood lumber and forestry industries also uses a conversion factor of 4.52 m3/MBF.
- USDA explained that it relied on a standard from the United Nations in deciding to use 4.53 m3/MBF. USDA has used the standard conversion factor of 4.525 m3/MBF for more than 50 years when reporting on the U.S. northwest forestry industry. The length of time that the USDA has used this established conversion factor speaks to its reliability and consistency.
- It is arbitrary for Commerce to use a standard conversion factor for the purposes of tracking U.S. log export for U.S. trade statistics, but to reject this same conversion factor in this proceeding as inappropriate.
- Commerce's use of an adjusted conversion factor prepared specifically for purposes of litigation contradicts its objective seeking "consistency, predictability, and simplicity" in the use of industry standards.
- Mr. Spelter's conclusion in the 2002 USFS report was that there was a need for more consistent and transparent log measurement system for U.S. timber markets and that confusion can result and costs can ensue from use of the present opaque system. Mr. Spelter's conclusion echoes Commerce's rationale in choosing the IRS's AUL tables because they are consistent, predictable and simple industry standard, as opposed to data submitted by interested parties, which by its nature is partial.
- Commerce's rationale for rejecting the 4.525 m3/MBF conversion factor in *Lumber IV* was that "this figure is not actually used to perform calculations by most of the cited sources, but is provided as a point of reference."[663] However, evidence on the record of this proceeding demonstrates that the factor is used to actively track the export of U.S. logs to Canada and throughout the world and is used by various professionals in the industry.
- Commerce's preliminarily determination in this review relied on GBC's analysis to find that the origin, methodology, assumptions, and the scale used to calculate the 4.53 m3/MBF conversion was unknown. However, the record demonstrates that the 4.53 m3/MBF conversion factor originated from a UN committee established to harmonize reporting of international trade data after World War II.
- Jendro and Hart criticize the standard conversion factor because it is outdated due to log diameter changes over time, citing to the 2002 USFS study. However, Jendro and Hart ignore Mr. Spelter's finding that improvements in sawmill technology lower the conversion factor. Record evidence demonstrates that, due to technological improvements, the conversion factor has not increased significantly over time.
- In the *Lumber V AR1 Prelim Results*, Commerce made an adjustment to the 2002 USFS conversion factor based on ratios proposed by Jendro and Hart. Although Commerce stated that its basis for the adjustment was from an analysis written by a UN data scientist, the adjustment itself was based on calculations from Jendro and Hart.

[663] *Id*. at 36, citing *Lumber IV Final* IDM at 148.

- This adjustment accounts for one characteristic of logs (*i.e.*, diameter) without accounting for other characteristics that all parties agree affect the conversion factor (*i.e.*, length, taper, defect). Commerce should not use an adjustment created expressly for purposes of litigation intended only to benefit the respondents.
- Jendro and Hart provided average log diameters for the POR and proposed different adjustment ratios based only on four diameter sizes of logs. However, Jendro and Hart failed to provide ratios to adjust for other characteristics that dramatically affect the conversion factor despite having access to such information.
- Fonseca's analysis expressly states that its categories were grouped into four length and four diameter classes, but Jendro and Hart chose to provide only one length category. It is undisputed that the length of log sizes can significantly impact the conversion factor.
- Jendro and Hart's decision to provide Commerce with only one length category despite the Fonseca's analysis containing four length categories demonstrates their bias towards the respondent parties, and thus, their study's unreliability for the Commerce's use as an adjustment ratio.
- To provide an adjustment based on diameter, without accounting for factors such as length and taper, is another example of the selectivity and unreliability of the Jendro and Hart adjustment.

GBC/BCLTC's Comments[664]

- Commerce's concern with potential bias in the site selection methodology of the Dual-Scale Study reflects a misunderstanding of the nature and purpose of the study. The purpose of the study was to provide a suite of robust estimates of m3/MBF conversion factors for each of the principal species, grade, and condition categories of logs in the BC interior harvest so that those conversion factors could then be applied to the mandatory respondents' specific mix of volumes by species, grade, and condition during the period of review. Therefore, the site selection in the study needed to be purposive (*i.e.*, not random) in order to ensure that the study would capture a sample of logs in each of the categories of species, grade, and condition present in the BC interior.
- The purposive selection of the Dual-Scale Study sites was done to ensure that the study would capture a sufficient sample of logs in each of the already known categories of species, grade, and condition that make up the total BC interior harvest. By contrast, a random sample of scale sites could have omitted sites with sufficient volumes of beetle-killed logs or could well have omitted sites with sufficient volumes of green logs, or any number of categories.
- Data in the 2016 study and the 2018 update allow Commerce to confirm that the sites selected did provide a representative sample. A comparison of dual-scale data with the aggregate characteristics of the logs consumed by sawmills in the BC interior demonstrates that dual-scale was representative of the log characteristics of the primary species of the BC interior harvest.[665]
- Commerce's adjustment of the 2002 USFS Study's conversion factor to account for the differences between the USFS Product Cubic Scale and the BC Metric Scale is necessary and important, but Commerce's adjustment does not account for the fact that the Fonseca adjustment did not include dead timber.

[664] *See* GBC June 8, 2020 Vol V Case Brief at 32 – 34.
[665] *Id.*, *citing* GBC IQR at Exhibits BC-AR-ST-164 at Tables 9a, 9b, 10a, 10b, 11a, 11b, and Exhibit BC-AR1-ST-168.

- While Commerce recognized it needed to include U.S. PNW prices for dead logs in its benchmark because of the significant volume of dead lodgepole pine and spruce harvested in the BC interior, it must address the fact that Mr. Fonseca's conversion factors do not account for a significant proportion of dead logs harvested in the BC interior, which undisputedly have much higher m3/MBF conversion actors than logs cut from live trees.
- Commerce must address the fact that the Fonseca adjustment does not account for a significant portion of the logs actually harvested in the BC interior during the POR that were cut from dead trees. If Commerce refuses to use the conversion factors for beetle-killed logs in the Dual-Scale Study, then it must develop an alternative basis to account for the logs harvested in the BC interior that have much higher m3/MBF conversion factors than logs cut from live trees.

West Fraser's Comments[666]
- Neither the petitioner nor Commerce has offered any persuasive criticisms of the Dual-Scale Study conducted by Jendro and Hart.
- The Dual-Scale Study addresses the different conversion factors that should apply for green and dead logs. The Dual-Scale Study calculated an accurate overall U.S. PNW-to-BC conversion factor that accounts for all relevant differences between U.S. PNW and BC stumpage.
- As explained in the GBC/BCLTC Case Brief, Commerce's criticism of the Dual-Scale Study (the selection of scaling sites) is an important feature of the study, not a flaw. The composition of species and grades of timber received at any particular site could not affect the validity of the analysis because the study calculated different conversion factors for different grades and species.
- The only way to obtain a reliable conversion factor to convert the benchmark prices to dollars per cubic-meter is to conduct a dual-scale study measuring the same logs using each of the relevant scaling systems. Jendro and Hart have performed and provided such a study and placed it on the record of this review. Neither the petitioner nor Commerce has offered persuasive criticisms of this study.
- In *Lumber V AR1 Prelim Results*, Commerce recognized the need to adjust the 2002 USFS conversion factor to account for variations between the U.S. Cubic Scale and the BC Metric Scale by using ratios contained in a 2005 publication from Mr. Fonseca to reflect more accurately measurements under the BC Metric Scale.
- This Fonseca adjustment did not address the different conversion factors that should apply for green and dead logs, consistent with Commerce's adoption of a separate benchmark for dead logs. Jendro and Hart's Dual-Scale Study does account for dead logs in its conversion factors.
- Despite Commerce's preliminary finding that the Dual-Scale Study's site selection methodology is inherently more prone to bias, the composition of species and grades of timber received at any particular scaling site could not affect the validity of Jendro and Hart's analysis because Jendro and Hart calculated different conversion factors for different grades and species.
- If Commerce continues to use U.S. PNW logs as the benchmark for its calculation, it should use the Dual-Scale Study's conversion factors when deriving its benchmark.

Petitioner's Rebuttal Comments[667]

[666] *See* West Fraser June 8, 2020 Case Brief at 27 – 30.
[667] *See* Petitioner June 25, 2020 Rebuttal Brief at 53 – 58.

- The Canadian Parties have not acknowledged that the board feet to cubic meter conversion is relevant only for converting U.S. logs from MBF to cubic meters, but not for BC interior logs from cubic meters to MBF. The only dual-scale study that would be relevant to Commerce's analysis would be one conducted using U.S. logs.
- There are two conversion factors on the record that are based on the measurement of U.S. logs: (1) the 2002 USFS Spelter study and (2) a dual-scale survey of logs scale volumes from Oregon and Idaho. Commerce should not use a conversion factor constructed from entirely BC logs.
- The Canadian Parties do not deny there is a selection bias in its methodology, but instead assert Commerce misunderstands the nature and purpose of the study. There is no misunderstanding; the Dual-Scale Study is based on 33 sites selected by Jendro and Hart from the investigation, which were largely revisited for the 2018 update.
- Given the significant overlap in survey sites, and the "accuracy" and "representativeness" touted by the Canadian Parties of the Dual-Scale Survey, the results should be identical year-over-year. However, the results of the report illustrate the resulting conversion factors are heavily influenced by the type of logs selected by the survey. By altering the mix of "sawlog" and "utility" logs measured, the GBC significantly manipulated the conversion factor.
- Some logs that are graded as utility under the Scribner scale are assigned a volume of zero, while the same logs would have a positive volume under the BC Metric scale. Logs that scaled as having zero volume under the Scribner scale were included in the calculation of the conversion factors, thus artificially inflating the m3/MBF conversion factors derived. Logs that are scaled with an MBF volume of zero are sold by the ton rather than by MBF.
- As the WDNR price surveys make clear, U.S. sawmills that purchase logs classified as "utility" grade under the Scribner system pay for those logs, but they report their prices for these logs by the ton rather than by MBF.

GBC/BCLTC's Rebuttal Comments[668]

- The petitioner continues to cite Henry Spelter for the proposition that 4.525 m3/MBF is the "established" conversion factor for making U.S. log data compatible with data from the rest of the world, while refusing to acknowledge that Spelter made this observation in the context of explaining why it is not appropriate to use this conversion factor ubiquitously.
- The petitioner contends Commerce's observation about the origin, methodology, assumptions and scales used in calculating of the 4.525m3/MBF factor is unsupported because the *origin* of the conversion factor can be identified. The petitioner does not suggest, however, that *anything* is known about the methodology, assumptions, or scales used to calculate this 4.525 m3/MBF factor.
- The petitioner's contention that the Fonseca adjustment used by Commerce was created for the purposes of litigation is unfounded. While Jendro and Hart did provide the mechanics of the Fonseca adjustment based on the ratios calculated by Fonseca, Commerce did its own calculations using its own analysis of the diameter distribution for all logs.
- Jendro and Hart suggested that Commerce use the "all lengths" ratios because the record data on the volume of logs in the BC interior in each length class during the period of review have limitations. Namely, that the data are limited to grade 1 and 2 logs and are not species specific.

[668] *See* GBC June 25, 2020 Vol. I Rebuttal Brief at 13 – 17.

- Record evidence provides that this was the more conservative option. Despite the data limitations, the data are nonetheless broadly representative of the volumes of logs in each length class during the POR. If Commerce used the volume ratios most appropriate for the log length of the BC interior harvest during the POR, the result would have been higher m3/MBF conversion factors than Commerce preliminarily calculated. Therefore, Jendro and Hart's suggestion to use the "all lengths" ratios was the more conservative suggestion and could not in any respect be considered "bias{ed} towards the respondent parties."

Commerce's Position: In the *Lumber V AR1 Prelim Results*, Commerce used a conversion factor based on a 2002 USFS study.[669] The selection of the 2002 USFS study as the basis for the conversion factor was consistent with Commerce's choice of a conversion factor in *Lumber V Final*,[670] *Lumber IV*,[671] and *SC Paper Expedited Review*.[672] In the *Lumber V AR1 Prelim Results*, Commerce adjusted the 2002 USFS conversion factor to account for the differing scales used in the 2002 USFS study and in this review.[673] As explained below, after evaluating the parties' arguments, we continue to find that it is appropriate to use this same conversion factor, as adjusted, for these final results.

The Canadian Parties urge Commerce to use the conversion factors contained in the updated version of the Dual-Scale Study placed on the record of this review. Commerce rejected this study in the *Lumber V AR1 Prelim Results* but stated that we would continue to investigate the methodology of the Dual-Scale Study prior to these final results. As we explained in *Lumber V Final*:

> {i}n instances where parties have presented a self-commissioned study specifically in anticipation of an investigation for the Department's consideration, the Department must carefully examine the study to ensure that it is based on sound methodologies that guard against any study bias. That is, the Department must evaluate whether any study or report placed on the record of a proceeding by an interested party is free of data and conclusions that were tailored to generate a desired result. Therefore, the essential issue here is whether the BC Dual Scale Study produced conversion factors that were based upon a valid sampling methodology.[674]

Since the issuance of the *Lumber V Final* on November 1, 2017, the GBC was provided with more than adequate notice to produce a study based on a valid sampling methodology that would guard against study bias. After examining the numerous Jendro and Hart reports and responses relating to the Dual-Scale Study on the record of this review,[675] we find that the GBC did not sufficiently address the concerns that were explicitly set forth in *Lumber V Final*.[676] We agree

[669] *See Lumber V AR1 Prelim Results* PDM at 30 – 31.
[670] *See Lumber V Final* IDM at 61.
[671] *See Lumber IV Final Results of 2nd AR* IDM at 14.
[672] *See SC Paper from Canada – Expedited Review – Preliminary Results* (unchanged in the final results).
[673] *See Lumber V AR1 Prelim Results* PDM at 31 – 32.
[674] *See Lumber V Final* IDM at 59.
[675] *See* GBC IQR at Exhibits BC-AR1-ST-163 and BC-AR1-ST-164; GBC SQR2 at Exhibit BC-AR1-STSUPP2-1, GBC; and GBC SQR5 at Exhibit BC-AR1-STSUPP5-1.
[676] Commerce also raised concerns that the Dual-Scale Study was only based on trees in British Columbia and not in Washington state. On this record, we have a Washington state-priced benchmark that is in board feet, and we need

with the GBC that converting log volumes from board feet to cubic meters is complex. Commerce also notes that any selected conversion factor could potentially have a significant impact on any calculated stumpage subsidy rate for British Columbia. That is, in part, why the conversion factor calculated by the GBC must be based on a valid sampling methodology free from potential study biases. The GBC argues that without its self-selection of BC stands, a study based on a valid random sampling methodology could possibly miss necessary bins.[677] However, the GBC provided no analytical data or third-party peer-reviewed analysis to support its contention that a valid random sampling methodology would produce an invalid conversion factor.

While the purposive sampling technique used by the study's authors, which is also referred to as judgmental sampling techniques, are used by independent researchers, Commerce stated in the *Lumber V Final* that we must carefully guard against selection bias when evaluating any study placed on the record by an interested party. The GBC argues that it was appropriate for the study authors and BC Ministry officials to determine which scale sites should be selected.[678] Although the fact that the site selection is not probability-based does not in itself invalidate the GBC's methodology, the study's authors must clearly explain the criteria underlying their selection. Jendro and Hart's explanation of the methodology they follow to select sites is insufficient in the sense that they do not explain the reasons for the variation in sampling frequency in the same location across different time series. For example, in the 2016 study,[679] there were 33 sample loads selected. From the Prince George location, the authors selected four sample loads totaling 921 logs. However, from the Houston location, they chose five sample loads totaling 1,590 logs. The number of selected sample loads, their location, and the total number of logs examined, appear arbitrary.

In the 2018 update to the study,[680] moreover, the GBC increased the total number of sample loads from 33 to 39. However, the GBC does not explain why it selected six additional sample loads. Therefore, GBC's purposive (*i.e.*, not random) and judgment-based selection methodology is not fully explained and the extent to which it protects against bias remains unclear.

Furthermore, an interested party such as the GBC in this proceeding is not a disinterested party. Rather, it is a party that is arguing for a desired outcome favorable to its interest and the interests of its softwood lumber industry. Therefore, the self-selection of the scale sites by the GBC is fundamentally inconsistent with our *Lumber V Final* in which we stated that Commerce must evaluate whether any study or report by an interested party is free of data and conclusions that were tailored to generate a desired (biased) result. Self-selection by an interested party is fundamentally inconsistent with that principle. Accordingly, we continue to find that the Dual-Scale Study does not represent a source of viable conversion factors for this instant review.

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to convert that price to cubic meters. The Washington state price in cubic meters would be based upon the cubic meters of the tree in Washington state, not British Columbia. *See Lumber V Final* IDM at 60–61.

[677] *See* GBC SQR5 at Exhibit BC-AR1-STSUPP5-2 at 30.

[678] *Id.* at 31.

[679] *See* Dual-Scale Study at Table 2a.

[680] *Id.* at Table 2b.

Finally, we would note that in the instances where the statute refers to the use of samples, Congress explicitly provided Commerce with the sole authority to determine what constitutes a statistically valid sample.[681]

The petitioner also disagrees with Commerce's continued use of the 2002 USFS study's conversion factor and argues Commerce should instead use a conversion factor of 4.525 m3/MBF because this is the widely recognized standard conversion factor used by various U.S. government agencies, leading industry publications, and forestry officials in their day-to-day operations. The petitioner also contends that a standard conversion factor would satisfy Commerce's objective of seeking "consistency, predictability, and simplicity" by using a widely recognized industry standard. Commerce does not agree with the petitioner's arguments and continues to find that the "standard" conversion factor is not appropriate for our purposes in this review.

Commerce's LTAR calculation requires a conversion factor because the benchmark, U.S. PNW delivered log prices, and the respondents' stumpage prices are measured using different volumetric scaling methodologies. As we have previously explained, Commerce is seeking a conversion between the Scribner Decimal C short log scale and the BC Metric scale.[682] A standard conversion between thousands of board feet and cubic meters where there is no evidence that the conversion uses either of the specific scales at issue in this review is not an appropriate conversion choice if the record contains an alternative unbiased conversion that concerns the applicable scaling methodologies.

A standard conversion factor may be appropriate for tracking and estimating trade flows because a standard factor provides simplicity and consistency. Simplicity is important for tracking trade flows because logs are measured using various volumetric scaling methodologies with their own assumptions. For example, in Washington state, coastal logs are measured using the Scribner long log scale, while logs in the inland portion of the state are measured using the Scribner short log scale.[683] Since there are different assumptions embedded in the two versions of the Scribner scale,[684] in order to accurately convert from board feet to cubic meters, you need to know which version of the Scribner scale was used measure the logs in board feet.[685] However, it would become very complicated to track trade flows if Commerce, the USITC, USDA or *Random Lengths* attempted apply a scale-specific conversion factor on U.S. export data because they would also then require information on the scale used to determine the volume of the logs at the port of exportation. While a standard conversion factor may not provide as precise of a calculation as one applicable to the scales involved, a standard conversion factor makes sense for trade flows because it provides a consistent and simple way to convert volumes when the

[681] *See* sections 777A(b) and 777A(e)(2)(A)(i) of the Act.
[682] *See Lumber VAR1 Prelim Results* PDM at 31 – 32.
[683] *See* GBC IQR at Exhibit BC-AR1-ST-94 at fn. 37.
[684] *Id.* at Appendix A at 20 – 21. *See also* Fonseca Publication at 7 ("The rounding rules utilized for diameters can also create substantial differences. Both of the Scribner log rules use inches as a unit. Scribner Long Log truncates diameters (13.99" rounds down to 13"), while Scribner Short Log and most other log scales use conventional rounding (13.51" rounds up to 14").") and 48 ("Short Log Scribner also known as 'Eastside Scribner' is quite different from 'Long Log' Scribner in that, amongst other differences, the maximum scaling length of a log segment is 20'.").
[685] *See* Fonseca Publication at Table A.1.M. The Fonseca Publication demonstrates that the same logs measured in the Scribner short and log scales produce different volumetric results.

volumes include volumetric calculations under different scales. Consistency and simplicity are not our primary concern in trying to identify the correct conversion factor for our calculations. Precision and impartiality are more important characteristics for this proceeding.

The petitioner urges Commerce to evaluate its choice of a conversion factor in the same way it chose IRS schedules as the appropriate source to determine the AUL period across all our proceedings. We do not think Commerce's rationale for identifying a consistent choice for determining the AUL across all our proceedings is comparable to choosing a conversion factor that is applicable to the case facts of this instant review. In choosing the IRS tables as the source for determining industry-specific AULs, Commerce sought a source that could be used consistently across every proceeding, no matter the industry or country: "In our view, the IRS tables method offers consistency, predictability, and simplicity, and presents a reasonable substitute for the AUL of assets in specific industries around the world."[686] In contrast, the conversion factor we seek here is only applicable to the specific case facts of this instant review. The conversion factor should, as best as the record allows, correspond to the benchmark data and the goods purchased by the respondents in this specific review. Commerce's recent proceedings involving volumetric conversions of logs from British Columbia and the U.S. PNW demonstrate that we have a preference for a conversion factor that applies to the facts of the specific proceeding. In *Groundwood Paper from Canada*, Commerce needed to convert between U.S. PNW log benchmark prices measured in board feet and log purchases measured in cubic meters. In that case, the responding companies were located on the BC coast and, accordingly, Commerce used benchmark prices from the U.S. PNW coastal states.[687] Commerce used a conversion factor from the 2002 USFS study that converted the volume from Scribner long log scale to cubic meters.[688] In this review, since the respondent companies are located in the BC interior, the U.S. PNW benchmark price is based on inland logs, which are measured using the Scribner short log scale. Adoption of the petitioner's argument for a standard conversion factor would mean that Commerce should use the same standard conversion factor in both *Groundwood Paper from Canada* and in this proceeding despite the different scales used to measure the volume of the U.S. PNW benchmarks.

Throughout its arguments for the selection of the "standard" conversion factor, the petitioner's case brief repeatedly cites to the very 2002 USFS study[689] from which Commerce selected the conversion factor used in the *Lumber V Final*[690] and, again, as the starting point for the conversion factor in the *Lumber V AR1 Prelim Results*.[691] The 2002 USFS study was authored by a USFS economist, Henry Spelter. The petitioner's reliance upon and reading of Mr. Spelter's 2002 USFS study is not persuasive. The petitioner's case brief selectively quotes the 2002 USFS study, disregards the context of the Mr. Spelter's analysis, and attempts to argue for findings that are in direct conflict with Mr. Spelter's findings. We think it is useful to reference the following paragraphs from which the petitioner has selectively quoted Mr. Spelter's 2002 USFS Study to guide our discussion of the petitioner's arguments.

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[686] *See CVD Preamble*, 63 FR at 65396.
[687] *See Groundwood Paper from Canada Final* IDM at Comment 30.
[688] *Id*.; *see also* GBC IQR at Exhibit BC-AR1-ST-178 at 3. The 6.76 mbf/m3 conversion factor discussed in the *Groundwood Paper from Canada Final* is the long log, coastal conversion calculated in the 2002 USFS study.
[689] *See* GBC IQR at Exhibit BC-AR1-ST-178.
[690] *See Lumber V Final* IDM at Comment 19.
[691] *See Lumber V AR1 Prelim Results* PDM at 30 – 31.

> Beyond the issue of softwood lumber trade is the problem of how to harmonize trade data where different scaling systems are employed. Analysts have used "standard" conversion factors to make North American (now exclusively U.S.) data compatible with data from the rest of the world, and over time, a factor of 4.53 m3 /MBF has become established. However, details on its provenance, the embedded assumptions on log size, and the type of scale used have been lost. A factor of 4.53 can be related to specific diameters in all currently used U.S. log scales, but those diameters are considerably larger than the average log sizes prevalent today. The results here show that a conversion factor of 4.53 was reasonably close for West Coast logs scaled by the Scribner system prior to the 1980s, when a big share of logs consisted of large-diameter old growth trees. Since then, however, change to a second growth timber base has made that standard conversion factor too low.
>
> The appropriateness of a standard conversion factor then has to be weighed according to the purposes for which it is used. For illustrating short-term trends in trade, the use of a standard factor may do little harm. However, longer term trends can become considerably biased. And for situations involving valuations requiring precision, the use of a standard factor irrespective of the particular circumstances is least appropriate. The foregoing illustrates the need for a more consistent and transparent log measurement system in U.S. timber markets. Foresters have long recognized shortcomings in the present system and have been advocating a change to cubic volume measurements. The results here underscore the confusion that can result and the costs that can ensue from the use of the present opaque scaling systems.[692]

The petitioner argues that since Mr. Spelter recognizes that 4.53 has become established as the "standard" conversion factor,[693] this should be conclusive for Commerce to find that 4.53 is a definitive U.S. government standard. Ignoring the fact that Commerce, as explained above, does not find that the use of a standard is appropriate in this review, if Commerce agreed with the petitioner's argument, then we would be ignoring Mr. Spelter's analysis relating to why he believes the use of the standard conversion factor is not appropriate. Later in the same paragraph that the petitioner quotes, Mr. Spelter finds that because of changing forest characteristics the "standard" conversion factor was "too low" for coastal logs.[694] In the subsequent paragraph, Mr. Spelter is even more definitive when he states that in situations involving valuations requiring precision, "the use of a standard conversion factor irrespective of the particular circumstances is *least* appropriate."[695] When Mr. Spelter describes situations involving valuations requiring precision, he is referring to the very exercise we are undertaking in this review. While Mr. Spelter was referencing the *Lumber IV* proceeding in his 2002 study, he was referring to the need for accuracy in this type of calculation because, as he states in the introduction to his report, the differences in a conversion factor in this type of exercise "are not inconsequential, because they

[692] *See* GBC IQR at Exhibit BC-AR1-ST-178 at 5.
[693] *Id*.
[694] *Id*.
[695] *Id*. (emphasis added)

represent a substantial amount in potential yearly duties on Canadian lumber."[696] Since the petitioner argues that the statement from Mr. Spelter that 4.53 is recognized as the "standard" conversion and, thus, should be "conclusive for Commerce's finding," then under the petitioner's reasoning, Mr. Spelter's finding that the standard conversion factor is the least appropriate conversion for use in our calculations should also be conclusive.

The petitioner quotes the 2002 USFS study a second time in arguing that Commerce should use the standard conversion factor because, it argues, the conclusion echoes Commerce's stated desire for a consistent, predictable, and simple industry standard when it opted for the IRS' AUL tables, and Commerce should abide by those characteristics and choose the standard conversion factor because it is the only consistent, transparent, and simple industry standard in this proceeding. The passage that the petitioner quotes from the 2002 USFS study is Spelter's conclusion for the "need for a more consistent and transparent log measurement system in U.S. timber markets…The results here underscore the confusion that can result and the costs that can ensue from the use of the present opaque scaling systems."[697] The petitioner has once again selectively quoted the 2002 USFS study and assigned a finding to the study that it does not make. Directly after finding that a standard conversion factor is the least appropriate factor to use in this type of proceeding, the full quote from the study without the ellipses is:

> The foregoing illustrates the need for a more consistent and transparent log measurement system in U.S. timber markets. Foresters have long recognized shortcomings in the present system and have been advocating a change to cubic volume measurements. The results here underscore the confusion that can result and the costs that can ensue from the use of the present opaque scaling systems.[698]

Mr. Spelter's conclusion about needing a more consistent and transparent measurement system is not referring to a conversion factor, but to the scaling methodologies themselves. The middle sentence that the petitioner removed from its quotation clarifies that Mr. Spelter is discussing moving from the opaque calculations of the Scribner long and short scales used in the U.S. PNW to a cubic measurement system that is more in line with the rest of the world. Mr. Spelter's conclusion is that the U.S. industry's continued use of scales that measure logs in board feet is causing confusion and resulting in additional costs. Mr. Spelter is not advocating for the use of a standard conversion factor considering in the very same paragraph he finds that it would be the least appropriate conversion factor to use.

As Mr. Spelter explains in the introduction of the 2002 USFS study, the rationale for his analysis was to determine whether conversion factors available at that time were "appropriate to translate present-day Washington log prices into cubic terms."[699] As we discussed above, Mr. Spelter determined that the use of the "standard" conversion factor was not appropriate for our purpose, but he did state that the only time a standard conversion factor should be used is to illustrate short-term trends in trade.[700] Even in that instance, Mr. Spelter did not offer an endorsement of a

[696] *Id*. at 1.
[697] *See* Petitioner June 8, 2020 Case Brief at 35 – 36 (emphasis and omission in the case brief).
[698] *See* GBC IQR at Exhibit BC-AR1-ST-178 at 5.
[699] *Id*. at 1.
[700] *Id*. at 5.

standard conversion factor, only that using a standard conversion "may do little harm."[701] Mr. Spelter also determined that the standard conversion factor was not appropriate for measuring long-term trends because using a standard conversion factor could lead to results that may be "considerably biased."[702] So while using a standard conversion factor may be appropriate for use in measuring trade flows, the very purpose for which the U.S. government agencies cited by petitioner use the "standard" conversion factor, it does not mean it is appropriate for our purposes. As a U.S. government economist and log measurement expert has concluded, it is not arbitrary for the U.S. government to use a calculation for a purpose that requires less precision (*i.e.*, tracking trade data), and a different calculation when it requires more precision (*i.e.*, converting log prices from a specific scaling methodology into log prices that reflect an entirely different scaling methodology).

The petitioner also challenges that Commerce's preliminary determination to reject the standard conversion factor was not appropriate because Commerce "relied on the GBC's analysis to find that 'even industry experts are not aware of the origin, methodology, assumptions, or even the scale used in calculating this conversion factor.'"[703] At the end of this section of its case brief, the petitioner expresses disapproval with Commerce for relying on expert reports prepared expressly for purposes of litigation in reaching its preliminary determination that the "standard" conversion factor should not be used in our calculation.[704] Despite the petitioner's assertion, Commerce did not rely on analysis done by the GBC to reach our preliminary determination, but instead lifted the language we based our determination on, almost word-for-word, from the 2002 USFS study.[705] In fact, we cited to the 2002 USFS study for our rationale and even reproduced two sentences directly from the 2002 USFS study in that very footnote.[706] There is not one citation in the paragraph relating to the standard conversion factor that references expert reports prepared by any of the Canadian Parties.

We agree with the petitioner that the record demonstrates that Mr. Spelter corrected his statement on the unknown origin of the "standard" 4.53 conversion factor by identifying the origin of the factor in a 2003 USFS publication.[707] Mr. Spelter writes that after World War II, a UN committee attempting to harmonize international trade data "determined 4.53 m3 per thousand board feet was a fairly representative factor for the size of saw and veneer logs typical for that time."[708] Later in that same paragraph, Mr. Spelter states that "this outdated factor should be modified periodically to reflect changes in the resource," but notes the factor has remained unchanged.[709] While the record does identify the committee that developed the "standard" conversion factor, the record remains silent as to the methodology, assumptions, and scales used to calculate the conversion factor. As we have explained above, these details matter in trying to evaluate whether a conversion factor is appropriate for converting between the benchmark and purchase data at issue. The record contains no information on which scales were used to develop

[701] *Id*.
[702] *Id*.
[703] *See* Petitioner June 8, 2020 Case Brief at 37, citing *Lumber V AR1 Prelim Results* PDM at 31.
[704] *Id*. at 38 – 39.
[705] *See Lumber V AR1 Prelim Results* PDM at 31.
[706] *Id*. at fn. 170.
[707] *See* GBC IQR at Exhibit BC-AR1-ST-189 at 4.
[708] *Id*.
[709] *Id*.

the "standard" conversion factor for either the board foot or cubic meter measurements. Alternatively, the 2002 USFS Study calculates separate factors for the Scriber long log and Scribner short log scales conversion into cubic meters.[710] The 2002 USFS study is the only conversion factor on the record, free from bias, that demonstrates a direct relationship to the scales used to measure the benchmark data. As discussed below, in areas where the 2002 USFS study has come up short in terms of precision, Commerce has attempted to make adjustments as useable record evidence allows to correct for those shortcomings.

Finally, the petitioner contends that Commerce ignored record evidence that demonstrated that "because of…technological improvements, the conversion factor has not increased significantly over time."[711] The petitioner's citation for this record evidence was a dual-scale survey of logs in Oregon and Idaho.[712] Nowhere does the two-page dual-scale survey mention, or even imply, technological advances.[713] Commerce assumes that the petitioner is arguing that because the results of this survey produced conversion factors that were similar to the "standard" conversion factor, advances in technology compensated for the decreases in log diameters that Spelter discusses in the 2002 USFS report as a reason that conversion factors should be revised over time. If that is, in fact, the petitioner's argument, there are many reasons why the results of this scaling survey could result in m3/MBF ratios that were lower than Mr. Spelter's study including, but not limited to, the small number of loads scaled (the survey does not indicate how many logs were scaled), the quality mix of the logs, or the diameter mix of the logs. Data from 12 loads across two scaling sites is unlikely to produce results that are representative of the U.S. PNW harvest.[714] By contrast, Mr. Spelter used "essentially the entire population of logs processed in the state of Washington in 1998" to calculate the conversion factors in the 2002 USFS study.[715] The data in this dual-scale survey do not in any way prove that the m3/MBF ratio has not increased significantly over time or that if it has not increased over time, that it is specifically due to technological advances. For the reasons outlined above, we continue to find that the 2002 USFS study is the most appropriate source of conversion factors on the record of this review.

In the *Lumber V AR1 Prelim Results*, Commerce preliminarily determined that the 2002 USFS study was the most appropriate choice for a conversion factor, but we also acknowledged that the 2002 USFS study produced conversion factors between Scribner and the U.S. Cubic scales, while we ultimately require a conversion to BC Metric Scale.[716] Accordingly, Commerce used data from a 2005 publication from Matthew Fonseca to adjust the 2002 USFS conversion factor so that it would be reflective of the differences between the U.S. Cubic Scale and the BC Metric Scale.[717]

The petitioner argues that despite Commerce's claims that it used the Fonseca publication to make this adjustment, Commerce actually used analysis from Jendro and Hart to calculate the adjustment. While it is true that the respondents and Jendro and Hart advocated for Commerce

[710] *See* GBC IQR at Exhibit BC-AR1-ST178 at 3 – 5.
[711] *See* Petitioner June 8, 2020 Case Brief at 37 – 38.
[712] *See* Petitioner Benchmark Submission at Exhibit 3.
[713] *Id*.
[714] *Id*.
[715] *See* GBC IQR at Exhibit BC-AR1-ST-178 (p. 5).
[716] *See Lumber V AR1 Prelim Results* PDM at 31.
[717] *Id*. at 31 – 32.

to adjust the 2002 USFS study using the Fonseca publication and provided a framework to do so, Commerce did not use the Jendro and Hart analysis or tables to calculate the adjustment used in the preliminary results. In *Lumber V AR1 Prelim Results*, Commerce states "the ratios from the Fonseca publication are based on the length and small-end (or top) diameter of the logs and calculated into four classes by diameter" and cites to the Fonseca publication, not Jendro and Hart's analysis, as the location of the data used in the preliminary calculations.[718] Commerce then explained that, by applying company-specific diameter data on the record to the ratios developed from the Fonseca Publication, it was able to calculate company- and species-specific ratios to adjust the 2002 USFS conversion factor.[719] As we explained in Comment 21, this respondent-specific diameter data was provided by Canfor and West Fraser and were not figures developed by Jendro and Hart.

The record also demonstrates that the species-specific combined ratios calculated in the Jendro and Hart framework[720] were different from the company-specific ratios that Commerce calculated in *Lumber V AR1 Prelim Results*[721] and, accordingly, so were the conversion factors used in the preliminary calculations.[722] The case briefs also reflect this fact, as the respondent parties have challenged Commerce's calculations of the Fonseca adjustment (see below) because it did not follow the suggested calculation from the Jendro and Hart framework.

The petitioner argues that the adjustment made by Commerce was lacking because it only considered one aspect of Fonseca's analysis (*i.e.*, the diameter of logs), but did not consider the second part (*i.e.*, the length of the logs). Table A.1.M. from the Fonseca publication, which Commerce used in the preliminary calculations, contains five log length columns, four for specific length ranges and a final that incorporated the four range lengths.[723] Commerce utilized this fifth "Total All Lengths" category in the preliminary calculations.[724] While the calculation was not as specific as we would have preferred (*i.e.*, if we were able to use the data relating to each log length range), Commerce did not fail to account for log length, it simply relied on an "all lengths" category.

Commerce was unable to utilize the length ranges in the Fonseca tables because the record does not contain useable log length data. As the GBC/BCLTC highlighted in their rebuttal brief, the most comprehensive log length data for the BC interior only contained information for logs scaled as grade 1 or 2 under BC's scaling rules.[725] The respondents' purchase tables demonstrate

[718] *Id.* at fn. 177, *citing* Fonseca Publication at Table A.1.M.
[719] *Id.* at 32.
[720] *See* GBC IQR at Exhibits BC-AR1-ST-194 and BC-AR1-ST-195.
[721] *See* Canfor Preliminary Calculation Memorandum at Attachment IV at tab "Benchmark;" *see also* West Fraser Preliminary Calculation Memorandum at Attachment VI at tab "Benchmark."
[722] *See* GBC IQR at Exhibits BC-AR1-ST-194 and BC-AR1-ST-195; *see also* Canfor Preliminary Calculation Memorandum at Attachment IV at tab "Benchmark;" *see also* West Fraser Preliminary Calculation Memorandum at Attachment VI at tab "Benchmark."
[723] *See* Fonseca Publication at Table.A.1.M.
[724] *See* Canfor Preliminary Calculation Memorandum at Attachment IV at tab "Benchmark;" *see also* West Fraser Preliminary Calculation Memorandum at Attachment VI at tab "Benchmark."
[725] *See* GBC IQR at BC-AR1-ST-162. The heading of the data states "Sawlog Grades Only;" *see also* Exhibit BC-AR1-ST-63 at 7, which demonstrates that grades 1 and 2 are the sawlog grades in the BC interior grading system.

that logs of lesser quality were often used to produce lumber during the POR.[726] As we discussed in Comment 15, it is our determination that we should not use a data source when it fails to include a significant portion of the logs used to produce lumber. Accordingly, the record did not contain information that would allow us to utilize the full spectrum of log length ranges in the Fonseca tables, and we, therefore, relied on the "all lengths" data.

Further, we agree with the Canadian Parties that if the record did include useable data that would allow us to incorporate the Fonseca length ranges in our calculations, as the petitioner seems to propose, that the calculated adjustment would have resulted in conversion factors that were *higher* than the conversion factors that we calculated in the preliminary determination. As we discussed above, the log length data on the record for the BC interior only incorporates grade 1 and 2 logs. Data from the GBC shows that Grade 1 and 2 logs made up approximately 77 percent of the BC interior harvest during the POR by volume.[727] The length data for Grade 1 and 2 indicate the majority of those logs, approximately 66 percent, fall into just one of the four length ranges (16-21 ft) in Fonseca's Table A.1.M.[728] In three of the four diameter categories in Table A.1.M, the "all-length" ratio was higher than the ratios in the 16-21 ft range and in the fourth it was nearly identical.[729] Accordingly, since most of the volume would have been allocated to the 16-21 ft length category in the Fonseca tables, we would have calculated ratios that would have resulted in a higher conversion factor than we calculated in the preliminary results. A higher conversion factor would result in a lower calculated benefit. Therefore, not only was Commerce's methodology of using the "all lengths" data from the Fonseca's Table A.1.M. not biased, it appears that the lack of useable length data was the conservative approach, despite the petitioner's arguments seemingly to the contrary.

For the reasons, detailed above, we do not agree with the petitioner that calculation of the adjustment factor was based on unreliable data or was biased toward the respondents. We continue to find that it is appropriate to adjust the 2002 USFS study using the data in the Fonseca publication for these final results.

The Canadian Parties argue that Commerce must address the fact that the Fonseca data was only concerned with the measurement of green logs and therefore the resulting adjustment that Commerce calculated in the preliminary results is not reflective of dead logs. We agree with the Canadian Parties that the record demonstrates that the Fonseca data were based on the measurement of green logs.[730] However, the Fonseca data is the best available information on the record, and Commerce is not aware of any useable record information that would allow for an adjustment to the 2002 USFS factor that incorporates dead logs. As we discussed at the

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[726] *See* Canfor IQR at Exhibit STUMP-B-2 and STUMP-B-3; *see also* West Fraser IQR at Exhibits WF-AR1-BCST-1a through WF-AR1-BCST-6b.
[727] *See* GBC IQR at Exhibit BC-AR1-ST-186(a) at 4. The total of Grade 1 and 2 logs in FY 117/18 was 30,646,554 m3 and the total for all grades was 39,741,657 m3.
[728] *See* GBC IQR at Exhibit BC-AR1-ST-162; *see also* Fonseca Publication at Table A.1.M. In meters, the 16-21' range corresponds to 4.7 m to 6.4 m. According to BC-AR1-ST-162, the 5 m length class accounted for 40.6 percent of the total volume in the interior during FY 17/18 and the 6 m class accounted for 26.5 percent of the total volume.
[729] *See* Fonseca Publication at Table A.1.M.
[730] *See* GBC IQR at Exhibit BC-AR1-ST-188. An email exchange between Neal Hart and Matthew Fonseca in which Mr. Fonseca confirms, from what he recollects, all of the logs scaled were fresh logs and that "{t}here were no dead logs."

beginning of this position, Commerce has determined that the Dual-Scale Study, which contains conversion factors based on the measurements of dead logs, is not usable for our purposes in this investigation. As we have also explained in Comments 15 and 24, Commerce cannot make an adjustment if the record does not contain useable record information that would allow for the calculation of such an adjustment. Therefore, for these final results, Commerce continues to calculate the Fonseca adjustment as calculated in the preliminary results and apply that adjustment to the 2002 USFS conversion factor across the entirety of the benchmark prices.

Comment 23: Whether Commerce Should Adjust the BC Log Benchmark Price for Scaling and G&A Costs

Petitioner's Comments[731]

- In setting its benchmark calculation, Commerce allows adjustments "for factors affecting comparability." An analysis of comparability is as fundamental as determining whether the adjustment is reflected in one comparison point but not the other. Similar to *Uncoated Paper from Indonesia*, in this review, the issue regarding comparability addresses what costs are already in the benchmark price that are also incurred by BC respondents.
- In *Lumber IV AR2*, Commerce found that post-harvest activities such as scaling and delivering logs to mills or markets are not included as an adjustment in the benefit calculations because they are not necessary to access the standing timber for harvesting.
- Scaling costs are incurred by sawmills whether they purchase logs from unaffiliated loggers or if they harvest the logs themselves from standing Crown or private stumpage. Because scaling costs are incurred in both of these situations, the benchmark price is already comparable to the stumpage program at issue and thus, no adjustment is necessary.
- Canfor states that it pays for scaling costs when its harvests its own tenure, harvests tenure held by other companies, and when it purchases logs from unaffiliated, third-party loggers. Two affidavits from U.S. softwood lumber producers attest that they incur scaling costs whether they harvest standing timber from their own lands, or they buy logs from unaffiliated third-party loggers. Because scaling is the metric that all softwood lumber producers, Canadian or otherwise, use to determine the payment for timber, it is a cost that is incurred even if the producer is purchasing logs from an unaffiliated logger. As such, the U.S. benchmark price is already reflective of the scaling costs that Canfor and West Fraser incurred in harvesting logs from Crown stumpage.
- The U.S. producer affidavits also attest that G&A costs associated with "log procurement" are also incurred when making third-party log purchases and when harvesting from standing timber. Commerce should not allow for an adjustment for these log procurement G&A costs.

[731] *See* Petitioner June 8, 2020 Case Brief at 55 – 58.

Canfor's Rebuttal Comments[732]

- The petitioner misunderstands Commerce's standard for determining whether adjustments to the benchmark are appropriate. In *Lumber V Final* and *Lumber V AR1 Prelim Results*, Commerce held that legally mandated expenses should be allowed as adjustments because lumber producers like Canfor incur those legally mandated costs in addition to the stumpage price.
- Canfor also objects to the petitioner's characterization of generalized statements by two U.S. lumber companies in affidavits as definitive evidence that these costs "also are included in the benchmark price." It is not even clear from the abbreviated explanations in the affidavits exactly which costs these lumber companies are reporting since "log procurement" and "forest management" are not defined. The petitioner is equally vague about which of Canfor's G&A costs it would consider "comparable."
- The petitioner has misunderstood Commerce's methodology regarding these adjustments; these legally mandated costs remain tied to expenses relating to accessing, harvesting, or hauling timber to the mills. As such, there is no reason for Commerce to depart from its past treatment of these G&A costs.

West Fraser's Rebuttal Comments[733]

- Commerce has repeatedly rejected the petitioner's argument on these adjustments.
- The petitioner mischaracterizes Commerce's position in *Lumber IV* to support its claim that Commerce should disallow West Fraser's legally obligated scaling costs in its benchmark calculations for BC stumpage. The quotation from *Lumber IV* used by the petitioner is expressly related to adjustments of the benchmark price for Alberta stumpage calculations. In *Lumber IV*, the underlying benchmark data for non-BC provinces "reflect{ed} prices at the point of harvest," while in British Columbia the benchmark was derived from delivered log prices. Accordingly, Commerce followed its past approach for the BC benchmark and "adjusted for all harvest and haul costs, including general, administration, and overhead."
- The petitioner's assertions based on "affidavits from two U.S. producers of softwood lumber" that these producers incur certain "G&A costs associated with 'log procurement'" are far too vague to permit any informed adjustment to the benchmark.
- The petitioner does not dispute the actual basis for Commerce's adjustment, which was that the costs incurred by West Fraser "were tied to either {its} tenure obligations or to expenses relating to accessing, harvesting, or hauling timber to the mills."

Commerce's Position: As discussed in Comment 14, similar to *Lumber V Final* and *Lumber V AR1 Prelim Results*, Commerce will continue to use delivered log prices from the U.S. PNW as the starting point for a tier-three benchmark. Consistent with our calculation methodology in this proceeding, we determine it remains appropriate in British Columbia to continue to adjust for the respondents' access, harvest, and hauling costs, as well as the costs associated with the respondents' Crown tenure obligations.

The petitioner argues that Commerce determined in *Lumber IV AR2* that post-harvest activities such as scaling and delivering logs to mills or markets should not be included as an adjustment in the benefit calculations because they are not necessary to access the standing timber for

[732] *See* Canfor June 25, 2020 Rebuttal Brief at 10 – 12.
[733] *See* West Fraser June 25, 2020 Rebuttal Brief at 22 – 25.

harvesting.[734] We agree with West Fraser that the petitioner's argument is a mischaracterization of the *Lumber IV AR2* determination. The quotation highlighted by the petitioner regarded adjustments in Alberta where the benchmark was a stumpage price, not a delivered log price.[735] As Commerce explained in the *Lumber IV AR2* IDM, for the *Lumber IV AR2* preliminary results, "we employed a methodology for adjusting the unit prices of the Crown stumpage programs administered by the GOA, GOS, GOM, GOO, and GOQ" (*i.e.*, the non-BC provinces).[736] In *Lumber IV AR2*, for the non-BC provinces, we used a stumpage benchmark price from the Maritimes. Since we used a stumpage benchmark, we found that "{b}ecause the Maritimes data reflect prices at the point of harvest, we also did not include post-harvest activities such as scaling and delivering logs to mills or market."[737] This is a different calculation methodology than what was used in British Columbia where the benchmark was a delivered log price. For British Columbia, "in calculating our derived stumpage benchmark, we adjusted for all harvest and haul costs, including general, administration, and overhead" costs.[738] The record clearly demonstrates that we have consistently adjusted for post-harvest and G&A costs when using a delivered log benchmark price. Our methodology on adjustments in British Columbia in *Lumber V Final*, *Lumber V AR1 Prelim Results*, and in these final results, are entirely consistent with the *Lumber IV AR2* determination.

The petitioner argues, citing *Uncoated Paper from Indonesia*, that in setting the benchmark calculation, Commerce allows adjustments for factors affecting comparability and that this analysis is as fundamental as determining whether the adjustment is reflected in one comparison point but not the other. The petitioner then highlights a pair of affidavits from U.S. lumber producers that include statements that they incur scaling costs whether they harvest standing timber from their own land or buy logs from unaffiliated third parties and therefore the U.S. benchmark price is already reflective of scaling costs that Canfor and West Fraser incurred in harvesting logs from Crown stumpage.

As we discussed in Comment 21, our derived demand methodology for stumpage determines the market value of a log at the mill-gate as the lumber price minus the mill's own, non-wood, production costs to determine the maximum amount it would pay for a log. As Commerce determined in the *Lumber V Final*, "it is appropriate in British Columbia to adjust the benchmark delivered log price not just for the respondents' access, harvest and hauling costs, but also for certain additional costs associated with the respondents' Crown tenure obligations, to arrive at a derived stumpage price."[739] This included an adjustment for all of the respondents' reported scaling costs because they were required by the Crown to incur those costs as a condition to access and harvest Crown timber.[740]

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[734] *Id*., *citing Lumber IV Final Results of 2nd AR* IDM at Comment 49.
[735] *Id*.
[736] *Id*. at 15.
[737] *Id*.
[738] *Id*. at Comment 52.
[739] *See Lumber V Final* IDM at Comment 24.
[740] *Id*. "Consistent with Lumber IV, in addition to silviculture and forest management costs, the Department finds that it is also appropriate to adjust for other obligated costs that are required by the Crown in order for the respondents to access and harvest the Crown timber supply. These costs include annual forest rent, waste stumpage charges, and scaling costs."

In the *Lumber V AR1 Prelim Results*, we revised this adjustment to not include scaling costs relating to timber harvested from cruise-based stands because the record did not contain evidence that scaling of cruise-based timber was legally obligated.[741] There is no record evidence that contradicts our finding that scaling costs are legally obligated for non-cruise-based timber. Since these non-cruise scaling costs are legally obligated as a condition of accessing the Crown timber, it is appropriate to adjust for these costs. Any non-obligated scaling that the respondents choose to undertake after a log reaches the mill (*i.e.*, for third-party log purchases or for timber harvested from cruised stands) are not included in the calculation of the derived stumpage price.

In *Lumber V Final*, we determined that the G&A costs for which we adjusted "were tied to either the respondents' tenure obligations, or to expenses relating to accessing, harvesting or hauling timber to the mills."[742] This was consistent with our methodology in *Lumber IV* where we found it was appropriate to adjust for indirect costs and G&A.[743] There is no record evidence in the instant review that the respondents' reported G&A costs are not tied to the respondents' tenure obligations, or to expenses relating to accessing, harvesting or hauling timber to the mills. Therefore, it remains appropriate to adjust for these costs in our calculation.

Comment 24: Whether Commerce Should Adjust for Tenure Security in British Columbia

Petitioner's Comments[744]

- Despite the recognition that tenure security provides a value, Commerce preliminarily determined that the record does not contain data to properly quantify a countervailable benefit. However, data submitted by the respondents on the record of this review allows Commerce to make a benchmark adjustment for the final results.
- Using the data from a tenure swap between the mandatory respondents and Interfor's purchase of tenure rights from Canfor, Commerce should adopt a net present value calculation methodology to measure the value of tenure security.
- The net present value methodology is based on the same rationale as Commerce's methodology to determine the benefit value of nonrecurring subsidies pursuant to 19 CFR 351.524(d)(1).
- Commerce chose to not value tenure security at *Lumber V AR1 Prelim Results*, in part, because the valuations provided by the petitioner were "for specific stands or tenures, and, thus, reflect the myriad characteristics specific to that stand." For the final results, the petitioner has incorporated such a large amount of AAC and includes such a variation of stands that there is no danger that the characteristics of a single stand will unduly influence the amount or the final adjustment. The petitioner proposes taking a weighted average of the four values it calculated, which ensures that the per-unit value of a smaller stand will not have a disproportionate effect on the end value.

Canadian Parties' Rebuttal Comments[745]

[741] *See Lumber V AR1 Prelim Results* PDM at 34.
[742] *See Lumber V Final* IDM at Comment 24.
[743] *See Lumber IV Final Results of 2nd AR* IDM at 109.
[744] *See* Petitioner June 8, 2020 Case Brief at 42 – 54.
[745] *See* GBC June 25, 2020 Vol I Rebuttal Brief at 17 – 27.

- Commerce has repeatedly rejected the tenure security argument that the petitioner advances in this review, including in *Lumber III*,[746] *Lumber IV*,[747] *Lumber V Final*[748] and *Lumber V AR1 Prelim Results*.[749]
- Commerce's cross-border stumpage subsidy methodology already captures any benefit that the respondents would benefit from as a result of tenure security.
- The petitioner's methodology fails to attempt to quantify or balance out the countervailing uncertainties faced by long-term tenure holders, and the record likewise provides no basis for Commerce to undertake such an exercise.
- The values upon which the petitioner bases its calculations are based on the unique and unusual circumstances of those specific, isolated transactions. The derived values are not representative of the respondent's overall AAC, and the prices paid represent the value of the entire bundle of rights and obligations inherent in the tenures, and not only the alleged tenure security value.
- The tenure swap between Canfor and West Fraser does not represent a transaction for tenure security but reflects the value of timber based on locational differences to the other company in the swap due to mill closures.
- To the extent tenures have any value, the BC mandatory respondents already paid for those tenures, as the vast bulk of long-term tenure holders in the Interior generally already purchased their tenures in arms-length transactions from third parties. Under the petitioner's mistaken approach, those companies would therefore in effect have to pay twice for the same value – once when they purchased the tenures originally, and again in Commerce's benefit calculation.
- Commerce's preliminary finding properly recognized that the petitioner's proposed adjustment also is unreasonable because it is based on only certain isolated tenure valuations. The amortized values recorded for the tenures reflect only the attributes and underlying values of the particular stands of timber included in those specific tenures. As Commerce is aware, the value of timber in different stands, and thus the value of different tenures, can vary significantly.
- There is no evidence these isolated tenures for which the petitioner has provided calculations are representative of the mandatory respondents' stands, and thus that the alleged valuations that the petitioner came up with are at all applicable to the vast bulk of the mandatory respondents' AAC.
- The petitioner claims that Commerce's concerns about the isolated, stand-specific nature of the petitioner's calculations can be "cured" by taking an average of the different valuations, but the petitioner's calculations show substantial variations in the alleged tenure security valuations. This significant difference in alleged valuations underscores the lack of any reasonable basis to apply any resulting "average" to the entirety of the respondents' AAC across all tenures.

Canfor's Rebuttal Comments[750]

- Canfor acquired the tenures on its books from private third parties in commercial arm's-length transactions, often in conjunction with acquisitions. These tenures were bought and sold several times by various private parties before Canfor acquired them. The tenure purchases

[746] *See Lumber III Final*, 57 FR at 22596.
[747] *See Lumber IV Final* IDM at Comment 2; *see also Lumber IV Final Results of 2nd AR* IDM at Comment 60.
[748] *See Lumber V Final* IDM at Comment 27.
[749] *See Lumber V AR1 Prelim Results* PDM at 34.
[750] *See* Canfor June 25, 2020 Rebuttal Brief at 4 – 10.

and sales reflect market conditions in the area where the tenures are located. The tenures are a cost to Canfor, and no benefit has been bestowed.
- By their nature, each tenure transaction is unique; thus, even if "tenure security" were somehow countervailable, it is absurd to suggest that these two isolated transactions could serve as the starting point from which to extrapolate some sort of tenure security valuation.
- If Commerce chooses to make this adjustment, then the remaining tenure term used by the petitioner in its net present value calculation is incorrect and must be revised. When tenures are purchased as part of an overall transaction, the book value of the tenure is recorded in Canfor's books separately at cost and amortized over an extended period of years. In the case of Canfor, the tenure is amortized over 50 years in its books since such tenures are replaceable, and it has been Canfor's experience over many years that such replacements are routine.

West Fraser's Rebuttal Comments[751]
- Inputting the data from West Fraser's tenure exchange with Canfor into a net-present-value calculation does nothing to address Commerce's finding in the *Lumber V AR1 Prelim Results* that the record in this review lacks evidence that the exchanged tenures are representative of other tenures.
- There are other reasons for rejecting the petitioner's tenure security argument: (1) the record does not identify which portion of West Fraser's tenures have been purchased from private parties and thus could not provide a countervailable benefit from GBC, (2) the petitioner has presented no evidence that tenure security affects BC stumpage prices as determined by the BCTS auction system and applied to non-auction stumpage purchases through GBC's Market Pricing System, and (3) the petitioner does not explain how tenure security in British Columbia should require Commerce to adjust its benchmark amounts derived from U.S., not BC, log prices.

Commerce's Position: In the *Lumber V AR1 Prelim Results*, Commerce preliminarily determined that the record does not contain data to properly quantify a countervailable benefit that may potentially arise from tenure security.[752] Specifically, we acknowledged that the record does contain some tenure valuation information, but the valuations are for specific stands or tenures and, thus, reflect the myriad characteristics specific to that stand.[753] For the reasons detailed below, we find that this remains the case for the final results and, consistent with our preliminary determination, find the record does not contain the necessary information that would allow us to properly quantify a benefit that may arise from tenure security.

In *Lumber IV* and in *Lumber V Final*, we determined that it was not necessary to analyze whether a countervailable benefit could be conferred through tenure security without the necessary data on the record with which to quantify any benefits allegedly conferred by tenure security.[754] We continue to find ourselves in this same situation in this review and have, once again, reached the same conclusion.

[751] *See* West Fraser June 25, 2020 Rebuttal Brief at 19 – 22.
[752] *See Lumber V AR1 Prelim Results* PDM at 34.
[753] *Id*.
[754] *See Lumber IV Final* IDM at Comment 2; *see also Lumber IV Final Results of 2nd AR* IDM at Comment 60; and *Lumber V Final* IDM at Comment 27.

The petitioner has presented a net present value calculation methodology that it claims properly values the benefit of long-term tenures to the mandatory respondents.[755] Using tenure transactions involving the mandatory respondents, the petitioner has provided four separate calculations using its net present value calculation.[756] The petitioner claims that if Commerce were to weight average these calculations, then it would address Commerce's concerns from the preliminary results and "ensure a broadly applicable value."[757] We do not agree with the petitioner's contention that averaging four calculations results in a broadly applicable adjustment. Notwithstanding any concerns that Commerce may have with the petitioner's proposed net present value methodology, the record does not support the contention that averaging these four calculations properly addresses Commerce's conclusion from the preliminary results that these valuations are for specific stands or tenures and, thus, reflect the myriad characteristics specific to that stand.[758] The petitioner's own calculations demonstrate the stand-specific nature of this valuation through the drastically different per-unit values it calculated using its methodology.[759]

There is also little support for the petitioner's claim that these four calculations are representative of the respondents' long-term tenure agreements. The volume of the AAC covered by the net present value calculations represent a small portion of the respondents' AAC during the POR.[760] Additionally, as the respondents have explained on the record, the valuations assigned to the transactions by the companies were specific to those particular stands and the considerations surrounding the future volume allocated to those stands.[761] Additionally, the record establishes that these valuations are not necessarily simply a reflection of the value of tenure security provided by the tenures, but also a reflection of the shifting operational and commercial realities faced by the companies. For example, the tenure swap between Canfor and West Fraser was a result of both companies closing mills and desiring to reposition tenure holdings near each company's existing mills;[762] as such, the valuations that each respondent assigned to those specific tenures could have had more to do with operational concerns than the value of the tenure security provided by the tenures. In sum, we lack the data that could provide a broadly representative valuation of any potential tenure security benefit. For these reasons, we continue to find that the record information does not permit a calculation that could properly quantify a potential benefit that might be conferred by tenure security.

[755] *See* Petitioner June 8, 2020 Case Brief at 45 – 47.
[756] *Id.* at 54.
[757] *Id.* at 54 – 55.
[758] *See Lumber V AR1 Prelim Results* PDM at 34.
[759] *See* Petitioner June 8, 2020 Case Brief at Attachment 2.
[760] *See* Canfor June 25, 2020 Rebuttal Brief at Section II.B; *see also* WF SQR at Exhibit WF-AR1-BCST-30 and West Fraser IQR at Exhibit WF-AR1-BCST-11a/11b; and West Fraser June 25, 2020 Rebuttal Brief at Section II.
[761] *See* Canfor SQR1 at 26 – 27.
[762] *See* GBC June 25, 2020 Vol I Rebuttal Brief at 24.

D. Nova Scotia Stumpage Benchmark Issues

Comment 25: Whether Private-Origin Standing Timber in Nova Scotia Is Available in the Provinces at Issue

GOC's Comments[763]

- Standing timber is rooted in the ground. It cannot be transported between markets. As such, a delivered price for standing timber cannot be calculated.
- A market price that is derived from transactions in which the purchaser under examination cannot participate does not reflect the purchaser's commercial environment. Accordingly, private standing timber prices in Nova Scotia cannot reflect what firms in other provinces would pay, and, therefore, cannot constitute a tier-one benchmark.
- Commerce has consistently determined that there are no viable, tier-two, world market prices for standing timber because such prices (*e.g.*, standing timber prices from the United States) are not available to purchasers in Canada. The same logic should apply to standing timber from Nova Scotia that are not available in the markets for Québec, Ontario, and Alberta.
- Even stumpage prices derived from logs (which are traded across national and provincial borders) would not be suitable in the instant proceeding because the enormous cost of transporting logs from Nova Scotia to the other provinces would render it an unsuitable tier-one benchmark.

GOA's Comments[764]

- That Nova Scotia and Alberta are located in Canada is not enough to qualify timber prices from Nova Scotia as a valid tier-one benchmark.
- Commerce has declined to use out-of-jurisdiction benchmarks for a good that is "not available, marketable, or transportable" to the jurisdiction under investigation.[765]

Resolute and Central Canada's Comments[766]

- Resolute purchased standing timber and logs exclusively from Québec and Ontario during the POR. There is no evidence it acquired such wood fiber from Nova Scotia.

Petitioner's Rebuttal Comments[767]

- Section 771(5)(E) of the Act requires Commerce to examine the adequacy of remuneration "in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country, which is subject to the investigation or review."
- Canada is the "country" that is subject to review, and Nova Scotia is within Canada.
- Further, 19 CFR 351.511(a)(2)(i) states that a tier-one benchmark is "a market-determined price for the good or service resulting from actual transactions in the country in question."
- In the investigation, Commerce explained that the purchase and transport of standing timber within Canada is not dependent upon a single, limited, means and this fact distinguishes

[763] *See* GOC July 29 2020 Vol I Case Brief at 75 – 80. Various Canadian Parties reiterate the GOC's case brief arguments that are summarized as part of this issue.
[764] *See* GOA July 29 2020 Vol II Case Brief at 117 – 119.
[765] *See SC Paper from Canada Final* IDM at 42.
[766] *See* Resolute July 29, 2020 Case Brief at 9.
[767] *See* Petitioner August 10, 2020 Rebuttal Brief at 4 – 6, 13, and 30 – 31.

standing timber purchases from the electricity purchases examined in *SC Paper from Canada Final*, which involved dedicated power transmission corridors.
- In the investigation, Commerce noted that JDIL, based in New Brunswick, acquired standing timber and logs from Nova Scotia, thereby demonstrating that standing timber and logs are purchased across provincial borders.
- Record information indicates that JDIL continued to purchase standing timber and logs from Nova Scotia during the POR.
- Commerce rejected the Canadian Parties' arguments on this point in the investigation.

Commerce's Position: Consistent with our findings in the *Lumber IV Final* and *Lumber V Final*, we find that stumpage prices for private-origin standing timber in Nova Scotia constitute prices that are inside the "country that is subject to the investigation" and, therefore, may serve as a tier-one benchmark under 19 CFR 351.511(a)(2)(i).[768] Section 771(5)(E)(iv) of the Act expressly provides that Commerce must determine the adequacy of remuneration "in relation to prevailing market conditions for the good . . . being provided. . . in the country which is subject to the investigation or review." Under section 771(3) of the Act, the term "country" means a "foreign country, a political sub-division, dependent territory, or possession of a foreign country . . ." Commerce has previously found the inclusion of "political subdivision" within the definition of the term "country" ensures that Commerce may investigate subsidies granted by sub-federal level government entities and ensures that those governments qualify as interested parties under the statute.[769] In other words, an examination of subsidies granted by the government of the exporting country includes subsidies granted by sub-federal governmental authorities.

Furthermore, 19 CFR 351.511(a)(2)(i) provides that Commerce "will normally seek to measure the adequacy of remuneration by comparing the government price to a market- determined price for the good or service resulting from actual transactions in the country in question," *i.e.*, a tier-one benchmark. Thus, under our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the "country" under investigation. The province of Nova Scotia is a "political subdivision" located within the "country" of Canada, and Canada is the "foreign country" that is subject to the instant CVD review. Thus, we find that under the statute and Commerce's regulations, we are not precluded from using prices for private-origin standing timber in Nova Scotia as a tier-one benchmark when analyzing whether the various provincial governments at issue sold Crown- origin standing timber for LTAR during the POR.

Regarding the Canadian Parties' reliance on *SC Paper from Canada Final*, we disagree that the *SC Paper from Canada* electricity finding should be used as a precedent to calculate stumpage subsidies in this proceeding. As an initial matter, stumpage is a different type of good from electricity. The purchase and transport of standing timber within Canada is not dependent upon a single, limited, means, which contrasts with the facts considered in *SC Paper from Canada* involving dedicated power transmission corridors, and, thus, it is possible for standing timber to be sold across provincial borders.[770] Electricity transmitted over long distances also suffers from

[768] *See Lumber V Final* IDM at Comment 39.
[769] *See Lumber IV Final Results of 1st AR* IDM at Comment 35.
[770] *See SC Paper from Canada Final* IDM at 41 – 42 and 128 – 130.

line losses which greatly inflate the electricity's price.[771] Thus, an end user of electricity in Nova Scotia has no way of buying electricity from other provinces without actual electricity power transmission corridors. The record evidence showed that Nova Scotia's sole inter-provincial electricity transmission connection was with New Brunswick.[772] Therefore, we did not use electricity prices from Alberta. Further, the electricity data from Alberta were not, in fact, based on actual transactions under 19 CFR 351.511(a)(2)(i). Rather, it was constructed based on existing tariffs in Alberta as if Port Hawkesbury operated in that province.[773]

In contrast, the Nova Scotia stumpage data in this proceeding, unlike the hypothetical Alberta benchmark in *SC Paper from Canada*, are actual transactions. Further, the market for stumpage is not limited to each province or region. The purchase of standing timber within Canada is not dependent upon a single, limited, means, which contrasts with the facts considered in *SC Paper from Canada* involving dedicated power transmission corridors, and, thus, it is possible for standing timber to be sold across provincial or regional borders. A lumber producer is free to purchase stumpage across provincial boards or regions. Indeed, evidence on the record indicates that the New Brunswick-based JDIL purchased standing timber in Nova Scotia.[774] Stumpage, akin to land, are both rooted in the ground, and an end user is free to purchase the good across provincial or regional borders. In the *2010 Review of CWP from Turkey*, Commerce used industrial land prices across Turkey as benchmarks to calculate the benefit conferred by a land for LTAR program.[775]

We also disagree that *Uncoated Paper from Indonesia* should lead Commerce to conclude that private-origin standing timber from Nova Scotia is not a good that is available to the respondents subject to this review and, thus, may not serve as a viable stumpage benchmark. In *Uncoated Paper from Indonesia*, Commerce determined that prices for standing timber that originated outside of Indonesia could not serve as a stumpage benchmark at all because it was not available to firms inside Indonesia.[776] Thus, Commerce's decision on that particular matter did not address the viability of stumpage prices from inside the borders of Indonesia. As such, we find that that the facts of *Uncoated Paper from Indonesia* are distinct from the facts concerning the Nova Scotia-based stumpage benchmark, which is completely comprised of stumpage prices from inside Canada.

Having determined that stumpage prices for private-origin standing timber in Nova Scotia constitute prices from within the "country" of provision, Commerce examined whether such prices are comparable as discussed under 19 CFR 351.511(a)(2)(i). As discussed elsewhere in this memorandum, we continue to find that private-origin standing timber in Nova Scotia is comparable to the Crown-origin timber sold in the provinces at issue and that the prices for Nova Scotia, as contained in the 2017-2018 Private Market Survey, constitute a reliable data source to serve as a tier-one benchmark.

[771] *Id*.
[772] *Id*.
[773] *Id*.
[774] *See* JDIL Final Calculation Memorandum.
[775] *See 2010 Review of CWP from Turkey* IDM at Comment 4.
[776] *See Uncoated Paper from Indonesia* IDM at 14.

Comment 26: Whether the Tree Size in Nova Scotia, as Measured by DBH, Is Comparable to Tree Size in Québec, Ontario, and Alberta

GOC's Comments[777]

- SPF in Nova Scotia benefits from the province's temperate climate, which allows trees to grow taller and wider.
- The differences in species mix (*e.g.*, red spruce, the most common species in Nova Scotia, grows larger than black spruce, the most common species in Ontario and Québec, and lodgepole pine, the most common species in Alberta), results in a larger average DBH in Nova Scotia, which translates into more valuable stumpage due to lower harvesting costs and higher product values.
- The GNS reported an average DBH of 15.73 cm for standing timber in Nova Scotia; however, this figure is understated because the GNS included DBH data for pulpwood trees that are too small to produce sawlogs and studwood.
- The timber represented in the Nova Scotia benchmark excludes small-sized pulpwood and includes a higher proportion of larger species like red spruce.
- The GNS reported an average DBH of standing timber based on forest inventory data that includes both trees large enough to produce sawlogs and studwood and trees too small to be harvested for such purposes, or likely to be harvested at all.
- The GNS has not reported the average DBH of the standing timber harvested to produce the sawlogs and studwood. Rather, the DBH is based on "merchantable" standing timber (*e.g.* trees with a DBH great than 9 cm) "that may be used in sawlog, studwood, or pulpwood applications."[778] In contrast, the Miller Report indicates that the minimum DBH of a sawlog is 17.8 cm.[779]
- The inclusion of trees that produce pulplogs in the DBH calculation results in an understated DBH when applied to Nova Scotia's sawtimber harvest.
- Nova Scotia's larger timber translates into larger logs whose small-end diameters are almost 10 cm (3.6 in) larger than Nova Scotia's provincial counterparts in the boreal forest. This fact demonstrates that the DBH reported by the GNS is not comparable to the DBH measurements reported by the GOQ, GOO, and GOA.

GOA's Comments[780]

- The DBH reported by the GOA reflects softwood timber actually harvested during the POR.
- The DBH reported by the GNS (17.29 cm and 15.9 cm for all coniferous standing and SPF standing timber, respectively) is a quadratic mean diameter (QMD) used for forest inventory management. The QMD for Alberta's coniferous forest is only 9.4 cm. When measured on the same basis, it is evident that trees in Nova Scotia are larger than the trees in Alberta.

[777] *See* GOC July 29 2020 Vol I Case Brief at 47 – 58. Various Canadian Parties reiterate the GOC's case brief arguments that are summarized as part of this issue.
[778] *Id*. at 50, citing GNS August 29, 2019 New Factual Submission at 4.
[779] *Id*. at 52, citing Miller Report.
[780] *See* GOA July 29 2020 Vol II Case Brief at 110 – 112.

Petitioner's Rebuttal Comments[781]

- Evidence on the record, demonstrates that the term "merchantable" is a standard term used by provincial governments and forestry experts in forest management.[782]
- The Marshall Report indicates that Québec's merchantable timber produces a DBH ranging from 15.24 cm to 20.32 cm, which is in the same approximate range as the DBH range of 11 cm to 25 cm that the GOQ claims is limited to harvested sawlogs.
- The GOC reports that the Canada-wide DBH of Black Spruce ranges from 13 cm to 23 cm, which is in the same range of the Black Spruce DBH (15 cm to 25 cm) the GNS reported.
- Commerce verified the accuracy of the GNS's DBH data in the investigation. The Canadian Parties have not provided any information that discounts the accuracy of the GNS's DBH data.

Commerce's Position: The Canadian Parties argue the DBH figures reported by the GNS (17.29 cm and 15.9 cm for all coniferous standing and SPF standing timber, respectively) are understated and that a measurement reflecting the DBH of harvested SPF logs would demonstrate that Nova Scotia's trees are too large to be comparable to the trees that grow in Québec, Ontario, and Alberta. We disagree.

The DBH reported by the GNS reflects merchantable, standing timber on private lands, where merchantable is defined as standing timber with a minimum DBH of 9 cm.[783] Like Nova Scotia, the DBH data from the GOQ reflect measurements of tree size timber, in other words, standing timber.[784] Further, in measuring the DBH of its Crown-origin standing timber the GOQ also utilizes a merchantable timber standard that is defined as a minimum DBH of 9 cm.[785] Thus, we find the DBH data reported by the GOQ for Crown-origin timber reflects standing timber, not harvested timber, with a minimum diameter of 9 cm, and therefore, we conclude that the DBH data for Nova Scotia and Québec are calculated on the same basis.

As noted in the *Lumber VAR1 Prelim Results*, information from the GOQ indicates that the DBH of SPFL[786] standing timber species ranges from 11 cm to 25 cm,[787] while the data from the GOQ for DBH by tariffing zone indicate a province-wide, average DBH of 16.1 cm for SPFL standing timber.[788] Further, the average DBH of Crown-origin standing timber in the tariffing zones where Resolute harvested Crown-origin standing timber during the POR was 15.8 cm.[789] Based on these data points, we therefore find that the DBH for SPFL standing timber in Québec and the average DBH of SPF standing timber in the tariffing zones from which Resolute harvested during the POR are nearly identical to the DBH for SPF private-origin standing timber reported by the GNS. Therefore, we find that the DBH for private-origin SPF standing timber in Nova Scotia is comparable to the DBH of SPFL Crown-origin standing timber in Québec.

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[781] *See* Petitioner August 10, 2020 Rebuttal Brief at 26 – 31.
[782] *Id*. at 27, citing GNS Comments on GOC NFI on Nova Scotia Private Price Survey at 4.
[783] *See* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at 4.
[784] *See* Marshall Report at 11, that in turn reflects DBH data from the BMMB for Crown-origin SPFL standing timber by tariffing zone in the Marshall Report Data Submission.
[785] See GOQ July 15, 2019 Primary QNR Response at Exhibit QC-STUMP-031 at 56.
[786] The GOQ includes Spruce, Pine, Fir, and Larch species in its category for SPF species.
[787] *See Lumber VAR1 Prelim Results* PDM at 25, citing GOQ July 15, 2019 Primary QNR Response at QS-S-21 and Exhibit QC-STUMP-19.
[788] *See* DBH Analysis Memorandum.
[789] *See* DBH Analysis Memorandum.

As noted in the *Lumber V AR1 Prelim Results*, the GOO did not report DBH data for Crown-origin SPF standing timber.[790] However, in the absence of the requested DBH data, we have utilized DBH data for SPFL Crown-origin standing timber in Québec as a means of estimating the DBH of Crown-origin standing timber in Ontario. The average DBH of SPFL Crown-origin standing timber in the Québec tariffing zones that border Ontario is 16.56 cm, while the average DBH of SPFL Crown-origin standing timber in northern tariffing zones that are contiguous to the Ontario border (*e.g.*, those tariffing zones that are to the north of Québec tariffing zone 858) is 15.25 cm.[791] Therefore, from these comparisons, we find it is reasonable to conclude that the DBH of SPF Crown-origin standing timber in Ontario is similar to the DBH of SPFL Crown-origin standing timber in contiguous tariffing zones of Québec, and, thus, in turn is comparable to the DBH of SPF private-origin standing timber in Nova Scotia.

Concerning Alberta, the GOA argues that the DBH figure it reported to Commerce reflects harvested standing timber, which means that the trees that comprise its DBH are more desirable and, therefore, larger than the merchantable, private-origin standing timber that comprise the DBH data the GNS reported for Nova Scotia. In other words, the GOA argues that the DBH information for Alberta and Nova Scotia are not on an apples-to-apples basis. First, information from the GOC indicates that black spruce, an SPF species that is commonly harvested across all of Canada, has a DBH that ranges from 13 to 23 cm, which is a diameter range that encompasses the DBH the GNS reported for private-origin standing timber in Nova Scotia.[792] Further, while the DBH for private-origin logs harvested from private lands in Nova Scotia is not available on the record, a New Brunswick Private Task Force Report on New Approaches for Private Woodlots contains information concerning the DBH of SPF standing timber harvested from private woodlots in New Brunswick.[793] Because Nova Scotia and New Brunswick are contiguous and in the absence of the requested DBH data for Crown-origin standing timber in Alberta, we find it is reasonable to use the DBH of standing timber harvested from private woodlots in New Brunswick as a proxy for the DBH of private standing timber harvested in Nova Scotia. Information from the GNB indicates that the optimal DBH of SPF standing timber from private woodlots in New Brunswick is between 20.32 cm and 27.94 cm.[794] Thus, the optimal DBH range for standing timber harvested from private woodlots in New Brunswick approximates the DBH of SPF species trees that are harvested in Alberta (*i.e.*, 17.8 cm for black spruce to 24.2 cm for white spruce).[795] Further, while the DBH of optimally-sized logs harvested from private woodlots in New Brunswick is similar to the DBH of harvested Crown-origin logs in Alberta, the New Brunswick Private Task Force Report on New Approaches for Private Woodlots indicates that, in practice, the DBH of logs harvested from private woodlots is only 14.73 cm to 16.76 cm.[796] Therefore, using the DBH of standing timber harvested from private woodlots in New Brunswick as a proxy for the DBH of standing timber harvested from private lands in Nova Scotia, we conclude that the DBH of private-origin standing timber in Nova Scotia is comparable to the DBH of Crown-origin standing timber in Alberta.

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[790] *See Lumber V AR1 Prelim Results* PDM at 25, citing GOO July 15, 2019 Primary Stumpage QNR Response at ON-STUMP-21.
[791] *See* DBH Analysis Memorandum.
[792] *See* GOC July 15, 2019 Primary QNR Response at Exhibit GOC-AR1-STUMP-49.
[793] *See* GNB July 15, 2019 Primary Stumpage QNR Response at Exhibit NB-AR1-Stump-17 at 20 – 22.
[794] *Id*. at Exhibit NB-AR1-Stump-17 at 21 – 22
[795] *See* GOA July 15, 2019 Primary Stumpage QNR Response at Exhibit AB-AR1-S-23 Volume II at 17.
[796] *See* GNB July 15, 2019 Primary Stumpage QNR Response at Exhibit NB-AR1-Stump-17 (p. 21).

Comment 27: Whether SPF Tree Species in Nova Scotia Are Comparable to SPF Tree Species in the Provinces at Issue

GOC's Comments[797]

- Species within the SPF group have different values, and Nova Scotia's unique species mix does not resemble the provinces at issue.
- Factors like size, moisture content, growth pattern, limb distribution, and defect tendencies differ among species within the SPF species basket. These factors, in turn, affect the costs and benefits that mills derive from that species' timber. Thus, "different species that are used to make SPF lumber are valued differently" on the stump even though they may ultimately produce the same end-product.[798]
- Nova Scotia produces 35 percent of its sawable softwood products from Red Spruce, a species that does not grow in Ontario or Alberta and accounts for a very small portion of Québec's forest inventory. Red Spruce is a hearty species that tolerates shade and grows straight, qualities that increase its value to harvesters.
- Meanwhile, the prominent SPF species in Québec, Ontario, and Alberta (*e.g.*, black spruce, white spruce, jack pine, and lodgepole pine) are relatively smaller and defect prone.
- Black Spruce, the most prominent species in the forest inventories of Québec and Ontario, constitutes less than 5 percent of Nova Scotia's forest inventory. Black Spruce grown in Québec and Ontario is smaller and is associated with defects making it less value than Red Spruce from Nova Scotia.
- Sawmills in Nova Scotia avoid processing White Spruce into lumber because it is weaker and less dense than other prominent SPF species in the province. Sawmills in Alberta do not have the luxury of such a choice given that White Spruce accounts for 37 percent of Alberta's softwood harvest.
- Jack Pine, which accounts for significant portions of the forest inventory of Québec and Ontario, is defect prone and less valuable. Jack Pine accounts for less than one percent of Nova Scotia's forest inventory.
- Lodgepole Pine, which grows in Alberta, is not found in Nova Scotia. Lodgepole Pine is smaller and more defect prone than Nova Scotia's most common pine species.
- Balsam Fir grows in Nova Scotia, Québec, and in some parts of Ontario. Its high moisture content lowers its value. In Nova Scotia, higher value Red Spruce is readily available, which allows sawmills to avoid Balsam Fir. Meanwhile, the dearth of alternative species in Québec and Ontario leaves such sawmills with no choice but to utilize the Balsam Fir.

Petitioner's Rebuttal Comments[799]

- During the POR, the share of SPF species in the harvest volume of Crown-origin standing timber accounted for (1) 80.01 percent of the harvest in Québec; (2) 70.93 percent in Ontario, and (3) 99.95 percent in Alberta.
- The provinces' grouping of SPF species into a single SPF category for purposes of pricing Crown-origin standing timber and record keeping belies the Canadian Parties' claims

[797] *See* GOC July 29 2020 Vol I Case Brief at 35 – 47 and 110 – 112. Various Canadian Parties reiterate the GOC's case brief arguments that are summarized as part of this issue.
[798] *Id*. at 36, citing Miller Report at 3.
[799] *See* Petitioner August 10, 2020 Rebuttal Brief at 13 – 26.

concerning the unique qualities of species that comprise the SPF-basket categories in Québec, Ontario, and Alberta.

- The GOA's Timber Management Regulation sets one general stumpage rate for all coniferous timber (SPF or otherwise) that is not based on specific specifies but rather on "western spruce, pine, and fir {lumber} that is kiln-dried, random lengths, 2" x 4" and better" as published by *Random Lengths Publications Inc*.[800]
- Similarly, the GOO groups black spruce, white spruce, jack pine, tamarack/larch and balsam fir into a single SPF category and treats them as interchangeable for "commercial purposes."[801]
- The GOQ includes fir, spruce, jack pine and larch in the single SPF category it charges on sales of Crown-origin standing timber.
- The Canadian Parties' claims concerning black spruce are refuted by the GOQ's questionnaire response, which states that black spruce had a higher value with less transformation costs compared to the Balsam Fir. The information from the GOQ also indicates that a black spruce log with a 14 cm DBH can produce a profit, a fact that refutes the Canadian Parties' claims about the value of the species.[802]
- Information in the GOC's initial questionnaire response indicates that black spruce is commonly known as red spruce and that black spruce can form a hybrid species with red spruce that is difficult to distinguish from either parent species. The characteristics of black spruce and its resemblance to red spruce make it possible for paid consultants to generate their desired trends and outcomes.

Commerce's Position: Under 19 CFR 351.511(a)(2)(i), in choosing in-country prices, Commerce considers factors affecting comparability. However, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[803] Consistent with the *Lumber IV* proceeding and the *Lumber V Final*, Commerce preliminarily determined in the current review that tree size and species composition are key factors determining the market value of standing timber.[804] Once again, the Canadian Parties argue that various species differ between the provinces to such an extent that the prices in the 2017-2018 Private Stumpage Survey are not suitably comparable as a tier-one benchmark. We continue to disagree with these arguments and continue to find that, though there are minor variations in the relative concentration of individual species across provinces, the standing timber in Nova Scotia, New Brunswick, Québec, Ontario, and Alberta is harvested from the same core species group—SPF.[805] Accordingly, we find that the transactions for private-origin standing timber in Nova Scotia are comparable to the Crown-origin standing timber in New Brunswick, Québec, Ontario, and Alberta in terms of species comparability.

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[800] *Id*. at 18 – 19, citing GOA July 15, 2019 Primary Stumpage QNR Response at Exhibit AB-AR1-S-15.
[801] *Id*. at 21, citing GOO July 15, 2019 Primary Stumpage QNR Response at Exhibits ON-STUMP-18 and ON-STUMP-19. The GOO groups white pine and red pine separately from the aforementioned SPF category.
[802] *Id*. at 22 – 23, citing GOQ Initial Questionnaire at Exhibit QC-S-26.
[803] *See, e.g.*, *HRS from India* IDM at Comment 12: "There is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government. *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511. In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis."
[804] *See Lumber V AR1 Prelim Results* PDM at 24, citing *Lumber IV Preliminary Results of 2nd AR*, 70 FR at 33103-04, unchanged in *Lumber IV Final Results of 2nd AR* IDM at Comments 21 and 25; *Lumber V Prelim* PDM at 44 – 46; and *Lumber V Final* IDM at Comment 39.
[805] The GOQ considers the Larch species to be part of the SPF species category in Québec. In Ontario, the GOO also includes Larch/Tamarack in its SPF species category.

SPF was the dominant coniferous species harvested by sawmills in New Brunswick, Québec, Ontario, and Alberta during the POR. For example, during the POR, SPF species accounted for (1) 94.49 percent of the Crown harvest in New Brunswick; (2) 80.01 percent of the Crown harvest in Québec; (3) 70.93 percent of the Crown harvest in Ontario, and (4) 99.95 percent of the Crown harvest in Alberta.[806] Data supplied by the three mandatory respondents and the sole voluntary respondent also indicate that SPF species represent the majority of the companies' respective Crown timber harvest.[807]

While Canadian Parties point out what they claim are distinct physical differences between the various species that comprise the SPF category in provinces west of Nova Scotia, consistent with the investigation, we continue to find that the coniferous species that comprise the SPF category in the Canadian provinces at issue have "sufficiently common characteristics to be treated interchangeably in the lumber market."[808] We also continue to find that these purported physical differences among species in the SPF category are not reflected in the how Provincial Governments price Crown-origin standing timber. Consistent with *Lumber IV* and the *Lumber V Final*, record information indicates the GOO and GOA charge the same unit price for all Crown-origin standing timber that fall within the SPF species category.[809] The GOO groups black spruce, white spruce, jack pine, tamarack/larch and balsam fir into a single SPF category and treats them as interchangeable for "commercial purposes."[810] The GOA's Timber Management Regulation sets one general stumpage rate for all coniferous timber (SPF or otherwise) that is not based on specific species but rather on "western spruce, pine, and fir {lumber} that is kiln-dried, random lengths, 2" x 4" and better" as published by *Random Lengths Publications Inc*.[811] As for the GOQ, in FY 2017-2018, the GOQ calculated a price for Crown-origin standing timber for each species that comprised its SPF category.[812] However, the starting point for each species' prices was, nonetheless, a common SPF price to which the GOQ applied a species-species net revenue adjustment.[813] Thus, we find the manner in which the GOA, GOO, and GOQ set prices for Crown-origin trees that fall within the SPF species category undercuts the Canadian Parties' claims that physical differences within the SPF species category make them incomparable to Nova Scotia SPF trees on an individual or group basis.

Additionally, as noted elsewhere in this memorandum, we find that despite variances among the species that comprise the SPF categories in Nova Scotia, New Brunswick, Québec, Ontario, and Alberta, tree size, as measured by DBH, remains in the same general range. Therefore, we continue to find that the species that make up the private-origin standing timber in Nova Scotia

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[806] *See* GNB July 15, 2019 Primary Stumpage QNR Response at Exhibit NB-STUMP-1 at Table 4; GOQ July 15, 2019 Primary QNR Response at QS-S-9 to QS-S-12 and Exhibit QC-STUMP-14; GOO July 15, 2019 Primary Stumpage QNR Response at ON-STUMP-4 and Exhibit ON-STATS-1; and GOA July 15, 2019 Primary Stumpage QNR Response at Exhibit AB-AR1-S-11.
[807] *See* Final Calculation Memoranda for the three mandatory respondent companies and voluntary respondent, which identify the species of Crown-origin standing timber acquired during the POR.
[808] *See Lumber V Final* IDM at Comment 40.
[809] *See Lumber V Final* IDM at Comment 40.
[810] *See* GOO July 15, 2019 Primary Stumpage QNR Response at Exhibits ON-STUMP-73 and Exhibit ON-TEN-34. The GOO groups white pine and red pine separately from the aforementioned SPF category.
[811] *See* GOA July 15, 2019 Primary Stumpage QNR Response at Exhibit AB-AR1-S-15.
[812] *See* GOQ July 15, 2019 Primary QNR Response at S-64.
[813] *Id*. at S-65.

are comparable to the species that comprise Crown-origin standing timber in New Brunswick, Québec, Ontario, and Alberta.

Comment 28: Whether Nova Scotia's Forest Is Comparable to the Forests of New Brunswick, Québec, Ontario, and Alberta

GOC's Comments[814]

- Nova Scotia's climate benefits its timber supply in ways that increase its stumpage prices relative to other provinces, including ways related to its species mix and DBH.
- Physical differences distinguish Nova Scotia's timber. Those differences stem from Nova Scotia's unique climate. Nova Scotia is in an entirely separate ecozone (the Atlantic Maritime Ecozone) with a distinct forest (the Acadian Forest) compared to the three provinces to which Commerce compares it.
- Nova Scotia's Atlantic Maritime Ecozone has a cool, moist maritime climate and moderate temperatures around 6.5°C and mean annual precipitation from 1,000 mm to 1,500 mm near the coast. These relatively high temperatures and precipitation amounts result in longer growing seasons ranging from 160 to 200 days, which is 50 percent longer than that of Alberta.
- Nova Scotian standing timber benefits from rolling terrain with good drainage and year-round access for harvesting in areas where spring weight restrictions do not impact trucking.
- No evidence indicates that Nova Scotia's forests have been degraded by the type of infestations that have decreased the quality of timber in other provinces, like Québec with its spruce budworm infestation.
- Conditions in Nova Scotia combine to produce large, healthy trees that grow in concentrated areas, which allow for harvesters to be more efficient and produce more valuable timber products (*i.e.*, logs) than their counterparts in other provinces.
- Ontario and Québec forests are primarily located in the Boreal Shield Ecozone, which is characterized by long winters and short summers. These forests also receive significantly less rainfall than Nova Scotia.
- The most common SPF species in Ontario and Québec, black spruce, is associated with swampy terrain of the Boreal forest making it difficult to access and harvest.

GOA's Comments[815]

- The Cross Border Analysis details the differences between the forests of Nova Scotia and Alberta and the impacts those differences have on standing timber prices.[816]
- In the *Lumber V AR1 Prelim Results*, Commerce ignored the Cross Border Analysis when concluding that the forests of Nova Scotia and Alberta are comparable.

Petitioner's Rebuttal Comments[817]

- In the *Lumber V AR1 Prelim Results*, Commerce continued to find that SPF species are the primary species that are grown east of British Columbia and that SPF species are the primary species harvested on private lands in Nova Scotia and Crown lands in the provinces at issue.

[814] *See* GOC July 29 2020 Vol I Case Brief at 30 – 35. Various Canadian Parties reiterate the GOC's case brief arguments that are summarized as part of this issue.
[815] *See* GOA July 29 2020 Vol II Case Brief at 102 – 104.
[816] *See* Cross Border Analysis.
[817] *See* Petitioner August 10, 2020 Rebuttal Brief at 17 – 18.

- The Canadian Parties wrongly claim that differences in forestry and climate conditions in the provinces at issue relative to Nova Scotia result in physical differences in standing timber.
- Central to the Canadian Parties' argument is the assertion that species within the SPF group have different values and that, due to differing climate and forestry conditions, Nova Scotia's SPF mix is not comparable to the SPF mixes in the provinces at issue.
- This claim is flatly contradicted by the GOA's, GOO's, and GOQ's treatment of Crown-origin SPF stumpage. Namely, these provincial governments treat SPF species as a single group for purposes of setting stumpage prices for standing timber and record keeping.
- Also, the purported differences in climate and forestry conditions do not result in standing timber in Nova Scotia being larger than that in Québec, Ontario, and Alberta. The DBH of SPF trees in Nova Scotia is comparable to the DBH of SPF trees in the provinces at issue.

Commerce's Position: Consistent with the *Lumber V Final*,[818] we continue to disagree with the Canadian Parties that there are fundamental differences between the Acadian forest (which encompasses Nova Scotia) and the Boreal forest (which encompasses Québec, Ontario, and large areas of Alberta) that render private-origin standing timber prices in Nova Scotia incomparable to Crown-origin standing timber prices in Québec, Ontario, and Alberta. As discussed elsewhere in this decision memorandum, we find that species and DBH are the two most critical elements when assessing whether prices for private-origin standing timber in Nova Scotia are comparable to Crown-origin standing timber in New Brunswick, Québec, Ontario, and Alberta. Thus, if growing conditions in the Acadian and Boreal forests caused significant differences in the physical characteristics of their respective standing timber, one would expect those conditions to be borne out in the types of species and the size of trees that grow in the forests. Yet, as discussed in this memorandum, record information demonstrates that while Nova Scotia is not located in the same forest as Québec, Ontario, and Alberta, the two forests are comparable in terms of species and DBH in that both forest regions are dominated by SPF-based species and the DBH of the forests' trees are in line with one another. Having determined that the species mix and DBH of the trees in the Acadian and Boreal forests are comparable, we therefore also determine that information cited by the Canadian Parties (*e.g.*, the Cross Border Analysis) has not demonstrated that growing conditions in the Acadian and Boreal forests are so different as to render trees from the two forests incomparable to one another.

Comment 29: Reliability of Nova Scotia Private-Origin Standing Timber Benchmark

GOC's Comments[819]

- In the investigation, Commerce correctly rejected a proposed stumpage benchmark because the submitter did not make the underlying data available and, thus, Commerce concluded that the data were not usable or verifiable.[820]
- Commerce should reach the same conclusion with regard to the 2017-2018 Private Stumpage Survey because key aspects of the survey are not available to interested parties, namely the

[818] *See Lumber V Final* IDM at Comment 40.
[819] *See* GOC July 29 2020 Vol I Case Brief at 80 – 91. Various Canadian Parties reiterate the GOC's case brief arguments that are summarized as part of this issue.
[820] *See Lumber V Final* IDM at 61 – 62.

identities of the sellers, whether fees were included in the stumpage price, and whether survey respondents purchase wood fiber for purposes other than lumber production.

- The 2015-2016 Private Stumpage Survey contained significant conversion factor errors and included non-stumpage costs that skewed the price data. The GNS has not indicated how it remedied these deficiencies in the 2017-2018 Private Stumpage Survey.
- The 2015-2016 Private Stumpage Survey included costs that were not part of the stumpage prices included in the survey such as felling, delimbing costs, and road building/access costs. There is no evidence indicating that the 2017-2018 Private Stumpage Survey took measures to avoid including these non-stumpage costs.
- The 2015-2016 Private Stumpage Survey improperly included log prices. The 2017-2018 Private Stumpage Survey only surveyed mills (who often purchase harvested logs) and did not include independent harvesters and brokers (who are known to purchase standing timber), and, thus, likely includes log purchases.
- The 2017-2018 Private Stumpage Survey lacks data from industrial freeholds, which accounted for a significant percentage of the private harvest during the POR.
- The lengths of a single, harvested tree can have multiple uses. However, the Nova Scotia Private Stumpage Survey instructs survey respondents to report prices for various wood products where the product definitions are, in turn, based on intended use. Without access to the underlying data, it is impossible to determine how survey respondents categorized their purchased goods when responding to the survey.
- The GNS misled Commerce when it claimed the 2016-2017 Private Stumpage Survey was not prepared for purposes of the investigation. Similarly, there is no evidence that the GNS prepared the 2017-2018 Private Stumpage Survey in the ordinary course of business.
- The GNS did not use the 2015-2016 Private Stumpage Survey to set stumpage prices in the province, citing what it claimed were issues related to the method the contractor, Deloitte, used to weight regional stumpage prices. The 2017-2018 Private Stumpage Survey does not use a fundamentally different survey methodology.
- The GNS has provided no evidence indicating whether it used the 2017-2018 Private Stumpage Survey to set stumpage prices. The absence of such evidence should lead Commerce not to rely upon the 2017-2018 Private Stumpage Survey as a data source.
- Commerce indexed prices to the corresponding month in the opposite year covered by the Survey, rather than indexing prices to the most recent month for which prices are available as it did in the investigation, which makes the data set unreliable.
- Nine months of the POR is not covered by the 2017-2018 Private Stumpage Survey, which makes it unreliable.
- The benchmark price Commerce derived from the 2017-2018 Private Stumpage Survey is not weighted to reflect regional harvest distributions, an adjustment that GNS officials have previously indicated is necessary in order to avoid unreliable results.
- The GNS has not provided Commerce with the necessary county-level data required to recreate the regionally weighted stumpage prices listed in the 2017-2018 Private Stumpage Survey.

GOO's Comments[821]

- The 2017-2018 Private Stumpage Survey appears to include lump-sum transactions, where the buyer and seller agree to a single price to harvest some or all of a woodlot, thereby making the survey unreliable.

GOQ's Comments[822]

- While Commerce places great weight on its allegation that sawmills in Québec "dominate" the market for standing timber, a cursory review of the sawmills in Nova Scotia indicates a level of market concentration far greater than in Québec.
- Commerce cannot willfully blind itself to relevant data by not even asking questions of the same kind and caliber of Nova Scotia that it demands of Québec. This asymmetrical provincial analysis precludes selection of the 2017-2018 Private Stumpage Survey as a benchmark.
- Data from the 2017-2018 Private Stumpage Survey indicates that the average volume of surveyed private stumpage purchases per transaction was 39.06 m^3, or approximately *a single truck load* of logs.
- During the POR, the average volume of standing softwood timber purchased through the GOQ's public stumpage auction was 28,769 m^3 per auction.
- Prices from "individual transactions" that, on average, constitute a mere 0.135 percent of the volumes being sold at individual auctions in Québec should not be used as benchmark for those Québec sales.

GNS's Rebuttal Comments[823]

- The GNS, in fact, used the 2015-2016 private stumpage survey in setting forestry policy.
- An affidavit from a high ranking GNS official states that the GNS "identified a downside risk of altering Crown stumpage rates at the same time that Nova Scotia mills were subject to antidumping and countervailing duty cash deposit as a result of the investigation concerning imports of softwood lumber products from Canada."[824]
- Thus, it is incorrect to state the survey was not used in the ordinary course of business and did not inform GNS policy.
- The GNS began to process the survey stumpage prices before the initiation of the investigation.
- In February 2016, the GNS began to the process to commission its own, stand-alone private stumpage market survey.
- The GNS did not use the 2015-2016 private stumpage survey to update Crown stumpage rates because of a concern with Deloitte's approach to regional weighting of stumpage prices.
- Commerce has access to transaction-level, anonymized data from the 2017-2018 Private Stumpage Survey that it can use to re-weight the data in any way it sees fit.
- The facts concerning the 2015-2016 private stumpage survey are distinct from those involving the 2017-2018 Private Stumpage Survey, namely the GNS used the 2017-2018 survey results to set the stumpage prices charged on Crown-origin standing timber in Nova Scotia.

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[821] *See* GOO July 29, 2020 Vol IV Case Brief at 47 – 52.
[822] *See* GOQ July 29, 2020 Vol V Case Brief 66 – 70.
[823] *See* GNS August 10, 2020 Rebuttal Brief at 2 – 9. The petitioner reiterates the arguments of the GNS that are summarized as part of this issue.
[824] *See* GNS August 10, 2020 Rebuttal Brief at 2 – 9, citing GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 1.

- The 2017-2018 Private Stumpage Survey was conducted and concluded after Commerce excluded Nova Scotia from the *Order*, a fact that belies the Canadian Parties' claims that the GNS conducted the 2017-2018 survey for purposes of this CVD proceeding.
- The 2017-2018 Private Stumpage Survey is accurate and robust. It contains pricing data, verified by Deloitte, that reflect stumpage prices for specific hardwood and softwood stumpage products, it utilizes a weighting methodology that is preferred by Commerce, and addresses minor issues found by Commerce during the GNS verification that took place during the investigation.
- The fact that the GNS used the results of the 2017-2018 Private Stumpage Survey as the basis to set stumpage rates on purchases of Crown-origin standing timber demonstrates the reliability of the 2017-2018 survey results and that the survey does not, as the Canadian Parties claim, contain non-stumpage costs, lump-sum transactions, or unclear product definitions.
- The 2017-2018 Private Stumpage Survey instructed respondents not to include non-stumpage costs or lump-sum transactions. The product descriptions utilized in the survey reflect descriptions from the Nova Scotia Registry of Buyers, which is regularly used by the GNS and the wood products industry in Nova Scotia.
- The 2017-2018 Private Stumpage Survey is robust. It included 20 respondents, covered nearly 700,000 square meetings of standing timber purchases, and nearly 20,000 individual transactions.
- Contrary to the Canadian Parties' claims, industrial freehold purchases account for only 13 percent of Nova Scotia's total provincial harvest, and operators of industrial freeholds do not typically offer their private-origin standing timber to unrelated third parties.

Petitioner's Rebuttal Comments[825]

- The Canadian Parties claim that each region of Nova Scotia has different average unit prices for each type of standing timber, and thus, Commerce should weight the survey results of the 2017-2018 Private Market Survey to account for regional differences.
- The Canadian Parties provide Commerce with a series of calculations using data cobbled together from various sources to arrive at an adjustment that accounts for such purported regional differences.
- The proposed adjustment is not required under the statue and therefore is unnecessary.
- The proposed adjustment does not improve the accuracy of Commerce's stumpage benchmark calculation.

Commerce's Position: The Canadian Parties make claims concerning the accuracy and reliability of the 2015-2016 Private Market Survey, which formed the basis of the Nova Scotia standing timber benchmark in the investigation, as a means of casting doubt on the 2017-2018 Private Market Survey. These claims are either incorrect or unfounded. In the investigation, Commerce verified the 2015-2016 Private Market Survey, and in the *Lumber V Final*, determined that the prices for private-origin standing timber contained in the survey were sound, reliable, and therefore suitable for use as the tier-one benchmark when determining whether the respondents purchased Crown-origin standing timber for LTAR in Québec, Ontario, and Alberta.[826] We find that the Canadian Parties have presented no new arguments or information that would cause us to reconsider our finding from the investigation concerning the reliability of

[825] *See* Petitioner August 10, 2020 Rebuttal Brief at 112 – 113.
[826] *See Lumber V Final* IDM at Comment 41.

the 2015-2016 survey. Therefore, we continue to find that the underlying methodology and results of the 2015-2016 are reliable. Further, given that Commerce finds: (1) the 2015-2016 Private Market Survey to be reliable; (2) the 2017-2018 Private Market Survey utilized many of the same key data collection methodologies as the 2015-2016 survey; (3) and there is no evidence in this review that calls the reliability of the 2017-2018 survey into question, we find the results of the 2017-2018 Private Market Survey are also reliable.

Repeating arguments from the investigation,[827] the Canadian Parties claim that the GNS commissioned the 2015-2016 Private Market Survey for purposes of the lumber proceeding, and therefore is not reliable, and thus Commerce must also conclude that the 2017-2018 Private Market Survey was commissioned for purposes of the review and is unreliable. To support their argument, they assert that the 2015-2016 Private Market Survey was not used to set the prices for Crown-origin standing timber prices in Nova Scotia and neither was the 2017-2018 Private Market Survey. As in the investigation, we continue to find that the 2015-2016 Private Market Survey was not commissioned or conducted for purposes of the investigation.[828] The GNS has an established history of conducting periodic stumpage surveys to evaluate whether it should update Crown stumpage rates.[829] The GNS began the process to survey private-origin standing timber prices for FY 2015-2016 well before the initiation of the investigation. For example, in December 2015, a year before the initiation of the investigation, the GNS learned that the GNB was preparing its own survey of private-origin standing timber prices and, thus, was approached by various stakeholders to similarly conduct a survey covering private-origin standing timber prices in Nova Scotia.[830] The record indicates that in February 2016, the GNS then commenced a procurement process to find a vendor to develop a new stumpage survey.[831] All of these events transpired prior to the initiation of the investigation. Thus, even though the GNS ultimately determined not to use the results of the 2015-2016 Private Market Survey to set the prices for Crown-origin standing timber in the province due to concerns with how the contractor, Deloitte, weighted the survey results and concerns over altering Crown-origin standing timber prices during an ongoing CVD investigation,[832] the evidence on the record demonstrates that the GNS commissioned the study well before the *Lumber V* proceeding even began. Therefore, we continue to disagree with the Canadian Parties' claims that the 2015-2016 Private Market Survey was conducted for purposes of this proceeding and that the survey and any updated versions of the study are unreliable.

As for the 2017-2018 Private Market Survey, the GNS makes clear in the narrative of its initial questionnaire response that it used the 2017-2018 survey to set prices of Crown-origin standing

[827] *Id*. at Comment 41.
[828] *Id*. at Comment 41.
[829] *See* GNS July 15, 2019 Primary QNR Response at 1; *see also* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 1, which contains a declaration from Jonathan Porter, Executive Director, Renewable Resources Division, GNS Department of Lands and Forestry: "In order to estimate the fair market value of stumpage in the Province, the Department commissions periodic surveys of buyers who routinely purchase stumpage from independent private land owners in a competitive marketplace. In years when a survey is not conducted, the Department generally updates its Crown stumpage rates set using the last completed private stumpage survey by reference to market indices so that the Crown stumpage rates remain consistent with fair market value."
[830] *See* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 1, Attachments 1 – 2.
[831] *Id*. at Exhibit 1, Attachment 3.
[832] *Id*. at Exhibit 1 at 6; *see also* GNS July 15, 2019 Primary QNR Response at Exhibit NS-6.

timber in the province,[833] and a declaration from the Executive Director at the GNS's Department of Lands and Forestry states that "the Department used these 2017-2018 survey results to update Crown stumpage rates in FY 2019-2020."[834] Therefore, the Canadian Parties are simply wrong to claim that the GNS did not use the results of the survey as the basis for setting the prices for Crown-origin standing timber. Furthermore, the fact that the GNS utilized the results of the 2017-2018 Private Market Survey to set the price of Crown-origin standing timber charged for FY 2019-2020, a period that post-dates Nova Scotia's exclusion from the CVD *Order*, is additional proof that the GNS commissioned and relied upon the 2017-2018 survey in the ordinary course of business. Given these facts, it is simply not credible for the Canadian Parties to claim that the GNS commissioned the 2017-2018 Private Market Survey for purposes of the first review and, thus, Commerce should not rely upon the survey for purposes of deriving tier-one standing timber benchmark prices.

We also disagree with the Canadian Parties' claims that the underlying data from 2015-2016 Private Market Survey were not examined or on the record of the investigation and that their absence was a fatal flaw that continued in the 2017-2018 Private Market Survey. In the investigation, the GNS explained that Deloitte, the firm that conducted the 2015-2016 Private Market Survey, did not disclose the identities of the survey respondents to the GNS or provide it with disaggregated survey results but that the counsel to the GNS, nonetheless, provided Commerce with the proprietary, disaggregated survey results of the 2015-2016 Private Market Survey.[835] The disaggregated survey results redacted the identities of the purchasers of the private-origin standing timber.[836] At verification, Deloitte provided Commerce officials with access to the unredacted and disaggregated survey results.[837] As explained in the *Lumber V Final*, based on its review of the underlying data at verification, Commerce determined that the 2015-2016 Private Market Survey was reliable and suitable for benchmark purposes.[838] Thus, because the GNS submitted the disaggregated survey results from the 2015-2016 Private Market Survey on the record, it is simply incorrect for the Canadian Parties to claim the data were not disclosed or available during the investigation. For this reason, we find that the facts concerning the 2015-2016 Private Market Survey are distinct from the standing timber prices for the U.S. PNW that the petitioner proposed using as the benchmark to determine whether the GBC sold Crown-origin standing timber for LTAR. In the investigation, the petitioner did not provide any source documents to substantiate the reliability of its proposed benchmark, whereas at verification, Commerce was able to trace prices in the anonymized, disaggregated dataset of the 2015-2016 Private Market Survey to the unredacted sales documents.[839] In the current review, the GNS once again provided a disaggregated, anonymized version of the results of the 2017-

[833] *See* GNS July 15, 2019 Primary QNR Response at 5: "The "Report on prices of Standing Timber, April 1, 2017 – March 31, 2018…formed the basis for the Government of Nova Scotia to set its Crown stumpage rates."
[834] *See* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 1.
[835] *See Lumber V Final* IDM at Comments 40 and 41; *see also Lumber V Prelim Results* IDM at 44.
[836] *See Lumber V Final* IDM at Comments 40 and 41.
[837] *Id*. at Comment 41: "Further, other than the survey respondents whose source documents the Department examined at verification, the identities of the survey respondents are not on the record."
[838] *Id*.
[839] *See, e.g., Lumber V Final* IDM at Comment 39: "based on our examination as well as our verification of the underlying data, we continue to find that private-origin standing timber in Nova Scotia are comparable to the Crown-origin timber sold in the provinces at issue and that the prices in the NS Survey constitute a reliable data source to serve as a tier-one benchmark." *See also Lumber V Final* IDM at Comment 41 and Comment 20.

2018 Private Market Survey.[840] Therefore, we find that the GNS has adequately disclosed the underlying data of the 2017-2018 Private Market Survey.

We disagree with the Canadian Parties' claim that the 2015-2016 Private Stumpage Survey included costs that were not part of the stumpage prices included in the survey such as felling, delimbing costs, and road building/access costs and that such additional costs were also included in the 2017-2018 Private stumpage Survey. In the investigation, Commerce rejected the Canadian Parties' claims that the 2015-2016 version of the study contained extraneous costs not related to stumpage prices and lump-sum transaction prices that distorted the survey results.[841] In the investigation, Commerce also explained that the survey instructed respondents to only report prices paid for stumpage (*e.g.*, standing timber).[842]

The Canadian Parties claims that the 2017-2018 Private Market Survey similarly contains additional, non-stumpage costs are unfounded and wrong. The 2017-2018 Private Market Survey instructed respondents to report prices paid for "stumpage" and instructed the survey participants not to include any other non-stumpage costs.[843] Further, the survey instructed survey respondents not to report lump-sum transactions.[844] Therefore, there is simply no basis to conclude that the prices in the 2017-2018 Private Market Survey are improperly inflated by extraneous costs or improper reporting methods.

We disagree that the 2015-2016 Private Market Survey improperly included log prices and that this purported error necessarily carried over to the 2017-2018 version of the survey. The Canadian Parties' claim is that sawmills buy logs from independent contractors and do not pay stumpage prices, and because the 2017-2018 Private Market Survey was comprised of sawmill respondents, the survey must therefore reflect prices for logs. In the investigation, Commerce explained that the 2015-2016 Private Market Survey instructed respondents to only report "stumpage prices," *i.e.*, standing timber prices, for "softwood sawlogs."[845] Further, in the investigation, Commerce verifiers examined sales documentation confirming that the prices in the 2015-2016 Private Market Survey reflected standing timber prices for sawlogs and studwood.[846] Similarly, the 2017-2018 Private Market Survey instructs respondents to report prices paid for "stumpage."[847] Therefore, consistent with the investigation, we find the Canadian Parties' claims constitute mere conjecture that are not supported by information on the record.

We also disagree that the lack of price data from firms with access to standing timber located on private industrial freehold lands makes the 2017-2018 Private Market Survey unreliable. Commerce rejected this same argument in the investigation explaining that:

> (1) "softwood timber harvested on industrial freehold lands is not a significant portion of the softwood timber harvested in Nova Scotia," (2) "the purchase and harvesting of

[840] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-5.
[841] *See Lumber V Final* IDM at Comment 41.
[842] *Id*.
[843] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-16.
[844] *Id*.
[845] *See Lumber V Final* IDM at Comment 41.
[846] *Id*. at 163.
[847] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-16.

> timber on industrial freehold lands has no meaningful impact on the purchase and harvesting of timber on small private woodlots," and (3) "generally speaking, owners of industrial freehold lands do not typically offer their standing timber for sale to unrelated third parties. If any industrial freehold wood is sold to third parties, these transactions typically involve the sale of harvested logs where the owner does not have a use for those logs in its own facility."[848]

In 2018, softwood standing timber from industrial freehold lands did not account for a significant share of Nova Scotia's total harvest of softwood standing timber.[849] We also continue to find that standing timber from a given industrial freehold is generally internally consumed by the owner of the industrial freehold land.[850] The lack of arm's length sales prices involving industrial freehold land would make such sales unusable as tier-one benchmarks. Therefore, our finding on this point remains unchanged from the investigation.

As discussed in further detail below in Comment 32, we disagree with the Canadian Parties that the 2015-2016 Private Market Survey: (1) contained significant errors involving the conversion factor used to report standing timber prices in cubic meters; (2) the alleged errors carried over to the 2017-2018 Private Market Survey; and (3) the alleged errors disqualify the 2017-2018 survey results from use in the first review. In the investigation, Commerce rejected the same claims concerning the conversion factor used to calculate private-origin standing timber prices in Nova Scotia in cubic meters.[851] As explained in the investigation, the conversion factor utilized in the 2015-2016 Private Market Survey is the same factor the GNS uses in the ordinary course of business.[852] Accordingly, the GNS used the same conversion factor in the 2017-2018 Private Market Survey.[853] The record of the first review demonstrates that the conversion factor used in the 2017-2018 Private Market Survey is the same conversion factor that the GNS directs Registered Buyers to use when calculating the volume of primary forest products they have acquired under the GNS's Registration and Statistical Returns Regulations.[854] Furthermore, the GNS used the results of the 2017-2018 Private Market Survey, which incorporate the conversion factor at issue, to set the prices for Crown-origin standing timber sold during FY 2019-2020.[855] Thus, the fact that the GNS used the conversion factor at issue when setting prices for Crown-origin standing timber in FY 2019-2020 further demonstrates its legitimacy and reliability.

Additionally, while we find the conversion factor used in the 2017-2018 Private Market Survey is reasonable and accurate, as the GNS notes, the conversion factor used to convert the private-origin standing timber prices to cubic meters has no bearing on the accuracy of the survey's underlying data, whose private-origin standing timber prices can be converted back to a Canadian Doller per tonne price and recalculated into cubic price using a conversion factor of one's choosing. In other words, while the Canadian Parties disagree with the conversion factor

[848] *See Lumber V Final* IDM at Comment 41.
[849] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-1. The industrial freehold share of Nova Scotia's standing timber harvest is proprietary.
[850] *Id*. at 14.
[851] *See Lumber V Final* IDM at Comment 41.
[852] *Id*.
[853] *See* GNS July 15, 2019 Primary QNR Response at 17.
[854] *Id*. at Exhibit NS-15.
[855] *See* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 1.

the GNS used to convert the private-origin standing timber prices into cubic meters, such criticisms have nothing to do with the reliability of the prices themselves, as expressed in Canadian Dollars per tonne.

The Canadian Parties also argue that while the lengths of a single, harvested tree can have multiple uses, the 2017-2018 Private Stumpage Survey instructs survey respondents to report prices for various wood products (*e.g.*, sawlog, studwood, pulplog) where the product definitions are, in turn, based on intended use. Thus, the Canadian Parties claim that without access to the underlying survey data, it is impossible to determine how survey respondents categorized their purchased goods when responding to the survey. Commerce rejected this line of argument in the investigation, and we continue to reject such arguments in the first review. In the investigation, Commerce explained that the log type classifications contained in the 2015-2016 Private Market Survey reflect definitions that harvesters in Nova Scotia use in the ordinary course of business.[856] We also explained that the use of log type definitions that are based on intended use was not limited to Nova Scotia and that during the POI, the GOQ, GOO, and GOA relied on similar use-based definitions when determining whether harvested standing log was classified as a sawlog or a pulplog.[857] We therefore concluded in the investigation that the utilization of use-based definitions by the provincial governments in which the provision of stumpage for LTAR is under examination supported our finding that usage-based definitions in the 2015-2016 Private Market Survey were sound and reliable.[858] In the investigation, Commerce also explained that it verified that, based on these production definitions, the 2015-2016 Private Market Survey covered only private stumpage transactions for softwood sawable[859] products, which is the same merchandise for which we were seeking a benchmark.[860]

We find that the facts of the first review are no different from those of the investigation as they pertain to the product definitions contained in the 2017-2018 Private Market Survey. The classification terms used in the 2017-2018 are based on the definitions contained in the GNS's Registry of Buyer's Report, and the GNS and members of the wood products industry in Nova Scotia use terms such as sawlog and studwood in the ordinary course of business as a means of describing sawable standing timber that is for sale.[861] Further, because the GNS and members of its wood products industry regularly use such terms in the ordinary course of business to describe standing timber,[862] we reject the Canadian Parties' claims that respondents to the 2017-2018 Private Market Survey would interpret such terms as sawlog or studwood to mean only a certain portion or length of standing timber, particularly when the 2017-2018 instructed survey respondents to report the prices they paid for "stumpage,"[863] (*i.e.*, the price paid for a standing tree). Lastly, information from the GOQ indicates that it uses terms such as sawlog and pulplog when providing information to potential bidders as part of its auction of Crown-origin lands.[864]

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[856] *See Lumber V Final* IDM at Comment 41.
[857] *Id*.
[858] *Id*.
[859] We use the term "sawable" to refer to timber that is suitable for use by sawmills to make lumber products.
[860] *See Lumber V Final* IDM at Comment 41.
[861] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-17.
[862] *Id*. at Exhibit NS-7.
[863] *Id*. at Exhibit NS-16.
[864] *See* GOQ July 15, 2019 Primary QNR Response at Exhibit QC-STUMP-8.

Notably, the GOQ has not argued that its use of similar definitions in reference to standing timber has caused confusion or caused the results of their auction system to be unreliable.

The Canadian Parties argue that Commerce's method of indexing prices in the 2017-2018 Private Market Survey to account for months during the POR for which no survey prices were available demonstrates that the 2017-2018 survey results are unreliable. As explained in Comment 35, we find our method for indexing prices in the 2017-2018 Private Market Survey constitute a reasonable means to calculate monthly, tier-one standing timber benchmarks. Additionally, Commerce regularly indexes LTAR benchmarks.[865] Further, our indexing method has no bearing on the quality of the data that are indexed. Therefore, we reject the Canadian Parties' claim that our indexing method somehow demonstrates that the 2017-2018 Private Market Survey was unreliable.

We also reject the Canadian Parties' argument that the 2017-2018 Private Market Survey is unreliable because it does not include prices for six months of the POR. Consistent with the investigation,[866] we find that the legal requirements governing Commerce's selection of benchmarks do not require perfection and, thus, a tier-one benchmark need not reflect prices for the entire period under examination to be suitable for use.[867] In the case of Crown-origin standing timber purchased by the mandatory respondents during the POR in Québec and Alberta, we conducted the stumpage benefit calculation on an annual basis and, thus, calculated the Nova Scotia benchmark as a weighted annual average of both actual prices in the 2017-2018 Private Market Survey and indexed prices for months in which the survey lacked data.[868] Thus, the only stumpage benefit calculations that relied on indexed data in the 2017-2018 Private Market Survey alone are the purchases of Crown-origin standing timber in Ontario by the relatively small number of Ontario-based mills owned by Resolute for certain months in which we indexed monthly prices from the 2017-2018 Private Market Survey.[869] Further, in the case of JDIL, we based the stumpage benchmark on JDIL's company-specific purchases of private-origin standing timber in Nova Scotia, and therefore, we did not rely on the 2017-2018 Private Market Survey.[870]

We disagree with the GOQ's argument that Commerce should reject the 2017-2018 Private Market Survey because the transaction average volume reflected in the 2017-2018 survey is smaller than the overall average transaction volume of Québec's Crown-origin auction system. The 2017-2018 Private Stumpage Survey included 20 respondents, covered nearly 700,000 square meters of private-origin standing timber purchases, and nearly 20,000 individual transactions.[871] The total volume of private-origin standing timber transactions included in the 2017-2018 Private Market Survey is approximately 34 percent of Nova Scotia's total private harvest during the same period.[872] Therefore, we find the 2107-2018 Private Market Study is robust and representative of Nova Scotia's market for private-origin standing timber.

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[865] *See, e.g., Quartz Surface Products from India* IDM at 8.
[866] *See Lumber V Final* IDM at Comment 41.
[867] *See HRS from India* IDM at Comment 12, "There is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government."
[868] *See* Final Calculation Memoranda for Resolute, Canfor, and West Fraser.
[869] *See* Resolute Final Calculation Memorandum.
[870] *See* JDIL Final Calculation Memorandum.
[871] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-6.
[872] *Id*.

Concerning the relative size of transaction volumes, we find the appropriate analysis is to compare the transaction volumes in the 2017-2018 Private Market Study to the volume of Crown-origin standing timber that Resolute purchased during the POR. Comparing transaction volumes in this manner indicates that the average transaction volume of Resolute's Crown-origin standing timber purchases is substantially smaller than the overall average transaction volume for Québec's auction system as cited by the Canadian Parties and also indicates that many of Resolute's transaction volumes are within the range of the average transaction volume contained in the 2017-2018 Private Market Survey.[873] Therefore, we disagree with the Canadian Parties' claim that transaction data indicate that the 2017-2018 Private Market Survey results are not suitable for use as a tier-one standing timber benchmark.

We disagree with the GOQ that Commerce should not use the 2017-2018 Private Market Survey as the source of its tier-one benchmark for standing timber because the total volume of the private market sales transactions contained in the survey are substantially less than the total volume of Crown-origin standing timber harvested in Québec during the POR. It is not appropriate to compare surveyed volumes to total volumes, because the former represents a sample of the total universe of observations while the latter represents the total universe of observations. Rather, the proper analysis is one that examines whether the information in the 2017-2018 Private Market Survey is representative of Nova Scotia's overall private-origin standing timber market. For the reasons stated above and consistent with the investigation,[874] we find observations in the 2017-2018 Private Market Survey are, in fact, representative and, thus, suitable for use.

We disagree with the Canadian Parties that Commerce must use county level data to recalculate the prices in the 2017-2018 Private Market Survey to account for regional differences. The Canadian Parties' proposed method to recalculate the results of the 2017-2018 Private Market Survey do not reflect the survey methods that the GNS undertakes in the ordinary course of business.[875] Further, the Canadian Parties' claims that the 2017-2018 Private Market Survey does not reflect all the regions of Nova Scotia is factually incorrect. The 2017-2018 Private Market Survey indicates that it reflects all of Nova Scotia's counties and regions.[876] The 2017-2018 Private Market Survey also provides the survey volume and number of transactions attributable to Nova Scotia's Western, Central, and Eastern regions.[877] Regarding regional coverage, the 2017-2018 Private Market Survey states, "On a regional basis when compared to the private land tenure reported in the 2017 Registry of Buyers Report, the survey coverage of the Western region accounted for 32% of the total volume of private land timber harvested in that region, the Central region accounted for 46%, and the Eastern region accounted for 22%."[878] Thus, we find that the 2017-2018 Private Market Survey contains a robust sample of each of Nova Scotia's three regions. Furthermore, the 2017-2018 survey states that the "regional dispersion of volume reported in the survey generally tracks the private land harvest reported in

[873] *See* Resolute Final Calculation Memorandum; *see also* GNS July 15, 2019 Primary QNR Response at Exhibit NS-5.
[874] *See Lumber V Final* IDM at Comment 41.
[875] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-6, which indicates that the GNS does not weight the results of the 2017-2018 Private Market Survey on a county-level basis.
[876] *Id*.
[877] *Id*.
[878] *Id*.

the Registry of Buyers Report."[879] Thus, the information on the record demonstrates that the 2017-2018 Private Market Survey tracks the private harvest volumes in the GNS' Registry of Buyers Report.

Lastly, we disagree with the GOQ that Commerce should have first conducted a distortion analysis of Nova Scotia's standing timber market to determine whether private-origin standing timber can serve as a viable tier-one benchmark, as it has done with regard to the standing timber market in Québec. Unlike Québec, there is no allegation that the GNS sells Crown-origin standing timber for LTAR, nor is there an allegation from interested parties that sales of Crown-origin standing timber in Nova Scotia distort the province's market for private-origin standing timber. Further, unlike Québec, Crown-origin standing-timber accounts for a substantially smaller share of the overall standing timber market in Nova Scotia.[880] Therefore, consistent with the investigation,[881] we continue to find that it is not necessary to make the use of private-origin standing timber prices in Nova Scotia as a tier-one benchmark contingent upon the results of a distortion analysis of Nova Scotia's standing timber market.

Comment 30: Whether High Demand for Pulplogs in Nova Scotia Creates High Demand for Sawlogs which Makes Market Conditions for Nova Scotia Sawlogs Incomparable to the Market Conditions of Sawlogs in Other Provinces

GOC's Comments[882]

- Nova Scotia Pulp mills' high demand for wood fiber, especially for whole logs that would be processed at sawmills in other provinces, exerts upward pressure on stumpage prices by creating competition for stumpage rights. The high demand for pulp logs also provides an outlet for sawmills' residual products, which allows sawmills to pay more for stumpage on their sawlogs and studwood than they otherwise would.
- Nova Scotia's pulp mills' high demand for unprocessed logs and residuals increases average stumpage prices in the province and represents a significant departure from the market conditions in the other provinces.

Petitioner's Rebuttal Comments[883]

- In the investigation, Commerce found that the Canadian Parties failed to substantiate and quantify the extent to which the purported demand for pulp logs in Nova Scotia increased the prices of sawlogs in the province. The Canadian Parties repeat the same arguments in the review and continue to offer no basis for Commerce to revise its findings from the investigation.
- The Canadian Parties' argument is premised on the claim that Nova Scotia's pulp market is flourishing relative to other pulp producers in North America. However, Nova Scotia's pulp exports declined by USD 300 million from 2002 to 2015, and a major pulp mill in Nova Scotia closed in 2020.

[879] *Id*.
[880] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-1. The harvest volume attributable to private-origin standing timber in Nova Scotia is proprietary.
[881] *See Lumber V Final* IDM at Comment 41.
[882] *See* GOC July 29 2020 Vol I Case Brief at 70 – 74.
[883] *See* Petitioner August 10, 2020 Rebuttal Brief at 108 – 109.

- Evidence from the GNS indicates that the market slump for pulp during this period was "devastating" for sellers of standing timber in Nova Scotia.[884]
- Record evidence demonstrates that the Canadian Parties' arguments about "Nova Scotia's robust pulp market" and its purported impact on the sawlog market are without merit.

Commerce's Position: The Canadian Parties raised the same argument in the investigation, and Commerce rejected it:

> The Canadian Parties also argue that the Nova Scotia market for softwood stumpage is influenced by the number and distribution of pulp mills in the province. Specifically, the Canadian Parties argue that the demand from pulp mills for wood fiber exerts upward pressure on stumpage prices by creating competition for stumpage rights and by providing an outlet for lower-quality timber harvested by sawmills and for sawmill residual products, which may result in sawmills paying more for standing timber. They claim the upward pressure on stumpage prices in Nova Scotia is not present in Québec, Ontario, and Alberta, and should lead the Department to refrain from using private prices for standing timber as a tier-one benchmark.
>
> Once again, the Canadian Parties claim a difference exists between the market for private-origin standing timber in Nova Scotia and the other provinces at issue but, other than claiming that pulp mill distribution "influences" stumpage prices in Nova Scotia in a manner that is not present elsewhere in Canada, they fail to quantify the extent of the purported difference or even to demonstrate that such a difference exists. Thus, we find that the Canadian Parties have not substantiated their claims concerning the "influence" of pulp mill distribution, nor have they demonstrated that any such difference renders the two sources incomparable on that basis.[885]

Nothing in the Canadian Parties' arguments leads us to reconsider our finding from the investigation. The Canadian Parties fail to quantify how the purported pulplog demand impacts sawlog prices in Nova Scotia. Rather, the Canadian Parties misleadingly cite to general statements on the record as a basis for claiming that a distinct and disproportionate demand for sawable logs exists in Nova Scotia that should compel Commerce not to use private-origin standing timber prices in Nova Scotia as a tier-one benchmark. For example, the Canadian Parties cite to a statement in the narrative of the GNB's initial questionnaire response to misleadingly claim that the demand for chips and pulp "allows Nova Scotia's landowners to sell their stumpage at higher rates than their neighbors."[886] However, the information they cite does not make that conclusion and, in fact, does not even mention prices or demand for sawable standing timber: "Nova Scotia has a stronger demand for chips and pulp {than} New Brunswick due to the existence of certain paper mills, leading to higher prices for that product in much of Nova Scotia than in New Brunswick".[887]

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[884] *See* Petitioner August 10, 2020 Rebuttal Brief at 35, citing *GNS Comments on GOC NFI on Nova Scotia Private Price Survey* at Exhibit 6.
[885] *See Lumber V Final* IDM at Comment 40.
[886] *See* GOC July 29 2020 Vol I Case Brief at 72.
[887] *See* GNB July 15, 2019 Primary Stumpage QNR Response at Exhibit NB-AR1-II-18 at fn.12.

The Canadian Parties also cite to portions of the Economic Impact Analysis of the Timber Management and Supply Changes on Nova Scotia's Forest Industry,[888] which is included as an attachment to the Asker Report, to claim that the high demand for pulplogs drives the demand for sawable logs in Nova Scotia to such high levels that prices for sawable standing timber in Nova Scotia are incomparable to prices of sawable standing timber in other provinces. However, the executive summary of the Nova Scotia Economic Impact Analysis does not conclude or even mention that high pulplog demand drove sawable standing timber prices to disproportionately high levels.[889] Further, in making their point that high demand from Nova Scotia's pulp mills constitutes a key driver of timber market prices, including the sawtimber market prices, the Canadian Parties rely on an incomplete citation to the Nova Scotia Economic Impact Analysis. Specifically, citing to the Nova Scotia Economic Impact Analysis, they claim the pulp and paper industry "holds the cards in timber supply," yet they fail to acknowledge the rest of the information in the paragraph:

> The softwood lumber capacity expansion within Nova Scotia, which began in the early 1990s, drove a substantial increase in demand for sawlogs. The province's sawlog harvest rapid growth, in comparison with the slowly declining trend in pulpwood harvesting (and whole log chipping), is illustrated in Figure 3. In essence, prior to the early 1990s, it can be said that Nova Scotia's pulp & paper industry was not fully integrated with the province's lumber industry. This situation perhaps was emphasized by the extensive private timberlands owned by the pulp & paper firms. After 1997, full integration took place. The pulp & paper companies relied increasingly on lower cost sawmill residuals. Even so, they held (and *today* still hold) the high cards in timber supply – invariably trading sawlogs to sawmills for chips. As noted later, the dominant form of timberland ownership, namely woodlots, plays a subsidiary 'reserve' role in this flow of fibre. Moreover, woodlots owners increasingly have become disengaged.[890]

Thus, nothing in this quote describes high pulplog demand driving sawtimber demand and prices to disproportionately high levels. In fact, the quote, in its entirety, mentions the increasing demand for sawable standing timber and the decreasing demand for standing timber suitable for pulpmills.[891]

Moreover, elsewhere, the Nova Scotia Economic Impact Analysis indicates that the demand for sawable standing timber impacts the costs of the pulp and paper sector and not the other way around: "Although the pulp and paper mills can influence their own costs, the overall driver clearly is at the sawmill."[892] Further, the Nova Scotia Economic Impact Analysis indicates that sawmill costs are driven by the availability of sawlogs.[893]

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[888] Hereinafter referred to as the Nova Scotia Economic Impact Analysis.
[889] *See* GOC July 15, 2019 Primary QNR Response at Exhibit GOC-AR1-Stump-43, Attachment 30 at 2.
[890] *Id*. at Exhibit GOC-AR1-Stump-43, Attachment 30 at 8.
[891] *Id*.
[892] *Id*. at Exhibit GOC-AR1-Stump-43, Attachment 30 at 39.
[893] *Id*.

Therefore, we continue to reject the Canadian Parties' unsubstantiated and unquantified claim that high pulplog demand in Nova Scotia drives sawlog demand to extremely high levels that renders sawlogs prices in Nova Scotia incomparable to sawlog prices in other provinces.

Comment 31: Classification of Timber Purchases in Nova Scotia Compared to Québec, Ontario, and Alberta

GOC's Comments[894]

- Classification of stumpage by purchaser or intended use, as in Nova Scotia, is not a condition of timber markets throughout Canada. Instead, each province has its own provincially mandated classification system that does not resemble Nova Scotia's, making it impossible for Commerce to accurately compare prices for Nova Scotia's products to prices for Québec's and Alberta's products.
- The vast majority of harvested timber in Québec is classified as either grade B (sawlogs) or grade C (pulpwood).
- Based on Nova Scotia mill specifications, almost none of the grade C pulpwood logs in Québec would qualify as studwood or sawlogs in Nova Scotia.
- But in Québec, almost all grade C logs are purchased and processed in Québec sawmills, even though they are classified as pulpwood.
- Commerce cannot ignore this difference in how identical or similar products are classified in Nova Scotia and Québec.
- The GOA does not determine timber dues based on categorizing what is harvested as sawlogs, studwood, or pulpwood. Rather, the GOA bases Crown-origin standing timber prices on objective physical characteristics.
- Like Nova Scotia, Ontario relies on mill destination to classify timber. However, more of Ontario's timber is directed to sawmills compared to Nova Scotia despite the provinces' similar classification system because Nova Scotia sends more logs to pulp mills, which in turn ensures that sawmills in Nova Scotia process high quality logs.
- The differences in log classification make logs processed in sawmills in Nova Scotia incomparable to logs processed in sawmills in Québec, Ontario, and Alberta, thereby rendering Nova Scotia standing timber prices not suitable as a stumpage benchmark.

Petitioner's Rebuttal Comments[895]

- The Canadian Parties' arguments on this issue are no different from the arguments Commerce dismissed in the investigation.
- The Canadian Parties claim that Nova Scotia is unique among the provinces in its product classifications because its timber is classified by destination (*e.g.*, pulpmill or sawmill).
- However, Nova Scotia is not unique in this regard. The GOO classifies its Crown-origin timber based on destination; thus, a log is classified as a sawlog if it is destined for a sawmill regardless of its physical characteristics.
- The GOA's Scaling Manual expressly states that "{t}he end product of a load of logs (*i.e.*, lumber, pulp, etc.) will dictate the product code assigned to load, population, or disposition."[896]

[894] *See* GOC July 29 2020 Vol I Case Brief at 58 – 67.
[895] *See* Petitioner August 10, 2020 Rebuttal Brief at 35 – 39.
[896] *See* Petitioner August 10, 2020 Rebuttal Brief at 36, citing GOA July 15, 2019 Primary Stumpage QNR Response at Exhibit AB-AR1-S-18 (p. 25).

- In Québec, "{s}tumpage dues in Québec are billed after the wood has been scaled by the permit holders," where permit holders are, in turn, defined by the end-product they produce (pulp and paper industry, lumber industry, plywood industry, etc.).[897]
- The 2017-2018 Private Stumpage Survey reports the prices of harvested softwood logs destined for sawmills (*e.g.*, sawlogs and studwood) in Nova Scotia. Similarly, the mandatory respondents reported the volume and value of softwood logs processed in their respective sawmills.
- Because Commerce is seeking a benchmark for each respondent's purchases of stumpage and logs used to make softwood lumber, and not logs purchased for other uses, the Nova Scotia benchmark appropriately uses only sawlogs and studwood, the types of timber also used by the mandatory respondents in their sawmills.

Commerce's Position: We disagree with the Canadian Parties' claim that sawable standing timber in the Nova Scotia benchmark is much larger than the sawable Crown-origin standing timber harvested in Québec, Ontario, and Alberta and, as a result, the prices in the 2017-2018 Private Market Survey are incomparable and not suitable for use. The Canadian Parties raised the same argument in the investigation, which Commerce rejected.[898] Consistent with the investigation, in this review, we instructed the respondent firms to report the volume and value of Crown-origin sawlogs that they purchased during the POR.[899] Accordingly, we have used a benchmark that was similarly comprised of prices charged for standing saw timber in Nova Scotia.[900] In this way, we ensure a comparison that consists solely of logs used by sawmills to make lumber. Thus, to include pulplogs into the Nova Scotia benchmark would create a mismatch between the respondents' reported sawable timber (exclusive of pulplogs) and a broader Nova Scotia benchmark including both sawable logs and pulplogs. Furthermore, the Nova Scotia benchmark consists of two types of saw timber: sawlogs and studwood.[901] As explained in the investigation, Commerce verifiers confirmed that while both sawlogs and studwood are softwood sawable logs used in the production of softwood lumber products, studwood generally denotes smaller diameter logs suitable for sawing into 8-foot, 9-foot, or 10-foot studs.[902] Thus, consistent with the investigation, we find that the Nova Scotia benchmark incorporates a range of log types that are used by sawmills (including log types on the small end of the sawlog spectrum) that results in a conservative and comparable benchmark.

Further, in the investigation, we explained that the Canadian Parties' claims concerning the purported size differences in the size of standing timber harvested in Nova Scotia and Québec, Ontario, and Alberta was not borne out by the DBH data on the record.[903] As explained in Comment 26, record information continues to indicate that the DBH of Nova Scotia timber is within the same DBH range as timber in Québec, Ontario, and Alberta. Therefore, we find no

[897] *See* Petitioner August 10, 2020 Rebuttal Brief at 36, citing GOC July 15, 2019 Primary Stumpage QNR Response at Exhibit QC-S-61.
[898] *See Lumber V Final* IDM at Comment 40.
[899] *See* Initial Questionnaire at 90 and Québec, Table 1, which instructs Resolute to report Crown-origin standing timber purchased by sawmills.
[900] *See, e.g.*, Resolute Final Calculation Memorandum; *see also* GNS July 15, 2019 Primary QNR Response at NS-5 and NS-6.
[901] *See* GNS July 15, 2019 Primary QNR Response at NS-5 and NS-6.
[902] *See Lumber V Final* IDM at Comment 40.
[903] *See Lumber V Final* IDM at Comment 40.

basis to include the prices for pulplogs, which are not used to make softwood lumber in Nova Scotia, in the Nova Scotia tier-one benchmark that Commerce uses to determine whether the respondents purchased sawable, Crown-origin standing timber for LTAR.

However, based on the comments received, we have determined to revise how we compare sawable Crown-origin logs harvested in Québec to sawable private-origin logs harvested in Nova Scotia. In the *Lumber V AR1 Prelim Results*, we compared Resolute's purchases of Grade "C," "M," and "R" logs that it processed into lumber to a benchmark price that consisted of the weighted-average price of sawlog and studwood prices of private-origin standing timber in Nova Scotia, as contained in the 2017-2018 Private Market Survey.[904] The GOQ's scaling manual defines grade "B" SPF logs as having "a fine end diameter in the 14 cm class and a length of 2.50 m," whereas grade "C" softwood logs are defined as "{l}ogs or parts of logs that do not meet the criteria for each method {used to classify grade B logs}, but which are of marketable and billable size…"[905] The GOQ's scaling manual defines grade B hemlock and cedar logs as having a minimum nominal length of 2.5 meters and minimum end diameter of 20 cm for hemlock or 16 cm for cedar and minimal defects (*i.e.*, decay, holes, cracks, and any defects that affect the internal quality of the timber), whereas grade C hemlock and cedar logs do not meet the minimum standards of grade B.[906] The GNS's classification of studwood is similarly based on size.[907] Thus, because the GOQ's description of grade "C" logs and the GNS's description of studwood both hinge primarily on size, and both descriptions encompass smaller sawable timber (*e.g.*, timber that is smaller than sawlogs),[908] we determine it is more appropriate to compare Resolute's purchases of grade C Crown-origin standing timber to the prices for studwood as listed in the 2017-2018 Private Market Survey.[909] We note our revision to Resolute's stumpage benefit calculations is consistent with the stumpage benefit calculation for JDIL, which compares the prices of JDIL's purchases of Crown-origin sawlogs to sawlog benchmark prices and the prices of JDIL's purchases of Crown-origin studwood to studwood benchmark prices.[910] Finally, the GOQ's scaling manual indicates that grades "M" and "R" are decayed timber,[911] so we have also compared the prices that Resolute paid for sawable, "M" and "R" grades of Crown-origin standing timber to the prices for studwood in the 2017-2018 Private Market Survey.[912]

[904] *See* Resolute Preliminary Calculation Memorandum.
[905] *See* GOQ IQR at Vol 1, Exhibit QC-STUMP-036 (p. 527).
[906] *Id*. at 505.
[907] *See, e.g., Lumber V Final* IDM at Comment 40.
[908] *See* GOQ IQR at Vol 1 at 505 – 506 and 531 – 532.
[909] *See* Resolute Final Calculation Memorandum at 2 and Attachment 2.
[910] *See* JDIL Final Calculation Memorandum.
[911] *See* GOQ IQR at Vol 1 at 527 and 532.
[912] *See* Resolute Final Calculation Memorandum at 2 and Attachment 2.

Comment 32: Conversion Factor Used in Nova Scotia Benchmark

GOC's Comments[913]

- The 2016-2017 Private Stumpage Survey contained incorrect and out of date conversion factors that artificially inflate prices for private origin standing in Nova Scotia. There is no evidence this deficiency has been remedied in the 2017-2018 Private Stumpage Survey.
- While the GNS uses this conversion factor in its annual forestry report, the source for the factor is not on the record, and the factor itself is many years old and, thus, not contemporaneous or reliable. The GNS' periodic checks of the conversion factor's accuracy during the period 2001 through 2005 do not explain how the factor accurately reflects conditions during the 2017-2018 period. Contemporaneous conversion factors are necessary in order to reflect the ever-changing nature of the forest.
- The 2017-2018 Private Stumpage Survey applies a single conversion factor for all products included in the survey results despite that different products have weight to volume ratios that vary by wood products.
- The factor utilized in the 2017-2018 Private Stumpage Survey underestimates the volume of large diameter wood products (*e.g.*, the volumes of studwood and sawlogs).
- There is no evidence indicating that the GNS used the conversion factor from the 2017-2018 Private Stumpage Survey for any Crown-origin stumpage transaction.
- The IFS Report contains a more accurate conversion factor that Commerce should use to convert the Canadian Dollars per tonne prices in the 2017-2018 Private Market Survey into cubic meters. The Canadian Parties' alternative conversion factor is based in part on the GNS's scaling manual and results in a conversion factor that is more accurate than the conversion factor at issue.

GOA's Comments[914]

- Significant differences in the weight-to-volume conversion factors used in Nova Scotia and Alberta result in recording different volumes of wood from the same timber weight and, thus, require an adjustment to ensure a fair and accurate comparison.
- Specifically, any comparisons to Crown-origin standing timber in Alberta should use a private stumpage price from Nova Scotia that is adjusted downward, as proposed by the GOA, in a prior new factual filing, by means of a revised conversion factor.[915]

GNS's Rebuttal Comments[916]

- In the investigation, Commerce rejected the Canadian Parties' critique of the 2015-2016 Private Stumpage Survey and should do so again as it regards the updated survey.
- Any party can calculate a weight-based, dollars-per-ton figure by using Nova Scotia's regulatory conversion factors to convert volume in cubic meters to weight in tonnes and using that to calculate a per-tonne dollar figure.

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[913] *See* GOC July 29 2020 Vol I Case Brief at 91 – 99. Various Canadian Parties reiterate the GOC's case brief arguments that are summarized as part of this issue.
[914] *See* GOA July 29 2020 Vol II Case Brief at 122 – 124.
[915] *Id*. at 124, citing GOA August 12, 2019 NFI Submission at Exhibit III-20.
[916] *See* GNS August 10, 2020 Rebuttal Brief at 9 – 14. The petitioner reiterates the arguments of the GNS that are summarized as part of this issue.

- In this regard, any party could use any conversion factor to convert from tonnes to cubic meters, including seasonal conversion factors because the month of the transaction is also provided in the database.
- Importantly, the conversion factor does not impact the underlying price paid and reported in the 2017-2018 Private Stumpage Survey.
- Per its provincial regulations, the GNS uses the conversion factor at issue to direct Registered Buyers to calculate the volume of primary forest products they have acquired. As such, the GNS uses the conversion factor at issue to establish a standardized approach to reporting wood volumes on a cubic meter basis in the GNS's annual Registry of Buyers Report.
- Analyses by the GNS that pre-date the investigation indicate that the conversion factor at issue, which was first developed in 1994, remained essentially unchanged as of 2009, thereby demonstrating that it is a reliable means to convert weight to volume of wood harvested.
- Contrary to the Canadian Parties' claims, GNS scaling studies from 2007 do not use any factor for converting the weight of a log to the volume of a log, nor does it provide any method for calculating such a conversion factor.

Petitioner's Rebuttal Comments[917]

- The conversion factor utilized in the 2017-2018 Private Stumpage Survey was scientifically developed and is used by the GNS in the ordinary course of business. In contrast, the Canadian Parties derived their revised Nova Scotia conversion factor for purposes of the review and created it "using information from the {Nova Scotia} scaling manual with assumptions on average species composition."[918]

Commerce's Position: As discussed in Comment 29, we find the conversion factor used in the 2017-2018 Private Market Survey to be reliable and that the Canadian Parties' proposed modifications are unwarranted and inaccurate. The GNS began the process to develop a standard conversion rate in 1989.[919] From 1989 to 1994, the GNS surveyed SPF timber delivered to sawmills to derive a tonnes to cubic meter conversion factor. When developing the conversion factor, the GNS followed the Canadian Standards Association (CSA) Scaling Roundwood Standard CAN3-0202.1-M86, which is a nation-wide standard.[920] Between 2001 and 2005, the GNS, in accordance with CSA scaling standards, conducted another survey of its forests to check the accuracy of the conversion factor at issue. The results showed virtually no differences in the conversion factor.[921] In 2000, the GNS's Department of Lands and Forestry established the Forest Sustainability Regulations, which included into the Registration and Statistical Returns Regulations a provincial annual conversion factor (*e.g.*, the conversion factor at issue) for Registered Buyers to use when reporting harvest information for the Registry of Buyers and calculating their silviculture obligations pursuant to the Forest Sustainability Regulations.[922]

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[917] *See* Petitioner August 10, 2020 Rebuttal Brief at 44 – 46 and 100 – 101.
[918] *Id*. at 101, citing GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 3 (Declaration of Heidi Jane Higgins).
[919] *See* GNS July 15, 2019 Primary QNR Response at 16; *see also* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 2.
[920] *See* GNS July 15, 2019 Primary QNR Response at 16; *see also* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 2.
[921] *See* GNS July 15, 2019 Primary QNR Response at 16 – 17; *see also* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 2.
[922] *See* GNS July 15, 2019 Primary QNR Response at 16.

Further, as discussed above in Comment 29, the GNS utilized the conversion factor at issue when soliciting private-origin standing timber prices as part of the 2015-2016 Private Market Survey. During the investigation, Commerce verifiers examined the process and information that went into the GNS's development and continued evaluation of the conversion factor, and in the *Lumber V Final*, Commerce determined that the GNS's conversion factor was reliable and accurate.[923] In this review, record information indicates that the GNS relied upon the same conversion factor as part of the 2017-2018 Private Market Survey, which the GNS, in turn, used to set the prices charged for Crown-origin standing timber during FY 2019-2020.[924] Thus, this chronology of events demonstrates that for over twenty years, the GNS has used and relied upon the conversion at issue for some of the most important aspects of its forest policy. Further, the record information demonstrates that during this decades-long period, the GNS has undertaken additional reviews of its forest inventory and harvest data to ensure that the conversion factor continues to accurately reflect the characteristics of Nova Scotia's timber.

Record information demonstrates that in keeping with CSA methodologies, the conversion factor at issue accounted for wood attributes that impact the development of conversion factors.[925] For example, in his declaration, Kevin Hudson, Chief Scaler for the GNS, explains that the GNS developed the conversion factor at issue to reflect the species, species mix, and moisture content of Nova Scotia standing timber.[926]

We disagree with the Canadian Parties' claim that the conversion factor used in the 2017-2018 Private Stumpage Survey improperly applies a single conversion factor for all products included in the survey results despite different products having weight to volume ratios that vary by wood products. The GNS acknowledges that conversion factors may vary by species and product, but notes that its analysis of Nova Scotia's forest and harvest data as well as its derivation of the conversion factor (all of which adhered to CSA methodologies) yielded a single conversion factor applicable to coniferous sawlogs, studwood, and pulpwood.[927]

We also disagree with the Canadian Parties' claim that there is no evidence the GNS used the conversion factor from the 2017-2018 Private Stumpage Survey for any Crown-origin stumpage transaction. As discussed in Comment 29, record evidence indicates that the GNS used the conversion factor at issue for purposes of the 2017-2018 Private Market Survey and that the GNS, in turn, used the 2017-2018 survey results to set the prices charged for Crown-origin standing timber during FY 2019-2020.[928] Therefore, it is simply inaccurate to claim that the conversion factor at issue is not reflected in the prices the GNS charges for Crown-origin standing timber.

We also disagree with the Canadian Parties that Commerce should rely on an alternative conversion factor from the IFS Report. The GNS developed the conversion factor at issue in the ordinary course of business for use in the analysis of the standing timber that grows in Nova Scotia. Thus, we find it is not credible to assume that the IFS Report, which was commissioned

[923] *See Lumber V Final* IDM at Comment 41.
[924] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-6.
[925] *See* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 2
[926] *Id*.
[927] *Id*.
[928] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-6.

for purposes of this proceeding by parties outside of Nova Scotia, would have knowledge and data concerning the conditions of Nova Scotia's trees that are superior or more accurate than that of the GNS. Additionally, information from the GNS indicates that the alternative conversion factor proposed in the IFS Study is inaccurate. The Canadian Parties explain that their alternative conversion factor is accurate because it relies, in part, on the GNS's scaling manual, which they claim includes the steps required to convert cubic meters to kilograms.[929] However, in her declaration, Ms. Jane Higgins, the Manager of the GNS Scaling and Forest Regulation Administration, explains that Nova Scotia's scaling manual "does not actually include any factor for converting the weight of a log, nor does it provide any method for calculating such a conversion factor."[930] Further, Ms. Higgins notes that the IFS Report's "sole deliverable was for the report to estimate the costs to mills for hauling felled trees and not to evaluate Nova Scotia's standard weight-to-volume conversion factor."[931] She also notes that the IFS Report's proposed conversion factor does not adhere to CSA methodologies, which all of Canada's provinces follow as a basis for metric conversion factors.[932] Ms. Higgins also takes issue with the IFS Report's use of imprecise satellite imagery to estimate species mix for use in the derivation of the alternative conversion factor, as opposed to the actual inventory and harvest information relied upon by the GNS to derive the conversion at issue.[933] Thus, Ms. Higgins concludes:

> In my professional judgment, I disagree with the use of Nova Scotia's Scaling Manual to derive a weight-to-volume conversion factor. . . the conversion factor produced in the IFS Report was created using information from the scaling manual with assumptions on average species composition by identifying the areas harvested in a GIS {geographical information system} exercise, inventory information, and applying the a relative density and average standing moisture of these species from the scaling manual. This is a flawed exercise insofar as no physical logs were examined . . ."[934]

We also disagree with the GOA's argument that Commerce should adjust the conversion factor used in the 2017-2018 Private Market Survey downward to account for the fact that the moisture content of Alberta's Crown-origin standing timber differs from that of Nova Scotia's private-origin standing timber. As noted elsewhere in this memorandum, Commerce's regulations and the statute do not require that a tier-one benchmark perfectly match the goods that are the subject of the LTAR benefit analysis.[935] Furthermore, as discussed in Comments 26, 27, and 28, we find that private-origin standing timber in Nova Scotia is comparable to the Crown-origin standing timber that grows in Québec, Ontario, and Alberta in terms of tree size, species, and overall forest conditions, all of which play an important role in deriving conversion factors.[936] Therefore, we do not find there is a sufficient basis to adjust Nova Scotia's conversion factor to account for any purported differences in moisture content between Nova Scotia and Alberta.

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[929] *See, e.g.*, GOC July 29, 2020 Vol I Case Brief at 94 – 95.
[930] *See* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 3.
[931] *Id*.
[932] *Id*.
[933] *Id*.
[934] *Id*.
[935] *See, e.g.*, *HRS from India* IDM at Comment 12.
[936] *See* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 2.

Comment 33: Whether Differences in Nova Scotia's Harvest and Haulage Costs Impact Its Comparability or Require an Adjustment

GOC's Comments[937]

- Nova Scotia's small size and dense infrastructure, in addition to low labor costs, allow mills to pay less to harvest and haul logs and, accordingly, pay more for stumpage.
- The Asker Report explains that sawmills' close proximity to tree stands, well-developed infrastructure, and low labor costs minimize the costs associated with transporting harvested timber, which allows for negotiation of higher stumpage prices.
- The IFS Report confirms, quantitatively, that relatively low hauling costs are a condition of the Nova Scotia market that does not prevail in other provinces. Specifically, the IFS Report indicates that haulage costs are C$11.64/m^3 lower than the haulage costs paid by the mandatory respondents during the POR.
- These market conditions in Nova Scotia, relative to the provinces at issue, disqualify Nova Scotia's private forest as a viable tier-one benchmark.
- If, however, Commerce continues to use Nova Scotia as a tier-one benchmark, then it must adjust the benchmark downward to account for the differences in haulage and harvesting costs that exist between Nova Scotia and the provinces of New Brunswick, Québec, Ontario, and Alberta.

GOA's Comments[938]

- The Cross-Border Analysis estimates that Nova Scotia's logging, merchandising, and hauling costs are C$8.33 m3 lower than Alberta's. This difference makes Nova Scotia standing timber that much more valuable to the harvester than Alberta standing timber.
- The differences in haulage prices, in turn, reflect different labor markets. Namely, truck drivers in Alberta are paid C$10 more per hour than in Nova Scotia.[939]
- As detailed in the Cross-Border Analysis, due to the comparatively slower growth rate among Alberta trees than Nova Scotia trees, the trees to be harvested in Alberta are more dispersed in Alberta, and this circumstance also results in higher harvest and hauling costs in Alberta.
- As demonstrated in the Cross-Border Analysis, the cost to ship a truckload of lumber from Nova Scotia to Boston, its closest market, is approximately 43 percent less than the cost of shipping the equivalent amount of lumber from Alberta to Minneapolis, Alberta's most profitable major market.

Petitioner's Rebuttal Comments[940]

- Commerce rejected the Canadian Parties' arguments on this issue in the investigation. In the investigation, Commerce noted that the respondents sourced standing timber that was close to their sawmills, a fact that did not distinguish from the conditions purported to exist in Nova Scotia.
- In the current review, the Canadian Parties make the same arguments with citations to the IFS Report, which purports to quantify the relative differences in Nova Scotia's haulage costs.

[937] *See* GOC July 29, 2020 Vol I Case Brief at 66 – 70.
[938] *See* GOA July 29, 2020 Vol II Case Brief at 113 – 117. West Fraser reiterates the arguments of the GOA that are summarized as part of this issue.
[939] *Id*. at 115, citing various GNS submissions.
[940] *See* Petitioner August 10, 2020 Rebuttal Brief at 31 – 33.

However, the IFS Report bases its calculation of average haulage costs in Nova Scotia on a flawed assumption. On this point, the IFS Report states:

> Information regarding which cut block volume was delivered to which sawmill is not known. However, the allocation of hundreds of cutblocks to a large number of sawmills would likely occur in a manner that would result in the least cost to all sawmills, subject to a sawmill's sawlog demand.[941]

- As the GNS notes, this presumption demonstrates a misunderstanding of Nova Scotia's private stumpage market. Specifically, the GNS states that its private standing timber markets do not adhere to such an assumption. According to the GNS,

> there are smaller parcels of land where harvestable timber may be found. One owner may own a parcel of land next to an access road while another owner may own a parcel of land behind that first land owner. . . Landowners sell stumpage rights when they want to and purchasers need to navigate land owned by another land owner in between the woodlot being harvested and the access road. It is, therefore, incorrect to assume any allocation of woodlots in economic order.[942]

- Another consultant of the Canadian Parties states that:

> Even though sawmills have strong incentives to keep harvesting, transport, and conversion costs as low as possible, they have limited influence over those costs as those costs are largely determined by fuel and energy prices, prevailing wages, etc. Differences in mill profitability are, therefore, largely due to factors within the influence of sawmills' stumpage.[943]

- Hauling distances are not factors that affect the comparability of a stumpage-to-stumpage comparison. As Commerce explained in the investigation, "Because we determine that the Nova Scotia benchmark is a stumpage price that does not reflect post-harvest activities, a proper stumpage-to-stumpage comparison must logically exclude the cost of such activities from the calculation."[944]
- Therefore, Commerce should continue to use private standing timber prices in Nova Scotia as a tier-one benchmark for New Brunswick, Québec, Ontario, and Alberta and should not adjust the Nova Scotia benchmark for haulage and harvesting costs as proposed by the Canadian Parties.

Commerce's Position: The Canadian Parties rely on excerpts from the Asker Report to argue that differences in log haulage distances in Nova Scotia and the provinces at issue are too great for private-origin standing timber prices in Nova Scotia to be used as a tier-one benchmark. Commerce rejected these same arguments in the investigation:

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[941] *Id*. at 32, citing IFS Report at Section 5.
[942] Id. at 32, citing GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 3, para. 6.
[943] *Id*. at 33, citing Marshall Report at p. 9.
[944] *Id*. at 112, citing *Lumber V Final* IDM at Comment 43.

> In making their arguments on this point, the Canadian Parties rely on information and conclusions in the Asker Report. The Asker Report states that Nova Scotia has 0.49 kilometers of road per square kilometer of land, while Alberta has only 0.34 kilometers of road per square kilometer. And, based on this information, the Asker Study concludes that:
>
> > . . . assuming the same cost for constructing a meter of road, and assuming this road density difference is similar in forest regions, the road density difference between Nova Scotia and Alberta could result in total construction differences of approximately C$1,000 per square kilometer . . ."
>
> As noted by the petitioner, the Canadian Parties' assumptions are further based on an estimate of average road construction costs offered by "one Nova Scotia logger." As the quote from the Asker Study reveals and as the petitioner highlights, the Canadian Parties' claims concerning the relative differences in tree stand to mill distance and infrastructure development between Nova Scotia and the provinces of Québec, Ontario, and Alberta are based on two assumptions and estimated data from a single logger in Nova Scotia. Thus, we find the conclusions in the Asker Report to be based on speculation and not substantial evidence.[945]

We find the Canadian Parties have not presented any new information to warrant reconsideration of our prior findings regarding the claims and conclusions made in the Asker Report.

We also disagree that information in the IFS Report demonstrates differences in haulage costs between Nova Scotia and the provinces at issue that are so great as to disqualify private-origin standing timber prices in Nova Scotia from use as a tier-one benchmark. In reaching its conclusions concerning haulage costs in Nova Scotia, the IFS Report explains:

> Information regarding which cut block volume was delivered to which sawmill is not known. However, the allocation of hundreds of cutblocks to a large number of sawmills would likely occur in a manner that would result in the least cost to all sawmills, subject to a sawmill's sawlog demand.[946]

Ms. Higgins, a Manager at the Nova Scotia Department of Lands and Forestry provides the following critique of the assumptions that comprise the haulage cost analysis contained in the IFS Report. In particular, she states that the IFS Report assumes:

> . . . "the allocation of hundreds of cutblocks to a large number of sawmills would likely occur in a manner that would result in the least cost to all sawmills, subject to a sawmill's sawlog demand." This is not how the private land stumpage market operates. There is not one owner of one large tract of land that has sold various portions to different purchasers. Rather, in Nova Scotia, there are smaller parcels of land where harvestable timber may be found. One owner may own a parcel of land next to an access road while another owner may own a parcel of

[945] *See Lumber V Final* IDM at Comment 40.
[946] *See* IFS Report at Section 5.0 entitled "Assumptions."

> land behind that first land owner. {The} IFS {Report} assumes that both landowners would sell stumpage at the same time and harvesting would occur in the least costly manner. A private market does not function this way. Landowners sell stumpage rights when they want to and purchasers need to navigate land owned by another land owner in between the woodlot being harvested and the access road. It is, therefore, incorrect to assume any allocation of woodlots in economic order.[947]

Based on information from the GNS, we find the assumptions the IFS Report makes concerning how the market for private-origin standing timber operates to be flawed, and therefore, we also find the claims the IFS Report makes concerning haulage cost differences between Nova Scotia and the provinces at issue to be unavailing.

We also disagree that information from the GOA and the Cross Border Analysis regarding differences in log haulage costs between Nova Scotia and Alberta demonstrate that private-origin standing timber prices in Nova Scotia are incomparable to Crown-origin standing timber prices in Alberta. The GOA argues that higher wage rates in Alberta drive the significant differences in haulage costs between the two provinces. However, the GOA's argument relies on wage data corresponding to a three-digit NAICS code for the transportation sector in general that is not specific to wages paid to haul logs from harvests sites to sawmills in Alberta and Nova Scotia.[948] The GOA also cites to the Cross Border Analysis to support its claim that wages to haul harvested logs are higher in Alberta than in Nova Scotia. However, the passage of the Cross Border Analysis to which the GOA cites is an assertion referring to Alberta's transportation sector in general, not wages of transportation workers that haul logs, and, moreover, the cited passage lacks a corresponding citation.[949]

We also continue to find that statements in other reports placed on the record undercut the Canadian Parties' claims concerning haulage costs in Nova Scotia and the provinces at issue. While we disagree with the Miller Report's conclusions that the prices generated by the GOQ's auction system result in prices that may be used as a tier-one stumpage benchmark, we nonetheless note that the Marshall Report states the following as it regards the factors that impact standing timber prices:

> Even though sawmills have strong incentives to keep harvesting, transport, and conversion costs as low as possible, they have limited influence over those costs as those costs are largely determined by fuel and energy prices, prevailing wages, etc. Differences in mill profitability are, therefore, largely due to factors within the influence of sawmills stumpage and efficiency in transforming timber into lumber (*i.e.*, wood conversion yield).[950]

[947] *See* GNS Comments on GOC NFI on Nova Scotia Private Price Survey at Exhibit 3, citing IFS Report at 9.
[948] *See* GOA August 12, 2019 NFI Submission at Exhibits PR-NSR-AR1-21 and PR-NSR-AR-22.
[949] *See* GOA July 15, 2019 Primary Stumpage QNR Response at Exhibit AB-AR1-S-23 (Cross Border Analysis) at 36.
[950] *See* Marshall Report at 9.

Comment 34: Whether Commerce Should Adjust the Nova Scotia Benchmark for Differences in Logging Camp Costs

GOC Comments[951]

- Harvesters in Nova Scotia do not need to provide logging camps for their workers because the province's compact size allows the workers to return home after work.
- Harvesters in other provinces do not have this luxury. Québec mills incur an average cost of C$1.04/$m^3$, and Ontario mills incur an average cost of C$0.77/$m^3$ to provide these camps. Commerce must adjust its benchmark to adjust for those cost differences.

Petitioner's Rebuttal Comments[952]

- As it did in the investigation, Commerce should continue to reject adjustments to the Nova Scotia benchmark for unsupported differences in hauling and harvesting costs.
- Commerce determined in the investigation that forest camps are not factors that affect the comparability of a stumpage-to-stumpage comparison.[953]

Commerce's Position: Under section 771(5)(E)(iv) of the Act, Commerce is required to measure the adequacy of remuneration in relation to the "prevailing market conditions for the good or service being provided." As discussed further in Comment 43, the private prices in the 2017-2018 Private Market Survey are "pure" stumpage prices, *i.e.*, prices charged to the purchaser for the right to harvest timber, which therefore do not reflect any of the related costs.[954] Logging camp costs are not part of "pure" stumpage prices but are, instead, related costs. Consequently, including the charges associated with logging camps would introduce an external factor unrelated to the "pure" stumpage price, and, pursuant to section 771(5)(E)(iv) of the Act, we find that a proper stumpage-to-stumpage comparison must exclude the cost of such related expenses from the calculation.

Comment 35: Whether Commerce Should Revise the Indexing Method Employed in the Derivation of the Nova Scotia Benchmark

GOC's Comments[955]

- In the investigation, Commerce relied on an all commodities index because it claimed the Canadian Parties did not submit evidence to support the fact that "stumpage prices do not follow general trends in commodity prices."[956]
- In this review, the Canadian Parties have not only submitted evidence to support the unique trends in the lumber market but have also provided an alternative lumber-based index, *Random Lengths*' FLCI, upon which Commerce should rely.
- Using the FLCI would allow Commerce to index survey data to the lumber market and its attendant seasonal price patterns absent fluctuations occurring in unrelated commodities markets.

[951] *See* GOC July 29, 2020 Vol. I Case Brief at 120.
[952] *See* Petitioner August 10, 2020 Rebuttal Brief at 111.
[953] *Id*. at 112, citing *Lumber V Final* IDM at Comment 43.
[954] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-6.
[955] *See* GOC July 29, 2020 Vol I Case Brief at 120 – 123.
[956] *Id*. at 120, citing *Lumber V Final* IDM at 127.

- In its preliminary calculations, Commerce indexed data to the corresponding month in the opposite year (*e.g.*, indexing April 2018 to April 2017), instead of to the most recent month covered by the 2017-2018 Private Stumpage Survey (April 2017 or March 2018), like it did in the investigation and other CVD proceedings.
- While lumber prices fluctuate between seasons, those fluctuations are already accounted for by the FLCI Index. Commerce does not need to tie its methodology back to the prior year in order to account for those price effects, especially since no evidence demonstrates that the month from the previous year is more accurate than the prior month in the same year.
- Lumber prices vary from year to year; therefore, indexing to the prior month in the same year is more accurate.

GOO's Comments[957]
- The data from the 2017-2018 Private Stumpage Survey reflect only one year of a POR that spans 18 months.
- Commerce's attempt to remedy this flaw in the Nova Scotia data by means of indexing is an illegitimate half measure that fails to correct for the absence of the necessary data.

Petitioner's Rebuttal Comments[958]
- Commerce's decision in the *Lumber V AR1 Prelim Results* to index harvest value for each species to the corresponding month in the opposite year instead of applying the PPI index to the most recent available month is reasonable given that the data included in the Nova Scotia Private Price Survey cover a longer period spanning two calendar years, which allows Commerce to employ a more accurate month-over-month adjustment.
- Commerce has broad discretion to determine the relevant "factors affecting comparability" when identifying and calculating a benchmark as the implementing agency of the Act.[959]
- The mere fact that Commerce indexed the Nova Scotia prices does not render them unreliable or unusable. Commerce has indexed benchmark data in many prior CVD cases.
- The Canadian Parties fail to demonstrate that indexing to the prior month is more accurate than indexing to the same month in the prior year.
- The Canadian Parties' acknowledgement of seasonal trends in lumber prices demonstrates the appropriateness of indexing to the same month in the prior year, rather than to the prior month in the same year.
- While the Canadian Parties espouse the "most recent month methodology" for price, for purposes of weight averaging Nova Scotia prices, they advocate using a separate volume indexing method for months without data, specifically one that relies on the volumes from the corresponding month in another year.[960]
- Thus, the Canadian Parties are themselves arguing for the adoption of a half-measure that employs different indexing methodologies for price and volume.

Commerce's Position: We agree that the *Random Lengths*' FLCI is the appropriate price index to index the private-origin standing timber prices contained in the 2017-2018 Private Market

[957] *See* GOO July 29, 2020 Vol IV Case Brief at 48.
[958] *See* Petitioner August 10, 2020 Rebuttal Brief at 103 – 107.
[959] *Id*. at 104, citing *U.S. v. Eurodif*, 555 U.S.
[960] *Id*. at 106, citing GOC Case Brief at 123, FN 372.

Survey since the FLCI is based on a basket of prices for 15 framing lumber products[961] and is used by the GNS in the ordinary course of business. For example, record evidence indicates that the GNS use the FLCI to set Crown stumpage prices, and the US lumber industry uses the FLCI to analyze market trends and negotiate private prices.[962] Thus, because the record information demonstrates that the GNS uses the FLCI to set Crown stumpage prices, we are using the FLCI to index the private prices in the 2017-2018 Private Market Survey for the final results.[963]

Specifically, for the months in the 2017-2018 Private Market Survey that lack price data for a given species or species group, we have used the FLCI to index the price data for the month in the corresponding year where the survey does contain price data. The GOC argues that the FLCI should be used to index price data for a given month to the adjacent month, as opposed to indexing price data for one month to the corresponding month in the other year; however, the GOC has not provided any evidence indicating that the FLCI should only be used to index prices from month to month. Therefore, for the final results, we continue to index prices for a month without data in the 2017-2018 Private Market Survey with the data in the same month of the other year.[964]

Comment 36: Whether Commerce Should Revise the Nova Scotia Benchmark to Account for Regional Differences

GOC's Comments[965]

- If Commerce wants to reproduce the survey results that the GNS allegedly uses in the ordinary course of business, it must also adjust for these regional differences.
- An exact recreation of regional weighting methodology is not possible because the GNS did not provide Commerce with the necessary county-specific data.
- However, Commerce can use harvest data from Nova Scotia's three regions to derive a regionally weighted benchmark.
- Weighting the benchmark for regional differences will track the methodology utilized by Deloitte, the firm the GNS contracted to prepare the 2017-2018 Private Stumpage Survey.

Petitioner's Rebuttal Comments[966]

- The Canadian Parties' proposed weighting methodology is cobbled together from various sources.
- Their proposal is unnecessary and does not improve the accuracy of Commerce's stumpage-to-stumpage comparison.
- The Canadian Parties' proposed adjustment to account for purported regional differences within Nova Scotia is not required by the statute.

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[961] *See* GOC July 15, 2019 Primary QNR Response at Vol III, Appendix 1 to Exhibit GOC-AR1-STUMP-44 at Attachment 9 at 4 – 5.
[962] *See* GOC July 29, 2020 Vol I Case Brief at 122; *see also* GNS July 15, 2019 Primary Stumpage QNR Response at Exhibit NS-21 at 6 – 7; Petitioner Comments on IQRs at 4; Petitioner June 25, 2020 Rebuttal Brief at 46 – 47; and Petitioner LER SQR at Exhibit 8.
[963] *See* Nova Scotia Final Benchmark Calculation Memorandum; *see also* GOC Benchmark Submission at Exhibit GOC-ADEQ-AR1-16.
[964] *See* Nova Scotia Final Benchmark Calculation Memorandum at Attachment 1.
[965] *See* GOC July 29, 2020 Vol I Case Brief at 124 – 125.
[966] *See* Petitioner August 10, 2020 Rebuttal Brief at 112 – 113.

Commerce's Position: We disagree that it is necessary to re-weight the results of the 2017-2018 Private Market Survey to account for regional differences, as proposed by the Canadian Parties. In its case brief, the Canadian Parties argue that if Commerce "wants to reproduce the survey results that the GNS allegedly uses in the ordinary course of business, the Department must also adjust for . . . regional differences."[967] As a point of clarification, it is incorrect to claim that the GNS uses survey results of Nova Scotia's private-origin standing timber that are weighted by region. The GNS's Report on Prices of Standing Timber covering the period April 1, 2017, through March 31, 2018, states that the GNS's "preference is to scale the survey to represent the actual population of harvested timber in the Province" and also states that the 2017-2018 Private Market Survey reflects "the actual distribution of transactions"[968] Therefore, it is incorrect to argue or imply that weighting the results of the 2017-2018 Private Market Survey is necessary in order to arrive at the GNS's intended and preferred result.

We also find that the representativeness of the 2017-2018 Private Market Survey dispels the need to weight the results by region. As explained in Comment 29, the 2017-2018 Private Market Survey: (1) reflects all of Nova Scotia's counties and regions;[969] (2) "On a regional basis when compared to the private land tenure reported in the 2017 Registry of Buyers Report, the {2017-2018 Private Market Survey's} coverage of the Western region accounted for 32% of the total volume of private land timber harvested in that region, the Central region accounted for 46%, and the Eastern region accounted for 22%;"[970] and (3) the "regional dispersion of volume reported in the {2017-2018 Private Market Survey} generally tracks the private land harvest reported in the Registry of Buyers Report."[971] Therefore, because the regional volumes in the 2017-2018 Private Market Survey cover all of Nova Scotia's counties and regions and generally track the private harvest volumes in the GNS's Registry of Buyers Report, we find it is sufficiently representative, thereby making consideration of additional regional weighting unnecessary.

Thus, because in the ordinary course of business the GNS does not commission surveys that weight the prices of private-origin standing timber in Nova Scotia by region and because the 2017-2018 Private Market Survey already sufficiently reflects regional harvest volumes in Nova Scotia, we do not find it necessary or appropriate to entertain using the Canadian Parties' proposed nine-step, regional re-weighting methodology, which relies on multiple, additional sources outside of the 2017-2018 survey.

[967] *See* GOC July 29, 2020 Vol I Case Brief at 124.
[968] *See* GNS July 15, 2019 Primary QNR Response at NS-6.
[969] *Id*.
[970] *Id*.
[971] *Id*.

Comment 37: Whether to Add a C$3.00/m^3 Silviculture Fee to the Nova Scotia Benchmark

GOC's Comments[972]

- Unlike the fees and various in-kind costs that the mandatory respondents pay to acquire Crown timber in other provinces, private purchasers of stumpage in Nova Scotia do not actually pay a fee of C$3.00/m^3.
- To the extent that any silviculture costs may be incurred by stumpage purchasers, those costs are not part of the remuneration charged by the seller. The Nova Scotia Registry of Buyers Reports for 2017 and 2018 indicate that, during the POR, only one Registered Buyer paid the C$3.00/m^3 silviculture charge and that the total amount of that payment was miniscule.
- Although Registered Buyers may incur net costs associated with their silviculture obligations, the record does not contain evidence quantifying those costs.
- Commerce should not include the C$3.00/m^3 in the Nova Scotia benchmark.

Petitioner's Comments[973]

- For the final results, Commerce should include the C$3.00/m3 silviculture fee in the Nova Scotia benchmark for stumpage programs that include silviculture in the price of the stumpage payments, namely the GOO and GOQ stumpage programs. Including this adjustment will allow Commerce to make an apples-to-apples comparison of stumpage prices across provinces, in which both the price of the stumpage and the price of silviculture activities are included.
- Unlike the provinces of Ontario and Québec, the Nova Scotia Benchmark does not include payments for silviculture. Instead, "Registered Buyers" in Nova Scotia who purchase more than 5,000 m3 of primary forest products in a year are required by the Forest Sustainability Regulations to provide a "required value" of silviculture activities, either through a cash payment to the Sustainable Forestry Fund or by the carrying out of an equivalent silviculture program
- This fee represents an additional payment for stumpage, above and beyond what is reported in the Nova Scotia private stumpage survey.
- Commerce has added the C$3/m3 silviculture fee to the Nova Scotia benchmark in prior Canadian CVD proceedings involving the provision of Crown-origin standing timber for LTAR.[974]
- In Ontario, silviculture is included in stumpage charges pursuant to the *Crown Forest Sustainability Act* in the form of a forest renewal charge.
- In Québec, the GOQ clarified that holders of Timber Supply Guarantees "are not responsible for silviculture under the {*Sustainable Forest Development Act*}," but that minimum stumpage prices are set to ensure that the GOQ receives enough revenue from stumpage to fully fund silviculture work.
- Thus, because silviculture is included in the stumpage prices charged by the GOO and GOQ, Commerce should add the C$3.00/m3 silviculture fee to the Nova Scotia Benchmark.
- Commerce erred when it preliminarily determined that it could "find no evidence to confirm that the so-called silviculture costs included in the stumpage rates charged by Ontario and

[972] *See* GOC July 29, 2020 Vol I Case Brief at 107.
[973] *See* Petitioner July 29, 2020 Case Brief at 22 – 26.
[974] *See, e.g., SC Paper from Canada Final* IDM at Comment 8; *see also Lumber IV Final Results of 2nd AR* IDM at Comment 38.

Québec are actual silviculture expenditures as such or are market-based costs."[975] Commerce's conclusion does not negate the fact that the GOO and the GOQ include stumpage costs in the prices they charge for Crown-origin standing timber.

- Therefore, Commerce must compare what is paid for Crown-origin standing timber in Ontario and Québec, which unequivocally includes silviculture fees, to a Nova Scotia benchmark that reflects the fact that purchases of private-origin standing timber in Nova Scotia incur mandatory silviculture costs.

GOC's Rebuttal Comments[976]

- The petitioner wrongly assumes that because the GNS requires Registered Buyers to earn three credits for each cubic meter of softwood timber that they harvest from private lands, the actual cost of earning those credits is C$3.00/m3.
- The record is devoid of evidence indicating that purchases of private-origin standing timber in Nova Scotia incur silviculture costs of C$3.00/$m^3$, or anything close to it.
- Despite the petitioner's assumption that each silviculture credit equates to a Canadian dollar, the Nova Scotia schedule of credits for silviculture activities does not denominate credit values in dollars. Thus, there is no basis to conclude that earning C$1 in silviculture credits should cost a Registered Buyer C$1.
- Whatever silviculture obligations Registered Buyers in Nova Scotia may incur, those obligations are not part of the remuneration provided by the purchaser to the seller in exchange for stumpage. There is no evidence that the private stumpage sellers involved in the transactions underlying the Department's benchmark derived any benefit from the silviculture fee or the alternative silviculture activities.
- Unlike the fees and various in-kind costs that Respondents pay for the right to harvest Crown timber in some other provinces, the obligations incurred by Nova Scotia private stumpage purchasers are not owed to stumpage sellers, do not necessarily benefit those sellers, and are thus not part of the value exchanged in the stumpage transaction. Thus, there is no basis to add any expenses related to those obligations to the prices paid to the seller of the private-origin standing timber.

Commerce's Position: Interested Parties argued the same point in the investigation. In reply, Commerce explained:

> We agree with the Canadian Parties that the C$3/$m^3$ silviculture fee should not be included in the Nova Scotia benchmark. In this investigation, we are seeking a stumpage-to-stumpage comparison. Because the record reflects that the silviculture fee is not part of the stumpage prices reflected in the benchmark, the Department continues to find that it is appropriate to not include the fee in our benchmark stumpage price.[977]

We continue to reach this conclusion in these final results. As in the investigation, we have conducted our benefit analysis under the provision of Crown-origin standing timber for LTAR program that reflects a stumpage-to-stumpage comparison, and thus, we have not included the

[975] *See* Petitioner July 29, 2020 Case Brief at 25, citing *Lumber V AR1 Prelim Results* PDM at 29.
[976] *See* GOC August 10, 2020 Vol I Rebuttal Brief at 8 – 17.
[977] *See Lumber V Final* IDM at Comment 42.

C$3/m^3 at issue because it is not included in the standing timber price charged by sellers of private-origin standing timber in Nova Scotia.[978]

Furthermore, as Canadian Parties note, the Nova Scotia Registry of Buyers Reports for 2017 and 2018 indicate that, during the POR, only one Registered Buyer paid the C$3.00/m^3 silviculture charge and that the total amount of that payment was miniscule.[979] Thus, as a matter of fact, there are, essentially, no silviculture fees paid to the GNS for Commerce to attribute to Nova Scotia benchmark prices.

The petitioners also argue that in the absence of silviculture payments made to the GNS, Commerce should quantify the silviculture activities that Registered Buyers may perform in lieu of paying the C$3.00/m^3 fee and attribute those expenses to the Nova Scotia benchmark. For the reasons stated above, we find no such adjustment is warranted. Moreover, there is no information on the record that would permit Commerce to quantify such expenses associated with silviculture activities performed in lieu of the C$3.00/m3 fee. In fact, as the Canadian Parties note, the Nova Scotia schedule of credits for silviculture activities does not denominate credit values in Canadian dollars.[980]

Additionally, Registered Buyers are not required to undertake silviculture obligations on behalf of the seller of the private-origin standing timber.[981] Thus, we agree with the Canadian Parties that there is no basis to conclude that any silviculture obligations performed by Registered Buyers are part of the value exchanged in the stumpage transaction.

Comment 38: Whether Fuelwood Should Be Included in the Stumpage Benefit Calculation

GOA's Comments[982]

- In the Initial Questionnaire, Commerce directed the respondents to report all logs delivered to their respective sawmills during the POR. Accordingly, West Fraser reported its purchases of Crown-origin fuelwood grade logs (*e.g.*, code 20 logs) that were delivered to one of its sawmills during the POR.
- In the *Lumber V AR1 Prelim Results*, Commerce included these Crown-origin fuelwood purchases into West Fraser's benefit calculation. Specifically, Commerce compared the prices of the Crown-origin fuelwood logs to the price of Nova Scotia logs that were processed into lumber. This improper comparison skewed West Fraser's subsidy benefit upward.
- The fact is that West Fraser did not convert the fuelwood logs into lumber. Fuelwood is a "used-based" classification, meaning that logs only receive the code 20 designation if they are destined to be processed into firewood. Further, West Fraser's questionnaire responses demonstrate that it processed the fuelwood logs in question into firewood. Specifically, the volume of its fuelwood log purchases nearly equals the volume of firewood that it sold.[983]

[978] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-16.
[979] *Id*. at Exhibit NS-8 at 36.
[980] *See* GOC Benchmark Submission at Exhibit GOC-ADEQ-AR1-11.
[981] *Id*.
[982] *See* GOA July 29, 2020 Vol II Case Brief at 64 – 65. West Fraser reiterates the GOA's case brief arguments that are summarized as part of this issue.
[983] *Id*. at 42, citing West Fraser LER Response at Exhibits WFAR1-LER-3 and WF-AR1-LER-4.

- Commerce's stumpage benefit calculation is concerned only with logs processed into subject merchandise.
- Therefore, Commerce should remove West Fraser's Crown-origin fuelwood purchases from the stumpage benefit calculations. Alternatively, if Commerce improperly continues to include Crown-origin fuelwood in the benefit calculation, it should compare such Crown-origin fuelwood purchases to the fuelwood standing timber prices contained in the 2017-2018 Private Stumpage Survey.

Petitioner's Rebuttal Comments[984]
- West Fraser paid relatively high prices for code 20 logs during the POR, prices that are too high for logs that were truly destined for firewood production. Thus, West Fraser has failed to demonstrate that code 20 logs that it purchased were, in fact, processed into and sold as firewood.
- Additional, proprietary, transactions between West Fraser and other sawmills belie West Fraser's claims concerning how its purchases of Crown-origin fuelwood were processed.
- Therefore, Commerce should continue to include fuelwood logs in West Fraser's stumpage benefit calculation.

Commerce's Position: We disagree with West Fraser and the GOA that Commerce should exclude West Fraser's purchases of Crown-origin standing timber that were graded as "20." West Fraser argues that despite the fact one of its sawmills purchased such grade "20" timber, it was not processed into softwood lumber but instead sold as fuelwood to unaffiliated parties. In support of its claim, West Fraser explains that the volume of crown-origin grade "20" logs in spreadsheets it submitted as part of its LER questionnaire response are nearly equal to the volume of Crown-origin grade "20" logs it reported as part of its stumpage questionnaire response.[985] We find this information is not persuasive as they are spreadsheets that lack any corresponding sales or financial documentation that reconcile the two data sets. Further, the sales documentation that is on the record indicates that West Fraser sold Crown-origin grade "20" timber to customers that included other sawmills.[986] Thus, we find West Fraser's sale of the grade "20" timber to a sawmill undercuts its claim that the timber was fuelwood that was not suitable for lumber production. Therefore, in these final results, we have continued to include West Fraser's purchases of Crown-origin standing timber graded as "20" in the stumpage benefit calculation.

Comment 39: Whether Commerce Should Account for JDIL's Treelength Purchases in the Stumpage Benefit Calculation

GNB's Comments[987]
- Declarations by GNB officials state that, in New Brunswick, treelength rates for stumpage apply to the full tree when harvested and involve the application of a weighted combined price encompassing higher value sawlog and studwood and lower value pulp/chips/biomass.

[984] *See* Petitioner August 10, 2020 Rebuttal Brief at 123 – 125.
[985] *See* West Fraser LER Response at Exhibits WF-AR1-LER-3 and WF-AR1-LER-4; *see also* West Fraser IQR at Exhibit WF IQR at WF-AR1-ALBST-1A, 1B.
[986] *See* West Fraser LER Response at Exhibits WF-AR1-LER-3.
[987] *See* GNB July 29, 2020 Vol III Case Brief at 38 – 41.

- By contrast, where there are product-specific stumpage rates, a different rate is applied to each part of the tree (*e.g.*, sawlog, studwood, pulpwood).
- As a result, prices for product-specific stumpage for sawlogs and studwood generally are higher than the treelength rate for a comparable stand.
- Thus, the sawlog or studwood portion of a tree at a treelength stumpage rate cannot reasonably be compared directly to sawlog or studwood at a product stumpage rate.
- In the investigation, Commerce acknowledged the differences of saw material versus full-tree material for New Brunswick.[988]
- An apples-to-apples comparison in the stumpage benefit calculation requires a comparison of treelength to treelength stumpage rates, or product to product stumpage rates.

JDIL's Comments[989]
- During the POR, JDIL purchased the large majority of its Crown-origin SPF standing timber at treelength length stumpage rates. In contrast, JDIL purchased private-origin SPF standing timber in New Brunswick at only product stumpage rates. Comparing these prices demonstrates that there are significant differences between treelength and product-based standing timber prices.
- Because there are significant differences between product stumpage rates and treelength stumpage rates, Commerce must adjust the Nova Scotia benchmark, which is based on product stumpage rates, to treelength stumpage rates to ensure a valid comparison with the treelength stumpage rates JDIL paid on Crown-origin SPF.
- JDIL provided the necessary information to make such an adjustment.[990]

Petitioner's Rebuttal Comments[991]
- In the investigation, Commerce sent supplemental questionnaires to JDIL regarding this exact issue. In JDIL's final calculation memorandum that accompanied the *Lumber V Final*, Commerce determined that, "{c}onsistent with the *Preliminary Determination*, we continue to find treelength to be more comparable to sawlogs."[992]
- The adjustment proposed by JDIL is unrelated to treelength ratios of studwood and sawlogs. Namely, the ratio proposed in JDIL's case brief of 61.19 percent for studwood and 38.81 percent for sawlog is based on the overall percentages of studwood timber and sawlog timber purchased in the province, not the ratio of such wood within a single treelength.
- Using this province-wide harvest ratio as the basis to estimate the value of studwood and sawlog wood fiber in standing timber sold as treelengths is not more accurate than Commerce's current methodology and would not result in a proper comparison.
- The declaration from the GNB's expert makes clear that there is no distinction between studwood and sawlogs in treelength classification.[993]

[988] *Id*. at 39, citing *Lumber V Final* IDM at 85.
[989] *See* JDIL July 29, 2020 Case Brief at 16 – 27.
[990] *Id*. at 23, citing the JDIL Benchmark Submission at Exhibits 2 and 3.
[991] *See* Petitioner August 10, 2020 Rebuttal Brief at 125 – 128.
[992] *Id*. at 125.
[993] *Id*. at 127, citing GNB July 15, 2019 Primary Stumpage QNR Response at Exhibit NB-AR1-STUMP-8 and Exhibit NB-AR1-BENCH-STUMP-2.

- Given the lack of distinction by the GNB itself, there is no reason for Commerce to depart from its investigation findings based on an artificial calculation created by the respondents for purposes of this litigation.

Commerce's Position: In the *Lumber V AR1 Prelim Results*, we used JDIL's purchases of private-origin standing timber in Nova Scotia as the benchmark to determine whether JDIL purchased Crown-origin standing timber for LTAR. The GNB and JDIL argue that Commerce must adjust JDIL's stumpage benchmark downward because JDIL's stumpage benchmark reflects product-based stumpage prices, whereas JDIL's purchases of Crown-origin standing timber in New Brunswick reflect treelength-based prices. We disagree that such an adjustment is warranted.

As an initial matter, we note that the product field included as part of JDIL's private-origin standing timber purchase dataset was not solicited in Commerce's Initial Questionnaire. Rather, JDIL added this field in the stumpage data it reported to Commerce as part of its initial questionnaire response, explaining that the addition of the field was necessary to ensure a proper comparison between Crown-origin logs sold on a treelength basis and the private-origin logs it states it purchased on a product basis in Nova Scotia and New Brunswick.[994]

Additionally, we find JDIL's proposed adjustment to JDIL's stumpage benchmark flawed because: (1) the conversion from product prices to treelength prices relies on information from one of JDIL's tenure licenses in New Brunswick rather than on data for private origin logs in Nova Scotia; and (2) relies in part on ratios that reflect the overall percentage of studwood timber and sawlog timber harvested in New Brunswick rather than on the ratio of studwood and sawlog within a given treelength.[995] Therefore, we have not included JDIL's proposed adjustment to JDIL's stumpage benchmark in our calculations for these final results.

Comment 40: Whether Commerce Should Revise the Product Comparisons Used in the Stumpage Benefit Calculation to Account for Log Quality

GOA's Comments[996]
- The facts of the record demonstrate that pulpwood-sized logs in Nova Scotia would be processed as sawable logs (*e.g.*, logs sawn into lumber) in Alberta.
- This evidence, coupled with Commerce's conclusion that the forests in the two provinces consist of trees of comparable size, compels the conclusion that Nova Scotia pulpwood prices must be used in computing benchmarks for Alberta Crown stumpage sales to sawmills.
- Logs coded as 06 and 99 account for approximately 27 percent of Alberta's harvest and consist of smaller and less valuable logs. In Nova Scotia, pulplogs account for a comparable share of its harvest.
- Logs coded as 99 in Alberta range from 6.9 cm to 9.9 cm and are under 8 feet in length. Specifications from HC Haynes, which contains log price data for Nova Scotia, indicates that logs that small meet no mill's specifications for studwood in Nova Scotia. In fact, much of

[994] *See* JDIL IQR at Exhibit STUMP-01 at 6.
[995] *See* JDIL July 29, 2020 Case Brief at Appendix 1.
[996] *See* GOA July 29, 2020 Vol II Case Brief at 65 – 58. Other Canadian Parties reiterate the GOA's case brief arguments that are summarized as part of this issue.

Alberta's logs coded as 99 fail to meet the 3.5 cm minimum diameter requirements for pulpwood.

- The GOA applies product codes, such as code 99, to portions of logs and not to the entire log as is the case in Nova Scotia. Thus, the mere fact that a log, a portion of which is coded as 99, is delivered to a sawmill does not mean it was used to produce lumber. It is more likely to consist of the tips of tree length and other logs that would be trimmed before the remainder of the log is sawn.
- Available evidence indicates that Alberta's code 06 size specifications align more closely with Nova Scotia pulpwood than with Nova Scotia studwood.
- Logs coded as 06 in Alberta generally must have a top diameter under 6 inches. Stud mills in Nova Scotia, on the other hand, require logs with a top diameter over 4-4.5 inches but under 13-14 inches. Pulp mills in Nova Scotia, on the other hand, accept logs with top diameters starting at 3-3.5 inches, indicating a greater degree of overlap with Albertan logs coded as 06.
- It is unreasonable to compare the Alberta's lower quality logs to higher quality logs in Nova Scotia, such as studwood and sawlogs.
- Finding that Albertan code 06 and code 99 logs are most comparable to Nova Scotia pulpwood is the only finding that is consistent with the Commerce's preliminary conclusion that the Nova Scotia private forest is comparable to the Alberta Crown forest in terms of timber size among other characteristics. It cannot be the case that timber in the two provinces is of comparable size, but there is no timber in Alberta comparable to the least valuable percent of the Nova Scotia harvest that is classified as pulpwood.

GOQ's Comments[997]

- In the *Lumber V AR1 Prelim Results*, Commerce compared the prices of Crown-origin standing timber graded as pulpwood, specifically grade C and M standing timber, that Resolute processed into lumber to a Nova Scotia private standing timber benchmark that excludes pulpwood.
- Pulpwood grade logs account for 37 percent of the timber inputs into Québec sawmills. Thus, Commerce must include standing timber prices for pulpwood in the stumpage benefit calculations for Resolute.

Canfor's Comments[998]

- Commerce compared code 01 standing timber (which is used by sawmills, studmills, and pulpmills and which accounts for two-thirds of Alberta's coniferous harvest) to sawlog grade standing timber in Nova Scotia. Sawlog grade timber only accounted for 16 percent of Nova Scotia's private standing timber harvest in 2018.
- This not an appropriate comparison. Commerce should instead compare Canfor's purchases of grade 01 standing timber with Nova Scotia benchmark that is comprised of sawlog *and* studwood grade standing timber.

[997] *See* GOQ July 29, 2020 Vol V Case Brief at 69 – 70.
[998] *See* Canfor July 29, 2020 Case Brief at 13 – 15.

Petitioner's Rebuttal Comments[999]

- Commerce has found that "{t}he portion of the log harvest accounted for by pulp-grade logs in Nova Scotia is not relevant to the Department's analysis" because "the volume of Crown-origin standing timber reported to the Department by the respondents does not include logs destined for pulp mills."[1000]
- Nova Scotia's pulpwood data apply to logs used in its pulpmills; thus, the price for such pulpwood is unrelated to standing timber used to make lumber.
- Commerce acknowledged this fact in the investigation: "includ{ing} pulplogs into the Nova Scotia benchmark, as suggested by the Canadian Parties, would create an imbalance in the benefit calculation."[1001]
- The Nova Scotia benchmark includes studwood, which are smaller sized logs used by sawmills, thereby making the benchmark a conservative reflection of private, market-based standing timber prices.
- Commerce instructed the respondent firms to report the volume and value of Crown-origin sawlogs that they purchased during the POR. Accordingly, Commerce used a benchmark that was similarly comprised of prices charged for standing saw timber in Nova Scotia, thereby ensuring a stumpage benefit comparison that consists solely of logs processed by sawmills.[1002]
- The GNS defines pulpwood as products intended to be pulped for paper production. Thus, in keeping with its prior findings, Commerce should not include pulpwood in the stumpage benchmark.
- Alberta logs with product codes 06 and 99 are still destined for sawmills and should not be compared to logs that are destined for pulp mills.
- Commerce properly concluded that logs with a 01 product code should be compared only with Nova Scotia sawlogs because, as Commerce has explained, it "instructed the respondent firms to report the volume and value of Crown-origin sawlogs that they purchased during the POI."[1003]

Commerce's Position: We disagree with the Canadian Parties' claim that the sawable standing timber that comprises the Nova Scotia benchmark is considerably larger than the sawable Crown-origin standing timber harvested by the respondents in Québec, Ontario, and Alberta. As explained in Comment 26, consistent with the investigation, we find the DBH of Nova Scotia timber is within the same DBH range as timber in Québec, Ontario, and Alberta. Therefore, we also disagree that Commerce should compare non-sawlog standing timber prices (*e.g.*, pulplog prices), as contained in the 2017-2018 Private Market Survey, to certain sawable Crown-origin standing timber grades in Alberta and Québec that the respondents purchased during the POR.[1004] As explained in Comment 31, consistent with the investigation, in this review, we instructed the respondent firms to report the volume and value of Crown-origin sawable standing timber that they purchased for their sawmills during the POR.[1005] Accordingly, we have utilized a benchmark that is similarly comprised of prices charged for sawable standing timber in Nova

[999] *See* Petitioner August 10, 2020 Rebuttal Brief at 107 – 110.
[1000] *Id*. at 108, citing *Lumber V Final* IDM at Comment 43.
[1001] *Id*. at 109, citing *Lumber V Final* IDM at Comment 41.
[1002] *Id*. at 109, citing *Lumber V Final* IDM at Comment 40.
[1003] *Id*. at 110, citing *Lumber V Final* IDM at Comment 40.
[1004] We use the term "sawable" to refer to timber that is suitable for use by sawmills to make lumber products.
[1005] *See* Initial Questionnaire at 90 and Québec, Table 1, which instructs Resolute to report Crown-origin standing timber purchased by sawmills.

Scotia.[1006] In this way, we ensure a comparison that consists solely of logs used by sawmills to make lumber. Thus, to include pulplog grade standing timber in the Nova Scotia benchmark would create a mismatch between the respondents' reported sawable timber and a broader Nova Scotia benchmark comprised of sawable standing timber as well as pulplog grade standing timber that is not purchased by Nova Scotia sawmills.[1007] Further, as explained in Comment 31, in the investigation, Commerce verifiers confirmed that while both sawlogs and studwood are softwood sawable logs used in the production of softwood lumber products, studwood generally denotes smaller diameter logs suitable for sawing into 8-foot, 9-foot, or 10- foot studs.[1008] Thus, consistent with the investigation, we find that the Nova Scotia benchmark incorporates a range of standing timber types that are used by sawmills (including standing timber types on the small end of the sawable timber spectrum) that results in a conservative and comparable benchmark.

We disagree with the Canadian Parties that the share of the Crown-origin harvest accounted for by standing timber graded as "06" and "99" in Alberta should lead Commerce to compare the respondents' purchases of such grades to pulplog grade standing timber prices in Nova Scotia, or that the share of private-origin harvest attributable to sawlog quality grade standing timber in Nova Scotia should lead Commerce to remove such sawlog prices from the Nova Scotia benchmark. The goal of our LTAR benefit analysis is to compare the respondents' purchases of sawable, Crown-origin standing timber to a benchmark comprised of sawable standing timber. As such, the volume of standing timber graded as "06" and "99" in Alberta and the volume of sawlog quality standing timber contained in the 2017-2018 Private Market Survey is not relevant to our price comparisons. Rather, what is relevant are the prices and grade categories of sawable standing timber in Nova Scotia and the provinces at issue. Information indicates that standing timber prices categorized as sawlogs and studwood in the in the 2017-2018 Private Market Survey are sawable.[1009] Thus, we have utilized the sawlog and studwood standing timber prices contained in the 2017-2018 Private Market Survey as the basis of our standing timber benchmark.

As discussed in Comment 31, information in the GOQ's scaling manual indicates that Resolute's crown-origin standing timber purchases graded as "B" are comparable to Nova Scotia sawlog standing timber grade while Resolute's Crown-origin standing timber purchases graded as "C," "M," or "R," while sawable, is nonetheless smaller or of lower quality than grade "B" timber, and, thus, are comparable to the Nova Scotia studwood standing timber grade.[1010]

[1006] *See, e.g.*, Resolute Final Calculation Memorandum; *see also* GNS July 15, 2019 Primary QNR Response at NS-5 and NS-6.

[1007] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-6 at 3 and Exhibit NS-8, which contains the GNS uses to define sawlog, studwood, and pulplogs. These definitions indicate that standing timber that produces sawlogs and studwood is sawable and that standing timber that produces pulplogs is not.

[1008] *See Lumber V Final* IDM at Comment 40.

[1009] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-6 at 3 and Exhibit NS-8, which contains the GNS uses to define sawlog, studwood, and pulplogs. These definitions indicate that standing timber that produces sawlogs and studwood is sawable and that standing timber that produces pulplogs is not.

[1010] Grade "R" denotes a log with reduction at one end of at least 66.7 percent and length of less than 3.76m. *See* GOQ IQR, Vol 1 at Exhibit QC-STUMP-036 at 496. Logs that are dead before harvest are classified as grade "M" and are not classified by size. *Id.*, at 527.

Regarding Alberta, information in the Alberta Scaling Manual indicates that Crown-origin standing timber graded as "01" is used for full size sawlogs.[1011] Based on this information, we find purchases of standing timber graded as "01" by West Fraser and Canfor are comparable to Nova Scotia sawlog quality grade standing timber. Information in the Alberta Scaling Manual also indicates that the codes for Crown-origin standing timber graded as "06" and "99" are for small-stem and undersized logs.[1012] The smaller-size grades compose a significant proportion of the volume purchased by the respondents, which demonstrates that these codes are used extensively by the respondents' sawmills.[1013] Thus, we find that while such grades are sawable, they are smaller than standing timber the GOA grades as "01." Therefore, we have compared the prices Canfor and West Fraser paid for such grades of Crown-origin standing timber to the prices of Nova Scotia studwood standing timber.

Comment 41: Whether Commerce Should Revise the Price Comparisons Used in the Stumpage Benefit Calculation Involving Crown-Origin Standing Timber in Québec, Ontario, and Alberta

GOC's Comments[1014]

- Nova Scotia sawmills recognize the limited value of pine and fir logs and, therefore, rely almost exclusively on spruce logs when possible. This is a market condition that does not exist in Québec, Ontario, and Alberta.
- To account for these differing market conditions, Commerce should compare lower value studwood standing timber prices in Nova Scotia to the respondents' purchases of Crown-origin, pine and fir standing timber.
- Because Nova Scotia studmills tend to accept more non-spruce species than do Nova Scotia sawmills, this comparison will more closely reflect the quality and other product characteristics of fir and pine that are processed by sawmills in Québec, Ontario, and Alberta.

Petitioner's Rebuttal Comments[1015]

- Commerce rejected the Canadian Parties' argument in the investigation, noting that there was "no basis to make an adjustment" to the Nova Scotia benchmark to account for province-specific species mixes because the respondents had failed to substantiate their claim that variation in SPF species impacts comparability.[1016]
- The Canadian Parties' argument regarding the lack of comparability amongst species is refuted by the fact that the provincial governments treat all SPF species as a single group for purposes of setting Crown stumpage rates and by the fact that lumber processed from SPF species is used interchangeably.
- The Canadian Parties' proposed adjustment would result in a benefit calculation that compares lower grade studwood in Nova Scotia to higher grade timber prices in Québec, Ontario, and Alberta.

[1011] *See* GOA July 15, 2019 Primary Stumpage QNR Response at Exhibit AB-AR1-S-18 at 14, and 25 – 26.
[1012] *Id*.
[1013] *See* Final Calculation Memoranda for Canfor and West Fraser.
[1014] *See* GOC July 29, 2020 Vol I Case Brief at 110 – 112.
[1015] *See* Petitioner August 10, 2020 Rebuttal Brief at 101 – 102.
[1016] *Id*. 101, citing *Lumber V Final* IDM at Comment 42.

Commerce's Position: The Canadian Parties argue that Commerce should use the studwood category from the 2017-2018 Private Market Survey as a proxy for quality and, thus, compare such prices to the prices for pine and fir Crown-origin standing timber in Québec, Ontario, Alberta, which the Canadian Parties are low-quality SPF timber. We disagree. The 2017-2018 Private Market Survey defines studwood in terms of its size, not quality.[1017] Accordingly, as noted in Comment 40, our decision to utilize sawlog or studwood prices from the 2017-2018 Private Market Survey is determined by the size of the Crown-origin logs in question. Furthermore, as noted in Comment 27, we find that the coniferous species that comprise the SPF category in the Canadian provinces at issue have "sufficiently common characteristics to be treated interchangeably in the lumber market"[1018] and that the purported physical differences among species in the SPF category are not reflected in how Provincial Governments price Crown-origin standing timber. Additionally, as explained in Comment 31, we find that despite variances among the species that comprise the SPF categories in Nova Scotia, Québec, Ontario, and Alberta, tree size, as measured by DBH, remains in the same general range amongst the provinces. Therefore, we have not compared studwood prices for private-origin standing timber in Nova Scotia, as listed in the 2017-2018 Private Market Survey, to the price for pine and fir Crown-origin standing timber in Québec, Ontario, and Alberta.

Comment 42: Whether Commerce Should use Log Price Data from the HC Haynes Survey as the Basis for the Nova Scotia Standing Timber Benchmark

Canfor's Comments[1019]

- If Commerce continues to use Nova Scotia as the source for its standing timber benchmark in the stumpage benefit calculations for Québec, Ontario, and Alberta, it should base the benchmark on Nova Scotia log price data from the HC Haynes Survey.
- The HC Haynes Survey is more accurate than the flawed 2017-2018 Private Stumpage Survey.
- Unlike the 2017-2018 Private Stumpage Survey, the HC Haynes Survey was produced in the ordinary course of business.
- Canfor has demonstrated how Commerce can use the log prices in the HC Haynes Survey to calculate a derived standing timber price that it may use in the stumpage benefit calculation for Crown-origin standing timber purchased in all non-British Columbia provinces at issue.

The petitioner did not rebut this comment.

Commerce's Position: We disagree with Canfor that if Commerce continues to use Nova Scotia as the source for its standing timber benchmark in the stumpage benefit calculations for Québec, Ontario, and Alberta, it should base the benchmark on Nova Scotia log price data from the HC Haynes Survey. Commerce has on the record prices for private-origin standing timber in Nova Scotia, as contained in the 2017-2018 Private Market Survey.[1020] As discussed elsewhere in this Memorandum, we find the prices in this survey to be reliable and comparable to the

[1017] *See* GNS July 15, 2019, Primary QNR Response at Exhibit NS-17, indicating that the 2017-2018 Private Market Survey relied on product definitions from the GNS' Registry of Buyers; *see also* Exhibit NS-8, which contains the studwood definition from the Registry of Buyers: "Any log between 8 and 10 feet lengths plus trim, intended to be sawn into lumber used for vertical support in the wall of buildings."
[1018] *See Lumber V Final* IDM at Comment 40.
[1019] *See* Canfor July 29, 2020 Case Brief at 8 – 9.
[1020] *See* GNS July 15, 2019 Primary QNR Response at Exhibits NS-5 and NS-6.

Crown-origin standing timber at issue in Québec, Ontario, and Alberta and, thus, we find that the survey prices constitute an appropriate tier-one benchmark under 19 CFR 351.511(a)(2)(i).

Consistent with Comment 13, prices from the HC Haynes Survey cannot be used in the stumpage benefit calculation for Québec, Ontario, and Alberta because, under the benchmark hierarchy established by 19 CFR 351.511(a)(2), our first preference for determining the adequacy of remuneration is to compare the government price to a market-determined price "for the good or service resulting from actual transactions in the country in question." The good at issue for this LTAR program in this review is standing timber. The HC Haynes Survey prices that Canfor proposes using as a benchmark are for a different product, *i.e.*, harvested logs, that is downstream from standing timber. As such, the HC Haynes Survey prices are not a tier-one benchmark "for the good or service" under examination.

Comment 43: Whether Commerce Should Make Adjustments to Stumpage Rates Paid by the Respondents to Account for "Total Remuneration" in Alberta, New Brunswick, Ontario, and Québec

Canadian Parties' Comments

- Canfor, JDIL, Resolute, West Fraser, GOA, GOC, GOO, and GOQ argue that Commerce has not accounted for the "full" or "total" remuneration paid by the respondents for stumpage by excluding certain fees and dues, including holding and protection charges, in-kind service fees such as road construction, silviculture and reforestation, FRIP/FRIAA dues, unreimbursed management fees for License #7, royalty fees, indigenous land harvest fees, and others.[1021] Such fees and payments are part of the total price paid for stumpage, not their "long-term tenure rights," and, in their absence, the provinces would charge higher rates for stumpage. The Canadian Parties argue that Commerce correctly included all of these costs in *Lumber IV*, and Commerce is obligated to account for them in this review because Commerce is required to measure the adequacy of remuneration under the prevailing market conditions as directed by section 771(5)(E)(iv) of the Act.
- West Fraser and the GOA argue that Commerce cannot describe the in-kind costs and other fees paid by the Alberta respondents as total remuneration to be part of its "long-term tenure rights," as Commerce found with JDIL and the GNB in *SC Paper*, because the facts of the two proceedings are different.[1022] While JDIL was partially reimbursed for its other stumpage-related expenses, the GOA does not reimburse the Alberta respondents at all, and the fees paid by the Alberta respondents cannot be separated from the cost of stumpage.

Petitioner's Comments[1023]

- Commerce should not make adjustments to the costs paid by the respondents for stumpage beyond the cost of the standing tree because such adjustments would include fees and services not accounted for in the benchmark. The Nova Scotia benchmark is a "pure stumpage price," unadjusted by other fees such as royalties and road construction. Commerce's prior use of

[1021] *See* Canfor July 29, 2020 Case Brief at 9 – 13; *see also* JDIL July 29, 2020 Case Brief at 28 – 30; Resolute July 29, 2020 Case Brief at 18 – 20; West Fraser July 29, 2020 Case Brief at 30 – 38; GOA July 29, 2020 Vol II Case Brief at 8 – 33; GOC July 29, 2020 Vol I Case Brief at 106 – 109; GOO July 29, 2020 Vol IV Case Brief at 54 – 56; and GOQ July 29, 2020 Vol V Case Brief at 71 – 73.

[1022] *See* West Fraser July 29, 2020 Case Brief at 38 – 41; *see also* GOA July 29, 2020 Vol II Case Brief at 12.

[1023] *See* Petitioner August 10, 2020 Rebuttal Brief at 114 – 119 and 122 – 123.

adjustments in *Lumber IV* were due to a different benchmark, and comparisons between *Lumber IV* and this review are thus misplaced.

Commerce's Position: The Canadian Parties argue that Commerce should adjust their purchase prices of Crown-origin stumpage by adding the cost of certain activities, fees, and charges that are part of the "total" remuneration paid by the respondents. We disagree. The private prices in the 2017-2018 Private Stumpage Survey and JDIL's Nova Scotia purchases are "pure" stumpage prices, *i.e.*, prices charged to the purchaser for the right to harvest timber, which therefore do not reflect any of the related costs.[1024] Under section 771(5)(E)(iv) of the Act, Commerce is required to measure the adequacy of remuneration in relation to the "prevailing market conditions for the good or service being provided." Thus, due to our determination that the Nova Scotia benchmark is a "pure" stumpage price, which does not reflect these other activities, fees, and charges, we find that a proper stumpage-to-stumpage comparison must exclude the cost of such related expenses from the calculation.

Accordingly, we have excluded all the related expenses that are not the "pure" stumpage price paid. We have not added the costs for certain post-harvest activities, such as scaling and hauling logs to the mill, because such costs are incurred after harvesting standing timber, and after the purchase/sale of stumpage. Likewise, the administrative costs considered by the Canadian Parties are considered overhead expenses, which are not directly related to stumpage prices. We also find no record evidence that the Nova Scotia benchmark or JDIL's Nova Scotia purchases incorporate the cost of long-term tenure obligations (*e.g.*, unreimbursed License #7 expenses, annual fees, FRIAA dues, holding and protection charges, *etc*., which the respondents argue we should adjust for in the benefit calculation).[1025] Our findings in this regard are consistent with our approach in the investigation.[1026]

Concerning the distinction between "long-term tenure rights" and "stumpage," Commerce finds, as it did in the investigation,[1027] that costs associated with long-term tenure rights are separate from and substantively different than the "pure" stumpage price. Such costs are billed on separate invoices or as separate line items by the provinces, rather than incorporated into the stumpage price,[1028] and there is no evidence on the record that these costs are taken into account by provincial governments when setting stumpage prices. Although the parties rely on section 771(5)(E)(iv) of the Act, that section does not require Commerce to include all costs that a purchaser bears in relation to the purchase of a good when measuring the adequacy of remuneration for that purchase. As discussed above, our benchmark excludes these long-term tenure costs, and as such, including these costs would distort the calculation of benefit by adding costs on one side of the equation (respondents' purchase price) without similar costs being incorporated into the other side (the Nova Scotia benchmark or JDIL's Nova Scotia purchases). West Fraser's and the GOA's arguments regarding reimbursement are likewise unavailing because, as stated above, we find that in-kind and other related expenses in Alberta are part of the respondents' long-term tenure rights and are not part of the "pure" stumpage price as

[1024] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-6 *see also* JDIL IQR STUMP-01 at 11.
[1025] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-6; *see also* JDIL IQR STUMP-01 at 11.
[1026] *See Lumber V Final* IDM at Comment 43.
[1027] *Id*.
[1028] *See, e.g.*, Canfor IQR at Exhibits Stump-A-7 and Stump A-8; and Resolute July 15, 2019 Primary Stumpage QNR Response at Exhibits RES-STUMP-ON-12 and RES-STUMP-QC-7.

calculated from the *2017-2018 Private Stumpage Survey*.[1029] Consequently, Commerce cannot adjust for such costs without distorting the benchmark.

Regarding the parties' arguments related to *Lumber IV*, we note that, as in the investigation,[1030] the record evidence in this review stands on its own. Furthermore, we agree with the petitioner that the benchmark assessed in this review is substantively different from that of *Lumber IV*. As discussed in Comments 25 and 28, the *2017-2018 Private Stumpage Survey* does reflect the prevailing market conditions of Alberta's stumpage system and, consequently, comparisons to *Lumber IV* are unnecessary.

E. Log Export Restraint Issues

Comment 44: Whether Commerce Should Find Restrictions on Log Exports in Alberta, New Brunswick, Ontario, and Québec to Be Countervailable Subsidies

- ***Alberta***

Petitioner's Comments[1031]

- The text of the Forests Act and Log Export Directive execute a general ban on log exports and implement burdensome requirements for authorization, which consequently direct or entrust logs to Alberta mills. This export restraint is enforced through certain requirements in Alberta tenure agreements.
- Commerce should also find that the program is *de jure* specific because it is limited to the timber industry and confers a benefit by allowing lumber producers to obtain logs for LTAR.

Canadian Parties' Rebuttal Comments[1032]

- Canfor and the GOA argue that the log export authorization system does not constitute a financial contribution because the process is flexible, simple to complete, cost-free, and does not restrict exports of logs.
- Should Commerce determine the program to be countervailable, it should not use the benchmark provided by the petitioner because the proposed benchmark is a tier-two benchmark and distortive due to multiple issues, including species, aberrational prices, and conversion factors. Commerce should instead use the H.C. Haynes data used for Ontario and Québec.

[1029] *See* GNS July 15, 2019 Primary QNR Response at Exhibit NS-6; *see also* JDIL IQR STUMP-01 at 11; Canfor IQR at Exhibits Stump-A-7 and Stump A-8; and Resolute July 15, 2019 Primary Stumpage QNR Response at Exhibits RES-STUMP-ON-12 and RES-STUMP-QC-7.
[1030] *See Lumber V Final* IDM at 136.
[1031] *See* Petitioner July 29, 2020 Case Brief at 15 – 21.
[1032] *See* GOA August 10, 2020 Vol II Rebuttal Brief at 1 – 11; *see also* Canfor August 10, 2020 Rebuttal Brief at 1 – 3.

- ***New Brunswick***

Petitioner's Comments[1033]
- Commerce erred in preliminarily finding that the GNB's log export process does not constitute a financial contribution.
- Commerce should find that the log export process in New Brunswick provides a financial contribution by means of entrustment or direction of private entities.
- Commerce should find that the log export process in New Brunswick is specific and provides a benefit.

GNB and JDIL's Rebuttal Comments[1034]
- Commerce should continue to find that Section 68 of the CLFA does not provide an indirect financial contribution to sawmills that produce softwood lumber.
- New Brunswick's log export process does not provide a benefit.

- ***Québec***

GOQ and GOC Comments[1035]
- Commerce incorrectly determined that Québec's statutory requirement that logs harvested on public land be harvested in-province constitutes entrustment or direction. There is extensive evidence that there is no export demand for Québec logs, and thus, that no log exports are restrained.
- No provincial laws or regulations restrain log exports from Québec's private forest, while a domestic processing requirement for logs from Québec's public forest has been in place for over a century. Export authorizations are provided through decrees. Once a decree is in place, there is no formal notice process or specific approval required. During the POR, two decrees were in effect and only four shipments were made. When the volume shipped under one of the decrees exceeded the authorized quantity, the shipment was retrospectively approved. No request for an authorization has been denied since 1995.
- According to the Act, a countervailable subsidy exists only when an authority "*provides* a financial contribution."[1036] In *Lumber III and Lumber IV*, Commerce found Québec's LER to have no effect because of the lack of export demand for Québec logs.
- Commerce found that there is no "process for an individual seller to request an exemption not covered by the decrees." Since Québec has been approving requests to export since 1995, obviously companies can request authorization. When the two decrees in effect during the POR expired, the GOQ renewed them and added additional regions to their scope. The GOQ's approach is similar to the GNB's looking at requests on a case-by-case basis and is even more flexible given the absence of a formal application process and lack of penalty for non-compliant shipments.
- Commerce's supposition, that even when non-sawmills acquire timber through auctions, they must then sell unprocessed timber to TSG-holding mills, is incorrect. Many sawmills do not

[1033] *See* Petitioner July 29, 2020 Case Brief at 6 – 15.
[1034] *See* GNB August 10, 2020 Volume III Rebuttal Brief at 3 – 15; *see also* JDIL August 10, 2020 Rebuttal Brief at 2 – 11.
[1035] *See* GOQ July 29, 2020 Vol V Case Brief at 76 – 97; *see also* GOC Vol I Case Brief at 126 – 137.
[1036] *See* section 771(5)(B)(i) of the Act.

hold TSGs, but process logs originating on public lands, including those purchased at auction by non-sawmills. The LER does not limit or prevent potential bidders from participating in the auctions.

- Commerce cites from the legislative history of Québec's LER to find that the current LER is meant to "manage Québec's forest sources and support domestic manufacturing{.}" This ignores that by the 1980s, exports of non-processed wood were "minimal," and legislators acknowledged that the LER had little effect because Québec is a large net wood importer.
- The LER was meant to protect workers in Québec's newsprint industry by keeping pulp and paper resources within the province. Lumber is not mentioned once in the measure's legislative history. More recently, the LER has persisted through inertia. Commerce previously cited these facts to find that Québec's "LER" is not a restraint at all.
- Alberta and New Brunswick's LERs were found not to be countervailable. Québec's LER is less restrictive than New Brunswick's. Commerce should reverse its finding that Québec's LER is countervailable in the final results based on the record evidence and its findings for provinces with comparable LERs.
- Commerce incorrectly found that Québec's LER was *de jure* specific as a program limited to the timber processing industry. The Act defines a program as *not* specific if eligibility is automatic and the program is not limited to a specific group of industries, is administered in accordance with strictly followed eligibility criteria, and those criteria are public available and verifiable.
- The Act explicitly defines the four categories of "financial contribution," and the alleged LERs do not fall into any of these four categories. They are approval processes for log exports and do not constitute the government provision of "goods." Furthermore, the LER does not fall under the indirect bestowal of a financial contribution through entrustment or direction.
- There is a high threshold for finding entrustment or direction. Commerce has found that entrustment or direction "cannot merely be a by-product of government regulation" or be due to "encouragement." Rather, there must be evidence of a policy, affirmative measures to support the policy, and a link between the policy, measures, and the financial contribution. The alleged LERs do not force log owners to carry out one of the Act's enumerated government functions, and therefore, do not "entrust or direct" anything.
- In *AK Steel Corp. v. United States*, the CAFC held that an indirect subsidy finding requires establishing a "causal nexus" between the program and benefit. This is a pre-URAA case, but the "causal nexus" standard has been followed in multiple post-URAA cases, including *TMK IPSCO*.[1037] In *Wind Towers from Indonesia*, Commerce declined to find entrustment or direction of CTL plate based on a standard that such a finding required entrustment or direction *for LTAR*, similar to *PRCBs from Vietnam Final*.[1038]
- Neither the GOQ nor the GOO requires private log owners to sell to in-province mills or to a particular party at a particular price. Section 771(5) of the Act defines "financial contribution" based on the nature of government action, so it is inappropriate to make a finding of entrustment or direction based on the supposed impact of the LER. Regardless, there is no evidence that either LER increases log supply or affects log prices.
- An entrustment or direction finding requires that the financial contribution "would normally be vested in the government." In this case, the "government function" is the provision of logs. Attempts to focus attention on the duration of the LERs or provincial forest management does

[1037] *See TMK IPSCO v. United States*, 179 F. Supp. 3d 1328 (CIT 2016).
[1038] *See Wind Towers from Indonesia* IDM at Comment 1, *PRCBs from Vietnam Final* IDM at Comment 8.

not cure this flaw. Ontario and Québec do not normally sell logs and thus providing logs is not "normally vested in the government."

- The Act and SAA both confirm that a *de jure* specificity finding requires that a measure be affirmatively limited to a small number of enterprises or industries and is not tied to limitations on the activities conducted by enterprises or industries. The obligation to process public timber in Québec, as well as the conditions for shipments outside Québec, do not expressly limit access to an enterprise or industry.
- A restriction applicable to *all* timber harvested from Québec's public forest is, by definition, not limited to any particular industry in Québec. The GOQ's export authorization decrees likewise do not reference a specific industry. The ultimate customers or recipients of the exported logs are not limited by Québec's LER and are likely from the wide range of industry sectors that use unprocessed timber.
- When first enacted and in subsequent iterations, the LER targeted the pulp and paper industry. Lumber is unmentioned in the versions of the law in effect for over a century. The SAA requires that a countervailable subsidy be specific to the enterprise or industry under investigation, and the LER relates to pulp and paper, not lumber.
- Just as the LER cannot be considered *de jure* specific because any enterprise or industry that uses unprocessed lumber within Québec is subject to the LER, it also cannot be *de facto* specific as it applies to all unprocessed lumber within Québec used by a wide variety of industries and sectors.

Petitioner's Rebuttal Comments[1039]

- Commerce correctly determined that the GOQ provides a countervailable subsidy by using LERs to entrust or direct log suppliers to provide logs to sawmills. The Canadian Parties' arguments against this finding are unavailing.
- The standard for "entrustment or direction" is not defined by a dictionary or a narrow set of government activities. Rather, Commerce has noted that this phrase "can encompass a broad range of meanings" and also that the definition used by Commerce in *Dynamic RAM Semiconductors from Korea* "did not define the boundaries of what could be considered entrustment or direction." The SAA states that the phrase "shall be interpreted broadly" and that indirect subsidies are to be examined "on a case-by-case basis." In *Hynix Semiconductor*, the CIT found that the entrustment or direction language is "precisely the type of ambiguity that an administrative agency, like the Department, is given deference under *Chevron* step one to reasonably interpret."
- References to *AK Steel*, *TMK IPSCO*, and *Beijing Tianhai* are misleading. The argument that entrustment or direction require *AK Steel's* 'causal nexus' between government action and benefit is unavailing because, as found by Commerce in *Certain Wheat from Canada*, post-URAA, the Act "does not impose the further requirement that the government entrust or direct the private entity to provide a benefit{,}" but rather only requires that the private entity is entrusted or directed to provide a financial contribution.[1040] *TMK IPSCO* raised the 'causal nexus' issue over an export tax with different facts than the LER, and *Beijing Tianhai* did not involve an entrustment or direction claim.[1041]

[1039] *See* Petitioner's August 10, 2020 Rebuttal Brief at 129 – 149 and 150 – 158

[1040] *Id.* at 143, citing *Certain Wheat from Canada* IDM at Comment 3.

[1041] *Id.* at 144 – 145 citing *Beijing Tianhai*, 52 F. Supp. 3d 1351, and *TMK IPSCO v. United States*, 179 F. Supp. 3d 1328.[1042] *See* Marshall Report at 77.

- Commerce discussed and rejected the argument that BC's LER did not direct log owners to supply logs to "any purchaser in particular," explaining that the "process" by which the program operated was more important and that "the program is designed to benefit, and in operation does benefit downstream consumers{.}"
- Whether Québec has legislation requiring log owners to sell to mills is not dispositive. The existence of an exemption process to Québec's LER shows that the GOQ does, in fact, enforce the LER and constrains log suppliers' ability to export. The exemption system provides the GOQ discretion to ensure that Crown wood is allocated in a manner that maximizes the economic benefit to Québec's forestry industry, as shown by both exemption decrees requiring there be no buyers or sawmills that could process wood to be exported.
- The Marshall Report and IFS LER Report's claims of, respectively, a "'200 km transportation threshold'" and 88 km ideal hauling distance are contradicted by record evidence and not relevant to Commerce's determination.[1042] Resolute has idled an Ontario sawmill and ships Crown-origin softwood to another of the company's sawmills up to 353 km away, showing that distance is not necessarily determinative. More importantly, Commerce has found that export demand is not relevant, regardless of the effect of distance on that demand. In the *Lumber V Final*, Commerce rejected export demand arguments for BC because there was no way of knowing what trade flows would look like absent the restraint.
- Commerce's findings in *Lumber III* and *Lumber IV* are not relevant. Commerce's findings are "based on the evidentiary record developed in each proceeding." The GOQ cites *Peer Bearing*'s finding that verified information from previous administrative reviews is reliable data. However, in *Peer Bearing*, no new evidence "call{ed} into question the trustworthiness of the data." This record, however, casts doubt on arguments the GOQ has made, including that distance is an inherent limitation to potential purchasers of Québec logs. Furthermore, the record also shows that the LER is not as "lax" as the GOQ claims. Under the SFDA, deviations from the reported destination of Crown timber must be reported to the GOQ, and the GOQ requires BMMB auction participants to submit a "Timber Destination Log" to ensure traceability of Crown timber.
- Commerce correctly found Québec's LER specific under section 771(5A)(D)(i) of the Act. The LER is clearly limited by law to entities processing timber within Québec, *i.e.*, Québec's timber processing industry. The LER is also *de facto* specific under section 771(5A)(D)(iii)(II) of the Act, because this industry is the only industry benefiting from the LER.

- ***Ontario***

GOO and GOC Comments[1043]

- Commerce incorrectly determined that Ontario has a "log export restraint" that confers a financial contribution. It then used a benchmark that did not reflect Ontario's prevailing market conditions to calculate a subsidy rate. Additionally, to the extent any benefit is calculated, this program is still neither *de jure* nor *de facto* specific.
- Ontario has a log export application process that does not restrict log exports. The permitting process has become even more flexible since Commerce found this program not to be a

[1042] *See* Marshall Report at 77.
[1043] *See* GOO July 29, 2020 Vol IV Case Brief at 59 – 71; and GOC July 29, 2020 Vol I Case Brief at 126 – 137. The GOO and GOC's discussion of Ontario's LER in their case briefs issues raised many of the same issues discussed in the GOQ and GOC's briefs on Québec's LER.

countervailable subsidy in the *Lumber III Prelim*. Commerce also confuses Ontario's collection of basic information from wood processing facilities with "control" over the flow of logs within Ontario.
- There is a high threshold for finding entrustment and direction, and that threshold has not been met. Ontario merely has a log export application process, and, in any event, the GOO does not sell logs. As such, the alleged subsidy does not meet the government function requirement.
- There is no evidence on the record that Ontario private-origin log prices are distorted as to render them an unsuitable benchmark for logs subject to the purported "LER."
- The log export application requirements that Commerce found to be an LER apply to all industries and enterprises that harvest Crown timber, and thus, are not specific.

Resolute's Comments[1044]
- The only Ontario Crown log transactions that Commerce countervailed for Resolute in 2018 were exports from Ontario to Québec. It is illogical to countervail logs that were exported from Ontario as a countervailable subsidy through an Ontario LER. To the extent that Commerce does countervail such transactions, it should use a benchmark within Québec for calculating benefit.

Petitioner's Rebuttal Comments[1045]
- The petitioner has added sufficient evidence to the record showing the GOO's administration of LERs to support a finding of entrustment or direction of crown-origin logs. The phrase is flexible and subject to case-by-case analysis.
- Regardless of Commerce's findings in the *Lumber III Prelim* that Ontario's LER was not a countervailable subsidy, each of Commerce's proceedings stands on its own evidentiary record.
- Commerce has no way of knowing what Ontario's log trade would look like absent Ontario's LER. As such, arguments about Ontario's limited exports and imports of logs at present are not relevant to Commerce's findings on this issue.
- The GOO's information collection on the movement and processing of logs within the province is control, because parties that fail to supply the requested information to the GOO can be penalized.
- Users of the LER are limited by law to the timber processing industry; thus, this program is *de jure* specific.
- The logs "exported" from Ontario to Québec that Resolute claims should not be countervailed were still subject to Ontario's LER, because that restraint covers exports from Canada.

Commerce's Position: In the LER Post-Preliminary Decision Memo, we found that certain log export restrictions in Québec and Ontario were countervailable subsidies that entrusted or directed the provision of logs for LTAR.[1046] On the other hand, we determined that alleged log export restraints in New Brunswick and Alberta were not countervailable.[1047] For purposes of

[1044] *See* Resolute July 29, 2020 Case Brief at 23 – 26.
[1045] *See* Petitioner August 10, 2020 Rebuttal Brief at 129 – 149 and 150 – 158. The petitioner's rebuttal brief discussion of Ontario's LER contains arguments that overlap with arguments made in that brief's discussion of Québec's LER.
[1046] *See* LER Post-Preliminary Decision Memorandum at 4, 7, 12, and 13.
[1047] *Id*.

these final results, with respect to Québec and Ontario, we have come to a different determination than we reached in the LER Post-Preliminary Decision Memo.

The SAA, which lays out authoritative guidance for Commerce's evaluation of indirect subsidies, provides the following:

> …Commerce has found a countervailable subsidy to exist where the government took or imposed (through statutory, regulatory or administrative action) a formal, enforceable measure which directly led to a discernible benefit being provided to the industry under investigation. … In cases where the government acts through a private party, such as in Certain Softwood Lumber Products from Canada[1048] and Leather from Argentina[1049] (which involved export restraints that led directly to a discernible lowering of input costs), the Administration intends that the law continue to be administered on a case-by-case basis consistent with the preceding paragraph.[1050]

As an initial matter, it is essential to stress the language in the above paragraph that we intend to administer the law on a case-by-case basis. The findings for this case are based on the record evidence of this case. Interpreting the evidence on this case-specific manner gives Commerce the flexibility to address indirect subsidization. When facing indirect subsidy allegations in future CVD cases, we intend to make our determinations based on the records of those cases.

As the parties argued in their briefs, after the URAA became law, Commerce's analysis of export restraints in certain cases involved a consideration of multiple elements, including long-term price trend data or independent studies.[1051] Some parties have placed economic analysis on the record in this review,[1052] and we have determined to consider that analysis along with other relevant record evidence, in making our determination on these export restraints.

The SAA's reference to proceedings under a former iteration of the Canadian Softwood Lumber CVD Order, as well as *Leather from Argentina*, suggests that the "discernable lowering of input costs" was part of our analysis of whether the alleged program constitutes a subsidy in pre-URAA proceedings. In light of the language of the SAA and the arguments raised by interested parties, we have determined that in some post-URAA cases involving export restraints, as well, we not only conducted a financial contribution and benefit analysis, but we also considered information about whether the market for the good was influenced by the alleged restraints.[1053] Accordingly, consistent with that comprehensive analysis, we have conducted a thorough analysis of the record of this review and determined there is no information on the record that the

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[1048] *See Lumber III CVD Final Determination*, 57 FR at 22604 – 22610.
[1049] *See Leather from Argentina*, 55 FR at 40213-40214.
[1050] *See* SAA at 926.
[1051] *See Coated Paper from Indonesia* IDM at 25 – 35; *SC Paper from Canada – Expedited Review – Final Results* IDM at Comments 11 and 14; *Biodiesel from Argentina* IDM at Comment 1; *Biodiesel from Indonesia* IDM at Comment 5; and *Lumber V Final* IDM at Comment 44.
[1052] *See* Marshall Report at 76 – 79; GOC LER Response at Exhibits FED. APP. LEP-5 and FED. APP. LEP-6
[1053] *See HRS from Thailand Initiation*, 65 FR at 77584; *OCTG from China* IDM at comments 29 and 32 (In *TMK IPSCO*, 170 F.Supp. 3d at 1338-1341, the CIT affirmed Commerce's determination in *OCTG from China* to not countervail certain alleged export restraints on steel rounds when the record did not contain evidence that the restraints affected the domestic prices for steel rounds).

alleged log export restraints have affected prices for Crown-origin logs during the POR in Alberta, New Brunswick, Ontario, or Québec.

We have therefore reconsidered our financial contribution and benefit analyses from the LER Post-Preliminary Decision Memo for the programs at issue in all four provinces, and taken into consideration as well the fact that there is no record evidence demonstrating that the alleged export restraints in Alberta, New Brunswick, Ontario, or Québec have affected the prices of Crown-origin logs during the POR. Considering all this information as a whole, we do not find that the log export restraints in any of those provinces satisfy the elements necessary to determine that these alleged programs are a subsidy. Consequently, in these final results we find that the log export restraints at issue in Alberta, New Brunswick, Ontario, and Québec are not countervailable.

As these programs are not countervailable, benchmark selection and benefit calculation issues raised in interested parties' case briefs are moot.

Comment 45: Whether the LER in British Columbia Results in a Financial Contribution

Canadian Parties' Comments[1054]

- Any governmental action that falls outside of financial contribution under section 771(5)(D) of the Act cannot constitute a financial contribution as a matter of law and cannot be countervailed. The BC LER does not fit any the categories outlined under section 771(5)(D) of the Act.
- The BC LER is not a direct provision of goods because it is simply a process by which permits are issued for the export of logs held by private parties who harvested the logs.
- The BC LER does not fall within the provision for indirect bestowal of a financial contribution under section 771(5)(B)(iii) of the Act. The BC LER does not entrust or direct a private entity to carry out the provision of goods. Commerce has found that entrustment or direction only exists when "a government affirmatively causes or gives responsibility to a private entity or group of private entities to carry out what might otherwise be a government subsidy function of the type listed in subparagraphs (i) to (iii) of section 771(5)(D)."[1055]
- Commerce has also found that "entrustment or direction cannot merely be a by-product of government regulation,"[1056] nor can it be based on mere encouragement.[1057] Commerce has required a clear linkage between the government action and the private action.[1058] In *Lumber V AR1 Prelim Results*, Commerce failed to establish the requisite linkage between the government action and the alleged ensuing private action.
- All parties and Commerce appear to agree that an entrustment or direction finding may not lawfully be based on the alleged effects of the measure. In the WTO litigation, the United States argued that the effects of the BC LER played no part in its financial contribution analysis. Therefore, it follows that such a finding may not be based on any supposed impact the BC LER process might have on domestic log prices.

[1054] *See* GBC June 8, 2020 Vol III Case Brief at 3 – 14.
[1055] *Id*., citing *Dynamic RAM Semiconductors from Korea* IDM at 47.
[1056] *Id*., citing *SC Paper from Canada Final* IDM at 126.
[1057] *Id*., citing *PRCBs from Vietnam Final* IDM at 24.
[1058] *Id*.

- In *Lumber V AR1 Prelim Results*, Commerce claimed that the laws and regulations that govern the provision of logs in BC compel suppliers of BC logs to supply to BC consumers including mill operations.[1059] Commerce selectively cited certain passages of the BC *Forest Act* without considering the exceptions that are also part of that law and provide the authority for the operation of the LER process -- Commerce ignored these exclusions in *Lumber V AR1 Prelim*. In contrast, the *Forest Act* does not include any provision requiring log owners to sell their logs at all, or at particular prices. This is similarly the case for logs subject to federal jurisdiction.
- The record demonstrates that the LER process comes nowhere close to providing the affirmative action required for finding a financial contribution. The record does demonstrate that the LER process provides virtually all log owners seeking to export logs the authorization to do so.
- The government establishment of a process for the exportation of a good does not equate to requiring a party to provide that good to domestic purchasers. All the BC LER does is provide permits for the exportation of logs.
- For entrustment or direction to be exist, it must also fulfill the government functions provision. Commerce did not address this prong in *Lumber V AR1 Prelim Results*, but in *Lumber V Final*, it based its conclusion on the "long history of government management of the forest in British Columbia" and the fact that "export restrictions have long been in place for logs under provincial and federal jurisdiction."[1060] This rationale does not meet the statutory requirement. First, Commerce ignored the fact that the alleged practice that must be vested in the government under the statute is the provision of logs, not the restraint of exports or the management of forests. Second, according to Commerce's reasoning, the government provision requirement would always be met. Commerce essentially cites to the existence of the alleged subsidy as proof that providing the good would normally be vested in the government. This is circular reasoning that renders the government provision part of the statute a nullity.

West Fraser's Comments[1061]

- Commerce has not developed a precise definition of entrustment or direction,[1062] but has distinguished between total export bans and partial restraints that allow for alternative sales outlets.[1063]
- The BC LER does not entrust or direct any private party to provide logs to West Fraser, or any other person or entity. The BC LER simply provides that log sellers are to go through a surplus test process and seek a permit before exporting logs.
- Commerce also erred in concluding that the provision of logs would normally be vested in the government. The circumstance that the GBC sells the right to harvest Crown timber does not mean that the provision of logs is a function that would normally be vested in the government. Commerce has identified no evidence indicating that the GBC has ever provided delivered logs to anyone, much less that this is a function normally vested in the government.

[1059] *See Lumber V AR1 Prelim* PDM at 37.
[1060] *See Lumber V Final* IDM at 155.
[1061] *See* West Fraser June 8, 2020 Case Brief at 32 – 34.
[1062] *Id.*, citing *CVD Preamble*, 63 FR at 65400.
[1063] *Id.*, citing *Coated Paper from Indonesia* IDM at 29 and *Leather from Argentina* at 40213.

Petitioner's Rebuttal[1064]

- Despite the Canadian parties' insistence that Commerce erred in *Lumber V AR1 Prelim Results*, the Canadian parties acknowledge that the facts on the record of the review are unchanged from the investigation[1065] and, therefore, do not warrant changes to Commerce's findings.
- Commerce need not look to the existence of price suppression for an affirmative finding of financial contribution. Commerce's finding in *Lumber V Final*, which Commerce relied upon in *Lumber V AR1 Prelim Results*, was not based on the BC LER suppressing log prices.
- Commerce has stated that entrustment or direction can "encompass a board range of meanings," and that it does not believe it is "appropriate to develop a precise definition of the phrase."[1066]
- The CIT has found that the statute does not define entrustment or direction, Congress acknowledged in the SAA that entrustment or direction would be open to interpretation, and that Commerce should be given deference to reasonably interpret its meaning [1067]
- In the SAA, Congress specifically authorized Commerce to consider export restrictions as scenarios that could constitute government entrustment or direction and specifically mentioned previous iterations of Softwood Lumber proceedings.[1068]
- Following the SAA and the agency's past practice, Commerce examined the BC LER in the investigation, and looked to whether these facts indicate that the government had a specific policy objective to benefit, and in operation does benefit, the industry or companies in question in the "entrusts or directs" inquiry. Commerce determined that "the legal requirements that logs remain in British Columbia combined with the process for obtaining an exception from those requirements to export, result in a policy where the GOC and GBC have entrusted or directed timber harvesters to provide logs to producers in British Columbia."[1069]
- The Canadian parties argue that there needs to be a clear linkage between the government action and the private action and cited to *PRCBs from Vietnam* to support its argument that the BC LER does not rise to the level of entrustment or direction. *PRCBs from Vietnam* is not germane to this inquiry. *PRBCs from Vietnam* found that the government exercising zoning authority did not, by itself, show that the government entrusted or directed that landowner to lease land on favorable terms,[1070] while this record contains overwhelming evidence to support Commerce's continued finding that the structure and design of the BC LER is intended to benefit BC sawmills by requiring private log sellers to sell logs to BC wood processing companies, even if they could obtain better prices in the export market.
- Commerce directly addressed the Canadian parties' argument relating to government function in the investigation[1071] and properly relied on its investigation finding in *Lumber V AR1 Prelim Results*.[1072]

[1064] *See* Petitioner June 25, 2020 Rebuttal Brief at 21 and 60 – 67.
[1065] *Id.* at 60, citing GBC June 8, 2020 Vol V Case Brief at 15.
[1066] *See CVD Preamble*, 63 FR at 65349.
[1067] *See* Petitioner June 25, 2020 Rebuttal Brief at 21 and 60 – 67, citing *Hynix Semiconductor v. U.S.* at 1344 – 1345.
[1068] *Id.* at 61, citing SAA at 925 – 926.
[1069] *See Lumber V Final* IDM at 155.
[1070] *See PRCBs from Vietnam* IDM at 24.
[1071] *See* Petitioner June 25, 2020 Rebuttal Brief at 21 and 60 – 67, citing *Lumber V Final* IDM at 151 and 155 – 156.
[1072] *Id.* at 66, citing *Lumber V AR1 Prelim* PDM at 36 – 37.

Commerce's Position: The Canadian Parties have largely recycled their arguments from *Lumber V Final* in challenging Commerce's preliminary finding in this review that the BC LER directs private log suppliers to provide logs to mill operators within the meaning of section 771(5)(B)(iii) of the Act, and provide a financial contribution of logs, in accordance with section 771(5)(D)(iii) of the Act.[1073] All parties acknowledge the operation of the BC LER remains the same as during the investigation. Accordingly, for the reasons detailed below, we confirm our finding of financial contribution for these final results.

Citing *Dynamic RAM Semiconductors from Korea*, the Canadian Parties argue that Commerce "explained that entrustment or direction only exists when 'a government affirmatively causes or gives responsibility to a private entity or a group of private entities to carry out what might otherwise be a government subsidy function…'"[1074] As Commerce explained in *Lumber V Final*, *Dynamic RAM Semiconductors from Korea* "does not stand for the proposition that the Department has found that entrustment or direction can only occur where the government has 'affirmatively' given responsibility to a private entity to carry out what might otherwise be a governmental subsidy function."[1075] Commerce has not defined the boundaries of what could be considered entrustment or direction, and the SAA provides that any analysis of entrustment or direction must be conducted on a "case-by-case basis."[1076] The CIT has stated that "the 'entrusts or directs' language presents precisely the type of ambiguity which an administrative agency, like Commerce, is given deference…to reasonably interpret."[1077] Under U.S. law the government need not "affirmatively" compel a private party to act, and the phrase entrustment or direction "could encompass a broad range of meanings," including restraining exports through in-province use requirements.[1078] As we highlighted in *Lumber V Final*, the SAA explicitly cites to the countervailability of a prior iteration of the very log export restraint program in *Certain Softwood Lumber Products from Canada* that is at issue in this review.[1079]

Next the Canadian Parties, citing to *PRCBs from Vietnam*, argue that Commerce has in the past required a clear linkage between the government action and the private action and that Commerce has failed to do so in this review. There is a clear distinction between *PRCBs from Vietnam* and the facts of this review. In *PRCBs from Vietnam*, Commerce found that although private entities received low cost, expropriated farm land from the government of Vietnam and might be in a position to pass those savings forward to their tenants, there was no evidence that that they were required or expected to do so and that despite the government's "involvement" in industrial zone planning, there was no evidence of interference in or restrictions on the private parties' ability to negotiate prices.[1080]

The Canadian Parties also quote Commerce's statement in *SC Paper from Canada Final* that "entrustment or direction of a private party to provide a financial contribution cannot merely be a

[1073] *See Lumber V AR1 Prelim Results* PDM at 36.
[1074] *See* GBC June 8, 2020 Vol III Case Brief at 4, citing *Dynamic RAM Semiconductors from Korea* IDM at 47.
[1075] *See Lumber V Final* IDM at 155.
[1076] *See* SAA at 926.
[1077] *See Hynix Semiconductors*, 391 F. Supp. 2d at 1345.
[1078] *See CVD Preamble*, 63 FR at 65349.
[1079] *See Lumber V Final* IDM at 156, *citing* SAA at 926.
[1080] *See PRCBs from Vietnam* IDM at Comment 8.

by-product of government regulation."[1081] This statement acknowledges that there are many government regulations that affect the behavior of private parties such as environmental regulations, antitrust laws, and financial regulations. It simply sets forth the proposition that, for example, a government regulation that requires fiscal soundness in the banking sector cannot be the basis of finding that a private commercial bank has been entrusted or directed to provide a financial contribution in the form of loans to an enterprise or industry. This intent is clear from the definition of the word "by-product" which means "an incidental or secondary product;" "a secondary and sometimes unexpected or unintended result."

In contrast, Commerce has found that the log suppliers' provision of logs to in-province processors is not merely incidental to the laws constituting the GOC and GBC log export restraints, or merely encouraged by those laws. Commerce found that "official government action compels suppliers of BC logs to supply to BC customers."[1082] The relevant laws expressly require logs to be used in British Columbia or further manufactured within the province.[1083] Other than for reasons of waste or uneconomic processing,[1084] which the record shows were not used during the POR,[1085] the only way for an entity to obtain an exception is to demonstrate that its logs are surplus to the needs of processors.[1086] As we explained in the investigation, the provincial and federal surplus criteria involve committees of individuals (*i.e.*, TEAC/FTEAC) that evaluate whether any offers received reflect a fair price, and where they find in the affirmative, the application for export is denied, and the applicant may not reapply to export those logs.[1087] As we have previously determined, this process directly interferes with the ability of log suppliers to sell to foreign purchasers at all, to the extent that their logs are not deemed surplus to the needs of in-province processors.[1088] The facts regarding this surplus test and legal requirements have not changed since the investigation. In addition, and as noted in *Lumber V Final*, the record demonstrates that the government imposes fees in-lieu of manufacturing for logs that are exported out of the province, and, potentially, penalties for unauthorized exports.[1089] This surplus test and legal requirements, in addition to the fees associated with the export of logs outside the province, result in a policy whereby the GBC has entrusted or directed private log suppliers to provide logs to mill operators within the meaning of section 771(5)(B)(iii) of the Act.

This review and the facts detailed above present a stark contrast to *PRCBs from Vietnam*, where there was both a lack of any direct mandate to provide land to the respondents, and a lack of indirect, circumstantial evidence demonstrating that the private entities were entrusted or directed to do so. Here, Commerce identified specific laws and processes that *require* log suppliers to fill the needs of timber processors in British Columbia.

[1081] *See SC Paper from Canada Final* IDM at Comment 11.
[1082] *See Lumber V Final* IDM at 55.
[1083] *See* GOC/GBC IQR at Exhibit BC-AR1-ST-19 at Section 127.
[1084] *Id.* at Section 128(3).
[1085] *See* GOC/GBC LEP IQR at 22.
[1086] *Id.* at 17.
[1087] *See Lumber V Prelim Results* PDM at 59; *see also Lumber V Final* IDM at 150.
[1088] *See Lumber V Final* IDM at 154.
[1089] *Id.* at 154 – 155.

We disagree with the Canadian Parties' arguments that the BC LER is simply a permitting process and does not compel parties to provide logs to consumers in British Columbia. The *Forest Act* requires log suppliers to provide their logs to consumers of logs in British Columbia. As Commerce explained in *Lumber V Prelim:*

> {T}he Forest Act explicitly states that all timber harvested in British Columbia is required to be used in British Columbia or manufactured in British Columbia into wood products. These logs cannot be exported unless they meet certain criteria, the most common of which is that they are surplus to the needs of the timber processing industry in British Columbia. Therefore, the {Government of British Columbia} requires private log suppliers to offer logs to mill operators in British Columbia, and may export the logs only if there are no customers in British Columbia that want to purchase the logs. Thus, the nature of the actions undertaken by the {Government of British Columbia} require private suppliers of BC logs to sell to, and satisfy the demands of, BC consumers, including mill operators.[1090]

The Canadian Parties and West Fraser argue that the BC LER does not direct log sellers to provide logs to a particular purchaser or to sell logs at all. As we explained in the investigation, the record evidence demonstrates that the BC LER is designed to benefit, and in operation does benefit, downstream consumers:

> Timber harvesters and processors in British Columbia are limited, by the provincial or federal restrictions on the export of logs to which they are subject, in to whom they can sell their logs. These limitations result in the third-party timber harvesters and processors providing logs to BC processors of logs at the entrustment or direction of the GBC and the GOC. We continue to find that this provision of logs falls within the definition of a financial contribution … because the provision of logs is the provision of a good or service, other than general infrastructure.[1091]

The Canadian parties also argue that Commerce has "ignored" the exemptions provided for in the *Forest Act* in the *Lumber V AR1 Prelim*.[1092] This is incorrect. Commerce directly referenced the exemptions in its discussion of the *Forest Act* in the *Lumber V AR1 Prelim Results*:

> As Commerce detailed during the investigation, the *Forest Act* explicitly states that all timber harvested in British Columbia is required to be used in British Columbia or manufactured in British Columbia into wood products. These logs cannot be exported unless they meet certain criteria, the most common of which is that they are surplus to the needs of the timber processing industry in British Columbia. Therefore, the GBC requires private log suppliers to offer logs to mill operators in British Columbia and may export the logs only if there are no customers in British Columbia that want to purchase the logs. Thus, the nature of

[1090] *See Lumber V Prelim Results* PDM at 60 – 61.
[1091] *See Lumber V Final* IDM at 154.
[1092] *See* GBC June 8, 2002 Vol III Case Brief at 10.

> the actions undertaken by the GBC require private suppliers of BC logs to sell to, and satisfy the demands of, BC consumers, including mill operators.[1093]

Further, notwithstanding the Canadian parties' arguments about the other exemptions provided for under the *Forest Act* (*i.e.*, the economic processing exemptions and utilization exemption), the record indicates that the only exemption actually used during the POR was the surplus criterion. Therefore, we find the Canadian parties' arguments that Commerce "ignored" other possible exemptions under the *Forest Act* to be unconvincing.

The Canadian Parties and West Fraser also argue that the BC LER does not satisfy the definition of financial contribution under section 771(5)(D)(iii) of the Act, which requires that the financial contribution "would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments." The respondents argue that the provision of logs is at issue in this review, and there is no record evidence of the GBC or the GOC providing logs to any party.

In the investigation, we explained that the relevant financial contribution is the provision of a good or service, *i.e.*, logs.[1094] As such, the financial contribution is countervailable pursuant to section 771(5)(D)(iii) of the Act. Through its entrustment or direction finding, Commerce found that the GOC and GBC had delegated to licensed log harvesters the function of providing logs to consumers, including mill operators, in the province. In the investigation, Commerce found that the "long history of government management of the forest in British Columbia" supports the conclusion that the provision of logs is the type of function that would normally be vested in the government.[1095] Commerce did not find – and was not required to find – that the governments of British Columbia and Canada actually sell logs. But those governments control and provide timber – the input used to make logs, which is the input used to make softwood lumber products – and the control and management of the timber resource is a government function in British Columbia.

The Canadian Parties also argue that Commerce employed circular logic in the investigation by using the existence of the GOC and GBC export restraints as evidence that the provision of logs is normally vested in the government. But Commerce did not cite the mere existence of the log export restraints, but rather that they endured for *over 125 years*.[1096] The longevity of these measures, which entrust or direct log suppliers to provide logs, is evidence of what functions are "normally," *i.e.*, consistently over many decades, vested in the government in British Columbia. More fundamentally, the implication that there must be evidence that the government itself previously performed the subsidy function for it to be "normally vested in the government" is disproven by the programs the SAA cites as encompassed by section 771(5)(B)(iii) of the Act.[1097] In neither *Lumber III* nor *Leather from Argentina* did the government have a history of directly providing the relevant inputs, logs and cattle hides, respectively.[1098] Consequently, the Canadian Parties' argument that Commerce was required to have such evidence for it to

[1093] *See Lumber V AR1 Prelim Results* PDM at 37.
[1094] *See Lumber V Final* IDM at 154.
[1095] *Id.* at 155.
[1096] *Id.*
[1097] *See* SAA at 926.
[1098] *See*, generally, *Leather From Argentina* and *Lumber III Final.*

conclude that the provision of logs would be normally vested in the government is wholly without merit. For the reasons described above, we continue to find that the record supports our continued finding that the BC LER satisfies the government functions requirement of section 771(5)(B)(iii) of the Act.

Comment 46: Whether the Log Export Restraint Has an Impact in British Columbia

Canadian Parties' Comments[1099]

- Commerce is authorized to move beyond the presumptive in-jurisdiction benchmark only if "it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market."[1100] The facts do not support such a finding with respect to the LER process.
- According to Dr. Reishus' framework,[1101] in order to affect log prices, an export restraint must, at a minimum, actually constrain the ability of a log supplier to export logs. If a supplier that wishes to export logs can obtain exceptions or exemptions from the regulations with little or no burden, or is otherwise unhindered by the regulations, then the regulations would have no appreciable effect on the supplier's ability to export and no appreciable effect on market prices.
- When compared to the share of the U.S. Coastal harvest that is exported, it becomes apparent that the LER process does not impose any significant quantitative impediment. Exports from British Columbia in 2017 represented 36 percent of the BC Coastal harvest, whereas exports from the U.S. Pacific Northwest Coast (Washington and Oregon) were significantly lower, representing 24 percent of the Coastal private harvest in those states (where there are no export restrictions) or 19 percent of all harvest in those states in 2017.
- The BC LER provides no meaningful constraint on the exportation of logs. The time to obtain an export permit does not constitute a deterrence to log export transactions. The fee-in-lieu of manufacturing in the BC interior does not exist (federal jurisdiction) or is low (provincial jurisdiction) – log sellers frequently make these payments without exercising the right to export. The record also demonstrates that it is uneconomic to export from much of the interior.
- Minimal constraints combined with the fact that 99 percent of applications resulted in approval indicate the BC LER has no effect on log sellers' ability to export. Therefore, any impact on price would not be appreciable and would certainly not rise to the level of significant distortion required to allow Commerce to move beyond a tier-one benchmark.
- The record does not contain substantial evidence of blocking and no evidence that blocking has any impact in the areas of the BC interior where the mandatory respondents operate. The effective threat of blocking cannot be substantial when the number and share of logs that are precluded from export through the LER process was so small.
- There is no unmet export demand; therefore, the BC LER cannot materially increase the supply of logs in British Columbia. Unexported logs available for export indicate that there is no remaining unmet net export demand for logs at prevailing market prices. In this case, the regulation does not materially increase the supply of logs retained in the jurisdiction and does not appreciably affect the market price of logs in the jurisdiction.

[1099] *See* GBC June 8, 2020 Vol III Case Brief at 14 – 26.
[1100] *Id*. at 15, citing *CVD Preamble*, 63 FR at 65377.
[1101] *Id*., citing GOC LER Response at Exhibit FED. APP. LEP-6 at 2.

- Underutilized export authorizations during the POR indicate that log exporters in British Columbia were able to export as much as the export market required. This shows that the LER did not function as a restraint on log exports during the POR.
- There is no basis to determine that the LER affects pricing in the BC interior. The inland portion of the interior does not generally have economically feasible options for hauling logs to ports of exportation. Even in the PME, the BC LER's effect on supply, exports and prices must be small due to large surplus of unexported logs.[1102]
- Commerce's ripple effect analysis defies economic logic and is based on three false premises: (1) that there is enough overlap in species and grade for such price transmission to occur, (2) that the overlap of log markets would permit price transmission across these markets, and (3) that log markets are integrated.
- There is a different species mix in the PME than the inland interior region, which results in mills having substantial differences in specialization. Mills in these different regions are not viable economic competitors for logs in the other region. Commerce has recognized the difference between coastal and inland regions in selecting an inland Washington State benchmark.
- Geographic barriers and transportation costs result in extremely limited possibilities of economic transportation of logs between these regions. This limits any potential log price effect in the PME from affecting prices in the inland region.
- Log markets do not obey the law of one price. Integration of log markets has been refuted by three separate studies on the record of the review,[1103] but Commerce has ignored these studies and instead has relied on studies that were refuted by Dr. Reishus and do not even address BC data.

West Fraser's Comments[1104]

- A countervailable subsidy exists only "where there is a benefit to the recipient."[1105] Before Commerce can find that a government policy provides such a benefit, it must "consider . . . alternative theor{ies} and supporting evidence."[1106] The BC LER can only provide a benefit if the BC LER meaningfully affected the prices a mill paid for logs during the POR. The record evidence demonstrates that the LER did not do so.
- There simply is no record evidence to support a conclusion that logs that otherwise would be exported are prevented from being exported because of the LER. The record demonstrates that market realities result in most logs being consumed in the domestic market where supply is low and demand is high.
- The record evidence supports the conclusion that the BC LER had little if any effect on the supply of logs in the BC interior. The Kalt-Reishus report finds that log markets are local

[1102] The Pacific Maritime Ecozone is a Canadian terrestrial ecozone defined by the NAFTA Commission for Environmental Cooperation. The PME does not fully align with the GBC's administrative classifications for the Coast and Interior. The PME includes a substantial portion of the Skeena Natural Resource Region that falls within the administrative boundaries of the Interior. The Skeena Natural Resource Region that falls within the PME is often referred to as the Tidewater. *See* GOC/GBC LEP IQR at LEP-3 – LEP-5.
[1103] *Citing* Kalt-Reishus Report, GBC Comments on Petitioner's IQR Comments at Exhibits BC-AR1-RPR-3 (Leamer Report), and BC-AR1-RPR-6.
[1104] *See* West Fraser June 8, 2020 Case Brief at 35 – 36.
[1105] *See* section 771(5)(E) of the Act.
[1106] *See* West Fraser June 8, 2020 Case Brief at 35, c*iting Hynix Semiconductor v. U.S.* at 1011.

and there is no record evidence that shows any impact the BC LER might have on coastal logs would affect log prices in the BC interior.
- Any alleged effect on log exports caused by the BC LER could not appreciably affect the supply of logs in the BC interior because only a small volume of logs would ever be exported from the BC interior. Given the high transportation costs of hauling logs long distances in the BC interior, log sellers in the BC interior have no practical opportunity to export their logs and are unaffected by the BC LER.

Petitioner's Rebuttal Comments[1107]
- Evidence on the record indicates that barriers to export still exist, despite the number of authorizations granted. Many BC log sellers are forced to enter informal arrangements with BC lumber producers who have the right to block log export applications. Blocking creates circumstances where domestic purchasers can use their leverage to influence domestic log prices.
- The record continues to support the finding that even if LERs in British Columbia directly affected log prices on the Coast, where the export ports are located, that effect would ripple across the province to areas farther away, such as the Interior. The record contains a map demonstrating that the log markets of the BC sawmills overlap with each other and with potential export market, showing that even if LERs only affected log prices in areas near the BC border, these prices would ripple through overlapping log markets of all BC mills.
- The record also contains several independent studies showing log markets covering large areas can be integrated, wherein log price changes in one region are reflected across distances much larger than an individual sawmill's typical harvest area, even across international boundaries.

Commerce's Position: The Canadian Parties and West Fraser have submitted overlapping arguments claiming that the record does not contain evidence that the LER has an impact on exports in British Columbia and that, even if it did, that impact would not reach the interior where the mandatory respondents are located. The Canadian Parties argue that this means there is no basis for Commerce to find that the BC market is distorted due to the LER. Since these arguments largely overlap, we will deal with them together.

In *Lumber V AR1 Prelim*, Commerce found that prices in British Columbia were significantly distorted, in part, as a result of the combination of the government's control of the timber market in BC and the BC LER's continued restriction of exports of logs from the province.[1108] We preliminarily determined that these factors increased the supply of logs available to domestic users and, in turn, suppressed prices in British Columbia.[1109] Separately, Commerce also determined that the BC LER itself provided a benefit and calculated said benefit in accordance with section 771(5)(E)(iv) of the Act.[1110]

The preliminary findings in this review echoed Commerce's determination in *Lumber V Final*, as we found in *Lumber V AR1 Prelim Results:* "{t}here are no new facts in this review regarding

[1107] *See* Petitioner June 25, 2020 Rebuttal Brief at 21 – 28 and 71 – 72.
[1108] *See Lumber V AR1 Prelim Results* PDM at 19 – 20.
[1109] *Id.*
[1110] *Id.* at 37.

the manner in which the log export restraints operate."[1111] In *Lumber V Final*, Commerce determined that the BC LERs restricted exports and suppressed prices,[1112] and that the BC LER affected the entire province, including the interior where the mandatory respondents were located.[1113] In the investigation, Commerce also calculated a benefit for the respondents for the LER in accordance with section 771(5)(E)(iv) of the Act.[1114]

The Canadian Parties argue that the record does not support Commerce's findings that the BC LER materially restricts exports from British Columbia. The Canadian Parties, citing analysis from the Kalt-Reishus Report, highlight the high percentage of approvals for applications to export and the volumes of logs that were approved for export during the POR but were never actually exported as evidence that the LER did not materially constrain exports.[1115] Using Dr. Reishus' framework on export regulations, the Canadian Parties contend that this lack of an effect on log suppliers' ability to export means that the LER has no appreciable effect on market prices.[1116]

Despite the Canadian Parties' various arguments outlining why the BC LER does not have a material impact on the ability to export logs out of British Columbia, the record contains multiple independent studies and reports that were not drafted for this proceeding that reach the opposite conclusion.

A 2014 Fraser Institute Report highlights the fact that constituencies in British Columbia do not consider the BC LER to be as inconsequential as the Canadian Parties claim:

> Almost no topic in British Columbia forestry has been more controversial than what to do about log exports. Unions and some politicians argue for a complete ban, while previous economic analysis has favoured free trade in logs. Meanwhile, the current government has been happy to allow limited log exports, so long as these logs are not of the highest quality and are deemed surplus to domestic needs.[1117]

The Fraser Institute Report concluded that "{a}lthough log exports are allowed, the export process is in many cases complex and potentially unduly costly for log owners and producers. Due to these restrictions, logs sell for substantially less on the domestic market than when exported."[1118] The analysis also found that "{t}he current log export process prevents log owners from securing long-term contracts with foreign buyers to shelter from price volatility,

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[1111] *Id.* at 36.
[1112] *See Lumber V Final* IDM at Comment 44.
[1113] *Id.* at Comment 45.
[1114] *See Lumber V Prelim* PDM at 62. (unchanged for the final)
[1115] *See* GBC June 8, 2020 Vol III Case Brief at 15 – 19.
[1116] *See* GOC LER Response at Exhibit FED. APP. LEP-6 at 2. "For a log export regulation to affect market prices, the export regulation must, at a minimum, actually constrain the ability of a log supplier to export logs. If a supplier that wishes to export logs can obtain exceptions or exemptions from the regulations with little or no burden, or is otherwise unhindered by the regulations, then the regulations would have no appreciable effect on the supplier's ability to export and no appreciable effect on market prices."
[1117] *See* Petitioner Comments on IQRs at Exhibit 58 at iii.
[1118] *Id.* at 29.

prevents log owners from sorting logs per customer request, and imposes time delays that increase log handling costs and ties up capital."[1119]

A November 2016 Wilson Center Report on the BC LERs echoes many of the conclusions of the Fraser Institute Report:

> British Columbia's log export restrictions (LERs) have generated particular controversy. The unique structure of the regime guarantees B.C. wood processors access to cut-rate inputs at the expense of domestic timber harvesters. These subsidized inputs create an array of distortionary effects up and down the supply chain, putting them at odds with the market-based approach taken in almost every other sector of the Canadian economy… The Canadian softwood lumber narrative typically holds that Canada is on the side of the angels and that U.S. concerns about its practices are protectionist or the work of a bully. Yet, the evidence suggests that in some cases Canadian lumber really is subsidized and really does displace U.S. production. As will be set forth below, in the case of LERs this is almost indisputable.[1120]

The record contains additional evidence of independent parties demonstrating that the BC LER forces log producers to sell in the domestic market when they would prefer to sell to export markets where there are higher prices. For example, in 2014, the CEO of TimberWest, Western Canada's largest private forest land owner, gave a presentation on the LER in which he stated the "current policy framework that is forcing private land owners to sell logs to domestic customers at a substantial loss is unsustainable."[1121] The presentation demonstrated that domestic logs were sold at a lower price than logs sold into export markets and that TimberWest's export sales subsidized their sales of logs in the domestic market, which in return produced a loss for the company.[1122] TimberWest's CEO concluded the that "LERs result in a direct subsidy to domestic mills through a transfer of wealth between private parties."[1123]

The Canadian Parties contend that the high percentage of exports that were approved through the surplus test process demonstrates that the BC LER has no appreciable effect on a supplier's ability to export. The Canadian Parties argue that Commerce's finding in the investigation that "there is no way to know how many more logs would be exported in the absence of {the BC LER} process"[1124] was unreasonable speculation in light of the fact that many log exporters chose not to act on export authorizations or export permits they had in hand.[1125] We do not agree with the Canadian Parties' framing of our finding as unreasonable speculation or agree with their contention that the unexported volumes approved for export somehow negates our analysis.

As Commerce discussed in *Lumber V Final*, the incidences of blocking, which exist only as a result of the BC LER's surplus test process, indicate "that due to these informal arrangements the

[1119] *Id*.
[1120] *Id*. at Exhibit 57 at 2 – 3.
[1121] *Id*. at Exhibit 60 at 15.
[1122] *Id*. at 5 and 8.
[1123] *Id*. at 19.
[1124] *See Lumber V Final* IDM at 141.
[1125] *See* GBC June 8, 2020 Vol III Case Brief at 18 – 19.

fact that most export requests are approved is not a reliable indication of how the market is impacted by the existence of the log export restraints."[1126] The record is replete with examples of blocking and the distortions it causes in the BC log market. Blocking is neither a new issue or one that the GBC is unaware of; a December 2006 report to the British Columbia Minister of Forests and Range discussed log producers' concerns with sawmills that were blocking the approval process for export proposals and noted that "{l}arge landowners complained of having to provide domestic mills with alternate logs to keep domestic buyers from blocking their proposed exports."[1127]

The long-term nature of the blocking issue is echoed in a pair of record documents relating to Merrill & Ring, a private landowner in British Columbia. In 2006, Merrill and Ring filed a notice of arbitration in which it detailed how the company was "regularly" blocked by domestic purchasers and provided specific examples of blocking occurring in 2006.[1128] More than a decade later, during our POR, an April 2017 affidavit from a Merrill & Ring employee states that the "practice of objecting to or threatening to object to the granting of export licenses is commonly referred to a "blockmailing" and is a regular occurrence in the BC lumber industry."[1129] As a result of the blocking, "Merrill is often forced to sell logs to domestic processors at below market prices in order to obtain the export permits that Merrill needs from the GOC to sell logs to its customers on the export market, resulting in significant harm to Merrill."[1130]

The Canadian Parties also argue that the record does not provide any support for the proposition that blocking has any impact on the BC interior where Canfor and West Fraser operate. However, the record demonstrates that concerns with blocking were not just limited to the coast. The 2006 report to the British Columbia Minister of Forests and Range explained: "We heard from interior log producers about sawmills that block the producers' exports even when that sawmill does not utilize the grades or species in question."[1131] Further, as Dr. Haley, a professor on the Faculty of Forestry at the University of British Columbia, explains:

> The "surplus" criterion, by its very nature, also facilitates the troublesome practice of "blocking." This takes place when a wood processor who does not "need" the logs being advertised nevertheless puts in a bid for them simply to prevent or block, their export. *This practice is said to be particularly pervasive in the Interior*. When logs are advertised for export as "standing green," the bidder is unlikely to be required to take delivery at the bid price since, in most cases, in the absence of an export permit the stand in question is simply not harvested. Under these circumstances, frivolous bids bear no consequences and are difficult to detect.[1132]

[1126] *See* Lumber V Final IDM at 141.
[1127] *See* Petitioner Comments on IQRs at Exhibit 56 at 5.
[1128] *Id*. at Exhibit 67 at 12 – 13.
[1129] *Id*. at Exhibit 69 at 2.
[1130] *Id*.
[1131] *Id*. at Exhibit 56 at 5.
[1132] *Id*. at Exhibit 55 at 6. (emphasis added)

Dr. Haley continued by stating, "{t}he motive for 'blocking' of exports, of course, is to ensure that the domestic price of logs remains depressed."[1133]

The Canadian Parties have also argued that the effective threat of blocking cannot be substantial when the number and share of logs that are precluded from export through the LEP process was so small.[1134] Again, the record evidence belies this contention. The 2016 Wilson Center report indicated that blocking was widespread throughout the province: "Almost every timber harvester has negotiated side agreements to keep its exports from being blocked."[1135] The report concluded its analysis of the BC LER by echoing Commerce's concerns with the Canadian Parties' references to approval rate of export permits (in the report, the author is discussing a 2002 claim by Canada at the WTO that 97 percent of exports were approved):

> The real question is not what percentage of exports is formally approved. Rather, one should ask what percentage of B.C. timber production can be said to be legitimately available for export. Because blocking agreements between harvesters and processors are informal, one may never know precisely, but it is certainly much less than 97%.[1136]

This is not an inconsequential concern. As discussed above, the presentation from TimberWest's CEO discussed and the record evidence from Merrill & Ring explained, that companies are being forced to sell logs in the domestic market to log purchasers at below cost in order to ensure that they have access to the profitable export market. Despite the fact that Commerce highlighted blocking as a rationale for finding that the BC LER distorted the market in the *Lumber V Final*, the Canadian Parties' case brief spent one paragraph discussing blocking.[1137] The Kalt-Reishus Report that the Canadian Parties have submitted on the record to demonstrate that the LER has no impact on export volumes or prices in British Columbia is 890 pages when including the appendices. In those 890 pages, the report discusses blocking for two sentences.[1138] This is not a case of Commerce not addressing the arguments and evidence presented by the responding parties, but of the responding parties ignoring the rationale and record evidence laid out in our findings. The totality of the record evidence described above supports a finding that the BC LER both increases the supply of logs in British Columbia and causes sales of logs at suppressed prices, including in the BC interior.

The Canadian Parties argue that the LER has no impact on the portion of the BC interior where the mandatory respondents' mills are located because, as the Kalt-Reishus Report describes, exporting from the inland interior[1139] is not a viable proposition.[1140] The record evidence does not support the contention that the mandatory respondents' mills are in areas where exports are

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[1133] *Id*.
[1134] *See* GBC June 8, 2020 Vol III Case Brief at 18 – 19.
[1135] *See* Petitioner Comments on IQRs at Exhibit 57 at 9.
[1136] *Id*.
[1137] *See* GBC June 8, 2020 Vol III Case Brief at 19.
[1138] *See* Kalt-Reishus Report at 64.
[1139] The Kalt-Reishus Report and Bustard Reports remove the Tidewater portion of FLNRORD's administratively defined interior region and consider it with the rest of the coast when analyzing the BC LER. They define this expanded coastal region as the PME and the remaining interior as the inland interior. *See* Kalt-Reishus Report at 7 – 10 and LEP-2 at 2 – 4.
[1140] *See* GBC June 8, 2020 Vol III Case Brief at 21 – 22, citing Kalt-Reishus Report at 13 – 14.

not viable. First, the record demonstrates that there were exports from the southern interior during the POR, both to the United States and to Asia.[1141] The record also demonstrates that Canfor has multiple mills in the southern interior near timbermarks with export permitted volume during FY 2017/18.[1142] Even as you move further north into the interior, there are timbermarks with volumes permitted for export near both respondents' mills.[1143] The respondents also have mills just outside of the PME, adjacent to the Tidewater, that are near timbermarks with export permitted volume.[1144] Therefore, the record demonstrates that many of the mandatory respondents' mills are in locations where exports are viable. Even assuming that the Kalt-Reishus report was correct that log markets are inherently local, this record demonstrates that blocking would directly impact both the supply and price of the logs available to the mandatory respondents.

In addition to the findings above, the record also demonstrates that the BC LER still requires exporters pay a fee-in-lieu of exportation on logs subject to provincial jurisdiction. The fee in-lieu-of-manufacture is required when a log is exported and not processed in British Columbia.[1145] Ultimately, the fee simply is an export tax. Such a tax necessarily increases a log supplier's cost to export logs. The record demonstrates that these fees can be significant.[1146]

The Canadian Parties argue that the fee-in-lieu charged in the Interior, which is less than on the Coast, represents a small portion of the value of logs permitted for export.[1147] This argument was also raised in *Lumber V Final*.[1148] As we explained in our position,

> We disagree with the significance that the GOC/GBC attribute to the fact that the fees for the interior of the province, where the mandatory respondents are located, are less than the fees from the coastal region of British Columbia. Although the fees for logs harvested from the interior are lower in comparison to the BC coast, we find the fact that any fee is required at all to be significant. These fees increase the cost of exporting, as compared to producing domestically, and represent another impediment (along with the 'blocking' system, approval process, etc.) to export logs from British Columbia.[1149]

The fees have not changed since the investigation, and there is no new record evidence that leads us to revise our position on the fee-in-lieu for this review.

While the fee-in-lieu is only applicable to logs under provincial jurisdiction, the record also continues to show that the GOC charges a fee of $14.00 on all export permits. This fee applies to logs under both provincial and federal jurisdiction. While this may be a small cost, it is yet

[1141] *See* Kalt-Reishus Report at 75.
[1142] *See* GOC/GBC LEP IQR. at Map 3.
[1143] *Id*.
[1144] *Id*.
[1145] *Id*. at 37; see also Kalt-Reishus Report at 42.
[1146] *See* GOC/GBC LEP IQR at Chart 9.
[1147] *Id*. at Chart 8.
[1148] *See Lumber V Final* IDM at 142.
[1149] *Id*.

another additional cost imposed on log suppliers that wish to export logs as a result of the export restraints put in place by the Government of Canada.

For the reasons discussed above, Commerce continues to find that the totality of the record evidence supports finding that the BC LER impacts the British Columbia log market.

Comment 47: Whether the U.S. Log Benchmark Is a World Market Price Available in British Columbia

Canadian Parties' Comments[1150]

- The fundamental error in Commerce's tier-two benchmark methodology is the utter absence of any "world market price" for logs. Dr. Leamer explained that logs do not follow the law of one price.[1151] Even if they did, the Kalt-Reishus Report explained that it is not economic to haul logs overland by truck for more than limited distances.[1152] BC interior sawmills could not even access the hypothetical world market log prices that Commerce deems available to them. Commerce's benchmark methodology fails the test of being "grounded in the reality of prevailing market conditions for the good or service being provided," as the CIT required in *Borusan*.[1153]
- The CIT also explained in *Borusan*, that the actual experience of respondents is relevant in determining what firms "would pay" in purchasing the goods at issue.[1154] Commerce's methodology, assuming the economic feasibility of long-distance log hauls that the record shows do not occur, fails the test articulated by the CIT.

Petitioner's Rebuttal[1155]

- Commerce has determined that it is incongruent to select a benchmark price that is the same as the price of the program under investigation for providing a benefit. Accordingly, the Canadian Parties various arguments on suppression of logs prices are immaterial.
- In determining whether a world market price constitutes an appropriate benchmark, Commerce's practice is to consider "whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the world market."[1156]
- As the CIT made clear, the reference to "a firm" for constructing a tier-two benchmark in Commerce's regulations "does not mean the respondent. Rather, it refers to a hypothetical firm located in the {country in question.}"[1157] The record demonstrates that BC logs can be and were exported during the POR.

Commerce's Position: Commerce continues to find that the application of a tier-two benchmark methodology in calculating a benefit for this program is consistent with its regulations. Specifically, 19 CFR 351.511(a)(2) sets forth the basis for identifying benchmarks

[1150] *See* GBC June 8, 2020 Vol III Case Brief at 27 – 29.
[1151] *See* GBC Comments on Petitioner's IQR Comments at Exhibit BC-AR1-RPR-3.
[1152] *See* Kalt-Reishus Report.
[1153] *See Borusan*, 61 F. Supp. 3d at 1335.
[1154] *Id*. at 1341.
[1155] *See* Petitioner June 25, 2020 Rebuttal Brief at 71 – 74.
[1156] *Id*. at 73, citing *CVD Preamble* at 65377.
[1157] *Id*. at 74, citing *Beijing Tianhai*, 52 F. Supp. 3d. at 1374.

to determine whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference:

1. market prices from actual transactions within the country under investigation;
2. world market prices that would be available to purchasers in the country under investigation; or
3. an assessment of whether the government price is consistent with market principles.

As discussed in Comment 14, we continue to find that the stumpage market in British Columbia is distorted. The demand and value of logs in the BC market is linked with demand and value of stumpage in British Columbia, as supply and value of the logs available in the market are derived from the stumpage market in the province. Therefore, while our preference would be to use actual purchase prices within Canada, *i.e.*, using a tier-one benchmark, we continue to find that prices of BC sourced logs as well as the prices of imported logs cannot be used as tier-one benchmarks to measure the adequacy of remuneration.

The Kalt-Reishus[1158] report referenced in the Canadian Parties' case brief is new for this review, while the Leamer report[1159] referenced in the brief is the same report from the record of the investigation. Despite some new expert reports and responses for this review,[1160] the arguments that the Canadian Parties make in relation to the availability of a world market price are the exact same arguments made in *Lumber V* investigation. In the *Lumber V* investigation, the Canadian Parties argued that a tier-two world market price is not available to producers in the BC interior because log markets are localized and it is not economic to export logs from the PNW to the BC interior.[1161] The Canadian Parties make the same arguments in this review. As Commerce, explained in *Lumber V Final*, "19 CFR 351.511(a)(2)(ii) requires only that the world market price be available to 'purchasers in the country in question,' and does not require a specific demonstration that the mandatory respondents in particular would have made these world market purchases."[1162] As we explain in Comment 46, we find that logs from the BC interior can be and were exported during the POR. Consistent with *Lumber V Final*, we find that because logs can be and are exported from the BC interior, they can also be imported to the BC interior. Accordingly, we continue to find that world market prices are "available" to sawmills throughout British Columbia, including the interior. We confirm that our reliance on a tier-two benchmark is appropriate for this review.

The CIT's decision in *Borusan* does not alter this position. In that decision, the CIT cited the *CVD Preamble's* explanation that in selecting world market prices under 19 CFR 351.511(a)(2)(ii), Commerce "will consider whether the market conditions in the country are

[1158] *See* Kalt-Reishus Report.
[1159] *See* GBC Comments on Petitioner's IQR Comments at Exhibit BC-AR1-RPR-3.
[1160] In addition to the new Kalt-Reishus Report, the record also contains a new expert report and response on the BC LER from Brian Bustard of Vanlog Forestry Services – *see* GOC/GBC LEP IQR at Exhibit LEP-2 and GBC Comments on Petitioner's IQR Comments at Exhibit BC-AR1-RPR-5.
[1161] *See Lumber V Final* IDM at Comment 47.
[1162] *Id*. at Comment 47, *citing e.g.*, *Beijing Tianhai*, 52 F. Supp. 3d at 1374 ("When constructing a tier-two benchmark, the reference to 'a firm' does not mean the respondent. Rather, it refers to a hypothetical firm located in the PRC purchasing steel tube during the POI. This is why the Department is directed, when calculating tier-two benchmarks, to determine 'price{s that} would be available to purchasers in the country in question.'" (internal citations omitted)).

such that it is reasonable to conclude that the purchaser could obtain the good or service on the world market."[1163] The *CVD Preamble* further provides: "{T}he world market price for commodity prices, such as certain metals and ores, or for certain industrial and electronic goods commonly traded across borders, could be an acceptable comparison price for a government-provided good, provided that it is reasonable to conclude from record evidence that the purchaser would have access to such internationally traded goods.[1164] The CIT explained that, in interpreting this provision, a relevant question was "what the purchaser would reasonably *avail* itself of," and further explained that whether a purchaser would avail itself of a geographically distant purchase market would depend on multiple factors, including distance and transport costs relative to other accessible alternatives.[1165] The facts underlying *Borusan* considered the feasibility of exports to Turkey from geographically distant regions, including East/Southeast Asia and Latin America.[1166] In contrast, this review does not involve the selection of a tier-two benchmark for BC log purchases from a geographically distant location, but rather the U.S. PNW, a region that is geographically contiguous with British Columbia. As stated above, because record evidence demonstrates that logs are exported from the BC interior, it is reasonable to conclude that they can be imported. As such, purchasers in British Columbia could reasonably avail themselves of logs from the US PNW, and such US PNW log prices are therefore an appropriate tier-two benchmark. Therefore, we find the facts of *Borusan* are distinct from those of the instant review.

F. Purchase of Goods for MTAR Issues

- ***Alberta***

Comment 48: Whether AESO Electricity Purchases for MTAR Are Countervailable

GOA's Comments[1167]

- The AESO has no generation assets and does not distribute electricity to wholesale or retail customers. Rather, AESO administers a wholesale electricity trading platform, and does not itself purchase electricity. Therefore, there is no financial contribution, as Commerce has determined in analogous circumstances in *Rebar from Turkey*.[1168]
- Prices are set hourly through market-based competitive bidding, in which all buyers and sellers pay/receive the same price each hour. Consequently, there can be no benefit.
- Commerce's preliminary benefit calculation compared the monthly weighted-average price at which Canfor "sold" electricity through the AESO with the monthly weighted-average price at which it "purchased" electricity through the AESO as a wholesale market participant. This method simply measured price volatility, rather than any actual price difference between sale and purchase prices. By using the monthly weighted-average price at which Canfor sold and purchased electricity, Commerce "zero{ed} any months in which Canfor's average selling price was lower than its average purchase price."[1169] If Commerce continues to regard the

[1163] *See Borusan* at 1335 (citing *CVD Preamble*, 63 FR at 65377).
[1164] *See CVD Preamble*, 63 FR at 65377.
[1165] *See Borusan* at 1335.
[1166] *Id.* at 1335 – 1336.
[1167] *See* GOA June 8, 2020 Vol IV Case Brief at 2 and 5 – 16.
[1168] *Id.* at 2, citing *Rebar from Turkey* IDM at Comment 1.
[1169] *Id.* at 12.

AESO as a purchaser and a seller of electricity, the benefit calculation should compare hourly prices, not monthly prices, due to the volatile nature of energy prices.[1170]
- Electricity is a service, not a good; thus, government purchases are not countervailable.
- If the AESO had purchased electricity from Canfor and if the price paid was higher than the price at which it resold electricity to Canfor, there is still no subsidy attributable to softwood lumber. Any subsidy is attributable solely to Canfor's sales of electricity.

Canfor's Comments[1171]
- The AESO does not purchase or sell electricity. Rather, it administers Alberta's Energy Trading System, a wholesale market for the exchange of electricity between buyers and sellers. AESO has not provided a financial contribution or benefit to Canfor, as it did not actually buy or sell electricity from Canfor.
- All buyers and sellers on Alberta's Energy Trading System pay and receive the same price within one hour, which further indicates that there can be no benefit based on this system.
- Even if Commerce continues to countervail this alleged benefit, the calculation is incorrect. The benefit calculation should be revised to account for all monthly comparisons of Canfor's purchase price for electricity and its sale price for electricity. Such a calculation demonstrates there is no benefit to Canfor.

Petitioner's Rebuttal Comments[1172]
- The AESO's payments to Canfor should constitute a financial contribution within the meaning of sections 771(5)(B)(iii) and 771(5)(D)(iv) of the Act. Even though the GOA itself did not purchase electricity from suppliers such as Canfor, through the establishment and administration of the Energy Trading System, the GOA directs and entrusts private entities to purchase electricity from Canfor for MTAR.
- The record contains no information to support the GOA's argument that hourly prices, instead of monthly prices, should have been used to calculate the benefit. This argument also assumes that all of Canfor's electricity purchases took place in the wholesale market, with Canfor acting as a self-retailer, resulting in exactly the same hourly prices for all of its purchases and sales, but there is no record evidence to support this assumption.
- Commerce properly measured the benefit conferred to Canfor under the ETS using the unit price Canfor paid to purchase electricity during the POR. The GOA's argument that Commerce "incorrectly zero{ed} any months in which Canfor's average selling price was lower than its average purchase price" is misplaced.[1173] The GOA proposed a benefit calculation method that accounts for the "negative" subsidies for the months in which the average selling price was lower than the average purchase price, rather than adjusting such prices to zero. Commerce rejected this calculation method in the *Lumber V Final*.[1174]

Commerce's Position: Based on the arguments of interested parties and record evidence, we reverse our preliminary finding that this program constitutes a financial contribution under

[1170] *Id.* at 14, citing *Brass from Germany* IDM at 5. (In which Commerce used a daily price to calculate a daily cost of production in light of high price volatility for copper and zinc.)
[1171] *See* Canfor June 8, 2020 Case Brief at 26 – 29.
[1172] *See* Petitioner June 25, 2020 Rebuttal Brief at 114 – 116.
[1173] *Id.* at 115, citing GOA June 8, 2020 Vol IV Case Brief at 12.
[1174] *See* Petitioner June 25, 2020 Rebuttal Brief at 116, citing *Lumber V Final* at Comment 15.

section 771(5)(D)(iv) of the Act in the form of the purchase of goods and a benefit under section 771(5)(E)(iv) of the Act. We agree with the Canadian Parties that the electricity transmitted by producers such as Canfor is purchased not by the AESO or another government entity, but, rather, by the electricity buyers in the ETS marketplace.

Commerce previously analyzed a program with analogous circumstances in *Rebar from Turkey Final Results*. The TEIAS, a Turkish government entity that manages the transmission of electricity in Turkey, acts as a system operator.[1175] The MFSC, a unit under the TEIAS, acts as a market operator by "perform{ing} market operations through which the electricity price forms based on the supply and demand conditions automatically and transparently."[1176] Commerce concluded that because the market operator did not pay for or set prices for electricity, it therefore did not make any "purchases" of electricity.[1177] Without the purchase of a good by an authority, a financial contribution does not exist in this case.

In the case of Canfor's sales of electricity through the AESO, the record demonstrates that, similar to the situation in *Rebar from Turkey Final Results*, the AESO is not a purchaser or seller of electricity. The GOA established the AESO as part of the restructuring of its electricity market from a traditional regulated market to a market-based system.[1178] The AESO is an independent not-for-profit government agency that is responsible for ensuring access to power throughout the province of Alberta.[1179] Among its functions, the AESO plans and maintains the transmission grid, and builds infrastructure that connects electricity generators and customers to the grid. The AESO ensures that the grid has sufficient capacity to transmit power from where it is generated to where it is used, and that the supply of electricity meets the province's demand for electricity.[1180]

The AESO develops and operates the wholesale electricity market for the province, known as the ETS. The GOA explained that the ETS marketplace operates like a stock market by "match{ing} offers from sellers of electricity to demand from buyers."[1181] Electricity generators submit offers in the ETS for every hour on a day-ahead basis, which are sorted from lowest to highest for each hour.[1182] Starting with the lowest offers, system controllers balance the electricity supply with demand by matching offers with electricity consumers' demand for every hour until the demand for that hour is met.[1183] An hourly price, or pool price, is determined by an average of the highest offers and bids submitted to the ETS for each minute in that hour.[1184] The hourly pool price is made available to the public at the end of every hour, in accordance with the *Electric Utilities Act*.[1185] Regardless of the source of the energy supply (*e.g.*, coal, gas, solar,

[1175] *See Rebar from Turkey Final Results* IDM at 12.
[1176] *Id.*
[1177] *See* GOA June 8, 2020 Vol IV Case Brief at 8, citing *Rebar from Turkey Final Results* IDM at Comment 1; *see also Rebar Trade Action Coal. v. U.S.* at 1304 (affirming Commerce's determination that a market operator that did not pay for electricity or set prices, did not "purchase" electricity).
[1178] *See* GOA AESO SQR at 3.
[1179] *Id.* at Exhibit AB-AR1-AESO-9 ("Electricity in Alberta and the AESO") at 1.
[1180] *Id.*
[1181] *See* GOA AESO SQR at 5.
[1182] *Id.* at Exhibit AB-AR1-AESO-9 ("How is the pool price for electricity determined?") at 1.
[1183] *Id.* at 6.
[1184] *Id.* at 5 – 7.
[1185] *Id.* at Exhibit AB-AR1-AESO-1 ("Province of Alberta Electric Utilities Act") at 25.

etc.), all electricity generators receive the same hourly pool price, which is the same price paid by all buyers within that hour.[1186] Pool buyers do not select pool sellers or set prices.[1187] Buyers and sellers on the ETS do not know to whom they sold or from whom they purchased electricity.[1188] The AESO has no financial interest or investment in the energy industry, nor does it bear any market risk.[1189] The AESO does not produce electricity nor sell it, and earns no profit.[1190] Because the AESO does not have investments or assets, and bears no market risk, it cannot make losses.[1191]

The relationship between Canfor and the AESO does not resemble that of a typical transaction in which one party makes a "purchase" from another party.[1192] The AESO facilitates the financial settlement for all electric energy exchanged through the ETS, whereby energy suppliers are paid and buyers make payments on the same business day.[1193] Because market participants do not know to whom they sold or from whom they purchased electricity, the AESO acts as the settlement agent by collecting payments from purchasers and disbursing corresponding payments to sellers via bank wire transfers.[1194] With the exception of a trading charge to cover operating costs associated with administering the ETS, the AESO itself does not have a cash flow, and its financial statements indicate that it does not book sales revenue or cost of goods sold.[1195] Accordingly, we find that the record evidence demonstrates that the AESO does not purchase or pay Canfor, or any other entity, for electricity.

The petitioner acknowledges that the GOA itself did not purchase electricity from suppliers such as Canfor but asserts that the GOA directs and entrusts buyers on the wholesale ETS market to purchase electricity. However, the record evidence indicates that the AESO and the ETS do not direct which buyers purchase from which electricity suppliers, nor do they have any impact on the amount of electricity purchased or sold by any market participant. Further, the AESO functions as a marketplace for buyers and sellers of electricity, and as a settlement agent for payment between such buyers and sellers. The AESO and the ETS have no control over pricing of electricity offered within the marketplace, as pricing is established by competitive bids and offers for electricity on a minute-by-minute basis. We therefore determine that the record does not support the petitioner's argument that the GOA directs and entrusts private entities to purchase electricity from Canfor for MTAR pursuant to sections 771(5)(B)(iii) and 771(5)(D)(iv) of the Act.

Based on the evidence, we determine that the AESO's role in facilitating the purchase and sale of electricity on the ETS marketplace does not constitute a government purchase of electricity and, thus, does not constitute a financial contribution to power suppliers such as Canfor under section 771(5)(D)(iv) of the Act. Accordingly, we conclude that there is no need to address the parties'

[1186] *Id*. at 6 – 7.
[1187] *Id*. at 9.
[1188] *Id*. at 6.
[1189] *Id*. at Exhibit AB-AR1-AESO-9 ("The basics of electricity transmission") at 2.
[1190] *Id*. at 5.
[1191] *Id*. at 13
[1192] *Id*. at 7, citing *Perrin v. U.S*. at 42 ("…unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning."); *see also Usinor Industeel v. U.S*., 215 F. Supp. 2d at 1358.
[1193] *Id*. at Exhibit AB-AR1-AESO-1 at 24 and Exhibit AB-AR1-AESO-9 ("Power Pool Settlement Guide") at 5.
[1194] *Id*. at Exhibit AB-AR1-AESO-9 ("Power Pool Settlement Guide") at 5.
[1195] *Id*. at Exhibit AB-AR1-AESO-10 ("AESO 2018 Annual Report") at 25 and 39.

arguments regarding the benefit calculation and attribution methodology. This finding is consistent with Commerce's findings in *Rebar from Turkey Final Determination* and *Rebar from Turkey Final Results*.[1196]

- ***British Columbia***

Comment 49: Whether BC Hydro EPAs Are Countervailable

GBC's Comments[1197]

- Commerce was incorrect to find BC Hydro EPAs specific because the program recipients were limited in number.
- In the *Lumber V AR1 Prelim Results*, Commerce stated that the 131 BC Hydro EPAs was not a large number, without any explanation of the standard by which this was determined. Record evidence shows that BC Hydro has negotiated over 200 EPAs over the past 30 years with a wide range of parties including private power companies, municipalities, and BC Hydro customers. These projects also span a wide range of industries.
- Commerce also failed to assess the length of time the EPAs have existed.

Petitioner's Comments[1198]

- Commerce did not fail to address the points raised by the GBC on the specificity of BC Hydro EPAs. Rather, it correctly upheld its findings on these points from the *Lumber V Final*.

Commerce's Position: We continue to find this program to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the recipients are limited in number. In the *Lumber V Final*, we explained that the GBC's contention that this program is not specific because its users were spread across a wide range of projects and sectors is irrelevant as follows:

> BC Hydro had only 105 active EPAs with independent power producers meant that subsidy recipients were limited in number and {Commerce found} that the program was, therefore, *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. The GBC argues that these users were spread among a variety of projects, and less than 20 percent of these EPAs were for biomass projects. But the diversity or variety of users, or the relative percentage of users engaged in biomass projects as compared with other projects, is irrelevant to our specificity analysis under section 771(5A)(D)(iii)(I) of the Act. The fact that there are many power providers other than just sawmills does not negate the fact that there are only 105 actual recipients with EPAs under this program. As explicitly stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy. The EPA program which is limited to only 105 power providers in BC is not widely

[1196] *See Rebar from Turkey Final Results* IDM at Comment 1 and *Rebar from Turkey Final Determination* IDM at Electricity for MTAR and Comment 6.
[1197] *See* GBC June 8, 2020 Vol V Case Brief at 97 – 100.
[1198] *See* Petitioner June 25, 2020 Rebuttal Brief 91 – 93.

used throughout the provincial economy; therefore, the program is specific under section 771(5A)(D)(iii)(I) of the Act.[1199]

In short, as Commerce found in the *Lumber V Final*, the attributes of EPA participants do not change whether these participants were limited in number. During the POR of this administrative review, there were 131 active EPAs, which, though somewhat larger than the number during the POI, we still find to be a small number relative to the overall number of corporate tax filers in British Columbia.[1200] Furthermore, the GBC's assertion that Commerce failed to consider that BC Hydro has executed almost 200 EPAs over the last 30 years is inapposite—Commerce's analysis of a subsidy's age is meant to ensure that *recently* introduced subsidies are not automatically found to be specific based on limited usage.[1201] Specifically, the *SAA* states that "{t}he Administration interprets the criterion concerning the duration of a subsidy program to mean that where a *new subsidy program* is recently introduced, it is unreasonable to expect that use of the subsidy will spread throughout the economy in question instantaneously."[1202] That less than 200 EPAs have been executed over more than three decades underscores this program's narrow scope and supports a decision to continue finding it *de facto* specific. In any event, the *SAA* goes on to state that "the Administration does not intend that this criterion be used to excuse *de facto* specificity."[1203]

Two additional arguments that this program is not countervailable are addressed in separate comments.

First, the GBC and West Fraser, along with several other respondents, note that Commerce can only countervail purchases of goods and then argue that electricity is a service, not a good. For the comments on this issue and our explanation of why we continue to find the purchase of electricity to be the purchase of a good, *see* Comment 5.

Second, the GBC and West Fraser also argue that BC Hydro's purchases of electricity are tied to electricity and thus cannot be countervailed into softwood lumber subsidies. For the comments on this issue and our explanation of why we find that BC Hydro's purchases should be attributed to West Fraser's overall sales, *see* Comment 6.

Comment 50: Whether Commerce Applied the Correct Benchmark to Calculate the Benefit under BC Hydro EPAs

GBC/BCLTC's Comments[1204]

- The relevant market for measuring West Fraser's purported benefit under the EPAs is the market for incremental, green, wholesale firm energy generated in British Columbia. Commerce incorrectly used the prices West Fraser paid to BC Hydro for electricity, which are based on a regulated tariff schedule. Additionally, the EPA prices are market-based such that there is no "benefit" conferred under them.

[1199] *See Lumber V Final* IDM at Comment 50 (citations omitted)
[1200] *See* GBC IQR at Volume II at 56.
[1201] *See* SAA at 931 – 932.
[1202] *Id*.
[1203] *Id*.
[1204] *See* GBC June 8, 2020 Vol V Case Brief at 100 – 117.

- Commerce assumed in the *Lumber V AR1 Prelim Results* that BC Hydro's tariff schedule rates are market-determined and reflect prevailing market conditions for the electricity West Fraser sold through the EPAs. However, due to the uncompetitive electricity delivery market, BC Hydro's rates are regulated by the GBC, which requires BC Hydro to sell at prices that reflect BC Hydro's costs and a reasonable rate of return on invested capital. The monthly base price Commerce relies on reflects the costs of all BC Hydro's resources, while the EPA price only reflects the cost of that specific electricity source.
- Commerce has followed the incorrect logic of the *Groundwood Paper Final* in ignoring the requirement for a market-based benchmark on the basis that the government is acting on both sides of the transaction. However, Commerce must still follow the unambiguous directive of section 771(5)(E) of the Act to account for prevailing market conditions.
- Commerce claims to have applied the "benefit to the recipient" standard, but in fact the benchmark for the BC Hydro EPAs measures the GBC's costs. A benchmark compliant with 19 CFR 351.503(b) would have found a market price or at least a price based on market principles. Commerce has failed to determine whether West Fraser received more revenue than it might otherwise earn selling electricity to a party other than West Fraser.
- The regulated tariff rates have additional basic differences from the EPAs. The EPAs' pricing was established in 2011, while the tariff rates are updated annually. Additionally, the EPAs exist in a market with a different structure than BC Hydro's regulated sales.
- The Rosenzweig Report confirms that incremental green, wholesale firm energy is a unique product not comparable to other electricity products and that Commerce has conducted an "apples to oranges comparison" by using BC Hydro's tariff rate as a benchmark. Among other differentiating factors, BC Hydro has an obligation to provide electricity, whereas an IPP's provision of electricity under an EPA is voluntary.
- Regardless of Commerce's findings in the *Groundwood Paper Final*, there is uncontroverted evidence on this record that EPA and tariff electricity are not fungible. The Rosenzweig Report explains that long-term firm power sold wholesale is different than hourly non-firm energy because, unlike non-firm energy, firm energy "is not interruptible{.}"
- Commerce should use average firm energy prices from other calls for incremental green, wholesale firm energy, such as the Bioenergy Phase 1 and Clean Power Calls. In the *Lumber V Final*, Commerce asserted that such a benchmark "would be circular insofar as it would result in a comparison of an alleged subsidy with itself."[1205] However, BC Hydro has gone through bidding rounds for EPAs with different criteria and price outcomes, and Commerce has not undertaken any evidence suggesting that the calls proposed as benchmarks are countervailable subsidies.
- If circularity means that Commerce must eliminate benchmarks based on EPA pricing, then Commerce must also not use BC Hydro's regulated tariff rates as a benchmark. The tariff rates reflect BC Hydro's full costs, including electricity purchased under EPAs.
- Commerce must deduct West Fraser's cost to produce the electricity from the EPA prices in determining whether a benefit was received.

West Fraser's Comments[1206]

- Commerce must follow its statutory obligation to use a benchmark that reflects the market for incremental, green, wholesale firm energy in British Columbia. Commerce's benchmark

[1205] *See Lumber V Final* IDM at 167.
[1206] *See* West Fraser June 8, 2020 Case Brief at 70 – 77.

comes from different sources, is sold in different markets, and has different terms of sale and pricing methodologies than the electricity sold under the EPAs. Commerce should correct this error by using market-driven prices from competitive power calls in British Columbia. If Commerce does fail to correct the benchmark, it should at least account for West Fraser's costs incurred through the EPAs.
- If Commerce declines to use a benchmark in British Columbia, it can use the Québec Biomass Cogeneration CFT and Wind CFT calls for power in 2009 and 2010.
- Contrary to Commerce's mistaken description in the *Lumber V Final*, West Fraser does not purchase electricity from BC Hydro and then resell that "same" electricity back to BC Hydro. West Fraser incurs costs in producing the electricity it sells to BC Hydro, and Commerce's benefit analysis did not account for this.

Petitioner's Rebuttal Comments[1207]
- The GBC's expert report claims that West Fraser's electricity is fundamentally different than electricity BC Hydro supplies and explains at length the policy justification for the GBC purchasing biomass-generated electricity. However, it provides no evidence that biomass-generated electricity has any distinct characteristics as to make it a different product than other forms of electricity.
- Electricity, regardless of the source, is electricity. The GBC has acknowledged that BC Hydro does not track the source of electricity sold to its customers and that energy supplied through EPAs is treated the same as energy from BC Hydro's own generation resources. Given that the GBC was buying and selling one good, Commerce properly examined the nature of this program.
- The "costs" West Fraser incurred do not fall under the narrowly enumerated subsidy offsets Commerce considers.
- While Commerce's benchmark does capture the cost to the GBC of the electricity sales, this is because the GBC was both buying and selling electricity. Commerce properly found that West Fraser received a benefit because it was paid a higher price for the electricity than BC Hydro's tariff rate.
- The GBC and West Fraser's complaints that Commerce failed to account for BC Hydro's pricing methods or other conditions of sale are inapposite because Commerce was not conducting a tiered analysis under 19 CFR 351.511, but rather using the benefit to the recipient standard.
- Commerce should reject, as it did in the *Lumber V Final*, arguments to use other BC Hydro EPAs as a benchmark. Regardless of whether the procurement process for EPAs was transparent and competitive, comparing West Fraser's EPAs to other EPAs would be a circular comparison, and Commerce is conducting the analysis under the benefit to the recipient standard.
- The GBC also suggests that Commerce use average firm energy prices from a different set of EPAs to benchmark West Fraser's EPA sales to BC Hydro. However, Commerce has never limited the analysis of EPAs to the Bioenergy Phase II calls, and these other EPAs are part of the same program. The Canadian Parties' argument that the BC Hydro EPAs are not specific because there are 131 *total* EPAs proves this point. Additionally, these benchmarks would fail to capture the benefit to the recipient.

[1207] *See* Petitioner June 25, 2020 Rebuttal Brief at 97 – 100, 103 – 108, and 112 – 114.

Commerce's Position: The GBC and West Fraser raised largely the same arguments in the underlying investigation.[1208] We continue to reject their arguments that Commerce was wrong to use BC Hydro's tariff rate as a benchmark in this administrative review.

The SAA explains that section 771(5)(E) of the Act provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy.[1209] As discussed in Comment 7, under that provision, a benefit is normally treated as conferred where there is a benefit to the recipient.[1210] The facts under examination show that not only is West Fraser selling electricity to BC Hydro, but West Fraser is also purchasing electricity from BC Hydro. For an MTAR program with these unique facts, such as the BC Hydro EPAs, where the government is acting on both sides of the transaction—*i.e.*, selling a good to, and purchasing that good back from, a respondent—Commerce has decided to measure the benefit to the respondent as the difference between the price at which the government is selling the good to the company, and the price at which the government is purchasing that good back from the company.[1211]

Regarding the parties' arguments for the use of a "incremental, green wholesale firm electricity" benchmark on the basis of a "tier" under 19 CFR 351.511(a)(2), we disagree that 19 CFR 351.511(a)(2) provides the appropriate framework given the unique facts of the transaction under examination. As discussed at Comment 7 and in the *CVD Preamble*, Commerce has not codified a regulation which expressly provides instruction on how to analyze a government's purchase of goods for MTAR.[1212] We stated that "{u}nlike the case with the provision of goods and services, … we have not had the opportunity to gain sufficient experience" with MTAR allegations and, thus, were "hesitant" to set forth how we would analyze such allegations.[1213] We stated that we "expect{ed}" that 19 CFR 351.511, regarding the provision of goods and services by a government for LTAR would provide Commerce with an approach to calculating the benefit received by a respondent where the government procures goods and services for MTAR.[1214]

However, neither the regulations nor the *CVD Preamble* address a situation where the government is both a provider and purchaser of the good in question. BC Hydro's presence on both sides of the electricity transaction with West Fraser presents an unusual situation that is different from either a standard provision program, in which the government only provides the respondent with a good, or what we envisioned as a standard procurement program at the time of the *CVD Preamble*, where the government is only a purchaser of a good from a respondent. Therefore, we disagree that our regulations establish a three-tiered hierarchy for the identification of benchmarks for these unique types of MTAR programs, or that an analysis informed by 19 CFR 351.511(a)(2) is necessary to calculate West Fraser's benefit. For further information on the appropriate regulatory framework regarding the analysis of this type of MTAR program, *see* Comment 7.

[1208] *See Lumber V Final* IDM at Comment 51.
[1209] *See* SAA at 927.
[1210] *See* section 771(5)(E) of the Act.
[1211] *See Lumber V Final* IDM at Comment 51.
[1212] *See CVD Preamble*, 63 FR at 65379.
[1213] *Id*.
[1214] *Id*.

The GBC and West Fraser argue that a more appropriate benchmark would be the winning bids received either from the same power calls as West Fraser's EPAs Commerce is examining or winning bids from other clean power calls in British Columbia. BC Hydro purchases energy from independent power producers pursuant to long-term EPAs, and we are investigating the benefit conferred by the EPAs signed between the provincially-owned utility company and West Fraser. The benchmarks that West Fraser and the GBC propose are winning bids on other EPAs.[1215] In its own case brief, the GBC treated EPAs signed under different power calls as part of a single program.[1216] Thus, using prices from other EPAs, regardless of whether they originated from a different power call as the two EPAs we are examining in this proceeding, would be inconsistent with the statute and Commerce's regulations because the benchmark used to measure the benefit from an investigated program cannot be from the program being investigated.[1217]

West Fraser also proposes alternative benchmarks that it claims avoid the circularity issue of using EPAs as a benchmark for EPAs. West Fraser suggests the Québec Biomass Cogeneration CFT and Wind CFT calls for power in 2009 and 2010. Because Commerce has determined that the standard for evaluating sales of electricity for these unique types of MTAR programs should be the benefit-to-the-recipient standard, it is not necessary for us to analyze prevailing market conditions and determine a benchmark using an LTAR "tiered" approach.

Second, we continue to find the GBC and West Fraser's argument that Commerce is comparing "different" goods in its benchmark analysis fundamentally flawed. The good on both sides of the benchmark is electricity. In the *Lumber V Final*, we found that:

> While electricity can be generated using various sources - hydro, coal, gas, oil, solar, nuclear, biomass - there is no information on the record to demonstrate that the method used to generate electricity changes the physical characteristics of electricity or the fungibility of electricity. Indeed, BC Hydro itself does not track the source of the electricity that it sells to its customers.[1218]

The GBC claims that the Rosenzweig Report disproves Commerce's description of the fungibility of electricity.[1219] We find this claim unconvincing. The Rosenzweig Report discusses how the *market* for green wholesale firm electricity differs from the *market* for non-firm retail electricity such that electricity procured in one market cannot necessarily be substituted for the other.[1220] It is not surprising that different markets that operate by different rules and that it may be difficult to exchange or transmit even identical goods across such markets. However, that does not change the fundamental nature of the good at question, *i.e.*, electricity is electricity.

[1215] *See* West Fraser June 8, 2020 Case Brief at 75 – 76.
[1216] *See* GBC June 8, 2020 Vol V Case Brief at 97 – 100.
[1217] *See e.g.*, section 771(5)(E) of the Act; 19 CFR 351.503(b); 19 CFR 351.505; 19 CFR 351.506; 19 CFR 351.507; and 19 CFR 351.511(a)(2)(i)(ii).
[1218] *See Lumber V Final* IDM at Comment 51 (citation omitted).
[1219] *See* GBC June 8, 2020 Vol V Case Brief at 112 – 113, citing Rosenzweig Report at 13.
[1220] *See* Rosenzweig Report at 13 – 18.

West Fraser's Fraser Lake and Chetwynd mills purchase electricity from BC Hydro at a regulated tariff rate. These mills also sell electricity back to BC Hydro through EPAs. Thus, we are treating the benefit to West Fraser as the difference between these two prices. Consequently, we continue to find that the appropriate benchmark to calculate the benefit that West Fraser received from the sale of electricity back to BC Hydro is the BC Hydro tariff rate.

The GBC contends that West Fraser's sales of electricity under EPAs with BC Hydro are necessarily "adequate" such that no benchmark analysis is needed because they result from a competitive and open bidding process.[1221] As the GBC recognizes, for policy reasons, BC Hydro seeks to specifically acquire clean and renewable energy from sources within British Columbia.[1222] The GBC characterizes the EPAs as part of an attempt to fulfill that objective.[1223] Because this policy framework limits the sources from which BC Hydro can source electricity, the prices that result from the EPA process cannot be considered market-based. The respondents' attempt to make "green, wholesale firm electricity" into the relevant good for comparison is an attempt to assume away the GBC's policy choices to prefer electricity from certain sources procured from within British Columbia.

Similarly, we disagree with West Fraser and the GBC that the costs West Fraser incurred to perform the EPAs should be taken into consideration. As explained above, we determine the amount of any benefit conferred to West Fraser under the benefit-to-the recipient standard. This standard requires that we calculate the benefit by comparing the price at which the government purchased electricity to the price at which the government sold electricity; the reason for any pricing difference is not part of this analysis. As such, whether BC Hydro's resource stack reflects the prevailing market conditions for biomass-generated energy plants and their associated costs is not an issue that Commerce needs to examine. Similarly, under this standard, the GBC's argument that because BC Hydro's costs are affected by the prices it pays IPPs for electricity, the cost-based BC Hydro tariff rates suffer from the same circularity issue as other EPAs is not relevant.[1224]

Based on the above, we continue to use West Fraser's purchases of electricity from BC Hydro as a benchmark for determining whether West Fraser's sales of electricity to BC Hydro were for MTAR.

[1221] *See* GBC June 8, 2020 Vol V Case Brief at 114 – 117.
[1222] *See* GBC IQR at Volume II at 62.
[1223] *Id*.
[1224] *See* GBC June 8, 2020 Vol V Case Brief at 117.

- ***Ontario***

Comment 51: Whether Commerce's Specificity and Benchmark Analyses for the Ontario and Québec Electricity MTAR Programs Were Arbitrary

Resolute and Central Canada's Comments[1225]

- Commerce defined the industry for biomass cogenerated electricity differently in its specificity and benchmark analyses.
- Commerce focused on producers of biomass cogenerated electricity to find PPAs with those electricity producers to be limited in number. However, when Commerce looked for a benchmark for its benefit analysis, it looked broadly to electricity sales by Hydro-Québec or IESO originating from all energy sources.
- Narrowing the specificity analysis of biomass cogenerated PPAs favored a countervailable subsidy finding, while expanding the comparison of biomass cogenerated electricity to other forms of generated electricity favored a high countervailable subsidy margin.
- Were Commerce to compare prices for forest biomass cogenerated electricity with a benchmark of prices for electricity from a range of energy sources in its benefit analysis, then it should recognize the full range of electricity sources for its specificity analysis.
- Conversely, were Commerce's specificity analysis limited to forest biomass cogenerated electricity contracts, then the benefit comparison should be to a benchmark of forest biomass cogeneration electricity sales.

Petitioner's Rebuttal Comments[1226]

- The legal standards and Commerce's analyses for specificity and benefit conferred are separate and distinct.

Commerce's Position: We disagree with Resolute's argument that our determinations regarding specificity and benefit are arbitrary or inconsistent for the following programs—GOO Purchase of Electricity for MTAR under CHP III PPA and GOQ Purchase of Electricity for MTAR under PAE 2011-01. The analyses conducted of both programs in this review were in accordance with Commerce's regulations and the Act.

As we explained in Comment 7, Commerce's practice is to use the benefit-to-the-recipient standard set forth in in 19 CFR 351.503(b) to determine the benefit from the sale of electricity for MTAR programs. The application of that standard is separate and distinct from the specificity analysis of a program that Commerce performs pursuant to section 771(5A)(D) of the Act. Our findings that there exist only a limited number of actual recipients under these programs (*see* Comment 53 and 56) in no way calls into question the determinations that a benefit was conferred to Resolute from each program under the benefit-to-the-recipient standard, and *vice versa*.

[1225] *See* Resolute June 8, 2020 Case Brief at 29 – 30.
[1226] *See* Petitioner June 25, 2020 Rebuttal Brief at 109 – 110.

Comment 52: Whether Commerce Applied the Correct Benchmark to Calculate the Benefit under the IESO CHP III

Resolute and Central Canada's Comments[1227]

- The IESO electricity consumption rate, used by Commerce, does not reflect the prevailing market conditions for the sale of biomass cogenerated electricity by a private seller to the government. The price, availability, and transmission (transportation) of electricity generated by Resolute are all different from and incomparable to those of electricity obtained and redistributed by IESO to consumers. The price that Resolute is paid to provide biomass-generated power resulted from an open bid, competitive procurement process conducted by the OPA.
- The Ontario grid is supplied predominantly by generators of nuclear and hydroelectric energy. The benchmark price for electricity consumed by Resolute reflects that mix of sources of energy supply. The costs of electricity for those sources are much lower than the costs of biomass cogenerated electricity. As such, Commerce selected a non-market benchmark price that never would allow producers of biomass cogenerated electricity to recover their costs.
- Commerce's chosen benchmark consists of a regulated government supplier selling to many industrial consumers, whose demand for electricity is determined by the needs of their businesses. Here, by contrast, the GOO is the sole purchaser in the market. The demand for Resolute's service is not a function of goals for maintaining the stability of the electricity grid and for developing alternative sources of energy.
- Commerce should measure the price under the CHP III contract against the average per unit cost of biomass cogenerated electricity in Ontario of C$131/MWh plus the hourly Ontario energy price to determine the adequacy of remuneration.
- Conversely, if Commerce continues to use an electricity consumption price benchmark, it should include a Global Adjustment rate as applied in the Thunder Bay generation contract. Calculating the benchmark price without taking into account the Global Adjustment appropriate to the prevailing market conditions for biomass is contrary to the law.

Petitioner's Rebuttal Comments[1228]

- The costs to generate electricity that Resolute incurred are not germane to Commerce's benefit analysis, which focuses on benefits accrued to the respondent.
- Commerce's benchmark, which compares the price Resolute obtained in selling electricity to the GOO and the price Resolute paid to purchase the same electricity, is the best available benchmark to measure the benefit conferred under the CHP III.
- If Resolute is arguing that Commerce should adjust the benchmark to include a "Global Adjustment" or that Commerce should offset the payments that Resolute received, such modifications are not necessary. Commerce's benchmark is not based on Resolute's costs for producing electricity.
- Commerce's benchmark measures the benefit conferred by the government when the respondent is acting on both sides of the transaction for the sales and purchases of electricity. Thus, no additional operating cost adjustment is required.

[1227] *See* Resolute June 8, 2020 Case Brief at 14 – 21.
[1228] *See* Petitioner June 25, 2020 Rebuttal Brief at 109 – 110.

Commerce's Position: Because Commerce has determined that the standard for evaluating sales of electricity for MTAR is the benefit-to-the-recipient standard, it is not necessary for us to analyze prevailing market conditions and determine a benchmark using an LTAR "tiered" approach.

As discussed in Comment 7, a benefit is normally treated as conferred where there is a benefit to the recipient.[1229] The facts under examination show that not only is Resolute selling electricity to IESO, but Resolute is also purchasing electricity from IESO. For an MTAR program, such as the CHP III, where the government is acting on both sides of the transaction—*i.e.*, selling a good to, and purchasing that good back from, a respondent—the benefit to the respondent is the difference between the price at which the government is selling the good to the company, and the price at which the government is purchasing that good back from the company.

Resolute's Thunder Bay mill purchases electricity from IESO at the electricity consumption rate. The Thunder Bay mill also sells electricity back to IESO under the CHP III PPA at an administratively-set price. Thus, the benefit to Resolute is the difference between these two prices. The costs incurred by Resolute to generate biomass electricity is irrelevant to Commerce's analysis. We therefore need not consider Resolute's arguments that Commerce should apply a cost-revenue test, using the average unit cost of biomass cogenerated electricity (C$131/MWh) plus the hourly Ontario energy price, to determine whether adequate remuneration was paid for electricity. Similarly, we need not adjust the electricity consumption rate benchmark for a Global Adjustment charge to account for prevailing market conditions for biomass. The reasons for any pricing differential are not part of our analysis. Further, whether hydroelectric or nuclear plants reflect the prevailing market conditions for biomass cogeneration plants and their associated costs is not an issue that Commerce needs to examine.

We also disagree with Resolute's assertion that, because the electricity consumption rate is a price predominately based on hydroelectric and nuclear energy, it cannot serve as the benchmark for a biomass energy program. As explained in Comment 7, Commerce's determination to use the electricity consumption rate is based on our interpretation of the Act regarding the calculation of benefit where a government procures a good for MTAR.

Further, we find that Resolute failed to provide any evidence that the prevailing market conditions for the provision of electricity by IESO is differentiated based upon the manner in which the electricity is generated. The GOO itself stated that the IESO does not set the price of electricity sold to consumers based on the generation or fuel source of electricity, because the IESO does not track the flow of electricity based on the generation source.[1230] The GOO reported that "there were no laws or policies in place that specifically addressed the pricing of electricity generated from biomass."[1231] Information submitted by the GOO shows that the IESO charges and tracks electricity prices based on the time and locations of the electricity used but not on the fuel sources in which the electricity was generated.[1232] Thus, the record shows that the GOO treats electricity, regardless of fuel sources, as a single good.

[1229] *See* section 771(5)(E) of the Act.
[1230] *See* GOO November 22, 2019 NSA SQR Response at Exhibits ON-CHP-13-C, H; and Resolute November 22, 2019 NSA SQR Response at Exhibit-NSA-CHP-2 (p. 19, 21 – 23).
[1231] *See* GOO November 22, 2019 NSA SQR Response at ON-61 and ON-62.
[1232] *Id*. at Exhibit ON-CHP-9A-9D.

For all these reasons, we continue to find that the appropriate benchmark to calculate the benefit that Resolute received from the sale of electricity back to IESO under the CHP III program is the electricity consumption rate.

Comment 53: Whether Ontario's IESO CHP III Is Specific

GOO's Comments[1233]

- CHP contracts are neither *de jure* nor *de facto* specific. The CHP III Request for Proposals was open to all parties interested in developing new biomass CHP generation capacity in the Ontario electricity market, provided they met other eligibility requirements related to ensuring a reliable supply of electricity.
- During the POR, IESO was a party to 21 different contracts.

Resolute and Central Canada's Comments[1234]

- Resolute's electricity sales to IESO are not specific. Resolute's is one of IESO's 16 CHP contracts and one of 20 contracts for natural gas and other fuels for which alternative electricity capacity sources have been procured.
- In addition to the CHP, the GOO has contracted electricity generation from other renewable sources, as well as hydropower.
- The record shows that the CHP is neither *de jure* nor *de facto* specific because it is part of a wider initiative for green energy and neither the forestry industries nor Resolute benefited disproportionately from it.

Petitioner's Rebuttal Comments[1235]

- Commerce correctly found this program to be *de facto* specific because the actual recipients of the subsidy are limited in number—*i.e.*, just two companies with CHP III contracts during the POR. The recipients are limited in number when compared to the universe of potential users, *i.e.*, corporate tax filers in Ontario.
- Whether IESO maintains different programs through contracts to produce electricity from other sources (*i.e.*, that the CHP is part of a larger public policy initiative to promote green sources of energy) is irrelevant to the inquiry of specificity.
- That Commerce should compare the number of users of the program to that of other potential subsidy programs not under examination (*i.e.*, PPAs for electricity produced from sources other than biomass) has no basis in law.
- The fact that the CHP III procurement process was conducted in an open manner is not germane to Commerce's specificity analysis, which centers on whether Resolute was one of the limited number of recipients of the subsidy.

Sierra Pacific's Rebuttal Comments[1236]

- Commerce properly found the IESO's purchase of electricity pursuant to CHP III contracts is *de facto* specific.

[1233] *See* GOO June 8, 2020 Vol VII Case Brief at 35 – 38.
[1234] *See* Resolute June 8, 2020 Case Brief at 32 – 33.
[1235] *See* Petitioner June 25, 2020 Rebuttal Brief at 93 – 96.
[1236] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 32 – 34.

- Section 771(5A)(D)(iii) of the Act directs Commerce to determine whether a subsidy is *de facto* specific by examining the enterprises or industries that received assistance under the program being investigated. In this case, the program is the GOO's purchases of electricity pursuant to the CHP III and not some larger public policy initiative to promote green energy.

Commerce's Position: We preliminarily determined that CHP III PPAs for the sale of electricity to IESO are *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the actual recipients of the subsidy are limited in number.[1237] After consideration of the respondent parties' arguments, we are not persuaded to change our specificity finding for these final results.

The program under examination is IESO's CHP III, the procurement program initiated in 2009,[1238] and not previous iterations (*i.e.*, CHP I and CHP II) or other programs that IESO may have implemented to encourage alternative energy supplies in Ontario. That IESO may have had 16 to 21 contracts since the GOO began the procurement for combined heat and power is irrelevant to our analysis. In this review, we are analyzing the specificity of only the CHP III, the program used by Resolute.

Further, the fact that the CHP III was open to all parties interested in developing new biomass cogeneration capacity does not negate the fact that the actual recipients of the subsidy are limited in number. As reported by the GOO itself, there were only two companies, one of which was Resolute, with CHP III contracts during the POR.[1239] Based on such data, we continue to find the IESO's purchase of electricity under the CHP III to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because recipients of the subsidy are limited in number.

Comment 54: Whether Commerce Correctly Attributed Benefits Under the IESO CHP III Program

GOO's Comments[1240]
- Under its CHP III contract, Resolute produces electricity at its biomass facility co-located with its Thunder Bay pulp and paper mill. The contract is directly tied to Resolute's manufacture and pulp and paper and cannot be attributed to Resolute's other manufacturing operations.

Resolute and Central Canada's Comments[1241]
- The CHP III contract demonstrates the intention of IESO to purchase biomass cogenerated electricity from Resolute's Thunder Bay pulp and paper mill. The request for proposals and the contract between the OPA (IESO's predecessor) and Resolute state that the project's aim is electricity generation.
- IESO purchases of electricity generated at Resolute's Thunder Bay pulp and paper facility are unrelated to the sale, manufacture, or production of subject merchandise and should not be considered part of this review.

[1237] *See* Resolute Post-Prelim Decision Memorandum at 8 – 9.
[1238] *See* GOO July 15, 2019 Primary Non-Stumpage QNR Response at Vol I, p. CHP-13 and Exhibits ON-CHP-2 and ON-CHP-3.
[1239] *Id*. at CHP-19.
[1240] *See* GOO June 8, 2020 Vol VII Case Brief at 35 – 38.
[1241] *See* Resolute June 8, 2020 Case Brief at 27 – 28.

- The revenues from the sale of electricity to IESO are booked as offsets against the cost of goods sold at that pulp and paper mill. Purchases of electricity sales, therefore, are tied, if not to the electricity being purchased itself, to the production of pulp and paper at the plants where the electricity is being generated.
- The only exception to the attribution rule arises when the subsidy is to an input product, in which case Commerce would attribute the subsidy to both the input and downstream products produced. However, neither the payments for the electricity, nor the recaptured electricity itself, nor the pulp and paper created at the mills with generators, were inputs in the production of softwood lumber.

Petitioner's Rebuttal Comments[1242]
- Resolute ignores Commerce's practice that because electricity is an input in the overall operations of the company, Commerce will attribute the subsidy to sales of all products produced by the company, including electricity, pulp and paper, and softwood lumber.
- As evidenced from the CHP III Request for Proposals, the program is not tied to the production of paper and pulp, but open to co-generation facilities in Ontario that are fueled by renewable energy sources. Even though the CHP III procures electricity from Resolute's mill in Thunder Bay, the contract is not tied to the production of pulp or paper.
- Commerce does not, and is not required by law, to tie subsidies on a plant or factory-specific basis.
- How Resolute books the revenue from electricity sales is a business decision and does not dictate how Commerce should attribute subsidies.

Sierra Pacific's Rebuttal Comments[1243]
- Money is fungible and subsidies provided to one division of a company, such as a pulp and paper mill, will impact the company's overall production and sale of products. How a respondent actually uses the subsidy—for example, as offsets against the cost of goods sold at pulp and paper mills—is irrelevant to Commerce's analysis.[1244]
- Resolute and the GOO failed to identify any new record evidence demonstrating that, at the time of bestowal, benefits of the CHP III contract between Resolute and the OPA are tied to the production or sale of pulp and/or paper.

Commerce's Position: After consideration of the respondent parties' arguments, we conclude that there is no basis to change how the benefits of the IESO CHP III are attributed in this administrative review.

We disagree with the GOO and Resolute that, because the Thunder Bay pulp and paper mill sells electricity to IESO, the benefit from the sales are tied to non-subject merchandise, *i.e.*, either electricity or paper. First, at Comment 6, we explain in detail why a subsidy provided to the sale

[1242] *See* Petitioner June 25, 2020 Rebuttal Brief at 88–90.
[1243] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 28–29.
[1244] *Id*., citing *CVD Preamble*, 63 FR at 65403 ("We have generally stated that we will not trace the use of subsidies through a firm's books and records. Rather we analyze the purpose of the subsidy based on information available at the time of bestowal. Once the firm receives the funds, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that we evince.").

of electricity is not tied to electricity. Commerce has consistently attributed the benefits from electricity subsidies to all products.[1245]

Second, the fact that Resolute manufactures non-subject merchandise at the Thunder Bay mill does not change the fact that the mill is part of the Resolute corporate group. Thunder Bay is not a distinct corporate entity, which would require Commerce to conduct an analysis under 19 CFR 351.525(b)(6)(ii)-(v) to determine whether subsidies received by the mill are attributable to Resolute. Rather, Resolute is the corporate entity which files the tax documents and consolidates the financial statements of all of its mills—including Thunder Bay— as one corporate entity.[1246] Neither the statute nor Commerce's regulations "provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm."[1247] Further, Commerce does not tie subsidies on a plant- or factory-specific basis.[1248]

Commerce recognizes that money is fungible and its use for one purpose may free up money to benefit another purpose. Subsidies provided to a division of a company, such as a pulp and paper mill, will impact the overall production and sale of all other products of the company. Consequently, there is no need to address attribution because money is fungible within a single, integrated corporate entity (as opposed to a conglomeration of entities for which an analysis under 19 CFR 351.525(b)(6) may be required). The manner in which Resolute records the benefit from the CHP III program internally within its financial accounts is irrelevant to our analysis, which is informed by our regulations and practice.

An exception is whether the subsidy is tied to the production or sale of a particular product. Section 351.525(b)(5)(i) of Commerce's regulations states that, generally, "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." In making this determination, Commerce analyzes the purpose of the subsidy based on information available at the time of bestowal.[1249] Commerce's practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed rather than examine the use or effect of subsidies (*i.e.*, to trace how the benefits are used by companies). A subsidy is only tied to a particular product when the intended use is known to the subsidy provider (here, the GOO) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been previously upheld by the CIT.[1250]

Contrary to the respondent parties' claims, there is no information on the record that establishes, at the time of approval or bestowal, the benefits from Resolute's sale of electricity under the CHP III to IESO were tied to the production of pulp or paper, or any other good. Notably, the lack of any language or criteria in the request for proposals and PPA tying the benefits of the CHP III to the production of a particular product at a participant's facility indicate that the CHP

[1245] *See Lumber V Final* IDM at 161.
[1246] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibits RES-NS-GEN-3, RES-NS-GEN-4, RES-NS-GEN-5, and RES-NS-GEN-6.
[1247] *See SC Paper from Canada Final* IDM at 161 (citing *CFS from China* IDM at Comment 8).
[1248] *See, e.g., SC Paper from Canada – Expedited Review – Final Results* IDM at 99.
[1249] *See CVD Preamble*, 63 FR at 65403.
[1250] *See, e.g., Essar Steel Ltd. v. U.S.* 678 F. 3d at 1296.

III is an untied subsidy.[1251] Under the program, IESO's aim was solely the procurement of up to 100 MW of combined heat and power.[1252]
As noted, Commerce has found that electricity is an input to all products produced by a company.[1253] Particularly, "{e}lectricity benefits the production and manufacture of the subject merchandise since electricity is required to operate the production facilities of the softwood lumber producer."[1254] As such, under 19 CFR 351.525(a) and (b)(5)(ii), subsidies bestowed on the input product, *i.e.*, electricity, should be attributed to sales of all products produced by a company. Resolute has not contested the finding that electricity is consumed in the production of softwood lumber. Consequently, to the extent that Resolute receives more revenue than it otherwise would have earned under the CHP III, we attribute that benefit to Resolute's total sales as mandated under 19 CFR 351.525(a) and (b)(5)(ii).

- ***Québec***

Comment 55: Whether Commerce Applied the Correct Benchmark to Calculate the Benefit Under the PAE 2011-01 Program

GOQ's Comments[1255]

- Under the PAE 2011-01, Hydro-Québec buys electricity for resale and, therefore, the question under the statute is whether Hydro-Québec's purchase price was for MTAR. The statute directs that this question be answered with respect to the prevailing market conditions for the good being purchased, which here is electricity produced from forest biomass.[1256]
- Commerce's analysis is contrary to the statute because it compares the wholesale purchase price of electricity generated from forest biomass to Hydro-Québec's retail selling price of electricity generated almost entirely from hydropower. However, Commerce previously acknowledged that "{w}holesale prices are not comparable to the retail prices, the adequacy of remuneration of which we are trying to determine."[1257]
- Commerce's practice under its LTAR regulation (19 CFR 351.511(a)(2)) is relevant to determining adequate remuneration for MTAR purposes.
- The Merrimack Study establishes that prices used in the PAE-2011-01 contracts reflect prevailing market conditions. The study is based on biomass electricity costs in Ontario, Québec, and the United States, and should be used as either a tier-two or tier-three benchmark to determine any benefit under this program.
- The Coyne Study can also be used as a tier-three benchmark. The report shows that Hydro-Québec did not make purchases of electricity for MTAR by comparing PAE 2011-01 average pricing to publicly available PPA prices and U.S. Feed-in Tariffs pricing.

[1251] *See* GOO July 15, 2019 Primary Non-Stumpage QNR Response at Vol III, Exhibit ON-CHP-3; *see also* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibits RES-NS-CHP-3 and RES-NS-CHP-4 (for Resolute's CHP III PPA with IESO and amendment, respectively).
[1252] *See* GOO July 15, 2019 Primary Non-Stumpage QNR Response at Vol III, Exhibit ON-CHP-3 (Request for Proposals, p. 1).
[1253] *See* Comment 6; *see also Lumber V Final* IDM at 161.
[1254] *See Lumber V Final* IDM at 161.
[1255] *See* GOQ June 8, 2020 Vol VIII Case Brief at 17 – 28.
[1256] *Id*. at 17, citing section 771(5)(E) of the Act.
[1257] *Id*., citing *Glycine from Thailand* IDM at 19.

- Because Hydro-Québec's L Rate is composed of energy generated from all energy sources, it does not represent the prevailing market conditions for the purchase of electricity produced from biomass and should not be used as a benchmark. Further, the L Rate is almost wholly the reasonable rate of return on mature, fully expensed hydropower plants. Those plants do not reflect the prevailing market conditions for new biomass cogeneration plants and their capital costs.
- In *Canada – Feed-In Tariff Program*, the WTO's Appellate Body rejected an all-sources electricity benchmark when examining Ontario's feed-in tariff program.[1258]

Resolute and Central Canada's Comments[1259]

- The market conditions of price and availability for biomass cogenerated electricity sold to the GOQ are not comparable to the conditions for electricity sold by the GOQ to industrial consumers. Hydro-Québec's L Rate is based almost entirely (98 percent) on hydropower. Even though all power sources are included in Hydro-Québec's cost base, the economics of large-scale hydropower drive the regulated selling rates.
- Biomass cogenerated electricity necessarily commands a premium price over hydropower because of the higher initial costs of generation. These market conditions must be considered in the benchmark analysis.
- Commerce's benchmark also fails to reflect prevailing market conditions for Resolute's biomass cogenerated electricity because the sellers and purchasers are different for each, with different market conditions. Commerce's benchmark consists of a regulated government supplier selling electricity retail to industrial consumers whose demand for electricity is determined by the needs of the manufacturing/energy consumption needs of their businesses. Here, however, the government is the sole purchaser in the market of wholesale electricity. Whereas, the demand for Resolute's service is a function of goals for maintaining the stability of the electricity grid and for developing alternative sources of energy.
- In *Canada – Feed-In Tariff Program*, the WTO Appellate Body rejected Commerce's comparison of an all-sources electricity benchmark to the price of new green electricity.[1260]
- Hydro-Québec's biomass cogenerated electricity pricing is consistent with prevailing market conditions for forest biomass energy markets, including those in the United States, as concluded in the Merrimack Study.
- Hydro-Québec, in accordance with the conclusions of the Merrimack Study, agreed to pay Resolute a market price for biomass-cogenerated electricity. The conclusions of the Merrimack Study were confirmed by the subsequent Coyne Study.

[1258] *Id*. at 20 – 21, citing *Canada – Feed-In Tariff Program* at paras. 1.3, 5.178, 5.193, 5.199 5.213, 5.216, and 5.219.
[1259] *See* Resolute June 8, 2020 Case Brief at 9 – 14.
[1260] *Id*. at 12, citing *Canada – Feed-In Tariff Program* at 5.219.

Petitioner's Rebuttal Comments[1261]

- In the investigation, Commerce rejected the Merrimack study finding that the record was devoid of support for the proposition that "the prevailing market conditions for the provision of electricity by Hydro-Québec is differentiated based upon the manner in which the electricity is generated."[1262]
- The record in this review continues to show that the price paid by Hydro-Québec customers does not vary depending on the manner in which the electricity is generated. Indeed, "the price paid for the electricity" purchased from Hydro-Québec "is the same regardless of the source."[1263]
- The Coyne study does not call into question Commerce's benefit methodology. This report merely intends to bolster the Merrimack study, which Commerce rejected.
- *Canada – Feed-In Tariff Program* is not law. Findings of WTO reports are without effect under U.S. law unless and until such a report has been adopted pursuant to the specified statutory scheme established in the URAA.[1264]
- Commerce's decision to rely on the L rate—the rate Resolute paid for electricity during the POR—as the benchmark is appropriate because it calculated the benefit conferred on Resolute under the PAE 2011-01 program by comparing the unit price for electricity that Resolute paid to Hydro-Québec to the unit price of electricity that Hydro-Québec paid to Resolute.

Commerce's Position: The GOQ and Resolute raised these arguments in the underlying investigation.[1265] For the same reasons articulated then,[1266] we continue to reject their arguments that Commerce applied the wrong benchmark— the L Rate[1267]—to determine the benefit under the PAE 2011-01 program in this administrative review.

The SAA explains that section 771(5)(E) of the Act provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy.[1268] As discussed in Comment 7, under that provision, a benefit is normally treated as conferred where there is a benefit to the recipient.[1269] Not only is Resolute selling electricity to Hydro-Québec, but Resolute is also purchasing electricity from Hydro-Québec. For an MTAR program such as this one, where the government is acting on both sides of the transaction—*i.e.*, both selling a good to, and purchasing that good back from, a respondent—the benefit to the respondent is the difference between the price at which the government is selling the good to the company, and the price at which the government is purchasing that good back from the company.

Resolute's pulp and paper mills purchase electricity from Hydro-Québec at the L rate, which is the tariff in effect during the POR. Those same mills sell electricity back to Hydro-Québec under the PAE 2011-01 program at an administratively-set price.[1270] Thus, the benefit to

[1261] *See* Petitioner June 25, 2020 Rebuttal Brief at 108 and 111 – 112.
[1262] *Id*. at 111, citing *Lumber V Final* IDM at Comment 54.
[1263] *Id*., citing GOQ July 15, 2019 Primary QNR Response, Vol III at 12.
[1264] *Id*. at 108, citing *Groundwood Paper from Canada Final* IDM at Comment 26.
[1265] *See Lumber V Final* IDM at Comment 54.
[1266] *Id*.
[1267] The L Rate has been referred to as the Industrial L Rate and Standard L Rate.
[1268] *See* SAA at 927.
[1269] *See* section 771(5)(E) of the Act.
[1270] *See* GOQ July 15, 2019 Primary QNR Response, Vol III at 7, 12 and Exhibits QC-BIO-21, QC-BIO-35, and QC-BIO-47.

Resolute is the difference between these two prices. Consequently, we continue to find that the appropriate benchmark to calculate the benefit that Resolute received from the sale of electricity back to Hydro-Québec is the L rate.

Regarding the parties' arguments for the use of a biomass-cogenerated electricity benchmark on the basis of a "tier" under 19 CFR 351.511(a)(2), we disagree that 19 CFR 351.511(a)(2) provides the appropriate framework given the unique facts of the transaction under examination. As discussed at Comment 7 and in the *CVD Preamble*, Commerce has not codified a regulation which expressly provides instruction on how to analyze a government's purchase of goods for MTAR.[1271] We stated that "{u}nlike the case with the provision of goods and services . . . we have not had the opportunity to gain sufficient experience" with MTAR allegations and, thus, were "hesitant" to set forth how we would analyze such allegations.[1272] We stated that we "expect{ed}" that 19 CFR 351.511, regarding the provision of goods and services by a government for LTAR would provide Commerce with an approach to calculating the benefit received by a respondent where the government procures goods and services for MTAR.[1273]

However, Hydro-Québec's presence on both sides of the electricity transaction with Resolute presents an unusual situation that is different from either a standard provision program, in which the government only provides the respondent with a good, or what we envisioned as a standard procurement program at the time of the *CVD Preamble*, where the government is only a purchaser of a good from a respondent. Therefore, we disagree that our regulations establish a three-tiered hierarchy for the identification of benchmarks with regard to MTAR programs, or that an analysis informed by 19 CFR 351.511(a)(2) is necessary to calculate Resolute's benefit. For further information on the appropriate regulatory framework regarding the analysis of this type of MTAR program, *see* Comment 7.

The respondent parties assert that the L rate is a hydropower price that cannot serve as the benchmark for a biomass energy program. In support of their arguments, they rely on *Canada – Feed-In Tariff Program*, a WTO dispute. However, WTO panel and Appellate Body conclusions 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.[1274] Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel or Appellate Body dispute reports limit automatically Commerce's discretion in applying the statute in an AD or CVD proceeding.[1275] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[1276]

Commerce's determination to use the L rate is based on our interpretation of the Act regarding the calculation of benefit where a government procures a good for MTAR; the Act is fully consistent with the international obligations of the United States. Moreover, Commerce is

[1271] *See CVD Preamble*, 63 FR at 65379.
[1272] *Id*.
[1273] *Id*.
[1274] *See Corus Staal BV v. U.S.*,, 395 F. 3d 1347-49 (Fed. Cir. 2005), accord *Corus Staal BV v. U.S.*, 502 F. 3d 1375 (Fed. Cir. 2007); and *NSK Ltd. v. U.S.*, 510 F. 3d 1379-80 (Fed. Cir. 2007).
[1275] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[1276] *See* SAA at 659.

governed by U.S. law, and, as we have explained, our calculation of benefit using the L rate as a benchmark is fully consistent with section 771(5)(E) of the Act.

Further, we find that the respondent parties failed to provide any evidence that the prevailing market conditions for the provision of electricity by Hydro-Québec are differentiated based upon the manner in which the electricity is generated. The GOQ itself reported that, "Hydro-Québec pools the electricity together from the various sources and sells it for a uniform price. . . That is, the consumer does not know the underlying source of the electricity supplied by Hydro-Québec but knows that the price paid for the electricity is the same regardless of the source."[1277] Thus, Hydro-Québec makes no distinction between sources of electricity generated. The GOQ's statement is corroborated by the tariff schedules which indicate that there is no distinction. Within the schedules, the L rate is listed with no disclosure as to the source from which that electricity is generated.[1278] This evidence indicates that electricity is electricity regardless of the source from which it was generated. As such, we find no merit to the arguments that a rate for electricity which might be generated from hydropower cannot be used as a benchmark for the PAE-2011-01 program. Further, because we conclude that the appropriate benchmark to determine the benefit that Resolute received from the sale of electricity back to Hydro-Québec is the L rate, we need not address the respondent parties' arguments that Commerce must use the Merrimack Study or Coyne Study as a benchmark under 19 CFR 351.511(a)(2).

Similarly, we disagree with the respondent parties that the capital costs of biomass cogeneration electricity facilities should be taken into consideration. As explained above, we determine the amount of any benefit conferred to Resolute under the benefit-to-the recipient standard. This standard requires that we calculate the benefit by comparing the price at which the government purchased electricity to the price at which the government sold electricity; the reason for any pricing difference is not part of this analysis. As such, whether hydropower plants reflect the prevailing market conditions for biomass cogeneration plants and their associated costs is not an issue that Commerce needs to examine.

Lastly, contrary to the GOQ's assertion, *Glycine from Thailand*[1279] has no bearing on Commerce's selection of a benchmark for the PAE 2011-01 program. In that proceeding, Commerce was investigating the provision of electricity for LTAR—not the purchase of electricity for MTAR—finding that the wholesale prices on the record were not comparable to the retail prices for which the adequacy of remuneration was being measured. Here, as noted, Commerce is examining the government's purchase of electricity for MTAR where the government is both the provider and purchaser of the good. Nevertheless, the benefit-to-the-recipient standard set forth under 19 CFR 351.503(b) is proper in this situation, and the price at which Resolute purchased electricity from Hydro-Québec is the appropriate benchmark to measure the adequacy of remuneration of Resolute's sales of electricity to Hydro-Québec.

[1277] *See* GOQ July 15, 2019 Primary QNR Response, Vol III at 12.
[1278] *Id*. at Exhibits QC-BIO-33 (Chapter 5) and QC-BIO-34 (Chapter 5).
[1279] *See Glycine from Thailand IDM* at Comment 4.

Comment 56: Whether Hydro-Québec's PAE 2011-01 Program Is Specific

GOQ's Comments[1280]

- Hydro-Québec purchases green power from a wide variety of sources, with 76 contracts in effect with hydro-electric, wind, natural gas, forest biomass, and other biomass power sources.
- Commerce however ignored that evidence and focused only on the PAE 2011-01 which had 15 projects in place during the POR with 13 different suppliers. Commerce also ignored that none of the projects involved Resolute's sawmills, and one was related to biogas.
- A *de facto* specificity finding because the actual recipients are limited in number is unsupported by the evidence.

Resolute and Central Canada's Comments[1281]

- Commerce should examine biomass cogenerated PPAs in the context of government initiatives to purchase alternative forms of electricity services.
- The range of Hydro-Québec PPAs is not limited to industries dependent on forest biomass cogeneration.
- During the POR, Hydro-Québec had 75 active PPAs for alternative energy supplies with private enterprises. Almost half of the contracts were for wind farms, and the remaining were for natural gas cogeneration, hydroelectric power, biomass cogeneration, and forest biomass cogeneration. Only 18 of the total PPAs were for forest biomass cogeneration. These facts show that the PAE 2011-01 contracts are not *de facto* specific because they were awarded to a wide range of industries.

Petitioner's Rebuttal Comments[1282]

- This program is *de facto* specific because the actual recipients of the subsidy are limited in number. There were only 15 PAE 2011-01 purchase agreements with 13 companies during the POR. The recipients are limited in number when compared to the universe of potential users, *i.e.*, corporate tax filers in Québec.
- Whether Hydro-Québec maintains different programs through contracts to produce electricity from other sources is irrelevant to inquiry of specificity.
- Commerce should not compare the number of users of the program to that of other potential subsidy programs not under examination (*i.e.*, purchase power agreements for electricity produced from sources other than biomass). Such an approach has no basis in the law.

Sierra Pacific's Rebuttal Comments[1283]

- Commerce properly found that the contracts for sale of electricity to Hydro-Québec under the PAE 2011-01 were *de facto* specific under section 771(5A)(D)(iii) of the Act.
- Section 771(5A)(D)(iii) of the Act directs Commerce to determine whether a subsidy is *de facto* specific by examining the enterprises or industries that received assistance under the program being investigated, in this case the GOQ's purchases of electricity pursuant to the PAE 2011-01, and not some larger public policy interest. There is no basis in the statute or the

[1280] *See* GOQ June 8, 2020 Vol VIII Case Brief at 28 – 29.
[1281] *See* Resolute June 8, 2020 Case Brief at 30 – 32.
[1282] *See* Petitioner June 25, 2020 Rebuttal Brief at 93 – 96.
[1283] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 32 – 34.

regulations for Commerce to expand its specificity analysis beyond the scope of the subsidy program being examined.

Commerce's Position: Resolute raised these same arguments in the underlying investigation.[1284] We found the arguments unpersuasive then and continue to do so here.

We disagree with Resolute and the GOQ that Commerce's specificity analysis should focus on Hydro-Québec's relative purchase of electricity generated from various sources, such as wind, hydro-electric, natural gas cogeneration, forest biomass, etc. As discussed in Comment 7, we do not differentiate between types of electricity. Moreover, section 771(5A)(D)(iii) of the Act directs Commerce to determine whether a subsidy may be specific as a matter of fact by examining the enterprises and industries which received assistance under the program being examined. The program under examination is Hydro-Québec's PAE 2011-01. What is not under examination are other programs that Hydro-Québec may have implemented for the purchase of other types of green power and public policy initiatives the GOQ may have in place to encourage alternative energy supplies.

For the PAE 2011-01, the GOQ reported that there were 15 purchase agreements with 13 companies in place during the POR.[1285] On its face, the data show that the number of producers benefitting from the PAE 2011-01 is limited. We disagree with the argument that the program is used by a diverse set of industries and therefore, it is not *de facto* specific. The record shows that the number of companies that had PAE 2011-01 agreements is limited. The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available and used throughout an economy.[1286] It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the countervailing duty law.[1287]

Thus, we continue to find the purchase of electricity by Hydro-Québec to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because recipients of the subsidy are limited in number.

Comment 57: Whether Commerce Correctly Attributed Benefits Under the PAE 2011-01

Resolute and Central Canada's Comments[1288]

- Any subsidy from Hydro-Québec's purchase of Resolute's biomass cogenerated electricity is tied to the production of the electricity sold, or to the production of paper for which a portion of that electricity could have been used as an input.
- Neither Hydro-Québec's call for tenders or the subsequent contract mention lumber production, nor did the tender process target sawmills or any facility producing something other than electricity.
- Resolute produces and sells electricity to Hydro-Québec at the Gatineau and Dolbeau pulp and paper mills. The revenues are booked as offsets against the cost of goods sold at those mills,

[1284] *See Lumber V Final* IDM at Comment 52.
[1285] *See* GOQ July 15, 2019 Primary QNR Response, Vol III at Exhibits QC-BIO-10 and BIO-50.
[1286] *See* SAA at 930.
[1287] *Id*.
[1288] *See* Resolute June 8, 2020 Case Brief at 25 – 27.

thereby reducing the overall cost of producing paper. Further, these mills are separated physically from any sawmills and, thus, there is no transmission of electricity between them. Likewise, there was no transfer of revenue or benefit from electricity production at the pulp and paper mills to any other Resolute operating facility.
- The only exception to the attribution rule arises when the subsidy is to an input product, in which case Commerce would attribute the subsidy to both the input and downstream products produced. However, neither the payments for the electricity, nor the recaptured electricity itself, nor the pulp and paper produced at the mills, were inputs in the production of softwood lumber.

Petitioner's Rebuttal Comments[1289]
- Resolute's argument ignores the *Lumber V Final*, where Commerce found that because electricity is an input in the overall operations of the company, Commerce will attribute the subsidy to sales of all products produced by the company, including electricity, pulp and paper, and softwood lumber.[1290]
- However Resolute records the revenue from electricity sales is a business decision. Those business decisions do not dictate how Commerce should attribute subsidies.[1291]
- Commerce properly considered subsidies for electricity that Resolute produced at its pulp and paper mills to be subsidies on Resolute's overall operations.

Sierra Pacific's Rebuttal Comments[1292]
- Money is fungible and subsidies provided to one division of a company, such as a pulp and paper mill, will impact the company's overall production and sale of products.[1293] How a respondent actually uses the subsidy—for example, as offsets against the cost of goods sold at pulp and paper mills—is irrelevant to Commerce's analysis.[1294]
- In the *Lumber V Final*, Commerce found no evidence establishing that, at the time of bestowal, the benefits from the PAE 2011-01 were tied to the production or sale of paper.[1295] Resolute points to no new evidence on the record of this review that would compel a different conclusion.

[1289] *See* Petitioner June 25, 2020 Rebuttal Brief at 88–89.
[1290] *Id*. at 88, citing *Lumber V Final* IDM at 161.
[1291] *Id*. at 89, citing *CFS from China* IDM at 95 ("{G}overnment regulations may make it more or less costly to use certain inputs depending on where the product is to be sold. In such situations, it is perfectly rational for the producer to create a business model that takes these factors into account. However, these business choices should not dictate how {Commerce} attributes subsidies bestowed on the inputs.").
[1292] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 28–29.
[1293] *Id*. at 28, citing *Lumber V Final* IDM at 169.
[1294] *Id*. at 28, citing *CVD Preamble*, 63 FR at 65403 ("We have generally stated that we will not trace the use of subsidies through a firm's books and records. Rather we analyze the purpose of the subsidy based on information available at the time of bestowal. Once the firm receives the funds, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that we evince.").
[1295] *Id*. at 29, citing *Lumber V Final* IDM at 170.

Commerce's Position: Resolute raised these arguments in the underlying investigation.[1296] For the same reasons articulated then,[1297] we continue to reject Resolute's claims on how the benefit of the PAE 2011-01 program should be attributed in this administrative review.

We disagree with Resolute's argument that, because its Dolbeau and Gatineau pulp and paper mills sell electricity to Hydro-Québec, the benefit from the sales are tied to non-subject merchandise, *i.e.*, either electricity or paper. First, at Comment 6, we explain in detail why a subsidy provided to the sale of electricity is not tied to electricity. Commerce has consistently attributed the benefits from electricity subsidies to all products.

Second, the fact that Resolute manufactures non-subject merchandise at the Dolbeau and Gatineau mills does not change the fact that those mills are part of the Resolute corporate group. The Dolbeau and Gatineau mills are not distinct corporate entities, which would require Commerce to conduct an analysis under 19 CFR 351.525 (b)(6)(ii)-(v) to determine whether subsidies received by those two mills are attributable to Resolute. Rather, Resolute is the corporate entity which files the tax documents and consolidates the financial statements of all of its mills – including Dolbeau and Gatineau – as one corporate entity.[1298] Neither the statute nor Commerce's regulations "provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm."[1299] Further, Commerce does not tie subsidies on a plant- or factory-specific basis.[1300]

Commerce recognizes that money is fungible and its use for one purpose may free up money to benefit another purpose. Subsidies provided to a division of a company, such as a pulp and paper mill, will impact the overall production and sale of all other products of the company. Consequently, there is no need to address attribution because money is fungible within a single, integrated corporate entity (as opposed to a conglomeration of entities for which an analysis under 19 CFR 351.525(b)(6) may be required). The manner in which Resolute records the benefit from the PAE 2011-01 program internally within its financial accounts is irrelevant to our analysis, which is informed by our regulations and practice.

An exception is whether the subsidy is tied to the production or sale of a particular product. Section 351.525(b)(5)(i) of Commerce's regulations states that, generally, "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." In making this determination, Commerce analyzes the purpose of the subsidy based on information available at the time of bestowal.[1301] Commerce's practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed rather than examine the use or effect of subsidies (*i.e.*, to trace how the benefits are used by companies). A subsidy is only tied to a particular product when the intended use is known to the subsidy provider (here,

[1296] *See Lumber V Final* IDM at Comment 53.
[1297] *Id*.
[1298] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibits RES-NS-GEN-3, RES-NS-GEN-4, RES-NS-GEN-5, and RES-NS-GEN-6.
[1299] *See SC Paper from Canada Final* IDM at 161 (citing *CFS from China* IDM at Comment 8).
[1300] *See, e.g., SC Paper from Canada – Expedited Review – Final Results* IDM at 99.
[1301] *See CVD Preamble*, 63 FR at 65403.

the GOQ) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been previously upheld by the CIT.[1302]

There is no information on the record which establishes that, at the time of approval or bestowal, the benefits from Resolute's sale of electricity under PAE 2011-11 to Hydro-Québec were tied to the production of pulp or paper, or any other product. Rather, the record shows that Hydro-Québec's purchase of electricity under the PAE 2011-01 was an untied subsidy.[1303] Under the program, Hydro-Québec's objective is the purchase of 300 MW of energy from residual forest biomass cogeneration power plants with no qualification that such electricity be from producers of non-subject merchandise.[1304]

As noted, Commerce has found that electricity is an input to all products produced by a company.[1305] Particularly, "{e}lectricity benefits the production and manufacture of the subject merchandise since electricity is required to operate the production facilities of the softwood lumber producer."[1306] As such, under 19 CFR 351.525(a) and (b)(5)(ii) of Commerce's regulations, subsidies bestowed on the input product, *i.e.*, electricity, should be attributed to sales of all products produced by a company. Resolute has not contested the finding that electricity is consumed in the production of softwood lumber. Consequently, to the extent that Resolute receives more revenue than it otherwise would have earned under the PAE 2011-11, we attribute that benefit to Resolute's total sales as mandated under 19 CFR 351.525(a) and (b)(5)(ii).

G. Grant Program Issues

- ***Federal***

Comment 58: Whether the BC ETG / Canada – BC Job Grant Is Specific

GBC/BLTC Comments[1307]
- The GBC argues that Commerce erred in finding the program to be regionally specific, as it is part of the federal Canada Job Grant program and is available in all provinces.

Petitioner's Rebuttal Comments[1308]
- The GBC's argument that the program is not regionally specific because all provinces participate in the Canada Job Grant program is incorrect. If the GOC had instead implemented a single, federal employer training grant, the program would not be regionally specific.

Commerce's Position: The BC ETG program was established as the successor program to the Canada – BC Job Grant program and was created as part of a joint effort between the GOC and

[1302] *See, e.g., Essar Steel Ltd. v. U.S.*, 678 F. 3d at 1296.
[1303] *See* GOQ July 15, 2019 Primary QNR Response, Vol III at 1 – 20, Exhibit QC-BIO-A (and referenced exhibits), Exhibit QC-BIO-35 (PAE 2011-01 Contract between Hydro-Québec and Resolute (Gatineau), and Exhibit QC-BIO-47 (PAE 2011-01 Contract between Hydro-Québec and Resolute (Dolbeau).
[1304] *Id.* at Exhibit QC-BIO-A, p. 10.
[1305] *See* Comment 6; *see also Lumber V Final* IDM at 161.
[1306] *See Lumber V Final* IDM at 161.
[1307] *See* GBC June 8, 2020 Vol V Case Brief at 56 – 58.
[1308] *See* Petitioner June 25, 2020 Rebuttal Brief at 152 – 153.

the provinces. The GOC provides funding to provincial governments to increase labor force participation by training workers in necessary skills.[1309] Record evidence indicates that the BC ETG successor program operates in effectively the same manner as its predecessor, which Commerce determined was countervailable in the *Groundwood Paper from Canada Final*.[1310] In particular, in the *Groundwood Paper from Canada Final*, Commerce found the program was a federally administered program that was only available in British Columbia and, thus, was regionally specific under section 771(5A)(D)(iv) of the Act.[1311]

The GBC argues that the program is not regionally specific because federally funded job training programs are available in all provinces through Canada Job Fund Agreements. However, the specific program at issue is a federally-run program that limits eligibility to the enterprises in British Columbia, and thus is not available to all firms in Canada.[1312]

The GBC also argues that there are no regional limitations within British Columbia, but this argument is not relevant to whether the ETG is regionally limited within Canada. We disagree with the GBC's arguments that favor a *de jure* specificity finding. Pursuant to the SAA,

> {Commerce's longstanding} practice recognizes that subsidies granted by a state or province on a generally available basis within a state or province (*i.e.*, not limited to certain enterprises within a state or province) are not specific, and therefore are not actionable. However, central government subsidies limited to a region (including a province or state) are specific even if generally available throughout that region.[1313]

The BC ETG falls into the latter category, *i.e.*, a federal government program which is limited to a specific province, British Columbia. As such, consistent with our preliminary finding in the *Lumber V AR1 Prelim Results*, we continue to determine that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Act.[1314]

Comment 59: Whether Funds West Fraser Received for a Lignin Plant through the SDTC, IFIT, and ABF Programs Are Tied to Non-Subject Merchandise

GOA's Comments Regarding the ABF Program[1315]

- The regulatory tying standard does not allow any discretion, as it states that the Secretary "will" attribute a subsidy to a product if the subsidy is tied to production or sale of that product. The only exception is when a subsidy is tied to production of an input, in which case Commerce must attribute the subsidy to the input and downstream products. There is no justification for treating a tied subsidy as attributable to all products West Fraser produces. Commerce's practice is to evaluate tying based on intended use at the time of bestowal. The

[1309] *See* GBC NSA SQR2 at ETG-1.
[1310] *See Groundwood Paper from Canada Final* IDM at Comment 78.
[1311] *Id*.
[1312] *See* GBC NSA SQR2, Exhibit BC-AR1-ETG-7 at 1.
[1313] *See* SAA at 914.
[1314] This finding is consistent with Commerce's specificity regarding the Canada-New Brunswick Job Grant program in *Lumber V Final* IDM at Comment 56.
[1315] *See* GOA June 8, 2020 Vol IV Case Brief at 16 – 24.

bestowal documents tie the grant to lignin production, and the administering authorities were aware of this, making the program tied to non-subject merchandise.

- Commerce noted that "the source of lignin is residual wood fiber harvested from West Fraser's FMAs" and "lignin…can be used {as} a biofuel" as a basis for finding this program untied. Neither of these are reasons to find this program untied. First, the raw material inputs are not relevant to the tying determination. A grant to build a lignin plant is tied to lignin. There is no regulatory language or rational basis for taking the inputs into account. The CVD law allows for consideration of how "upstream" input subsidies benefit downstream products, but not whether downstream subsidies benefit upstream inputs. Further, there is no record evidence showing that lignin is an input to softwood lumber production. The GOA and West Fraser have both stated that lignin is not an input to softwood lumber production and these statements remain uncontroverted.
- Commerce apparently used part of the contribution agreement for a different grant that notes that lignin can be sold as a fuel. There is still no evidence that West Fraser "could have used" the lignin to produce softwood lumber. Regardless, Commerce cannot make tying determinations based on potential uses of inputs; there must be actual use to produce downstream products.
- Finally, Commerce's finding that lignin being a biofuel makes this program untied is illogical. Under this logic, *anything* that can be burned in a boiler to generate steam can be treated as an input to softwood lumber. The lignin is produced from black liquor, which itself can be bumed to generate electricity. There is no reason for West Fraser to produce lignin for use as a biofuel when it could simply burn the black liquor.

GOC's Comments Regarding the SDTC and IFIT Programs[1316]

- The SDTC and IFIT funding that West Fraser received from the GOC were both tied to non-subject merchandise and are not countervailable. By finding that these programs were not tied to a particular product because lignin *could* be used as a biofuel, Commerce failed to follow its own practice of determining the purpose of assistance based on the government's understanding at the time of bestowal. Commerce was also incorrect to compare these programs to the BPCP, which is explicitly focused on bioenergy, as opposed to lignin production.
- The application documents for these two programs state that the intent was to develop a lignin recovery process at pulp mills to use in downstream products, not to burn lignin as fuel. West Fraser's SDTC proposal stated that lignin extracted would not be burned for energy, but rather used in downstream chemical products. Costs incurred producing or exporting softwood lumber were not eligible for IFIT assistance.
- Commerce has previously found that assistance tied to merchandise produced downstream from subject merchandise cannot be attributed to subject merchandise. By focusing on how lignin could be used to produce energy to reach a non-tying determination, Commerce went against the guidance in its own regulations against tracing subsidy usage though a firm's books and records. Instead, Commerce should follow its clearly defined practice of determining the purpose of assistance as defined at the time of bestowal to find that these programs are tied to non-subject merchandise and thus not countervailable.

[1316] *See* GOC June 8, 2020 Vol. II Case Brief at 60 – 66 and 68 – 73; and GOC June 8, 2020 Vol. I Case Brief at 42 – 45.

- Commerce failed to collect information on the specificity of either SDTC or IFIT, and as such, it cannot countervail either program.

West Fraser's Comments[1317]

- Commerce preliminarily found grants West Fraser received under the SDTC, IFIT, and ABF programs for construction of a lignin plant countervailable. However, the grants were for West Fraser's production of lignin as an adhesive, which is not subject merchandise or an input to subject merchandise. Commerce was also incorrect to compare this program to the BPCP, because that program was explicitly focused on bioenergy production.
- Commerce's practice is to tie grants to the products they were intended to support, consistent with the CVD regulations' language that "{i}f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product."[1318] Commerce has developed a standard for tying based on whether the subsidy provider knows and acknowledges the subsidy's intended use prior to or concurrent with the subsidy's bestowal. In past cases, Commerce has found programs tied to non-subject merchandise to not be countervailable.
- The grants that West Fraser received under these programs were meant to generate lignin as a binding agent in the production of various non-subject wood products that are not inputs to softwood lumber. The SDTC application described West Fraser's application to build a lignin plant for use as an adhesive in plywood manufacturing and the contribution agreement signed with the government reflects the same use. In the IFIT application, West Fraser stated that the lignin would be used for plywood and veneer lumber manufacture and agreed that no IFIT funding "will be used for the production or export of softwood lumber products." Commerce has found a similar condition to make a subsidy tied to non-softwood products. The ABF application also explained that the lignin produced would be used as a resin substitute.
- Commerce found that these programs were countervailable because they supported the production of lignin, a biofuel. However, these grants were clearly conditioned on using the lignin an as adherent, a high-value use relative to using the lignin as a biofuel. Commerce compared these programs to the BPCP, but that comparison is misplaced because, while the BPCP supported bioenergy production, these programs were tied to a non-biofuel usage of lignin.

Petitioner's Comments[1319]

- The ABF, SDTC and IFIT programs are not exclusively tied to non-subject merchandise. Lignin can be used as a biofuel that would be an input to West Fraser's softwood lumber production. Commerce should continue to countervail these programs.

Commerce's Position: After evaluating the arguments presented by interested parties and re-examining the relevant documentations associated with the programs, we have reconsidered Commerce's preliminary finding on the IFIT program. The record shows that this program is. tied to non-subject merchandise and thus not countervailable in this proceeding. However, we continue to find the SDTC and ABF programs to be untied and thus countervailable.

[1317] *See* West Fraser June 8, 2020 Case Brief at 37 – 47.
[1318] *See* 19 CFR 351.525(b)(5)(i).
[1319] *See* Petitioner June 25, 2020 Rebuttal Brief at 153 – 156 and 254 – 255.

In the *Lumber V Prelim*, we found the NIER program tied to non-subject merchandise, as the program's eligibility criteria explicitly stated that sawmills were ineligible from receiving assistance under the program.[1320] The IFIT program has an analogous restriction that costs associated with the production or export of softwood lumber cannot be funded by the program.[1321] Similarly, after examining the relevant program documentations associated with IFIT, we find that this restriction makes the IFIT program tied to non-subject merchandise.

By contrast, neither the ABF nor the SDTC program contains such a restriction. The relevant program documents, which are business proprietary, outline a wide range of eligible activities that the company may carry out, contrary to the Canadian Parties' claim that the funds can only be used for the production of lignin as an adhesive.[1322] While the Canadian Parties claim that Commerce's preliminary finding that the lignin can be burned as a biofuel is speculative, record evidence shows otherwise.[1323] As such, we continue to find these programs untied and attributable to all of West Fraser's sales.

The GOC also argues that Commerce failed to collect information on SDTC and IFIT that would allow for a specificity determination for either program.[1324] This issue is moot for IFIT due to our finding that IFIT is tied to non-subject merchandise. For the SDTC, however, we disagree with the GOC's assertion that Commerce cannot countervail this program based on a lack of information. First, the GOC incorrectly claims that Commerce failed to request this information.[1325] Rather, the GOC did not provide the information on the program in the *Standard Questions Appendix* and *Grant Appendix*,[1326] but we relied on the information in West Fraser's SDTC response that "in order to receive funds, the projects must address issues related to climate change, air quality, or clean water and soil," a description supported by the accompanying documents West Fraser submitted with its response.[1327] Based on this information, as well as additional details on program eligibility in the bestowal documents submitted with West Fraser's response, we continue to find this program limited to companies operating in the "cleantech" industry and thus *de jure* specific under section 771(5A)(D)(i) of the Act.

- ***Alberta***

Comment 60: Whether the Bioenergy Producer Program Is Countervailable

GOA's Comments[1328]

- In the *Lumber V AR1 Prelim Results*, Commerce adopted its findings from the investigation regarding the BPCP, the predecessor to the BPP, in which it found that the BPCP is expressly

[1320] *See Lumber V Prelim* PDM at 87.
[1321] *See* GOC December 9, 2019 NSA QR Response at 17; and West Fraser 2nd NSA QR Response at Exhibit WF-AR1-IFIT-3.
[1322] *See* West Fraser 2nd NSA QR Response at Exhibit WF-AR1-SDTC-4 and Exhibit WF-AR1-ABF-1.
[1323] *Id.* at Exhibit WF-AR1-SDTC-4 and Exhibit WF-AR1-ABF-4.
[1324] *See* GOC June 8, 2020 Vol II Case Brief at 66 – 68 and 73 – 74.
[1325] *Id.* at 67.
[1326] *See* GOC December 9, 2019 NSA QR Response at 36.
[1327] *See* West Fraser's Volume II IQR Response at 89 and Exhibit WF-AR1-SDTC-1 through WF-AR1-SDTC-4
[1328] *See* GOA's June 8, 2020 Case Brief at Vol IV 25 – 27. West Fraser reiterated the same comments regarding the BC Hydro Power Smart Subprograms. *See* West Fraser's Non-Stumpage Case Brief at 60 – 64.

limited to bioenergy producers and attributed the benefit from the BPP to West Fraser's overall production because West Fraser produced energy under the BPP to power the company's operations.
- Contrary to Commerce's findings, record evidence reveals an "intended link" in the bestowal documents between West Fraser's BPP grant and the production of bioenergy, non-subject merchandise. The West Fraser application and approval on the record indicates that the intended purpose of the grant is to produce bioenergy to produce steam and electricity used at West Fraser's kraft pulp mill, which produces bioenergy. Neither the steam nor the electricity generated by the kraft pulp mill was used as an input in the production of subject merchandise.
- Further, the GOA's published materials and guidelines regarding the BPP program establish that the BPP "is intended to support bioenergy production capacity in Alberta."

Petitioner's Rebuttal Comments[1329]
- The GOA and West Fraser erroneously claim that Commerce's practice is to consider a subsidy to be countervailable "only if it 'is provided with respect to the manufacture, production or sale of' softwood lumber."
- The bestowal documents on the record, such as the application for this program, continue to demonstrate that Commerce correctly found the BPP to be countervailable and should continue to do so for the final results.

Commerce's Position: We disagree with the arguments by the GOA and West Fraser that record evidence demonstrates that funding provided under the BPP is tied to non-subject merchandise. Section 351.525(b)(5)(i) of Commerce's regulations states that "{i}f a subsidy is tied to the production or sales of a particular product, {Commerce} will attribute the subsidy only to that product." To determine whether a subsidy is "tied," Commerce's focus is on "the purpose of the subsidy based on information available at the time of bestowal" (*i.e.*, when the terms for the provision are set), and not on how a firm has actually used the subsidy.[1330] Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents (*e.g.*, the application, contract or approval) explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.[1331]

During the POR, West Fraser's affiliate, Blue Ridge Lumber Inc., received funding under the BPP.[1332] In its initial questionnaire response, when asked whether the application or approval specified the merchandise for which assistance under the BPP was to be provided, West Fraser stated that the application form required Blue Ridge Lumber Inc. to "(i) describe the applying facility and production process, (ii) indicate the type of bioenergy production proposed for the program, and (iii) specify proposed production volumes."[1333] Further, the GOA required that the funding under this program "only support bioenergy production that leads to greenhouse gas reduction when compared to a conventional alternative" and that "the bioenergy product {must} lead{} to an emission reduction when compared to the conventional alternative."[1334]

[1329] *See* Petitioner June 25, 2020 Rebuttal Brief at 249 – 251.
[1330] *See CVD Preamble*, 63 FR at 65403.
[1331] *Id.* at 65402; *see also CRS from Korea* IDM at Comment 14; *and Solar Cells from China* IDM at Comment 13.
[1332] *See* West Fraser IQR at WF-II-237.
[1333] *Id.*
[1334] *Id.* at Exhibit WF-AR1-BPP-1 at 2.

We examined GOA documents describing the BPP, the application submitted by Blue Ridge Lumber Inc., and the agreement between the GOA and Blue Ridge Lumber Inc., and we find that there is no evidence in these documents indicating that BPP grants are tied to non-subject merchandise at the time of bestowal.[1335] The GOA program description and guidelines indicate that the purpose of the BPP was to "support bioenergy production capacity in Alberta in order to reduce greenhouse gas emissions through the use of fossil fuel alternatives and create value-added opportunities with economic benefits."[1336] Further, Blue Ridge Lumber Inc.'s grant application and grant agreement do not indicate that approval is linked to any specific product. Rather, the documents related to the BPP indicate that the program is intended for bioenergy producers, and there is no limitation on the type of production necessary to qualify, as bioenergy is a byproduct of the production process.[1337] In fact, West Fraser stated that "the {BPP} application form proposed to use burn biomass residuals from the sawmill process (hog fuel and sawdust) to produce heat."[1338] Therefore, the company's softwood lumber or pulp production may generate as a byproduct the types of biofuels that are supported by funding under the BPP.[1339]

Under the CVD regulations, if subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, Commerce will attribute the subsidy to sales of all products produced by the company.[1340] Because electricity is required to operate the production facilities of West Fraser, the benefit from the investigated program is attributed to all products produced by West Fraser under 19 CFR 351.525(a).

Accordingly, we find that the funding received under the BPP was not tied to the production or sale of a specific product, but rather was intended to benefit West Fraser's production of energy, which is used to power West Fraser's operations and, therefore, we continue to attribute the BPP grant benefits to West Fraser's overall production pursuant to 19 CFR 351.525(b)(5)(ii).[1341] Further, we continue to find that the BPP constitutes a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act; is expressly limited to bioenergy producers and, therefore, *de jure* specific in accordance with section 771(5A)(D)(i) of the Act; and confers a benefit equal to the amount of the grant received, as provided under 19 CFR 351.504(a) and section 771(5)(E) of the Act.

[1335] *Id.* at Exhibits WF-AR1-BPP-2, WF-AR1-BPP-3, and WF-AR1-BPP-4.
[1336] *See* GOA IQR, Vol II at ABI-3.
[1337] *See, e.g.*, GOA IQR, Vol II at ABII-14; *see also* West Fraser IQR, Vol I at WF-I-7; and West Fraser January 3, 2020 SQR at S5 – S6.
[1338] *See* West Fraser IQR, Vol II at WF-II-237.
[1339] *Id.*
[1340] *See CVD Preamble*, 63 FR at 65400.
[1341] In the *Lumber V AR1 Prelim Results*, we also found that Canfor received funding under the BPP, which we attributed to Canfor's total sales, and we continue to find the benefit under this program attributable to Canfor's total sales for these final results. *See Lumber V AR1 Prelim Results* PDM at 43 – 44.

- ***British Columbia***

Comment 61: Whether Payments for Aerial Inventory Photography and LiDar Are Countervailable

Petitioner's Comments[1342]

- The payments do not represent remuneration for a service rendered, but rather the conferral of a grant. The data Canfor leased to BCTS was either already collected or simultaneously collected by Canfor when surveying its own tenure. The payments offset Canfor's costs incurred to collect the data and allow Canfor to retain property ownership of the data.
- The program operates similarly to the Carbon Offset Grants program, in which Canfor sells Offset Units to the GBC, and which Commerce preliminarily found to confer a benefit in the form of a grant because the GBC ultimately reimbursed Canfor for expenditures related to the firm's environmental projects.

Sierra Pacific's Comments[1343]

- Canfor contracted with service providers to perform LiDar imaging surveys of Canfor's operating area, and BCTS leased subsets of Canfor's datasets for its own use. Because Canfor surveyed BCTS's operating area while in the process of surveying its own operating area, the costs that Canfor incurred for LiDar services in areas outside its tenure were incurred as part of its normal course of business.
- The payments relieved Canfor of a financial burden it incurred in its normal course of business and therefore constitute a financial contribution that confers a benefit.

Canfor's Rebuttal Comments[1344]

- Canfor's agreement with BCTS indicates that the services performed were in accordance with detailed criteria specified by BCTS, and thus were not activities Canfor performed in its normal course of business. Whether or not Canfor surveyed its own tenure and BCTS's operating area within the same timeframe is irrelevant. Canfor's tenure obligation does not include surveying BCTS's operating area.
- The payments do not operate as a "gift-like transfer" because BCTS received a service in exchange for its payment.[1345]

Canfor retains partial ownership of the BCTS data, but there is no record evidence suggesting that Canfor used such data for anything other than providing it to BCTS in accordance with the agreement.

GBC/BCLTC Rebuttal Comments[1346]

- The record contains no information to support the petitioner's assertion that the imaging activities for which BCTS paid are related to Canfor's tenures or were part of Canfor's tenure obligations.

[1342] *See* Petitioner June 8, 2020 Case Brief at 78 – 81.
[1343] *See* Sierra Pacific June 8, 2020 Case Brief at 12 – 13.
[1344] *See* Canfor June 25, 2020 Rebuttal Brief at 26 – 29.
[1345] *Id.* at 28, citing *Government of Sri Lanka v. U.S.* 308 F. Supp. 3d at 1383.
[1346] *See* GBC June 25, 2020 Vol I Rebuttal Brief at 27 – 31.

- The payments for aerial photography and LiDar constitute the government purchase of a service. The contract between Canfor and BCTS contains precise specifications for the imaging activities, including flight line overlap, scan angle, and flying height.
- BCTS paid Canfor to use helicopters and airplanes to fly over BCTS land and take photographs and LiDar of the areas. This payment does not constitute a grant or a gift-like transfer. These activities clearly constitute a service and are not countervailable.
- Even if the purchase of LiDar imaging was defined as the purchase of a good, there is no record evidence suggesting that BCTS paid more than adequate remuneration, and the petitioner does not make such an allegation.

Commerce's Position: We disagree with the petitioner's claim that BCTS's payment to Canfor for imaging activities constitutes a financial contribution in the form of a grant within the meaning of section 771(5)(D)(i) of the Act. For the reasons discussed below, we find the arguments raised by the petitioner and Sierra Pacific to be unpersuasive and continue to find the payments made by BCTS to Canfor for aerial photography and LiDar imaging not countervailable.

Canfor surveyed BCTS lands using LiDar and aerial imaging in accordance with specifications detailed in a contract between the two parties. Canfor produced datasets from the imaging activities it performed, then leased the datasets to BCTS. The petitioner and Sierra Pacific suggest that Canfor performed such imaging activities of BCTS's lands simultaneously while in the process of collecting data within its own tenure area for its own use. The petitioner also suggests that the datasets Canfor leased to BCTS may have been collected already, and thus required no additional imaging activities beyond those that Canfor would have performed on its own tenure lands for its own data collection. However, the record indicates that Canfor surveyed specific areas of forest land owned by BCTS as part of the data collection.[1347] We agree with Canfor that whether it surveyed its own tenure and BCTS's operating area simultaneously or separately is not relevant in determining if payments for such activities constitute a financial contribution in the form of a grant.

The transaction at issue is BCTS's payment in exchange for the surveying and leasing of the imaging datasets collected by Canfor. Critically, Canfor engaged in aerial and LiDar imaging on lands *that are not part of its tenure area* and provided the data collected through such activities to BCTS.[1348] There is no evidence that surveying land outside of its own tenure area is part of Canfor's tenure obligations and indeed would not have taken place in Canfor's normal course of business. In the absence of government payments to lease access to aerial photographs and LiDar imaging data, Canfor would not have provided the data it collected to BCTS. BCTS payments to Canfor do not constitute a grant, because Canfor received payment in exchange for certain activities unrelated to its tenure obligations.

Although parties have not raised an MTAR allegation pursuant to sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act, the government purchase of services is not countervailable under the statute, and the record does not contain information indicating that the GBC paid more than adequate remuneration if this were considered the government purchase of a good.

[1347] *See* Canfor IQR at Exhibit E-17 (Sample LiDar Agreement and Invoice) at Schedule B.
[1348] *See* GBC Post Prelim SQR at BC-SVCS-5 and Exhibit BC-AR1-SVCS-7.

The petitioner likens BCTS payments for aerial photography and LiDar imaging to the Carbon Offsets Grants program discussed at Comment 63. We disagree with this comparison. The petitioner's argument assumes that the carbon offset units purchased by the GBC are goods, a premise we have rejected for the final results. In the case of the carbon offsets, Canfor received payments from the GBC for engaging in environmental projects that ultimately benefited its own operations. Canfor may have undertaken such environmental projects without the additional incentive of receiving payment for offset units resulting from such projects. By contrast, in the case of the BCTS payments at issue, Canfor would not have surveyed BCTS forest areas outside of its own tenure area and provided the data collected to BCTS as part of its normal course of business, absent the contracts under this program.

Comment 62: Whether FRPA Section 108 Payments to Canfor Are Countervailable

Petitioner's Comments[1349]

- The FRPA Section 108 legislation operates as a grant program that relieves tenure holders from obligatory expenses related to establishing free-growing stands, and in certain circumstances, relieves tenure holders from this obligation entirely. Commerce should reverse its preliminary finding and determine that payments made under this program constitute a countervailable subsidy in the final results.
- If damage from "eligible events" does not occur and "significant extra expense" is not required to repair such damage, then tenure holders must fulfill their obligations to establish free-growing stands without such government assistance. If funding under the FRPA Section 108 legislation was not guaranteed in such instances, then all tenure holders would be responsible for all expenses associated with restoring damaged stands, regardless of the nature of the damage or the associated costs. FRPA Section 108 funding offsets a portion of costs that tenure holders are required to incur.

Sierra Pacific's Comments[1350]

- Any costs associated with establishing free growing stands, including costs associated with repairing damage to growing stands, should be included in the costs a tenure holder is obligated to incur as part of its normal operations. A tenure holder's "normal operations" include establishing a free growing stand. FRPA Section 108 funding relieves tenure holders of costs they are legally obligated to incur.
- The *CVD Preamble* explains that a respondent's costs are to be construed broadly and are not strictly limited to inputs used to produce subject merchandise.[1351] Further, Commerce has found government payments for costs incurred to be countervailable as grants whether related directly to managing inputs for subject merchandise or to a producer's broader operations, such as ensuring efficient supply chain operations.[1352]

[1349] *See* Petitioner June 8, 2020 Case Brief at 81 – 84.
[1350] *See* Sierra Pacific June 8, 2020 Case Brief at 12 – 13.
[1351] *Id.* at 10, citing *CVD Preamble*, 63 FR at 65360.
[1352] *Id.* at 11, citing *SC Paper from Canada – Expedited Review – Final Results* IDM at 115.

Canfor's Rebuttal Comments[1353]

- Even if "normal operations" is interpreted broadly, the definition would have to be expanded to include damage from unpredictable events such as wildfires, landslides, or floods. Such extreme events are outside of Canfor's control.
- The example in *SC Paper from Canada – Expedited Review – Final Results* cited by Sierra Pacific is related to reimbursements for silviculture and license management activities.[1354] This is not analogous to funding provided by the FRPA Section 108 payments at issue, in which the government pays tenure holders for their services in repairing damage caused by extraordinary events such as fires or landslides.
- The tenure holder is not obligated to bear expenses related to events outside of its control. The GBC explained that repair and restoration related to such extraordinary events are maintenance and regeneration activities that the GBC itself would otherwise perform.

Commerce's Position: The petitioner's claim that tenure holders are obligated to establish free growing stands at any cost, regardless of the magnitude of damage caused by unpredictable adverse events that are beyond the control of a tenure holder, is not supported by the record evidence. The GBC stated that, with regard to activities performed to repair damaged stands, "the {GBC} pays the tenure holders to complete maintenance and regeneration tasks that the Crown itself would otherwise perform."[1355] If the GBC is responsible for the costs associated with repairing and restoring damage caused by adverse and extreme events such as wildfires, landslides, and floods on tenure holders' lands, then it follows that such activities are not within tenure holders' obligations to establish free growing stands. The GBC may contract with service providers to perform such repair activities on Crown land, and in this case, the GBC paid Canfor for repair activities on its tenure. As noted in the Canfor/West Fraser Post-Prelim Decision Memorandum, the government purchase of services is not countervailable, and the record does not contain information indicating that the GBC paid Canfor more than adequate remuneration if this were considered the government purchase of a good.[1356]

Sierra Pacific argued that the *CVD Preamble* indicates that a respondent's costs are to be construed broadly and are not strictly limited to inputs used to produce subject merchandise. However, even with the broadest definition of "costs," this does not negate the facts on the record, specifically that the costs associated with repair activities that result from an unpredictable natural disaster are not included in Canfor's tenure obligations and thus are not part of its costs. These activities and their associated costs are the responsibility of the GBC.

Sierra Pacific also cited to *SC Paper from Canada – Expedited Review – Final Results* as support for its argument that Commerce has "previously found government payments for costs incurred to be countervailable as grants whether they relate specifically to managing of inputs or to a producer's operations more broadly, such as ensuring the efficient operations of its supply chain."[1357] In this example, the government reimbursed the respondent for "costs it incur{red} in the course of managing its input{s}and ensuring the efficient operation of its supply chain, *i.e.*,

[1353] *See* Canfor June 25, 2020 Rebuttal Brief at 29 – 33.
[1354] *Id.* at 30, citing *SC Paper from Canada – Expedited Review – Final Results* IDM at 108 – 116.
[1355] *See* GBC Post Prelim SQR at BC-S108-2.
[1356] *See* Canfor/West Fraser Post-Prelim Decision Memorandum at 10.
[1357] *See* Sierra Pacific June 8, 2020 Case Brief at 11, citing *SC Paper from Canada – Expedited Review – Final Results* IDM at 115.

activities it was obligated to undertake as part of its operations;" thus, Commerce found such reimbursement payments countervailable.[1358] However, there are fundamental differences between the activities referenced in *SC Paper from Canada – Expedited Review – Final Results* and those at issue here. Reimbursements in *SC Paper from Canada – Expedited Review – Final Results* were for costs the respondent would have incurred during the course of managing its inputs and ensuring the efficiency of its supply chain operations. Managing the inputs required to produce softwood lumber and establishing and maintaining an efficient supply chain are business activities that must be undertaken by all tenure holders, including Canfor. Unlike the activities undertaken by the respondent in *SC Paper from Canada – Expedited Review – Final Results*, government payments to Canfor under this program are related to activities that, save for the occurrence of extreme and unpredictable events, would not need to be performed in its normal course of business, and in fact are the responsibility of the GBC.[1359]

The GBC further clarified the distinction between the activities eligible for FRPA Section 108 funding and those that are part of a tenure holder's obligations, explaining that ineligible expenses are "{a}ny expenditures associated with planned activities that were not executed prior to the damaging event (*e.g.*, if the damaged stand would likely have required brushing even if the event had not occurred, then brushing is not an extra expense)."[1360] It is clear that the funding under this program is only available for expenses related to damage from extraordinary events, and not for activities that are undertaken as part of a tenure holder's obligations to establish free growing stands. Accordingly, we continue to find it appropriate to not treat these payments as grants. Although parties have not raised an MTAR allegation pursuant to sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act, the government purchase of services is not countervailable under the statute, and the record does not contain information indicating that the GBC paid more than adequate remuneration if this were considered the government purchase of a good. Thus, we continue to find these payments are not countervailable under sections 771(5)(D)(i) and 771(5)(E) of the Act.

Comment 63: Whether the Purchase of Carbon Offsets from Canfor Is Countervailable

GBC's Comments[1361]

- The GBC did not provide a grant to Canfor, but rather purchased a good at negotiated prices for market value. The "good" purchased is offset units, defined as the reduction or removal of one ton of carbon dioxide equivalent emissions into the atmosphere.
- In the *Lumber V AR1 Prelim Results*, Commerce inaccurately described the carbon offset program as a reimbursement, which implies that Canfor provided its project costs to the GBC, and the GBC subsequently paid Canfor for these costs. However, this is incorrect because the GBC receives something of value in return for its payment – an offset unit that has market value.
- If analyzed as the purchase of a good, the carbon offsets program does not provide a countervailable benefit because the GBC did not purchase the offset units for MTAR. During

[1358] *See SC Paper from Canada – Expedited Review – Final Results* IDM at 115.
[1359] *See* GBC Post Prelim SQR at BC-S108-2.
[1360] *Id.* at Exhibit BC-AR1-S108-2 (FRPA General Bulletin) (p. 2).
[1361] *See* GBC June 8, 2020 Vol V Case Brief at 66 – 72.

the POR, the prices for offset units purchased by the GBC from Canfor were within the lower end of the range and below the average of benchmark prices.
- Alternatively, Commerce should consider the carbon offset program to represent payment for the provision of a service, because the GBC pays Canfor in exchange for a public service: the reduction of greenhouse gas emissions. In this case, the carbon offsets program is similar to uranium enrichment contracts, in which the CAFC held that payments for such services were not countervailable under the statute.[1362]

Canfor's Comments[1363]
- The GBC's purchase of carbon offset units from Canfor represent the purchase of a good, rather than a reimbursement for expenditures related to Canfor's environmental projects. If Commerce treats this program as a countervailable subsidy, the payments from the GBC to Canfor should be treated as purchases of goods for MTAR.
- The unit prices were negotiated on a transactional basis between the seller and the buyer, and other market-based factors such as existing or prospective prices for comparable units. Canfor was not required to disclose its costs in this transaction, which is further evidence that the payments are not reimbursements. Once offset units are issued to the BC Carbon Registry, they are freely tradeable and may be sold to other parties, including, but not limited to, the GBC.
- For an MTAR analysis, Commerce should use the listing of offset units purchased by the GBC during the POR. The GBC provided benchmark prices for offset transfers in British Columbia and Québec, which satisfies Commerce's preference for in-country, market determined benchmarks. When these prices are used to calculate the benefit conferred to Canfor for its sales of offset units, it results in no benefit to Canfor as the prices at which the CIB purchased Canfor's offset units are lower than any of the benchmarks on the record.

Petitioner's Rebuttal Comments[1364]
- Whether or not the GBC's payments to Canfor are reimbursements for its stated costs, such payments still constitute a financial contribution in the form of a direct transfer of funds. Record evidence from a GBC report indicates that through the "combined incentive of offset revenue and a reduced annual carbon tax bill," the program allowed a recipient firm to complete a multi-million dollar project.[1365] In order to qualify for carbon offset projects, the GBC requires applicants to demonstrate that carbon offset sales will help overcome barriers to implementing a project. The program is similar to load curtailment programs, which Commerce has treated as grants in previous cases.[1366]
- Record evidence indicates that the market for carbon offsets is not based on market forces of supply and demand. Rather, the carbon offset "market" is a funding mechanism in which the GBC acts as a regulator and purchaser by "establishing the parameters for the market . . . and the rules for creating and distributing emission units, establishing registries, issuing credits, and

[1362] *See* GBC June 8, 2020 Vol V Case Brief at 72, citing *Eurodif v. U.S.*
[1363] *See* Canfor June 8, 2020 Case Brief at 18 – 25.
[1364] *See* Petitioner June 25, 2020 Rebuttal Brief at 167 – 171.
[1365] *Id.* at 169, citing Petitioner NSA Second Submission at Exhibit 59 (p. 19).
[1366] *Id.* at 169, citing *Lumber V Final* IDM at Comment 58; *Groundwood Paper from Canada Final* IDM at Comment 66; *Carbon & Alloy Steel Wire Rod from Italy* IDM at Comment 2; and *Silicon Metal from Australia Final* IDM at Comment 2.

setting rules for enforcement…"[1367] The fact that offset units may be sold to other non-governmental parties does not necessarily indicate that the prices are market-based.
- Because Commerce has analyzed the carbon offsets program as a grant, the use of a benchmark to measure the benefit is unnecessary.

Commerce's Position: The GBC and Canfor claim that the GBC's payments to Canfor for offset units cannot be reimbursements because Canfor was not required to provide the costs for an emissions-reducing project to the GBC in order to receive the payment. However, we agree with the petitioner that regardless of whether the payment is explicitly based on Canfor's estimated or actual costs incurred for the environmental project,[1368] the payment received by Canfor provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and bestows a benefit in the amount of the reimbursement under section 771(5)(E) of the Act and 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1369] Further, whether the payment amount is precisely equivalent to the total costs incurred by Canfor is immaterial when considering if it constitutes a financial contribution that confers a benefit.

We also disagree that it is necessary to treat offset units as goods rather than as a grant, as the GBC and Canfor have proposed. The GBC payments operated as an incentive to Canfor to invest in equipment and related systems designed to reduce its carbon emissions. Whether Canfor's decision to engage in such a project was motivated by its own environmental objectives or for other strategic business purposes, proprietary information located in Canfor's response indicates this program ultimately benefitted Canfor's overall operations, and the GBC payments defrayed the total costs incurred.[1370] Even though other entities may also purchase offset units from Canfor, the record indicates that, during and prior to the POR, the GBC made payments to Canfor for offset units that it would not have made otherwise in the absence of the program. Therefore, we continue to find that the GBC's carbon offset payments to Canfor constitute a grant with a benefit in the amount of the payment received.

We have not changed our analysis of this program and continue to treat it as a grant, not a good or service, and thus we need not consider the GBC's and Canfor's arguments pertaining to an MTAR analysis.

Comment 64: Whether the Miscellaneous Payment from BC Hydro to West Fraser Is Countervailable

GBC/BCLTC's Comments[1371]
- Commerce should not have countervailed the miscellaneous payment by BC Hydro to West Fraser. The payment was to purchase a service, which is not countervailable under the Act. Also, it was not a "grant" per Commerce's definition of a "gift-like transfer," but compensation

[1367] *Id*. at 170, citing Petitioner Benchmark Submission at Exhibit 5 (United Nations Development Programme, "Financing Solutions for Sustainable Development – Carbon Markets," p. 3).
[1368] *See Groundwood Paper from Canada Final* IDM at 223.
[1369] *See CVD Preamble*, 63 FR at 65361.
[1370] *See* Canfor IQR at Exhibit F-11.
[1371] *See* GBC June 8, 2020 Vol V Case Brief at 118 – 120.

for services rendered. Finally, the payment neither supported West Fraser's overall operations, nor was tied to subject merchandise.
- Commerce acknowledged multiple times in the Post-Preliminary Results that BC Hydro purchased services from West Fraser. For example, "the GBC submitted an itemized expense list for the services rendered by West Fraser"[1372] and "BC Hydro ultimately reimbursed West Fraser for expenditures related to the activities that West Fraser performed…for BC Hydro on projects related to energy production."[1373]

Petitioner's Rebuttal Comments[1374]
- Commerce should continue to countervail this payment.
- The payment, a direct transfer of funds, is a financial contribution under section 771(5)(D)(i) of the Act. Commerce has found in this proceeding that the provision of electricity is a provision of a good, and this specific case concerns payments that supported the energy needs of West Fraser's overall operations. Commerce has consistently rejected the argument that a grant cannot exist when a government pays a private party for activities performed by the private party.
- The payment supported West Fraser's energy needs, and thus, the GBC is incorrect to claim that it does not concern West Fraser's overall operations.

Commerce's Position: We continue to find that this payment is a financial contribution under section 771(5)(D)(i) of the Act and confers a benefit in the form of a grant under section 771(5)(E) of the Act and 19 CFR 351.504(a).

First, we disagree that this program is the purchase of a service, rather than a grant. West Fraser incurred costs from an energy infrastructure project linked to the company's own operations.[1375] This project was linked to West Fraser's energy infrastructure and ultimately could have benefited West Fraser's overall operations; thus, the BC Hydro payments defrayed the total costs incurred. In analyzing the benefit received by a grant, Commerce considers the benefit to be the amount of grant received by the company, pursuant to 19 CFR 351.504(a). Under 19 CFR 351.504, Commerce does not contemplate any advantages the government might receive by administering the program.[1376]

As discussed in Comment 8, we disagree that Commerce must define "benefit" as a "gift without consideration." Rather, consistent with the regulations, we measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, in this case a grant.[1377] Under this framework, grant payments of the associated costs incurred are, in fact, a benefit to the respondents.

Finally, we disagree with the GBC that Commerce cannot find this program to support West Fraser's overall operations. The GBC's claim is based on information that postdates West

[1372] *See* Canfor/West Fraser Post-Prelim Decision Memorandum at 5.
[1373] *Id.* at 6.
[1374] *See* Petitioner June 25, 2020 Rebuttal Brief at 161 – 166.
[1375] *See also* WF Post Prelim SQR1 at 15; and GBC Post Prelim SQR at 1 – 2.
[1376] *See CVD Preamble*, 63 FR at 65361 ("{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the 'effect' of a subsidy.").
[1377] *See* 19 CFR 351.503(a).

Fraser's receipt of the funds,[1378] and thus, is not relevant to determining attribution under Commerce's consistent practice of determining attribution of a subsidy at the time of bestowal.[1379]

Comment 65: Whether the BC Hydro Power Smart Subprograms Provide a Financial Contribution and Are Specific

GBC/BCLTC's Comments[1380]

- Two BC Hydro Power Smart subprograms, Energy Manager and Incentives, are neither *de jure* specific because all BC Hydro customers are permitted to use at least one component of these subprograms and participation in each subprogram is not limited to any particular enterprises or industries, nor are they *de facto* specific since there is no positive evidence that only a limited number of enterprises or industries used them.
- Commerce found the Energy Manager subprogram to constitute a financial contribution, even though it relied solely on its finding in the investigation without explaining why the funds under this subprogram meet the definition of a financial contribution.
- Commerce should find that the Energy Manager and the Incentives subprograms constitute a non-countervailable purchase of a service by BC Hydro and do not provide direct financial assistance to the customer since both subprograms compensate customers to develop and maintain energy plans that result in energy savings for BC Hydro and promote the provincial utility's conservation efforts.

Petitioner's Rebuttal Comments[1381]

- The Energy Manager subprogram is *de jure* specific because eligibility is expressly limited to "industrial customers that use more than 10 GWh of electricity per year" and to "customers large enough to warrant a full-time energy manager participating in the Energy Managers subprogram," contrary to the GBC's claim that the subprograms are available to all of BC Hydro's customers.
- Similarly, the Incentives subprogram is *de jure* specific as it is limited to industrial customers who "use more than one GWh of electricity per year" and can demonstrate that their projects will have "a projected savings of at least 300 megawatt-hours annually."
- Record evidence also supports finding the subprograms *de facto* specific under section 771(5A)(D)(iii)(II) of the Act since the pulp and paper and wood subsectors received the largest amount of payments under these subprograms and under section 771(5A)(D)(iii)(I) of the Act as users of the Power Smart subprograms are limited in number.
- While the Canadian Parties argue that the Power Smart program constitutes the purchase of a service, record evidence demonstrates that "Power Smart funds are provided by BC Hydro to customers to incentivize DSM initiatives to be undertaken by the customer," and funding granted under the energy studies component of the Energy Manager and Incentives subprograms is tied to the implementation of a capital project achieving a certain level of

[1378] *See* GBC Post Prelim SQR at Exhibit BC-ARI-BCHSUPP-1.
[1379] *See CVD Preamble*, 63 FR at 65403.
[1380] *See* GBC June 8, 2020 Vol V Case Brief at 73 – 85. West Fraser reiterated the same comments regarding the BC Hydro Power Smart Subprograms. *See* West Fraser June 8, 2020 Case Brief at 67 – 69.
[1381] *See* Petitioner June 25, 2020 Rebuttal Brief at 171 – 175.

energy savings and thus constitutes a financial contribution in the form of the "direct transfer of funds, such as grants," within the meaning of section 771(5)(D)(i) of the Act.

Commerce's Position: After analyzing the arguments submitted by the interested parties, we find no reason to change our specificity determinations that we made with respect to the BC Power Smart subprograms in the *Lumber V AR1 Prelim Results*. We continue to find the Energy Manager and Incentives subprograms to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

As an initial matter, while the GBC argues that the Power Smart subprograms are not *de jure* specific because all two million of BC Hydro's Industrial, Commercial, and Residential customers are permitted to use at least one component of these subprograms, and that they are not limited to particular enterprises or industries, we find it is necessary to examine each subprogram individually as the GBC itself states that "{e}ach subprogram has different eligibility criteria."[1382]

With regard to the Incentives subprogram, record evidence demonstrates that eligibility is limited to industrial customers that consume more than 1 GWh of electricity annually and can identify an energy efficiency upgrade that meets certain minimum requirements, such as projected savings of at least 300 megawatt-hours annually and an expected lifespan of five years or more.[1383] With regard to the Energy Manager subprogram, record evidence shows that eligibility is limited to industrial customers that use more than 10 GWh of electricity per year.[1384]

Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. As described above and in the *Lumber V AR1 Prelim Results*, the subsidies that are provided by BC Hydro under each subprogram are expressly limited by law to enterprises that meet specific energy consumption requirements, meaning that the GBC has established, by law, a limited group of enterprises that may receive grants from BC Hydro under the Energy Manager and the Incentives subprograms. The fact that the GBC may not have limited eligibility for these subprograms to specific industries, as the GBC contends, does not alter this conclusion.

With regard to the GBC's arguments that Commerce did not cite to positive evidence on the record of this review in finding that the Energy Manager subprogram constitutes a financial contribution, in the *Lumber V AR1 Prelim Results*, we relied on and cited directly to evidence submitted by the GBC and West Fraser on the record of this review to support our finding that West Fraser received a financial contribution from the GBC under the Energy Manager subprogram in the form of grants.[1385]

Therefore, we continue to find that the Energy Manager and the Incentives subprograms constitute a financial contribution under section 771(5)(D)(i) of the Act and are *de jure* specific under section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity under

[1382] *See* GBC IQR at Vol II BC-II-6 and BC-II-21.
[1383] *Id*. at Vol II, Exhibit BC-AR1-BCH-3 at 1 and Exhibit BC-AR1-BCH-4 at 1.
[1384] *Id*. at Vol II, Exhibit BC-AR1-BCH-5 at 3.
[1385] *See Lumber V AR1 Prelim Results* PDM at 46 (citing West Fraser IQR at WF-II-5 and Exhibits WF-AR1-BHPS-1, WF-AR1-BHPS-2, WF-ARl-BHPS-14, and WF-AR1-BHPS-15; and GBC IQR at Exhibit BCAR1-BCH-9).

section 771(5A)(D)(i) of Act, we have not examined whether the subprograms are *de facto* specific under section 771(5A)(D)(iii) of the Act.

We also disagree with the GBC and West Fraser that the Energy Manager and the Incentives subprograms constitute a non-countervailable purchase of a service by BC Hydro and do not provide direct financial assistance to the customer. As we stated in the *Lumber V AR1 Prelim Results*,[1386] the record evidence indicates that payment under the Energy Manager subprogram "supports customer development and maintenance of strategic energy management plans… and may include funding for a dedicated energy manager."[1387] Funding under the Energy Manager subprogram is also directed to paying a portion of the salary of one or more energy managers, and West Fraser in fact used funding under this subprogram to hire one employee.[1388] Funding under the Incentives subprogram "support{s} capital projects designed to achieve energy efficiencies or displace load… {and} includes funding for efficiency and load displacement projects."[1389] In addition, the GBC stated that "Power Smart funds are provided by BC Hydro to customers to incentivize DSM initiatives to be undertaken by the customer."[1390] Therefore, record evidence indicates that support under this program is provided in the form of grants.[1391] Further, the GBC's own responses to questionnaires refer to the payments under the Energy Manager and Incentives and the other subprograms of the Power Smart Program as "incentives to promote efficient energy usage…"[1392] Hence, these payments are more properly treated as grants for a company's energy programs and employee salaries, not as compensation for services provided to the government. Accordingly, the GBC's and West Fraser's argument that we unlawfully countervailed compensation for services purchased by BC Hydro is misplaced.

Finally, the GBC argues that the TMP subprogram is not *de jure* specific because BC Hydro allows all transmission customers who operate a TMP mill to use the program, and that the Load Curtailment subprogram constitutes the purchase of a service and is thus not countervailable. We continue to find the TMP subprogram to be tied to the production of non-subject merchandise and the Load Curtailment subprogram to have no measurable benefit; therefore, whether the TMP subprogram is specific and the Load Curtailment subprogram is a service is moot for the purposes of these final results.

Comment 66: Whether Payments for Cruising and Block Layout Provide a Financial Contribution

Sierra Pacific's Comments[1393]

- For the final results, Commerce should reverse its preliminary decision and find that payments for cruising and block layout constitute a financial contribution under section 771(5)(D)(i) of the Act and confer a benefit under section 771(5)(E) of the Act.

[1386] *Id*.
[1387] *See* GBC IQR Vol II at BC-II-6.
[1388] *See* West Fraser IQR at WF-II-5 and WF-II-6.
[1389] *See* GBC IQR at Vol II, BC-II-10.
[1390] *See* GBC IQR at Vol II, BC-II-5.
[1391] *See* West Fraser IQR at WF-II-8 and Exhibits WF-AR1-BHPS-1 and WF-AR1-BHPS-2.
[1392] *See* GBC IQR at Vol II, at BC-II-4.
[1393] *See* Sierra Pacific June 8, 2020 Case Brief at 13 – 15.

- While tenure holders can receive payments for completed development activities upon selling their developed blocks to BCTS, they may also sell partially or fully developed blocks to private parties or harvest the blocks they develop themselves. Tenure holders may choose not to develop their blocks at any point in the development process. This is evidence that, for blocks sold to private parties or harvested by the tenure holder itself, tenure holders incur costs for cut block development activities such as cruising and block layout in the normal course of business.

GBC/BCTC [1394] and *Canfor Rebuttal Comments*[1395]

- Sierra Pacific argues that the payments for cruising and block layout relieved tenure holders of a financial burden they would have otherwise incurred. However, the Crown is responsible for all development activities on BCTS land. Further, BCTS pays tenure holders for development activities performed only on Crown land, not for activities performed on tenure holders' lands.
- The fact that tenure holders develop their own blocks or have the ability to decide not to harvest blocks they develop, is not evidence that tenure holders are responsible for developing BCTS's blocks.
- Therefore, these payments do not relieve any obligations, and instead constitute payment for the provision of services by a private party. The payments at issue are not grants, as BCTS receives a service from the tenure holder in exchange for its payment.

Commerce's Position: We disagree with Sierra Pacific's claim that BCTS's payments to Canfor and West Fraser for cruising and block layout activities constitute a financial contribution in the form of a grant within the meaning of section 771(5)(D)(i) of the Act.

The activities purchased include surveying and marking boundaries, developing road layout plans, cruising cut blocks to estimate timber volumes by tree species, mapping the blocks, completing archeological and other assessments, and road and bridge design or construction.[1396] For reasons discussed below, we find the arguments raised by Sierra Pacific to be unpersuasive, and continue to find the payments made by BCTS to Canfor and West Fraser for cruising and block layout activities not countervailable. Sierra Pacific argues that Canfor's and West Fraser's tenure obligations include cruising and block layout activities and the associated costs. However, the record indicates that, during the POR, the payments Canfor and West Fraser received were for the performance of these activities on BCTS land, not on their own private tenure areas.[1397] Further, the GBC reported that BCTS is responsible for completing these activities on its own land.[1398] Thus, Canfor and West Fraser performed these activities on lands that are outside their tenure areas and not their own responsibilities. The record contains no evidence that engaging in cruising and block layout on lands outside of its tenure area is the responsibility of the tenure holder or would normally be undertaken by Canfor and West Fraser.

Given the above information, we continue to find that it is not appropriate to treat these payments as grants under section 771(5)(D)(i) of the Act. Further, although parties have not raised an MTAR allegation pursuant to sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act, the

[1394] *See* GBC June 25, 2020 Vol I Rebuttal Brief at 31 – 32.
[1395] *See* Canfor June 25, 2020 Rebuttal Brief at 33 – 35.
[1396] *See* GBC Post Prelim SQR at BC-SVCS-4.
[1397] *Id*.
[1398] *Id*.

government purchase of services is not countervailable under the statute, and the record does not contain information indicating that the GBC paid more than adequate remuneration if this were considered the government purchase of a good.

As such, we find no reason to deviate from our preliminary finding that payments to Canfor and West Fraser for cruising and block layout do not constitute a financial contribution under section 771(5)(D)(i) of the Act.

Comment 67: Whether Payments for Fire Suppression Are Countervailable

Sierra Pacific's Comments[1399]

- For the final results, Commerce should reverse its preliminary decision and find that payments to Canfor and West Fraser are countervailable.
- The GBC explained that tenure holders are responsible for fire suppression on Crown lands and have legal requirements to undertake fire prevention and suppression obligations. If the tenure holder is the first to encounter the fire, the British Columbia Wildlife Service will request that employees of the tenure holder engage in fire suppression until government personnel arrives. The GBC then reimburses the tenure holder for expenses associated with such activities.
- Section 6 of the *Wildfire Act* stipulates that "persons carrying out an industrial activity are obligated to carry out fire control with respect to fires that start within one km of the site of the industrial activity."[1400] Section 17 of the *Wildfire Act* further states that the GBC must pay compensation to those who carry out fire control pursuant to the obligation imposed under section 6, or those who comply with an official order to carry out fire control.
- Evidence on the record indicates that payments for such activities relieve Canfor and West Fraser of a financial burden they were obligated to incur pursuant to the *Wildfire Act*.

GBC/BCTC Rebuttal Comments[1401]

- The GBC compensated Canfor and West Fraser in exchange for wildfire suppression services. Therefore, the payments do not constitute a financial contribution in the form of a grant. Sections 771(5)(D)(iv) and (E)(iv) of the Act indicate that Commerce does not have the authority to countervail the government purchase of a service.
- Sierra Pacific's argument suggests that the countervailability of such payments depends on whether the recipient firm had a legal obligation to undertake such activities.
- Sierra Pacific also conflates the tenure holders' obligations to take initial limited fire action with the separate obligation imposed by the *Wildfire Act* which states that a person engaging in industrial activity on forest land must abate a fire hazard.

Canfor Rebuttal Comments[1402]

- Sierra Pacific's argument assumes that any transfer of funds from a government constitutes a financial contribution in the form of a grant. The fact that the GBC must compensate people or private entities that provide fire control services in accordance with the *Wildfire Act* does not

[1399] *See* Sierra Pacific June 8, 2020 Case Brief at 15 – 16.
[1400] *Id.* at 16, citing GBC IQR at Exhibit BC-FIRE-2.
[1401] *See* GBC June 25, 2020 Vol I Rebuttal Brief at 38 – 42.
[1402] *See* Canfor June 25, 2020 Rebuttal Brief at 35 – 38.

determine whether the payments represent a countervailable subsidy or not.
- The fire control activities performed are emergency services and are not the normal responsibilities of a tenure holder.

Commerce's Position: We disagree with Sierra Pacific's claim that the GBC's payments to Canfor and West Fraser for fire suppression activities constitute a financial contribution in the form of a grant within the meaning of section 771(5)(D)(i) of the Act.

Sierra Pacific argues that the *Wildfire Act* stipulates that fire suppression and the associated costs are part of a licensee's tenure obligations. However, the GBC reports that the BCWS is responsible for fire suppression activities and their associated costs on forest land.[1403] Under the *Wildfire Act*, licensees are obligated to suppress fires on forest land in instances in which a licensee encounters a wildfire first.[1404] When the BCWS detects a wildfire first, it utilizes its own internal staff to suppress the fire before seeking external assistance from licensees or other entities.[1405] In cases such as this, a licensee does not engage in any fire suppression activities and thus does not receive compensation. In certain emergency situations, such as if BCWS staff are addressing other fires, the BCWS requests that licensees fight the wildfire until the arrival of BCWS personnel.[1406] The GBC must pay compensation to those entities that carry out fire suppression according to an obligation under the *Wildfire Act* or that comply with an official order from the BCWS to carry out fire control.[1407]

Sierra Pacific suggests that because licensees have fire suppression requirements under the *Wildfire Act*, such requirements are part of a licensee's tenure obligations. However, the responsibility for fire control ultimately lies with the GBC and are types of emergency services beyond the normal obligations of the tenure holder. Thus, the payments from the GBC simply made Canfor and West Fraser whole for the time and costs of personnel and equipment they deployed to engage in fire suppression activities that are otherwise the government's responsibility.

Given the above information, we continue to find that it is not appropriate to treat these payments as grants under section 771(5)(D)(i) of the Act. Further, although parties have not raised an MTAR allegation pursuant to sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act, the government purchase of services is not countervailable under the statute, and the record does not contain information indicating that the GBC paid more than adequate remuneration if this were considered the government purchase of a good.

We find no reason to reverse our preliminary finding, and we continue to find that the GBC's payments to Canfor and West Fraser for fire suppression activities do not constitute a financial contribution in the form of a grant within the meaning of section 771(5)(D)(i) of the Act.

[1403] *See* GBC Post Prelim SQR at BC-FIRE-3.
[1404] *Id*.
[1405] *Id*.
[1406] *Id*.
[1407] *See* GBC IQR at Exhibit BC-AR1-ST-25, sec. 17(1).

Comment 68: Whether the FESBC Payment Is a Countervailable Subsidy

GBC/BCLTC's Comments[1408]

- The FESBC paid West Fraser to construct a fuel break on Crown land. This was payment for a service performed by West Fraser, not a grant, and it was not part of West Fraser's tenure obligations. Even if Commerce finds West Fraser's activity to be a good, there is no evidence that it was purchased for MTAR.

West Fraser's Comments[1409]

- The FESBC's payments to West Fraser were payments for a service and only covered the company's cost to complete the project. Commerce must consider the costs when analyzing the program. The project itself has no relationship to West Fraser's tenures and provides no benefit to West Fraser's softwood lumber production.
- This program is also not lawfully countervailable because it was never initiated on by Commerce.

Petitioner's Rebuttal Comments[1410]

- Commerce was correct to find this program countervailable. Even if other parties benefited from the project, West Fraser clearly also did, as shown by its project application document. Though the dictionary definition of "grant" is not relevant, the FESBC payment still falls under the definition cited by the Canadian Parties. West Fraser's assertion that it was compensated for its costs and no more is not relevant because this program was considered a grant, not an MTAR program.
- Section 771(6) of the Act provides three narrowly defined offsets to a subsidy that do not overlap with the offset West Fraser is requesting.
- Record evidence contradicts West Fraser's argument that the payments are not attributable to subject merchandise.
- The petitioner alleged this program properly and, regardless, Commerce must evaluate practices that appear to be countervailable subsidies that come to light during the investigation.

Commerce's Position: After reviewing the record evidence and arguments presented in interested parties' case briefs, we now find that the FESBC's payments to West Fraser do not constitute a financial contribution in the form of a grant within the meaning of section 771(5)(D)(i) of the Act.

Under this program, West Fraser constructed a fuel break per terms agreed to with FESBC.[1411] There is no record evidence that constructing the fuel break was connected to any of West Fraser's own tenure obligations or that, in the absence of FESBC payments, West Fraser would have built the fuel break in its normal course of business.[1412] Rather, West Fraser received payment in exchange for performing certain activities unrelated to its tenure obligations or normal operations.

[1408] *See* GBC June 8, 2020 Vol V Case Brief at 60 – 62.
[1409] *See* West Fraser June 8, 2020 Case Brief at 64 – 66.
[1410] *See* Petitioner June 25, 2020 Case Brief at 178 – 183.
[1411] *See* West Fraser 2nd NSA QR Response at 27 – 32.
[1412] *Id.* at 27 – 35 and Exhibits WF-AR1-FESBC-1 through WF-AR1-FESBC-4.

The petitioner suggests that that FESBC payments should be considered a grant because they helped West Fraser perform actions that benefited the company.[1413] However, we find that the language the petitioner cites to support this argument, when taken in context, does not support the claim that the funds received benefited its tenure obligations or overall operations related to production..[1414] Further, the record does not contain evidence that the project benefited West Fraser beyond the compensation the company received from FESBC.[1415]

Additionally, although parties have not raised an MTAR allegation pursuant to sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act, the government purchase of services is not countervailable under the statute, and the record does not contain information indicating that the GBC paid more than adequate remuneration if this were considered the government purchase of a good.

Based on the above, we conclude that the payments West Fraser received from FESBC are not a countervailable subsidy. Because we have found this program to not be countervailable, issues raised in the case briefs concerning attribution and the program's initiation are moot.

- ***New Brunswick***

Comment 69: Whether Commerce Should Continue to Find the Silviculture and License Management Programs Countervailable

GNB's Comments[1416]

- Licensees would not conduct silviculture and license management activities for free.
- The potential for sub-licensee allocation of crown stumpage undermines the position that silviculture and management are for a licensee's benefit.
- License management activities provide public goods and services to the GNB that are not a benefit to JDIL. Additionally, silviculture and license management are services and therefore are not countervailable. If any silviculture and license management activities are considered goods purchased by the GNB, they must be assessed for adequacy of remuneration.

JDIL's Comments[1417]

- The GNB's payments to JDIL were not grants. Rather, the GNB purchased services, which do not constitute a financial contribution. Additionally, new record evidence disproves the assumption that JDIL would have provided forest service management services, including public functions and services for the benefits of the GNB, the public, and third-party competitors, for no compensation.
- The GNB's purchases did not confer a countervailable benefit, because the government did not pay JDIL more than adequate remuneration for its execution of license management and silviculture operations on Crown land.

[1413] *See* Petitioner June 25, 2020 Case Brief at 179.
[1414] *See* West Fraser 2nd NSA QR Response at Exhibit WF-AR1-FESBC-1. The information discussed by the petitioner is business proprietary.
[1415] *Id*.
[1416] *See* GNB June 8, 2020 Vol VI Case Brief at 4 – 21.
[1417] *See* JDIL June 8, 2020 Case Brief at 2 – 14.

Petitioner's Rebuttal Comments[1418]

- The Canadian Parties have not submitted any new factual information that should compel Commerce to change its findings from the *Lumber V AR1 Prelim Results* or underlying investigation.

Commerce's Position: In the *Lumber V AR1 Prelim Results*, Commerce found the reimbursement of both silviculture and license management expenses to be countervailable grants.[1419] We determined that the reimbursements provided were grants and constituted a financial contribution in the form of a direct transfer of funds from the government, were specific, and bestowed a benefit in the amount of the grants, within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E) of the Act.[1420] The GNB and JDIL argue that these payments represent a purchase, by the GNB, of services provided by JDIL, and that the purchase of services is not countervailable.[1421]

JDIL is the Licensee on Crown timber licenses #6 and #7 (collectively referred to as License #7). JDIL, or another Irving cross-owned company, has been a long-term leaseholder of the Crown lands from which it sources part of its input supply.[1422] At present, JDIL is under an FMA with the province. Under the CLFA,[1423] JDIL is obligated to perform, and be reimbursed for, basic silviculture and forest management obligations. Specifically, paragraph 38(2) of the CLFA states:

> The Minister (a) shall reimburse the licensee for such expenses of forest management as are approved in and carried out in accordance with the operating plan, including expenses with respect to
>
> > i. pre-commercial thinning, …
> > iii. tree planting, ….
>
> subject to the regulations and the provisions of any agreement between the licensee and the Minister, and (b) shall compensate the licensee for other expenses of forest management in accordance with the regulations.[1424]

In accordance with the CLFA, JDIL's FMA defines basic silviculture and further specifies JDIL's requirement for both basic silviculture and licensee silviculture.[1425] In accordance with the FMA, basic silviculture is defined as the silvicultural activity required to produce the annual allowable harvest of timber as identified in paragraph 13.1.[1426] Licensee silviculture is defined as silvicultural treatments carried out at the expense of the licensee.[1427] Thus, the GNB is making a clear distinction between basic silviculture which is required and for which the GNB

[1418] *See* Petitioner June 25, 2020 Rebuttal Brief at 271 – 274.
[1419] *See Lumber V AR1 Prelim Results* PDM at 50.
[1420] *Id*.
[1421] *See* JDIL June 8, 2020 Case Brief at 1; *see also* GNB June 8, 2020 Vol VI Case Brief at 19.
[1422] *See* JDIL IQR at 2 and Exhibit SILV-04.
[1423] *Id*. at Exhibit SILV-02.
[1424] *Id*.
[1425] *Id*. at Exhibit SILV-04.
[1426] *Id*.
[1427] *Id*.

provides funds, and licensee silviculture, which is beyond basic silviculture, as described in the CLFA and is to be performed at the expense of the licensee.

In the underlying investigation, Commerce found that basic silviculture and forest management activities provide countervailable subsidies because the GNB relieved JDIL of expenses incurred through a direct transfer of funds.[1428] The FMA goes on to stipulate that JDIL "shall carry out basic silviculture,"[1429] "the Minister will fund the basic silvicultural program,"[1430] and JDIL's "obligations…will correspond to the level of basic silviculture funding provided by the Minister."[1431] Likewise the FMM, which forms part of the FMA, further outlines the specific responsibilities of the licensee and the Crown and defines license management fees as the "reimbursement to licensees for specific requested management services undertaken at the request of, and on behalf of DNR."[1432]

For purposes of this final, we continue to find these programs countervailable. First, the assertion that JDIL was not fully reimbursed for either the silviculture or the forest management activities it performed is immaterial. The notion that the payments received by JDIL from the GNB do not cover JDIL's actual expenses for both silviculture and forest management activities does not negate the benefit from the payments received.[1433] These are activities that involve the renewal and maintenance of forestry land, *i.e.*, the management of JDIL's input and supply chain, and which JDIL would undertake even in the absence of the reimbursements. The GNB refers to its submission of a declaration from the NB Chief Forester as well as the total sums spent by JDIL in 2017 and 2018 as support for its claim that JDIL would *not* conduct the silviculture and license management activities it currently undertakes.[1434] However, Commerce finds the reasoning presented in this declaration unavailing. First, the declaration states that "Licensees would not continue to implement these services if not compensated by the GNB. These activities involve significant costs to Licensees and are for the benefit of the GNB and public."[1435] However, this reasoning is contradicted by JDIL's case brief. In JDIL's submission, JDIL argues that GNB's reimbursement of silviculture and license management fees does not confer a benefit because "the GNB's payments failed to cover fully J.D. Irving's {JDIL} expenses."[1436]

JDIL, as established, has been a Licensee for many years and would have a keen understanding of its relationship with the GNB and the reimbursements it receives each year for silviculture and license management fees. Therefore, it is illogical to assume that JDIL would intentionally spend *more* than it was minimally required to under its license agreement unless there was some value to JDIL's business that prompted them to do so. Therefore, Commerce must consider that

[1428] *See Lumber V Final* IDM at 183 – 186.
[1429] *See* JDIL IQR at Exhibit SILV-04.
[1430] *Id*.
[1431] *Id*.
[1432] *Id*. at Exhibit LMF-04.
[1433] *Id*. at Exhibit SILV-04. JDIL's FMA para. 13.4 states that it "may, at its own expense …. Carry out licensee silviculture in addition to basic silviculture and the Company…shall be the exclusive beneficiaries (on a prorated basis) of any immediate or future increase to the annual allowable harvest of timber as a result of such silvicultural treatments."
[1434] *See* GNB June 8, 2020 Vol VI Case Brief at 9.
[1435] *Id*. at 10.
[1436] *See* JDIL June 8, 2020 Case Brief at 12.

this willingness on JDIL's part to conduct *more* silviculture and license management activities than it would be reimbursed for is due to JDIL's interest in ensuring its input and supply chain viability.

As discussed above, the respondents have provided no credible information or argument that this government action does not provide a benefit under the CVD law to JDIL. Therefore, because the GNB provides reimbursements to JDIL for costs it incurs in the course of managing its input and ensuring the efficient operation of its supply chain, *i.e.*, activities it was obligated to undertake as part of its operations, we continue to find that these programs provide a financial continuation in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act.

Comment 70: Whether Commerce Should Find the Workforce Expansion Programs to Be Countervailable or Specific

GNB's Comments[1437]

- The Workforce Expansion Program is neither countervailable nor specific. The GNB provided new information to demonstrate that both the Workforce Expansion – OJP and the regular Workforce Expansion programs (WFE-Regular) are broadly used across economic sectors and that there is only limited use by the forest products sectors (and even less by producers of subject merchandise).

Petitioner's Rebuttal Comments[1438]

- Commerce should continue to find that the OJP Program provides a countervailable subsidy to JDIL.

Commerce's Position: In the *Lumber V AR1 Prelim Results*, Commerce continued to calculate a countervailable subsidy rate for JDIL's receipt of funds under the New Brunswick Workforce Expansion Program and the New Brunswick Youth Employment Fund.[1439] The GNB argues that these programs are broadly available, and there is only limited use of these programs by the forest product sectors. The petitioner argues that Commerce should continue to find these programs provide countervailable subsidies to JDIL.

Consistent with our past practice,[1440] we continue to find these programs to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. As stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies which are truly broadly available and widely used throughout an economy.[1441] The SAA also states that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.[1442] Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, Commerce will take into account the number of enterprises in the economy in question to determine whether the number of enterprises

[1437] *See* GNB June 8, 2020 Vol VI Case Brief at 48 – 50.
[1438] *See* Petitioner June 25, 2020 Rebuttal Brief at 268 – 271.
[1439] *See Lumber V AR1 Prelim Results* PDM at 51.
[1440] *See SC Paper from Canada Final* IDM at Comment 28.
[1441] *See* SAA at 929.
[1442] *See* SAA at 929 and 931.

using a subsidy is large or small.[1443] Thus, we have followed the instructions of the SAA in analyzing whether this program is *de facto* specific.

Information submitted by the GNB continues to demonstrate that a limited number of companies, relative to the total number of companies operating in GNB, participated in this program during the POR.[1444] The GNB states that, after reviewing the 50 largest company participants in the OJP and WFE-Regular programs, "only four of the fifty companies are in the forestry sector, of which two are mills, one is a silviculture services providers, and another a contractor."[1445] However, this information does not support an argument that the programs in question are not *de facto* specific. Rather, it simply states that the GNB reviewed the 50 largest users, which does not support a finding that the program is *not* limited in use when compared to the total body of companies in New Brunswick, regardless of the industry sector of any of the 50 largest companies.

In *Steel Plate from Korea*, Commerce found an electricity discount program to be *de facto* specific when distributed to a small number of enterprises relative to the total number of enterprises, and stated: "{g}iven the data with respect to the small number of companies which received… electricity discounts during the POI, we determine that the… program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act."[1446] Therefore, in accordance with section 771(5A)(D)(iii)(I) of the Act and past Commerce practice, we continue to find this program to be *de facto* specific.[1447]

- ***Ontario***

Comment 71: Whether Ontario's Forest Roads Funding Program Is Countervailable

GOO's Comments[1448]

- In Ontario, harvesters of Crown timber are responsible for constructing and maintaining provincially owned public roads (primary, branch, and operational) in the Crown forest. Primary and branch roads are for the public, and operational roads are for forestry operations for which Ontario provides no reimbursement.
- The GOO provides no benefit to Resolute by only partially reimbursing it for a general infrastructure construction obligation (for primary and branch roads) that Ontario imposed on the company – roads that the GOO would otherwise have constructed and maintained for the public.
- These obligations required by the Crown imposed a cost on the harvesters, which during 2018, averaged C$87 cents/cubic meter for the construction of primary roads and C$51 cents/cubic meter for the construction of branch roads.

[1443] *See CRS from Korea* IDM at Comment 13.
[1444] *See* GNB SQR 2 at Exhibit NB-AR1-WEP-3.
[1445] *See* GNB June 8, 2020 Vol VI Case Brief at 48.
[1446] *See Steel Plate from Korea*, 64 FR at 15535.
[1447] *See, e.g., Corrosion-Resistant Steel from Korea* IDM at 16.
[1448] *See* GOO June 8, 2020 Vol VII Case Brief at 14 – 22.

- A financial contribution does not exist in the case of government provision of general infrastructure.[1449] Commerce should apply its case precedent and determine that Ontario's partial reimbursement for certain road obligations it imposes does not provide a countervailable subsidy because they constitute general infrastructure.

Resolute and Central Canada's Comments[1450]

- Commerce's finding that road reimbursements are grants ignores the consideration that the province receives something of value in return for the reimbursements. The purchases of services, in which the provincial government partially paid for road construction and maintenance, are not grants and, thus, are not countervailable under the Act.
- Resolute's costs exceeded the reimbursements received in consideration for the work performed.

Petitioner's Rebuttal Comments[1451]

- Whether or not Resolute fully recovers the costs of its roadwork is immaterial to Commerce's analysis. There is no statutory requirement that a subsidy program completely offset a cost, legally incurred within a company's normal course of business, for it to be countervailable.[1452]
- Record evidence refutes the parties' claim that the building of the roads constitutes "general infrastructure." Exhibits placed on the record by the petitioner indicate that "{t}hese roads provide important forest operations that allow for {}strategic harvest;" primary and branch roads "provide principal access to the {forest} management unit;" and in 2017, Ontario increased funding for this program by C$20 million "as a show of support for {lumber} producers."[1453]

Sierra Pacific's Rebuttal Comments[1454]

- The fact that the program only partially covers Resolute's costs or that a broad range of users may access the roads, does not negate the fact that a benefit was received – and the benefit exists in the amount of the grant bestowed by the GOO under the program.
- The GOO's general infrastructure arguments are inapposite because section 771(5)(D)(iii) of the Act and 19 CFR 351.511(d), cited by the GOO,[1455] apply to financial contribution in the form of the provision of goods and services, and under the OFRFP, the GOO is not providing (nor purchasing) goods or services, but reimbursing Resolute for costs it is legally obligated to incur as a harvester of Crown timber.
- Commerce properly found that the payments constitute a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. The exception to section 771(5)(D)(iii) of the Act for general infrastructure does not apply.

[1449] *Id*. at 20 – 22, citing, *e.g.*, *PET Resin from Oman* IDM at 8; *Wire Rod from Saudi Arabia*, 51 FR at 4210; *Flat Products from Korea* IDM at 22; *Bethlehem Steel Corp. v. U.S.*, 223 F. Supp. 2d 1378-79; section 771(5)(D)(iii) of the Act; 19 CFR 351.511(d); and Article 1.1 of the SCM Agreement.
[1450] *See* Resolute June 8, 2020 Case Brief at 67 – 69.
[1451] *See* Petitioner June 25, 2020 Rebuttal Brief at 196 – 199.
[1452] *Id*. at 197, citing *Groundwood Paper from Canada Final* IDM at 247.
[1453] *Id*. at 198, citing NSAs Regarding Resolute at Exhibits 12, 13, and 15.
[1454] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 51 – 54.
[1455] *Id*. at 54, citing GOO June 8, 2020 Vol VII Case Brief at 20 – 22.

Commerce's Position: We find that this program functions in a manner that is similar to Québec's MCRP. Like the MCRP, the OFRFP is designed to reduce costs that harvesters are legally required to incur under their tenure agreements in their normal course of business of harvesting Crown timber in Ontario. Because the GOO provides reimbursements to Resolute for costs it incurs for the construction and maintenance of roads in public forest areas to perform its harvesting activities, we find that the OFRFP provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and bestows a benefit in the amount of the reimbursement under section 771(5)(E) of the Act and 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1456] The fact that the reimbursements that Resolute received only partially covered its costs does not negate the fact that a benefit was received.

We also disagree that Resolute's activities under this program constitute a service to the GOO, and, thus, the associated payments are not countervailable. The activities performed by Resolute — building and maintaining roads to access harvesting areas on Crown land—were performed in the furtherance of its harvesting activities, not to render a service to the GOO or general public. The respondent parties would have us believe that because primary and branch roads can be used by the public, the roads built by Resolute are general infrastructure and, thus, the GOO's partial reimbursement of Resolute's road costs are not countervailable. A primary road is a road that provides principal access to a forest management unit in the Crown forest.[1457] A branch road branches off a primary road and provides further access to and through a forest management unit.[1458] We find that such roads were not built by Resolute for the betterment of the public's welfare, but rather those roads were built by Resolute to get access to the forest areas, assigned under its forest license, where it could build operational roads to allow for its harvesting activities.[1459] The cases cited by the GOO[1460] support a finding that, unless infrastructure is created for the broad societal welfare of a country, region, or municipality, it confers a countervailable subsidy on the recipient. Because we find Resolute's construction of roads was to further its harvesting abilities, we do not find this to be "general infrastructure" as defined under 19 CFR 351.511(d). Therefore, Resolute's road building activities do not fall under the rubric of "general infrastructure."

For the foregoing reasons, we continue to determine that the OFRFP is countervailable.

Comment 72: Whether Ontario's TargetGHG Is Specific

GOO's Comments[1461]

- TargetGHG is not *de jure* specific. The program required eligible applicants to be an Ontario-based industrial emitter, a broadly applicable qualification. OCE did not expressly limit the

[1456] *See CVD Preamble*, 63 FR at 65361.
[1457] *See* GOO July 15, 2019 Primary Stumpage QNR Response at ON-STUMP-124 – ON-STUMP-125. *See also* GOO June 8, 2020 Vol VII Case Brief at 17.
[1458] *Id*.
[1459] *See* Resolute March 4, 2020 Response at Exhibit RES-ON-ROAD-APP; *see also* GOO March Response at ROADS-1 – ROADS 26.
[1460] *See* GOO June 8, 2020 Vol VII Case Brief at 20 – 22, citing *PET Resin from Oman* IDM at 8; *Wire Rod from Saudi Arabia*, 51 FR at 4210; *Flat Products from Korea* IDM at 22.
[1461] *See* GOO June 8, 2020 Vol VII Case Brief at 38 – 41.

program to enterprises, industries, or groups thereof. There were 11 approved applicants for TargetGHG in varied industries, such as manufacturing, agriculture, forestry, and utilities. Further, there were no geographic or industry restraints.
- TargetGHG is not *de facto* specific. Industries that received funding represented a broad cross-section of industry, such as carbon capture and utilization, energy distribution/utility, cement, and automotive.
- Resolute was the only forestry company that received funding, and that funding accounted for less than 10 percent of the total. Neither Resolute nor the forestry industry received a disproportionate share of the funding.

Resolute and Central Canada's Comments[1462]
- Commerce's finding of *de jure* specificity because the program expressly limits eligibility to Ontario-based large industrial emitters ignores the evidence that the universe of large industrial emitters is a broad category and does not create a discrete class of beneficiaries satisfying the specificity requirements under the statute.
- "A principle purpose of the specificity requirement for countervailability is 'to differentiate between those subsidies that distort trade by aiding a specific company or industry, and those that benefit society generally (like the police, fire protection, roads, and schools) and thus minimally distort trade, if at all.'"[1463] A program open to companies in virtually every industrial sector does not benefit a specific company or industry and does not distort trade.
- During the POR, 11 projects were approved for funding. Only one project was submitted by a company in the forestry industry. The other participants belonged to a variety of industries. TargetGHG does not favor a particular industry, and no company is a disproportionate recipient of funding.

Petitioner's Rebuttal Comments[1464]
- TargetGHG caters to industrial emitters in the areas of focus listed in the Program Proposal and, thus, eligibility for the program is not offered for all industries in Ontario. Based on the evidence, Commerce should continue to find the program to be *de jure* specific.
- The respondents' *de facto* specificity arguments misconstrue the Act, which states a subsidy can be considered *de facto* specific if "{t}he actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number."[1465] As Resolute notes, only 11 projects were approved for funding during the POR. Arguments focused on the distribution of funds to the forestry industry, predominant use, or disproportionality are irrelevant. The Act is explicitly clear in stating that the "subsidy is specific if one or more of the following factors exist," under section 771(5A)(D)(iii) of the Act.
- Commerce should find that TargetGHG is both *de jure* specific, pursuant to section 771(5A)(D)(i) of the Act, and *de facto* specific, pursuant to 771(5A)(D)(iii) of the Act.

Commerce's Position: The foremost eligibility criterion for a TargetGHG applicant is "must be an Ontario-based industrial emitter."[1466] The GOO reported that the TargetGHG was available to

[1462] *See* Resolute June 8, 2020 Case Brief at 88 – 90.
[1463] *Id*. at 90, citing *Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1349.
[1464] *See* Petitioner June 25, 2020 Rebuttal Brief at 194 – 195.
[1465] *See* section 771(5A)(D)(iii)(I) of the Act.
[1466] *See* GOO December 13, 2019 Response at 11 and Exhibit ON-TGHG-6.

companies in Ontario that were large emitters.[1467] The GOO explained that the "TargetGHG {Industrial Demonstration Program} encourages large industrial emitters to adopt and implement leading-edge technologies to reduce their emissions."[1468]

Contrary to Resolute's arguments, the GOO, when establishing the eligibility criteria for the TargetGHG, in fact created a discrete class of beneficiaries by limiting assistance to reduce GHG to only large industrial emitters. Consequently, the TargetGHG is not open to all industries, companies, or sectors in Ontario. For example, TargetGHG is not offered to transportation and commercial and residential sectors. Therefore, because the program expressly benefits only Ontario-based large industrial emitters, we find that the TargetGHG is specific under section 771(5A)(D)(i) of the Act.

Because we continue to determine that the TargetGHG is *de jure* specific, we need not address the arguments regarding whether this program is *de facto* specific.

Comment 73: Whether Ontario's IESO Demand Response Is Countervailable

GOO's Comments[1469]

- The IESO Demand Response's market-based auction process does not provide a financial contribution to participants. The auction satisfies Commerce's definition of "general infrastructure" because it contributes to the maintenance of Ontario's electrical infrastructure.
- The Demand Response auction did not provide a benefit because it compensates participants based on a competitive, market-based procurement mechanism. However, should Commerce conduct a benefit analysis, the regulations prescribe that the adequacy of remuneration for the provision of a service should be measured by comparing the payments made to Resolute with the prices in the IESO Demand Response auction (tier-one benchmark), which reflects the prevailing market conditions of the Ontario electricity market and demonstrates that no benefit was provided to Resolute.
- The IESO Demand Response is neither *de jure* nor *de facto* specific. There are no limitations on industry or geographic location for enterprises or industries to participate. The only criterion is that participants must have the ability to manage electricity consumption in accordance with contractual obligations. Consistent with Commerce's practice with other demand response programs, it should find the IESO Demand Response to be non-countervailable because it is not specific.[1470]
- However, should Commerce conduct a specificity analysis, it should use the number of "contributors" instead of the number of participants because certain auction participants were aggregations of "contributors."
- Commerce cannot rely on its countervailable finding in *Groundwood Paper from Canada Final*, where the "competitive contract system" was considered,[1471] and not the Demand Response auction, which is at issue in this review.

[1467] *Id*. at 20.
[1468] *Id*. at 1.
[1469] *See* GOO June 8, 2020 Vol VII Case Brief at 23 – 35.
[1470] *Id*. at 23, citing *CTL Steel Plate from Korea Final*, 64 FR at 73186.
[1471] *Id*. at 25, citing *Groundwood Paper from Canada Final* IDM at 224.

Resolute and Central Canada's Comments[1472]

- A *de facto* specificity finding is not supported by the record. No industries are excluded from the program, and no industry or company is a disproportionate participant. Demand Response is open to any entity or groups of entities and eligibility does not depend on a participant being in any particular industry.
- The fact that there were 19 participants in the program between 2014 and 2018 does not indicate *de facto* specificity because the participants can be individual entities or aggregates of users. Between November 1, 2018, and April 30, 2019, five of the participants included aggregators representing a total of 669 companies.
- This demand response program benefits the IESO and not the participants.

Petitioner's Rebuttal Comments[1473]

- The fact that a variety of industries were eligible for the program does not negate the fact that the actual recipients of the subsidy are limited in number and, therefore, the program is *de facto* specific. Only 19 participants received payments under the program from 2014 – 2018.
- The GOO's argument that Commerce should use the number of "contributors" (a term not defined on the record) instead of the number of participants is without basis. A subsidy is considered *de facto* specific if "{t}he actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number."[1474]
- The IESO Demand Response provides an incentive, in the form of electricity credits, to companies that willingly adjust their energy use. Thus, the program confers a benefit to Resolute equal to the amount of the electricity credits received.
- No part of Commerce's regulations requires an evaluation of benefits enjoyed by the government, nor do they stipulate that an advantage conferred to the government negates any advantage to a respondent.[1475]
- In the *Groundwood Paper from Canada Final*, Commerce considered and rejected the argument that no benefit was provided under the Demand Response because an auction system set the market pricing for the curtailment services purchased by the IESO.[1476] The GOO's claim that the record of this review is meaningfully different than that of the *Groundwood Paper from Canada Final* due to the introduction of the auction system is false.

Commerce's Position: Based on the GOO's and Resolute's responses to questionnaires issued in this administrative review, we preliminarily determined that Resolute received countervailable benefits under the Demand Response program.[1477] The facts on the record of this review demonstrate that the features which make the Demand Response countervailable remain unchanged from the *Groundwood Paper from Canada Final*. In the *Groundwood Paper from Canada Final*, we found that it was not relevant whether the payments under the program were determined by reference to market principles.[1478] The GOO has not provided any arguments in this review to warrant a change in Commerce's position. As such, we are not persuaded by the

[1472] *See* Resolute June 8, 2020 Case Brief at 33 – 34, and 40 – 42.
[1473] *See* Petitioner June 25, 2020 Rebuttal Brief at 189 – 193.
[1474] *See* section 771(5A)(D)(iii)(I) of the Act.
[1475] *See* Petitioner June 25, 2020 Rebuttal Brief at 191, citing *Groundwood Paper from Canada Final* IDM at Comment 66.
[1476] *Id*. at 193, citing *Groundwood Paper from Canada Final* IDM at Comment 66.
[1477] *See Lumber VAR1 Prelim Results* PDM at 53 – 54.
[1478] *See Groundwood Paper from Canada Final* IDM at Comment 66.

GOO's arguments that the Demand Response auction does not provide a benefit to the participants. Consequently, we continue to find that the electricity credits (*i.e.*, grants) that the IESO provided to Resolute under the Demand Response constitute a countervailable subsidy.

We also find no relevancy to the GOO's assertion that the Demand Response auction, which procures demand response capacity from participants, is general infrastructure because it contributes to the management and maintenance of Ontario's electrical grid. General infrastructure is defined under 19 CFR 351.511(d) as infrastructure that is created for the broad societal welfare of a country, region, or municipality. The auction process is part of program under which electricity credits are provided to participants, such as Resolute, who reduce their electricity consumption as directed by the IESO during peak times. The electricity credits that Resolute received on its monthly invoices for curtailing its electricity usage benefitted only Resolute and not the public at large.

We thus continue to find that the Demand Response confers a benefit equal to the amount of electricity credits received, as provided under section 771(5)(E) of the Act, which states that a benefit shall normally be treated as conferred where there is a benefit to the recipient. Under the Demand Response, participants—like Resolute—receive electricity credits when they curtail their power usage on demand in response to an interruption notice issued by IESO. Because the GOO provides grants and not services to the participants of the Demand Response program, we find that the GOO's arguments on the adequacy of remuneration and application of a tier-one benchmark to measure the benefit are not relevant.

Further, 19 CFR 351.503(a) states that Commerce will "measure the extent to which a financial contribution (or income or price support) confers a benefit" as provided for the specific type of benefit, as described under the regulations. Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1479] Under this framework, any grant payments of the associated costs incurred (*i.e.*, power interruption to their operations) are, in fact, a benefit to the recipients. As such, we disagree that the Demand Response benefits IESO and not the participating companies. Any advantages to IESO in administering the program are not relevant to the benefit that Resolute received under the program.

In analyzing the benefit of electricity credits, Commerce considers the benefit to be the amount of the grant received by the company, pursuant to 19 CFR 351.504(a). Under 19 CFR 351.504, Commerce does not contemplate any advantages the government might receive by administering the program.[1480] Consequently, whether IESO was able to maintain the integrity of the grid during peak demand because of the program is immaterial to Commerce's analysis. The focus of Commerce's analysis is the direct transfer of funds that IESO made to Resolute via electricity credits, which we find conferred a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

[1479] *See* 19 CFR 351.503(c).
[1480] *See CVD Preamble*, 63 FR at 65361 ("{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the 'effect' of a subsidy.").

Similarly, we disagree with the argument that the program is used by a diverse set of industries and therefore, it is not *de facto* specific. The record shows that the number of companies that received electricity credits is limited. The GOO reported that only 19 participants received payments from 2014 through 2018 under the Demand Response.[1481] The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available and used throughout an economy.[1482] It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the countervailing duty law.[1483]

We also disagree with the respondent parties that the specificity analysis should consider "contributors" rather than the number of participants. Under the Act, a subsidy is considered *de facto* specific if "{t}he actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number."[1484] Thus, the correct manner to conduct the specificity analysis of the Demand Response is to examine the actual number of recipients of the subsidy, which the GOO reported to be 19 over a 5-year period.[1485] Because the actual recipients of the subsidy under the Demand Response are limited in number, we determine that the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Lastly, we disagree with the GOO that Commerce should find the IESO Demand Response to be non-specific consistent with *CTL Steel Plate from Korea Final*. A specificity analysis is case-specific. Commerce cannot apply a specificity finding in one case to another case which has its own separate and distinct facts. As discussed above, the record of this administrative review shows that the IESO Demand Response is specific as a matter of fact.

Comment 74: Whether Ontario's IEI Program Is Specific

Resolute and Central Canada's Comments[1486]

- IEI is not *de jure* specific because "large industrial consumers" is not a limited category of enterprises or industries having access to the program. "Industrial consumer" is a broad category that does not create a discrete class of beneficiaries.
- A program used by virtually every industrial sector is not benefiting a specific company or industry and does not distort trade.
- IEI is also not *de facto* specific. During the POR, 22 contracts were in place with participants that span a wide range of industries, and the wood products industry (and Resolute in particular) received only a small fraction of the funding, which does not favor a particular industry or disproportionately benefit a company.

Petitioner's Rebuttal Comments[1487]

- Expressly limiting eligibility to "large industrial consumers" creates a limited category of enterprises to which subsidization is available.

[1481] *See* GOO July 15, 2019 Primary Non-Stumpage QNR Response at DR-23.
[1482] *See* SAA at 930.
[1483] *Id*.
[1484] *See* section 771(5A)(D)(iii)(I) of the Act.
[1485] *See* GOO July 15, 2019 Primary Non-Stumpage QNR Response at DR-23.
[1486] *See* Resolute June 8, 2020 Case Brief at 50 – 52.
[1487] *See* Petitioner June 25, 2020 Rebuttal Brief at 193 – 194.

- Commerce should continue to find the IESO IEI to be *de jure* specific.

Commerce's Position: While we disagree with Resolute regarding the specificity of Ontario's IEI, we are clarifying the basis for finding the program to be *de jure* specific. We preliminarily found that the IEI is *de jure* specific to large industrial customers.[1488] After considering Resolute's arguments and reviewing the record, we find, for these final results, that the IEI is *de jure* specific because recipients of assistance under the IEI are limited to customers who undertake activity under certain 2012 NAICS sector codes. Resolute was eligible for assistance under the IEI based on its classification under NAICS code 321110: Sawmills and Wood Preservation.[1489]

Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. In the November 1, 2012 letter of direction issued by Ontario's Minister of Energy to the OPA (now IESO) establishing the IEI program, the GOO defined the eligible industries as those classified in mining, quarrying, and oil and gas extraction (sector 21) and manufacturing (sector 31, 32, and 33).[1490] In the April 24, 2014 letter of direction issued by the Minister of Energy to OPA, IEI eligibility was expanded to include NAICS codes 1114 (greenhouse/floriculture production), 49312 (refrigerated warehousing), and 518 (data processing).[1491]

The subsidies that are provided by the GOO under the IEI program are expressly limited to certain energy-consuming customers classified within specific NAICS codes, meaning that the government has established, by law, a limited group of enterprises that may receive grants under this program. Therefore, we continue to find that the IEI program is *de jure* specific under section 771(5A)(D)(i) of the Act.

Having made a finding of *de jure* specificity, we need not examine whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

- ***Québec***

Comment 75: Whether Québec's PCIP Confers a Benefit

GOQ's Comments[1492]
- Commerce failed to analyze whether the PCIP reimbursement was a benefit under section 771(5)(E) of the Act.
- Evidence shows that no benefit is conferred because the reimbursements are for costs incurred as a result of government action (*i.e.*, a silviculture prescription that requires that at least 50 percent of a harvest stand be undisturbed) and even after reimbursements are received, the harvesters subject to the partial cut mandate incurred greater costs than those harvesters not subject to the mandate, while still being charged the same stumpage rates.

[1488] *See Lumber V AR1 Prelim Results PDM* at 54 – 55.
[1489] *See* GOO July 15, 2019 Primary Non-Stumpage QNR Response at IEI-24 and IEI-25.
[1490] *Id*. at Exhibit ON-IEI-1.
[1491] *Id*. at Exhibit ON-IEI-5.
[1492] *See* GOQ June 8, 2020 Vol VIII Case Brief at 80 – 83.

Resolute and Central Canada's Comments[1493]

- Commerce's finding that PCIP reimbursements are grants fails to recognize that the GOQ received valuable consideration in return for the reimbursements, *i.e.*, forest harvesting and cutting undertaken at Resolute's expense. A "grant" is a gift without consideration or obligation.
- Commerce's PCIP benefit determination was improper. The purpose of determining whether a benefit exists, and the measurement of that benefit, is to examine whether an unfair advantage was conferred by the financial contribution on the production of subject merchandise such that the advantage should be offset by a countervailable subsidy. Commerce must account for the consideration Resolute provided to Québec in exchange as part of a reciprocal obligation for the PCIP reimbursements being provided.
- The PCIP confers no benefit to Resolute. Rather, Resolute incurs costs to affect Québec's sustainability policy that can never be reimbursed fully (*i.e.*, no more than 90 percent).
- Partial reimbursements for the performance of services are not countervailable subsidies.

Petitioner's Rebuttal Comments[1494]

- Commerce has previously rejected the idea that it must define the term "benefit" as a gift without consideration. Commerce's regulations explicitly define "benefit" as "the amount of the grant."[1495]
- In conducting its benefit analysis, Commerce need not consider the advantages enjoyed by a government in its administration of a subsidy program.
- Resolute's receipt of a partial reimbursement does not negate the fact that a benefit was received.[1496] While it is unfortunate that partial cutting results in a net loss of value to Resolute, Commerce is not responsible for assessing the effectiveness of a subsidy in determining its benefit.

Sierra Pacific's Rebuttal Comments[1497]

- The GOQ makes payments under the PCIP to partially offset costs that Resolute is legally obligated to incur under the SFDA. The payments were not made "in exchange" or "in consideration" for Resolute's performing partial cuts. The legal obligation exists independent of PCIP reimbursements.
- The GOQ's comparison of costs incurred by harvesters operating in the public forest subject to a partial cut mandate and harvesters operating on land with no such mandate is irrelevant. Commerce's analysis is whether the GOQ provides payments to offset costs that Resolute would otherwise have incurred pursuant to a legal obligation, not whether Resolute's costs are higher than other harvesters who are not subject to the same obligation.

Commerce's Position: We disagree that the PCIP confers no benefit. Under the PCIP, there is a government action that confers a benefit, *i.e.*, reimbursements, which offset a portion of the legally required costs incurred by harvesters within the ordinary course of business.[1498]

[1493] *See* Resolute June 8, 2020 Case Brief at 52 – 57.
[1494] *See* Petitioner June 25, 2020 Rebuttal Brief at 237 – 239.
[1495] *Id*. at 238, citing *Groundwood Paper from Canada Final* IDM at Comment 81 and 19 CFR 351.504(a).
[1496] *Id*. at 239, citing *Lumber V Final* IDM at Comment 63 and *Groundwood Paper from Canada Final* IDM at Comment 81
[1497] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 42 – 45.
[1498] *See CVD Preamble*, 63 FR at 65361.

As the landowner and steward of the public forest, the GOQ sets silviculture prescriptions for every harvest block for harvesters to perform in order to maintain the long-term health and sustainability of the forest. Specifically, under the SFDA, the GOQ requires TSG holders to perform forest development activities, which include partial cuts, whereby a harvester is limited to removing no more than 50 percent of the volume of a harvest stand. Resolute secures a portion of its Crown-origin timber from TSGs; therefore, to ensure a secure supply of timber, Resolute must carry out the activities required of TSG holders under the SFDA, including partial cuts on certain harvest stands.[1499]

During the POR, Resolute received payments in the form of reimbursements under the PCIP, which partially offset costs incurred for a legally required activity under its TSG; therefore, we determine that this program provides a benefit to Resolute under section 771(5)(E) of the Act, and that the benefit exists in the amount of reimbursements received by Resolute, pursuant to 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1500] The fact that the reimbursements were only partial does not negate the fact that a benefit was received by Resolute.

Further, we disagree that any advantages to Québec in undertaking the PCIP are relevant to the benefit that Resolute received from the GOQ. In analyzing the benefit received by a grant, pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Section 351.504(a) of the regulations does not contemplate any advantages the government might receive by administering the program, nor do the regulations require Commerce to consider advantages other parties, such as the general public, may or may have not received. Because the GOQ made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

We also disagree with Resolute that Commerce must define the term "benefit" under a grant as a "gift without consideration." Rather, the regulations at 19 CFR 351.503(a) state that Commerce will "measure the extent to which a financial contribution (or income or price support) confers a benefit" as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the "benefit" as "the amount of the grant." Nonetheless, as noted above, in the absence of the PCIP reimbursements, Resolute would still have been legally obligated to comply with the rules of the SFDA in order to harvest in the affected forest areas. Under this framework, any reimbursement of the associated costs incurred are, in fact, a benefit to Resolute.

Finally, we disagree that Resolute's activities under the PCIP constitute a service, and, thus, the associated payments are not countervailable. As a TSG holder, Resolute was legally required to perform partial cuts on certain harvest stands. Under the PCIP, the GOQ provided a grant to Resolute for harvesting on lands where such a partial cutting of harvest stands was required. The

[1499] *See* GOQ July 15, 2019 Primary QNR Response, Vol II, Exhibit QC-PCIP-A and all referenced exhibits therein; *see also* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibit RES-NS-PCIP-APP and all referenced exhibits therein.
[1500] *See CVD Preamble*, 63 FR at 65361.

partially cutting was performed in the furtherance of Resolute's harvesting activities, and not to render a service to the GOQ or general public.

For all the aforementioned reasons, we continue to determine that the PCIP is a grant program that confers a countervailable benefit.

Comment 76: Whether Québec's Paix des Braves Confers a Benefit

GOQ's Comments[1501]
- Commerce failed to analyze whether the reimbursement was a benefit under section 771(5)(E) of the Act.
- Those who harvest on Cree territories incur additional costs associated with a wider dispersion of harvest blocks resulting in higher road building costs. Despite the additional costs, harvesters are billed at the normal stumpage rates as those harvesters not operating on Cree territories. Resolute was only reimbursed for a portion of the actual additional costs incurred. No benefit is conferred because the reimbursements are for costs incurred as a result of government action that imposes an additional financial burden on certain harvesters while not reducing the stumpage rate.
- Commerce cannot rely on the *Groundwood Paper from Canada Final* for its determination. This proceeding covers softwood lumber, not groundwood paper. The two proceedings are separate, and each has its own factual record.

Resolute and Central Canada's Comments[1502]
- The partial compensation for restricted, mosaic cutting on Cree territories does not constitute a grant. Resolute received reimbursement in consideration for the reciprocal obligation to employ mosaic-cutting methods on Cree land, and this reciprocal obligation resembles the provision of a service by Resolute to Québec (and the Cree Nation), not a grant. Services provided to a government are not countervailable under the statute.
- Commerce may not countervail an amount that exceeds any benefit actually received, which, in this case, is zero.

Petitioner's Rebuttal Comments[1503]
- The fact that Resolute's receipt of a grant is also tied to the GOQ's fulfillment of its agreement with the Cree Nation, or that harvesters on Cree lands are disadvantaged compared to harvesters operating elsewhere, does not negate the benefit conferred to Resolute.
- The GOQ's payments to Resolute signify an input cost reduction, such that Resolute actually pays less to harvest on Cree lands than it would absent the program.
- That the GOQ provides monetary assistance to alleviate the financial burden of harvesters is the essence of a countervailable subsidy.
- In analyzing the benefit, Commerce considers the benefit to be the amount of the grant received by the company.[1504]

[1501] *See* GOQ June 8, 2020 Vol VIII Case Brief at 88 – 91.
[1502] *See* Resolute June 8, 2020 Case Brief at 57 – 59.
[1503] *See* Petitioner June 25, 2020 Rebuttal Brief at 239 – 241.
[1504] *Id*. at 241, citing *Groundwood Paper from Canada Final* IDM at Comment 66.

Sierra Pacific's Rebuttal Comments[1505]

- Commerce treats government payments to relieve a respondent of costs it either would have incurred as part of its normal operations or pursuant to a legal obligation as a countervailable subsidy in the form a grant. Payments the GOQ made to Resolute under the Paix des Braves were not provided in exchange for services performed by Resolute, but to offset costs that Resolute was legally obligated to incur.
- That Resolute received only partial reimbursement does not negate the fact that a benefit was received in the amount of the grant.
- The fact that companies which do not harvest on Cree lands may have lower costs than companies that do harvest on Cree lands is irrelevant to the determination of benefit.

Commerce's Position: Based on the GOQ's and Resolute's responses to questionnaires issued in this administrative review, we preliminarily determined that Resolute received countervailable benefits under the Paix des Braves.[1506] The facts on the record of this review demonstrate that the features which make the Paix des Braves countervailable remain unchanged from the *Groundwood Paper from Canada Final*.

Like the PCIP, under the Paix des Braves, there is a government action that confers a benefit, *i.e.*, reimbursements, which offset a portion of the legally required costs incurred by harvesters within the ordinary course of business.[1507]

When harvesting on Cree Nation land, forestry companies are legally required to cut smaller blocks in a widely dispersed mosaic pattern and build additional roads. Pursuant to the "Agreement Respecting a New Relationship Between the Cree Nation and the GOQ" (aka, Paix des Braves), the GOQ compensates forestry companies a portion of the increased costs of harvesting timber in forests located within the Cree territories.[1508]

During the POR, Resolute received payments in the form of reimbursements under the Paix des Braves, which partially offset its harvesting costs. We determine that this program provides a benefit to Resolute under section 771(5)(E) of the Act, and that the benefit exists in the amount of reimbursements received by Resolute, pursuant to 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1509] The fact that the reimbursements were only partial does not negate the fact that a benefit was received by Resolute.

We disagree that any cost advantages to harvesters cutting in other forest areas of the province are relevant to this issue. The fact that harvesters of Crown land in other areas are not participating in the Paix des Braves says nothing about the benefit that Resolute itself actually received under it.

[1505] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 47 – 50.
[1506] *See Lumber VAR1 Prelim Results* PDM at 56 – 57.
[1507] *See CVD Preamble*, 63 FR at 65361.
[1508] *See* GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-CA-A and all referenced exhibits therein; *see also* Resolute's July 23, 2019 Primary Non-Stumpage QNR Response at Exhibit RES-NS-PdB-App and all referenced exhibits therein.
[1509] *See CVD Preamble*, 63 FR at 65361.

Further, we disagree that any advantages to Québec in undertaking the Paix des Braves are relevant to the benefit that Resolute received from the GOQ. When analyzing the benefit of a grant pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Section 351.504(a) of Commerce's regulations does not contemplate any advantages the government might receive by administering the program, nor do the regulations require Commerce to consider advantages other parties, such as the public or First Nations, may or may have not received. Because the GOQ made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

Finally, we disagree that Resolute's activities under the Paix des Braves constitute a service, and, thus, the associated payments are not countervailable. Under this program, the GOQ provided a grant in the furtherance of Resolute's harvesting activities on Cree territories, not to render a service to the government or general public.

For all the aforementioned reasons, we continue to determine that the Paix des Braves is a grant programs that confers a countervailable benefit.

Comment 77: Whether Québec's MCRP Confers a Benefit

GOQ's Comments[1510]
- Commerce failed to analyze whether the reimbursement was a benefit under section 771(5)(E) of the Act.
- MCRP provides payment pursuant to contracts for services rendered—the building/rehabilitating bridges and multi-use roads on public land. This is work that would otherwise have been done by the GOQ for infrastructure that is property of the GOQ.
- Because the program is a partial reimbursement for services rendered, the payments do not confer a benefit.

Resolute and Central Canada's Comments[1511]
- Commerce's finding that road reimbursements are grants ignores the consideration that the province receives something of value in return for the reimbursements. The purchases of services, in which the provincial government pays partially for road construction and maintenance, are not grants and, thus, are not countervailable under the Act.
- Resolute's costs exceeded the reimbursements received in consideration for the work performed.

Petitioner's Rebuttal Comments[1512]
- The "services" argument misconstrues the nature of the MCRP. The construction and maintenance of the multi-use roads are not solely for the benefit of the province; rather, Resolute and Mauricie derive benefit from these activities and would undertake them regardless of any reimbursement from the GOQ.

[1510] *See* GOQ June 8, 2020 Vol VIII Case Brief at 91 – 93.
[1511] *See* Resolute June 8, 2020 Case Brief at 66 – 67.
[1512] *See* Petitioner June 25, 2020 Rebuttal Brief at 234 – 237.

- The primary responsibility for maintaining these roads rests with the forestry industry not because such companies are "specially situated with the capabilities to perform that work," as Resolute argues,[1513] but because of the importance of these roads to carry out harvesting activities.[1514]
- The reimbursements provided by the GOQ relieve Resolute of a financial burden it would have incurred in the normal course of business.
- A partial reimbursement does not negate the fact that Resolute received a benefit. There is no statutory requirement that a subsidy offset the entirely of a cost in order to provide a benefit.

Sierra Pacific's Rebuttal Comments[1515]
- The record indicates that the cost of construction/maintenance of public access roads in the public forest are incumbent on the forestry industry.[1516] Thus, the payments the GOQ makes under the MCRP relieve Resolute of a financial burden it otherwise would have incurred as part of its normal operations.
- Commerce properly treated these payments as a financial contribution in the form of a direct transfer of funds, *i.e.*, grants, and properly treated the entire amount of the payments as conferring a benefit.
- The payments are not made "in consideration" for the provision of services, but rather to offset costs that Resolute would otherwise have incurred.

Commerce's Position: Under the MCRP, the MFFP provides reimbursements of up to 90 percent of the costs of construction, improvement, and repairs of multi-use public access roads in the public forest to TSG-holders, buyers of timber on the open market, holders of a forestry permit stipulated in section 73 of the SFDA, Rexforêt, and holders of an over-the-counter contract for timber.[1517] During POR, Resolute's responding cross-owned affiliate Mauricie received payments under the MCRP.

We find that the MCRP functions in a manner that is similar to Québec's Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas program. Like that program, the MCRP is designed to reduce costs that the forestry sector is legally required to incur under its TSGs in its normal course of business of harvesting in the public forest. Because the GOQ provides reimbursements to Mauricie for costs it incurs for the construction and repair of roads in public forest areas to perform its harvesting activities, we find that the MCRP provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and bestows a benefit in the amount of the reimbursement under section 771(5)(E) of the Act and 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1518] The fact that the reimbursements were only partial does not negate the fact that a benefit was received.

[1513] *Id*. at 235, citing Resolute June 8, 2020 Case Brief at 60.
[1514] *Id*. at 236, citing Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibit RES-NS-MCRP-1.
[1515] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 50 – 51.
[1516] *Id*. at 51, citing Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibit RES-NS-MCRP-1 (p. 1).
[1517] *See* GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-MCRP-A and all referenced exhibits therein; *see also* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibit RES-NS-MCRP-APP and all referenced exhibits therein; and Resolute July 30, 2019 QNR Response for Mauricie at 11 and 22.
[1518] *See CVD Preamble*, 63 FR at 65361.

We disagree that Mauricie's activities under this program constitute a service to the province, and, thus, the associated payments are not countervailable. In its "Guide to the Multi-resource Road Cost Reimbursement Program," the MFFP acknowledges that "{a} large proportion of these roads are built by the forest industry to carry out timber harvesting activities."[1519] As such, the activities performed by Mauricie—building and repairing roads to access harvesting areas on Crown land—were performed in the furtherance of its harvesting activities, not to render a service to the GOQ or general public. Because Mauricie's roadwork was done to further its harvesting operations, we do not find the roads to be "general infrastructure" within the meaning of 19 CFR 351.511(d) as infrastructure that is created for the broad societal welfare of a country, region, or municipality.

For the foregoing reasons, we continue to determine that the MCRP is a grant program that provides a countervailable benefit.

Comment 78: Whether Québec's Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances Confers a Benefit

GOQ's Comments[1520]

- Commerce failed to analyze whether the reimbursements were a benefit under section 771(5)(E) of the Act.
- Disturbances (*i.e.*, fire, wind-throw, and insect epidemics) increase harvesting costs because of the reduced per-hectare salvageable volume. Despite the additional costs, the stumpage rates in the applicable tariffing zones that harvesters are billed are not reduced. The program compensates the harvesters for added costs associated with preserving the health of the public forest. Because the program is a reimbursement for the increased per-unit harvesting costs incurred by salvage operations, payments under the program do not confer a benefit.
- Commerce cannot rely on the *Groundwood Paper from Canada Final* for its determination. This proceeding covers softwood lumber, not groundwood paper. The two proceedings are separate, and each has its own factual record.

Resolute and Central Canada's Comments[1521]

- This program confers no benefit on Resolute but rather partially reimburses the company for the costs incurred in exchange for the service of saving the forest from an ecological catastrophe, such as insect infestation and fires.
- Commerce's treatment of the payments as grants is contrary to law. A grant is a gift, something bestowed for no consideration, an unfair advantage under the statute.[1522] Here, Resolute received compensation for salvage operations, which is not a gift. Further, services provided to a government are not countervailable under the Act.
- Should Commerce continue to countervail the reimbursements, then it should treat as separate programs the three initiatives,[1523] which have different eligibility criteria.

[1519] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibit RES-NS-MCRP-1 (p. 1).
[1520] *See* GOQ June 8, 2020 Vol VIII Case Brief at 85 – 88.
[1521] *See* Resolute June 8, 2020 Case Brief at 80 – 83.
[1522] *Id*. at 81, citing *Government of Sri Lanka v. U.S.*, 2018 WL 1831791 at *8.
[1523] The three initiatives are: Timber Salvage Operation in Recently Burned Area; Timber Salvage Operation in Blowdown Area; and Incentives for Harvesting Areas Infested by Spruce Budworm.

Petitioner's Rebuttal Comments[1524]

- The salvage work companies perform under this program does not, as Resolute and the GOQ argue, simply aid the government in preserving the health of the public forest. Rather, this program's funding is intended to "support the supply to wood processing plants," and thus provides Resolute with an input cost reduction such that the company pays less to continue its harvesting operations in affected areas than it would otherwise.[1525] As Commerce has made clear, its concern is the benefit received by the company.[1526]
- There is no justification to treat the initiatives under this program as three separate programs. There is no particular form of application, and payments are consistently disbursed as grants or credits in the same manner.

Sierra Pacific's Rebuttal Comments[1527]

- Commerce's analysis focuses on whether the government relieved the respondent of a financial burden it otherwise would have incurred as part of its normal operations or was required to incur pursuant to a legal obligation, not whether the respondent received the payments "in consideration" for undertaking the relevant activities. Here, the GOQ made payments to Resolute to offset costs the company was legally obligated to incur, which constitutes a financial contribution in the form of a grant.
- The payments offset costs of activities which were in furtherance of Resolute's harvesting activities, and pursuant to a legal obligation, not to render a service to the GOQ.

Commerce's Position: Based on the GOQ's and Resolute's responses to questionnaires issued in this administrative review, we preliminarily determined that Resolute received countervailable benefits under this Investment Program.[1528] The facts on the record of this review demonstrate that the features which make this Investment Program countervailable remain unchanged from the *Groundwood Paper from Canada Final*. We thus disagree with the respondents and continue to find that the payments made by the GOQ to Resolute under this Investment Program constitute a countervailable subsidy. Like the PCIP, payments under this program are provided to offset harvesting costs that Resolute is legally required to incur in its normal course of business and, thus, the payments confer a benefit under section 771(5)(E) of the Act.

As the landowner and steward of the public forest, the GOQ requires harvesters who hold TSGs to perform various reforestation and land stewardship activities in order to maintain the long-term health and sustainability of forest areas. Under the SFDA, the GOQ requires TSG holders to perform accelerated or selective cutting of timber in the public forest when a disturbance of fire, wind-throw, and insect epidemic occurs.[1529]

Section 771(5)(D)(i) of the Act defines the term "financial contribution" as "the direct transfer of funds, such as grants…" and 19 CFR 351.504(a) states that, in the case of a grant, "a benefit

[1524] *See* Petitioner June 25, 2020 Rebuttal Brief at 246 – 248.
[1525] *Id*. at 247, citing GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-AD-1.
[1526] *Id*. at 247, citing *Groundwood Paper from Canada Final* IDM at Comment 66.
[1527] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 39 – 41.
[1528] *See Lumber V AR1 Prelim Results* PDM at 60 – 61.
[1529] *See* GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-AD-4 (Article 60 of the SFDA); *see also* Resolute July 15, 2019 Primary Stumpage QNR Response at 46, citing Article 60 of the SFDA at RES-STUMP-QC-15.

exists in the amount of the grant." There is no legal basis for Resolute's argument that direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act, such as grants, are limited to "gifts" bestowed without consideration. To the extent that the CIT previously construed "grant" according to a dictionary definition that references "gift," a dictionary definition does not supersede Commerce's application of the Act. Because the GOQ made a "direct transfer of funds" via a grant to Resolute, we determine that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1530] The fact that Resolute received partial reimbursements does not negate the fact that a benefit was received.

We disagree that Resolute's activities under this program constitute a service, and, thus, the associated payments are not countervailable. The manner in which the program operates confirms that payments are not for services rendered to the GOQ, but for the furtherance of Resolute's harvesting activities. Funds are disbursed under this program after companies "submit a request in writing to the Ministry to obtain financial assistance," which takes the form of "grants or credits."[1531] The funding offsets a portion of a harvester's operating expenses that are incurred as a result of the "greater dispersion of harvesting operations, additional road costs, additional accommodation costs, higher difficulty of operation."[1532] The record evidence makes clear that the GOQ provided grants to Resolute to make the company's salvage harvesting and processing of timber from forest areas impacted by fire, blowdown, and spruce budworm financially profitable.

Further, we disagree with Resolute that there are "three initiatives" under this Investment Program that should be treated as separate programs. Under the October 28, 2014 Normative Framework, the GOQ established one financial assistance program—the Investment Program in Public Forests Affected by a Natural or Anthropogenic Disturbances—to help companies cover the additional costs incurred in timber operations in forest areas affected by disturbances.[1533] While a company can receive assistance for different types of disturbances, that fact does not denote that there are separate and distinct programs for fire, wind-throw, and insect epidemic. If the GOQ intended there to be a program for each type of disturbance, then it would have implemented three separate programs and not one Investment Program in October 2014, or later via the July 3, 2017 Normative Framework when the program was renewed for the next three fiscal years.[1534]

For the foregoing reasons, we continue to determine that this Investment Program provides grants that confer countervailable benefits.

[1530] *See CVD Preamble*, 63 FR at 65361.
[1531] *See* GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-AD-A (p. 6 – 7).
[1532] *See* Resolute July 15, 2019 Primary Stumpage QNR Response at RES-NS-NADB-APP (p. 1).
[1533] *See* GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-AD-2 (Summary of Explanations).
[1534] *Id*. at 2017 Normative Framework.

Comment 79: Whether Québec's PIB Is Countervailable

GOQ's Comments[1535]

- Commerce failed to analyze whether the reimbursement was a benefit under section 771(5)(E) of the Act or specific under section 771(5A)(D)(i) of the Act.
- Commerce's preliminary finding equates the existence of eligibility requirements for a program to *de jure* specificity. The statute requires that for a *de jure* specificity finding, the legislation must affirmatively limit the program to a small number of enterprises or industries. The statute does not tie a *de jure* specificity finding to limitations on the activities conducted by the enterprises or industries. Under the PIB, any enterprise or industry that uses forestry products to develop innovative new products or processes is eligible for the program and, therefore, the PIB is not *de jure* specific.
- The PIB also does not confer a benefit on producers of subject merchandise. The approved projects during the POR were all determined to be innovative projects that are not subject merchandise.

Resolute and Central Canada's Comments[1536]

- PIB benefits the GOQ as it seeks to develop ways of using low quality wood and to mitigate job losses associated with industries in decline, such as newsprint. The new products are not softwood lumber products.
- The GOQ does not fully reimburse participants for their expenses. Rather, the GOQ contributes to the costs of R&D and is not giving away something for nothing, *i.e.*, these are not gifts without consideration.
- PIB is not *de jure* specific because it is open to all Québec companies and education industries that use wood or wood biomass to develop or produce new innovative products. PIB is not *de facto* specific because the record shows that the companies which received funding during the POR operated in a variety of sectors.

Petitioner's Rebuttal Comments[1537]

- The PIB is expressly limited to companies that "use or intend to use wood or wood biomass" to develop innovative products, processes, or pilot plants.[1538] The possibility that there are many industries that use forestry products does not negate this limitation, as the respondents assert.
- Record evidence also shows that the PIB is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.[1539]
- Concerning benefit, record evidence shows that eligibility for this subsidy is not tied to non-subject merchandise.[1540] The "innovative products, processes, and technologies" developed with financial assistance from this subsidy may take on a variety of forms, none of which are solely limited to non-subject merchandise.[1541]

[1535] *See* GOQ June 8, 2020 Vol VIII Case Brief at 93 – 96.
[1536] *See* Resolute June 8, 2020 Case Brief at 91 – 93.
[1537] *See* Petitioner June 25, 2020 Rebuttal Brief at 243 – 245.
[1538] *Id*. at 244, citing GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-PIB-A (p. 7).
[1539] *Id*. at 244, citing GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-PIB-A (p. 12) and Exhibit QC-PIB-8 (proprietary usage data).
[1540] *Id*. at 244, citing GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-PIB-A (p. 1).
[1541] *Id*. at 245, citing GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-PIB-A (p. 1).

- The PIB is intended to support the forest products industry as a whole, defined as "industry covering the first, second and third processing of the pulp, paper and bioproducts, panels, sawmill, wood construction and bioenergy sectors."[1542]

Commerce's Position: We do not find the arguments made by Resolute and the GOQ to be persuasive and, thus, are not moved to reconsider the countervailable finding for the PIB (aka, Wood Innovation Program).

Established under the 2016 Forest Innovation Program Normative Framework, the PIB was implemented with a C$22.5 million budget to support innovation and diversification of the forest products industry and industries using forest products.[1543] The Normative Framework is explicit in that an eligible applicant must be "specializing in the forest products industry."[1544] Hence, we determine that the program is *de jure* specific, under section 771(5A)(D)(i) of the Act because, pursuant to the Normative Framework, the GOQ expressly limits access to the subsidy to particular enterprises, *i.e.*, entities specializing in the forest products industry. Though only a single factor warrants a finding of specificity and a further analysis is not required, we note that the PIB is also *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. The proprietary usage data for the POR that were provided by the GOQ indicate that the actual recipients of PIB grants on an enterprise basis are limited in number.[1545]

Additionally, there is no evidence to suggest, as the respondents do, that the PIB cannot confer a benefit on softwood lumber producers because the PIB stimulates investments in innovative products and innovative products are not subject merchandise. The Normative Framework makes clear that the projects funded under PIB are to enhance the value of wood fibre, diversify the product offer, promote the competitiveness of the forest industry, and increase or maintain the consumption of low-quality wood (hardwood or softwood) without qualification.[1546] The record shows that eligibility for this subsidy is not tied to non-subject merchandise.[1547] Rather, the Normative Framework indicates that the PIB supports the forest industry, defined as "industry covering the first, second and third processing of the pulp, paper and bioproducts, panels, sawmill, wood construction and bioenergy sectors."[1548] As such, we continue to find that the PIB bestowed a benefit to Resolute during the POR, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).

[1542] *Id*. at 245, citing GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-PIB-3.
[1543] *See* GOQ July 15, 2019 Primary QNR Response, Vol II at Exhibit QC-PIB-1 (p. 4).
[1544] *Id*. at Exhibit QC-PIB-1 (p. 5) and Exhibit QC-PIB-3 (p. 5).
[1545] *Id*. at Exhibit QC-PIB-8.
[1546] *Id*. at Exhibit QC-PIB-1 (p. 4) and Exhibit QC-PIB-3 (p. 5).
[1547] *Id*. at Exhibit QC-PIB-A and all referenced exhibits.
[1548] *Id*. at Exhibit QC-PIB-3 (p. 2).

Comment 80: Whether Québec's ÉcoPerformance Is Countervailable

GOQ's Comments[1549]

- All sectors of the Québec economy, except residential and road transportation, are eligible for financial support under ÉcoPerformance if they use fossil fuels and want to reduce usage by means of energy efficiency measures.
- Even if Commerce continues to find the program specific, it does not confer a benefit to the participants as payment correlates to the reduced/avoided GHG emissions and is based on objective criteria that a company must fulfill on a contractual basis.
- The provision of GHG reduction/avoidance is a service for which Québec pays. Québec and its citizens are the beneficiaries, not the companies that implemented the projects.
- Commerce cannot rely on the *Groundwood Paper from Canada Final* for its determination. This proceeding covers softwood lumber, not groundwood paper. The two proceedings are separate, and each has its own factual record.

Resolute and Central Canada's Comments[1550]

- Under the ÉcoPerformance, the GOQ purchases services – the reduction of GHG, the reduction of fossil fuel consumption, and the improvement of energy efficiency through quantifiable projects – all of which benefit the government in its sustainability goals. A government's purchase of services is not countervailable.
- Neither the facts nor the law supports a finding that ÉcoPerformance is *de facto* specific. ÉcoPerformance is available to any person or company in Québec and used by individuals, institutions, and enterprises in varied sectors. Commerce's methodology of determining specificity by comparing the total number of ÉcoPerformance participants with the number of potential corporate tax filers in Québec constitutes an inappropriate broadening of the *de facto* specificity criteria. The statute does not require that all market participants benefit equally.
- Even if Commerce were to deny that the program involves a service, not goods, it is not specific and, therefore, not countervailable.

Petitioner's Rebuttal Comments[1551]

- Any benefit that the GOQ enjoys through reduced GHG is irrelevant to Commerce's analysis and has no bearing on whether the ÉcoPerformance is countervailable. A benefit to the GOQ does not nullify the benefit received by Resolute.
- There is no evidence that the payments under the program are payments for services, but rather evidence demonstrates that the payments are grants. The GOQ stated that "in the vast majority of cases, the financial assistance is provided for or ties to capital assets investments in energy efficiency equipment."[1552] Energy efficiency equipment not only reduces GHG but also benefits the operations of a company.
- The number of participants under the ÉcoPerformance is limited when compared to the total number of companies operating in Québec and renders the program *de facto* specific.

[1549] *See* GOQ June 8, 2020 Vol VIII Case Brief at 121 – 128.
[1550] *See* Resolute June 8, 2020 Case Brief at 83 – 86.
[1551] *See* Petitioner June 25, 2020 Rebuttal Brief at 228 – 230.
[1552] *Id*. at 230, citing GOQ July 15, 2019 Primary QNR Response, Vol VI at Exhibit QC-ECO-A (p. 23).

Commerce's Position: We are not persuaded by the respondents' arguments regarding the specificity of the ÉcoPerformance. The fact that many sectors of the Québec economy are eligible to seek financial support under the program does not negate the evidence on the record of this administrative review that the actual recipients are limited in number.

Contrary to Resolute's arguments, we did not preliminarily determine *de facto* specificity by comparing the total number of ÉcoPerformance participants with the number of potential corporate tax filers in Québec. Rather, we relied on the number of participants in the program, and its two predecessor programs, for the period 2007 – 2018, as reported by the GOQ.[1553] The GOQ reported that there was a small number of participants, in total, that received grants under the program for all the years 2007 through 2018 combined.[1554] Therefore, we continue to find the ÉcoPerformance to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in number.

We are also unpersuaded by the respondents' arguments that the ÉcoPerformance is not countervailable because it constitutes the purchase of services by the government. We do not agree that the reduction/avoidance of GHG emissions amounts to a performance of a service for which the government is paying. Record evidence indicates that payments under the program are "financial assistance" from the GOQ to an entity for typically energy efficiency equipment and provided in the manner of non-recurring grants.[1555]

Further, we disagree that any advantages of GHG reduction/avoidance to the province are relevant to this issue. Governments cannot receive "benefits" within the meaning of 19 CFR 351.504(a). Section 771(5)(D)(i) of the Act defines the term "financial contribution" as "the direct transfer of funds, such as grants…" and 19 CFR 351.504(a) states that, in the case of a grant, "a benefit exists in the amount of the grant." Because the GOQ made a "direct transfer of funds" via grants to Resolute under the ÉcoPerformance, we find that Resolute received a benefit equal to the amount of the grants received, pursuant to 19 CFR 351.504(a) and section 771(5)(E) of the Act.

[1553] *See Lumber VAR1 Prelim Results* PDM at 59 – 60.
[1554] *See* GOQ July 15, 2019 Primary QNR Response, Vol VI at Exhibit QC-ECO-A (p. 14). The total number of participants for the years 2007 – 2018 is proprietary information. For more information, *see* Final Québec Specificity Memorandum.
[1555] *See* GOQ July 15, 2019 Primary QNR Response, Vol VI at Exhibit QC-ECO-A (p. 7 – 8, and 23).

Comment 81: Whether Québec's FDRCMO and MFOR Are Specific

GOQ's Comments[1556]

- Any program that does not have universal usage is not *de facto* specific. However, Commerce preliminarily determined that the Emploi-Québec programs FDRCMO and MFOR, are *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because a small number of companies received grants under the program when compared to the total number of companies operating/established in Québec and the total number of companies that filed an income tax return in Québec.
- Record information indicates that no company or industry accounts for a disproportionate or predominant amount of the grants given under FDRCMO and MFOR.[1557] The statute does not require a *de facto* specificity finding if less than all of the companies in the province received a grant under a program. Rather, when considering whether a program is limited in number by an enterprise, Commerce must consider whether a few companies received the grant such that the subsidy is targeted.[1558] Here, both programs are used by thousands of different companies across a range of industry classifications.
- FDRCMO and MFOR are not targeted, nor are they limited in number by an enterprise.

Resolute and Central Canada's Comments[1559]

- MFOR, which was created for workers and not enterprises, is not *de facto* specific because evidence shows that it is widely available and used, and no enterprise or industry is a predominant or disproportionate user of the program. Participating entities cover a wide range of sectors, from hair salons to heavy industries. Workers in the forestry industries, which include sawmills, received 3.5 percent of funding in 2017, and less than 2.0 percent in 2018.
- FDRCMO is a worker training program available to all businesses in Québec irrespective of industry sector. Participating entities cover a wide range of sectors, including care facilities and heavy industries. Forest products industries were not the greatest recipients of the funding.
- In the underlying investigation, Commerce did not countervail a similar Emploi-Québec program, *i.e.*, CEP.[1560] Commerce should follow the same reasoning and find that MFOR and FDRCMO do not favor Resolute or the sawmill industry or any other industry or enterprise, and are not specific to any enterprise or industry or group thereof.

Petitioner's Rebuttal Comments[1561]

- The respondents attempt to convolute Commerce's analysis by focusing on disproportionate and predominate use. However, disproportionate and predominate use are only two of the four factors that can constitute *de facto* specificity and have no bearing on Commerce's *de facto* specificity finding under 771(5A)(D)(iii)(I) of the Act.
- A *de facto* specificity finding under 771(5A)(D)(iii)(I) of the Act alone is sufficient.

[1556] *See* GOQ June 8, 2020 Vol VIII Case Brief at 106 – 109.
[1557] *Id*. at 106 – 108, citing GOQ July 15, 2019 Primary QNR Response, Vol IV at Exhibit QC-FDRCMO-6 and Exhibit QC-MFOR-5.
[1558] *See* GOQ June 8, 2020 Vol VIII Case Brief at 96 – 101, citing, *e.g.*, *AK Steel Corp. v. U.S.*, 192 F.3d 1385.
[1559] *See* Resolute June 8, 2020 Case Brief at 94 – 96.
[1560] *See Lumber V Final* IDM at 90 – 91.
[1561] *See* Petitioner June 25, 2020 Rebuttal Brief at 231 – 233.

Commerce's Position: While we do not dispute that any company in Québec can apply for assistance under FDRCMO and MFOR, usage data submitted by the GOQ indicate that the actual recipients of assistance under each program are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.

As stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies that truly are broadly available and widely used throughout an economy.[1562] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies . . . used by discrete segments of an economy could escape the purview of the {countervailing duty} law."[1563] The SAA also states that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.[1564]

Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, Commerce reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.[1565] Thus, we have followed the instructions of the SAA and our practice in determining whether FDRCMO and MFOR are *de facto* specific. Further, we disagree that Commerce is to consider the percentage of program funds disbursed to a particular company or industry under section 771(5A)(D)(iii)(I) of the Act.

Our analysis of the usage data submitted by the GOQ show that a small number of companies received grants under the FDRCMO each year 2014 through 2018, when compared to the total number of companies operating/established in Québec or to the total number of companies that filed an income tax return in Québec for the years 2014 through 2018.[1566] While the number of companies that received MFOR grants during the same period was higher, on a percentage basis, there is no appreciable difference.[1567] Based on these facts, we determine that the Emploi-Québec programs are not widely used throughout the provincial economy; therefore, the programs are *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

The GOQ maintains that no company or industry accounts for a predominant or disproportionate amount of the grants given under FDRCMO and MFOR. However, predominant and disproportionate use are addressed by sections 771(5A)(D)(iii)(II) and (III) of the Act, respectively. Neither statutory section is the basis upon which Commerce reached its specificity determination with respect to FDRCMO and MFOR. Moreover, as set forth under 19 CFR

[1562] *See* SAA at 929.
[1563] *Id*.
[1564] *Id*. at 931.
[1565] *See CRS from Korea* IDM at Comment 13; *see also Lumber V Final* IDM at Comment 62.
[1566] *See* GOQ July 15, 2019 Primary QNR Response, Vol IV at Exhibit QC-FDRCMO-6 and Exhibit QC-FDRCMO-1 (p. 12). The number of companies that received disbursements under FDRCMO, the number of companies operating/established in Québec, and the number of companies that filed an income tax return in Québec for the years 2014 through 2018 are proprietary data. For more information, *see* Final Québec Specificity Memorandum.
[1567] *See* GOQ July 15, 2019 Primary QNR Response, Vol IV at Exhibit QC-MFOR-5 and Exhibit QC-MFOR-A (p. 11 – 12). The number of companies that received disbursements under MFOR, the number of companies operating/established in Québec, and the number of companies that filed an income tax return in Québec for the years 2014 through 2018 are proprietary data. For more information, *see* Final Québec Specificity Memorandum.

351.502(a), in determining whether a subsidy is *de facto* specific, Commerce will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially in order of appearance. If a single factor warrants a finding of specificity, Commerce will not undertake further analysis.[1568] Therefore, because recipients of the subsidy under FDRCMO and MFOR were limited in number on an enterprise basis, under section 771(5A)(D)(iii)(I) of the Act, we find the programs *de facto* specific.

Lastly, Commerce's finding that the CEP is not specific in *Lumber V Final* is not relevant to our analysis of FDRCMO and MFOR.[1569] Unlike with FDRCMO and MFOR, the usage data analyzed for the CEP demonstrated that the program was not specific under any prong of section 771(5A)(D)(iii) of the Act.[1570] As discussed above, the GOQ's usage data for FDRCMO and MFOR clearly show that the actual recipients of assistance under each program are limited in number in accordance with section 771(5A)(D)(iii)(I) of the Act. Contrary to Resolute's argument, Commerce cannot apply the reasoning used to find the CEP not specific to FDRCMO and MFOR when the data for FDRCMO and MFOR demonstrate *de facto* specificity based on limited usage.

Comment 82: Whether Québec's FDRCMO and MFOR Are Recurring

GOQ's Comments[1571]

- The AUL information provided for respondents demonstrates that FDRCMO and MFOR grants are not exceptional, and the respondents received grants under multiple contracts in the same year and under different contracts year after year.
- Although the Emploi-Québec programs require agency approval, that criterion in itself is not determinative of whether a program is recurring or non-recurring. In fact, Commerce's questionnaire and regulations recognize that worker assistance and worker training programs are presumptively recurring programs.[1572]
- Commerce should recognize that the Emploi-Québec programs are recurring.

Petitioner's Rebuttal Comments[1573]

- The GOQ misunderstands 19 CFR 351.524(c)(2), under which all three criteria need not to be met for Commerce to find a non-recurring subsidy. Evidence on the record indicates that "separate, project-specific government approval was required" and "projects…are limited in duration" under the FDRCMO and MFOR.[1574]

Commerce's Position: We disagree that the FDRCMO and MFOR grants are recurring. While Commerce's regulations include a non-binding illustrative list of the programs "normally"

[1568] *See* section 771(5A)(D)(iii) of the Act (providing that a program is *de facto* specific if "one or more" of the enumerated factors exist).
[1569] *See Lumber V Final* IDM at 19.
[1570] *See Lumber V Prelim* PDM at 90 – 91.
[1571] *See* GOQ June 8, 2020 Vol VIII Case Brief at 109 – 110.
[1572] *Id*., citing GOQ July 15, 2019 Primary QNR Response, Vol IV at Exhibit QC-MFOR-A (page 19) and Exhibit QC-FDRCMO-A (page 20); and 19 CFR 351.524(c), identifying "worker assistance; worker training" as the types of programs that Commerce "normally will treat" as recurring.
[1573] *See* Petitioner June 25, 2020 Rebuttal Brief at 231 – 233.
[1574] *Id*. at 233, citing GOQ July 15, 2019 Primary QNR Response, Vol IV at Exhibit QC-FDRCMO-A (p. 16) and Exhibit QC-MFOR-A (p. 15).

treated as providing recurring benefits (*i.e.*, "{d}irect tax exemptions and deductions; exemptions and excessive rebates of indirect taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; wage subsidies; and upstream subsidies"), they also provide a test for determining whether a benefit is recurring. Specifically, 19 CFR 351.524(c)(2) states:

> If a subsidy is not on the illustrative lists, or is not addressed elsewhere in these regulations, or if a party claims that a subsidy on the recurring list should be treated as non-recurring or a subsidy on the non-recurring list should be treated as recurring, the Secretary will consider the following criteria in determining whether the benefits from the subsidy should be considered recurring or nonrecurring:
>
> > (i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;
> > (ii) Whether the subsidy required or received the government's express authorization for approval (*i.e.*, receipt of benefits is not automatic); or
> > (iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

Therefore, in examining whether a grant is recurring or non-recurring, Commerce will examine whether the grant is received on a regular or predictable basis, or if it requires express approval from the government.[1575] The record indicates that, under the FDRCMO and MFOR, a company must submit a separate application for consideration of each worker training project, and that express approval by MTESS is required in order to receive the grants.[1576] Once the application is approved, the company and MTESS enter into an agreement of one to three years.[1577] These facts indicate that assistance under FDRCMO and MFOR is not automatic – each grant must be applied for and receive separate government approval, and the financial assistance to be provided is based on specific agreements between the company and MTESS. We, therefore, continue to determine that FDRCMO and MFOR are properly treated as non-recurring subsidies for these final results. This finding is consistent with *Groundwood Paper from Canada Final*.[1578]

Comment 83: Whether Hydro-Québec's GDP New Demand-Side Management Program Is Specific and Conferred a Benefit

GOQ Comments[1579]

- The GDP is not limited to a specific enterprise or industry as a matter of law or fact.

[1575] We note that there is a specific regulation pertaining to worker-related subsidies (19 CFR 351.513), but this does not detract from our determination to treat the programs at issue here as non-recurring based on the record evidence.
[1576] *See* GOQ July 15, 2019 Primary QNR Response, Vol IV at Exhibit FDRCMO-A (p. 6) and Exhibit QC-MFOR-A (p. 5 – 6).
[1577] *Id*. at Exhibit FDRCMO-A (p. 16) and Exhibit QC-MFOR-A (p. 15).
[1578] *See Groundwood Paper from Canada Final* IDM at Comment 80.
[1579] *See* GOQ June 8, 2020 Vol VIII Case Brief at 72 – 77, and 79 – 80.

- Recipients are not limited in number, and all commercial, institutional, and small- and medium-size industrial companies are eligible.
- During the POR, and over the AUL, the largest users of the program were in the educational services, hospital, real estate, and public administration sectors. Customers in the wood products industry were not the largest or the predominant users and did not receive a disproportionately large amount of assistance. Further, Hydro-Québec did not exercise discretion to favor a particular enterprise or industry. Eligibility under the GDP was automatic and based on pre-established criteria based on the level of reduced electricity consumption.
- The GDP benefits only Hydro-Québec by enabling it to provide power during peak demand periods and maintain the reliability of the grid. No benefit is provided to the users of the GDP because they risk interruption to their operations.

Resolute and Central Canada's Comments[1580]
- Commerce's reasoning for finding the GDP *de jure* specific because it is open only to customers with a communicating meter whose electrical service contract is subject to Rate DM, G, G9, M, or LG are eligible to participate is a tautology. Only buyers of electricity can benefit the public utilities, and the benefit is greater to the utilities where there is a lot of electricity to interrupt.
- GDP is available to all Hydro-Québec medium power customers or aggregators not participating in the IEO. Participants are comprised of a number of entities from a wide variety of industry sectors.
- Commerce does not explain under which subsection of 771(5)(E) of the Act it determined the benefit. Were Commerce to treat electricity curtailment as a "good," the way that it treats purchases of electricity, then it would need a benchmark to determine a benefit, but there is no allegation that the exchange of payments for curtailment were made for MTAR.

Petitioner's Rebuttal Comments[1581]
- Participation in the GDP is expressly limited to only those Hydro-Québec customers who are subject to Rate DM, G, G9, M, or LG and, thus, is *de jure* specific.
- Resolute itself admits that the GDP is designed "to interrupt larger electricity consumers" and that the program is only helpful in situations where "there is a lot of electricity to interrupt."[1582] Thus, Resolute confirms that the GDP is in fact limited to certain Hydro-Québec customers with certain billing rates and load reduction capabilities.
- The GOQ's argument that the GDP benefits Hydro-Québec and not Resolute ignores the fact that Commerce's regulations "do not contemplate any advantages the government might receive by administering {a} program."[1583]
- Under the GDP, the GOQ provided Resolute a direct transfer of funds, thereby conferring a benefit in the amount of such transfer.

Commerce's Position: We are unpersuaded by the respondent parties' assertion that the GDP program is not specific. Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is

[1580] *See* Resolute June 8, 2020 Case Brief at 36 – 37, and 39 – 40.
[1581] *See* Petitioner June 25, 2020 Rebuttal Brief at 200 – 205.
[1582] *Id*. at 203, citing Resolute June 8, 2020 Case Brief at 40.
[1583] *Id*. at 205, citing *Groundwood Paper from Canada Final* IDM at Comment 66, and 19 CFR 351.504(a).

specific as a matter of law. The subsidies that are provided by Hydro-Québec through the GDP are expressly limited to customers with a communicating meter whose electrical service contract is subject to Rate DM, G, G9, M, or LG, as stated in the Participant Guides.[1584] Thus, only customers with certain billing rates and load reduction capabilities are eligible to participate in the GDP program.

The evidence shows that the GOQ has established, by law, a limited group of enterprises that may receive electricity credits from Hydro-Québec under this program. That the GOQ may not have limited eligibility to commonly defined enterprises or industries does not alter this conclusion. Therefore, we continue to find the GDP program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity, we need not examine whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

We agree with Resolute that this program is not an MTAR and therefore a benchmark to determine the benefit is not necessary. As such, we continue to find that the GDP confers a benefit equal to the amount of electricity credits received, as provided under section 771(5)(E) of the Act, which states that a benefit shall normally be treated as conferred where there is a benefit to the recipient. Under the GDP, participants—like Resolute—receive electricity credits when they curtail their power usage on demand in response to an interruption notice issued by Hydro-Québec.

Section 19 CFR 351.503(a) of Commerce's regulations state that Commerce will "measure the extent to which a financial contribution (or income or price support) confers a benefit" as provided for the specific type of benefit, as described under the regulations. Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1585] Under this framework, any grant payments of the associated costs incurred (*i.e.*, power interruption to their operations) are, in fact, a benefit to the recipients.

Thus, we disagree that the GDP benefits Hydro-Québec and not the participating companies. Any advantages to Hydro-Québec in administering the GDP are not relevant to the benefit that Resolute received under the program. In analyzing the benefit of electricity credits, Commerce considers the benefit to be the amount of grant received by the company, pursuant to 19 CFR 351.504(a). Under 19 CFR 351.504, Commerce does not contemplate any advantages the government might receive by administering the program.[1586] Consequently, whether Hydro-Québec was able to maintain the integrity of the grid during peak demand because of the GDP program is immaterial to Commerce's analysis. The focus of Commerce's analysis is the direct transfer of funds that Hydro-Québec made to Resolute via electricity credits, which we find conferred a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

[1584] *See* GOQ July 15, 2019 Primary QNR Response, Vol III at Exhibit QC-GDP-1 (April 2016 version) at "Eligible Customers" and Exhibit-QC-GDP-2 (May 2017 version) at "Eligible Customers."
[1585] *See* 19 CFR 351.503(c).
[1586] *See CVD Preamble*, 63 FR at 65361 ("{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the 'effect' of a subsidy.").

Comment 84: Whether Hydro-Québec's IEO Is Specific and Conferred a Benefit

GOQ Comments[1587]

- Commerce's *de jure* specificity finding is contrary to the evidence and the statute.
- Industrial users with the technical capacity to curtail power on notice of interruption are not an "enterprise or industry" and, therefore, the IEO is not "expressly limited" under the law.
- The IEO program is available to all Medium-Power Customers, Large-Power Customers on Rate L (industrial), and Rate LG Customers. These customer types are comprised of thousands of entities from a wide variety of industry sectors. The program is not specific to the forestry, wood, and paper sector.
- The IEO does not confer a benefit to participants. Under the IEO, participating companies must curtail power on demand, disrupting their production which is a cost not a benefit. The IEO benefits Hydro-Québec so it can meet its mandate to reliably supply electricity during peak demand periods.

Resolute and Central Canada's Comments[1588]

- The Québec energy curtailment programs are for the benefit of Hydro-Québec because they help maintain the integrity of the grid during seasonal peak demand.
- Commerce does not explain under which subsection of 771(5)(E) of the Act it determined the benefit. Were Commerce to treat curtailment of electricity as a "good," the way that it treats purchases of electricity, then it would need to find a benchmark to determine a benefit, but there is no allegation that the exchange of fixed and variable credits for interruption notices were made for MTAR.
- Commerce's conclusion that the IEO program is *de jure* specific because it limits access to the subsidy to industrial users with the technical capacity to curtail power on notice of interruption is tautological, like saying swim meets are limited to people who can swim.
- The program is generally available to all Medium-Power Customers, Large-Power Customers on Rate L, and Rate LG Customers who agree to curtail power on notice of interruption from Hydro Québec.

Petitioner's Rebuttal Comments[1589]

- The IEO is expressly limited to all medium power customers on Rate M and large power customers on Rates LG and L (industrial). Customers classified as Rates D, DM, DT, G-9,H, and LP, to name a few, do not have access to this subsidy. The technical specifications of these rates establish, by law, a limit on which enterprises and industries may use the IEO, thereby rending it *de jure* specific.
- The IEO provides an incentive, in the form of electricity credits, to companies that willingly adjust their energy use. Thus, the IEO confers a benefit to Resolute equal to the amount of the electricity credits received.

Commerce's Position: We are unpersuaded by the respondent parties' assertion that the IEO program is not specific. Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is

[1587] *See* GOQ June 8, 2020 Vol VIII Case Brief at 43 – 49, and 51–62.
[1588] *See* Resolute June 8, 2020 Case Brief at 37–40.
[1589] *See* Petitioner June 25, 2020 Rebuttal Brief at 218 – 220.

specific as a matter of law. The subsidies that are provided by Hydro-Québec through the IEO are expressly limited by law to enterprises that meet specific energy generation and consumption requirements and have the technical capacity to curtail power on notice of interruption.[1590] The IEO is available to only Medium-Power Customers, Large-Power Customers on Rate L (industrial), and Rate LG Customers.[1591]

Thus, the evidence shows that the GOQ has established, by law, a limited group of enterprises that may receive electricity credits from Hydro-Québec under this program. That the GOQ may not have limited eligibility to commonly defined enterprises or industries does not alter this conclusion. Therefore, we continue to find the IEO program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity, we need not examine whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

Similarly, we continue to find that the IEO confers a benefit equal to the amount of electricity credits received, as provided under section 771(5)(E) of the Act, which states that a benefit shall normally be treated as conferred where there is a benefit to the recipient. Under the IEO, participants—like Resolute—receive electricity credits when they curtail their power usage on demand in response to an interruption notice issued by Hydro-Québec.

Section 19 CFR 351.503(a) of the regulations states that Commerce will "measure the extent to which a financial contribution (or income or price support) confers a benefit" as provided for the specific type of benefit, as described under the regulations. Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1592] Under this framework, any grant payments of the associated costs incurred (*i.e.*, power interruption to their operations) are, in fact, a benefit to the recipients. Thus, we disagree that the IEO benefits Hydro-Québec and not the participating companies. Any advantages to Hydro-Québec in administering the IEO are not relevant to the benefit that Resolute received under the program.

In analyzing the benefit of electricity credits, Commerce considers the benefit to be the amount of grant received by the company, pursuant to 19 CFR 351.504(a). Under 19 CFR 351.504, Commerce does not contemplate any advantages the government might receive by administering the program.[1593] Consequently, whether Hydro-Québec was able to maintain the integrity of the grid during peak demand because of the IEO program is immaterial to Commerce's analysis. The focus of Commerce's analysis is the direct transfer of funds that Hydro-Québec made to Resolute via electricity credits, which we find conferred a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

[1590] *See Lumber V AR1 Prelim Results* PDM at 64–65.
[1591] *See* GOQ July 15, 2019 Primary QNR Response, Vol III at Exhibit QC-IEO-A.
[1592] *See* 19 CFR 351.503(c).
[1593] *See CVD Preamble*, 63 FR at 65361 ("{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the 'effect' of a subsidy.").

Comment 85: Whether Hydro-Québec's Electricity Discount Program for Rate L Customers Is Countervailable

GOQ Comments[1594]

- Though this discount program is available only to Rate L customers, recipients are not limited in number or to a particular industry. Any Hydro-Québec Rate L customer that made eligible investments under the program was automatically approved, regardless of its industry. Customers in the sawmills/wood preservation industry are not the largest or predominant users, and do not receive a disproportionately large amount of the benefit. Moreover, Hydro-Québec and Finances Québec did not exercise discretion to favor a particular enterprise/industry. Eligibility was automatic and based on pre-established criteria. Therefore, this program is not limited to a specific enterprise or industry as a matter of law or fact.
- Payments do not confer a benefit because the amount of the reimbursement directly correlates to the eligible costs incurred by specific investments to reduce GHG emissions.
- Energy efficiency programs, like this one, provide Hydro-Québec with power and energy savings that contribute to its ability to provide sufficient power and energy during peak periods. Therefore, the program benefits Hydro-Québec and not the participants.
- Due to the contractual nature of the payment, the financial contribution cannot be considered a grant. The program is not countervailable because Hydro-Québec is purchasing a service (*i.e.*, improved energy efficiency, reduced GHG emissions, etc.) from the participants that benefits Hydro-Québec. A government's purchase of services cannot be countervailed.

Resolute and Central Canada's Comments[1595]

- This program is available to all consumers billed at the electricity Rate L and is used by many companies in different industries (*i.e.*, 34 participants during the POR). The forest products industry was not the greatest recipient of the funding, and the program does not favor Resolute or the forest industry, or any other industry/enterprise.
- The Rate L discount program's partial funding is not a grant, which, by definition, must be a gift without consideration.[1596]
- The Rate L program is tied to projects aligned with the GOQ's energy and environmental conservation goals and policies. Commerce's finding that the rebate provides grants fails to recognize that the GOQ both intended and received reciprocally valuable consideration in return for the funding.

Petitioner's Rebuttal Comments[1597]

- Hydro-Québec made monthly payments to Resolute based on the company's approved investments. Those payments reduced Resolute's electricity costs by providing electricity rebates as eligible investments were made by the company.

[1594] *See* GOQ June 8, 2020 Vol VIII Case Brief at 36 – 43.
[1595] *See* Resolute June 8, 2020 Case Brief at 48 – 50.
[1596] *Id*. at 49, citing *Government of Sri Lanka v. U.S.*, 2018 WL 1831791 at *8. The CIT construes "grant" to have its ordinary dictionary meaning: "'Grant' is ordinarily defined as '2: something granted; esp: a gift (as of land or a sum of money) usu. for a particular purpose ... 3a: a transfer of real or personal property by deed or writing—compare ASSIGNMENT 3a, GIFT 2a.' Grant (Noun), Webster's Third New International Dictionary (unabridged 1981) (example sentences omitted)."
[1597] *See* Petitioner June 25, 2020 Rebuttal Brief at 205 – 211.

- Nothing in the statute requires that a financial contribution under section 771(5)(D)(i) of the Act "be a gift without consideration."[1598] The only statutory directive is whether the GOQ provided a direct transfer of funds to Resolute, which it did.
- There is no requirement that a grant must cover the entirety of costs in order to be countervailable. Further, Commerce does not limit financial contributions to those made "without consideration."[1599]
- Contrary to Resolute's *de facto* arguments, Commerce found the program to be *de jure* specific under section 771(5A)(D)(i) of the Act because, pursuant to Decree 675-2016, the program is available to only large power industrial consumers subject to Hydro-Québec's Rate L. Nonetheless, Commerce can also find the program to be *de facto* specific as only 34 Hydro-Québec customers have been accepted into the program.[1600]
- The GOQ's specificity arguments should also be rejected. This program is limited by law to enterprises that meet specific energy consumption requirements. The fact that industrial mine operators and steel producers benefitted under the program does not alter Commerce's specificity analysis and finding.
- The GOQ's arguments that any benefit was to Hydro-Québec, which was able to enjoy energy savings, is disconnected from how the statute instructs Commerce to examine benefit. Resolute benefits from its participation in the program as it receives a discount in its electricity bill. The fact that the assistance provided to Resolute was consistent with the GOQ's energy goals does not negate the fact that the program bestows a benefit on Resolute pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).

Commerce's Position: We are unpersuaded by the respondent parties' assertion that the Rate L discount program (aka, L Rate Investment Rebate) is not specific. As the GOQ reported, "the purpose of the program is to encourage large industrial power consumers—defined as Rate L customers—to undertake eligible investments."[1601] Under the program, businesses billed at the large power industrial rate (Rate L) that carry out eligible investment projects (such as to reduce GHG emissions) can received government assistance in the form of reduced electricity costs.[1602]

Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. The subsidies that are provided by Hydro-Québec through this program are expressly limited by Decree 675-2016 to only "consumers billed at Rate L."[1603] This evidence shows that the GOQ has established, by law, a limited group of enterprises—Rate L consumers—that can receive assistance from Hydro-Québec in the form of electricity rebates for investment projects. Further, that the GOQ may not have limited eligibility to commonly defined enterprises or industries does not alter this conclusion. Therefore, we continue to find the Rate L discount program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity, we need not examine whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

[1598] *Id*. at 208, citing Resolute June 8, 2020 Case Brief at 49.
[1599] *Id*., citing *Groundwood Paper from Canada Final* IDM at Comment 66.
[1600] *Id*. at 210, citing GOQ July 15, 2019 Primary QNR Response at Exhibit QC-EDL-A (p. 12).
[1601] *See* GOQ July 15, 2019 Primary QNR Response, Vol III at Exhibit QC-EDL-A (p. 1).
[1602] *Id*.
[1603] *Id*. at Exhibit QC-EDL-2.

Decree 675-2016 also states that "the discount applied to electricity bills will enable consumers billed at Rate L to free up additional funds to make investments that enhance their competitiveness."[1604] The reduced electricity costs (in the form of electricity rebates) allow for the reimbursement of up to 50 percent of the eligible costs of an investment.[1605] We thus continue to find that the Rate L discount program confers a benefit equal to the amount of electricity rebates received, as provided under section 771(5)(E) of the Act, which states that a benefit shall normally be treated as conferred where there is a benefit to the recipient. Under the program, participants—like Resolute—receive a benefit in the form of electricity rebates from Hydro-Québec on their monthly electricity bills. The fact that the electricity rebates only partially covered the costs of the investment projects does not negate the fact that a benefit was received.

Further, 19 CFR 351.503(a) states that Commerce will "measure the extent to which a financial contribution (or income or price support) confers a benefit" as provided for the specific type of benefit, as described under the regulations. Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1606] Under this framework, any grant payments of the associated costs incurred (*i.e.*, the investment projects) are, in fact, a benefit to the recipients.

Thus, we disagree that the Rate L discount program benefits Hydro-Québec and not the participating companies. Any advantages to Hydro-Québec in administering the program are not relevant to the benefit that Resolute received under the program. In analyzing the benefit of investment incentives, Commerce considers the benefit to be the amount of grant received by the company, pursuant to 19 CFR 351.504(a). Under 19 CFR 351.504, Commerce does not contemplate any advantages the government might receive by administering the program.[1607] Consequently, whether Hydro-Québec was able to realize energy savings and provide sufficient power during peak periods because of this program is immaterial to Commerce's analysis. The focus of Commerce's analysis is the direct transfer of funds that Hydro-Québec made to Resolute in the form of electricity rebates, which we find conferred a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

Lastly, we disagree with the assertion that Hydro-Québec purchases a service under this program. As discussed above, the evidence clearly shows that under this Rate L discount program, the GOQ is providing grants to Hydro-Québec's Rate L consumers. It is clear from the record that the purpose of the electricity rebates is to incentivize the companies to undertake certain investment projects. Hence, these rebates are properly treated as grants, not as compensation. The argument that we unlawfully countervailed compensation for services purchased by Hydro-Québec for energy efficiency and reduced GHG emissions is misplaced.

[1604] *Id*.
[1605] *Id*. and Exhibit QC-EDL-A, p. 1.
[1606] *See* 19 CFR 351.503(c).
[1607] *See CVD Preamble*, 63 FR at 65361 ("{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the 'effect' of a subsidy.").

Comment 86: Whether Hydro-Québec's ISEE Is Countervailable

GOQ Comments[1608]

- Recipients of the ISEE are not limited in number, as 2,955 companies received assistance under the program during the AUL. The forestry, wood, and paper industry is not a predominant user and does not receive a disproportionately large amount of the assistance. Hydro-Québec did not exercise discretion to favor a particular enterprise or industry, and eligibility was automatic and based on pre-established, public criteria. The ISEE is not limited to a specific enterprise or industry as a matter of law or fact.
- Payments under the ISEE do not confer a benefit because the amount paid directly correlates to the company's reduced electricity usage.
- The ISEE benefits Hydro-Québec with savings that contribute to Hydro-Québec's ability to provide sufficient power and energy.
- Through the ISEE, Hydro-Québec is purchasing a reduction in electricity use, which is a service not a good. The statute specifically excludes a government's purchase of services.

Resolute and Central Canada's Comments[1609]

- ISEE is not *de facto* specific because it is available to any individual or entity that owns, operates, or occupies an industrial building in Québec associated with a goods-producing industry. ISEE participants belong to a broad variety of sectors, and lumber/forestry products industries received a fraction of the funding. The ISEE is not bestowed on a specific enterprise or industry, nor group of enterprises or industries, and is not specific.
- ISEE projects are undertaken for Hydro-Québec's benefit to develop an energy-efficient electricity grid. ISEE does not provide participants with grants that, by definition, must be gifts without consideration. The GOQ both intended and received consideration in return for the ISEE funding.

Petitioner's Rebuttal Comments[1610]

- Both Resolute and the GOQ misunderstand how *de facto* specificity operates under the statute. The GOQ reported that 2,955 companies were approved for funding under the ISEE from 2007 – 2018. When that number is compared to the total number of companies operating/established in Québec or the total number of corporate tax filers from 2014 – 2018, the data show that the actual recipients of the ISEE subsidy, on an enterprise basis, are limited in number and the program is not widely used throughout the economy.[1611]
- Regarding benefit, any advantages enjoyed by Hydro-Québec as a result of its administration of this subsidy program are not germane to Commerce's benefit analysis.
- A benefit is conferred "where there is a benefit to the recipient," and here, the ISEE provides grants directly to Resolute.
- Commerce has previously rejected the argument that the ISEE constitutes the government's purchase of a service and has instead found that funding disbursed through the program acts as an incentive.[1612]

[1608] *See* GOQ June 8, 2020 Vol VIII Case Brief at 62 – 72.
[1609] *See* Resolute June 8, 2020 Case Brief at 86 – 88.
[1610] *See* Petitioner June 25, 2020 Rebuttal Brief at 221 – 223.
[1611] *Id*. at 222, citing GOQ July 15, 2019 Primary QNR Response, Vol III at Exhibit QC-ISEE-A (p. 17).
[1612] *Id*., citing *Structural Steel from Canada* IDM at Comment 5.

Commerce's Position: In the *Lumber VAR1 Prelim Results*, we found that a limited number of companies received grants under the ISEE during the POR and AUL period and, therefore, preliminarily determined that the ISEE is *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act.

The GOQ argues that the program is not *de facto* specific because the softwood lumber industry is not a predominant user of the program, does not receive a disproportionally large amount of assistance under the program, and Hydro-Québec did not exercise discretion to favor the industry when providing assistance under the program. However, under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program to be *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in number. The fact that companies in many different industries received assistance under the program does not negate the fact that from 2007 through 2018, only 2,955 companies received assistance under the ISEE, which represents less than one percent of the total number of companies operating or established in Québec.[1613] The usage data indicate that the ISEE is not widely used throughout the provincial economy, and, therefore, we continue to find the program to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act.

We disagree that this program does not confer a benefit upon Resolute. The record evidence clearly shows that Resolute received payments under the ISEE. Assertions that the ISEE benefits Hydro-Québec with savings is not relevant under the benefit to the recipient standard employed by Commerce. Rather, what is relevant is that Resolute received direct transfers of funds from Hydro-Québec under the ISEE in the form of grants during the POR and prior years of the AUL. We therefore continue to find that the ISEE provides a benefit under section 771(5)(E) of the Act, and that the benefit exists in the amount of payments received by participants, pursuant to 19 CFR 351.504(a).

Moreover, we disagree with the respondent parties that Hydro-Québec's ISEE is not countervailable because the GOQ is purchasing the service of energy efficiency (*i.e.*, the reduction of electricity use). We do not agree that the reduction of electricity usage amounts to a performance of a service for which the government is paying. Record evidence indicates that the ISEE payments are "incentives" to companies to support the realization of energy efficiency projects that will reduce the average amount of electricity used per unit produced.[1614] Therefore, we continue to find that Hydro-Québec's ISEE program conferred a benefit to Resolute equal to the amount of the grants received, pursuant to 19 CFR 351.504(a).

[1613] *See* GOQ July 15, 2019 Primary QNR Response, Vol III at Exhibit QC-ISSE-A (p. 17).
[1614] *Id*. at 13.

Comment 87: Whether Hydro-Québec's Special L Rate Is Tied to Pulp and Paper Production

GOQ Comments[1615]

- The Special L Rate is tied to the production of pulp and paper at Resolute's mills in the Côte-Nord region, not the production of lumber. The Côte-Nord Rate L is a special agreement between Resolute and Hydro-Québec designed to compensate Resolute's pulp and paper mills for some of the costs incurred as a result of the regional spruce budworm epidemic.

Resolute and Central Canada's Comments[1616]

- The Special L Rate bestowal documents—the December 16, 2015, GOQ Decree and the agreements with Resolute providing the special rate—show that the rate was temporary, tied to the operations at Resolute's Baie Comeau and Clermont paper mills, not to Resolute generally, not to all of its mills buying electricity under the Hydro-Québec L Rate, and not to Resolute's Outardes sawmill in the region or any sawmills making the subject merchandise.
- The Decree and the agreements indicate that the GOQ intended the Special L Rate to be linked to the paper mills at Baie-Comeau and Clermont at the time it was implemented.

Petitioner's Rebuttal Comments[1617]

- Record evidence shows that the purpose of the Special L Rate at the time of bestowal was to provide additional subsidization to Resolute's operations in the Côte-Nord region. The GOQ decree discounting Resolute's electricity purchases from Hydro-Québec declared that the purpose of the agreement was to ensure the long-term viability of the forest industry in the Côte-Nord region.
- Because the program was designed to support all of Resolute's operations in the region, including Resolute's Outardes sawmill, the program was not tied to non-subject merchandise.
- The Special L Rate benefits all of Resolute's production.

Commerce's Position: We disagree with the respondents' arguments that the electricity discount provided by the Special L Rate (aka, Rate L Discount) is tied only to the production of pulp and paper at Resolute's mills in the Côte-Nord region. First, the fact that Resolute manufactures non-subject merchandise at the Baie Comeau and Clermont mills does not change the fact that those two mills are part of the Resolute corporate group. The Baie Comeau and Clermont mills are not distinct corporate entities, which would require Commerce to conduct an analysis under 19 CFR 351.525 (b)(6)(ii)-(v) to determine whether subsidies received by those two mills are attributable to Resolute. Rather, Resolute is the corporate entity which files the tax documents and consolidates the financial statements of all of its mills—including Baie Comeau and Clermont—as one corporate entity.[1618] Neither the statute nor Commerce's regulations "provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm."[1619]

[1615] *See* GOQ June 8, 2020 Vol VIII Case Brief at 30 – 32.
[1616] *See* Resolute June 8, 2020 Case Brief at 43 – 47.
[1617] *See* Petitioner June 25, 2020 Rebuttal Brief at 212 – 216.
[1618] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibits RES-NS-GEN-3, RES-NS-GEN-4, RES-NS-GEN-5, and RES-NS-GEN-6.
[1619] *See SC Paper from Canada Final* IDM at 161 (citing *CFS from China* IDM at Comment 8).

Second, Commerce does not tie subsidies on a plant or facility-specific basis.[1620] Commerce recognizes that money is fungible, and its use for one purpose may free up money to benefit another purpose. Subsidies provided to a division of a company, such as a pulp and paper mill, will impact the overall production and sale of all other products of the company. Consequently, there is no need to address attribution because money is fungible within a single, integrated corporate entity (as opposed to a conglomeration of entities for which an analysis under 19 CFR 351.525(b)(6) may be required).

The only exception is if the subsidy is tied to the production or sale of a particular product. Section 351.525(b)(5)(i) of Commerce's regulations states that, generally, "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." In making this determination, Commerce analyzes the purpose of the subsidy based on information available at the time of bestowal.[1621] Commerce's practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed rather than examine the use or effect of subsidies (*i.e.*, to trace how the benefits are used by companies). A subsidy is only tied to a particular product when the intended use is known to the subsidy provider and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been previously upheld by the CIT.[1622]

The respondents claim that the Special L Rate was tied to the operations of the Baie Comeau and Clermont mills, which produce pulp and paper products. However, there is no information on the record to establish that, at the time of approval or bestowal, the benefit of the Special L Rate was explicitly tied to the production of pulp and paper at those mills. The GOQ reported that, "in response to the request by certain Côte-Nord forestry companies, including Resolute, to address the sustainability of the Côte-Nord forest industry afflicted by the spruce budworm epidemic, the Government of Québec announced a series of operational measures, technical support, and financial support to put an end to the forestry crisis on the Côte-Nord on August 31, 2015. Upon approval by the Council of Ministers, Order in Council 1147-2015 was issued on December 16, 2015."[1623] Nowhere within that Order, or subsequent agreements/service contracts, does the GOQ state that the application of a 20 percent Rate L discount is tied to the production of pulp and paper products, or the production of products in general.[1624] Rather, the Order announces that the purpose of the Special L Rate is to compensate forestry companies on the North Shore for the financial difficulties caused by the spruce budworm epidemic to ensure the long-term viability of the forest industry.[1625]

We thus determine that there is no evidence establishing that the approval and bestowal of the Special L Rate was tied to production of pulp and paper at Resolute's mills in the Côte-Nord region. This finding is consistent with the *Groundwood Paper from Canada Final*, where

[1620] *See, e.g., SC Paper from Canada – Expedited Review – Final Results* IDM at 99.
[1621] *See CVD Preamble*, 63 FR at 65403.
[1622] *See, e.g., Essar Steel Ltd. v. U.S.*, 678 F. 3d at 1296.
[1623] *See* GOQ July 15, 2019 Primary QNR Response, Vol III at Exhibit QC-SB-A.
[1624] *Id*. at Exhibits QC-SB-2, Exhibit QC-SB-4, and Exhibit QC-SB-5.
[1625] *Id*. at Exhibit QC-SB-2.

Commerce also analyzed the Special L Rate discount program and did not find it to be tied to the production of pulp and paper.[1626]

Comment 88: Whether Hydro-Québec's Special L Rate Conferred a Benefit

GOQ Comments[1627]

- The Special L Rate does not confer a benefit, but rather compensates for the additional costs associated with performing salvage operations to preserve the health of the forest.
- The Special L Rate does not constitute a subsidy because it provides only partial reimbursement (*i.e.*, a 20 percent rebate of Rate L) for the increased electricity costs associated with harvesting forests impacted by spruce budworm.

Resolute and Central Canada's Comments[1628]

- Were Commerce to apply the Special L Rate to softwood lumber, it could not measure the benefit by credits or discounts from the L Rate because that rate does not reflect the prevailing market conditions in the Côte-Nord region, where timber was damaged by the spruce budworm.

Petitioner's Rebuttal Comments[1629]

- Resolute fails to cite any evidence that the L Rate does not reflect prevailing market conditions.
- Commerce's benefit calculation is supported by record evidence and in accordance with the law.
- That the spruce budworm may have increased Resolute's costs does not negate the fact that the Special L Rate reduced the electricity rate Resolute would have paid absent the program.

Commerce's Position: After considering the arguments, we are not persuaded that the Special L Rate does not provide a benefit because it provides only partial reimbursement for the increased costs associated with harvesting timber in a budworm-infested region. The notion that the payments received do not cover the full electricity costs does not negate the benefit from the payments actually received.[1630] Partial use of, or partial payment under, a program does not negate the fact that a benefit was received.[1631] When analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1632] Resolute reported that it received electricity credits under the Special L Rate program on its monthly invoices during the POR.[1633]

[1626] *See Groundwood Paper from Canada Final* IDM at 16, Comment 10 (where Commerce determined to use Resolute's total sales value as a denominator for all programs except for the NIER, FSPF, and FPPGTP for which the use of Resolute's pulp and paper sales as the denominator was appropriate) and Comment 72; *see also* Groundwood Paper from Canada Post-Prelim Memorandum at 17 – 18.
[1627] *See* GOQ June 8, 2020 Vol VIII Case Brief at 32 – 35.
[1628] *See* Resolute June 8, 2020 Case Brief at 47.
[1629] *See* Petitioner June 25, 2020 Rebuttal Brief at 216 – 217.
[1630] *See, e.g.*, discussion of benefit at 65361 of the *CVD Preamble*.
[1631] *See, e.g.*, *SC Paper from Canada – Expedited Review – Final Results* at Comment 31.
[1632] *See CVD Preamble*, 63 FR at 65361.
[1633] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibit RES-NS-LRateB-APP, p. 5 – 6.

Additionally, we find no basis to Resolute's argument that "were the Department, incorrectly, to apply the Special L Rate to softwood lumber, it could not measure the benefit by credits or discounts from the L Rate because that rate does not reflect the prevailing market conditions in the Côte-Nord region, where timber has been damaged and affected by the spruce budworm."[1634] As we preliminarily discussed, this Special L Rate program conferred a benefit to Resolute equal to the amount of the electricity credits that Hydro-Québec applied to its monthly electricity invoices.[1635] Therefore, there is no need to measure the benefit of the Special L Rate to the L Rate as Resolute seems to suggest. As such, the issue of the prevailing market conditions in the Côte-Nord region is irrelevant to Commerce's analysis.

Consequently, we continue to find that the Special L Rate discount provides a benefit under section 771(5)(E) of the Act, and that the benefit exists in the amount of electricity credits received by Resolute, pursuant to 19 CFR 351.504(a).

H. Tax Program Issues

- ***Federal***

Comment 89: Whether the Federal and Provincial SR&ED Tax Credits Are Specific

GOC's Comments[1636]

- Commerce's method for assessing *de facto* specificity for the Federal SR&ED tax credit by comparing program users to tax filers is not consistent with prior findings for the program or relevant case precedent for similar programs. Additionally, this method is unlawful.
- Commerce previously found this program not specific in *OCTG from Canada and Lumber II*. In the *Lumber V Final*, Commerce dismissed these cases are predating the URAA, but the SAA clearly states that URAA amendments on specificity were not meant to change Commerce's practice in that area.
- Commerce must amend its formulaic percentage comparison to consider factors such as the breadth of industries represented by SR&ED tax credit users. Commerce has previously found programs with far smaller numbers of users not *de jure* specific.
- In *Royal Thai Gov't v. U.S.*,[1637] the CIT upheld a Commerce finding that a program prioritizing 351 industries for debt restructuring was not specific. In *Bethlehem Steel Corp. v. U.S.*,[1638] the CIT upheld a Commerce finding that a Chinese electricity curtailment program with 190 users was not *de facto* specific. In *AK Steel Corp. v. U.S.*,[1639] the CIT upheld a finding that a program with 207 users was not *de facto* specific. Cases where Commerce did find *de facto* specificity involved far small groups. By contrast, 20,990 and 19,610 enterprises from a broad range of industries used the SR&ED tax credit in 2017 and 2018, respectively.
- Commerce has recently begun to determine *de facto* specificity by comparing the users of a tax programs to the total corporate tax filers during the relevant period, then finding the program specific if the percentage of users is small. This approach is inconsistent with the Act, which

[1634] *See* Resolute June 8, 2020 Case Brief at 47.
[1635] *See Lumber V AR1 Prelim Results* PDM at 61 – 63.
[1636] *See* June 8, 2020 GOC Vol II Case Brief at 28 – 41.
[1637] *See Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d at 1335 – 1336.
[1638] *See Bethlehem Steel Corp. v. U.S.*, 140 F. Supp. 2d at 1368.
[1639] *See AK Steel Corp. v. U.S.*, 192 F. 3d at 1385.

calls for an inquiry into the "number" of enterprises that use a program, not the "percentage." A percentage is also a number, but this approach overturns past precedent and casts off the legally required case-by-case examination of facts to ensure that *de facto* specificity will always be found.

- The percentage approach leads to the approach of countervailing programs available to all industries and sectors that the CIT found would be "absurd," even though the SAA makes it clear that the Act implements the CIT ruling on general availability.
- If Commerce does persist in using a percentage approach, it must make appropriate adjustments to the numerator and denominator to ensure a fair comparison. The numerator should include the number of corporations that have used the SR&ED program over a number of years and the denominator should include only companies in a position to use the credit. The CRA number for reported tax filers is also an overestimate, as it counts separate corporate entities part of a single group and includes non-profits, tax-exempt companies, and some non-Canadian companies. The number of business enterprises reported by StatCan is a better denominator.
- Only looking at the absolute number of users ignores the significance of particular sectors for a country's economy, particularly given that many sectors with a large number of enterprises account for a smaller share of the economy than their number would suggest, and vice versa.
- Given that the CVD law applies only to physical commodities, the specificity analysis should only be carried out within the goods-producing sectors of the economy. Otherwise, any government programs to goods production could be found specific given that small share of the economy such production accounts for in a mature economy like the United States or Canada.
- Softwood lumber producers are not predominant or disproportionate users of this tax credit under the meaning of sections 771(5A)(D)(iii)(II) and (III) of the Act. Nor is there any discretion in determining eligibility.

GOQ's Comments[1640]

- Québec's SR&ED is not limited to the softwood lumber or any other industry, and it is widely available and used by a diverse group of industries. Commerce should find it not to be *de facto* specific.

GBC/BCLTC's Comments[1641]

- The BC SR&ED tax credit is not *de facto* specific. All companies are eligible for the credit. Many different activities qualify for the credit, and many companies from a broad range of sectors use it every year. The forestry industry, which includes softwood lumber, is not a predominant user of the program, and the tax credit is granted automatically when eligibility criteria are met.

GOO's Comments[1642]

- Commerce's percentage analysis ignores the broad availability and usage of Ontario's SR&ED tax credit. The program is available to tax filers throughout the province regardless of industry, and Commerce's past practice supports not finding this program *de facto* specific because the users are limited in number.

[1640] *See* GOQ June 8, 2020 Vol VIII Case Brief at 101 – 102.
[1641] *See* GBC June 8, 2020 Vol V Case Brief at 54 – 56.
[1642] *See* GOO June 8, 2020 Vol VII Case Brief at 42 – 43.

- The Ontario SR&ED is not specific under the other factors of *de facto* specificity. No one enterprise or industry was a predominant user, and the program is not geographically specific.

GNB's Comments[1643]
- New Brunswick's Research and Development Tax Credit is not countervailable for the reasons explained by the GOC in its discussion of the Federal SR&ED program. Any taxpayer in New Brunswick can use the program, and usage is broad.

West Fraser's Comment[1644]
- Commerce's findings that the Federal, British Columbia, and Alberta SR&ED tax credits are *de facto* specific are incorrect. All of these programs are broadly available and widely used throughout the economies they are provided in.
- Commerce was also incorrect to attribute all of the benefits from these programs to subject merchandise.

Resolute's Comments[1645]
- In the *Lumber V Final*, Commerce selectively quoted language from the SAA on the specificity test not being a loophole to support a *de facto* specificity finding for the Federal SR&ED. However, Commerce ignored that the SAA also says that the specificity test is meant to serve as a "rule of reason" to avoid the imposition of countervailing duties for subsidies where the benefits are spread throughout the economy. The Federal SR&ED is such a program with benefits spread throughout the economy.
- Commerce's use of a percentage analysis to find this program *de facto* specific is very similar to the case of countervailing a tax credit for expenditures on capital investments that the SAA says would be "absurd." Commerce should have looked at the large absolute number, not the percentage.
- Québec's SR&ED is not specific. The program is widely used, and the softwood lumber industry did not receive a disproportionate share of disbursements.

Petitioner's Rebuttal Comments[1646]
- Commerce's *de facto* specificity findings for the SR&ED programs was consistent with the statute and past practice. The Canadian Parties have attempted to confuse this issue by adding irrelevant factors to the discussion. All of these programs were used by a limited number of recipients relative to the total number of corporate tax filers/total companies operating and thus are *de facto* specific.
- That these programs did not restrict eligibility to a particular industry is relevant for *de jure* specificity, but *de facto* specificity does not require an agency to limit access to a program.
- The Canadian Parties' claim that Commerce's percentage analysis is "inconsistent" with the Act makes no sense. Commerce has broad discretion in determining *de facto* specificity, as neither the Act, the SAA, or precedent dictates the method Commerce is to use in analyzing this issue.

[1643] *See* GNB June 8, 2020 Vol VI Case Brief at 50.
[1644] *See* West Fraser June 8, 2020 Case Brief at 47 – 51.
[1645] *See* Resolute June 8, 2020 Case Brief at 99 – 102 and 104 – 105.
[1646] *See* Petitioner June 25, 2020 Rebuttal Brief at 128 – 136.

- The SAA notes that "in determining whether the number of industries using a subsidy is small or large {Commerce} could take account of the number of industries in the economy in question."[1647] This is the logic Commerce has used in comparing the number of users of the SR&ED programs relative to the overall number of tax filers. Programs used by a very small share of eligible enterprises are not widely used.
- The Canadian Parties argue that Commerce's *de facto* specificity analysis for the SR&ED is inconsistent with past practice and then separately that Commerce has recently made *de facto* specificity determinations using just such a method. Furthermore, the CIT has affirmed the method Commerce is using to conduct its *de facto* specificity analysis, making the specific facts at issue in other cases cited not relevant.

Sierra Pacific's Rebuttal Comments[1648]
- Commerce's approach of analyzing *de facto* specificity by comparing the actual number of subsidy recipients to eligible users is consistent with the Act and SAA. Commerce has not applied any formula or bright-line test, but rather continued to analyze programs on a case-by-case basis.
- Prior case precedent confirms that a number that may be "limited" in one case may not be "limited" in another based on the number of eligible users and level of economic diversification. Thus, the argument that Commerce found programs with a smaller number of users not *de facto* specific in other cases is not relevant.
- That subsidy recipients may be spread widely throughout the economy does not mean that those recipients cannot be "limited" in number.
- Once a program is found to be specific under section 771(5A)(D)(iii)(I) of the Act because the recipients are limited in number, arguments regarding a lack of specificity under other sections of the Act become moot.

Commerce's Position: In the *Lumber V Final*, Commerce found that the SR&ED programs were *de facto* specific because the number of actual recipients, relative to the total number of corporate tax filers, were limited on an enterprise basis under section 771(5A)(D)(iii)(I) of the Act and then explained how these findings accorded with the Act, the SAA, and past case precedent.[1649] Commerce also explained the legitimacy of using a percentage analysis to determine whether the Québec SR&ED was specific in the *Groundwood Paper from Canada Final*.[1650] In the *Lumber V Final Results of Expedited Review*, Commerce again found that the SR&ED programs were *de facto* specific and responded to the Canadian Parties' arguments that the *Lumber V Final*'s finding on this issue was incorrect.[1651] In this review, the Canadian Parties make substantively the same arguments as in the prior proceedings, and we continue to find their arguments unconvincing.

As Commerce explained in the *Lumber V Final*,[1652] the SAA states that the specificity test is an initial screening mechanism to winnow out only those foreign subsidies that are truly broadly

[1647] *See* SAA at 931.
[1648] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 18-24.
[1649] *See Lumber V Final* IDM at Comment 64.
[1650] *See Groundwood Paper from Canada Final* IDM at Comment 61.
[1651] *See Lumber V Final Results of Expedited Review* IDM at Comment 14.
[1652] *See Lumber V Final* IDM at Comment 190.

available and widely used throughout an economy.[1653] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies . . . used by discrete segments of an economy could escape the purview of the {countervailing duty} law."[1654] The SAA also states that, in determining whether the number of industries or enterprises using a subsidy is large or small, Commerce can take into account the number of industries or enterprises in the economy in question.[1655] Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, Commerce reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.[1656] Thus, we have followed the instructions of the SAA and our practice in determining whether this program is *de facto* specific, and we continue to disagree with the GOC's argument that we were required to analyze only the absolute number of users under section 771(5A)(D)(iii)(I) of the Act.

Furthermore, section 771(5A)(D)(iii)(I) of the Act, which provides the first factor in the *de facto* specificity test under the statute, does not require Commerce to examine whether the governments took actions to limit the number of recipients of the federal or provincial tax credits. We also note that if a single factor warrants a finding of specificity, "{Commerce} will not undertake further analysis."[1657] Because we made a specificity finding under section 771(5A)(D)(iii)(I) of the Act, the first factor in the *de facto* specificity test under the Act, we were not obligated to examine other factors under the Act, or to consider government actions in limiting the actual number of recipients of the federal and provincial tax credit programs.

The GOC notes that the tens of thousands of users of the Federal SR&ED program is "large" and that the users represent "every sector in the Canadian economy."[1658] The provincial governments that administer SR&EDs likewise argue that these programs have many users representing diverse industries in their respective provincial economies.[1659] However, a specificity analysis under section 771(5A)(D)(iii)(I) of the Act does not require the administering authority to make a determination based on the number of industries that use a program, but instead states that a program is specific if the "actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number."

In the *Lumber V AR1 Prelim Results*, Commerce considered whether the recipients of the Federal, Québec, Ontario, Alberta, British Columbia, and New Brunswick programs were limited in number on an industry or enterprise basis. For each program, we found that the usage

[1653] *See* SAA at 930 (referencing *Carlisle Tire v U.S.*, 564 F. Supp. 834 (CIT 1983)).
[1654] *Id*.
[1655] *Id*. at 931.
[1656] *See Cold-Rolled Steel from Korea* IDM at Comment 13.
[1657] *See* 19 CFR 351.502(a).
[1658] *See* GOC June 8, 2020 Vol II Case Brief at 1 – 2.
[1659] *See, e.g.*, GBC June 8, 2020 Vol V Case Brief at 55, "{Participating} industries range from finance and insurance to healthcare and social assistance;" *see also* GOQ June 8, 2020 Vol VIII Case Brief at 102, "the remainder of the tax credits under the program were given to a wide range of industries that includes agriculture, manufacturing, transport and storage, wholesale trade, and finance and insurance industries."

data provided by the respective government showed that the actual users of the program were limited relative to either the number of enterprises or corporate tax filers.[1660]

The GOC posits that because the CVD law applies only to physical commodities, the specificity analysis should only be carried out within the goods-producing sectors of the economy, given that small share of the economy such production accounts for in a mature economy like the United States or Canada.[1661] The GOC also argues that Commerce was wrong in comparing the number of users of the program with the total number of tax return filers instead of comparing the number of users of the program with only those companies that conduct research and development (and therefore hypothetically could have benefited from the program).[1662] Both arguments emphasize that the Federal SR&ED's users are not "limited" when compared against a much smaller denominator.

However, Commerce looks at the economy as a whole in determining whether or not the number of industries or enterprises receiving a subsidy is, in fact, limited.[1663] Commerce's analysis in this administrative review, as well as its analysis in the underlying investigation, expedited review, and the *Groundwood Paper Final* was therefore fully consistent with Commerce's current practice, regulations, and the language of the SAA accompanying the change in the law as part of the URAA.

We also disagree with the GOC that our specificity analysis for this program is inconsistent with prior Commerce analysis in cases where we found no *de facto* specificity for programs with fewer users than the Federal SR&ED. In *AK Steel*, the CAFC affirmed Commerce's specificity analysis in light of facts and circumstances of that particular case and explained that "*(d)eterminations of disproportionality and dominant use* are not subject to rigid rules, but rather must be determined on a case-by-case basis taking into account all the facts and circumstances of a particular case."[1664] We note that in *CTL Steel Plate from Korea Final* (litigated in *Bethlehem Steel*), Commerce based its negative *de facto* specificity determination with regard to an electricity discount program, on an analysis of *disproportionate* and *predominant use*.[1665] Therefore, we find that the references to *AK Steel* and *Bethlehem Steel*, which addressed disproportionality and predominant use, are not applicable to our analysis of these tax programs, where we found that the actual recipients are limited in number, in accordance with section 771(5A)(D)(iii)(I) of the Act.

With respect to *Royal Thai Gov't v. U.S.*, also cited by the GOC, Commerce addressed the unique and distinguishing facts of that case in the *Lumber V Final Determination.*[1666] The GOC has made no additional arguments in this case from that in the underlying investigation to have us reconsider our analysis of the facts in *Royal Thai Gov't v. U.S.* and this program. Because the facts of every subsidy and case are different, the CAFC has acknowledged that

[1660] *See Lumber V AR1 Prelim Results* PDM at 73 (Federal), 74 (Alberta), 77 (British Columbia), 80 (New Brunswick), and 82 (Québec); *see also* Resolute Post-Prelim Decision Memorandum at 5 (Ontario).
[1661] *See* GOC June 8, 2020 Vol II Case Brief at 40.
[1662] *Id.* at 37.
[1663] *See* SAA at 930.
[1664] *See AK Steel Corp v. U.S.*, 192 F. 3d at 1385 {emphasis added}.
[1665] *See CTL Steel Plate from Korea Final*, 64 FR at 73186 and 73192 – 93 {emphasis added}.
[1666] *See Lumber V Final* IDM at Comment 64.

Commerce is afforded significant latitude and not subject to rigid rules when determining if a particular program is specific under section 771(5A) of the Act.[1667]

The GOC additionally cites to four cases in which Commerce found *de facto* specificity to argue that Commerce's precedent for finding *de facto* specificity based on a limited number of enterprises or industries has involved much smaller numbers than in the instant proceeding: *Citric Acid from China*,[1668] *OCTG from Turkey*,[1669] *CRS from Russia*,[1670] and *Compressors from Singapore*.[1671] However, as stated above, the CAFC has stated, Commerce is afforded latitude and not subject to rigid rules when determining specificity.[1672] Most importantly, however, as detailed above, Commerce conducts its *de facto* specificity analysis under section 771(5A)(D)(iii) of the Act on a case-by-case basis. As the CAFC stated, specificity "must be determined on a case-by-case basis taking into account all facts and circumstances of a particular case."[1673] Because the facts of *Citric Acid from China*, *OCTG from Turkey*, *CRS from Russia*, and *Compressors from Singapore* were specific to those particular proceedings, Commerce's determinations in those cases are not applicable to this review and do not dictate a particular finding in this review.

Commerce properly determined on the record of this case that the recipients of the Federal and provincial SR&ED credits in Canada were limited in number and that the programs were therefore d*e facto* specific, in accordance with the Act, regulations and the SAA. As Commerce has explained above, and in prior decisions,[1674] this program is specific because the number of users was limited.

Comment 90: Whether the FLTC and PLTC Are Countervailable

GOC's,[1675] *Canfor's*,[1676] *and West Fraser's Comments*[1677]

- Companies subject to the logging tax received no benefit from the FLTC and PLTC because the credits place companies in the same position as had there been no provincial logging tax at all, and in the same position as other taxpayers outside of the logging industry. The BC logging tax is specific to the logging industry, and the FLTC and PLTC operate as a "reduction

[1667] *See Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d at 1335 – 1336 (citing *AK Steel Corp v. U.S.*, 192 F. 3d at 1385); *see also Bethlehem Steel Corp. v. U.S.*, 140 F. Supp. 2d at 1368 ("Commerce on a case-by-case basis *sequentially* analyze each of the four factors listed in {section 771(5A)(D)(iii)}.").
[1668] *See Citric Acid from China* IDM at 18.
[1669] *See OCTG from Turkey* (affirmed in *Borusan*, Supp. 61 F. 3d at 1342 – 343).
[1670] *See CRS from Russia* IDM at 117.
[1671] *See Compressors from Singapore*, 61 FR at 10316.
[1672] *See Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d at 1335 – 1336 (citing *AK Steel Corp. v. U.S.*, 192 F. 3d at 1385); *see also Bethlehem Steel Corp. v. U.S.*, 140 F. Supp. 2d at 1368 ("Commerce on a case-by-case basis *sequentially* analyze each of the four factors listed in {section 771(5A)(D)(iii)}.").
[1673] *See AK Steel*, 192 F. 3d at *1385; Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d at 1335 – 1336 (Commerce's determinations of *de facto* specificity "are not subject to rigid rules, but rather must be determined on a case-by-case basis.").
[1674] *Lumber V Final* IDM at Comment 65; *see also Groundwood Paper from Canada Final* IDM at Comment 61.
[1675] *See* GOC June 8, 2020 Vol II Case Brief at 49 – 60.
[1676] *See* Canfor June 8, 2020 Case Brief at 3 – 17.
[1677] *See* West Fraser June 8, 2020 Case Brief at 51 – 53.

{or a} repeal of the {logging} tax."[1678] Further, the tax credits are not selective as they apply to all entities subject to the logging tax in British Columbia.[1679]

- Since the logging income of companies in British Columbia is taxed as part of their overall income, the GOC and GBC put in place the FLTC and PLTC to avoid double taxation on the same income and to level the playing field by putting forestry companies in the same tax position as taxpayers in other sectors of the economy.
- In *Government of Sri Lanka v. U.S.* and *Inland Steel v. U.S.*, the companies at issue received government funds, but neither was considered to have received a benefit because the companies acted as intermediaries for the government to transfer money to a third-party entity. Similarly, Commerce should consider the program in its entirety, as a mechanism for transferring funds from the federal to the provincial government.
- The FLTC, PLTC, and BC logging tax must be evaluated as a whole, and Commerce should consider the net flow of benefits.[1680] The respondents are acting as an intermediary for channeling funds from the federal to provincial government, and there is no net change in the respondents' tax liability, and therefore no benefit.
- Commerce should have subtracted the logging tax paid by the respondents from any benefit conferred by the FLTC and PLTC, resulting in zero net benefit. Commerce should treat the payment for the logging tax as a "similar payment" under section 771(6)(A) of the Act that is required in order to qualify for the FLTC and PLTC. In the *Lumber V Final Results of Expedited Review*, Commerce rejected this net benefit calculation on the grounds that the logging tax does not constitute an application fee or deposit.[1681] Commerce did not provide a sufficient explanation for its interpretation of the statute, rendering its determination "arbitrary and impermissible."[1682]

Petitioner's Rebuttal Comments[1683]

- The FLTC and PLTC subsidy programs provide a financial contribution in the form of government revenue forgone under section 771(5)(D)(ii) of the Act. Commerce's regulations require the calculation of the benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a) be based on the difference between the tax the company actually paid with the subsidy program and the tax the company would have paid absent the tax program. In the absence of the FLTC and PLTC subsidy programs, Canfor and West Fraser each would have been responsible for the full amount of the BC provincial logging tax on logging income during the POR, as one-third of the logging tax is rebated under the PLTC and two-thirds of the logging tax is rebated under the FLTC.
- Unlike the recipients in *Government of Sri Lanka v. U.S.* and *Steel Products from France*,[1684] the GBC is not an industry or other third-party that receives funds channeled through the respondents. These cases involved the respondent who acted as a conduit of government

[1678] *Id*. at 52 – 53, citing *Bethlehem Steel Corp. v. U.S.* at 348 – 349 ("The reduction is no more a subsidy than the basic tax law itself or the repeal of the law. Tax laws become {subsidies} only if the elimination, or reduction of the tax is selective.").
[1679] *Id*.
[1680] *See* GOC June 8, 2020 Vol II Case Brief at 50, citing *Dynamic RAM Semiconductors from Korea* IDM at 48 and *Hynix Semiconductor v. U.S.*, 391 F. Supp. 2d at 1345.
[1681] *See* section 771(6)(A) of the Act.
[1682] *See* Canfor June 8, 2020 Case Brief at 14, citing *NSK v. U.S. (2004)*, 390 F.3d at 1358 (vacating and remanding Commerce's interpretation of a provision of 19 U.S.C. 1677a), and *SKF USA v. U.S.*, 263 F.3d at 1381 – 1383 (vacating and remanding Commerce's inconsistent interpretations of the same statutory phrase in separate but related provisions).
[1683] *See* Petitioner June 25, 2020 Rebuttal Brief at 117 – 126.
[1684] In *Inland Steel v. U.S.*, the CIT affirmed Commerce's determination in *Steel Products from France*.

funds, and thus received no subsidy. In contrast, the GBC, through the BCTS, and the GOC provide a financial contribution in the form of tax credits to companies subject to the BC provincial logging tax.

- In *Hynix Semiconductor v. U.S.*, the CIT held that the countervailing duty statute may be interpreted broadly to close any loopholes that might allow governments to provide indirect subsidies.[1685] This case does not support the GOC's argument that the FLTC, PLTC, and BC logging tax should be analyzed as a whole.
- The FLTC and PLTC do not operate as a wealth transfer mechanism from the GOC to the GBC. Rather, the GOC applies the funds to each company's individual tax return.
- The taxes should not be subtracted from any alleged benefit conferred by the FLTC and PLTC pursuant to section 771(6)(A) of the Act. If taxes operate as a "similar payment" to an "application fee" or "deposit" described in section 771(6)(A) of the Act, then tax credits would never confer a benefit because the benefit would be zero in such a benefit calculation. If tax credits never led to a benefit, the statutory language in section 771(5)(D)(ii) of the Act, which defines tax credits as a form of financial contribution, would be superfluous.[1686] Commerce's determination in the *Lumber V Final Results of Expedited Review* is consistent with CIT decisions in which the court explained that Congress intended the scope of section 771(6)(A) of the Act to be read and applied narrowly.[1687]
- West Fraser's argument that the FLTC and PLTC are not selective would only be relevant to a *de facto* specificity analysis. Because Commerce has found that the FLTC and PLTC are *de jure* specific in the *Lumber V Final Results of Expedited Review*, it does not need to reach a finding on *de facto* specificity.

Commerce's Position: The GOC's, Canfor's, and West Fraser's arguments have not led us to reconsider the preliminary finding that the FLTC and PLTC are countervailable. The GBC has applied a tax on loggers' income within the province of British Columbia, and the GOC and GBC have applied tax credits that can be used to offset the logging income taxes paid. The GOC provides a tax credit on a company's federal income tax return equal to two-thirds of the provincial tax that the company has paid for logging on its provincial tax return, and the GBC provides a tax credit equal to the remaining one-third of the provincial tax imposed on logging income.

With the credit from the federal government, the loggers are paying less tax than they otherwise would have paid, a fact which GOC acknowledged when it stated that "due to differences in the British Columbia provincial and federal legislation, situations could occur where the FLTC may be less than 2/3 of the logging taxes paid, resulting in the taxpayer being out of pocket for some part of the logging tax."[1688] Thus, the GOC's statement demonstrates that, in the absence of the FLTC subsidy program, eligible firms would be "out of pocket" for the entirety of the provincial tax on logging income. During the enactment of this provision, the GOC explained "{i}t is estimated that this {FLTC} concession may reduce revenues by {C}$3 million net in a full year

[1685] *See* Petitioner June 25, 2020 Rebuttal Brief at 121, citing *Hynix Semiconductor v. U.S.*, 391 F. Supp. at 1344–1345.
[1686] *Id.* at 124, citing *Agro Dutch v. U.S.*, 508 F.3d at 1032 ({I}t is a 'cardinal principle of statutory construction that a statute ought . . . to be so construed that . . . no clause, sentence, or word shall be superfluous.").
[1687] *Id.* at 123, citing *Geneva Steel*, 914 F. Supp. at 609–610 and *Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d at 1363.
[1688] *See* GOC July 15, 2019 Primary QNR Response at GOC-II-90.

and {C}$1½ million in 1962-63."[1689] Thus, it is evident that the FLTC constitutes a financial contribution in the form of revenue foregone, within the meaning of section 771(5)(D)(ii) of the Act. We also continue to find that the PLTC is a financial contribution in the form of revenue foregone, pursuant to section 771(5)(D)(ii) of the Act, because by providing a tax credit, the GBC refrains from collecting revenue that would otherwise be due. We continue to find that the FLTC and PLTC tax programs are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because eligibility for both the FLTC and PLTC tax rebates are expressly limited by law to corporations that are part of the forest industry. Further, we continue to find that the FLTC and PLTC programs provide a benefit in the amount of the difference between the tax the company paid and the tax the company would have paid absent the tax credits, as provided in 19 CFR 351.509(a)(1).

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

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

The GOC and Canfor assert that to claim the FLTC, the taxpayer must first have "paid" the BC logging tax, and that it clearly acts as a payment that is similar to an application fee or deposit, within the meaning of section 771(6)(A) of the Act, needed to qualify for the FLTC. According to the GOC and Canfor, when the logging tax is subtracted from the FLTC, pursuant to section 771(6)(A) of the Act, there is zero net benefit. Contrary to the GOC and Canfor's arguments, however, section 771(6)(A) of the Act does not apply to the FLTC because the taxes in this case do not constitute an application fee or a deposit. Section 771(6)(A) of the Act provides that Commerce "may subtract from the gross countervailable subsidy the amount of any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." Commerce has, only in limited circumstances, provided offsets under 771(6)(A) of the Act, because the plain language of section 771(6)(A) of the Act is clearly limited to an application fee, deposit, or similar payment paid to qualify for the benefit of the countervailable subsidy. These limited circumstances can include fees paid to commercial banks for the required letters of guarantee or necessary application processing charges for obtaining a

[1689] *Id.* at Exhibit GOC-AR1-CRA-FLTC-1 (p. 2709 – 2710) (Federal Budget – April 10, 1962).

loan.[1690] Commerce does not interpret 771(6)(A) of the Act to mean we can offset taxes on which a potential subsidy benefit could be based.

The GOC argues that Commerce must consider the program in its entirety, as there has been no benefit to the logging companies. Through the imposition of the BC logging tax, and the simultaneous crediting of the total amount of that tax by the BC and federal governments, the GOC contends there has been no net impact on the tax liability of the logging companies. Rather, according to the GOC, the only impact is that the GBC received an increase in revenue for two thirds of the logging taxes that have been effectively financed by the federal government. The GOC claims that this is not the situation described in the *CVD Preamble*, where Commerce explained that it will not consider the "effects" of a subsidy on a firm's behavior.[1691]

We disagree with the GOC's assertion and find that it conflicts with several principles set forth in Commerce's CVD regulations. As the GOC acknowledges, Commerce does not account for the effects of the subsidy when determining whether such a subsidy is countervailable pursuant to section 771(5)(C) of the Act.[1692] Furthermore, the financial arrangement between the GOC and GBC is not a factor that we consider in our benefit analysis. Under 19 CFR 351.509(a), a direct tax benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program. As noted above, the FLTC and PLTC reduce the logging tax that the respective company would have otherwise paid. The fact that the company does not receive funds directly, but rather through tax credits, does not render these tax credits not countervailable.

We further find the claim that the FLTC and PLTC are not countervailable because they do not confer a net benefit is similar to the comments that Commerce rejected in the *Lumber V Final* with respect to the accelerated depreciation (ACCA) program (*i.e.*, the argument that there is no net benefit conferred under the ACCA because the lower income, and resultant tax savings, in the year in which the respective taxpayer claimed the accelerated depreciation will be offset by increased net income (and higher tax payments) in future years).[1693] The GBC applied an additional tax on loggers that the GOC and GBC decided to forgo, which results in a benefit to the loggers. Similar to the issue here, the *CVD Preamble* references a situation where the government imposes an additional cost to a firm (in this example an environmental regulation) and then creates a subsidy to reduce that firm's cost of compliance. The *CVD Preamble* is clear that, in this example involving an environmental regulation, there are two separate government actions and that even though the two government actions, taken together, may leave the firm with higher costs, the government action in providing a subsidy to reduce compliance cost is fully countervailable.[1694] Similarly, in the issue of the logging tax credits, there are two government actions: (1) the GBC imposes an additional tax on loggers; and (2) the GOC and GBC provide a tax credit for the provincial tax on logging income. Thus, the government

[1690] *See Welded Line Pipe from Turkey* IDM at 23 – 24; *see also PET Film from India* IDM at 11 and 13.
[1691] *See* GOC June 8, 2020 Vol II Case Brief at 58, citing the *CVD Preamble*, 63 FR at 65361; *see also* 19 CFR 351.503(c).
[1692] *Id*.
[1693] *See, e.g., Lumber V Final* IDM at 200 – 201 (citing *CVD Preamble*, 63 FR at 65375 – 65376, explaining that for accelerated depreciation programs Commerce will calculate "… the tax benefits from accelerated depreciation schemes on a year by year basis," as opposed to on a prospective basis).
[1694] *See CVD Preamble*, 63 FR at 65361.

actions in providing a subsidy via the FLTC and PLTC, which reduce the company's logging tax that is otherwise due, are fully countervailable.

Commerce does not find that *Off-the-Road Tires from Sri Lanka*[1695] (the determination at issue in *GOSL v. U.S.*) and *Inland Steel* are germane to the specific facts related to this issue. In the case of *Off-the-Road Tires from Sri Lanka*, the issue was whether the rubber purchasers received countervailable subsidies. Rubber purchasers serving as a conduit for subsidization of rubber producers could not be charged with receiving a countervailable benefit, merely because government money passed through them. In *Inland Steel*, Commerce found that government funds that the recipient was obligated to forward to a third party did not provide a countervailable benefit to the intermediary.[1696] In contrast, in this review, the logging tax credits are not flowing through an intermediary or to a third party but are, instead, received in the form of a tax credit directly by the respective company from the government.

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

Furthermore, the record evidence for the FLTC does not demonstrate that this is a direct transfer of funds from the federal to the provincial government because the GOC tax credits are applied against each individual company's tax returns.[1697] Thus, this is, in fact, a transfer from the GOC to the company directly. Any arrangement that the GOC and GBC make regarding the relative proportion of the logging tax to be credited by the federal and provincial governments, and the purpose of such an arrangement, is beyond the purview of what Commerce is able to consider under the Act and its regulations. The fact that the GOC assumes a greater share than the GBC of crediting the logging tax does not change the fact that respondents received a benefit in the form of credits on taxes they would otherwise be obligated to pay.

As stated above, with respect to taxes, the financial contribution occurs when a government foregoes or does not collect revenue that is otherwise due. The GBC has decided to apply a tax on loggers' income within the province of British Columbia. The GOC and the GBC have, in fact, decided to forego the revenue that is otherwise due by applying tax credits and, thus, we find that the program constitutes a financial contribution that benefits the respondents under sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a).

[1695] *See Off-the-Road Tires from Sri Lanka*, 82 FR at 2949; *see also Off-the-Road Tires from Sri Lanka Order*, 82 FR at 12556.
[1696] *See Inland Steel v. U.S.*, 967 F. Supp. at 1367 – 1368.
[1697] *See* Canfor IQR at Exhibit 18 (Canfor's 2018 Federal Tax Return at 7).

Comment 91: Whether the Refund for the BC Logging Tax in 2017 Related to Prior Years Is Countervailable

Canfor's Comments[1698]

- In 2017, Canfor received a tax refund of its logging income tax paid to the GBC that was related to tax years prior to 2017, and were unrelated to the income tax returns filed during the POR.
- Even if Commerce continues to treat the FLTC and PLTC as countervailable, it should eliminate the benefit for the tax refund of the PLTC received in 2017. Commerce indicated in the *Lumber V AR1 Prelim Results* that "{f}or purposes of determining the timing of receipt of the benefit, we relied upon the income tax return filed during the relevant calendar year" and "{o}n this basis, we preliminarily determine that Canfor received a net countervailable subsidy of 0.06 percent *ad valorem* in 2017 and 0.17 percent *ad valorem* in 2018."[1699] However, Canfor reported that it had no taxable income in its 2016 income tax return that was filed in 2017, resulting in no income tax payable and no basis on which to claim the BC logging tax credit in its 2016 income tax return filed in 2017.
- The refund in the amount of the logging tax previously paid is different from a logging tax credit claimed. The reduction in the logging tax payable results in a lower logging tax credit claimed in the applicable tax year. Consequently, the refund of any logging tax paid in the applicable tax year cannot constitute a benefit from the logging tax credit program.

Petitioner's Rebuttal Comments[1700]

- In its 2017 tax return, filed in 2018, Canfor had taxable income and was liable for the 10 percent BC logging tax. Canfor's argument that the tax refund for the BC logging tax related to a year prior to 2017 that was received in 2017 should be attributed to the 2016 tax return filed in 2017, a year in which Canfor had no taxable income, is incorrect.
- Commerce clarified in the *Lumber V Final* that when calculating benefits from tax credits, it looks to "the assistance amount that was actually received by the company under this program in the {POR}."[1701] Therefore, the tax refunds Canfor received in 2017 should continue to be included in the 2017 benefit calculation for the final results.

Commerce's Position: For the 2017 tax year, Canfor reported receiving a tax refund from the GBC related to the PLTC for years prior to the POR.[1702] Canfor claims that the reduction in logging tax payable results in a lower tax credit claimed in the applicable year prior to the POR, suggesting that the tax refund cannot constitute a benefit received in 2017. However, the circumstances of how the tax refund was obtained is secondary to the fact that Canfor reported receipt of the funds in 2017 and that is when it realized its tax savings.

Canfor argues that the amount received should not be included in the benefit calculation because the tax refund is unrelated to the tax returns filed during the POR. Canfor also states that the timing of receipt of the tax refund, during 2017, corresponds to the tax return filed in 2016, a year in which Canfor had no taxable income and received no tax credits. However, the

[1698] *See* Canfor June 8, 2020 Case Brief at 15 – 17.
[1699] *Id*. at 15, citing *Lumber V AR1 Prelim Results* PDM at 77 – 78.
[1700] *See* Petitioner June 25, 2020 Rebuttal Brief at 125 – 126.
[1701] *Id*. at 125, citing *Lumber V Final* IDM at 218.
[1702] *See* Canfor IQR at NS-63.

regulations stipulate that a benefit is considered received at the time the recipient firm would otherwise be required to pay the tax, which *normally* coincides with a firm's tax return file date.[1703] However, in this specific circumstance, given that the refund pertains to the tax credit claimed in years prior to the POR, but was received in a different year (during the POR), we are considering only the amount of assistance received during the POR. Consistent with our practice, we included in the numerator only the amount that was actually received by Canfor under this program during the POR.[1704] Accordingly, we continue to find that the tax refund related to the PLTC constitutes a financial contribution that confers a benefit equal to the amount of tax savings pursuant to 19 CFR 351.509(a)(1).

Comment 92: Whether the ACCA Is *De Jure* Specific

GOC's Comments[1705]

- Commerce was wrong to find the federal ACCA *de jure* specific. In fact, no enterprise or industry is excluded, and the deduction is broadly available throughout the Canadian economy. The mere presence of eligibility requirements on activities does not make a program *de jure* specific.
- In *CRS from Russia*, Commerce found a program that all enterprises or industries could claim, but only for natural resource exploration, to not limit eligibility. In *Non-Oriented Electrical Steel from Taiwan*, Commerce found a program that was limited to innovative R&D activities to not be *de jure* specific because the benefits were not limited to any industry. Farming, fishing, logging, construction, and certain extraction activities are considered "manufacturing and processing," but companies engaged in those activities may claim the ACCA for equipment they use in manufacturing and processing and record evidence shows that they did during the POR.
- Commerce has also correctly found SR&ED credits to not be *de jure* specific. Just as certain activities are excluded from the definition of "manufacturing and processing" for the ACCA, certain activities are excluded from receiving SR&ED benefits. Consistency calls for the same determination.
- The CAFC has found that existence of eligibility criteria does not make a program *de jure* specific, and the SAA confirms that "a subsidy would not be deemed to be *de jure* specific merely because it was bestowed pursuant to certain eligibility criteria."[1706] All the ACCA's "restrictions" do is to define manufacturing.
- Commerce cited *Nails from Oman* and *CWP from the UAE* in the *Lumber V Final* in support of its *de jure* specificity finding for the ACCA, but those cases involved tariff exemptions that certain *enterprises* could not claim; for the ACCA, only certain *equipment* is not eligible.
- Even if Commerce incorrectly conflates activity and industry such that it finds some industries are excluded, the Act requires wide availability for a finding of no *de jure* specificity; Commerce has turned that into a requirement of near universal availability.
- The ACCA is available to companies in almost all of Canada's industries, including sectors that Commerce wrongly claimed were excluded from receiving it. In numerous prior cases,

[1703] *See* 19 CFR 351.509(b)(1).
[1704] *See, e.g., Lumber V Final* IDM at 218 (in which Commerce included only the assistance that was actually received during the POI in the benefit calculation).
[1705] *See* GOC June 8, 2020 Vol II Case Brief at 18 – 24.
[1706] *See* SAA at 930.

Commerce has found programs to not be specific in spite of clear limitations on the number or type of industries that could use the programs. For example, in *Laminated Hardwood Trailer Flooring from Canada*, Commerce found a program that all commercial non-retail enterprises were eligible for was not *de jure* specific. In *Citric Acid from China*, Commerce found likewise for the provision of steam coal to six major industrial categories.
- If Commerce correctly finds the ACCA not *de jure* specific, it should also find the program to not be *de facto* specific, given that over 26,000 and 28,000 enterprises used the program in 2017 and 2018, respectively. Sawmills made up only 3.3 percent of the deduction's users, so softwood lumber producers are not disproportionate or predominant users of the deduction.

Resolute and Central Canada's Comments[1707]
- By finding a tax credit for expenditures on capital investment available to all sectors to be specific, Commerce has reached a finding that "simply defies reason{,}" according to a CIT ruling cited as authoritative in the SAA. Furthermore, the SAA makes it clear that a *de jure* specificity finding requires "access to a subsidy" be limited "to a sufficiently small number of enterprises, industries, or groups thereof{.}" Commerce has reversed this standard by finding that the *exclusion* of a small group of activities from the program makes the program specific.

Petitioner's Rebuttal Comments[1708]
- There is no new information or argument for Commerce to reverse its correct *de jure* specificity finding. Contrary to the claim that certain activities are excluded from the program because they are not manufacturing or processing, various activities literally defined as processing are excluded. Thus, industries solely engaged in these activities are excluded from the program, and the program is *de jure* specific consistent with Commerce's past practice.
- The GOC also argues that, even if the program is defined as excluding certain industries, the exclusion is limited, and the program is still widely available. However, Commerce already rejected this argument in the *Lumber V Final*, and there is no new information to substantiate these claims.[1709]

Commerce's Position: We continue to find that the ACCA is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, eligibility for this tax program is expressly limited to certain enterprises or industries.

The GOC cites to numerous specificity analyses of other programs undertaken in Commerce's CVD proceedings to support its argument that this program is not *de jure* specific. However, Commerce has consistently found this program to be *de jure* specific across multiple CVD proceedings involving Canada. In the *Lumber V AR1 Prelim Results*, as well as the *Lumber V Final*, *SC Paper from Canada – Expedited Review – Final Results*, *Wind Towers from Canada Final*, *Groundwood Paper from Canada Final*, and *Lumber V Final Results of Expedited Review*, we found the ACCA for Class 29/53 assets program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because eligibility for the program is expressly limited as a matter of law to certain industries and explained why the GOC's references to

[1707] *See* Resolute June 8, 2020 Case Brief at 105 – 109.
[1708] *See* Petitioner June 25, 2020 Rebuttal Brief at 147 – 148.
[1709] *See Lumber V Final* IDM at Comment 68.

other cases were unavailing.[1710]

Section 1104(9) of the ITR regulations provide that "manufacturing or processing" does not include certain described categories of activities, as follows:

> {F}or the purpose of … Class 29 … 'manufacturing or processing' does not include: (a) farming or fishing; (b) logging; (c) construction; (d) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation thereof; (e) extracting minerals from a mineral resource; (f) processing of (i) ore, other than iron ore or tar sands ore, from a mineral resource to any stage that is not beyond the prime metal stage or its equivalent, (ii) iron ore from a mineral resource to any stage that is not beyond the pellet stage or its equivalent, or (iii) tar sands ore from a mineral resource to any stage that is not beyond the crude oil stage or its equivalent; (g) producing industrial minerals; (h) producing or processing electrical energy or steam, for sale; (i) processing natural gas as part of the business of selling or distributing gas in the course of operating a public utility; (j) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent; or (k) Canadian field processing.

The GOC asserts that this program is available to all enterprises and is, thus, like a program that Commerce examined in *CRS from Russia*, where Commerce found that a tax deduction program was not *de jure* specific because any company could claim a tax deduction if it performed certain activities.[1711] However, in *CRS from Russia*, and unlike here, we found that the program was not *de jure* specific because the applicable law's "articles do not stipulate the eligibility requirements or any limitation on eligibility."[1712] Citing *Non-Oriented Electrical Steel from Taiwan*, where Commerce found a program to be not *de jure* specific where only companies with highly innovative research and development activities were eligible for a tax credit, the GOC asserts that any company that acquired machinery for manufacturing or processing as defined by the ITR can claim the ACCA deduction.[1713] However, unlike the facts here, in *Non-Oriented Electrical Steel from Taiwan*, we found that the program was not *de jure* specific because the applicable law "indicates that benefits are not expressly limited to any industry … or other criteria, and thus not *de jure* specific under section 771(5A)(D)(i) of the Act."[1714]

The GOC argues that the ITR excludes activities and not industries and, therefore, this program is not specific under section 771(5A)(D)(i) of the Act.[1715] The GOC contends that the excluded activities do not change the fact that eligibility for this program does not exclude any specific enterprises or industries from eligibility for the program and that all enterprises and industries are eligible to claim the deduction for the non-excluded activities that they perform.[1716] The

[1710] *See Lumber V AR1 Prelim Results* PDM at 69 – 70; *see also Lumber V Final* IDM at Comment 68; *SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 32; *Groundwood Paper from Canada Final* IDM at 184; *Lumber V Final Results of Expedited Review* IDM at Comment 6; and *Wind Towers from Canada Final* IDM at Comment 2.
[1711] *See* GOC June 8, 2020 Vol II Case Brief at 21.
[1712] *See CRS from Russia Final* IDM at 117.
[1713] *See* GOC June 8, 2020 Vol II Case Brief at 21, citing *Non-Oriented Electrical Steel from Taiwan* IDM at 21.
[1714] *See Non-Oriented Electrical Steel from Taiwan* IDM at 21.
[1715] *See* GOC June 8, 2020 Vol II Case Brief at 7 – 8.
[1716] *Id.*

GOC further argues that a program available to all producers is not rendered specific merely because some producers may not claim the benefit for all of the activities that they undertake due to the program eligibility criteria. The GOC also argues that the ITR defines the underlying assets, and it does not exclude or limit particular industries.[1717] However, as discussed above, the ITR explicitly excludes certain activities from the definition of manufacturing or processing. Thus, enterprises and industries engaged in the excluded activities are not eligible for this program. Therefore, access to the subsidy is expressly limited to non-excluded enterprises and industries. As such, we find unpersuasive the GOC's argument that the program is not specific because it is limited to "activities" rather than "industries." Further, in *Magnesium from Israel*, Commerce made no distinction between activity and industry for purposes of determining specificity, and we do not do so now.[1718]

In support of its argument, the GOC argues Commerce's decisions in *CWP from the UAE* and *Nails from Oman* are distinguishable from this proceeding.[1719] We disagree. Contrary to the GOC's arguments, in *CWP from the UAE* and *Nails from Oman*, Commerce found programs that excluded certain activities to be *de jure* specific. Those cases support Commerce's specificity finding here. In *CWP from the UAE*, Commerce found *de jure* specificity because the law excluded enterprises involved with the extraction or refining of petroleum, natural gas, or minerals from receiving the benefit of tariff exemptions.[1720] Commerce explained that, where there is an explicit exclusion of certain industries in the law itself, such an exclusion is sufficient under section 771(5A)(D)(i) of the Act to support a finding that the law is expressly limited to a group of industries.[1721] Commerce further explained that section 771(5A)(D)(i) of the Act directs Commerce to consider "limitations" of availability to the program.[1722] Similarly, in *Nails from Oman*, Commerce found that the government expressly limited access to the tariff exemption program to certain establishments and, therefore, the program was *de jure* specific because it excluded other enterprises or industries (*i.e.*, those engaged in the field of oil exploration and extraction and those engaged in the field of extraction of metal ores) from receiving benefits of the program.[1723] The ACCA for Class 29 and Class 53 assets is likewise expressly restricted to non-excluded enterprises and industries.

Additionally, the GOC argues that the scope of the activity exclusion is very limited and that Commerce cannot equate the existence of limits on a program's availability to be *de jure* specific.[1724] The GOC further argues that a program is not *de jure* specific when it is widely available, and that the wide availability does not mean or require universal availability.[1725] However, we disagree that the exclusion at issue is very limited or that this program is widely available. Section 771(5A)(D)(i) of the Act states that a program is *de jure* specific if the governing authority "expressly limits access to the subsidy." Here, the ITR expressly limited

[1717] *Id.* at 8.
[1718] *See Magnesium from Israel* IDM at Comment 2.
[1719] *See* GOC June 8, 2020 Vol II Case Brief at 10 – 11.
[1720] *See CWP from the UAE* IDM at Comment 1.
[1721] *Id.* at 18.
[1722] *Id.*
[1723] *See Nails from Oman* IDM at Comment 1.
[1724] *See* GOC June 8, 2020 Vol II Case Brief at 4.
[1725] *Id.*

access to the subsidy by excluding certain described categories, such as farming, fishing, and construction, from the definition of "manufacturing or processing." Although the GOC is correct that the specificity test is intended to winnow out broadly available assistance spread throughout an economy, it is not "intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy would escape the purview of the CVD law."[1726]

The GOC also argues that during the POR, companies listed in the excluded "industries" claimed the ACCA for the manufacturing and processing activities that they performed.[1727] We find this argument unpersuasive because companies in industries that are engaged *exclusively* in the excluded activities under Class 29 or Class 53 are not eligible for the federal ACCA Class 29 assets program, based on the applicable tax laws for Class 29 and Class 53, as discussed above.

As support, the GOC also references numerous cases, claiming that, in each case, Commerce found that programs were not *de jure* specific where a program was widely available.[1728] We disagree that these cases support a different result here; we do not find that this program is widely available for the reasons discussed above, and the fact patterns in the cited cases are distinguishable from that of the Federal ACCA Class 29 assets program. For example, in *Laminated Hardwood Trailer Flooring from Canada*, Commerce found the Decentralized Fund for Job Creation Program (DFJC) of the Société Québecoise de Developpement de la Main-d'Oeuvre not to be *de jure* specific.[1729] However, Commerce also found assistance under the DFJC program to be "distributed to many sectors representing virtually every industry and commercial section found in Québec," as it excluded only retail businesses, nonprofits, and local and regional municipalities.[1730] Here, the ACCA for Class 29/53 assets program contains numerous additional eligibility restrictions. Similarly, in *Live Swine from Canada*, Commerce found the Transitional Assistance/Risk Management Funding grant program not to be *de jure* specific because it was available to most of the agricultural sector with the exception of producers of processed agricultural products.[1731] In addition to the fact that this administrative review does not require that Commerce analyze specificity of an agricultural subsidy (which is governed by special rules, under 19 CFR 351.502(d)), again, the Federal ACCA for Class 29/53 assets program contains numerous additional eligibility restrictions. Additionally, in *Fresh Cut Flowers from the Netherlands*, Commerce found that a program was not *de jure* specific because it excluded "one narrow type of agricultural activity."[1732] This case predates the statutory amendments made under the URAA, and in any event, is not analogous to the numerous activities that are excluded under the ACCA for Class 29/53 assets program.

Moreover, in *Citric Acid from China*, Commerce stated that "there is no indication that {the provision of} steam coal is *de jure* specific under {section} 771(5A)(D)(i) of the Act" because (1) "users of steam coal range from producers of electricity, heal suppliers and manufacturers of

[1726] *See* SAA at 930.
[1727] *See* GOC June 8, 2020 Vol II Case Brief at 18.
[1728] *Id.* at 29 – 23.
[1729] *See Laminated Hardwood Trailer Flooring from Canada*, 61 FR at 59084.
[1730] *Id.*
[1731] *See Live Swine from Canada Final* IDM at 27.
[1732] *See Fresh Cut Flowers from the Netherlands*, 52 FR at 3301 and 3306.

processed food and nuclear fuel to office, hotels and caterers," and "{w}ithin the major industrial category of manufacturing along users include food processers, nuclear fuel processors, smelters and pressers of ferrous and non-ferrous metal, and manufacturers of textiles, medicine, chemicals, transport equipment, among many others."[1733] However, here, the ACCA for Class 29/53 assets program contains numerous additional eligibility restrictions, as the ITR expressly limits access to the subsidy by excluding certain described categories from the definition of "manufacturing or processing," as discussed above. Further, in *CRS from Russia*, Commerce found that the extraction tax deduction program not to be *de jure* specific as "the law does not appear to limit access to an enterprise, industry, group of industries, or region."[1734]

The ACCA for Class 29/53 assets program contains numerous additional eligibility restrictions. Also, in *CTL Steel Plate from Korea Final*, Commerce found that the VCA program not to be *de jure* specific because "there were a large number of volunteers from across a wide range of industries."[1735] In addition, in *CTL Steel Plate from Korea Prelim*, Commerce found that the VCA program at issue not to be *de jure* specific under section 771(5A)(D)(i) of the Act because it "is available to numerous companies across all industries" and "the regulation does not explicitly limit eligibility of the program."[1736] However, again, the Federal ACCA for Class 29/53 assets program contains numerous additional eligibility restrictions, as the ITR expressly limits access to the subsidy by excluding certain described categories from the definition of "manufacturing or processing," as discussed above. Lastly, in *CTL Steel Plate from Korea Final*, Commerce found tax benefits under technology for manpower development expenses were not specific as the program was provided to all manufacturing and mining industries.[1737] On the contrary, the ITR explicitly limits access to the subsidy by excluding certain activities from the definition of manufacturing or processing; enterprises and industries engaged in the excluded activities are not eligible for this program.

Finally, the GOC argues that more than the existence of eligibility requirements need to be demonstrated to find *de jure* specificity, and Commerce's approach is inconsistent with section 771(5A)(D)(ii) of the Act.[1738] While we agree that the mere existence of eligibility criteria is not sufficient to find *de jure* specificity, the eligibility criteria do not satisfy the statutory requirement for "objective criteria," insofar as they "favor one enterprise or industry over another."[1739] That is, the ITR favors enterprises or industries that are engaged in qualifying manufacturing and processing activities, over enterprises or industries that are not.

We therefore continue to determine that the ACCA for Class 29/53 assets is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, eligibility for this tax program is expressly limited to certain enterprises or industries. As a result of this finding, we need not address the respondents' arguments regarding *de facto* specificity.

[1733] *See Citric Acid from China* IDM at 50 – 51.
[1734] *See CRS from Russia* IDM at 114.
[1735] *See CTL Steel Plate from Korea Final*, 64 FR at 73193.
[1736] *See CTL Steel Plate from Korea Prelim*, 64 FR at 40456.
[1737] *See CTL Steel Plate from Korea Final*, 64 FR at 73192.
[1738] *See* GOC June 8, 2020 Case Brief Vol II at 9 and 15.
[1739] *See* section 771(5A)(D)(ii) of the Act.

Comment 93: Whether Commerce Was Correct to Treat the Both the ACCA and Class 1 Additional CCA as Individual Programs

Resolute and Central Canada's Comments[1740]

- The Class 29 and Class 53 ACCAs are distinct programs that should be examined separately. Commerce was wrong to determine, with only minimal explanation for Québec and no explanation for Ontario, that the Class 29 and Class 53 allowances for taxes payable to the GOQ and GOO are part of the same program as federal Class 29 and 53 tax allowances. Thus, this "program" is in fact six separate programs.
- Commerce made a similar error in analyzing Class 1a and 1b allowances as separate programs, when in fact they are two distinct allowances that should be treated differently. Commerce then made the same mistake as for Class 29 and Class 53 assets by treating separate federal and provincial tax provisions as a single program.
- Class 53 covers similar assets to Class 29, but the Class 53 ACCA operates differently than the Class 29 ACCA. In the *Lumber V AR1 Prelim Results*, Commerce acknowledged that these classes cover assets purchased in different time periods but did not mention that the depreciation method and amounts available to depreciate also differ. The Class 53 CCA uses a declining balance method, rather than the straight-line method of the Class 29 CCA and Class 53 deductions not taken in a year cannot be fully carried forward.
- Class 1a and Class 1b allowances are separate programs. One covers non-residential buildings used for manufacturing and processing, the other covers all non-residential buildings. To the extent that Commerce incorrectly determines Class 1a allowances to be a subsidy, it should use the 6 percent CCA for Class 1b assets as the benchmark, rather than the 4 percent CCA for residential buildings.
- Additionally, federal and provincial CCAs cannot be conflated. They have different rules and policies regarding their applicability and enterprises can claim different amounts on different tax returns, as Resolute did for the Class 53 CCA in its 2017 Federal and Québec tax returns. The programs have different purposes, with the Ontario and Québec CCAs meant to support in-province tax filers, and they are not harmonized like the logging tax credit.

Petitioner's Rebuttal Comments[1741]

- The ACCA for Class 53 assets is the successor to the Class 29 ACCA, and there are no substantive differences between the federal and provincial CCAs. Thus, there is no basis for Commerce to treat this program as separate programs.
- Subsidy programs often undergo minor changes or updates, but that does not mean that there is a new program. The only relevant difference between the Class 29 and Class 53 ACCAs is the eligibility date.
- The assets that fall under Class 29 and Class 53, the depreciation schedule and methods, and the years of acquisition for assets do not differ by jurisdiction. Contrary to its assertion that the programs "do not act in harmony," Resolute in fact reported that the Québec and Ontario CCAs for Class 29 and Class 53 assets are "fully harmonized" with the federal CCAs for these assets.

[1740] *See* Resolute June 8, 2020 Case Brief at 109 – 112 and 117 – 118.
[1741] *See* Petitioner June 25, 2020 Rebuttal Brief at 148 – 150.

Commerce's Position: We disagree with Resolute's claim that Commerce should split the ACCA into six separate programs based on differences between the Class 29 and Class 53 ACCAs and between federal and provincial ACCAs. We also disagree that Commerce should split the Class 1 additional CCA into six separate programs based on differences between Class 1a and 1b CCAs and between federal and provincial Class 1 additional CCAs. First, we disagree with Resolute's claim that the Class 29 ACCA and Class 53 ACCA represent separate programs. Both programs provide accelerated depreciation for machinery and equipment acquired by taxpayers that are primarily for use in Canada for the manufacturing or processing of goods for sale or lease.[1742] The primary difference between the two is that the Class 29 ACCA covers assets purchased from March 18, 2007 through 2015, while the Class 53 ACCA covers assets purchased from 2016 through 2025.[1743] While Class 29 and Class 53 assets do not depreciate at identical rates, we find that the commonality of the assets eligible for the program and the relatively small difference between the new and old depreciation formulas lead us to find that these should be treated as the same program.

Second, we disagree with Resolute's claim that we must split both the ACCA and the Class 1 Additional CCA programs into separate Federal, Québec, and Ontario programs.[1744] Both Québec and Ontario's ACCAs are harmonized with the federal governments.[1745] These allowances apply the same depreciation rules to the same assets in each jurisdiction. The Ontario CCAs are claimed on the same tax return as the federal CCAs.[1746] Resolute files a separate Québec tax return and can choose to claim and use CCA credit at different times than it does on its federal returns.[1747] However, the basic intent of the program, to provide accelerated depreciation for a group of assets remains the same between the Québec and Federal ACCAs. As to Resolute's argument that the Class 1 Additional CCA should be separated into two programs, the two provisions both provide increased depreciation over standard Class 1 assets to the same type of asset—non-residential buildings.[1748]

As such, we are continuing to analyze both the ACCA and Class 1 Additional CCA as one program.

Comment 94: Whether the AJCTC Is Specific

GOC's Comments[1749]

- Commerce erred in finding that the Apprenticeship Job Creation Tax Credit is *de jure* specific because it limits eligibility to certain trades, rather than industries. This tax credit is available to any enterprise, regardless of industry, that hires an apprentice in any of the listed skilled job types, known as "Red Seal Trades."

[1742] *See* GOC July 15, 2019 Primary QNR Response at GOC-II-1 and GOC-AR1-CRA-ACCA-1.
[1743] *Id.*
[1744] *See* Resolute June 8, 2020 Case Brief at 109 – 112 and 117 – 118.
[1745] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibit RES-NS-GEN-5; *see also* GOQ July 15, 2019 Primary QNR Response at Exhibit QC-CCA-3
[1746] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibit RES-NS-GEN-5.
[1747] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at 49.
[1748] *See* GOC December 9, 2019 NSA QR Response at 3 – 4.
[1749] *See* GOC June 8, 2020 Vol II Case Brief at 24 – 28.

- This tax credit program is also not *de facto* specific. Because more than 12,000 firms claimed the tax credit during the POR, it should not be considered limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Petitioner's Rebuttal Comments[1750]
- Section 771(5A)(D)(iii)(I) of the Act does not specify a numerical threshold for what constitutes "limited in number." However, because 12,700 enterprises received the tax credit out of a total of 1,035,703 companies in Canada in 2017, it is reasonable to conclude that the recipients are limited in number.
- The GOC's argument that the tax credit is not limited in number because eligibility is based on skilled trades, rather than determined solely by the industry, is misplaced, and Commerce should continue to find the program to be *de jure* specific in the final results.

Commerce's Position: The AJCTC allows employers to claim a tax credit of 10 percent of wages for qualifying apprentices in the first two years of the apprentice's employment, up to a maximum of C$2,000 per apprentice per year.[1751] In the underlying investigation and the *Lumber V AR1 Prelim Results*, we found the program to be *de jure* specific because a qualifying apprentice is defined as someone working in a prescribed trade.[1752] To qualify for a tax credit under the program, an employer must employ an apprentice working in one of the 56 identified Red Seal Trades.[1753] Thus, this program is *de jure* specific under section 771(5A)(D)(i) of the Act, because eligibility for the program is expressly limited to certain industries.

The GOC argues that because the program is limited by skilled "trades," it is therefore not limited by industry or enterprise as required under section 771(5A)(D)(i) of the Act. The GOC states that Red Seal Trades are types of jobs, and thus the program is open to all industries and is only limited by activity. However, we do not distinguish, and neither the statute nor the regulations require us to distinguish, between an enterprise or industry and an activity performed by that enterprise or industry for purposes of evaluating *de jure* specificity. In practice, we have found programs to be *de jure* specific where eligibility was limited to enterprises or industries engaged in certain activities or projects.[1754] As we have found in the underlying investigation and the *Lumber V AR1 Prelim Results*, the AJCTC is expressly limited to enterprises or industries that are engaged in one of the limited "Red Seal Trades."

The GOC also argues that the AJCTC is not limited to a "group" of industries as required by section 771(5A)(D) of the Act because the eligible industries are "widely disparate."[1755] Again, we are not moved to alter our prior determination. Under section 771(5A)(D)(i) of the Act, access to assistance need only be limited to an enterprise or industry, or groups thereof; the heterogenous or homogeneous nature of the industries included or excluded is immaterial to our analysis.[1756]

[1750] *See* Petitioner June 25, 2020 Rebuttal Brief at 150 – 152.
[1751] *See* GOC July 15, 2019 Primary QNR Response at GOC-II-31 and Exhibit GOC-AR1-CRA-AJCTC-2.
[1752] *See Lumber V Final* IDM at Comment 70 and *Lumber V AR1 Prelim Results* PDM at 70.
[1753] *See* GOC July 15, 2019 Primary QNR Response at GOC-II-31 and Exhibit GOC-AR1-CRA-AJCTC-1.
[1754] *See, e.g., CWP from the UAE* IDM at 17; *see also Nails from Oman* IDM at 12.
[1755] *See* GOC June 8, 2020 Vol II Case Brief at 26.
[1756] *See* 19 CFR 351.502(b) (stating that in determining whether a subsidy is provided to a "group" for purposes of

The GOC made similar arguments in the underlying investigation, and we continue to find such arguments unconvincing. Therefore, we continue to find this program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, the program expressly limits eligibility to certain activities, which by extension limits it to certain industries. Because of this finding, we need not address the GOC's arguments regarding whether the AJCTC is *de facto* specific.

Comment 95: Whether the Class 1 Additional CCA[1757] Program Is Specific

GOC's Comments[1758]

- The higher rate of depreciation that buildings used for manufacturing and processing can claim over other buildings in Class 1 is not *de facto* specific to a particular enterprise or industry.

Resolute and Central Canada's Comments[1759]

- More than 30,000 companies from almost 200 different industry codes used Class 1a or Class 1b allowances during each year of the POR, showing that they are not *de facto* specific.
- In previous proceedings, Commerce has declined to find *de facto* specificity in factual scenarios where a large and diverse group of industries receive benefits under a program. Commerce's method of finding *de facto* specificity by comparing the total number of corporate tax filers to the number of corporate tax filers to claim the deduction is just the sort of comparison that the SAA states would "produce absurd results." The SAA even includes the example of a hypothetical "tax credit for expenditures on capital investment even if available to all industries and sectors" as a program that it would not make sense to find specific.

Petitioner's Rebuttal Comments[1760]

- Regardless of a program's absolute number of users, the relevant question for determining specificity under section 771(5A)(D)(iii)(I) of the Act is whether the actual recipients are limited in number relative to the population at issue. The Class 1 Additional CCA program was used by around 1.5 percent of the population of taxpayers and thus is clearly *de facto* specific.

Sierra Pacific's Rebuttal Comments[1761]

- Commerce conducted a *de facto* specificity analysis for this program in accordance with section 771(5A)(D)(iii)(I) of the Act and agency practice.

Commerce's Position: In the *Lumber VAR1 Prelim Results*, we explained how the facts led to a finding of specificity as follows:

> The GOC reported that 31,950 companies claimed this additional deduction in 2017, while 33,420 companies claimed it in 2018, out of approximately 2.2 million tax filers.

section 771(5A)(D) of the Act, Commerce is not required to consider whether there are "shared characteristics" within the group of eligible enterprises or industries).

[1757] Some sources refer to "depreciation" as opposed to the "CCA."

[1758] *See* GOC June 8, 2020 Vol II Case Brief at 41 – 49.

[1759] *See* Resolute June 8, 2020 Case Brief at 113 – 117.

[1760] *See* Petitioner June 25, 2020 Rebuttal Brief at 159 – 161.

[1761] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 18 – 23.

> As such, we find the actual recipients, relative to total corporate tax filers, are limited in number on an enterprise basis. Because the actual recipients, relative to total corporate tax filers, are limited in number on an enterprise basis, we preliminarily determine that this program is *de facto* specific in accordance with section 771(5A)(D)(iii)(I) of the Act.[1762]

As stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies that truly are broadly available and widely used throughout an economy.[1763] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies . . . used by discrete segments of an economy could escape the purview of the {countervailing duty} law."[1764] The SAA also states that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.[1765]

Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, Commerce reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.[1766] Thus, we followed the instructions of the SAA and our practice in determining whether the Class 1 CCA program is *de facto* specific.

As such, we continue to find that the Class 1 Additional CCA program is not widely used throughout the provincial economy, because the recipients are limited in number; therefore, the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. The breadth of industries that benefited from the program, noted by Resolute in its case brief,[1767] does not affect this finding. We also disagree with the claim that this program cannot be *de facto* specific because the number of users is large in absolute terms. For further discussion of that issue, Comment 89.

Comment 96: Whether the Class 1 Additional CCA Program Provides a Benefit

GOC's Comments[1768]

- The Class 1 Additional CCA reflects the shorter useful life of buildings used for manufacturing and processing. Commerce has no basis from which to conclude that the ten percent depreciation rate provides any kind of benefit and is therefore countervailable.
- The ten percent depreciation rate available for manufacturing buildings is not an accelerated rate above the normal rate for buildings. Instead, the ten percent depreciation rate is intended to reflect the actual shorter/faster useful life of such assets that are used for manufacturing purposes. Buildings used for manufacturing wear out more quickly than buildings with non-manufacturing uses, as assessed by the GOC. This depreciation rate does not provide benefits

[1762] *See Lumber V AR1 Prelim Results* PDM at 71 – 72.
[1763] *See* SAA at 929.
[1764] *Id*.
[1765] *Id*. at 931.
[1766] *See CRS from Korea* IDM at Comment 13; *see also Lumber V Final* IDM at Comment 62.
[1767] *See* Resolute June 8, 2020 Case Brief at 115.
[1768] *See* GOC June 8, 2020 Vol II Case Brief at 41 – 49.

to purchasers of such assets and was implemented to better reflect the true useful economic life of these assets.
- It is not unusual for different kinds of assets to be depreciated at different rates, reflecting their different expected useful economic lives. Moreover, there is nothing in the GOC's economic assessment of the ten percent depreciation rate to support the claim that this program is a subsidy. This assessment was based on an empirical study not prepared for a CVD investigation.
- Commerce has not countervailed a country's normal tax depreciation system in the absence of evidence that the system allows particular producers to accelerate their depreciation. Commerce's own regulatory framework acknowledges that assets depreciate at different rates, and Canada's 10 percent CCA for Class 1 assets follows the same economic principles as the IRS tables used by Commerce to determine AULs.
- There is no evidence that the ten percent depreciation rate calculated by the GOC for buildings used for manufacturing is inadequate or unreliable. The normal rate of depreciation for buildings used for manufacturing is ten percent, which would not provide any benefit if used as a benchmark.

Resolute and Central Canada's Comments[1769]
- These higher CCAs for Class 1a and Class 1b reflects that these assets have a shorter useful life than residential buildings categorized in Class 1, not because these are subsidy programs that provide a benefit. If Commerce incorrectly determines Class 1a allowances to be a subsidy, it should use the 6 percent CCA for Class 1b assets as the benchmark, rather than the 4 percent CCA for residential buildings.

JDIL's Comments[1770]
- The CCAs claimed for Class 1a and 1b assets on JDIL's tax year-2016 and tax year-2017 income tax returns reflect the shorter useful lives of the underlying assets, manufacturing facilities, and commercial buildings. The government does not forgo revenue or confer a benefit by administering a tax depreciation schedule that accurately reflects the useful life of the underlying assets.

Petitioner's Rebuttal Comments[1771]
- Commerce should continue to use the ordinary 4 percent depreciation rate for Class 1 assets as the benchmark for determining benefit. Record evidence shows that the Class 1 buildings are usually depreciated at a rate of four percent, but that those that use at least 90 percent of floor space for manufacturing or processing may apply for an additional 6 percent deduction. Commerce's benefit methodology was lawful, and the policy arguments raised by the Canadian Parties are irrelevant.

Commerce's Position: We continue to find that this program provides a benefit as a tax reduction in the amount of the difference between the tax the company paid and the tax the company would have paid absent the tax reduction, as provided in 19 CFR 351.509(a)(1).

[1769] *See* Resolute June 8, 2020 Case Brief at 116 – 117.
[1770] *See* JDIL's June 8, 2020 Case Brief at 22 – 24.
[1771] *See* Petitioner June 25, 2020 Rebuttal Brief at 159 – 161.

The GOC maintains CCA rates for different classes of property, including Class 1, under its tax system. The standard CCA rate for Class 1 is four percent.[1772] The GOC stated that "{i}n addition, an 'eligible non-residential building' as defined in subsection 1104(2) of the ITR may qualify for an additional CCA deduction" and that "a taxpayer can file an election in respect of each separate eligible non-residential building …." in order to receive an additional CCA (emphasis added).[1773] Pursuant to the ITR, an eligible non-residential building "means a taxpayer's building (other than a building that was used, or acquired for use, by any person or partnership before March 19, 2007) that is located in Canada, that is included in Class 1 {(emphasis added)}… and that is acquired by the taxpayer on or after March 19, 2007 to be used by the taxpayer, or lessee of the taxpayer, for a non-residential use."[1774] Paragraph 1100(1)(a.1) the ITR provides for an additional 6 percent CCA deduction if at least 90 percent of the floor space of the eligible non-residential building is used at the end of a tax year for manufacturing or processing in Canada of goods for sale or lease.[1775]

Record evidence thus establishes that taxpayers qualify for the additional deduction for a certain Class 1 asset (*i.e.*, an "eligible non-residential building") that is: (1) included in Class 1 and used for manufacturing and processing operations within the meaning of the ITR or (2) included in Class 1 and used for non-residential use. Further, in order to receive an additional deduction, taxpayers need to file Schedule 8 elections with their income tax returns.[1776] Otherwise, they would not receive the additional six percent deduction and instead receive the basic four percent of the CCA. Section 351.509(a)(1) of Commerce's regulations states that "{i}n the case of a program that provides a full or partial exemption or remission of a direct tax (*e.g.*, an income tax), or reduction in the base used to calculate a direct tax, *a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program*."[1777]

Here, in the absence of the Class 1 Additional CCA, the respondents would have paid more as the basic rate applicable is four percent for Class 1 assets. Because the respondents were able to pay less than the tax they would have paid due to the additional CCA in place, the appropriate benefit for Commerce to measure is the tax savings of the difference between the deduction calculated using the basic rate of depreciation and the deduction calculated using the total depreciation rate, including the additional CCA rate, that the respondents used.

As such, we continue to find, as we did in the preliminary results, that the four percent CCA under Class 1 is the appropriate reference for determining the revenue forgone by the GOC's financial contribution as defined in section 771(5)(D)(ii) of the Act.

[1772] *See* GOC December 9, 2019 NSA QR Response at 3 and 28.
[1773] *Id.* at 3 – 4.
[1774] *Id.*
[1775] *Id.* at 4.
[1776] *Id.* at 6.
[1777] *See* 19 CFR 351.509(a)(1); *see also CVD Preamble*, 63 FR at 65375.

- ***Alberta***

Comment 97: Whether Alberta's TEFU and British Columbia's Coloured Fuel Programs Are Countervailable

West Fraser's Comments[1778]

- The *Motor Fuel Tax Act* establishes a lower tax rate for "coloured fuel" and clearly enumerates the permitted uses for this fuel, primarily certain off-road activities. Alberta partially exempts fuel tax for "marked fuel" used in qualifying off-road activities. These programs are not *de jure* or *de facto* specific. Additionally, they do not provide financial contributions, because they do not forego revenue "otherwise due," but rather are tax rates consistent with characteristics of marked/coloured fuel.
- Any Alberta entity may apply for a TEFU certificate to purchase marked fuel at a partially tax-exempt rate, and the eligibility criteria are clearly outlined, objective, neutral automatic, and strictly followed. Likewise, the BC Coloured Fuel program is not limited to an enterprise or industry, and the eligibility criteria are objective and statutorily fixed. Thus, these programs are not *de jure* specific under either section 771(5A)(D)(i) or 771(5A)(D)(ii) of the Act.
- Record data confirms that the Alberta forestry industry is not a predominant user of the TEFU program and does not disproportionately benefit from the program, and also that the program is used by a wide range of industries. British Columbia does not collect information on coloured fuel usage by industry. Thus, there is no evidence on the record suggesting that either province's program is *de facto* specific.
- A government could always collect more taxes and failing to do is not a financial contribution, as the "otherwise due" in the Act language underscores. The lower Alberta/BC tax rates for marked/coloured fuel are consistent with off-road activities not generating the need for road and highway maintenance that justify fuel taxes. Previously, marked fuel was not taxed in Alberta.

GOA's Comments[1779]

- TEFU is not countervailable. It is not *de jure* specific, as it is a non-forestry program that can be accessed by any commercial or government entity that meets statutory eligibility criteria. TEFU is also not *de facto* specific, as consumers in a broad range of industries used the program, and the forestry industry is not a predominant user. TEFU also does not provide a financial contribution, as the GOA is not foregoing revenue that would "otherwise" be collected.
- The Act defines a program as *de jure* specific when legislation or the program's administering authority "expressly limits access to the subsidy to an enterprise or industry." There are no enterprise or industry access limitations established by the program's administering authorities or Alberta's *Fuel Tax Act* and *Fuel Tax Regulation*. The activity-based eligibility requirements of the *Fuel Tax Regulations* do not consider the industry or enterprise of the applicant. Furthermore, the plain language of the Act does not define activity-based restrictions as grounds for a specificity finding.

[1778] *See* West Fraser June 8, 2020 Case Brief at 53 – 60.
[1779] *See* GOA June 8, 2020 Vol IV Case Brief at 33 – 43.

- TEFU is also not *de jure* specific under section 771(5A)(D)(ii) of the Act, because it operates under objective application criteria. The GOA will automatically issue a TEFU certificate to an applicant if none of the conditions for refusing the application apply.
- TEFU does not meet any of the criteria for *de facto* specificity. The program was used by a significant number of users and industries, the forestry industry is not a "predominant user" or disproportionate beneficiary of the program, and the GOA does not exercise any discretion in issuing TEFU certificates.
- TEFU is not foregoing any revenue that would otherwise be collected and thus does not provide a financial contribution.

GBC's Comments[1780]
- Commerce incorrectly countervailed British Columbia's lower tax rate for coloured fuel. This lower tax rate is justified by the lack of highway wear and tear generated by off-road vehicles that use coloured fuel. Commerce also failed to cite record evidence from this proceeding in finding this program countervailable.
- The motor fuel tax was enacted to fund transportation infrastructure such as highways and public roads. As much of British Columbia is covered by private roads and highways, the GBC decided that users of those roads, *i.e.*, coloured fuel purchasers, should not contribute as much to maintenance of those public roads.
- Commerce found in the *Lumber V Final* that it is "irrelevant" that there is a policy rationale for this tax differential, but that ignores the agency's responsibility to consider all evidence. It is illogical to countervail as a financial contribution setting different tax rates that reflect the different public costs of different activities.

Petitioner's Rebuttal Comments[1781]
- Commerce correctly found in the *Lumber V Final* that these programs are countervailable, considering and rejecting the same arguments that West Fraser, the GOA, and the GBC again make in their case briefs for this current segment of the proceeding. In the *Lumber V AR1 Prelim Results*, Commerce found that there was no new information or argument on the record to alter its previous findings.
- *De jure* specificity can exist when eligibility is explicitly limited to certain activities, given that only industries involved in those activities are eligible.
- Commerce found in the *Lumber V Final* that access to TEFU "is expressly limited to enterprises or industries engaged in certain activities, and West Fraser and the GOA do not argue or cite evidence that broad segments of the economy are engaged in one of the narrow, limited activities for which a tax exemption certificate can be granted."[1782] Commerce also found that the TEFU and BC Coloured Fuel eligibility criteria "do not meet the statutory definition of 'objective criteria'."[1783]
- TEFU is specific on a *de facto* basis, because GOA data show that a group of industries are the predominant users of the subsidy. However, Commerce need not address arguments on *de facto* specificity given that the program is *de jure* specific.

[1780] *See* GBC June 8, 2020 Vol V Case Brief at 49 – 53.
[1781] *See* Petitioner June 25, 2020 Rebuttal Brief at 136 – 142.
[1782] *See Lumber V Final* IDM at 205.
[1783] *Id.* at 205 and 209.

- Commerce considered the "otherwise due" language of the Act in the *Lumber V Final* and noted for TEFU that it is not relevant "that the GOA, in the past, may not have taxed these purchases"[1784] and for BC's Coloured Fuel tax "{i}t is irrelevant to this inquiry whether…the GBC's differential tax scheme is supported by a policy rationale."[1785] Commerce should continue to find that these programs provide financial contributions.

Commerce's Position: We continue to find that TEFU and the BC Coloured Fuel programs are *de jure* specific under section 771(5A)(D)(i) of the Act and provides financial contributions as defined in section 771(5)(D)(ii) of the Act that confer benefits. Thus, both programs are countervailable subsidies.

In the *Lumber V Final*, we found that both programs are specific under section 771(5A)(D)(i) of the Act, as they are "expressly limited to enterprises or industries engaged in certain activities,"[1786] and that the respondents did not "argue or cite evidence that broad segments of the economy are engaged in one of the narrow, limited activities for which a tax exemption certificate can be granted."[1787]
In this segment of the proceeding, the GOA contests that finding for TEFU, noting that a TEFU applicant can select a use: "from among 21 diverse operations types and a catch-all, 'other' category…operations include 'road or pipeline construction,' 'home heating,' 'waste management,'…The Department offers no explanation as to how this diverse group of users supports a finding that the use-based eligibility criteria favor one industry or enterprise over another."[1788] However, this argument does not undermine the fact that the law expressly limited the program to enterprises or industries engaged in certain activities.

In the *Lumber V Final*, we noted that the SAA states that the specificity test is not "intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the CVD law."[1789] Rather, though the GOA cites potentially diverse uses, these uses are narrowly tailored "discrete segments" of the economy just as described in the SAA. As such, we find the GOA's argument unpersuasive. We also find that the other arguments made by the GOA and West Fraser on the specificity under section 771(5A)(D)(i) of the Act of TEFU and the BC Coloured Fuel program were considered and rejected by Commerce in the *Lumber V Final* and, as such, do not provide grounds for reconsideration.[1790]

With regard to *de jure* specificity under section 771(5A)(D)(ii) of the Act, we found in the *Lumber V Final* that for TEFU and BC Coloured Fuel, respectively:

[1784] *Id*. at Comment 73 (p. 206).
[1785] *Id*. at Comment 74 (p. 208).
[1786] *See Lumber V Final* IDM at 205 (for TEFU) and 208 (for BC Coloured Fuel).
[1787] *Id*.
[1788] *See* GOA June 8, 2020 Vol IV Case Brief at 37 – 38, citing GOA July 15, 2019 Primary Non-Stumpage QNR Response at Exhibit AB-AR1-TEFU-6 at 1.
[1789] *See Lumber V Final* IDM at 208, citing SAA at 930.
[1790] *See Lumber V Final* IDM at 205 (TEFU) and 208 – 209 (BC Coloured Fuel).

> {T}he eligibility criteria do not meet the statutory definition of "objective criteria," because they favor certain enterprises, that is, those enterprises or industries that use marked fuel for one of those limited, prescribed purposes.[1791]
>
> Under this program, the eligibility criteria limits access to the subsidy to only those users purchasing fuel for a prescribed list of approved activities. Therefore, the eligibility criteria do not meet the statutory definition of "objective criteria," because they favor certain enterprises{.}[1792]

We note no additions or new factual information on the record of this review that would lead to a change in this finding for either program. The controlling statutes and eligibility criteria for TEFU and the BC Coloured Fuel programs have not changed since the investigation.[1793] Likewise, the arguments raised by West Fraser and the GOA in their case briefs as to why these programs are not *de jure* specific under section 771(5A)(D)(ii) of the Act were previously discussed in the *Lumber V Final* and found unpersuasive.[1794]

For financial contribution, Commerce found the following in the *Lumber V Final* for TEFU and BC Coloured Fuel, respectively:

> we disagree with the GOA's argument that the {TEFU} program does not provide a financial contribution because marked fuel was originally not taxed, and only recently became taxed at a lower rate than other fuel. This exemption results in the GOA foregoing tax revenue that would otherwise be due.[1795]
>
> Vehicles that use coloured fuel on the highway, an unauthorized purpose, must pay the tax difference between 3 cents per liter for coloured fuel and the location-specific tax for clear fuel. Therefore, this program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone.[1796]

West Fraser, the GBC, and the GOA repeat their arguments from the investigation that these programs do not fall under the statutory definition of "foregoing or not collecting revenue that is otherwise due" and the GOA highlights that marked fuel was previously not taxed in Alberta.[1797] These arguments are still unpersuasive. The Alberta *Fuel Tax Act* refers to marked fuel as Tax-Exempt,[1798] and in British Columbia, a purchaser will pay the standard fuel tax rate if they do not present a form certifying that coloured fuel will be used for authorized purposes.[1799] The record shows that the GOA provides a tax exemption of nine cents per liter to eligible companies and

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[1791] *Id.* at 206.
[1792] *Id.* at 209.
[1793] *See* GOA July 15, 2019 Primary Non-Stumpage QNR Response at 23 – 25 and Exhibits AB-AR1-TEFU-3 through AB-AR1-TEFU-6; and GBC IQR Volume III at 2 – 6 and Exhibits BC-AR1-GAS-3 through Exhibits BC-AR1-GAS-5(b).
[1794] *See Lumber V Final* IDM at 206 (for TEFU) and 208 (for BC Coloured Fuel).
[1795] *Id.* at 206.
[1796] *Id.* at 208.
[1797] *See* GOA June 8, 2020 Vol IV Case Brief at 42; GBC June 8, 2020 Vol V Case Brief at 50 – 51; and West Fraser June 8, 2020 Case Brief at 53.
[1798] *See* GOA July 15, 2019 Primary Non-Stumpage QNR Response at AB-AR1-TEFU-6.
[1799] *See* GBC IQR Volume III at 2 – 3.

municipalities when fuel is used in unlicensed vehicles, machinery, and equipment for qualifying off-road activities.

The GBC also repeats the argument that British Columbia taxing coloured fuel at a lower rate than clear fuel is supported by a logical policy rationale and asserts that Commerce was wrong to find this policy rationale "irrelevant."[1800] However, we continue to find that the rationale outlined by the GBC is not relevant to our CVD determination. While the long-term repair costs generated by highway use may be relevant to the GBC in setting fuel tax rates, our analysis of whether a program provides a financial contribution and confers a benefit is not based on the net social costs of one activity relative to another activity. Rather, in this case, our analysis is guided by the language of section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1), which states that a financial contribution is provided when a government foregoes revenue that is otherwise due, and the recipient receives a benefit to the extent that the taxes it pays as a result of the program are less than what it would have paid in the absence of the program. The additional social policy rationale underlying a program argued by the GBC is simply not a factor for consideration under the applicable statutory and regulatory provisions pertinent to this program and the CVD law in general.

Comment 98: Whether Schedule D Depreciation Constitutes a Financial Contribution and Confers a Benefit

GOA's Comments[1801]

- For tax programs, a benefit is conferred when the authority does not collect revenue that is otherwise due. Commerce should not interpret the statutory phrase "otherwise due" to include revenue that would have been collected as a result of inaccurate property valuation. Depreciation under Schedule D accurately values property with reduced capacity. Commerce should conclude that property valuation pursuant to Schedule D depreciation does not provide a financial contribution as required by section 771(5)(D)(ii) of the Act.

Petitioner's Rebuttal Comments[1802]

- The GOA argues that Schedule D depreciation simply allows the government to collect the proper amount of tax based on an accurate property valuation. In other words, the GOA is asserting that a benefit is not conferred if a firm has a lower tax liability due to depreciation if it is prescribed in law. Commerce has rejected this argument in the *Groundwood Paper from Canada Final*.[1803]
- The additional depreciation is a preferential tax rate that lowers Canfor's property tax liability, and clearly provides a benefit.

Commerce's Position: We disagree with the GOA and continue to find that Schedule D depreciation provides a financial contribution and confers a benefit. Schedule D allows additional depreciation for functional obsolescence to be factored into the valuation of industrial property.[1804] The GOA argues that any benefit prescribed in law cannot confer a benefit because

[1800] *See* GBC June 8, 2020 Vol V Case Brief at 52.
[1801] *See* GOA June 8, 2020 Vol IV Case Brief at 28 – 30.
[1802] *See* Petitioner June 8, 2020 Case Brief at 251 – 253.
[1803] *Id.* at 77, citing *Groundwood Paper from Canada Final* IDM at 184 – 185.
[1804] *See* GOA Post Prelim SQR1 at AB-SQ5-67.

under Schedule D, Canfor pays the property tax rate prescribed by law. However, simply because the tax savings under Schedule D depreciation are set forth in provincial law and regulations, that fact, in of itself, does not necessarily indicate that such tax savings do not confer a benefit. Our regulations at 19 CFR 351.509(a)(1) state that a firm receives a benefit for the exemption or remission of a tax to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program. As described in the *Lumber V AR1 Prelim Results*, the additional depreciation under Schedule D lowers the tax Canfor would otherwise pay for the properties covered by that program and thus confers a benefit equal to the amount of tax savings under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Furthermore, the Schedule D depreciation provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because the GOA foregoes revenue that would otherwise be due.

Comment 99: Whether Schedule D Depreciation Is Specific

GOA's Comments[1805]

- Schedule D depreciation is available to a broad range of industries and companies in Alberta. Section 771(5A)(D)(i) of the Act states that a program is specific if it "expressly limits access to the subsidy to an enterprise or industry." A program that is broadly available to many types of producers cannot be considered limited to an industry, even if not all producers are able to utilize the program.[1806]
- Commerce should analyze tax programs within the context of the broader tax system. In a previous case, Commerce considered that different industries benefited from the availability of deductions for business expenses and concluded that the program was not *de jure* specific when analyzed within the tax system more generally.[1807]
- In Canfor's case, the linear property assessment guidelines applied to property related to energy production. However, similar guidelines apply to other types of industrial machinery utilized by a broad range of industries in Alberta.

Petitioner's Rebuttal Comments[1808]

- The GOA claims that Commerce's *de jure* specificity finding is incorrect because similar guidelines apply to other types of industrial machinery. This argument is not relevant, as the program at issue is Schedule D depreciation, not other depreciation rates described in Alberta's *Municipal Government Act*.
- The GOA's reference to *CRS from Russia* as an example for why Commerce should analyze this program within the broader tax system is also misplaced. In *CRS from Russia*, Commerce "evaluated the applicable articles" of the tax program that specifically applied to the deduction under investigation, and determined it to be *de facto* specific.[1809] Schedule D depreciation is *de jure* specific because it is limited to "designated industrial properties" as defined in the *Municipal Government Act*.

[1805] *See* GOA June 8, 2020 Vol IV Case Brief at 30 – 32.

[1806] *Id*. at 30, citing *Changzhou Trina Solar Energy* 195 F. Supp. 3d at 1349 (differentiating between subsidies that aid specific companies or industries and those that benefit society more broadly such as police and fire departments) (citing *Allegheny I* at 20).

[1807] *Id*. at 31, citing *CRS from Russia* IDM at 115.

[1808] *See* Petitioner June 25, 2020 Rebuttal Brief at 251 – 253.

[1809] *See CRS from Russia* IDM at 117.

- Even if Commerce determines that the program is not *de jure* specific, the program's recipients are limited in number, and thus Schedule D depreciation is *de facto* specific.

Commerce's Position: In the Canfor/West Fraser Post-Prelim Decision Memorandum, we found this program to be *de jure* specific under section 771(5A)(D)(i) of the Act because it was limited to "designated industrial properties."[1810] The GOA argues that the Schedule D depreciation provided under the program is not *de jure* specific because it is available not only to "designated industrial properties" but also to a wide range of other industries that experience reduced capacity, or obsolescence. We continue to disagree with the GOA that the program is not *de jure* specific; however we have modified the *de jure* specificity analysis we employed in the Post-Preliminary Memo.

Upon review of the information on the record, we find that the Schedule D depreciation provided under the program is limited to the following:

- Farmland
- Machinery and equipment, which the program describes as "range of items used in manufacturing, processing and other industrial facilities, such as tanks, mixers, separators, fuel gas scrubbers, compressors, pumps, chemical injectors, and metering and analysis equipment. Machinery and equipment is used in conjunction with properties such as meat processing plants, refineries, chemical plants, pulp and paper plants, and oil sands plants."[1811]
- Designated industrial property, which encompasses railways, major industrial plants, and linear property.[1812]
- Eligible linear property that falls under the designated industrial property category encompasses electric power systems (Canfor's Grande Prairie EcoPower Centre qualified under the Schedule D program under this provision), [1813] telecommunications systems, cable television systems, and pipelines and wells associated with oil and gas transport and delivery.[1814]

Based on the information above, we find that the Schedule D tax depreciation program is *de jure* specific under 771(5A)(D)(i) of the Act because it is limited to farmland, designed industrial properties, and certain machinery and equipment limited to manufacturing, processing and similar industries, and farmland.

Regarding the farmland eligibility criteria, 19 CFR 351.502(e) states that "a subsidy is not specific under section 771(5A)(D) of the Act solely because the subsidy is limited to the agricultural sector."[1815] Here, Schedule D depreciation is limited not only to agricultural property, but also to designated industrial equipment and certain machinery and equipment described above. Therefore, because the program is not solely limited to farmland, we find the agriculture provision under 19 CFR 351.502(e) does not apply to the program at issue.

[1810] *See* Canfor/West Fraser Post-Prelim Decision Memorandum at 3.
[1811] *Id*., Exhibit AB-AR1-MPT-12 at 8.
[1812] *Id*. at 8.
[1813] *See* GOA June 8, 2020 Vol IV Case Brief at AB-SQ5-68 and Exhibit AB-AR1-MPT-3.
[1814] *See* GOA Post Prelim SQR1 at Exhibit AB-AR1-MPT-1 (p. 163) and Exhibit AB-AR1-MPT-12 at 8 – 9.
[1815] *See* 19 CFR 351.502(e)

- ***British Columbia***

Comment 100: Whether the IPTC[1816] Is Countervailable

GBC/BCLTC's Comments[1817]

- Commerce failed to account for how Canfor and West Fraser's BC school tax rates were set. The school tax rate was not lowered for these companies; rather, the GBC sets the school tax rates for Class 4 property through two separate sections of the *School Act* and does not forego revenue in doing so. Additionally, this program is not *de facto* specific.
- The GBC did not significantly lower the school tax rate for Class 4 property in both 2017 and 2018. Rather, the GBC followed the law by setting a rate for Class 4 property under Section 119(3) of the *School Act* and then by adjusting that rate automatically through Section 119(6) of the same law.
- This program is not *de facto* specific, as there are over 12,000 Class 4 properties in British Columbia, 17 varied categories of properties fall under Class 4, and the lumber industry paid only 11 percent of the school tax in 2017 and 2018. The GBC also does not exercise discretion in granting the school tax credit.

Petitioner's Rebuttal Comments[1818]

- According to the Act, "foregoing or not collecting revenue that is otherwise due, such as granting tax credits or deductions from taxable income" is a financial contribution. The GBC's argument that the IPTC is not a financial contribution because it is set by two separate provisions of the *School Act* is baseless.
- The GBC does not address Commerce's finding that actual recipients of the program are "limited in number" relative to the number of companies in British Columbia during the POR. As only "one or more" factor is required to find *de facto* specificity, the arguments proffered by the GBC are irrelevant.

Commerce's Position: We continue to find that the IPTC provides a financial contribution in the form of revenue forgone, within the meaning of section 771(5)(D)(ii) of the Act that confers a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).[1819] The GBC's argument that the statutory provisions for Class 4 tax rates are not revenue foregone do not address the Act's plain language. The IPTC is a tax credit and tax credits are explicitly listed in section 771(5)(D)(ii) of the Act as revenue foregone. As noted in *Lumber V AR1 Prelim Results*, certain industries are eligible as classification as Class 4 – Major Industry, and the IPTC is a tax credit that is automatically applied to all properties classified as Class 4 – Major Industry.[1820] The GBC's argument that the tax rates are set through multiple provisions of a law and therefore not revenue foregone is unconvincing, and does not negate the fact that the GBC applies the IPTC to the tax collection notices of Class 4 properties, for which they realize tax savings.[1821]

[1816] The IPTC may also be referred to as the British Columbia School Tax Credit, or the Class 4 Major Industry Property School Tax Credit.
[1817] *See* GBC June 8, 2020 Vol V Case Brief at 62 – 66.
[1818] *See* Petitioner June 25, 2020 Rebuttal Brief at 176 – 177.
[1819] *See Lumber V AR1 Prelim Results* IDM at 78, citing GBC NSA SQR2 at Exhibits BC-AR1-SCH-1 and BC-AR1-SCH-5.
[1820] *Id*.
[1821] *Id*.

The GBC determining a tax liability and then subsequently relieving that liability in another provision is still a financial contribution that confers a benefit.

In addition, we continue to find that the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited in number relative to the number of companies operating in British Columbia.[1822] The GBC's arguments on the IPTC's operation do not address this finding and do not provide grounds for reconsidering our determination, given that *de facto* specificity can be found when a single one of the criterion under section 771(5A)(D) of the Act are met.

Comment 101: Whether the BC Training Tax Credit Is Specific

GBC/BCLTC's Comments[1823]

- Commerce erred in finding that the BC Training Tax Credit is *de jure* specific because it limits eligibility to firms that engage in job training in certain trades, rather than industries. The tax credit is available to all enterprises in British Columbia, regardless of industry, that carry out qualifying training activities related to more than 150 trades across a number of industries and sectors.
- Additionally, because it is available for training related to such a large number of trades within a wide variety of industries, the tax credit is not limited in number and thus is not *de facto* specific.

Petitioner Rebuttal Comments[1824]

- Commerce properly concluded that the tax credit is *de jure* specific, as it is limited to certain industries. If Commerce alternatively concludes that the program is not *de jure* specific, the tax credit is still *de facto* specific, as the actual number of recipients is limited compared with the total number of companies operating in the province during the POR.

Commerce's Position: The BC Training Tax Credit provides tax credits to employers participating in eligible apprenticeship programs administered through the Industry Training Authority.[1825] The tax credit functions similarly to the federal AJCTC. In the AJCTC program, tax credits are available to employers that employ an apprentice working in the any of the listed skilled jobs known as "Red Seal Trades."[1826] On this basis, and as noted in Comment 94, we continue to find the AJCTC to be *de jure* specific as it is limited to enterprises or industries that are engaged in one of such trades.[1827] Here, the BC Training Tax Credit is available for apprenticeships in the Red Seal Trades and for certain additional, non-Red Seal trades.[1828] Therefore, the tax credit is available to a greater number of skilled trades than those eligible for the AJCTC. While the tax credit is not formally harmonized or tied to the AJCTC, participation in the AJCTC is one of the eligibility criteria for one type of "enhanced" tax credit under this

[1822] *Id*. at 78, citing GBC NSA SQR2 at Exhibit BC-AR1-SCH-10.
[1823] *See* GBC June 8, 2020 Vol V Case Brief at 58 – 59.
[1824] *See* Petitioner June 25, 2020 Rebuttal Brief at 175.
[1825] *See* GBC Post Prelim SQR at BC-TRN-4.
[1826] *See* GOC July 15, 2019 Primary QNR Response at GOC-II-31 and Exhibit GOC-AR1-CRA-AJCTC-1.
[1827] *See* Comment 94.
[1828] *See* GBC Post Prelim SQR at BC-TRN-2 and Exhibit BC-AR1-TRN-3.

program.[1829] As such, it functions as a corollary to the AJCTC, and it is possible for recipients to receive one or both.

The GBC argues that because the program is available to skilled "trades," it is therefore not limited by industry or enterprise as required under section 771(5A)(D)(i) of the Act. The GBC states that listed trades are types of jobs, and thus the program is open to all industries and is only limited by activity. However, we do not distinguish, and neither the statute nor the regulations require us to distinguish, between an enterprise or industry and an activity performed by that enterprise or industry for purposes of evaluating *de jure* specificity. In practice, we have found programs to be *de jure* specific where eligibility was limited to enterprises or industries engaged in certain activities or projects.[1830]

However, the record evidence indicates that the tax credit is limited to industries that are engaged in one of the listed eligible trades, which include Red Seal and certain non-Red Seal trades.[1831] While the number of trades eligible for the tax credit is greater than the number of trades eligible for the AJCTC, we determine that the program is still limited to certain activities enumerated by the GBC.[1832] Accordingly, we continue to find this program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, the program expressly limits eligibility to certain trades, which by extension limits it to certain industries.

Because of this finding, we need not address the arguments regarding whether the AJCTC is *de facto* specific.

Comment 102: Whether Class 9 Farm Property Assessment Rates Are Specific

Petitioner's Comments[1833]

- The record evidence submitted by the GBC indicates that only certain land uses qualify for the Class 9 farm classification, and further, a list of excluded land uses is also on the record.[1834] The exclusion of certain activities indicates that enterprises engaged in such activities are not eligible for the classification and the associated tax credit. In the underlying investigation, Commerce concluded that the ACCA for Class 29 Assets program was *de jure* specific because of the exclusion of certain industries from the definition of manufacturing and processing. As a result, such industries were excluded from using the ACCA Class 29 Assets program.
- Commerce should not rely on the lack of evidence of disproportionate use by Canfor or the forestry sector to determine the program's specificity.
- The number of properties with a Class 9 classification relative to the total number of tax filers in British Columbia is limited in number. In the underlying investigation, Commerce considered the number of enterprises in the economy when determining if the actual number of

[1829] *See* GBC Post Prelim SQR at BC-TRN-2.
[1830] *See, e.g., CWP from the UAE* IDM at 17; *see also Nails from Oman* IDM at 12.
[1831] *See* GBC Post Prelim SQR at BC-TRN-2 – BC-TRN-3.
[1832] *Id*.
[1833] *See* Petitioner June 8, 2020 Case Brief at 84 – 88.
[1834] *Id*. at 84, citing GBC Post Prelim SQR at Exhibit BC-AR1-FARM-8 (p. 2 and 11).

recipients of the subsidy is large or small.[1835] Commerce should make a similar conclusion here when comparing the number of actual recipients to the number of enterprises operating in the province or to the number of tax filers in the province.

Canfor Rebuttal Comments[1836]

- The petitioner claims that the land uses that qualify for the Class 9 tax credit are limited. However, the list of qualifying agricultural uses is long, and includes a wide range of farm activities. The petitioner also argues that the program is limited because certain industries are excluded from obtaining this land classification. However, the list of excluded industries is shorter, and includes a limited range of activities.
- The petitioner's comparison of the Class 9 assessment rates to the ACCA Class 29 Assets program, which Commerce concluded was *de jure* specific is based on the fact that certain industries were excluded from the classification. However, the lists of activities excluded from these two programs are fundamentally different.
- Commerce should continue to find that the program is not *de facto* specific. In British Columbia in 2016, there were 51,560 properties that received the Class 9 classification out of 317,770 corporate tax filers and 532,044 companies operating within the province. The number of properties with this classification is clearly not limited.

Commerce's Position: We disagree with the petitioner's argument that Class 9 farm property assessment rates are specific. The BCAA is responsible for classifying property and assessing property taxes throughout the province of British Columbia. The BCAA classifies land and buildings into different classes for taxation purposes.[1837] Owners of Class 9, or farm property, automatically receive a 50 percent tax credit that applies to the school tax owed on that property.[1838]

The petitioner argues that the program is *de jure* specific because certain land uses are excluded from qualifying for the Class 9 farm classification. The petitioner refers to Commerce's determination for the ACCA for Class 29 Assets program, in which a tax deduction is available to enterprises engaging in manufacturing and processing.[1839] Commerce found the program to be *de jure* specific because certain industries were excluded from the definition of manufacturing and processing. However, the list of activities excluded from the Class 29 designation includes a broad range of industries (*e.g.*, farming, logging, construction, petroleum extraction, mineral extraction, *etc.*).[1840] Here, the exclusion list is limited to such activities as the production of manufactured derivatives from agricultural raw materials, production of agricultural products for domestic consumption on the farm, the breeding of pets, and the cultivation of controlled substances.[1841] Rather than whole industries or sectors, the exclusion list enumerates activities that clearly do not meet the criteria for eligibility for the Class 9 classification, namely, the

[1835] *See Lumber V Final* IDM at Comments 62, 64, and 68 (explaining the specificity findings for the New Brunswick Workforce Expansion Program, New Brunswick Youth Employment Fund, Federal and Provincial SR&ED Tax Credits, and the ACCA for Class 29 Assets Program).
[1836] *See* Canfor June 25, 2020 Rebuttal Brief at 38 – 41.
[1837] *See* GBC Post Prelim SQR at BC-FARM-1.
[1838] *Id.*
[1839] *See Lumber V Final* IDM at Comment 68.
[1840] *Id.*
[1841] *See* GBC Post Prelim SQR at Exhibit BC-AR1-FARM-5 (p. 13).

production of agricultural products that are sold.[1842] The petitioner also argues that the program is *de facto* specific based on the actual number of Class 9 designated properties when compared with the total number of firms operating in the province or the total number of corporate tax filers in the province. We find this argument unpersuasive.

According to 19 CFR 351.502(d), "{t}he Secretary will not regard a subsidy as being specific under 771(5A)(D) of the Act solely because it is limited to the agricultural sector (domestic subsidy)." The Class 9 classification meets this criteria because the list of qualifying land uses and activities includes the agricultural sector as a whole (*e.g.*, fruit, vegetable, and grain production; livestock raising; seed production; cultivation of trees; *etc.*). The petitioner has not adequately demonstrated that this program is not available to the agricultural sector writ large or that any farmers or types of agricultural activities are provided favorable treatment. Therefore, pursuant to 19 CFR 351.502(d), we continue to find that the lower tax rate for Class 9 properties is not specific under section 771(5A)(D) of the Act.

- ***New Brunswick***

Comment 103: Whether New Brunswick's Property Tax Incentives for Private Forest Producers Is Countervailable

GNB's Case Brief Comments[1843]

- The statutory property assessment rules regarding freehold timberland in the New Brunswick Assessment Act (Assessment Act) are neither *de jure* nor *de facto* specific, nor do they constitute government revenue foregone.
- The C$100 per hectare assessment value for freehold timberland is broadly available and neutrally administered. Further, this C$100 per hectare assessment value is not specific to any industry, enterprise or group in the province.
- Over two-thirds of private land subject to assessment in New Brunswick receives this assessment value. The large majority of these properties are owned by individuals rather than companies; and only a small percentage of individual owners uses the forested land for economic purposes.
- The GNB's C$100 per hectare assessment value for free hold timberland does not constitute a financial contribution, as all revenue that is "otherwise due" is collected, and no portion of the property tax revenue for freehold timberland is foregone.

Petitioner's Rebuttal Comments[1844]

- Commerce accurately found the Assessment Act's rules regarding freehold timberland constitute a financial contribution and are *de jure* specific in the preliminary results.
- The Assessment Act effectively limited access to the subsidy to the forestry industry, and thus, the information cited by the GNB, such as the percentage of individual land holders versus corporate land holders and that the companies holding the land come from a variety of sectors, is immaterial to Commerce's *de jure* analysis.

[1842] *Id.* at 12 – 13.
[1843] *See* GNB June 8, 2020 Vol VI Case Brief at 22 – 37.
[1844] *See* Petitioner June 25, 2020 Rebuttal Brief at 256 – 261.

- The GNB's property tax for free hold timberland constitutes a financial contribution, as the GNB foregoes the tax revenue that it would have collected if the freehold timberland was assessed as other real property, based on its "real and true value."

Commerce's Position: In the *Lumber V AR1 Prelim Results*, consistent with *Lumber V Final Results of Expedited Review*,[1845] we found the GNB's statutory property assessment rules regarding freehold timberland to be countervailable.[1846] Specifically, we found this program *de jure* specific, because, under the Assessment Act, eligibility for this tax program is expressly limited to owners of freehold timberland.[1847] Further, we found the program provided a financial contribution in the form of government revenue foregone and conferred a benefit to the extent that the property taxes paid by JDIL as a result of this program are less than the taxes the company would have paid absent the program.[1848] For purposes of these final results, we continue to find this program to be countervailable.

Landowners in New Brunswick pay property taxes based on the assessed value of the land in accordance with the Assessment Act. Section 15 of the Assessment Act stipulates that all real property shall be assessed at its "real and true value."[1849] However, this section specifically stipulates certain types of land to be unique and not subject to this standard assessment. One of these unique types of land, freehold timberland, is assessed at a rate of C$100 per hectare, as stipulated under Section 17(2) of the Assessment Act.[1850]

In the *Lumber V AR1 Prelim Results*, we stated that we found nothing to change our position from our finding in the expedited review.[1851] The GNB argues that there is new information on the record for us to reconsider our finding.[1852] Specifically, it references numerous statements regarding ownership and uses of timberland properties on the record of this review.[1853] For example, the GNB states that: (1) over 67 percent of all private land in the province is a recipient of this assessment policy subject to the C$100 per hectare assessment rate;[1854] (2) companies owned only 24 percent of the properties subject to the C$100 per hectare assessment rate;[1855] and (3) the companies that own land subject to the C$100 per hectare assessment rate operate in a variety of industries whose uses include a broad range of economic sectors.[1856] On this basis, the GNB concludes that the majority of properties receiving the C$100 per hectare assessment value are owned by individuals that are not owned for sale of timber in the production of wood and wood-related merchandise.

However, this information is irrelevant for Commerce's *de jure* analysis under 771(5A)(D)(i) of the Act. Commerce's specificity finding in both this review and the expedited review is based

[1845] *See Lumber V Final Results of Expedited Review* IDM at Comment 20.
[1846] *See Lumber V AR1 Prelim Results* PDM at 80 – 81.
[1847] *Id*.
[1848] *Id*.
[1849] *See* GNB IQR Response at Exhibit NB-AR1-SNB-7.
[1850] *Id*.
[1851] *See Lumber V AR1 Prelim Results* PDM at 80 – 81.
[1852] *See* GNB June 8, 2020 Vol VI Case Brief at 23 – 28.
[1853] *Id*.
[1854] S*ee* GNB IQR Response at Exhibit NB-AR1-SNB-9.
[1855] *Id*.
[1856] *Id*. at Exhibit NB-AR1-SNB-1.

on a *de jure* finding, as this tax benefit is limited by law. As such, these facts regarding ownership and uses of timberland properties in the province are moot for our *de jure* specificity analysis.

The GNB also argues that this program is not *de jure* specific under sections 771(5A)(D)(i) and 771(5A)(D)(ii) of the Act, and thus not countervailable. Specifically, the GNB argues that the C$100 per hectare valuation is broadly available and widely used by a number of industries. Further, it also argues that SAA stipulates that assistance that is generally available and widely distributed is not an actionable subsidy.[1857] As such, the GNB asserts that this program should not be considered specific under 771(5A)(D)(i) of the Act. However, we disagree, as we continue to find that record evidence indicates that this program is *de jure* specific. Consistent with *Lumber V AR1 Prelim Results* and *Lumber V Final Results of Expedited Review*, we continue to find that the Assessment Act expressly restricts the access to the subsidy to a limited number of landholders.[1858]

As an initial matter, the record indicates that the relevant freehold timberland under consideration is assessed using a different methodology than other types of land in the province, including other similar types of land. For example, while freehold timberland as defined under Section 17(2) of the Assessment Act, is assessed at the C$100 per hectare rate, certain types of timberland and farmland can also be assessed at their real and true value as stipulated at Sections 16.1 and 16.2 of the Assessment Act. Further, for a land parcel to be classified as freehold timberland under Section 17(2) of the Assessment Act, it must be 10 hectares or more, and must be for bona-fide use as freehold timberland (*i.e.*, land that is capable of being harvested).[1859] As such, we find that this assessment would not be generally available to all landholders throughout the province, but only to a subset of the landholders. Further, in the *Lumber V Final Results of Expedited Review*, we found that access to the benefit would be effectively limited to potential enterprises involving production of wood and wood-related merchandise because of the type of land at issue.[1860] This finding is further supported by information on the record of this review, which indicates that the GNB anticipates timberland to be used to grow trees used in the production of various wood products including lumber.[1861] Thus, the record indicates that the GNB provides this unique assessment with the knowledge that certain industries, including the lumber industry, will benefit from this program. As such, we find that this subsidy is expressly limited to a specific type of timberland holders (*i.e.*, over 10 hectares and bona-fide use) and further that the GNB provides this benefit to groups that it expressly expects to produce subject merchandise. For these reasons, we continue to find this program to be specific under section 771(5A)(D)(i) of the Act.

The GNB also argues that Commerce misinterpreted the Assessment Act, and therefore should find that the provision at issue is not a financial contribution in the form of revenue forgone.

[1857] *See* SAA at 913.
[1858] *See Lumber V AR1 Prelim Results* PDM at 80–81; *see also Lumber V Final Results of Expedited Review* IDM at Comment 20.
[1859] *See* GNB IQR Response at Exhibit NB-AR1-SNB-8.
[1860] *See Lumber V Final Results of Expedited Review* IDM at Comment 20.
[1861] *See, e.g.*, JDIL IQR at Exhibit NBPT-02 (*The Minister of Municipal Affairs v. Robertson*, N.B.R. (2d) 60, 62 (1968), (stating "'Timberland' refers to wild or unimproved land on which stand growing trees of species capable of being used in the production of lumber, pulpwood and other merchantable wood products.")).

Specifically, the GNB argues that Sections 15 to 17 of the Assessment Act each establish assessment policies for different groups of properties with unique characteristics and therefore apply distinct rules of valuation. Specifically, the GNB stipulates that Section 15 of the Assessment Act applies to a minority of NB properties that are smaller and more developed and are assessed based on a complex series of factors, whereas Sections 16 and 17 of the Assessment Act establish assessment policies for freehold timberland, farm woodlots and farmland. The GNB states that sovereign governments are permitted to adopt taxation systems, and Commerce has incorrectly assumed that the policy in Section 15 of the Assessment Act was a "baseline policy." As such, the GNB concludes that it collects all revenue that is "otherwise due," and no portion of the property tax revenue for freehold timberland is foregone.

The GNB made similar arguments in the expedited review,[1862] and similarly, we continue to disagree with the GNB's characterization that the sections of the Assessment Act following Section 15 are not departures from the baseline policy. The first sentence of Section 15 of the Assessment Act directly states that, aside from certain exceptions, "all property shall be assessed at its real and true value as of January 1 of the year for which the assessment is made" (emphasis added).[1863] Thus, this first sentence under "Valuation of Real Property" indicates that there is a baseline policy for the GNB. Specifically, the Assessment Act stipulates that, unless a property falls under an exception, it will be assessed at its real and true value as of the beginning of the year in which the assessment is being made. Further, the Assessment Act directly lists freehold timberland, at Section 17(2), to have a different assessment basis (*i.e.*, C$100 per hectare)[1864] then the "standard" real and true value of the property. To put it another way, the Assessment Act establishes a policy to assess the value of NB property based on its real and true value, and has provided certain exceptions to this rule, including the valuation of freehold timberland. On this basis, we conclude that these exceptions represent departures from the standard policy to which "ordinary" property is subject. As such, we find that given that the GNB is not assessing timberland property using its standard valuation policy, it is foregoing revenue and thus providing a financial contribution.

Comment 104: Whether Commerce Correctly Calculated the Benchmark for New Brunswick's Property Tax Incentives for Private Forest Producers Program

Petitioner's Comments[1865]

- Commerce's benefit calculation for this program should not exclude the value of standing timber, and the record does not contain information to objectively and reasonably value the underlying land without including the standing timber.

GNB/JDIL's Rebuttal Comments[1866]

- Commerce correctly excluded the value of standing timber from the benchmark property value.

[1862] *See Lumber V Final Results of Expedited Review* at Comment 20.
[1863] *See* GNB IQR Response at Exhibit NB-AR1-SNB-7.
[1864] *Id*. at Exhibit SNB-8.
[1865] *See* Petitioner June 25, 2020 Rebuttal Brief at 58 – 67.
[1866] *See* GNB June 25, 2020 Vol II Rebuttal Brief at 3 – 12; *see also* JDIL June 25, 2020 Rebuttal Brief at 3 – 11.

- While Commerce's use of *Higgins and Tuddenham* is reasonable to calculate the underlying value ratio, the record includes an independent appraiser's assessment of woodlands in Nova Scotia that provides a more appropriate basis to calculate the underlying ratio.

Commerce's Position: In *Lumber V AR1 Prelim Results*, we determined the property taxes paid by JDIL as a result of this program were less than the taxes the company would have paid absent the program, thus providing a benefit to the company.[1867] Specifically, we calculated the property taxes JDIL would have paid if its freehold timberland were assessed at its "real and true value."

To determine the taxes the company would have paid, we first calculated the average value of timberland property using private sales of timberland in the province during the POR.[1868] Next, we adjusted this value by removing the value of standing timber on this land.[1869] To determine the value of the underlying timberland, we relied upon information contained in the Court of Queen's Bench of New Brunswick's finding in *Higgins and Tuddenham*.[1870] Specifically, we calculated a ratio by dividing the value of timberland, exclusive of the timber thereon (C$2,706), and the total value of the timberland itself, including timber, (C$12,200).[1871] On this basis, we calculated a ratio of 22.18 percent.[1872] We then applied this ratio to the average value of timberland property sold to determine the values of the underlying land during the POR.[1873]

Using these property values, we calculated an assessed value for JDIL's property holdings during the POR, and the taxes the company would have paid based on this assessed value, absent the program.[1874] Finally, to calculate JDIL's benefit under this program, we subtracted the taxes that the company actually paid during the POR on its holding from the value of the underlying timberland.[1875]

For purposes of this final, we will continue to exclude the value of standing timber from the private sales of timberland in New Brunswick during the POR. Section 1 of the Assessment Act provides a definition of "real property."[1876] Within this definition, at Section 1(f), the Assessment Act explicitly excludes "growing or non-harvested crops in or on land."[1877] As such, the record demonstrates that the value of the trees (*i.e.*, "non-harvested crops") would not be included in any assessment if timberland were to be valued using the baseline methodology under Section 15 of the Assessment Act. Therefore, for purposes of these final results, we have calculated an average value of timberland property in New Brunswick during the POR exclusive of the value of standing timber.

[1867] *See Lumber V AR1 Prelim Results* PDM at 80–81; *see also* JDIL Preliminary Calculation Memorandum.
[1868] *See* JDIL Preliminary Calculation Memorandum.
[1869] *Id*.
[1870] *Id*.
[1871] *Id*.
[1872] *Id*.
[1873] *Id*.
[1874] *Id*.
[1875] *Id*.
[1876] *See* GNB IQR Response at Exhibit NB-AR1-SNB-7.
[1877] *Id*.

The petitioner argues that record information shows that standing timber is not a crop, and thus, Commerce should not deduct the value of the timber from the sales value of the land. The petitioner notes that the Assessment Act does not contain a definition for "crops." Instead, the petitioner references the NAICS, which lists numerous categories of "crop production" industries, but did not include "forestry and logging" among them.[1878] The petitioner explains that while both "crop production" and "forestry and logging" are classified under the NAICS as part of the "agriculture, forestry, fishing and hunting" sector,[1879] crop production includes numerous subcategories (including oilseed and grain farming, vegetable and melon farming, fruit and tree nut farming, and greenhouse, nursery and floriculture production)[1880] whereas the forestry and logging industry engages in growing and harvesting tree species that allow the land to be classified as "freehold timberland"[1881] to qualify for the special tax assessment rate. As such, the petitioner concludes that the NAICS classified the "forestry and logging" industry as a separate and distinct category from "crop production" and thus, standing timber that grows atop "freehold timberland" is not a crop.

Further, while the GNB may treat timber as a crop, the petitioner argues that the GNB's treatment of how to assess timberland properties, including whether the value of standing timber is part of the assessment, should not be the basis for how timberland properties would be treated absent this program, because the GNB's assessment of timberland properties is the very subsidy Commerce is currently examining. As such, the petitioner holds, the NAICS is a standardized classification system, which provides an objective demarcation of industries that is not influenced by the GNB.

Finally, the petitioner points to *The King v. Jones* a case decided by the New Brunswick Supreme Court, Appeal Division in 1949, in which the New Brunswick court examined the issue of assessment of timberland properties for taxation purposes.[1882] Specifically, the petitioner argues that in *The King v. Jones*, the appellant asserted that the assessment of its timberland property was overvalued particularly because the assessors included the value of standing timber in the assessment of the property.[1883] However, both the dissenting and majority opinions in *The King v. Jones* agreed that such an argument had no merits, because the "real and true value" of the property should be "the real and true exchange value; the sum which a purchaser would be prepared to give to obtain all the advantages which the lands provide while assuming all the dangers and disadvantages, casualties and possible losses which the lands carry with them."[1884] The dissenting opinion further explained that "{w}hile growing, the trees are part of the real estate," and as such, "assessors are required to value property at its real and true value, such assessment in the case of timber lands must, in my opinion, include the trees growing on such land."[1885] The petitioner adds that since this case was issued before this program was

[1878] *Id*. at Exhibit NB-AR1-SNB-11.
[1879] *Id*. at Exhibit NB-AR1-SNB-12.
[1880] *Id*.
[1881] *Id*.
[1882] *See* Petitioner IQR Comments at Exhibit 109 (citing *The King v. Jones, Ex p. Saint John Sulphite Ltd. et. al.* (1949), 4 D.L.R. 259 (Can. N.B. C.A.)).
[1883] *Id*. at 260.
[1884] *Id*. at 274.
[1885] *Id*. at 265.

established, it provides a gauge as to the methodology by which timberland properties should be assessed in the absence of the subsidy program.

Based on the information reflected in NAICS and *The King v. Jones*, the petitioner holds that timberland property should have been assessed at a value which reflects the value of the standing timber. As such, the petitioner concludes that Commerce should use the average value of qualified timberland property sales in the New Brunswick during the POR, without any adjustments, to measure the benefit conferred under this subsidy program.

We disagree with the petitioner. The petitioner argues the GNB's practice of assessing timberland properties, including not incorporating the value of standing timber in its assessment, should not be the basis for how timberland properties would be treated absent this program. However, we find this argument is misplaced. As discussed elsewhere in this memorandum, we find this program to be countervailable on the basis that certain types of freehold timberland (10 or more hectares and bona-fide use) are assessed using a methodology that differs from other types of land, including other types of land that may include timber. Specifically, as explained above, we find Section 15 of the Assessment Act to be the normal basis for how properties are assessed for tax purposes within the province. Thus, any decreased taxes paid outside of the standard practice would be considered revenue forgone that constitutes a financial contribution. When determining the amount of taxes the company would have paid absent the program, we presume JDIL's property would be assessed at its real and true value as stipulated under Section 15 of the Assessment Act.

While the petitioner has noted that the Assessment Act specifically does not provide a definition of crops, the record shows that the GNB considers timber to be a crop and that timber is to be excluded from the valuation of a property when being assessed. The GNB's treatment of timber is reflected in the Property Assessment Policy and Procedures, issued by Service New Brunswick, which is the agency responsible for assessing the values of real properties within the province. The Property Assessment Policy and Procedures includes a list of items (equipment, installations, structures, etc.) and indicates whether the value of these items are to be included in the assessment value of the underlying property for taxation purposes in New Brunswick. This schedule specifically stipulates that timber is a "Non-Assessable" item and that the rationale for considering it to be non-assessable is that it falls under 1(f) of the Assessment Act, which specifically stipulates that crops are to be excluded from the value of real property. In other words, the record demonstrates that when assessing land under Section 15 of the Assessment Act, the GNB assesses the land at its true and real value, and that it excludes any crops, including timber.[1886]

The petitioner references the NAICS, which indicates that the "forestry and logging" industry is a separate and distinct category from "crop production" and thus, standing timber is not a crop. We find this fact to be irrelevant for purposes of our analysis, as this is not a GNB specific law or policy. Further, the reference to *The King v. Jones*, is not applicable for this review. In *The King v. Jones*, the Court was making a ruling based on the applicable law at that time, specifically the *Rates and Taxes Act*.[1887] However, that law was superseded by Assessment Act,

[1886] *See* GNB IQR Response at Exhibit NB-AR1-SNB-7.
[1887] *Id*. at page 260.

enacted in 1966.[1888] Thus, the Court's interpretation of a law no longer in effect is not applicable for our decision making. As such, we continue to find that it is appropriate to remove the value of the standing timber when calculating how much JDIL should have paid in property taxes.

Both the petitioner and JDIL have also argued, should Commerce continue to exclude the value of standing timber from the private sales of timberland for this program, that there are potential alternatives to calculating the underlying value of the timber other than using the ratio based on *Higgins and Tuddenham*. Specifically, the petitioner argues that Commerce should use the actual value of the land exclusive of standing timber (C$375 per hectare) calculated by the appraiser in that case,[1889] adjusted for inflation. Further, JDIL argues that while *Higgins and Tuddenham* provides a reasonable basis to calculate the ratio for this program, the record includes an assessment of woodland values in Nova Scotia that provides a better basis to calculate this ratio. JDIL also argues that the woodlands assessed in the Cortex Consultant's report titled, "Valuation of the Bowater Mersey Woodlands: Valuation Summary"[1890] are comparable in area to JDIL's timberland holdings and thus are more appropriate for purposes of calculating timber values.

We disagree with both the petitioner and JDIL. JDIL has stated that while the *Higgins and Tuddenham* is a reasonable method to calculate the ratio for the underlying timberland, the Bowater Mersey study provides a better option for purposes of this calculation on the basis that the appraised land in this report is comparable in size to the size of JDIL's land holdings. While the Bowater Mersey study is not unusable for determining the value of the underlying timberland, we find *Higgins and Tuddenham* to be best for purposes of this review. As discussed above, under this program, we are determining the underlying value of timberland within New Brunswick. As such, using information based on land values within the province itself, as is the case with *Higgins and Tuddenham*, provides a better basis to calculate a ratio for purposes of this program than land from another province, which is the case with the Bowater Mersey study. Further, aside from the land size in the Bowater Mersey valuation being comparable to the size of JDIL's land holdings, JDIL has provided no other information to support that the woodlands in Nova Scotia are more comparable to the timberland values in *Higgins and Tuddenham*. As such, we continue to find that *Higgins and Tuddenham* continues to provide the best available information to calculate the value of the underlying timberland.

Finally, we find the petitioner's argument to use the C$375 per hectare rate from *Higgins and Tuddenham* to be inappropriate. In this case, an appraiser had been hired to assess the value of woodland that was being expropriated by the GNB to build a highway.[1891] The appraiser calculated the total value of the land by calculating the value of the wood on the land (*i.e.*, timber) and added that to the cut-over land value (*i.e.*, land value without underlying the timber).[1892] To calculate the cut-over land value, the appraiser evaluated a range of sales valuing the cut-over land values between C$250 and C$375 per hectare.[1893] The appraiser selected C$375 per hectare in this particular instance because the property being expropriated was

[1888] *Id*. at Exhibit NB-AR1-SNB-7.
[1889] *See* JDIL Calculations Missing Attachment Memo at Attachment at paragraph 17.
[1890] *See, e.g.*, JDIL IQR at Exhibit NBPT-11 (Bowater Mersey study).
[1891] *See* JDIL Calculations Missing Attachment Memo at Attachment at paragraph 14.
[1892] *Id*. at paragraph 17.
[1893] *Id*. at paragraph 44.

considered a higher quality property value for the area.[1894] Thus, this figure is representative of higher quality timberland in the province and does not represent the values throughout all of New Brunswick. In other words, had the property been in a less expensive area, the assessor would likely have selected a lower per hectare price to value the underlying land. Further, this C$375 per hectare value was based on figures from 1997.[1895] As such, we find applying a ratio based on these property values is more appropriate to calculate than to attempt to inflate the C$375 per hectare figure from 1997. Therefore, we are not making any changes to our calculation for determining the value of the underlying property.

Comment 105: Whether Commerce Omitted JDIL's Program Rate for the Total Capital Cost Allowance for Class 1 Acquisitions Program from JDIL's Total Net Subsidy Rate for 2018

Petitioner's Comments[1896]

- Commerce should correct the typographical error in JDIL's total net subsidy rate for 2018. Specifically, Commerce should add JDIL's program rate for the Class 1 Acquisitions Program to its overall rate for 2018.

Commerce's Position: Commerce agrees with the petitioner's argument. In the *Lumber V AR1 Prelim Results*, Commerce inadvertently did not include the calculated 2018 program rate for the Total Capital Cost Allowance for Class 1 Acquisitions program in JDIL's total net subsidy rate for 2018. Commerce has corrected this typographical error for this final.[1897]

Comment 106: Whether Commerce Should Find LIREPP Countervailable

GNB/JDIL's Comments[1898]

- The LIREPP credits do not constitute a financial contribution as revenue forgone, and further, are not tied to the production of subject merchandise.
- Should Commerce find this program to be a countervailable program, it should treat it as purchase of good for MTAR and use benchmark information on the record to calculate a benefit.
- JDIL's participation in LIREPP was tied to its production and sale of a paper product, which is non-subject merchandise.
- The only possible financial contribution under LIREPP is the purchase of goods (Renewable Energy) and not revenue forgone.

Petitioner's Rebuttal Comments[1899]

- Commerce should continue to find the LIREPP tax credit countervailable and should continue to treat this program as revenue forgone.

[1894] *Id*.
[1895] *Id*. at paragraph 17.
[1896] *See* Petitioner June 25, 2020 Rebuttal Brief at 88.
[1897] *See* JDIL Final Calculation Memorandum.
[1898] *See* GNB June 8, 2020 Vol VI Case Brief at 37 – 42; *see also* JDIL June 8, 2020 Case Brief at 14 – 19.
[1899] *See* Petitioner June 25, 2020 Rebuttal Brief at 262 – 267.

Commerce's Position: JDIL reported receiving energy bill credits under this program in 2017 and 2018.[1900] In the *Lumber V AR1 Prelim Results*, we found that interested parties did not submit any new information or arguments that warranted a reconsideration of Commerce's prior determination in the underlying investigation.[1901] Therefore, Commerce found this program constitutes a financial contribution, is specific, and confers a benefit under sections 771(5)(D), 771(5A), and 771(5)(E) of the Act, respectively.[1902]
JDIL and the GNB argue that NB Power did not forego revenue, and that this program should be analyzed as an MTAR program to determine whether NB Power purchased renewable electricity from the participating Irving companies for more than adequate remuneration.[1903] The GNB also placed the average price paid by NB Power in New Brunswick for comparable electricity during the POR as support for its argument that Commerce should conduct an MTAR analysis should it continue to find this program countervailable.

We continue to find that the LIREPP program is properly analyzed as a revenue foregone program, rather than as a possible MTAR program. We continue to find that the amount of LIREPP credits that IPL transfers to JDIL confers a benefit to JDIL, in accordance with 19 CFR 351.525(b)(6)(v). We also continue to find that this LIREPP program is *de jure* specific in accordance with section 771(5A)(D)(i) of the Act, because the GNB expressly limits access to LIREPP to certain eligible enterprises by law.

As detailed in *SC Paper from Canada – Expedited Review*,[1904] LIREPP is a multifaceted program. The purpose of the LIREPP program is for New Brunswick to: (1) reach NB Power's mandate to supply 40 percent of its electricity from renewable sources by 2020; and (2) bring New Brunswick's large industrial enterprises' net electricity costs in line with the average cost of electricity in other Canadian provinces.[1905] According to the GNB verification report in *SC Paper from Canada – Expedited Review*, GNB officials from NB Power, a Crown corporation, and from DERD, explained one of the reasons that the LIREPP program was implemented was for industries to get credit applied to their electricity bill for the renewable energy they generated.[1906]

The NB Power officials stated that "the purpose of LIREPP is that 'you want to buy enough to get them {the program participants} to the target discount,'" adding that "we want to buy a certain amount of {electricity}, then we resell at firm rates, then the difference is the NET LIREPP Adjustment."[1907] In other words, the NET LIREPP adjustment is the difference between the amount of renewable electricity that NB Power will purchase from the LIREPP participant (here, the participating Irving companies), and the amount of electricity that NB Power will sell to the LIREPP participant (again, the participating Irving companies). The net LIREPP adjustment is provided to participating Irving companies, including JDIL, as credits that

[1900] *See* JDIL IQR at Exhibit LIREPP-06.
[1901] *See Lumber V AR1 Prelim Results* PDM at 79.
[1902] *Id*.
[1903] *See* GNB June 8, 2020 Vol VI Case Brief at 38.
[1904] *See SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 27.
[1905] *Id*.
[1906] *Id*.
[1907] *Id*.

are applied to their monthly electricity invoices.[1908] Thus, while the program does encompass, in part, the purchase of a good or service, the credits reduce the participating Irving Companies' monthly electricity bills, and it is the amount of the monthly credits that we have determined is the countervailable benefit consistent with section 771(5)(E) of the Act.

The volume of electricity that the participating Irving Companies "sell" to NB Power, most of which is not transmitted to or through the grid, is derived each month using the target discount and the C$95/MWh rate. The C$95/MWh rate is fixed in the Electricity Act.[1909] Thus, even if this rate varied, because NB Power works backwards from the target discount, the program guarantees that the target discount is reached each month by adjusting the volume of NB Power's purchases of electricity from the participating Irving companies. In other words, NB Power has determined in advance the amount of credits it wishes to give the participating Irving companies. As such, we reaffirm our preliminary decision to treat the benefit from this program as the amount of Net LIREPP credits that are provided to participating Irving companies including JDIL to reduce their monthly electricity payments from NB Power, a Crown corporation.

Comment 107: Whether the Gasoline and Fuel Tax Program Provides a Financial Contribution in the Form of Revenue Forgone or Can Be Found Specific

GNB's Comments[1910]

- The Gasoline and Fuel Tax Program does not result in a financial contribution in the form of revenue forgone. Excluding a certain category of uses from a tax does not result in the government foregoing tax revenue because revenue from such uses was never due.
- Evidence on the record demonstrates that the policy is specific to behavior (*i.e.*, driving on public highways) and not to an industry, enterprise, or group thereof. Further, there is no evidence that the lumber industry or JDIL is a predominant or disproportionate user of the policy or receives discretionary or favorable treatment.

Petitioner's Rebuttal Comments[1911]

- Commerce should continue to find this program countervailable because the GNB has not provided any new arguments that merit a change to Commerce's previous findings.

Commerce's Position: In *Lumber V AR1 Prelim Results*, Commerce continued to find this program countervailable, stating that no interested parties had submitted new information or argument that warranted a reconsideration of Commerce's prior determination in the underlying investigation.[1912] In advance of the final results, the GNB argues that the "policy goal of collecting taxes for public highways based on public highway use does not satisfy the financial contribution condition under {section 771(5)(D)(ii) of the Act}."[1913] Additionally, the GNB argues that the program is specific to *behavior* and not to an "industry, enterprise, or group thereof."[1914] The petitioner claims that these arguments have no merit and should not prompt

[1908] *See* JDIL IQR at Exhibit LIREPP-1.
[1909] *Id*.
[1910] *See* GNB June 8, 2020 Vol VI Case Brief at 42 – 48.
[1911] *See* Petitioner June 25, 2020 Rebuttal Brief at 142 – 143.
[1912] *See Lumber V AR1 Prelim Results* PDM at 80.
[1913] *See* GNB June 8, 2020 Vol VI Case Brief at 46.
[1914] *Id*. at 47.

Commerce to change its findings from the preliminary results. Commerce agrees with the petitioner and continues to find this program countervailable.

The GNB continues to rely on much of the same reasoning that was rejected by Commerce in the final determination in the underlying investigation, *i.e.*, that the purpose behind the imposition of an indirect tax might outweigh the structure of the law in practice and the regulation underlying the tax.[1915] The GNB has now also provided a "History of the Gasoline and Fuel Tax" and documents changes to the law dating to 1926 in an attempt to show the underlying policy goals of the tax and what the raised funds would be used for.[1916] However, as in the underlying investigation, Commerce finds this argument and information unavailing.[1917] The fact remains that, as a matter of law, certain professions or activities under this program are exempt from, or reimbursed for, taxes on the fuel used, regardless of the reasoning behind why some groups may or may not be exempted. Therefore, the GNB structured the program in such a way to forgo tax revenue that would otherwise be due. Thus, Commerce continues to find that this program provides a financial contribution, is specific, and confers a benefit under sections 771(5)(D), 771(5A), and 771(5)(E) of the Act, respectively.

- ***Ontario***

Comment 108: Whether the OTCMP Is Specific

GOO's Comments[1918]
- Rather than being limited to certain industries, the OTCMP is available to all industries that perform certain activities, including broad inclusion of manufacturing. The eligible activities for claiming the OTCMP encompass a wide range of industries and therefore cannot be *de jure* specific.
- Regarding *de facto* specificity, there is no evidence that any one industry or enterprise was a predominant user of the OTCMP or received a disproportionate share. Nor did Ontario favor or discriminate against any industry or enterprise in the program, which is broadly available to all enterprises in Ontario without geographic limitation.

Resolute and Central Canada's Comments[1919]
- OTCMP is not *de jure* specific because the eligibility requirements restrict activities, not industries or enterprises, and grouping activities does not define industries.
- OTCMP is not *de facto* specific because no evidence indicates that the number of users of OTCMP is limited, nor that there are any predominant or disproportionate users.

Petitioner's Rebuttal Comments[1920]
- Commerce's *de jure* specificity finding is in accordance with the law and supported by record evidence.

[1915] *See Lumber V Final* IDM at 210.
[1916] *See* GNB June 8, 2020 Vol VI Case Brief at 44.
[1917] *See Lumber V Final* IDM at 210.
[1918] *See* GOO June 8, 2020 Vol VII Case Brief at 43 – 44.
[1919] *See* Resolute June 8, 2020 Case Brief at 118 – 119.
[1920] *See* Petitioner June 25, 2020 Rebuttal Brief at 199 – 200.

- By identifying a narrow set of activities as a condition for eligibility, the OTCMP, is, in turn, limited to certain enterprises or industries that engage in any of those activities.
- Commerce may make a finding of *de jure* specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or project, and excluded others.[1921]

Commerce's Position: We disagree with Resolute and the GOO, and continue to find the OTCMP to be *de jure* specific, within the meaning of section 771(5A)(D)(i) of the Act because the tax credit is expressly limited by law.

As described in Resolute's Post-Prelim Decision Memorandum, under the OTCMP, a corporation can claim a tax credit if it had Ontario taxable income during the tax year and eligible profits from certain activities, which are manufacturing and processing, farming, fishing, logging, mining, the generation of electrical energy for sale, or the production of steam for sale as set out in section 33 of the *Ontario Taxation Act, 2007*.[1922] Consequently, the OTCMP is expressly limited to enterprises and industries that engage in only those activities, to the exclusion of other enterprises and industries engaged in activities such as construction, extraction of natural gas, oil, and minerals.

The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available and used throughout an economy.[1923] It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the countervailing duty law.[1924] Thus, we continue to find the OTCMP to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Commerce may make a finding of *de jure* specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.

In light of the above, we have not considered the parties' arguments pertaining to *de facto* specificity.

- ***Québec***

Comment 109: Whether Québec's Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas Confer a Benefit

Resolute and Central Canada's Comments[1925]
- Commerce improperly treated the roads tax credit as a grant. The funds were provided as a tax credit in consideration for Resolute building/maintaining roads provided to and owned by the GOQ.
- Commerce's finding that road reimbursements are grants ignores the consideration that Québec receives something of value in return for the reimbursements. Compensation for such road

[1921] *Id*. at 200, citing *Groundwood Paper from Canada Final* IDM at Comment 56.
[1922] *See* Resolute Post-Prelim Decision Memorandum at 5; *see also* GOO March 4, 2020 Response at OTCMP-1.
[1923] *See* SAA at 930.
[1924] *Id*.
[1925] *See* Resolute June 8, 2020 Case Brief at 59 – 64.

building/maintaining is not a grant but rather a payment for services and is not countervailable under the Act.
- The amounts of the road credits that Resolute received were less than the amounts that Resolute spent on road construction/maintenance. No benefit was conferred as Resolute's costs exceeded the reimbursements received.

Petitioner's Rebuttal Comments[1926]
- The road credits are grants and not payments for services, as Commerce determined in *Lumber V Final*.[1927] Resolute is legally required to perform the roadwork activities for which it is reimbursed under its TSG. Therefore, the GOQ is offsetting a cost that Resolute incurs in its normal course of business, which is a financial contribution.
- Resolute's argument that no benefit was conferred because its costs exceeded the reimbursements received is baseless. Where an offset does not meet any of the narrow definitions set forth in section 771(6) of the Act, there is no basis for Commerce to recognize them as an offset to the benefits provided under the program. Here, the GOQ is simply lowering a cost that Resolute was mandated to pay under the law.

Commerce's Position: We disagree with Resolute that Commerce improperly countervailed the road tax credits. Québec sawmills are legally mandated to fulfill several obligations with regard to their TSGs, which include road construction, repairs, and maintenance. Revenu Québec permits corporations that incurred expenses for the construction or major repair of eligible access roads or bridges in public forest areas to claim a refundable tax credit for a portion of the expenses on their income tax returns.[1928]

During the POR, Resolute received refunds from the GOQ as reimbursement of its costs for the construction of roads completed in prior years.[1929] We find that the manner in which the refundable tax credits were provided, as reimbursements for obligatory expenses incurred, indicates that the payments were provided by the GOQ to relieve Resolute of a financial burden that Resolute would have otherwise incurred in its normal course of business. Therefore, because the GOQ provides reimbursements to Resolute for costs it incurs for the construction/maintenance of roads/bridges in the public forest, we determine that this refundable tax credit confers a benefit in the amount of the refund received pursuant to 19 CFR 351.509(a)(1). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1930] The fact that Resolute's road costs exceeded the amounts of refunds received does not negate the reality that Resolute received a benefit from the GOQ which lowered a cost that Resolute was mandated to pay under law.

Further, we disagree that Resolute's road activities under this program constitute a service to the government, and, thus, the associated refunds are not countervailable. Resolute's

[1926] *See* Petitioner June 25, 2020 Rebuttal Brief at 223 – 225.
[1927] *Id*. at 224, citing *Lumber V Final* IDM at Comment 78.
[1928] *See* GOQ July 15, 2019 Primary QNR Response, Vol V at Exhibit QC-C77-A and all referenced exhibits therein; *see also* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibit RES-NS-CPARB-APP and all referenced exhibits therein.
[1929] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibits RES-NS-CPARB-APP (p. 4).
[1930] *See CVD Preamble*, 63 FR at 65361.

construction/maintenance of roads in the public forest was done in the furtherance of its harvesting activities, not to render a service to the GOQ or the general public.

For the foregoing reasons, we continue to determine that this program confers a benefit and is countervailable.

Comment 110: Whether Québec's Refund of Fuel Tax Paid on Fuel Used for Stationary Purposes Is Specific

GOQ's Comments[1931]

- For *de jure* specificity, the statute requires that the legislation affirmatively limit the program to a small number of enterprises or industries. The statute does not tie a *de jure* specificity finding to a limitation on the activities conducted by the enterprises or industries.
- Commerce should amend its *de jure* specificity determination because, although the Fuel Tax Refund for Stationary Purposes is only provided for fuel used for stationary engines, this criterion does not, by law, limit the fuel tax refund to any enterprise or industry or any group thereof. The law does not identify any specific enterprises or industries that are prohibited from obtaining a refund.
- Commerce's preliminary finding equates the existence of eligibility requirements for a program to be *de jure* specificity. However, Court decisions establish that a program cannot be found to be *de jure* specific only because the beneficiaries of the program must meet some eligibility requirements.[1932]
- The data also demonstrates that the refund is widely granted for a large number of companies across a wide set of industries[1933] and, thus, it cannot be found to be *de facto* specific.

Resolute and Central Canada's Comments[1934]

- The fuel tax refund is intended for a person who has paid tax on gasoline when the gasoline was used to supply a stationary engine, which is to distinguish from taxing fuel when it is used for propulsion.
- Anyone operating an engine with gasoline but not driving anywhere with that engine is eligible for the refund. The difference in the application of the fuel tax is not specific to an enterprise or industry, or group thereof.

Petitioner's Rebuttal Comments[1935]

- Revenu Québec's fuel tax refund for fuel used for stationary purposes is *de jure* specific as it limits those entitled to refunds on fuel tax paid for certain specified activities, *i.e.*, equipment of vehicles such as power shovels, drilling machines, and cranes.[1936]
- Because the application for the fuel tax refund limits participation by type of machine, this tax program is *de jure* specific under section 771(5A)(D)(i) of the Act.

[1931] *See* GOQ June 8, 2020 Vol VIII Case Brief at 117 – 120.
[1932] *Id*. at 118 – 119, citing *Asociacion de Exportadores e Industriales de Aceitunas de Mesa v. U.S.*, No. 18-00195, Slip Op. 20-8 (CIT Jan. 20, 2020), at 9 – 10.
[1933] *See* GOQ June 8, 2020 Vol VIII Case Brief at 120, citing GOQ July 15, 2019 Primary QNR Response, Vol V at Exhibits QC-FTR-A, QC-FTR-4, and QC-FTR-19.
[1934] *See* Resolute June 8, 2020 Case Brief at 119 – 120.
[1935] *See* Petitioner June 25, 2020 Rebuttal Brief at 143 – 146.
[1936] *Id*. at 145, citing Resolute July 23, 2019 Non-Stumpage QNR Response at Exhibit RES-NS-FUELSP-1, p. 6.

Commerce's Position: We disagree with the arguments made by Resolute and the GOQ. We continue to find refunds of fuel tax paid on fuel used for stationary purposes to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Under the Fuel Tax Act, the subsidy is expressly limited to companies that are entitled to refunds on fuel tax paid for certain specified activities.

The GOQ reported that the refund of fuel tax for stationary purposes "is available for any qualifying equipment" used for commercial or public purposes.[1937] The refund may be claimed for equipment whose use or purpose does not require that the vehicle be moving. The "Application for a Tax Refund Respecting Fuel Used for Stationary Purposes" under the Fuel Tax Act makes clear the limited equipment and activities that qualify for the refund of fuel tax paid:

> The refund may be claimed respecting equipment whose use or purpose does not require that the vehicle be moving. Accordingly, the refund measure applies to the equipment of vehicles such as power shovels, drilling machines, cranes, concrete mixers, tank trucks and garbage trucks, but does not apply to the equipment of vehicles such as bulldozers, graders, rotary mixers (soil stabilizers), compactors, scrapers, snow-grooming machines, snow ploughs, snow blowers, or spreaders of melting agents or abrasives. [1938]

The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available and used throughout an economy.[1939] It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the countervailing duty law.[1940] Commerce may make a finding of *de jure* specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.

We also disagree that our finding equates the existence of eligibility requirements or "objective criteria" for a program to *de jure* specificity. Under section 771(5A)(D)(ii) of the Act, the term "objective criteria" mean criteria "that are neutral and that do not favor one enterprise or industry over another." However, under this program, the eligibility criteria limit access to the subsidy to only those users operating specified stationary equipment of a vehicle. Therefore, the eligibility criteria do not meet the statutory definition of "objective criteria," because they favor certain enterprises.

Because we continue to determine that this program is *de jure* specific, we need not address the arguments regarding whether this program is *de facto* specific.

[1937] *See* GOQ July 15, 2019 Primary QNR Response, Vol V at Exhibit QC-FTR-A (p. 10).
[1938] *Id*. at Exhibit QC-FTR-14 (p. 4).
[1939] *See* SAA at 930.
[1940] *Id*.

Comment 111: Whether Québec's Property Tax Refund for Forest Producers on Private Woodlands Confers a Countervailable Benefit

Resolute and Central Canada's Comments[1941]

- Forest producers certified under the SFDA who hold a certificate issued from the MFFP may apply for a refund equal to 85 percent of the amount of property taxes paid on private woodlands to the extent that they incur forest maintenance expenses greater than or equal to the amount of the property taxes paid.
- The refundable activities are concentrated on sustainable forest management and protection so that neglect on private land will not adversely impact public forests.
- The property tax refund confers no benefit because it is provided as a partial reimbursement for measures taken to protect the Québec forest.

Petitioner's Rebuttal Comments[1942]

- The property tax refund constitutes a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, and accordingly confers a benefit under 19 CFR 351.509(a)(1).
- Contrary to Resolute's arguments, the regulations do not direct Commerce to measure the benefit based on the effectiveness of provincial policies and goals.

Commerce's Position: We disagree with Resolute that this property tax refund supports Québec's sustainable forestry policies and, therefore, does not confer a countervailable benefit on the company. Under this program, private forest producers are eligible for a refund of 85 percent of the amount of property taxes paid when development expenses incurred for investment in forest management are greater than or equal to the amount of property taxes paid.[1943] When analyzing whether a benefit exists, Commerce is concerned with what goes into a company, and not what the company does with the subsidy.[1944] During the POR, Resolute received property tax refunds from the GOQ. Consequently, we determine that this program provides a benefit to Resolute under section 771(5)(E) of the Act, and that the benefit exists in the amount of tax refunds received by Resolute, pursuant to 19 CFR 351.509(a)(1). The fact that the refund was equal to only 85 percent of the amount of property taxes paid does not negate the fact that a benefit was received by Resolute.

Comment 112: Whether Québec's Tax Credit for Fees and Dues Paid to Research Consortium Is Specific

GOQ's Comments[1945]

- Commerce preliminarily determined that the number of recipients of this credit was limited in number on an enterprise basis when compared to the total corporate tax filers in Québec. However, that finding is not supported by the facts which show that a diverse set of industries used the tax credit.[1946]

[1941] *See* Resolute June 8, 2020 Case Brief at 120 – 121.
[1942] *See* Petitioner June 25, 2020 Rebuttal Brief at 248 – 249.
[1943] *See* GOQ July 15, 2019 Primary QNR Response, Vol V at Exhibit QC-C07-A (p. 1).
[1944] *See CVD Preamble*, 63 FR at 65361.
[1945] *See* GOQ June 8, 2020 Vol VIII Case Brief at 103 – 104.
[1946] *Id*., citing GOQ July 15, 2019 Primary QNR Response, Vol V at Exhibits QC-C16-20 and QC-C16-21.

- Any program that does not have universal use is not *de facto* specific. When considering whether a program is limited in number by an enterprise, Commerce must consider whether a few companies received the grant such that the subsidy is targeted.[1947]

Resolute and Central Canada's Comments[1948]

- Commerce's *de facto* specificity finding is not supported by the evidence.
- The record shows that no enterprise or industry is a predominant or disproportionate user of this tax credit. Rather, the record shows that the companies that received tax credits during the POR were from a wide variety of industries, including finance, retail, and heavy industries.
- The softwood lumber industry was not the largest recipient of the tax credit, neither by number of companies nor by amount received.

Petitioner's Rebuttal Comments[1949]

- Arguments regarding disproportionate and predominate use are irrelevant to Commerce's finding of *de facto* specificity on an enterprise basis.
- A finding under section 771(5A)(D)(iii)(I) of the Act alone is sufficient for *de facto* specificity.

Commerce's Position: Under this program, if a taxpaying corporation conducts business in Canada and is a member of an eligible research consortium in the course of its taxation year, it can claim a tax credit for fees and dues paid to the consortium.[1950]

As stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy.[1951] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies . . . used by discrete segments of an economy could escape the purview of the {countervailing duty} law."[1952] The SAA also states that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.[1953]

The GOQ reported the number of companies that received the tax credits during the POR.[1954] We compared the number of companies that received benefits under the program to the total corporate tax filers in the province for the years 2014 to 2018. On basis of that analysis, we find that this program is *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the tax credits are limited in number.[1955]

We disagree with the argument that the program is used by a diverse set of industries and, therefore, is not *de facto* specific. The record shows that the number of companies that received the tax credits, though diverse, is limited in number. The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available and used throughout an

[1947] *See* GOQ June 8, 2020 Case Brief at Vol VIII 96 – 101, citing, *e.g.*, *AK Steel Corp. v. U.S.*, 192 F.3d 1385.
[1948] *See* Resolute June 8, 2020 Case Brief at 104 – 105.
[1949] *See* Petitioner June 25, 2020 Rebuttal Brief at 233 – 234.
[1950] *See* GOQ July 15, 2019 Primary QNR Response, Vol V at Exhibit QC-C16-16 at 21.
[1951] *See* SAA at 929.
[1952] *Id*.
[1953] *Id*. at 931.
[1954] *See* GOQ July 15, 2019 Primary QNR Response, Vol V at Exhibit QC-C16-20.
[1955] *See* Final Québec Specificity Memorandum.

economy.[1956] It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the countervailing duty law.[1957]

Arguments regarding predominant or disproportionate use of the tax credits are irrelevant. Predominant and disproportionate use are addressed by sections 771(5A)(D)(iii)(II) and (III) of the Act, respectively. Neither statutory section is the basis upon which Commerce reached its specificity determination with respect to this tax credit program. Moreover, as set forth under 19 CFR 351.502(a), in determining whether a subsidy is *de facto* specific, Commerce will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially in order of appearance. If a single factor warrants a finding of specificity, Commerce will not undertake further analysis.[1958] Therefore, because recipients of the subsidy under this tax credit program were limited in number on an enterprise basis, under section 771(5A)(D)(iii)(I) of the Act, we find the programs *de facto* specific.

I. Company-Specific Issues

- ***Canfo**r*

Comment 113: Whether Benefits of Unaffiliated Suppliers Should Be Cumulated with Canfor's Benefit and Whether Canfor's U.S. Sales of Subject Merchandise Produced by Unaffiliated Suppliers Should Be Included in the Denominator of Canfor's Subsidy Rate Calculation

Petitioner's Comments[1959]

- Commerce did not properly account for Canfor's U.S. exports of subject merchandise produced by unaffiliated Canadian producers in the *Lumber V AR1 Prelim Results*. Canfor's subsidy rate calculation does not include subsidies provided to the unaffiliated producers, but the denominator used to calculate the rates for stumpage and non-stumpage programs includes sales of subject merchandise produced by unaffiliated suppliers. This distorts the benefit calculation by expanding the denominator to include sales of these products.
- Commerce should apply the same methodology used in *Sinks from China* in accordance with 19 CFR 351.107(b) and 19 CFR 525(c).[1960] Specifically, Commerce should cumulate the subsidy rates for Canfor and each unaffiliated Canadian producer by stating that any subject merchandise produced by unaffiliated producers and exported to the United States by Canfor is subject to a combination of the rate calculated for Canfor and the rate applicable to each unaffiliated producer.
- If Commerce does not cumulate Canfor's subsidies, it may alternatively remove sales of subject merchandise from unaffiliated producers from the rate subsidy calculation denominator. If the subject merchandise produced by unaffiliated suppliers represents a very

[1956] *See* SAA at 930.
[1957] *Id*.
[1958] *See* section 771(5A)(D)(iii) of the Act (providing that a program is *de facto* specific if "one or more" of the enumerated factors exist).
[1959] *See* Petitioner June 8, 2020 Case Brief at 68 – 78.
[1960] *Id*. at 75 – 76, citing *Sinks from China Prelim*, 77 FR at 46717 and 46730, and *Sinks from China Final*, 78 FR at 13017.

small percentage of the exports and Commerce has excused unaffiliated suppliers from completing a questionnaire response, Commerce has determined that such sales should be removed from the denominators used to calculate the subsidy rate.[1961]

Canfor's Rebuttal Comments[1962]

- The provisions in 19 CFR 351.107(b) and 19 CFR 351.525(c) apply only to nonproducing exporters and trading companies, respectively. These are not applicable as Canfor is a producer and exporter of the subject merchandise.
- Removing the sales value of Canfor's exports of subject merchandise produced by unaffiliated suppliers from the denominator is not possible because such information is not on the record. Commerce determined that Canfor was not required to provide questionnaire responses or subsidy information for the unaffiliated suppliers and did not request any additional sales information.

Commerce's Position: The Initial Questionnaire explained that if a mandatory respondent "exported subject merchandise produced by other companies in your country during the POR, then you must submit complete questionnaire responses for all producers that supply your company."[1963] As in the investigation, Canfor submitted a letter asking to be excused from submitting responses for unaffiliated producers whose subject merchandise Canfor exported during the POR.[1964] In the letter, Canfor explained that the sales at issue were negligible and would have a minimal impact on any net subsidy calculated by Commerce.[1965] In response, Commerce stated, "{b}ased on the information provided in {Canfor's} letter, {the Department} has determined that Canfor is not required to submit questionnaire responses for unaffiliated producers of subject merchandise."[1966] Commerce's decision in this review is consistent with its approach in the investigation[1967] and is consistent with prior CVD cases where Commerce has excluded unaffiliated producers of subject merchandise from responding to Commerce's initial questionnaire when the volume of subject merchandise supplied to the mandatory respondent is relatively small.[1968] As a result of Commerce's decision not to solicit a questionnaire response from the unaffiliated producers in question, there is no information on subsidy usage by the unaffiliated producers, nor is there any information on the quantity and value of lumber sales they made to Canfor or the mark-up that Canfor may have applied when it resold the lumber products produced by those unaffiliated producers. In light of Commerce's decision at the outset of this review not to require the unaffiliated producers to provide a questionnaire response to Commerce or otherwise solicit sales information related to the unaffiliated producers, we find it would not be feasible or appropriate to reduce Canfor's denominator in the final results, as proposed by the petitioner.

We disagree with the petitioner that Commerce's approach in *Drill Pipe from China* and *Citric Acid from China* are relevant to our findings here. While in those cases Commerce removed

[1961] *Id.* at 76 – 77, citing *Drill Pipe from China* IDM at 20 and *Citric Acid from China* IDM at 4.
[1962] *See* Canfor June 25, 2020 Rebuttal Brief at 13 – 21.
[1963] *See* Initial Questionnaire, Section III at 3.
[1964] *See* Canfor Difficulty Reporting and Request for Modification.
[1965] *Id.* at 2 – 3.
[1966] *See* Response to Canfor Reporting Difficulty Letter.
[1967] *Id.* at Attachment 1.
[1968] *See, e.g., Wire Strand from China* IDM at 7.

those producers' sales from the denominators of the mandatory respondents, it did so because none of the merchandise those producers manufactured was exported to the United States.[1969] No such information exists on the record of the instant review as it regards the lumber sold by Canfor that it acquired from unaffiliated producers.

We also disagree with the petitioner that Commerce should establish a combination rate for the unaffiliated producers at issue in this case. The petitioner raised the same argument in the *Lumber V Final Results of Expedited Review*, and Commerce rejected it. As Commerce explained in the *Lumber V Final Results of Expedited Review*:

> We also find that the petitioner's reliance on 19 CFR 351.107(b) (the combination rate regulations) and 19 CFR 351.525(c) (the trading company attribution regulation) is misplaced. Under 19 CFR 351.525(c), in order for {Commerce} to cumulate benefits provided to the trading companies with benefits from subsidies provided to the unaffiliated firm that is producing subject merchandise sold through the trading company, {Commerce} would need to identify and measure any subsidies provided to each unaffiliated producer/supplier, determine the benefits allocable to the POI, calculate a net countervailable subsidy for each unaffiliated producer/supplier, and then cumulate the subsidies the unaffiliated producer/supplier received with subsidies provided to the trading company. Here, the record does not contain information pertaining to subsidies that each unaffiliated producer/supplier received; therefore, we cannot apply 19 CFR 351.525(c).[1970]

As explained above, Commerce determined not to solicit a questionnaire response from the unaffiliated producers at issue, and therefore, does not have information on any subsidies they received. Thus, similar to the facts in the *Lumber V Final Results of Expedited Review*, we find that cumulation under 19 CFR 351.525(c) cannot be applied. Further, for the same reason, it is not appropriate for Commerce to attribute the cash deposit rate in effect for the unaffiliated producers that was in effect during the POR to Canfor, as proposed by the petitioner.

Lastly, we find that the facts of *Sinks from China* are distinct from the facts of this review. In *Sinks from China*, Commerce solicited and received a complete questionnaire response from the unaffiliated trading company at issue, thereby enabling Commerce to cumulate and attribute the subsidies received by the trading company.[1971] As noted above, due to the unaffiliated producers' small value of sales, Commerce did not request information regarding their subsidy usage and sales information.

[1969] *See Drill Pipe from China* IDM at Comment 6; *see also Citric Acid from China* IDM at 4.
[1970] *See Lumber V Final Results of Expedited Review* IDM at Comment 5.
[1971] *See Sinks from China Final* IDM at 3 – 4.

- ***JDIL***

Comment 114: Whether Commerce Should Include Sales by Cross-owned Producers of Downstream Products in JDIL's Sales Denominator When Calculating Countervailable Subsidy Rates

JDIL's Comments[1972]
- JDIL's sales denominator must include sales by its cross-owned producers of downstream products.
- Contrary to its plain language, Commerce incorrectly interprets the use of "input" in 19 CFR 351.525(b)(6)(iv) to be limited to inputs for the production of subject-merchandise (or derived downstream products).

Petitioner's Rebuttal Comments[1973]
- Commerce rejected JDIL's arguments regarding the appropriate sales denominator in the investigation and should do so again because the downstream product in question – wood chips – is not an input for softwood lumber.

Commerce's Position: In the *Lumber VAR1 Prelim Results*, we attributed the benefit from subsidies that JDIL received to its total sales, because JDIL is the sole subject merchandise producer.[1974] Furthermore, to calculate JDIL's benefit from the provision of stumpage for LTAR, Commerce limited the sales denominator to JDIL's "total softwood lumber sales and total softwood co-product sales (*i.e.*, products produced by sawmills) during the CY 2017 and 2018."[1975] Thus, 19 CFR 351.525(b)(6)(iv) is inapplicable to this case proceeding, because JDIL is not an "input supplier" for the purpose of attribution in this case.

JDIL , nonetheless, argues that, pursuant to 19 CFR 351.525(b)(6)(iv), JDIL supplies an input (wood chips) to its cross-owned companies (IPP, IPL, and Irving Tissue), for production of downstream products (pulp and paper) for which the supplied wood chips are primarily dedicated. Thus. JDIL argues Commerce must attribute subsidies received by JDIL to the combined sales of JDIL and its cross-owned producers of pulp and paper (minus intercompany sales).[1976] As noted in the *Lumber VAR1 Prelim Results* in the "Attribution of Subsidies" section, Commerce did not include as part of its calculations IPP, IPL, or Irving Tissue's sales of pulp and paper products, pursuant to 19 CFR 351.525(b)(6)(iv). Commerce adopted this approach because 19 CFR 351.525(b)(6)(iv) is only applicable to subsidies received by suppliers who provide an input that is primarily dedicated to the production of subject merchandise to a cross-owned, downstream producer of subject merchandise. JDIL, the producer of subject merchandise, supplied non-subject inputs (wood chips) to cross-owned, downstream producers of non-subject merchandise (pulp and paper producers). Furthermore, JDIL acknowledged that subsidies received by IPP, IPL, and Irving Tissue do not meet any of the four exceptions for attributing to the production of subject merchandise subsidies received by cross-owned corporations under 19 CFR 351.525(b)(6)(ii) - (v), such that questionnaire responses were

[1972] *See* JDIL June 8, 2020 Case Brief at 23 – 30.
[1973] *See* Petitioner June 25, 2020 Rebuttal Brief at 289 – 293.
[1974] *See Lumber VAR1 Prelim Results* PDM at 33.
[1975] *Id*.
[1976] *See* JDIL June 8, 2020 Case Brief at 23.

required from these companies.[1977] As none of these three companies fall under the exceptions provided in 19 CFR 351.525(b)(6)(ii) – (v), we have not expanded the denominator to include their sales.

Although JDIL attempts to argue that we should expand its denominator because it is an "input supplier" to IPL, IPP, and Irving Tissue under 19 CFR 351.525(b)(6)(iv), the wood chips it supplies to these companies are not a primarily dedicated input to the production of subject merchandise, softwood lumber. As discussed above, 19 CFR 351.525(b)(6)(iv) is inapplicable here given that we attributed the benefit from subsidies that JDIL received to its total sales, because JDIL is the sole subject merchandise producer. JDIL is not an input supplier in this case.

JDIL cites to *SC Paper from Canada – Expedited Review* as support for including IPP, IPL, and Irving Tissue's sales in the denominator.[1978] However, the situation in that case is very different. Unlike this proceeding, JDIL was treated as an input supplier in the *SC Paper from Canada – Expedited Review* .[1979] Thus, under 19 CFR 351.525(b)(6)(iv), in the *SC Paper from Canada – Expedited Review* Commerce needed to take into account sales of subject merchandise or a derived downstream product. This is not the case here.

- ***Resolute***

Comment 115: Whether Countervailing Road Credit Reimbursements Imposes a Double Remedy

GOQ's Comments[1980]

- In LCIA 81010, the arbitral tribunal's award of compensation for the roads tax credit (*i.e.*, 2.35 percent of the awarded 2.60 percent export charge) offset any benefit that Resolute could have received under the road credit refunds during the POR.
- Adding countervailing duties on top of the trade remedy imposed on all shipments of softwood lumber from Québec to the United States between 2010 and 2013, for a program that ended in 2013, is a double remedy that moves the result in this case from remediation to punishment.[1981] The same subsidy may not be countervailed twice.[1982]
- The double remedy analysis in *Kajaria Iron Castings v. U.S.* means that Commerce cannot impose a countervailing duty that is not equal to the amount of the net subsidy.
- A double remedy is equally unacceptable under the United States' obligations under international agreements.[1983]
- Commerce should find that the refund payments received by Resolute in 2017 and 2018 for the road credits earned in the 2008, 2012, and 2013 year-end tax returns are not benefits in the POR because the benefit has been offset by the compensation awarded in LCIA 81010.

[1977] *Id*. at FN 72.
[1978] *Id*. at 25.
[1979] *See SC Paper from Canada – Expedited Review – Preliminary Results* PDM at 10.
[1980] *See* GOQ June 8, 2020 Vol VIII Case Brief at 110–117.
[1981] *Id*. at 111, citing *Nucor Corp. v. U.S.*, 414 F. 3d 1336.
[1982] *Id*. at 115, citing *Kajaria Iron Castings v. U.S.*, 156 F. 3d 1175.
[1983] *Id*. at 114 – 116, citing *United States – AD & CVD Duties on Certain Products*, para. 541, 550 – 60, and 591.

Resolute and Central Canada's Comments[1984]

- Pursuant to the 2006 SLA Arbitration LCIA 81010, Resolute paid more in export taxes than any amount it received through road credit refunds during the POR. Between 2011 and 2013, Resolute prepaid the export tax remedy for road credits, including those that were not realized until later. Therefore, were Commerce to countervail the road credit refunds in these final results, it would be imposing an unlawful double remedy by duplicating trade remedies that were addressed under the SLA arbitration for the same program.
- By imposing a duty that is not equal to the amount of the net benefit, Commerce contravenes section 701(a) of the Act.[1985]

Petitioner's Rebuttal Comments[1986]

- Resolute and the GOQ repeat their argument from the investigation that the LCIA 81010 arbitration award "offset" any benefit conferred by the road credit refunds to Resolute during the POR. Commerce however determined that the LCIA 81010 is irrelevant to its analysis and that any amounts paid in relation to the arbitral award cannot be used to offset the benefit of the subsidy.[1987]
- Any purported interpretations of U.S. law by the WTO Appellate Body have no bearing on Commerce's analysis.[1988]
- There is no parallel between *Kajaria Iron Castings v. U.S.* and this credit program because Commerce has not countervailed the payments made pursuant to the LCIA 81010 award.[1989]
- Commerce correctly imposed a duty equal to the amount of the net benefit pursuant to section 771(6) of the Act. The export taxes paid pursuant to the LCIA 81010 award do not fall within any of the categories enumerated under section 771(6) of the Act.

Commerce's Position: We find that neither Resolute nor the GOQ presented any new arguments for consideration in this review. Therefore, we continue to determine, consistent with the investigation,[1990] that the LCIA 81010 is irrelevant to Commerce's analysis of the benefit which Resolute received under the road credit refunds. Within an administrative review, Commerce is responsible for determining whether a government is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of subject merchandise sold for importation into the United States, pursuant to section 701(a) of the Act. Commerce examines subsidies that producers and exporters received during the review period, as stated in 19 CFR 351.213(e)(2)(i). Because Resolute received refundable tax credits during the POR, Commerce is permitted to examine the refunds. Based on our analysis of the record, we determine that the refundable tax credits provided by the GOQ under the Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas program are countervailable subsidies.[1991]

[1984] *See* Resolute June 8, 2020 Case Brief at 64 – 66.
[1985] *Id*. at 66, *Kajaria Iron Castings v. U.S.*, 156 F. 3d 1175.
[1986] *See* Petitioner June 25, 2020 Rebuttal Brief at 225 – 228.
[1987] *See Lumber V Final* IDM at Comment 78.
[1988] *See* Petitioner June 25, 2020 Rebuttal Brief at 226, citing *Ripe Olives from Spain* IDM at Comment 2.
[1989] *Id*. at 226 – 227, citing *Kajaria Iron Castings v. U.S.*, 156 F. 3d 1173.
[1990] *See Lumber V Final* IDM at Comment 78.
[1991] *See Lumber V AR1 Prelim Results* PDM at 81; *see also* Comment 109.

Commerce is not imposing a double remedy by countervailing the refundable tax credits that Resolute received in the POR. These refunds are separate and distinct events from the LCIA 81010. Resolute contends that it prepaid the export tax remedy for the road credits between 2011 and 2013. However, when Resolute applied for the refundable tax credits in its 2008, 2012, and 2013 year-end tax returns, it did not know whether its claims for road credits would be approved by the MFFP (which performed an inspection of the roads built), or by Revenu Québec (which conducted a financial audit of the claims).[1992] Further, Resolute did not know, when the claims were ultimately approved, the amounts of refunds to be received. As Resolute explained, "Revenu Québec also conducts a financial audit, which may result in a change in value of the credit earned."[1993] Therefore, we find that Resolute could not have prepaid road tax credits between 2011 and 2013, when the company could not know if it would receive refundable tax credits and, if so, the amounts of any refund. It would be illogical for a company to prepay road credits that it does not know it will even receive.

Further, we agree with the petitioner that the respondents have not established that any amounts paid in relation to the arbitral award are a permissible offset under section 771(6) of the Act, which identifies the limited circumstances under which Commerce will reduce the benefit amount.[1994]

Comment 116: Whether the Contracts Between Resolute and Rexforêt Confer a Benefit

GOQ's Comments[1995]

- Neither project 17-07-004 nor 7-07-005 provided a benefit to Resolute. They were contracts for the performance of work on public lands. The payment made pursuant to 17-05-005 contractually must be reimbursed to Rexforêt, and the payment made pursuant to 17-07-004 was made pursuant to a contract for the execution of specific work requested by Rexforêt so that it could carry out silvicultural work in subsequent years.

Resolute and Central Canada's Comments[1996]

- Projects 17-07-004 and 17-07-005 are not countervailable. These two projects were contracts with Rexforêt for the provision of a service to the government, *i.e.*, performance of roadwork that was not essential for any of Resolute's harvesting activity.
- Commerce's finding regarding these projects is not consistent with the findings regarding road construction and maintenance in British Columbia and Alberta, where Commerce found those activities not to be part of a tenure holder's normal responsibilities.[1997]
- Resolute's roadwork for Rexforêt is indistinguishable from the contract work that Commerce found not countervailable in Western Canada, particularly where Resolute repaired and

[1992] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at RES-NS-CPARB-A.
[1993] *Id*. at RES-NS-CPARB-1 (p. 8).
[1994] The qualifying offsetting amounts are: (A) any application fee, deposit, or similar payment in order to qualify for or receive, the benefit of the countervailable subsidy; (B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order; and (C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.
[1995] *See* GOQ June 8, 2020 Vol VIII Case Brief at 83 – 85.
[1996] *See* Resolute June 8, 2020 Case Brief at 69 – 72.
[1997] *See* Canfor/West Fraser Post-Prelim Memorandum at 11 – 12.

widened a road and constructed bridge, neither of which were needed by Resolute for harvesting.
- Commerce reasoned further, as to Western Canada, that purchases of services by the government are not countervailable and treated road construction/maintenance as a service.

Petitioner's Rebuttal Comments[1998]
- Though Resolute asserts that its construction and maintenance work on the roads is tantamount to providing the government with a service, these activities were conducted in areas where harvesting occurred, and it is Resolute's obligation as a TSG holder to perform such activities, pursuant to the SFDA.[1999]
- The GOQ confirmed that Resolute carried out road construction and maintenance beneficial to its harvesting activities. Under Project 17-07-004, the MFFP provided payment to Resolute to assist the company in "relocate{ing} its fall forestry operations due to an access problem."[2000] The description for Project 17-07-005 notes that the construction of the bridge will be used by logging companies, for which Resolute acts as the "prime contractor," to transport wood.[2001]

Sierra Pacific's Rebuttal Comments[2002]
- Commerce treats government payments to relieve a respondent of costs it either would otherwise have incurred as part of its normal operations or pursuant to a legal obligation as a countervailable subsidy in the form a grant.
- The cost incurred does not necessarily have to be for activities that are "essential" to a respondent's operations, as Resolute argues.

Commerce's Position: We find that Resolute's and the GOQ's characterization of the roadwork payments under projects 17-07-004 and 17-07-005, as a government purchase of services, misconstrues the nature of the assistance provided.

Record evidence shows that the road/bridge construction and maintenance that Resolute performed under the projects was beneficial to its harvesting activities. Resolute reported that it "already had workers and equipment in areas where road or bridge maintenance or construction was needed,"[2003] indicating that it was harvesting timber in the areas targeted under the projects. As a TSG holder, it is Resolute's obligation to perform roadwork activities. Pursuant to the SFDA, the responsibilities of a TSG holder include "cutting and harvesting of timber (including partial cuts), and for the construction, improvement, rehabilitation and maintenance of transportation infrastructure."[2004]

For Project 17-07-004, Resolute and Rexforêt shared the costs of a road that Resolute needed for its forestry operations.[2005] The evidence indicates that, in October 2017, Resolute had to relocate

[1998] *See* Petitioner June 25, 2020 Rebuttal Brief at 241 – 243.
[1999] *Id*. at 242, citing GOQ July 15, 2019 Primary QNR Response at QC-S-122.
[2000] *Id*. at 242, citing GOQ April 2, 2020 SQR Response at 2 and Exhibit QC-RX-17.
[2001] *Id*. at 243, citing GOQ April 2, 2020 SQR Response at 3.
[2002] *See* Sierra Pacific June 25, 2020 Rebuttal Brief at 45 – 47.
[2003] *See* Resolute March 31, 2020 SQR Response to March 12th SQ at 3.
[2004] *See* GOQ July 15, 2019 Primary QNR Response at Exhibit QC-S-122.
[2005] *See* GOQ April 2, 2020 SQR Response at 2.

its fall forestry operations due to an access problem located on aboriginal territory.[2006] The new sector, initially planned for winter use, did not have adequate roads to use during the season.[2007] The fact that Resolute may not have originally intended to conduct the road repair work, as the GOQ argues, does not mean that the work did not benefit Resolute's harvesting once it relocated its fall forestry operations and that the activity would not have been conducted in Resolute's ordinary course of business.

For Project 17-07-005, Resolute was the "prime contractor" for a bridge construction project.[2008] The evidence indicates that Rexforêt paid Resolute a ten percent advance to start construction on the bridge.[2009] The GOQ stated that logging companies "will use the bridge to transport wood."[2010] The fact that the payment allowed Resolute to begin the project without delay, as the GOQ asserts, does not negate the fact that the bridge benefits Resolute's operations and that the activity would have been conducted in Resolute's ordinary course of business. Also, we find no merit to the GOQ's argument that the payment made to Resolute "must be reimbursed to Rexforêt."[2011] In its response, the GOQ reported, "Payment was made to Resolute by the MFFP (via Rexforêt) to start the project quickly. The amount will be *reimbursed by all logging companies* (via financial arrangement) who will use the bride to transport wood" (emphasis added).[2012]

On the basis of the evidence, we determine that the payments provided by Rexforêt relieved Resolute of financial burdens that the company would have otherwise incurred. The roadwork activities for which Resolute received reimbursements from Rexforêt are activities that Resolute would have undertaken in furtherance of its harvesting operations even in the absence of its contracts with Rexforêt.

Further, we disagree with Resolute's assertion that the countervailable finding for projects 17-07-004 and 17-07-005 is not consistent with the findings regarding road construction and maintenance in Western Canada.[2013] While Canfor did perform road and bridge work for the GBC during the POR, those activities were not part of its responsibilities as a tenure holder in British Columbia.[2014] However, Québec sawmills are legally mandated to fulfill several obligations with regard to their TSGs, which include road construction, repairs, and maintenance.

Given that Resolute has an obligation to perform roadwork under its TSG, and the construction it did under projects 17-07-004 and 17-07-005 were in harvesting areas, we conclude that the roadwork that Resolute did for Rexforêt is distinct from the contract work that Canfor completed for the GBC and, thus, is countervailable.

[2006] *Id*.
[2007] *Id*.
[2008] *Id*. at 2 – 3.
[2009] *Id*. at 3.
[2010] *Id*.
[2011] *See* GOQ June 8, 2020 Vol VIII Case Brief at 85.
[2012] *See* GOQ April 2, 2020 SQR Response at 3.
[2013] *See* Canfor/West Fraser Post-Prelim Decision Memorandum at 11 – 12.
[2014] *Id*.

Comment 117: Whether the Benefit of SR&ED Tax Credits Claimed by Resolute Was Extinguished When AbitibiBowater Emerged from Bankruptcy

Resolute and Central Canada's Comments[2015]

- Subsidies that accrued prior to 2011 were extinguished by the AbitibiBowater bankruptcy proceedings, which concluded in December 2010.
- AbitibiBowater's assets (including accrued tax assets) were valued at fair market and sold to Resolute (the new entity) in arm's length transactions.
- During the POR, pre-bankruptcy accruals were claimed on Resolute's Federal, Ontario, and Québec income tax returns. These tax credits could not provide any benefit.

Petitioner's Rebuttal Comments[2016]

- Resolute's accrual of subsidies is irrelevant as it received the SR&ED benefits after the bankruptcy proceedings. Pursuant to 19 CFR 351.509(b)(1), Commerce "normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return."
- Extinguishment applies only to subsidies received prior to restructuring. Pursuant to 19 CFR 524(a), Commerce "will allocate (expense) a recurring benefit to the year in which the benefit is received." Resolute received the SR&ED tax credits during the POR.
- A change in ownership does not by itself require a determination that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.[2017]

Commerce's Position: We agree with the petitioner. Extinguishment applies only to subsidies received prior to and during a bankruptcy proceeding. Resolute's predecessor, AbitibiBowater, emerged from bankruptcy on December 9, 2010. The subsidies at issue here are tax credits which Resolute claimed on its annual income tax returns filed in 2017 and 2018 to offset its income taxes payable.[2018] The filing of those income tax returns was well after AbitibiBowater's restructuring and bankruptcy proceedings ended.

With regard to tax benefits, Commerce "normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return," pursuant to 19 CFR 351.509(b)(1). Further, Commerce "will allocate (expense) a recurring benefit to the year in which the benefit is received," as instructed at 19 CFR 351.524(a). Because Resolute claimed the SR&ED tax credits during the POR, regardless of when they were accrued, we find Resolute's argument is without merit. Resolute benefitted from the subsidies in 2017 and 2018, when it filed its tax returns claiming the SR&ED tax credits. Further, the fact that AbitibiBowater's accrued tax assets were valued at fair market and sold to Resolute in an arm's length transaction is irrelevant. Rather, what is material to

[2015] *See* Resolute June 8, 2020 Case Brief at 97 – 98 and 102 – 104.
[2016] *See* Petitioner June 25, 2020 Rebuttal Brief at 127 – 128.
[2017] *See* section 771(5)(F) of the Act.
[2018] *See* Resolute July 23, 2019 Primary Non-Stumpage QNR Response at Exhibits RES-NS-GEN-5 and GEN-6 for Resolute's income tax returns filed during the POR.

Commerce's analysis is that, during the POR, Resolute used the SR&ED programs by claiming tax credits that it was carrying forward to reduce its tax liability. As such, under section 771(5)(E) of the Act and pursuant to 19 CFR 351.509(a)(1), the SR&ED tax credit programs conferred benefits equal to the amount of tax savings on Resolute during the POR.

Comment 118: GOO's Debt Forgiveness of Resolute's Fort Frances Mill

GOO Comments[2019]

- Commerce contends that Resolute received a subsidy when the GOO released Resolute from an obligation to repay a C$22.5 million debt when it did not keep the Fort Frances mill operational for three years after the receipt of the final disbursement of the funds as stipulated in the Conditional Funding Agreement. However, Commerce asserts a benefit when none exists. Commerce has the obligation to find that a benefit was conferred by means of a financial contribution during the POR.
- Applying *Government of Sri Lanka v. U.S.*[2020] demonstrates errors in Commerce's finding. While Commerce notes the timing of the Settlement and Release Agreement (*i.e.*, 2017), its finding of benefit ignores that Commerce previously determined that the conditional FSPF grant was extinguished as a result of AbitibiBowater's (Resolute's predecessor) bankruptcy. Commerce cannot now claim that the same subsidy is again countervailable having already been extinguished.
- The record shows that Resolute incurred costs in connection with negotiating the Settlement and Release Agreement—a settlement which resolved a commercial dispute between Resolute and the GOO to their mutual satisfaction.
- The FSPF grant was tied to pulp and paper and cannot be attributed to Resolute's non-pulp or paper operations. The closure of the mill does not alter that fact.

Resolute and Central Canada's Comments[2021]

- The $22.5 million FSPF grant provided to AbitibiBowater is not an untied subsidy. The 2007 bestowal documents show that the grant was tied to the operations of the Fort Frances pulp and paper mill.
- The grant was extinguished when AbitibiBowater emerged from bankruptcy in December 2010.
- Further, no benefit was conferred upon Resolute by the 2017 Settlement and Release Agreement because valuable consideration (*i.e.*, expenditures by Resolute in excess of the grant to preserve the pulp and paper mill for sale) was provided in exchange for the decision that repayment of the grant to the GOO was unnecessary.
- The 2007 Conditional Funding Agreement and the 2017 Settlement and Release Agreement were as tied to one another as the grant was tied to pulp and paper. Both demonstrated the GOO's intent in 2017, as in 2007, that the agreements be tied to the Fort Frances pulp and paper mill.
- Commerce found in the *Lumber V Final* that FSPF grants were tied to sales of non-subject merchandise at the time of bestowal.[2022] Commerce also found in the *Groundwood Paper from*

[2019] *See* GOO June 8, 2020 Vol VII Case Brief at 5 – 14.
[2020] *Id*. at 11 – 12, citing *Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d 1373.
[2021] *See* Resolute June 8, 2020 at 72 – 79.
[2022] *Id*. at 72, citing *Lumber V Prelim* PDM at 88, unchanged in the *Lumber V Final*.

Canada Final that any alleged subsidies Resolute might have received from FSPF grants would have been extinguished through AbitibiBowater's bankruptcy proceeding.[2023]
- Commerce now claims the Settlement and Release Agreement could not have been tied to the production of paper because the Fort Frances mill was not producing pulp and paper in 2017. That contention is contradicted by the fact that in 2017, Resolute was trying to find a buyer to operate the mill as a going concern.

Petitioner's Rebuttal Comments[2024]
- Commerce made clear that the subsidy program at issue is not the 2007 FSPF grant, but the forgiveness of money owed in 2017, after Resolute broke the terms of the 2007 Conditional Funding Agreement with the GOO.
- Resolute reported that the 2007 funding was conditional on the continuous operation of the mill for at least three years after the final FSPF disbursement in March 2012.[2025] Once Fort France was idled, Resolute was not producing pulp and paper products at the mill. Thus, the GOO's forgiveness of the money owed could no longer be treated as tied to the production of non-subject merchandise.
- The GOO's debt forgiveness could not have been extinguished by Resolute's emergence from bankruptcy. The GOO's notice directing Resolute to repay the conditional grant was issued in October 2014, more than four years after Resolute's emergence from bankruptcy.
- The time of bestowal of the subsidy is June 29, 2017, the date when the GOO forgave the C$22.5 million debt owed by Resolute pursuant to a settlement agreement.
- The GOO cites to *Government of Sri Lanka v. U.S.*; however, that CIT case involved a foreign producer providing an interest-free loan to the government, not the government providing a financial contribution to the respondent.[2026]
- The settlement agreement was not "simply a settlement resolving a commercial dispute," as the GOO asserts. Resolute is the mill's owner, and the GOO has no ownership stake. Rather, the settlement agreement was the GOO's forgiveness of a debt owed by Resolute to the government, which is a "direct transfer of funds" to Resolute.

Commerce's Position: Commerce has already addressed the arguments raised by the GOO and Resolute in the Resolute Post-Prelim Decision Memorandum.[2027] Consequently, there are no new arguments that would lead Commerce to reconsider its finding that, in 2017, the GOO forgave a debt of $22.5 million that Resolute owed to the government.

As discussed in the Resolute Post-Prelim Decision Memorandum,[2028] in 2007, under the Ontario FSPF, Resolute's pre-bankruptcy predecessor, Abitibi-Bowater,[2029] was approved for a C$22.5 million grant (the Conditional Funding Agreement) for the construction of a biomass co-generation plant at the Fort Frances pulp and paper mill. The funding was conditional on the

[2023] *Id*. at 72, citing *Groundwood Paper from Canada Final* IDM at Comment 6.
[2024] *See* Petitioner June 25, 2020 Rebuttal Brief at 183 – 189.
[2025] *Id*. at 184, citing Resolute November 21, 2019 NSA SQR Response at Exhibit NSA-FSPF-APP at Section A.
[2026] *Id*. at 188 – 189, citing *Government of Sri Lanka v U.S.*, 308 F. Supp.3d at 1380 – 81.
[2027] *See* Resolute Post-Prelim Decision Memorandum at 3 – 5.
[2028] The respondents provided information on the debt forgiveness within the GOO November 21, 2019 Response at ON-18 – ON-33 (and all referenced exhibits); and Resolute November 21, 2019 Response at 3 – 4 and Exhibit NSA-FSPF-APP (and all referenced exhibits).
[2029] In 2012, Abitibi-Bowater legally changed its name to Resolute FP Canada Inc.

continuous operation of the mill for at least three years following the final grant disbursement, which was in March 2012. However, in May 2014, Resolute permanently closed the Fort Frances mill. Pursuant to the terms of the Conditional Funding Agreement, which Resolute discussed in its filings with the U.S. Securities and Exchange Commission, in October 2014, the Ministry of Natural Resources and Forestry of Ontario directed Resolute to repay the full amount of the FSPF grant.[2030] On June 29, 2017, through the Settlement and Release Agreement between Resolute and the GOO, Resolute was excused of the requirement to repay the C$22.5 million debt it owed to the Ontario government.

We recognize that in the *Lumber V Final* and *Groundwood Paper from Canada Final*, Commerce found the FSPF grant tied to the production of only pulp and paper products.[2031] However, we determine that the subsidy at issue here is not the FSPF grant issued in 2007, but the 2017 forgiveness of money owed when Resolute broke the terms of the Conditional Funding Agreement with the GOO. By Resolute's own admission, once the Fort Frances mill was idled, the conditions of the original FSPF grant were breached. Resolute explained that the original funding "was conditional on the continuous operation of the mill for a period of at least three years following the date of the final disbursement under the FSPF (*i.e.*, March 2012)."[2032] By definition, once the mill was closed, it was no longer operational, and Resolute was no longer producing pulp and paper products at the Fort Frances mill.

When making a finding of attribution, we analyze the purpose of the subsidy based on information available at the time of bestowal.[2033] Commerce's tying practice states that "a subsidy is tied to particular products or operations … an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy."[2034]

The subsidy provision on June 29, 2017—debt forgiveness—was separate and distinct from the FSPF grant in 2007. On June 29, 2017, the time of bestowal of the GOO's forgiveness of the C$22.5 million debt, Resolute was not producing pulp and paper at the Fort Frances mill. Thus, the GOO's forgiveness of the money it was owed was no longer tied to the production of non-subject merchandise, as argued by Resolute and the GOO.

Further, the actions taken by the GOO on June 29, 2017—forgiveness of a debt owed to it by Resolute—was not the resolution of a commercial dispute, as claimed by Resolute and the GOO but the provision of a subsidy by the GOO to Resolute. Resolute was the sole owner of the Fort Frances mill with no government ownership stake.[2035] The Settlement and Release Agreement freed Resolute of its obligation to repay to the Ontario government the C$22.5 million when it did not keep the Fort Frances mill operational for three years after receipt of the final

[2030] *See* Resolute Non-Stumpage Response at Exhibit RES-NS-GEN-2 (2016 Form 10-K), p. 116 and Exhibit RES-NS-GEN-3 (2017 Form 10-K), p. 111 – 112.
[2031] *See Lumber V Prelim* PDM at 88, unchanged in *Lumber V Final* IDM at 18 – 18; *see also Groundwood Paper from Canada Final* IDM at 29 – 30 and Comment 10.
[2032] *See* Resolute November 21, 2019 Response at Exhibit NSA-FSPF-APP, p. 1.
[2033] *See CVD Preamble*, 63 FR at 65402 – 65404.
[2034] *Id*. at 65402.
[2035] *See* Resolute Non-Stumpage Response at Exhibit RES-NS-GEN-2 (2016 Form 10-K), p. 116 and Exhibit RES-NS-GEN-3 (2017 Form 10-K), p. 111 – 112.

disbursement of government funds as stipulated in the Conditional Funding Agreement. That Resolute may have incurred costs in searching for a buyer to operate the mill and negotiating the Settlement and Release Agreement is irrelevant to Commerce's subsidy analysis. Commerce's analysis is focused on whether the GOO provided a financial contribution to Resolute on June 29, 2017. The evidence unequivocally shows that on June 29, 2017, the GOO forgave a debt of C$22.5 million that Resolute was obligated to pay under the Conditional Funding Agreement.

Additionally, citing to *Groundwood Paper from Canada Final*, in which Abitibi-Bowater's 2009—2010 bankruptcy proceeding was examined, both Resolute and the GOO claim that Commerce found that the FSPF grants received, prior to and during the bankruptcy proceeding, were extinguished.[2036] We acknowledge that Commerce found that payments under the FSPF program received prior to December 9, 2010, were extinguished as a result of Abitibi-Bowater's bankruptcy and subsequent change-in-ownership.[2037] However, as discussed, we find that the subsidy under examination in this review is not the 2007 FSPF grant issued to Abitibi-Bowater, but the debt forgiveness that was bestowed upon the newly formed company, Resolute, after Abitibi-Bowater emerged from bankruptcy. The notice from the GOO directing Resolute to repay the conditional incentive of C$22.5 million was made in October 2014, and the GOO forgave the debt owned by Resolute on June 29, 2017; these are events that occurred several years after Abitibi-Bowater emerged from bankruptcy on December 9, 2010. Thus, the GOO's forgiveness of the debt owed by Resolute could not have been extinguished through the bankruptcy proceeding.

On the basis of the record, we determine that the GOO's debt forgiveness of Resolute's obligation to repay the C$22.5 million conditional grant for its Fort Frances mill constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because the GOO forgave the collection of revenue that was otherwise owed to it.

Lastly, we find the GOO's reference to *Government of Sri Lanka v. U.S.* to be unavailing. The facts of that CIT case are considerably different than the facts here. Notably, that case involved a foreign producer providing an interest-free loan to the government, not the government providing a financial contribution to the respondent,[2038] which is the circumstance that Commerce has analyzed in this administrative review.

Comment 119: Whether Commerce Should Correct a Clerical Error in Resolute's LER Benefit Calculation

Resolute and Central Canada's Comments[2039]

- In the 2017 Québec LER benefit calculation for Resolute, one entry of log purchase data contains the volume but is inadvertently missing the value due to a transcription mistake in Resolute's Table 5.1 containing log purchase data.
- Because of this missing value, Commerce calculated a large, anomalous benefit; however, the correct figure for this log purchase value is already on the record and, should Commerce continue to find an LER subsidy, it must use the correct value for this log transaction.

[2036] *See Groundwood Paper from Canada Final* IDM at Comment 6.
[2037] *Id*.
[2038] *See Government of Sri Lanka v U.S.*, 308 F. Supp.3d at 1380 – 81.
[2039] *See* Resolute July 29, 2020 Case Brief at 24 – 25.

Commerce's Position: As discussed in Comment 44, we find this program is not countervailable; therefore, this issue is moot.

X. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review 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

APPENDIX I

ACRONYM AND ABBREVIATION TABLE

This section is sorted by Acronym/Abbreviation.

Acronym/Abbreviation	Complete Name
AAC	Annual Allowable Cut
ABF	Alberta Bio Future
AbitibiBowater	AbitibiBowater Inc.
Abitibi-Bowater	Abitibi-Bowater Canada Inc.
ACCA	Accelerated Capital Cost Allowance
ACE	Automated Commercial Environment
ACOA	Atlantic Canada Opportunities Agency
Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AESO	Alberta Electric System Operator
AFA	Adverse Facts Available
AFoA	Alberta Forests Act
AFRIR	Alberta Forests Resources Improvement Regulation – AR 38/2013
AJCTC	Apprenticeship Job Creation Tax Credit
ALB	Atlantic Lumber Board
AMAF	Alberta Ministry of Agriculture and Forestry
AOP	Annual Operating Plans
AR1 Hendricks Report	"An Economic Analysis of the Ontario Timber Market and an Examination of Private Market Prices in that Competitive Market – An Update" by Ken Hendricks, Ph.D. (*See* GOO IQR, Vol VIII at Exhibit ON-PRIV-2)
ARTT	Arrangement and Reduction of Work Time
ASR	Alberta Scaling Regulation – AR 195/2002
ATMR	Alberta Timber Management Regulation – AR 404/1992
AUL	Average Useful Life
AWS	Annual Work Schedule
Barrette	Barrette Wood, Inc.
BC	British Columbia
BCAA	British Columbia Assessment Authority
BCLTC	British Columbia Lumber Trade Council
BCTS	BC Timber Sales
BCWS	BC Wildfire Service
BMMB	Québec Timber Marketing Board (*Bureau de mise en Marché des bois*)
Bowater	Bowater Canadian Ltd.
BPCP	Bioenergy Producer Credit Program
BPI	Business Proprietary Information
BPP	Bioenergy Producer Program

CAFC	U.S. Court of Appeals for the Federal Circuit
Canfor	Canfor Corporation, Canfor Wood Products Marketing Ltd. and, Canadian Forest Products, Ltd.
Canfor Pulp	Canfor Pulp Products Inc.
CAR	Reclassification of Assistance Committee
Carrier	Carrier Forest Products Ltd. and Carrier Lumber Ltd.
CBP	U.S. Customs and Border Protection
CCA	Capital Cost Allowance
CCTP	Coniferous Community Timber Permit (and License)
Central Canada	OFIA and CIFQ, collectively
CEP	Consultation for Employment Program
CFP	Canadian Forest Products, Ltd.
CHP III	Combined Heat and Power III
CIB	Climate Investment Branch
CIFQ	Conseil de l'Industrie Forestiere du Québec
CLFA	Crown Lands & Forest Act
cm	Centimeter
Commerce	U.S. Department of Commerce
COR	Certificate of Recognition
Coyne Study	Concentric Energy Advisors Expert Report (December 8, 2017) (*See* GOQ July 15, 2019 Primary QNR Response at Exhibit QC-BIO-51)
CRA	Canada Revenue Agency
CRP	Community Reforestation Program
CTP	Commercial Timber Permits
CVD	Countervailing Duty
CWPM	Canfor Wood Products Marketing, Ltd.
CY	Calendar Year
D&G	Les Produits Forestiers D&G Ltee
DBH	Diameter at Breast Height
Deloitte	Deloitte LLP
DFATD	Department of Foreign Affairs, Trade and Development
DGR Report	"Evaluation of the Impact of the Salvage Harvest of a Tract of Forest Affected by TBE (Spruce Budworm Outbreak) on Timber Supply Costs" by DGR Forestry Consultants Inc. (*See* Resolute IQR at Exhibit RES-NS-LRateB-2)
DNRE	Department of Natural Resources and Energy Development
Dual-Scale Study	"Dual-Scale Study of the Principal Conifer Species of Interior British Columbia Applying the BC Metric and Scribner Short Log Measurement Rules: 2018 Update" by Jendro & Hart LLC (*See* GBC IQR at Exhibit BC-AR1-ST-163)
E&C	Enforcement & Compliance
EDC	Export Development Canada
EFAR	Electronic Facility Annual Return (eFAR)
EIPA	Export and Import Permits Act

EOA	Economic Obsolescence Allowance
EPA	Electricity Purchase Agreement
ESDC	Employment and Social Development Canada
ETG	Employer Training Grant
F2M	Forest2Market
FDRCMO	Fonds de développement et de reconnaissance des competences de la main d'oeuvre (translated as Workforce Skills Development and Recognition Fund)
FERC	Federal Energy Regulatory Commission
FESBC	Forest Enhancement Society of British Columbia
FHP	Forest Harvest Plans
FLCI	Framing Lumber Composite Index
FLTC	Federal Logging Tax Credit
FMA	Forest Management Agreement
FMM	Forest Management Manual
FMP	Forest Management Plans
FMU	Forest Management Unit
FMV	Fair Market Value
Fonseca Publication	"The Measurement of Roundwood Methodologies and Conversion Ratios" by Matthew A. Fonseca (*See* GBC SQR3 at Exhibit BC-AR1-STSUPP3-1)
FortisBC	FortisBC Inc.
FPPGTP	Federal Pulp and Paper Green Transformation Program
FRIAA	Forest Resource Improvement Association of Alberta
FRIP	Forest Resource Improvement Program
FRPA	Forest and Range Practices Act
FSPF	Forest Sector Prosperity Fund
FTEAC	Federal Timber Export Advisory Committee
FY	Fiscal Year
G&A	General & Administrative
GBC	Government of British Columbia
GDP	Gestion de la demande de puissance
GHG	Greenhouse Gases
GNB	Government of New Brunswick
GNS	Government of Nova Scotia
GOA	Government of Alberta
GOC	Government of Canada
GOM	Government of Manitoba
GOO	Government of Ontario
GOQ	Government of Québec
GOS	Government of Saskatchewan
HBS	Harvest Billing System
HHI	Hirschman-Herfindahl Index
HTSUS	Harmonized Tariff Schedule of the United States
IDM	Issues and Decision Memorandum
IEI	Industrial Electricity Incentive
IEO	Interruptible Electricity Option

IESO	Independent Electricity System Operator
IFIT	Federal Forestry Industry Transformation Program
IKEA	IKEA Supply AG and IKEA Distribution Services Inc.
IMF	International Monetary Fund
Investigation Hendricks Report	"An Economic Analysis of the Ontario Timber Market and an Examination of Private Market Prices in that Competitive Market" by Ken Hendricks, Ph.D. (*See* GOO's Letter, "Response of the Government of Ontario to the Department's January 19, 2017 Initial Questionnaire," dated March 13, 2017 at Vol VIII, Part 1, Exhibit ON-PRIV-2, submitted in the Lumber V investigation)
IPL	Irving Paper Limited
IPP	Independent Power Producer
IPTC	Industrial Property Tax Credit
IQR	Initial Questionnaire Response
IRS	Internal Revenue Service
ISEE	Industrial Systems Energy Efficiency
ITA	Income Tax Act
ITC	U.S. International Trade Commission
ITR	Income Tax Regulations
JDIL	JDIL Limited
Kalt-Reishus Report	"Economic Analysis of British Columbia Log Export Premitting Process, Stumpage and Log Markets," by Joseph P. Kalt and David Reishus (*See* GOC/GBC LEP IQR at Exhibit LEP-1).
LBIP	Land-Based Investment Program and Successor Programs
LBIS	Land-Based Investment Strategy
Lemay	Scierie Alexandre Lemay & Fils Inc.
LER	Log Export Restraint
LiDar	Light Detection and Ranging
LIMS	Log Inventory Management System
LIREPP	Large Industrial Renewable Energy Purchase Program
LMF	License Management Fee
LTAR	Less Than Adequate Remuneration
M&P	Manufacturing and Processing Tax Credit
M&P ITC	Manufacturing and Processing Investment Tax Credit
m3	cubic meter
Marshall Report	"Expert Report of Robert C. Marshall, Ph.D.," (March 10, 2017) (*See* GOQ's Letter, "Submission of the Expert Report of Robert C. Marshall, Ph.D.," dated July 11, 2019).
Mauricie	Produits Forestiers Mauricie S.E.C.
MBF	Thousands of Board Feet
MCRP	Multi-resource Road Cost Reimbursement Program
MEC	Memorandum to Executive Council
MERN	Ministry of Energy and Natural Resources

Merrimack Study	Merrimack Benchmarking Study: The Competitive Cost of Biomass Generated Electricity (CFT 2009-01) (April 2, 2004) (*See* GOQ July 15, 2019 Primary QNR Response at Exhibit QC-BIO-29)
MFFP	Ministry of Forests, Wildlife and Parks
MFLNRO&RD	Minister of Forests, Lands, Natural Resource Operations and Rural Development
MFOR	Manpower Training Measures
MITC	Manitoba's Manufacturing Investment Tax Credit
MLI	Marcel Lauzon Inc.
MNP Survey	"A Survey of the Ontario Private Timber Market" by MNP LLP (*See* GOO IQR, Vol VIII at Exhibits ON-PRIV-1-A and ON-PRIV-1B)
Montana Lumber	Montana Reclaimed Lumber Co.
MPB	Mountain Pine Beetle
MPBP	Mountain Pine Beetle Program
MPS	Market Pricing System
MTAR	More Than Adequate Remuneration
MTESS	Ministry of the Work, Employment and Social Solidarity
MW	Megawatts
NAFP	North American Forest Products Ltd.
NAFTA	North American Free Trade Agreement
NAFTA Panel	North American Free Trade Agreement Article 1904 Binational Panel Review, "Interim Decision and Order of the Panel," Secretariat File No. USA-CDA-2018-1904-03 (September 4, 2019)
NAICS	North American Industry Classification System
NB Power	New Brunswick Power
NBDNR	New Brunswick Department of Natural Resources
NBFPC	New Brunswick Forest Products Commission
NBLP	New Brunswick Lumber Producers
NFI	New Factual Information
NIER	Northern Industrial Electricity Rate
NRCan	Natural Resources Canada
NSA	New Subsidy Allegations
OCFP	Oregon-Canadian Forest Products
ODNR	Oregon Department of Natural Resources
OFIA	Ontario Forest Industries Association
OFRFP	Ontario Forest Roads Funding Program
OIC	Order in Council
OJP	One Job Pledge
Olympic	Olympic Industries Inc. and Olympic Industries ULC
OPA	Ontario Power Authority
OTCMP	Ontario Tax Credit for Manufacturing and Processing
PAE 2011-01	Purchase Power Program 2011-01
PCIP	Partial Cut Investment Program
PDM	Preliminary Decision Memorandum

Petitioner	Committee Overseeing Action for Lumber International Trade Investigations or Negotiations *a.k.a.* COALITION
PIB	Program Innovation Bois
PIR	Partnerships in Injury Reduction
Plateau	Plateau Forest Products LLC
PLTC	Provincial Logging Tax Credit
PME	Pacific Maritime Ecozone
PNW	Pacific Northwest
POI	Period of Investigation
POR	Period of Review
PPA	Purchase Power Agreement
PPI	Producer Price Index
PWC	Price Waterhouse Coopers
QNR	Questionnaire
QR	Questionnaire Response
Quota	Coniferous Timber Quota Certificates
R&D	Research and Development
RDC	Regional Development Corporation
RDTC	Research and Development Tax Credit
Resolute	Resolute FP Canada Inc.
Resolute Forest Products	Resolute Forest Products Inc.
Resolute Growth	Resolute Growth Canada Inc.
RFP	Request for Proposals
RILA	Retail Industry Leaders Association
Roland	Roland Boulanger & Cie Ltee
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SDO	Resolute's Côte-Nord sawmill
SDTC	Sustainable Development Technology Canada
SFDA	Sustainable Forest Development Act
SFL	Sustainable Forest License
Sierra Pacific	Sierra Pacific Industries
SMB	Small and Medium-Sized Business
SME	Small and Medium-Sized Enterprise
Softwood Lumber	Certain softwood lumber products
SPF	Spruce-Pine-Fir
SPFL	Spruce-Pine-Fir-Larch
SQ	Supplemental Questionnaire
SQNR	Supplemental Questionnaire Response
SR&ED	Scientific Research and Experimental Development
SR&ED – GBC	Scientific Research and Experimental Development – GBC
SR&ED – GOA	Scientific Research and Experimental Development – GOA
SR&ED – GOO	Scientific Research and Experimental Development – GOO

SR&ED – GOQ	Scientific Research and Experimental Development – GOQ
TDA	Timber Damage Assessment
TEAC	Timber Export Advisory Committee
TEFU	Tax-Exempt Fuel Program for Marked Fuel
TEQ	Transition Énergétique Québec
Terminal	Terminal Forest Products Ltd.
TMP	Thermo-Mechanical Pulp
Tolko	Tolko Marketing and Sales Ltd.
TSG	Timber Supply Guarantee
TSL	Timber Sale License
U.S.	United States
U.S. Cubic Scale	U.S. Forest Service Product Cubic Scale
UFP	UFP Western Division, Inc. and UFP Eastern Division, Inc., and their various operating affiliates and subsidiaries within the U.S.
UN	United Nations
URAA	Uruguay Round Agreements Act
USDA	United States Department of Agriculture
USFS	United States Forest Service
USMCA	United States-Mexico-Canada Agreement
VLM	Vancouver Log Market
WCB	Workers' Compensation Board
WDNR	Washington Department of Natural Resources
West Fraser	West Fraser Mills Ltd.
Woodtone	W.I. Woodtone Industries Inc.
WTO	World Trade Organization

APPENDIX II

ADMINISTRATIVE DETERMINATIONS/NOTICES, REGULATORY, AND COURT CASES TABLE

This section is sorted by Short Citation.

Short Citation	Administrative Case Determinations
1988 CVD Preamble	*Countervailing Duties*, 53 FR 52306 (December 27, 1988)
2010 Review of CWP from Turkey	*Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012)
Acciai Speciali Terni S.P.A.	*Acciai Speciali Terni S.P.A. v. United States*, 26 C.I.T. 148 (CIT 2002)
Agro Dutch v. U.S.	*Agro Dutch Indus. Ltd. v. United States*, 508 F. 3d 1024 (Fed. Cir. 2007)
AK Steel Corp. v. U.S.	*AK Steel Corp. v. United States*, 192 F. 3d 1367 (Fed. Cir. 1999)
Al Tech	*Al Tech Specialty Steel Corp. v. U.S.*, 28 CIT 1468 (Sept. 8, 2004)
Allegheny I	*Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141 (CIT 2000)
Allegheny II	*Allegheny Ludlum Corp. v. United States*, 25 CIT 816 (2001)
Aluminum Extrusions from China 1st AR	*Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014)
Ansaldo Componeti S.p.A.	*Ansaldo Componeti S.p.A. v. United States*, 628 F. Supp. 198 (CIT 1986)
Asociacion de Exportadores e Industriales de Aceitunas de Mesa v. U.S.	*Asociacion de Exportadores e Industriales de Aceitunas de Mesa v. United States*, No. 18-00195, Slip Op. 20-8, (CIT Jan. 17, 2020)
Ball Bearings from Thailand	*Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand; Final Negative Countervailing Duty Determinations: Antifriction Bearings (Other Than Ball or Tapered Roller Bearings) and Parts Thereof from Thailand*, 54 FR 19130 (May 3, 1989)
Beijing Tianhai	*Beijing Tianhai Indus. Co. v. United States*, 52 F. Supp. 3d 1351 (CIT 2015)
Bethlehem Steel Corp. v. U.S.	*Bethlehem Steel Corp. v. United States*, 223 F. Supp. 2d 1372 (CIT 2002)
Borusan	*Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306 (CIT 2015)
Brass from Germany	*Brass Sheet and Strip from Germany: Amended Final Results of Antidumping Duty Administrative Review*, 75 FR 66347 (October 28, 2010)
Bristol Metals v. U.S.	*Bristol Metals L.P. v. United States*, 703 F. Supp. 2d 1370 (CIT 2010)
Canada – Feed-In Tariff Program	*Canada – Measures Relating to the Feed-In Tariff Program*, (WT/DS426/AB/R), adopted May 6, 2013
Carbon & Alloy Steel Wire Rod from Italy	*Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Final Affirmative Determination*, 83 FR 13242 (March 28, 2018)

Carbon Steel Wire Rod from Saudi Arabia	*Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod from Saudi Arabia*, 51 FR 4206 (February 3, 1986)
Certain Steel Products from Korea	*Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37338 (July 9, 1993)
Certain Wheat from Canada	*Final Affirmative Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52747 (September 5, 2003)
CFS from China	*Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007)
Changzhou Trina Solar Energy	*Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334 (CIT 2016)
Chevron	*Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)
Chlorinated Isocyanurates from China	*Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review*, 82 FR 27466 (June 15, 2017)
Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman	*Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Final Affirmative Countervailing Duty Determination*, 77 FR 64473 (October 22, 2012)
Citric Acid from China	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 77 FR 72323 (December 5, 2012)
Coated Paper from Indonesia	*Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 72 FR 60642 (Oct. 25, 2007)
Compressors from Singapore	*Certain Refrigeration Compressors from the Republic of Singapore; Final Results of Countervailing Duty Administrative Review*, 61 FR 10315 (March 13, 1996)
CORE from India AR 15-16 Final	*Certain Corrosion-Resistant Steel Products From India: Final Results of Countervailing Duty Administrative Review; 2015-2016*, 84 FR 11053 (March 25, 2019)
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Corus Staal v. U.S. (2007)	*Corus Staal BV v. United States*, 502 F. 3d 1370 (Fed. Cir. 2007)
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CRS from Russia	*Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016)
CTL Steel Plate from Korea Prelim	*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 40445 (July 26, 1999

CTL Steel Plate from Korea Final	*Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176 (December 29, 1999)
Cut-to-Length Carbon-Quality Steel Plate from Indonesia	*Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia*, 64 FR 73155 (December 29, 1999)
Cut-to-Length Plate from Korea	*Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017)
CVD Order	*Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 347 (January 3, 2018)
CVD Preamble	*Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998)
CWP from the UAE	*Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Affirmative Countervailing Duty Determination*, 77 FR 64465 (October 22, 2012)
Drill Pipe from China	*Drill Pipe from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 78 FR 47275 (August 5, 2013)
Dynamic RAM Semiconductors from Korea	*Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003)
Essar Steel Ltd. v. U.S.	*Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285 (CIT 2010)
Essar Steel Ltd. v. U.S.	*Essar Steel Ltd. v. United States*, 678 F. 3d 1268 (Fed. Cir. 2012)
Eurodif v. U.S.	*Eurodif S.A. v. United States*, 411 F.3d 1355, 1365 (Fed. Cir.), aff'd on reh'g, 423 F.3d 1275 (Fed. Cir. 2005)
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FERC v. Electric Power Supply Association	*FERC v. Electric Power Supply Association*, 136 S. Ct. 760 (2016) as revised (January 28, 2016)
Flat Products from Korea	*Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002)
Fresh Cut Flowers from Mexico	*Certain Fresh Cut Flowers from Mexico; Final Negative Countervailing Duty Determination*, 49 FR 15007 (April 16, 1984)
Fresh Cut Flowers from the Netherlands	*Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers from the Netherlands*, 52 FR 3301 (February 3, 1987)
Geneva Steel	*Geneva Steel v. United States*, 914 F. Supp. 563 (CIT 1996)
Glycine from Thailand	*Glycine from Thailand: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 84 FR 38007 (August 5, 2019)
Government of Sri Lanka v. U.S.	*Government of Sri Lanka v. United States*, 308 F. Supp. 3d 1373 (CIT 2018); 2018 WL 1831791 (CIT 2018)
Groundwood Paper from Canada Final	*Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination*, 83 FR 39414 (August 9, 2018)

Groundwood Paper from Canada Post-Prelim Memorandum	Memorandum, "Post-Preliminary Analysis of Countervailing Duty Investigation: Certain Uncoated Groundwood Paper from Canada," dated June 18, 2018
Groundwood Paper from Canada Prelim	*Certain Uncoated Groundwood Paper from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 2133 (January 16, 2018)
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HRS from India	*Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review,* 74 FR 20923 (May 6, 2009)
HRS from Thailand Initiation	*Notice of Initiation of Countervailing Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, South Africa, and Thailand,* 65 FR 77580 (December 12, 2000)
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Inland Steel v. U.S.	*Inland Steel Industries, Inc. v. United States,* 967 F. Supp. 1338 (CIT 1997)
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The King v. Jones	*King v. Jones, Ex p. Saint John Sulphite Ltd. et. al.* (1949), 4 D.L.R. 259 (Can. N.B. C.A.)
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Laminated Hardwood Trailer Flooring from Canada	*Preliminary Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring from Canada,* 61 FR 59079 (November 20, 1996)
Leather from Argentina	*Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Leather from Argentina*, 55 FR 40212 (Oct. 2, 1990)
LEU from France	*Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France,* 66 FR 65901 (December 21, 2001)
Light Truck Tires from China AR 14-15	*Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014-2015,* 83 FR 11694 (March 16, 2018)
Live Swine from Canada AR 1996	*Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews,* 61 FR 52408 (October 7, 1996)
Live Swine from Canada	*Final Negative Countervailing Duty Determination: Live Swine from Canada,* 70 FR 12186 (March 11, 2005)
Lumber I	*Final Negative Countervailing Duty Determinations; Certain Softwood Products from Canada,* 48 FR 24159 (May 31, 1983)
Lumber II	*Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada,* 51 FR 37453 (October 22, 1986)
Lumber III Final	*Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada,* 57 FR 22570 (May 28, 1992)

Lumber IV Final	*Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002)
Lumber IV Final Results of 1st AR	*Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products from Canada*, 69 FR 75917 (December 20, 2004)
Lumber IV Preliminary Results of 1st AR	*Notice of Preliminary Results of Countervailing Duty Review: Certain Softwood Lumber from Canada*, 69 FR 33204 (June 14, 2004)
Lumber IV Final Results of 2nd AR	*Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005)
Lumber IV Preliminary Results of 2nd AR	*Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 33088 (June 7, 2005)
Lumber IV First NAFTA Remand Redetermination	*Remand Redetermination, Certain Softwood Lumber Products from Canada, Final Affirmative Countervailing Duty Determination*, USA-CDA-2002-1904-03 (January 12, 2004)
Lumber IV Second NAFTA Remand Determination	*Second Remand Determination: In the Matter of Certain Softwood Lumber Products from Canada*, USA-CDA-2002-1904-03 (July 30, 2004)
Lumber NSR	*Final Results of Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada*, 70 FR 56640 (September 28, 2005)
Lumber V Final	*Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017)
Lumber V Prelim	*Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017)
Lumber V Final Results of Expedited Review	*Certain Softwood Lumber Products from Canada: Final Results of Countervailing Duty Expedited Review*, 84 FR 32121 (July 5, 2019)
Lumber V Prelim Results of Expedited Review	*Certain Softwood Lumber Products from Canada: Preliminary Results of Countervailing Duty Expedited Review*, 84 FR 1051 (February 1, 2019)
Lumber V AR1 Prelim Results	*Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2017 –2018*, 85 FR 7273 (February 7, 2020)
MacLean-Fogg	*MacLean-Fogg Co. v. United States*, 753 F. 3d 1237 (Fed. Cir. 2014)
Magnesium from Canada	*Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992)
Magnesium from Israel	*Magnesium from Israel: Final Affirmative Countervailing Duty Determination*, 84 FR 65785 (November 29, 2019)
Magnola	*Magnola Metallurgy, Inc. v. United States*, 508 F. 3d 1349 (Fed. Cir. 2007)
Melamine from Trinidad and Tobago	*Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849 (November 6, 2015)
Nails from Oman	*Certain Steel Nails from the Sultanate of Oman: Final Negative*

	Countervailing Duty Determination, 80 FR 28958 (May 20, 2015)
Non-Oriented Electrical Steel from Taiwan	*Antidumping or Countervailing Duty Investigations, Orders, or Reviews: Non-Oriented Electrical Steel from Taiwan*, 79 FR 61602 (October 14, 2014)
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OCTG from Argentina	*Oil Country Tubular Goods from Argentina; Preliminary Results of Countervailing Duty Administrative Review*, 62 FR 32307 (June 13, 1997)
OCTG from Canada	*Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Canada*, 51 FR 15037 (April 22, 1986)
OCTG from China Final	*Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009)
OCTG from China AR3	*Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (August 14, 2013)
OCTG from India AR 13-14	*Certain Oil Country Tubular Goods From India: Final Results of Countervailing Duty Administrative Review; 2013-2014*, 82 FR 18282 (April 18, 2017)
OCTG from Turkey	*Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014)
Off-the-Road Tires from Sri Lanka	*Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination*, 82 FR 2949 (January 10, 2017)
Off-the-Road Tires from Sri Lanka Order	*Certain New Pneumatic Off-the-Road Tires from India and Sri Lanka: Countervailing Duty Order*, 82 FR 12556 (March 6, 2017)
PAM, S.p.A.	*PAM, S.p.A. v. United States*, 495 F. Supp. 2d 1360, (Ct. Intl. Trade 2007)
Pasta from Italy AR13	*Certain Pasta from Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 18806 (April 13, 2010)
Perrin v. U.S.	*Perrin v. United States*, 444 U.S. 37 (1979)
PET Film from India	*Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008)
PET Resin from Oman	*Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 81 FR 13321 (March 14, 2016)
Polyester Textured Yarn from India	*Polyester Textured Yarn from India: Final Affirmative Countervailing Duty Determination*, 84 FR 63848 (November 19, 2019).
PRCBs from Vietnam Final	*Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 2, 2010)
Preamble	*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997)

Quartz Surface Products from India	*Certain Quartz Surface Products from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25398 (May 1, 2020)
Rebar from Turkey Final Determination	*Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (May 22, 2017)
Rebar from Turkey Final Results	*Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 26907 (June 12, 2017)
Rebar Trade Action Coal. v. U.S.	*Rebar Trade Action Coal. v. United States*, 335 F. Supp. 3d 1302 (CIT 2018), *aff'd*, 783 F. App'x 1034 (Fed. Cir. 2019)
Ripe Olives from Spain	*Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination*, 83 FR 28186 (June 18, 2018)
Royal Thai Gov't v. U.S.	*Royal Thai Gov't v. United States*, 436 F. 3d 1330 (Fed. Cir. 2006)
S. Rep. No. 96-249	Trade Agreements Act of 1979, Senate Report Number 96-249 (1979)
SAA	Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994)
SC Paper from Canada Final	*Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 13, 2015)
SC Paper from Canada Prelim	*Supercalendered Paper from Canada: Preliminary Affirmative Countervailing Duty Determination*, 80 FR 45951 (August 3, 2015)
SC Paper from Canada – Expedited Review – Final Results	*Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017)
SC Paper from Canada – Expedited Review – Preliminary Results	*Supercalendered Paper from Canada: Preliminary Results of Countervailing Duty Expedited Review*, 81 FR 85520 (November 28, 2016)
SC Paper NAFTA Remand	*Final Redetermination Pursuant to Panel Remand, Supercalendared Paper from Canada*, USA-CDA-2015-1904-01 (Nov. 8, 2017).
Shrimp from Ecuador	*Certain Fresh Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination*, 78 FR 50389 (August 19, 2013)
Silicon Metal from Australia Final	*Silicon Metal from Australia*: *Final Affirmative Countervailing Duty Determination*, 83 FR 9834 (March 8, 2018)
Silicon Metal from Australia Prelim	*Silicon Metal from Australia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 37843 (August 14, 2017)
Sinks from China Final	*Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013)
Sinks from China Prelim	*Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 46717 (August 6, 2012)
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Solar Cells from China	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of*

	Countervailing Duty Administration Review, and Partial Rescission of Countervailing Duty Administration; 2014, 82 FR 32678 (July 17, 2017)
Solar Cells from China AR 2012	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015)
SolarWorld Ams., Inc.	*SolarWorld Ams., Inc. v. United States*, 125 F. Supp. 3d 1318 (CIT 2015)
Steel Plate from Korea	*Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 72 FR 38565 (July 13, 2007)
Steel Products from France	*Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993)
Steel Wheels from China	*Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*,77 FR 17017 (March 23, 2012)
Steel Wire Nails from New Zealand	*Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails from New Zealand*, 52 FR 37196 (October 5, 1987)
Steel Wire Rod from Trinidad and Tobago	*Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago*, 62 FR 55003 (October 22, 1997)
Steel Wire Rod from Venezuela	*Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997)
Structural Steel from Canada	*Certain Fabricated Structural Steel from Canada: Final Negative Countervailing Duty Determination*, 85 FR 5387 (January 30, 2020)
Textile Mill Products and Apparel from Singapore	*Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Singapore*, 50 FR 9840 (March 12, 1985)
Timken	*Timken U.S. Corp. v. U.S.*, 434 F. 3d 1345 (Fed. Cir. 2006)
TMK IPSCO	*TMK IPSCO v. United States*, 179 F. Supp. 3d 1328 (CIT 2016)
U.S. v. Eurodif	*United States v. Eurodif S.A.*, 555 U.S. 305 (2009)
Uncoated Paper from Indonesia	*Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016)
United States – AD & CVD Duties on Certain Products	*United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted March 11, 2011
United States – Large Civil Aircraft (Second Complaint)	*Appellate Body Report, United States – Measures Affecting Trade in Large Civil Aircraft – Second Complaint*, WT/DS353/AB/R (March 12, 2012)
Usinor Industeel v. U.S.	*Usinor Industeel S.A. v. United States*, 215 F. Supp. 2d 1356 (CIT 2002)

Violet Pigment 23 from China	*Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 75 FR 36630 (June 28, 2010)
Welded Line Pipe from Korea	*Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015)
Welded Line Pipe from Turkey	*Welded Line Pipe from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 80 FR 14943 (March 20, 2015)
Wind Towers from Canada Final	*Utility Scale Wind Towers from Canada: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances,* 85 FR 40245 (July 6, 2020)
Wind Towers from Indonesia	*Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 85 FR 40241 (July 6, 2020)
Wire Rod from Italy Final	*Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy,* 63 FR 40474 (July 29, 1998)
Wire Rod from Saudi Arabia	*Notice of Final Countervailing Duty Determination: Carbon Steel Wire Rod from Saudi Arabia,* 51 FR 4206 (February 3, 1986)
Wire Strand from China	*Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 28557 (May 21, 2010)

APPENDIX III

CASE-RELATED DOCUMENTS

Document Citation Table for Final Results: Lumber CVD - First Administrative Review

Date	Submitting Party	Short Citation	Document Title	Pertaining To
November 25, 2018	Commerce	GBC November 25, 2019 SQ	Commerce's Letter, "Certain Software Lumber from Canada: Government of British Columbia Questionnaire Responses," dated November 25, 2019.	GBC
April 1, 2019	Commerce	*Initiation Notice*	Certain Softwood Lumber Products from Canada: Initiation of Antidumping and Countervailing Duty Administrative Reviews, 84 FR 12209 (April 1, 2019)	Interested Parties
April 1, 2019	Petitioner	NSA First Submission	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Subsidy Allegation on Government of Canada's Softwood Lumber Aid Package," dated April 1, 2019	GOC
April 2, 2019	Commerce	CBP Data Query Results	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	Interested Parties
April 9, 2019	Canfor	Canfor Respondent Selection Comments	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Comments on CBP Data and Respondent Selection," dated April 9, 2019	Commerce
April 9, 2019	J.D. Irving	J.D. Irving Respondent Selection Comments	J.D. Irving's Letter, "Certain Softwood Lumber Products from Canada: Respondent Selection Comments," dated April 9, 2019.	Commerce
April 9, 2019	Petitioner	Petitioner Respondent Selection Comments	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on CBP Import Data and Respondent Selection," dated April 9, 2019.	Commerce
April 9, 2019	Resolute	Resolute Respondent Selection Comments	Resolute's Letter, "Softwood Lumber from Canada: Respondent Selection - Comments on CBP Data," dated April 9, 2019.	Commerce
April 9, 2019	West Fraser	West Fraser Respondent Selection Comments	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Comments on CBP Data and Respondent Selection," dated April 9, 2019.	Commerce
April 11, 2019	GOC	GOC NSA Comments	GOC's Letter, "Countervailing Duty First Administrative Review of Certain Softwood Lumber Products from Canada: Response to Petitioner's New Subsidy Allegations," dated April 11, 2019.	Petitioner
April 15, 2019	Brunswick Valley, et al.	Brunswick Valley Rebuttal to Petitioner's Respondent Selection Comments	Brunswick Valley Lumber Inc., Chaleur Sawmills LP, Delco Forest Products Ltd., Devon Lumber Co. Ltd., Fornebu Lumber Co. Ltd., H.J. Crabbe & Sons Ltd., Langevin Forest Products Inc., Marwood Ltd., North American Forest Products Ltd., and Twin Rivers Paper Co. Inc.'s Letter, "Certain Softwood Lumber Products from Canada: Rebuttal to Petitioner's Comments on CBP Import Data and Respondent Selection," dated April 15, 2019.	Petitioner
April 16, 2019	Canadian Parties	Canadian Parties Rebuttal to Petitioner's Respondent Selection Comments	GOC and the Governments of Alberta, British Columbia, Manitoba, New Brunswick, Ontario, Québec, and Saskatchewan, as well as industry associations Alberta Softwood Lumber Trade Council, British Columbia Lumber Trade Council, Conseil de l'industrie forestière du Québec, Ontario Forest Industry Association, and New Brunswick Lumber Producers, and Canfor, J.D. Irving, Resolute, Tolko, and West Fraser's Letter, "Countervailing Duty Administrative Review of Certain Softwood Lumber Products from Canada: Canadian Parties' Rebuttal to Petitioner's Comments on CBP Import Data and Respondent Selection," dated April 16, 2019.	Petitioner
April 16, 2019	J.D. Irving	J.D. Irving Rebuttal to Petitioner's Respondent Selection Comments	J.D. Irving's Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Respondent Selection Comments," dated April 16, 2019.	Petitioner
April 26, 2019	Canadian Parties	Canadian Parties Comments on Stumpage Benchmark	Governments of Québec, Ontario, and Alberta as well as the Conseil de l'industrie forestière du Québec and the Ontario Forest Industries Association's Letter, "Certain Softwood Lumber Products from Canada: Request that the Department Collect Evidence Relating to the Government of Nova Scotia's Decision to Not Use the September 2016 Deloitte Private Stumpage Survey," dated April 26, 2019.	GONS
May 16, 2019	Commerce	*Ex Parte* Meeting with Sierra Pacific	Memorandum, "First Administrative Review; Antidumping and Countervailing Duty Orders on Softwood Lumber from Canada: Ex Parte Meeting with Sierra Pacific," dated May 16, 2019.	Sierra Pacific
May 17, 2019	Commerce	Respondent Selection Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Respondent Selection," dated May 17, 2019.	Interested Parties
May 21, 2019	Commerce	Initial Questionnaire	Commerce's Letter, "Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Initial Questionnaire," dated May 21, 2019.	Interested Parties
May 24, 2019	Commerce	Assessment Rate Memorandum	Memorandum, "Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada: Clarification of Information Contained in Initial Questionnaire," dated May 24, 2019.	Interested Parties
May 28, 2019	Commerce	Economic Diversification Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Economic Diversification Memorandum," dated May 28, 2019.	Interested Parties
May 28, 2019	Commerce	Loan Appendix Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Loan Benchmark and Loan Guarantee Appendix," dated May 28, 2019.	Interested Parties
May 29, 2019	Canadian Governmental Parties	Canadian Governmental Parties Request for Questionnaire Clarification	GOC and the Governments of Alberta, British Columbia, Manitoba, New Brunswick, Ontario, Québec, and Saskatchewan's Letter, "Certain Softwood Lumber Products from Canada: Requests for Clarification of Issues Identified in the Department's May 21, 2019 Questionnaire," dated May 29, 2019.	Commerce

May 29, 2019	J.D. Irving	J.D. Irving Request for Questionnaire Clarification	J.D. Irving's Letter, "Certain Softwood Lumber Products from Canada: Request for Clarification of the Questionnaire," dated May 29, 2019.	Commerce
May 29, 2019	Resolute	Resolute Request for Questionnaire Clarification	Resolute's Letter, "Softwood Lumber from Canada: CVD First Administrative Review Resolute's Request For Clarification Of May 21, 2019 Questionnaire," dated May 29, 2019.	Commerce
June 3, 2019	Commerce	Canfor Extension	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; Request for Extension to Identify Difficulty in Responding," dated June 3, 2019.	Canfor
June 3, 2019	Canfor	Canfor Reporting Difficulty	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Notification of Reporting Difficulty Extension Request," dated June 3, 2019.	Commerce
June 3, 2019	GOC and GBC	GOC/GBC Reporting Difficulties	GOC and GOBC's Letter, "Certain Softwood Lumber Products from Canada: Identification of Additional Difficulties in Responding to the Department's May 21, 2019 Questionnaire," dated June 3, 2019.	Commerce
June 4, 2019	ARTB	ARTB Affiliation Response	ARTB's Letter, "Certain Softwood Lumber Products from Canada: Response to Section III Identifying Affiliated Companies," dated June 4, 2019	ARTB
June 4, 2019	Canfor	Canfor Affiliation Response	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Affiliated Companies Response," dated June 4, 2019.	Canfor
June 4, 2019	Commerce	Clarification of Initial Questionnaire Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Clarification of Initial Questionnaire," dated June 4, 2019.	Interested Parties
June 4, 2019	West Fraser	West Fraser Affilation Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Affiliated Company Response," dated June 4, 2019.	West Fraser
June 5, 2019	J.D. Irving	J.D. Irving Company Affiliation Response	J.D.'s Irving's Letter, "Certain Softwood Lumber Products from Canada: Response to Section III Question Identifying Affiliated Companies," dated June 5, 2019.	J.D. Irving
June 5, 2019	Commerce	Meeting with Interested Parties regarding Questionnaire	Memorandum, "Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada: Meeting with Interested Parties," dated June 5, 2019.	Interested Parties
June 5, 2019	Resolute	Resolute Company Affiliation Response	Resolute's Letter, "Softwood Lumber from Canada: CVD First Administrative Review Resolute's Response to Affiliated Companies Questionnaire," dated June 5, 2019.	Resolute
June 7, 2019	Commerce	Addendum to the Initial Questionnaire	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Addendum to the Initial Questionnaire," dated June 7, 2019.	Interested Parties
June 11, 2019	Canfor	Canfor Difficulty Reporting and Request for Modification	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Notification of Reporting Difficulty and Request to Modify Reporting Instructions," dated June 11, 2019.	Canfor
June 12, 2019	Petitioner	Petitioner Response to Canfor's Request for Modification	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Canfor's Request to Modify Reporting," dated June 12, 2019.	Canfor
June 18, 2019	Petitioner	Petitioner Comments on Canfor's Affiliation Response	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Canfor's Affiliated Companies Questionnaire Response," dated June 18, 2019.	Canfor
June 19, 2019	ARTB	ARTB Request for Questionnaire Clarification	ARTB's Letter, "Certain Softwood Lumber Products from Canada: Request for Clarification of the Initial Questionnaire," dated June 19, 2019.	ARTB
June 19, 2019	Petitioner	Petitioner Comments on Resolute's Affiliation Response	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Resolute's Affiliated Companies Questionnaire Response," dated June 19, 2019.	Resolute
June 19, 2019	Petitioner	Petitioner Comments on West Fraser's Affiliation Response	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on West Fraser's Affiliated Companies Questionnaire Response," dated June 19, 2019.	West Fraser
June 19, 2019	Petitioner	Petitioner Withdrawal of Review Requests	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Withdrawal of Request for Administrative Review," dated June 19, 2019.	Interested Parties
June 20, 2019	Petitioner	Petitioner Comments on ARTB's Request for Clarification	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on ARTB's Request for Clarification," dated June 20, 2019.	ARTB
June 24, 2019	Petitioner	Petitioner Corrected Withdrawal of Review Requests	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Correction to Withdrawal of Request for Administrative Review," dated June 24, 2019.	Interested Parties
June 25, 2019	West Fraser	West Fraser Response to Petitioner's Comments on West Fraser's Affiliated Companies Questionnaire Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Response to Petitioners' Comments on West Fraser Mills Ltd.'s Affiliated Companies Questionnaire Response," dated June 25, 2019.	West Fraser
June 26, 2019	Resolute	Resolute Comments to Petitioner's Letter on Resolute's Affiliation Response	Resolute's Letter, "Softwood Lumber from Canada: Response to Petitioner's Comments on Resolute's Affiliated Companies Questionnaire Response," dated June 26, 2019.	Petitioner
June 27, 2019	Commerce	Memorandum on the Withdrawal of Review Requests	Memorandum, "Deadlines Applicable to Voluntary Respondents and Withdrawal of Requests for Review," dated June 27, 2019.	Interested Parties
June 28, 2019	Clermond Hamel Ltee. and Busque & Laflamme Inc.	Clarification of Review Request	Clermond Hamel Ltee. and Busque & Laflamme Inc.'s Letter, "Softwood Lumber from Canada: Clarification of Clermond Hamel Ltee. And Busque & Laflamme Inc. 's Requests for Administrative Review," dated June 28, 2019.	Commerce
July 1, 2019	Commerce	Extension of Deadline to Withdraw Review Requests	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Extension of Time to Withdraw Requests for Administrative Review," dated July 1, 2019.	Interested Parties

July 1, 2019	Fontaine	Fontaine Withdraw of Review Request	Fontaine's Letter, "Softwood Lumber from Canada: Withdrawal of Request for Countervailing Duty Administrative Review (4/28/2017 - 12/31/2018)," dated July 1, 2019	Commerce
July 1, 2019	Mobilier Rustique	Mobilier Rustique Withdraw of Review Request	Mobilier Rustique's Letter, "Certain Softwood Lumber from Canada - Mobilier Rustique Withdrawal of Request for Administrative Review," dated July 1, 2019	Commerce
July 2, 2019	Commerce	Response to Canfor Reporting Difficulty Letter	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada," dated July 2, 2019.	Canfor
July 5, 2019	ARTB	ARTB's Withdraw of Voluntary Respondent Treatment	ARTB's Letter, "Certain Softwood Lumber Products from Canada: Withdrawal of Request for Treatment as a Voluntary Respondent," dated July 5, 2019.	Commerce
July 8, 2019	GOM	GOM July 8, 2019 Primary QNR Response	GOM's Letter, "Certain Softwood Lumber Products from Canada - Response of the Government of Manitoba to the Department's May 21, 2019 Questionnaire," dated July 8, 2019	GOM
July 8, 2019	GOS	GOS July 8, 2019 Primary QNR Response	GOS' Letter, "Certain Softwood Lumber Products from Canada - Response of the Government of Saskatchewan to the Department's May 21, 2019 Questionnaire," dated July 8, 2019.	GOS
July 9, 2019	Commerce	GOC July 9, 2019 SQ (Mauricie)	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Resolute FP Canada Inc.'s Affiliated Company—Forest Products Mauricie L.P./Produits Forestiers Mauricie S.E.C.," dated July 9, 2019.	GOC
July 9, 2019	NAFP	NAFP's Request to Rescind Review	NAFP's Letter, "Certain Softwood Lumber Products from Canada: NAFP's Request to Rescind Administrative Review," dated July 9, 2019.	Commerce
July 9, 2019	Commerce	Resolute July 9, 2019 Company Affiliation (Mauricie) SQ	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Affiliated Company—Forest Products Mauricie L.P./Produits Forestiers Mauricie S.E.C.," dated July 9, 2019.	Resolute
July 11, 2019	GOQ	Marshall Report	GOQ's Letter, "Certain Softwood Lumber Products from Canada: Submission of the Expert Report of Robert C. Marshall, Ph.D.," dated July 11, 2019.	GOQ
July 11, 2019	GOQ	Marshall Report Data Submission	GOQ's Letter, "Certain Softwood Lumber Products from Canada: Filing of back-up data sets and files to the Expert Report of Robert C. Marshall, Ph.D," dated July 11, 2019.	GOQ
July 15, 2019	Canfor	Canfor IQR	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Stumpage and Non-Stumpage Initial Questionnaire Response," dated July 15, 2019	Canfor
July 15, 2019	GOA	Cross Border Analysis	GOA July 15, 2019 Primary Stumpage QNR Response at Exhibit AB-AR1-S-23, "MNP Cross-Border Analysis of Alberta Stumpage and Log Prices," dated July 15, 2019	
July 15, 2019	GNB	GNB July 15, 2019 Primary Stumpage QNR Response	GNB's Letter "Certain Softwood Lumber Products from Canada: Initial Questionnaire Response by the Government of the Province of New Brunswick," dated July 15, 2019.	GNB
July 15, 2019	GNS	2017-2018 Private Stumpage Survey	GNS July 15, 2019 Primary Stumpage QNR Response at NS-5 and NS-6, "Report on Prices of Standing Timber, April 1, 2017 – March 31, 2018," dated July 15, 2019	GNS
July 15, 2019	GNS	HC Haynes Survey	GNS July 15, 2019 Primary Stumpage QNR Response at Exhibit NS-9.	
July 15, 2019	GNS	GNS July 15, 2019 Primary Stumpage QNR Response	GNS's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Nova Scotia to the Department's Initial Questionnaire," dated July 15, 2019.	GNS
July 15, 2019	GNS	GNS J.D. Irving Response	GNS's Letter "Softwood Lumber from Canada: Response of the Government of Nova Scotia to the Department's Initial Questionnaire for the Government of Canada concerning Voluntary Respondent, J.D. Irving Limited," dated July 15	J.D. Irving
July 15, 2019	GOA	GOA July 15, 2019 Primary Stumpage QNR Response	GOA's Letter, "Response to Questionnaire Part 2: Provision of Stumpage for Less Than Adequate Remuneration," dated July 15, 2019.	GOA
July 15, 2019	GOA	GOA July 15, 2019 Primary Stumpage QNR Response	GOA's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Alberta to Section II of the Department's May 21, 2019 Initial Questionnaire," dated July 15, 2019	Commerce
July 15, 2019	GOA	GOA July 15, 2019 Primary Non-Stumpage QNR Response	GOA's Letter, "Certain Softwood Lumber Products from Canada:Response of the Government of Alberta to Section II of the Department's May 21, 2019 Initial Questionnaire," dated July 15, 2019.	GOA
July 15, 2019	GOO	GOO July 15, 2019 Primary Non-Stumpage QNR Response	GOO's Letter, "Certain Softwood Lumber Products From Canada: Response of the Government of Ontario to the Department's May 21, 2019 Non-Stumpage Questionnaire," dated July 15, 2019.	GOO
July 15, 2019	GOO	GOO July 15, 2019 Primary Stumpage QNR Response	GOO's Letter, "Certain Softwood Lumber Products From Canada: Response of the Government of Ontario to the Department's May 21, 2019 Questionnaire," dated July 15, 2019.	GOO
July 15, 2019	GOQ	GOQ July 15, 2019 Primary QNR Response	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Québec's Response to the Department's May 21, 2019 Initial Questionnaire," dated July 15, 2019.	GOQ
July 15, 2019	J.D. Irving	JDIL IQR	J.D. Irving's Letter "Certain Softwood Lumber Products from Canada: Response to Section III of the Questionnaire for Producers/Exporters," dated July 15, 2019.	J.D. Irving
July 15, 2019	GOC	Asker Report	GOC July 15, 2019 Primary Stumpage QNR Response at GOC-AR1-STUMP-43.	GOC
July 15, 2019	GOC	Miller Report	GOC July 15, 2019 Primary Stumpage QNR Response at GOC-AR1-STUMP-44.	GOC
July 15, 2019	Resolute	Resolute July 15, 2019 Primary Stumpage QNR Response	Resolute's Letter, "Softwood Lumber from Canada: CVD First Administrative Review Resolute's Response to Initial Stumpage Questionnaire," dated July 15, 2019.	Resolute

July 15, 2019	West Fraser	West Fraser IQR	West Fraser's Letter "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to the Department of Commerce Countervailing Duty Initial Questionnaire," dated July 15, 2019.	Commerce
July 16, 2019	GBC	GBC IQR	GBC's Letter, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2017-2018: Government of British Columbia's Initial Questionnaire Response," dated July 16, 2019	Commerce
July 16, 2019	GOC	GOC July 15, 2019 Primary QNR Response	GOC's Letter, "Countervailing Duty Administrative Review of Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of Canada," dated July 16, 2019.	GOC
July 16, 2019	GOC/GBC	GBC LEP IQR	GOC's Letter, "Countervailing Duty Administrative Review of Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of Canada," dated July 16, 2019.	GOC
July 17, 2019	Commerce	Resolute Reporting of Non-Recurring Subsidies	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Reporting of Non- Recurring Subsidies," dated July 17, 2019.	Resolute
July 18, 2019	Commerce	Voluntary Respondent Selection Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Selection of JD Irving, Ltd. as a voluntary respondent," dated July 18, 2019.	J.D. Irving
July 19, 2019	West Fraser	Clarification of BPI Treatment of West Fraser Reporting Entities	West Fraser's Letter "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Clarification Regarding Business Proprietary Treatment of Certain Information Related to West Fraser's Reporting Entities," dated July 29, 2019.	West Fraser
July 23, 2019	Commerce	Canfor SAQNR	Commerce's Letter, "Certain Softwood Lumber from Canada: Affiliated Companies Section Questionnaire Response," dated July 23, 2019.	Canfor
July 23, 2019	Resolute	Resolute July 23, 2019 Primary Non-Stumpage QNR Response	Resolute's Letter, "Softwood Lumber from Canada: CVD First Administrative Review Resolute's Response to Initial Non-Stumpage Questionnaire," dated July 23, 2019.	Resolute
July 30, 2019	Commerce	*Ex Parte* Meeting with U.S. Lumber Coalition	Memorandum, "First Administrative Reviews; Antidumping and Countervailing Duty Orders on Softwood Lumber from Canada: Ex Parte Meeting with U.S. Lumber Coaltion," dated July 30, 2019.	Petitioner
July 30, 2019	GOC and GOO	GOC/GOO July 30, 2019 QNR Response on Mauricie	GOC/GOO's Letter, "Countervailing Duty Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire Response," dated July 30, 2019.	Resolute
July 30, 2019	GOQ	GOQ July 30, 2019 QNR Response regarding Mauricie	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Québec's Response to the Department's Direction to Provide a Questionnaire Response for Forest Products Mauricie L.P./Produits Forestiers Mauricie S.E.C.," dated July 30, 2019.	Resolute
July 30, 2019	Resolute	Resolute July 30, 2019 QNR Response for Mauricie	Resolute's Letter, "Softwood Lumber from Canada: CVD First Administrative Review Response of Resolute FP Canada Inc. to Section Ill Questionnaire for Producers/Exporters Part I NonStumpage and Part II Stumpage for Forest Products Mauricie L.P./Produits Forestiers Mauricie S.E.C.," dated July 30, 2019.	Resolute
July 31, 2019	Canfor	Canfor SAQNR Response	Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Supplemental Affiliated Companies Response," dated July 31, 2019.	Canfor
August 1, 2019	Canfor	Canfor Supplemental Affiliated Companies Response	Canfor's Letter "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Supplemental Affiliated Companies Response," August 1, 2019.	Canfor
August 1, 2019	Commerce	NSA Deferred from Investigation	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Additional Subsidy Allegations Deferred to the First Administrative Review," dated August 1, 2019.	Commerce
August 6, 2019	Petitioner	Petitioner NSA Second Submission	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Certain New Subsidy Allegations," dated August 6, 2019.	Interested Parties
August 7, 2019	Commerce	Resolute August 7, 2019 Sales Information SQ	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Supplemental Questionnaire regarding Sales Information," dated August 7, 2019.	Resolute
August 8, 2019	Commerce	NSA Questionnaire for Petitioner	Letter, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for April 1, 2019 Subsidy Allegation," dated August 8, 2019.	Petitioner
August 9, 2019	Commerce	Memorandum on NSA Questionnaire for Petitioner	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Call to Counsel representing the petitioner (COALITION)," dated August 9, 2019.	Petitioner
August 12, 2019	GOC, GOQ, and GOO	Canadian Government Comments on NSAs Deferred to AR1	GOC, GOQ, and GOO's Letter, "Countervailing Duty Administrative Review of Certain Softwood Lumber Products from Canada: Additional Subsidy Allegations Deferred to the First Administrative Review," dated August 12, 2019 .	Commerce
August 12, 2019	Petitioner	Petitioner Comments on Canfor's SAQNR Response	Petitioner's Letter, Certain Softwood Lumber Products from Canada: Comments on Canfor's Supplemental Affiliated Companies Response," dated August 12, 2019.	Canfor
August 12, 2019		IFS Report	GOC August 12, 2019 NFI Submission, dated August 12, 2019 at Exhibit PR-NSR-AR1-40.	GOC
August 12, 2019	GOC	GOC August 12, 2019 NFI Submission	GOC et al Letter, "Comments from the Governments of Alberta, Ontario, and Québec on the Government of Nova Scotia's Initial Questionnaire Response," dated August 12, 2019.	GOC
August 12, 2019	GOA	GOA August 12, 2019 NFI Submission	GOA's Letter, "Certain Softwood Lumber Products from Canada: Government of Alberta's Factual Information to Rebut, Clarify, or Correct Information in Government of Nova Scotia's Initial Questionnaire Response," dated August 12, 2019.	GOA

August 13, 2019	Petitioner	Petitioner August 13, 2019 NSA SQR Response	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Response to Supplemental Questionnaire on Subsidy Allegation," dated August 13, 2019.	Commerce
August 13, 2019	Petitioner	Petitioner Comments on IQRs	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Initial Questionnaire Responses," dated August 13, 2019.	Interested Parties
August 15, 2019	Petitioner	Request for Verification	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Request for Verification of Information for the First Administrative Review Period (2017-2018)," dated August 15, 2019.	Commerce
August 15, 2019	Resolute	Resolute August 15, 2019 Sales SQR Response	Resolute's Letter, "Softwood Lumber from Canada: Response of Resolute FP Canada Inc. to Supplemental Questionnaire Regarding Sales Information," dated August 15, 2019.	Resolute
August 15, 2019	Canadian Governmental Parties	Response to Petitioner's August 5, 2019 NSAs	Canadian Governmental Parties' Letter, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Response to Petitioner's New Subsidy Allegations," dated August 15, 2019.	Interested Parties
August 20, 2019	Canfor	Canfor Response to Petitioner Comments on Canfor SAQNR Response	Csnfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to Petitioner's Comments on Supplemental Affiliated Companies Response, dated August 20, 2019.	Canfor
August 20, 2019	Petitioner	NSAs Regarding Resolute	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Certain New Subsidy Allegations for Resolute FP Canada Inc., " dated August 20, 2019.	Resolute
August 22, 2019	GOC	GOC Comments on Petitioner's August 13, 2019 NSA Response	GOC's Letter, "Countervailing Duty Administrative Review of Certain Softwood Lumber Products from Canada: Comments on Petitioner's Response to Supplemental Questionnaire on Subsidy Allegation," dated August 22, 2019.	Petitioner
August 26, 2019	GBC	GBC Comments on Petitioner's IQR Comments	GBC's Letter, "Certain Softwood Lumber Products from Canada: Reply to Petitioner's Comments on Initial Questionnaire Responses," dated August 26, 2019.	Petitioner
August 26, 2019	GOO	GOO Comments on Petitioner's IQR Comments	GOO's Letter, "Certain Softwood Lumber Products from Canada: Information in Reply to Petitioner's Comments on Initial Questionnaire Responses," dated August 26, 2019.	Petitioner
August 26, 2019	GOQ	GOQ Comments on Petitioner's IQR Comments	GOQ's Letter, "Certain Softwood Lumber Products from Canada: Reply of the Government of Québec to Petitioner's Comments on Initial Questionnaire Responses," dated August 26, 2019.	Petitioner
August 29, 2019	GNS	GNS Comments on GOC NFI on Nova Scotia Private Price Survey	GNS Letter, "Softwood Lumber from Canada: Factual Information Submitted by the Government of Nova Scotia to Clarify Factual Information Concerning Nova Scotia's Forestry System," dated August 29, 2019.	GNS
August 30, 2019	Resolute	Resolute Response to NSAs Regarding Resolute	Resolute's Letter, "Softwood Lumber from Canada: Countervailing Duty First Administrative Review Resolute's Response to Petitioner's August 19, 2019 New Subsidy Allegations," dated August 30, 2019.	Resolute
August 30, 2019	Commerce	September 3, 2019 Resolute Sales SQ	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Second Supplemental Questionnaire regarding Sales Information," dated August 30, 2019.	Resolute
September 3, 2019	Resolute	Resolute September 6, 2019 Sales SQR Response	Resolute's Letter, "Softwood Lumber from Canada: Response of Resolute FP Canada Inc. to Second Supplemental Questionnaire Regarding Sales Information," dated September 3, 2019.	Resolute
September 6, 2019	Commerce	NSA Memorandum - Resolute Allegations	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Subsidy Allegations - Resolute FP Canada Inc.," dated September 6, 2019.	Resolute
October 9, 2019	Petitioner	Petitioner Rebuttal to Canfor's August 19 Comments	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Response to Canfor's Response to Petitioner's Comments on Supplemental Affiliated Companies Response," dated October 9, 2019.	Canfor
October 31, 2019	Commerce	October 31, 2019 NSA Questionnaire for GOO/GOQ re: Resolute Allegations	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: New Subsidies Questionnaire - Allegations against Resolute FP Canada Inc.," dated October 31, 2019.	GOO/GOQ
October 31, 2019	Commerce	October 31, 2019 NSA Questionnaire for Resolute	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: New Subsidies Questionnaire - Allegations against Resolute," dated October 31, 2019.	Resolute
November 6, 2019	Commerce	November 8, 2019 NSA Questionnaire for Resolute	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: New Subsidy Allegation Questionnaire," dated November 6, 2019.	Resolute
November 6, 2019	Commerce	NSA Memorandum - RE 1st and 2nd NSA Submissions	Memorandum, "Analysis of New Subsidy Allegations," dated November 6, 2019.	Various Respondents
November 8, 2019	Commerce	Canfor NSA QNR	Commerce's Letter, "New Subsidy Allegation (NSA) Questionnaire," dated November 8, 2019.	Canfor
November 8, 2019	Commerce	November 12, 2019 SQ for GOO	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for the Government of Ontario," dated November 8, 2019.	GOO
November 12, 2019	GOQ	GOQ November 14, 2019 NSA SQR Response (Resolute Specific Allegations)	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Québec's Response to the New Subsidies Questionnaire – Allegations Against Resolute FP Canada Inc.," dated November 12, 2019.	GOQ
November 12, 2019	Commerce	November 12, 2019 SQ for GOQ	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for the Government of Quebec," dated November 12, 2019.	GOQ
November 12, 2019	Commerce	November 12, 2019 SQ for Resolute	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for Resolute," dated November 12, 2019.	Resolute

November 14, 2019	Canfor	Canfor's Resubmission of Exhibit STUMP-B-3	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Resubmission of the Microsoft Excel Version of Exhibit STUMP-B-3 of Canfor's Initial Questionnaire Response," dated November 14, 2019.	Canfor
November 15, 2019	Commerce	Canfor 2nd NSA QNR	Commerce's Letter, "Second New Subsidy Allegations (NSA) Questionnaire," dated November 15, 2019.	Canfor
November 15, 2019	GOO	GOO November 21, 2019 NSA SQR Response (Resolute Specific Allegations)	GOO's Letter, "Certain Softwood Lumber Products From Canada: Response of the Government of Ontario to the Department's New Subsidies Questionnaire," dated November 15, 2019.	GOO
November 15, 2019	Resolute	Resolute November 15, 2019 Stumpage SQR Response	Resolute's Letter, "Softwood Lumber from Canada: Response of Resolute FP Canada Inc. to First Supplemental Stumpage Questionnaire," dated November 15, 2019.	Resolute
November 21, 2019	Resolute	Resolute November 21, 2019 NSA SQR Response	Resolute's Letter, "Softwood Lumber from Canada: CVD First Administrative Review Resolute's Response to New Subsidies Questionnaire," dated November 21, 2019.	Resolute
November 21, 2019	Resolute	Resolute November 21, 2019 NSA SQR Response (Resolute Specific Allegations)	Resolute's Letter, "Softwood Lumber from Canada: CVD First Administrative Review Resolute's Response to New Subsidies Questionnaire (NSA) - Allegations Against Resolute," dated November 21, 2019.	Resolute
November 22, 2019	Canfor	Canfor's 2nd Resubmission of Exhibit STUMP-B-3	Canfor's Letter, "Certain Softwood Lumber Products from Canada. Case No. C-122-858: Canfor's Resubmission of the Microsoft Excel Version of Exhibit STUMP-B-3 of Canfor's Initial Ouestionnaire Response," dated November 22, 2019.	Canfor
November 22, 2019	GBC	GBC NSA SQR1	GBC's Letter, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's New Subsidy Allegation Questionnaire Response," dated November 22, 2019.	GBC
November 22, 2019	GOO	GOO November 22, 2019 NSA SQR Response	GOO's Letter, "Certain Softwood Lumber Products From Canada: Response of the Government of Ontario to the Department's Second New Subsidies Questionnaire," dated November 22, 2019.	GOO
November 22, 2019	GOQ	GOQ November 22, 2019 NSA SQR Response	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Québec's Response to the Department's November 8, 2019 New Subsidies Allegation Questionnaire," dated November 22, 2019	GOQ
November 22, 2019	Petitioner	Petitioner Comments on GOQ's November 14, 2019 SQ Response	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on the Government of Quebec's Response to the New Subsidies Questionnaire – Allegations Against Resolute FP Canada Inc.," dated November 22, 2019.	GOQ
November 25, 2019	Canfor	Canfor NSA SQR	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's New Subsidy Allegations Questionnaire Response," dated November 25, 2019.	Canfor
November 25, 2019	GOC	GOC NSA QNR Response	GOC's Letter "Countervailing Duty Investigation of Certain Softwood Lumber from Canada: Response of the Government of Canada to the New Subsidy Allegation Questionnaire," dated November 25, 2019.	
November 25, 2019	GOQ	GOQ November 26, 2019 SQR Response	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Québec's Response to the Department's November 12, 2019 Second Supplemental Questionnaire," dated November 25, 2019.	GOQ
November 26, 2019	Petitioner	Petitioner Comments on Commerce's LER Questionnaire	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Response to Information Requested on Log Export Restraints Programs," dated November 26, 2019.	Commerce
December 2, 2019	GOO	GOO December 3, 2019 SQR Response	GOO's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Ontario to the Department's Third Supplemental Questionnaire," dated December 2, 2019.	GOO
December 2, 2019	Petitioner	Petitioner LER SQR	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Response to Information Requested on Log Export Restraints Programs," dated December 2, 2019.	Commerce
December 6, 2019	Canfor	Canfor NSA SQR2	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Second New Subsidy Allegations Questionnaire Response," dated December 6, 2019.	Canfor
December 6, 2019	Commerce	*Ex Parte* Meeting with Senate Finance Staff	Memorandum, "First Administrative Reviews; Antidumping and Countervailing Duty Orders on Softwood Lumber from Canada; Ex Parte Meeting with U.S. Senate Finance Staff ," dated December 6, 2019.	Commerce
December 6, 2019	GBC	GBC NSA SQR2	GBC's Letter, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Second New Subsidy Allegation Questionnaire Response," dated December 6, 2019.	GBC
December 6, 2019	Petitioner	Petitioner Comments on Resolute's and GOO's November 21, 2019 SQR Responses	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Questionnaire Responses Concerning Subsidy Programs Used by Resolute," dated December 6, 2019.	Resolute, GOO
December 6, 2019	Resolute	Resolute December 6, 2019 Non-Stumpage SQR - Grants	Resolute's Letter, "Softwood Lumber from Canada: Response of Resolute FP Canada Inc. to Supplemental (Non-Stumpage) Questionnaire," dated December 6, 2019.	Resolute
December 9, 2019	GOC	GOC December 9, 2019 NSA QR Response	GOC's Letter "Countervailing Duty Investigation of Certain Softwood Lumber from Canada: Response of the Government of Canada to the Second New Subsidy Allegation Questionnaire," dated December 9, 2019.	GOC

December 10, 2019	West Fraser	West Fraser 2nd NSA QR Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Response to Second New Subsidy Allegations Questionnaire for Mandatory Respondents," dated December 10, 2019.	West Fraser
December 10, 2019	Commerce	Canfor NS SQNR	Commerce's Letter, "Supplemental Questionnaire for Affiliation and Initial Questionnaire Responses," dated December 10, 2019.	Canfor
December 10, 2019	GBC	GBC SQR1	GBC's Letter, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Supplemental Questionnaire Response," dated December 10, 2019.	GBC
December 10, 2019	Commerce	GOA AESO Electricity Purchase Supplemental QNR	Commerce's Letter, "Supplemental Questionnaire for Alberta Energy Systems Operator (AESO) Purchase of Electricity," dated December 10, 2019.	GOA
December 10, 2019	GOA	GOA December 10, 2019 2nd NSA QR Response	GOA's Letter, "Certain Softwood Lumber Products from Canada: Government of Alberta's Second New Subsidy Allegation Questionnaire Response," dated December 10, 2019.	GOA
December 10, 2019	Commerce	GOA December 10, 2019 Supplemental QR	Commerce's Letter, "Certain Software Lumber from Canada: Alberta Supplemental Questionnaire," dated December 10, 2019.	GOA
December 11, 2019	Canadian Parties	Canadian Parties Comments on Petitioner's Comments on Commerce's LER Questionnaire	Canadian Parties' Letter, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Comments on Petitioner's Questionnaire Response Relating to Purported Log Export Restraints," dated December 11, 2019.	Canadian Parties
December 11, 2019	Commerce	GNB December 13, 2019 Supplemental QNR	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for the Government of New Brunswick," dated December 11, 2019.	GNB
December 11, 2019	J.D. Irving	J.D. Irving Comments on Petitioner's Response to November 22, 2019 Supplemental QR	J.D. Irving's Letter, "Certain Softwood Lumber Products from Canada: J.D. Irving's Comments on Petitioner's Response to the November 22, 2019, Supplemental Questionnaire," dated December 11, 2019.	J.D. Irving
December 13, 2019	Petitioner	Petitioner Comments on GOQ, GOO, GOA, West Fraser, and Resolute Supplemental QR Reponses	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Supplemental Questionnaire Responses," dated December 13, 2019.	Canadian Parties
December 16, 2019	Commerce	Canfor Stumpage SQNR	Commerce's Letter, "Certain Softwood Lumber for Canada: Canfor Corporation Responses," dated December 16, 2019.	Canfor
December 16, 2019	GOA	GOA December 10, 2019 Supplemental QR Response	GOA's Letter, "Certain Softwood Lumber Products from Canada: Government of Alberta's Stumpage Supplemental Questionnaire Response," dated December 16, 2019.	GOA
December 23, 2019	Commerce	GBC December 27, 2019 SQ	Commerce's Letter, "Certain Softwood Lumber from Canada: Supplemental Questionnaire on Government of British Columbia Stumpage Responses," dated December 23, 2019.	GBC
December 23, 2019	GOA	GOA AESO SQR	GOA's Letter, "Certain Softwood Lumber Products from Canada: Government of Alberta's AESO Supplemental Questionnaire Response," dated December 23, 2019.	GOA
December 27, 2019	GNB	GNB December 13, 2019 Supplemental QNR Response	GNB's Letter, "Certain Softwood Lumber Products from Canada: Supplemental Questionnaire Response," dated December 27, 2019.	GNB
December 27, 2019	Resolute	Resolute December 30, 2019 NFI Submission	Resolute's Letter, "Countervailing Duty First Administrative Review of Certain Softwood Lumber Products from Canada New Factual Information," dated December 27, 2019.	Resolute
December 31, 2019	Petitioner	Petitioner Benchmark Submission	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Benchmark Information," dated December 31, 2019.	Canadian Parties
December 31, 2019	GBC	GBC Benchmark Submission	GBC's Letter, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia Benchmark Information," dated December 31, 2019.	GBC
December 31, 2019	Commerce	GNS December 31, 2019 Supplemental QR	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for the Government of Nova Scotia," dated December 31, 2019.	GNS
December 31, 2019	Commerce	J.D. Irving December 31, 2019 Supplemental QR	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for J.D. Irving, Ltd.," dated December 31, 2019.	J.D. Irving
January 2, 2020	JDIL	JDIL Benchmark Submission	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Benchmark Submission," dated January 2, 2020	JDIIL
January 2, 2020	BCLTC	BLTC Benchmark Submission	BCLTC's Letter, "Certain Softwood Lumber Products from Canada: Submission of Factual Evidence Potentially Relevant to Measurement of Adequacy of Remuneration," dated January 2, 2020.	GBC
January 2, 2020	GNB	GNB Benchmark Submission	GNB's Letter, "Certain Softwood Lumber Products from Canada: Submission of Factual Information," dated January 2, 2020	GNB
January 3, 2020	GOC	GOC Benchmark Submission	GOC's Letter, "Certain Softwood Lumber from Canada: Submission of Factual Information to Measure the Adequacy of Remuneration," dated January 2, 2020	GOC
January 3, 2020	Canfor	Canfor NS SQR	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Non-Stumpage Supplemental Questionnaire Response," dated January 3, 2020.	Canfor
January 3, 2020	West Fraser	West Fraser January 3, 2020 SQR	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Response to the Department of Commerce's Supplemental Questionnaire for West Fraser's Responses Dated January 3, 2020," dated January 15, 2020	Commerce
January 6, 2020	Commerce	GBC January 6, 2020 SQ	Commerce's Letter, "Certain Software Lumber from Canada: Supplemental Questionnaire on Government of British Columbia Stumpage Responses," dated Janauary 6, 2020.	GBC

January 6, 2020	Petitioner	Petitioner Pre-Prelim Comments	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Pre-Preliminary Comments," dated January 6, 2020.	Commerce
January 7, 2020	Canfor	Canfor Stumpage SQR	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Stumpage Supplemental Questionnaire Response," dated January 7, 2020.	Canfor
January 8, 2020	Canfor	Canfor Pre-Prelim Comments	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Pre-Preliminary Comments," dated January 8, 2020.	Canfor
January 8, 2020	GOO	GOO Pre-Prelim Comments	GOO's Letter, "Certain Softwood Lumber Products from Canada: Pre-Preliminary Comments," dated January 8, 2020.	Commerce
January 9, 2020	Petitioner	Petitioner's Comments on Resolute's December 30, 2019 NFI Submission	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Response to Resolute FP Canada Inc. New Factual Information," dated January 9, 2020.	Commerce
January 10, 2020	GBC	GBC Benchmark Rebuttal	GBC's Letter, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia Benchmark Information," dated January 10, 2020.	Petitioner
January 13, 2020	Commerce	GBC January 14, 2020 SQ	Commerce's Letter, "Certain Software Lumber from Canada: Supplemental Questionnaire on Government of British Columbia Stumpage Responses," dated January 14, 2020.	GBC
January 13, 2020	GBC	GBC SQR2	GBC's Letter, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Response to the Department's December 27, 2019 Supplemental Questionnaire," dated January 13, 2020.	GBC
January 15, 2020	Commerce	Clarification of Company Names Memorandum	Memorandum, "Administrative Reviews of the Antidumping and Countervailing Duty Orders on Certain Softwood Lumber Products from Canada: Clarification of Company Names & Addresses," dated January 15, 2020.	Interested Parties
January 15, 2020	GNS	GNS Supplemental Response	GNS Letter, "Softwood Lumber from Canada: Questionnaire Response Concerning Silviculture Reimbursement to J.D. Irving, Ltd.," dated January 15, 2020.	GNS
January 15, 2020	Commerce	Intent to Rescind In Part Memorandum	Memorandum, "Intent to Rescind the 2017/2018 Administrative Review, in Part," dated January 15, 2020.	Interested Parties
January 15, 2020	West Fraser	WF SQR	West Fraser Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Response to the Department of Commerce's Supplemental Questionnaire for West Fraser's Responses Dated January 3, 2020," dated January 15, 2020.	West Fraser
January 16, 2020	GBC	GBC SQR3	GBC's Letter, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Response to the Department's January 6, 2020 Supplemental Questionnaire," dated January 16, 2020.	GBC
January 21, 2020	GBC	GBC SQR4	GBC's Letter, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Response to the Department's January 14, 2020 Supplemental Questionnaire," dated January 21, 2020.	GBC
January 22, 2020	Tolko	Tolko Comments on Intent to Rescind In Part Memorandum	Tolko's Letter, "Certain Softwood Lumber Products from Canada: Comments on Notice of Intent to Rescind Memorandum," dated January 22, 2020.	Commerce
January 23, 2020	GNB	GNB SQR 2	GNB's Letter, "Certain Softwood Lumber Products from Canada: Supplemental Questionnaire Responses," dated January 23, 2020.	GNB
January 31, 2020	Commerce	Alberta 1st AR Market Memorandum	Memorandum, "Alberta 1st AR Market Memorandum," dated January 31, 2020.	GOA
January 31, 2020	Commerce	All Others Rate Prelim Memorandum	Memorandum, "Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada: All Others Rate Calculation for the Preliminary Results," dated January 31, 2020	Interested Parties
January 31, 2020	Commerce	Canfor Preliminary Calculation Memorandum	Memorandum, "Preliminary Results Calculations for Canfor," dated January 31, 2020.	Canfor
January 31, 2020	Commerce	JDIL Preliminary Calculation Memorandum	Memorandum, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Preliminary Results Calculations for J.D. Irving, Ltd.," dated January 31, 2020.	J.D. Irving
January 31, 2020	Commerce	Lumber V AR1 Prelim Results	Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2017–2018, and accompanying Preliminary Decision Memorandum, dated January 31, 2020.	Interested Parties
January 31, 2020	Commerce	Nova Scotia Benchmark Calculation Memorandum for Preliminary Results	Memorandum, "Nova Scotia Benchmark Calculation Memorandum for the Preliminary Results," dated January 31, 2020.	GNS
January 31, 2020	Commerce	New Brunswick 1st AR Prelim Market Memorandum	Memorandum, "Preliminary Determination Memorandum on New Brunswick Private Stumpage Market Distortion," dated January 31, 2020.	
January 31, 2020	Commerce	Ontario AR1 Market Memorandum	Memorandum, "Preliminary Determination Memorandum on Ontario Private Stumpage Market Distortion," dated January 31, 2020.	GOO
January 31, 2020	Commerce	Québec Market Memorandum	Memorandum, "Preliminary Determination Memorandum on Quebec Private Stumpage Market Distortion," dated January 31, 2020.	GOQ
January 31, 2020	Commerce	Québec Specificity Memorandum	Memorandum, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Specificity Analysis of Québec Grant & Tax Programs," dated January 31, 2020.	GOQ
January 31, 2020	Commerce	Reply to Rescind Comments Memorandum	Memorandum, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Reply to Comments Regarding Notice of Intent to Rescind Review, In Part," dated January 31, 2020	Interested Parties

January 31, 2020	Commerce	Resolute Preliminary Calculation Memorandum	Memorandum, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Preliminary Results Calculations for Resolute FP Canada Inc.," dated January 31, 2020.	Resolute
January 31, 2020	Commerce	West Fraser Preliminary Calculation Memorandum	Memorandum, "Preliminary Results Calculations for West Fraser Mills Ltd.," dated January 31, 2020.	West Fraser
February 5, 2020	Commerce	GOO February 5, 2020 SQ	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for the GOO," dated February 5, 2020	GOO
February 5, 2020	Commerce	GOQ February 5, 2020 SQ	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for the GOQ," dated February 5, 2020	GOQ
February 5, 2020	Commerce	Resolute February 5, 2020 SQ	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for Resolute," dated February 5, 2020	Resolute
February 10, 2020	Petitioner	Petitioner Hearing Request	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Hearing Request," dated February 10, 2020	Commerce
February 12, 2020	Commerce	GBC February 12, 2020 SQ	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for Post-Preliminary Analysis," dated February 12, 2020	GBC
February 13, 2020	Commerce	NSA Analysis Memorandum - Logs for LTAR	Memorandum, "Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada: Analysis of New Subsidy Allegations," dated February 13, 2020	Interested Parties
February 18, 2020	GOA	GOA Hearing Request	GOA's Letter, "Certain Softwood Lumber Products from Canada: Hearing Request," dated February 18, 2020	Commerce
February 19, 2020	GOQ	GOQ February 19, 2020 SQR	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Quebec's Response to the Department's February 5, 2020 Third Supplemental Questionnaire," dated February 19, 2020	Commerce
February 24, 2020	Commerce	GBC February 24, 2020 SQ	Commerce's Letter, "Certain Softwood Lumber from Canada: Supplemental Questionnaire on Government of British Columbia Stumpage Responses," dated February 24, 2020.	GBC
February 26, 2020	Canfor	Canfor Post Prelim SQR	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Post-Preliminary Supplemental Questionnaire Response," dated February 26, 2020	Canfor
February 26, 2020	GBC	GBC Post Prelim SQR	GBC's Letter, First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Response to the Department's February 12, 2020 Supplemental Questionnaire," dated February 26, 2020	GBC
February 26, 2020	Commerce	West Fraser February 28, 2020 SQ	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Post-Preliminary Results Supplemental Questionnaire," dated February 28, 2020	West Fraser
March 2, 2020	Canadian Parties	Canadian Parties Hearing Request	GOC's Letter, "Certain Softwod Lumber Products from Canada: Request for Hearing," dated March 2, 2020	Commerce
March 4, 2020	GOA	GOA Post Prelim SQR1	GOA's Letter,"Certain Softwood Lumber Products from Canada: Government of Alberta's Response to the Department's February 12, 2020 Post-Preliminary Supplemental Questionnaire," dated March 4, 2020	GOA
March 4, 2020	GOO	GOO March 4, 2020 SQR Response	GOO's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Ontario to the Department's Post-Preliminary Determination Supplemental Questionnaire," dated March 4, 2020	GOO
March 4, 2020	Resolute	Resolute March 4, 2020 SQR Response	Resolute's Letter, "Countervailing Duty First Administrative Review of Certain Softwood Lumber Products from Canada: Resolute's Response to the Department's February 5, 2020 Supplemental Questionnaire," dated March 4, 2020	Resolute
March 5, 2020	GOA	GOA Post Prelim SQR2	GOA's Letter, "Certain Softwood Lumber Products from Canada: Government of Alberta's Response to the Department's February 13, 2020 Post-Preliminary Supplemental Questionnaire," dated March 4, 2020	GOA
March 5, 2020	Commerce	GOO March 5, 2020 SQ	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire," dated March 5, 2020	GOO
March 5, 2020	Commerce	Resolute March 5, 2020 SQ	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire," dated March 5, 2020	Resolute
March 9, 2020	GBC	GBC SQR5	GBC's Letter,"First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Response to the Department's February 24, 2020 Supplemental Questionnaire," dated March 9, 2020.	GBC
March 10, 2020	Commerce	GOC March 10, 2020 LER SQ	Commerce's Letter, "Certain Softwood Lumber from Canada: Log Export Restraint Questionnaire," dated March 10, 2020	GOC
March 10, 2020	Commerce	Resolute March 10, 2020 LER SQ	Commerce's Letter, "Certain Softwood Lumber from Canada: Log Export Restraint Questionnaire," dated March 10, 2020	Resolute
March 11, 2020	West Fraser	WF Post Prelim SQR1	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Response to the Department of Commerce's Post-Preliminary Results Supplemental Questionnaire Dated February 28, 2020"	West Fraser
March 12, 2020	Commerce	GOO March 12, 2020 SQ	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire," dated March 12, 2020	GOO
March 12, 2020	Commerce	GOQ March 12, 2020 SQ	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire," dated March 12, 2020	GOQ
March 12, 2020	Commerce	Resolute March 12, 2020 SQ	Commerce's Letter, "Administrative Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire," dated March 12, 2020	Resolute

March 24, 2020	GOO	GOO March 24, 2020 SQR Response to March 12th SQ	GOO's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Ontario to the Department's Third Post-Preliminary Determination Supplemental Questionnaire," dated March 24, 2020	GOO
March 24, 2020	GOO	GOO March 24, 2020 SQR Response to March 5th SQ	GOO's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Ontario to the Department's Second Post-Preliminary Determination Supplemental Questionnaire," dated March 24, 2020	GOO
March 24, 2020	Resolute	Resolute March 24, 2020 SQR Response to March 5th SQ	Resolute's Letter, "Countervailing Duty First Administrative Review of Certain Softwood Lumber Products from Canada: Resolute's Response to the Department's March 5, 2020 Supplemental Questionnaire," dated March 24, 2020	Resolute
March 26, 2020	Petitioner	Petitioner Rebuttal To GBC SQR5	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Supplemental Questionnaire Response," dated March 26, 2020.	GBC
March 31, 2020	Resolute	Resolute March 31, 2020 SQR Response to March 12th SQ	Resolute's Letter, "Countervailing Duty First Administrative Review of Certain Softwood Lumber Products from Canada: Resolute's Response to the Department's March 12, 2020 Supplemental Questionnaire," dated March 31, 2020	Resolute
April 2, 2020	GOQ	GOQ April 2, 2020 SQR Response to March 12 SQ	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Quebec's Response to the Department's March 12, 2020 Fourth Supplemental Questionnaire," dated April 2, 2020	GOQ
April 3, 2020	Petitioner	Petitioner Comments to the GOO's March 24th SQR Response	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on the Government of Ontario's 2nd Post-Preliminary Supplemental Questionnaire Response," dated April 3, 2020	GOO
April 6, 2020	West Fraser	WF Post Prelim SQR2	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Response to the Department of Commerce's Post-Preliminary Results Supplemental Questionnaire Dated April 1, 2020," dated April 6, 2020	West Fraser
April 8, 2020	GOA	GOA LER Response	GOO's Letter, "Certain Softwood Lumber Products from Canada: Government of Alberta's Log Export Restraint Questionnaire Response," dated April 8, 2020	GOA
April 8, 2020	GOO	GOO LER Response	GOO's Letter, "Certain Softwood Lumber Products From Canada: Response of the Government of Ontario to the Department's Log Export Restraint Questionnaire," dated April 8, 2020	GOO
April 8, 2020	GOQ	GOQ LER Response	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Québec's Response to the Department's March 10, 2020 Log Export Restraint Questionnaire," dated April 8, 2020	GOQ
April 8, 2020	JD Irving	JD Irving LER Response	JD Irving's Letter, "Certain Softwood Lumber Products from Canada: Response to the March 10, 2020, Log Export Restraint Questionnaire," dated April 8, 2020	ID Irving
April 8, 2020	West Fraser	West Fraser LER Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Response to the Department of Commerce's Log Export Restraint Questionnaire Dated March 10, 2020," dated April 8, 2020	West Fraser
April 8, 2020	GNB	GNB LER QR	GNB's Letter, "Certain Softwood Lumber Products from Canada: Response to Information Requested on Log Export Restraints Programs," dated April 8, 2020	GNB
April 9, 2020	GOC	GOC LER Response	GOC's Letter, Countervailing Duty Administrative Review of Certain Softwood Lumber Products from Canada: Government of Canada's Federal Appendix to the Department of Commerce's Log Export Restraint Questionnaire," dated April 9, 2020	GOC
April 13, 2020	Resolute	Resolute LER Response	Resolute's Letter, "Countervailing Duty First Administrative Review of Certain Softwood Lumber Products from Canada: Resolute's Response to Log Export Restraint Questionnaire," dated April 13, 2020	Resolute
April 13, 2020	Commerce	Resolute LER SQ2	Commerce's Letter, "Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Clarification and Request for Additional Information," dated April 13, 2020	Resolute
April 14, 2020	GOO	GOO Comments to Petitioner's April 3rd Filing	GOO's Letter, "First Countervailing Duty Administrative Review of Softwood Lumber from Canada: Factual Information in Response to Petitioner's Comments to Government of Ontario's March 24, 2020 Questionnaire Response," dated April 14, 2020	Petitioner
April 14, 2020	Resolute	Resolute Comments to Petitioner's April 3rd Filing	Resolute's Letter, "Resolute's Response to Petitioner's Comments on the Government of Ontario's 2nd Post-Preliminary Supplemental Questionnaire Response," dated April 14, 2020	Petitioner
April 17, 2020	Commerce	LER Benchmark Request	Memorandum, "Countervailing Duty (CVD) Order on Certain Softwood Lumber from Canada: 1st Administrative Review: Log Export Restraints: Benchmark Submission Request," dated April 17, 2020	Interested Parties
April 20, 2020	Commerce	GOC LER SQ2	Commerce's Letter, "Countervailing Duty (CVD) Order on Certain Softwood Lumber from Canada: 1st Administrative Review: Log Export Restraints: Clarification and Request for Additional Information ," dated April 13, 2020	
April 23, 2020	Commerce	Resolute LER SQ2 Response	Resolute's Letter, "Countervailing Duty First Administrative Review of Certain Softwood Lumber Products from Canada: Resolute's Response to Supplemental Log Export Restraint Questionnaire," dated April 23, 2020	Resolute
April 23, 2020	Commerce	Resolute LER SQ3	Commerce's Letter, "Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Request for Confirmation," dated April 23, 2020	Resolute
April 24, 2020	Commerce	April 24th Tolling Memorandum	Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020	Interested Parties

April 27, 2020	Petitioner	Petitioner Comments on Post-Prelim SQR Responses	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Post-Preliminary Supplemental Questionnaire Responses," dated April 27, 2020	Commerce
May 13, 2020	Commerce	Canfor/West Fraser Post-Prelim Decision Memorandum	Memorandum, "Post-Preliminary Decision Memorandum for Canfor Corporation and West Fraser Mills Ltd.," dated May 13, 2020	Interested Parties
May 13, 2020	Commerce	Canfor Post-Preliminary Calculation Memorandum	Memorandum, "Post-Preliminary Results Calculations for Canfor Corporation and its cross-owned affiliates," dated May 13, 2020	Canfor
May 13, 2020	Commerce	West Fraser Post-Preliminary Calculation Memorandum	Memorandum, "Post-Preliminary Results Calculations for West Fraser Corporation and its cross-owned affiliates," dated May 13, 2020	West Fraser
May 15, 2020	Commerce	Briefing Schedule	Memorandum, "First Administrative Review of Countervailing Duty Order on Certain Softwood Lumber from Canada: Briefing Schedule for All Issues Except Logs for Less Than Adequate Remuneration Programs," dated May 15, 2020	Interested Parties
May 15, 2020	Commerce	Ontario Tax Program Specificity Memorandum	Memorandum, "First Administrative Review of Countervailing Duty Order on Certain Softwood Lumber from Canada: Specificity Analysis of Ontario Tax Program," dated May 15, 2020	GOO
May 15, 2020	Commerce	Resolute Post-Prelim Calculations	Memorandum, "First Administrative Review of Countervailing Duty Order on Certain Softwood Lumber from Canada: Post-Preliminary Results Calculations for Resolute FP Canada Inc.," dated May 15, 2020	Resolute
May 15, 2020	Commerce	Resolute Post-Prelim Decision Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Post-Preliminary Decision Memorandum for Resolute FP Canada," dated May 15, 2020	Resolute
May 19, 2020	Canadian Parties	Canadian Parties Request to Modify Briefing Schedule	Canadian Parties' Letter, "Certain Softwood Lumber Products from Canada: Request to Modify Briefing Schedule," dated May 19, 2020	Commerce
May 20, 2020	Commerce	Draft Customs Instructions	Memorandum, "First Administrative Review of Countervailing Duty Order on Certain Softwood Lumber from Canada: Draft Customs Instructions," dated May 20, 2020	Interested Parties
May 20, 2020	Petitioner	Petitioner Comments on Canadian Parties Request to Modify Briefing Schedule	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on the Canadian Parties' Request to Modify Briefing Schedule," May 20, 2020	Commerce
May 20, 2020	Commerce	Revised Briefing Schedule	Memorandum, "First Administrative Review of Countervailing Duty Order on Certain Softwood Lumber from Canada: Revised Briefing Schedule," dated May 20, 2020	Interested Parties
May 26, 2020	Commerce	JDIL Calculations Missing Attachment Memo	Memorandum, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; Calculations for J.D. Irving, Limited: Missing Attachment," dated May 26, 2020	JDIL
May 27, 2020	Canadian Parties	Canadian Parties Second Request to Modify Briefing Schedule	Canadian Parties' Letter, "Certain Softwood Lumber Products from Canada: Second Request to Modify Briefing Schedule," dated May 27, 2020	Commerce
May 28, 2020	Commerce	Briefing Schedule Extension	Memorandum, "First Administrative Review of Countervailing Duty Order on Certain Softwood Lumber from Canada: Extension for Briefing Schedule," dated May 28, 2020	Interested Parties
June 2, 2020	GNB	GNB Comments on Draft Customs Instructions	GNB's Letter, "Certain Softwood Lumber Products from Canada: Comments on Draft Customs Instructions," dated June 2, 2020	Commerce
June 3, 2020	Commerce	Extension of Final Results	Memorandum, "Certain Softwood Lumber Products from Canada: Extension of Deadline for Final Results of the 2017-2019 Countervailing Duty Administrative Review," dated June 3, 2020	Interested Parties
June 8, 2020	Canfor	Canfor June 8, 2020 Case Brief	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Case Brief," dated June 8, 2020	Canfor
June 8, 2020	Carrier	Carrier Comments to Draft Customs Instructions	Carrier's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Letter in Lieu of Case Brief," dated June 8, 2020	Commerce
June 8, 2020	GBC	GBC June 8, 2020 Vol III Case Brief	GOC's and GBC's Letter, Volume 3, "Canadian Parties' Joint Case Brief - GOC/GBC Log Export Permitting Process," dated June 8, 2020	Commerce
June 8, 2020	GBC	GBC June 8, 2020 Vol V Case Brief	GBC's Letter, Volume 5, "Canadian Parties' Joint Case Brief - GBC/BCLTC," dated June 8, 2020	Commerce
June 8, 2020	GNB	GNB June 8, 2020 Vol VI Case Brief	GNB's Letter, Volume 6, "Canadian Parties' Joint Case Brief - GNB," dated June 8, 2020	Commerce
June 8, 2020	GOA	GOA June 8, 2020 Vol IV Case Brief	GOA's Letter, Volume 4, "Canadian Parties' Joint Case Brief - GOA/Alberta Softwood Lumber Trade CouncilJune 8, 2020	Commerce
June 8, 2020	GOC	GOC June 8, 2020 Vol I Case Brief	GOC's Letter, Volume 1, "Canadian Parties' Joint Case Brief - Common Issues," dated June 8, 2020	Commerce
June 8, 2020	GOC	GOC June 8, 2020 Vol II Case Brief	GOC's Letter, Volume 2, "Canadian Parties' Joint Case Brief," dated June 8, 2020	Commerce
June 8, 2020	GOO	GOO June 8, 2020 Vol VII Case Brief	GOO's Letter, Volume 7, "Canadian Parties' Joint Case Brief - GOO," dated June 8, 2020	Commerce
June 8, 2020	GOQ	GOQ June 8, 2020 Vol VIII Case Brief	GOQ's Letter, Volume 8, "Canadian Parties' Joint Case Brief - GOQ," dated June 8, 2020	Commerce
June 8, 2020	Petitioner	Petitioner June 8, 2020 Case Brief	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Case Brief," dated June 8, 2020	Commerce
June 8, 2020	Resolute & Central Canada	Resolute June 8, 2020 Case Brief	Resolute & Central Canada's Letter, "Countervailing Duty First Administrative Review of Certain Softwood Lumber Products from Canada: Non-Stumpage Issues Case Brief on behalf of Resolute and Central Canada," dated June 8, 2020.	Commerce
June 8, 2020	Sierra Pacific	Sierra Pacific June 8, 2020 Case Brief	Sierra Pacific's Letter, "Certain Softwood Lumber Products from Canada: Case Brief," dated June 8, 2020	Sierra Pacific

June 8, 2020	West Fraser	West Fraser June 8, 2020 Case Brief	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Case Brief," dated June 8, 2020	West Fraser
June 8, 2020	JDIL	JDIL June 8, 2020 Case Brief	JDIL's Letter, "Softwood Lumber Products from Canada: Case Brief," dated June 8, 2020	JDIL
June 8, 2020	Carrier	Carrier June 8, 2020 Case Brief	Carrier's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Letter in Lieu of Case Brief," dated June 8, 2020	Canadian Parties
June 8, 2020	Canfor	Canfor June 8, 2020 Case Brief	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Case Brief," dated June 8, 2020	Canfor
June 10, 2020	Petitioner	Petitioner Request for Rebuttal Brief Extension	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Extension Request to Submit Rebuttal Brief," dated June 10, 2020	Commerce
June 11, 2020	Commerce	Extension for Rebuttal Briefs	Memorandum, "First Administrative Review of Countervailing Duty Order on Certain Softwood Lumber from Canada: Extension of Time to File Rebuttal Briefs," dated June 11, 2020	Interested Parties
June 16, 2020	GNB	GNB LER SQ2 Response	GNB's Letter, "Certain Softwood Lumber Products from Canada: Response to Clarification and Request for Additional Information on Log Export Restraints Programs Questionnaire Response," dated June 16, 2020	GNB
June 16, 2020	GOO	GOO LER SQ2 Response	GOO's Letter, "Certain Softwood Lumber Products From Canada: Response of the Government of Ontario to the Department's April 20, 2020 Request for Clarification and Additional Information," dated June 16, 2020	GOO
June 16, 2020	Resolute	Resolute LER SQ3 Response	Resolute's Letter, "Countervailing Duty First Administrative Review of Certain Softwood Lumber Products from Canada: Resolute's Response to April 23, 2020 Letter Regarding Ontario Crown Logs," dated June 16, 2020	Resolute
June 18, 2020	GNB	GNB LER Benchmark Submission	GNB's Letter, "Certain Softwood Lumber Products from Canada: Log Export Restraints Programs Benchmark Submission," dated June 18, 2020	GNB
June 18, 2020	GOQ	GOQ LER Benchmark Submission	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Québec's Response to the Department's Solicitation of Log Price Benchmarks," dated June 18, 2020	GOQ
June 18, 2020	JD Irving	JD Irving LER Benchmark Submission	JD Irving's Letter, "Certain Softwood Lumber Products from Canada: Log Export Restraint Benchmark Submission," dated June 18, 2020	JD Irving
June 18, 2020	GOA	GOA LER Benchmark Submission	GOA's Letter, "Certain Softwood Lumber Products from Canada: Factual Information Submission to Measure Adequacy of Remuneration Concerning Alberta's Log Export Authorization Requirement," dated June 18, 2020	GOA
June 25, 2020	Canadian Parties	Canadian Parties LER Pre-Prelim Comments & Response to Petitioner Comments on Post-Prelim SQR Responses	Canadian Parties' Letter, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Pre-Preliminary Comments and Response to Petitioner's Comments on Post-Preliminary Supplemental Questionnaire Responses Relating to Purported Log Export Restraints," dated June 25, 2020	Interested Parties
June 25, 2020	Canfor	Canfor June 25, 2020 Rebuttal Brief	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Rebuttal Brief," dated June 25, 2020	Canfor
June 25, 2020	GBC	GBC June 25, 2020 Vol I Rebuttal Brief	GBC's Letter, Volume 1, "Countervailing Duty Review of Certain Softwood Lumber Products from Canada: Canadian Parties' Rebuttal Brief - GBC/BCLTC," dated June 25, 2020	Commerce
June 25, 2020	GNB	GNB June 25, 2020 Vol II Rebuttal Brief	GNB's Letter, Volume 2, "Countervailing Duty Review of Certain Softwood Lumber Products from Canada: Canadian Parties' Rebuttal Brief - GNB," dated June 25, 2020	Commerce
June 25, 2020	JD Irving	JDIL June 25, 2020 Rebuttal Brief	JD Irving's Letter, "Softwood Lumber Products from Canada: Rebuttal Brief," dated June 25, 2020	JD Irving
June 25, 2020	Petitioner	Petitioner June 25, 2020 Rebuttal Brief	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief," dated June 25, 2020	Commerce
June 25, 2020	Sierra Pacific	Sierra Pacific June 25, 2020 Rebuttal Brief	Sierra Pacific's Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief," dated June 25, 2020	Commerce
June 25, 2020	West Fraser	West Fraser June 25, 2020 Rebuttal Brief	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Rebuttal Case Brief," dated June 25, 2020.	Commerce
June 29, 2020	Petitioner	Petitioner LER Benchmark & Response to Canadian Parties June 25, 2020 Submission	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Response to Canadian Parties' Pre-Preliminary Comments and Benchmark Submissions for the Log Export Restraint Programs in Alberta, Ontario, Quebec, and New Brunswick," dated June 29, 2020	
July 10, 2020	Commerce	LER Calculation Memo	Memorandum, "Calculation of Benefit for Entrustment and Direction of CrownOrigin Logs for Less than Adequate Remuneration (LTAR)," dated July 10, 2020.	
July 10, 2020	Commerce	LER Post-Preliminary Decision Memo	Memorandum, "Post-Preliminary Decision Memorandum for Entrustment and Direction of Crown-Origin Logs for Less than Adequate Remuneration (LTAR) Allegations," dated July 10, 2020.	
July 13, 2020	Commerce	Non-BC Stumpage & LER Issues Briefing Schedule	Memorandum, "Briefing Schedule for Alberta, Ontario, Quebec, and New Brunswick Provision of Stumpage and Entrustment & Direction of Logs Issues," dated July 13, 2020	
July 21, 2020	Commerce	July 21 Tolling Memorandum	Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020	Interested Parties
July 29, 2020	Canfor	Canfor July 29, 2020 Case Brief	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Alberta Stumpage Case Brief," dated July 29, 2020	Canfor
July 29, 2020	GNB	GNB July 29, 2020 Vol III Case Brief	GNB's Letter, "Volume III: Case Brief of the Government of New Brunswick," dated July 29, 2020	GNB

July 29, 2020	GOA	GOA July 29, 2020 Vol II Case Brief	GOA's Letter, "Volume II: Case Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council," dated July 29, 2020	GOA
July 29, 2020	GOC	GOC July 29, 2020 Vol I Case Brief	GOC's Letter, "Countervailing Duty Review of Certain Softwood Lumber Products from Canada: Canadian Parties' Joint Case Brief," dated July 29, 2020	
July 29, 2020	GOO	GOO July 29, 2020 Vol IV Case Brief	GOO's Letter, "Volume IV: Case Brief of the Government of Ontario," dated July 29, 2020	GOO
July 29, 2020	GOQ	GOQ July 29, 2020 Vol V Case Brief	GOQ's Letter, "Volume V: Stumpage and LER Case Brief of the Government of Quebec," dated July 29, 2020	GOQ
July 29, 2020	JD Irving	JDIL July 29, 2020 Case Brief	JD Irving's Letter, "Softwood Lumber Products from Canada: Stumpage Case Brief," dated July 29, 2020	JD Irving
July 29, 2020	Petitioner	Petitioner July 29, 2020 Case Brief	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Eastern Canadian Provinces Stumpage Case Brief," dated July 29, 2020	Petitioner
July 29, 2020	Resolute	Resolute July 29, 2020 Case Brief	Resolute's Letter, "Countervailing Duty First Administrative Review of Certain Softwood Lumber Products from Canada: Stumpage Issues Case Brief on behalf of Resolute and Central Canada," dated July 29, 2020	Petitioner
July 29, 2020	West Fraser	West Fraser July 29, 2020 Case Brief	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Case Brief," dated July 29, 2020	West Fraser
August 10, 2020	Canfor	Canfor August 10, 2020 Rebuttal Brief	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Alberta Stumpage Rebuttal Brief," dated August 10, 2020	Canfor
August 10, 2020	GNS	GNS August 10, 2020 Rebuttal Brief	GNS's Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief," dated August 10, 2020	GNS
August 10, 2020	GOC	GOC August 10, 2020 Vol I Rebuttal Brief	GOC's Letter, "Countervailing Duty Review of Certain Softwood Lumber Products from Canada: Canadian Parties' Joint Rebuttal Brief," dated August 10, 2020	GOC
August 10, 2020	GOA	GOA August 10, 2020 Vol II Rebuttal Brief	GOA's Letter, "Volume II: Rebuttal Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council," dated August 10, 2020	GOA
August 10, 2020	GNB	GNB August 10, 2020 Volume III Rebuttal Brief	GNB's Letter, "Volume III: Rebuttal Brief of the Governnment of New Brunswick," dated August 20, 2020	GNB
August 10, 2020	GOQ	GOQ August 10, 2020 Volume IV Rebuttal Brief	GOQ's Letter, "Stumpage and LER Rebuttal Brief of the Government of Quebec," dated August 20, 2020	GOQ
August 10, 2020	JD Irving	JDIL August 10, 2020 Rebuttal Brief	JD Irving's Letter, "Softwood Lumber Products from Canada: Rebuttal to Petitioner's Stumpage Case Brief," dated August 10, 2020	JD Irving
August 10, 2020	Petitioner	Petitioner August 10, 2020 Rebuttal Brief	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief to July 29, 2020 Canadian Parties' Case Briefs," dated August 10, 2020	Petitioner
August 10, 2020	Resolute	Resolute August 10, 2020 Rebuttal Brief	Resolute's Letter, "Countervailing Duty First Administrative Review of Certain Softwood Lumber Products from Canada: Stumpage Issues Rebuttal Brief on behalf of Resolute and Central Canada," dated August 10, 2020	Petitioner
August 10, 2020	Sierra Pacific	Sierra Pacific August 10, 2020 Rebuttal Brief	Sierra Pacific's Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief on Non-BC Stumpage and Log Export Restraint Programs," dated August 10, 2020	Sierra Pacific
August 28, 2020	GOC	Canadian Parties Second Hearing Request	GOC's Letter, "Countervailing Duty Administrative Review of Certain Softwood Lumber Products from Canada: Request to Schedule Hearing," dated August 28, 2020	Canadian Parties
October 16, 2020	Commerce	Hearing Transcript	Transcript of the Hearing held on October 7, 2020 in the First Administrative Review of the CVD Order on Cretain Softwood Lumber Products from Canada	Interested Parties
November 23, 2020	Commerce	JDIL Final Calculation Memorandum	Memorandum, "Final Results Calculations for JDIL," dated November 23, 2020.	JDIL
November 23, 2020	Commerce	Canfor Final Calculation Memorandum	Memorandum, "Final Results Calculations for Canfor," dated November 23, 2020.	Canfor
November 23, 2020	Commerce	West Fraser Final Calculation Memorandum	Memorandum, "Final Results Calculations for West Fraser Mills, Ltd. and its cross-owned affiliates," dated November 23, 2020.	West Fraser
November 23, 2020	Commerce	Final Non-Selected Rate Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Selected Companies Rate Calculation for the Final Results," dated concurrently with this memorandum.	Interested Parties
November 23, 2020	Commerce	Final Québec Specificity Memorandum	Memorandum, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Specificity Analysis of Québec Grant & Tax Programs," dated concurrently with this memorandum.	GOQ
November 23, 2020	Commerce	New Brunswick 1st AR Final Market Memorandum	Memorandum, "Final Determination Memorandum on New Brunswick Private Stumpage Market Distortion," dated November 23, 2020.	GNB
November 23, 2020	Commerce	Resolute Final Calculation Memorandum	Memorandum, "First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Final Results Calculations for Resolute FP Canada Inc.," dated concurrently with this memorandum.	Resolute
November 23, 2020	Commerce	DBH Analysis Memorandum	Memorandum, "DBH Analysis Memorandum," dated November 23, 2020	GOQ
November 23, 2020	Commerce	Nova Scotia Final Benchmark Calculation Memorandum	Memorandum, "Nova Scotia Benchmark Calculation Memorandum for the Final Results," dated November 23, 2020	Interested Parties
November 23, 2020	Commerce	British Columbia Stumpage Memorandum	Memorandum, "British Columbia Stumpage Memorandum," dated November 23, 2020.	Interested Parties
23-Nov-20	Commerce	DBH Analysis Memorandum	Memorandum, "DBH Analysis Memorandum," dated November 23, 2020	Interested Parties