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1st Administrative Review
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Office III: Lumber Team

December 13, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum: Final Results of Administrative
Review: Certain Softwood Lumber Products from Canada

SUMMARY

We have analyzed the comments and rebuttal comments¹ of interested parties in the final results of the above-mentioned countervailing duty (CVD) administrative review covering the period May 22, 2002, through March 31, 2003 (the POR). As a result of our analysis, we have made certain modifications to our Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products From Canada, 69 FR 33204 (June 14, 2004) (Preliminary Results). The “Methodology and Background Information” and “Analysis of Programs” sections below describe the decisions made in this CVD administrative review. Also below is the “Analysis of Comments” section in which we discuss the issues raised by interested parties. We recommend that you approve the positions we have developed below in this memorandum.

METHODOLOGY AND BACKGROUND INFORMATION

I. Company-Specific Reviews

As noted in the Preliminary Results, the Department determined to calculate company-specific rates, to the extent practicable. See the March 15, 2004, Memorandum to James J. Jochum, Assistant

¹ Case briefs and rebuttal briefs were submitted to the Department on October 19, 2004, and October 27, 2004, respectively.

Secretary, for Import Administration, from Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, concerning Selection of Companies for Company-Specific Reviews (Company Selection Memorandum).²

In the Preliminary Results we stated that, to provide parties an opportunity to comment, the Department intended to issue a decision memorandum related to subsidy rate calculations involving the companies selected for individual review prior to issuing the final results of this review. See 69 FR at 33206. On October 8, 2004, we issued a memorandum detailing our analysis of Fontaine Inc. (formerly J.A. Fontaine), Les Produits Forestiers Dube Inc., Scierie West Brome Inc., and Scierie Lapointe & Roy Ltee., and announced our intent to rescind the reviews with respect to Bear Lumber Ltd., Bois Daaquam Inc., Cambie Cedar Products Ltd., Midway Lumber Mills Ltd., Nickel Lake Lumber, Twin Rivers Cedar Products Ltd., and Uphill Wood Supply Inc. See Memorandum to James J. Jochum, Assistant Secretary for Import Administration, from Jeffrey May, Deputy Assistant Secretary for Import Administration, concerning Preliminary Results of Company-Specific Reviews and Notice of Intent to Partially Rescind Certain Company-Specific Reviews (Company-Specific Preliminary Memorandum).

We received comments from numerous parties regarding our March 15, 2004, selection of only 11 companies for company-specific reviews. In addition, parties commented on our decision not to conduct company-specific reviews of certain companies and our preliminary determination to rescind the reviews of seven of the 11 companies. See Comments 1 - 9 and the Department's positions in response thereto.

For these final results, we continue to find that Fontaine Inc., Les Produits Forestiers Dube Inc., and Scierie West Brome Inc., each has a company-specific net subsidy rate of zero percent ad valorem and that Scierie Lapointe & Roy Ltee. has a company-specific de minimis net subsidy rate. See the December 13, 2004, Company-Specific Final Calculations Memorandum. Further, for the reasons set forth in the Company-Specific Preliminary Memorandum, we have rescinded the company-specific reviews of Bear Lumber Ltd., Bois Daaquam Inc., Cambie Cedar Products Ltd., Midway Lumber Mills Ltd., Nickel Lake Lumber, Twin Rivers Cedar Products Ltd., and Uphill Wood Supply Inc.

II. Subsidies Valuation Information

A. Aggregation and Company-Specific Rates

In accordance with 19 CFR 351.213(b), the Government of Canada (GOC) and the Coalition for Fair Lumber Imports Executive Committee (petitioners) requested an administrative review of this countervailing duty order and both requested that this review be conducted on an aggregate basis. See

² All public documents and public versions of business proprietary documents are available in the public file located in the Department's Central Records Unit (CRU), room B-099.

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 68 FR 39055 (July 1, 2003) (Initiation Notice). Because of the extraordinarily large number of softwood lumber producers in Canada, the Department determined to conduct this administrative review of the order on an aggregate basis and calculate a single country-wide subsidy rate to be applied to all exports of subject merchandise. See section 777A(e)(2)(B) of the Tariff Act of 1930, as amended (the Act) and the July 25, 2003, Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, regarding Methodology for Conducting the Review (Review Methodology Memorandum).

As noted in the Preliminary Results, the Department solicited information from the GOC on an aggregate or industry-wide basis in accordance with section 777A(e)(2)(B) of the Act, rather than from individual producers and exporters. See 69 FR at 33206. Although as noted above, we received comments regarding company-specific reviews, no interested party objected to the conduct of the review on an aggregate basis. For purposes of these final results, we have aggregated the subsidy information on an industry-wide basis. Specifically, we used the information provided by the GOC and Provincial governments and calculated one subsidy rate for the Canadian softwood lumber industry for exports of softwood lumber to the United States.

B. Allocation Period

In the underlying investigation, and the Preliminary Results of this review, pursuant to 19 CFR 351.524(d)(2), the Department allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over a 10-year average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Determination: Certain Softwood Lumber Products From Canada, 66 FR 43186 (August 2001), 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), and Preliminary Results. No interested party challenged the 10-year AUL derived from the IRS tables. Thus, in the final results of this review, we have allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over a 10-year AUL.

C. Recurring and Non-Recurring Benefits

The Department has previously determined that the sale of Crown timber by Canadian provinces confers countervailable benefits on the production and exportation of the subject merchandise under section 771(5)(E)(iv) of the Act, because the stumpage fees at which the timber is sold is for less than adequate remuneration. For the reasons described in the program sections below, the Department continues to find that Canadian provinces sell Crown timber for less than adequate

remuneration to softwood lumber producers in Canada. Pursuant to section 351.524(c)(1) of the CVD Regulations, subsidies conferred by the government provision of a good or service normally involve recurring benefits. See Countervailing Duties; Final Rule, 63 FR 65348 (November 25, 1998) (CVD Regulations). Therefore, consistent with our regulations and past practice, benefits conferred by the provinces' administered Crown stumpage programs have, for purposes of these final results, been expensed in the year of receipt.

In this review the Department also investigated other programs that involve the provision of grants to producers and exporters of subject merchandise. Under section 351.524 of the CVD Regulations, benefits from grants can either be classified as providing recurring or non-recurring benefits. Recurring benefits are expensed in the year of receipt, while grants providing non-recurring benefits are allocated over time corresponding to the AUL of the industry under review. Specifically, under section 351.524(b)(2) of the CVD Regulations, grants which provide non-recurring benefits will also be expensed in the year of receipt if the amount of the grant under the program is less than 0.5 percent of the relevant sales during the year in which the grant was approved (referred to as the 0.5 percent test).

D. Benchmarks for Loans and Discount Rate

In selecting benchmark interest rates for use in calculating the benefits conferred by the various loan programs under review, the Department's normal practice is to compare the amount paid by the borrower on the government provided loans with the amount the firm would pay on a comparable commercial loan actually obtained on the market. See section 771(5)(E)(ii) of the Act; 19 CFR 351.505(a)(1) and (3)(i). However, because we conducted this review on an aggregate basis and, with the exception of the company-specific reviews noted above, we are not examining individual companies, for those programs requiring a Canadian dollar-denominated discount rate or the application of a Canadian dollar-denominated, short-term or long-term benchmark interest rate, we used for these final results the national average interest rates on commercial short-term or long-term Canadian dollar-denominated loans as reported by the GOC.

The information submitted by the GOC was for fixed-rate short-term and long-term debt. For short-term debt, the GOC provided monthly weight-averaged short-term interest rates based on the prime business rate, SME rate, three-month corporate paper rate, and one-month bankers' acceptance rate, as reported by the Bank of Canada. For long-term debt, the GOC provided quarterly implied rates calculated from long-term debt and the interest payments made on long-term debt as reported by Statistics Canada (STATCAN). Based on these rates, we derived simple averaged POR rates for both short-term and long-term debt.

Some of the reviewed programs provided long-term loans to the softwood lumber industry with variable interest rates instead of fixed interest rates. Because we were unable to gather information on variable interest rates charged on commercial loans in Canada, we have used as our benchmark for those loans the rate applicable to long-term fixed interest rate loans for the POR as reported by the GOC.

Regarding the selection of a discount rate for the purposes of allocating non-recurring subsidies

over time, we are directed by 19 CFR 351.524(d)(3). Because we conducted this review on an aggregate basis under section 777A(e)(2)(B) of the Act, we used as the discount rate, the average cost of long-term fixed-rate loans in Canada as reported by the GOC. See 19 CFR 351.524(d)(3)(i)(B).

E. Aggregate Subsidy Rate Calculation

As noted above, this administrative review was conducted on an aggregate basis, with the exception of the individual company-specific reviews. We have used the same methodology to calculate the country-wide rate for the programs subject to this review that we used in the investigation and in the Preliminary Results.

1. *Provincial Crown Stumpage Programs*

For stumpage programs administered by the Canadian provinces subject to this review, we first calculated a provincial subsidy rate by dividing the aggregate benefit conferred under each specific provincial stumpage program by the total stumpage denominator calculated for that province. For further information regarding the stumpage denominator, see the “Denominator Issues” section, below. As required by section 777A(e)(2)(B) of the Act, we next calculated a single country-wide subsidy rate. To calculate the country-wide subsidy rate conferred on the subject merchandise from all stumpage programs, we weight-averaged the subsidy rate from each provincial stumpage program by the respective province’s relative shares of total exports to the United States during the POR. As in Lumber IV and in the Preliminary Results, these weight-averages of the subject merchandise do not include exports from the Maritime Provinces. See e.g., the April 25, 2002, Memorandum to Faryar Shirzad, Assistant Secretary for Import Administration, from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, regarding Ministerial Error Allegations Filed by Respondents and Petitioners. We then summed these weight-averaged subsidy rates to determine the country-wide rate for all provincial Crown stumpage programs.

2. *Other Programs*

We also examined a number of non-stumpage programs administered by the Canadian Federal Government and certain Provincial Governments in Canada. These included programs previously investigated and programs newly alleged in this review. To calculate the country-wide rate for these programs, we used a different methodology than that employed in the investigation. For federal programs that were found to be specific because they were limited to certain regions, we calculated the countervailable subsidy rate by dividing the benefit by the relevant denominator (i.e., total production of softwood lumber in the region or total exports of softwood lumber to the United States from that region), and then multiplying that result by the relative share of total softwood exports to the United States from that region. For federal programs that were not regionally specific, we divided the benefit by the relevant sales (i.e., total sales of softwood lumber, total sales of the wood products manufacturing industry (which includes softwood lumber), or total sales of the wood products

manufacturing and paper industries).

For provincial programs, we calculated the countervailable subsidy rate by dividing the benefit by the relevant sales amount for that province (*i.e.*, total exports of softwood lumber from that province to the United States, total sales of softwood lumber in that province, or total sales of the wood products manufacturing and paper industries in that province). That result was then multiplied by the relative share of total softwood exports to the United States from that province.

Where the countervailable subsidy rate for a program was less than 0.005 percent, the program was not included in calculating the country-wide countervailing duty rate.

3. *Excluded Companies*

In the investigation, we deducted from the above-mentioned denominators, sales by companies that were excluded from the countervailing duty order. As noted in the Preliminary Results, the Department has also concluded expedited reviews for a number of companies, pursuant to which a number of additional companies have been excluded from the countervailing duty order. Pursuant to our prior practice, we have deducted the sales of all companies excluded from the countervailing duty order from the relevant sales denominators used to calculate the country-wide subsidy rates, as well as the sales of companies individually reviewed in this review, as discussed above.

In the Preliminary Results, we estimated the companies' POR sales using sales data they supplied during the underlying investigation or expedited review. Specifically, we indexed the sales data of the excluded companies to the POR using province-specific lumber price indices obtained from STATCAN. We then subtracted the indexed sales data of the excluded companies from the provincial and Canada-wide sales denominators.

As noted in the Preliminary Results, on May 25, 2004, we requested sales data for the POR from the companies that were excluded from the countervailing duty order as a result of the exclusion and expedited review process. We received only one response to that request. Additionally, we did not receive any comments from parties on our treatment of these companies' sales in our Preliminary Results. As a result, for these final results, we have continued to estimate the companies' POR sales using the sales data they supplied during the underlying investigation or expedited reviews, with the exception of the company that responded, for which we used the reported values. Because, for these final results, we are providing company-specific rates to four companies, we have also excluded their sales from our denominator calculations.

In addition, as discussed more fully in the Department's position in response to Comment 17, for these final results, we have estimated the excluded companies' POR stumpage benefits using the data they supplied during the underlying investigation or expedited review. Because the underlying data related to volumes of logs and/or lumber acquired by the companies, we applied the province-specific benefit rates calculated in these final results to the volumes relied on in the investigation or expedited review. We then subtracted the stumpage benefits of the excluded companies from the provincial and Canada-wide stumpage numerators.

F. Pass-through

During the underlying investigation and this administrative review, the Canadian parties claimed that a portion of the Crown logs processed by sawmills were purchased by the mills in arm's-length transactions with independent harvesters and such logs must be excluded from the subsidy calculation unless the Department determines that the benefit to the independent harvester passed through to the lumber producers. In the Preliminary Results, we determined that Alberta, British Columbia (B.C.), Manitoba, Ontario, and Saskatchewan each failed to substantiate its claim that logs entering sawmills during the POR included logs purchased in arm's-length transactions. See 69 FR at 33208, 33209.

We received comments from numerous parties on these issues. See Comments 10 - 11, below. For the final results of this review, we have continued to determine that Alberta, B.C., Manitoba, Ontario, and Saskatchewan each failed to substantiate its claim that logs entering sawmills during the POR included logs purchased in arm's-length transactions.

III. Denominator

As noted above and as discussed in the Preliminary Results, the Department is determining the stumpage subsidies to production of softwood lumber in Canada on an aggregate basis. See 69 FR at 33209. The methodology employed to calculate the ad valorem subsidy rate requires the use of a compatible numerator and denominator. In the Preliminary Results, the Department explained that in the numerator of the calculation, the Department 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 the Department'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.

To establish the value for the denominator, during the course of this administrative review, the Department repeatedly sought information regarding the GOC's sales denominator data for each of the provinces under review. As discussed in the Preliminary Results, however, despite our repeated requests, that data was not provided for Manitoba and Saskatchewan.

In the Preliminary Results, the Department found that the GOC had failed to cooperate to the best of its ability by failing to make any effort to seek waivers from the small number of affected companies in Manitoba and Saskatchewan and that an adverse inference was warranted. As adverse facts available, we relied upon information supplied by the GOC in its questionnaire responses. For further discussion of this issue, see Comment 17, below.

Also in the Preliminary Results, the Department declined to include any shakes and shingles products in the denominator of the subsidy rate calculations because we have no way separately to determine the values of treated and untreated shakes and shingles in the residual products category.

Finally, in response to the GOC's request that the denominator should be expanded to include "other softwood products" produced by non-sawmill wood product producers using inputs obtained from sawmills, the Department preliminarily found that the products listed by the GOC in the "other softwood products" category are outputs of non-sawmill wood product manufacturers that may use lumber as an input, but are not the direct result of the softwood lumber manufacturing process. See Preliminary Results, 69 FR at 33212. Therefore, the Department concluded that inclusion of such products in the denominator is inappropriate because it is inconsistent with the methodology used to calculate the numerator. Concerning softwood "co-products" produced by non-sawmill establishments, the Department also preliminarily determined not to include these values in the denominator because we lacked the information necessary to determine the value of softwood co-products made by remanufacturers that resulted from the softwood lumber manufacturing process. We received comments from interested parties on our denominator. See Comment 16, below.

After considering the comments, for these final results we have not changed our calculation of the denominator, other than, as discussed above in the "Excluded Companies" section of this memorandum.

ANALYSIS OF PROGRAMS

I. Provincial Stumpage Programs Determined to Confer Subsidies

In Canada, the vast majority of standing timber that is sold originates from lands owned by the Crown. Each of the reviewed Canadian provinces, *i.e.*, Alberta, B.C., Manitoba, Ontario, Quebec, and Saskatchewan,³ has established programs through which they charge certain license holders "stumpage" fees for standing timber harvested from these Crown lands. These programs, the sole purpose of which is to provide lumber producers with timber, are described in detail in the province-specific sections of the Preliminary Results. See 69 FR at 33219 - 33227. We did not receive any comments with respect to the operation of any of the provinces' stumpage programs. Therefore, we have not repeated the full description of the provincial stumpage programs here.

In accordance with section 771(5) of the Act, to find a countervailable subsidy, the Department must determine that a government provided a financial contribution and that a benefit was thereby conferred, and that the subsidy is specific within the meaning of section 771(5A) of the Act. As set forth below, no new information or argument on the record of this review has resulted in a change in the Department's determinations from Lumber IV and the Preliminary Results that the provincial stumpage programs constitute financial contributions provided by the provincial governments and that they are

³ In this review, we did not examine the stumpage programs with respect to the Yukon Territory, Northwest Territories, and timber sold on federal land because the amount of exports to the United States is insignificant and would have no measurable effect on any subsidy rate calculated in this review.

specific. However, there is new information on the record of this review that was not on the record in the underlying investigation that resulted in our decision to use different benchmarks against which to measure the adequacy of remuneration, *i.e.*, to measure the benefit conferred. In addition, based on our analysis of information and comments received since the Preliminary Results, as discussed more fully below, we have determined to use a different benchmark against which to measure the adequacy of remuneration with respect to B.C.

A. Financial Contribution and Specificity

As noted in our Preliminary Results, and consistent with Lumber IV, the Department determined, consistent with section 771(5)(D)(iii) of the Act, that the Canadian provincial stumpage programs constitute a financial contribution because the provincial governments are providing a good to lumber producers, and that good is timber. As in the investigation, the Department noted that the ordinary meaning of “goods” is broad, encompassing all “property or possessions” and “saleable commodities.” The Department found that “nothing in the definition of the term ‘goods’ indicates that things that occur naturally on land, such as timber, do not constitute ‘goods.’” To the contrary, the Department found that the term specifically includes “. . . growing crops and other identified things to be severed from real property.” The Department further determined that an examination of the provincial stumpage systems demonstrated that the sole purpose of the tenures was to provide lumber producers with timber. Thus, the Department determined that regardless of whether the provinces are supplying timber or making it available through a right of access, they are providing timber. See Preliminary Results, 69 FR at 33213.

No new information has been placed on the record of this review warranting a change in our finding that the provincial stumpage programs constitute a financial contribution in the form of a good, and that the provinces are providing that good (*i.e.*, timber) to lumber producers. Consistent with Lumber IV, we continue to find that the stumpage programs constitute a financial contribution provided to lumber producers within the meaning of section 771(5)(D)(iii) of the Act.

In our Preliminary Results and in Lumber IV, the Department determined that provincial stumpage subsidy programs were used by a “limited number of certain enterprises” and, thus, were specific in accordance with section 771(5A)(D)(iii)(I) of the Act. More particularly, the Department found that stumpage subsidy programs were used by a single group of industries, comprised of pulp and paper mills, and the saw mills and remanufacturers that produce the subject merchandise. This is true in each of the reviewed provinces. We received comments on this determination. See Comment 18, below. Based on our analysis of the information and arguments on the record, the Department continues to find that the stumpage programs are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

B. Benefit - Benchmark

Section 771(5)(E)(iv) of the Act and section 351.511(a) of the CVD Regulations govern the determination of whether a benefit has been conferred from subsidies involving the provision of a good

or service. Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred by a government when the government provides a good or service for less than adequate remuneration. Section 771(5)(E) further states that the adequacy of remuneration

shall be determined in relation to prevailing market conditions for the good or service being provided . . . in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of . . . sale.

Section 351.511(a)(2) of the CVD Regulations sets forth the hierarchy for selecting a benchmark price to determine whether a government good or service is provided for less than adequate remuneration. The hierarchy, in order of preference, is: (1) market-determined prices from actual transactions within the country under investigation or review; (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. See Preliminary Results, 69 FR at 33213 - 33219, for a full discussion of the application of the hierarchy.

Private Provincial Market Prices

As discussed in the Preliminary Results, the Department preliminarily found that there were no private market prices in the provinces whose stumpage programs are under review that could serve as first-tier benchmarks. Specifically, the Department preliminarily found with respect to Manitoba and Saskatchewan, there was no province-specific private stumpage data upon which to base a first tier benchmark arising from those provinces. Additionally, B.C. did not provide private stumpage prices for the record of this proceeding. Instead, B.C. provided prices from auctions the government administers under the Small Business Forest Enterprise Program (SBFEP). As we did in Lumber IV, and following the guidelines laid out in section 351.511 of our regulations, we preliminarily did not rely on these prices as we found that the auctions were not competitively run because they were not open to all bidders. Alberta reported private price data and government competitive bid data as reported in Alberta's Timber Damage Assessment (TDA) 2003 update. As discussed in the Preliminary Results, the Department determined that we were unable to use these transactions as benchmark prices based on the evidence on the record demonstrating that Alberta's private timber market prices are administratively set and do not reflect market determined prices as required by the CVD Regulations. Ontario provided a survey of private prices prepared by Demers Gobeil Mercier & Accociés Inc. (DGM). As discussed in the Preliminary Results, this pricing data was prepared for the sole purpose of responding to the Department's questionnaire in this administrative review. The Department also explained that because it was unable to verify the private pricing data to determine its reliability and accuracy, the Department preliminarily determined that the data could not serve to establish a market benchmark. See Id., 69 FR at 33214,- 33215. Finally, although Quebec provided private stumpage prices charged in Quebec, the Department preliminarily determined that record evidence demonstrated

that these prices were not suitable for use as a benchmark within the meaning of section 351.511(a)(2)(i) of the CVD Regulations because the incentives that tenure holders face vis-a-vis the private market are distorted by a combination of the Government of Quebec's (GOQ's) administered stumpage system, the relative size of public and private markets, feed back effects between the private and public markets, and a non-binding annual allowable cut (AAC).

We received comments from parties concerning our preliminary finding that there were no useable private market prices provided by Alberta, Ontario, and Quebec. See Comments 19 - 33, below. Based on our analysis of the information and arguments on the record, for purposes of these final results, we continue to find that there are no useable private market prices in the provinces whose provincial stumpage programs are under review.

Private Stumpage Prices in New Brunswick and Nova Scotia

As noted in the Preliminary Results, unlike the investigation, in this review we have additional information on private timber prices in Canada. Specifically, we have private stumpage prices from New Brunswick and Nova Scotia (together, the Maritimes). Because private price data for the Maritimes are on the record of this administrative review, we closely examined these prices to determine whether they constitute market-determined in-country prices under the first tier of our adequate remuneration hierarchy. See section 351.511(a)(2)(i) of the CVD Regulations.

In the Preliminary Results, the Department described the Maritimes' pricing data in detail and, after consideration of the arguments of the interested parties, we preliminarily found that those prices are appropriate market-determined benchmark prices, consistent with the first tier of our regulatory hierarchy. We also preliminarily determined that the Maritimes' prices for eastern Spruce-Pine-Fir (SPF) are comparable to Crown stumpage prices for the SPF species groupings in Quebec, Ontario, Manitoba, Saskatchewan and a portion of Alberta because the species in the Maritimes are representative of the species in those provinces. Accordingly, we preliminarily determined to use the private Maritimes' timber prices in our benefit calculation and compared these prices to the Crown stumpage prices in each of the provinces to determine whether the Crown prices were for less than adequate remuneration.⁴ See Preliminary Results, 69 FR at 33218 - 33219.

We also preliminarily determined that a comparison of the Maritimes' prices to those in B.C. and western Alberta is appropriate for benchmark purposes. However, we preliminarily determined that record evidence also indicated that there are differences in values between eastern and western SPF because trees in the West are generally larger, and yield more and better quality lumber. Therefore, we preliminarily determined to adjust the benchmark prices to account for the higher value trees in B.C. and western Alberta. See Id.

After issuance of the Preliminary Results, we provided interested parties an opportunity to submit new information relevant to the use of data from the Maritimes and the comparability of this data to similar data in other Canadian provinces. We received such new information on August 31, 2004,

⁴ Where appropriate, we also compared prices of certain non-SPF species for which price data is available in the Maritimes.

and September 10, 2004. We conducted verification of the information provided by the Maritimes between September 13 and 24, 2004.

In addition, we received comments from interested parties on our use of the private Maritimes' timber prices. Interested parties objected to our preliminary finding that the Maritimes' pricing data represents market-determined prices that are an appropriate benchmark consistent with our first tier benchmark. See Comments 34 - 38, below. In addition, parties objected to our benchmark adjustment (the East-West adjustment) as applied to B.C. and a portion of Alberta.

Based on our analysis of the comments received and evidence on the record, for these final results, we continue to find that the Maritimes' prices are an appropriate benchmark under the first tier of our regulations for purposes of measuring the adequacy of remuneration of the stumpage programs in Alberta, Manitoba, Ontario, Quebec, and Saskatchewan. Further, we have determined that an East-West adjustment to the Maritimes benchmark is not needed nor appropriate for a portion of Alberta. See Comment 43, below.

However, with respect to B.C., we have determined that the Maritimes' pricing data, in light of the needed adjustments, may not be the most appropriate benchmark. Rather, as discussed in detail below, we have determined that the most appropriate benchmark with which to measure the adequacy of remuneration for the B.C. stumpage program is a benchmark based on U.S. logs.

Benchmark Prices for B.C.

1. The Maritimes Benchmarks Are Not the Most Appropriate for B.C.

In the Preliminary Results, we determined that there were no private market stumpage prices in the provinces whose provincial stumpage programs are under review that can serve as benchmarks. However, we found that private stumpage prices in the Maritimes constitute market-determined, in-country prices under the first tier of the adequate remuneration hierarchy in the Department's regulations. We therefore used those Maritimes' prices in the Preliminary Results as benchmarks to assess the adequacy of remuneration for provincial stumpage. As discussed above, we continue to find that those Maritimes' prices are in-country, market-determined prices under tier one of our regulations. As discussed above, we continue to find that the Maritimes' prices are appropriate benchmarks to assess the adequacy of remuneration for the provincial stumpage programs in Alberta⁵, Manitoba, Ontario, Quebec, and Saskatchewan. With respect to B.C., however, we are modifying our methodology. We find that because of the extensive differences between the species harvested in B.C. and the Maritimes, the adjusted Maritimes' prices are not the most appropriate benchmarks available to measure the adequacy of remuneration for B.C.

In the Preliminary Results, we found that there was substantial similarity between the species in the Maritimes and B.C., recognizing that the majority of all Canadian lumber production is marketed and sold as one generally recognized and commercially interchangeable product, "SPF." On that basis,

⁵ In Comment 43 of this Decision Memorandum, we discuss the change in our methodology with respect to Alberta.

we preliminarily found that a comparison of the Maritimes' prices to those in B.C. was appropriate for benchmark purposes. However, we also found that B.C. species were generally larger and produced more valuable lumber than timber species harvested in the Maritimes. We therefore adjusted the Maritimes' benchmark prices to account for the differences in values between eastern and western SPF using an adjustment based on the ratio of market-determined stumpage prices in the United States of eastern SPF and the western timber (East/West Adjustment).⁶ See Preliminary Results, 69 FR at 33219.

Interested parties raised numerous comments following the Preliminary Results regarding the comparability of species in B.C. and eastern SPF species in the Maritimes. Specifically, the parties question the degree of commercial interchangeability of eastern SPF with prevalent B.C. species, such as fir-larch, and hem-fir. With respect to commercial interchangeability, evidence on the record demonstrates that the prices for certain framing lumber products made from SPF, hem-fir, and fir-larch are published together with no differentiation given between the products. This indicates some degree of commercial overlap. However, the record also reflects that hem-fir and fir-larch are identified as being ideal in a number of specialized applications for which SPF is not. For example, the Canadian Lumber Grading Authority's Standard Grading Rules for Canadian Lumber and the Western Wood Products Association's Western Lumber Product Use Manual both show that fir-larch has certain different physical characteristics and is used in a wider range of applications than eastern SPF, i.e., "appearance grades".⁷ In the context of determining an appropriate benchmark, this evidence demonstrates that the degree of commercial interchangeability between the species in B.C. and eastern SPF species in the Maritimes is less than we originally believed it to be. In addition, other record evidence attests to the greater value of western timber relative to eastern timber, based in part in size. For example, a recent U.S. Forest Service report Profile 2001 Softwood Sawmills in the United States and Canada stated that "western timber tends to be larger and hence more valuable than eastern and northern trees."⁸ However, the report provides no basis for adjusting for this difference. Based on the record of this proceeding, therefore, we concluded that the East/West adjustment that we used in the Preliminary Results may not provide an appropriate means of taking account of differences in value between the species. Accordingly, we looked to other information on the record that better reflected the market value of B.C. timber.

2. World Market Prices

In considering the second tier regulatory hierarchy, we are cognizant of the fact that the NAFTA Panel considering the Lumber IV found that standing timber is not a good that is commonly

⁶ See the December 13, 2004, Benchmark Calculation Memorandum, which contains the actual ratios applied to the benchmark prices.

⁷ March 15, 2004, memorandum Factual Information Regarding Use of Maritimes Stumpage Prices.

⁸ March 15, 2004, BCTLC submission of factual information.

traded across borders. As a consequence, according to the Panel, there is no world market price for timber that satisfies U.S. statutory or regulatory requirements. The Panel also observed that because the Department's adjustments did not adequately account for differences in Canadian market conditions, the Department construed the statute in a manner contrary to law.

In the First Remand we disagreed with the Panel's conclusion and noted our continuing belief that the resulting benchmarks constitute world market prices for timber that are commercially available to purchasers in Canada, within the meaning of 19 CFR 351.511(a)(2)(ii). See Remand Determination In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination, Secretariat File No. USA-CDA-2002-1904-03 NAFTA Binational Panel Review (January 12, 2004). We nonetheless followed the Panel's instruction and for the purpose of the remand, established a new methodology to determine the existence of a benefit.

In this review, the petitioners have once again suggested that U.S. stumpage prices should be considered an appropriate benchmark either as world market prices or based on market principles. For the reasons discussed below, we have determined that U.S. stumpage prices are not the most appropriate benchmarks for purposes of measuring the adequacy of remuneration of B.C. stumpage programs.

3. B.C. Log Prices Are Not An Appropriate Benchmark

In this review, we collected and analyzed detailed information on log transactions in B.C. The record supports two significant findings. The first is that stumpage and log markets are closely intertwined and therefore Crown stumpage prices affect both stumpage and log prices. The second is that Crown logs are, in fact, sold in substantial quantities on the log market. Based on this evidence and these findings, we determine that there are no market-determined log prices in B.C. upon which we can measure the adequacy of remuneration.⁹

The Log Export Restraint (LER) response established that stumpage and log markets are closely intertwined. For example, the application process for the right to export timber after processing involves a variety of analyses that include stumpage costs and log prices. See the June 2, 2004, Memorandum to Melissa G. Skinner, Director, from Stephanie Moore and Joy Zhang, Case Analysts, concerning Verification of the Questionnaire Responses Submitted by the Government of British Columbia (GOBC Verification Report) at Exhibits 10-15.¹⁰ In addition, we verified a study submitted by B.C., "Norcon Forestry Ltd. Survey of Primary Sawmills' Arm's Length Log Purchases in the Province of British Columbia." See the March 15, 2004, submission to the Department by Steptoe & Johnson. This study, and our verification report show that the great majority of wood sold in B.C.

⁹ The evidence on the record of the NAFTA remand supported a different conclusion. In the Matter of Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination; Secretariat File No. USA-CDA-2002-1904-03, Remand Determination (January 12, 2004).

¹⁰ For example, in evaluating export applications for standing timber, B.C. uses log price estimates as part of its analysis.

(apart from allocated Crown wood) is purchased by large integrated tenure-holding producers who purchase wood for their sawmills following standard purchase contracts; these contracts can and are structured as log purchases or stumpage purchases. Thus, the record evidence indicates that these producers are indifferent as to which form of wood, *i.e.*, either timber or logs, they purchase for use in softwood lumber production. Instead, the decision to purchase either timber or logs will ultimately depend on price. The fact that these companies simultaneously purchase and use both forms of wood means, in principle, that the prices for stumpage or logs are equivalent to the purchaser from a cost standpoint, *i.e.*, stumpage price plus the cost of harvesting is equivalent to paying for a log. The fact that these producers used both timber and logs throughout the POR to produce softwood lumber means that this price equivalence was maintained throughout the POR. This suggests that the timber and log prices are linked, which, in turn, suggests that low (or high) timber prices means low (or high) log prices.¹¹ The Department therefore finds that there is sufficient record evidence to conclude that subsidized prices in the Crown stumpage market would result in price suppression in the sales of Crown logs.

Prices from the Vancouver Log Market (VLM) provide the only record evidence of published log prices in B.C. While the GOBC argues that these prices reflect private market transactions, the record evidence shows that the VLM is controlled by large tenure holders who obtain the majority of their own needs from the Crown at low subsidized prices. For example, Dr. Pearse's study for the B.C. government on the Coastal forest industry, "Ready For Change," finds that the Vancouver Log Market is too dominated by a handful of large tenure-holding buyers and sellers (*see*, Pearse (2001) at 24). On the demand side of the VLM, Crown tenure holders would be unwilling to pay higher prices for private logs than their own log costs as derived from a subsidized Crown stumpage price, since they could always source additional logs from their own tenure (*i.e.*, elastic supply). Further, on the supply side, VLM prices are unsuitable benchmarks to the extent that they represent the sale of Crown logs, the prices of which would reflect prices the Crown stumpage market.

The LER questionnaire response from B.C. contains ample evidence of the dominant presence of the tenure-holders on the VLM.¹² The government of B.C.'s (GOBC's) own specialist hired to evaluate their industry described the VLM, in its entirety, as:

an informal arrangement among the big supply departments of the major coastal licensees (*i.e.*, the holders of long-term and large forest tenures), representatives of the larger market loggers, the log buyers for smaller independent tenured or non-tenured mills or their agents and the

¹¹ That is not to say that timber and log prices are rigidly linked and follow each other in lock-step at every point in time. There are, of course, other factors such as input switching costs and capacity constraints that might weaken or temporarily break the link, but as a general rule, there is linkage between timber and log prices sufficient to make softwood lumber producers indifferent between timber and log purchases.

¹² The LER questionnaire responses of the GOBC, and the verification report, have extensive information showing that a hand full of large tenure holding firms account for the great majority of transaction on the VLM. *See e.g.*, the March 8, 2004, supplemental questionnaire response of the GOBC at BC-VIII-8.

“traders” employed by log brokers - - all of whom, from their offices, buy and sell logs on a routine basis.

Moreover, none of the published log prices for the VLM distinguish between Crown logs and private logs; thus, even if we thought purely private prices were not affected by the Crown stumpage prices, it would be impossible to isolate such prices to establish a benchmark. Finally, Dr. Pearse’s study finds that many of the sales transactions recorded in the VLM data are not actually independent purchases or sales, but trades of one type of logs for another. Log swaps were identified in the study as an important factor limiting the operation of competitive forces in the market place (see, Pearse (2001) at 24).

For these reasons, the record evidence supports the Department’s finding that the B.C. log prices submitted by the GOBC are not market-determined prices independent from the effects of the underlying Crown stumpage prices. Because of the linkage between B.C. log prices and Crown stumpage, those B.C. log prices cannot be used to assess the adequacy of remuneration.

4. U.S. Log Prices are a More Appropriate Benchmark

An analysis of the record indicates that the information for potential benchmarks consists of B.C. log prices, U.S. stumpage prices for species comparable to those in B.C., i.e., in the U.S. Pacific Northwest, and U.S. log prices. As discussed above, B.C. log prices are not appropriate because we find that they are not market-determined prices. Although we considered comparable U.S. stumpage prices as an appropriate benchmark under our regulatory hierarchy, using these prices requires complex adjustments to the available data.

We therefore turned our analysis to U.S. log prices. Under our regulatory hierarchy, U.S. log prices constitute third tier benchmarks, i.e., a benchmark that is consistent with market principles. See 19 CFR 351.511(a)(2)(iii). The regulations do not specify how the Department is to conduct a market principles analysis. By its nature such an analysis depends upon available information concerning the market sector at issue and therefore must be developed on a case-by-case basis.¹³ It is generally accepted that the market value of timber is derivative of the value of the downstream products. The 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.¹⁴

As a result of the similarity of species between the timber harvested in the U.S. Pacific Northwest and in B.C. (see discussion below), we have selected U.S. Pacific Northwest log prices as the most appropriate benchmark on the record to evaluate whether Crown timber in B.C. is priced

¹³ For the reasons stated in Comment 44 of this Decision Memorandum, we have rejected the GOBC’s claim that we conduct a market principles analysis based on a cost methodology.

¹⁴ The provincial stumpage calculations acknowledge this principle by tracking either timber, log, or lumber prices for different species (or species groups).

consistent with market principles. We also find that the species in the U.S. Pacific Northwest are most representative of the species in B.C., and therein most representative of the market value of the timber harvested in B.C. Using these log prices is also consistent with a market principles analysis because the prices are from private transactions between log sellers and sawmills for log harvested from private lands and are thus market determined prices.¹⁵

Having selected an appropriate benchmark, we adjusted the benchmark to reflect prevailing market conditions in B.C. We identified numerous factors affecting market conditions that needed to be adjusted for, *inter alia*, costs associated with the tenure contract, costs associated with accessing timber for harvesting, and costs of acquiring timber. In summary, the harvesting costs reported by harvesters of Crown and private timber in B.C. were deducted from market-determined log prices from the U.S. Pacific Northwest to calculate a “derived market stumpage price” to compare with Crown stumpage. All of the factors we evaluated and/or made adjustments for to reflect market conditions in the other provinces are included in the total harvesting costs that we deducted from the U.S. log price to derive the market stumpage price, including both harvesting costs, and tenure related costs. Thus, we adjusted for all market conditions in B.C.¹⁶

For purposes of these final results, therefore, we find that the U.S. log prices are a more appropriate benchmark. U.S. log prices provide a reasonable means of assessing whether B.C.’s provincial stumpage programs price stumpage consistent with market principles within the meaning of the third tier of regulatory hierarchy. See 19 CFR 351.511(a)(2)(iii).

A key consideration in evaluating the market value of timber is the comparability of the species. As described above, the record contains information on U.S. log prices for species that are representative of the species for standing timber within B.C.¹⁷ Evidence on the record also demonstrates that we can assess the adequacy of remuneration of B.C.’s provincial stumpage prices by deriving market-determined stumpage benchmarks using the prices of logs in the U.S. Pacific Northwest. Specifically, we can rely on the prices for U.S. logs for those same species that are located in B.C.

First, we find that the same species of softwood timber are produced on the B.C. Coast as in western Washington and Oregon. The dominant species on the Coast are western hemlock, Douglas Fir, red cedar, balsam fir and cypress (yellow cedar). Western red cedar, hemlock and Douglas Fir are also the major species in western Washington and Oregon. In the Interior, the dominant species are SPF (spruce, lodgepole pine, balsam fir), Douglas Fir/larch and red cedar. Douglas Fir/larch,

¹⁵ State and Federal Timber is sold as stumpage. Some of the transactions in question may represent logs harvested from these lands and resold in a separate private transaction. Private land accounts for the majority of logs.

¹⁶ It is important to recognize that the species in B.C. and U.S. Pacific Northwest are sold into the same markets; primarily high quality log exports to Japan, and finished lumber into the North American Market.

¹⁷ The November 12, 2003, GOBC’s LER Questionnaire Response at Exhibit LER-9 shows that each species harvested in B.C. is also harvested in the U.S. Pacific Northwest.

lodgepole pine/spruce, red cedar, and hemlock/true fir are the dominant species in Eastern Washington, Idaho, and Montana. Ponderosa (yellow pine) is grown in B.C. Interior and eastern Washington, Idaho and Montana.

The comparability of B.C. and the Pacific Northwest is attested to by the numerous studies comparing the forest products industry in both places. While these studies have identified differences between the regions, e.g., different corporate tax codes, the studies attest to the many underlying similarities across the geographic region crucial to our analysis. For example, the Council of Forest Industries study stated that the main differences in species harvest were that there was relatively more Douglas Fir, and a slightly higher portion of larger logs, in the U.S. Pacific Northwest than in B.C. Other than these differences, the commercially important species were highly comparable.¹⁸

Regarding log prices in the Pacific Northwest, both sides identified and submitted market-determined prices for the species in question. The GOBC submitted Log Lines prices covering most of the region and species over the entire POR. In commenting on the proper treatment of such prices, the GOBC submitted articles from the Pacific Rim Wood Market Report. Petitioners, submitted two additional sources covering these species in the region during the POR. We used all of these market-determined prices for these species within the region.

5. Comparative Advantage

Finally, comments have been submitted addressing whether or not Canada has a “comparative advantage” which should be accounted for in our analysis. However, the record does not demonstrate either that Canada has a comparative advantage, or that any adjustment is appropriate. The submitted studies are inconclusive and internally inconsistent on this matter. For example, “Response to Stoner et. al. on Comparative Advantage” suggests that Canada has a comparative advantage as it has a greater number of trees relative to its population, which in turn makes it easier to produce and export lumber to the United States.¹⁹ The study tempers this advantage by noting that the Canadian trees are small, comparatively less valuable, and in remote locations. An earlier GOC study, argues that the industry in the Pacific Northwest has a comparative advantage over the B.C. industry. The study describes the advantages as being based on, among other things, a preferential tax system and slightly higher quality

¹⁸ See “A Regional Comparison of Stumpage, Taxation, and Other Factors in the Forest Industries of British Columbia and the U.S. Pacific Northwest” British Columbia Lumber Trade Council, 3/15/2004 submission Volume 4, Appendix 21, Folio 2. See also *Id.* at Folio 1, “Conditions of Competition Between British Columbia and the U.S. Pacific Northwest” United States International Trade Commission; “A regional Comparison of Stumpage Values in British Columbia and in the United States Pacific Northwest,” Prof. David Haley, Forestry Chronicle, Petitioners’ 3/5/04 submission of factual information, Volume 6, exhibit 77. See also “Comparing the Performance of Western Region Sawmills,” Western Wood Products Association, British Columbia Lumber Trade Council, 3/15/2004 submission Volume 2, Appendix 2, Folio 2.

¹⁹ The March 15, 2004, BCTLC submission of factual information for the administrative review.

Douglas Fir harvest.²⁰ Based on our review of the record evidence, we find no basis for finding that comparative advantage affects our consideration of the degree of commonality between B.C. and the Pacific Northwest.

C. Benefit - Calculations

Adjustments

As noted in the Preliminary Results, the provinces reported certain fees and associated charges with their tenures (e.g., process facility license fees and ground rent). As the ultimate price paid for the harvested timber reflects these fees and associated charges, we preliminarily included them in the provincial stumpage price, where appropriate.

Having preliminarily found that the Maritimes' prices are in-country, market-determined prices, we determined to use the prices, inclusive of the C\$3.00 per cubic meter paid into a Forest Sustainability Fund by harvesters of private timber in Nova Scotia as the benchmark to measure the adequacy of remuneration. See Preliminary Results, 69 FR at 33219. For the Preliminary Results, we granted certain adjustments to provincial stumpage prices for those activities that evidence on the record indicates: 1) were not incurred by Maritimes private stumpage holders; and 2) were legally obligated costs associated with the tenure in the comparison province. Consistent with the methodology explained in the Preliminary Results, we made adjustments to Crown stumpage prices in Alberta for basic reforestation, forest management planning, holding and protection charges, environmental protection costs, forest inventory costs, reforestation levy, and primary road construction and maintenance cost. We made adjustments to Crown stumpage prices in B.C. for ground rent, primary road and bridge building and maintenance costs, deactivation of primary road costs, basic silviculture, and sustainable forest management costs. We made adjustments to Crown stumpage prices in Manitoba for forest renewal charges, primary road costs, and obligated silviculture costs that were not credited. We made adjustments to Crown stumpage prices in Ontario for road construction and maintenance costs and forest management planning. We made adjustments to Crown stumpage prices in Quebec for contributions to the Forestry Fund, administrative forest planning costs, and obligated silviculture costs that were not credited. We also made a negative adjustment for silviculture credits that were for voluntary activities in Quebec. For Saskatchewan, we made adjustments to Crown stumpage prices for road costs, processing facilities license fees, Forest Product Permits (FPP) application fees, and forest management.

²⁰ See "Who's got the Competitive Advantage Now?" shows that Coastal B.C. is the highest cost log producer (i.e., the least efficient) in the March 15, 2004, Memorandum entitled "Research Results and Potential Sources for the Administrative Review."

After the Preliminary Results, we provided interested parties an opportunity to submit new information relevant to the use of data from the Maritimes and the comparability of this data to similar data in other Canadian provinces. We received such new information on August 31, 2004, and September 10, 2004. As provided in section 782(i) of the Act, we conducted verification of the information regarding New Brunswick and Nova Scotia from September 13 to September 16, 2004, and from September 21 to September 24, 2004. We used standard verification procedures, including meeting with government officials and examining relevant records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU.

In addition, interested parties commented on the adjustments made in the Preliminary Results. Based on our analysis of the information and arguments on the record, for purposes of these final results we have revised the adjustments we granted. See Comment 39 and the Department's position in response thereto.

Calculation of the Benefit

As explained in the Preliminary Results, we preliminarily determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the species adjustment for western Alberta and B.C. and the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. Because the benchmark prices were higher than the administered prices in each of the provinces during the POR, we preliminarily found that the sale of timber in each of the provinces was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

For the purposes of these final results, we determined to continue to measure the benefit from the provincial stumpage programs of Alberta, Manitoba, Ontario, Quebec, and Saskatchewan by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. To calculate the benefit under these programs, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weight-averaged stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in each province during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province.

For B.C., we calculated average market log prices for each species of logs harvested in B.C. using published log prices from the U.S. Pacific Northwest. Because these are the prices paid by sawmills to independent harvesters, we subtracted the harvesting costs (and profit) that would be incurred by an independent harvester in order to calculate a "derived" market stumpage price (i.e. what the independent harvester would pay a landowner for stumpage.) We compared this derived market

stumpage price with Crown stumpage charges to determine whether there was a benefit.²¹

For B.C., there were a number of questions raised by parties regarding these calculations. Petitioners suggested the need make an adjustment for old growth, and to adjust for overstated harvesting costs. Regarding old growth, the record is mixed on the need for an adjustment, old growth trees can include more valuable logs but have higher incidences of rot and decay. Moreover, the U.S. log prices include old growth logs. Thus no adjustment is warranted. Regarding the proposed adjustment for overstated costs, the record does not contain substantial evidence to justify such an adjustment. The GOBC proposed a number of adjustments involving comparisons between the private stumpage calculations in the Maritimes and Crown stumpage charges in B.C. However, those “adjustments” of the kind discussed for the other provinces, see, e.g. Comment 39 are not needed in these calculations. This is because all costs incurred in by harvesters in B.C., including all of the relevant factors in the GOBC’s proposed adjustments are included within the reported harvesting costs which are deducted (and are therefore accounted for).

To calculate the province-specific subsidy rate, we divided the total stumpage benefit by each province’s POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see the “Denominator” section, above. As explained in the “Aggregate Subsidy Rate Calculation” section of the Preliminary Results, we weight-averaged the benefit from this provincial subsidy program by each province’s relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in the “Country-Wide Rate for Stumpage” section of these final results.

Country-Wide Rate for Stumpage

The countervailable country-wide subsidy rate for the provincial stumpage programs is 16.80 percent ad valorem.

OTHER NON-STUMPAGE PROGRAMS

Other Programs Determined to Confer Subsidies

Programs Administered by the Government of Canada

1. Federal Economic Development Initiative in Northern Ontario (FEDNOR)

In the Preliminary Results we determined that the FEDNOR program is specific within the meaning of section 771(5A)(D)(iv) of the Act, because assistance under this program is limited to

²¹ See December 13, 2004, B.C. Final Results Calculation Memo for details.

certain regions in Ontario. Furthermore, we found that FEDNOR provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act, and confers a countervailable benefit as set forth under 19 CFR 351.504, through a grant provided directly to a softwood lumber producer.

With regard to the Community Futures Development Corporations (CFDC) loans given since the POI in Lumber IV, we determined that two loans were given at interest rates below the benchmark rate and, therefore, confer a benefit within the meaning of section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a).

Consistent with our treatment of FEDNOR grants in Lumber IV, we treated the grant received during the POR as non-recurring. In accordance with 19 CFR 351.524(b)(2), we determined that the approved amount of the grant is less than 0.5 percent of total sales of softwood lumber for Ontario during the POR. Therefore, we expensed the benefit from this grant in the year of receipt.

To calculate the countervailable subsidy provided under this program, we summed the amount of the grant disbursed during the POR and the interest savings on the loans, and divided the combined amount by the f.o.b. value of total sales of softwood lumber (inclusive of in-scope lumber and other softwood sawmill products) for Ontario during the POR. Next, we multiplied this amount by Ontario's relative share of total exports to the United States. Using this methodology, we preliminarily determined the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

We received comments on our Preliminary Results related to this program. See Comment 45. Based on our analysis of the comments received, we have made no changes for these final results. Thus, we determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

2. Western Economic Diversification Program Grants and Conditionally Repayable Contributions (WDP)

In the Preliminary Results we determined that the WDP is specific under section 771(5A)(D)(iv) of the Act, because assistance under the program is limited to designated regions in Canada. The provision of grants constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confers a benefit as set forth under 19 CFR 351.504.

In accordance with 19 CFR 351.524(c), we treated the International Trade Personnel Program (ITPP) grants as recurring benefits. Because the GOC expressly excluded grants supporting exports to non-U.S. markets, we attributed the reported grants to U.S. exports of softwood lumber from the regions eligible for assistance under this program, *i.e.*, B.C., Alberta, Saskatchewan, and Manitoba.

Consistent with our treatment of "Other WDP Projects" in the investigation, we treated this grant as non-recurring. In accordance with 19 CFR 351.524(b)(2), we determined that this grant is less than 0.5 percent of total sales of softwood lumber from the regions eligible for assistance under this program. Therefore, we expensed the benefit from this grant in the year of receipt.

To calculate the countervailable subsidy rate for this program, we summed the rates for the ITPP and Other WDP sub-projects. Next, we multiplied this amount by the four provinces' relative share of total exports to the United States. Using this methodology, we preliminarily determined the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

Based on additional information received from the GOC in response to our supplemental questionnaire of July 16, 2004, and comments on our Preliminary Results related to this program, we have made changes to our calculations. See Comment 46. Specifically, the GOC has clarified the responsibilities of the personnel supported by the ITPP grants. Consequently, where the employee's activities were directed towards exports to all markets, we attributed the subsidy to total exports. Similarly, where the employee's activities were directed towards exports to the United States, we attributed the subsidy to U.S. exports. After these changes, we determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

3. Natural Resources Canada (NRCAN) Softwood Marketing Subsidies

In the Preliminary Results we determined that any assistance provided under the Canada Wood program would be tied to export markets other than the United States. Therefore, in accordance with 19 CFR 351.525(b)(4), we determined that the Canada Wood program does not confer a countervailable subsidy.

With regard to Value to Wood Program (VWP), we found that certain of the projects funded during the POR appear to be related to softwood lumber. We preliminarily determined that the grants provided under the VWP constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confer a benefit as set forth under 19 CFR 351.504. Because the VWP grants were limited to Forintek Canada Corp. (Forintek), which conducted research related to softwood lumber and manufactured wood products, we preliminarily determined that they are specific within the meaning of section 771(5A)(D)(i) of the Act. Thus, we preliminarily determined that the VWP provided a countervailable subsidy to the softwood lumber industry.

With regard to the National Research Institutes Initiative (NRII), because the Pulp & Paper Research Institute of Canada's (PAPRICAN's) work is limited to pulp and paper, we preliminarily determined that none of the funding PAPRICAN received conferred a countervailable subsidy on the softwood lumber industry. However, based on our review of the record, we preliminarily determined that research undertaken by the Forest Engineering Research Institute of Canada (FERIC) benefits commercial users of Canada's forests. Specifically, FERIC's research covers harvesting, processing and transportation of forest products, silviculture operations, and small-scale operations. Thus, government-funded R&D by FERIC benefits, *inter alia*, producers of softwood lumber. Similarly, we found that Forintek's NRII operations, which pertain to resource utilization, tree and wood quality, and wood physics, also benefit, *inter alia*, softwood lumber.

We preliminarily determined that NRII grants to FERIC and Forintek constitute financial contributions within the meaning of section 771(5)(D)(i) of the Act and provide benefits as set forth under 19 CFR 351.504. We also preliminarily determined that the grants are specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited to FERIC and Forintek, which conduct research related to the forestry and logging industry, the wood products manufacturing industry, and the paper manufacturing industry. Therefore, we preliminarily determined that FERIC's and Forintek's NRII funding provided a countervailable subsidy to the softwood lumber industry.

To calculate the countervailable subsidy rate for this program, we first examined whether these

non-recurring grants should be expensed to the year of receipt. See 19 CFR 351.524(b)(2). We summed the funding approved for Forintek during the POR under the VWP and NRRII components, and divided this sum by the total sales of the wood products manufacturing industry during the POR. We also divided the funding approved for FERIC during the POR by the total sales of the wood products manufacturing and paper industries during the POR. Combining these two amounts, we determined that the benefit under the NRCAN softwood marketing subsidies program should be expensed in the year of receipt.

We then calculated the countervailable subsidy rate during the POR by dividing the amounts received by Forintek during the POR under the VWP and NRRII components by the total sales of the wood products manufacturing industry during the POR (net of excluded and zero rate company sales). We also divided the funding received by FERIC during the POR by the total sales of the wood products manufacturing and paper industries during the POR (net of excluded and zero rate company sales). Combining these two amounts, we preliminarily determined the countervailable subsidy from the NRCAN softwood marketing subsidies program to be 0.01 percent *ad valorem*.

We received comments on our Preliminary Results related to this program. See Comment 47. Based on our analysis of the comments received, we have made no changes for these final results. Thus, we determine the countervailable subsidy from this program to be 0.01 percent *ad valorem*.

4. Payments to the Canadian Lumber Trade Alliance (CLTA) & Independent Lumber Remanufacturers Association (ILRA)

In the Preliminary Results we determined that this program provided a financial contribution in the form of a grant within the meaning of section 771(5)(D)(i) of the Act and conferred a benefit as set forth under 19 CFR 351.504. Because the program provided grants to two associations, CLTA and ILRA, we determined that it is specific within the meaning of section 771(5A)(D)(i) of the Act. Therefore, we determined that the GOC grants to CLTA and ILRA provide a countervailable subsidy to the softwood lumber industry.

To calculate the countervailable subsidy rate for this program, we first examined whether this non-recurring grant should be expensed to the year of receipt. See 19 CFR 351.524(b)(2). Because these grants underwrote these associations' costs related to the softwood lumber dispute, we determined that the benefit is tied to anticipated exports to the United States. See 19 CFR 351.514(a). Therefore, we divided the amount approved by total exports of softwood lumber to the United States during the POR. See 19 CFR 351.525(b)(4). Because the resulting amount was less than 0.5 percent, the benefit was expensed in the year of receipt.

We then calculated the countervailable subsidy rate during the POR by dividing the amount received by CLTA and ILRA during the POR by total exports of softwood lumber to the United States during the POR. On this basis, we preliminarily determined the countervailable subsidy from this program to be 0.23 percent *ad valorem*.

We received comments on the Preliminary Results related to this program. See Comment 48. Based on our analysis of the comments received, for the purposes of these final results we have revised our specificity finding. In particular, we determine that the grants to the CLTA and ILRA are

contingent up export performance and, hence, specific within the meaning of section 771(5A)(B) of the Act. We have continued to calculate the countervailable subsidy rate during the POR by dividing the amount received by CLTA and ILRA during the POR by total exports of softwood lumber to the United States during the POR. However, in the final results, we have reduced the denominator to account for excluded and zero rate company export sales of lumber to the United States. Therefore, we determine the countervailable subsidy from this program to be 0.23 percent *ad valorem*.

Programs Administered by the Province of British Columbia

1. Forest Renewal British Columbia (FRBC)

In the Preliminary Results, we determined that the FRBC program provided grants directly to softwood lumber producers in two ways: (1) as part of ad hoc arrangements between Forest Renewal B.C. and softwood lumber companies, and (2) as part of established grant programs to support activities such as business development, industry infrastructure, training, and marketing. Because direct grant assistance is provided only to support the forest products industry, in the Preliminary Results, the Department determined that these grants are specific under section 771(5A)(D) of the Act. The Department also preliminarily determined that provision of these grants constituted a financial contribution within the meaning of section 771(5)(D)(i) of the Act.

The Forest Renewal B.C. program also provided funds to community groups and independent financial institutions, which may in turn provide loans and loan guarantees to companies involved in softwood lumber production. In the Preliminary Results, the Department found that the lumber producers received no benefit, within the meaning of section 771(5)(E)(ii), from the loans without guarantees and the guaranteed loans during the POI because the reported interest rates charged on those loans were equal to or higher than the interest rate charged on comparable commercial loans.

Effective March 31, 2002, the B.C. legislature terminated the Forest Renewal B.C. program. In the winding-up of operations of the Value-Added Business Unit under the Forest Renewal B.C. program, certain disbursements and other “true-up” value-added commitments were made during the POR. These disbursements were made pursuant to Contribution Agreements that had been entered into prior to the termination of the program.

All grants provided under this program are expensed in the year of receipt. In the Preliminary Results, to calculate the provincial rate provided under this program, we summed the amount of grants provided to all producers/exporters of softwood lumber during the POR and divided that amount by the f.o.b. value of total sales of B.C. softwood lumber for the POR. Next, as explained in the “Aggregate Subsidy Rate Calculation” section of this memorandum, we weight-averaged the provincial rate from this provincial subsidy program by the province’s relative share of total U.S. exports. We received comments on our Preliminary Results related to this program. See Comment 49. Based on our analysis of the comments received, we have made no changes for these final results. Thus, we have determined the countervailable subsidy from this program to be 0.01 percent ad valorem.

2. Forestry Innovation Investment Program (FIIP)

In the Preliminary Results we determined that the Forestry Innovation Investment Ltd. (FII) grants provided to support product development and international marketing are countervailable subsidies. The FII grants constitute financial contributions within the meaning of section 771(5)(D)(i) of the Act and provide benefits as set forth in 19 CFR 351.504. The grants are specific because they are limited to institutions and associations conducting projects related to wood products generally and softwood lumber, in particular. See section 771(5A)(D)(i) of the Act.

Regarding the research sub-program, the GOBC reported that it funded approximately 141 research projects during the POR. The GOBC claimed that this research is not specific to softwood lumber and, moreover, that it involves the government purchase of services.

According to information submitted in the response, investments made through the research program “are expected to provide a positive contribution to the government goal of having a leading edge forest industry that is globally recognized for its productivity, environmental stewardship and sustainable forest management practices.” Given the focus of this research, we preliminarily determined that this research benefits commercial users of B.C.’s forests and, inter alia, producers of softwood lumber.

Therefore, we preliminarily determined that the FII grants provided to support research are countervailable subsidies. These FII grants constitute financial contributions within the meaning of 771(5)(D)(i) of the Act and provide benefits as set forth in 19 CFR 351.504. The grants are specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited to institutions and associations conducting research related to the forestry and logging industry, the wood products manufacturing industry, and the paper manufacturing industry.

To calculate the benefit from this program, we first determined whether these non-recurring subsidies should be expensed in the year of receipt. See 19 CFR 351.524(b)(2). For grants given to support product development for softwood lumber, we divided the amounts approved by total sales of softwood lumber for B.C. during the POR. For grants to support international marketing, we divided the grants approved by exports of softwood lumber from B.C. to the United States during the POR. (As explained above, the GOBC did not report grants tied to other export markets.) See 19 CFR 351.525(b)(4). For research grants, we divided the grants approved by total sales of the wood products manufacturing and paper industries from B.C. during the POR. Combining these three amounts, we preliminarily determined that the FII benefit should be expensed in the POR.

We then calculated the countervailable subsidy rate during the POR by dividing the amounts disbursed during the POR. For grants given to support product development for softwood lumber, we divided the amounts disbursed by total sales of softwood lumber for B.C. during the POR. For grants to support international marketing, we divided the amounts disbursed by exports of softwood lumber from B.C. to the United States during the POR. For research grants, we divided the amounts disbursed by total sales of the wood products manufacturing and paper industries for B.C. during the POR. We combined these three amounts and, as explained in the “Aggregate Subsidy Rate Calculation” section of this memorandum, we multiplied this total by B.C.’s relative share of total exports to the United States. On this basis, we preliminarily determined the countervailable subsidy from the FIIP to be 0.13 percent *ad valorem*.

Based on our analysis of the comments received, we have made no changes for these final results. Thus, we determine the countervailable subsidy from this program to be 0.13 percent *ad valorem*. See Comment 51.

3. British Columbia Private Forest Property Tax Program

B.C.'s property tax system has two classes of private forest land—Class 3, “unmanaged forest land,” and Class 7, “managed forest land”—that incurred different tax rates in the 1990s through the POR. Record evidence shows generally lower property tax rates for Class 7 than for Class 3 land at all levels of tax authority for most, though not all, taxes. For example, at the provincial level, Class 7 land incurred rates of C\$0.50 and C\$2.30 per C\$1,000 of assessed land value—or 0.05 and 0.23 percent—for the general rural tax and the school tax, respectively; while Class 3 land incurred rates of C\$4.50 and C\$12.00 per C\$1,000 of assessed land value, or 0.45 and 1.20 percent. Similarly, the various municipal and district level authorities imposed generally lower rates for Class 7 than for Class 3 land. See the October 22, 2004, Memorandum to James J. Jochum, Assistant Secretary, Import Administration, from Jesse Cortes, Case Analyst, concerning New Subsidy Allegation: British Columbia Private Forest Land Tax Program, (B.C. Tax Preliminary Memorandum).

As discussed in the B.C. Tax Preliminary Memorandum, this differential tax program is encoded in several laws, of which the most salient is the 1996 *Assessment Act* (and subsequent amendments). Section 24(1) of the *Assessment Act* contains forest land classification language expressly requiring that, *inter alia*, Class 7 land be “used for the production and harvesting of timber.” Additionally, Section 24(3) or 24(4) of the *Assessment Act*, depending on the edition of the statute, requires the assessor to declassify all or part of Class 7 land if “the assessor is not satisfied ... that the land meets all requirements” for managed forest land classification. Amendments to the provision, enacted from 1996 through 2003, retained the same language stating these two conditions. Thus, the law as published during the POR required that, for private forest land to be classified—and remain classified—as managed forest land, it had to be “used for the production and harvesting of timber.”

Section 771 of the Act sets forth various elements that must be present for the Department to find a countervailable subsidy. Because the tax authorities impose two different tax rates on private forest land, the governments are foregoing revenue when they collect taxes at the lower rate. Thus, the program results in a financial contribution as defined in section 771(5)(D)(ii) of the Act. It also confers a benefit in the form of tax savings within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) of the Department's regulations.

Further, we determine that the B.C. private forest land tax program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. As noted above, and as discussed more fully in the B.C. Tax Preliminary Memo, the *Assessment Act* expressly requires that Class 7 land be “used for the production and harvesting of timber,” and additionally requires the assessor to declassify any Class 7 land not meeting all the Class 7 conditions, of which timber use was one. Hence, in accordance with section 771(5A)(D)(i) of the Act, we find that the B.C. private forest land tax program is specific as a matter of law, *i.e.*, *de jure* specific, to private forest landowners who harvested or produced timber during the POR.

The GOBC has argued that, in practice and notwithstanding the language of the law, timber harvest or production is not a dispositive requirement for obtaining or retaining managed forest land status, and that the Class 7 rolls included landowners who did not harvest or produce timber. A determination that a subsidy is *de jure* specific concludes the Department's analysis. Nevertheless, we note that record evidence indicates that Class 7 landowners who own or operate a sawmill were the majority users of the subsidy during the POR. However, having determined that the language of the *Assessment Act* expressly limited access to the program to private forest landowners who harvested or produced timber such that the B.C. tax program is *de jure* specific under section 771(5A)(D)(i) of the Act, we are not required to undertake a factual analysis under section 771(5A)(D)(iii) of the Act.

The benefit received under this program is the sum of the tax savings enjoyed by Class 7 sawmill landowners at both the provincial and sub-provincial levels of tax authority in B.C. With regard to the provincial tax, the assessed value is calculated as the sum of the land value and a formulaic valuation of the timber harvested from the land in the prior year. The tax is levied by applying the tax rate to this assessed value. The GOBC did not submit data on the timber value. Accordingly, the Department calculated the tax benefit at the provincial level based solely on the land value.

We determined the tax benefit at the local level using the data submitted by the GOBC on local tax rates, and on the value and acreage of Class 3 and Class 7 land in the various jurisdictions. Only those jurisdictions with both Class 3 and Class 7 land in the assessment rolls for 2002 and 2003, and whose tax differential resulted in a tax savings for Class 7 landowners, were included in the benefit calculation. With regard to a number of regional and hospital district jurisdictions that are intermediate between the provincial and local levels, the GOBC submitted data on their Class 3 and Class 7 tax rates, but did not provide assessment data on land value and acreage. Consequently, to the extent that any benefit may have accrued at that level, we have not included it in our calculation for the present review; we will re-examine this aspect of the program in any subsequent review. The provincial and local level benefit amounts were summed to produce an overall POR benefit amount. Using the POR total value of B.C. sawmill wood product shipments as the denominator, and adjusting for B.C.'s share of the total exports to the United States, we determined a tax benefit to the Class 7 landowners of 0.10 percent ad valorem during the POR. See the December 13, 2004, B.C. Tax Final Calculations for a more detailed explanation.

We received comments from the parties on this issue. Based on our analysis of those comments, we have amended our preliminary finding by including the benefit conferred by the tax savings at the local level, as discussed above and in Comment 60 of the Decision Memorandum.

Programs Administered by the Province of Quebec

1. Private Forest Development Program

Consistent with Lumber IV, we preliminarily determined that the Private Forest Development Program (PFDP) conferred a countervailable subsidy within the meaning of section 771(5) of the Act and that assistance provided under this program is specific under section 771(5A)(D)(i) of the Act because assistance is limited to private woodlot owners. In addition, we preliminarily determined that

payments by PFDP constitute a financial contribution under section 771(5)(D)(i) of the Act, providing benefits as set forth in 19 CFR 351.504.

The GOQ argued that no benefit is provided under this program to sawmill operators because they are required to make contributions to PFDP for lumber harvested on private land. The GOQ states that the sawmill operators' contributions were greater than the amount of silviculture reimbursements the mills received under this program during the POR.

We did not accept this claim. Every holder of a wood processing plant operating permit must pay the fee of C\$1.20 for every cubic meter of timber acquired from a private forest. These fees fund, in part, the PFDP. The recipients of payments under the PFDP are owners of private forest land. Thus, the sawmill operators that received assistance under the PFDP received assistance because they owned private forest land. Therefore, consistent with Lumber IV, we preliminarily determined that the fees paid to harvest timber from private land do not qualify as an offset to the grants received under the PFDP pursuant to section 771(6) of the Act. Section 771(6) of the Act specifically enumerates the only adjustments that can be made to the benefit conferred by a countervailable subsidy and fees paid by processing facilities do not qualify as an offset against benefits received by private woodlot owners.

Consistent with Lumber IV, we preliminarily treated these payment as recurring. See 19 CFR 351.524(c). Thus, to calculate the countervailable subsidy provided under this program, we summed the reported amount of grants provided to producers of softwood lumber during the POR and divided that amount by total sales of softwood lumber from Quebec for the POR. Next, as explained in the "Aggregate Subsidy Rate Calculation" section of this memorandum, we multiplied this amount by Quebec's relative share of exports to the United States. On this basis, we preliminarily determined the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

We received comments on the Preliminary Results related to this program. See Comment 53. Based on our analysis of the comments received, for the purposes of these final results we calculated the countervailable subsidy by summing the reported amount of grants provided to sawmills that produce softwood lumber (and other products) during the POR and divided that amount by total sales of softwood lumber, hardwood lumber, and softwood co-products. Next, as explained in the "Aggregate Subsidy Rate Calculation" section of this memorandum, we multiplied this amount by Quebec's relative share of exports to the United States. On this basis, for these final results we have determined the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

Programs Determined Not to be Countervailable

Program Administered by the Government of Canada

1. Human Resources & Skills Development Worker Assistance Programs (HRSD)

Pursuant to Canada's Employment Insurance Act (EIA), the GOC provides "Part I" unemployment compensation to workers and "Part II" retraining and rehiring assistance to workers, employers and third parties. This support is administered by HRSD (formerly Human Resources Development Canada), which delegates the delivery of Part II assistance to the regional authorities.

In the Preliminary Results, we determined that softwood lumber producers do not have an obligation to retrain laid off workers and, consequently, that softwood lumber producers have not been relieved of an obligation by virtue of the GOC's retraining programs and, thus, was not countervailable.

We received comments on our Preliminary Results related to this program. See Comment 54. Based on our analysis of the comments received, we have made no changes for these final results. Thus, we determine no countervailable subsidy is conferred by this program.

2. Litigation-Related Payments to Forest Products Association of Canada (FPAC)

In May 2002, the DFAIT allocated C\$17 million in grant money to FPAC in support of FPAC's Canada-U.S. Awareness Campaign (CUSAC). CUSAC was a public relations campaign in the United States regarding the softwood lumber dispute between the two nations. The program was expanded in November 2002 to include advocacy activities such as lobbying of U.S. legislators. Of the allotted sum, a total of C\$14 million was disbursed during the POR.

We preliminarily determined that this program does not confer a countervailable subsidy on the production, sale or exportation of softwood lumber from Canada. The nature of the public relations campaign was to influence decision makers in the United States government, not to advertise Canadian lumber or promote sales of Canadian lumber in the United States. This campaign was an extension of the advocacy activities undertaken by the GOC on behalf of the industry.

We received comments on our Preliminary Results related to this program. See Comment 55. Based on our analysis of the comments received, we have made no changes for these final results. Thus, we determine no countervailable subsidy is conferred by this program.

Program Administered by the Province of Alberta

1. Timber Damage Compensation for Forest Management Agreement (FMA) Holders

Under Alberta law, FMA holders have a right to compensation when trees within the FMA holder's territory are damaged or destroyed. Thus, when energy companies damage large quantities of timber while drilling oil wells, engaging in exploration, or building pipelines, the FMA holders may seek compensation. FMA holders are required to pay for all wood cut within their designated FMA area. This requirement exists even if the timber is destroyed by industrial operators such as mining or oil and gas operations.

We preliminarily determined that the industrial operators have not been entrusted or directed to provide a financial contribution to FMA holders in Alberta and, therefore, that this program did not confer a countervailable subsidy.

We received comments on our Preliminary Results related to this program. See Comment 56. Based on our analysis of the comments received, we have made no changes for these final results. Thus, we continue to determine that no countervailable subsidy is conferred by this program.

Programs Determined Not to Confer A Benefit During the POR

Program Administered by the Province of Manitoba

1. Timber Damage Compensation for Timber Licensees

Section 20(2) of The Forest Act authorizes compensation to be paid to timber licensees for damage to timber incurred as a consequence of boring or operating any salt, oil, or gas wells, or in working any quarries or mines. The Government of Manitoba (GOM) reported that no compensation has ever been paid for such damages to a timber licensee.

We preliminarily determined that this program did not confer a benefit because no timber licensees received compensation during the POR.

We received comments on our Preliminary Results related to this program. See Comment 57. Based on our analysis of the comments received, we have made no changes for these final results. Thus, we determine no countervailable subsidy was conferred by this program during the POR.

Programs Administered by the Province of Quebec

1. Assistance from the Societe de Recuperation d'Exploitation et de Developpement Forestiers du Quebec (Rexfor)

SGF Rexfor, Inc. (Rexfor) is a corporation all of whose shares are owned by the Societe Generale de Financement du Quebec (SGF). SGF is an industrial and financial holding company that finances economic development projects in cooperation with industrial partners. Rexfor is SGF's vehicle for investment in the forest products industry.

Rexfor receives and analyzes investment opportunities and determines whether to become an investor either through equity or participative subordinated debentures. In the Preliminary Results, consistent with Lumber IV, we did not analyze equity investments by Rexfor. However, consistent with Lumber IV, we examined whether Rexfor's participative subordinated debentures, *i.e.*, loans, conferred a subsidy.

In the Preliminary Results, because assistance from Rexfor is limited to companies in the forest products industry, we preliminarily found that this program is specific under section 771(5A)(D)(i) of the Act. The long-term loans provided by Rexfor we found to qualify as a financial contribution under section 771(5)(D)(i) of the Act. To determine whether the single loan outstanding to a softwood lumber producer during the POR provided a benefit, we compared the interest rates on the loan from Rexfor to the benchmark interest rates as described in the "Benchmarks for Loans and Discount Rates" section of the Preliminary Results. See section 771(5)(E)(ii) of the Act. Using this methodology, we preliminarily found that no benefit was provided by this loan because the interest rates charged under this program were equal to or higher than the interest rates charged on comparable commercial loans.

Additionally, there was one company that had a Rexfor loan that had entered into bankruptcy negotiations with Rexfor and other creditors during the period of investigation and settled with Rexfor

prior to the POR. We noted in the Preliminary Results that the record contains no information on Canada's bankruptcy proceeding involving the company in question. Therefore, we were not able to determine from the information on the record whether the process followed in eliminating this debt conferred a subsidy. Lacking this information, we examined whether the debt forgiveness would confer a benefit during the POR. Using the POI denominator we find that the amount of debt forgiveness was smaller than 0.5 percent of the value of sales of softwood lumber for Quebec in the POI, thus any benefit would be expensed prior to the POR in accordance with 19 CFR 351.524(b)(2). On this basis, we preliminarily found that the debt forgiveness by Rexfor did not confer a benefit in the POR and, thus, provides no countervailable subsidy.

We received no comments on our Preliminary Results related to this program. For these final results, we have continued to find that the one outstanding Rexfor loan and the debt forgiveness by Rexfor did not confer a benefit in the POR, and, thus, provided no countervailable subsidy.

2. Assistance under Article 28 of Investissement Quebec

Assistance under Article 28 is administered by Investissement Quebec, a government corporation. In Lumber IV, the Department investigated assistance from the GOQ under Article 7, which was administered by the Societe de Developpement Industriel du Quebec ("SDI"). Article 28 supplanted Article 7 in 1998. Under Article 7, SDI provided financial assistance in the form of loans, loan guarantees, grants, assumption of interest expenses, and equity investments to projects that would significantly promote the development of Quebec's economy. The Article 28 program operates fundamentally in the same manner as Article 7.

During the POR, there was one outstanding loan under Article 28. There were no outstanding loans under Article 7. No other assistance was provided to softwood lumber companies under Article 7 or Article 28.

We preliminarily determined that no benefit was provided by this loan because the interest rates and fees charged under this program were equal to or higher than the interest rates charged on comparable commercial loans.

We received comments on our Preliminary Results related to this program. See Comment 58. For these final results, we have continued to find that the Article 28 loan did not confer a benefit in the POR, and, thus, provided no countervailable subsidy.

Other Programs

Program Administered by the Province of British Columbia

1. "Allowances" for Harvesting Beetle-Infested Timber

We preliminarily determined that any "allowances" provided in regard to harvesting beetle-infested timber were included in the Department's stumpage subsidy rate calculations.

We received no comments on our Preliminary Results related to this program. For these final results, we have continued to find that any allowances provided in regard to beetle-infested timber were included in the Department's stumpage subsidy rate calculations.

Program Administered by the Province of British Columbia

2. Land Base Investment Program (LBIP)

We preliminarily determined not to include this program in this administrative review because the focus of the land-base activities under this program are materially identical to the land-base activities of Forest Renewal B.C., activities which the Department determined not to investigate in Lumber IV.

We received comments on our Preliminary Results related to this program. See Comment 50. For these final results, we are not revising the Department's determination in the Preliminary Results.

Programs Determined Not to Be Used

Program Administered by the Government of Canada

1. Canadian Forest Service Industry, Trade & Economics Program (CFS-ITE)

We received comments on this program. See Comment 59. For these final results, we are not revising the Department's determination in the Preliminary Results.

TOTAL AD VALOREM RATE

In accordance with 777A(e)(2)(B) of the Act, we have calculated a single country-wide subsidy rate to be applied to all producers and exporters of the subject merchandise from Canada, other than those producers that have been excluded from this order. This rate is summarized in the table below:

Producer/Exporter	Net Subsidy Rate
All Producers/Exporters	17.18 percent <u>ad valorem</u>

ANALYSIS OF COMMENTS

A. Company-Specific Review Issues

Comment 1: Legal and International Obligations to Conduct Company Reviews

The Canadian parties argue that the Department's failure to provide company-specific assessment rates is a violation of section 751 of the Act and the Agreement on Subsidies and Countervailing Duty Measures (SCM Agreement). They assert that the Department is not limited, in its review of individual companies, to those that qualify for zero or de minimis rates. Rather, the Department is required to calculate individual subsidy rates for all companies that request a review. A number of companies take issue with the fact that the final results of this administrative review will supercede expedited review cash deposit rates. Specifically, the parties argue that if the aggregate rate calculated in these final results is higher than the individual cash deposit rate calculated in the expedited review proceeding, they will be required to pay countervailing duties in excess of any subsidy found to exist.

Canadian parties claim that the Department's regulations provide for a two-step expedited review process, referring to the Preamble which states: "The objective is to provide a noninvestigated exporter with its own cash deposit rate prior to the arrival of the first anniversary month of the order, at which point the exporter may request an administrative review." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27321 (May 19, 1997) (Final Rule).

In addition, Canfor Corporation and its affiliates Lakeland Mills Ltd. and The Pas Lumber Company Ltd., and Terminal Forest Products, Ltd. (Canfor and Terminal) argue that the Department inaccurately characterized their requests for company-specific reviews as simply requests to be "voluntary" respondents. See Company Selection Memorandum. Canfor and Terminal argue that they too are entitled to company-specific reviews and assessment rates because of their status as companies that participated in the expedited reviews and received company-specific cash deposit rates. Because the expedited reviews only established cash deposit rates for estimated CVD duties, the companies had no alternative but to request administrative reviews under section 751(a)(1) of the Act, to obtain their own company-specific assessment rates. As such, they submitted voluntary responses to the questionnaire which the Department issued to the zero/de minimis review requesters; however, they were not selected for review because, they contend, the Department improperly limited the number of companies eligible for review.

Petitioners counter stating that the Department is not required to provide a company-specific administrative review for any company that requested an expedited review under any U.S. statute or regulation, U.S. judicial precedent, or prior administrative decision-making. Petitioners contend that U.S. law, in fact, forbids company-specific reviews when the Department has properly elected to conduct a country-wide review. According to petitioners, the statute authorizes the Department to calculate a country-wide rate if it would be impracticable to calculate company-specific rates. As such, the Department's decision to limit the number of individually-reviewed producers and exporters to four companies during this review is reasonable and in accordance with the law and comports with long-

established and consistent practice. Petitioners also rebut respondents' arguments that the United States has an international obligation to provide them with company-specific treatment.

Department's Position

When conducting an administrative review on an aggregate basis pursuant to section 777A(e)(2)(B), the Department is not required to conduct any company-specific reviews. Rather, the Department's regulations require only that the Department "consider" company-specific requests in an aggregate case, and conduct the reviews "to the extent practicable." Determining whether or to what extent it is practicable to conduct individual reviews is entirely within the Department's discretion (see section 351.213(k)(1) of the Department's Regulations). Accordingly, the Department stated in its Review Methodology Memorandum that in the event it determined to conduct the review on an aggregate basis, it "intends to also review the maximum number of company-specific requests that do not impose an extraordinary administrative burden upon the Department." See Review Methodology Memorandum at 4. Based on the complexity of the issues involved, and the resources necessary to conduct the reviews, the Department determined that it was administratively practicable for it to conduct reviews of four individual companies claiming zero rates. The decision to limit the company-specific reviews to those four companies was within the Department's discretion to determine what is and what is not practicable in a given case.

The respondents' claim ignores the plain language of section 777A(e)(2) of the Act, which recognizes that in certain cases in which the number of producers and exporters is too large to allow for company specific reviews, the Department has the discretion to conduct the review on an aggregate basis. See section 777A(e)(2) of the Act. Moreover, it is plainly evident in the language of the regulations, that, in an aggregate review, the Department need only "consider" individual requests and conduct individual reviews only "to the extent practicable." 19 CFR 351.213(k). Respondents' argument that Commerce is required in an aggregate review to grant all requests for company-specific reviews would render these statutory and regulatory provisions meaningless. Indeed, under the respondents' analysis, the Department would be required to conduct individual reviews of the approximately 296 companies that requested a review. Such a requirement would nullify the discretion Congress accorded the Department to conduct aggregate reviews.

With regard to Canfor and Terminal's arguments, given that it is entirely within the Department's discretion to conduct company-specific reviews in aggregate cases, it is also entirely within the Department's discretion to determine whether or how to select companies for individual review. Neither Canfor nor Terminal met the criteria used by the Department to select companies potentially eligible for a company-specific review and, therefore, we determined not to conduct a review for either company. See Company Selection Memorandum at 2.

The claim by certain respondents that the Department should treat the cash deposit rates they received in the expedited review proceedings as assessment rates is also inconsistent with the statute and regulations. Expedited reviews are based on information from the period of investigation and, like the investigation, only establish a cash deposit rate for the exporter/producer. There is absolutely no basis in the statute or the regulations for respondents' assumption that the cash deposit rates in

expedited reviews are to be treated any differently than other company-specific cash deposit rates. To the contrary, expedited review rates, like any other cash deposit rate, may be superceded by the final results of a subsequent administrative review. If a review is requested, section 751(a)(2)(C) of the Act requires that the final results of the review be the basis for the assessment of countervailing duties on entries during the period of review and future cash deposits. A cash deposit rate becomes an assessment rate and continues for future entries only if no review is requested. See 19 CFR 351.212(c).

Both the GOC and petitioners requested that the Department conduct this review on an aggregate basis. Moreover, as discussed above, the number of individual requests for review was extremely large. We therefore conducted an aggregate review and, in accordance with section 777A(e)(2) of the Act, calculated “a single country-wide subsidy rate to be applied to all exporters and producers,” and some company-specific rates, to the extent practicable. In accordance with section 751(a)(2)(C) of the Act, therefore, those final results must be the basis for both the assessment of duties on entries during the POR and future cash deposits. Finally, with respect to respondent’s WTO-specific arguments, we note that U.S. law, as implemented through the URAA, is fully consistent with our WTO obligations.

Comment 2: Rescission of Company-Specific Reviews Was Unlawful and Unreasonable

Section 351.213(k) of the Department’s regulations states that “where the Secretary conducts an administrative review of a countervailing duty order on an aggregate basis ... the Secretary will consider and review requests for individual assessment and cash deposit rates of zero to the extent practicable.” The Quebec Border Mills²² argue that the plain meaning of this regulation is that in addition to an aggregate review, the Department is to conduct some number of individual reviews and reviewing only four companies does not come close to meeting the practicability standard. They note that the Department cited internal administrative resource limitations for its decision to rescind certain company administrative reviews. See Company-Specific Preliminary Memorandum at 4. The Quebec Border Mills and other Canadian parties argue, however, that administrative convenience is not a valid basis to rescind a review – rather it is a discretionary predicate to initiate a review, citing to section 351.213(k)(1) of the Department’s regulations. They further assert that the Department’s authority to rescind is found in section 351.213(d), and that none of the situations provided for in section 351.213(d) applies to the company-specific reviews. It is also the Department’s responsibility, they argue, to ensure that staffing is sufficient to carry out statutory obligations and commitments. Further, the Canadian parties discuss the significant investment of time, money, and human capital the companies made to comply with the Department’s requests for information. They assert that it is unreasonable for the Department to terminate the individual reviews on the grounds of inconvenience after having put these companies with limited resources through the expense and trouble of responding to multiple

²² Bois Daaquam Inc., Bois Omega, Limitee, Fontaine Inc. (a.k.a., J.A. Fontaine et fils incorporee), Maibec Industries Inc., Materiaux Blanchet Inc. (St. Pamphile Mill), and Scierie West Brome Inc. (collectively, Quebec Border Mills)

questionnaires.

Department's Position

As discussed above in response to Comment 1, the Department's decision to conduct individual reviews in the context of an aggregate review is discretionary. The Department properly exercised its discretion and found that although it could review four of the 11 companies that originally satisfied the selection criteria, it was not administratively practicable to conduct reviews of the remaining six companies that satisfied the criteria. See "Company-Specific Reviews" section of this Decision Memorandum. Moreover, the regulations provide that the Department will "consider and review" individual companies to the extent practicable. Thus, contrary to respondents' arguments, the regulation on its face does not limit the Department's discretion to determine what is practicable to the point of initiation. If it is not practicable to do some or all of the individual reviews, the Department has the discretion not to do so.

When the Department exercises that discretion, it may vary based on the facts of the case. In some cases, the Department may be able to determine at the point of initiation the extent to which it is practicable to "consider and review" individual companies. In other cases, however, the complexity and administrative resource allocation required for the company-specific reviews and the aggregate review may not be fully known until the review is well under way. In those cases, if during the conduct of the review, the Department finds that it is not practicable to continue some or all of the company-specific reviews, it is within the Department's discretion to discontinue those reviews. Respondent's argument to the contrary is premised on the view that section 251.213(d) limits the Department's discretion to determine whether it is practicable to do the company-specific review. That is not the case. First, the regulation states that the Department will rescind a review if the request is withdrawn within 90 days. Thus, rather than limiting the Department's discretion to rescind, the regulation is limiting the Department's discretion *not* to rescind a review if the request is withdrawn. In the other situations addressed in the regulation, the decision whether to rescind is within the Department's discretion. Nothing in the regulation suggests that it in any way limits the Department's discretion to determine whether and to what extent company-specific reviews are practicable in an aggregate case.

Comment 3: Burden and Difficulty of Company-Specific Reviews Was Exaggerated

The Canadian parties argue that the Department's decision to limit company-specific reviews in this administrative review, from 148 to 11, and then to four companies, by postulating methodologies that are so complex as to prohibit company reviews is unreasonable. They contend that the Department improperly invoked methodological hurdles as the final arbiter of its company selection process and framed its approach based on what it claimed was practicable. The Department also, without any notice or explanation to the parties, decided not to use the methodology developed in the exclusion and expedited review process for the company-specific reviews. Instead, it chose a more complicated methodology, requiring it to investigate and determine company-specific benchmarks.

Respondents contend that if the Department returned to the methodology used for company

exclusions and expedited reviews for these final results, it would be administratively practicable to conduct the company-specific reviews. Further, the Canadian parties note that the Canadian companies have fully cooperated with the Department at every stage of the review, and therefore, the Department has all data necessary to calculate company-specific assessment rates using the methodology employed in the exclusions and expedited reviews.

Petitioners counter the Canadian parties' conclusion that the Department could easily have provided company-specific assessments simply by using the same methodologies employed during the investigation exclusion process and the expedited reviews. In not employing any of those methodologies, petitioners contend, the Department recognized the necessity that there be full offset of the subsidy as mandated by section 701(a) of the Act, and that assessment rates be calculated as accurately as possible.

Department's Position

As discussed in the "Company-Specific Review" section of this Decision Memorandum, the Department continues to find for these final results that it is not administratively practicable to review six of the 11 companies originally selected for individual review and that one company did not fit the selection criteria. Therefore, the Department has rescinded the individual reviews of these companies.

With the exception of the company that did not satisfy the selection criteria, the basis for the Department's decision to rescind the remaining six company specific reviews is administrative impracticability. See Company-Specific Preliminary Memorandum. As the Department stated, "The ability to review individual companies is inversely related to the commitment of time and resources required by the statutorily mandated administrative review. In an aggregate case, the Department can only conduct those company-specific reviews which its limited resources will permit." See Id. at 2. As evidenced by the voluminous number of issues and comments addressed in this Decision Memorandum, the Department has devoted considerable effort and resources to this aggregate administrative review.

Although the Department initially believed that it might be practicable to review the 11 companies that originally satisfied its selection criteria, it subsequently determined that reviewing all of these companies would require more data and analysis than originally anticipated. To identify viable benchmark options, we would have had to issue additional questionnaires and examine all information on the record to ensure that appropriate benchmarks are being used. Moreover, administrative resources were not available to resolve certain data deficiencies concerning the six companies. Thus, these company-specific reviews would require additional administrative resources and divert administrative resources from this aggregate administrative review. Consequently, the Department determined that it was impracticable for the Department to continue with those company-specific reviews. That decision was well within the Department's discretion.

Moreover, contrary to respondents' arguments, the Department could not employ the expedited review methodology in the individual reviews as that methodology is not a company-specific methodology. In the expedited reviews, we calculated company cash deposit rates by multiplying the company's quantity of Crown logs and the quantity of lumber inputs by the appropriate province-specific stumpage benefit calculated in the underlying investigation (i.e., the average per-unit differential

between the calculated adjusted stumpage fee for the relevant province and the appropriate benchmark for that province.) We then divided the stumpage benefit by the appropriate value of the company's sales to determine the company's estimated subsidy rate from stumpage and added any benefit from other programs to obtain the cash deposit rate for the company. See Final Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada, 67 FR 67388, 67391(November 5, 2002). Although that methodology was reasonable in the context of the expedited reviews when we were calculating estimated cash deposit rates, it is not appropriate for use in this administrative review in which we are calculating assessment rates. Specifically, for assessment purposes, the Department needs to calculate CVD rates based on company-specific data and can not apply a provincial-wide benefit, which the expedited review methodology does.

Comment 4: Review of Bois Daaquam Inc.

The Quebec Border Mills argue that by its own failure to investigate, the Department penalized Bois Daaquam Inc. (Daaquam) by rescinding its company-specific review. They assert that Daaquam provided every item of information that the Department requested, and the first notice that the Department needed more information was in the October 8, 2004, decision memorandum. See Company-Specific Preliminary Memorandum at 3. Of the three items concerning private Canadian log purchases the Department claimed were missing, Daaquam provided two in its May 11, 2004, questionnaire response (top diameter and length of log) and explained that its records did not permit retrieval of the third (log diameter). See the May 11, 2004, Questionnaire Response of Daaquam at 11 and Appendix 3. As such, the Department should reverse its preliminary determination and conduct a company-specific review for Daaquam.

Department's Position

Daaquam, in its May 11, 2004, questionnaire response, did provide top diameter and length for its log purchases; the company, however, did not supply such information for the tree lengths purchased from private and arm's-length suppliers. When discussing Daaquam's data in the Company-Specific Preliminary Memorandum, we should have been more precise in describing the "wood type" for which there were incomplete details. This fact, however, does not change the Department's ultimate decision to rescind Daaquam's company-specific review. Without top diameter and length for the tree lengths purchased, we cannot determine whether a comparison of the private tree length prices to the alleged arm's-length Crown-origin tree length prices is appropriate. Further, as discussed in the Company-Specific Preliminary Memorandum, to identify a viable benchmark option, we would need to issue additional questionnaires and rigorously examine all information on the record to ensure that the most accurate benchmark is applied. However, the Department's efforts and resources have been focused on analyzing the various and complex issues of this aggregate administrative review and, therefore, it is not administratively practicable to conduct a company-specific review of Daaquam.

Comment 5: Reconsideration of Midway Lumber's Company-Specific Review is Not Supported

Respondents contend that in the Company-Specific Preliminary Memorandum, the Department implies that unforeseen events caused it to rescind individual reviews. For example, respondents state that in that memorandum, the Department states that Midway Lumber's (Midway) log purchases directly from the Crown were, contrary to initial reporting, actually significant. Respondents argue that there is no basis to rescind Midway's review. They state that whether a company purchased one percent or 99 percent of its logs from the Crown, the calculation methodology remains the same and, therefore, the Department should reverse its preliminary decision and conduct a company-specific review for Midway.

Department's Position

As evidenced by the information submitted in Midway's May 7, 2004, questionnaire response, contrary to the company's earlier statements, it does not meet the selection criteria for a company-specific review. As enunciated in the March 15, 2004, Company Selection Memorandum, companies with insignificant purchases (*i.e.*, three percent or less) of Crown logs might be eligible for company-specific reviews. The Department specifically stated "we also reviewed the responses to determine whether there were any potential respondents that had quantities of either lumber inputs or Crown stumpage that could be considered insignificant when compared to overall volume and, therefore, ignored in any analysis." See Company Selection Memorandum at 5. In its September 29, 2003, submission, Midway Lumber reported that it did not purchase a significant amount of logs directly from the Crown. However, in its May 7, 2004, questionnaire response to the April 22, 2004, company-specific review questionnaire, Midway reported substantial purchases of logs from the Crown, *i.e.*, Crown log purchases which were significantly greater than three percent of total logs purchased during the review period. See the May 7, 2004, Questionnaire Response of Midway at Table 3. Because Midway does not meet the eligibility criteria for a company-specific review, the Department is rescinding its review.

Comment 6: Zero/De Minimis Rate Companies Should be Verified

Petitioners argue that the Department should verify the information upon which it preliminarily determined zero and de minimis rates for Fontaine Inc., Les Produits Forestiers Dube Inc., Scierie West Brome Inc., and Scierie Lapointe & Roy Ltee. They argue that the Department's practice of conducting verifications during the company exclusion proceedings and expedited review process should be continued in this administrative review.

The Canadian parties disagree with petitioners, asserting that, unlike the companies that received zero or de minimis rates in the exclusion and expedited review process, these four companies are not eligible for exclusion from the order. Further, according to section 782(i)(3)(B) of the Act, the Department is not required to verify any individual company in this review. They argue that the more fundamental issue is the disparate treatment of the companies that requested individual reviews.

Department's Position

Sections 782(i)(3)(A) and (B) of the Act provide that in an administrative review, the Department shall verify information relied upon if “verification is timely requested by an interested party . . . and no verification was made . . . during the 2 immediately preceding reviews. . .” The statute contains a good cause exception to these requirements. The Department’s regulation, 19 CFR 351.307 mirrors the statutory provision. No party timely requested verification of Fontaine Inc., Les Produits Forestiers Dube Inc., Scierie West Brome Inc., and Scierie Lapointe & Roy Ltee. Moreover, considering that the Department verified Fontaine Inc. (a.k.a., J.S. Fontaine & Fils Inc.), Les Produits Forestiers Dube Inc., and Scierie West Brome Inc. in the underlying investigation, and verified Scierie Lapointe & Roy Ltee during the company’s new shipper review, good cause did not exist for verifying these four companies in this review.

Comment 7: *Decision Not to Review Leggett & Platt was Based on a Factual Error*

Leggett & Platt Ltd., Leggett & Platt (BC) Ltd., and Leggett & Platt, Inc. (collectively, Leggett & Platt) argue that the Department failed to select it for a company-specific review. See Company Selection Memorandum at 5-6. The company contends the Department determined that it was ineligible for a review on the grounds that it was a U.S. importer that did not identify the Canadian exporters. Leggett & Platt state that was a factual error, noting that at the onset of the administrative review it identified itself as a “remanufacturer, exporter, and U.S. importer of the subject merchandise during the review period, and thus is an interested party,” and that in numerous documents identified the Canadian exporters for whom a review was requested. Therefore, the Department must correct its error and immediately initiate a zero rate review for Leggett & Platt.

Petitioners rebut Leggett & Platt’s claim that the Department is obligated to conduct a zero-rate review of its affiliated Canadian producers and exporters. Petitioners discuss that the Department determined that reviews of companies that acquired lumber could be exceptionally complex and, because of the large number of companies that reported lumber inputs in their questionnaire response, such analyses would not be practicable. See Company Selection Memorandum at 5. Petitioners note that Leggett & Platt acquired only lumber during the POR and did not harvest, buy, or otherwise acquire logs; as such, the company is not eligible for a zero rate review under the criteria established by the Department.

Department's Position

Initially, the Department did mistakenly find Leggett & Platt to be a U.S.-origin company. However, the reason that Leggett & Platt was not selected for a company-specific review concerns the company’s lumber purchases. In its September 26, 2003, questionnaire response, Leggett & Platt reported lumber purchases and, therefore, it did not fit the selection criteria for a review. As enunciated in the March 15, 2004, Company Selection Memorandum, the Department specifically excluded from consideration of a company-specific review those companies whose sole inputs were lumber.

Comment 8: Quebec Border Mills' Wood Sourcing is Unique and Warrants Individual Reviews

The Quebec Border Mills argue that their situation is unique in that the vast majority of their wood is sourced from the United States or private Canadian lands, or from excluded mills. For example, four of the non-reviewed Quebec Border Mills sourced between 62 percent and 80 percent of their wood from U.S. lands and between 76 percent and 93 percent of their wood from a combination of U.S. and Canadian private lands, and from excluded mills. The use of U.S. wood stems in large part from the geographic proximity of the border mills to the United States, and their longstanding business relationships with Maine and other U.S. landowners. They contend that this sourcing pattern is pivotal, because this case is not about U.S. stumpage, but Crown land stumpage. They discuss that the Department has pointed to U.S. wood procurement as an example of non-subsidized, market-driven procurement, and has considered wood obtained from private Canadian lands and from mills excluded from the countervailing order to be unsubsidized. Subjecting the Quebec mills to the country-wide rate would rest on the opposite assumption of “subsidized” sourcing. They assert that this assumption is inconsistent with other findings, in particular low rates for the Quebec Border Mills confirmed in the expedited reviews, and is factually incorrect. Therefore, they argue that the Quebec Border Mills are eligible for exclusion from the order based on their “non-subsidized” sourcing.

Department's Position

During the exclusion process of the investigation, we excluded from the order 26 companies, (22 of which are located in Quebec), which demonstrated sourcing the majority of their inputs from the United States, Maritimes, and/or private Canadian lands, and which received either zero or de minimis subsidies. The Department also, to date, has issued two remands in response to the NAFTA Panel's directives with regard to six Quebec companies. These remand determinations, if and when affirmed by the Panel, will result in these companies also being excluded from the order.

The Department, however, cannot exclude Quebec Border Mills from the countervailing duty order based simply on close business relationships with U.S. companies. The scope of the order covers the merchandise produced by these companies. The complexity of issues and fact patterns of this case require that the Department thoroughly review each company, subject to the order, to examine whether any countervailable subsidies were received.

In this review, to the extent practicable, the Department has conducted company-specific reviews of certain Quebec Border Mills, and other Canadian companies. Specifically, in these final results, the Department has completed company-specific reviews for four Quebec Border Mills, finding that these companies have either a zero or de minimis net subsidy rate.

Comment 9: Individual Calculations for Blanchet and Maibec

The Quebec Border Mills assert that if the Department calculates individual rates for all mills, several observations will become relevant: First, for *Materiaux Blanchet Inc.*, the individual calculation

should be for the St. Pamphile border mill. Second, for Maibec Industries Inc., the individual calculation should involve only the wood processed in the lumber sawmill operations.

Department's Position

In these final results, the Department is not calculating mill-specific rates.

B. Subsidies Valuation Issues

1. Numerator Issues

a. Pass-through

Comment 10: Record Evidence Demonstrates the Existence of Arm's-Length Purchases of Logs

The Canadian parties argue that the Department's preliminary determination that a pass-through analysis in not warranted in any province is both illegal and not supported by substantial evidence. They argue that record evidence demonstrates the existence of a large number of arm's-length purchases in each province.

Respondents state that the Department acknowledged in the Preliminary Results that log input purchases took place in Alberta, British Columbia, Manitoba, Ontario, and Saskatchewan during the POR. They argue that the Department mistakenly concluded that none of the transactions were at arm's length. According to respondents, the Department erroneously and illegally presumed that all transactions are non-arm's-length sales, unless it can be shown otherwise.

Respondents contend that the Department cannot legally presume that all sales between producers of logs and producers of subject merchandise are not at arm's length. They argue that, in accordance with recent WTO Appellate Body and Panel findings, the Department should conduct a pass-through analysis of logs purchased at arm's length by lumber producers to determine whether the alleged subsidy to timber harvesters from provincial stumpage benefitted those lumber producers. Further, the Government of Ontario (GOO) claims that pursuant to the upstream subsidy provision of the Act, a subsidy to an input product (*i.e.*, timber or logs) cannot be attributed to an unrelated purchaser of the product absent a finding that all of the elements of the upstream subsidy provision of the statute are met. More specifically, an alleged subsidy is countervailable only to the extent it has been demonstrated to provide a "competitive benefit" to the subject merchandise. Therefore, the GOO argues that the Department is required to exclude logs sold to unrelated third parties in arm's-length transactions from the subsidy calculation where there is no showing that the benefit to the independent harvesters "passed through" to the lumber producers. Nonetheless, the respondents argue that the petitioners neither requested nor substantiated allegations of upstream subsidies passing through to downstream producers of the subject merchandise.

Respondents also argue that they provided all available information regarding sales of Crown logs from independent harvesters without sawmills to sawmills in arm's-length transactions and, if the Department found that the data submitted was insufficient to conduct a pass-through analysis, then the Department should have issued a supplemental questionnaire. Respondents contend that for the

Department's decision not to conduct an analysis because the data is allegedly insufficient, without providing notice, does not accord with the Department's statutory and regulatory obligations.

Petitioners contend that although respondents allege that certain volumes of logs are transferred between unrelated parties in purportedly arm's-length transactions in all of the provinces subject to review except Quebec, respondents did not identify any specific evidence that would enable the Department to conclude that the subsidy benefit in these transactions is not passed through to the log buyers. Instead, respondents simply assert that the mere fact of a sale between unrelated parties is sufficient to establish the existence of arm's-length transactions.

Petitioners contend that transactions in Crown logs in the subject provinces are likely not to be at arm's length because of the structure of the provincial stumpage programs, which restrict the ability of tenure holders to obtain full value for the Crown logs they harvest. Petitioners argue that the "web of conditions" imposed on all provincial tenure holders - appurtenancy requirements, local processing requirements, log export restrictions, mandatory contracts with local mills as a condition of obtaining tenure - operate to force tenure holders to provide logs for local lumber production even if they could obtain higher log prices elsewhere. These restrictions imposed by the provincial governments on tenure holders demonstrate that the parties to such log transfers are unable to freely negotiate a truly arm's-length price. While the specifics of such restrictions vary by province, it is manifest that all of the provincial governments have structured the tenure systems so as to benefit lumber producers, not the logging industry. Petitioners also contend that record evidence confirms that, in B.C., the major tenure holders effectively control the market for logs provided to independent loggers through the SBFEP. Therefore, as a result of these and other provincial policies, there is no effective log market for independently-traded logs in B.C.

Petitioners argue that no commercial timber or log sellers would encumber log sales with the types of price-depressing restrictions that the provincial governments require of allegedly independent loggers. However, if respondents claim the existence of arm's-length sales, then the burden is on them to demonstrate the existence of arm's-length transactions in logs harvested from provincial tenures to make lumber. Thus, petitioners assert that the Department correctly determined that respondents bear the burden of production of evidence demonstrating that specific transactions took place during the POR in which subsidy benefits did not pass through to the lumber producer.

Respondents counter that petitioners' argument that no sales of logs harvested from Crown lands can be arm's-length transactions rests on two related and equally misguided propositions: (1) that an arm's-length transaction can occur only in a market that is devoid of government restrictions; and (2) that an arm's-length transaction is one that results in the price that the parties would negotiate if no exogenous factors affected prices. According to respondents, this definition of "arm's length" has no legal or economic foundation, and, were it adopted, it would ensure that no arm's-length transaction could ever be found. The concept of arm's-length transactions in a pass-through analysis does not incorporate the absence of governmental restrictions because these restrictions do not affect whether, or the extent to which, any alleged benefit is passed through in sales of logs between unrelated parties. Rather, respondents point to the language of the SAA which states that "the term 'arm's-length transaction' means a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the

transaction had been negotiated between unrelated parties.” SAA at 928. Respondents contend that nothing in this definition suggests that an arm’s-length transaction must take place in a marketplace free of government involvement or that it must result in the highest price that the seller could theoretically obtain if there were no governmental limitations on how it could sell its product.

Respondents contend that they have demonstrated that log export restraints have no effect on the price of logs in B.C., but even if petitioners could establish that there is such a price effect, that effect would be a result of the export restriction itself, and not evidence of any pass-through of alleged subsidies to timber. Respondents assert that petitioners’ contention that log export restraints are a countervailable subsidy has long been discredited, and is contradicted by substantial evidence and unsupported by prior decisions. Further, the GOBC argues that the Department should reject this backdoor attempt to overcome the clear holding of the panel on Export Restraints. Likewise, the Department must reject any other attempt to import into the definition of “arm’s length” the alleged effects of other government measures that do not independently satisfy the statutory requirements of a financial contribution, benefit, and specificity.

Respondents also contend that petitioners are claiming, in essence, that any law or regulation that has an effect on the price of logs results in a pass through of the alleged benefit to stumpage and that this price effect should be included in countervailing duties. This claim confuses the putative effects of a particular government action with the nature of that action. The laws and regulations alleged by petitioners to affect the price of logs do not satisfy the statutory requirements of financial contribution, benefit, and specificity. Therefore, the Department cannot legally countervail the effects of those measures under the guise of a pass-through analysis that pertains only to an alleged subsidy to stumpage.

Finally, respondents counter that contrary to petitioners’ characterization, *Creswell Trading Co. v. United States*, 15 F.3d 1054, 1059 (1994), does not hold that respondents have the burden of proof in cases such as this review. Respondents contend furthermore that they have presented ample evidence to demonstrate that independent loggers and sawmills sell logs to lumber producers in arm’s-length transactions. As a result, according to respondents, the burden has shifted back to the Department to prove that this evidence was either inaccurate or insufficient, which it has failed to do.

Department’s Position

In response to numerous requests by the Department, certain provinces submitted information on the record of this proceeding concerning the volume of provincial Crown logs harvested during the POR that they allege were sold in arm’s-length transactions, and for which they claim a pass-through analysis must be performed. We evaluated that information in the Preliminary Results, and found that respondents failed to provide the necessary evidence to support their claims that the reported log sales were in fact conducted at arm’s length. Preliminary Results, 69 FR at 33208 - 33209. In reaching this conclusion, the Department did not merely presume that all transactions are non-arm’s-length sales, as the Canadian parties suggest. Rather, as described in more detail below, we considered all of the information provided by the parties and determined that these were not arm’s-length sales. None of the

comments received by the parties since issuing the Preliminary Results have altered our finding that the parties failed to substantiate their claims. Moreover, if respondents had any additional information evidencing arm's-length transactions in which subsidies did not pass through to the sawmills, it was up to the party in control of that information to submit it to the Department for review.

Our finding that the log sales at issue can not be considered arm's-length transactions is based on limitations on log sales that are contained in Crown tenure contracts, such as (1) appurtenancy and local processing requirements; (2) government-mandated wood supply agreements; (3) the payment of Crown stumpage fees by sawmills for logs purchased from independent harvesters; (4) the structure of certain log purchase agreements; and (5) fiber exchanges between Crown tenure holders, buyers and sellers cannot negotiate freely. Buyers and sellers of logs are not free to bargain with whomever they chose or to bargain on terms not encumbered by government mandates. Where sales are affected by one or several of these factors, we find that the transaction is not an arm's-length transaction.

The limitations, such as appurtenancy and local processing requirements, dictate to the harvester those entities to whom it may sell, severely restricting the ability of the harvesters to bargain freely with willing purchasers in the marketplace. The most egregious example of this is an appurtenancy clause that requires that all or a specified amount of a tenure holder's timber be processed in a specified mill.

Similarly, wood supply agreements also restrict harvesters' choices in disposing of Crown timber. Under these agreements, the provincial government requires that an applicant, as a condition of obtaining a Crown tenure, negotiate a contract with another party regarding the disposition of the timber harvested from the tenure. Unlike in an open market transaction where sellers can choose freely among potential buyers, log sales made pursuant to mandated wood supply agreements cannot be considered arm's-length transactions because the sale is a function of the government's mandate.

Furthermore, many of the transactions reported by the Canadian provinces are based on log purchase agreements which, in many instances, more closely resemble contracts for harvesting and hauling of logs than arm's-length log sales thereof. These include transactions in which the purchasing sawmill takes an active role in managing all aspects of harvest and delivery of the Crown timber. For example, the sawmill may make separate payments to a harvesting company, the unaffiliated "tenure holder," and log hauler. In other instances, the sawmill finances or otherwise provides goods or services to the tenure holder as part of the transactions. In these transactions, the tenure holder is not merely selling the log for a negotiated arm's length price. Rather, the sawmill controls many elements of the transaction so that the transaction cannot be considered to have been conducted at arm's-length.

In addition to the structure of these contracts, we found that in a great many transactions the sawmills pays the Crown directly for the stumpage due for logs purchased from independent harvesters, rather than paying the harvesters the price of a log. Under this arrangement, it appears that the stumpage benefit goes directly to the sawmill paying the stumpage fee, just as if the sawmill were drawing from its own tenure and contracting out for harvesting and hauling services.

Finally, fiber exchange agreements are transactions in which tenure holders with processing facilities exchange Crown logs with other tenure holders. For example, a tenure holder with a mill that is set up to process only SPF timber species may end up with a harvest including some species other than SPF, e.g., Douglas fir. Fiber exchange agreements allow the SPF mill to exchange the Douglas fir

for SPF with another tenure holder. Fiber exchange agreements can be entirely volume based, *i.e.*, on a “equivalent volume” basis, although, in some instances, the parties attach a nominal price to the exchanged logs. Such agreements are often based on government-mandated appurtenancy or other processing requirements, which require that all Crown harvest, or an equivalent volume, be processed in a certain mill. The mills exchange wood precisely because they are not allowed to sell the logs on the open market. Moreover, the mills are required to harvest certain volumes from their own tenure, including logs they do not need for their own mills. These exchange agreements therefore are a mechanism for these tenured sawmills to deal with the various government restrictions on the disposition of the timber they harvest, not arm’s-length log sales. When buyers and sellers are not free to negotiate, the transactions cannot be considered to be at arm's length. Such a determination fully accords with the arm's-length definition set forth in the SAA.

We do not disagree with respondents’ contention that an arm’s-length transaction need not take place in a marketplace free of government involvement or result in the highest price that the seller could theoretically obtain if there were no governmental limitations on how it could sell its product. However, respondents neglect to distinguish between government actions that generally regulate the marketplace and those that mandate particular outcomes. The government mandates at issue here are conditions that are placed on the tenure licenses that have a direct impact on the disposition of Crown logs sold by independent harvesters.

Additionally, contrary to respondents’ assertion, an upstream subsidy allegation is not required. In this proceeding we are examining subsidies that directly benefit the lumber manufacturing process in Canada on an aggregate basis. This involves identifying all subsidies that benefit lumber manufacturers, including subsidies arising from the provision of Crown timber for less than adequate remuneration.

To calculate the benefit from the provincial Crown stumpage programs, we requested that each Canadian province report the value and volume of all Crown timber used in the lumber manufacturing process during the POR. Each of the Canadian provinces subject to this proceeding reported this data. By comparing the prices paid for the Crown harvested timber with market-determined benchmark prices, we have determined that Crown timber is provided for less than adequate remuneration.

The issue concerning a pass-through analysis arises only because the respondents have claimed that the Department has overstated the total subsidy by not properly adjusting the benefit calculation to account for allegedly arm’s-length sales of Crown logs by independent harvesters to downstream lumber producing sawmills. In this proceeding, the Department has properly addressed this claim by requesting detailed information from respondents to evaluate whether such an adjustment is appropriate. We continue to find that the log sales transactions reported by respondents were not conducted at arm’s length and therefore no adjustment to the calculations is warranted.

With respect to log export restrictions, we find that the existence of these restrictions does not necessarily preclude the existence of arm’s-length transactions in Canada. The log export restrictions primarily limit commercial interchange between individual Canadian companies and companies outside of Canada. In contrast, the factors that we identified as imposing restrictions on the log sales transactions between independent harvesters and sawmills do have a direct effect on those transactions.

Comment 11: Definition of a Log Sale Transaction

The Canadian parties argue that the Department erroneously found that certain log sales are not in fact log sales where the purchaser agrees to pay the seller's stumpage obligation as part of the terms of the transaction.

The Government of Alberta (GOA) contends that the Department incorrectly claimed that the existence of submission authority arrangements in Alberta confirmed the correctness of its decision not to make an adjustment for any arm's-length sales. According to the GOA, the existence of submission authority does not mean that sale are occurring at non-arm's-length prices, and use of such authority does not undermine the legitimacy of the arm's-length sales in Alberta. Thus, there is no reasonable basis for rejecting the GOA's request to classify these arm's-length sales volumes as non-subsidized lumber.

The Canadian parties also contend that in an arm's-length sale of logs for which a government stumpage charge must be paid, both parties take that payment into account when establishing the arm's-length value of the logs. They further argue that it doesn't matter which party actually writes the check to the government, and it is irrelevant to whether the transaction occurred at arm's-length or to whether any of the alleged stumpage subsidy benefit passed through to the purchaser. Respondents argue that the fact that the arm's-length purchaser of a log pays the stumpage fee to the provincial government does not transform that transaction into the same thing as a sawmill that harvests from its own tenure and hires loggers to perform the harvesting service. In the first case, the purchaser pays the stumpage fee in addition to the purchase price it pays to the logger, instead of paying to the logger a purchase price that includes the stumpage fee, but whichever party pays the stumpage fee to the province, the total cost to the log purchaser is the same. The logger is still selling logs, not services. Any alleged pass through of a benefit to the log purchaser in this private transaction to which the province is not a party must be established before that benefit can lawfully be countervailed. In the second case, by contrast, the tenure-holding sawmill is obligated by its provincial tenure agreement to pay stumpage fees and meet a variety of other provincial tenure obligations in exchange for the right to harvest the log. If the log is used by that sawmill in its own lumber production, the issue of pass through does not arise.

Further, the Canadian parties contend that the same principles apply to transactions that involve additional payments and services incurred by the sawmill purchasing the logs. According to respondents, such provisions to the harvester are merely transactions where the value is exchanged by a method other than a direct cash payment. The means by which value was exchanged did not affect the amount of value transferred or the arm's-length character of the transaction. Hence, these alternative methods of structuring the transaction do not reduce the amount of value transferred for the log or eliminate the need for a pass-through analysis.

The GOBC asserts that, in fact, transactions in which the purchasing mill pay third-party contractors directly are no different from transactions that the Department observed in Nova Scotia and that form part of the Maritimes benchmark. Because the Department incorporated these transactions into the Maritimes' benchmark, these are clearly arm's-length transactions. Thus, the GOBC argues that the Department should conduct a pass-through analysis and conclude that no alleged stumpage

subsidies passed through with respect to 25.7 percent of the Crown logs purchased by the B.C. sawmills that participated in the Norcon survey.

Petitioners agree with the Department's finding in the Preliminary Results that, where the buyer of a log allegedly transferred at arm's-length is the party that pays stumpage to the provincial government, the log buyer receives the financial contribution and any benefit directly and no pass-through analysis is required. Petitioners contend that even if it could be shown that some portion of the subsidy benefit is passed back to the harvester, the Department must still countervail the full benefit, as the countervailing duty law is not concerned with how the subsidy recipient spends the benefit conferred.

Department's Position

Contrary to respondents' argument, the Department determines that the stumpage fee is the vehicle by which the Crown bestows the subsidy through its administered stumpage programs. When this fee is paid directly to the Crown by the sawmill purchasing the subsidized logs from the tenure holding independent harvester, that stumpage benefit also goes directly to the sawmill paying the fee, just as if the sawmill were drawing from its own tenure and contracting out for harvesting and hauling services. Therefore, in effect, the subsidy is bestowed directly to the purchasing sawmill.

As stated in the Preliminary Results, there is no material difference between the situation of a sawmill that "buys" a log harvested by a tenure holder and is then obligated to pay the province for the timber and the case of a sawmill that harvests from its own tenure and hires loggers to perform the harvesting service. In both cases the sawmill receives the wood fiber and is legally obligated to remunerate the government for it; in both cases any benefit conferred by the government's willingness to accept less than adequate remuneration inures to the sawmill. See Preliminary Results, 69 FR at 33208.

We disagree with the GOBC's assertion that transactions in which the purchasing mill pay third-party contractors directly are no different from transactions that the Department observed in Nova Scotia and that form part of the Maritimes' benchmark. Record evidence does not demonstrate that timber transactions in the Maritimes are subject to the same constraints as in B.C., e.g., there are no appurtenancy or domestic processing requirements on private stumpage in the Maritimes.

b. Alberta

Comment 12: Timber Going to Non-Sawmills

The GOA asserts that the Alberta stumpage classification system does not allow the province to isolate the wood volumes going strictly to sawmills, because Alberta uses a single basket category (reported as "Section 80/81" timber) for much of its timber which covers wood going to make either pulp or lumber products or roundwood products. The GOA claims that, because the Section 80/81 timber goes to multiple production facilities, it is necessary to net down the gross volume of this wood to get to the proper numerator which is the net volume entering sawmills. In order to properly identify

the volume entering sawmills, the GOA provided a PricewaterhouseCoopers (PwC) survey at verification which covered mills representing more than 90 percent of Alberta's softwood billed volumes for the POR.

In the Preliminary Results, the Department calculated the volume of softwood logs entering sawmills in Alberta based, in part, on the information provided at verification. Specifically, the Department adapted the results from the PwC survey which relied on companies' actual mill records used to track material allocations and production costs to determine the percentage of all softwood logs used to produce each of the products manufactured by that particular tenure holder. The PwC survey aggregated the reported company-specific volume percentages for lumber, chips, shavings, sawdust and hog fuel to determine an aggregate percentage called "lumber." Similarly, the PwC survey aggregated the other categories (oriented strand board (OSB), pulp, plywood, firewood, newsprint, etc.) to derive an aggregate percentage called "non-lumber." Alberta applied these percentages (81.63 percent for lumber and co-products, and 18.33 percent for non-lumber products) to the total billed volumes of Crown timber for the POR to determine the volume of the Alberta Crown wood going to sawmills. See the June 2, 2004, Memorandum to Melissa G. Skinner, Director, from Robert Copyak and George McMahon, Case Analysts, concerning Verification of the Questionnaire Responses Submitted by the Government of Alberta (GOA Verification Report) at Exhibits 8-15.

The GOA argues that the Department erroneously adapted the PwC methodology in its calculations for the Preliminary Results, creating an inadequate net down of Alberta timber volumes. In calculating the numerator for Alberta, the Department deducted from the total volume in the PwC report certain timber "to reflect non-lumber categories that do not utilize whole logs as an input." See the June 2, 2004, Preliminary Calculations for the Province of Alberta Memorandum at ALB-3. The GOA objects to the Department's deductions to the total volume in the PwC report on the grounds that Alberta mills do, in fact, use whole logs to produce OSB and pulp products and claim that the Department was incorrect in finding otherwise. See pages 32-36 of the GOA's case brief. Therefore, the GOA asserts that the Department should use the PwC report results without the adjustments made by the Department in the Preliminary Results.

Petitioners counter, stating that the Department verified the PwC report and the methodology used. Petitioners argue that if the Department concluded, based on its verification, that the PwC report reflected the amount of wood fiber used to make lumber and pulp products for certain mills, rather than the volume of logs entering sawmills and pulpmills, respectively, for certain integrated companies, this conclusion must be maintained in the final results. Furthermore, petitioners assert that the GOA concedes that the PwC report does not include the actual billed volume that entered sawmills and pulp mills for the surveyed tenureholders, but was calculated by aggregating "all the percentages for the products made in a sawmill, i.e., lumber, chips, shaving, sawdust, and hog fuel" and attributing these "percentages" to lumber and the "percentages for all the other products" to non-lumber. Thus, petitioners argue the Department should correctly conclude, based on its verification of the PwC report, that the OSB and pulp categories represented products "made in a sawmill" from logs that entered sawmills. See pages 84-85 of petitioners' rebuttal brief.

Department's Position

In the Preliminary Results, the Department stated that the “OSB,” “Chemical Wood Pulp,” and “Newsprint” categories reported in the PwC survey do not utilize whole logs as an input. However, the Department has determined that record evidence shows company purchases of Alberta stumpage being used to produce “OSB” and “Chemical Wood Pulp” products. See GOA Verification Report at 208-211. Therefore, we have corrected our calculations to properly account for the “OSB” and “Chemical Wood Pulp” categories, as stated in the PwC survey results. As to “Newsprint,” the GOA explained the lack of any billed volume associated with the “Newsprint” category was “because production of this product in Alberta during the period of review in fact did not use whole Crown logs.” See footnote 10 at page 34 of the GOA’s case brief. Therefore, the Department was correct in its finding that “Newsprint” did not utilize Crown logs during the POR. Accordingly, the Department determines that it is appropriate to accept the PwC survey results collected at verification and apply the reported percentages stated therein to Alberta’s numerator calculations for these final results.

c. Quebec

Comment 13: Numerator of the Subsidy Benefit Calculation Should be Recalculated

Petitioners argue that the volume of timber provided by the GOQ to holders of Forest Management Contracts (FMCs) was used to make lumber, thus it should be included in the numerator of the subsidy benefit calculation for Quebec. They disagree with the Department’s explanation for why stumpage fees paid by FMC permit holders should not be incorporated into the province-wide administered stumpage rate. See Preliminary Results, 69 FR at 33225-26.²³ Petitioners assert that the questionnaire response provided by the GOQ clarifies that the volume of timber reported by type of mill is provided for in Timber Supply and Forest Management Agreements (TSFMAs) only. As a result, they claim that the figure used by the Department for the volume of Quebec provincial timber entering sawmills during the POR only represents the volume of timber that the GOQ provided directly to sawmills, and it does not include the total volume of timber that the GOQ provided to non-sawmill-owning entities through FMCs. Therefore, petitioners contend that Quebec FMC holders are similar to SBFEP tenureholders or other similar “independent logger” tenureholders in other provinces, as they acquire provincial logs which are subsequently processed into lumber in a Quebec sawmill.

Petitioners further argue that even though the GOQ does not sell the timber to a lumber producer itself, lumber producers still derive a benefit. They provide an example of one Quebec lumber producer applying for a zero/de minimis rate review who explains that neither the FMC holder nor the affiliated sawmill has control over (1) purchasers of the logs of the FMC holder, (2) the log

²³ In the Preliminary Results, the Department stated that according to information submitted by the GOQ, the softwood stumpage harvested under TSFMAs is equal to the total timber harvested for tenure holding lumber processing plants (i.e., processing plants that produce the subject merchandise). On this basis, the Department did not incorporate the stumpage fees paid by FMC permit holders into the province-wide administered stumpage rate.

volume allocated to each purchaser, or (3) the log price. See the May 12, 2004, Questionnaire Response of Bois Daaquam at 2-4. Thus, petitioners argue that this cannot meet the definition of an arms-length transaction because the FMC holder does not “negotiate” the selling price, the identity of the purchasers, or the volume to be sold to each purchaser. Citing SAA at 928. For these reasons, petitioners believe the Department should include the softwood timber volumes attributable to FMC license holders in the Quebec benefit calculation.

The GOQ refutes petitioners’ claims stating that it does not control to whom an FMC holder sells timber harvested under its FMC agreement, nor does it set the price of any sale of timber harvested under an FMC agreement. The GOQ asserts that all of the fiber sourced by FMC holders from Crown lands and then sold to sawmills were sold under open and competitive market conditions. Therefore, these transactions would require an arm’s-length analysis if the Department chooses to include that volume in the numerator of Quebec’s benefit calculation.

Department’s Position

Record evidence demonstrates that timber harvested under FMCs was sold to sawmills during the POR, as indicated in section 102 of the Quebec Forest Act. However, the transactions through which this lumber was sold would require the Department to undertake a pass-through analysis, as recognized by the GOQ. During the course of this administrative review, the Department did not examine or request any information concerning the nature of these timber sale transactions. Specifically, we did not examine the relationship between the harvesters and sawmills or the terms and conditions of the timber sales to determine whether they were conducted at arm’s-length. We are therefore unable to reach a determination as to whether the volume of timber harvested under FMCs during the POR should be included in the numerator of Quebec’s benefit calculation and will reconsider this issue during the course of the on-going second administrative review.

Comment 14: Whether the Calculation of Numerator is Sufficient to Produce the Volume in the Denominator

Petitioners argue that the volume of provincial timber included in the Department’s Quebec numerator is insufficient to produce the volume of lumber represented in Quebec’s portion of the denominator. Petitioners calculate that at the standard conversion factor for lumber, the log volumes provided by the GOQ for use in the numerator would result in 17,847,737 cubic meters of lumber produced in Quebec sawmills during the POR. Petitioners state, however, that the GOC certified that 20,747,000 cubic meters of softwood lumber was produced in Quebec during the POR. Petitioners claim that this is more than 16 percent greater than the volume that the log input into Quebec sawmills could have produced. Petitioners argue that regardless of whether the numerator figure is too small or the denominator figure too large, the Department cannot use both figures if it knows that both of them cannot be correct simultaneously. They further state that to produce 20,747,000 cubic meters of

softwood lumber in mills with an average efficiency factor of 4.34 cubic meter/MBF²⁴ would require a volume 38,157,585 cubic meters of softwood logs, not the 32,825,303 cubic meters claimed by the GOQ. Therefore, petitioners argue that the difference of 5,332,282 cubic meters should be added to the Quebec numerator.

Department's Position

At verification, the Department traced the 25,197,962 cubic meters of provincial softwood log harvest that entered and was processed in Quebec's sawmills during the POR, as reported by the GOQ's billing system. See the June 2, 2004, Memorandum to Melissa G. Skinner, Director, from Brian Ledgerwood, Maura Jeffords, Case Analysts, concerning Verification of the Questionnaire Responses Submitted by the Government of Quebec (GOQ Verification Report) at 14. The Department also traced the volume and value of lumber used in Quebec's portion of the denominator calculation to STATCAN's databases. The verifiers found no discrepancies regarding these data. See the June 2, 2004, Memorandum to Eric B. Greynolds, Program Manager, from Margaret Ward, Case Analyst, concerning Verification of the Questionnaire Responses Submitted by the Government of Canada and Statistics Canada (GOC and STATCAN Verification Report) at 6.

As the Department found no discrepancy with either the harvest volumes reported by the GOQ or the volume and value data reported by STATCAN, no adjustment, as claimed by petitioners, to the numerator is required. Moreover, as explained in this Decision Memorandum, the numerator used for Quebec (and all other provinces whose stumpage programs are being reviewed for that matter) includes only Crown-origin logs while, the denominator includes all lumber produced by non-excluded companies in Canada. As a result, there will not be a direct relationship between logs in the numerator and lumber sales in the denominator.

d. Excluded Companies

Comment 15: Benefits to Excluded Companies Should be Deducted in the Calculations

The GOC explains that in the Preliminary Results, the Department deducted the sales of companies excluded from the CVD order from the denominator of the net subsidy rate calculations. The GOC argues that for the numerator and denominator to match, the Department must also deduct the benefits to those excluded companies from the numerator of the net subsidy rate calculations. While many of the excluded companies received de minimis subsidies rates, the GOC claims that the total amount received by the companies has an impact on the country-wide rate and, therefore, must be accounted for in the net subsidy rate calculations.

Department Position

²⁴ MBF is thousand board feet.

The numerator and denominator should be compatible. In the Preliminary Results, we removed from the country-wide denominator the sales attributable to companies that have been excluded from the countervailing duty order, but we did not remove the corresponding de minimis benefit amounts from the country-wide numerator. In the final results, we have removed from the numerators the benefit amounts received by all companies excluded from the countervailing duty order as well as any stumpage benefits received by companies receiving a company-specific rate in the final results of this review. Specifically, we have calculated POR benefits by applying the province-specific benefits calculated in these final results to the appropriate logs/lumber volumes reported in the investigation or expedited review. See the December 13, 2004, Final Results Calculation Memorandum. In making this correction to our country-wide rate calculations, it was necessary to place on to the record of the administrative review the exclusion calculations from the underlying investigation and expedited reviews. These proprietary calculations are included in the Final Results Calculation Memorandum.

2. Denominator Issues

a. Attribution of Stumpage Benefit

Comment 16: Attribution of Stumpage Subsidies to All Products from Subsidized Logs

In the Preliminary Results, the Department included in the numerator of the calculation, 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 the net subsidy rate calculation in the Preliminary Results included only those products that result from the softwood lumber manufacturing process. Specifically, the Department 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.

The GOC takes issue with the Department’s approach to the denominator in the Preliminary Results. The GOC contends that some of the lumber produced from the logs included in the numerator was sold by sawmills to downstream value-added producers (a.k.a., remanufacturers). The GOC argues that these remanufacturers used the lumber acquired from the sawmills to produce both in- and out-of-scope softwood products. The GOC claims that, just as with in-scope remanufactured lumber, the non-scope remanufactured products are produced from the same wood fiber that initially entered sawmills. The GOC adds that softwood chips were similarly produced by Sawmills from the logs included in the numerator and were subsequently sold to pulp mills and used to produce pulp products.

The GOC argues that all products produced by remanufacturers as well as all pulp produced by pulp mills were manufactured from the allegedly subsidized lumber and/or chips created at the primary sawmills. In support of this contention, the GOC points out that the Department is applying the countervailing duty in this segment of the proceeding to in-scope lumber produced by remanufacturers on the ground that the subsidy does not remain with the primary mill, but passes on to the downstream

remanufacturer. The GOC asserts that the Department must therefore include in the denominator all products produced from the subsidized logs.

The GOC further argues that the Department's approach in the Preliminary Results disregards section 19 CFR 351.525(b) which states that

- (I). In general. If a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.
- (ii). Exception. If a subsidy is tied to production of an input product, then the Secretary will attribute the subsidy to both the input and downstream products produced by a corporation.

The GOC notes that the Department has applied this regulation in past cases. See Industrial Phosphoric Acid From Israel: Final Results of Countervailing Duty Administrative Review, 63 FR 13626 at 13630 (March 20, 1998) (IPA from Israel) where the GOC claims that the Department attributed grants for the production of inputs to subject merchandise over sales of the input and all downstream products that could be produced from the input.

The GOC argues that the Department has ignored its past practice and instead has created a lumber-specific methodology in which it bases the numerator on the volume of "those softwood Crown logs that entered and were processed by sawmills during the POR" and therefore limits the denominator to those products it believes are the direct result of the softwood lumber manufacturing process. The GOC claims that whether the lumber is the direct result of the softwood lumber manufacturing process or has been further processed by remanufacturers is irrelevant to the calculation methodology required by the statute and the regulations. Rather, the Department should determine whether the downstream products are produced from allegedly subsidized inputs. The GOC claims that the Department has previously confirmed the applicability of such an approach before the NAFTA panel reviewing the underlying investigation. See Certain Softwood Products from Canada, USA-CDA-2002-1904-03, Brief of the U.S. Department of Commerce in Opposition (November 15, 2001) at I-7, where the Department stated that, ". . . it must include in the numerator the entire value of the logs provided, and include in the denominator the entire value of all sales, both subject and non-subject merchandise, for which logs were used."

Petitioners contend that the Department properly limited the denominator to the value of products produced from logs included in the subsidy numerator (i.e., softwood lumber (including in-scope lumber produced by remanufacturers), softwood co-products, and other softwood products produced directly in sawmills from logs included in the numerator (i.e., ties, fuelwood, etc.)). Petitioners also assert that the Department properly excluded further downstream products (e.g., pulp and paper) from the denominator. Petitioners dispute the GOC's claim that by including in-scope lumber produced by remanufacturers in the denominator the Department is implicitly assuming that the subsidy benefit is attributable to all downstream products produced from softwood lumber. Petitioners assert that the denominator includes in-scope remanufactured products because all subject merchandise are covered by the scope of the order. Under this approach, all subject merchandise whether or not subsidized are

included in the denominator such that the average countervailing duty assesses on softwood lumber (subsidized and not subsidized) is equal to the net countervailable subsidy. Petitioners add that whether the subsidy benefit is attributable to the primary lumber product or the remanufactured lumber product, or is shared between the them, the aggregate countervailing duty rate is the same and the proper duty is assessed by using all sales of subject merchandise. Citing to the WTO Appellate Body's decision, petitioners argue that no finding of passthrough of benefit is implicit in the Department's inclusion of in-scope remanufactured lumber in the denominator. See United States - Final Countervailing Duty Determination with Respect to Softwood Lumber from Canada, WT/DS257 at paragraph 164.

Petitioners also take issue with the GOC's characterization of IPA from Israel. Petitioners claim that in IPA from Israel, the Department determined that grants tied to particular products should be attributed to sales of those products and to the downstream products manufactured by that same company from the products to which the grants were tied. See IPA from Israel, 62 FR at 47648. In contrast, petitioners argue that the Department has found stumpage subsidies to be tied to a production process, and not to a particular product. See Lumber III, 57 FR at 22576.

Department's Position

The attribution arguments put forth by the Canadian Parties misconstrue the Department's net subsidy rate calculation for provincially-administered Crown stumpage programs. Moreover, the administrative precedent to which the Canadian Parties cite reflects the facts of a company-specific proceeding involving subsidies found to be tied to certain inputs. In contrast, this proceeding is being conducted on an aggregate basis, and here we have not found the subsidy to be tied to an input product.

In all net subsidy rate calculations, the denominator is determined by what is captured in the numerator or the subsidy benefit. To determine the numerator in this proceeding, the Department examined whether the Canadian provinces subsidized the production of softwood lumber in Canada by selling timber (stumpage) for less than adequate remuneration in accordance with 19 CFR 351.511. As such, the Department used *only* the volume of Crown logs that entered and were actually processed in lumber producing sawmills during the POR. We did not also examine whether Canada's various stumpage programs confer countervailable benefits on other wood products. Thus, for example, the Department has *not* included in the numerator calculation volumes of Crown logs harvested and processed in pulp mills, Crown logs that were harvested but never processed during the POR, or the volume of Crown logs processed by whole log chippers during the POR.

By calculating the numerator in the manner described above, we selected a denominator that corresponded to all products produced during the softwood lumber manufacturing process from logs that entered and were processed by sawmills during the POR. The selection of the denominator is thus a logical result of the numerator calculation, as it must be in order to properly calculate the subsidy rate.

We disagree with the Canadian Parties' claims, which they also made in the investigation, that limiting our numerator calculation to subsidized products used in the lumber manufacturing process is not permitted by the regulations because the regulations do not permit subsidies to be "tied" in such a

manner. As we have explained previously, we have not reached a determination that the subsidy is “tied” to an input product, within the meaning of the regulations. Rather, because this is a review being conducted on an aggregate basis, we have merely limited our numerator calculation to subsidized products that are used to produce the subject merchandise and then selected a corresponding denominator, i.e., the output of the lumber manufacturing process. This “matching” of the numerator and denominator is essential in order to calculate an accurate country-wide ad valorem countervailing duty rate on Canadian lumber exported to the United States.

Therefore, based on the approach described above, we have included in our denominator all softwood products produced by sawmills during the softwood lumber manufacturing process from logs that entered and were processed by sawmills during the POR. In addition, because we are collecting duties based on the ad valorem value of subject merchandise at the final-mill stage and because we do not want to use a denominator that would result in the over collection of duties, we have also included in our denominator all in-scope merchandise produced by remanufacturers. As explained in the Preliminary Results, we would have included any co-products produced by remanufacturers during the softwood lumber production process. The GOC, however, did not provide breakouts of the softwood co-products produced by remanufacturers.

The GOC asserts that there are also remanufacturers that use in-scope lumber in their production processes to make other non-scope softwood products. However, these items (e.g., chemically treated wood in the rough, fiberboard, and mobile homes) are not products that are produced during the production of softwood lumber, and thus do not correspond to our numerator calculation. Thus, consistent with our methodology in the investigation, we are not including these additional remanufactured products in the denominator of the net subsidy calculation.

b. Use of Adverse Facts Available for Manitoba and Saskatchewan

Comment 17: Use of Adverse Facts Available to Derive Lumber and Co-Product Shipment Data

To derive the lumber shipment values for Saskatchewan that the GOC reported in its questionnaire response, the GOC used data from the underlying investigation to calculate average unit values that they projected to the POR using softwood lumber price indices. The GOC multiplied the indexed average lumber unit values by actual POR volume data for Saskatchewan to arrive at an estimated POR lumber shipment value. In the case of softwood co-product shipment values for Saskatchewan and Manitoba, the GOC adopted a similar approach and estimated values for the two provinces using data from the underlying investigation. See, e.g., the March 15, 2004, GOC submission at GOC-GEN-46. In this manner, the GOC derived estimated POR shipment values for Saskatchewan and Manitoba.

In the Preliminary Results, the Department resorted to the use of Adverse Facts Available (AFA) to derive the softwood lumber shipments values for Saskatchewan and to derive the softwood co-product shipment values for Manitoba and Saskatchewan on the grounds that the GOC failed to act to the best of its ability to obtain unit values based on available data from the POR. For further discussion of the Department’s decision to use AFA (see 69 FR at 33209). In its case briefs, the GOC objects to the Department’s application of AFA.

The GOC claims that in the Preliminary Results, the Department refers to its efforts to collect “actual” sales data for Manitoba and Saskatchewan, as opposed to “estimated” data. Given that the denominator data utilizes national accounts data, the GOC claims the use of the terms “actual” and “estimate” are misleading as all of the GOC’s denominator data are accurate estimates in one form or another. The GOC contends that it tested the validity of the Manitoba and Saskatchewan denominator data it submitted by comparing a Canada-wide sales figure (which included the confidential sales data from the two provinces) to the Canada-wide sales figure comprised of its submitted sales figures for Manitoba and Saskatchewan. The GOC claims that the two Canada-wide figures are virtually identical and, thus, demonstrate the accuracy of the shipment data it submitted for Manitoba and Saskatchewan. The GOC further claims that the average unit values from the underlying investigation were previously verified by the Department and, therefore, should be accepted in the administrative review.

The GOC further argues that it, in fact, inadvertently provided much of the confidential data requested by the Department. In spite of this inadvertent disclosure, the GOC explains that it did not seek to remove from the record the confidential data that was inadvertently submitted.

The GOC also contests the Department’s claim in the Preliminary Results that the GOC failed to cooperate to the best of its ability. The GOC claims that the Department based its AFA finding on the fact that the GOC failed to seek waivers from softwood lumber producers in Manitoba and Saskatchewan that would theoretically have permitted confidential data for those provinces to be disclosed. The GOC claims that the Department never asked it to seek such waivers in the questionnaires or in meetings it held with the Department.

The GOC argues that the Department erroneously involves the actions of the Canadian Border Services Agency (CBSA) as justification for resorting to AFA for portions of Manitoba’s and Saskatchewan’s denominator data that was submitted by STATCAN. It further asserts that the Department exaggerates the success of the CBSA in obtaining confidentiality waivers from individual companies. The GOC contends that contrary to the Department’s statements in the Preliminary Results, the GOC did not obtain waivers from 50 companies in a 10 to 15 day period. Rather, the GOC asserts that it successfully obtained waivers from 50 companies during a six-week period.

The GOC also argues that the Department’s AFA finding failed to appreciate the dramatic differences between the confidentiality regulations of the CBSA and STATCAN. The GOC claims that, unlike the CBSA, STATCAN’s waiver regulations are more stringent and often require the consent of all affected producers to reveal any of the data in question.

The GOC claims that the CIT has not allowed the Department to resort to use of AFA where “respondents submitted the necessary information required to make a proper determination, and Commerce verified the responses as accurate and reliable.” See, e.g., Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Mfrs. v. United States, 44 F. Supp. 2d 229, 236 (CIT 1999). The GOC further asserts that the Department’s AFA finding does not accord with the CAFC’s decision in Nippon Steel v. United States, 337 F. 3d 1373, 1379-84 (Fed. Cir. 2003) (Nippon Steel) and that the facts of the instant proceeding are clearly distinct from those addressed by the CAFC.

Petitioners argue that the Department’s application of AFA was warranted because the GOC did not act to the best of its ability. Citing to Branco Peres Citrus, S.A. v. United States, 173 F. Supp. 2d 1363, 1372 (CIT 2001) (Branco Peres Citrus), they argue that the CIT has authorized the

Department to resort to the application of AFA when the data exist but the party fails to take the needed steps to obtain them. As in Branco Peres Citrus, petitioners claim that the GOC failed to take the necessary steps to obtain data that was requested by the Department. Specifically, petitioners argue that the GOC failed to request waivers from the companies that accounted for softwood lumber and co-product sales in Manitoba and Saskatchewan.

Further, petitioners disagree with the GOC that Nippon Steel, which involved a false statement by the respondent regarding the implausibility of obtaining the requested records, can be distinguished from the facts of the instant review. According to petitioners, as in Nippon Steel, the GOC falsely claimed that denominator data for Manitoba and Saskatchewan could not be disclosed. However, petitioners argue that the GOC failed to mention in its questionnaire response that such information could, in fact, be disclosed pursuant to a waiver. Petitioners assert that the GOC's omission of this important fact was just as misleading as a false affirmative statement and they note that Nippon Steel, establishes that "inadequate inquiries" on the part of respondent may warrant the application of AFA.

Petitioners contend that the GOC's failure to seek the waivers from the handful of companies whose data comprises the sales data for Manitoba and Saskatchewan is particularly glaring in light of the fact that the GOC requested multiple waivers from individuals/companies when the purported evidence was favorable to it. In support of their contention, petitioners cite to several submissions in which GOC agencies and the provincial governments (including the GOM and the Government of Saskatchewan (GOS) have provided company-specific information. Petitioners argue that the GOC therefore cannot complain that obtaining company-specific information is unnecessarily burdensome.

Petitioners disagree with the GOC's contention that the Department did not instruct the GOC to seek waivers. Petitioners cite to the Department's March 15, 2004, questionnaire in which the Department stated in its cover letter, "Moreover, we request that the relevant governments seek appropriate waivers from the private parties that would permit the submission of this information as business proprietary information to the Department."

Petitioners further argue that the GOC's claim that the Department overstated the number of waivers sought by the CBSA, misses the point that the GOC attempted to secure waivers in one aspect of the instant review and refused to do so in an other and, thus, its actions warrant the application of AFA.

Concerning the GOC's arguments that its "estimated" denominator data is a suitable substitute, petitioners argue that such an approach requires the Department to rely upon the good word of the GOC that its estimations are accurate. Petitioners argue that it is a respondent's burden to produce data and the Department's responsibility to assess and scrutinize that data. Petitioners also contend that the Department has no legal obligation to rely on such estimates.

Department's Position

As explained in the Preliminary Results, the Department repeatedly requested that the GOC provide the POR unit values for lumber shipments from Saskatchewan and POR unit values for co-

product shipments from Saskatchewan and Manitoba.²⁵ In response to the Department's requests, the GOC claimed that the unit values requested for Saskatchewan and Manitoba could not be disclosed pursuant to STATCAN's confidentiality regulations. See, e.g., the November 12, 2003, Questionnaire Response of the GOC at 9-10 and the March 8, 2004, Questionnaire Response of the GOC at 3. Contrary to the GOC's claims, the Department then instructed the GOC to seek waivers for the denominator data it claimed was confidential. See the March 15, 2004, cover letter to the Department's Questionnaire in which the Department stated:

"In certain other instances, the governments have declined to provide requested information claiming that provincial and/or Canadian law prohibits them from providing such data. To the extent not submitted, we request copies of all such laws referenced by the governments. Moreover, we request that the relevant governments seek appropriate waivers from the private parties that would permit the submission of this information as business proprietary information to the Department."

The GOC did not seek such waivers for the denominator data as requested by the Department and instead claimed that the revelation of any of the confidential information would result in a criminal violation. See the April 1, 2004, Questionnaire Response of the GOC at 2.

Meanwhile, the GOC, working in conjunction with STATCAN and the CBSA sought and obtained waivers from individual producers and importers of lumber and included their confidential data in a three volume submission that it voluntarily filed with the Department on March 15, 2004, the last day in which parties could file new factual information.²⁶ The fact that the GOC filed a submission in which waivers were used to obtain confidential information from individual companies on the same day that the Department requested that the GOC seek waivers to obtain the requested denominator data belies the GOC's claim that waiver requests were unduly burdensome or administratively impossible.

Furthermore, during verification, we learned that STATCAN's confidentiality regulations allow for the release of confidential data provided that the administering authority seek waivers from parties that submitted confidential information to the Canadian Government. For example, under section 17(2) of the Statistics Act, STATCAN may conduct a discretionary disclosure in which certain confidential information is released by order of the Chief Statistician provided that the originators of the data give written consent. See GOC and STATCAN Verification Report at 2. Moreover, officials from STATCAN admitted that in the past they sought consent from companies to release their confidential information to the public. See Id. Thus, contrary to the GOC's claims, STATCAN's confidentiality regulations did not make it impossible for the requested denominator data to be released. Moreover, the record evidence indicates that STATCAN has, in fact, sought waivers to release similar types of confidential data in the past.

²⁵ The Preliminary Results contain the chronology of the Department's requests for this data. See 69 FR at 33209-33212.

²⁶ The GOC's March 15, 2004 filing purports to show that log import data from STATCAN and the CBSA are inaccurate and, therefore, are unuseable for benchmark purposes.

Section 776(a) of the Act requires the use of facts available when necessary information is not available on the record, an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As discussed above and as previously explained in the Preliminary Results, there can be no doubt but that respondents are aware that full and accurate lumber value shipment data and co-products data are necessary for the Department's subsidy calculation. Indeed, obtaining accurate data to calculate the denominator is central to the Department's subsidy rate calculation and was an issue throughout the underlying investigation and the Department's subsequent remand redetermination. Notwithstanding the specific provision in the law that permits the government to seek such waivers, the GOC failed and refused to provide the denominator data requested by the Department in spite of the Department's repeated requests and in spite of the GOC's demonstrated ability to seek and obtain waivers for the release of confidential data in other aspects of the administrative review. Therefore, we find that the GOC withheld the denominator data requested by the Department and, thus, the use of facts available, as permitted by Section 776(a) of the Act, is warranted.

Section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Federal Circuit has addressed the issue of adverse facts available in Nippon Steel. In interpreting Section 776(b) of the Act, the Federal Circuit held that "the statutory mandate that a respondent act to the best of its ability requires the respondent to do the maximum it is able to do" (see 337 F.3d at 1382). As we have discussed above and in the Preliminary Results, the GOC claimed that, pursuant to its confidentiality regulations, it was impossible for STATCAN to release of the requested denominator data. However, contrary to the GOC's claims, evidence collected at verification demonstrates that STATCAN may release confidential data when the originators of the information waive their rights to confidentiality. Evidence collected at verification indicates that the GOC STATCAN has sought waivers for similar data in the past.

As the record makes clear, in spite of the Department's request, the GOC never sought any such waivers for the requested denominator data. With respect to the GOC's claim that release of the data would constitute a criminal act, the Department has not asked the GOC to violate any laws. Rather, the Department requested that the GOC seek appropriate waivers under the provisions in its own law. The GOC made no effort to seek such waivers. The GOC failed to put forth its maximum efforts to obtain the requested information. Thus, because the GOC claimed the release of the requested denominator data was impossible when, in fact, it could have sought waivers to release the confidential denominator data, we continue to find that the GOC failed to act to the best of its ability and that the application of AFA is warranted.

We also disagree with the GOC's contention that it provided much of the confidential data that we requested. As explained in the Preliminary Results, the GOC inadvertently disclosed confidential information concerning Saskatchewan's lumber shipment volume. This data was submitted to the Department and served on all parties on the public service list. The Department incorporated this data into its AFA calculations. However, in spite of the use of this data, the Department still lacks the unit-value information it repeatedly requested for Saskatchewan and Manitoba.

We also disagree with the GOC's contention that their estimations should be accepted because the GOC purportedly tested the validity of the Manitoba and Saskatchewan denominator data it submitted by comparing a Canada-wide sales figure (which included the confidential sales data from the two provinces) to the Canada-wide sales figure comprised of its submitted sales figures for Manitoba and Saskatchewan. It is the GOC's responsibility to produce the requested data and the Department's responsibility to assess the reasonableness and validity of that data.

On this basis, we continue to find that the application of adverse inferences when calculating the denominator for Saskatchewan and Manitoba is warranted.

C. **Provincial Stumpage Program Issues**

1. **Specificity**

Comment 18: Stumpage Program is Not Specific

The Ontario Forest Industries Association (OFIA) and the Ontario Lumber Manufacturers Association (OLMA) argue that the evidence on the record of this review does not support the Department's preliminary finding that stumpage programs were used by a single group of industries. Rather, the surveys placed on the record of this review demonstrates that innumerable industries use stumpage. Further, the OFIA/OLMA argue that if the Department were to properly apply the *de facto* specificity factors enumerated in the statute, the Department would find that stumpage is not specific to an industry or group of industries.

The petitioners argue that stumpage subsidies are *de jure* specific to producers of subject timber. Furthermore, petitioners argue that the Department's determination from its original investigation, that stumpage subsidy programs were specific because a limited number of certain industries utilized the subsidies, has been upheld by NAFTA and WTO. As no new evidence to challenge the Department's determination from the investigation has been offered, the Department should disregard the OFIA/OLMA's claims about specificity.

Department's Position

In the Preliminary Results and in Lumber IV, the Department determined that provincial stumpage subsidy programs were used by a "limited number of certain enterprises" and, thus, were specific in accordance with section 771(5A)(D)(iii)(I) of the Act. More particularly, the Department found that stumpage subsidy programs were used by a single group of industries, comprised of pulp and paper mills, and the saw mills and remanufacturers that produce the subject merchandise. Although the OFIA/OLMA cite to two surveys placed on the record of this review that were not presented in the underlying investigation, we continue to determine that no information in the record of this review

warrants a change to our finding that stumpage subsidy programs were used by a single group of industries and are, therefore, specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Contrary to the OFIA/OLMA's claim, the language of the statute is clear. Section 771(5A)(D)(iii) of the Act (as well as the SAA and the CVD Regulations) clearly states that the Department will find *de facto* specificity if one or more of the factors listed in section 771(5A)(D)(iii) of the Act exists. Indeed, section 351.502(a) of the CVD Regulations states that if a single factor warrants a finding of specificity, the Department will not undertake further analysis. Therefore, the Department is not required to address the other factors listed in section 771(5A)(D)(iii) of the Act. For these final results, we continue to find that the stumpage programs are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

2. Benchmark: In-Province Stumpage Prices

a. Alberta

Comment 19: Timber Damage Assessment Data as a Provincial Benchmark

The GOA argues that the Department incorrectly concluded that timber damage assessment (TDA) values cannot serve as an adequate benchmark. The GOA describes TDA as an arm's-length determination of the value of standing timber in Alberta developed by private parties with opposing interests. The GOA takes issue with the Department's reasons for rejecting the use of TDA in the Preliminary Results (see 69 FR at 32112). Specifically, the GOA contends that, in describing TDA, the Department inaccurately stated that (1) TDA was established by the government, (2) parties subject to TDA were mandated by the GOA to compensate tenureholders for damaged timber, (3) TDA is administratively set by the GOA, and (4) that damaged timber compensated under TDA is not harvested for commercial purposes. See pages 26-27 of the GOA's case brief. The GOA argues that the record demonstrates that TDA was created by private parties, is voluntary, the TDA prices are not administratively set, and that the intentions of the harvester are irrelevant as to whether or not TDA represents a market value. In sum, the GOA asserts that TDA is a private sector effort to calculate guidelines used to assess the market value of standing timber in Alberta, and is reliable because it is based on actual market transactions.

Petitioners state that the Department was correct to conclude in the Preliminary Results that TDA prices do not reflect a market price for timber in Alberta. Petitioners contend that TDA prices are not market-determined and are not used as a benchmark to price actual sales of timber used for lumber production. Furthermore, petitioners assert that the TDA values are inherently part of the Alberta stumpage program itself; therefore, they cannot measure whether the program confers a benefit. Petitioners argue that the TDA values are not informative of whether the prices amount to adequate remuneration because the TDA values are simply a reflection of the internal prices that are depressed

by the government subsidies at issue. Petitioners argue that TDA is not strictly a timber benchmark because the data is based primarily on log sales, obtained exclusively from tenureholders. Moreover, petitioners object to TDA because it reflects purchases by mills who hold tenure in Alberta. See pages 242-243 of petitioners' case brief.

The GOA rebuts petitioners' assertion that TDA is not strictly a timber benchmark because the data used to calculate standing timber values are based mostly on log sales. Specifically, the GOA argues that TDA is representative of private commercial interests in Alberta and is used to calculate the market value of Alberta stumpage; therefore, TDA is usable as a stumpage benchmark, either under Tier 1 of the Department's regulatory hierarchy, or even if it were not an actual value used in the province, under Tier 3. The GOA also takes issue with petitioners' objection to TDA on the basis that it reflects purchases by mills who hold tenure in Alberta. The GOA argues that purchases by tenureholders have no impact on the validity of the prices paid for the logs in what Alberta describes as an active private log market.

Department's Position

The Department inadvertently made several factual misstatements in the Preliminary Results. Notwithstanding these inaccurate statements, TDA values cannot serve as an appropriate benchmark. We have examined the TDA values provided by Alberta and have found that they do not reflect market-determined prices as required by the CVD Regulations. Several factual statements made by the Department in the Preliminary Results require correction. First, the Department indicated that the TDA survey process was established by the GOA. The Department should have stated that the GOA facilitated the development of the TDA, with the aim of creating guidelines for compensation in disputes over timber felled during gas or oil exploration, drilling, or mining activities. Although GOA representatives attend TDA committee meetings, the GOA is not ultimately responsible for negotiating the details of the TDA. Second, the Department stated that the utilization of the TDA was mandatory for parties. However, factual information from verification shows that TDA is a voluntary effort at dispute resolution which is not mandated by the government. See GOA Verification Report at 9. Finally, the Department indicated that the TDA values were administratively set. However, the Preliminary Results should have indicated that the TDA compensation values were negotiated using a residual value calculation based on Bearing Point's survey described below.

These factual corrections notwithstanding, the Department continues to find that the TDA prices cannot serve as benchmarks. The prices underlying the TDA value calculations are effected by the GOA's involvement in the market, which could lead to a distortion in the TDA values. As the GOA acknowledges, the TDA values are set by reference to the stumpage values. Specifically, as the GOA states the "value on the {TDA} table are derived by consultants from a two year average of competitive CTP sales values, as well as the value of arm's length log purchases, adjusted to stumpage values by backing out harvesting and haul costs." See the November 12, 2003, Questionnaire Response of the GOA at Volume 1, pages 1-6.

The Coniferous Timber Permit (CTP) sales do not represent prices for transactions between private parties, but are prices for transactions between private parties and the Crown for Crown stumpage. While the GOA argues that these transactions are a result of competitive bidding which would negate the effect of Crown involvement in the transaction, the record evidence demonstrates that the extent of competition in the CTP sales is both limited and declining. The BearingPoint TDA 2003 Update indicates that “{c}ompetitive permits decreased quite noticeably since 1997, as the system of allocating permits changed to one where most permits are directly allocated at the general rate of Crown dues. Approximately, 20 percent of the permits are now competitively auctioned – a much smaller portion than in previous years.” See Id. at Volume 5, page 3. This trend is evident in the BearingPoint survey results which show that the CTP competitive volume sold has declined significantly, decreasing from 526,000 m³ in 1993 to 114,000 m³ in 2002. See Id. at 2. In addition, the reported CTP volume sold in 2002 (114,000 m³), represents less than one percent of Alberta’s billed volume for the POR (11,932,017 m³). Hence, the vast majority of the CTP prices do not reflect competition for the right to harvest timber. The record, therefore, demonstrates that the CTP prices underlying the TDA calculations do not reflect market determined prices.

The GOA asserts that the remaining values collected for the purposes of the TDA, *i.e.*, timber sales by FMA and Timber Quota Certificates (CTQ) holders adjusted to stumpage values, are arm’s-length transactions between private parties. However, as the GOA indicates, the TDA survey does not differentiate between “private” and Crown transactions. See Id. at Volume 1, pages 1-6. There is, therefore, no method for the Department to identify the potentially private transactions captured by the TDA survey.

For these reasons, the record evidence supports the Department’s finding that the TDA prices are not actual market-determined prices and, thus, cannot be used as a benchmark. See 19 CFR 351.511(a)(2). In light of this decision we have not addressed petitioners’ comments regarding whether record evidence confirms that timber and log prices in Alberta are distorted and, therefore, cannot serve as an appropriate benchmark

b. Ontario

Comment 20: DGM Survey Prices are Useable Private Prices under the First Tier of the Benchmark Hierarchy

The GOO argues that the Department should determine the “adequacy of remuneration” of Ontario’s softwood timber sales by “comparing the stumpage charge for Ontario Crown softwood timber with a market-determined price resulting from actual transactions reflecting prevailing market conditions in Ontario.” See pages 6-7 of the GOO’s case brief. The GOO contends that the Department should apply the first tier of the benchmark hierarchy by using the stumpage prices for timber harvested from private lands in Ontario. The GOO states that, because the stumpage fees for Crown softwood timber do not include the costs of significant obligations that harvesters of Crown timber are required to incur, the Crown timber prices must be adjusted upward to reflect such additional costs.

The GOO argues that Ontario “has provided the Department with extensive verifiable evidence establishing the viability of Ontario’s private market and the prices of actual private market transactions in Ontario.” See Id. at 7. Specifically, the GOO contends that prices provided by the GOO in the Demers Gobeil Mercier (DGM) Survey should be used for benchmark purposes and that the record demonstrates that Ontario has a thriving and competitive private timber market reflective of “existing prevailing market conditions.”

The GOO argues that if access to Crown timber could be used as a bargaining lever to drive down the price of private timber, this would be evident in the prices, i.e., FRL holders would pay significantly lower prices than non-FRL holders. The GOO contends that the DGM Survey demonstrates the viability of Ontario’s private timber market, observing that, according to the survey, the average price of private SPF timber paid by loggers who hold FRLs during the POR differed by only C\$0.20 per cubic meter from the average price paid by loggers who do not hold FRLs. The GOO further notes that the DGM Survey indicates that prices for SPF timber harvested from private land in different regions of Ontario do not differ greatly from each other, e.g., the weighted-average price of SPF timber delivered to sawmills and harvested from private land in the northern and central regions differs by C\$0.09. The GOO contends that this price distribution is consistent with a well-functioning competitive market in which arbitrage serves to limit the ability of private market prices to vary.

The GOO also argues that, “[s]hould the Department impermissibly disregard the first tier benchmark provided by Ontario’s private market for softwood timber,” the Department cannot apply the second tier of the hierarchy because there are no world market prices. The GOO contends that the Department is “prohibited by law, and the record evidence does not support, the use of U.S. timber or log prices” because “[s]uch comparisons do not reflect prevailing market conditions in Ontario.” See Id. at 7-8. The GOO argues that, if the Department chooses to use a benchmark under the third tier of the hierarchy, “it should apply its standard cost-revenue test to determine whether the Ontario stumpage program produced a sufficient rate of return.” See Id. Finally, the GOO states that, should the Department construct a log price benchmark under the third tier, it should rely only upon Ontario domestic log prices and not import or export data.

The OFIA and OLMA argue consistently with the GOO’s position that the Department should use private stumpage prices in Ontario under the first tier of the benchmark hierarchy.²⁷ See Id. at 14.

Petitioners’ remarks primarily argue for the Department’s discretion to reject the DGM Survey. They argue that, because Crown timber makes up 93 percent of the market, there is no possibility that private prices are not suppressed by Crown timber prices. Petitioners argue that, as in the investigation, the Department should use timber prices from the U.S. portion of the boreal forest in the adjacent counties of northeast Minnesota to measure the benefit from Ontario’s provincial stumpage

²⁷ The OFIA and OLMA argue that, “[a]lternatively, the Department may resort to one of its established third tier benchmarks” and either derive stumpage from domestic log prices in Ontario, or apply a cost revenue test. See page 24 of OFIA/OLMA’s case brief. These comments are addressed in Comment 44 of this Decision Memorandum.

program. In the alternative, petitioners argue that the Department should use published U.S. log prices, net of Canadian harvesting costs, as a measure of the subsidy benefit under tier three of the benchmark hierarchy or as a check for systematic bias in a timber price benchmark. Petitioners argue that there are no useable prices in Ontario for use as benchmarks under the first tier of the regulatory hierarchy. Petitioners contend that “regardless of the extent to which the DGM Survey was verified, Ontario private prices are far too distorted by government involvement in the market to form the basis of any benchmark.” See pages 4-5 of petitioners’ rebuttal brief.

Petitioners also argue that the similarity between private timber prices in the DGM Survey and prices for public timber shows that they compete with each other and thus private prices are distorted. They further argue that the uniformity of private prices throughout Ontario is evidence of competition between the public and private market which holds private timber prices down.

Department’s Position

As noted in this Decision Memorandum, section 771(5)(E)(iv) of the Act governs the Department’s benefit analysis when a good has been provided. Specifically, section 771(5)(E)(iv) provides that “[a] benefit shall normally be treated as conferred where there is a benefit to the recipient, including – . . . in the case where goods or services are provided, if such goods or services are provided for less than adequate remuneration.” The statute further provides that the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided . . . in the country which is subject to the . . . review.”

The decision of which data to use for benchmark purposes is guided by our regulations and a reasoned analysis of the facts on the record. In accordance with our benchmark hierarchy, we must first determine whether there are market prices within Canada which can be used to measure whether the provincial stumpage programs provide a good for less than adequate remuneration. See 19 CFR 351.511.

We determine that the private prices placed on the record by the GOO are not suitable benchmarks. As explained below, the private prices reported in the DGM Survey cannot be used as benchmarks because the prices paid by these mills for private timber are effectively determined by the price they pay for public timber.

The DGM Survey is a survey of loggers that supplied the 25 largest Crown softwood consumers. The DGM Survey identified its survey population by contacting various parties and requesting that they provide names of loggers who harvest timber from private lands. DGM contacted government agencies, the 25 largest consumers of Crown timber in Ontario, and 12 small mills in southern Ontario to identify these loggers. Presumably the mills that were contacted provided names of their suppliers to DGM. The DGM surveyors also identified a small number of loggers through telephone contacts; however, the record does not indicate how many of these actually participated in the survey.

The price that loggers are willing to bid on private stumpage is dictated by the difference of the expected sale price of the log and their harvesting costs plus profit. Loggers who sell to tenure holding mills cannot expect to charge more for their private logs than the cost of the logs that the mills can

source from their public tenure. These large softwood sawmills, producing 94 percent of the lumber in Ontario, have Crown tenure for which they pay government-set stumpage prices. As discussed below in Comment 21, because the AAC in Ontario is not binding, mills with public tenure can always harvest more timber from their tenure and are not driven to the private market by demand that cannot be met from their tenure holdings. Their willingness to pay for logs from other sources will be limited by their costs for obtaining timber from their own tenures. Therefore, the prices loggers bid for private stumpage is limited to match the public stumpage prices paid by these mills. For these reasons, the Department finds that the transactions recorded in the DGM Survey are effectively determined by the Crown stumpage prices and are, hence, not suitable benchmarks for assessing adequacy of remuneration.

We also disagree with the GOO's contention that the similarity between Crown stumpage prices and private prices in the DGM Survey demonstrates that the private prices are not distorted. The GOO's argument begins with an assumption that Ontario Crown stumpage prices are not distorted, *i.e.*, that if Crown prices are not distorted and they are the same as private prices then private prices must be undistorted. Ontario assumes the answer to the inquiry, *i.e.*, whether Crown stumpage is sold for less than adequate remuneration. The similarity between these prices more likely reflects that fact that private prices are effectively determined by Crown prices. As discussed above with respect to B.C., the linkage between Crown timber prices and private timber prices would lead to price suppression in the private market, as harvesters of timber from private land would be forced to meet the Crown stumpage price. Our analysis cannot utilize a benchmark that would reflect any underlying subsidy to determine whether and to what extent that very subsidy exists. For these reasons, the prices in the DGM Survey are not useable under tier one of our regulatory hierarchy.

As explained above in the "Benchmark" section of this Decision Memorandum, consistent with the statute and the CVD regulations, we are using the Maritimes' stumpage prices on the record to assess the adequacy of remuneration for purchases of Crown timber in Ontario. The Maritimes' prices are in-country, market-determined prices and, thus, unlike the DGM Survey prices, are useable benchmarks under tier one of our regulatory hierarchy.

Comment 21: Whether Ontario Crown Supply is Inelastic and Whether Marginal Demand is Met by the Private Market

The GOO argues that the price of Crown timber will not distort private prices if Crown timber is inelastically supplied, *i.e.*, if Crown supply does not change due to changes in price, it cannot satisfy all demand, and private suppliers are available to meet demand. The GOO states the price charged for "marginal timber" determines the market price for timber in Ontario irrespective of whether the timber from Crown lands is subsidized. This conclusion is based on two economic characteristics of Ontario's softwood timber market: (1) supply of Crown timber is price inelastic in the short run, and (2) there are private suppliers who are willing to supply timber at a price above that charged by the Crown. The GOO contends that under these two characteristics, the price observed for "marginal" private timber will be unaffected by the price charged for Crown timber. If the volume does not change, then Crown lands cannot supply the marginal demand for timber; such demand will be met by private suppliers who

are not forced to compete with Crown supply and thus the price of Crown timber cannot distort private prices.

The GOO argues that the only economically valid basis for a conclusion that Crown timber is elastically supplied would be evidence showing that the volume of timber harvested from Crown land has responded to price variations. Mere changes in Crown volume supplied, which is affected by a variety of exogenous reasons unrelated to price (e.g., weather) are not sufficient to show elasticity—there must be evidence that volume changes are in response to price. Rather, empirical evidence supports the conclusion that changes in Crown production are unrelated to changes in the price of Crown timber, specifically events such as weather (blowdowns) and inadequate road infrastructure.

The GOO contends that marginal demand for timber will and must be met by private supply, not Crown supply. Unlike Crown land, the harvesting of which is approved by the Ontario Ministry of Natural Resources (OMNR), privately-held land is regulated by market forces, meaning that the amount of private land available for harvest can adjust flexibly to current and future timber pricing in relation to the returns associated with alternate land uses. For this reason, the GOO concludes, private sellers who supply that marginal demand do not compete with Crown timber, and can sell for prices that are not influenced by Crown rates. The OFIA and OLMA concur with the GOO stating that demand for timber in Ontario is unsatisfied by timber harvested from Crown lands and that private timber and log sales in Ontario satisfy the excess demand for wood fiber when the government supply has been exhausted. Consequently prices in the private market are unconstrained by Crown stumpage prices.

Further, the GOO explains that the AAC is a theoretical harvest rate used as a planning tool to ensure that the productive capacity of Crown land is not eroded by excessive production. Planned harvest volume does not measure full economic production and typically overstates true production capacity because it cannot account for some significant non-price factors (e.g., fish and wildlife management) that tend to limit the ability to harvest. Accordingly, the GOO argues, the inability of Crown tenureholders to meet the AAC or planned harvest volumes does not demonstrate that there is excess Crown production capacity in the Ontario timber market that would affect prices for private timber.

Petitioners rebut respondents' argument that Ontario Crown timber is inelastically supplied, asserting that the economic studies on the record all agree that "the elasticity of supply in the administered sector is zero." See Stoner Log Distortion Study at 11. They contend that respondents err when they state the inflexibility of the Ontario stumpage program is the very feature that prevents it from distorting private prices. Respondents fail to explain how government timber sales do not distort the private market if the volume of public timber is fixed arbitrarily without reference to the market while arguing government timber sales could distort the private market if the volume of public timber responded to price. Similarly, they argue that respondents' contention that price distortion can only be shown if the volume of subject timber harvested varies from year to year based on price is flawed. Petitioners assert that if the price of administered timber is set so low that sawmills buy as much of it as they can before turning to the private forest, private prices will be depressed at least as much as they would be if public prices were set just high enough to compete with private supply.

Department's Position

Information on the record does not support the GOO's claims. Because the AAC is set so high, it does not matter whether its level changes based on price. Whether the AAC changes only matters if it forces mills to buy from the private timber market. Evidence on the record shows that is not the case in Ontario.

Even if the GOO is arguing that the actual volume of timber harvested does not change based on the price of Crown stumpage, this only suggests that the volume harvested or quantity demanded for timber is dependent on other factors. This does not change the fact that the private stumpage prices are limited by prices for Crown stumpage. It is irrelevant whether the volume of timber harvested from Crown lands changes based on price changes. The Department therefore finds that changes in the volume of timber harvested is not reflective of a residual demand.

The primary effect of an AAC should be to force tenure mills to turn to private timber for any demand beyond the AAC's set harvest volume. Two ways this market effect can be frustrated are 1) if the AAC is not binding in that tenure holders can harvest more timber than the limit or 2) if the AAC is set so high that the limit is not usually reached. This situation does not force tenure holding mills to source from private land and so any sourcing from private lands is not a true marginal demand. If the AAC is too high a private land-owner could not charge more than the Crown stumpage price for a similar stand of trees. If it did, the mill would simply source more from its Crown tenure. Evidence on the record shows that Ontario is this type of stumpage market.

Every five years, the province allocates a volume of AAC which is supposed to limit the amount of the timber a tenure holder can harvest and purchase at the administratively-set rate over that time period. The record shows that the AAC in Ontario is so high that it does not force tenure holding mills to turn to the private forest and thus causes the private timber market to be effectively determined by the Crown timber market. On average, tenure holders' actual harvest levels from Ontario public lands were about 80 percent of their planned levels during the POR. The difference between the AAC and the amount actually harvested from public lands is larger than the entire private timber market.

The GOO's assertion that marginal demand is being met by private suppliers again relates to the AAC. The fact that mills do not harvest up to their AAC seems to be ignored by the GOO. Mills in Ontario do not need to source from the private timber market, they can simply harvest more from their Crown tenure. There is no true residual or marginal demand for tenured mills if all demand can be met below the AAC. The large sawmills would only purchase from the private market if private timber sellers match public timber prices for similar wood.²⁸ The private timber market exists because private land owners have no alternative market that would bring them a better price. The U.S. market might be the only better alternative for private land owners selling saw logs except that there is no market for Ontario saw logs in the bordering U.S. states. As argued by respondents in the investigation of the immediate case (see 67 FR at 15545), softwood timber harvested in Ontario is smaller and lower

²⁸ There is also record evidence that the large tenure holding mills own their own private land from which they source timber.

quality than timber in U.S. bordering states and is more comparable to pulp logs in the U.S. While the GOO reports that there are no restrictions on exporting logs, it also reported that there were virtually no exports of softwood timber to the U.S. during the POR. The DGM Survey did indicate that some logs were exported to the United States, but it did not indicate whether the logs were exported to pulp mills or to saw mills. Even so, the small amount of exports suggests that the demand for Ontario logs is limited.

c. Quebec

Comment 22: Effect That Mills Sourcing Exclusively from the Private Forest Have on the Price of Standing Timber in Quebec's Private Forest

The GOQ argues that in its Preliminary Results the Department attributed an inordinate amount of market power to dual-source mills. The GOQ claims that dual-source mills do not effect the market price of private standing timber to the extent claimed by the Department.²⁹ Specifically, the GOQ contends that the Department improperly discounted the impact that mills sourcing exclusively from Quebec's private lands have on standing timber prices.³⁰ The GOQ asserts that the Department's claim in the Preliminary Results that the purely private mills consume, on average, 705 cubic meters of logs is misleading, as evidenced by the breakdown of actual consumption that it provided. See the March 8, 2004, Supplemental Questionnaire Response of the GOQ at Exhibit 119. It claims that the data in Exhibit 119 indicates that many mills in the purely private category process large volumes of softwood timber.

²⁹ The GOQ's use of the term dual-source mill refers to a mill that obtains its supply of standing timber from the public and private forests.

³⁰ In its questionnaires, the Department repeatedly requested that the GOQ provide actual consumption data and sourcing patterns for the 1042 mills that were in operation during the POR. Citing confidentiality restrictions, the GOQ claimed it was unable to provide the data in the manner requested by the Department. Instead, the GOQ provided actual consumption/sourcing data for mills, in groups of five, that fell into the following sourcing categories: (1) mills obtaining logs exclusively from Quebec's public forest (purely public category), (2) mills obtaining a combination of logs from Quebec's public and private forest (public/private category), (3) mills obtaining a combination of logs from Quebec's public and private forests as well as from imported sources (public/private/other category), and (4) mills obtaining logs exclusively from private forests (purely private category). See, e.g., Exhibit 119. However, in Exhibit 102 of its November 12, 2003 questionnaire response, the GOQ provided actual consumption data for mills that consumed softwood from private and from Crown public forests during 2002. Also, in Exhibit 171 of its April 15, 2004 submission, the GOQ provided consumption and sourcing data for the largest 20 mills in the purely public category, the largest 10 mills in the public/private category, and the largest five mills in the purely private and public/private/other categories. As explained in the Preliminary Results, in Quebec, there are 52 mills in the purely public category, 818 mills in the purely private category, 94 mills in the public/private category, and 76 mills in the public/private/other category.

The GOQ further argues that rather than examine the mills' individual consumption, it is more relevant to consider the total consumption of mills in the purely private category, in the aggregate, from the private forest. Because the private forest is the sole source of supply for these mills they must compete vigorously to ensure supply and, therefore, their collective demand will push prices upward. It also points out that mills in the purely private category consume 13 percent of Quebec's private standing timber and that, contrary to the Department's findings, this share of consumption is substantial and serves as yet more proof that the purely private mills have the ability to influence prices for private standing timber. The GOQ further contends that if dual-source mills were to reduce their demand for private standing timber or attempt to en- mass bid down prices for private standing timber, then the mills sourcing exclusively from the private forest would have significant economic incentive to expand their production to take advantage of the newly available supply.³¹

Department's Position

Contrary to the GOQ's contentions, the GOQ did not provide the Department with a breakdown of the consumption of each of the 818 mills in the purely private category. However, while we lack actual consumption data for all mills in the purely private category, data provided by the GOQ demonstrate that such mills have minuscule operations when compared to mills operating in the purely public, public/private, and public/private/other categories.

In Exhibit 119, the GOQ grouped mills in each of the four categories into groups of five. The GOQ listed these groups in descending order according to the groups' total consumption. If mills in each group consumed equal amounts of logs, the average consumption of logs by mills in the purely public, public/private, and public/private/other categories were 140,370, 173,467, and 117,044 cubic meters, respectively in 2002. See Quebec Private Market Analysis Memorandum. In contrast, the average consumption by mills in the purely private category was 705. Id. Our analysis indicates that 673 of the 818 mills (approximately 75 percent of the number of mills in the category) in the purely private category consumed, on average, less than 705 cubic meters, indicating that the average for the group would be even smaller but for the fact that the consumption of the five largest mills in the category skew the mean. Thus, the data demonstrate that mills in the purely private category are, on average, dwarfed in terms of consumption when compared to mills in the purely public, public/private, and public/private/other categories.

This average consumption figure alone makes it unlikely that mills in the purely private category are able to operate on equal footing (in terms of negotiating leverage) with large, corporately-owned tenure holding sawmills. Instead, the small production volumes of these mills suggest that they operate on the fringe of a market dominated by industrial-sized, dual-source mills.

³¹ Petitioners did not specifically rebut each of issues raised by the GOQ regarding the issue of whether Quebec's private stumpage prices may serve as a viable benchmark.. However, suffice it to say, petitioners support the Department's preliminary finding that prices for private standing timber in Quebec are effectively determined by standing timber prices in the public forests. See pages 54 through 63 of petitioners' rebuttal brief.

Further, we do not agree with the GOQ's contention that preliminary findings concerning dual-source mills would merely result in mills from the purely private category consuming larger quantities of Quebec's private logs. First, as explained below in Comment 23, mills in Quebec, regardless of their sourcing patterns, can only increase their log consumption with the express permission of the GOQ. Second, even if a typical mill in the purely private category were able to obtain permission to increase its consumption, due to its small size, it would not have the ability to absorb the available log inputs absent significant retooling. For these reasons, we continue to conclude that the mills that harvest solely from Quebec's private forest lack the negotiating leverage to have any meaningful effect on prices of private standing timber in Quebec.

Comment 23: Effect That Mills Sourcing from Both the Public and Private Forests Have on the Price of Standing Timber in Quebec's Private Forest

The GOQ argues that the record does not support the Department's finding that the Quebec forest is dominated by dual source mills when examined at the corporate level or the regional level. Specifically, it claims that in the Preliminary Results, the Department does not indicate the extent to which these corporately-owned mills compete for private timber.

With respect to its regional level argument, the GOQ contends that in regions where the private forest harvest is abundant, logs from the private forest will comprise the majority of companies' input mix operating in that region. Thus, the GOQ argues that mills in those regions are forced to compete vigorously for private origin logs and the price these mills pay may serve as a viable benchmark.

The GOQ claims that the regions selected for review by the Department at verification were areas where the public harvest happened to predominate over the private harvest. In particular, the GOQ points to Region 2 where, it claims, approximately 96 percent of the log harvest is public and only 4 percent is private and, thus, the overall consumption of private forest logs by dual-source mills in that region is small compared to the overall consumption of private logs across the province. The GOQ contends that a more informative analysis would focus on regions where private supply is dominant because in such regions tenure holders' access to public land is far less than their needs, and thus, the mills' consumption from the private forest is larger.

The GOQ further argues that regions containing private forest lands have the greatest impact on establishing the private price that is used in the parity technique because the average prices for standing timber in each of the regions, as determined by the Private Forest Survey, are weight-averaged according to the volume of private harvest in each region.

Department's Position

The GOC's argument fails because the regions where the price feedback effect may be weak collectively are not large enough from a private timber harvest volume standpoint to make the overall

weighted-average price (across all regions) meaningful for benchmark purposes.³² Although the Department requested consumption data for all regions (i.e., regions 1 through 17) and for all mills in the four consumption categories, the GOQ only provided complete mill-specific consumption data for mills in the public/private category. According to the GOQ's data, mills in the public/private category only operate in regions 1 through 11.³³ The data submitted by the GOC indicate that in only two regions, 3 and 5, did public/private category mills source a significant share of timber requirements from the private forest (44 and 75 percent, respectively). In the other nine regions for which the GOC submitted data, public timber is the primary source of supply and reliance on the private standing timber market is considerably lower, less than 28 percent. Thus, in only two regions, 3 and 5, is the private share of timber consumption large enough that mills in these regions likely bid on private timber with some amount of consideration of meeting their timber needs than about the price feedback on their public timber costs. In the other nine regions, the private share of timber consumption is so small that we conclude that the mills bid on private standing timber thinking more about the price feedback on their public lumber costs than on meeting their timber requirements.³⁴ Moreover, regions 3 and 5 account for slightly more than 20 percent of the total private timber purchased by all public/private category mills in all eleven regions, not nearly enough to make the weighted-average price across all eleven regions a meaningful benchmark.

Public/private category mills are, of course, not the only source of demand for private timber. Mills in the public/private/other and purely private categories also purchase private timber in these regions. Although the GOQ did not provide the Department with a regional breakdown of the timber purchases (by source) for mills in the public/private/other category, the record evidence indicates that private timber accounted for only 18.35 percent of the province-wide purchases of these mills during the POR. The small private share of timber consumption of these mills suggest that they, too, bid on private timber motivated more by the price feedback on their public lumber costs than on meeting their timber need. Mills in the public/private/other and public/private categories together account for 86.13 percent

³² As explained in the Preliminary Results, 69 FR 33216, the term "feedback effect" refers to the fact that, under the GOQ's parity technique, prices for public standing timber are a partial function of the prices paid for private standing timber.

³³ The GOQ only provided company-specific information at verification for mills that were specifically listed in Exhibit 171 of the GOQ's April 15, 2004 submission. See, e.g., GOQ Verification Report at 4 and 30. Thus, the regions for which the Department's verifiers could review company-specific information pertaining to dual-source mills were limited to regions 1 through 11.

³⁴ Indeed, in the White Paper that was submitted on behalf of Quebec's private forest landowners (White Paper) by the Federation of Quebec's Wood Producers (FPBQ), the authors address the negative impact that the feedback effect has on prices of private standing timber:

... the forest industry has an interest in maintaining a low value of standing trees in private forests, as the determination of this value provides the basis for calculating forest user fees.

See GOQ Verification Report at Exhibit 16, page 174.

of all private timber consumed in the province, which leaves little room for the type of demand (mills thinking about their timber requirements and bidding accordingly) that would be sufficient to overcome the influence of public/private and public/private/other category mills. Given that dual-source mills, via the feedback effect, have the incentive to bid private standing timber prices down and given that the dual-source mills dominate the market for private standing timber, we find that the small amount of remaining demand is not sufficient to boost private timber prices enough to make the weighted-average price a meaningful benchmark. Private category mills represent just such a demand type, but account for only 577,096 cubic meters of the more than 4,160,355 cubic meters of the private timber that was consumed in Quebec during the POR. The GOC did not submit a regional breakdown of this 577,096 cubic meters figure, but this total is so small that any distribution of it across the regions would make the weighted-average price not a meaningful benchmark.

Comment 24: *Whether Quebec's Public Forests Are Residual to Private Forests*

The GOQ argues that Quebec's public forests are residual to private forests. In support of its contention it argues that dual-source mills maximize their revenues by sourcing high quality fiber from private lands in Quebec and outside Quebec and mix it with lower quality wood from Quebec's public forest.

The GOQ also asserts that the Department's preliminary findings regarding the price of Quebec's private standing timber incorrectly assumes that delivered log costs of harvested standing timber remain constant. The GOQ argues that with increased harvest volumes of public lands, harvesting costs, haul distances and silviculture obligations would increase total marginal and incremental costs to the tenure holder. Thus, the GOQ contends that rather than incur these marginal costs, dual-source mills first seek supplies from the private forest.

Department's Position

Regarding the GOQ's contention that dual-source mills maximize their revenues by sourcing high quality fiber from private lands in Quebec and outside Quebec and mix it with lower quality wood from Quebec's public forest, even if a stand of trees in Quebec's private forest were superior to those in the public forest, it would not eliminate the imbalance in negotiating leverage that exists in Quebec. See, e.g., Stoner Price Distortion Study (2002) at 4-5, which was included as part of petitioners' March 15, 2004 of expert studies, which states that an administratively set volume at an administratively determined price will necessarily shift the supply curve for private timber values, unless the volume and price set by the government somehow manages to equal what would normally obtain on the market. Thus, while sellers of trees from private stands might be able to charge more to account for certain product differences, they still must compete with logs from Crown lands. Therefore, the starting price for trees in those private stands will be based on the price first set in the public forest, thereby rendering the private forests residual to the public forests.

We also disagree with the GOQ's argument that a mill with tenure that attempts to manipulate private stumpage prices by increasing its harvest on its tenure and reducing private purchases faces the

additional penalty of increased harvest costs on its tenure and, thus, instead will first seek timber volumes from the private forests. As the record demonstrates, the GOQ's parity technique offers a wide range of offsets to the administrative stumpage price to assist tenure holders who harvest trees in remote regions of Quebec. For example, the GOQ has a detailed system in place to measure and continually update such costs as road building/maintenance, harvest, silviculture, logging camps, etc. that are incurred by tenure holders. As tenure holders' unit costs for these activities increase, the price they pay for Crown stumpage decreases. See, e.g., GOQ Verification Report at 4. It is this aspect of the parity technique that was specifically criticized by the FPBQ in its White Paper and testimony before the Quebec Parliament. Take for example, the FPBQ's complaint of what it refers to as "unjustified credits," in particular its request that the GOQ remove the "mill-to-market" credit currently in place that offsets tenure holders' stumpage fees to account for their distance from the market place. See page 177 of the White Paper.³⁵ Thus, while the tenure holders' costs of obtaining the timber might increase with each purchase of Crown logs, the GOQ, through its parity technique, offsets those costs by lowering the unit cost for the logs themselves.

Further undermining the GOQ's contention that Quebec's public forests are a residual or secondary sources of supply is the simple fact that the GOQ does not allocate public standing timber in a manner that resembles any generally accepted definition of "residual." If public standing timber supplies were, in fact, residual as the term "residual" is typically used, it would mean that tenure-holding mills in Quebec are required first to exhaust all available supply on private lands and only then resort to public lands to satisfy their unmet timber requirements. However, as the Department explained in the Preliminary Results, under Quebec's parity technique, public and private standing timber need not be consumed by dual-source mills/corporations in any particular order. See 69 FR at 33217. In fact, dual-source mills are not even required to purchase stumpage from the private market at any time during the year.

Comment 25: Annual Allowable Cut in Quebec is Binding

The GOQ argues that, contrary to the Department's finding, the AAC in Quebec is legally binding.³⁶ According to the GOQ, the Department's conclusion that the AAC is not binding is based on three factors: the ability of TSFMAs to (1) rollover unused tenure allocations; (2) to exceed their tenure

³⁵ See also page 61 of Exhibit 16 of the Quebec Verification Report. Specifically, the FPBQ complained during the parliamentary hearing that such "unjustified credits" as the "mill-to-market" adjustment, ". . .cancel all potential competition between Quebec industries in relation to wood in private forests." The FPBQ's complaints of "unjustified credits" provide yet another example of how sellers of standing timber in the private forest compete on an unequal playing field against the supply of standing timber in the Crown forests of Quebec.

³⁶ AAC describes the amount of Crown tenure allocated to tenure holders during the year.

allocation in a given year; and (3) to shift their tenure allocations within the same corporate family. The GOQ argues these conclusions are factually inaccurate and that, the prices of standing timber on Quebec's private lands may serve as a viable benchmark when determining whether the GOQ sells Crown timber for less than adequate remuneration.

First, the GOQ argues that the ability of tenure holders to rollover unused portions of its AAC is limited to 15 percent per year thereby limiting the affects of the rollover feature to the short term. It also asserts that the rollover feature merely enables "market reactions" on the part of tenure holders and does not grant them any undue market power over sellers of private standing timber. Citing to the NAFTA Remand, the GOQ further contends that it was the rollover feature that demonstrated that the GOQ does not enforce minimum cut requirements on Crown lands, which it claims illustrates that tenure holders' harvest decisions are market determined.

Second, the GOQ claims that the Department erred in concluding that mills can freely adjust their tenure allocations if a mill is able to persuade the GOQ to change the mill's AAC allocation. Citing to verification exhibits collected concerning Tembec, a corporation with multiple sawmills operating in Quebec, the GOQ asserts that there is no record evidence indicating that the GOQ expands the AAC upon request by tenure holding mills. The GOQ argues that the record evidence instead clearly indicates that it strictly adheres to the principal of the AAC. In addition, the GOQ argues that the record evidence indicates that the GOQ does not shift mill volume allocations from one corporate sibling to another on an ad-hoc basis.

The GOQ also claims that the Department relied on limited public stumpage data, *i.e.*, province-wide averages, to demonstrate that dual-source mills were able to obtain sufficient or even excess timber supplies from their public tenures. The GOQ argues that such data are misleading because they do not reveal tenure allocation utilization rates on a dual-use mill-specific basis.

The GOQ further argues that one-third of the logs consumed by mills in the public/private/other category came from either the private forest or imports and that these non-Crown sources are needed in order for the mills to fulfill their production needs. As further evidence that the private forest is a heavily harvested source of supply, the GOQ claims that from 1999 to 2001, the harvest in private forests exceeded the annual sustainable harvest level. See page 105 of the Private Standing Timber Market in Quebec included in Exhibit QC-11 of the GOQ's March 11, 2004 submission (Quebec Private Forest Study). The GOQ argues that, for the Department's Preliminary Results to be accurate, tenure holders would be harvesting 100 percent of the AAC while the amount of softwood timber harvested from the private forest would fall below the annual sustainable level reflecting dual-source mills attempts to bid down prices. See page 41 of GOQ's case brief.

Department's Position

The GOQ's arguments on this matter are not persuasive. Regarding the rollover issue, the fact that tenure holders can rollover up to 15 percent of their public timber allocation to the next year is not disputed by the GOQ. The flexibility of the rollover feature grants tenure holders considerable negotiating leverage over private forest owners. For example, if, in a given year the demand for lumber is low or production of lumber constrained, a dual-source mill can decide to reduce its production and

roll the unused Crown allocation over to the following year, when lumber demand may be greater or larger production more feasible. In such a situation, in both the current year and the following year, dual-source mills have the power to divert their demand for log inputs towards Crown sources and away from the private forest.

Record evidence also disproves the GOQ's contention that the AAC cannot be expanded during the 5-year period. However, even if the harvest of tenure holders were to remain fixed over the 5-year period covered by the AAC, the rollover feature would nonetheless afford the tenure holders negotiating leverage in the short-term (*i.e.*, in a given year) regarding the price they pay sellers of private standing timber. The importance of short-term pricing considerations to private woodlot owners, and the overhang effect that a non-binding AAC has on price, is reflected in the White Paper. In the White Paper, the FPBQ requests that "all volumes available from the private forests and other sources such as chips, recycling, and timber from outside Quebec, should find a taker prior to allocating volumes from public forests." (Emphasis added). The FPBQ goes on to request that:

. . .the volumes allocated to annual allowable use be granted annually in two portions in adherence to the public forest residuality principle. The volume of the first portion will be determined as a function of historical user rates of the mill in the preceding five years. The volume of the second portion will be granted on a semi-annual basis, only when the facility has demonstrated an inability to fulfill its need as well as other supply sources on the market. (Emphasis added).

Id. The FBBQ is, thus, requesting that the AAC be tightened up and allocated on an as-needed basis, to eliminate the overhang. The FPBQ further requests that "the needs of the mills be evaluated annually on the basis of volumes actually consumed by the plant over the past five years. (Emphasis added). *Id.* at 180. The FPBQ's emphasis on annual evaluations of tenure holders' mill needs and on annual revisions to tenure holders' AAC illustrates how demand from tenure holders in the short-term is paramount to sellers of private standing timber. Moreover, the FPBQ's specific requests for short-term monitoring and analysis of tenure holders' Crown allocation reveal the imbalance of market dominance that exists in the GOQ's administered stumpage system.

Record evidence also refutes the GOQ's claim we incorrectly concluded that tenure holders have the ability to alter their tenure allocations pending approval from the GOQ. Although the Ministère des Ressources naturelles de la Faune et des Parcs (Ministry of Natural Resources (MRN)) was initially reluctant to fulfill Tembec's request for additional tenure allocation for one of its mills, the MRN did come to Tembec's assistance. The MRN's December 17, 1999, letter to Tembec³⁷ noted that, "in order to ensure the long-term viability" of the mill in question, it would-permit Tembec to shift a portion

³⁷ The GOQ has waived the proprietary status that protected the identity of Tembec and the correspondence between it and the MRN. Additional documents exist that demonstrate how corporations are able to manipulate their softwood timber allocations by redistributing their softwood allocations among mills under their control. *See e.g.*, GOQ Verification Report at 3and Exhibit 20 at 34A.

of tenure allocation from one of its other corporate mills to the mill that needed additional logs. See page 72a of Exhibit 20 of the Quebec Verification Report. Similarly, after Tembec repeatedly complained to the MRN that it would have to temporarily shut down one of its other mills because of its “difficulty obtaining an affordable price on round timber from Ontario,” the MRN, in June 2000, again allowed Tembec to shift a sizeable amount of allocation from two of its mills to the mill in question. See pages 70A and 74A of Exhibit 20 of the Quebec Verification Report.³⁸

We disagree with the claim that the dearth of “affordable” non-Crown origin supplies simply demonstrates that private forest and imported log prices are not effectively determined by prices charged for standing trees on Crown land. The correspondence between the MNR and Tembec leads to the opposite conclusion. Rather than permitting free market forces to resolve tenure holders’ sourcing concerns (i.e., having the corporate tenure holders pay higher prices for the non-Crown origin logs), the GOQ enables tenure holders to redistribute their softwood Crown volume allocations among their corporately-owned sawmills, thereby granting them the power to lessen the need of any given mill for non-Crown wood supplies.

Furthermore, the fact that Tembec claimed that non-Crown origin logs were more expensive than Crown logs does not indicate that non-Crown sources are free from the effects of the GOQ’s Crown timber pricing policies. Rather, sellers of private-origin logs take into consideration the market dominance of the tenure holding sawmills (e.g., the ability of large tenure holding sawmills to shift their demand away from non-Crown sources of supply) when setting their prices.

The GOQ also contests the Department’s preliminary finding that the MRN can increase mills’/corporations’ tenure allocations when requests and/or evidence is provided to effect such changes. Although some of the evidence we collected at verification indicates that companies (e.g., Tembec) were unsuccessful in their attempts to convince the MRN to increase the tenure allocations, the record also demonstrates that the MRN has the ability to revise the amount of tenure allotted to sawmills. See GOQ Verification Report at Exhibit 20. Section 81.2 of the Forestry Act confirms that the GOQ has the ability to revise tenure allocations:

The Minister may, after reaching an agreement with the agreement holder concerned, revise the volume allocated under or the area covered by an agreement...where the production of the processing plant changes, or where the enterprise undergoes restructuring.

Further, the MRN stated at verification that, “. . .an allocation could increase because of increased production needs, but in such a case, the mill would have to make a formal request to the MRN.” See

³⁸ Article 43.2 of the Forestry Act states that the MRN,

may, as an exceptional measure, allow that part of the round timber harvested by the agreement holder, in the course of a year, be intended for a processing plant other than the plant specified in the agreement, in particular, where the Minister considers it necessary to avoid a deterioration or loss of timber or to ensure the optimal use of the timber.

See the November 12, 2003, Questionnaire Response of the GOQ at Exhibit 19.

GOQ Verification Report at 2. Moreover, information collected during verification indicates that the MRN did indeed grant certain mills' requests for increases in their tenure allocations. See Id. at item 3 of page 3 within Exhibit 19.³⁹

We also disagree with the GOQ's claims that the harvest data referenced in the Department's Preliminary Results were inherently limited and that the Department's interpretation of such data was conjectural. On this point, the GOQ focuses on sawmills and does not take into consideration the evidence indicating that corporately affiliated sawmills regardless of their mill category (*i.e.*, dual-source or purely public source mills) work together to ensure a steady supply of Crown logs by redistributing unused Crown allocation from one sawmill to another.⁴⁰ In light of this fact, we find that our reliance on the province-wide averages is appropriate.

Comment 26: Incentive Structure of Dual-Source Mills

The GOQ argues that the Department's Preliminary Results regarding dual-source mills ignores the fact that such mills vary in the degree to which they rely on standing timber from the public forest and, therefore, their alleged incentives to drive down private prices will differ. For example, it claims that 123 such mills in the public/private and public/private/other categories obtain relatively small amounts of Crown logs and large amounts of their logs from imported sources. The GOQ argues that for there is a negative incentive to reduce the prices for standing timber in the private forest, as any such reduction would provide a competitive benefit to mills primarily sourcing from Crown lands, while providing no equivalent reduction on their imported logs.

The GOQ further argues that mills in the public/private and public/private/other categories, as a group, have a disincentive to participate in the pricing scheme described in the Preliminary Results. It explains that there is not a dollar-for-dollar correlation between private and public standing timber prices and that a dollar reduction in the price of private trees will result in a reduction of less than one dollar in the public forest.

In sum, the GOQ asserts that the Preliminary Results, fail to discuss why dual-source mills would attempt to suppress prices in the private forests when the largest benefactors of such a scheme would be the 818 mills in the purely private category, followed by the 53 mills in the purely public category via the feedback to public stumpage prices.

Department Position

³⁹ The information in Exhibit 19 is business proprietary in its entirety and, thus, cannot be summarized on the public record.

⁴⁰ The degree to which tenure holding mills dominate Quebec's softwood industry is evidenced by the fact that the top six corporations account for approximately 60 percent of Quebec's authorized consumption. See Preliminary Results, 69 FR at 33215.

The Department agrees that private category mills benefit from the prices that dual-use mills pay for private timber. We disagree, however, that dual-use mills would forego any price reduction on the vast majority of their wood purchases because of a competitive fear of market displacement by (much smaller) private category mills that collectively account for 13.87 percent of all private standing consumed and 1.73 percent of Quebec's total consumption. The Department also agrees that dual-use mills would certainly keep the benefit of the price feedback effect to themselves if they could, but certainly would not deny themselves that benefit just because another group of mills (which accounts for a much smaller share of the market) also benefits.

Comment 27: Relevance of Collusion Concerning the Analysis of Quebec's Private Forest

The GOQ asserts that the feedback element of the Preliminary Results cannot be a mechanism through which dual source mills can pressure private prices down because there is no record evidence to suggest that dual source mills either formally collude or unilaterally decide as part of simultaneous effort by a number of mills to reduce the amount paid for logs. The GOQ, presumes that the Department intended to describe the market for private standing timber in Quebec as an oligopsony or monopsony. The GOQ defines an oligopsony as market dominance in the hands of a "group of buyers acting in concert"⁴¹

Department's Position

Collusion is required when market competitors can increase their collective profits by acting in concert to raise output prices or lower input prices, but where each competitor is not individually motivated to do the same, out of fear of a loss of competitiveness. That is, collusion is needed to make firms collectively do what they would not do independently. For example, a single fresh pork producer would commit economic suicide by gouging its pig supplier *vis a vis* other fresh pork producers and therefore would never do so on its own. Collusion or collective action by all fresh pork producers (wherein all producer agree to take the same action on price) is therefore required to lower the price of pigs.

This is, however, not true in the case of dual-use mills that bid down the price of private standing timber. These mills benefit from a non-binding AAC and know that the price they pay for public timber depends directly on the price of private timber. These mills have no need and therefore no incentive to bid for private timber as a mill would bid to meet timber requirements because dual-use mills can satisfy all of their wood requirements with public timber. Instead, each of these dual-use mills has an incentive to bid down the price of private timber, regardless of what other mills do, because every little bit of downward pressure on the price of private timber contributes to the reduction of the dual-use mill's cost of public timber. This cost reduction is significant to each of these dual-use mills because of the large share in total wood consumption for which public timber accounts. There is, therefore, no need for

⁴¹ See footnote 18, page 24 of the GOQ's case brief.

collusion or collective action to bid down private timber prices because each of these dual-use mills are individually motivated to do so on its own.

Comment 28: Barriers to Entry in Quebec's Private Forests

The GOQ argues that if private prices for standing timber were below what would normally obtain in a free market, one would observe high profits followed by a dramatic increase in the construction and operation of mills sourcing private timber. New entrants would then bid up the price of private standing timber to market levels. They therefore conclude that, in such a situation, the only thing that would prevent private standing timber prices from reaching market levels would be barriers preventing new entrants from acquiring private standing timber as well as barriers prevent existing mills from expanding their production. The GOQ contends that the Preliminary Results fail to cite any record evidence that would demonstrate the existence of such barriers but these barriers must exist if the Department's model is correct.

Department's Position

Through the Forestry Act, the GOQ controls every aspect of softwood lumber production from the construction of the sawmill to the production capacity of the mill. This control by the GOQ erects barriers to entry. One cannot construct a sawmill in Quebec without the consent of the GOQ. Section 162 of the Forestry Act specifically states:

No person may construct a wood processing plant of a class prescribed by regulations of the Government, increase the timber consumption capacity of such a plant or change its class or location without prior authorization from the Minister.

Further, the granting of an operating permit is contingent upon the GOQ's determination that adequate supply exists:

The Minister shall grant the authorization referred to in section 162 if he considers that timber supply sources are sufficient and forest production respected.

See section 163. In addition, section 164 prohibits a person from operating a wood processing plant without a permit. Id. Further, assuming aspiring producers successfully obtain permission to operate a sawmill, one is still subject to a fee:

A wood processing plant operating permit shall be issued upon payment of the duties and on the condition determined by regulation of the Government. . .

See section 165.

The GOQ also controls the production of existing mills including the mills' location and production capacity. See section 162. In addition, section 165 states that the wood processing plant permit, "...shall indicate the class of plant and the class of annual timber consumption authorized for the various species or groups of species, as established by regulation, as well as the authorized volumes for those species or groups of species..." Also, pursuant to section 168, the GOQ has the authority to continuously monitor sawmills' operations by requiring them to submit detailed information about their source and consumption of logs.⁴² In addition, the GOQ is charged with supervising the sale and transfer of existing sawmills:

a permit holder shall give the Minister a written notice of any act or transaction of such a nature as to effect a change in the control of a wood processing plant or, where such is the case, of the legal person which operates it.

Id. at Section 166. Section 170 states that the GOQ has the authority to cancel producers' operating permits if it finds that they have failed to comply with provisions set forth in the Forestry Act. Id. Thus, contrary to the GOQ's claims, numerous government regulatory measures limit entry into the market.

Comment 29: Relevance of Log Exports Concerning the Analysis of Quebec's Private Forest

The GOQ argues that a factor necessary but missing in the Department's finding is evidence indicating that no alternative markets for wood from the private forests. The GOQ claims that the absence of restrictions on export of logs from the private forest and a high degree of mobility of private market logs within Quebec preclude any price collusion.

Department's Position

The GOQ has claimed that if private prices for standing timber were effectively determined by prices in the public forest, private land owners would seek out an alternate market, namely export markets. However, as the GOQ has itself noted, there is no viable export market for Quebec logs. See the November 12, 2003, LER Questionnaire Response of the GOQ at 3, 6. The GOQ's own evidence demonstrates that considering the lower quality and transportation costs of Quebec logs there is no export demand for Quebec's logs. Indeed, the GOQ's evidence indicates that log exports in 2002 were a very small portion, 0.03 percent, of the private forest harvest. Thus, private land owners do not have a viable alternative to selling to dual source mills.

⁴² Exhibit 155 of the GOQ's April 5, 2004 submission contains an example of the data that sawmills must submit to the GOQ. The particular form in Exhibit 155 happens to pertain to a tenure holding mill. However, as the Forestry Act Makes provides, all holders of operating permits must submit such data to the GOQ's MRN.

Comment 30: Whether Quebec's Forest Marketing Boards and Syndicates Mitigates the Market Power Held by Tenure Holding Mills

The GOQ argues that the Department's findings regarding the price of standing timber in Quebec's private forest fails to consider the role and power of the Marketing Boards and Syndicates in Quebec. The GOQ argues that because the Marketing Boards and Syndicates possess the power to negotiate prices on behalf of private woodlot owners with mills; address grievances between private woodlot owners and mills, and theoretically protect woodlot owners from dual source mills attempting to suppress prices, it would be impossible for dual source mills to suppress prices without any counteracting response from the Marketing Boards and Syndicates.

Department's Position

Record evidence supports the Department's conclusion that Syndicates/Marketing Boards lack the negotiating leverage to challenge prices offered by the mills. The GOQ has presented no evidence demonstrating that the Syndicates actually can challenge prices offered by the mills.

At verification, officials from the Syndicates/Marketing Boards explained the distinction between the terms "Marketing Board" and "Syndicate." A Marketing Board can either be managed by an administrative office or a syndicate both of which can market logs.⁴³ However, only a Syndicate can perform tasks other than marketing logs such as payment collection, scaling expertise and publication of regional newspapers where log prices are advertised. See page 15 of the Quebec Verification Report. While the GOQ's claims portray the Marketing Boards/Syndicates as one entity that is able to exert power on behalf of all private woodlot owners in Quebec, the Syndicates/Marketing Boards are regional entities with defined geographic territory and negotiate only on behalf of landowners within their jurisdiction.⁴⁴ Operational differences also exist among the 15 Marketing Boards. See the November 12, 2003, Questionnaire Response of the GOQ at Volume 1, 138.

⁴³ While all 15 Marketing Boards/Syndicates are required to develop joint marketing plans, they vary by Marketing Board/Syndicate. See the November 12, 2003, Questionnaire Response of the GOQ at Volume 1, 139. Five marketing boards participate and manage a regional joint plan, while four have joint marketing plans for their areas and specific agreements with mills where the board collects payment and still the remaining six only negotiate prices with no active role in the day to day sales of logs to sawmills. See Id. The GOQ claims that Marketing Boards/Syndicates negotiate prices on an annual basis in some cases, and where a mill has projected a purchase volume, the Syndicate/Marketing Board will allocate purchase volumes among its members. See the March 8, 2004, submission of the GOQ at QC-2nd Supp-61 (March 8, 2004).

⁴⁴ A map detailing the location of each of the 15 Syndicate/Marketing Boards can be found at Exhibit 100 of the GOQ's November 12, 2003 Submission. We note that of the 15 listed, all but 2 entities are designated as Syndicates.

The record evidence demonstrates that private wood lot owners do not have any negotiating power that they can exercise directly or through the syndicates/marketing boards. The record contains testimony before the Quebec Assembly, a letter sent to the MNR, as well as a White Paper presented to the GOQ in which landowners complained about the impact of the Crown stumpage system on private prices. See GOQ Verification Report at Exhibit 16 and Exhibit 150 of the GOQ's April 8, 2004, submission. Other record evidence contain statements by the FPBQ and private landowners which criticize the impact Crown policies have on private prices and complaint about the inability of the landowners to obtain market price.⁴⁵

The letter sent to the MNR from the FPBQ in March 2002 addresses the effect, resulting from calculating tenure holders dues, of a downward pressure on private woodlot markets. See Id.

Comment 31: *The Significance of Log Imports Into Quebec*

The GOQ contends that an element that is necessary but missing from the Preliminary Results concerning Quebec's private standing timber market is a discussion of the importance of imported logs into Quebec. See page 62 of the GOQ's case brief.

Petitioners assert that imports into Quebec are not evidence against distortion. Imports, instead, are a result of mills along the Quebec - Western Maine border and the transportation network in Western Maine which grants easier access to Quebec border mills for Maine logs than to Maine mills east of the Allagash river. Petitioners further argue that imports into Quebec are also the result of the fact that Canadian truckers picking up logs in the United States are not permitted to sell the logs to other U.S. mills.

Department's Position

Record evidence demonstrates that a significant volume of imports into Quebec are consumed by a limited number of mills clustered along the Quebec/Maine border. In the underlying investigation, the Department conducted a number of reviews of Quebec's border mills as part of the company exclusion process. The exclusion process covered 25 mills in Quebec. These 25 mills imported no less than 2.4 million cubic meters of logs.⁴⁶ Similar data for the POR is not available for all border mills. However, the POI import volume of the 25 Quebec Border mills is 68 percent of the logs imported into Quebec during the POR. The GOQ's own study asserts that Quebec border mills are the main buyers of imports. See The Private Forest Standing Timber Market by Del Began Masse et Associes, Inc., at Volume 3, 115 and Exhibit 11 of the GOQ's March 15, 2004, submission:

⁴⁵ See the March 5, 2004, submission by petitioners at Volume 5.

⁴⁶ The Department has placed the calculations for the excluded companies on the record of this proceeding. These data are included in the Department's Calculation Memorandum.

Quebec border mills are the main buyers of softwood timber from the United States and other Canadian provinces. Sources are varied, but the main ones in order of importance, are the north - eastern American states, Ontario and New Brunswick.

The GOQ did not provide company-specific consumption/sourcing information for companies in the public/private/other category. However, Exhibit 171 of the GOQ's April 15, 2004, submission does contain company-specific data for the five largest log processors in the public/private/other category. Of these five mills, two are border mills and the data indicate that these two mills are among the largest importers of logs into Quebec, thus supporting the Department's contention that imports into Quebec are largely confined to a group of mills along the Quebec/Maine border. See page 2 of Exhibit 171.

Record evidence also indicates that border mills are reliant on imports because these mills are closer to standing timber supplies in Northern Maine than the Maine mills located in the south of the state. See Profile 2003: Softwood Sawmills in the United States and Canada in Exhibit 6 of the GOQ's April 13, 2004, submission. Furthermore, record evidence indicates that border mills hold timber lands in Maine.⁴⁷

Further, the record demonstrates that the flow of wood fiber from Maine into Quebec can be explained by the long-standing relationships that have developed between landowners in Maine and the Quebec Border Mills. See the December 20, 2001, Letter from Jonathan Ford, Maine Landowner to the Department, submitted as Exhibit 10 of the GOQ's March 15, 2004, submission.

In addition, as evidenced by the parliamentary testimony and White Paper, there are certain advantages associated with long-term, steady access to timber supplies. See e.g., GOQ Verification Report at Exhibit 16, page 191. This fact supports our conclusion that border mills will seek to perpetuate the business relationships that lead to their secure access to standing timber in Maine.

The border mills' decision to import U.S. logs is based on logistical and historical factors that make them unique when compared to other mills in Quebec. Thus, the border mills, which account for a significant volume of Quebec's imports, have sourcing decisions that differ from the rest of Quebec's mills and, therefore, their focus on standing timber from the private forest and their incentive to harvest private standing timber will differ from other mills in the province.

Comment 32: Whether Anecdotal Evidence Cited by Department is Relevant

The GOQ criticizes the Department's reliance on the parliamentary testimony, White Paper, and petition that was submitted to the GOQ on behalf of the FPBQ. The GOQ first argues that the FPBQ presented this information prior to the POR and, therefore, it is untimely. It also contends that the information is dated because it was submitted prior to major revisions to Quebec's administered stumpage system. As an example, the GOQ claims that in April 2000 it increased the number of tariffing

⁴⁷ In fact, the GOQ's consultant states that Quebec border mills own timber land in Maine: "The softwood timber that New Brunswick and Quebec sawmills purchase from Maine comes mostly from forest lands owned by the Canadian companies (e.g., Fraser, Irving, Maibec etc.)" See Private Forest Standing Timber Market Study at 99.

zones from 28 to 161 to ensure greater homogeneity and accuracy in assessing stumpage dues on Crown lands.

The GOQ further argues that the petition presented by the FPBQ pertains solely to trees sold in Quebec's private hardwood forests and did not involve the softwood forests. The GOQ also claims that the parliamentary testimony placed on the record confirms that the private land owners' complaints pertained solely to hardwood products. The GOQ cites to a quote from a FPBQ representative in which, according to the GOQ, the representative asks that the method used for setting softwood prices on Crown lands be applied to hardwoods. See GOQ Verification Report at Exhibit 16, page 56.

The GOQ also asserts that nowhere in the transcript of the parliamentary hearing is there any discussion about conditions in Quebec's private softwood market. The GOQ claims that, to the contrary, the testimony focuses on pulp and paper and hardwood markets.

Department's Position

The White Paper was prepared in August of 2000 and the parliamentary hearings took place in September 2000, both of which came after the reforms initiated by the GOQ in April of that same year. Although this information predates the POR, it is still relevant to our analysis because the GOQ's administered stumpage system remains the same as it was when the FPBQ's arguments were first presented.

Additionally, a review of the information submitted by the FPBQ on behalf of the sellers of Quebec's private standing timber clearly indicates that their complaints and requests for reform included softwood timber products. In the underlying investigation, verifiers from the Department met with a representative of the FPBQ. During that meeting, the FPBQ official stated that representatives of private land owners, "...lobbied the GOQ regarding the manner in which it sets stumpage prices in Quebec. . ." and that, "...private wood lot owners have an interest in the level of stumpage fees because if the GOQ sets fees at an arbitrarily low level, it would depress stumpage fees and log prices in the entire Province." See the November 12, 2003, Questionnaire Response of the GOQ at Exhibit 111. Subsequent to the issuance of the Department's verification report, the GOQ submitted an affidavit to the Department in which the FPBQ official claimed his comments were limited to the hardwood forests.

First, as stated in the Decision Memorandum that accompanied the Final Determination, the Department's stands behind its finding that FPBQ official's remarks were, in fact, in reference to the entire forest.⁴⁸ Moreover, the information that the FPBQ itself presented in the White Paper and submitted to Quebec's Parliament (outside the course of the countervailing duty proceeding) belies the claims made by the GOQ. Specifically, the record demonstrates that the complaints of Quebec's private landowners contained in the White Paper apply to the forest as a whole. For example, in the White Paper's introduction, it states that the:

. . .under-use of private forests may be partially explained by the importance of public forests in Quebec. In fact, public forests account for 71 percent of timber supplied to Quebec mills.

⁴⁸See footnote 16 of the Decision Memorandum from the investigation.

Although Section 43 of the Forestry Act stipulates that the public forest is a residual supply, it still represents a solid competitor for private forest timber producers. Indeed, public forests represent a vast monopoly that forces the hand of supply and demand. This competition is reflected in the timber prices charged by private forest producers.

See page 162 of Exhibit 16 of the GOQ's Verification Report. Nothing in the quote from the White Paper indicates that the private forest landowners' criticism applies to anything other than the entire forest in Quebec. This is further evidenced in the FPBQ's request for revision to the provision of the Forestry Act that governs the setting of government stumpage fees:

. . .The Minister of Natural Resources should ensure that society procures a fair price for public resources. Revenue generated by the use of public forests should enable a reasonable return on forest capital. . .The Government must ensure they receive the highest possible price for public forest resources.

See page 174 of Exhibit 16 of the GOQ's Verification Report. Here again, the private forest landowners do not ask that their proposed reforms to the Forestry Act be confined to the hardwood forest. The White Paper also calls for elimination of the provision of "unjustified credits" to tenure holding mills, credits that are applied to softwood trees harvested on Crown land. Further, the White Paper calls for the GOQ to reduce the risk of conflict of interest by moving the responsibility of setting prices for government-owned fees from the MRN to the Ministry of Finance. Again, the FPBQ, on behalf of private landowners, refers to the administered stumpage system in general which, in turn, governs the policies in the Crown forest as a whole.

Furthermore, we disagree with the GOQ that an FPBQ official's statement during the parliamentary hearing that the method used for setting softwood prices on Crown lands be applied to hardwoods is evidence that the FPBQ's requested reforms somehow are limited to the hardwood forest. The FPBQ does not oppose the notion of an administered stumpage system in which public stumpage fees are based on private stumpage fees. See page 173 of the White Paper where the authors state that while using private stumpage fees to set public stumpage fees is "theoretically valid, it has been criticized for many reasons." Thus, the FPBQ is arguing that, to the extent that its calls for reforms are implemented, reforms that cover the forest as a whole, then it would be willing to accept a system in which all stumpage fees are set according to the method applied in the Crown's softwood forests.

The information from Quebec's private forest landowners, submitted to the GOQ outside the course of this administrative review, provides detail concerning how Quebec's private forest landowners believe that the GOQ's administered stumpage system effectively determines the prices that can be charged in the private forest. Moreover, in spite of the GOQ's attempts to explain this evidence away, the information from the private forest landowners clearly applies to the entire forest as it existed during the POR and, therefore, is extremely relevant to the Department's findings in this proceeding.

Comment 33: *Whether the Department Acted As An Impartial Fact Finder*

The GOQ claims that the manner in which the Department collected information concerning whether the prices of private standing timber is effectively determined by the prices of standing timber in the public forest was inappropriate and, as a result, the record is incomplete and inaccurate. The GOQ claims this incomplete record led the Department to draw erroneous conclusions concerning the market conditions that exist in Quebec's private forest.

In particular, the GOQ argues that verifiers from the Department failed to permit officials from the MRN to explain their views concerning the petition, White Paper, and parliamentary testimony. The GOQ claims that refusal to speak with GOQ officials on this matter was carried out in spite of the fact that the Department's April 12, 2004 verification outline requested that GOQ officials be prepared to discuss these documents. The GOQ argues that if the Department had opted to speak with the high-ranking GOQ officials who were available during verification about the information submitted by the FPBQ, it would have clarified many of the issues raised in the documents.

The GOQ argues that a similar process occurred during verification with respect to officials from Quebec's forest marketing boards. The GOQ charges that during their meetings with officials from Quebec's forest marketing boards the verifiers chose not to ask questions that related to whether the prices of private standing timber were effectively determined by standing timber prices charged on Crown lands.

Department's Position

The GOQ's criticism on this matter hinges on the contention that the verifiers precluded officials from the MRN from offering their opinions on parliamentary testimony that the MRN did not submit and on documents that it did not write. As the evidence demonstrates, it was officials from the FPBQ who attended the parliamentary hearing, the transcript of which was placed on the record of the review. Further, it was the FPBQ, not the MRN, that submitted the White Paper and petition to Quebec's parliamentary body. However, as acknowledged by the GOQ, the head official of the FPBQ refused to attend the verification.

The verifiers properly focused this portion of the verification on the collection of hearing transcripts and documents of the FPBQ. Because FPBQ personnel, *i.e.*, the personnel responsible for the hearing transcript and other documents, were not available to discuss the contents of these documents, it was not necessary to further discuss these with other GOQ officials. Subsequent to verification, the Department quoted from these pieces of evidence and drew conclusions from them. Nothing has prevented the GOQ from doing the same. Moreover, as evidenced by its voluminous case brief, the GOQ has not been denied the right to comment on the information submitted by the FPBQ on behalf of Quebec's private forest landowners.

The GOQ's claims regarding the verifiers' meetings with officials from the forest marketing board is equally without merit. The purpose of verification is to confirm and clarify existing record evidence. This involves meeting with the relevant government and company officials who were involved in preparing questionnaire responses and who may provide clarifications to the data and information submitted to the record. In conducting this process, the Department has the ultimate discretion in

deciding with whom to meet and which questions it deems are necessary to clarify information on the record.

On this basis, the Department rejects the GOQ's unjustified accusations and stands firmly behind the procedures followed by its verifiers during the verification of the GOQ.

3. *Maritimes Stumpage Prices*

a. Distortion

Comment 34: *Whether the Market Conditions for Private Standing Prices in New Brunswick and Nova Scotia Are Distinct from Those in Quebec*

Petitioners argue that private prices in the Maritime provinces cannot be used as a benchmark because government created distortions make these prices not reflective of market conditions. See page 10 of the petitioners' case brief. Petitioners assert that the law prohibits the use of prices if it is reasonable to conclude that prices are significantly distorted as a result of government involvement in the market. The standard required that the record demonstrate that Maritime private prices are free from the influence of government timber sales and other policies as a prerequisite to being used as a benchmark. Petitioners also comment that the Department's practice has been to reject prices when reasonable to conclude there is a significant distortion caused by government involvement. It is not actually required to prove a distortion exists, according to petitioners. Furthermore, according to petitioners, the Department's established practice is not to use prices as a benchmark when those prices are derived from a market in which the government constitutes a majority of the supply or a substantial portion of the market. Petitioners assert that when a government has 50 percent or more of the market share, private prices are not useable. The petitioners argue that Maritime private prices are distorted because record evidence shows that the provincial government is the majority supplier. Petitioners also rely on NAFTA and WTO panel decisions to support their arguments.

Petitioners argue that the Department can find that private prices from the Maritime provinces are distorted absent an allegation that Maritimes Crown stumpage prices are subsidized. Distorted prices in one province are not a reflection of whether the provincial government in another province collected adequate remuneration for provincial stumpage.

Petitioners also claim that the Department did not explain how prices in New Brunswick could be market determined if the Crown supplied the majority of the softwood saw timber. Petitioners cite numerous expert studies on the record as confirming that provincial government stumpage programs in the Maritime provinces distort the price of private timber. These experts assert, according to petitioners, that administered stumpage prices necessarily affect non-administered stumpage prices.

Petitioners assert that private prices in New Brunswick are distorted because the factors which the Department used to determine that Quebec private prices are distorted are also present in New

Brunswick. Petitioners note that the Department found that 818 mills sourcing exclusively from the private forest in Quebec sourced 13.87 percent of the supply from the private forest while in New Brunswick, petitioners argue that 3 purchasers sourcing exclusively accounted for one-tenth of one percent of the private supply in New Brunswick. Petitioners also point out that mills with access to Crown land in New Brunswick sourced almost 100 percent of the private forest compared to Quebec where the Department found mills with access to Crown lands sourced 86.3 percent of the private market. Petitioners argue that while the Department found that dual source mills in Quebec were not dependent on the private market evidenced by less than 19.0 percent of their total supply coming from private lands, the record shows that dual source mills in New Brunswick were also not dependent on private woodlots as evidenced by dual source mills in New Brunswick sourcing 18.2 percent of their total supply from private woodlots. See page 26 of the petitioners' case brief.

Petitioners argue that like the Department's finding for Quebec, there is a "feedback effect" in New Brunswick. Petitioners also challenge the Canadian parties claim that the feedback effect for New Brunswick differs from the feedback effect for Quebec. Petitioners assert that the right conclusion to be drawn is that the record evidence shows that private prices affect Crown prices in New Brunswick and vice versa, by driving both Crown and private prices down.

The Maritime Lumber Bureau (MLB) rebuts petitioners' argument that private prices from the Maritimes can not be used because the Department's regulations preclude any private price where government involvement significantly distorts the private price. See page 2 of the MLB's rebuttal brief. The MLB argues that the Department's regulations contain no bright line 50 percent test categorically excluding any private price where the government supplies more than 50 percent of the market exists. The MLB distinguishes the only case cited by the petitioners as employing the 50 percent test, Hot Rolled Carbon Steel Flat Products from Thailand, 66 FR 50 410 (October 3, 2001) from this review, by the fact that the Thai government controlled the entire in-country market and no other in-country market existed.

The MLB contests the petitioners' claim that private prices in the New Brunswick and Nova Scotia are not market determined by offering support for its argument that the Maritime private timber market is a regional market with numerous buyers and sellers from within Canada and the United States. See Id. at 3. The MLB argues that the private stumpage market in the Maritimes is a regional one where a fundamental characteristic is demand in New Brunswick exceeds the available supply and the buyers in the New Brunswick market respond by importing 17 percent of supply from outside the province. See Id. at 4. Similarly, the MLB argues that the sources of supply in the Maritime provinces is as competitive among four types of suppliers. See Id. at 5. In New Brunswick, the suppliers include Crown, private industrial, private woodlot and imports and provide 37.5 percent, 21.6 percent, 23.9 percent, and 17 percent, respectively. The MLB further rebuts the petitioners' claim stating that Crown leaseholders are not as unified a market force as posited by the petitioners; Crown lands are divided among 6 licensees and 77 sub-licensees who must look to private sources for a majority of their wood requirements. The MLB also refutes petitioners' argument regarding Nova Scotia, stating that wood from private sources constitutes 90.9 percent of the supply, with 55.9 percent of Nova Scotia's total harvest from private woodlots and 34.9 percent from the industrial freeholds and 9.25 from Crown sources. When Nova Scotia and New Brunswick are treated as a region, the MLB argues that

petitioners' argument is rebutted because Crown represents a mere 23 percent of the input used for softwood lumber. The MLB also contradicts the petitioners' claim that private prices in the Maritime provinces are not market based because the MLB asserts there is record evidence that harvest volumes in the Maritimes trend according to lumber prices.

The MLB further claims that the petitioners' argument that private prices in the Maritime provinces cannot be used because the government controls more than 50 percent of the supply is refuted when look at the total control of Crown sources by the Maritime provincial governments, the provincial governments of the Maritime provinces control 23 percent of the Crown supply. See Id. at 7. The MLB also contradicts petitioners' claim by reviewing the evidence cited by petitioners, which calculates the supply from Crown lands as 42 percent of the total harvest.

The MLB argues that New Brunswick is not an isolated market but is a functioning competitive component of a regional market, as evidenced in the petitioners' own evidence.

The MLB cites record evidence that private stumpage prices have risen with demand, in contradiction with petitioners' evidence. The MLB further argues that Crown supply cannot sufficiently supply the demand in New Brunswick which further emphasizes the importance of supply from private industrial freeholds, private woodlots and imports.

The MLB offers rebuttal to the Stoner Reports submitted by petitioners as support for their theory that prices in the Maritime provinces are distorted by claiming that the Stoner Reports do not apply to the Maritime provinces. The MLB notes that the Stoner Reports never actually cite to any evidence regarding market conditions in the Maritime provinces, and that the basic theory underlying the Stoner Reports, the dominant firm model has no relevance to the Maritime provinces. The MLB offers evidentiary support why each of the factors listed in the Stoner Reports are not present in the Maritime provinces. See Id. at 15.

The MLB rebuts the Lutz Report submitted by petitioners to show that private prices in the Maritime provinces were distorted, by pointing to the Canadian Forest Service Study Timber Markets in New Brunswick and Nova Scotia and their Use in Assessing Stumpage Prices in Other Canadian Provinces (CFS Study) as being a more accurate representation of the market conditions in the Maritime provinces.

The MLB asserts that the petitioners' argument that a headcount of mills sourcing from the private forest exclusively fails to provide accurate information on the importance of the private market in the Maritime provinces, where the analysis should instead focus on the fact that private sources supply 75 percent of the total wood fiber in the Maritime provinces whereas in Quebec, private sources only account for 15 percent of the total wood supply. See Id. at 18. The MLB also challenges the statements by academics and woodlot owners offered by the petitioners as evidence of price distortion as overstated, taken out of context and generally not representative of the 80,000 private woodlot owners in the Maritime provinces.

Finally, the GOQ claims that the Department's finding that private standing timber prices from Quebec are unuseable as a benchmark is inconsistent with its use of private prices from the Maritimes as a benchmark. It asserts that the structure, composition, and operation of Quebec's private market are superior to those in the Maritimes and points out that the Department found Quebec's administered stumpage system superior to New Brunswick's in Lumber III. The GOQ also argues that the

sawmill/corporate concentration in the Maritimes benchmark is higher than that in Quebec and that Quebec has a larger, more competitive private supply than the Maritimes. The GOQ also contends that, in comparison to the Maritimes, Quebec has twice the amount of marketing boards, more buyers and sellers, and twice the mills sourcing exclusively from the private market, therefore making it more competitive. Based on these factors, the GOQ argues that Quebec's private market is equally, if not, more competitive than the Maritimes. Consequently, it asserts that the Department should use Quebec's private standing timber prices, not those from the Maritimes, as the benchmark.

Department's Position

As we recognized in the Preliminary Results, 69 FR at 33213, the statute, the regulatory hierarchy and the record facts inform the Department's adequacy of remuneration analysis. The Preamble to the Regulations provides additional guidance on the use of market-determined prices stemming from actual transactions within the country. See "Explanation of the Final Rules," Countervailing Duties, Final Rule, 63 FR 65348, 65377 (November 25, 1998) (Final Rule Preamble). As noted in the Preamble, prices from a government auction would be appropriate where the government sells a significant portion of the good or service through competitive bid procedures that are open to everyone, that protect confidentiality, and that are based solely on price. The Preamble recognizes that the Department normally will not adjust such competitively-bid prices to account for government distortion because such distortion will normally be minimal as long as the government involvement in the market is not substantial. See Final Rule Preamble, 63 FR at 65377.

The Preamble also states that "[w]hile we recognize that government involvement in the marketplace may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy." See Id., 63 FR 65377-78.

This guidance in the Preamble reflects the fact that, when the government is the predominant provider of a good or service there is a likelihood that it can affect private prices for that good or service. Where the government effectively determines the private prices, a comparison of the government price and the private prices cannot capture the full extent of the subsidy benefit. In such a case, therefore, the private prices cannot serve as an appropriate benchmark.

In this case, the Government of New Brunswick (GONB) owns 51 percent of the timber land in New Brunswick. Despite petitioners' assertions, this bare majority market share alone does not provide a basis to determine that private prices from New Brunswick are not useable as a benchmark. As discussed below, the GONB does not have the same level of control over the domestic market for saw timber that the Royal Thai Government had over the electricity market in Hot Rolled Carbon Steel Flat Products from Thailand, 66 FR 50,410 (Oct. 3, 2001) (HRC Steel from Thailand), nor the same impact as the role of Crown timber pricing in Quebec.

Contrary to petitioners' claims, the New Brunswick timber market can also be distinguished from the Quebec timber market in that the GONB's involvement does not result in market dominance by

tenure holding mills, as it does in Quebec. Timber from Crown and federal lands in New Brunswick accounted for 41.7 percent of the timber processed by sawmills in New Brunswick during the POR. See 2002 Timber Utilization Survey, submitted by petitioners on August 31, 2004, at Exhibit 46. Timber from freeholds accounts for 20.8 percent, private lands represented by Marketing Boards account for 19.4 percent and imports account for 17.6 percent of timber processed by sawmills. This breakdown of the supply of timber demonstrates that the Crown is not the dominant supplier as compared to Quebec where Crown accounts for 87 percent of the timber supplied to sawmills.

For petitioners' market distortion arguments to be tenable, several factors would need to be present. First, the facts would need to show that the Crown licensees receive timber at a below market or subsidized price. Given that the majority of Crown timber is processed by the sub-licensees, the licensees would be required to pass on the benefits of a below market or subsidized price to the sub-licensees. Facts would also be required to demonstrate that the sub-licensees could use their 55 percent supply of the Crown, and their 44 percent of the private market, including imports, to dictate the prices which private sellers of logs and timber charge. Petitioners have presented no evidence to show that the factors outlined above exist. Further, there is no evidence to show that 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.

Moreover, petitioners' claim that the Department has a practice mandating that private prices are unuseable when government involvement is greater than 50 percent is incorrect. In HRC Steel from Thailand, the Department determined that private prices for electricity were unuseable as a benchmark because "RTG essentially controls the domestic electricity market." The Department found that the RTG provided 73 percent of the domestic electricity supply, purchased all the imports and mandated what the private electricity companies in Thailand could charge for electricity. See 66 FR at 50410. Notably, the RTG was not only a majority provider of the electricity but also was deemed to "essentially control the domestic electricity market." (emphasis added). The Department, therefore, not only examines the portion of market share held by the government but also considers the impact of that market share and has discretion to determine if the level of government involvement significantly distorts the private market.

Additionally, there is no record evidence supporting petitioners' claim that GONB assistance to private woodlot owners for silviculture demonstrates that private prices in New Brunswick are distorted. Petitioners' comments do not provide any amount of assistance that has been provided to private woodlot owners during the POR. Second, the evidence cited by petitioners does not provide any details concerning the level of the funding of silviculture. Nor do petitioners' arguments demonstrate the impact of government funded silviculture, *i.e.* that absent government funding the private woodlot owners would perform no silviculture activities. Petitioners' comment also fails to demonstrate the quantitative or qualitative relationship between any financial assistance from the GONB and the price of wood from private woodlots.

There is no information on the record to suggest that a feedback effect, similar to the one in Quebec, exists in New Brunswick. As no allegations of subsidy were made regarding the New

Brunswick Crown stumpage program, the Department has not investigated that program. Additionally, as described above, the market incentives existing in Quebec which give rise to a distorting feed-back effect are not present in New Brunswick.

Our determination is not premised on a finding that the Maritimes is a regional market. In the Preliminary Results, the Department used private stumpage prices from New Brunswick and Nova Scotia, because they represented prices for actual market transactions in Canada. The Department's verification of these private prices confirmed the Department's decision to use these prices. Notably, no other provinces from the Maritime region, *i.e.* Prince Edward Island, Newfoundland and Labrador submitted private prices.

As shown above in the Department's consideration of claims comparing New Brunswick and Quebec, private prices for standing timber in New Brunswick are not effectively determined by standing timber in the province's public forests. As no similar claims have been made regarding Nova Scotia, the Department also finds that private prices for standing timber in Nova Scotia are not effectively determined by standing timber prices in the province's public forests. These determinations are independent and do not require that the Department consider the Maritime provinces as a regional market.

Interested parties from both sides have submitted comments equating the timber market in the Maritimes with that in Quebec, albeit with different final conclusions. As the discussion above illustrates, the Department finds when applying the same economic analysis to both areas that the timber market in the Maritimes is substantially different from the timber market in Quebec.

For all of the reasons cited above, the Department finds for these final results that the Maritimes stumpage prices are market-determined prices. Moreover, as explained in Comment 38, we also continue to find that the species in the Maritimes are comparable to those in Alberta, Manitoba, Ontario, Quebec, and Saskatchewan. Therefore, we have used the Maritimes prices as appropriate first tier benchmark prices to measure the adequacy of remuneration for Crown provided timber in each of these provinces.

b. Country vs. Province

Comment 35: Maritimes "In-country" Prices: Tier One of Benchmark Hierarchy

Petitioners argue that the Maritimes' prices cannot qualify as a tier-one benchmark. Specifically, petitioners cite to the portion of the statute which requires the Department to perform its "adequacy of remuneration" determination "in relation to prevailing market conditions for the good or service being provided . . . in the country which is subject to the investigation or review." 19 U.S.C. § 1677 (5)(E). Petitioners state that according to 19 U.S.C. §1677(3), the CVD statute defines "country" to include either "a foreign country" or a political subdivision of a country. Petitioners add that the definition of the term "country" was added to the CVD statute as part of the Trade Agreements Act of 1979 and, in enacting this definition, the Senate explained that "{T}he administering authority will determine on the basis of the facts of each case, what entity or entities will be considered the 'country' for the purposes of a title VII proceeding." *See* S. Rep. No. 96-249, at 81, reprinted in 1979, U.S.C.C.A.N. 381, 467. Petitioners state that the stumpage subsidy programs are administered by the respective provincial

governments and only apply within the respective provinces, therefore, the benefit calculated by the Department is performed by applying the benchmark to each of the individual provinces. Petitioners argue that, for purposes of the CVD law, the “country” providing the subsidy is the province. See pages 76-79 of petitioners’ case brief.

Canadian parties also state that the Department has excluded parties from the countervailing duty order, thereby not reviewing programs in the “country” of Canada. Therefore, Canadian parties argue that the term “country” must be interpreted as “a political subdivision,” i.e., a particular province, because the decision to exclude provinces means that the provinces, instead of Canada, are the “countries” whose programs are subject to the review. In sum, Canadian parties assert that a benchmark based upon stumpage prices from outside a province constitutes a benchmark beyond the jurisdiction’s borders (a cross-border benchmark), irrespective of whether the stumpage prices are from the United States or from a different province. See page 31-33 of OFIA/OLMA’s case brief.

Petitioners agree in part with Canadian parties. Specifically, petitioners agree that the Maritimes do not represent tier one benchmarks, however, they disagree with Canadian parties’ conclusion that the Department can use only benchmarks within each province. Rather, petitioners assert that the Department could consider the possibility of using Maritimes’ timber price data only as a tier two or three benchmark and would have to reject them as unuseable, given data problems, price distortion and an absence of representativeness.

Respondents argue that the Department has historically rejected cross-border benchmarks as “arbitrary and capricious,” emphasizing the “appropriateness of remaining within the relevant jurisdictions.” See Certain Softwood Lumber Products from Canada, 48 FR 24159, 24168 (May 31, 1983); see also, Certain Softwood Lumber Products from Canada, 57 FR 22507, 22507 (May 8, 1992). They further assert that the NAFTA binational panel reaffirmed the Department’s historic view and rejected the use of U.S. benchmarks, and that the WTO Dispute Settlement Body also declined to uphold the Department’s application of cross-border benchmarks. See Certain Softwood Lumber Products from Canada, Decision of the Panel, File No. USA-CDA-2002-1904-03 (August 13, 2003) at 32-33. Thus, the Department should rely on data that specifically relates to the prevailing market conditions in each province.

Department’s Position

The statute expressly provides that the Department 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.” See section 771(5)(E)(iv) of the Act, (emphasis added). Tier one of the Department’s regulation, 19 CFR 351.511(a)(2), provides that the Department “will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question.” (emphasis added). The statute as interpreted by the Department’s regulations, thus, specifically requires that the Department first consider whether there are useable market-determined prices resulting from actual transactions in the country in question. Consistent with the statute and the regulations and as explained in Comments 19 - 33 of this Decision Memorandum and in the Preliminary Results, the

Department has assessed the adequacy of remuneration for Quebec⁴⁹, Ontario, Alberta, Manitoba and Saskatchewan using market-determined stumpage prices from Nova Scotia and New Brunswick (together, the “Maritimes”), *i.e.*, using stumpage prices from provinces in Canada.

We disagree with the contention that, as a matter of law, the Maritimes are not part of the country under investigation. The purpose of a countervailing duty investigation is to determine whether and to what extent the government of the exporting country has subsidized the production, sale or export of the subject merchandise. The countervailing duty order under review is the order on certain softwood lumber products from Canada. The purpose of this review, therefore, is to determine whether and to what extent the government of the exporting country, *i.e.*, Canada, subsidized the production, sale or export of the subject merchandise.

The inclusion of “political subdivision” within the definition of the term “country” ensures that the Department may investigate and review subsidies granted by sub-federal level government entities and ensures that those governments qualify as interested parties under the statute. In other words, an examination of subsidies granted by the government of the exporting country includes subsidies granted by sub-federal governmental authorities. The language in section 771(3) does not mean, as the parties contend, that the term “province” is interchangeable with the word “country” under the CVD law. The fact that the statute permits the Department to examine sub-federal programs does not change the fact that the “country,” *i.e.*, the “foreign country” that is subject to this review is Canada.

Moreover, as a matter of fact, the Maritime Provinces are part of the country under investigation. The scope of this CVD order and, therefore, this review, is certain softwood lumber products from Canada, not certain softwood lumber products from parts of Canada. The exclusion of certain products from the Maritime Provinces from the scope of the CVD order does not mean that the country under review is not Canada.

The Department initiated the underlying investigation of this proceeding on “certain softwood lumber products from Canada.” See Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada, 66 FR 21332 (April 30, 2001).

The notice of initiation was subsequently amended to exempt from the scope of the investigation certain lumber produced in the Maritime Provinces. This exemption was limited to lumber produced in the Maritime Provinces from timber harvested in the Maritime Provinces. Amendment to the Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada, 66 FR 40228 (August 2, 2001). The amendment to the scope of the investigation is set forth in the CVD order and specifically states:

On July 27, 2001, we amended our Initiation Notice, to exempt certain softwood lumber products from the Provinces of New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland. . . from this investigation. This exemption does not apply to softwood lumber products produced in the Maritime Provinces from Crown timber harvested in any other Province.

⁴⁹ As set forth above of this Decision Memorandum, we have revised our benchmark methodology for B.C.

See Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada, 67 FR 36070 (May 22, 2002), as amended, 67 FR 37775 (May 30, 2002) .

The exemption therefore does not apply to all softwood lumber produced in the Maritime Provinces. The fact remains, however, that Canada is the “country” subject to the order and this review. Consequently, Maritimes’ price data represents actual transactions in the country under review within the meaning of tier one of the CVD Regulations. Because we have determined that Maritimes’ prices are a tier one benchmark, we do not need to reach the issue of whether they would be an appropriate benchmark under tier two or three of the Department’s regulations.

The petitioners’ comments concerning the distortion and representativeness of the Maritimes’ benchmarks are addressed in Comments 34 and 37 of this Decision Memorandum.

Finally, with respect to parties’ WTO-specific arguments, we note U.S. law, as implemented through the URAA, is fully consistent with our WTO obligations.

Comment 36: Quebec Province-Specific Rate

The GOQ argues that if the Department finds a countervailable subsidy, it should provide Quebec with a province-specific rate. See pages 11-12 of the GOQ’s case brief. The GOQ’s argument in this regard tracks its argument that Quebec is the “country” under review. The GOQ submits that for the same reason, *i.e.*, the statutory definition of “country” includes “political subdivision,” a province-specific rate would be consistent with U.S. countervailing duty law and the SCM Agreement. Moreover, the GOQ submits that the Department has the authority to calculate such a rate and that such an approach has been determined to be consistent with the purpose of U.S. and international countervailing duty law. Citing In the Matter of Certain Softwood Lumber Products from Canada, Panel No. U.S.A.-92-1904-02, United States-Canada Free Trade Agreement Binational Panel Review, (May 6, 1993) (Lumber III FTA Panel). Additionally, the GOQ contends such a province-specific approach would be consistent with the law because the law prohibits the imposition of countervailing duties that do not offset actual benefits received.

Petitioners argue that the FTA panel in Lumber III affirmed the Department’s use of a single country-wide rate. See Lumber III FTA Panel at 139. Thus, petitioners argue that the Department should maintain its calculation of a single country-wide CVD rate for this review.

Department’s Position

Because of the large number of Canadian producers and exporters of the subject merchandise, this review is being conducted under section 777A(e)(2)(B) of the Act, which permits the Department to “determine a single country-wide subsidy rate to be applied to all exporters and producers.” The country subject to the order is Canada. Consistent with the statute, the Department has calculated a single Canada-wide subsidy rate.

Moreover, the GOQ's arguments to the contrary notwithstanding, a single country-wide rate does not impose duties in excess of the subsidy found to exist. The methodology used by the Department is based on evidence establishing the total subsidies to the production of softwood lumber in Canada. The country-wide subsidy rate is based on an allocation of the total subsidies. Allocating the total subsidies found to exist across the provinces does not overstate the subsidies to the production of softwood lumber in Canada. The Department's country-wide rate calculation therefore does not result in the imposition of excess duties.

c. Non-representative

Comment 37: Use of AGFOR Reports of Maritimes Stumpage Prices

Petitioners argue that private prices reported by the Maritimes are not useable as a benchmark because these prices do not represent prices for the POR, citing issues with the Department's use of STATCAN's Atlantic Region lumber price index (STATCAN index) in the Preliminary Results and the methodology used by AGFOR in reporting pricing data. Based on a survey conducted by Athol Forestry Cooperative (Athol survey), an organization of 230 private woodlot owners in Nova Scotia, petitioners assert that the STATCAN index did not track timber price movements between the five-month AGFOR survey period and the POR. See pages 5-7 of petitioners' case brief. Petitioners state that the Atlantic Canada prices reflect the experience of all of the Maritime provinces, but do not reflect the prices for the lower grades of lumber that are produced in Nova Scotia. Therefore, petitioners argue that it is unreasonable to rely on the STATCAN index to create POR private prices for Nova Scotia.

Petitioners also claim that the data from the AGFOR reports for New Brunswick and Nova Scotia are inaccurate and they challenge the veracity of the AGFOR data and methodology. The petitioners specifically question why log prices in Nova Scotia decreased between the data reported and the indexed data which the Department used in its Preliminary Results calculations, when the petitioners claim their evidence shows the price should have increased. In one claim, the petitioners assert that New Brunswick private prices cannot be used because a conversion factor data error was discovered during verification. In another instance, the petitioners claim that a price reported in percentage of total sales is not representative of an actual sales transaction and, therefore, is unusable. The petitioners also question the data reporting studwood at a higher price in some Marketing Board regions than the price of sawlogs in New Brunswick. See Id. at 6-7.

In regard to the Nova Scotia report, the petitioners argue that these prices are unusable as a result of flaws in AGFOR's methodology. Petitioners assert that AGFOR's pro-ration of total harvest volumes on a product-specific basis is unsupported by any factual information and bears no relation to market conditions in Nova Scotia. See Id. Because of these flaws in the AGFOR data and methodology for both the New Brunswick and Nova Scotia reports, the petitioners argue that the AGFOR reports are not representative of private prices in the Maritime provinces for the POR and, therefore, are unusable. See Id. at 249.

OFIA and OFMA argue that the Department cannot use the AGFOR Reports for New Brunswick and Nova Scotia as a matter of law because they allege that these reports do not contain

data from actual transactions reflecting prevailing market conditions. See pages 46-48 of OFIA/OLMA's case brief. The OFIA/OLMA repeats several arguments made by petitioners and further is critical of AGFOR's weight averaging methodology and reporting of stumpage prices on a percentage of mill delivered log price basis. In addition, the OFIA/OLMA asserts that the Department did not review the accuracy of the mill prices published by grades by the marketing boards or the grades used to categorize softwood lumber. See page 5 of OFIA/OLMA's case brief.

Counsel for the MLB rebuts petitioners' challenge to the data collected and the methodology used for the New Brunswick AGFOR Report. In support, the MLB outlines the methodology used by AGFOR that describes the process by which the Department verified the data, and asserts that the New Brunswick AGFOR Report was not prepared in preparation for this review but rather as a means to provide the GONB an update of private prices for internal use. See page 21 of MLB's rebuttal brief. The MLB challenges the petitioners' criticism of the Department's decision to index prices collected for Nova Scotia to reflect POR data. The MLB states that the petitioners' proposed index method is a less accurate method than that used by the Department. See Id. at 22. Moreover, the MLB counters petitioners' argument that the data and methodology employed by AGFOR for the Nova Scotia Report make the report unusable. Specifically, the MLB states this argument is without merit, given that the petitioners' own consultant, Athol, used a similar methodology and means for data collection in the survey it submitted on the record. The MLB further rebuts petitioners' claim that the Department incorrectly equally weighted studwood and sawlogs prices by asserting that a review of the Nova Scotia Registry of Buyers and the Random Lengths Big Book supports the Department's reasoning. See Id. at 23.

Department's Position

The AGFOR data used by the Department were collected in the ordinary course of business and the prices were verified subsequent to the issuance of the Preliminary Results. Although it was necessary to index the data from the Nova Scotia report to make it contemporaneous with the POR, the Department used an index reported by STATCAN, which is also utilized by AGFOR in indexing certain data in its report. See Appendix A, at page B-3 of the AGFOR report entitled "Review and Recommendations of the Valuation, Allocation and Sale of Crown Timber Resources in Nova Scotia" contained in the June 17, 2004, Memorandum to the File concerning Pages Missing from the Calculation Memoranda. Although petitioners argue that the Athol survey shows a different price trend regarding Nova Scotia timber prices in the five-month period between the AGFOR report and the POR, the Department is unable to corroborate the Athol survey results. The STATCAN index, however, is a reliable source consistent with AGFOR's own practice of indexing. Therefore, we find no reason to doubt the accuracy of the STATCAN index used by the Department to make the AGFOR data contemporaneous with the POR.

The Department, when it verified the Maritimes' data, found only a single error for a single entry in the New Brunswick price data. See the October 1, 2004, Memorandum to Melissa G. Skinner, Director, from Maura Jeffords, Case Analyst, concerning Verification of the Questionnaire Responses Submitted by Governments of New Brunswick and Nova Scotia and AGFOR Reports Submitted in

Reference to Private Prices in New Brunswick and Nova Scotia (Maritimes Verification Report) at 7. The conversion factor error was not systemic and the Department is able to correct this calculation; therefore, the error does not warrant the rejection of the entire AGFOR report.

As explained in the Maritimes verification report, AGFOR's survey interviewees reported certain prices on a "percent mill" basis because the landowner's arrangement indicated that their stumpage price was a certain percentage of the price determined at the mill. In these instances, AGFOR used mill prices by grade, as published by the marketing boards and Table 2.1 of the New Brunswick report, to determine the price. See Id. at 8. Therefore, the "percent mill" prices reflect the actual business practice of the landowners and the prices at which they sell their trees in the open market. Thus, the mere fact that landowners opt to sell their standing timber on a "percent mill" basis does mean that their prices are not market prices as petitioners contend.

In regard to AGFOR's derivation of a weighted-average stumpage price, the Maritimes Verification Report explains the methodology, stating that:

for each product code, AGFOR multiplied the unit value by its corresponding estimated volume to arrive at a total value for each region. For example, in Central Nova Scotia, for product one, they multiplied 11.55 C\$/m³ by 134,063 m³. They then calculated a province wide total value for each product code (\$14,931,411 for the Central region) and divided that amount by the product code's corresponding estimated province-wide volume (1,503,933 m³) to arrive at the weighted-average stumpage price for that particular product (9.93 C\$/m³).

See Id. at 14-15. This methodology is used by AGFOR in the ordinary course of its reporting of stumpage data to the Government of Nova Scotia (GONS). As a result of the fact that the GONS does not collect harvest volume data by species, AGFOR used a methodology which allowed it to allocate the species prices to the corresponding species volumes. The Department examined the accuracy of this allocation and finds AGFOR's allocation methodology to be a reasonable approach.

For these reasons, the Department has determined that it is reasonable to accept AGFOR's methodology for reporting the New Brunswick and Nova Scotia stumpage prices.

Comment 38: Maritimes Do Not Reflect Prevailing Market Conditions

Petitioners and respondents both argue there are irreconcilable factual differences between the market conditions in the Maritimes and other provinces and, therefore, the Maritimes' prices are an inappropriate benchmark. The parties argue that the geographical, ecological, and species variations across Canadian provinces demonstrate that the same forest and market conditions for stumpage cannot be found in any two provinces in Canada. Additionally, natural phenomena (e.g., mountain ranges) and differing ecosystems (e.g., climate) greatly affect the quality, size and value of timber and species composition as one moves east to west and, therefore, an east-west comparison of timber is problematic. They add that the Department acknowledges this fact by applying different adjustments to the Maritimes' benchmark for each province under review.

Petitioners specifically argue that the Department is legally forbidden to use Maritimes' sawtimber prices for benchmark purposes, stating the statute and regulations establish that benchmark goods and markets must be representative to make prices for these goods "useable." If such benchmark goods and markets are not representative, then they do not facilitate the statutorily required inquiry into adequate remuneration vis-a-vis relevant market conditions in the subject country. Citing to section 351.511(a)(2)(i) of the CVD regulations, petitioners assert that the Department will use only prices for the same good that the government, under review, is providing; though, the Department will consider product similarity and use prices for similar products that are comparable. However, petitioners assert that certain differences in the physical environment of the Maritimes result in low-quality timber, which is not comparable to timber found in the other provinces. See page 57 of petitioners' case brief. They discuss that the timber harvested in the Maritimes is generally lower-quality second, third, and fourth generation growth. The quicker growth and maturity cycles of the Maritimes have resulted in a large concentration of immature trees which are harvested before reaching full value and which are relatively less dense and weaker than trees of other provincial forests.

Respondents also argue that a comparison of the Maritimes' forest to other forests is not possible, but for different reasons. The GOO, GOM and GOS discuss that Manitoba's and Saskatchewan's Crown forests are boreal forests, while all of Nova Scotia's forest and the vast majority of New Brunswick's forest are acadian forest. They claim that the acadian forests have a wetter and milder climate and longer growing season than the boreal forests and, as such, the growing conditions in Manitoba and Saskatchewan are significantly harsher than the Maritimes, affecting the size and quality of their commercial forests. See page 6 of GOM's and GOS' case briefs. Because the Maritimes, the GOM and GOS claim, enjoy better growing conditions, larger trees are harvested from their forests. See Id. The GOA also discusses that Alberta's forest, unlike the Maritimes' forest, suffers from low precipitation, cold northern climates, short growing season, minimal road construction, and poor proximity to the mills; all of which results in poorer quality, smaller diameter, and lower value Alberta trees. See page 5 of the GOA's case brief.

Further, both petitioners and respondents argue that there is an extreme difference in species composition between private timber in the Maritimes and public timber in Western Canada. For example, in New Brunswick, the dominant softwood species are spruce and balsam fir, with minuscule amounts of jack pine; however, jack pine is the dominant species in Saskatchewan and balsam fir represents only 2.3 percent of the harvest. Also, much of the timber harvested in the Maritimes is comprised of species (e.g., white pine) that do not exist or are rare, poor quality, or inaccessible to harvest in Alberta.

Department's Position

The statute requires that the adequacy of remuneration for the good being provided "shall be determined in relation to prevailing market conditions," which includes "price, quality, availability, marketability, transportation, and other conditions of sale." See section 771(5)(E)(iv) of the Act. Section 351.511(a)(2)(i) of the regulations further instructs the Department, when measuring the adequacy of remuneration, to consider product similarity and other factors affecting comparability

between a government price and a market-determined benchmark price. Contrary to the arguments made by both petitioners and respondents, evidence on the record demonstrates that, with the exception of B.C., the forest and market conditions of the Maritimes are in fact comparable to those of the provinces whose stumpage programs are under review. Therefore, for the reasons explained below (and as previously set forth in the Preliminary Results), we continue to find that the Maritimes' stumpage prices are market-determined benchmarks that reflect prevailing market conditions in Alberta, Manitoba, Ontario, Quebec and Saskatchewan.

The Maritimes' benchmark consists of prices for the eastern SPF species group, which includes jack pine, balsam fir, black and white spruce.⁵⁰ We have grouped these timber species together for benchmark purposes because the various species share similar characteristics. For example, these species are sufficiently similar in physical characteristics to be commercially interchangeable in lumber applications and are priced similarly by some provinces. The species of "eastern SPF" is a widely recognized group, which numerous publications and reports analyze and refer to collectively.

Eastern SPF is also an ubiquitous species group, which grows in the forests of all of the provinces whose stumpage programs are under review, with the exception of B.C. Eastern SPF constitutes almost the entire harvest (between 95 and 100 percent) in Alberta, Manitoba, Ontario, and Quebec.⁵¹ Though eastern SPF is somewhat less predominant in the Maritimes, this species group accounts for between 44 and 94 percent of the provinces' harvest.

Petitioners and respondents also argue that because the Maritimes is in a different forest region, *i.e.*, the acadian forest, than the other provinces, *i.e.*, the boreal forest, the trees are not comparable. While we agree in principal that the type of forest can affect the comparability of species and composition (*i.e.*, size and quality) of trees grown therein, we, nonetheless, find that the record of this review shows the similarity of the two forests. The species maps for eastern SPF demonstrate the species group's range of growth stretching from the Maritimes to Alberta. Additionally, the record indicates that eastern SPF trees are comparable across their entire growing range as demonstrated by tree diameter, which is one of the most important characteristics in terms of lumber use. The record indicates comparable diameters among eastern SPF trees grown from the Maritimes to Alberta. At the easternmost portion of their range, eastern SPF's average diameter at breast height (DBH) in New Brunswick is 7.78 inches, at the westernmost portion of their range in Alberta, the DBH is 8.00 inches, and in Quebec, which accounts for the largest overall harvest, the DBH is 7.91. We also note that to the extent other adjustments are necessary to reflect prevailing market conditions, those adjustments are reflected in our analysis (see Comment 39).

For these reasons, we continue to find that the forest and market conditions of the Maritimes are comparable to those conditions of the provinces' whose stumpage programs are under review and, therefore, the Maritimes' stumpage prices are market-determined benchmarks that reflect prevailing market conditions in Alberta, Manitoba, Ontario, Quebec, and Saskatchewan.

⁵⁰ As described in Comment 40, for Quebec, we have added market-determined benchmark prices for larch to our Maritimes SPF benchmark, because this species is included in the SPF species group in Quebec.

⁵¹ Eastern SPF accounts for 71 percent of Saskatchewan's harvest.

d. Adjustments

Comment 39 : *Benchmark Adjustments*

In general, the Canadian parties argue that, if the Department erroneously persists in using benchmark prices from the Maritimes, it must make adjustments to account for differences in prevailing market conditions in each of the provinces. At a minimum, the parties argue, the Department must correct the fundamental adjustment errors in its Preliminary Results by accurately quantifying and adjusting for the differences between the provincial markets and the private Maritimes market in order to effectuate a more accurate “apples to apples” comparison. To properly assess the adequacy of remuneration, the Department should have granted any adjustment evidencing a supply cost difference between Crown stumpage and the benchmark. The specific arguments concerning the adjustments are discussed in further detail below.

Department’s Position

Since issuing the Preliminary Results, the Department has verified and obtained additional information concerning the Maritimes’ pricing data. In light of this new information and the comments received from the parties, we have reconsidered the cost adjustments we made in the Preliminary Results. The refined approach we have adopted further facilitates the comparison of market-determined stumpage prices in the Maritimes with the Crown-administered stumpage prices in the subject provinces to assess the adequacy of remuneration for Crown-provided timber.

In determining which cost adjustments to make, we have focused on those on costs that are assumed under the timber contract (e.g., the Crown tenure agreement) and those costs that are necessary to access the standing timber for harvesting, but that may differ substantially depending on the location of the timber. Where such costs are incurred by harvesters in either the Maritimes or the subject provinces, we have included them in our benefit calculations. We have not, however, made adjustments for costs which may be necessary to access the standing timber for harvesting, but that do not substantially differ depending on location of the timber, e.g., costs for tertiary road construction and harvesting. Post-harvest activities such as scaling and delivering logs to mills or markets are also not included, because they are not necessary to access the standing timber for harvesting.

The pricing data for New Brunswick and Nova Scotia (together, the Maritimes) reflect the prices paid by harvesters for standing timber and include the value of the timber being purchased in addition to any landowner costs. At verification, we learned that Maritimes harvesters must also incur additional costs that must be paid in order to be able to acquire the timber. Specifically, harvesters in New Brunswick are required to pay silviculture fees as well as administrative fees to the marketing board operating within the region. In Nova Scotia, in order to be able to acquire the tree, the registered buyer must either pay for or perform in-kind activities equal to CN\$3.00 for every cubic meter of private wood harvested. See Maritimes Verification Report at 9 and 17. In addition, we learned that New Brunswick and Nova Scotia both have existing networks of permanent roads by which harvesters

can access timber.⁵² See Id. Therefore, harvesters did not have to build or maintain primary and secondary roads to access a harvesting area. Also, at verification, we learned that in New Brunswick and Nova Scotia, the provincial governments are responsible for providing the province-wide fire fighting infrastructure and that the provincial governments do not impose fire fighting/prevention fees on landowners or harvesters.⁵³ See Id. at 10 and 17. Harvesters in the Maritimes are also not required to incur any landowner-related costs. See, e.g., Id. at 8 and 15. The only costs Maritimes harvesters must incur to purchase and access timber for harvesting are thus the cost of the timber itself as well as the fees that are described above. Therefore, we have added these costs to the Maritimes benchmark prices when comparing these prices to the Crown-adjusted prices in the subject provinces.

Crown tenure holders are charged an administered fee for the timber they harvest. In addition, the tenure holders assume additional costs under the terms of tenure, and incur costs to access the timber for harvesting. The costs that are assumed under the tenure in the subject provinces include silviculture activities, forestry fund payments, fire and insect protection, and forest planning/tenure administration fees. The necessary costs associated with accessing the timber for harvesting in the subject provinces differ depending on the market conditions in those regions. These include road construction and maintenance costs and, for example in the case of Quebec, cost for logging camps. As explained above, we have not made adjustments for costs that harvesters incur once they reach the harvest area (i.e., tertiary or haulage roads and harvesting costs) because such costs are not dependent on the location of a given tree stand relative to existing road networks or population centers.

Pursuant to this methodology, for purposes of these final results, we have added the following costs to the stumpage price of the Maritimes:

New Brunswick - (1) Forest Management Levy Paid to the Marketing Boards (2) Administration Levy Paid to the Marketing Boards⁵⁴

Nova Scotia - (2) Silviculture Fees

We have added the following costs to the stumpage prices of the subject provinces:

Alberta - (1) Costs for Primary and Secondary Roads (e.g., Permanent Road Costs in Road Classes 1 Through 4), (2) Basic Reforestation, (3) Forest Management Planning, (4) Holding and Protection, (5) Environmental

⁵² The existing road network also eliminates the need for logging camps in the Maritimes.

⁵³ The GONB requires harvesters to have certain types of equipment on site (e.g., a back tank full of 18 litres minimum of water) and to combat the fire until the government arrives. See page 10 of the Maritimes Verification Report. However, these are requirements imposed on the landowner and would be factored in the landowner's costs which are included in the price offered to the harvester for the standing timber.

⁵⁴ The Forest Management Levies are used to fund silviculture and other forest management activities on private lands. Administration levies are used to fund the management of the Marketing Boards and to assist private landowners with developing administrative plans for their woodlots. For a specific list of what these levies fund, see GONB Verification Exhibit 6.

Protection (6) Inventory (7) Reforestation Levy (8) Fire, Insect, and Disease Protection

Saskatchewan - (1) Forest Management Fee, (2) Processing Facilities License Fee, (3) FPP Application Fee, (4) Forest Management Activities, and (5) Costs for Permanent Roads (e.g., Primary and Secondary Roads)

Manitoba - (1) Forest Renewal Charge, (2) FML Silviculture, (3) Costs for Permanent Roads (e.g., Primary and Secondary Roads), (4) Forest Inventory, (5) Forest Management Planning, (6) Environmental Protection

Ontario - (1) Forest Management Planning, (2) Construction and Maintenance of Primary and Secondary Roads, (3) Fire Protection

Quebec - (1) Forest Fund, (2) Administrative Forest Planning, (3) Non-Credited Silviculture, (4) Construction and Maintenance of Primary and Secondary Roads, (5) Fire and Insect Protection, (6) Logging Camps, (7) Silvicultural Credits for Non-Mandatory Activities (Negative Adjustment)

Adjustment Comments Raised by Interested Parties

Adjustments for British Columbia

The GOBC points out that in the Final Determination the Department adjusted for certain costs. However, they argue that in the Preliminary Results, the Department neglected to adjust for these same costs that tenure holders in B.C. incurred, but were not borne by harvesters in the Maritimes. The GOBC contends that if the Department reverts to an impermissible cross-border benchmark, pursuant to Section 771(5)(E) of the Act, it must account for the “prevailing market conditions” in B.C., which differ substantially from prevailing market conditions in the U.S. Pacific Northwest (PNW). As such, the GBC argues that the Department should make adjustments for the following costs in its final results: (1) primary and secondary road construction and maintenance, (2) remote logging camps, (3) helicopter logging, and (4) fire and pest management expenses.

Petitioners counter that the Department should make no adjustments for secondary road building and fire and pest management. Regarding remote logging camps, petitioners assert that the Department should adjust only for costs actually associated with accommodating workers at remote locations, and not for activities such as storing equipment that must be performed in any logging operation.

Department's Position

For these final results for B.C., we used U.S. logs as a benchmark and deducted all harvesting costs incurred in B.C., which included costs associated with acquiring Crown timber. See discussion above. Therefore, the question of any appropriate adjustments between private stumpage prices in the Maritimes and Crown stumpage charges in B.C. is irrelevant.

Adjustments for Alberta

The GOA argues that the Department's Preliminary Results did not include credit for all the in-kind services provided to Alberta tenure holders or adjust for other technical issues. In the Preliminary Results, the Department granted adjustments for road construction and maintenance costs, basic reforestation, forest management planning, holding and protection, environmental protection, inventory, and reforestation levies. The GOA argues that the Department should also adjust for costs for fighting fire, insects and disease, scaling, land use administration, costs for coordinating overlapping tenures, secondary road construction, and adjust any comparison for differing scaling rules.

Petitioners argue that no adjustment should be made for Alberta tenure holder's fire, insect and disease protection costs, secondary roads, and that an adjustment for scaling is unnecessary. Petitioners rebut GOA's suggested adjustments for land use administration and overlapping tenures and argue that any costs would be offset in a market by corresponding cost savings.

Department's Position

Pursuant to the methodology stated above, the Department is granting the following adjustments for these final results: road construction and maintenance costs (primary and secondary roads in Road Classes 1 through 4 permanent), basic reforestation, forest management planning, holding and protection, environmental protection, inventory, reforestation levies, and fire, insect, and disease protection.

Adjustments for Quebec

The GOQ argues that the Department must adjust Quebec stumpage prices to account for differences between Quebec and the Maritimes' stumpage prices. The GOQ claims that the Department must adjust for primary and secondary road construction and maintenance costs, fire protection, insect disease and protection, logging camps, transport to mill and transport to market. The GOQ also argues that the Department must adjust the price paid by Quebec's tenure holders for tree stand-to-mill and mill-to-market transportation costs.

Department's Position

In accordance with our methodology for granting adjustments as specified above, we granted adjustments for primary and secondary road construction and maintenance costs, fire protection, insect disease and protection, and logging camps. In regard to Quebec's claimed adjustment for tree stand-to-mill and mill-to-market transportation costs, record evidence clearly indicates that the Maritimes' pricing data reflect the price received by landowners from harvesters and do not reflect a delivered mill price or a delivered lumber price. See Maritimes Verification Report at 7 and the AGFOR Report at 22. Therefore, we are not adding such costs to the government stumpage price in Quebec because they constitute costs that are incurred past the point of harvest and, thus, are costs that are not reflected in the Maritimes' price used in the Department's benefit calculation.

Adjustments for Manitoba

The GOM argues that, in the Preliminary Results, the Department did not take into account differences in utilization standards, scaling rules, climate and growing conditions, and size differences between logs harvested in public forests and those harvested in the Maritimes. The GOM also argues that the Department must adjust for differences in log-haul distances and distances from mill to market. Finally, the GOM argues that the Department must adjust for prevailing market conditions in Manitoba by adjusting for road construction costs, forest inventory costs, forest management planning, environmental, and full road costs. See pages 5-10 and 12-14 of the GOM's case brief.

Petitioners argue that no adjustments are warranted for forest management costs, because all harvesters must devote time and resources to long-range and short-term planning strategies. Further, argue the petitioners, the remaining forestry administration costs advanced by the GOM, including environmental costs, are analogous to costs of government relations or compliance with forestry and other regulations that other loggers incur. See page 20 of petitioners' rebuttal brief.

Department's Position

Pursuant to the methodology described above, we adjusted for certain costs incurred in Manitoba. In the Preliminary Results, the Department adjusted for FML silviculture and primary road costs. For these final results, we have also adjusted for secondary road costs, forest inventory, forest management and planning, environmental protection, and fire protection costs.

Adjustments for Saskatchewan

The GOS argues that, in the Preliminary Results, the Department did not take into account differences in utilization standards, scaling rules, climate and growing conditions, and size differences between logs harvested in public forests and those harvested in the Maritimes. The GOS also argues that the Department must adjust for differences in log-haul distances and distances from mill to market as well as adjusting for all management planning and road costs. In addition, the GOS argues that the Department created a species-specific comparison that does not represent the prevailing market

conditions in Saskatchewan because its Crown timber dues for softwood sawlogs do not vary by species.

Petitioners argue that no adjustments are warranted for forest management costs, because all harvesters must devote time and resources to long-range and short-term planning strategies. See page 29 of the petitioners' rebuttal brief.

Department's Position

Pursuant to the methodology described above, we adjusted for certain costs incurred in Saskatchewan. In the Preliminary Results, the Department adjusted for a forest management fee, processing facilities license fee, FPP application fee, regional forestry costs, and primary road costs. For the final results, we have also adjusted for secondary road costs and forest management activities, including insect and disease control and fire protection.

Adjustments to Ontario

The GOO argues that "any attempt to compare stumpage prices between Ontario and the Maritimes must take into account and adjust for all of the differences between the two markets." Specifically, the GOO argues that the Department must properly account for differences in road costs, forest management costs, forest protection costs, and "mill-to-market" costs. The GOO requests an adjustment for road construction, maintenance, and overhead. The GOO argues the Department should grant an adjustment for costs associated with compiling and implementing forest management plans, First Nations consultations, and an allocation for overhead expenses. The GOO also argues that Department should grant an for the costs of protecting Crown forests from fire, disease, and insects.

The GOO asserts that the Department should account for differences between the size of Ontario timber and Maritimes' timber, arguing that Ontario saw timber is smaller than Maritimes' saw timber. The GOO argues that record evidence demonstrates that softwood mills in Ontario are generally further from potential U.S. and domestic markets than softwood mills in the Maritimes and the additional hauling costs reduce the value of Ontario timber relative to Maritime timber. The GOO did not, however, provide a figure for how much of a "mill-to-market" adjustment should be made.

Petitioners argue that Maritimes' timber is not comparable to subject timber and, therefore, Maritimes' prices are unuseable for benchmark purposes.

Department's Position

Pursuant to our adjustment criteria, we are granting a road adjustment for the costs of primary and secondary construction and maintenance and a corresponding allocation for overhead. We did not make any adjustment for costs associated with tertiary roads. We have made adjustments for forest management costs, First Nations relations, and forest protection.

We determine that the saw timber in Ontario and the Maritimes are comparable and, therefore, determine that no size adjustment is warranted. In addition, we did not make an adjustment for differences in “mill-to-market” distances.

e. Calculation of Maritimes Prices

Comment 40: Errors Using Maritimes Benchmark

The Canadian parties argue that, should the Department continue to use Maritimes’ prices as the benchmark, then certain corrections must be made for the final results. In particular, the GOQ disagrees with the Department’s preliminary decision to use the Maritimes’ stumpage value for white pine as a benchmark for Quebec’s red pine stumpage. The GOQ claims that only white, red, and jack pines are harvested in the Maritimes and because jack pine is included in the Maritimes’ SPF category and white pine is reported separately, the “pine” category in Table 3.1 of the AGFOR Report for New Brunswick must exclusively contain red pine. Therefore, for the final results, the Department must compare Quebec’s red pine prices to the Maritimes’ pine category.

The GOQ also argues that the Department did not accurately compare the Maritimes’ benchmark to Quebec stumpage, claiming that the benchmark for SPF was compared to Spruce-Pine-Fir- Larch (SPFL) in Quebec. The GOQ asserts that a price for larch must be included in the Maritimes’ benchmark when comparing it to Quebec’s SPFL.

Other Canadian parties argue that the AGFOR Report for New Brunswick contained an overstated value for SPF sawlogs for the Carleton-Victoria Marketing Board and, therefore, for the final results, the New Brunswick average value for SPF sawlogs needs to be recalculated.

Department’s Position

There is no basis to determine, as the GOQ asserts, that the “pine” price in Table 3.1 of the New Brunswick AGFOR Report must be a red pine price. The fact that the table separately listed white pine, red pine, spruce, fir, jack pine (SPF), cedar, larch and hemlock as softwood logs, does not mean that “pine” listed under softwood tree length must be “red pine.” Rather, because red and white pine are listed separately in the logs category, the pine listed in tree length must be something other than either red or white pine. Therefore, we have continued to not use that price to calculate a benchmark for either red or white pine.

With respect to the GOQ’s request that larch be included in the Maritimes’ benchmark to account for Quebec’s SPF categorization including larch, we agree. Therefore, to measure the adequacy of remuneration of Quebec’s SPFL, we have calculated a Maritimes’ SPFL benchmark.

Further, the Department agrees with the Canadian parties that the corrected value for SPF sawlogs from the Carlton - Victoria Marketing Board in New Brunswick, as discovered at verification should be used. The Department's benchmark calculations reflect this change.

f. Ministerial Errors

Comment 41: Errors Concerning Quebec's Forestry Fund Adjustment and Non-credited Silviculture Costs

Respondents claim that in calculating an adjustment for fees charged to public tenureholders under Quebec's Forestry Fund, the Department calculated a cubic meter per dollar rate, instead of calculating a dollar per cubic meter rate. See the June 2, 2004, Memorandum to the File from Brian Ledgerwood, Case Analyst, concerning Calculations for the Province of Quebec. They also claim when calculating an adjustment for non-credited silviculture costs, the Department did not adjust the 1997-1998 reported figures for inflation. See Id. For the final results, the Department must correct these errors.

Department's Position

For the Forestry Fund, the Department has corrected the calculation to reflect the amount paid by TSFMA holders divided by the volume harvested by TSFMA holders. Regarding, the non-credited silviculture expenses, the Department took the figures from Verification Exhibit 9 at page 73, which indicates that the figures are actual numbers for the POR (see GOQ Verification Report). Therefore, no adjustment for inflation is needed.

Comment 42: Volume and Value Data for B.C. Softwood Logs

The GOBC argues that the Department does not need to apply volume and value ratios to B.C. Crown sawlog data to estimate a softwood log price because the information is on the record. See page 23 of the GOBC's case brief.

Department's Position

The volume and value data for B.C. softwood logs is on the record, and thus no application of ratios is necessary. We have used the information on the record in these final results.

g. East-West Adjustment

1. Alberta

Comment 43: Timber in Western Alberta: East-West Adjustment for Quality

The GOA argues that the Department made an erroneous conclusion in its Preliminary Results that Alberta has a distinct “Western” region with valuable timber not found in the rest of Alberta. The GOA states that differences between Eastern and Western Alberta are marginal or nonexistent and the Department had no factual basis to support the application of a high value benchmark. The GOA asserts that much of the area in southwestern Alberta is not commercially harvestable because it lies within Protected Areas or Resource Management Zones where harvesting cannot occur or is limited. Furthermore, the GOA argues that areas near the Rocky Mountains are, in some cases, worse than conditions in the central and eastern areas of Alberta which explains why there is almost no Douglas Fir harvested in Alberta. See pages 16-17 of the GOA’s case brief.

Petitioners assert that Alberta’s forests and SPF timber are much more typical of western SPF than eastern SPF in terms of species composition and value. Therefore, petitioners argue that if the Department erroneously continues to use a Maritimes benchmark, the Department should make an East-West adjustment for the entire Alberta harvest recognizing that the Alberta harvest consists primarily of species not found in the Maritimes. Petitioners assert that the Maritimes SPF benchmark price is based significantly on low-value balsam fir, the Maritimes and Alberta are in different forest regions, and Alberta’s forests are old growth like British Columbia’s. Finally, petitioners contend that Alberta is in the same timber market as the western SPF states and provinces and, therefore, is not in the same timber market as the Maritimes. See pages 88-90 of petitioners’ case brief.

Department’s Position

Based upon further review of record information, the Department finds that a significant portion of the Western region of Alberta is considered a Protected Area or Resource Management Zone. See the November 12, 2003, Questionnaire Response of the GOA at Volume 2, Exhibit AB-S-18. Because the harvesting of timber is restricted in the forest region in which more valuable western SPF timber is grown, the Department finds that an East-West quality adjustment is unwarranted for Alberta’s provincial harvest. In addition, the record of this proceeding does not adequately establish what, if any, volume of Crown harvest in Western Alberta is the same species as the timber harvested in interior B.C. Therefore, for these final results, the Department has calculated the benefit for Alberta without the use of a quality adjustment.

4. Tier Three Benchmarks

Comment 44: Market Principles under Third-tier Category as Benchmark

Respondents argue that the third tier of the benchmark hierarchy in the Department’s regulations provides for an analysis of the government’s costs and whether it achieves “rates of return sufficient to ensure future operations.” See the Preamble to the CVD Regulations, 63 FR at 65378. Respondents contend that the Department should find that the provincial stumpage programs operate consistent with

market principles under the third tier of the benchmark hierarchy, arguing that each of the Provincial governments obtained revenues from its stumpage program that exceeded the costs of managing its forests and are sufficient to ensure future operations. They argue that the Department has applied a cost-revenue test in many cases, including an instance when the government's share of the market approaches or even reaches 100 percent. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from South Africa, 66 FR 20261, 20270 (April 20, 2001) (Hot-Rolled Steel from South Africa).

Petitioners argue that the Department has determined that multiple methodologies could be applied under the third tier of the regulation and that the Department expressly reserves discretion to choose a methodology appropriate to the market under examination, as "the circumstances of each case vary widely." Citing Preamble, 63 FR at 65378. They further argue that the Department has posited that a cost-revenue approach could be appropriate only in certain limited circumstances. They state that the Department's clear objective under the third tier is to structure the methodology for the facts of the market at issue and only if the Department finds that cost-revenue accords with how the market values the good provided, then this test could provide a reasonable basis for assessing the adequacy of remuneration. However, petitioners claim that the cost-revenue analysis for the subject timber does not work because respondents omit the very cost item at issue, which is the value of the timber. The respondents would have the Department consider only the costs of selling timber and not the value of the timber itself. Petitioners state that although respondents suggest that the Department regularly applies a cost-revenue test in similar cases, the facts of Hot-Rolled Steel from Thailand and Hot-Rolled Steel from South Africa do not support respondents' argument that there is a broad legal requirement that the Department apply a simplistic cost-revenue test.

Petitioners also contend that the record evidence demonstrates that provincial systems do not set their prices according to market considerations. They state that the provinces impose numerous requirements on tenure holders including minimum and maximum cut requirements, minimum processing requirements, appurtenancy requirements, and mill closure restrictions. They claim that these aspects of the Canadian system alter the costs and revenues that this type of analysis compares, and thus would be distorted by their nonmarket origin. See Id. They further assert that the Department may not use a benchmark comparison that has been distorted by the government's involvement in the market. See SAA at 927; NAFTA Panel Dec. (2003) at 34. Thus, petitioners believe that if the Department reaches the third tier benchmark, it should reject a cost-revenue analysis to determine whether provincial stumpage programs are consistent with market principles.

Department's Position

As explained above in response to various comments, the Department is using Maritimes' stumpage prices for benchmark purposes under tier one of the Department's hierarchy to examine the administratively-set prices paid for Crown stumpage in Alberta, Manitoba, Ontario, Quebec, and Saskatchewan. The Maritimes' prices are useable under tier one because they are market-determined, in-country prices. Because we have determined that these Maritimes' prices are useable under tier one

of the regulations for these provinces, it is not necessary to consider other data or methodologies under the second or third tier of the CVD regulations. See 19 CFR 351.511(a)(2)(i)-(iii).

As explained above, we are using U.S. log prices under tier three of the benchmark hierarchy to examine the administratively-set prices paid for Crown stumpage in British Columbia. In conducting a market principles analysis, the Department's practice is to consider the facts of the case. Consistent with our practice, we have examined how the market determines the price of timber and developed benchmark stumpage prices accordingly. By deriving species-specific benchmark prices in the same manner that the market derives such prices, the Department was able to assess whether B.C.'s stumpage prices were consistent with market principles. This approach reasonably effectuates the purpose of the statute and the regulations and is supported by record evidence.

Despite the GOC's argument to the contrary, the Department is not required under tier three to limit itself to a cost-recovery methodology, *i.e.*, a methodology that relies on whether or not the provincial governments' revenues cover their operational costs as reflective of the market principles underlying the pricing of stumpage. Indeed, the CVD regulation is written broadly to afford the Department the discretion necessary to address the facts of each specific case and determine the most appropriate methodology to use. There is absolutely nothing in the law or prior practice to suggest that a "cost-recovery" analysis is the required methodology or even the preferred methodology under a tier three market principles analysis.

Although the Department has conducted cost-revenue analyses in certain cases, the nature of the market principles analysis is driven by the particular facts and circumstances of the goods and services alleged to be subsidized. In this case, the "cost-recovery" methodology is inappropriate in light of record evidence concerning B.C.'s stumpage practices. The record evidence demonstrates that the province administratively, rather than competitively, sets prices for timber, sets minimum and maximum cut requirements, sets minimum processing requirements, and designates where the timber must be processed (appurtenancy requirements). In addition, tenures are normally long-term to ensure a stable supply of timber to Canadian mills. The province also restricts mill closures even in down markets. The objectives of these provincial mandates are to keep Canadian mills supplied with timber and to keep the mills operating and the workers employed, regardless of what the market might otherwise dictate. None of these practices can be considered market based. Rather, they distort the operation of normal market forces, and fundamentally undermine the GOC's claim that provincial stumpage prices are established in accordance with market principles.

Additionally, the GOC's proposed "cost-recovery" methodology is completely divorced from market principles and, as such, could not reasonably be used to measure consistency with market principles. Most importantly, the methodology advocated by the GOC fails to account for the value of the standing timber. Without taking into consideration the full replacement costs of all standing timber, which any profit-maximizing commercial actor would do, the proffered cost-revenue analysis fails the market principles test.

As discussed above, given the evidence on the record of this review, we have determined that the best method to determine whether B.C.'s provincial stumpage prices are consistent with market principles is by deriving stumpage prices from U.S. log prices, as adjusted.

D. Other Program Issues

Comment 45: Federal Economic Development Initiative in Northern Ontario (FEDNOR)

The GOC notes that the Department had found in the underlying investigation that CFDC loans were made on commercial terms, and claims that the Department erred when it found in this review that two CFDC loans conferred a countervailable benefit within the meaning of section 771(5)(E)(ii) of the Act. According to the GOC, the record evidence shows that loan number 5, issued on April 1, 2002, had an interest rate of 6.10 percent; while loan number 139, issued on December 18, 2001, had a floating interest rate of prime plus 2 percent, or 6.00 percent. On both issuance dates, the GOC continues, the prime rate was 4.00 percent and the medium/small business rate was 5.125 percent. Thus, the GOC contends, the two loans were made at interest rates above the prevailing commercial rates and not at a discount to “comparable commercial loans.” Consequently, the GOC argues, there is no administrative efficiency in limiting the Department’s finding to a conclusion that no benefit was conferred on the loans outstanding in the POR, and the Department should find the loans not countervailable.

The petitioners note that, consistent with the Department’s practice when conducting a review on an aggregate basis, the Department correctly used a national long-term fixed interest rate benchmark, rather than loan-specific, actual interest rates. Consequently, the petitioners dispute the respondent’s argument that the Department should have compared the CFDC loan rates to the prime rate or the medium/small business rate. The petitioners argue that the GOC provided no explanation for why the respondent’s proposed modification of the methodology is superior to what the Department adopted under its regulations (see 19 CFR 351.505(a)(5)(ii)).

Department’s Position

The commercial benchmarks suggested by the GOC, i.e., the prime rate and the medium/small business rate, are components of the “Short-term Business Interest Rates” calculated by the GOC. The loans in question, numbers 5 and 139, are long-term loans. Therefore, in accordance with 19 CFR 351.505(a)(2), we have used long-term benchmarks to determine whether these loans give rise to a benefit. The long-term benchmark for loans taken out in 2001, based on the long-term interest rate information provided by the GOC, was 6.6 percent, and the long-term benchmark for loans taken out in 2002 was 6.48 percent. As noted in the

Preliminary Results, we did not have a long-term variable benchmark interest rate and, consequently, used the long-term fixed benchmark rate provided by the GOC to measure any benefit from variable-rate long-term loans provided under this program. Because the benchmark interest rates exceeded the rates on loans 5 and 139, we continue to find that this program conferred a countervailable subsidy.

Comment 46: Western Economic Diversification Program Grants and Conditionally Repayable Contributions (WDP)

The GOC argues that, although it does not concede that the WDP ITPP contributions were countervailable subsidies, the Department erred in attributing the alleged benefit to exports from the covered regions to the United States. Specifically, according to the GOC, the record demonstrates that it did not limit its reporting to grants supporting personnel focused on sales to the U.S. market, but included support for individuals whose job was to promote global sales (citing the GOC's August 16, 2004, supplemental response). The GOC claims that, for example, as explained in its August 16, 2004, supplemental response at GOC-2, one individual employed under Project Number BXHZOO122 worked to develop global markets and attended trade shows throughout the world. According to the GOC, the regulations require that the Department must tie a grant to sales to a particular market before the Department can attribute the benefit only to those sales (citing to 19 CFR 351.525(b)(4)). The GOC concludes that, since the ITPP contributions were not tied solely to U.S. market sales, the Department should attribute any alleged benefit to worldwide exports from the regions covered by the WDP, rather than to U.S. exports alone.

Noting that the GOC does not challenge the countervailability of the WDP ITPP grants, the petitioners contend that there is no basis to adjust the denominator as argued by the GOC, since the Department had accounted for the fact that the reported disbursements already excluded portions of the grants that were expressly dedicated to export promotion in Asian markets. Additionally, the petitioners dispute the GOC's contention that a portion of the remaining ITPP grants included contributions tied to global markets. Specifically, the petitioners say that having one individual attend trade shows throughout the world hardly disproves that the thrust of the balance of the grants was the U.S. market, especially since the U.S. market accounts for the overwhelming bulk of Canadian lumber exports.

Department's Position

Based on further information submitted at the Department's request, we have revised our calculation from the Preliminary Results. Specifically, the GOC has clarified what activities were undertaken by personnel whose salaries were supported under this program. Where the personnel hired under this program promoted exports to the United States, we attributed the benefits to those exports. Where the personnel promoted exports to non-U.S. markets, we did not attribute any of the benefit to U.S. sales. Finally, where the personnel promoted exports generally, we attributed the benefit to total exports.

We disagree with the petitioners that assistance to support personnel attending trade shows around the world should be attributed to U.S. sales because of the importance of the U.S. markets.

Instead, because the trade shows occurred throughout the world and because the personnel undertook other activities to support exports to all markets, we have attributed the benefit total exports of softwood lumber.

Comment 47: Natural Resources Canada (NRCAN) Softwood Lumber Marketing Research Subsidies Under the Value-to-Wood Program (VWP) and the National Research Institutes Initiative (NRII)

The GOC observes that, although the Department has countervailed indirect subsidies (such as inducements or requirements to provide loans, control over loan processes, and the provision of transportation services), the Department has not countervailed funds provided to a research institute as an indirect subsidy to the production of subject merchandise. The GOC notes that, e.g., in Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003) (citing the unpublished decision memorandum, dated June 16, 2003, at 122) (Korean DRAMS), the Department found government contributions to Seoul National University and various research institutes to be not countervailable, partly because there was no evidence that the research would otherwise have been conducted by the respondents.

According to the GOC, in the current review, NRCAN provided VWP funding to Forintek—a national, not-for-profit research institute—to conduct pre-competitive research related to value-added wood products. Funding was also provided under the NRII to Forintek and two other national, not-for-profit institutes—FERIC and PAPRICAN—again, according to the GOC, to conduct pre-competitive research; specifically, the funding was used to maintain highly specialized personnel during a financial crisis so that the institutes’ core research could continue. The GOC claims that none of the funding under the VWP or the NRII was transferred to any softwood lumber producer or exporter, or used to provide research to any softwood lumber producer or exporter. Hence, since there was neither a direct nor an indirect financial contribution to any softwood lumber producer or exporter, there was no countervailable subsidy within the meaning of section 771(5)(B) of the Act.

The petitioners dispute the GOC contention that the Department has not countervailed funds provided to a research institute as an indirect subsidy to the production of subject merchandise. Instead, the petitioners claim that the Department has customarily countervailed research funds channeled to non-profit institutions if the funds benefitted a given industry and the research results were not publicly available. On this point, the petitioners cite, e.g., Preliminary Affirmative Countervailing Duty Determination: Pure and Alloy Magnesium From Canada, 56 FR 63927 (December 6, 1991) (Magnesium from Canada), where the Department determined that funding to the Institute of Magnesium Technology conferred a specific benefit to the magnesium processing industry, because it was limited to only three recipients and, thus, limited to a group of enterprises or industries.

The petitioners contend that, in the current review, the funding to Forintek and FERIC does not fit the exception allowed by section 771(5B) of the Act and, hence, is countervailable under 19 CFR 351.522. As in Magnesium from Canada, the results of Forintek’s and FERIC’s research were not publicly available and benefitted a given industry, i.e., Canada’s softwood lumber producers.

Specifically, the petitioners note that, in its description of the VWP, Forintek specified that research results were available only to Canadian “wood products manufacturers,” and that, similarly, FERIC stated on its website that it distributes its “research and development results” only to its “members.” Additionally, the petitioners note that, per information on Forintek’s and FERIC’s websites, both institutes undertake applied research, not pre-competitive or basic research as the GOC has claimed.

Department’s Position

A thorough review of the Department’s practice with respect to assistance provided to research organizations shows that this assistance is treated as a direct subsidy to the production, manufacture or exportation of the subject merchandise if the research is for the improvement of the merchandise or enhancement of the technology used to produce the merchandise. Where the government funds such research, we determine that the government is relieving producers in the industry of the costs they would normally incur in carrying out the R&D themselves.

This practice is articulated in two cases involving assistance provided by the Korean government.⁵⁵ First, in the Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea, 65 FR 41051 (July 3, 2000) (Korean Structurals), the Department investigated assistance to the Korean New Iron & Steel Technology Research Association (KNISTRA), an association of steel companies established for the development of new iron and steel technology. KNISTRA was a member-based R&D agency that supports R&D projects through private and public contributions. In preliminarily determining assistance to KNISTRA to be countervailable, the Department stated:

Since most companies normally fund R&D programs to enhance their own technology, we determine that GOK funding to KNISTRA relieves companies of this obligation. Therefore, GOK’s grants are a financial contribution under section 771(5)(D)(i) of the Act which provide a benefit to the recipient in the amount of the grant.

(See Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Structural Steel Beams from the Republic of Korea, 64 FR 69731, 69740 (December 14, 1999). The preliminary finding was confirmed without comment in the final.)

In the second case, Korean DRAMs, the petitioners alleged that government funding of research by Seoul National University and government research institutes regarding nano-technology conferred a subsidy on the semiconductor industry because such research was vital to the future of the

⁵⁵ The petitioners have additionally cited Magnesium from Canada where the Department investigated government assistance to the Institute of Magnesium Technology. The Department eventually found the assistance to be not countervailable under a public availability test which has since been abandoned by the Department (see 63 FR 65388). Therefore, we are not addressing this precedent further.

industry and would have been undertaken by members of the industry if it had not been funded by the Korean government. The Department, however, found no subsidy, *inter alia*, because there was no evidence that the semiconductor producers would have undertaken this particular research.

In light of this practice, the issue before the Department in this review is to determine whether the record evidence indicates that the government-funded research by Forintek and FERIC aims to improve the subject merchandise or the technology for producing subject merchandise.

In May 2002, NRCAN announced funding for three programs to help insure “that Canada’s forest industry remains prosperous and competitive,” and “to secure the industry’s position in the global market.” See the March 24, 2004, Questionnaire Response of the GOC at Volume 4, attachment 1. The first program, Canada Wood, was available only for projects outside Canada and the United States, and is not discussed further here. The second program, Value to Wood, was established to provide funds to Forintek and several universities to conduct research related to value-added wood products. Only Forintek received funds under Value to Wood during the POR. The final program, the Three Institutes Initiative, provided funds to Forintek, FERIC, and PAPRICAN, to allow these institutes to maintain their core staff while seeking to achieve long-term financial stability. Because any research conducted by PAPRICAN relates to non-subject merchandise (pulp and paper), funding for PAPRICAN is not discussed further here.

Under Value to Wood, 14 projects were funded during the POR. These projects were selected as follows. An industry research advisory committee was established to identify key research issues. Forintek developed research proposals in response. The industry advisory committee then ranked the proposals and sent its recommendations to NRCAN which approved the funding. Under the Three Institutes Initiative, Forintek and FERIC submitted requests for funding to NRCAN to cover anticipated shortfalls in their research programs. Thus, the government funding helped to defray the cost of these institutes’ ongoing research.

Both Forintek and FERIC are non-profit, member-based organizations. Forintek’s members include numerous producers of softwood lumber. These producer members participate in Forintek’s ongoing research as “project liaisons.” This ongoing research includes, *inter alia*, numerous projects on aspects of lumber manufacturing. See *Id.*

FERIC describes its goal, “... improv[ing] Canadian forestry operations related to the harvesting and transportation of wood, and the growing of trees” Most of FERIC’s funding comes from “a growing partnership between leading forestry companies (who utilize almost 70 percent of the total Canadian wood harvest), the Government of Canada, and the provinces....” FERIC’s research program is developed with guidance from its partners. See *Id.* at Volume 4, attachment 12.

Based on this evidence, we believe it is appropriate to conclude that the research being conducted by FERIC and Forintek serves to improve the subject merchandise or the technology for producing subject merchandise. Therefore, there is evidence that softwood lumber producers would have undertaken this research if it had not been funded by the GOC.⁵⁶ Consequently, we have

⁵⁶ While it may be possible that some of the research projects at issue do not relate to subject merchandise, as it has been here, the burden is on the respondent to demonstrate that any particular government-funded projects do not benefit the subject merchandise.

determined that the GOC's grants to Forintek and FERIC provide a direct subsidy on the manufacture or production of the subject merchandise.

Comment 48: Payments to the Canadian Lumber Trade Alliance (CLTA) & Independent Lumber Remanufacturers Association (ILRA)

According to OFIA and OLMA (together, the Ontario associations), the courts have held that, to find a subsidy, the Department must find both a financial contribution and a benefit (citing Delverde, SRL v. United States, 202 F.3d 1360 (Fed. Cir. 2000) (Delverde III)). The Ontario associations argue that the Department cannot treat the CLTA—an industry association that does not produce subject merchandise—as though it were a producer or exporter of subject merchandise. The petitioners, they say, mischaracterized Department practice when it claimed that the Department has recognized government financial contributions to producer associations as providing a benefit to the industry. Rather, the Ontario associations contend, the Department must make a determination whether the CLTA grant benefitted the softwood lumber industry by relieving it of an obligation it would otherwise have incurred, as required under 19 CFR 351.513(a). Prior determinations, they say, support this principle: e.g., in Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 FR 57040, 57042 (October 22, 1999) (Canadian Cattle), the subsidies to cooperative feeder associations were found to benefit the industry because those associations were suppliers to the industry, a function not applicable to the CLTA; and, in Notice of Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile, 67 FR 35961 (May 22, 2002) (Raspberries from Chile), subsidies to a trade association for specific promotional activities were found to benefit the industry because they relieved the industry of an obligation otherwise incurred. Given the voluntary nature of CLTA membership, the Ontario associations claim the CLTA could not have compelled members to pay for the administrative and communication costs supported by the grants. Additionally, they claim that, contrary to the requirements of section 701(a)(1)(1994) of the Act (codified as section 1671(a)(1)) and as mandated by Delverde III, the Department has not made a determination that the grants were tied to the manufacture, production, or export of softwood lumber to the United States.

With regard to the subsidy rate calculation, the Ontario associations point out that the Department found the CLTA subsidy to be a domestic subsidy under section 771(5A)(D)(i) of the Act and then incorrectly treated it as an export subsidy under 19 CFR 351.514(a) when calculating the ad valorem rate. The first finding, the Ontario associations argue, precluded the second finding. In any case, they say, the Department failed to attribute the subsidy to all products sold by the producer, as required to make the domestic subsidy finding. Moreover, they claim that, in terms of tying a subsidy to export performance, a distinction should be made—which the Department did not make—between “related,” meaning “connected,” and “contingent,” meaning “dependent on something else” (citing Black's Law Dictionary, Deluxe Eighth Edition (2004); Merriam-Webster's Collegiate Dictionary, 11th Edition (2003); and Webster's II New College Dictionary (1995)). According to the Ontario associations, to make the export subsidy determination, the Department was required to find that the CLTA grant was “dependent” on export performance, not merely “connected” to exports. On this

point, they cite Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 68 FR 17346 (April 9, 2003), at 17349-50; Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film Sheet & Strip from India, 69 FR 18542 (April 8, 2004), at 18544-45. Since the grants were related to designated administrative and communication costs, and the CLTA did not export softwood lumber (and its members could qualify for the grants without ever exporting), the Ontario associations contend that the grants were unrelated to export performance.

Similarly, the GOC contends that the payments to the CLTA and ILRA during the POR were intended to help defray the associations' costs related to the softwood lumber dispute, not to aid in the production or marketing of softwood lumber, since neither the CLTA nor the ILRA produces or exports softwood lumber. Therefore, the GOC argues, the payments did not constitute countervailable subsidies.

Should the Department continue to find them countervailable, the GOC argues that the Department should not compound the error by using softwood lumber exports to the United States as the denominator in calculating the alleged benefit. The GOC argues that, per 19 CFR 351.525(b)(2), the Department may limit the denominator to exports only if the alleged subsidy is an export subsidy, *i.e.*, a subsidy that is, in law or fact, contingent upon export performance within the meaning of section 771(5A)(B) of the Act. According to the GOC, the softwood lumber dispute imposed on the CLTA and the ILRA an entirely new set of costs related to facilitating communication among the members regarding the dispute and taking on advocacy responsibilities. These burdens, the GOC asserts, were necessarily of a domestic nature, since neither association exports softwood lumber to the United States, and, thus, the grants could not be export subsidies. Consequently, according to the GOC, the proper denominator is the total amount of softwood lumber production during the POR.

The petitioners note that, as conceded by the respondents, the GOC provided money to an association of producers of the subject merchandise. Therefore, the petitioners argue, the program is countervailable as a matter of law, and that is where the Department's analysis must stop. The petitioners contend that the Department has consistently recognized financial contributions to producer associations as providing a countervailable benefit to the industry (citing, *e.g.*, Raspberries from Chile, Decision Memorandum at Comment 2; Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea, 65 FR 41051 (July 3, 2000) (Structural Steel Beams)). According to the petitioners, what the subsidizing government intends to be done with the subsidy, and what the recipient actually does with the subsidy, are irrelevant for purposes of countervailability (citing section 771(5)(C) of the Act, as codified in 19 U.S.C. 1677(5)(C), and Saarstahl A.G. v. United States, 78 F.3d 1539, 1543 (Fed. Cir. 1996), in quoting S. Rep. No. 103-189, at 42-43 (1993)). With regard to the subsidy rate calculation, the petitioners argue that the Department is correct to use softwood lumber exports to the United States as the denominator, since the Department determined that the payments were directly tied to anticipated exports to the United States.

Department's Position

We disagree with the Ontario associations and the GOC that payments to industry associations cannot be considered a direct subsidy on the manufacture, production or exportation of the subject merchandise. Industry associations have producer members and, hence, act on behalf of those members.⁵⁷ When a government makes a grant to an industry association to cover the association's excessive expenses, that grant benefits the association's members.

This position is consistent with that taken by the Department in Raspberries from Chile. In that case, the Department stated:

It is reasonable, in our view, to treat funds received by a trade association as benefitting the members of the association and the products they produce. Although we do not believe that we are required to show that the responding companies would have borne the costs incurred by the association and underwritten by the government, international promotion of products is typically a cost that exporting companies face.

As in Raspberries from Chile, we do not believe that we are required to show that the responding companies would have borne the expenses incurred by the CLTA and ILRA, and underwritten by the GOC. However, we would normally expect companies to incur the costs of formulating joint positions and conveying their views on matters of interest to them. See the March 24, 2004, Questionnaire Response of the GOC at Volume 5, GOC-CLTA-3. Therefore, we have continued to find that the GOC grants to CLTA and ILRA confer a countervailable subsidy on the subject merchandise.

The Ontario associations also cite Canadian Cattle where the Department found countervailable loan guarantees to feeder associations. There is no discussion in that decision about whether subsidies to feeder associations might or might not provide a benefit to the subject merchandise, or even identifying feeder associations as suppliers to producers of the subject merchandise.

Regarding the Department's specificity determination and its attribution of the benefits to exports to the United States, we agree with the Ontario associations that finding a program to be specific under section 771(5A)(D) of the Act ("Domestic Subsidy") is not consistent with using exports to the United States as the denominator for calculating the *ad valorem* subsidy rate. Under 19 CFR 351.525(a)(3), the benefits of domestic subsidies are properly attributed to all sales.

Nevertheless, we continue to find that the benefits of these grants are tied to exportation to the United States. The purpose of the grants was to defray the costs incurred by the CLTA and ILRA in developing and conveying their positions on the softwood lumber dispute, opposing trade limiting remedies in the United States. Consequently, we have revised our specificity determination and find that the grants to the CLTA and ILRA are specific under section 771(5A)(B), i.e., as export subsidies.

⁵⁷ The CLTA's member firms produce lumber and all types of lumber products. The ILRA's members are producers of value-added wood products in B.C. (GOC's March 24, 2004, response, Volume 5 at GOC-CLTA-1-2)

Comment 49: Denominator Used to Calculate the Forest Renewal B.C. Subsidy Rate

The GOBC argues that the Department should recalculate the alleged subsidy rate for Forest Renewal B.C. According to the GOBC, because this program benefits a broad range of products, similarly to the FII program, the Department should calculate the benefit by dividing the grants received over total sales of the B.C. wood product manufacturing industries.

As the Department determined that this program provided grants directly to softwood lumber producers, the petitioners argue the Department must use the total sales of B.C. softwood lumber as the denominator when calculating the benefit received under this program. According to the petitioners, the respondent fails to reference any evidence or provide additional information to support its arguments factually.

Department's Position

We continue to find that the FRBC program confers countervailable benefits that provide a direct subsidy to the manufacture or production of the subject merchandise for the same reasons as outlined in Comments 50 and 51, which addresses the FII program. Accordingly, we have continued to calculate the benefit by dividing the grants received over B.C.'s total sales of lumber shipments.

Comment 50: Whether the Land Base Investment Program is (LBIP) Countervailable

The petitioners argue that the Department's decision to exclude the LBIP from the administrative review because of its similarity to the Forest Renewal B.C. program is unsustainable. The petitioners note that the Forest Renewal B.C. program was not investigated in Lumber IV because the Department determined that the GOBC was merely purchasing services, which are not countervailable. However, the petitioners argue that this position enables any foreign government to avoid the countervailing duty law by simply requiring that subsidy recipients perform some nominal service. Moreover, the petitioners argue that the direct allocation of funds to tenure-holders that perform a certain service is more akin to a grant than a purchase of services. According to the petitioners, this has been the Department's consistent practice, citing Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea, 67 FR 62101, 62104 (October 3, 2002) (Carbon Steel from Korea); Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 60410 (October 3, 2001) (Carbon Steel from Thailand); and Certain Cut-to-Length Carbon Steel Plate from Mexico, 65 FR 18067, 18069 (April 6, 2000) (Carbon Steel from Mexico).

The respondent contends that the Department properly decided not to include the LBIP in this administrative review. The respondent argues that the Department verified that the LBIP activities are carefully designed not to provide a competitive benefit to any company or industry, but to improve the forest resource over the long term. According to the respondent, the Department properly concluded that the LBIP was similar to the Forest Renewal B.C. land-based program. Moreover, the GOBC

states that LBIP funds can be used only to perform the agreed-upon activity, which is thoroughly reviewed prior to approval of the project by the LBIP administrator as well as after completion of the project to ensure compliance.

As for the three cases cited by the petitioners, the respondent argues that the referenced programs involved subsidies geared to the production of particular products and allowed companies various tax or import duty exemptions provided these companies used domestic materials or located facilities in certain areas. The GOBC argues that the LBIP is clearly distinguishable from these programs and that none of the LBIP projects is linked to the production of particular products, but, as recognized by the Department, these projects relate to the improvement of the forest resource as a whole.

Therefore, the GOBC contends that the Department should sustain its proper conclusion not to include the LBIP in this review.

Department's Position

At verification, the Department confirmed the GOBC's claim regarding the similarity of the LBIP and the land base activities of Forest Renewal B.C., activities which the Department determined not to investigate in Lumber IV. As a result, in the Preliminary Results we determined not to include the LBIP in this administrative review. After the Preliminary Results, no new information or evidence was submitted that indicated that this program is different from the land-base activities of Forest Renewal B.C. or that it otherwise conferred a countervailable subsidy. Moreover, we do not find the precedents cited by the petitioners in Carbon Steel from Korea, Carbon Steel from Thailand, or Carbon Steel from Mexico to be persuasive. These programs provided tax exemptions and import duty exemptions to companies that utilized domestic materials over imported materials or located production facilities in specific regions. The LBIP does not offer any such exemptions. Therefore, for these final results we are not revising the Department's determination in the Preliminary Results.

Comment 51: Whether Forestry Innovation Investment ("FII") Expenditures Are Countervailable

The GOBC argues that the Department's preliminary finding that the FII expenditures constitute countervailable subsidies is not supported by the record. According to the GOBC, the FII grants provided to support product development, international marketing, and research serve generally to improve the forest resource over the long term and relate to a broad spectrum of forest issues and products. The connection between the aggregate FII expenditure and the production of subject merchandise, argues the GOBC, is at most extremely remote and tenuous.

For example, in regard to the International Marketing program, the GOBC contends that at the verification of the GOBC the Department examined the U.S. Market Promotion Program undertaken by the Western Red Cedar Lumber Association and noted in the verification report that the focus of the project was not to market the products of specific B.C. producers, but rather, to promote cedar as a product regardless of its origin. The GOBC further argues that the FII funds may not be used to

support activities that provide a direct benefit to any for-profit entity and the results of FII funded projects are publicly available.

As for the Research Program projects supported by the FII, the GOBC contends that they are designed to support the long-term health and sustainability of the forest resource as a whole. According to the respondent, the FII activities, such as “Ecology and Management of Riparian - Stream Ecosystems,” “Insect Families in B.C.,” and “Foraging Area Habitat Selection by Northern Goshawks in Northwest B.C.” are good examples of the broad focus of the research projects carried out under this program and do not provide any financial contribution to producers of subject merchandise.

The vast majority of these projects, notes the GOBC, were conducted by universities, provincial government agencies, and private research organizations or consultants. The respondent argues that in Korean DRAMs,⁵⁸ the Department found “government-supported, broad-ranging research {by} universit{ies} and other research entities was not countervailable” because those institutions provide no good or service to industry, and industry would not have undertaken the research itself. Although a “handful” of FII funded projects were undertaken by companies, the GOBC states that these projects could not provide a direct benefit to these companies and that there is no evidence that producers of subject merchandise would undertake such research in the absence of FII support. Furthermore, the GOBC notes that the Department’s preliminary finding in regard to this program was based on a single sentence from the Ministry of Forests’ Annual Service Plan Report, which stated that Research Program investments are expected to provide a “positive contribution” to the GOBC’s goal of a leading edge forest industry. According to the GOBC, “this language does not provide substantial evidence, much less any evidence, that a benefit has been provided to producers of softwood lumber during the POR.”⁵⁹

Finally, the GOBC argues that the Department did not show, as it must, that FII expenditure conferred both a financial contribution and a benefit on lumber producers. According to the GOBC, the Department did not demonstrate these two things because the focus of these research projects is to improve the long-term sustainability of the forest as a whole, taking into account all of the elements that make up the forest. Moreover, the respondent argues that the Research Program projects are similar in nature to the land-base activities of Forest Renewal B.C. and its successor, the Forest Investment Account Land Base Investment Program, both of which the Department determined were government purchases of services and did not countervail in the Preliminary Results. According to the respondent, the GOBC is doing the same thing, purchasing services, *i.e.*, publicly available research, to enhance the long-term health and value of the forest for the province generally and with respect to all of its uses, commercial and otherwise.

⁵⁸ Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea (Korean DRAMs), 68 FR 37122 (June 22, 2003) and accompanying Decision Memorandum at Comment 27.

⁵⁹ The GOBC further argues that the Department’s use of the total POR shipment values for the paper and wood products manufacturing industries as the denominator in the benefit calculation does not correct for the fact that the Research Program did not provide countervailable grants to these industries.

Therefore, the GOBC states that the Department should find in the final results that the FII expenditures made under the Research, Product Development, and International Marketing Programs do not constitute countervailable subsidies to producers of subject merchandise.

The petitioners state that the Department correctly concluded that this program provides countervailable subsidies. The petitioners argue that the record does establish a clear nexus between the three FII sub-programs and the subject merchandise, and contend that much of the funding goes directly to lumber companies and lumber trade associations. In support of these statements the petitioners cite their August 14, 2003, submission at Exhibits FIIP-3 (a GOBC FII Forest Research Program (FRP) overview that asserts that “investments made through {FRP} are expected to provide a contribution to the government’s goal of having a leading edge forest industry . . .”) and FIIP-6 (a GOBC Ministry of Finance document, which lists organizations that receive funding from Forestry Innovation Investment’s International Marketing and Product Development Programs). See page 120 of petitioners’ rebuttal brief. The petitioners also disagree with the GOBC’s contention that the Research Program projects are merely a mechanism through which B.C. purchases services, which in this case are publicly available research. According to the petitioners, the GOBC did not identify any evidence that this research is made public.

Department’s Position

In the Preliminary Results, we found the FII grants, provided to support product development, international marketing, and research, to be countervailable subsidies. The GOBC argues that grants to support these activities should not be countervailed because they serve to improve the forest resource over the long-term and their connection to the subject merchandise is tenuous.

We note first that with respect to the Product Development sub-program, the GOBC stated that 19 projects were funded during the POR, but the GOBC reported only five of those projects because the other 14 “. . . involved products or activities with no nexus to subject merchandise or products directed to non-U.S. markets . . .” See the March 12, 2004, submission of the GOBC at BC-FII-8. Similarly, for the International Marketing sub-program, of the 14 projects approved during the POR, the GOBC only reported six because eight of the projects “involved products with no nexus to subject merchandise or were directed at Asian and European export markets.” See Id. at BC-FII-9. While the GOBC may view the connection between the few reported projects and the subject merchandise to be tenuous and remote, the connection is acknowledged and the benefit has been attributed accordingly.

In regard to the research sub-program, the Department’s practice with respect to assistance provided to research organizations is to treat such assistance as a direct subsidy to the production, manufacture, or exportation of the subject merchandise if the research is for the improvement of the merchandise or enhancement of the technology used to produce the merchandise. Where the government funds such research, we believe that the government is relieving producers in the industry of the costs they would normally incur in carrying out the R&D themselves. For a more in-depth discussion of the circumstances in which a research program is found to be a countervailable subsidy, see Comment 47. In light of this practice, the issue before the Department in this review is to determine

whether the record evidence indicates that the research projects funded under the FII program aim to improve the subject merchandise or the technology for producing subject merchandise.

As we noted in the Preliminary Results, investments made through the research program “are expected to provide a positive contribution to the government goal of having a leading edge forest industry that is globally recognized for its productivity, environmental stewardship and sustainable forest management practices.” According to information submitted by the petitioners, the GOBC expects investments made under this program “to lead to positive outcomes in at least four identified impact areas, including: . . . enhancing timber quality, . . . increasing available timber volume, . . . and . . . improving forest health to improve the market acceptability of B.C. forest products . . .” See the August 14, 2004, submission by petitioners at Exhibit FIIP-3. In addition, ten out of the twenty-five projects funded in 2002/2003, according to documentation provided by the petitioners, were conducted by lumber companies. For example, Riverside Forest Products Ltd., a company that produces softwood products for customers in North America, received funding through this program to conduct three separate projects in 2002/2003. See Id. at FIIP-5.

Based on the record evidence, it is reasonable to conclude that the research projects funded under the FII program serve to improve the subject merchandise or the technology for producing the subject merchandise.⁶⁰ Consequently, we have determined that the FII research grants provide a direct subsidy to the manufacture or production of the subject merchandise.

For these final results, we are continuing to find the (reported) projects that received funding through the FII program during the POR from the product development, international marketing, and research sub-programs to be countervailable.

Comment 52: Denominator Used to Calculate the FII Subsidies

If the Department continues to find the FII sub-programs countervailable, the respondent argues that the Department should use the same denominator it used to calculate the subsidy rate for the FII Research Program for the Product Development Program and International Marketing Program calculations.⁶¹ This would be the appropriate allocation, argues the GOBC, because of the remote and tenuous connection between the FII-funded programs and the subject merchandise.

The petitioners argue that the Department used the appropriate denominators in calculating the subsidy rates for the FII sub-programs. The petitioners contend that as a result of the GOBC’s failure to report grants tied to markets other than the United States, the Department reasonably concluded that the total sum reported was related to marketing efforts linked to the sales in the United States.

⁶⁰ While it may be possible that some of the research projects at issue do not relate to the subject merchandise, the burden is on the respondent to demonstrate that any particular government-funded projects do not benefit the subject merchandise.

⁶¹ The Department allocated the benefit from the Research Program over POR shipment data for the B.C. wood product manufacturing and paper industries.

Department's Position

We disagree with the GOBC. Based on the record evidence, we believe the denominators used in the Preliminary Results were correct. For both the Product Development and the International Marketing sub-programs, the GOBC limited the reported amounts by excluding projects that involved products or activities with no nexus to subject merchandise or products directed to non-U.S. export markets. Lacking information on the non-reported Product Development projects, some of which may have related to wood products or paper (industries included in the denominator for the research sub-program), it would not be appropriate to use the larger denominator for these sub-programs.

Similarly, regarding the International Marketing grants, of the 14 projects funded during the POR, the GOBC reported six. Given the exclusion of projects unrelated to subject merchandise or to sales to non-U.S. markets, we have continued to use total export sales of softwood lumber from B.C. to the United States during the POR as the denominator in our calculation of the countervailable subsidy rate.

Comment 53: *Whether the Private Forest Development Program (PFDP) Is Countervailable*

The GOQ disagrees with the Department's finding that the PFDP is specific under the countervailing duty law and the Department's claim that the fees paid by the sawmills into the PFDP are irrelevant because they do not represent one of the "offsets" enumerated under the countervailing duty statute.

The GOQ argues that the Department's specificity finding is legally and factually flawed because the Department does not explain how private woodlot owners constitute an "enterprise or an industry within the jurisdiction of the authority providing the subsidy" as required by Section 771(5A)(D) of the Act. According to the respondent, any landholder (*i.e.*, any person who owns land on which trees grow) with more than 4 hectares is eligible to participate in this program and eligibility is automatic. See page 93 of the GOQ's case brief. Therefore, the respondent asserts that the only conclusion the Department can logically reach is that the PFDP is neither *de facto* nor *de jure* specific.

The GOQ further states that it never argued that the sawmill contributions to the PFDP should be viewed as one of the enumerated offsets under 771(6) of the Act. Therefore, the GOQ argues that the Department's explanation for disregarding these payments is inapposite as it addresses an argument that was never presented. According to the GOQ, its argument was that, in addition to not being specific to an "enterprise or an industry" producing softwood lumber, there is simply no benefit being conferred.

The GOQ notes that the PFDP is jointly funded by the Ministère des Ressources Naturelles de la Faune et des Parcs and the lumber mills. According to the GOQ, there are 130,000 private woodlot owners in Quebec, of which 1,303 hold wood processing plant operating permits (*i.e.*, sawmills). The GOQ states that these 1,303 mill operators are required to pay C\$1.20 to the private regional agencies for each cubic meter of timber acquired. The GOQ further states that there are 38,500 registered woodlot owners in Quebec, of which roughly 13,000 receive silviculture reimbursements each year through the PFDP at an average of less than C\$3,000 per recipient. According to the GOQ, only 38

registered private woodlot owners in the program produced softwood lumber, which is a *de minimis* proportion in relation to either the 13,000 annual beneficiaries or the more than 38,500 registered woodlot owners.

The GOQ states that the sawmills that were eligible to participate in the PFDP only received an 80 percent silviculture reimbursement. Because of the compulsory fee associated with purchasing wood on private lands, the GOQ argues that these sawmills paid six times more into the program than they received. For this reason the GOQ argues that the PFDP does not provide a financial contribution or benefit with respect to the production of softwood lumber. The GOQ claims that, in fact, the sawmills that received silviculture reimbursement under the program lost money because of their compulsory obligation to fund the program in excess of any benefit they could receive. Specifically, these mills contributed C\$2,942,791 to the PFDP during the POR and were reimbursed only C\$489,611, states the GOQ. Therefore, the GOQ argues the verified record confirms that the PFDP does not provide a financial contribution or benefit with respect to the production of softwood lumber but rather imposes a financial expense.

If the Department nevertheless continues to countervail this program, the GOQ argues that any subsidy from the PFDP would benefit all private woodlot producers. Subsequently, the GOQ states that the Department must use a denominator that includes all lumber (hardwood and softwood), as well as all co-products and any other wood products, produced by sawmills in the denominator of the Department's subsidy calculation. See the March 15, 2004, Letter from the GOQ to the Department concerning revised StatsCan Data at Exhibit GOC-GEN.

The petitioners agree with the Department's preliminary finding that assistance under the PFDP is specific because it is limited to private woodlot owners⁶² and is not directed to a wide range of industries. Additionally, the petitioners note that the GOQ itself stated in its questionnaire response that "a forest woodlot owner who wishes to benefit from the private forest development assistance program must first apply to become a certified 'forest producer'" and that the application to obtain PFDP assistance requires the woodlot owner be a certified forest producer. See the November 12, 2003, submission by the GOQ at 2. Moreover, the petitioners claims that private woodlot owners would only participate in silviculture if they intended to harvest the timber commercially and that the GOQ would not provide silviculture assistance to anyone who is planting trees for random reasons.

Because this program is limited to owners of commercially useable timberland that participate in the forest products industry and disproportionately participate in the softwood lumber industry, the petitioners argue that this program is specific under section 771(5A)(D) of the Act. The petitioners also state that the Department correctly determined that contributions to the PFDP did not qualify under the statutory offset provision. Moreover, as the program is specific to private woodlot owners that are forest producers, the petitioners disagree with the GOQ's suggestion to change the denominator used for the subsidy calculation for these final results.

⁶² The petitioners further note that it is Departmental practice to not revisit in reviews the specificity of programs found to be countervailable in the investigation, referencing Pure and Alloy Magnesium from Canada: Final Results of the Fifth (1996) Countervailing Duty Administrative Reviews, 63 FR 45045 - 45046 (August 24, 1998) (Pure and Alloy Magnesium from Canada).

Department's Position

In Pure and Alloy Magnesium from Canada, the Department stated that it is Departmental policy, absent the presentation of new facts or evidence, to not revisit prior determinations that a program is, or is not, specific. See Pure and Alloy Magnesium from Canada at 63 FR 45045 - 45046. In the present review, no new facts or evidence have been presented regarding the specificity of this program. Therefore, the specificity finding from Lumber IV stands.

Regarding the GOQ's claim that this program does not confer a benefit, we disagree. The payments to the sawmills are grants and, hence, financial contributions (see section 771(5)(D)(i) of the Act). Under 19 CFR 351.504(a), the benefit from a grant is the amount of the grant. Section 771(6) of the Act permits an offset to reduce the amount of the benefit in certain narrowly drawn circumstances. However, for the reasons explained in the Lumber IV and the Preliminary Results the payment made by the sawmills to fund the PFDP do not qualify as an offset to the payments the sawmills receive from the PFDP. Hence, we find that there is a benefit in the amount of the payments to the sawmills.

Finally, we have decided to include all sales of softwood lumber, softwood co-products, and hardwood lumber from Quebec in the denominator used to calculate the countervailable subsidy rate. The basis of our decision is that the production at the sawmills that received funding under this program is not limited to softwood lumber.

Comment 54: Worker Assistance Programs Administered by Human Resources & Skills Development (HRSD)

The GOC contends that its August 16, 2004, supplemental submissions—and, in particular, the sample collective bargaining agreements (CBAs)—confirm the preliminary finding that its HRSD worker assistance programs are not countervailable because softwood lumber companies have no customary or legal obligations to retrain laid-off employees and, therefore, are not relieved by HRSD of any such obligations.

The respondent complains that the Department did not, in the Preliminary Results, address financial contribution or specificity with regard to the HRSD programs, and urges the Department to do so in the final. According to the GOC, the record demonstrates that these programs do not draw on general treasury funds but simply return to workers the workers' unemployment insurance payments to the employment insurance system. The GOC contends that the Department has previously found such contributions to be not countervailable, e.g., in Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany, 62 FR 54990 (October 22, 1997) (Wire Rod from Germany). Insurance payouts, the GOC argues, do not constitute a financial contribution because the payouts are simply the workers' own contributions coming back to them. Accordingly, the GOC urges the Department to find, consistent with Wire Rod from Germany, that employment insurance benefits administered by HRSD are not countervailable financial contributions.

On the issue of specificity, the GOC claims that the express terms of the HRSD programs make their benefits generally available to all Canadian workers; none is limited even to such a broad group of

industries as the forestry sector, or to an enterprise or industry in a designated geographical region as set forth in section 771(5A)(D)(iv) of the Act. The GOC argues that regions with greater than 10 percent unemployment are not “designated” within the meaning of the statute, since the makeup of such regions change as unemployment surges and dissipates. Rather, the GOC continues, worker assistance limited to such regions falls under the “objective criteria or conditions” within the meaning of section 771(5A)(D)(ii) of the Act—*i.e.*, that are “neutral” and “do not favor one enterprise or industry over another”—which render a subsidy “not specific as a matter of law.” On this point, the GOC cites Final Affirmative Countervailing Duty Determinations; Certain Steel Products from the Federal Republic of Germany, 47 FR 39345 (September 7, 1982), where the Department found that a training program for unemployed workers in administrative regions with unemployment rates higher than six percent was not regionally specific.

Regarding the April 2002, C\$13 million aid package, the petitioners complain that the Department accepted without verification the GOC’s claim that funds came from worker and employer contributions directly to employees. Similarly, the petitioners fault the Department for relying on unverified information regarding the October 2002, C\$71 million aid package; specifically, that the OWPPI worker retraining assistance was limited to a region not subject to the current review, *i.e.*, the Maritime Provinces. The petitioners also believe that the Department’s analysis of the IRTI retraining program was seriously flawed.

The petitioners argue that payments to workers provide a benefit under section 771(5)(E) of the Act to the extent the payments relieve producers of an obligation they otherwise would incur, as set forth in 19 CFR 351.513, which may include retraining costs that are typical or customary for a given industry in a given country. In this regard, the petitioners claim that the Department relied on questionable or misleading statements by the GOC that softwood lumber producers’ retraining obligations, if any, existed only in the contracts between companies and employees, not in Canadian law or regulation.

The petitioners complain that the Department did not address evidence the petitioners submitted that softwood lumber producers were “normally” obligated to provide retraining assistance to laid-off workers and that, therefore, government assistance toward these obligations constitutes a countervailable benefit. For example, the petitioners cite a report showing that Weyerhaeuser put together “comprehensive programs . . . for impacted employees, including severance benefits, outplacement counseling, transition assistance, education and relocation assistance,” in connection with the closure of its sawmill in Dryden, Ontario (*see* the August 14, 2004, New Subsidy submission by petitioners at Exhibit WAP-11). Similarly, the petitioners cite information from a union internet site that an agreement between Domtar and its workers in St. Catherines, Ontario, provided for a severance pay package and six months of benefits, retraining, and other adjustment assistance (*see Id.* at Exhibit WAP-13).

The petitioners argue that, consistent with the Department’s practice, a government program should be countervailed when it is designed to provide additional unemployment benefits to lumber workers that relieve softwood lumber producers of part of the costs related to workforce reductions (citing the Preamble to Countervailing Duties; Final Rule, 63 FR 65348, 65379, which states in part that “‘obligation’ should be interpreted broadly” and that “even though an obligation is not binding in a

contractual or statutory sense, an exemption from it may nevertheless provide a benefit to a firm”). The petitioners contend, additionally, that the Department’s policy is to consider the impact of the knowledge of government worker subsidies on the outcomes of negotiated severance packages between companies and workers (see Certain Steel Products from Germany, 58 FR 37318 (July 9, 1993), where the Department found that the company would have agreed to pay more to its laid-off workers had it not known that the government was going to pay the workers as well). According to the petitioners, Canadian lumber companies that negotiated severance packages and laid off workers after the announcement of the C\$71 million package in October 2002, would have been impacted by the knowledge of that aid package.

In its October 27, 2004, rebuttal brief, the petitioners dispute the respondents’ contention that record evidence confirms the Department’s conclusion that mandatory retraining for laid-off employees was not a customary element in the labor contracts of softwood lumber companies. On the contrary, according to the petitioners, several of the sample CBAs submitted by the GOC actually show that lumber producers commonly undertake such obligations. The petitioners cite, as an example, Article 12.10 of Great West Timber’s CBA, which states that employees whose positions are terminated will be offered alternative work on remaining jobs “in accordance with Article XII, to meet the Company’s labour requirement,” and that, if such employees require retraining, they “shall be trained by the Company” (see the August 16, 2004, Supplemental Response of the GOC at Volume 3). The petitioners point out that similar language appears in the CBAs of Domtar (see Id. at Volume 3, section 12.10), McKenzie Forest Products, Inc. (see Id. at Volume 4, section 12.10), and Weyerhaeuser Company Limited, (see Id. at Volume 4, section 12.10(i)). Additionally, in another example offered by the petitioners, under the “2000-2003 Coast Master Agreement” between B.C. companies and their unions, each participating company bound itself to “cooperate with the Government of British Columbia and participate in every possible way in training or retraining of employees so affected.” See Id. at Volume. 2, Exhibit GOC-HRSD-23, Article VI, Section 3.

Department’s Position

In determining that a countervailable subsidy exists, the Department must find, inter alia, a benefit within the meaning of section 771(5)(E) of the Act. As in the Preliminary Results, because we have found that the HRSD programs did not confer a benefit to softwood lumber producers, it is unnecessary to make a further determination as to the other subsidy elements within the meaning of sections 771(5)(D) and 771(5A) of the Act, i.e., financial contribution and specificity, respectively. Accordingly, we are not addressing the comments raised by the respondent on these points.

With regard to the petitioners’ comment that the Department relied on unverified information from the GOC, we note that 19 CFR 351.307 provides the Department discretion to conduct a verification in the final results of an administrative review, and we did not find it necessary to conduct such a verification.

We do not agree with the petitioners’ contentions that Canadian softwood lumber producers were normally obligated under the CBAs to retrain laid-off workers. The language in the CBAs referred to by the petitioners is found in a boilerplate paragraph that pertains to workers whose

positions are discontinued and who are assigned to other positions within the company, rather than to workers laid-off from the company. As such, it is not relevant to the HRSD programs at issue or to what companies were contractually obligated to provide in the case of laid-off workers.

With respect to the “2000-2003 Coast Master Agreement” also cited by the petitioners, specifically the one-sentence paragraph requiring the company’s cooperation with the GOBC and participation “in every way possible” in training or retraining, we find that the language—although suggestive—is too broad and vague regarding the nature of the obligation. More to the point, it is not clear what cost the company would otherwise incur within the meaning of 19 CFR 351.513, since the language does not set forth what the company’s obligation would be absent this provision.

With respect to the petitioners’ claims that its information supports a finding that retraining obligations do exist between employers and laid-off workers, we disagree. The information submitted by the petitioners was adequate for the Department to investigate the alleged subsidy conferred by this program. Having investigated the program and developed a more complete record, however, we have determined that the evidence does not support a finding that sawmills in Canada are obliged, through law or contract, to provide retraining assistance. With regard to the specific evidence cited by the petitioners, the Domtar agreement related to the closing of a paper mill. Regarding the Weyerhaeuser announcement, it provides only a general description of a program for laid-off workers, including “education.” Moreover, because of the aggregate nature of this proceeding, we are not investigating alleged subsidies to individual producers. Instead, for this program we sought information from the GOC and ten randomly selected producers, and have based our determination on their responses.

Thus, we continue to find that no benefit was conferred within the meaning of section 771(5)(E) of the Act.

Comment 55: *Litigation-Related Payments to Forest Products Association of Canada (FPAC)*

According to the petitioners, in deciding not to countervail the government payments to FPAC, the Department mistakenly accepted the respondents’ erroneous interpretation of the general export promotion exception under 19 CFR 351.514(b)—*i.e.*, that, since the subsidy provided only “general informational services” on behalf of the industry, it qualified as not countervailable under that section of the regulations. The petitioners contend that the exception for “general informational activities that do not promote particular products” mentioned in that section is unambiguously narrow: as discussed in the relevant part of the Preamble to the regulations, the exception applies only to the indirect benefit from government promotional efforts, such as “government guides on how to export, overseas marketing reports, and marketing opportunity bulletins,” as well as “certain advocacy efforts, such as country image events or country product displays” (citing Preamble, 63 FR at 65381), not to payments to associations of subject merchandise producers.

The petitioners contend that the Department recognized this narrow scope of the exception when it countervailed government payments to two other such associations—the CLTA and the ILRA—which are indistinguishable from the payments to FPAC. In the case of FPAC, says the petitioners, the government did not merely undertake “general informational activities,” but, rather, made a cash grant by simply handing the industry a check. The petitioners claim the Department has

consistently recognized that government financial contributions to producer associations provide a countervailable benefit to the industry. On this point, the petitioners cite, e.g., Raspberries from Chile, in which the Department found it reasonable to “treat funds received by a trade association as benefitting the members of the association and the products they produce”; and Structural Steel Beams, where the Department found government contributions to a steel industry association to be countervailable. In any event, the petitioners note, the Preamble states that efforts to “promote particular products” and “image events ... that focus on individual products ...” would not meet the general export promotion exception (citing Preamble, 63 FR at 65381, specifically in reference to Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile, 63 FR 31437 (June 9, 1998)). Thus, the petitioners conclude, the FPAC’s government-funded lobbying effort to convince the U.S. government to remove tariffs on certain softwood lumber products, is clearly related to “particular products” within the meaning of 19 CFR 351.514(a) and does not qualify for an exception.

The GOC argues that the record evidence contradicts the petitioners’ assertion that the FPAC grant does not fall within the exception under 19 CFR 351.514(b). According to the GOC, the grant’s stated purpose was to “inform and educate a target audience on the punitive impact” of softwood lumber duties in the United States and, to this end, the FPAC worked with a U.S. advertising firm to develop marketing materials aimed at increasing awareness in the United States about the importance of the U.S.-Canada trade relationship. Although the campaign featured information about the softwood lumber dispute and its harmful effects on U.S.-Canada relations, it did not promote the sale of Canadian softwood lumber.

The GOC claims the petitioners were incorrect to assert that the government “simply handed the trade association a check.” The money was given pursuant to an FPAC proposal that did not mention marketing Canadian softwood lumber or provide any funds to aid in softwood lumber production. The GOC adds that periodic progress reports detailing the expenditure of the grant money and forecasts of future expenses assured the government that FPAC was following the proposal rather than providing money to the industry.

The petitioners’ reliance on Raspberries from Chile and Structural Steel Beams is misplaced, according to the GOC, since those cases involved grants that aided, respectively, in the marketing and production of subject merchandise. Moreover, the GOC contends, in Raspberries from Chile the dispute was not whether the grants were used for export promotion but whether the export programs were intended to increase the exports of certain companies; in contrast, the FPAC grant was not used to fund export promotion at all. In Structural Steel Beams, the Department found that the R&D project supported by the grant was used in the production of the subject merchandise. Again, the GOC claims, this is unlike the situation of the FPAC grant, which was not intended to, and did not, aid in the production of softwood lumber.

The Ontario associations contend that the Department correctly found that the FPAC public relations campaign was an extension of government advocacy activities on behalf of a country’s exporters, which are not countervailable per Department practice under 19 CFR 351.514(b). They claim the record does not support the petitioners’ allegation that FPAC’s activities promoted particular products. As the Department found, they say, the campaign did not advertise Canadian lumber or

promote Canadian lumber sales in the United States; rather, the advertisements sought to resolve the U.S.-Canada trade dispute and promote bilateral trade relations generally.

According to the Ontario associations, the petitioners mischaracterized the law when they asserted that payments to producer associations are always countervailable. They claim the Department has never found that a financial contribution to a producer association, *per se*, provides a countervailable benefit; rather, the Department finds a countervailable benefit only where the contribution relieves the recipient of an obligation it would have incurred otherwise. The Ontario associations point out that, *e.g.*, in Raspberries from Chile, the Department found contributions given for “specific promotional activities” benefitted the industry, since exporting companies typically incur the cost of international promotion of their products; and in Structural Steel Beams, the Department found funds given to an industry association for R&D work relieved the industry of a financial obligation normally incurred by the industry. In contrast, the Ontario associations argue, FPAC did not relieve FPAC members of any obligations they would incur otherwise; rather, the government simply delegated an advocacy program to an organization that encompassed both respondents and other forest products industries.

Department’s Position

We disagree with the petitioners that we have expanded the narrowly drawn export promotion exception in 19 CFR 351.514(b). As explained in the preamble to the regulation (63 FR at 65381), the exception encompasses “government advocacy efforts on behalf of a country’s exporters...” Whether that advocacy is undertaken by the government itself or is paid for by the government does not change the nature of effort, *i.e.*, a public relations campaign to influence members of the U.S. government. We further disagree with the petitioners that the campaign promoted particular products. Clearly, the campaign focused on the softwood lumber dispute, but its purpose was to educate U.S. government and the public about the impact of the dispute and not to promote sales of Canadian softwood lumber in the United States.

Because we have found that this program is not a subsidy because it falls within 19 CFR 351.514(b), we are not addressing the additional comments regarding the countervailability of payments to industry organizations.

Comment 56: Whether Timber Damage Assessments (TDA) Confer a Countervailable Benefit

The GOA agrees with the Department’s preliminary finding that timber damage assessments did not provide subsidies to anyone in Alberta and argues that the Department should reaffirm that finding in the final results. The GOA further explains that TDA is not a government program or government mandate, but rather, is a private sector initiative to calculate annually the market value of standing timber in Alberta for strictly commercial reasons. The GOA states that Alberta law makes it clear that the province will collect stumpage from the forest sector for any timber cut on a tenure area, regardless of whether it is used or destroyed (citing the November 12, 2003, submission of the GOA at Exhibit 12 section 91(1)). According to the respondent, after collecting money for stumpage cut, the

GOA is not involved thereafter with private party concerns as to who destroyed the Crown timber and the GOA does not direct or entrust industrial entities operating in the forests to pay anything on behalf of the GOA to tenureholders when trees are destroyed on their tenure areas. The GOA states that any right to damages is a general common law right to property damage that is also outlined in the Surface Rights Act in Alberta. Finally, the GOA argues that the petitioners' allegation that the stumpage amount paid by the tenureholders might be less than the tenureholders are paid by private parties for damaged timber, and thus could be a subsidy, is mere speculation refuted by the evidence on the record.

The petitioners argue that section 16(2) of the Alberta Forests Act, which authorizes compensation to be paid to FMA holders rather than to the province (the owner of the timber) for any damage to timber to which the FMA holders are entitled, is an indirect subsidy within the meaning of section 771(5)(B)(iii) of the Act. The petitioners argue that the issue is not whether the FMA holders pay timber dues on damaged timber but whether those dues paid match what the FMA holder receives in compensation from a third party. According to the petitioners, the standing timber value included in the 2002 TDA Table was C\$20.14 per cubic meter for softwoods (see the November 18, 2003, submission by petitioners at Exhibit 5) while timber dues for most of the softwood harvest averaged only C\$4.29 per cubic meter (see Id. at 36). The petitioners state that the Department should address this issue specifically and verify whether the GOA requires FMA holders to pass on to the government the full amount of the compensation that they received in the form of timber dues. If the FMA holders only re-convey to the GOA a portion of that compensation, the petitioners contend that the Department should treat that difference as a countervailable benefit.

Department's Position

The record evidence shows that, as the GOA gives rights to FMA holders to harvest timber from Crown lands, it similarly provides rights to people, usually through lease or license, to obtain subsurface resources as well. This practice has resulted in conflicts between those parties that have access to the surface of the land and those that have access to the subsurface, as both parties can have claims to the same land area. To manage this area of conflict, the GOA established the right to seek compensation in the Surface Rights Act. The record shows that the Surface Rights Act entitles the existing occupants of the land to seek compensation from the entities extracting subsurface resources for any injury to the occupied land. Within section 1(g) of the Surface Rights Act, an occupant is, in part, described as "(I) a person, other than the owner, who is in actual possession of land . . . or . . . (iv) in the case of Crown land, a person shown on the records of the department or other body administering the land as having an interest in the land." See the March 12, 2004, submission of the GOA at Exhibit 1. Additionally, after years of conflict and negotiations, the GOA brought the forest and industrial operators together to find common agreement on the levels of compensation for timber damage. This resulted in the creation of the TDA Tables, which were based on a methodology developed by an outside third party with direct input from both the forest and industrial operators.

We do not find this right to seek compensation for damage under this program to be a subsidy within the meaning of section 771(5)(B)(iii) of the Act, as argued by the petitioners. Section 771(5)(B)(iii) of the Act states that, a subsidy exists when an authority "makes a payment to a funding

mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, to a person and a benefit is thereby conferred.” The circumstances behind the right to seek compensation under this alleged program do not meet these requirements. Specifically, we disagree with the petitioners that a right to seek compensation for damages in these circumstances constitutes the entrustment or direction of a private entity to provide a financial contribution. Moreover, there is no evidence or reason to believe that the GOA normally compensates private entities for damage to their property when that damage is caused by another private entity.

This right to seek compensation for injury caused by a third party is also not a subsidy as described in section 771(5)(B)(i) or (ii) of the Act. There is no financial contribution being made by the government, or on behalf of the government, within the meaning of section 771(5)(D).

In sum, the GOA, through the Surface Rights Act and its adoption of the TDA Tables, has simply established a procedure whereby the FMA holders and the industrial operators can negotiate damages between themselves. However, the fact that private parties may compensate one another for damages in no way implies that the GOA either directly or indirectly provides a financial contribution.

Furthermore, the record evidence shows that the law in Alberta recognizes the rights of a broad range of property interests in Alberta, not just the FMA holders, to seek redress for damage caused by subsurface operators, including banks holding a mortgage on a property, real estate agents owed commissions who have taken liens against the land, condominium associations owed fees, unpaid purchasers or vendors with liens, anyone with a lease or an interest in a lease, anyone with an easement or right of way, anyone with rights under a restrictive covenant or encroachment agreement, and anyone with a right to take resources from the land surface or from near the land surface (e.g., gravel, soil).

Therefore, for these final results, we have determined the FMA holders’ right to seek compensation when timber within their designated area is damaged to not be countervailable.

Comment 57: Affirm Preliminary Findings for Timber Damage Compensation for Timber Licensees

For these final results, the GOM argues that the Department should not only continue to find that this program did not confer a benefit, but the Department should also find that this program is not countervailable. The GOM states that, although Section 20(2) of The Forest Act authorizes compensation to be paid to timber licensees for damage to timber incurred as a consequence of “boring or operating any salt, oil, or gas wells,” or “in working any quarries or mines,” there is no program in place to compensate forest licensees, and no compensation has ever been paid to timber licensees, for such damages. According to the respondent, the province’s Forest Damage Appraisal and Valuation Procedures require that any damage to timber caused by industrial users be paid to the Crown, as the owner of the timber, and not to any individual timber licensee. Moreover, the GOM argues that even if a licensee’s area might be damaged by industrial users, there is more than enough of Manitoba’s annual allowable cut (AAC) that is uncommitted (69 percent of the softwood AAC and 64.7 percent of the hardwood AAC) that no licensee would be unable to obtain its harvest volume.

The petitioners argue that there is no new evidence or basis for the Department to go beyond its findings in the Preliminary Results and find that this program is not countervailable.

Department's Position

Having found no benefit, we have determined that there is no subsidy conferred on softwood lumber by this program. Therefore, there is no need to make additional findings and, as a matter of administrative economy, we have chosen not to address other aspects of this program.

Comment 58: *Whether Assistance Under Article 28 of Investissement Quebec is a Countervailable Program*

The GOQ argues that the Department should affirm its preliminary finding that no benefit was provided to softwood lumber producers under Article 28. See Preliminary Results, 69 FR at 33234. The GOQ further argues that the Department should find that Article 28 does not provide a countervailable subsidy because assistance provided thereunder is not specific. The GOQ states that the sole requirement for the receipt of assistance under Article 28 is that a project must be of major economic significance for Quebec. The GOQ states that there is no record evidence that the granting of such assistance is dependent upon export performance or the use of domestic goods over imported goods; that there is, in terms of a domestic subsidy, dominant or disproportionate use; or that Investissement Quebec provided assistance under Article 28 in such a manner as to indicate that it favored the wood sector over any other sector. The GOQ points out that this conclusion would be consistent with the evidence in this proceeding and with the Department's previous determinations (see, e.g., Alloy and Magnesium and Pure Magnesium from Canada: Preliminary Results of Full Sunset Reviews, 65 FR 10766, 10768 (February 29, 2000) (Alloy Magnesium and Pure Magnesium from Canada: Sunset)).

The petitioners argue that there is no new evidence or basis for the Department to go beyond its findings in the Preliminary Results and find this program is not countervailable.

Department's Position

Having found no benefit, we have determined that there is no subsidy conferred on softwood lumber by this program. Therefore, there is no need to make additional findings and, as a matter of administrative economy, we have not chosen to address the specificity of this program.

Comment 59: *Canadian Forest Service Industry, Trade & Economics Program (IT&E)*

The GOC contends that, although the Department found the IT&E program to be not used during the POR, the Department failed to address the statutory factors necessary to a subsidy finding. The record, according to the respondent, clearly demonstrates that the IT&E program does not provide grants or other financial contributions; rather, it is an economic and policy research office staffed by four professional economists who produce economic studies in conjunction with universities, non-profit organizations, and other government entities. Therefore, the Department should also find that the program is not a countervailable subsidy.

The petitioners argue that the respondent has not identified any basis for the Department to go beyond its preliminary determination that the IT&E program was not used and make a finding that the program did not provide a countervailable benefit.

Department's Position

When a program is not used, the Department typically does not make a finding as to its countervailability. This is a matter of both administrative efficiency and practicality. Regarding administrative efficiency, the respondents are relieved from the requirement of providing extensive information about non-used programs and the Department is relieved of the burden of analyzing and verifying information related to those programs. Regarding the practicality, it is generally easier to understand how a program works when the program is being used. Otherwise, the analysis is necessarily abstract. Therefore, we have not gone beyond the non-use determination to examine whether this program potentially provides a countervailable subsidy.

Comment 60: *British Columbia Private Forest Land Tax Program*

The petitioners contend the Department was correct to find that the differential tax rates under the *Assessment Act* conferred a *de jure* specific subsidy on B.C.'s softwood sawmill industry. The petitioners claim that the respondent has failed to explain how the requirement to harvest timber under Section 24(1) of the *Assessment Act* is not dispositive. The petitioners add that, by pointing to an older—and, therefore, irrelevant—version of the statute which does not contain this requirement, the respondent merely substantiated the subsidy allegation by showing that B.C. later adopted legislation that expressly provided for the subsidy benefit.

With regard to the affidavits submitted by the GOBC, the petitioners dismiss as meaningless the assertion by one official that B.C. has never declassified Class 7 land due solely to cessation of harvesting activities. The petitioners claim that, because stopping timber operations is a contributing factor to removal of Class 7 status, harvesting timber is not only a legal requirement, but an enforcement obligation for B.C. officials and timberland owners. Assuming B.C. timberland owners are law-abiding, the petitioners continue, they would comply with the law on threat of enforcement with no need for actual enforcement. Thus, the petitioners say the affidavits merely imply that the threatened loss of a beneficial tax status ensures the owners stay with the program and continue harvesting timber.

The petitioners note that the GOBC has not responded to its allegation that the true amount of the tax break is actually larger when the difference in local tax rates is taken into account. The petitioners fault the Department for failing to countervail the tax subsidy at the local government level, based on the lack of necessary information, which it views as legally and factually erroneous. Citing section 701(a) of the Act, the petitioners say the statute requires that the entire countervailable subsidy be fully countervailed, a principle upheld, e.g., in *RSI (India) Pvt., Ltd., v. United States*, 687 F. Supp. 605 (CIT 1988) and *Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 178 F. Supp. 2d 1305 (CIT 2001). According to the petitioners, the Department should calculate an average Class 3/Class 7 rate differential for each type of local tax reported in the GOBC's May 24, 2004, response, and apply the differential to the land value used in the provincial subsidy calculation; alternatively, the

Department should request specific data regarding municipal Class 7 acreage and tax collection. The petitioners claim that the Department need not request company-specific data, but can directly request the GOBC or the municipal jurisdictions for data on Class 7 land with sawmills. Additionally, the petitioners note that, pursuant to the B.C. *Forest Act*, at Chapter 157, Section 127, all private sawlogs have to be sold to B.C. sawmills, and argue that, therefore, the Department should not limit the benefit to Class 7 sawmills, but use the entire Class 7 land acreage as the proxy for timber value.

The petitioners provide their own calculation for the benefit conferred by the differential tax rates at the municipal level, based on municipal-level land value and tax rates data submitted earlier by the respondent.

The GOBC argues that the Department has drawn an artificial connection between Class 7 property rates and softwood lumber production, saying lumber mills belong to an entirely separate property class, *i.e.*, Class 4, major industry, which is taxed higher than Class 7. The GOBC faults the Department for equating softwood lumber production with timber production and harvesting, saying that timber is used to produce a vast number of distinct products representing myriad industries other than softwood lumber. There is no record evidence, the GOBC continues, that Class 7 landowners supplied timber to softwood lumber producers during the POR.

The GOBC contends that the Class 3 rates are punitive and do not reflect the tax rates normally applicable to private forest land. Additionally, Class 3 land comprises only a residual class amounting to no more than 7 percent of the total land area, and only a small portion of the total assessed value, of private forest land. The GOBC argues the Department is wrong to presume that Class 3 rates are the default rates when there is a range of other possible tax rates that could apply to private forest land. A more reasonable benchmark, the GOBC claims, is the Class 9 farm land classification, which also comprises “managed” land under the tax statutes and is identified in the 1986 Budget as the comparable rate applicable to Class 7.

The GOBC asserts it is illogical to conclude that Class 7 rates are preferential, since Class 7 owners voluntarily agree to incur the additional costs of reforestation and environmental standards to which Class 3 owners are not obligated. According to the GOBC, the Province’s private forest land policy falls within the parameters of a legitimate government function undertaken on behalf of the general public interest, which the Department has recognized in, *e.g.*, Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada, 51 FR 10041 (March 24, 1986) (Groundfish from Canada). The GOBC argues that, in the absence of evidence that the ultimate taxes paid by Class 7 owners are reduced, the Department essentially made a finding that a tax rate differential is *per se* countervailable. There is no prior case, the GOBC claims, where the Department has made such a finding; rather, the Department has countervailed tax rate differentials only when the industry clearly pays a lower tax than otherwise owed (citing Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Reviews, 56 FR 38116 (August 12, 1991), at Comment 15, in comparison with Bicycle Tires and Tubes from Taiwan: Reopened Investigation – Final Countervailing Duty Determination, 46 FR 53201 (October 28, 1981)).

The GOBC argues that the Department’s *de jure* analysis incorrectly construed Article 24(1)(b) of the *Assessment Act* and improperly considered it separately from the *Forest Land Reserve Act Amendment, 1999* (FLRA), under which the responsibility for determining Class 7

eligibility falls to the Agricultural Land Commission (ALC), rather than B.C. Assessment. The FLRA, the GOBC claims, does not restrict Class 7 status to landowners who harvest and produce timber, much less to those who supply lumber producers, and does not provide for removal from Class 7 status of any landowner who ceases harvesting activity. In any case, the GOBC contends, Article 24(1)(b) does not strictly limit Class 7 status to timber-producing landowners, as attested to by the affidavits of two key officials which the GOBC submitted for the record. The Department, the GOBC argues, is wrong to find that these affidavits are irrelevant to the *de jure* specificity analysis. The GOBC claims that actual practice should be deemed consistent with an express statutory restriction, and that such a consideration does not amount to a *de facto* analysis, but merely ensures that substantial evidence supports the *de jure* analysis, as the Department had done in, e.g., Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Turkey, 67 FR 55815 (August 30, 2002) (Steel Wire Rod from Turkey) (citing, in particular, the Decision Memorandum at 8-14), and Preliminary Negative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Thailand, 69 FR 52862 (August 30, 2004) (PET Resin from Thailand). The GOBC believes that the same comprehensive approach taken by the Department in those cases is warranted in the present case, given the body of laws and regulations governing Class 7 status.

Substantial record evidence, the GOBC argues, confirms that Class 7 status is not specific on either a *de jure* or *de facto* basis because it is open to all private landowners in the Province: once the land is included in the private land reserve, the landowner only has to submit a Management Commitment form to the ALC to obtain Class 7 status. According to the GOBC, only 13 of the hundreds of Class 7 landowners during the POR owned or operated sawmills, and the Department's finding that Class 7 sawmill owners or operators constituted the majority users of the Class 7 tax rates does not negate the general availability of the classification. Moreover, the GOBC points out, the record shows that timber harvested from private land is used to produce a vast array of end-products, not just softwood lumber.

The GOBC argues that the POR value of sawmill softwood lumber shipments used as the denominator was unduly narrow, since harvested logs are used to produce myriad distinct products other than softwood lumber, including paper products, panel products, furniture, chemicals, etc. Additionally, the GOBC claims, nearly 30 percent of the POR harvest was exported out of the Province. Therefore, according to the GOBC, since Class 7 status is not tied to softwood lumber production, the Department should attribute the alleged benefit to all appropriate products, pursuant to 19 CFR 351.525(b)(3). For the proper denominator, the GOBC points to the value used in the preliminary calculation with regard to the FII research program, i.e., the total value of B.C. shipments of wood and paper products during the POR, or C\$16,593,449,000. At a minimum, the GOBC continues, the Department should at least add to the denominator the value of B.C. lumber shipments by "other wood industries," amounting to C\$227,875,000, or the value of B.C. sawmill shipments of softwood logs amounting to C\$162,879,000.

The GOBC rebuts the petitioners' argument that the Department should include tax savings at the local level in the benefit calculation, claiming, first, that the record does not show that countervailable subsidies were conferred by local tax authorities. According to the GOBC, under the

Local Government Act, submitted in the GOBC's May 24, 2004, response at Exhibit BC-T-20, municipalities exercise independent tax authority and, although they use the nine property classes established by the Province, are not required to assign higher taxes to Class 3 than to Class 7 land. The GOBC provides the example of the District of Kent, which in 2002 and 2003 imposed higher tax rates on Class 7 than Class 3 land. The GOBC adds that neither softwood lumber producers, Class 7 landowners, nor any other forestry sector participant is listed in the exemptions from municipal property taxes pursuant to section 339 of the *Local Government Act*. Therefore, the GOBC asserts, there is no financial contribution at the municipal level within the meaning of section 771(5)(D)(ii) of the Act.

Moreover, the GOBC claims that the task of calculating a benefit at the local level is inherently company-specific and inappropriate to the aggregate nature of the current review. Since municipalities set property tax rates independently, the GOBC says, owners of land in multiple jurisdictions face multiple tax rates for which the Department would need detailed information from each landowner. The GOBC claims that an attempt to avoid company-specific data by applying an average differential rate, as the petitioners have suggested, will double-count taxes where landowners own land in multiple jurisdictions. The GOBC reminds the Department that it refused to initiate investigations into company-specific issues in the underlying investigation, e.g., with regard to the Job Protection Commission benefits and to an alleged subsidy to Skeena in Lumber IV. In any case, the GOBC claims it has already submitted the necessary municipal-level land value and acreage data in its October 5, 2004, supplemental response at Exhibit BC-T-42. However, since neither B.C. Assessment nor the ALC retains records identifying sawmill owners, the GOBC explains it has been unable to provide a list of sawmill owners at the municipal or regional district level, because the precise location of each sawmill is available only from the landowners themselves.

In addition, the GOBC rejects the petitioners' suggested calculation method because it grossly overstates any alleged benefit. According to the GOBC, the petitioners' chart of municipalities and their Class 3 and Class 7 tax rates included jurisdictions that do not even have Class 3 or Class 7 land, e.g., Armstrong, Belcarra, Bowen Island, Cache Creek. The GOBC claims that none of these municipalities levy municipal property tax rates on Class 3 or Class 7 land; the rates presented by the petitioners are largely school taxes already accounted for in the Department's calculation and "other" taxes collected for a variety of services, not an assessment on land in the municipality. Only seven municipalities, the GOBC asserts, have both classes of land, and these seven accounted for only a minuscule portion of Class 7 land value and acreage during the POR, which is not enough to have a material impact on the calculation.

Department's Position

Consistent with our determination that this program is *de jure* specific, we agree with the petitioners that the statutory requirement for timber production in Class 7 land is dispositive. Section 24 of the *Assessment Act* unambiguously states that Class 7 land is land "that is being used for the production and harvesting of timber." Section 771(5A)(D)(i) of our own statute clearly stipulates that when the relevant legislation "expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law." The Department's *de jure* analysis rests on a textual reading of

a statute, and where the legal language plainly limits access to the subsidy to an enterprise or industry, we find *de jure* specificity, which concludes the analysis on that subsidy element. For this reason, it is not necessary for us to address the respondent's other comments related to actual practice or actual usage.

We find the GOBC's comments regarding the relative relevance of the *Assessment Act* versus the 1999 FLRA to be unpersuasive. We did not, as the GOBC claims, consider the *Assessment Act* in isolation from the FLRA, which specifically addresses the forestry and environmental requirements for Class 7 land. In our preliminary analysis of this program, we specifically cited the FLRA, because it carried "Consequential Amendments" that included Section 24 of the *Assessment Act*. The amendment left unchanged the requirement that Class 7 land be "used for the production and harvesting of timber." Although, as the GOBC claims, the main body of the FLRA does not carry the timber production requirement, it nowhere precludes the operation of that requirement by other means, *i.e.*, through the *Assessment Act*, and the appearance of that very requirement under the FLRA's "Consequential Amendments" appendix contradicts the GOBC's position. Further, the *Assessment Act*, being a tax statute, remains equally, if not more, relevant because the program under review is a tax system.

We do not share the respondent's view that our finding amounts to a finding that differential tax rates are *per se* countervailable. The tax differential at issue pertains to two alternative tax classifications, Class 3 and Class 7, distinguished, *inter alia*, by a timber production requirement that makes the tax savings specific to an industry. Those who qualify for the lower rate based on such a requirement would clearly "pay a lower tax than otherwise owed." The GOBC's comments on this point are predicated on another contention, which we also do not share, *i.e.*, that the Class 3 rates are not the default rate. Despite the fact that the Class 3 rates may be punitive, the language and structure of Section 24 of the *Assessment Act* clearly pose Class 3 and Class 7 as alternatives to each other and not to some other classification. In particular, the express language of the statute plainly states that forest land is not farm land, which directly contradicts the GOBC's claim that the farm land classification, Class 9, is the one most comparable for the purposes of selecting a benchmark. Moreover, Class 9 is treated under a separate section of the *Assessment Act*.

The Department's benefit analysis does not extend to the broader economic analysis implied in the respondent's argument that Class 7 rates provide no benefit because Class 7 owners commit to the additional costs of eco-friendly forestry practices. These costs do not fall within the groups of offsetting costs enumerated under section 771(6) of the Act to be subtracted from the gross countervailable subsidy amount. Therefore, we have not adjusted for them in our benefit analysis.

The respondent cites Groundfish from Canada for the proposition that the B.C. tax constitutes a legitimate government function undertaken on behalf of the general public interest. However, in Groundfish from Canada, the Department determined that the program did not provide any financial assistance to the groundfish industry. In contrast, we have found that the tax program in the current review provides a financial contribution to an industry.

With regard to whether all B.C. logs are sold to the sawmills, the record indicates that under the B.C. log export restriction regime, some logs may be exported, rather than sold to the sawmills, if they can be shown to be surplus to domestic demand, or uneconomical for domestic processing, or

would otherwise go to waste. See GOBC Verification Report at 14. Hence, we have continued to limit the numerator in our benefit calculation to Class 7 sawmills. Regarding the respondent's contention that the preliminary denominator was unduly narrow, it is our understanding that the value of sawmill shipments we used, comprising in-scope lumber, co-products and other softwood (residual), comprise the totality of primary wood products shipments by sawmills in the Province. Accordingly, for the final calculation, we are using the same value for the denominator.

We do not agree with the respondent that the local authorities did not provide a countervailable subsidy. As the record shows and the GOBC has stated, the property classes by which the localities set their taxes are established by the Province. See, e.g., the May 24, 2004, Question Response of the GOC/GOBC at Exhibit BC-T-4, page 20 (Section 19(14) of the *Assessment Act*) and page 3, footnote 2 of the GOC/GOBC's rebuttal brief. Therefore, the timber production requirement that is integral to the managed forest land classification continues to operate at the local level, and our specificity determination is applicable at that level. Further, our analysis of the local tax rate data submitted by the GOBC shows that, in the overwhelming majority of jurisdictions, the tax rates were lower for Class 7 than for Class 3 land, although the differential varied across the jurisdictions.

We have addressed the respondent's concern that jurisdictions with neither Class 3 nor Class 7 land were included in the petitioners' suggested computation of an average tax differential and that the school tax was double-counted: as shown in the B.C. Tax Final Calculation, the benefit calculation was based only on jurisdictions whose assessment rolls included both Class 3 and Class 7 assessments during the POR, and excluded the school tax, which is accounted for only at the provincial level, as we did in the preliminary calculation. On this point, we believe to be erroneous the respondent's claim that only seven jurisdictions assessed both Class 3 and Class 7 land during the POR. According to our analysis of the data provided in the GOBC's October 5, 2004, supplemental response at Exhibit BC-T-42, there were dozens of jurisdictions where the assessment rolls showed both Class 3 and Class 7 land.

Comment 61: *Tenureholders Underreporting Volumes of Timber Harvested in Quebec*

Petitioners argue that the GOQ has provided a benefit by allowing tenureholders to under-report the volumes of timber harvested, resulting in less stumpage fees paid. See, e.g., the August 14, 2003, Petitioners' New Subsidy Submission at 47-52 (New Subsidy Submission) and the November 18, 2003, Petitioners' New Subsidy Reply at 28-32. They contend that a report by the Auditor General of Quebec found that the Quebec Ministry of Natural Resources "does not always ensure that all the stumpage fees contemplated by the legislation are received." See New Subsidy Submission at 48 and Exhibit PUT-5. They further assert that STATCAN data shows that 20,747,000 cubic meters of softwood lumber were produced in Quebec during the POR, but the application of standard conversion factors to the reported volume of softwood logs used in Quebec sawmills indicates that no more than 17,849,704 cubic meters of lumber could have been produced out of that volume. Petitioners claim that the total lumber production was 16 percent greater than the volume that the log input into Quebec sawmills could have produced. As a result, they assert that the Auditor General's

report, in conjunction with other record evidence, constitutes a reason to suspect that the GOQ knows that Quebec tenureholders are under-reporting the volume of timber.

Respondents rebut by noting that the Department verified the Quebec public stumpage system and assured itself that the system accurately reports timber volumes harvested from public lands. See GOQ Verification Report at 14. Respondents assert that the Auditor General's report neither states nor implies that there is deliberate or systematic inaction by the Quebec government which promotes the under-reporting of harvested timber. They contend that the report simply discusses that more accurate monitoring by the provincial government is possible and makes recommendations to increase management controls. In addition, respondents argue that petitioners' attempt to use verified log harvest data and verified lumber production data to demonstrate that there is missing timber is misguided as they rely on three separate data sets taken from three disparate data sources.

Department's Position

At verification, the Department traced the provincial softwood log harvest amount that entered and was processed in Quebec's sawmills during the POR. See GOQ Verification Report at 14. The Department also traced the volume and value of lumber used in Quebec's portion of the denominator calculation to STATCAN's databases. We found no discrepancies regarding these data. See GOC and STATCAN Verification Report at 6. We, therefore, find no reason to believe that Quebec tenureholders under-reported the volume of timber. Further, as discussed at the initiation of the underlying investigation, while there has been information submitted in this proceeding suggesting isolated incidents of alleged under-scaling (i.e., under-reporting), which could indicate fraud by a company, such action does not constitute a government-sanctioned policy of knowingly tolerating timber under-reporting. See the April 23, 2001, Memorandum to the File from Melissa G. Skinner, Director, concerning Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada at 38. Consequently, we did not initiate an investigation of timber under-reporting as such action does not in and of itself constitute a government action as required under the statute for an investigation or an alleged subsidy practice. There is no information on the record of this proceeding to warrant a change in our position concerning timber under-reporting.

Comment 62: *Whether British Columbia's Skeena Cellulose and NWBC Timber & Pulp Ltd Received Any Benefits During the POR*

Petitioners disagree with the Department's determination that an analysis of programs related to one specific company would be inappropriate in this administrative review because of the aggregate nature of this review. See New Subsidy Memorandum at 9-10. Petitioners argue that the Department should conduct an analysis of company-specific programs because the Department cannot assess duties without regard to the more flagrant lumber subsidies in Canada, as the Department is not accorded discretion under the CVD statute to disregard enormous countervailable subsidies. See 19 U.S.C. § 1671(a) (CVD must be "equal to the net countervailable subsidy."). Petitioners believe that Skeena Cellulose (Skeena) received several countervailable subsidies from the B.C. government, including

significant debt forgiveness, large loan guarantees, subsidized loans and an environmental indemnity, and that the GOBC also provided additional subsidies to Skeena's new owner, NWBC Timber & Pulp Ltd. (NWBC).

See Id. at 29-45. They assert that the Department itself recognized this program in its preliminary results (see 69 FR at 33232).

Respondents rebut by stating that the Department correctly declined to investigate to Skeena and its successor company. Respondents agree with the Department's position that it is not appropriate to analyze subsidies related to one specific company, as the Department is determined to apply an aggregate methodology in the proceeding. Furthermore, respondents assert that the Department determined for itself that alleged subsidies to Skeena examined in the investigation were far below the *de minimis* threshold, resulting in a negligible rate of less than 0.005 percent *ad valorem*. See Preliminary Determination, 66 FR at 43212. In addition, respondents contend that the Department did consider all of petitioners' new information supplied on the record. Thus, respondents believe that the Department should reject petitioners' arguments that it revisit its determination not to include allegations concerning Skeena in this administrative review.

Department's Position

As discussed above, we determined to conduct this review on an aggregate basis because of the extraordinarily large number of Canadian producers/exporters. With the exception of the four companies for which we conducted zero rate reviews, we are not calculating company-specific subsidy rates. As this allegation is applicable to only one specific company, we continue to find that it is not appropriate to analyze this program in the context of an aggregate final results.

Recommendation:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the review in the Federal Register.

Agree

Disagree

James J. Jochum
Assistant Secretary
for Import Administration

Date