69 FR 75921, December 20, 2004

A-122-838
Administrative Review
POR: 05/22/2002-04/30/2003
Public Document
Office 1

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

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

DATE: December 13, 2004

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

Summary

This memorandum addresses issues briefed or otherwise commented upon in the above-referenced segment of this proceeding. Section I addresses the general issues briefed by interested parties. Section II addresses the company-specific issues briefed by interested parties. Below is a complete list of the issues in this review for which we have received comments from the parties:

I. General Issues

Comment 24: Financial Expense Ratio-Foreign Exchange Gains and Losses

Comment 25: Clerical Errors

Issues Specific to Tolko

Comment 26: Lavington Sales

Comment 27: Unreconciled Cost Differences

Comment 28: Log Purchases from Affiliated Parties

Comment 29: General and Administrative Expenses-Payments to Trade Council

Comment 30: Allocation of Mixed-Length Tallies

Issues Specific to West Fraser

Comment 31: Exemption from Administrative Review

Comment 32: Length-Specific Background Prices

Comment 33: Start-Up Adjustment

Issues Specific to Weyerhaeuser

Comment 34: Freight Calculations

Comment 35: General and Administrative Expense Calculation-Severance and Closure Sale of Timber Mill

Comment 36: British Columbia Coastal's Log Costs

Comment 37: Below-Cost Sales

Comment 38: Level of Trade Classification of Home Market and U.S. Vendor Managed Inventory Sales

Comment 39: Interest Rate for U.S. Inventory Carrying Costs

Comment 40: Clerical Errors

Comment 41: Clerical Errors in Cost Calculation

Issues Specific to Lignum

Comment 42: Respondents Selected for Administrative Review

Issues Specific to the Changed Circumstances Review

Comment 43: Changed Circumstances Review

Background

On June 14, 2004, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review of certain softwood lumber products from Canada.[1] A notice amending the initiation and Preliminary Results was published on August 5, 2004.[2] The amended notice initiated a review of 22 additional companies and applied to these companies the review-specific average margin for respondents not selected for an individual review as calculated in the Preliminary Results.

On September 14, 2004, the Department published the preliminary results of a changed circumstances review involving the merger of two respondents in this review.[3] The Department preliminarily determined that post-merger Canfor Corporation (Canfor) was the successor-in-interest to both pre-merger Canfor and Slocan Forest Products Ltd. (Slocan) and should be assigned a weighted-average cash deposit rate based on Canfor and Slocan's pre-merger rates.

The period of review (POR) is May 22, 2002, through April 30, 2003. The respondents in this review are: Abitibi-Consolidated Inc. (Abitibi), Buchanan Lumber Sales, Inc. (Buchanan), Canfor, Slocan, Tembec Inc. (Tembec), Tolko Industries, Inc. (Tolko), West Fraser Timber Co. Ltd. (West Fraser), and Weyerhaeuser Company (Weyerhaeuser). We verified the information submitted on the record by the respondents with on-site visits and issued our findings in the verification reports. We received case briefs and/or rebuttal briefs, respectively, from the

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[1] See Notice of Preliminary Results of Antidumping Duty Administrative Review and Postponement of Final Results: Certain Softwood Lumber Products From Canada, 69 FR 33235 (June 14, 2004) (Preliminary Results).

[2] See Notice of Amended Initiation and Amended Preliminary Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada, 69 FR 47413 (August 5, 2004).

[3] See Notice of Preliminary Results of Antidumping Duty Administrative Changed Circumstances Review: Certain Softwood Lumber Products From Canada, 69 FR 55406 (September 14, 2004) (Changed Circumstances Preliminary Results).

petitioner,[4] the respondents, and other interested parties.[5] The respondents requested a public hearing, which was held on October 6, 2004.

DISCUSSION OF ISSUES

I. General Issues

Comment 1: Treatment of Countervailing Duties

Citing Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France, 69 FR 46501 (August 3, 2004) (LEU from France), the petitioner acknowledges that the Department recently reaffirmed its longstanding practice not to deduct countervailing duties (CVDs) from U.S. price (USP). However, the petitioner argues that the statute requires the Department to deduct domestic-subsidy CVDs, and that such an adjustment is permitted by international law and consistent with the practice of U.S. trading partners.

In the petitioner's view, the Department's reading of the statute on the CVD-as-cost issue in LEU from France was flawed: the Department incorrectly equated "United States import duties" in section 211 of the Antidumping Act of 1921 (the 1921 Act) with "regular customs duties," and erroneously concluded that "special dumping duties" were different from "United States import duties." Congress, the petitioner asserts, did not intend the phrase "United States import duties" to mean only "normal" U.S. import duties. In LEU from France, the petitioner continues, the Department claimed essentially that the term "United States import duties" in section 202(a) of the 1921 Act does not encompass CVDs because the phrase "duty-free" does not encompass "special dumping duties." The term "duties," argues the petitioner, must be understood to encompass all duties imposed by law, including non-regular customs duties, and the phrase "United States import duties" is not the functional equivalent of "regular customs duties." The petitioner argues that if Congress intended "United States import duties" to mean only "normal" U.S. import duties, then Congress was creating a standard that imposed "normal" on non-"normal" duties. Moreover, the petitioner continues, in Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value, 51 FR 5572 (February 14, 1986) (Ethanol from Brazil), the Department deducted "special tariffs" imposed by Congress to offset a tax subsidy; thus, the Department has previously adjusted USP for non-"normal" U.S. import duties. The petitioner argues that the Department in LEU from France failed to explain how these "special"

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[4] The petitioner in this case is the Coalition for Fair Lumber Imports Executive Committee. We note that during the review, submissions have been made interchangeably by the petitioner itself and by the Coalition for Fair Lumber Imports, a domestic interested party. For ease of reference, we will use the term "petitioner" to refer to submissions by either, although we recognize that the Coalition for Fair Lumber Imports is not the actual petitioner.

[5] In addition, case and/or rebuttal briefs were received from the British Columbia Trade Council (BCLTC) and its Constituent Associations, Lignum Ltd. (Lignum), the Maritime Lumber Bureau and lumber producers located in those provinces (the Maritimes), Ontario Forest Industries Association (OFIA), Ontario Lumber Manufacturers Association (OLMA), and the Quebec Lumber Manufacturers Association (QLMA).

non-remedial tariffs may be considered "regular customs duties" and that, therefore, their deduction in LEU from France belies the Department's legal interpretation in the current review.

Citing LEU from France at 46505, the petitioner assails as inherently contradictory the Department's assertions that CVDs are not a "cost, charge or expense," because they are a "species" of "United States import duties," and are not "United States import duties" either. If CVDs are not "United States import duties," the petitioner reasons, then the statute still requires an adjustment for CVDs as a "cost, charge, or expense." The petitioner charges that the Department has effectively rewritten the statute to mean "additional costs, charges, or expenses and normal United States import duties (but not other import duties)." According to the petitioner, when Congress wanted to exclude a specific type of "cost, charge, expense or United States import duty," it did so expressly, as it did, e.g., in excluding export-subsidy CVDs specifically from section 772(c)(2)(A).

The petitioner argues that the addition of section 772(c)(1)(C), and the 1979 Congressional amendment of section 772(c)(2)(A), show that Congress intended non-export-subsidy CVDs to be deducted. The petitioner complains that even though the Department recognized in LEU from France that the 1979 amendments could be interpreted to mean that CVDs are normally deducted, the Department nonetheless asserts that they could also be interpreted as simply a safeguard against both adding and subtracting the same expense. Citing Mackey v. Lanier Collection Agency & Services, Inc., 486 U.S. 825 (1988) and Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687 (1995), the petitioner argues that the Department's interpretation of a Congressional act has improperly rendered superfluous another portion of the same law.

Moreover, the petitioner claims, consistent with the principle of expressio unius est exclusio alterius (i.e., "to express one thing is to exclude the alternative"), Congress intended to account for non-export-subsidy CVDs by not expressly excluding them from section 772(c)(2)(A), while expressly excluding export-subsidy CVDs. The petitioner contends that the Department mischaracterized the legislative history of the 1979 amendments when it stated in LEU from France that Congress contemplated no adjustment for domestic-subsidy CVDs. Rather, the petitioner argues, Congress made an important distinction between the upward adjustment under section 772(c)(1)(C) and the downward adjustment under section 772(c)(2)(A): the former is based on the theory that export subsidies impact only the U.S., not the home market, price; while the latter addressed the practical effect of non-export-subsidy CVDs included in, and inflating, USP. Consequently, the petitioner claims, the paragraph in the Senate Report, S. Rep. No. 96-249 at 93 (1979) (Senate Report), on which the Department relies in LEU from France, explains Congressional intent as to section 772(c)(1)(C), not section 772(c)(2)(A).

With regard to the concerns raised in LEU from France that deducting non-export-subsidy CVDs is "recursive" or amounts to "double-counting," the petitioner argues that such concerns are applicable only to antidumping duties (ADDs), not CVDs. The petitioner notes that ADDs, which offset illegal price discrimination, and CVDs, which offset subsidies that benefit an

import, serve fundamentally different purposes, and that ADDs do not address situations where the company also benefits from a non-export subsidy. The petitioner argues that the dumping analysis must account for all the costs of an import, which should include any domestic-subsidy CVDs because, unlike export subsidies, domestic subsidies reduce both the U.S. and home market prices. An accurate analysis of dumping, says the petitioner, requires that normal value (NV) and USP be set on comparable footing, i.e., at the factory gate, so that, e.g., delivered NV is adjusted for home market freight and delivered USP is adjusted for foreign inland and international freight. The petitioner argues that not adjusting for any CVDs included in USP would result in the prices being compared on different bases. Deducting the CVD does not double-count the CVD, the petitioner contends, because the resulting increase in the dumping margin would simply reflect the additional cost of the CVD that is not reflected in USP. Similarly, the petitioner dismisses the concerns regarding "recursiveness" with regard to adjustments for ADDs as raised by the Department in other proceedings, saying that the reasoning does not apply to CVDs, because the CVD rate is determined independently from the ADD calculation. Thus, the petitioner claims, adjusting for CVDs is no more recursive than adjusting for other costs, charges, expenses or U.S. import duties incident to bringing the product to the United States.

Finally, the petitioner challenges the Department's conclusion in LEU from France, 69 FR at 46508, that the reduction in the dumping margin that results from CVDs is not a distortion of the margin but a legitimate reduction in the level of dumping. This conclusion, says the petitioner, amounts to a claim that CVDs are effectively interchangeable with ADDs, which is erroneous, given that CVDs and ADDs address two distinct types of unfair trade practices. When a foreign producer is both dumping and receiving an illegal subsidy, the petitioner continues, the unfair trade can only be meaningfully offset by imposing both an ADD and a CVD.

In their joint rebuttal brief, BCLTC, OFIA, OLMA, QLMA, Abitibi, Buchanan, Canfor, Slocan, Tembec, Tolko, West Fraser and Weyerhaeuser (Canadian Parties) agreed with the Department's decision in LEU from France not to deduct CVDs. The Canadian Parties contend that the petitioner failed to raise any facts or legal arguments that the Department did not already consider in that decision. From the plain text of section 772 of the Tariff Act of 1930 (the Act) and its legislative history, the Canadian Parties say, it is clear that there are no other adjustments to USP for CVDs other than to add export-subsidy CVDs. Moreover, the Canadian Parties say, a deduction for CVDs would also be inconsistent with the policy underlying section 772(c)(2)(B) of the Act, which prohibits reducing USP by the amount of any export tax imposed in the exporting country to offset a countervailable subsidy.

The Canadian Parties argue that the Department's interpretation of the term "import duties" is based correctly on section 772 as a whole and has been upheld by the Courts in numerous cases. On the other hand, under the petitioner's interpretation, they argue, the term would encompass ADDs as well and result in a circular deduction of ADDs from USP. According to the Canadian Parties, the petitioner also fails to counter the Department's position that a deduction for domestic-subsidy CVDs would result in a double remedy for the domestic subsidies.

The Canadian Parties charge that the petitioner ignores a basic rule of statutory construction that the provision at issue must be analyzed as a whole. They note that section 772 has three specific provisions addressing CVDs: under section 772(c)(1), to add export-subsidy CVDs; under section 772(c)(2)(A), not to deduct the export-subsidy CVDs added under section 772(c)(1); and under section 772(c)(2)(B), not to deduct the export duties or taxes intended to offset countervailable subsidies. Thus, Congress, they argue, explicitly set forth when and how to adjust for CVDs; therefore, the more general provisions regarding import duties do not encompass CVDs. The Canadian Parties also point out that, in connection with the 1979 amendments, the Senate Report states that no adjustment is appropriate for non-export subsidies because they do not affect price comparability.

With regard to the doctrine of expressio unius est exclusio alterius that petitioner invoked in its case brief, the Canadian Parties state that the courts have limited the use of that doctrine to cases where Congress clearly meant its silence to be interpreted as requiring a treatment different from what it has provided for specifically.[6] The Canadian Parties argue that, since the legislative history explicitly distinguishes export subsidies from subsidies that benefit all production, and discusses why the latter do not necessitate an adjustment, then Congress must have intended what the statute expressly says, i.e., that the only CVD adjustment to USP is an addition for export subsidies.

The Canadian Parties rebut the petitioner's argument that the term "import duties" should be read to mean the same thing in section 302 (regarding the U.S. Custom and Border Protection's (CBP) assessment of duties on exports) as in sections 203 and 204 of the 1921 Act. Reiterating the Department's position in LEU from France, they argue that Customs law and AD/CVD law are distinct statutes with different purposes, which the courts have allowed the respective agencies to interpret independently of each other.

Contrary to the petitioner's contention, the Canadian Parties say that double-counting occurs if both antidumping and countervailing remedies address the same unfair trade practice. The statute, it continues, scrupulously guards against such double-counting, e.g., in the provision under section 771(6) to deduct from the gross countervailable subsidy any export taxes or duties intended to offset the countervailable subsidy received. The Canadian Parties point out that, however the countervailable subsidies are offset, whether through the deduction provided under section 771(6) or by imposition of CVDs, no additional adjustment for the subsidy is made to the antidumping calculation to avoid a double remedy. The petitioner, the Canadian Parties charge, ignores the necessity of this parallel treatment in section 772 and does not address the Department's point that CVDs are intended to countervail fully the net subsidy and, thus, to provide a complete remedy for the subsidy benefit conferred. Otherwise, they argue, if CVDs are imposed and also deducted from USP, then importers would pay twice for the same subsidy.

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[6] See Canadian Parties' rebuttal brief dated September 8, 2004, at 8.

Finally, the Canadian Parties disagree with the petitioner's claim that deduction of CVDs would not be "recursive" because the CVD amount is calculated separately from the dumping margin. The central problem, they state, is that current dumping margins would be adjusted by past CVDs; thus, the dumping duties would have to be endlessly recalculated following administrative reviews and subsequent appeals.

In their case brief, the Maritimes urge the Department to extend to the present review its LEU from France decision on this issue. However, if CVDs should be deducted from USP, they argue that the Department must calculate a separate Maritimes-only weight-averaged non-selected respondent antidumping duty rate to preserve the Maritimes' exemption from the CVD order; i.e., the Department must ensure that no dumping margin derived from the CVD deduction is applied to the Maritimes' softwood lumber imports that have been exempted from the CVDs.

Department's Position:

As noted by the parties, the Department considered this issue in LEU from France at Appendix I, "Proposed Treatment of Countervailing Duties as a Cost." There the Department undertook a comprehensive analysis and determined that, in calculating dumping margins, it would continue its well-established practice not to deduct CVDs from USP, because CVDs are neither "United States import duties" nor selling expenses within the meaning of the statute, and to make such a deduction effectively would collect the CVDs a second time. We find no basis for reaching a different conclusion in the present review.

In LEU from France, the Department reviewed the legislative history of section 772 with reference to the relevant provisions of the 1921 Act, and upheld its longstanding interpretation that ADDs and CVDs are not the same as ordinary customs duties. The Department reasoned that if "United States import duties" includes CVDs, then it logically must include all CVDs and also ADDs, thus requiring their deduction from USP. Deducting for export-subsidy CVDs, the Department explained, would flatly contradict the statute and deducting ADDs would amount to a circular deduction of dumping margins in calculating dumping margins. Additionally, the Department noted that the terms of the 1979 amendments require that export-subsidy CVDs be added to initial USP, and explained that we do not interpret the statute to require export-subsidy CVDs to be added to initial USP, only to negate this addition by their subsequent subtraction. The Department noted the statute's silence with respect to domestic-subsidy CVDs, and explained that the logical complement to adding export-subsidy CVDs to USP is to make no adjustment for domestic-subsidy CVDs. In support of this position, the Department pointed to the Senate Report, which stated that, where the situation is the same, i.e., where the subsidy benefits all merchandise sold in both markets (as is the case with domestic-subsidy CVDs), no adjustment to USP is appropriate. See Senate Report at 93.

In regard to the petitioner's contention that we have previously adjusted USP for non-"normal" U.S. import duties, the Department noted in LEU from France that, in the 23 years that it has administered the AD law, it has never deducted ADDs or CVDs from initial USP in calculating

dumping margins. The Department also explained that the "special tariffs" in Ethanol from Brazil, to which the petitioner refers, were neither CVDs nor remedial duties under any trade remedy law, and were not subject to an injury finding by the United States International Trade Commission (ITC). Consequently, just as the Department found in LEU from France, we find that Ethanol from Brazil is not relevant to the issue of whether CVDs should be subtracted from U.S. prices in calculating dumping margins.

In LEU from France, the Department also considered the issue in terms of the double-counting that results from deducting CVDs from USP. There we stated that there is no need to adjust for domestic-subsidy CVDs because domestic subsidies—which lower prices in both the U.S. market and the domestic market of the exporting country equally—are assumed not to affect dumping margins. For support, the Department noted that the Court of International Trade (CIT) has specifically upheld this rationale in U.S. Steel Group v. United States, 15 F. Supp. 892, 900 (CIT 1998), where the CIT explained that, since the Department has already corrected for any subsidies in the CVD order, deducting CVDs from USP would create a greater dumping margin in the form of a second remedy for the domestic industry.

With regard to the recursiveness issue as contended by the parties, to the extent that it is distinguishable from the double-counting issue, the petitioner's comments are not on point, as the Department did not rest its decision in LEU from France on any proposition that deducting CVDs from USP resulted in the same circularity as deducting ADDs. Similarly, the Canadian Parties, like the respondents in LEU from France, called attention to the possible practical difficulties posed by a CVD deduction in a retrospective assessment system. We need not, as the Department did not in LEU from France, address this point, because the reasons relied upon by the Department in LEU from France and in the present review provide sufficient grounds on which to base our determination to continue not to deduct CVDs from USP.

As we are continuing our established practice of not deducting CVDs from USP, we will not consider the Maritimes' request to have a separate Maritimes-only weight-averaged non-selected respondent antidumping duty rate due to their exemption from the CVD order. However, we note that the final results of this review only cover the AD order on certain softwood lumber and have no bearing on the results of any current or future CVD order on certain softwood lumber from Canada.

Comment 2: Collection of Cash Deposits

Buchanan, Canfor, Slocan and the Maritimes oppose the Department's proposal to instruct CBP to apply the cash deposit rate to the sum of the entered value, CVDs, and ADDs, when these items are deducted by in determining entered value. The respondents argue that the Department should continue to follow its standard practice in calculating cash deposit rates and instruct CBP to determine cash deposit rates by applying the appropriate company-specific or overall weighted-average antidumping duty cash deposit rate to the entered value of merchandise. They allege that there is no statutory or policy basis justifying the duty deposit multiplier that this

contemplated methodology would create. The Maritimes also claim that such practice would violate 19 U.S.C. § 1401a(b)(3)(B), the provision defining dutiable value for CBP purposes.

According to the respondents, applying the cash deposit rate to the sum of the entered value, CVDs and ADDs would "unlawfully inflate" the amount of cash deposits required to be posted as security pursuant to the antidumping statute. They criticize the Department for not providing any reason as to why such a change is necessary. Citing Citrosuco and Rautaruukki Oy v. United States 22 CIT 786, 789 (August 4, 1998), Buchanan argues that the Department is required by law to explain and justify the basis for any change in its instructions to CBP. In addition, Buchanan contends that duties are not being under-collected because although overall margins in the Preliminary Results of the first administrative review, published on June 14, 2004, were lower than those calculated in the amended order following the investigation, published on May 22, 2002, CBP continues to collect deposits based on the higher investigation rates. Canfor states that information on the record defends the Department's current practice in collecting cash deposits. Specifically Canfor points out that the cash deposit rate for the non-selected companies was 3.98 percent, while the assessment rate for the non-selected companies, which was based on the weighted-average of the respondents' entered values, is 4.23 percent. According to Canfor, this minor difference indicates that there is no significant under-collection of cash deposits.

Canfor also argues that this issue has been disputed numerous times in front of the Court of Appeals of the Federal Circuit (Federal Circuit) and the CIT, and both have rejected the validity and upheld the current methodology used by the Department in collecting cash deposits. Canfor states that the statute provides that cash deposits need only be a reasonable estimate of the actual ADDs that may be assessed, a concept affirmed by the Federal Circuit in Timken.[7]

As discussed above in Comment 1, the petitioner believes that in comparing USP to NV, the Department should adjust the USP to reflect any CVDs imposed to offset domestic subsidies during the POR. However, should the Department not agree on that point, the petitioner argues the Department must, at a minimum, apply the cash deposit rate to the sum of entered value plus CVDs. The petitioner maintains that if CVDs are not deducted in calculating USP, there is an inconsistency between the calculated USP and the entered value declared to CBP. Accordingly, the petitioner believes the Department must instruct CBP to apply the cash deposit rate to the sum of the entered value and CVDs when CVDs are deducted in determining entered value.

The petitioner disputes Buchanan's, Canfor's and Slocan's argument that the Department's proposed methodology unjustifiably departs from a long-standing practice and would result in the over-collection of cash deposits, thereby running afoul of successive decisions of the Federal Circuit and the CIT. The petitioner stresses that the Federal Circuit and the CIT never ruled that the Department is precluded by law from implementing the proposed methodology. In addition, the petitioner states that the cases cited by Buchanan, Canfor, and Slocan do not validate their

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[7] See, e.g., Torrington Co. v. United States, 44 F.3d 1572, 1578-79 (Fed. Cir. 1995) (Torrington); Timken Co. v. United States 930 F. Supp. 621, 625 (CIT 1996) (Timken).

respective arguments as to why the Department may not undertake the methodology proposed in the Preliminary Results. On the contrary, argues the petitioner, the citations support the "sound discretion" of the Department in making such a decision. Accordingly, the petitioner highlights that, the Department should implement the procedure described in the Preliminary Results, by instructing CBP to apply the cash deposit rate to the sum of the entered value and the CVD deposit for each respondent's U.S. sales.

Department's Position:

We agree with the respondents. The Department's current practice of applying the cash deposit rate to entered value is reasonable and in accordance with the law. We note that the issue of the appropriate method of collecting cash deposits has been argued numerous times before the CIT and Federal Circuit, which have upheld the current methodology used by the Department in collecting cash deposits.[8] In Torrington, the Federal Circuit stated:

> Title 19 bases the cash deposit rate on estimated antidumping duties on future entries. See 19 U.S.C. § 1673f (providing for refund or collection of over- and under-payments of estimated duty deposits); 19 U.S.C. § 1673b(d)(2) (administering authority must order posting of a cash deposit equal to the "estimated average amount by which the foreign market value exceeds the United States price"); 19 U.S.C. § 1673e(a)(3) (administering authority must publish an order requiring "the deposit of estimated antidumping duties"). Thus, Title 19 requires only cash deposit estimates, not absolute accuracy. These estimates need only be reasonably correct pending the submission of complete information for an actual and accurate assessment. See H.R. Rep. No. 317, 96th Cong., 1st Sess. 69 (1979).

As stated in Torrington, the cash deposit is meant to be a reasonable estimate. It is a rare occurrence that the assessment rate for an administrative review is identical to the cash deposit rate from the prior segment of the proceeding. We note, however, contrary to the argument made by Buchanan, that the fact that the preliminary cash deposit rates were lower than the rates in the investigation is not a factor in our decision. Preliminary rates are just that, preliminary, and have no effect on cash deposit rates. Further, there is no guarantee that the rates in the second review will be lower than in the first. While we agree with the petitioner that the courts have found that the Department has discretion in determining how to calculate and apply the cash deposit rate, we do not believe the facts of this case justify departure from our long-standing practice. As Canfor noted, the difference between the review-specific cash deposit and assessment rates does not indicate a large systematic under-collection of duties.

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[8] See e.g., Torrington; Timken; Daewoo Elec. Co. v. United Sates, 712 F. Supp. 931, 956 (CIT 1989) 6 F.3d 1511 (Fed. Circ. 1993); Zenith Elec. Corp. v. United States, 770 F. Supp. 648, 655 (CIT 1991), 77 F.3d 426 (Fed. Cir. 1996).

Therefore, we have not implemented the procedure described in the Preliminary Results and have followed our current practice of instructing CBP to determine cash deposit amounts by applying the appropriate cash deposit rate to the entered value of merchandise.

Comment 3: Value-Based Cost Methodology

Value-Based Cost Methodology: a) Abitibi, Tembec, and the petitioner argue that the Department should abandon the net realizable value (NRV) allocation method, and instead, rely on the respondents' costs as they are maintained in their normal books, i.e., on cost per thousand board feet (MBF) basis (Canfor and West Fraser oppose this position); b) Abitibi and Slocan argue the Department should exclude U.S. sales prices and expense data when computing the NRVs used for allocating wood and sawmill costs to individual products (The petitioner opposes this position); and, c) Slocan argues that the Department should treat the woodlands operations as the focal point of the value allocation and include all products in the value-based allocation that are made from wood obtained from the woodlands (The petitioner opposes this position.).

A. Abandonment of the NRV Allocation Method

Abitibi, Tembec, and the petitioner argue that the Department should abandon the price-based cost allocation method, and rely on the respondent's costs as maintained in their normal books and records. These parties ague that the softwood lumber industry throughout North America accounts for joint products at the sawmill by allocating costs over volume (i.e., per MBF) in their normal books and records. They argue that although the Department has struggled valiantly to make an NRV method work, it has created a monstrously complex system that is extremely burdensome on all parties, undermines the very purpose of the antidumping statue, and instead of solving problems, substitutes even worse flaws than those it attempts to remedy.

Abitibi, Tembec and the petitioner argue that section 773(f)(1)(A) of the Act states that costs shall normally be calculated based on the records of the producer, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country, and reasonably reflect the costs associated with the production and sale of the merchandise. Furthermore, they argue that section 773(f)(1)(A) states the Department shall consider all available evidence on the proper allocation of costs, if such allocations have been historically used by the producer. They argue that all of the respondents in this case have historically used, and continue to use, a volume-based cost allocation for their joint products. Tembec and Abitibi argue that their records are audited, are maintained in accordance with Canadian GAAP, reasonably reflect the costs associated with the product, and provide a method approved by cost accounting literature. The petitioner argues that for all of the respondents, MBF costs are reliable for purposes of the statute. In addition, the petitioner notes that while Weyerhaeuser does not comment on the propriety of using a value-based cost allocation at the sawmill, Weyerhaeuser does object to a value-based allocation applied to its wood costs at the timberland units, saying that the Department must rely on the cost records of the respondent except in rare situations.

Abitibi and Tembec argue that the antidumping statute is not punitive, but remedial and prospective. Further, they argue that in order to be remedial, rather than punitive, the method used in enforcing those orders must be designed to eliminate dumping going forward by encouraging foreign producers to sell in the U.S. market at not less than fair value (LTFV). They contend that this purpose is frustrated when the Department employs a methodology that is so complex that a foreign producer cannot reasonably ascertain the price above which it must sell in the United States to eliminate dumping.

Tembec argues that the NRV method makes it impossible for foreign producers to insure that U.S. sales are not at LTFV, because the cost of production (COP) is contingent on highly variable selling prices, including selling prices to the United States, over an entire review period. It claims that when the relative prices of two products change during the POR, the costs assigned to them under the NRV method could change radically, even though there was no change in the actual costs incurred to make those products. Because a company cannot know its costs as reallocated under the NRV method until after the POR is over, Tembec argues that respondents cannot know with any degree of certainty at what price they must sell in the United States to avoid dumping. Tembec argues that the volume-based allocations used in the industry's records are stable and predictable because those costs are based directly on actual costs recorded in the company's records, and a company that wants to discipline its selling prices to avoid dumping can monitor and manage costs and prices. By contrast, the NRV reallocation method is based on factors that are external to production costs and completely unpredictable.

Tembec argues that the NRV methodology creates incentives under certain circumstances to lower U.S. prices when market signals would indicate that USP should be raised. It notes that should a company lack above-cost home market sales for a particular product, it could under the NRV method, convert some of its below-cost sales to above-cost sales by reducing its USP for that product. Tembec notes that as long as a company keeps U.S. prices above the now above-cost Canadian prices, it would not be dumping. It further notes that even were it to drop U.S. prices below the Canadian prices, the resulting dumping margin on those sales might be lower than the margin generated by a similar match or constructed value. By contrast, Tembec argues that when costs are allocated by volume consistent with the company's records, the dumping methodology consistently creates an incentive to sell in the United States at the highest price that the market will bear.

Tembec notes that when the Department originally adopted the NRV method it attempted to keep the method as simple as possible, by limiting it to home market sales, and by limiting the allocation to differences in grade. Tembec argues that in response to the decision of the NAFTA Panel reviewing the antidumping investigation, the Department has had to extend its NRV method to cover dimensions and has tried to create a workable cost allocation method. Tembec notes that respondents are now required to submit five data sets and three complex computer programs, which required further adjustments throughout the review in response to numerous methodological problems. Thus, according to Tembec, the Department has created "an impossibly complex monster with an insatiable appetite for data" that is less accurate than the

original books and records of the respondents. Tembec argues that the NRV methodology is so complex and variable that slight changes in methodology make large differences in the dumping margin. It argues that changes, such as extending the NRV method to differences in dimension or the inclusion of different combinations of prices (U.S. prices, home market prices, and foreign prices), make substantial differences in cost allocations. Because of these and many other problems, Tembec argues that the NRV method is an unreliable tool for calculating dumping margins and should be replaced by a return to the costs per the books and records of the producers.

Abitibi argues that the Department's rationale for its value-based cost allocations in the LTFV investigation is no longer applicable. Abitibi notes that there are special challenges posed in computing production costs for products manufactured in a joint production process, and that the Department has never adopted a policy of using value-based cost allocations in all cases involving joint products. In fact, Abitibi argues that the Department has resisted the use of value-based cost allocation methodologies in numerous cases, involving products as diverse as different grades of pipe,[9] different sizes of mushrooms,[10] different grades and sizes of fresh salmon,[11] and greenhouse tomatoes,[12] while employing value-based costing in only a few cases, such as Pineapple from Thailand[13] and Polyvinyl Alcohol from Taiwan.[14]

Abitibi argues that in Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002) (Softwood Lumber LTFV Final Determination), the Department sought to harmonize these various decisions by drawing a distinction between joint products produced from a homogenous input (like mushrooms, salmon, and tomatoes) and joint products produced from physically different inputs (like pineapple juice and pineapple core). Abitibi notes that the Department asserted that lumber fell into the latter category because the Department was using value-based cost allocations *only* to account for differences in grade, and different parts of different logs had different grade characteristics. See Softwood Lumber LTFV Final Determination and accompanying Issues and

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[9] See IPSCO Inc. v. United States, 965 F.2d 1056 (Fed. Cir. 1992).

[10] See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246, 72248, 72254 (December 31, 1998) (Mushrooms form India 1998).

[11] See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile, 63 FR, 31411, 31413 (June 9, 1998) (Salmon from Chile 1998).

[12] See Notice of Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada, 67 Fed. Reg. 8781 (February 26, 2002) and accompanying Issues and Decision Memorandum at Comments 5 and 6.

[13] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand, 60 Fed. Reg. 29553, 29560 (June 5, 1995) (Pineapple from Thailand).

[14] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 Fed. Reg. 14,064, 14,072 (Mar. 29, 1996) (PVA from Taiwan).

Decision Memorandum at Comment 4. The Department ruled that because grade is inherited in the log, this distinguished cases such as mushrooms, tomatoes, and salmon, where differences in size or grade did not result from extracting pre-existing differences in the raw material input, but rather errors in the production process. Abitibi argues that the problem that the Department now faces is that a NAFTA Panel has rejected the Department's attempt to limit the value-based allocation to grade, and required its extension to dimension (thickness, width, and length). As a result, Abitibi argues the distinction the Department sought to draw between lumber on the one hand, and tomatoes, mushrooms, and salmon, on the other hand, can no longer be sustained. Thickness, width, and length are not "preexisting" in the log and "extracted" through processing. Thus, Abitibi argues that the Department's rationale for employing value-based cost allocations in the first place – its extraction theory – can no longer justify the full value-based cost allocations the NAFTA Panel has ruled must be employed if the Department uses value-based costs.[15]

Abitibi argues that substitution of value-allocated joint costs for the average joint costs recorded in its records is highly problematic, because the value-allocated methodology does not eliminate distortions, but instead introduces new and different distortions. Thus, Abitibi argues, the value-allocation methodology does not better "reasonably reflect the costs associated with the production and sale" of all of Abitibi's different softwood lumber products, as the Act requires.

First, Abitibi argues that the Department's methodology computes annual average NRVs, assigning costs based on annual average relative values. Abitibi argues that in the lumber industry, prices are highly volatile, with both absolute and relative prices varying greatly. Abitibi notes that in the LTFV investigation, the Department ignored this problem because it focused just on grade differences among products that were otherwise identical. Abitibi notes that such products do tend to have relatively stable relative prices precisely because they are alike in all respects except grade. Abitibi argues that the real problem arises because relative prices fluctuate the most among *dissimilar* products.

Second, Abitibi argues that changes in relative prices occur, not only between high volume products in the same grade groups, but even among several high volume products in completely different grade groups, e.g., machine stress rated, stud, structural, finger-jointed stud, and finger-jointed structural. Abitibi's plotting of the monthly percentage differences between each selected product and the annual average NRVs shows significant volatility. Abitibi argues that this simple analysis of its own lumber prices shows that overall price levels were not stable over the POR, and more importantly that even the relative prices between grade groups fluctuated greatly over short periods of time. Abitibi argues that this degree of instability, where individual products' average prices frequently cross each other, indicates the degree to which relative prices change, and the degree to which the Department's NRV method distorts the dumping analysis.

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[15] As no party pursued an appeal of the issue of whether value-based cost allocations should be used at all, the issue of whether the Department could use a full average cost methodology for joint costs was not before the Panel.

Third, Abitibi argues that the Department's NRV methodology distorts the AD margin because it captures not simply the relative price differences among products, but also price differences between different markets, and impermissibly ties the computation of NV to the computation of export prices and constructed export prices (for further information, see part B below).

Fourth, Abitibi argues that the NRV cost allocation methodology distorts the antidumping duty margin because it mixes mill-specific costs with company-wide NRVs, instead of allocating company-wide woodlands and sawmill costs on the basis of company-wide NRVs, as the Department did in the Softwood Lumber LTFV Final Determination. This, it argues, mismatches results in each sawmill's costs being allocated, not based on the value of that sawmill's output, but rather on the basis of company-wide averages.

Finally, Abitibi argues that the NRV method distorts the AD margin because the Department has excluded prices for sales made in mixed-length tallies from its NRV calculations, while at the same time continuing to use at least some of these prices in its price-to-price comparisons. Abitibi argues that, as a result, the values used do not capture all sales. For all of these reasons, Abitibi argues that to eliminate these distortions, the Department should compute woodlands and sawmill costs using the average cost methodology consistent with Abitibi's books and records.

Canfor and West Fraser argue that the lumber costs (i.e., cost per MBF) recorded in their normal records are distortive and, thus, the Department should depart from the records of respondents and should use the value allocation for the final results. Canfor argues that the complexity of the value-based cost method is no justification for scrapping that method in favor of a volume-based cost method. Canfor argues that in the LTFV investigation, the Department determined that a volume-based allocation of wood and sawmill costs to all lumber products did not reasonably reflect per-unit costs. Canfor argues that the different grades and dimensions of lumber constitute joint products with significantly different values. Thus, they argue that a volume-based allocation would necessarily and inevitably result in distortions, since lower value products always would be found to be sold below cost, while higher grade products would show fabulous profits. Canfor argues that this would lead to U.S. sales of lower grade products being matched to Canadian prices for other higher-value products (without any adjustment for differences in merchandise – because there would be no cost differences) or to constructed value. Morever, Canfor argues that constructed value would be based on extraordinary and unrealistic profit rates generated by the average cost methodology. A value-based cost allocation avoids these distortions, in Canfor's view. Finally, Canfor argues that Tembec does not explain how the distortions, arising from the volume-based methodology, would be more consistent with the remedial purposes of the statute than the current value-based cost system.

Department's Position:

We disagree with petitioner, Abitibi, and Tembec, with respect to their position that for this review the Department should abandon the NRV allocation method used for the Preliminary Results. While we agree that there are problems with any NRV method, none of the parties have

proposed a viable alternative that reasonably addresses the problems identified with the NRV method or the problems identified with a straight volume-based method, i.e., MBF.[16]

As we stated in the Softwood Lumber LTFV Final Determination and accompanying Issues and Decision Memorandum (Softwood Lumber LTFV Decision Memorandum) at Comment 4, "Due to the diversity of the industry, the range of wood grades found in any given log, the numerous permutations of physical characteristics, and the fact that lumber production is the result of a joint production process, the cost allocation issues raised by this case are among the most complex the Department has ever considered. The respondents themselves do not agree on the appropriate method to use to allocate costs to lumber products." All of the foregoing remains true for this first review.

While lumber production is a joint product situation, in that different grades of wood are cut from different parts of a given tree,[17] other aspects of the process, such as dimension, are under the control of the producers and, thus, not characteristic of a joint product process.[18] Moreover, applying a value-based cost allocation to a sawmill operation is complicated by the fact that lumber prices are volatile on a short, medium, and long-term basis due to a number of factors, such as, weather, housing starts, building trends, economic cycles, etc. Prices are also affected by certain lumber industry norms. For example, given that lumber companies combine sophisticated computerized cutting equipment with current market data to cut specific dimensions, and in some cases, grades, of product that are temporarily enjoying marginally higher prices because of market shortages or demand, it is not surprising that we see prices of different products continuously trending back toward each other.[19] These were among the reasons why we stated in the investigation that,

> We recognize that a value-based cost allocation method can be problematic in an antidumping context. The most obvious problem is the potential circularity of the analysis, whereby prices are used to determine the product-specific costs which in turn are either compared to those same product-specific prices or are used to determine prices

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[16] Respondents that support the use of an NRV method argue that: 1) the use of an average MBF cost resulted in numerous CONNUMs of "lower value" products being found below cost; 2) that only the "high" priced products were passing the cost test, and thus the CV profit applied to the lower value below cost products created dumping margins; and, 3) because actual MBF cost for major groups of similar products were the same, the Department could not make "DIFMER" adjustments as required by the statute.

[17] It is also true that lumber companies typically purchase trees by the cut block or stand at some agreed upon price, knowing that they will obtain a range of wood grades from the cut block.

[18] While not necessarily costing any more to manufacture, certain dimensions appear at times to have different market values. It is difficult to assign a specific reason for these value differences but it appears that among other reasons, unusual dimensional differences and building requirements of particular markets affect price.

[19] In addition, lumber is sold on a thousand board foot measure, which equates a different number of pieces of each dimension to the same measure.

> (i.e., through the sales-below-cost test and constructed value)....Other market factors may also create problems with using prices as a basis of allocation, such as volatile market prices (as alleged here by Abitibi), temporary surges in supply and demand, and specific market preferences for specific products. In addition, the statute directs the Department to determine the actual cost to produce the merchandise under consideration and establishes that cost as a floor for the comparison prices. Thus, we believe the use of a value-based cost allocation method is appropriate in an antidumping context in only very limited instances.

See Softwood Lumber LTFV Decision Memorandum at Comment 4.

In the investigation we adopted a limited value allocation methodology. We limited the value allocation to wood grades, because wood grades were the only physical characteristic that exhibited aspects of a joint product.[20] We further limited ourselves to home market sales when determining the NRVs. We did this primarily because we were only attempting to capture broad grade differences[21], not individual products with unique physical characteristics, nor did we have available price data for significant quantities of subject and non-subject products, which were also jointly produced at the split. Thus any calculation was an estimate at best. We also limited our methodology because of some of the distortions identified by Tembec and Abitibi in this review, specifically, volatile prices, shifting relative values, periodic sales, and circularity. See Softwood Lumber LTFV Decision Memorandum at Comment 4.

Finally, we realized that the comparisons in a review would not be between weighted-average U.S. prices for the POR and weighted-average home market prices for the POR, but rather between individual transactions in United States and specific monthly average home market prices. In comparing period-wide average prices of similar products, using a difference in merchandise adjustment calculated from average period costs, price volatility is to some degree averaged out. However, short- and medium-term price volatility is not averaged out to the same degree when comparing individual U.S. prices to monthly average home market prices, and unusual results can occur. Thus, the distortions would be more strongly felt in subsequent reviews.

We believed at the time of the investigation that our methodology resulted in a reasonable allocation which addressed all of the argued joint-product issues. However, the NAFTA Panel

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[20] All other physical characteristics (dimension, drying, planning, etc.) are a direct result of management making a decision to create that characteristic. A standard joint product situation is one in which multiple products result simultaneously from a single process, and each product from the joint is an inevitable result of the joint process. Different wood grades are the only physical characteristic that is inevitable in lumber production. Moreover, the evidence on the record did not show any clear price pattern existed between the relative values of the majority of dimensional differences, unlike the evidence for grades differences.

[21] While most grades are sold in the home market, products defined by more detailed physical characteristics are not. Also, we believed that the differences between grades were consistent between markets.

instructed the Department to re-allocate joint production costs using a value-based cost allocation methodology which took into account dimensional differences between different jointly produced products. In our First Remand Determination,[22] we complied with the Panel's decision, but stated that, while "the Department continues to believe that the random nature of the movement in relative prices between the various dimensions precludes dimension-specific prices from being a sound basis for a cost allocation, we have complied with the Panel's instructions." See First Remand Determination at 14.

For the first administrative review, we set out to make a good faith effort to develop a value-based cost allocation method for lumber production. In a letter to interested parties dated August 1, 2003, the Department solicited comment from the parties on several threshold questions concerning cost.[23] The letter covered among others the following topics: 1) the level in the company where the allocation should be made; 2) what costs should be allocated based on value and to which products; 3) the scope and source of price data; 4) the period of time price data should reflect; 4) price fluctuations; 5) periodic or infrequent sales; 6) scope and non-scope merchandise; 7) allocation of the costs incurred at the timber units; and 8) accounting for dimensional differences. The parties responded to our letter on August 8, 2003, and submitted rebuttals on August 20, 2003. After considering all of the comments we issued the Section D and E questionnaire on September 22, 2003, which incorporated a value-based allocation methodology and solicited the information that we considered necessary.[24] We note that during the proceeding we allowed for certain exclusions for particular facilities or products and made certain modifications to the programs.[25]

Even now, after the Preliminary Results, briefing by all of the parties on this isssue, and a public hearing on October 6, 2004, in which this topic was discussed at great length by many of the

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[22] See First Remand Determination, In the Matter of Certain Softwood Lumber Products from Canada: Final Affirmative Antidumping Determination (July, 17, 2003) (First Remand Determination).

[23] Letter from Gary Taverman, Director, Office 5, to Mandatory Respondents, Re: Antidumping Administrative Review: Certain Softwood Lumber from Canada (Threshold Issues Request) (August 1, 2003).

[24] We disagree with Abitibi that because the NRVs used to allocate costs are based on company-wide averages the value allocation should be done on a company-wide basis. The costs incurred at each mill, which is the split-off point of the joint production process, should be allocated only to those products actually produced at the mill. To do otherwise would mean that those mills that produce higher value products would draw costs from other mills. The end result being that costs would no longer be allocated to those products that they were incurred to produce. Moreover, we received comments from other respondents that they believed that the sawmill should be the point where the value allocation is made. See Letters from the petitioner, Tolko, Weyerhaeuser, and Slocan dated August 8, 2003.

[25] For example, we allowed Abitibi to exclude two of its mills that produced only small quantities of subject merchandise. As part of the supplemental questionnaire process we made several modifications either to create more uniformity between companies or to address issues that presented themselves, such as tally sales.

parties[26], we continue to face challenges in finding an accurate and administrable method for costing lumber for an antidumping duty review. All of the parties to the proceeding record costs based on a volume measure, i.e., MBF basis. None of the parties have adopted a value-based method in their normal books and records since the lumber case began. Moreover, the parties seem to agree that there is no perfect method over which to allocate cost in a dumping context.[27]

We agree that there are significant issues with both methodologies. Because of that, we also considered other methodologies, in addition to analyzing the two alternative methods. Specifically, we considered possible ways to address certain distortions. For example, to address the problems caused by volatile prices, one could calculate costs over shorter periods of time, e.g., monthly costs. However, this would have required at least twelve value allocation programs and monthly price data for non-subject products and subject products sold only in third countries.[28] We rejected such changes to our calculations because even a single change in our methodology to account for one or two distortions leaves other distortions unaddressed and may even create more or different distortions as a result. In addition, we realized that if we made such changes late in the review process, parties would not have had an opportunity to comment on those specific changes.

Given that any changes we considered would make our calculations more complex, we rejected modifying the allocation program. We also considered returning to a more limited value-based method similar to the program used for the final determination of the LTFV investigation. However, because all parties at the public hearing objected to a more limited compromise method[29] and because such a change would only have addressed certain specific distortions, while leaving many others untouched, and again might have created new ones, we also rejected this alternative.

Finally, we considered adopting a volume-based MBF method. While this approach has the merit of corresponding to the respndents' books and records, it suffers from the flaws identified

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[26] See Transcript of Public Hearing concerning the First Antidumping Duty Review of Certain Softwood Lumber Products from Canada (October 6, 2004) (Lumber Hearing).

[27] In the Lumber Hearing, arguing for an MBF measure Tembec's counsel stated that, "We're not contending that any method solves all of your problems." See Lumber Hearing at 60. Weyerhaeuser's counsel stated that, "I have to say, we sort of are in this Hobbesian world ... in that no matter what you do, you're never going to get this exactly right." See Lumber Hearing at 67. West Fraser and Canfor's counsels arguing for a value-based method also asserted that value-based costing is not going to be perfect. See Lumber Hearing at 90.

[28] Another way to avoid volatile prices would be to go outside the POR for historical prices and average prices over a significant period in order to obtain NRVs that represent more normalized actual historical inherent value differences between grades or dimensions. However, there are many problems inherent in using information outside of the POR, not the least of which is the contemporaneity issue and questions pertaining to the relevance of non-POR transactions.

[29] See Lumber Hearing at 32, 55, 60, and 94

by respondents (see footnote 16). Consequently, relying on a volume-based cost would have likely required the adoption of a fundamentally different approach to performing the cost test and in calculating CV profit than has been used by the Department in the past. None of the parties put forth a complete argument for making such changes to our calculations in this review. Furthermore, we could not confidently defend that such a determination would be more accurate than the value-based cost methodology, in light of the fact that at least one physical characteristic, grade, has all the elements of a joint product and has a significant effect on lumber values. All parties agree with this latter point, and it was one of the primary reasons that the Department chose to depart from the MBF costs recorded in the respondents' records. As we stated in the Softwood Lumber LTFV Lumber Decision Memorandum at Comment 4, "we believe that a volume-based cost allocation for wood and sawmill costs distorts the actual cost of individual products, because it does not account for the various grades of wood in the logs and the resulting products produced ... In coming to our conclusion, we considered several factors, such as, the grade differences pre-exist in the raw materials and do not result from the production process." We still believe this statement is largely accurate and thus, we decided against relying on the per-unit MBF costs from respondents' books and records.

None of the respondents, including Abitibi and Tembec, challenged the use of a value-based allocation as modified in the NAFTA Panel remand. Moreover, all of the respondents submitting responses to the Department's threshold questions argued for the use of a value-based allocation.[30] Only the petitioner argued for the use of a volume-based allocation. In addition, all of the respondents commented that the POR prices of the individual respondents were the appropriate source for the NRVs. For the most part, they argued this because they felt that historical prices would not reflect the prices during the POR. Only the petitioner argued that historical prices should be used. All of the respondents, except Weldwood of Canada Ltd. (Weldwood), argued that price volatility was mitigated by the use of an average annual NRV allocation.[31] The petitioner argued that the presence of volatile prices made the use of a value-based method inappropriate. By counseling the Department to adopt a value-based method, and

[30] Abitibi and Tembec submitted responses. In response to the question of which costs should be allocated based on value, Abitibi stated the following: "The Department should follow the same approach as in the LTFV investigation, as modified by the NAFTA Panel. All woodlands and sawmill costs common to all lumber production at a mill should be allocated to all products produced, based on grade, thickness, width, and length." See Letter from Abitibi to the Department, dated August 8, 2003 at 8. Tembec also argued for a value-based allocation. See Letter from Tembec to the Department dated August 8, 2003 at 10.

[31] Weldwood argued that the value allocation should be limited to grade. It argued that prices for dimension were not consistent and could not be determined because of price volatility, while grade differences were apparent even in the face of volatile prices. See Weldwood of Canada Limited's letter to the Department dated August 8, 2003 at 14.

to use prices from the POR, respondents were apparently willing to accept to some extent the distortive effect of volatile prices and the added difficulty in monitoring their prices.[32]

In conclusion, we realize that all of the proposed methods are imperfect. We have continued to increase our knowledge of the lumber industry in general and the cost accounting issues related to lumber in detail, including a search for authoritative accounting literature. We weighed the responses from the interested parties to our threshold questions, as well as the comments from the briefs and rebuttal briefs. We have also reviewed extensive amounts of price and cost data on the record, including the product comparisons submitted in response to Section D.[33] While the decision of the NAFTA Panel is not precedential or binding for this review, we considered the Panel's remand determination from the LTFV investigation.[34] We continue to disagree with certain assumptions and conclusions made by the NAFTA Panel, but we have decided that for this review it would be appropriate to continue to use an NRV method, allowing for both grade and dimensional differences.

While the use of a volume-based cost allocation was not argued before the NAFTA Panel, the issues raised in the instant proceeding by Tembec, Abitibi, and petitioner are the same concerns raised by the Department in the LTFV investigation, and are in large part the same facts that drove us to adopt the use of a limited value-based method. Finally, because there is little in the way of new evidence that would make us change our original decision, we will continue to use the value-based method from the Preliminary Results of this review.

We note further that we have applied the value-based methodology to all respondents because the same general cost allocation issues are applicable to all respondents.[35] We will continue to entertain further arguments and proposed remedies for future reviews of this order.

B. Exclusion of U.S. Prices

Abitibi and Slocan argue that including U.S. sales prices and expense data when computing the NRVs used in the value allocation distorts the dumping analysis. Abitibi and Slocan contend that

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[32] We note that there are several ways to address the issue of monitoring pricing. For example respondents could adopt cost accounting systems that incorporate a value-based system, provided that it is used to value inventory and for financial reporting.

[33] See Section D Exhibits from all respondents.

[34] We disagree with Abitibi's argument that the NAFTA Panel's decision is meaningful for products such as tomatoes, mushrooms or salmon. While the industries that produce these products have grade systems, none of these products are the result of a joint product scenario.

[35] If individual respondents incorporated different cost accounting systems that took different approaches in addressing the particular accounting issues for the industry, and the Department found that each individual respondent's books and records result in a reasonable cost, the Department would be obligated to allow for different accounting methods across multiple respondents.

the use of U.S. sales prices and expense data violates the purpose and structure of the anti-dumping statute, and thus is not in accordance with law. Abitibi and Slocan argue that the inclusion of U.S. prices and expense data in the computation of NRVs links the calculation of NV to the calculation of U.S. prices (either directly through the calculation of constructed value or indirectly through application of the below-cost test to home market sales) creating a circular antidumping computation.

Abitibi and Slocan contend that during the POR, price levels in the United States for lumber were far above Canadian price levels, and that the mix of products sold by each company in each market differs. Abitibi and Slocan argue that, as a result, the use of U.S. prices in the value allocation reflects not only differences in the relative values of the products, but also differences in relative prices between the U.S. and Canadian markets, which they assert should not be permitted to affect an antidumping cost allocation.

Finally, in an argument similar to that put forward by Tembec above, they argue that an increase in U.S. prices will result in greater costs being allocated to those products sold in the United States, which will ultimately increase NV for those products if they are also sold in the home market, either directly through the calculation of constructed value, or indirectly through the application of the below-cost test to home market sales. On the other hand, they argue that if prices in the U.S. market decrease relative to prices in the Canadian market, the opposite effect occurs, since products sold in the U.S. would attract lower costs. Abitibi and Slocan contend that this result cannot be reconciled with any statutory purpose. For the statute to have any meaning, they argue that NV must be computed independently of prices in the United States.

The petitioner argues that the Department, to the extent that it continues to employ a value-based cost allocation, should continue to employ U.S. prices in the calculation of NRVs. The petitioner rebuts Abitibi and Slocan's argument that the Department's current practice of including U.S. prices in the derivation of the NRVs is inconsistent with past practice. The petitioner notes that "past practice" consists of precisely one investigation.

The petitioner argues that the inclusion of U.S. prices in the derivation of NRVs was implemented only after seeking extensive comments on the this issue from interested parties. The petitioner notes that in Abitibi's comments on a potential methodology in this case, Abitibi suggested that if a product is sold only in the United States, its U.S. NRV should be used, as that value properly reflects the product's value. The petitioner argues that the inclusion of U.S. prices, as well as third-country prices, in the derivation of the NRVs is necessary in order to capture the true value of all products produced at the split-off point in a joint product scenario. The petitioner further argues that Canfor correctly noted in its comments on this issue at the outset of this review that "{o}ne principal economic rationale for value-based costing is that cost recovery on jointly produced products can only be determined by considering the total revenue

generated for all the jointly produced products."[36] The petitioner argues that other interested parties made essentially the same point.[37] The petitioner argues that the only logical conclusion from this unassailable point is that U.S. prices must be included in any derivation of the NRVs used in a value-based cost allocation scheme. Products sold in the U.S. market are jointly produced with products destined for the Canadian market, and third-country markets, and there is no logical reason why joint-product NRVs from the U.S. market should be treated differently than joint-product NRVs from other markets – especially where, as here, the majority of joint products are sold in the U.S. market.

The petitioner argues that the inclusion of U.S. prices in the derivation of the NRVs does not inject circularity into the process; rather, the use of home market prices injects circularity. While the petitioner agrees that the concept of value-based costing in general is circular and inherently problematic, it maintains that the use of U.S. prices in a value-based cost allocation is far less circular than the use of only home market prices in such a scheme – as home market prices, not U.S. prices, are the prices that will be tested against the allocated costs. The petitioner argues that contrary to Abitibi's and Slocan's claims, the inclusion of U.S. (and third-country) NRVs actually reduces the level of circularity in a value-based cost reallocation scheme. In fact, they argue, only by including NRVs for all joint products produced within the sawmill (regardless of where those joint products are sold) will the Department be able to minimize the circularity inherent in any such scheme.

Moreover, the petitioner argues that the claims that inclusion of U.S. prices in the value-based cost reallocation somehow causes NVs to be "perversely" dragged upwards, increasing dumping margins, is simply wrong. It argues that to the extent that the product mix in the U.S. market and the home market is different, and to the extent that U.S. prices are higher than those in the home market, which it claims is an unsubstantiated assumption, the inclusion of U.S. prices in a value-based cost reallocation scheme will cause greater costs to be assigned to products sold in the U.S. market and lower costs to be assigned to products sold in the home market. The petitioner notes that the assignment of lower costs to home market products should lead to a reduction, not an increase, in NV -- and, consequently, a reduction, not an increase, in the dumping margin.

Finally, the petitioner argues that Abitibi's claim that inclusion of U.S. prices in the derivation of NRVs biases the calculation of dumping margins is off-base and should be rejected. It argues that the inclusion of U.S. prices in the derivation of NRVs only affects the allocation of costs to

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[36] See Letter from Canfor to the Department dated August 8, 2003, Re: Certain Softwood Lumber (Canfor's Aug. 8 Response) at 16 (emphasis added).

[37] See, e.g., Letter from Weyerhaeuser to the Department dated August 8, 2003 (Weyerhaeuser's Aug. 8 Response) ("This methodology best reflects the principle of the NRV analysis, which is to allocate manufacturing costs to products on the basis of the relative values of all products manufactured from those manufacturing costs"); Letter from Weldwood to the Department dated Aug. 8, 2003 (Weldwood's Aug. 8 Response) ("Theoretically, when allocating common costs based upon net realizable value, the market sold should not be a consideration"); JD Irving, Ltd (JD Irving) to the Department dated Aug. 8, 2004 (J.D. Irving's Aug. 8 Response) ("{C}osts should be allocated over the entire volume and array of products that constitute the sawmill output").

various products based on the relative NRVs of those products; the absolute differences between home market prices and U.S. prices -- which form the basis of the dumping calculation – do not enter into the value-based cost allocation process. It argues that while U.S. sales prices may well be unrepresentative of the fair market values of various products, and should not be used for absolute valuation purposes, there is no inherent reason why the relative price differences between products within the U.S. market will necessarily provide a false representation of relative NRV differences. The petitioner argues that for all of the reasons discussed above, to the extent that the Department continues to employ a value-based cost reallocation scheme in its final results, the Department should continue to use U.S. sales prices in the calculation of NRVs.

Department's Position:

We agree with the petitioner and, for the purposes of these final results, have continued to use U.S. prices in the NRV cost allocation methodology. Section 773(f)(1)(A) of the Act states that the Department shall consider the record evidence when determining the proper allocation of costs. In the Preliminary Results of this administrative review, we allocated sawmill costs using a value-based cost allocation methodology that relied upon the NRV of lumber products sold in all markets, including sales to the United States. Contrary to Abitibi and Slocan's arguments, we did not directly link the USP to the calculation of NV or CV. Instead, we determined that the NRV for all jointly produced products sold in all markets was required in order to appropriately allocate the total joint costs. As the theory behind an NRV cost allocation method is to allocate costs relative to the revenue generating power identifiable with each individual product, all products and all sales need to be included in the allocation. In the instant case, U.S. prices, along with sales prices in Canada and third countries, were used to determine the relative costs of each sub-group of lumber products among the total group of products. We calculated COP and CV, where necessary, based on costs assigned to each product as a result of its NRV in all markets relative to all other products' NRV in all markets. U.S. prices, along with Canadian and third-country prices, were used to determine the relativity of sawmill costs among joint products, not the actual costs of the products.

Abitibi and Slocan argue that the value allocation methodology employed by the Department in the Preliminary Results injects circularity into the margin analysis. Further, Abitibi argues that an increase in U.S. prices will result in increased costs allocated to those products and, in turn, higher dumping margins. We disagree. The purpose of the value allocation methodology is to assign costs to joint products (i.e., those products not separately identifiable as individual products until after the split-off point).[38] Lumber products, in accordance with this definition, are joint products and the sawmill costs are joint costs. The ultimate sales destination (i.e., home market, U.S., or third-country) is not a physical characteristic that separately identifies one lumber product from another. As noted by the petitioner, products sold in the U.S. market are jointly manufactured with products destined for the Canadian market and third-country markets.

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[38] See Cost Accounting: A Managerial Emphasis (7th ed.), Charles T. Horngren and George Foster, New Jersey: Prentice Hall (1990), p. 527, for the definition of joint products. Consistent with the Preliminary Results, we consider the split-off point to be the end of the sawmill process.

Therefore, the NRV of lumber products sold in all markets must be considered when allocating the joint costs of the lumber products. To ignore the U.S. prices of lumber products in the value-based cost allocation, as suggested by Abitibi and Slocan, would result in an inconsistent allocation because only Canadian and third-country prices for products sold in those markets would be used to allocate costs of all merchandise produced for all markets.

In addition, circularity concerns are inherent in any value-based allocation. While Abitibi and Slocan only raise this concern with regard to U.S. sales, we note that the same concern exists with the use of home market sales. The same home market sales used to allocate costs are being compared to the resulting COPs in order to determine whether the sales occurred at below cost prices. In line with Abitibi and Slocan's logic, we would either need to use only third-country prices in the NRV allocation, use prices from a period where there was no allegation of unfair pricing, or adopt a less product-specific based NRV allocation (e.g., account for grade differences only). We also note that there are numerous products that were only sold in the United States, thus requiring the use of the U.S. sales prices. We disagree that it would be appropriate to include U.S. sales prices in certain instances, but exclude them in others.

We further disagree that an increase in USP would directly result in higher costs being allocated to those products sold in the United States and lower costs being allocated to those products sold in the home market. In order for Abitibi's assertion to be correct, all other prices of all products in all other markets would have to remain constant as well as all product mixes. Because the Department's value-based cost allocation methodology relies on the relevance of NRVs among products, the USP must increase relative to all other prices of all products in order for an increase in the USP of a product to influence the cost allocated to that product. For example, if the USP for a certain lumber product increases and the third-country price increases for another product, but the increases in price are not the same (i.e., the third-country price increase is larger than the increase to the USP), the relativity of both products to all other products changes and the cost allocation among all the products changes. Thus, an increase in USP of a lumber product does not necessarily result in an increase in the allocation of cost to that category of product. We agree with the petitioner, contrary to Abitibi's claim, that a reduction in the costs allocated to products sold in the home market would not necessarily result in a higher margin. As the petitioner noted, a reduction in the cost of products sold in Canada could result in an increased number of products passing the Department's below cost test and consequently result in a lower dumping margin. Because using the prices of all products in all markets best represents the allocation of the costs of the joint products, we find that including all prices (i.e., U.S., Canadian, and third-country prices) of the joint products in the NRV cost allocation reduces circularity in the Department's margin analysis.

With regard to Abitibi's and Slocan's arguments regarding the calculation of CV, we reiterate that the U.S. sales prices are used in the Department's value-based cost allocation, along with Canadian and third-country markets, to determine the relativity of value among the lumber products manufactured. As a result the sawmill costs are allocated among joint products based on NRV. Therefore, contrary to Abitibi's and Slocan's assertions, the USP, in and of itself, is not used as the basis of the Department's calculation of CV.

C. Woodlands Operations as the Focal Point of the Value Allocation

Slocan argues that the Department should allocate woodland costs by relative NRVs for all joint products of the woodlands. It contends that all products produced from the standing timber at the woodlands should be treated as a joint product. Thus, lumber produced at sawmills, plywood produced at plywood mills, and logs sold by the woodlands units would be combined into one large value allocation. It argues that the Department did not use a value allocated woodlands cost between lumber and non-lumber products, but instead used an average costing for logs to split woodlands costs between logs sent to sawmills and logs sent to other types of mills or log sales. It argues that, with few exceptions, the costs at the woodlands are common (joint) to all logs. Further, it argues that a single tree can contribute logs consumed in multiple end purposes.

The petitioner argues that should the Department continue to use a value-based allocation, the proper split-off point for this case is the sawmill. It argues that Slocan persists in the mistaken notion that the joint process begins with woodlands, despite having been rebuffed by both the NAFTA Panel and the Department. It argues that Slocan's intent is to allocate more costs to logs sold and thus away from lumber products. It argues that logs are the raw material input for the lumber production process and that the valuation of logs is independent from the decision of how to value lumber. The petitioner states that the NAFTA Panel rejected Slocan's similar arguments. See Certain Softwood Lumber Products from Canada, File No. USA-CDA-1904-02 (July 17, 2003), (NAFTA Panel Decision 2003) at 118.

Department's Position:

We agree with the petitioner and have continued to consider the sawmill to be the proper split-off point for purposes of the NRV based cost allocation. A joint cost[39] is the "cost of a single process... that yields multiple products simultaneously." The split-off point is the point within that process when the "products become separately identifiable."[40] Joint products are further defined by Horngren and Foster as those products that have "relatively high sales value and are not separately identifiable until the split-off point."[41] Conversely, by-products are defined as those products that have a low sales value compared with the sales values of the joint products.[42]

In the instant case, we consider the logs harvested within the timberlands to be the raw material inputs into the sawmill process. The joint costs are the sawmill costs and the split-off point is at

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[39] As defined in Cost Accounting: A Managerial Emphasis (7th ed.), Charles t. Horngren and George Foster, New Jersey: Prentice Hall (1990), p. 527.

[40] Id.

[41] Id.

[42] Id.

the end of the sawmill process where the lumber products become separately identifiable.[43] The resulting joint products (i.e., lumber products) have relatively high sales value and cannot be identified prior to the end of the sawmill process.

Contrary to Slocan's arguments, we do not consider the logs harvested from the timberlands to be joint products. Instead, we consider all harvested logs to be harvested logs regardless of the ultimate purpose for which those logs are used (e.g., production of lumber, sales of logs, or production of plywood). Although the end purposes of the logs may differ, the input into each of the different production processes (or, in cases of logs sales, the merchandise sold) is still the same – harvested logs. Further, the ultimate products (e.g., lumber, plywood, or merchandise produced by the buyer of the harvested logs) are not identifiable at the end of the woodlands process. The only product at the end of the timberlands process is harvested logs. As a result, the harvested logs do not meet the definition of joint products nor does the end of the woodlands process meet the definition of a split-off point. Therefore, we do not believe using an allocation based on the NRVs[44] of the various finished product lines that consume logs as input (e.g., lumber, plywood, oriented strand board) is the proper methodology to allocate woodlands costs. In effect, under such an approach, we would be allocating log costs to the various wood consuming product lines based on the relative profitability of each of the end products, which primarily reflects the profit added after the log is consumed versus the relative differences in the value of the logs.

Comment 4: Treatment of Non-Dumped Sales

The BCLTC, supported by Abitibi, Canfor, Buchanan, Slocan, Tembec, Tolko and West Fraser, argues that the Department should abandon the practice of "zeroing" negative margins in all circumstances, and recalculate the respondents' margins without "zeroing" because, as the U.S. courts have found, the practice is not required or permitted by U.S. statute, and it has been ruled illegal in the World Trade Organization (WTO).

Citing Viraj Group Ltd. v. United States, 162 F. Supp. 2d at 662-63 (August 15, 2001), the BCLTC claims that, pursuant to section 773(a) of the Act, the Department must make "fair comparisons" to "determine margins as accurately as possible." "Zeroing," the BCLTC continues, does not produce such fair comparisons because it inflates the dumping margin or creates a margin where none exists. Additionally, the BCLTC claims, "zeroing" fails to produce a weighted-average dumping margin as required by section 777A(c)(1) of the Act and fails to produce a weighted-average dumping margin for the subject merchandise as a whole pursuant to sections 771(35)(A)-(B) of the Act.

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[43] We note that only at the end of the sawmill process are the physical characteristics of the lumber products, such as grade and dimension, identifiable.

[44] A NRV based allocation would be based on sales prices of the finished products less manufacturing costs incurred in transforming the logs into the final product sold.

According to the BCLTC, the CIT has recognized that the term "amount," which is used in section 771(35)(A), refers to both positive and negative values. In addition, citing Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (December 13, 2000) and accompanying Issues and Decision Memorandum at Comment 26, the BCLTC states that the Department itself has taken negative and positive prices into account in its antidumping calculation. Moreover, the BCLTC points out that the CIT has confirmed that the statute, being silent on the question of "zeroing," does not compel the Department to apply this methodology. See Bowe Passat Reinigungs-Und Waschereitechnik GMBH v. United States, 926 F. Supp. 1138, 1150 (1996) (Bowe Passat). This position was reaffirmed by the Federal Circuit in Timken Co. v. United States, 354 F. 3d 1334, 1341 (January 26, 2004) (Timken 2004).

The BCLTC also argues that the statute must be interpreted consistently with U.S. law and international obligations, and that both forbid "zeroing." Invoking the analysis articulated in Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984), the BCLTC claims that the legislative history and the canons of statutory construction support the conclusion that "zeroing" is impermissible under U.S. law. According to the BCLTC, under the Uruguay Round Agreements Act (URAA), Public Law No. 103-465 (December 8, 1994) (URAA), and specifically with regard to sections 731 and 773 of the Act, Congress intended to implement the WTO Antidumping Agreement (ADA) requirement in Article 2.4 that a fair comparison be made between the export price, or constructed export price, and normal value. The Statement of Administrative Action (SAA) and the legislative history, the BCLTC continues, reflect the administration's and Congressional intentions that U.S. antidumping law be brought into conformity with the ADA. Consequently, the BCLTC argues, the Department is bound to abolish "zeroing" in order to comply with the URAA statutory requirement of a fair comparison.

Moreover, the BCLTC claims that even if Congressional intent were unclear, the U.S. courts are bound to construe U.S. law in such a manner as to avoid conflict with existing international legal obligations. See Alexander Murray v. The Schooner Charming Betsy, 6 U.S. 64, 118 (1804) (Charming Betsy). The BCLTC argues that the guiding principle of Charming Betsy applies forcefully to the Department's practice of "zeroing." The BCLTC also claims that, although the Federal Circuit acknowledged that the U.S. statute prevails in a conflict with the GATT, the court stressed that, without contrary language from Congress, statutes should not be interpreted to conflict with international obligations and that the Department does not have unlimited discretion over antidumping margin determinations. See Federal Mogul Corp. v. United States, 63 F. 3d 1572 (Fed. Cir. 1995).

Furthermore, the BCLTC continues, Congress and the administration have made their intentions clear that U.S. law must conform to the ADA, specifically Article 2.4, in the calculation of dumping margins. On this point, the BCLTC notes that a WTO dispute settlement panel has ruled specifically, with the Appellate Body affirming, that the U.S. practice of "zeroing" violates various provisions of Articles 2.2 through 2.4 of the ADA. See United States – Final Dumping Determination on Softwood Lumber from Canada, Report of the Panel, WT/DS264/R (April 13, 2004), and United States – Final Dumping Determination on Softwood Lumber from Canada,

Report of the Appellate Body, WT/DS264/AB/R (August 11, 2004) (jointly, U.S.-Softwood Lumber from Canada). Echoing the earlier WTO ruling in Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, Report of the Appellate Body, WT/DS141/R (March 1, 2001) (EC-Bed Linen), the WTO held that margins apply to the subject product as a whole, not to subgroups of the product, and that in failing to consider the entirety of prices, including prices that result in negative margins for product subgroups, "zeroing" inflates the dumping margin for the product as a whole.

Thus, the BCLTC concludes, since "zeroing" does not yield fair comparisons as mandated by U.S. law, was outlawed by U.S. implementation of ADA Article 2.4, and has been ruled illegal by the WTO, the Department should abandon "zeroing" in all circumstances and recalculate the respondents' margins without using "zeroing."

The petitioner counters that the Department should continue its longstanding "zeroing" methodology for the final results, saying the WTO decision is limited to the investigation segment, not binding on the Department, and has only prospective effect if implemented.

The petitioner claims that, under WTO rules, an investigation and an administrative review are different disputes, and an Appellate Body decision on the former, such as U.S.-Softwood Lumber from Canada, is not binding with regard to the latter, such as the present review. See U.S.-Softwood Lumber from Canada, Appellate Body Report, at par. 111, referencing Japan – Taxes on Alcoholic Beverages, Appellate Body Report, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R (November 1, 1996). A similar approach, according to the petitioner, is confirmed in U.S. law: (a) dumping margins are calculated differently between investigations (average-to-average method) and reviews (average-to-transaction method) (see 19 CFR 351.414(c)); and (b) the statute requires that the CIT treat each dispute arising from each segment of a proceeding as separate cases or controversies (See 19 U.S.C. § 1516a(a)(2)(B)). Thus, the petitioner argues, to the extent that U.S.-Softwood Lumber from Canada is binding, its decision is only applicable to the original investigation.

Citing section 102(a)(1) of the URAA, codified at 19 U.S.C. § 3512(a)(1), the petitioner also argues that WTO decisions are non-binding because any provision of the Uruguay Round Agreements that is inconsistent with U.S. law has no effect. In the event that a WTO decision conflicts with U.S. law, the United States can determine whether and how to implement the WTO recommendation. The petitioner notes that, in order for the United States to arrive at such a determination, the USTR must first consult with Congress. See section 123(f)(3) of the URAA, encoded at 19 U.S.C. § 3533(f)(3). Moreover, the petitioner continues, U.S. law forbids any change in the Department's practice until such a determination has been made and certain additional steps have been taken by the USTR and the Department. See section 123(g)(1) of the URAA, encoded at 19 U.S.C. § 3533(g)(1). In response to the BCLTC's reliance on the

Charming Betsy doctrine, the petitioner comments that the Department cannot ignore URAA-mandated procedures in favor of a "doctrine" that is based on a 200-year-old case.[45]

Furthermore, the petitioner argues that, even if the United States decides to implement U.S.-Softwood Lumber from Canada by changing Department practice, such a change would apply only to investigations not administrative reviews. In addition, even if the Department somehow determined it would apply this analysis to reviews as well as investigations, it would apply this change prospectively, i.e., only to unliquidated entries entered on or after the date on which the USTR directs the Department to implement the change, at some point in the future. See 19 U.S.C. § 3538(c)(1). Nothing in the statute gives the Department discretion to apply the change retroactively. Thus, the petitioner surmises, any change to the Department's "zeroing" practice would not apply to the entries subject to the present review.

Finally, the petitioner notes that the CIT has again found in favor of "zeroing," stating that it found U.S.-Softwood Lumber from Canada to be insufficiently persuasive in light of Timken 2004; cautioning that it was wary of overstepping its authority under the guise of the Charming Betsy doctrine; and rejecting the proposition that "zeroing" was unlawful under the Charming Betsy doctrine. See SNR Roulements v. United States, Slip Op. 04-100 (CIT 2004) (SNR Roulements), at 17-21. Accordingly, the petitioner contends that the Department has correctly applied its standard methodology in calculating the dumping margins for respondents.

Department's Position:

We agree with the petitioner. As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands, 66 FR 50408 (October 3, 2001), and accompanying Issues and Decision Memorandum at Comment 1; Final Results of Administrative Antidumping Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand 69 FR 61649 (October 20, 2004), and accompanying Issues and Decision Memorandum at Comment 7; and Notice of Final Results of Antidumping Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada 69 FR 68309 (November 24, 2004), and accompanying Issues and Decision Memorandum at Comment 8. Furthermore, the CIT has also consistently upheld the Department's treatment of non-dumped sales. See, e.g., SNR Roulements; Corus Engineering Steels, Ltd. v. United States, Slip Op. 03-110 at 18 (CIT 2003) (Corus); Timken 2004 at 1341; and Bowe Passat at 1150. Finally, the Federal Circuit in Timken 2004 has affirmed the Department's methodology as a reasonable interpretation of the statute.

The BCLTC also asserts that the WTO Appellate Body rulings in EC-Bed Linen and U.S.-Softwood Lumber render the Department's interpretation of the statute inconsistent with its international obligations and, therefore, unreasonable. However, the Court of Appeals in Timken

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[45] See petitioner's rebuttal brief dated September 8, 2004 at 25 (referencing Jane A. Restani & Ira Bloom, Interpreting International Trade Statutes: Is the Charming Betsy Sinking?, 24 Fordham Int'l L. J. 1533 (2001)).

2004 specifically found EC-Bed Linen was not only distinguishable but, more importantly, not binding. With regard to U.S.-Softwood from Canada, in implementing the URAA, Congress made clear that reports issued by WTO panels or the Appellate Body "will not have any power to change U.S. law or order such a change." See SAA at 660. The SAA emphasizes that "panel reports do not provide legal authority for federal agencies to change their regulations or procedures . . . . " Id. To the contrary, Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. See 19 U.S.C. § 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary); see also, SAA at 354 ("After considering the views of the Committees and the agencies, the Trade Representative **may** require the agencies to make a new determination that is "not inconsistent" with the panel or Appellate Body recommendations..." (Emphasis added)).

On September 27, 2004, the USTR indicated to the WTO Dispute Settlement Body that the United States intends to implement a decision consistent with the recommendations and rulings of the Dispute Settlement Body with respect to the Antidumpoing Softwood Lumber investigation. See <http://www.wto.org/english/news_e/news04_e/dsb_27sep04_e.htm>. However, no decision has yet to be issued by the United States as to the specifics of the analysis which will result from that decision. Accordingly, BCLTC is premature in arguing the form which the government's new analysis might take, or the effect this new analysis might have, if any, on other investigations or administrative reviews. Thus, for all the reasons stated herein, the Department has continued to calculate the cash deposit rate based on the total amount of duties owed.

Comment 5: Price Reallocation

Abitibi, Buchanan, Canfor, Tembec and Tolko argue that the price reallocation (also referred to as price deconstruction) performed by the Department on sales made on a random-length basis[46] in the Preliminary Results is contrary to the statutory mandate that the Department use the price at which the product was sold to determine export price, constructed export price and normal value. The respondents argue that sections 773(a)(1)(B)(i) and 772(a) and (b) of the Act require that the Department use the price at which the merchandise is first sold. According to the respondents, the only price at which the merchandise is sold is the per-unit price on the invoice. The respondents reiterate that they do not track any price but the per-unit price in their books and records, nor do they negotiate length-specific prices with customers.

According to Abitibi, the Department based its decision to reallocate the prices of the random-length sales based on the conclusion that "the price at which the products were sold is the total

[46] For the purposes of this review, we are defining a random-length sale as any sale which contains multiple lengths, for which a blended (i.e., average) price has been reported.

amount on the invoice."[47] However, Abitibi argues that there is no support for this finding. Abitibi instead explains that the price that the company and its customer agreed upon is the per-unit price, rather than the total price. Citing to Nippon Steel Corp. v. United States, 337 F.3d 1373, 1385 (Fed. Cir. 2003)(Nippon Steel), Canfor asserts that the Department must use as its starting price the price that is actually shown on the invoice. Canfor maintains that neither it, nor its customer, has ever seen the prices used by the Department in the Preliminary Results, and that these hypothetical prices do not represent a price at which the merchandise was "sold or agreed to be sold" between Canfor and its customers. According to Canfor, reallocating actual prices agreed to between Canfor and a customer based on prices for the same products agreed to with other customers - and determined according to a different pricing mechanism - cannot meet the statutory requirements to use the price at which the merchandise is first sold. Tolko argues that the methodology adopted for the Preliminary Results is irreconcilable with the Department's treatment of so-called "blended-price" contracts in the antidumping investigation of low-enriched uranium from France, where the Department declined to reconstruct contract prices.[48] According to Tolko, the petitioner in LEU from France 2001 had requested that the Department reject the respondents' submitted prices and rely on prevailing market prices instead. The Department did not do so, and Tolko maintains that the Department should apply the same reasoning in this review, and not revise the prices that Tolko negotiated with its customers.

Buchanan argues that its record keeping system does not identify which sales are sold on a random-length basis, and that the methodology which the Department forced the company to use to identify such sales is speculative because, not only does it designate random-length sales through a hypothetical exercise, it also reallocates those sales prices on the unproven assumption that the price in unrelated straight-length sales represents the price for a product of the same length within the tally in question. Buchanan contends that nothing on the record supports this assumption. Further, Buchanan believes that the two- or four-week period that the Department used for selecting straight-length matches was arbitrary, and that nothing on the record suggests that this is an appropriate period. In addition, Buchanan argues that the use of this short period results in disparate treatment between respondents, in that respondents with a higher proportion of straight-lengths sales will more often have their random-length sales deconstructed. According the Buchanan, if the Department continues to deconstruct prices, the relevant period for selecting straight-length matches should be the entire POR.

Tolko argues that the absence of significant and ascertainable length-based differences in its sales databases makes it unnecessary to reallocate its sales prices. Tolko contends that, because of its high proportion of mixed-length (random-length) tallies, the Department should exclude length as a matching criteria for it alone, regardless of how it treats the other respondents. Tolko notes

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[47] See Preliminary Results at 33238.

[48] See Notice of Final Determination of Sales at Less Than Fair Value: Low Enriched Uranium From France, 66 FR 65,877, (December 21, 2001), (LEU from France 2001) and accompanying Issues and Decision Memorandum at Comment 4.

that its regression analysis[49] indicates that the relative effect of different lengths on price is muted to statistical insignificance with respect to Tolko's mixed-length tally sales, making it appropriate to discount length with respect to Tolko's sales.

Abitibi and Tolko argue that, should the Department decide not to use invoice prices, it should consider the tally as a product. Abitibi contends that this would not require a departure from the statutory requirement that the Department use the actual price at which the merchandise was sold and would accurately reflect the fact that when a customer purchases a mixed-length tally, it is purchasing a mixture of different length lumber, not uniform, straight-length lumber. To the extent the Department is concerned about matching straight-length to mixed-length prices, Abitibi maintains that the proper solution is not to change the prices but to define appropriately the product to which the price relates. Abitibi suggests that if no identical tally existed, similar tallies could be identified based on its percentage composition of different lengths, and the most similar tally identified with reference to the smallest absolute value difference in these percentages.

Canfor, Slocan, and Tolko maintain that the use of reallocated prices prevents a company from being able to monitor its dumping, because the prices are pulled in an arbitrary direction after the time of sale. According to Canfor, a respondent cannot ensure compliance with U.S. antidumping law if it cannot determine at the time it makes a sale, what starting price the Department will ultimately use for that transaction. Slocan maintains that relying on the invoice price is easily verified, and allows the respondents an opportunity to monitor their sales to prevent dumping behavior.

The petitioner argues that statutory provisions cited by respondents, which refer to "the" foreign like product and "the" subject merchandise, mandate that the prices used be product-specific, and preclude the use of blended prices. The petitioner contends that the respondents' citation to Nippon Steel is inapposite, because Nippon Steel faulted the Department for altering the negotiated invoice price through currency conversions. In this case, the Department did not alter the total invoice price, it merely reallocated prices to individual products consistent with its practice in Flowers from Colombia.[50]

Further, the petitioner argues that the respondents are being inconsistent in their positions on reallocating prices and reallocating costs. The petitioner maintains that the statute mandates that a company's books and records shall normally be used if the records "reasonably reflect the costs associated with the production and sale of the merchandise."[51] The petitioner points out that the

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[49] See Letter from Tolko to the Department, Re: Response to Opportunity to Submit Data Analysis, dated August 20, 2004 (Tolko Data Analysis).

[50] See Fresh Cut Flowers from Colombia: Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part), 59 FR 15159 (March 31, 1994) (Flowers from Colombia).

[51] See section 773(f)(1)(A) of the Act.

respondents have generally argued that the Department should disregard the volume-based method of cost accounting used in their books, and instead employ a value-based methodology. According to the petitioner, if the Department has the discretion to reallocate costs, it is equally true that the Department has the discretion to reallocate total invoice prices to specific products for mixed-length sales. The position that the Department must reallocate costs to account for differences in dimension, implies that differences among dimensions are critical and must be recognized in order to ascertain accurate costs, while the position that prices may never be reallocated implies that value differences among dimensions are irrelevant and must be ignored in order to ascertain accurate prices. Further, the petitioner contends that the Department's methodology was reasonable in that it relied on average relative values that were company-specific, market-specific, and contemporaneous.

The petitioner disagrees that the problem of blended prices can be resolved by considering a tally to be an individual product. The petitioner points out that the respondents themselves noted, when the issue of blended prices was first being addressed, that a tally is not a product.[52] According to the petitioner, this would make the model-matching process less accurate and the number of identical matches would drop dramatically. Further, the petitioner does not believe that the matching methodology suggested by the respondents would result in the most similar match being selected for comparison purposes.

In response to Buchanan's argument that straight-length sales from the whole POR should be used in the price reallocation, Abitibi contends that, if the Department should continue to reallocate prices, it should continue to used the limited time period used in the Preliminary Results. Abitibi maintains that the record contains ample evidence supporting the limited window periods, principally the price graphs that each respondent submitted in response to Appendix D-3 of the Section D questionnaire. Abitibi contends that all the graphs show pronounced price movements over time and support the Department's approach of using straight-length prices only within narrow time periods.

Department's Position:

We agree with the petitioner. As an initial matter, we do not agree that the statue requires us to use the per-unit price on an invoice when the total invoice price has simply been averaged equally across all products despite the fact that product specific differences in the market value were taken into account in setting the total proce. Unlike the situation in Nippon Steel, where a double currency conversion changed the invoice price, we are continuing to use the total amount received by the respondent in our calculation. This is consistent with our practice in Flowers from Colombia,[53] where the Department allocated the price of a bouquet to the individual flowers

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[52] See petitioner's rebuttal brief on general issues dated September 8, 2004 at 13.

[53] See e.g. Antidumping Duty Questionnaire, in the case of Flowers from Colombia (A-301-602), dated May 15, 1996, at B-2; see also, Memorandum from Constance Handley, Program Manager to Gary Taverman, Director, Office 5, Re: Treatment of Sales Made on a Random Length Basis for Determining Export Price,

within the bouquet in order to reflect the value of the individual flowers. The respondents themselves have stated on the record that the composition of lengths in the tally is taken into account in determining the per-unit price.[54] While the respondents may use their knowledge of the current market values of the varying lengths to arrive at a per-unit price to quote the customer, both parties are obviously aware of what the invoice total will be. Further, we find Tolko's citation of LEU from France 2001 to be inapposite. That case did not involve a blended price for multiple products. In LEU from France 2001, new contracts had superseded previous contracts for the same product. The new contract price reported to the Department was the price actually paid by the customer. The respondent did not report the same price for products of different values, as is the case here.

With regard to Canfor's argument that it is inappropriate to use straight-length prices to different customers to establish relative prices, we note that our entire antidumping duty methodology is based on comparing prices between different customers. For purposes of determining relative prices, which were used to reallocate total invoice prices for the random-length sales, we limited our comparisons to sales made at the same level of trade, thereby mitigating any difference in selling practices.

Regarding the period used to identify straight-length sales in which to find a match, we disagree with Buchanan and continue to find that it is necessary to limit the time period due to the volatility of lumber prices. As Abitibi stated, there is ample evidence on the record to underscore this volatility. It would therefore result in further distortions to determine relative prices based on sales that were made in different times of the POR. That this results in some respondents having more sales whose prices have been reallocated than others is unavoidable, and a result of the different selling practices of the individual respondents, not of different treatment by the Department. We note that we used the same computer programing language for all of companies whose prices were reallocated. In addition, we disagree that the choice of time period was arbitrary. Rather, as stated in the Random Lengths Memo, "{t}he four-week period is similar in length to the one-month period we use to weight-average home-market sales."[55] In determining the time period to be used, we had to balance both the need to limit the time period due to price volatility and the need to find a sufficient number of single-length sales to make the reallocation possible. We continue to believe that by limiting the period in a manner consistent with our home market averaging period we can best balance these opposing concerns. We note that, with the exception of Buchanan, none of the respondents nor the petitioner have suggested a different time period.

Further, we continue to find that our methodology for identifying sales made on a random length basis was reasonable. For companies which did not specifically identify these sales in their

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Constructed Value and Normal Value, dated June 2, 2004 (Random Lengths Memo) at attachment 1.

[54] Id. at 7.

[55] Id. at 10.

books, we considered all sales of products identical except for length which were made at the same price on the same invoice to be random-length sales. Pricing information from the companies in response to Appendix D-3 of the Section D questionnaire, as well as in the databases, indicates that it would be unusual for a variety of lengths to have the exact same price on the same date, especially when they are on the same invoice, indicating they were sold at the same moment in time to the same customer.

With regard to Tolko's argument that length should be dropped as a matching characteristic for it alone, because its data shows that length does not matter to it, we note that Tolko ran its regression analysis using its full databases, which contain a preponderance of random-length sales. Since all lengths in a random-length sale have the same reported price, it is not surprising that Tolko's regression analysis showed that length does not affect price. This does not mean however, that Tolko's sales people do not take the composition of lengths in the tally into account when setting the price.[56] The matching criteria are chosen to reflect the criteria that buyers and sellers for a given product take into account when setting the price. Since Tolko competes in the same market with the other respondents it would be illogical to assume that only some of the matching criteria are relevant to Tolko, nor does record evidence suggest this is the case. Therefore, we have continued to include length as a matching criterion for all respondents, including Tolko.

Further, we do not agree that matching tally to tally would be appropriate. We note that, in their case briefs, neither Abitibi nor Tolko has cited a legal provision is support of their argument. As stated in the Random Lengths Memo, a tally is not a product.[57] We believe that matching an average to an average price could mask dumping, and therefore, we have not adopted this suggestion.

Finally, a number of the respondents have expressed a concern that they will not be able to monitor their dumping if they are unsure what price the Department will eventually assign to each product. To the extent this is a problem for companies, each company can mitigate this problem by systematically keeping track of the underlying single-length prices in its books and records. We note that one company, West Fraser, already does so, and those underlying prices were used in its dumping calculation.

Comment 6: Liquidation Instructions

Following the Preliminary Results, we released the draft liquidation instructions to the petitioner and all respondents for comment. For the companies assigned the review-specific average, the instructions requested CBP to assess antidumping liabilities of 4.23 percent of the entered value for all shipments of softwood lumber products from Canada produced and exported by the listed companies.

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[56] Id. at 7.

[57] Id. at 8.

A. Unidentified Importers

Slocan cites the wording of paragraph 1 of the Slocan-specific draft liquidation instructions, which instruct CBP to assess the antidumping liabilities on all merchandise "produced and imported" by Slocan. According to Slocan, the instructions should read, "produced and exported by Slocan." Slocan argues that the wording of the instructions would mistakenly exclude sales made by Slocan to a U.S. customer/importer from application of the rate determined for this administrative review. Slocan claims these sales appear in the U.S. sales database and that correcting the misuse of the conjunctions "and" and "or" in the above-referred paragraph would ensure Slocan's rate is correctly applied to all eligible entries.

The petitioner did not comment on this issue.

Department's Position:

The Department agrees with Slocan and will correct the wording of the liquidation instructions. While Slocan has identified itself as the importer of record for all its U.S. sales,[58] and therefore, should not have any importers being incorrectly liquidated based on reported sales, we note that in this review we have limited reporting to certain product types. Therefore, we recognize the possibility that importers of specialty products may not be identified in the database. In order to avoid incorrectly liquidating merchandise sold to these importers at the "All-Others" rate, we will change the wording of the liquidation instructions for all the mandatory respondents. The revised liquidation instructions will instruct CBP to liquidate all entries produced and exported by the respondent, but not imported by one of the listed importers, at a respondent-specific average liquidation rate.

B. Assessment of Companies Receiving the Review-Specific Average Rate

The Maritimes point out two errors in the first paragraph of the draft liquidation instructions. Both errors are said to appear in the following sentence: "For all shipments of Certain Softwood Lumber Products from Canada produced **and** exported by the companies listed below, entered or withdrawn from warehouse for consumption during the period 05/22/2002 through 4/30/2003, assess the antidumping liabilities of **4.23** percent as a percentage of the entered value." The first error would pertain to the use of the conjunction "and" which should be replaced by "and/or." The Maritimes state that if not corrected, the error would lead CBP to limit liquidation at the weighted average non-selected respondent rate to only companies that both produce and export the subject merchandise when it should address its order to liquidate to all the listed companies whether they produce and/or export. The second alleged error relates to the instructions assessment rate of "4.23" which the Maritimes claim should have been "3.98" as stated in the Preliminary Results.

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[58] See Slocan's Section C questionnaire response at C-50 (October 20, 2004).

Finally, the Maritimes raise a concern regarding the NAFTA challenge to the original AD final determination in which the Department has expressed that it believes that the statute prevents it from retroactively refunding AD deposits should the AD order be invalidated by a NAFTA Panel and/or Extraordinary Challenge Committee. The Maritimes urge the Department to reconsider its position and refund, in full, all AD deposits posted by the Maritimes in the event that the AD order is invalidated in its entirety.

Department's Position

We agree with the Maritimes in the necessity to correct the wording of the first paragraph of the liquidation instructions. Exporters have a right to request a review,[59] and limiting our instructions to only those entries both produced and exported by the requesting party, would effectively remove any companies which are non-producing exporters from the review.

However, the rate announced in the first paragraph of the draft liquidation instructions refers to the assessment of antidumping liabilities and is correct. It should indeed be 4.23 percent of the entered value. The 3.98 percent rate listed in the Preliminary Results is the cash deposit rate applicable to the listed companies. As stated in the Preliminary Results: "For the companies requesting a review, but not selected for examination and calculation of individual rates, we will calculate a weighted-average assessment rate based on all importer-specific assessment rates excluding any which are *de minimis* or margins determined entirely on adverse facts available." See Preliminary Results at 33255; see also, Memorandum from Salim Bhabhrawala, International Trade Compliance Analyst, to The File, Re: Review-Specific Average Cash Deposit and Assessment Rates (June 2, 2004).

With regard to the Maritimes' request that duties be refunded retroactively upon a final decision by the NAFTA panel, the Department cannot unilaterally reconsider the express language of the statute. Section 516A(g)(5)(B) of the Act is unequivocal in providing that NAFTA Panel decisions are to be enforced prospectively only. See Comment 32 for a more detailed analysis.

Comment 7: Valuation of Wood Chips

In calculating the COP and CV for an exporter or producer, the Department attempts to construct the actual cost of manufacturing using the books and records of that exporter or producer, as instructed by the Act. See section 773 (f)(1)(A) of the Act. In the process of manufacturing subject merchandise, by-products are often produced, which are subsequently sold to other corporate divisions, affiliated companies or unaffiliated companies. The Department allows an offset to the cost of manufacturing for the income derived from the sale of these by-products in its COP and CV calculations. It is this by-product offset which is the issue for purposes of this section.

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[59] See 19 CFR 351.213(b).

In the process of manufacturing the subject merchandise, respondents produced a large amount of their chief by-product, wood chips. These wood chips were sold for particular prices to other divisions within the company, to affiliated pulp mills and to unaffiliated companies.

Abitibi, Tembec, and West Fraser each disagree with the valuation the Department used in the Preliminary Results for wood chips.

Abitibi states that because wood chips are a by-product and thus have no identifiable costs, the best evidence of cost is the value assigned by the company in its books and records. Abitibi contends that the Department's reliance solely on chip sales to unaffiliated parties for the arm's-length price benchmark was improper because it ignored significant chip purchases by the pulp and paper division. Abitibi contends that since both purchases and sales equally reflect arm's-length transactions and thus market prices, the benchmark should be calculated by weight averaging the two. Abitibi claims that sales of wood chips by the sawmills are incapable of reflecting market price because they consist of small, spot sales, in isolated months under abnormal conditions. Abitibi cites the NAFTA Panel decision in Certain Softwood Lumber Products from Canada, USA-CDA-2002-1904-02 (March 5, 2004), page 29, which stated "unaffiliated sales by West Fraser had substance in themselves but were clearly not substantial in relation to West Fraser's total volume. It is therefore not reasonable to use those sales to determine the appropriate offset." Abitibi also contends that there is no basis, consistent with the purpose of the statute to compute dumping margins as accurately as possible, only to adjust chip values downward (e.g., when they are above market price) but not upward (e.g., when they are below market price). Abitibi states that discretion in this regard must be exercised in an even-handed way that is fair to all parties.

Tembec asserts that the Department's by-product methodology in the Preliminary Results did not result in a by-product offset that reflects the arm's-length value of wood chips. Tembec advocates that the Department increase the value of internal transfers of wood chips to reflect market prices. Tembec states that their reported mill specific wood chip sales prices to unaffiliated parties were tainted due to the fact that these were barter transactions, and the value assigned to these transactions were not representative of market values. Tembec states that the appropriate market values to use are the sales to unaffiliated companies which were not part of a barter agreement. Tembec argues that the Preliminary Results methodology of obtaining arm's-length values for each province is not appropriate, as there is no record evidence to substantiate that market values differ by province. Tembec suggests the use of arm's-length prices from Quebec for all of its mills in Canada. Additionally, Tembec argues that the barter sales in Ontario should be valued at the price provided in the barter agreement for purchases of chips in excess of the swap quantities. Tembec maintains that it is inappropriate to adjust internal transfer prices downward when they are higher than market prices and not adjust internal transfer prices upward when they are lower than market prices. Tembec states that the Department's preliminary methodology violates the even-handedness requirement under the ADA, as illuminated by the WTO Appellate Body in United States - Antidumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, 24 July 2001 (US-Steel Products from Japan Appellate Body Report). Tembec argues that the Department was unjustified in using facts

available to determine the market value for wood chips in British Columbia because the Department could have used market value information from Tembec mills in another province.

West Fraser states that wood chip sales from West Fraser to a purchaser should be classified as unaffiliated transactions based on the legal structure of the purchaser where the Department identified these transactions as affiliated transactions.

The petitioner states that the Department has the authority to adjust the internal wood chip values recorded at Abitibi's MacKenzie Mill to reflect the cost of the wood chips, pursuant to section 773(f)(1)(A) of the Act. However, the petitioner states that evidence exists on the record which calls into question the reasonableness of internal valuations recorded by the MacKenzie mill during the POR. The petitioner asserts that the Mackenzie mill wood chip prices exceeded those prices charged to unaffiliated purchasers of wood chips in the province, and therefore cannot be reasonable values for the by-product offset since they do not represent market values in the province.

On rebuttal, the petitioner contends that when a respondent sells the same by-product to affiliated and unaffiliated parties at different prices, the Department considers the prices received from unaffiliated parties by the respondent to be at arm's-length and to represent market prices, in recognition of the fact that a respondent can manipulate the price to its affiliates and, thus, can improperly increase its offset to costs. The petitioner further argues that when prices received from unaffiliated parties are higher than the prices received from affiliates for the same by-product, the Department has no reason to reduce the affiliated prices because there is no evidence that the affiliated prices have been manipulated to increase the offset to costs and no adjustment is warranted. The petitioner disagrees with Abitibi's reliance on the US-Steel Products from Japan Appellate Body Report because in this case, the Department is not attempting to determine which downstream sales of the foreign like product should be disregarded as outside the ordinary course of trade, and, therefore, section 773(a)(1)(B) of the Act is irrelevant.

The petitioner encourages the Department to adjust for the difference between the wood chip prices charged by Tembec to affiliated and unaffiliated customers on a province-specific basis. The petitioner argues that having calculated province-specific adjustment factors, there is no reason to aggregate them and then apply that aggregate differential on a country-wide basis. Moreover, the petitioner states the product mix varies from province to province. The petitioner claims the application of an aggregated country-wide differential is inconsistent with the underlying province-specific data, and skews the province-specific results, by understating the effect in British Columbia while overstating the effect in Ontario and Quebec.

On rebuttal, the petitioner claims that the inclusion of the barter transactions in the calculation of market price is conservative and does not distort the market values. The petitioner holds that the barter transactions are representative of arm's-length transactions. The petitioner contends that a province-specific analysis is appropriate in that each province has a distinct geographical market with different pricing structures. The petitioner disagrees with Tembec's suggestion that Eastern Canada chip prices could be used as a market price benchmark for British Columbia chip sales.

The petitioner states that Tembec has not provided any evidence or analysis that specific regions other than provinces represent distinct markets for chips. The petitioner agrees that the Department should treat internal transfers of wood chips in the provinces in a consistent manner. The petitioner asserts that the Department was consistent in the Preliminary Results by utilizing the lower of sales prices to unaffiliates or sales prices to affiliates in the value of wood chips for purposes of the by-product revenue offset.

Department's Position:

We disagree with respondents claims that the valuation of wood chips used in the by-product offset for the Preliminary Results was incorrect.

Pursuant to section 773(f)(2) of the Act, the Department may disregard transactions between affiliated parties if they do not fairly reflect the amount usually charged in the market under consideration. When a respondent sells the same by-product to affiliated and unaffiliated parties at different prices, the Department considers the prices received from unaffiliated parties by the respondent to be at arm's-length and to represent market prices. See Notice of Final Determination of Sales At Less Than Fair Value: Pure Magnesium from Israel, 66 FR 49349 (September 27, 2001) and accompanying Issues and Decision Memorandum at Comment 6. In determining whether transaction prices between affiliates reflect market values, we do not consider the substantiality of those transactions in terms of volume to be the determining factor. On the contrary, the Department's arm's-length test is qualitative in nature, not quantitative, in that it seeks to find the market value that best represents the company's own experience in the specific markets in which it operates, based on transactions in which it received compensation for its products from unaffiliated purchasers. The Department is required by section 773(f)(2) of the Act to determine whether these sales are made at prices "usually reflected" in the market. The test is whether such sales serving as the market price benchmark occurred in commercial quantities. We believe that the use of unaffiliated sales that are "sufficient in number or quantity" to reflect arm's-length transactions is a sensible benchmark test and no facts on the record, or cases cited by Abitibi, convinces us otherwise.

With respect to Abitibi's reference to the decision in Certain Softwood Lumber Products from Canada, in which the NAFTA Panel determined that the volume of West Fraser's sales of wood chips to unaffiliated parties was insufficient to use those transaction prices in the by-product offset calculation, we note that the Panel's decision was factually applicable only to West Fraser's merchandise covered by the antidumping duty investigation, and as a legal matter, NAFTA Panel decisions carry no precedential weight for purposes of our calculations. West Fraser argued in that case that the Department should use a meaningless percentage, namely, a measure of a respondent's unaffiliated sales to its total sales, in determining whether or not unaffiliated sales represented arm's-length transactions that could be applied to all of West Fraser's affiliated transactions. This is not the correct test: the issue is not how significant a respondent's unaffiliated sales are as compared to its affiliated sales. The issue, instead, is whether the price that the respondent receives from selling wood chips to unaffiliated parties on a regional basis reasonably represents commercially viable sales. We find that Abitibi's sales to

unaffiliated parties were commercially viable sales in sufficient number and quantity to satisfy the benchmark. Thus, we believe this price reasonably represents the respondent's own experience in the province.

On the other hand, the Department does not normally rely on prices paid by a respondent to purchase by-products manufactured by another company. The value of a by-product will differ depending on the production experience of each company. The only production data before the Department, however, in any given case will be that of the respondent itself, not unaffiliated suppliers selling products to the respondent. Accordingly, for purposes of a COP offset, in most cases, it does not make sense to use a respondent's purchase price of another company's by-product in its calculations, as applied to the respondent's COP.

With respect to Abitibi's arguments, we disagree with its contention that it was inappropriate to exclude wood chip purchases from the pulp and paper division in our calculation of the market price benchmark. Wood chips purchased by the pulp and paper division represent a distinct market segment which may differ from customers of the sawmills. The product characteristics of the chips (e.g., chip quality, moisture content, species mix etc.) and sales terms may also differ for the pulp and paper division purchases from the sales of wood chips by the sawmills. For example, the pulp and paper mills may have different species mix requirements, fresh mix (i.e., chips less than one week old), chip size and other technical requirements imposed on their suppliers versus that of the respondent sawmills which would impact the price paid by the pulp and paper mills to its various suppliers for wood chips. Each of these specifications is reflected in the price the sawmills are able to obtain for their wood chips produced. However, the record only reflects the production experience of Abitibi's sawmills, not the production experience of these other wood chip suppliers' mills. Due to these factors and the fact that the purchases by the pulp and paper division do not reflect the actual production experience of the Abitibi sawmills, we consider it reasonable to exclude purchases by the pulp and paper mills from the calculation of the market price benchmark for wood chips.

With respect to Abitibi's arguments that sales of wood chips by the sawmills are incapable of reflecting market price because they consist of small, spot sales, in isolated months under abnormal conditions, we have not found this to be the case. We find that these viable commercial sales of wood chips to unaffiliated parties were sufficient in number and quantity to establish the arm's-length nature of the sales. The sales occurred during multiple months of the POR. We additionally disagree that these sales were made in abnormal conditions. For example, Abitibi states that its Mackenzie sales were abnormal because it normally sells its wood chips to its affiliated newsprint plant, but this plant was shutdown or had a slowdown during the POR. We do not consider the slowdown or shutdown of a newsprint plant an abnormal occurrence in the ordinary course of trade, because it is common for plants to have maintenance shutdowns, industrial accidents, and shutdowns due to other external factors. We also compared the sawmill sales data to publically available data from "Chips and Logs: North American Conifer Chip Prices," Yardstick, December 2002, May 2003, and June 2003, placed on the record in Memorandum from Peter Scholl, Senior Accountant, to The File, Re: North American Conifer Chip Prices (November 30, 2004) at page 9, tracking market prices for sales of wood chips in

British Columbia and Eastern Canada for the POR. Pursuant to this comparison, we have determined that the sawmills' sales data reflected in Abitibi's books and records to unaffiliated purchasers reasonably reflect the market price of wood chips in the sawmills' respective provinces.[60]

The CIT has affirmed the Department's position that it is not the size of transactions, but the commerciality of those transactions, which is the primary focus of determining whether prices are "usually reflected" in the market. In Mannesmannrohren-Werke AG v. United States, 77 F. Supp. 2d 1302, 1307 (CIT 1999), the Court was faced with an appeal involving a company that had both affiliated and unaffiliated sales. The Department had found that input sales between Mannesmann and its related affiliate HKM did not reflect market value, so, pursuant to sections 773(f)(2) and (3) of the Act, the Department used market prices to value the inputs purchased from the affiliate HKM, and, in turn, to calculate Mannesmann's cost of production. The Department found that the price paid to the non-affiliated party was 30.9 percent higher than the price paid to HKM. Accordingly, the Department increased the transfer prices reported for all HKM billet sales to Mannesmann by 30.9 percent to approximate market value. Id. The CIT affirmed this analysis, even though the market price benchmark was based on a single unaffiliated transaction. In a "facts available" context which would not affect the nature of the test applied, the CIT found that this approach was rationally related to the purpose of establishing an arm's-length value: "Commerce did no more than use available record evidence of a market price to help it approximate other market prices." Id.. at 1319. Thus, consistent with the analysis of the CIT in Mannesmannrohren-Werke AG v. United States, we have used Abitibi's transactions with unaffiliated purchasers of wood chips to value transactions with affiliated purchasers.

With respect to companies that are legally and operationally divisions of one entity, and not individually incorporated affiliates, the Department's practice is to value transactions using the actual cost of the input transferred between divisions. See Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18430 (April 15, 1997). As the by-product offset is part of the Department's COP calculations, we need to value such inter-divisional transactions at the company's actual "cost" of producing such wood chips. However, by-products, by their nature, have no separately identifiable cost associated with their production. Thus, in valuing a by-product, in this case wood chips, the challenge faced by the Department is to find an "actual" value for these wood chips to offset "actual" costs in the COP calculations.

The issue before the Department in the investigation was the same as it is now in this review. In the investigation, we analyzed the wood chip sales transactions between sawmills and internal divisions and then compared these "actual" values with other, arm's-length transactions to determine if the interdivisional values fell within a reasonable range of prices (given the

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[60] Compare data from Memorandum from Peter Scholl, Senior Accountant, to The File, Re: North American Conifer Chips Prices (November 30, 2004) to Memorandum from Michael Martin, Program Manager, to The File, Re: Tembec Data from By-Product Revenue - Wood Chip Prices (May 26, 2004).

possibility that an arm's-length value might be higher, in order to collect back the equivalent of a "profit" on the sale of the wood chips outside of the company as a whole). See Softwood Lumber LTFV Final Determination and accompanying Issues and Decision Memorandum at Comment 11.

In this case, we analyzed transactions for all respondents in a by-product revenue-wood chip prices memorandum. See Memorandum from Michael Martin, Program Manager, to The File dated May 26, 2004. See also, Memorandum from Nancy Decker and Sheikh Hannan, Senior Accountants, to Neal Halper, Director, Office of Accounting, Re: Abitibi and Tembec Cost Calculations (December 13, 2004) (Abitibi and Tembec Memo). In accordance with the precepts outlined in the US-Steel Products from Japan Appellate Body Report, stating that the Unites States should apply even-handed tests, we analyzed the wood chip transactions for each respondent, noting on a regional basis whether the transactions with other divisions or affiliates were above or below the market price. Where no discernable difference existed, we made no adjustment. If the transactions with other divisions or affiliates were meaningfully above the market price on a regional basis, we adjusted the transaction values to market price because the transaction values reflected preferential treatment based upon the comparison with the market value. The higher transfer prices between divisions which Tembec desired that we use in this case were above the arm's-length transaction prices. See Abitibi and Tembec Memo. Accordingly, we did not use these preferential values in our calculations, but instead applied the market based values.

With respect to transactions in which the transaction values with other divisions were lower than the market price on a regional basis, we considered the existence of the equivalent of a "profit" applicable to these by-product transactions, and determined, just as we did in the investigation, that these transaction values were reasonable to use for purposes of the offset. Section 773(f)(1)(A) of the Act directs the Department to use a company's actual costs of production in inter-divisional transfers, even if that cost is lower than market value, given the existence of profit. The Department believes that the same can also be said of the inter-divisional valuations of cost calculation offsets, including the value of a by-product offset: A market value for that by-product may, by its very nature, be larger than the value that the company actually assigns to a by-product in the inter-divisional context. Accordingly, although the appropriate term for this difference in values might not be deemed to be "profit," it is the equivalent of profit in the context of a cost analysis. Thus, the Department's general presumption with respect to inter-divisional transactions, such as those between Tembec's sawmills and pulp-mills, is to presume that the valuation of a by-product appearing in the books and records, which is valued lower, within reason, than unaffiliated "market" prices, is the appropriate value to use in its cost calculations, unless contrary evidence exists on the record to question the reasonableness of this figure.

Tembec argues that the Department is required by law to dismiss these "lower" valued by-product values and use the higher-valued "market" prices. Such a claim is not supported by any statutory provision or case, and in fact, both the NAFTA Panel in Certain Softwood Lumber Products from Canada, USA-CDA-2002-1904-02 (March 5, 2004) at 23 (affirming the

Department's First Remand Redetermination) and the WTO Panel in United States-Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R (August 11, 2004) at paragraphs 7.323-7.324, stated that the Department's analysis in valuing the by-product revenue offset was in accordance with the Act and the United States' obligations under the AD Agreement. Accordingly, the Department has utilized these inter-divisional by-product values from Tembec's books and records in its calculations.

With respect to the barter transactions, we have determined that there is no basis for finding that the claimed barter transactions included in Tembec's unaffiliated wood chip sales prices have tainted the values such that they cannot be used to establish market value. Tembec entered into these barter transactions with unaffiliated parties and it stands to reason that these transactions were consumated at arm's-length. Simply because Tembec received merchandise instead of cash does not mean that a fair value exchange was not made. Additionally, we compared the sawmill sales data to publically available data from Yardstick, tracking market prices for sales of wood chips in British Columbia and Eastern Canada for the POR and have determined that the sawmill sales data to unaffiliated purchasers reasonably reflect the market price of wood chips for the respective provinces.

Tembec argues that the Department could have used market value information for wood chips from another province to determine market value for wood chips in British Columbia. We disagree. Record evidence clearly supports the fact that chip prices vary significantly by certain regions in Canada and that a comparison in the aggregate is not reflective of the inherent realities of the market under consideration. At each company's verification, we obtained information that demonstrated that wood costs vary significantly by region due to different stumpage and harvesting costs, and that the wood chip market logically tends to follow the log market. In addition, the existence of local pulp mills also effect the price of wood chips. Supply and demand factors also tend to cause wide variances in regional wood chip markets, whereby one region could be a net importer of chips and another region a net exporter due to oversupply. We found the same fact pattern in the original investigation. See Softwood Lumber LTFV Final Determination and accompanying Issues and Decision Memorandum at Comment 11. Additionally, we noted that data from Yardstick, at page 9, indicates that chip prices in British Columbia averaged US$52.75 per oven dry metric ton during the POR whereas Eastern Canada chip prices were US$92.50 per oven dry metric ton - a significant regional difference. The product mix which utilizes chips additionally varies from region to region. Consequently, a meaningful comparison that recognizes these differences must be performed on a regionally consistent, provisional basis.

We agree with petitioner's point that any calculated by-product offset adjustments should be applied to the reported data on a province specific basis and have done so for the final results.

We agree with West Fraser's argument that wood chip sales to a certain purchaser should be classified as unaffiliated transactions. However, we cannot address the specifics of West Fraser's claims in this public forum, as a meaningful discussion is only possible by means of reference to business proprietary information. We have therefore addressed West Fraser's comments in the

proprietary version of the Wester Fraser cost calculation memorandum from Michael Harrison, Accountant, to Neal Halper, Director, Office of Accounting, dated December 13, 2004.

Comment 8: Inclusion of Purchase Costs for Commingled Lumber

For both Weyerhaeuser and Canfor, the petitioner contends that the acquisition prices of third-party lumber resold from commingled inventories should be included in their respective weight-averaged costs for the final results. Because Weyerhaeuser and Canfor made sales from commingled inventories, the petitioner asserts that it is impossible for the Department to rigorously adhere to the statutory requirement that sales of merchandise produced by third parties and resold by the respondent be excluded from the calculation of USP and NV.[61] The petitioner argues that the methodology[62] used by the Department in the Preliminary Results[63] of this administrative review to remove the estimated portion of the sales that was not produced by the respondents does not, in fact, eliminate any sales from Weyerhaeuser and Canfor's respective sales databases. Instead, asserts the petitioner, the methodology reduces sales quantities based on the amount of lumber purchased from third parties and thereby merely reduces the impact commingled sales have on the margin calculation.

The petitioner asserts that where sales of third-party lumber are unavoidably included in the determination of NV and USP, the associated costs are relevant to the determination of the weighted-average costs. The petitioner points to Certain Pasta from Italy 1996 as an example of a situation where third-party merchandise was commingled in U.S. inventories and the Department used the respondent's acquisition prices of the third-party merchandise in determining the respondent's overall weighted-average costs. The petitioner contends that by including the acquisition prices in the respondent's costs, the Department neutralized the impact of the third-party prices in the margin calculation.

The petitioner recognizes that the Department, in a recent administrative review of certain pasta from Italy,[64] declined to include acquisition prices in the respondent's costs despite sales from commingled inventories. The petitioner argues that the facts of that case are distinguishable from

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[61] The petitioner cites Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, 61 FR 30326 (June 14, 1996) (Certain Pasta from Italy 1996); Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578 (October 16, 1998) (Steel Pipes and Tubes from Thailand); Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 FR 56738 (October 21, 1999); sections 771(16), 771(20) and 771A(c) of the Act.

[62] The petitioner cites Steel Pipes and Tubes from Thailand as an example of a case that employed this methodology.

[63] See Preliminary Results at 33241.

[64] The petitioner refers to Final Results of the Sixth Administrative Review of the Antidumping Order and Determination Not to Revoke in Part: Certain Pasta from Italy, 69 FR 6255 (February 10, 2004) (Certain Pasta from Italy 2004) and accompanying Issues and Decision Memorandum at Comment 42.

the instant case because in that case, the impact of the third-party sales on the margin was minimal.[65] In the instant case, the petitioner asserts that the impact of the third-party sales on the margin is not minimal.[66] Moreover, the petitioner contends that the cases cited by the Department in support of that case[67] did not involve sales of third-party merchandise from commingled inventories, but rather involved proceedings where the respondents were exclusively resellers and the resellers' suppliers did not have knowledge that the merchandise was destined for the U.S. market.[68] The petitioner concludes that because Weyerhaeuser and Canfor did not provide the actual production costs of their suppliers, the acquisition costs of the third-party lumber could serve as a proxy for those amounts.

Weyerhaeuser points to 773(b)(3) in objection to the petitioner's argument that the Department should include the acquisition cost of third-party lumber in calculating the cost of production. Weyerhaeuser argues that the Act limits the cost of production to only those costs incurred in producing the foreign like product. Further, Weyerhaeuser states that the Act defines foreign like product as merchandise that is identical or similar to subject merchandise and is produced by the same person as the subject merchandise.[69] Therefore, Weyerhaeuser concludes that the Act prohibits the inclusion of the purchase price of the third-party lumber and instructs the Department to consider only Weyerhaeuser's own cost of production for its lumber that is commingled with third-party lumber.

Weyerhaeuser asserts that in Certain Pasta from Italy 2004 and accompanying Issues and Decision Memorandum at Comment 42,[70] the Department acknowledged that an acquisition price is not equivalent to a cost of production and consequently did not include the acquisition costs in calculating the respondent's cost of production, stating that to do so would be inconsistent with the law and Department precedent.[71] Weyerhaeuser notes that consistent with this practice, the Department did not include acquisition costs in Weyerhaeuser's cost of production for the LTFV investigation of softwood lumber from Canada.

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[65] Id.

[66] The petitioner refers to its letter submitted to the Department on May 13, 2004.

[67] See Certain Pasta from Italy 2004 and accompanying Issues and Decision Memorandum at Comment 42.

[68] The petitioner cites Fresh and Chilled Atlantic Salmon from Norway: Final Results of Antidumping Duty Administrative Review, 61 FR 65522 (December 13, 1996) (Salmon from Norway); Preliminary Determination of Sales at Less Than Fair Value: Honey from Argentina, 66FR 24108 (May 11, 2001); and Preliminary Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada, 66 FR 51010 (October 5, 2001).

[69] Weyerhaeuser refers to 771(16) of the Act.

[70] Weyerhaeuser also cites Salmon from Norway, 61 FR 65522 (December 13, 1996).

[71] See Certain Past from Italy and accompanying Issues and Decision Memorandum at Comment 42.

Weyerhaeuser refutes the petitioner's argument that the existence of commingled inventories takes the instant case out of the scope of the statute. Weyerhaeuser asserts that in Certain Pasta from Italy 2004 and accompanying Issues and Decision Memorandum at Comment 42, the Department found otherwise. Weyerhaeuser contends that, in that case, the Department rejected the inclusion of acquisition costs and determined that the treatment of acquisition costs in Certain Pasta from Italy 1996 (i.e., the case relied on by the petitioner in support of its argument) was inconsistent with the law and the treatment in other cases. Weyerhaeuser concludes that to include the acquisition costs of third-party lumber in Weyerhaeuser's cost of production would, therefore, violate the Act and conflict with Department practice.

Weyerhaeuser also asserts that the petitioner's argument[72] regarding the difference between the instant case and Certain Pasta from Italy 2004 and accompanying Issues and Decision Memorandum at Comment 42, is misplaced. According to Weyerhaeuser, the critical fact of that case was that the respondent had its own production for all of the reported merchandise. Weyerhaeuser states that because the respondent produced all the reported merchandise, and purchased an insignificant amount of third-party merchandise, the Department disregarded the acquisition cost of the purchased merchandise and relied on the respondents' cost of production.[73] Weyerhaeuser claims that because it produced all of the merchandise subject to this review, the Department correctly disregarded Weyerhaeuser's purchases of lumber from third parties.

Finally, Weyerhaeuser contends that the petitioner's argument that the Department has included prices of third-party lumber in its dumping analysis is incorrect and is not supported by record evidence. Weyerhaeuser argues that the Department has fully neutralized the prices of commingled lumber in the margin calculations by removing the estimated portions of sales representing lumber produced by third parties.[74] Weyerhaeuser concludes that there is, therefore, no basis for the Department to ignore the statutory mandate and include acquisition costs in Weyerhaeuser's cost of production.

Canfor also argues that the antidumping statute prohibits the use of third-party finished lumber from being included in a respondent's cost of production. Specifically, Canfor points to 771(3) of the Act, where the Act states that "the cost of production shall be an amount equal to the sum of the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product. . . ." Thus, Canfor interprets the Act to limit the cost of production to only those costs incurred in "producing the foreign like product." Furthermore, according to

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[72] Weyerhaeuser refers to the petitioner's case brief at 20.

[73] See Certain Pasta from Italy2004 and accompanying Issues and Decision Memorandum at Comment 42.

[74] Weyerhaeuser cites Certain Cut-to-Length Carbon Steel Plate from Sweden: Preliminary Results of Antidumping Duty Administrative Review, 60 FR 48502 (September 19, 1995); Steel Pipes and Tubes from Thailand; and Gray Portland Cement and Clinker from Japan: Final Results of Antidumping Duty Administrative Review, 61 FR 67308 (December 20, 1996).

Canfor, the Act defines "foreign like product" as merchandise that is identical or similar to subject merchandise and that is produced "by the same person" that produces the subject merchandise. See 771(16) of the Act. Thus, Canfor argues that the Department may only consider the cost and sales data for lumber produced by Canfor.

Canfor asserts that prohibiting the inclusion of acquisition costs in the cost of production was confirmed when the Department in Certain Pasta from Italy 2004 and accompanying Issues and Decision Memorandum at Comment 42, stated that "{a}n acquisition price for a finished product does not translate into a cost of production." Continuing, Canfor notes that the Department consistently applied this practice in the Softwood Lumber from Canada LTFV Final Determination by excluding acquisition costs from Canfor and Weyerhaeuser's respective costs of production, notwithstanding the existence of commingled merchandise.[75]

According to Canfor, the petitioner has provided no statutory or regulatory authority to support the argument for including acquisition costs. Instead, the petitioner exclusively relied upon the early segments of Certain Pasta from Italy 1996 where the Department included acquisition costs in the cost of production, a treatment that Canfor points out has been recently and unambiguously rejected by the Department because it was found to be "...inconsistent with the law and with the treatment in other cases." Canfor also refutes the petitioner's attempt to distinguish the facts in this case from those in Certain Pasta from Italy 2004, stating instead that the statutory language and the Department's interpretation of the statute do not turn on the volume of third-party product purchased and resold by a respondent.

Finally, Canfor believes that the weighting out methodology performed on the sales side already neutralizes the impact of purchased lumber. Therefore, Canfor contends that any further adjustment would essentially double-count the adjustment already made by the Department on the sales side. To address the petitioner's contention that the methodology fails to effectively neutralize the impact of purchased lumber because it accounts only for quantities, not prices, Canfor argues that third-party lumber that is commingled, loses its identity. Therefore, upon resale, neither Canfor nor its customer knows the actual producer of the merchandise in any given sale. Consequently, there are no separate third-party prices to adjust and the only possible adjustment is on the quantity side. Therefore, Canfor believes the Department's methodology is reasonable and accurately performs this adjustment on a inventory location-specific and CONNUM-specific basis.

Department's Position:

We have not included the acquisition costs of third-party lumber resold by Weyerhaeuser and Canfor in their respective costs of production for the final results. The law repeatedly and

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[75] See Memorandum from Taija Slaughter, Accountant, to Neal Halper, Director, Office of Accounting, Re: Antidumping Duty Investigation of Softwood Lumber from Canada - Canfor at 1 (March 21, 2002); see also, Memorandum from Michael Martin, Program Manager, to Neal Halper, Director, Office of Accounting, Re: Antidumping Duty Investigation of Softwood Lumber from Canada - Weyerhaeuser at 3 (March 21, 2002).

explicitly calls for the use of the production costs of the subject merchandise in the antidumping calculation. Specifically, section 771(16)(A) of the Act defines the foreign like product as "{t}he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise." Also, section 771(16)(B)(i) of the Act, refers to merchandise "produced in the same country and by the same person as the subject merchandise." Section 771(28) of the Act states that an exporter or producer "means the exporter of the subject merchandise, the producer of the subject merchandise, or both where appropriate." Finally, for purposes of section 773 (the NV calculation), section 771(28) states, the term "exporter or producer" includes "both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise." Thus, the use of acquisition costs in the calculation of the cost of production is not prescribed by the law.

The petitioner correctly points out that the acquisition costs of purchased pasta were included in Certain Pasta from Italy 1996. However, the Department reviewed this practice in a more recent case and stated that "{a}lthough we agree that the acquisition cost of the purchased pasta was accepted in previous pasta reviews, this treatment was inconsistent with the law and with the treatment in other cases."[76]

We also disagree with the petitioner's contention that the volume of purchased finished merchandise plays a role in the Department's decision whether or not to use acquisition costs. As noted in Certain Pasta from Italy 2004, "{t}he Department has determined that it is necessary to use the producer's cost of production to accurately calculate the total costs and expenses incurred in producing subject merchandise. Furthermore, when a COP inquiry has been initiated, section 773(b)(1) of the Act clearly directs the Department to '...determine whether, in fact, such sales were made at less than the cost of production.' An acquisition price for a finished product does not translate into a cost of production."[77] Thus, the use of a respondent's cost of production is not contingent on the volume or impact on the margin of third-party merchandise that is sold.

Further, we also disagree with the petitioner's claim that the Department should have obtained a COP for the third-party lumber and in the absence of such, the acquisition costs should serve as a proxy. While the Department has on occasion obtained a third-party producer's COP when there was no transformation of the input merchandise within the scope of the order by the respondent,[78] this case does not warrant such an approach since Weyerhaeuser and Canfor both produced significant quantities of the merchandise under consideration. See also, Certain Pasta from Italy 2004, where the Department stated that the respondent "produced all of the CONNUMs and

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[76] See Certain Pasta from Italy 2004 and accompanying Issues and Decision Memorandum at Comment 42.

[77] Id.

[78] See Salmon from Norway and accompanying Issues and Decision Memorandum at Comment 1.

provided its own production costs for all the CONNUMs sold in the U.S. and home market," therefore, the Department "rel{ied} solely upon Zaffiri's cost of producing pasta."

Thus, consistent with the law and case precedent, we have not included the acquisition costs of purchased lumber in Weyerhaeuser and Canfor's respective costs of production for the final results.

II. Company-Specific Issues

Issues Specific to Abitibi

Comment 9: General and Administrative Expense Offset-Sale of a Line of Business

Abitibi claims that the Department should offset its G&A (general and administrative) expenses with the gain on the sale of an ongoing business operation - its Kraft pulp mill. The Department did not allow this amount to offset financial expenses in the Preliminary Results. Abitibi argues that the gain should be allowed to offset all general expenses, which include financial expenses, because it relates to the general operation of the company to the same extent as the purchase of a manufacturing facility, the idling of a manufacturing facility, the closure of a manufacturing facility, and the sale of fixed assets from manufacturing facilities. Because the general nature of all of these activities is the same, Abitibi concludes that the gain from the sale of the Kraft pulp mill should be treated the same. Abitibi cites Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590, 35614 (July 1, 1999) (AFBs), where the Department allowed the amortized gain from the sale of a manufacturing facility that was then subsequently leased back by the respondent.

Abitibi contends that it is the Department's practice to treat gains and losses from the sale of fixed assets and expenses related to manufacturing plant closures and temporary shutdowns as a general expense, provided the assets were depreciable, regardless of whether they were related to the production of subject merchandise.[79] Abitibi states that the Department has distinguished between routine sales of assets and non-routine sales of assets and allowed the gains or losses

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[79] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Korea, 67 FR 62124 (October 3, 2002) (CR from Korea) and the accompanying Issues and Decision Memorandum at Comment 15; Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the Republic of Korea, 66 FR 33526 (June 22, 2001) and the accompanying Issues and Decision Memorandum at Comment 7 (Rebar from Korea); Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador, 60 FR 7019, 7042 (February 6, 1995) (comment 52) (Roses from Ecuador); and Fresh Kiwifruit From New Zealand; Final Results of Antidumping Administrative Review, 59 FR 48596, 48608 (September 22, 1994) (comment 63) (Kiwifruit from New Zealand).

from the routine sales but disallowed the gains or losses from non-routine sales.[80] However, Abitibi believes that this approach was abandoned by the Department in the preliminary and final determinations of polyvinyl alcohol from Japan. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan, 68 FR 19510 (April 21, 2003) (PVA from Japan). Moreover, Abitibi states that in the Softwood Lumber LTFV Final Determination, the Department disregarded the notion that there could be non-routine assets that would not give rise to general expenses or gains.

Abitibi argues that the Department has also ruled that restructuring costs, including costs associated with closing production facilities, are general expenses related to a company as a whole even where those facilities only produced non-subject merchandise.[81] Further, Abitibi contends that the sale of its business segment is a restructuring move and relates to the general operations of the company because it is a business decision of what to produce and what not to produce.

Abitibi maintains that the gains recognized on the sale of the Kraft pulp business unit reflect the flip side of a goodwill expense which always relate to the company as a whole. The NAFTA Panel in the LTFV investigation agreed with the Department on this point. Further, Abitibi argues that because the Department does not examine whether goodwill expenses relate to the production of subject merchandise, it cannot exclude "goodwill-type" gains from general expenses.

Abitibi argues that if the Department does not allow the total gain on the sale of the business unit to offset G&A, in the alternative, the gain should be treated as a non-recurring item pursuant to section 773(f)(1)(B) of the Act and allocated over the useful life of the assets as benefitting both current or future production. Abitibi points to Article 2.2.1.1 of the ADA and cites a treatise of the WTO agreement that defines non-recurring costs as those costs that take place at one particular point in time and are typically incurred for the purpose of either entering or exiting markets.[82] According to Abitibi, the treatise explains that non-recurring costs, whose costs cut

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[80] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold Rolled Carbon Steel Flat Products From Germany, 67 FR 62116 (October 3, 2002) and the accompanying Issues and Decision Memorandum at Comment 16 (CR from Germany); Stainless Steel Wire Rod From Korea; Final Results of Antidumping Duty Administrative Review, 67 FR 6685 (February 13, 2002) and the accompanying Issues and Decision Memorandum at Comment 4B (SSWR from Korea); and Rebar from Korea.

[81] See, e.g., Corus at 21-22 (upholding the Department determination to include in general expenses the restructuring costs associated with decommissioning plants used to produce non-subject merchandise); and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From the United Kingdom, 67 FR 3146 (January 23, 2002) and the accompanying Issues and Decision Memorandum at Comment 3 (SS Bar from the UK).

[82] See Abitibi's case brief at 23-24 (referencing Judith Czako et al., World Trade Organization: A Handbook on Antidumping Investigation (Cambridge University Press, 2003) at 154-155).

across time and fall within the period reviewed accidentally, should appropriately be amortized allowing the costs to be spread out over the period reviewed and subsequent years.

Referring to AFBs, Abitibi asserts that where a respondent amortizes the gain in its books and records, the Department generally should use the recorded amortization in its calculation. Abitibi contends that this approach parallels U.S. practice in CVD investigations. Abitibi hypothesizes that if, in a countervailing duty proceeding, it received a non-recurring grant from the Canadian government, the Department would recognize that the benefit of the grant covers a number of years, and the Department would use the average useful life of assets for the industry to allocate that benefit over time. Abitibi alleges that because the sale of a manufacturing facility benefits both current and future production, the statute and the ADA require the Department to make an appropriate adjustment.

The petitioner argues that interest and G&A expenses are distinct categories of expenses recognized by the Department and that the gain from the sale of the pulp mill should not be offset against either.[83] The petitioner argues that the gain does not qualify as an offset to interest expenses because the Department only allows offsets for short-term interest income. The petitioner asserts that the gain on the sale of the manufacturing facility was not short-term interest income as defined by the Department. Further, the petitioner asserts that the Department will only allow an offset to interest expenses to the extent that the interest income equals interest expenses (i.e., the Department will not allow interest expenses to be negative).[84]

The petitioner argues that the Department, under certain circumstances, will treat gains or losses from routine sales of fixed assets as an offset to G&A expenses. However, the petitioner notes that this practice does not apply in the current circumstance because the sale is not routine or incurred in the ordinary course of business.[85] The petitioner points out that Abitibi identified the gain as income from discontinued operations, an atypical and infrequent occurrence, in a separate

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[83] See Use and Measurement of Production Costs Under U.S. Antidumping Law by Christian Marsh and John Miller dated September 19, 1995, and cases cited therein (supporting petitioner's argument).

[84] See, e.g., Certain Pasta From Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order in Part, 67 FR 298 (January 3, 2002) and the accompanying Issues and Decision Memorandum at Comment 3 (Pasta from Turkey); Use and Measurement of Production Costs Under U.S. Antidumping Law; Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review, 60 FR 2378, 2379 (January 9, 1995) (comment 4) (POS Cookware from Mexico); CINSA vs. United States, 966 F. Supp. 1230 (CIT 1997) (CINSA); and Certain Internal-Combustion Industrial Forklift Trucks from Japan: Final Results of Antidumping Duty Administrative Review, 57 FR 3167, 3177 (January 28, 1992) (comment 57) (Forklifts from Japan).

[85] See, e.g., CR from Germany; Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from the Republic of Korea, 57 FR 53693,53704 (November 12, 1992) (SMP cost comment 2) (Welded SS Pipe from Korea); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Quality Steel Plate Products from Korea, 64 FR 73196, 73209 (December 29, 1999) (comment 14) (CTL from Korea).

line item on the company's financial statements in accordance with GAAP, rather than an offset to the company's G&A expenses.

The petitioner contends that in AFBs, the Department accepted the respondent's amortized gain from the sale of a manufacturing plant because it was a sale-leaseback (whereby the cost of leasing back the operation was included in the reported costs) of a plant that produced subject merchandise and it was recorded as such in the company's books and records. As a result, the petitioner asserts that the facts in AFBs are very different from the facts in this case. The petitioner also argues that Abitibi's reliance on Softwood Lumber LTFV Final Determination is faulty. The petitioner points out that in that case, Tembec did not sell an entire manufacturing plant, it incurred costs to remove certain assets. Although Tembec claimed these costs as extraordinary expenses, the petitioner notes that the Department found the expenses to be routine and included the expenses in Tembec's G&A expenses.

Finally, the petitioner refutes Abitibi's suggestion that the Department should alternatively decide to amortize the gain over a ten year period. The petitioner argues that because the gain in question is not a cost, section 773(f)(1)(B) does not apply. Moreover, petitioner states that Abitibi's reliance on a treatise and the CVD law are irrelevant in this AD proceeding.

Department's Position:

We disagree with Abitibi that the gain from the sale of its Kraft pulp mill (an ongoing business line) should offset its general expenses, either financial expenses or G&A expenses. The gain or loss on the sale of an ongoing business line does not relate to the general operations of a company. Rather, the sale of an ongoing business line relates to that line of business and not the general operations of the company as a whole. See Certain Polyester Staple Fiber From Korea: Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke the Order in Part, 69 FR 61341 (October 18, 2004) and the accompanying Issues and Decision Memorandum at Comment 2. When determining whether an activity is related to the general operations of the company, the Department considers the nature, the significance, and the relationship of that activity to the general operations of the company. See CTL from Korea at 73210. Abitibi is in the business of manufacturing and selling merchandise, not selling entire factories or business units. Prior to disposal, the Kraft pulp business unit had ongoing operations related to the production and sale of non-subject merchandise. Routine sales of machinery and equipment are a normal part of ongoing operations for a manufacturing company and, accordingly, any resulting gains or losses are normally included as part of the G&A rate calculation. However, the sale of a fully functioning plant or business unit is a significant transaction, both in form and value, and the resulting gain or loss generates non-recurring income or losses that are not part of a company's normal business operations and are unrelated to the general operation of the company. See Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty Administrative Review, 66 FR 57417 (November 15, 2001) (Sheet and Strip from Korea) and accompanying Issues and Decision Memorandum at Comment 1. Therefore, for the final results, we have not included the gain from the disposal of the Kraft pulp mill in the G&A ratio calculation.

In evaluating whether the sale of the Kraft pulp mill was a routine sale of fixed assets, we considered the nature, the significance and the relationship of the Kraft pulp mill to the general operations of the company. The sale of this ongoing business line was not an insignificant transaction. As stated in Abitibi's 2002 annual report (at 14), "the divestiture was Canada's largest initial public offering of 2002." The total consideration for the sale was C$693 million, of which C$544 million was paid in cash and the remainder was paid in stock of the new enterprise (SFK General Partnership) and represented a 25 percent interest in the new entity. The Kraft pulp line of business did not cease to exist or operate. It continued as it had before the divestiture, it simply operated with new owners. Examined from another perspective, the total consideration for the sale of the business line represented more than 13.5 percent of the annual net consolidated sales of Abitibi. The Kraft pulp mill sales recorded in Abitibi's 2002 consolidated financial statements were C$103 million while the sales price of the Kraft pulp mill was 6.7 times that amount. Therefore, this cannot be considered an insignificant or routine transaction.

The footnotes to the consolidated financial statements present Abitibi's consolidated operations as business segments consisting of newsprint, lumber (now called wood products), and value added groundwood papers and market pulp (including Kraft pulp). In 2002 Kraft pulp represented 80 percent of the market pulp capacity (See Abitibi's 2003 Annual Report at 42 in Memorandum from Nancy Decker, Senior Accountant, to The File, Re: Abitibi Financial Information (November 30, 2004). Therefore, the nature of this operation is that of a separate line of business and not related to the general operations of the company.

We disagree with Abitibi that the sale of the ongoing business line is the same as a company idling a manufacturing facility. An idled facility is a facility that is no longer in operation, whereas the Kraft pulp mill in this case continues to operate, just not by Abitibi. This is one of the things that distinguishes the instant case from Corus, cited by Abitibi. In Corus, the restructuring costs resulted from taking certain assets at a particular facility out of service. Therefore, in Corus, the assets were, in essence, permanently idled, whereas the Kraft pulp mill sold by Abitibi was and continues to be fully operational. In addition, in the Corus case, the closures related to parts of a manufacturing facility and not a separate line of business, as in Abitibi's case.

We agree with the petitioner that Abitibi's reliance on AFBs is misplaced. In AFBs the company sold and leased back the same facility which produced the merchandise under consideration. That is, it operated the facility both before and after the sale. This is not the case with Abitibi. In this case, Abitibi sold an ongoing operation to a separate enterprise that then operated it. In AFBs, the company that sold the facility leased it back and continued to operate it just as it had prior to the sale.

We disagree with Abitibi that the Department should allow the gain on the sale of the Kraft pulp business line as an offset to general expenses merely because the assets were depreciable. The fact that in this case the Kraft pulp mill assets were depreciable is not the deciding factor. In this case, the assets were sold as a unit along with the entire operations of the Kraft pulp business

line. The Kraft pulp business line had significant sales before the POR, during the POR and it continued to operate after the POR. These assets were not simply non-productive or idled assets. In all of the cited cases regarding depreciable assets, the facts were distinct from the facts in this case where the gain is related to the sale of the complete Kraft pulp business line. In the cited cases CR from Korea and Rebar from Korea, the Department did not allow the gain from the sale of non-depreciable land to offset G&A. In Roses from Ecuador, the Department did not include the loss on the sale of fixed assets in financial expense, but the loss was included in G&A. In Kiwifruit from New Zealand, the issue was not gains on the sale of a business line or entire factories, it was gains on the routine sales of fixed assets, which the Department allowed as an offset to G&A. It is unclear why Abitibi cited PVA from Japan because that case was decided on the basis of total facts available where no issues were raised and no comments were received and addressed.

We disagree with Abitibi that the sale of the ongoing Kraft pulp mill is a restructuring that gives rise to gains and losses that should be included in G&A. A consolidated entity the size of Abitibi has some very profitable and valuable lines of business. The fact that Abitibi chose to sell, at a very large profit, one of its business lines, does not mean that the cost of producing its merchandise was any less. Under Abitibi's line of reasoning, a company could end up with a cost of producing lumber of zero simply because it was able to sell certain extremely profitable business lines or factories at large profits.

We disagree that the gain recognized on the sale of the Kraft pulp facility is in essence a reverse type goodwill that should be included in G&A. This argument defies logic. Goodwill is recognized when the price a company pays for the assets of another entity exceeds the fair value of the assets it obtained. The definition of goodwill from GAAP 2002 - Interpretation and Application of Generally Accepted Accounting Principles 2002, Patrick R. Delaney, et al., John Wiley & Sons, Inc., New York 2001 (the GAAP guide), at 403 is "the excess of the cost of the acquired enterprise over the sum of the amounts assigned to identifiable assets acquired less liabilities assumed." Continuing, the GAAP guide states, "{a}fter completing the purchase price allocation (a process described in APB 16 and unaltered by the new standards), any residual of cost over fair value of the net identifiable assets and liabilities is assigned to the unidentifiable asset, goodwill." (Emphasis added.) See p. 477 of the GAAP guide. Because goodwill is an unidentifiable asset, it is inappropriate and impossible to split it between activities, assets or divisions. Attributing the full goodwill cost to the company's overall general operations, as a G&A cost, is consistent with this point. See Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea, 69 FR 17645 (April 5, 2004) and the accompanying Issues and Decision Memorandum at Comment 12. Unlike goodwill, the gain on the sale of the business line is not an unidentifiable item. The gain can and was specifically identified to the assets of the Kraft pulp mill that Abitibi sold. We disagree with Abitibi's logic that the amount received for the sale of the pulp business line in excess of the net book value of the pulp business line assets should be spread to the remaining assets owned and operated by Abitibi. This "reverse goodwill" theory is not in accordance with GAAP of any country and is not a concept addressed in any accounting pronouncements. Contrary to Abitibi's claim, the gain is not a reverse of goodwill expense and it

would be inappropriate to allocate any portion of this gain from the sale of an ongoing business line to the cost of producing softwood lumber.

We are not persuaded by Abitibi's alternative argument the Department should allow a portion of the gain as a non-recurring item under section 773(f)(1)(B) of the Act. This section relates only to costs that benefit future periods, not revenues.

With respect to Abitibi's amortization argument, Abitibi sold its asset, thus there is no asset life over which to amortize the gain. Furthermore, regarding Abitibi's claim that the Department should amortize the gain the way it might a government grant in a CVD proceeding, the CVD and AD sections of the Act are separate and distinct; the rules of one do not govern the other. Finally, Abitibi claims that Article 2.2.1.1. of the ADA supports amortizing the gain as a non-recurring item. The Department's position is fully consistent with the United States' law and with its international obligation under this provision.

Comment 10: Calculation of Financial Expense Ratio-Asset or Cost of Sales Allocation

Abitibi asserts that the Department should allocate its financial expenses based on total assets, as reported by Abitibi, rather than the Department's traditional methodology (i.e., allocating financial expenses based on the cost of goods sold).[86] Abitibi argues that, in its situation in this particular case, the asset allocation methodology allows for the proper and non-distortive allocation of costs, whereas the Department's traditional methodology does not. Abitibi points out that the asset allocation methodology used in the instant case differs from the asset methodology used by Abitibi in the previous proceeding[87] and, therefore, has not been addressed by the Department.

Abitibi claims that the Department, in selecting the allocation methodology for financial expenses, must follow the statutory requirement that general expenses added to COP must be an amount pertaining to production and sales of the foreign like product.[88] Abitibi asserts that these statutory guidelines require the Department to use a methodology that encompasses only the production and sales of softwood lumber (i.e., the foreign like product) and not Abitibi's other products. As such, Abitibi concludes that the allocation methodology used must bear a

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[86] Abitibi contends that the Department resorted to its traditional methodology in the Preliminary Results to this case without any explanation or comparative analysis of the two alternative methodologies.

[87] Abitibi contends that the asset allocation methodology used in the previous proceeding and succeeding litigation was based on asset values at one point in time (i.e., the end of the fiscal year) whereas the asset allocation methodology used in the instant case is based on the average asset values over the POR. See Abitibi's case brief at 27, fn 16.

[88] See section 773(b)(3)(B).

reasonable relationship to the basis on which the expense is incurred.[89] Abitibi contends that the Department must also base its selection of allocation methodologies on record evidence.[90]

These two requirements, notes Abitibi, are supported by the express obligation in the U.S. statute and the ADA that the Department consider all available evidence on the proper allocation of costs.[91] Abitibi alleges that the WTO Appellate Body, in an appeal brought by Canada on behalf of Abitibi in regard to the LTFV determination in this case, ruled that the Department must reflect on and weigh the merits of evidence submitted regarding allocation issues.[92] Abitibi asserts further that the WTO Appellate Body held that there must be some degree of deliberation on the part of the investigating authority in considering all available evidence to ensure a proper allocation of costs.[93] Abitibi concludes that the Department must comply with this obligation and consequently select an allocation methodology, in the instant case, based on the evidence before it and an assessment of the relative advantages and disadvantages of the Department's traditional methodology and Abitibi's proposed methodology.[94]

Abitibi asserts that the Department, in Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from Korea, 58 FR 15467 (March 23, 1993) (DRAMS from Korea), held that the total assets allocation methodology was appropriate, rather than the cost of goods sold (COGS) methodology, because the allocation of interest expenses based on the COGS would not appropriately recognize the capital investment necessary for the subject merchandise compared to the other lines of business.[95] Abitibi points out that the record evidence in this case shows that the COGS methodology does not reflect the basis on which financial expenses are incurred. Abitibi argues

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[89] See Notice of Final Determination of Sales at Less than Fair Value: Concrete Reinforcing Bars from the Republic of Korea, 66 FR 33526 (June 22, 2001) and accompanying Issues and Decision Memorandum at Comment 2 and Micron Tech, Inc. vs. United States, 44 F. Supp. 2d 216 (CIT 1999).

[90] See, e.g., U.S.C. § 1516a(b)(1)(B)(I) and Thai Pineapple Canning Indus. Corp. vs. United States, 273 F.3d 1077 (Fed. Cir. 2001).

[91] See 773(f)(1)(A) of the Act and Article 2.2.1.1 of the ADA.

[92] See Abitibi's case brief at 29 referencing United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R (August 11, 2004) at paragraph 133.

[93] Id. at paragraph 134.

[94] Abitibi asserts that the WTO Appellate Body ruled that such a comparison is required in appropriate cases. See Abitibi's case brief dated August 20, 2004 at 29. Abitibi contends that the instant case is such a case because the record evidence contains evidence that more than one allocation methodology may be appropriate.

[95] Abitibi notes that while the Department did not follow the same practice in subsequent DRAMS from Korea cases, the Department has never identified deficiencies in the asset allocation methodology and has continued to use its traditional allocation methodology in order to have a consistent practice regardless of whether that practice is proper or accurate. Abitibi asserts that the statute does not require a consistent methodology but instead requires that the methodology be selected based on the evidence in each case.

that the allocation of a company's interest expense to particular products must take into account the funds needed for that product line and the amount of time for which the funds are needed.

Abitibi argues that the Department's COGS methodology ignores the fact that the amount of capital required for the production and sale of goods encompasses a variety of fixed assets, non-depreciable assets, and other assets. Abitibi claims that its newsprint and value-added paper product lines are more asset intensive than its lumber product line. Abitibi argues that the Department's COGS methodology is distortive because the assets needed to produce and sell the company's products are more significant in value than the current production expenses incurred to produce those products and that the assets employed for different product lines are not proportionate. Abitibi points to record evidence as support, stating that its interest expenses for fiscal year 2002 exceeded its total COGS, thereby rendering an allocation based on COGS inaccurate and not proper. See Abitibi's case brief at 33. Instead, Abitibi argues that its balance sheet as of year-end 2002 shows that the sum of its debt and liabilities are equal to, and in turn finance, its total assets.[96]

Abitibi asserts that the Department's COGS methodology does not take into account the amount of time the expenses incurred to produce goods remain outstanding. Abitibi presents an example that it concludes shows that the Department's COGS methodology incorrectly focuses on the total dollars expended (i.e., COGS) and ignores the amount of time a company needs to advance such dollars. Id. at 32. Using the same example, Abitibi argues that its total asset allocation methodology correctly adjusts for the difference in the amount of time that production expenses remain outstanding because total assets, the allocation basis, will include raw materials inventory, finished goods inventory, and accounts receivable.

Abitibi maintains that the Department's COGS methodology is inconsistent with other aspects of the Department's antidumping methodology. As an example, Abitibi points out that the Department recognizes in its price-to-price comparison that there is a cost of lending credit to customers. However, in using the COGS methodology, Abitibi asserts that the Department does not take into consideration the amount of time it takes customers to pay for different products when allocating financial expenses to different products. Abitibi reasons that the total asset methodology does account for this time because accounts receivable are one of the assets included in the basis of the allocation. Abitibi contends that the greater the accounts receivables for a product line, the more financial expenses it will attract. Abitibi provides a similar argument for finished goods inventory. Id. at 35. Abitibi also notes that the COGS allocation methodology ignores raw material inventory, while the total asset methodology does not.

Abitibi also notes that the Department's methodology does not permit offsets to financial expenses or other general expenses for activities it deems to constitute investment activities. Although the Department considers these activities to be separate lines of business, Abitibi

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[96] Abitibi asserts that non-depreciable assets, such as land, accounts receivables, raw material inventory, and finished goods inventory, are significant in proportion to Abitibi's COGS and cannot be ignored by the Department in its analysis (Id. at 33 and 34).

contends that the Department's allocation methodology allocates no interest expense to these businesses because they do not generate cost of sales. Abitibi argues that this is inappropriate because these lines of business require capital and, therefore, financial expenses should be allocated to them.

Abitibi maintains that the Department has offered several rationales in order to justify its use of the COGS methodology. According to Abitibi, the rationales do not withstand scrutiny in light of the record evidence in the instant case. First, Abitibi claims that the Department's theory that money is fungible[97] supports the total asset methodology and undercuts the COGS methodology. Abitibi argues that the uses to which a company puts its funds are reflected in its assets rather than just its current production expenses. Further, Abitibi maintains that the COGS methodology considers production costs only and not the expenses associated with selling the merchandise (i.e., selling expenses and accounts receivables), a violation of the statute. Abitibi also argues that the COGS methodology does not incorporate the theory that money is fungible because COGS does not include all lines of business (i.e., investment activities). Abitibi contends that the total asset methodology takes into consideration all business activities of a company and is much broader than the COGS methodology.[98] Moreover, asset values, according to Abitibi, more appropriately value expenses because they consider the time element of interest costs. Abitibi alleges that the COGS methodology ignores the fact that Abitibi must finance all of its fixed assets, all of its non-depreciable assets, all of its selling expenses, and every other item of expense, whereas the asset allocation methodology captures all of these expenses. Abitibi concludes that the COGS methodology wrongly focuses on only Abitibi's working capital needs (i.e., those capital needs related to current production) rather than its total capital needs. In the instant case, Abitibi notes that its total capital needs exceed its working capital needs.

Abitibi contends that there are three factual problems with the Department's argument[99] that the COGS allocation methodology takes into account assets because it includes depreciation expenses. Abitibi notes that the first problem is that when Abitibi purchases an asset, it must come up with the capital (i.e., it must finance) for the entire value of the asset and not simply the depreciation expense. The second problem with the Department's argument, according to Abitibi, is that depreciation cannot serve as a surrogate for asset values because not all assets are depreciable (e.g., land, accounts receivable and inventory). Finally, Abitibi asserts that depreciation expenses are not proportionate to asset values. Abitibi provides business segment data in its case brief, at 40, to support its argument that the asset values utilized by Abitibi's

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[97] See United States - Final Dumping Determination on Softwood Lumber from Canada: First Written Submission of the United States, WT/DS264 (May 12, 2003) (First Written Submission) at paragraph 195. Abitibi argues that the Department stated its position clearly in its First Written Submission.

[98] Abitibi asserts that the record evidence shows that every expense item included in COGS is reflected in the values of various assets . See Abitibi's case brief dated August 20, 2004 at 37.

[99] See Softwood Lumber LTFV Final Determination and accompanying Issues and Decision Memorandum at Comment 15.

different business segments are not proportionate to the depreciation expense generated by each business segment.

Abitibi concludes its arguments with a summary of the advantages and disadvantages of its suggested asset allocation methodology and the Department's traditional methodology. In this summary, Abitibi notes that the disadvantage to the asset allocation methodology is that it can only be used for companies, such as Abitibi, that segregate assets by line of business. Conversely, the only advantage listed for the COGS methodology in Abitibi's summary is that the COGS methodology is very simple to apply and can be applied in every case because all financial statements state the COGS.

The petitioner contends that Abitibi misconstrues the Act in claiming that section 773(f)(1)(A) compels the Department to consider all available evidence on the proper allocation of costs and weigh the relative advantages and disadvantages of the Department's COGS methodology and Abitibi's suggested total asset allocation methodology. The petitioner asserts that this provision only requires the Department to consider a cost allocation where the company has recorded a cost allocation in its normal books and records. As such, the petitioner argues that this provision is not relevant in the instant case. In addition, the petitioner argues that the WTO Dispute Settlement Panel and the WTO Appellate Body decisions are inconsistent with U.S. law, and further, the WTO Appellate Body decision did not require the comparison of the Department's COGS methodology and Abitibi's total asset allocation methodology. The petitioner claims that the WTO Dispute Settlement Panel reviewing the Softwood Lumber LTFV Final Determination interpreted Article 2.2.1.1. of the ADA as a limited obligation on investigating authorities to consider all available evidence on the proper allocations of costs insofar as such allocations have been historically utilized by the exporter or producer.[100] The petitioner argues that the WTO Appellate Body did not rule on the WTO Dispute Settlement Panel's interpretation in this regard. Instead, notes the petitioner, the WTO Appellate Body ruled that the WTO Dispute Settlement Panel's finding, that Article 2.2.1.1 would never require that investigating authorities compare various allocation methodologies to assess their advantages and disadvantages, was too broad, and therefore, the finding was limited to situations in which an investigating authority was reviewing a historical cost allocation kept in the ordinary course of a company's business.[101] The petitioner asserts that, in situations where a historical allocation was used, the WTO Appellate Body ruled that the investigating authority may or may not be required to assess the relative advantages and disadvantages of an allocation. Further, the petitioner claims that the WTO Appellate Body expressly did not rule on whether an investigating authority would have to consider all available evidence of costs if a producer did not historically utilize the cost allocation

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[100] See United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS 264 (February 27, 2004) at paragraphs 7.236 - 7.238.

[101] The petitioner cites United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R (August 11, 2004) at paragraphs 138, 139, and 142.

proffered.[102] The petitioner concludes that, because Abitibi did not historically allocate its interest expenses to particular segments of products, the Department is only required to determine whether its COGS allocation methodology reasonably allocates interest expenses.

The petitioner contends that the Department acted reasonably in rejecting Abitibi's proposed total asset allocation methodology in its Preliminary Results because Abitibi's methodology was expressly rejected by the Department in its Softwood Lumber LTFV Final Determination, a determination that was affirmed by the NAFTA Panel and a WTO Dispute Settlement Body Panel.[103] The petitioner argues that the Department's methodology addresses Abitibi's concern that its activities associated with non-subject merchandise are more capital intensive than those activities associated with lumber. The petitioner points out that the COGS methodology allocates 87 percent of Abitibi's interest expenses to non-lumber products and only 13 percent to lumber products.[104] The petitioner asserts that because COGS of all products includes a proportional amount of the depreciation of the fixed assets used in producing both subject and non-subject merchandise, allocating interest expense on the basis of COGS distributes proportionally more interest expense to those products having higher capital investment (i.e., pulp and paper) and less interest expense to those products having less capital investment (i.e., lumber).

The petitioner asserts that the Department's methodology accounts for the fact that money is fungible and that interest expense should be attributable to all business activities conducted by the company during the relevant period. According to the petitioner, allocating interest expenses over COGS sufficiently takes into account the borrowing activities of Abitibi, which is a producer and not a real estate company or financial services company.

Further, the petitioner contends that the Department has specifically rejected allocating interest expenses to business segments on the proportional share of fixed assets as advocated by Abitibi. The petitioner points to Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea, 63 FR 8934 (February 23, 1998) (SRAMS from Korea) where the Department ultimately found that allocating interest expense based on COGS distributes proportionally more interest expense to those products which had a higher capital investment. The petitioner objects to Abitibi's reliance on DRAMS from Korea because the case has little precedential value as it has never been followed in any other case and in the subsequent SRAMS from Korea decision, the Department expressly disavowed allocating interest expense based on fixed assets, finding instead that the COGS allocation

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[102] Id. at paragraph 142.

[103] See, e.g., Certain Softwood Lumber Products from Canada, USA-CDA-2002-1904-02 (March 5, 2004) and United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS 264 (February 27, 2004). The petitioner points out that the WTO Appellate Body did not reach the issue of whether the Department acted reasonably in employing the COGS method to allocate Abitibi's interest expense.

[104] See the petitioner's case brief dated August 20, 2004 at 14.

methodology was a reasonable means of accounting for vastly different business segments.[105] In affirming DRAMS from Korea, the CIT, in Micron Technology Inc. vs. United States, 893 F. Supp 21, 30 (CIT 1995) (Micron Technology) specifically opined that the Department's methodology of using COGS would also have been a reasonable method to allocate interest expense as it would have accounted for the capital intensive nature of the semiconductor industry through increased depreciation expenses.[106]

The petitioner asserts that although Abitibi's proposed total asset methodology in the instant case accounts for several points in time, rather than the single point in time advocated by Abitibi in the LTFV investigation to this case, the method is unreasonable because the values of the account balances of non-fixed assets (e.g., cash and accounts receivables) fluctuate constantly throughout the year.[107] The petitioner asserts that conversely, the Department's methodology reflects the actual COGS over the entire calendar year, and is thereby less subject to distortions caused by measuring asset values at certain points in the calendar year as proposed by Abitibi.

The petitioner argues that, even assuming the statute and Article 2.2.1.1. of the ADA require the Department to consider all available evidence regarding Abitibi's proposed allocation methodology, Abitibi's methodology is not any more reasonable than the COGS methodology, and therefore, the Department should continue to use the COGS methodology for purposes of its final results.

Department's Position:

We disagree with Abitibi's claims that the Department's COGS methodology, also known as "cost of sales," as applied in the Preliminary Results, is inconsistent with section 773(f)(1) of the Act. Section 773(f)(1) of the Act provides that costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Further, it stipulates that the Department shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation, provided that such allocations have been historically utilized by the exporter or producer. The Department, accordingly, looked to Abitibi's books and records and applied a methodology to allocate interest

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[105] The petitioner argues that the Department has rejected numerous methodologies for allocating interest expenses based on the agency's reasoning that money is fungible. See, e.g., Salmon from Chile 1998 and Final Determination of Sales at Less Than Fair Value: New Minivans From Japan, 57 FR 21937 (May 26, 1992).

[106] The petitioner notes that in this case, the CIT deferred to the Department's expertise finding that allocating interest expenses based on the proportionate value of semiconductor fixed assets to company-wide assets was plausible.

[107] The petitioner claims that the value of non-fixed assets included in the asset valuation base for each quarter cannot be ascertained as no supporting documentation was provided to allocate by quarter. See Abitibi's Section D response at 124, Annex D.14.

expenses that reasonably reflected the costs associated with the production and sale of softwood lumber.

In considering all available evidence on the proper allocation of cost, we reviewed the facts on the record, the methodological differences between Abitibi's asset method and the COGS method, the practical implications of applying each method in this case, and the COGS method's applicability to lumber respondents. It is important to note, however, that unlike direct product costs, such as direct materials, labor, or factory overhead, financial expenses are not assigned to products for financial statement reporting purposes, under GAAP, nor are they assigned to Abitibi's business segments. Rather, they are reflected as a period cost, relating to the Abitibi-Consolidated entity as a whole. When allocating a consolidated entity-wide expense to individual products, as required by the statute, one must necessarily balance a number of accounting and financial concepts in order to obtain a reasonable allocation.

Thus, any allocation method will have its strengths and weaknesses, especially where one must allocate consolidated entity-wide period costs to products. However, we are not required to compare various allocation methodologies to assess their advantages and disadvantages.[108] Where an allocation is not kept in the normal records, or is not historically used, we simply must consider all available evidence and select a reasonable allocation method. Also, it is desirable for an administering authority, when appropriate, to be consistent from case-to-case and respondent-to-respondent in selecting methodologies.

In the instant review, the Department calculated a COP and constructed value (CV) for Abitibi. The Act defines COP and CV to include general expenses. The Department defines "general expenses" to include financial expenses (also known as "interest expenses"). See the Department's Section D questionnaire dated September 22, 2003 at D-12. In order to include financial expenses within COP and CV, the Department has developed a methodology whereby it calculates a financial expense ratio. That is, using the highest level consolidated financial statements in which the respondent is a part, we divide the consolidated group-wide net financial expenses by the consolidated group-wide COGS. We then apply this ratio to the reported subject merchandise-specific cost of manufacturing (COM) (i.e. the sum of materials and fabrication costs) in order to arrive at a subject merchandise-specific financing expense amount for COP and CV. In this way all products produced by an entity are burdened with a proportional amount of financial expense.

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[108] Abitibi's arguments relying on the WTO Appellate Body decision for its claim that the Department must compare all allocation methodologies to assess strengths and weaknesses is misplaced. First, WTO decisions are non-precedential. Thus, the findings of the WTO, Appellate Body, based on the facts of the LTFV investigation, do not apply to this administrative review. Moreover, contrary to Abitibi's assertions, the WTO Appellate Body stated that it was "not expressing a view or making any finding on whether USDOC, in the instant case, should have 'compared' its own and Abitibi's methodologies and, assuming USDOC was under such an obligation, whether USDOC in fact complied with it." See United States – Final Dumping Determination on Softwood Lumber from Canada, Report of the Appellate Body, WT/DS264/AB/R (August 11, 2004) at paragraph 140. The record of this administrative review amply demonstrates that the Department considered all available evidence on the proper allocation of costs.

Abitibi does not challenge the Department's use of consolidated financial statements, or the inclusion of financial expenses within general expenses for purposes of COP and CV. Nor does Abitibi challenge the Department's use of COGS as the base for a financial expense ratio. Abitibi actually challenges the amount of financial expense allocated to particular segments of its business. Specifically, Abitibi argues that, when the Department calculates its financial expense ratio, the consolidated group-wide net financial expenses should first be allocated proportionally by the assets assigned to each business segment, before allocating the "segment's" net financial expenses by the cost of goods sold of the particular business segment. The question then is whether this line between business segment assets is warranted in this case or if the consolidated group-wide net financial expenses should be allocated by the consolidated group-wide cost of goods sold. The two methods at issue reflect two different perspectives on this allocation issue. Abitibi's focus on assets is a static balance sheet approach whereas the COGS method takes an income statement approach.

We note the Department has been presented with cases where strictly following our normal practice would not have resulted in a reasonable allocation. If the facts of a particular case warrant a change from our normal practice, the Department will consider alternatives. For example in Kiwifruit From New Zealand at 48601, petitioner argued that interest expense should be allocated on the basis of cost of goods sold, rather than on the basis of assets. The Department disagreed stating that:

> During verification in New Zealand, the Department observed that many kiwifruit growers reside on their farms. In most cases, these growers' financial statements list their private residence as well as orchards-related expenses together...Since the growers' residence does not generate a cost of sales, the allocation of interest on the basis of cost of sales would not accurately reflect the amount of interest expense attributable specifically to the residence of the orchard operation. Therefore, we have accepted respondent's methodology of allocating interest expenses on the basis of assets.

We believe that Abitibi has failed to demonstrate that the facts in this case should lead us to an alternative method. An arbitrary proportioning of finance expenses according to asset values along business segments first, and then allocating by COGS, puts an undue emphasis on assets as the driving factor as to why financial expenses are incurred. Abitibi's method incorrectly assumes that asset purchases and holdings are the only relevant activity of the company in measuring the working capital needs of respective business segments within a corporate group. It minimizes the cash requirements to support current production activities (e.g., paying vendors, workers, energy bills, etc.) and places more emphasis on the long-term accumulation of fixed assets. Such a method emphasizes capital acquisitions and holdings and virtually eliminates the consideration of different working capital requirements between the business segments.

Consolidated group-wide COGS is typically the most appropriate denominator for the financial expense ratio because it reflects all manufacturing costs associated with producing the merchandise

during the year.[109] That is, it reflects the working capital requirements (i.e., the cost of input raw materials, energy, labor, depreciation, etc.) to support the company's overall ongoing production operations. Moreover, the use of a COGS-based allocation method follows the treatment of these expenses under GAAP. GAAP recognizes that financial expenses are costs that relate to the company's overall operations, rather than to the operations of a division within the company or to a single product line. This is precisely why Abitibi's own audited consolidated financial statements do not apportion interest expense to the different business segments. Rather the interest expense is reported on the audited financial statements as a period cost associated with the activities of the consolidated entity as whole. Abitibi does not allocate financial expenses in its records to particular business segments or products. In addition, GAAP recognizes that financial expenses reported on the income statement reflect the current cost of borrowing and must be recognized as expenses in the current period as opposed to these costs being associated with assets on the balance sheet which reflect in many instances assets accumulated over many years. The COGS method recognizes the general nature of these financial expenses, that they are current expenses or period expenses, and the fact that these expenses are incurred in supporting a range of the company's overall operations. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cold-Rolled Carbon Steel Flat Products from Japan, 58 FR 37154, 37166 (July 9, 1993)) and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Sweden, 63 FR 40449, 40459 (July 29, 1998) (comment 12).

Furthermore, because money is fungible, financing costs need not be allocated with respect to the specific purposes for which funds are used. This is one reason financial accounting does not typically associate financial expenses, such as interest expense, with particular activities, nor does it associate corporate debt with particular assets. Instead, it treats interest expense as being related equally to all current operating activities of the company, and, in effect, burdens all products equally. The CIT and Federal Circuit have consistently upheld the Department's position on this point. See American Silicon Technologies and SKW Metals & Alloys, Inc., Elkem Metals Company and Global Metallurgical, Inc. v. United States, 334 F. 3d 1033 (Fed. Cir. 2003) (American Silicon III), where the court stated,

> This court must therefore determine whether Commerce reasonably calculated 'general expenses' by using Solvay's consolidated financial documents. In the first place, this court notes that standard accounting principles acknowledge consolidated financial statements as a fair presentation of the financial position of a group. See, Floyd A. Beams, Advanced Accounting 74, 77, 91, 102-03 (5th ed. 1992). Following those practices, Commerce has adopted and followed a standard policy for assessing finance costs of a producer based on the consolidated financial statements of a parent because the cost of capital is fungible. Commerce's policy recognizes that consolidated financial statements indicate that a corporate parent controls a subsidiary. These consolidated statements represent the financial health of

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[109] Barron's Financial Guides: Dictionary of Finance and Investment Terms, Second Edition (1987) defines COGS as "the cost of buying raw materials and producing finished goods."

> parent company operations in view of subsidiary operations. In addition, fungible financial assets invite manipulation. In other words, if Commerce used only a single division of a group as the source of financing costs, the controlling entity could shift borrowings from one division to another to defeat accurate accounting.
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> Therefore, under standard Commerce policy, as well as standard accounting principles, 'majority ownership is prima facie evidence of control over the subsidiary.' See Am. Silicon, 1999 WL 354415, at *7. Moreover, the Court of International Trade has sustained Commerce's normal practice of calculating financial expense ratios based on the consolidated financial statements of a parent as a permissible interpretation of applicable statutes (19 U.S.C. §§ 1677b(b)(3)(B), 1677b(e)(2)(A), and 1677b(f)(1)(A)), the Statement of Administrative Action, and its case law. See, e.g., Gulf States Tube, 981 F. Supp. at 647-49.

The record evidence shows that for Abitibi's fiscal year 2002, the lumber segment's relative percentage of Abitibi's overall cost of sales was 12.5 percent, versus the news print segment's 59.0 percent and the value-added ground wood papers segment's 28.44 percent. For Abitibi's fiscal year 2002 the lumber segment's relative percentage of Abitibi's overall assets was 6.89 percent, versus the news print segment at 65.4 percent and the value-added ground wood papers segment at 27.8 percent. These percentages are relatively the same in Abitibi's fiscal years 2001 and 2000. We also note that depreciation expenses at each segment as a percentage of each segment's cost of sales have remained relatively constant over the past three years, for lumber approximately 8.5 percent, for news print approximately 14 percent, and for value-added ground wood papers 11.5 percent. Moreover, under the COGS method the Department allocates 87.5 percent of Abitibi's financial expenses to non-lumber operations, while under Abitibi's assets method we would allocate 93.1 percent to non-lumber operations. While the two methods do result in different amounts of interest expense being allocated to each segment, the difference is relatively small, not unlike the small differences in the LTFV investigation.

As noted above, Abitibi's asset method emphasizes assets over working capital. In part, Abitibi argues that this should be done because its balance sheet, as of year-end 2002, shows that the sum of its debt and equity is equal to, and in turn finances, its total assets. Abitibi also argues that the record shows that its total debt for fiscal year 2002 exceeded its total COGS thereby rendering an allocation based on COGS as inaccurate and not proper. Neither of these facts are relevant. With the basic accounting formula of assets equals liabilities plus owners equity, Abitibi tries to prove that debt is attributable only to assets. Abitibi's approach is clearly balance sheet focused. However, just as in financial accounting, one financial statement does not accurately tell the complete story: one needs the income statement, the statement of cash flow, and the statement of equity, or rather deficit, in the case of Abitibi.

The COGS method, on the other hand, takes an "income statement" and "cash flows" perspective. Financial expenses and COGS are both elements of the income statement. As period costs, attributable to a period of time rather than to assets, financial expenses are listed separately on the

income statement and are not capitalized to assets on the balance sheet.[110] Abitibi's argument that its total debt for fiscal year 2002 exceeded its total COGS does not support its claim for a different financial expense methodology . It is a meaningless point of fact. The question before the Department concerns interest expense, not debt. Moreover Abitibi's statement of cash flows shows that cash from continuing operating activities, after accounting for financial expenses of $444 million Canadian, was a positive $243 million Canadian. The statement of cash flows also shows that while additions to fixed assets amounted to $214 million Canadian for fiscal year 2002, debt decreased by $370 million Canadian. We note that from 1992 to 2002 Abitibi's net cash from continuing operating activities totaled $4.2 billion while its net cash from borrowing (increases and repayments) was only $1.6 billion Canadian. What this tells us is that debt is not the only source of funds, and that assets on the balance sheet are not the only use of funds. Clearly assets do not tell the entire story, nor does the basic accounting formula of assets equal the sum of debt and equity.

The COGS allocation methodology takes into account the fact that different business units of a company may have different capital needs, since a business unit with lower capital costs will likely also have lower depreciation costs, which are factored into COGS. While evidence on the record indicates that Abitibi's non-lumber divisions have a greater amount of assets than its lumber division, the evidence does not indicate that Abitibi's financial costs relate solely to asset financing. As noted, financing costs may relate in part to the acquisition of materials, labor, and overhead needed for current production or cash-flow requirements, and to factors other than fixed asset costs. While land and goodwill are not amortized, as Abitibi argues, we note that depreciation expense is recorded for all of the other fixed assets. We do not believe that this renders the COGS method unreasonable. We note that neither Canadian nor U.S. GAAP consider financial statements to be misstated because they exclude a cost associated with either of these assets in a given period.[111] In addition, goodwill is expensed when deemed to be impaired and therefore may be recognized periodically as a cost. Thus, Abitibi's proposed asset-based allocation ignores the fact that finance costs might be incurred for purposes other than the purchase of capital goods. By contrast, the COGS-based methodology reflects such possible borrowing needs, reflects the fungibility of money, and acknowledges the distribution of assets within a company, since asset depreciation is taken into account in determining the cost of goods sold.

We note that Abitibi's use of COGS in its asset methodology points out a major inconsistency with Abitibi's argument. If true, all of the criticisms alleged by Abitibi as to the use of COGS as a basis of

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[110] We note that on page 60 of Abitibi's consolidated financial statements, it notes that "During the year, interest expense amounting to $2 million (2001 - $8 million, 2000 - $13 million) has been capitalized in connection with the capital projects." See Abitibi's Section A at Annex A-12. Canada's treatment of interest expense is similar to that of the United States. Under Statement of Financial Accounting Standards No. 34 (Oct 1979), interest can be capitalized up to the point when an asset is placed into service under the theory that the full cost required to place an asset into service should be reflected in the asset's recorded book value. However, once the asset is placed into service, interest is no longer capitalized. This is because the payment of interest is associated with the debt, not the asset. The payments on the loan, assuming there is one directly traceable, do not increase the value of the asset and its revenue generating ability, rather they are the current cost of holding debt.

[111] See Financial Accounting Standards Board Statement of Financial Standards, No. 142 (June 2001).

allocation for financial expense would apply to its own alternative method. The business segments, the dividing line where Abitibi would have us identify the allocable amounts, have diverse operations and products. Thus, the capital requirement of each product would have to be derived separately according to Abitibi's theories. However, Abitibi chooses to apply its theory only at the business segment and then adopts a COGS approach within a segment. Therefore, Abitibi is not only being inconsistent in applying its theory, but many of the same alleged distortions claimed by Abitibi under the COGS methodology would also exist in Abitibi's suggested alternative.

Abitibi argues that the allocation of a company's interest expense to particular products must take into account the funds needed for that product line and the amount of time for which the funds are needed. Abitibi asserts that the COGS methodology does not take into account the amount of time the payables associated with expenses incurred to produce goods remains outstanding. Abitibi argues that the COGS methodology incorrectly focuses on the total dollars expended (i.e., COGS) and ignores the amount of time a company needs to advance such dollars. Abitibi argues that its total asset allocation methodology correctly adjusts for the difference in the amount of time that production expenses remain outstanding because total assets, the allocation basis, will include raw materials inventory, finished goods inventory, and accounts receivable.

We disagree with all of these arguments. First, Abitibi's method does not account for time. It merely includes the average balance of receivables, inventories, fixed assets, and other assets from five points in time. The account balances from the balance sheet do not indicate the time a receivable was outstanding. Likewise, the balance of finished goods or raw material inventory do not indicate the amount of time these assets spent in inventory throughout the year. While Abitibi claims that its method accounts for the time value of money associated with these accounts, it does not. Moreover, the idea that the Department should calculate a business segment-specific relative imputed cost of capital associated with the activities surrounding all products within a consolidated corporate group is unrealistic. Such an approach would require parties to analyze each activity associated with producing and selling each individual product, including an analysis of the time over which associated activities occur, and to impute financing costs unique to that product's net capital requirements. If the theory Abitibi advances had merit, it would also require us to look at liabilities along with assets and to consider cash flows and profitability analyses from each business segment or product for not only the current year but also for previous years as the asset part of the equation is comprised of an accumulation of such assets over a long period of time. By only looking at assets, and ignoring liabilities, cash flows from operations, and the profitability of each respective business unit over a long period of time, we would only be looking at part of the net capital needs of each product.

There are also other problems with Abitibi's proposed asset method. Specifically, we have concerns with how reasonable it is to rely on the relative fixed asset values, which make up the bulk of the relative assets used in Abitibi's proposed method. The fixed asset values used in Abitibi's ratio reflect the net book value of such assets (i.e., acquisition cost less accumulated depreciation or other write-downs). The net book values are significantly affected by the timing of when assets were purchased, the depreciation method used, the life of the assets, and other factors. For example, two different assets acquired at the same time and for the same amount may be assigned different lives and may be depreciated using different methods thus resulting in significantly different net book

values. Or, two similar assets purchased in different years could be at different stages of their life cycle and, depending on the method of depreciation, would have significantly different net book values. Fixed assets may also be written down to match lower estimates of their productive value and thus would not reflect any "associated" debt. In addition, since fixed assets are initially recorded at historical values, fixed assets acquired in different years over a long period of time would be recorded in differing currency levels due to the devaluation of currency over time. The end result is that net book values for fixed assets do not necessarily reflect the capital requirements needed to fund the acquisition of such assets, thus, resulting in a random result driven more by timing of fixed asset acquisition than true capital requirements.[112]

We have rejected allocating interest expenses to business segments on the proportional share of fixed assets, as advocated by Abitibi, in other cases: See Softwood Lumber LTFV Final Determination, where Abitibi's methodology was expressly rejected by the Department; Salmon from Chile 1998 at 31430-31 (comment 26); Final Determination of Sales at Less Than Fair Value: New Minivans From Japan, 57 FR 21937 (May 26, 1992) (comment 18); and SRAMS from Korea at 8938. Also, we agree with the petitioner that the DRAMS from Korea has little precedential value, as it was not followed in other cases, and in subsequent SRAMS from Korea decisions, the Department expressly disavowed allocating interest expense based on fixed assets, finding instead that the COGS allocation methodology was a reasonable means of accounting for vastly different business segments.

After considering all available evidence on the proper allocation of cost for this case, including all of the record evidence, the methodological differences between Abitibi's asset method and the COGS method, the practical implications of applying each method in this case, and the COGS method's applicability to lumber respondents, we continue to believe that the COGS methodology results in a reasonable allocation of financial expense among the products and divisions of Abitibi. This methodology is appropriate as COGS accounts for the cash requirements for current production activities as well as for the cost of fixed asset acquisitions (i.e., depreciation expenses). The COGS method is consistent with the concept that money and debt are fungible, with GAAP, with the presentation of debt and financial expense as recorded in the records of Abitibi, and with the fact that financial expenses are general expenses attributable to the entire company. In addition, we note that in the original investigation and the current review, none of the other respondents requested that the Department apply an asset approach to allocating interest expense. Therefore, we have continued to use the COGS methodology for purposes of the final results.

Comment 11: Cost of Machine Stress Rated Testing

Abitibi argues that the Department should accept Abitibi's reasonable estimates of the costs for machine stress rated (MSR) testing and assign such costs to MSR products. Abitibi asserts that the

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[112] We also note that there are certain synergies between the segments in that the lumber segment of Abitibi's business supplies a significant amount of raw materials consumed by the other two segments, i.e. wood chips and chipped logs. We also note that the most important asset of the lumber segment, the vast amount of trees that Abitibi has the exclusive right to cut are not recorded as an asset on Abitibi's books, only the initial value of the cutting rights are.

Department, in reversing Abitibi's cost adjustments related to MSR products in the Preliminary Results of the instant review, apparently based its conclusion on its cost verification report[113] that stated that the MSR costs used for the MSR adjustments were based on estimates. Abitibi contends that the Department's reversal of the MSR adjustments is inconsistent with the Softwood Lumber LTFV Final Determination. Abitibi asserts that in that proceeding, at the Department's instruction,[114] Abitibi developed and reported MSR costs based on certain estimates because Abibiti's accounting records did not separately track the costs for MSR testing.[115] According to Abitibi, those estimates were based on the same methodology used in the instant review[116] and were accepted by the Department in its Softwood Lumber LTFV Final Determination. Abitibi also argues that the Cost Verification Report - Abitibi appears to confirm the reasonableness of Abitibi's methodology.[117] Absent any findings that the methodology was wrong or unreasonable, Abitibi asserts that the Department has no factual or legal basis for rejecting Abitibi's MSR cost methodology that it accepted in the previous proceeding ,and that the Department should allow the adjustment for MSR testing costs.

The petitioner did not comment on this issue.

Department's Position:

We disagree with Abitibi. First, we found that the MSR adjustment was based on estimates and that these estimates were not all based on actual costs in Abitibi's books. For example, the estimated MSR depreciation was based on a sales quote for MSR equipment plus estimated installation costs, instead of based on actual depreciation costs that Abitibi incurs on its actual machines.[118] Second, we found that virtually all planed lumber at the Abitibi mills with MSR testing facilities is MSR tested,

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[113] See Memorandum from Nancy Decker, Senior Accountant, to Neal Halper, Director, Office of Accounting, Re: Verification Report on the Cost of Production and Constructed Value Data Submitted by Abitibi Group dated June 4, 2004 (Cost Verification Report - Abitibi) at 2 and 31.

[114] Abitibi cites the Department's original Section D questionnaire dated May 25, 2001 at Part III.

[115] See, e.g., Abitibi's Supplemental Section D response dated March 3, 2004 at SD-20.

[116] Id.

[117] As an example, Abitibi notes that the verifiers compared the estimated pay to employees conducting MSR testing to the pay schedules at the La Dore mill and both were the same. See Cost Verification Report - Abitibi at 33. Abitibi asserts that in the previous proceeding, the Department verified and accepted the very same MSR methodology used at the very same mill. See Memorandum from LaVonne Jackson, Accountant, to Neal Halper, Director, Office of Accounting, Re: Verification Report on the Cost of Production and Constructed Value Data Submitted by Abititi Consolidated Inc. (January 22, 2002). Also, Abitibi notes that it does not object to using the corrected adjustment amounts (resulting from a discrepancy in the production quantities used in the calculation of the MSR adjustments) as reported in the Cost Verification Report - Abitibi.

[118] See Cost Verification Report - Abitibi at 31-33.

however, not all are sold as MSR certified.[119] Thus, the costs are not specific to lumber that Abitibi sells as MSR certified. In addition, mills routinely do work for each other, so some of the lumber from mills without MSR testing facilities is also tested. [120] Abitibi assigned the estimated MSR costs to only MSR certified products even though most planed lumber at these mills was MSR tested and, therefore, incurred the MSR testing costs. Abitibi had stated that it did not assign the MSR testing costs to all products that were MSR tested because this information cannot necessarily be tracked since mills routinely do work for one another. Nonetheless, it is not appropriate to assign all the MSR costs to only the MSR certified products when other planed products also go through the MSR testing process and incur the same testing costs. Therefore, we have continued to reverse Abitibi's cost adjustments related to MSR products. This, in effect, spreads the costs of MSR testing (which are recorded as part of planing costs in Abitibi's records) to all products planed at the mills with MSR testing facilities.

Issues Specific to Buchanan

Comment 12: Calculation of Buchanan's Credit Expense

Buchanan argues that, for the final results, the Department should calculate the interest rate used to determine its U.S. credit expense using only those months where there was both an outstanding balance and an interest expense.

Specifically, Buchanan argues that using months in which there was no month-end balance distorts the calculated imputed interest rate significantly. Buchanan states that there is Department precedent in support of its argument for re-calculating the credit expense. Buchanan notes that in Structural Steel Beams from Italy[121] the Department rejected relying on the end-of-month principal balance because it led to a distortive result. Further, according to Buchanan, in Antifriction Bearings,[122] the Department took the exact opposite position that it took in the Preliminary Results and it should be consistent in this case.

The petitioner argues that Structural Steel Beams from Italy is inapposite to Buchanan's situation, citing the special circumstances of the 'asset-backed securitization' (ABS) program. The petitioner notes that in Structural Steel Beams from Italy, the Department found that because the ABS program required the payment of the principal balance on the 28th day of the month, the end-of-month balances were likely understated. The petitioner also states that Structural Steel Beams from Italy "makes clear

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[119] Id.

[120] Id.

[121] See Notice of Final Determination of Sales at Not Less Than Fair Value: Structural Steel Beams from Italy, 67 FR 35481 (May 20, 2002) (Structural Steel Beams from Italy).

[122] See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 63 FR 33320 (June 18, 1998) (Antifriction Bearings).

that any determination to not include months in a credit expense calculation is made on the bases of the facts presented in each case."[123]

The petitioner asserts that Antifriction Bearings addresses a circumstance of sale dispute and does not discuss whether or not it is appropriate to include in credit expense calculations months in which there was no month-end balance.

Department's Position:

We disagree with Buchanan. Despite the fact that there were months with no month-end balance, an interest expense was still incurred for these months, indicating that borrowing had occurred during the month. We agree, however, that the disconnect between the amount borrowed and the amount paid in interest has caused distortions in the calculation. In Structural Steel Beams from Italy, the Department was able to use information on the record to calculate a more accurate interest rate. In this case, however, we do not have sufficient information on the record to calculate a more accurate interest rate. The information available for Antifriction Bearings does not explain the specific circumstances of that case or the decision to recalculate the credit expense. While it appears that a similar re-calculation may have been made in Antifriction Bearings, we note that decisions regarding the calculation of the interest rate are case specific. In this case, the fact that there are interest payments in months with no end-of-month balances indicates that there is no clear relationship between the amount of interest actually paid and the amount outstanding at the end of the month. Section 776(a) of the Act provides that when information requested is not placed on the record and is otherwise unavailable, the Department may apply facts otherwise available to the record. Because Buchanan's month-end balance does not reflect the amount on which interest was actually paid and there is no information on the record which would allow us to make a more accurate calculation, we have resorted to applying the Federal Reserve rate for commercial and industrial loans[124] as neutral facts available.

Comment 13: Assessment Rate for Buchanan Affiliates

Buchanan contests the Department's draft liquidation instructions, which provide importer-specific assessment rates for the Buchanan affiliates. As stated by Buchanan, the Department should be consistent with its practice of calculating a single assessment rate and applying it to all affiliated importers. In support of its argument, Buchanan cites Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and Singapore: Final Results of the Antidumping Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not to Revoke Order in Part, 68 FR 35623 (June 16, 2003) and accompanying Issues and Decision Memorandum at Comment 9B.

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[123] See petitioner's rebuttal brief dated September 8, 2004 at 9.

[124] See Department Policy Bulletin 98.2 for the Department's policy on Imputed Credit Expenses and Interest Rates, including the use of surrogate rates.

Department's Position:

We agree with Buchanan and will correct its liquidation instructions to apply a single weighted-average rate to all Buchanan affiliates. We note that Buchanan and its affiliates are under common management and ownership.

Issues Specific to Canfor

Comment 14: Sinclar as an Affiliated Reseller

In its questionnaire response, Canfor reported downstream sales made by its affiliate, Lakeland, through Sinclar, a reseller whose owners also own two-thirds of Lakeland. The petitioner argues that Canfor has not provided sufficient information to support the claim that Sinclar is affiliated with Lakeland alone, or with the collapsed Canfor entity, and that Canfor should have reported Lakeland's sales to Sinclar rather than Sinclar's downstream sales. According to the petitioner, Canfor had many opportunities to put such information on the record, and Canfor failed to do so. The petitioner maintains that because Canfor failed to provide sufficient information to support its affiliation claim, the Department should not find that Canfor or Lakeland and Sinclar are affiliates.

In addition, the petitioner states that the information that Canfor did submit is flawed. First, it claims that Canfor has presented an exaggerated situation, with respect to Sinclar's ability to control Canfor. The petitioner does not believe that the percentage of Lakeland's U.S. sales and home market sales that are purchased and resold by Sinclar is enough, in itself, to warrant a finding that Sinclar controls Lakeland. The petitioner argues that Lakeland is collapsed with Canfor and The Pas, and therefore, the Department must consider the percentage of sales through Sinclar to the collapsed entities' combined sales. The petitioner concludes that based on these percentages, it is clear that Sinclar does not have the ability to control the collapsed Canfor entity.

Second, the petitioner contends that Canfor has conceded that a portion of Lakeland's home market sales are not made through Sinclar and that Lakeland and Sinclar have no sales agreement. The petitioner argues that because of these two facts, there are other sales channels available to Lakeland (for instance, Canfor has an ownership interest in Lakeland and is a reseller of subject merchandise, and, could therefore, make the sales itself). In addition, the petitioner states that the nature of the subject merchandise and the lumber industry support a finding that Sinclar does not control Canfor or Lakeland. It asserts that lumber is a commodity product in an industry where numerous companies perform the same reselling function as Sinclar, and numerous companies manufacture the same merchandise as Lakeland. Therefore, the petitioner concludes that absent a contractual agreement, there is no support to find an affiliation.

Finally, the petitioner argues that there are numerous cases in which the Department has set forth a practice that would support a finding that Sinclar should not be considered affiliated with Canfor or

Lakeland.[125] For example, the petitioner notes that the Department did not find affiliation where a producer supplied 100 percent of its U.S. sales through a single, unrelated U.S. importer but where the parties are free to seek other business partners in Melamine from Indonesia. In another case, Gift Boxes from China, the Department found that a close supplier relationship in the absence of any evidence of contractual or legal control, was not a sufficient basis for finding that reliance exists. In addition, the petitioner asserts that in Ammonium Nitrate from Russian Federation and in Rayon Yarn from Austria, a respondent attempted to claim an affiliation between the producer and its U.S. customer. In these cases, the Department examined the following: the existence of alternative sources of supply and distribution; the proportion of the sales made by the producer through the trading company to the company's total sales and the proportion of the sales made by the trading company to the total sales made by the producer; and, the terms of the contract between the two parties. The petitioner contends that an examination of the same factors in this case would not lead to a finding of affiliation. The petitioner concludes that, based upon the precedent set in these cases, the Department should find that Lakeland and Sinclar are unaffiliated. Further, the petitioner contends that the Department should adjust Canfor's submitted U.S. prices to estimate the unaffiliated U.S. transaction price between Lakeland and Sinclar.

Canfor argues that Sinclar is clearly affiliated with Lakeland; and therefore, the price between Lakeland and Sinclar is a price between affiliated parties. Canfor states that the Department should calculate the export price and the constructed export price, pursuant to its precedent,[126] based on the price to the first unaffiliated purchaser, or the price between Sinclar and the unaffiliated U.S. customer. Canfor points out that the Department found that Lakeland and Sinclar were affiliated parties in the investigation, in which the Department conducted a verification at Lakeland and Sinclar. Canfor contends that the circumstances regarding Lakeland and Sinclar have not changed since the investigation. Canfor asserts that Lakeland and Sinclar are affiliated for reasons including the fact that Lakeland and Sinclar are both members of a group of enterprises under the control of two family groups, Lakeland and Sinclar have common shareholders, Lakeland and Sinclar have common board members and directors, and Lakeland and Sinclar treat each other as affiliates for purposes of reporting in their audited financial statements.

Canfor believes that the petitioner has attempted to side-step the issue of affiliation by focusing on the relationship between Sinclar and Canfor by pointing out that Department must consider the percentage of sales through Sinclar to the collapsed entities' combined sales. Canfor states that the collapse of Lakeland and Canfor does not extinguish the affiliation between Lakeland and Sinclar. In addition, Canfor argues that the petitioner's case citations are misplaced and factually distinguishable.

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[125] See, e.g., Melamine Institutional Dinnerware Products from Indonesia, 61 FR 43333 (August 22, 1996) (Melamine from Indonesia); Certain Folding Gift Boxes from the People's Republic of China, 66 FR 58115 (November 20, 2001) (Gift Boxes from China); Solid Fertilizer Grade Ammonium Nitrate from Russian Federation, 65 FR 1139 (January 7, 2003) (Ammonium Nitrate from the Russian Federation); and Open-ended Spun Rayon Singles Yarn from Austria, 62 FR 43701 (August 15, 1997) (Rayon Yarn from Austria).

[126] See Grain-Oriented Electrical Steel from Italy, 65 FR 54215 (September 7, 2002), see also, Stainless Steel Sheet and Strip in Coils from the United Kingdom, 64 FR 30688 (June 18, 1999).

For example, Canfor states that in Melamine from Indonesia, there were no corporate or familiar relationships between the two companies in question and in Gift Boxes from China, the companies did not have stock ownership in one another, share managers, or have any common familial ownership. Furthermore, Canfor points out that in Nitrates from the Russian Federation, the common ownership was less than five percent, and Rayon Yarn from Austria discussed supplier relationship and not affiliation per say.

Department's Position:

We agree with Canfor. The definition of affiliated parties in the Act includes "persons directly or indirectly controlling, controlled by, or under common control with, any other person" See section 771(33)(F) of the Act. Anderson Holdings and Steward Holdings collectively hold 66 2/3 percent shares of Lakeland and 100 percent of Sinclar shares. Therefore, the issue is not whether Sinclar can single-handedly control Canfor, but whether Lakeland and Sinclar are under the common control of Anderson Holdings and Stewart Holdings. The high percentage of stock ownership indicates that they are under common control. Further, it should be noted that Anderson Holdings and Stewart Holdings are part of a family group which owns a number of companies in common, and whose family members are actively involved as officers of the companies in the group.[127] In addition, as Canfor points out, Lakeland and Sinclar treat transactions with one another as affiliated party transactions that are separately disclosed in their financial statements.[128] Finally, Sinclar acts as a reseller for 100 percent of Lakeland's exports to the United States, and a substantial percentage of its home market sales.

The fact that Lakeland has been collapsed with Canfor for reporting purposes, and that Canfor itself has no business dealings with or ownership interest in Sinclar, does not negate the fact that Sinclar is affiliated with the company whose merchandise it is selling - Lakeland. Further, we find the examples to which the petitioner cites are not factually on point, as none of the cited cases deal with situations in which the parties were under the common control of a third-party via ownership. Because the transactions between Lakeland and Sinclar are properly treated as transactions between affiliated parties, we have continued to use the submitted prices, which reflect the first sale to an unaffiliated customer.

Comment 15: Treatment of Purchased Lumber as Commingled Inventory

The petitioner states that at verification, the Department discovered that Canfor had the ability to determine separate pricing information for self-produced and third-party lumber. It argues that it is apparent that Canfor maintains separate sales volume and value information for self-produced and resold lumber because the Department stated in its verification report that Canfor accounted separately for sales made on an agency basis. The petitioner argues that had Canfor submitted this

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[127] See Canfor's Section A response at A-15 and Exhibit A-2 (August 29, 2003); see also, Canfor's Supplemental Section A response at Exhibit 23 (October 31, 2003).

[128] Id. at Exhibit 16; see also, Canfor's case brief dated August 20, 2004 at 17.

information prior to the verification, the Department could have excluded sales prices and quantities of third-party lumber from Canfor's sales out of commingled inventory, thus not including them in the calculation of Canfor's margin. The petitioner urges the Department to apply adverse facts available (AFA) to all commingled sales because Canfor withheld the above information from the Department.

Alternatively, the petitioner believes that the Department should include the acquisition prices of third-party lumber resold by Canfor from commingled inventories in Canfor's weighted-average costs. See Comment 8, above.

Canfor argues that whenever it could identify sales of third-party lumber it did so, excluding them from the home market and U.S. databases. However, Canfor, states that in many instances its sales of third-party produced lumber were commingled in Canfor's reloads and vendor managed inventory locations and, therefore, it was necessary to follow the Department's proposed methodology to "weight out" commingled inventories. Canfor asserts that it does not maintain separate pricing information for sales of third-party lumber. It claims that the petitioner misinterpreted the Department's verification report, and that the "agency" sales in question consisted of a limited amount of non-subject merchandise.

Department's Position:

We agree with Canfor. The petitioner has misinterpreted a section of the verification report. In the quantity and value section of the verification report, we stated that Canfor accounted separately for sales made on an agency basis; however, "agency basis" referred to those sales in which Canfor acted as a commissioned sales agent and never took title to the merchandise. The "agency" sales in question were not reported in either the database or Canfor's general ledger. Therefore these sales constituted a reconciling item in Canfor's quantity and value reconciliation.[129] Canfor's sales of commingled third-party lumber were not made on an "agency basis," and were properly included in the database with weighting factors, as there was no way to distinguish those sales from sales of Canfor's self-produced lumber. We note that in the verification report, third-party commingled lumber is specifically referred to as "purchased." In addition, where Canfor could separately identify purchased lumber it did so.[130]

Comment 16: Railcar Lease Revenue

In its questionnaire response, Canfor reported that it leased railcars from a railcar manufacturer and leasing company for the purposes of transporting its lumber. Canfor earned revenue when the railroad used the railcars to transport third-party lumber. In the Preliminary Results, the Department offset Canfor's rail freight expenses by the amount of income earned from subleasing the railcars.

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[129] See Letter from Constance Handley, Program Manager to Canfor, Re: Canfor Verification Agenda (April 5, 2004) (Canfor Sales Verification Report) at 19.

[130] Id. at 51-54

The petitioner argues that the Department should disallow any adjustments for railcar lease revenue. According to the petitioner, Canfor's explanation of railcar lease revenue is incomplete and inconsistent. Further, the petitioner contends that Canfor provided information at the verification that was not previously placed on the record. For example, the petitioner asserts that Canfor, for the first time at the verification, discussed, among other things, the fact that it subleases the railcars. In addition, the petitioner claims that there is no documentation or evidence that these claims were verified. The petitioner contends that Canfor's explanation of freight revenue at the verification simply confused the issue more. The petitioner concludes that Canfor has had several opportunities to clearly explain railcar lease revenue and it has failed to do so. Therefore, the petitioner argues that the record of the review does not contain evidence of Canfor's description of railcar lease revenue and that the Department should remove the railcar lease revenue from both the U.S. and home market datasets for the purposes of the final results.

The petitioner states that even if there were evidence to support Canfor's description of the rail car revenue, railcar leasing is not incident to the sale of the subject merchandise. It references section 772(c)(2)(A) of the Act saying that the export price or constructed export price is reduced by the amount of shipping costs incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States and that the NV is reduced by the amount included in the price incident to shipping. The petitioner then references statements made by Canfor on the record, arguing that the statements indicate that the railcar lease revenue from leasing was not incident to the shipment of the sale of Canfor's merchandise from the mill to a place of delivery in the United States or Canada. For example, in Canfor's Supplemental Section B/C response[131] Canfor states that it receives the same railcar revenue whenever its leased cars are used, regardless of whether they are used to transport Canfor lumber or other parties' lumber. The petitioner believes that railcar lease revenue should be removed from both the U.S. and home market datasets for the final, because it is not incident to the shipment of subject merchandise.

The petitioner also argues that Canfor has not met its burden of establishing that the allocation of railcar lease revenue is accurate and undistorted. The petitioner asserts that 19 CFR 351.401(g)(2) states that any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Department's satisfaction that the allocation methodology used does not cause inaccuracies or distortions. The petitioner believes that Canfor's proposed volume-based allocation is incorrect, as it does not take into consideration the value of sales in the U.S. and Canadian markets. The petitioner further argues that Canfor's proposed allocation is incorrect because the antidumping duties are imposed on the basis of value; failure to allocate the alleged railcar revenues according to the value of sales during the POR is distortive and inaccurate. The petitioner argues that a per-MBF allocation of more revenue to one market than the other is nonsensical, as there is no reason to believe that sales of subject merchandise in one market generate more revenue than sales of subject merchandise in the other market. Thus, should the Department allow the revenue, it should reallocate the revenue so that the same amount of revenue per MBF is allocated to all sales in both markets.

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[131] See Canfor's January 12, 2004 Supplemental Section B/C questionnaire response at 34.

Canfor argues that the Department's adjustment for railcar lease revenue was proper and should not be revised. It states that the Department accepted railcar lease revenue and the allocation methodology in the investigation. Canfor explains that it receives mileage revenue from leased railcars which exceeds the leasing expense of the railcars. Canfor continues by stating that because the railcar revenue that it receives is not segregated by the market to which the lumber was shipped, it was necessary for Canfor to allocate the revenue among sales in each market. Furthermore, Canfor contends that because the railcar lease revenue was earned based on volume (the same amount of lumber will fit into a railcar regardless of its value), it should be allocated based on volume as well. In conclusion, Canfor states that because the methodology of allocating the railcar revenue reasonably reflects the actual revenues earned and because the methodology was accepted in the investigation, it should once again be accepted by the Department.

Department's Position:

We agree with Canfor. Canfor submitted complete responses to all of the Department's questionnaires and cooperated fully with the Department at the verification with respect to any questions regarding railcar lease revenue. Further, the Department's practice is to only accept new factual information at verification which nearly corroborates, supports, or clarifies information already on the record.[132] Canfor officials' statements about the way the company subleases its railcars support information in Canfor's Sections B and C questionnaire responses, regarding railcar lease revenue. In addition, the fact that Canfor actually received the revenue from subleasing the cars was properly verified by the Department. See Memorandum from Vicki Schepker and Amber Musser, International Trade Compliance Analysts, to Gary Taverman, Director, Office 5, Re: Verification of the Sales Response of Canfor Corporation, dated June 2, 2004 (Canfor Sales Verification Report).

Regarding whether the railcar lease revenue is incident to the sales of subject merchandise, we note that Canfor is not in the railway business. Its sole purpose for leasing the railcars is to ensure that it always has railcars available to ship its own lumber. If Canfor had no lumber sales, it would have no reason to lease railcars that are built to transport only lumber. Canfor is able to cut down on its overall lumber freight costs by subleasing the cars when they are not in use. Because the railcars are used strictly to transport lumber, we believe both the cost and the associated revenue from the cars are attributable to the subject merchandise.

Finally, we find that Canfor's volume-based allocation methodology, which reflects the manner in which the expense is incurred (or revenue generated), is reasonable. There is no evidence on the record that the value of the merchandise hauled has any relevance to the railcar lease expense, or the related revenue. The size of the car defines the amount of merchandise it can carry. Therefore, for the reasons discussed above, we have continued to add freight revenue to the normal value, export price, and constructed export price in these final results.

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[132] See Canfor Sales Verification Report.

Comment 17: Calculation of Financial Expense Ratio - Net Financial Income

Canfor argues that in the Preliminary Results, the Department improperly set to zero Lakeland's reported negative interest expense rate. Lakeland's rate was a component of the collapsed Canfor (i.e., Canfor, Lakeland, and The Pas) interest expense rate. Canfor believes that this adjustment overstated the collapsed entities' interest expense and should not be made for the final results.

Canfor acknowledges that as a general policy, it appears that the Department does not allow respondents to offset their cost of production with negative interest. Pursuant to this policy, Canfor suggests that if a separate cost of production and dumping margin were being calculated for Lakeland alone, the Department would have been justified in setting Lakeland's negative interest expense rate to zero. However, because the Department is not calculating a separate Lakeland cost of production and dumping margin, but is instead calculating a combined cost of production and dumping margin for Canfor and its collapsed affiliates, the respondent believes that the interest expense rate should likewise be combined. Thus, Canfor argues that as long as the combined Canfor, Lakeland, and The Pas' net interest expense rate is not negative, there is no basis for limiting the short-term interest income offset against the combined interest expense of the collapsed group.

Furthermore, Canfor claims that it only submitted separate company-specific interest rates for Canfor, Lakeland, and The Pas as an aid to verification. The company believes that the only interest expense rate that is relevant for the purpose of the collapsed entity's calculations is the consolidated interest rate, since the Department normally treats collapsed companies as a single entity for purposes of the dumping margin calculation. Citing Certain Welded Carbon Standard Steel Pipes and Tubes from India, 62 FR 47632, 47642 (September 10, 1997) (Steel Pipes and Tubes from India), Canfor argues that the single entity approach also applies to the calculation of the net interest expense rate. In Steel Pipes and Tubes from India, the Department stated that the cost of production is calculated using "...the consolidated financing expenses of the corporation of the affiliated parties whenever the parent or the controlling entities have the power to determine the capital structure of each member company within the group. This is particularly the case when the Department determines to collapse two or more affiliated parties, as here." Thus, Canfor concludes that calculating a consolidated net interest expense for the collapsed Canfor entity is appropriate. Because this consolidated net interest expense would be positive, Canfor believes that the Department's policy regarding negative interest rates would not apply. Accordingly, Canfor argues that the Department should not adjust Lakeland's negative interest expense rate to zero for the final results.

The petitioner believes that the Department should continue to disallow Lakeland's negative interest expense for the final results. The petitioner argues that allowing Lakeland's negative rate to offset the collapsed company's interest rate would be the equivalent of abandoning the Department's practice of calculating company-specific interest rates. The petitioner contends that each company's costs are unique and do not change because its operations are collapsed with other company's operations. Further, the petitioner disagrees with Canfor's statement that separate rates were calculated "merely as an aid to verification." Instead, the petitioner points out that the Department normally calculates individual interest costs for each company within a collapsed respondent. The subsequent weight averaging of the rates does not alter the amount incurred by the individual company.

Furthermore, the petitioner believes that Canfor's reference to Steel Pipes and Tubes from India fails to support its argument. According to the petitioner, that case merely indicates that the financial information of two separate entities was combined and a weight-averaged interest rate was calculated. It does not imply that the Department calculates a consolidated interest rate for collapsed entities by eliminating the distinct interest expense rates derived by each of the multiple entities.

Finally, the petitioner does not believe the Department should follow Canfor's proposed alternative to eliminate the separate company distinctions and, in effect, conduct a consolidated analysis of the three collapsed companies. The petitioner points out that a consolidated analysis is not accomplished by simply adding the cost of sales and interest expense together for the three companies. Because Canfor's three collapsed companies engaged in related party transactions, a consolidated analysis would require the elimination of inter-company profit that results from the transactions between the collapsed entities. However, the petitioner claims that the information necessary to make such an analysis, i.e., audited consolidated financial statements, is not on the record in this proceeding. Moreover, even if the Department wrongly sought to change its practice, the petitioner believes that the change proposed by Canfor would not result in a more accurate result. Indeed, the petitioner states that the use of a consolidated approach with the required elimination of inter-company profits would likely result in an increase to the financial expense rate, since the denominator in the calculation would decrease. Far from making the calculation more accurate, the petitioner argues that the consolidated approach would, in fact, create inaccuracies where none currently exist.

Therefore, the petitioner contends that the Department should not change its current practice of calculating company-specific finance costs for individual companies within a collapsed entity.

Department's Position:

We agree with the petitioner and have not allowed Lakeland's short-term interest income to offset the interest expenses of the other collapsed companies in the calculation of the financial expense ratio for the final results.

In this case, Canfor requests that the Department calculate a consolidated financial expense rate for the collapsed companies; however, Canfor, Lakeland, and The Pas do not prepare audited consolidated financial statements. The Department has a normal methodology of calculating the financial-expense ratio based on the financial statements at the highest level of consolidation normally prepared by the companies. See, e.g., Gulf States Tube Div. Of Quanex Corp. v. United States, 981 F. Supp 630, 647-48 (CIT 1997) (Gulf States Tube) (a case in which the Court reviewed the Department's financial expense calculation. In that case, the Department calculated the financial expense ratio consistent with this methodology). Thus, in this case, the highest level of consolidation is the individual financial statements of each company. Consistent with this practice, we have calculated a separate rate for Canfor, Lakeland, and The Pas based on the financial statements of each company.

In calculating the COP and CV, the Department's practice is to allow a respondent to offset financial expenses with short-term interest income earned from the general working capital of the company.

See, e.g., Timken v. United States, 852 F. Supp. 1040, 1048 (CIT 1994) where the Court addresses this issue. The Court has affirmed the Department's approach to calculating financial expenses offset with only short-term interest income. See Gulf States Tube at 650. At Canfor's verification, the Department confirmed that Lakeland's reported interest income offset was short-term in nature, thus allowable as an offset to financial expenses. However, as acknowledged by Canfor, the cost of manufacturing is different from financial expenses, and the Department's normal policy does not allow interest income to offset the cost of manufacture. See Notice of Final Results of Antidumping Duty Administrative Review: Large Power Transformers from Italy, 61 FR 37443, 37444 (July 18, 1996). This is because if a company has net interest income, its cost of financing is zero. It is not appropriate for a company to reduce its cost of materials, labor, or overhead simply because it had excess cash which generated interest income during the POR. The fact that it generated significant interest income does not mean that its other costs were less. The task is to calculate the cost of producing the product, not the company's net expenses.[133]

Finally, we agree with the petitioner that the Department's analysis in Steel Pipes and Tubes from India merely indicates that a weight-averaged interest rate was calculated in that case, not that the Department modified its practice and calculated a consolidated interest rate for collapsed entities by eliminating the separate distinction between multiple entities in the absence of consolidated financial statements.

Therefore, for the final results, we have allowed Lakeland's interest income offset limited to the amount of Lakeland's interest expenses in the calculation of the financial expense rate.

Comment 18: Calculation of General & Administrative Expenses-Sale of Land

Canfor argues that in the Preliminary Results the Department improperly excluded from the G&A rate calculation a gain on the disposal of land. Canfor states that the Department's explanation that land is a non-depreciable asset is not an appropriate reason for disallowing this gain. Therefore, the company believes the gain should be allowed for the final results.

Citing Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy, 64 FR 6615, 6626 (February 10, 1999), Canfor avers that the Department's practice is to include in G&A those expenses related to the general operations of a company as a whole rather than expenses related to specific production processes. Canfor submits that the CIT has affirmed that this policy applies to both expenses and offsetting income items. In U.S. Steel Group v. United States, 998 Supp. 1151,1154 (CIT 1998) (U.S. Steel Group), the Court stated that "Commerce's decision that offsets to G&A expenses should also be related to the company's general operations–comprised of all general activities associated with the company's core business, including the production of the subject merchandise–is a reasonable application of the statute." Citing Certain Cold-Rolled Carbon Steel Flat Products from Germany, 67 FR 62116 (October 3, 2002), and

[133] If a company had gains or investment income of a significant amount and the Department allowed an unlimited offset, the cost of the product itself could be reduced to zero.

accompanying Issues and Decision Memorandum at Comment 16, among other cases, the respondent points out that it is also the Department's well established practice to consider gains from routine dispositions of fixed assets as proper offsetting items to G&A expenses.

Accordingly, Canfor argues that gains on routine fixed asset dispositions are allowable G&A offsets, regardless of whether or not they were used to produce subject merchandise. In support of this claim, Canfor references CTL from Korea at 73210, in which the Department stated that for the calculation of G&A expenses "...it is not relevant whether or not the particular asset was used to produce subject merchandise." Furthermore, in Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30574, 30590 (June 8, 1999) (Japanese Coils), the Department stated that "...any income or expense incurred through KSC's disposition of fixed assets should be included in the G&A expense rate, regardless of whether they are used purely for the production of subject merchandise or non-subject merchandise." Thus, Canfor argues that the Department's stated policies in the Japanese Coils and the CTL from Korea case support its request for inclusion of the gain on the sale of land in the G&A calculation.

The respondent notes that the POR gain was generated by the sale of land that had previously housed Canfor's Eburne sawmill. Canfor admits that the Department has in the past suggested that gains on the sale of land are not appropriate offsets to G&A expenses because no depreciation expense would have been included in the cost of production. See Notice of Final Determination of Sales at Less Than Fair Value: Cold-Rolled Carbon Steel Flat Products from Korea 67 FR 62124 (September 23, 2002), and accompanying Issues and Decision Memorandum at Comment 15, and CTL from Korea. However, Canfor believes this reasoning is contrary to the Department's policy that G&A expenses and income must be related to the general operations of the company as a whole.

Canfor argues that whether an asset is depreciable has no bearing on whether the gain from its sale is related to a company's general operations. Canfor notes that the Court in U.S. Steel Group stated that a company's general operations are "...comprised of all general activities associated with the company's core business, including the production of the subject merchandise." The respondent points out that the land sold was not acquired for investment purposes or related to a separate line of business, but instead was used to house a sawmill.

Furthermore, distinguishing the facts in CTL from Korea from the facts in this case, Canfor explains that in CTL from Korea the Department determined that (1) the respondent's sale of land was not a routine disposition of fixed assets and (2) allowing the gain would have resulted in a negative G&A. Canfor poses that neither of these factors are present in this case. Canfor contends that there is nothing to suggest that the disposal of the Eburne land was anything other than a routine disposition. Thus, the respondent believes that, in accordance with the standards set forth by the Court in U.S. Steel Group, the gain clearly qualifies as income related to Canfor's general operations.

Canfor does not believe it is logical to exclude income simply because the underlying asset is non-depreciable. Rather, the test should be whether the income relates to the company's general operations, not whether it relates to production. Canfor notes that under the logic articulated by the Court in U.S. Steel Group, a gain on the routine disposal of a depreciable asset used in its pulp

operations would have been allowed as a G&A offset, even though any depreciation expense associated with the asset would not have been included in the cost of production of lumber. Thus, if a gain on an asset not used in the production of subject merchandise is allowable as an offset, Canfor concludes it is illogical to then disallow the gain on a non-depreciable asset that was used in the production of subject merchandise.

Additionally, Canfor notes that the depreciation on depreciable productive assets is captured in the cost of production. Therefore, Canfor argues that the accumulated depreciation reduces the assets' book value and effectively increases the net gain recognized upon the assets' eventual disposition. However, because no depreciation expense is recognized for land as part of the cost of production, there is also no offsetting reduction to the company's book value. Thus, Canfor concludes that whether or not an asset is depreciable is awash with respect to the relationship between the realized gain and the elements of the cost of production.

Finally, Canfor argues that while no depreciation would have been recorded, there were other expenses incurred relative to the land, such as property taxes, real estate fees and commissions, title transfer fees, and legal expenses, all of which would have been included in the company's G&A expense. Canfor believes that the inclusion of these expenses was proper since they relate to the company's operations as a whole. Furthermore, Canfor contends that the sale of the land was a routine disposition of fixed assets and was likewise related to the general operations of the company as a whole. Therefore, Canfor declares that the consequent gain is a proper offset to G&A expenses and should be allowed for the final results.

The petitioner believes that the Department properly excluded the gain from Canfor's G&A expense rate calculation in the Preliminary Results. The petitioner argues that the Department's consistent and longstanding practice is to treat gains and losses generated on the sale of land differently from those generated on routine sales of fixed assets. According to the petitioner, gains and losses on the disposition of land are excluded, while gains and losses on the routine disposition of fixed assets are included in the calculation of the G&A rate. In support of this claim, the petitioner cites Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea, 67 FR 62124 (October 3, 2002) (Carbon Steel Products from Korea), and accompanying Issues and Decision Memorandum at Comment 15, where the Department stated that "...land was a non-depreciable asset, which is not consumed in the production process." Consequently, in Carbon Steel Products from Korea, the Department excluded the gain and loss on the sales of land from the calculation of the G&A rate.

The petitioner asserts that Canfor did not provide the Department with a single example in the Department's history in which the Department decided otherwise. Indeed, the petitioner contends that the citation provided by Canfor, CTL from Korea, was unavailing and actually undercut the company's position. In that case, the Department determined that the sale of land in question was not a routine disposition of fixed assets and the gain would have completely offset the company's G&A expense for the year, actually resulting in a negative G&A expense. The petitioner disagrees with Canfor's pronouncement in its case brief that neither of these factors is present in the current case.

Instead, the petitioner argues that in both cases, the sale of land at issue was not a routine disposition of fixed assets.

The petitioner argues that the cases cited by Canfor simply show that expenses related to the general operations of the company are included in G&A, as are gains and losses associated with the routine dispositions of fixed assets. However, the petitioner asserts that none of the cases define sales of land as routine dispositions. Regarding Canfor's reference to the Court's finding in U.S. Steel Group, the petitioner points out that the miscellaneous income in question in that case did not include the sale of land. Furthermore, the petitioner disagrees with the company's interpretation that any income or expense related to the general operations of the company as a whole must be included in the G&A expense calculation. While all G&A expenses must relate to the general operations of a company, the petitioner argues that this does not imply that the reverse is true (i.e., that all general expenses should be included in G&A). Instead, the petitioner argues that expenses that are related to the general operations of a company, yet are non-routine and unusual are rarely included in G&A. Thus, the petitioner concludes that the critical standard is whether the sale at issue was a routine disposition of an asset. Using this standard, the petitioner resolves that Canfor's claim must fail because the sale of land at issue was not routine.

The petitioner refutes Canfor's claim that the sale of the land was routine. The petitioner notes that the Eburne sawmill was closed in 1998, then the land sold four years later in 2002. Thus, the petitioner argues that the land was a long-term asset, not an asset that would be bought and sold routinely. Further, the petitioner protests that manufacturing companies such as Canfor are not in the business of buying and selling land. While such transactions occur occasionally, they are unusual and not routine and in the case of land, ancillary to the core business of the company. Additionally, the petitioner notes that Canfor addressed the sale of the Eburne land in its 2002 Annual Report. The petitioner believes this is a clear indication that the sale was not routine since a routine sale of fixed assets does not require specific mention in a corporation's annual report.

Department's Position:

We agree with the petitioner that the gain from the sale of land is not a routine disposal of fixed assets related to the general operations of the company, thus, the amount should not offset the G&A expenses. When determining if an activity is related to the general operations of a company, the Department considers the nature, the significance, and the relationship of that activity to the general operations of the company. See CTL from Korea at 73210. Canfor is in the business of manufacturing and selling lumber, not selling land. In years prior to disposal, the land had previously been used to house a sawmill that was closed in 1998.[134] Routine sales of machinery and equipment are a normal part of ongoing operations for a manufacturing company and, accordingly, any resulting gains or losses are normally included as part of the G&A rate calculation. However, the sale of land used to house an entire sawmill is a significant transaction, both in form and value, and the resulting

[134] We note the sale apparently did not include the sawmill and equipment, which were removed prior to the sale.

gain or loss generates non-recurring income or losses that are not part of a company's normal business operations and are unrelated to the general operations of the company. See Sheet and Strip from Korea and accompanying Issues and Decision Memorandum at Comment 1. Therefore, for the final results, we have not included the gain from the disposal of land in the G&A ratio calculation.

Furthermore, because we are persuaded that the pertinent point in this case is whether the gain was related to the general operations of the company, the respondent's reliance on the Court's statements in U.S. Steel Group is misplaced and irrelevant for purposes of our analysis. Canfor's arguments with regard to "non-depreciable" and "depreciable" assets are significant only if the Department determines the sale of land used to house an entire sawmill is related to a company's general operations. We have determined it is not. Therefore, we have not addressed these arguments further in this memorandum.

Comment 19: Cash Deposit Rate Instructions

Canfor disagrees with the Department's decision in the Preliminary Results to include Canadian Forest Products Ltd (CFP) in its list of companies under review, but not individually examined, and to state that all such companies would be subject to the review specific weighted average dumping margin and new cash deposit rate. Canfor asserts that CFP is in fact a wholly-owned subsidiary of Canfor, and is the operating company for Canfor's softwood lumber production and sales and, therefore, should be removed from the listing of companies subject to the review-specific weighted-average dumping margin. To support its claim, Canfor cites its Section A Response at Exhibits A-4 & A-2 and its verification report at 2. See Canfor's Section A Questionnaire Response (August 29, 2003); see also, Canfor Sales Verification Report).

The petitioner did not comment on this issue.

Department's Position:

We agree with Canfor and have included CFP under Canfor's weighted-average margin.

Issues Specific to Slocan

Comment 20: Calculation of Stumpage Costs By Species

Slocan objects to the Department's preliminary adjustment to stumpage costs for species. Slocan argues that stumpage from Crown tenures in British Columbia have a single unit price within any given cutting authority and, therefore, different species do not receive different prices.[135] Slocan acknowledges that prices do differ among cutting authorities. This is because the price of each cutting authority depends greatly on the species and size of trees contained within each cutting authority. The

[135] A "cutting authority" is a measurement of an area of forest, within which there are commonly several species and sizes of trees.

Department requested that each respondent provide a breakdown of stumpage paid by each respondent for individual species in its questionnaires. In response to the Department's questionnaires, Slocan derived the difference in costs by species by weight-averaging the individual cutting authority prices charged by the British Colombia Ministry of Forests across the totality of Slocan's cutting authorities in British Colombia. Slocan asserts that this calculation was not part of its normal books and records and that the Department was acting unlawfully when it pressed Slocan to determine a species adjustment where none should exist. In support of this contention, it observes that the Department did not require Tembec to calculate a similar adjustment. Slocan submits that the Department has an obligation to apply its regulations rationally and consistently to all similarly situated respondents. Therefore it argues that the Department should refrain from calculating a species cost adjustment in the final results.

The petitioner disagrees with Slocan's assertions that the species cost adjustment was unlawful and unreasonable. The petitioner states that while it may be true that the same stumpage rate is charged for all species harvested from the same individual tract of land or cutting authority, the same stumpage rate is not paid for all species harvested within the entire British Columbia interior during a given period. Furthermore, the petitioner argues that it is not true that a given mill will pay the same per-unit stumpage amount for all of the logs it receives. The petitioner contends that the Department is under a strict duty to investigate and determine the dumping margin as accurately as possible and to use the best information available in doing so. The petitioner argues that the Department has acted consistent with this obligation in requesting this information from Slocan and applying the adjustment in its calculations.

For further support of the Department's request for this information and use of that information in its calculations, the petitioner argues that the extent of Slocan's operations in British Columbia should be taken into consideration in deciding whether it is meaningful to have species specific stumpage. Absent requests for this information from individual respondents, the petitioner argues that the Department would not be able to make such a determination in the first place.

Department's Position:

We agree with petitioner. Slocan was able to determine a species specific adjustment from data in its own books and records and data obtained from the British Columbia Ministry of Forests for the period of review. We have used the adjustment calculated by Slocan for these final results. Slocan acknowledges that there is a unique value for stumpage for each cutting authority. This is based upon a survey of the inventory of the type of trees in a cutting authority. Although the stumpage value for each species on the Forests Ministry invoice for each cutting authority is shown as the average for that cutting authority, the stumpage value is unique to the logs for that cutting authority. We note other British Columbia producers, e.g., Tolko, also reported stumpage on a species-specific basis. See Letter from Tolko to the Department at accompanying Cost File 1 (May 19, 2004). With respect to the Department's treatment of other respondents in this administrative review, the Department is satisfied that it requested the necessary information from each respondent to derive an adequate and

accurate antidumping duty margin calculation.[136] We agree that the Department has a duty to investigate and determine the dumping margin as accurately as possible and to use the best information available to it in doing so. See Lasko Metal Produs. Inc. v. United States, 43 F.3d 1442,1446 (Fed. Cir. 1994); see also, Corus at 12. The species specific adjustment data submitted by Slocan is the best information available to make an accurate species-specific adjustment for these final results.

Comment 21: Interest Expense Calculation-Credit Expense

Slocan argues that the Department should use the short-term interest rate that Slocan reported in its Section C questionnaire response, and not the U.S. prime rate that the Department used in the Preliminary Results, because "that is the U.S.-dollar short-term interest rate that Slocan experienced during" the POR.[137] In determining an appropriate short-term borrowing rate in cases in which the respondent did not borrow in the relevant currency, Slocan contends that the Department can use any rate that meets the criterion established in Imputed Credit Expenses and Interest Rates, Policy Bulletin No. 98.2 (Feb. 23, 1998), and does not have to use the average short-term lending rates calculated by the Federal Reserve. To support its contention that the Department holds "that it is not reasonable to presume that a commercial enterprise would borrow at a higher rate when a lower rate is available," Slocan cites LMI La Metalli Industriale, S.p.A. v. United States, 912 F.2d 455, 460 (Fed. Cir. 1990), United Engineering and Forging v. United States, 779 F. Supp. 1375, 1386-87 (CIT 1991), aff'd, 996 F.2d 1236 (Fed. Cir. 1993), and Class 150 Stainless Steel Threaded Pipe Fittings from Taiwan, 59 FR 38432 38434 (Jul. 28, 1994).[138] Slocan argues that the Department verified that the London Inter-Bank Offer Rate (LIBOR), which Slocan reported was in effect under the May 2002 and October 2002 credit operating agreements in effect during the POR; and therefore, that the LIBOR-based rate complies with the criterion established in Policy Bulletin No. 98.2 and with the Federal Circuit's "mandate that the Department may not presume a commercial enterprise would borrow at a higher rate in the face of evidence that a lower rate was readily available."[139]

The petitioner did not comment on this issue.

Department's Position:

We agree with Slocan. At verification, the Department confirmed that Slocan had access to a LIBOR-based credit operating agreement during the POR. As the Department stated in its verification report, "alternatively, Slocan can borrow and pay a premium on LIBOR. During the

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[136] Because the quality and species of trees varies across Canada, some respondents cut a wide range of species while others cut a very limited number of species.

[137] See Slocan's Case Brief dated August 20, 2004 at 17.

[138] Id. at 18.

[139] Id. at 19.

POR, it was more cost-effective to borrow on LIBOR because the interest rate was about 2 percent less than the cost would have been to borrow on the bank prime rate." See Memorandum from Monica Gallardo and Martin Claessens, International Trade Compliance Analysts, to Gary Taverman, Director, Office 5, Re: Verification of the Sales Response of Slocan Forest Products Ltd., at 25-26 (June 2, 2004). Since the LIBOR-based U.S. dollar interest rate was available to Slocan during the POR, we have used that rate in our final results.

Comment 22: Clerical Error Allegations

Slocan argues that the Department made three clerical errors in its SAS programming. First, Slocan contends that the Department treated its billing adjustment fields as if they had been reported on a per-unit, and not as a total per-line item, basis. Second, Slocan asserts that the Department erroneously deducted futures revenues from the USP. Slocan argues that during the NAFTA appeal of the final determination in the investigation of softwood lumber, the Department stated to the panel that losses or profits derived from lumber futures transactions should be treated as indirect selling expenses. While instructing Slocan to report such losses or profits in the indirect selling expense field, Slocan contends, the Department retained the DIRSELU field (which, according to Slocan, is comprised of net revenues), and deducted DIRSELU from net price, thereby treating Slocan's future revenues as both indirect and direct selling expenses, and treating Slocan's revenues reported in the DIRSELU field as losses. Third, Slocan argues that the Department erroneously applied the U.S. exchange rate to the inland freight expenses reported in field INLFTCUC in its entered value calculation after those expenses had been converted earlier in the SAS programming.

The petitioner did not comment on the first two clerical error allegations. Regarding the third allegation, the petitioner maintains that the Department did not make a clerical error but argues instead that the INLFTCUC field is still stated in Canadian dollars at the point of the entered value calculation.

Department's Position:

Regarding the first two clerical error allegations, we agree with Slocan and have changed the final results to reflect the allegations.

Regarding the third clerical error allegation, however, we disagree with Slocan and agree with the petitioner. At the point of the entered value calculation, the INLFTCUC field is still stated in Canadian dollars; the array function is carried out later in the program.

Issues Specific to Tembec

Comment 23: General and Administrative Expense Rates-Consolidated vs. Producer

Tembec contends that for the Preliminary Results, the Department erroneously recalculated Tembec's G&A expense ratio by adding data from the unaudited financial statements of Excel Forest Products, Spruce Falls Inc., Davidson Inc., Temrex Limited Partnership, Marks Lumber, and a non-existent

unconsolidated financial statement for Tembec Industries Inc. Tembec argues that for the final results, the Department should calculate the G&A expense ratio based on its audited consolidated financial statements because the Department has a long standing practice of using audited financial statements as the basis for the G&A rate calculation.[140] Tembec maintains that the Department created an artificial G&A expense ratio based on de-constructed information that does not accurately reflect Tembec's costs. Tembec states that in this review, it has submitted two G&A expense ratios as it had done in the investigation, one based on the financial statements of its forest products group and the other based on its consolidated financial statements. Tembec points out that in the investigation, the Department rejected Tembec's forest product group G&A expense ratio because there was no clear evidence that the data had been audited or were kept in accordance with Canadian GAAP,[141] but yet it notes that in this review, the Department is relying on unaudited data that are neither from any financial statements nor in conformance with Canadian GAAP. Tembec asserts that there are no audited or unaudited unconsolidated financial statements for Tembec Industries Inc. It is only through dis-aggregation of the consolidated data that the Department was able to create an equivalent to a financial statement for Tembec Industries Inc. without its separately incorporated subsidiaries.

According to Tembec, the G&A expense amounts used by the Department for Tembec Industries Inc. are inappropriate for use in Tembec's G&A rate calculation because they are aberrant when compared to other lumber producers. Tembec further explains that the G&A expense amounts used by the Department for Tembec Industries Inc. include expenses related to the corporate headquarters and should be allocated to the subsidiaries owned by Tembec Industries Inc.[142]

Tembec alleges that the Department rejected Tembec's audited consolidated financial statements in favor of an unconsolidated construct because the consolidated financial statements include data from entities that do not produce softwood lumber. Most specifically, Tembec explains that the Department used the consolidated Davidson Inc. financial statements for the Tembec G&A expense ratio calculation. Davidson Inc. owns two subsidiaries, Davidson Industries Limited and Davidson Chili S.A. Davidson Industries Limited is a sales office in Ireland and Davidson Chili S.A. is a management company in Chile, and neither produces softwood lumber. Thus, Tembec argues the

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[140] In support of its argument, Tembec cites Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Taiwan, 67 FR 76721 (December 13, 2002), and accompanying Issues and Decision Memorandum at Comment 10.

[141] In the investigation, the Department initially rejected Tembec's forest products group G&A ratio. Tembec challenged the Department's decision to the NAFTA Panel. Later, on remand from the NAFTA Panel, the Department used Tembec's forest products group G&A ratio in the COP calculation. See NAFTA Panel Decision 2003 at 2.

[142] Tembec recalculated the G&A expense rate used by the Department for the Preliminary Results by allocating the corporate headquarter expenses to its subsidiaries, but maintains that this recalculation would fix an error but not the fundamental problem that the Tembec Industries Inc. data remains an unaudited construct, and not a financial statement. See Tembec's case brief dated August 20, 2004 at Attachment 1.

Department is in error in calculating G&A expenses for purposes of an antidumping case on softwood lumber using data from two companies that do not produce the subject merchandise.

In addition, Tembec contends that the Department should not include early retirement expenses and losses on the disposal of fixed assets in the G&A expense rate calculation because these have been classified as "unusual items" in the audited financial statements. Tembec reiterates that an independent auditor has attested to the fact that early retirement and the disposal of fixed assets are not part of Tembec's ordinary course of business, and are therefore, unusual expenses in accordance with Canadian GAAP. Tembec maintains that certain fixed assets were removed from service due to an unique reconfiguration of equipment and the event is "infrequent in occurrence" and "unusual in nature" because it did not occur in the previous or past years. Moreover, the one time early retirement expenses were abnormal and not reasonably foreseeable. Therefore, these items should be excluded from the G&A rate calculation.[143] Finally, Tembec argues that early retirement and disposal of fixed asset expenses are consolidated amounts, and the only way the Department can include these amounts is by calculating the G&A expense rate based on Tembec's consolidated financial statements.

The petitioner contends that for the Preliminary Results, the Department has appropriately calculated Tembec's G&A expense ratio based on the unconsolidated financial statements of the six softwood lumber producing entities (Excel Forest Products, Spruce Falls Inc., Davidson Inc., Temrex Limited Partnership, Marks Lumber, and Tembec Industries Inc.), and that the Department should continue to do so for the final results because this approach comports with the antidumping statute, which prescribes that the cost of production include an amount for G&A expenses based on actual data pertaining to the production and sale of subject merchandise. The petitioner states that the Department was unable to use Tembec's forest product group G&A expense ratio in the cost of production calculation, because at the cost verification Tembec disavowed the forest group information on the premise that the circumstances and business operations for Tembec have changed since the investigation, and it is no longer appropriate to calculate the G&A expense rate using the forest product group's segmented financial information.[144] The petitioner argues that the Department should not use the G&A expense ratio that was based on Tembec's consolidated financial statements because during the NAFTA appeal of the underlying investigation, Tembec maintained that the consolidated G&A expense factor reflect Tembec's worldwide pulp, paper, and chemical operations, rather than its lumber operations in Canada, and the use of the consolidated G&A expense rate would

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[143] In support of its position, Tembec cites Floral Trade Council v. United States, 16 CIT 1014, 1016 (1992), aff'd 74 F.3d 1200 (Fed. Cir. 1995) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea, 65 FR 16877 (March 30, 2000) (Staple Fiber from Korea), and accompanying Issues and Decision Memorandum at Comment 8, where the Department has stated that it only allows for the exclusion of extraordinary expenses when these expenses are both unusual in nature and infrequent in occurrence.

[144] See Memorandum from Sheikh M. Hannan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, Re: Verification Report on the Cost of Production and Constructed Value Data Submitted by Tembec Inc. at page 40 (June 4, 2004).

distort the cost of production calculation.[145] However, the petitioner concurs with the respondent that the G&A expenses related to the corporate headquarters should be allocated to the subsidiaries owned by Tembec Industries Inc.

The petitioner further contends that the Department should include early retirement expenses and the loss on disposal of fixed assets in the G&A expense rate calculation because these are not "infrequent in occurrence" and "unusual in nature" items. According to the petitioner, there is nothing "unusual" about early retirement expenses or disposal of fixed assets. These items relate to the "general operations of the company," and are properly included in the G&A rate calculation. The petitioner maintains that in past cases, the Department included items of this nature in the G&A rate calculation, and therefore, should continue to do so for the final results.[146]

Department's Position:

We disagree with Tembec that the Department should calculate the G&A expense rate based on its consolidated financial statements. Section 773(b)(3)(B) of the Act states that for purposes of calculating cost of production, the Department shall include "an amount for selling, general, and administrative expenses based on the actual data pertaining to the production and sales of the foreign like product by the exporter in question." The antidumping law does not prescribe a specific method for calculating the G&A expense rate. When a statute is silent or ambiguous, the determination of a reasonable and appropriate method is left to the discretion of the Department. Because there is no bright-line definition in the Act of what a G&A expense is or how the G&A expense rate should be calculated, the Department has, over time, developed a consistent and predictable practice for calculating and allocating G&A expenses. This reasonable, consistent, and predictable method is to calculate the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company's company-wide cost of sales and not on a consolidated, divisional, or product-specific basis. This practice is identified in the Department's standard section D questionnaire, which instructs that the G&A expense rate should be calculated as the ratio of total company-wide G&A expenses divided by cost of goods sold. See Section D Questionnaire at D-13. The Department's methodology also avoids any distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionally between divisions.

As with many cost allocation issues that arise during the course of an antidumping proceeding, there may be more than one way to reasonably allocate the costs at issue. However, we have developed a consistent and predictable approach to calculating and allocating G&A costs for several reasons: 1)

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[145] In support of this statement, the petitioner refers to the brief from Tembec to the NAFTA secretariat (U.S. Section). No USA-CDA–2002-1904-02 at 11-12 (August 2, 2002).

[146] In support of its position, the petitioner cites Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24356 (May 6, 1999) (Hot-Rolled Steel from Japan-LTFV). In this case, a respondent argued that it properly excluded special retirement expenses and expenses related to the disposal of fixed assets from the G&A rate calculation. The Department rejected the respondent's claim, and included both expense categories in the G&A rate calculation.

so companies that sell to the United States can anticipate how we will treat their costs; 2) so countries with companies involved in a dumping proceeding can see that we are even-handedly applying methods across countries; and 3) so that companies can better monitor dumping and have predictability between proceedings. The Department's normal methodology for calculating a respondent's G&A expense ratio is reasonable, it is predictable and it is not results-oriented.

The Department normally computes the G&A expense rate of a company based on its unconsolidated operations because G&A at the producer level better represents the actual G&A expenses incurred by a company producing the merchandise under consideration.[147] The Department does not calculate the G&A expense rate based on a company's consolidated financial statements because a company's consolidated financial statements often include business entities involved in different sectors or industries that operate in different world markets from the affiliated respondent companies involved in the production and sale of the merchandise under consideration. As a result of these differences in industries and markets of operation, the corporate structures and general operating environments of the consolidated companies often bear little resemblance to the corporate structure and general operating environments of the companies producing subject merchandise. Moreover, the consolidated financial statements may include companies operating in different countries of the world that are at a different stage of economic development from the respondent country, thus, affecting the production costs (as used in the denominator of the calculation) because of the different raw material sources, different wage rates, energy costs, and so on, by those companies individually. Tembec's consolidated financial statements reflect the results of its worldwide operations, including companies solely in the construction, financial services, or chemical industries, and located in France, Hungary, and the United States. In contrast, all the six subject merchandise producing companies used by the Department to calculate Tembec's G&A expense rate for the Preliminary Results are located in Canada and all produce lumber products. For these reasons, we consider it preferable to follow our normal practice and continue to calculate Tembec's G&A expense rate at the unconsolidated company-wide level which more closely represents the company, country, and industry under investigation.[148]

We disagree with Tembec that the unconsolidated financial statements of Tembec Industries Inc. do not exist. In the normal course of business, Tembec prepares annual consolidated financial statements which are audited by its independent accountants. The consolidated financial statements include the financial results of Tembec Inc., Tembec Industries Inc. (corporate), and its consolidated subsidiaries and joint ventures. However, we note that Tembec first prepares separate financial statements for Tembec Inc., Tembec Industries Inc. (corporate), and each of the consolidated subsidiaries and joint

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[147] See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa, 67 FR 35485 (March 20, 2002), and accompanying Issues and Decision Memorandum at Comment 6. In this case, the Department calculated the respondent's G&A expense rate based on the respondent's unconsolidated financial statements.

[148] See Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico, 69 FR 53677 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 25. In this case, the Department calculated the G&A expense rate based on the two companies that produced the merchandise under consideration.

ventures. Next, Tembec combines the financial statements of Tembec Industries Inc. (corporate) with the financial statements of its subsidiaries and joint ventures and prepares the consolidated financial statements of Tembec Industries Inc. Finally, Tembec combines the consolidated financial statements of Tembec Industries Inc. with the financial statements of Tembec Inc. to prepare the consolidated financial statements of the Tembec group.[149] The financial statements of Tembec Industries Inc. (corporate) is the unconsolidated financial statements of Tembec Industries Inc. because these financial statements reflect the operations of Tembec Industries Inc. without its owned subsidiaries and joint ventures (i.e., the unconsolidated operations). Due to the unusual corporate organizational structures of certain large Canadian corporate groups, and the fact that sometimes all companies within the group do not have separate audited financial statements, it is sometimes necessary to back into audited results for respondent companies from the audited consolidated financial statements. We faced this same issue in Carbon and Certain Alloy Steel Wire Rod from Canada,[150] and used a similar approach in that case to isolate the unconsolidated financial statements for the respondent.

We disagree with Tembec that the Department created an artificial G&A expense ratio based on selected de-constructed information that does not accurately reflect Tembec's costs. Tembec owns several legal entities. In response to our supplemental questionnaire, Tembec stated that the legal entities that were involved in the production of the merchandise under review during the POR were Tembec Industries Inc., Excel Forest Products, Spruce Falls Inc., Davidson Inc., Temrex Limited Partnership, and Marks Lumber.[151] Consistent with the Department's practice, we used the amounts from the unconsolidated financial statements of these legal entities (except for Davidson Inc., which we have addressed below) to calculate Tembec's G&A expense rate. We also disagree with Tembec that the Department relied on unaudited data in calculating the G&A expense rate. The financial statements of the six legal entities used to calculate Tembec's G&A expense rate and also the financial statements of the rest of Tembec's subsidiaries and joint ventures are audited in conjunction with Tembec's audited consolidated financial statements.[152] Tembec provided a schedule at Exhibit 30 of Tembec's First Supplemental Section D Response of March 3, 2004, which reported each

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[149] Tembec provided a copy of its 2002 fiscal year consolidated financial statements that show separately the financial statements of all the consolidating legal entities in Exhibit 30 of its First Supplemental Section D Questionnaire Response (March 3, 2004). The consolidated financial statements of Tembec Inc. are in Column 1, and the financial statements of Tembec Industries Inc. (corporate) are in Column 4 of the Exhibit.

[150] See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Canada, 67 FR 55782 (August 30, 2002) (Carbon and Certain Alloy Steel Wire Rod from Canada) and accompanying Issues and Decision Memorandum at Comment 26. In this case, the respondent argued that its unconsolidated financial statements do not exist. The respondent maintained that it only prepares audited consolidated financial statements. From the consolidation worksheet, we identified the respondent's unconsolidated financial statements. We used the unconsolidated financial statements to calculate the respondent's G&A expense rate.

[151] See Tembec's First Supplemental Section D Response at 2 (March 3, 2004).

[152] See Tembec's 2002 fiscal year audited consolidated financial statements submitted at Exhibit 14 of Tembec's Section A Response (August 29, 2003) at 46 and 53.

company's financial results, separately, and reconciled the sum of each to the audited consolidated financial statements.

We disagree with Tembec's claim that the G&A expense amounts used by the Department for Tembec Industries Inc. are inappropriate because they are aberrant. The Department calculates the cost of production based on the amounts incurred by the respondent as reflected in its normal books and records. The Department does not compare the costs incurred by one respondent to the costs incurred by another respondent to determine the appropriateness of the amount to be included in the cost calculation or to make an adjustment to the reported costs. The cost of a respondent is what it has incurred.

We agree with Tembec that a portion of the G&A expenses incurred by Tembec Industries Inc. relates to its corporate headquarters. The corporate headquarters provides services to all of its subsidiaries and joint ventures. The Department normally allocates the parent company's G&A expenses to all of its subsidiaries that have benefitted from services provided by the parent company. Therefore, for the final results, instead of including all the corporate headquarters G&A expenses in Tembec Industries Inc.'s G&A, we allocated the corporate headquarters G&A expenses to all of Tembec's consolidated subsidiaries and joint ventures including Tembec Industries Inc. See Memorandum from Sheikh Hannan, Senior Accountant, to Neal Halper, Director, Office of Accounting, Re: Final Results Calculation Memo (December 13, 2004).

While we agree with Tembec that the Department used the consolidated Davidson Inc. financial statements for the Tembec G&A expense ratio calculation, we note that the Department requested that Tembec provide the unconsolidated data.[153] At verification, Tembec provided worksheets supposedly containing the requested unconsolidated data.[154] While we were verifying the selling, and G&A expenses from the worksheets to the financial statements of the legal entities submitted at Exhibit 30 of its First Supplemental Section D Response dated March 3, 2004, we noted that Davidson Inc.'s information was from its consolidated financial statements. We requested Tembec to provide the selling and G&A expenses information of the unconsolidated Davidson Inc. (i.e., without its two consolidated subsidiaries) at that time, however, Tembec was unable to do so.[155] Therefore, we had no other alternative but to use the consolidated G&A expense amount because the unconsolidated G&A expenses of Davidson Inc., were not on the record. We note that the inclusion of Davidson's G&A expense data in the Tembec company-wide G&A expense rate calculation had a minimal effect on the result.

We disagree with Tembec's position that the Department should exclude early retirement expenses and loss on disposal of fixed assets from the G&A expense rate calculation. These types of expenses

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[153] See Letter from Neal Halper, Director, Office to Tembec, Re: Step V.A. of the Cost Verification Agenda issued to Tembec by the Department at 9 (April 12, 2004).

[154] See the Cost Verification Report at Exhibit 28.

[155] Id. at Exhibit 28.

are routinely incurred by large manufacturing companies and are related to their general operations. Early retirement expenses are common in the business environment because to remain competitive, a company evaluates its workforce on a regular basis and changes it accordingly. It has to align its human resources to meet the changing needs of the organization. A company also reviews its production capabilities on a regular basis and, if necessary, discards, modifies, replaces or modernizes its existing production facilities. In this instance, the related assets were disposed of as part of Tembec's modernization program. These items are neither "unusual in nature" nor "infrequent in occurrence" for a manufacturing company. As outlined in Floral Trade Council of Davis, CA v. United States, 16 CIT 1014, 1016 (Dec. 1, 1992) (Floral Trade Council), the Department may exclude certain expenses from its calculation consider to be extraordinary. In order for an event to be considered extraordinary it must be "unusual in nature and infrequent in occurrence."[156] For example, in Floral Trade Council, the water table collapsed suddenly and unexpectedly. As a result, the well used to irrigate flowers for one respondent was unable to produce enough water for the farm because the water table was supplying water to the well. The shortage of water resulted in the death of a large number of flowers and many of the flowers left were not fit for export. In addition, another respondent's plants were attacked by a devastating and rare virus previously unknown in Colombia. The CIT upheld the Department's determination that both of these situations were unique, infrequent, and unusual in nature for purposes of the G&A calculations. In another example, Roses from Ecuador,[157] the Department determined the loss due to hurricane force winds was an extraordinary event. It was the first time the region experienced winds of abnormally high and devastating velocity. Such winds were highly abnormal and could not be reasonably anticipated.

Early retirement expenses and modernization of production facilities are not highly abnormal and are clearly related to the company's general operations as a whole. In the normal course of business, employees are paid severance pay for early retirement and assets within a production facility are disposed of, and therefore they are not infrequent activities. Early retirement expenses and losses on disposal of fixed asset are actual costs to the company and are related to the company's general operations–comprised of all general activities associated with the company's core business. In the past, the Department has included retirement and severance expenses in the G&A expense rate calculation, although the respondents claimed these were extraordinary items.[158] In past cases, the Department has also included costs associated with the disposal of fixed assets in the G&A expense

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[156] See Notice of Final Determination of Sales at Less Than Fair Value; Low Enriched Uranium from the United Kingdom, Germany and the Netherlands, 66 FR 65886 (December 21, 2001), and accompanying Issues and Decision Memorandum at Comment 23. An event is "unusual in nature" if it is highly abnormal, and unrelated or incidentally related to the ordinary and typical activities of the entity, in light of the entity's environment. An event is "infrequent in occurrence" if it is not reasonably expected to recur in the foreseeable future.

[157] See Roses from Ecuador at 7038.

[158] See Hot-Rolled Steel from Japan-LTFV at 24356 and Staple Fiber from Korea and accompanying Issues and Decision Memorandum at Comment 8.

rate calculation[159] even though the loss was classified as extraordinary in the respondent's normal books and records. The treatment of these expenses is consistent with the Department's treatment of these expenses in the investigation, which was affirmed on review.

Finally, we disagree with Tembec's claim that the early retirement expenses and loss on disposal of fixed asset arise only at the consolidated level. These amounts were incurred by Tembec Industries Inc. (corporate).[160] Therefore, for the final results, we continued to include these items in the G&A expense rate calculation.

Comment 24: Financial Expense Ratio-Foreign Exchange Gains and Losses

Tembec contends that for the Preliminary Results, the Department erroneously recalculated Tembec's financial expense ratio by including foreign exchange contract losses. For the final results Tembec argues that the Department should exclude the foreign exchange contract losses from the financial expense ratio calculation because these losses were related to accounts receivable. Tembec maintains that these foreign exchange contract losses that were incurred during the 2002 fiscal year resulted from a hedging program designed to protect it from foreign exchange risk on its accounts receivables in U.S. dollars and euros. Tembec claims that it has adopted a policy of hedging approximately 50 percent of its anticipated net U.S. dollar receipts with fixed forward contracts of up to 36 months. According to Tembec, these foreign exchange contracts have nothing to do with debts, cash deposits, or manufacturing activities. Rather, they relate to Tembec's efforts to mitigate the impact of foreign currency fluctuations on anticipated accounts receivables. Tembec alleges that the Department's treatment of these costs is contrary to the court's position because the CIT has held that foreign exchange translation losses are a legitimate component of cost of production only to the extent that these translation losses resulted from debt.[161] In addition, Tembec states that the CIT has also held that gains or losses resulting from currency hedging are part of the indirect selling expense of a company doing business in the U.S. market and should be treated as such.[162]

Tembec contends that the Department's current practice[163] relating to foreign exchange gains and losses need not conflict with the CIT's holdings because the current practice only revises the

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[159] See Notice of Final Results of Antidumping Duty Administrative Review: Antifriction Bearings (other than tapered roller bearing) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and United Kingdom, 65 FR 49219 (August 11, 2000), and accompanying Issues and Decision Memorandum at Comment 63.

[160] See Tembec's First Supplemental Section D Response dated March 3, 2004 at Exhibit 30 at Columns 1 and 4.

[161] In support of this statement, Tembec cites Micron Technology.

[162] Tembec cites Federal Mogul Corp. v. United States, 862 F. Supp. 384, 307 (CIT 1994) (Federal Mogul Corp.) and Torrington Co. v. United States, 832 F. Supp 379, 393 (CIT 1993).

[163] See Notice of Preliminary Results of Antidumping duty Administrative Review: Certain Preserved Mushrooms from India,68 FR 11045, 11048 (March 7, 2003) (Mushrooms from India 2003).

treatment of foreign exchange gains and losses differently at the consolidated and unconsolidated level. Tembec stresses that the Department did not indicate that it would include all foreign exchange gains and losses in the financial expense ratio calculation regardless of the source of the exchange gain or loss.[164] Further, Tembec claims that foreign exchange gains and losses on accounts receivable are covered in the CREDITH field of the home market sales database for sales conducted in currencies other than the Canadian dollar, and in the CREDITU field of the U.S. sales database because hedging expenses are incurred during the financing stage of sales. Finally, Tembec maintains that the Department's inclusion of this exchange loss in Tembec's calculation further distorts the POR financial expense because this expense was incurred during the 2002 fiscal year and not during the POR. Thus, Tembec argues that if the Department insists on including the foreign exchange contract loss in its calculation, the Department should include at least the POR foreign exchange contract loss amount[165] in the financial expense ratio calculation.

The petitioner contends that for the Preliminary Results, the Department has appropriately included Tembec's foreign exchange contract losses in the financial expense ratio calculation because it is the Department's current practice to include all foreign exchange gains and losses regardless of their sources in the financial expense ratio. The petitioner maintains that gains and losses arising from Tembec's currency hedging program on its anticipated accounts receivable are proper items for inclusion in the financial expense ratio calculation because the Department's current approach recognizes that the key measure is not necessarily what generates the exchange gains or losses but rather how well the entity as a whole was able to manage its foreign currency exposure to any one currency.

The petitioner refutes Tembec's reliance on the CIT cases to exclude the exchange losses from hedging operations, explaining that these cases dealt with aspects of the Department's treatment of foreign exchange gains and losses prior to the implementation of the Department's current practice. Moreover, the petitioner maintains that the Department made it clear in the Preliminary Results that in contrast to its previous practice discussed in the CIT cases, the current practice normally includes in the interest expense computation all foreign exchange gains and losses. The petitioner maintains that the CREDITH and CREDITU computer fields of the sales database do not include foreign exchange losses on accounts receivables as claimed by Tembec because these fields include only imputed interest expenses in the currency invoiced. Finally, the petitioner argues that the Department should not use the POR foreign exchange contract loss amount as suggested by Tembec because it is the Department's standard practice to calculate a company's financial expense ratio based on the company's audited annual financial statements.

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[164] In support of this statement, Tembec cites Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 68 FR 47543 (August 4, 2003) and accompanying Issues and Decision Memorandum at Comment 19.

[165] According to Tembec, the POR foreign exchange contract loss amount was much less than the corresponding 2002 fiscal year amount. See Tembec's case brief dated October 4, 2003 at 31.

Department's Position:

We disagree with Tembec that the Department should exclude foreign exchange contract losses from the financial expense ratio calculation. In Mushrooms from India, the Department alerted the public that it changed its practice with regard to foreign exchange gains and losses. Specifically the Department stated:

> For these preliminary results, we have implemented a change in practice regarding the treatment of foreign exchange gains and losses. The Department's previous practice was to have respondents identify the source of all foreign exchange gains and losses (e.g., debt, accounts receivable, accounts payable, cash deposits) at both a consolidated and unconsolidated corporate level. At the consolidated level, the current portion of foreign exchange gains and losses generated by debt or cash deposits were included in the interest expense ratio computation. At the unconsolidated producer level, foreign exchange gains and losses on accounts payable were either included in the G&A rate computation, or under certain circumstances, in the cost of manufacturing. Gains and losses on accounts receivable at both the consolidated and unconsolidated producer levels were excluded from the cost of production and constructed value calculations.
>
> Instead of splitting apart the foreign exchange gains and losses as reported in an entity's financial statements, we will normally include in the interest expense computation all foreign exchange gains and losses. In doing so, we will no longer include a portion of foreign exchange gains and losses from two different financial statements (i.e., consolidated and unconsolidated producer). Instead, we will only include the foreign exchange gains and losses reported in the financial statement of the same entity used to compute each respondent's net interest expense rate. This approach recognizes that the key measure is not necessarily what generated the exchange gain or loss, but rather how well the entity as a whole was able to manage its foreign currency exposure in any one currency. As such, for these preliminary results, we included all foreign exchange gains or losses in the interest expense rate computation. We note that there may be unusual circumstances in certain cases which may cause the Department to deviate from this general practice. We will address exceptions on a case-by-case basis.

See Mushrooms from India 2003 at 11048.

Currency hedging is a tool used to protect companies against the risks posed by worldwide currency fluctuations. When a company holds monetary assets or liabilities denominated in foreign currencies, it may resort to currency hedging. For example, if a company has foreign currency denominated assets it may prefer to hedge by entering into a forward sale agreement of the same foreign currency. In this manner, the company is assured of an exchange rate for its foreign currency denominated assets. However, for accounting purposes the holding of assets and currency hedging are considered two separate economic events (i.e., transactions). If on the settlement date (i.e., the day the forward sale is to be executed), the foreign currency becomes stronger in relation to the local currency, the company has a gain on holding the monetary assets (because it will receive more local currency in

exchange of these monetary assets) but incurs a loss on currency hedging (because it will have to pay more local currency to buy the foreign currency and subsequently receive less local currency by selling the foreign currency at the forward rate). The opposite happens if on the settlement date the foreign currency becomes weaker in relation to the local currency. Similarly, a company can hedge its foreign currency denominated debts by entering into a forward buy agreement of foreign currency. When a company holds both assets and liabilities in the same foreign currency it has a natural hedge. In this instance, it appears Tembec was hedging its foreign currency denominated accounts receivable and incurred hedging losses. However, depending on the exchange rate on the settlement dates, Tembec should have recovered some of these hedging losses through gains in holding its foreign-denominated accounts receivable.

Companies in the business of producing and selling merchandise are not in the business of speculating with foreign currencies. As such, in order to minimize the risk of holding foreign-denominated monetary assets and liabilities, companies often engage in a variety of activities from an enterprise-wide perspective to hedge themselves against foreign currency exposure. Therefore, companies often try to maintain a balanced holding of foreign-denominated assets and liabilities in any one currency so as to offset any foreign exchange losses with foreign exchange gains (i.e., hedging its foreign currency exposure on a company-wide basis, not for specific accounts). This balanced holding can be achieved with both current and long-term monetary assets or liabilities, as well as with foreign-denominated payables, receivables, cash holdings, or hedging contracts. Including only certain components that result from the company's coordinated efforts to manage its foreign currency exposure in the financial ratio calculation does not adequately reflect the financial results of the enterprise's foreign exchange management efforts. Instead, including all of the foreign exchange gains and losses in the financial ratio calculation better reflects the results of the company's foreign exchange management. The net foreign exchange gain or loss reflects the actual gain or loss of holding foreign-denominated monetary assets and liabilities in any given year, and reflects the company's ability or inability to mitigate its exposure to foreign currency fluctuations.[166] The management of a company's balance of foreign exchange gains and losses factors into its overall cash management and ultimately is an inevitable part of a company's cost of doing business when operating in foreign markets.

Pursuant to section 773(f)(1)(A) of the Act, costs shall normally be calculated in accordance with the records of the producer or exporter if such records are kept in accordance with home-country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. The record shows that the total amount of foreign exchange contract losses for the 2002 fiscal year was recorded as an expense in the company's audited consolidated financial statements prepared in accordance with Canadian GAAP. Foreign-exchange gains and losses are real costs or gains to the company in that they represent either additional or reduced Canadian dollar payments needed to satisfy foreign-denominated loans or payables, and additional or reduced Canadian dollar amounts to be received on foreign-denominated accounts receivables or cash deposit balances. The resulting

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[166] See Notice of Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil, 69 FR13813 (March 24, 2004) and accompanying Issues and Decision Memorandum at Comment 14. In this case, we included all foreign exchange gains and losses in the financial expense ratio calculation.

gains and losses are reflected in full on the company's audited consolidated income statement. Since the implementation of our current practice, we have consistently included all foreign exchange gains and losses in the financial expense ratio calculation. Specifically, in Certain Steel Concrete Reinforcing Bars from Turkey and Certain Welded Steel Pipe and Tube from Turkey, we included the exchange gains and losses generated by accounts receivables.[167]

We disagree with Tembec that foreign exchange gains and losses on accounts receivable are covered in the CREDITH and CREDITU fields of the sales databases. These fields contain imputed interest expenses in the currency invoiced for making circumstance-of-sale adjustments. As stated in the Department's antidumping questionnaire,[168] credit expenses are "the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer." The Department normally imputes these "opportunity" costs not to capture an expense but to equate two sales made on different terms. Foreign exchange gains and losses arise due to changes in the exchange rates between the currencies of two countries. Foreign exchange gains and losses are not an imputed cost nor are they interest expense on foreign denominated assets or liabilities. They are incurred because foreign denominated assets or liabilities are held in a foreign currency that changes value.

We find Tembec's reliance on Federal Mogul Corp. and Micron Technology to support its argument that foreign exchange contract losses should be excluded from financial expense ratio to be misplaced. As noted by the petitioner, the Department's practice has been revised since the CIT reviewed our old practice in both those cases. As noted above, we now view foreign exchange gains and losses from a company-wide perspective instead of a transaction-specific perspective. We also find Tembec's reliance on the Stainless Steel Bar from India unpersuasive and factually incorrect. In that case, we specifically said that we will include all foreign exchange gains and losses in the financial expense ratio calculation.

Finally, we disagree with Tembec that we should use the POR foreign exchange contract loss amount instead of the corresponding 2002 fiscal year amount. It is the Department's longstanding practice to base net financing expenses on the full-year interest expense and cost of sales from the audited fiscal year financial statements at the highest level of consolidation that correspond most closely to the cost reporting period.[169] We use the audited fiscal year financial statements for the period that most

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[167] See Notice of Final Results of Antidumping Duty Administrative Review: Certain Steel Concrete Reinforcing Bars from Turkey, 68 FR 53127 (September 9, 2003) (Certain Steel Concrete Reinforcing Bars from Turkey) and accompanying Issues and Decision Memorandum at Comment 15; see also, Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 69 FR 48843 (August 11, 2004) (Certain Welded Carbon Steel Pipe and Tube from Turkey) and accompanying Issues and Decision Memorandum at Comment 5.

[168] See Appendix 1 of the Department's Standard Antidumping Questionnaire.

[169] See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa, 67 FR 35485 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 7; see also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate

closely corresponds to the cost reporting period for several reasons. First, we want to rely on audited data, and consolidated financial data is typically only audited at year end. Secondly, we want to adopt an approach that is consistently relied upon by all respondents. It makes little sense to calculate different respondents' foreign exchange contract losses and gains using different periods for each company. A uniform period of time consisting of the fiscal year is a predictable, reliable, and constant period of time applicable to all respondents in all cases. Thirdly, we also calculate the G&A and interest expense rates on the respondent's fiscal year audited financial statements that most closely correspond to the cost reporting period. To adopt a POR calculation for certain proceedings and a fiscal year calculation for others creates a situation for results-oriented arguments. This is precisely why we have adopted a fair, consistent, and predictable approach of using the fiscal year audited financial statements that most closely matches to the POR. Therefore, for the final results, we continued to include the 2002 fiscal year foreign exchange contract loss amount in the financial expense ratio calculation.

Comment 25: Clerical Errors

Tembec alleges that the Department committed two clerical errors in its Preliminary Results. First, Tembec maintains that the verification corrections were not implemented, as the Department reintroduced the original dataset into the program after making the corrections. Second, Tembec contends that indirect selling expenses were understated as the Department recalculated them on a price that was net of early payment discounts. To rectify this, Tembec requests that the Department add back early payment discounts prior to recalculating indirect selling expenses.

The petitioner did not comment on this issue.

Department's Position:

We agree with Tembec with regard to the verification corrections and have made the necessary change to our calculation. Regarding the adjustment for indirect selling expenses, we note that the early payment discounts were taken from the invoice price prior to the invoice price being "deconstructed." Because the amount of the early payment discount varied across invoices and because the discounts were reported as absolute amounts, it is not simply a matter of adding the discounts back to the deconstructed prices. However, it is not clear that the indirect selling expense ratio was calculated based on gross selling prices. Specifically, the line in the program referred to by Tembec which states that indirect selling expenses are calculated on price plus freight revenue net of billing adjustments, is an indication of what the program is about to do, not an indication of what Tembec reported. The verification report states that the "gross sales used in the ratio calculation for

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Products from France, 64 FR 73143, 73152 (December 29, 1999).

indirect selling expenses are the budgeted sales for the POR."[170] It is unclear whether this budgeted amount takes early payment discounts into account. Therefore, we have not made any change to the recalculation of indirect selling expenses in our final results.

Issues Specific to Tolko

Comment 26: Lavington Sales

The petitioner argues that Tolko's reported cost of logs sold at the Lavington mill must be adjusted to eliminate profit. The petitioner asserts that the failure to remove log profit from the per-unit cost of logs sold overstates the cost of logs sold at the Lavington mill and, as a consequence, understates the cost of logs consumed at the sawmill. The petitioner cites Softwood Lumber LTFV Final Determination and accompanying Issues and Decision Memorandum at Comment 28, and contends that the Department concluded in the original investigation that profits earned on log sales should not be included in reported wood costs because the fact that some logs are sold for a profit does not mean that the cost is any different than the cost of logs consumed in production. Accordingly, the petitioner argues, the Department should adjust Tolko's reported log costs in the final results.

Tolko argues that the adjustment to eliminate the profit on log sales at the Lavington mill has already been reflected in the submitted cost files used in the Preliminary Results. See Tolko's response to the Department's Request for Revised Cost Files dated May 19, 2004 at 1-5 (Revisions to Cost Files). Therefore, Tolko asserts, no additional changes are required for the final results.

The petitioner did not comment on this issue.

Department's Position:

We agree with Tolko. The adjustment to eliminate the profit on log sales is already reflected in the submitted cost files (See Revisions to Cost Files at Exhibit 1) and no further adjustments are necessary for the final results.

Comment 27: Unreconciled Cost Differences

The petitioner argues that the Department should adjust Tolko's reported cost of manufacturing to account for the unreconciled differences identified at verification. The petitioner maintains that the Department found that the sawmill and planer production quantities at the Lavington and Manitoba Solid Wood sawmills were overstated, thus understating the reported sawmill costs. Accordingly, the petitioner asserts, the Department should adjust Tolko's reported variable and fixed sawmill costs in its final results.

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[170] See Memorandum from David Layton and Christopher Welty, International Trade Compliance Analysts, to Charles Riggle, Program Manager, Re: Sales Verification of the Questionnaire Responses of Tembec Inc. (Tembec) in the Antidumping Duty Administrative Review of Certain Softwood Lumber Products from Canada, dated June 2, 2004 (Tembec Sales Verification Report) at 16.

Tolko argues that the adjustment to account for the unreconciled differences in sawmill and planer production quantities referred to by the petitioner has already been reflected in the submitted cost files used in the Preliminary Results. See Revisions to Cost Files. Therefore, Tolko asserts, no additional changes are required for the final results.

The petitioner did not comment on this issue.

Department's Position:

We agree with Tolko. The adjustment to account for the unreconciled differences in sawmill and planer production quantities is already reflected in the submitted cost files (See Revisions to Cost Files at Exhibit 1) and no further adjustments are necessary for the final results.

Comment 28: Log Purchases from Affiliated Parties

The petitioner argues that Tolko's purchases of logs from certain affiliated parties in British Columbia were not made at arm's-length prices. The petitioner cites Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Thailand, 68 FR 68348 (December 8, 2003) and accompanying Issues and Decision Memorandum at Comment 5, and maintains that it is the Department's longstanding policy to require evidence from a respondent that charges for goods or services provided by affiliated parties were at arm's-length prices. Consistent with this practice, the petitioner asserts, the Department should adjust Tolko's log costs for the final results.

Tolko argues that the Department should not adjust the reported log costs because Tolko's purchases of logs from its affiliates were made at arm's-length prices. Tolko asserts that the petitioner's argument rests on a flawed comparison of total log purchases from affiliated suppliers to total log purchases from unaffiliated suppliers for British Columbia in total. According to Tolko, the proper comparison to determine whether these log purchases were at arm's-length is to compare the purchases of logs from affiliated suppliers and unaffiliated suppliers at the same mill. Tolko asserts that each of its woodlands divisions supplies logs to only one mill because the wood quality, stumpage rates, and logging costs may be very different even within the same province. Furthermore, Tolko contends, the record illustrates that the POR value of purchased logs for each Tolko sawmill in British Columbia did in fact vary widely.

Tolko cites Softwood Lumber LTFV Final Determination and accompanying Issues and Decision Memorandum at Comment 11 and maintains that the Department has consistently recognized that regional log conditions have a substantial influence on log costs. According to Tolko, the significant variations in unaffiliated log purchase prices among the different mills in British Columbia demonstrate clearly that different wood quality and different harvest costs have a significant impact on purchase prices. Thus, Tolko contends, a comparison of Tolko's purchases of logs from its affiliates to purchases of logs from unaffiliated parties done on a province-wide basis results in

nothing meaningful with respect to the possibility of actual price discrimination and is, therefore, irrelevant.

Tolko cites Hot-Rolled Steel from Japan-LTFV at 24349 and argues that in similar past circumstances the Department has compared affiliated and unaffiliated input purchases on a region-specific or factory-specific basis in order to make a reasonable comparison. In Hot-Rolled Steel from Japan-LTFV, Tolko asserts, the Department compared electricity prices one respondent paid to affiliated suppliers with prices it paid to unaffiliated suppliers on a mill-specific basis. Tolko states that the Department then adjusted the electricity prices paid by individual steel mills based on region-specific prices. Accordingly, Tolko concludes, the facts of this review compel the Department to apply the same methodology here and compare Tolko's log purchases on a mill-specific basis.

Tolko argues that this comparison shows that the vast majority of its purchases of logs from its affiliates were made at arm's-length prices. Tolko maintains that the remaining volume of purchases from affiliated parties that were made at prices lower than those charged by unaffiliated suppliers is de minimis in nature and that any adjustment would have no effect on Tolko's reported costs. In similar past circumstances, Tolko asserts, the Department has recognized that trivial volumes of affiliated purchases, even if made at lower prices than unaffiliated purchases, need not be adjusted. See, e.g., Stainless Steel Sheet and Strip in Coils: Final Results of Antidumping Duty Administrative Review from Italy, 67 FR 1715 (January 14, 2002) and accompanying Issues and Decision Memorandum at Comment 3 (SSSSC from Italy). Thus, Tolko concludes, an adjustment is similarly not necessary in this case.

Department's Position:

We agree with the petitioner. Pursuant to section 773(f)(2) of the Act, transactions between affiliated parties may be disregarded if the transfer price does not fairly reflect the amount usually reflected in the market under consideration. In applying the statute, the Department's established practice is to compare the transfer price paid by the respondent to affiliated parties for production inputs to the price paid to unaffiliated suppliers or, if this is unavailable, to the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration. See, e.g., Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review, 68 FR 59366 (October 15, 2003) and accompanying Issues and Decision Memorandum at Comment 5 and Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 55800 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 13. Therefore, in accordance with section 773(f)(2) of the Act and the Department's established practice, we have compared the average purchase price paid by Tolko for logs during the POR to affiliated suppliers in British Columbia to the average purchase price paid to unaffiliated suppliers in British Columbia. In doing so, we have determined that Tolko's purchases of logs from its affiliated suppliers were not at arm's-length prices. We have, therefore, adjusted these prices in our final results.

We disagree with Tolko's argument that the proper comparison in this case is to compare the purchases of logs from affiliated and unaffiliated suppliers at the same mill. In Softwood Lumber

LTFV Final Determination and accompanying Issues and Decision Memorandum at Comment 11, the Department established that a meaningful comparison of wood chip prices was necessary on a regional, rather than a country-wide basis due to significant regional variations in log costs.

Accordingly, the Department did its comparison of wood chip prices on a province-wide basis to account for these regional variations in log costs. While we continue to find evidence of variations in log costs between provinces in this review, we do not find that there is enough variation in log costs between Tolko's mills within a province to warrant a mill-specific comparison of log costs. Further, we find Tolko's reference to Hot Rolled Steel from Japan-LFTV to be off point. In Hot Rolled Steel from Japan-LFTV, the respondent did not address the issue of whether the purchases of affiliated inputs should be compared on a region-specific or mill-specific basis. Rather, the respondent argued that the Department should take into account the different levels of distribution of its electricity suppliers. Thus, we find that the proper comparison is to compare Tolko's purchases of logs from affiliated and unaffiliated parties on a province-wide basis.

Comment 29: General and Administrative Expenses-Payment to Trade Council

The petitioner argues that payments made to the trade council cannot be considered antidumping legal expenses and should be included in the calculation of Tolko's G&A ratio. The petitioner maintains that while the Department's practice is to permit legal expenses related to antidumping to be excluded from G&A, Tolko's exclusion is improper and without any basis on the record. See, e.g., Certain Corrosion Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews, 63 FR 12725, 12731 (March 16, 1998) (CTL Plate from Canada). The petitioner argues that a review of the cost verification exhibits provides no evidence to support the conclusion that payments to the trade council were incurred as legal expenses or even related to the antidumping case. The petitioner asserts that the payments excluded by Tolko are not directly related to antidumping and that this exclusion should be rejected in the final results.

Tolko argues that the Department confirmed at verification that Tolko's exclusions from G&A were properly classified. Tolko cites Memorandum from Robert B. Greger to Neal M. Halper, Director, Office of Accounting, Verification Report on the Cost of Production and Constructed Value Data Submitted by Tolko Industries Ltd. And Gilbert Smith Forest Products Ltd. (June 4, 2004) (Tolko Cost Verification Report) at 30 and notes that the Department specifically reviewed the expenses being questioned by the petitioner and stated that they consist of "payments made to the trade council for antidumping defense." Tolko asserts that it is the Department's well-established practice - and acknowledged by the petitioner - that expenses incurred in connection with participation in antidumping proceedings are properly excluded from margin calculations. Therefore, Tolko argues, there is no basis for including these expenses in Tolko's G&A ratio for the final results.

Department's Position:

We disagree with the petitioner. At verification the Department confirmed that Tolko's payments to the trade council were made in relation to activities performed by the trade council in the antidumping

duty case, similar to legal fees paid directly by a respondent. See Tolko Cost Verification Report at 30. As the petitioner has noted above, the Department's practice is to exclude such expenses from the calculation of the G&A ratio. See, e.g., CTL Plate from Canada and Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 13896, 13900 (May 8, 2001). Thus, we have continued to exclude these expenses in the final results.

Comment 30: Allocation of Mixed-Length Tallies

Tolko argues that the Department should exclude length as a characteristic in the value-based cost allocations because of Tolko's high proportion of mixed-length tally[171] sales. Tolko cites Remand Redetermination: In the Matter of Sales at Less Than Fair Value of Certain Softwood Lumber from Canada (October 15, 2003) and notes that, on remand from the NAFTA Panel, the Department developed a revised value-based cost allocation that accounts for differences in value across the dimensional attributes of thickness, width and length. Tolko asserts, however, that both the NAFTA Panel's decision and the Department's subsequent remand simply refer generically to dimensional differences without distinguishing between them. See NAFTA Panel Decision 2003. Further, Tolko contends, it does not appear that the issue of mixed-length tally sales was discussed to any significant extent in those proceedings.

Tolko argues that in this administrative review, the Department has collected significant information on mixed-length tally sales and asserts that it is not disputed that the unit price for mixed-length tallies may depend on the specific distribution of lengths within the tally. Tolko acknowledges that length can affect price and that different lengths can have different relative values. Tolko states, however, that although the distribution of lengths in a mixed-length tally can affect the unit price, it is not possible to ascertain specific length-related value differences within the tally.

Tolko asserts that due to its high proportion of mixed-length tally sales during the POR, the relative value differences among various lengths of lumber are blurred and cannot readily be quantified. Tolko contends that the high proportion of mixed-length tally sales erodes the value of using length as a mechanism to allocate joint costs among lumber products. Accordingly, Tolko argues, the only reasonable alternative is to exclude length as a characteristic in the value-based cost allocation for Tolko.

Tolko argues that there is no statutory or other obstacle to revising the value-based methodology applied in the Preliminary Results or to differentiating between Tolko and other Canadian respondents in applying it. Tolko cites section 773(f)(1)(A) of the Act and asserts that the Department is required to consider all available evidence on the proper allocation of costs for each producer or exporter of the subject merchandise. Thus, Tolko contends, the Department is not barred from modifying the value-based cost allocation methodology to achieve the most reasonable cost allocation for each producer.

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[171] We note that the Department has used the term 'random-lengths" to refer to sales made on a mixed-length tally basis.

As explained in Comment 3, the petitioner argues that the Department should not use the value-based cost methodology, but should use the MBF methodology in its calculation. However, if the Department insists on applying a value-based cost methodology as it did in the Preliminary Results, then the petitioner argues that the Department should continue to use length as a characteristic in the value-based cost allocations for all respondents, including Tolko. The petitioner asserts that Tolko acknowledges that the length of a particular product and the relative distribution of products of different lengths in a mixed-length tally can affect the unit price. The petitioner argues that Tolko's assertion that length should be excluded from the value-based allocation scheme because its precise impact is indeterminate and ignores what Tolko itself concedes is obvious from the record, namely that the length of a product affects its price. The petitioner cites the analysis of the NAFTA Panel Decision 2003 and contends that the Panel instructed the Department to include dimensional attributes, including length, in the value-based allocation methodology and that no party ever suggested that length should be excluded. Thus, the petitioner argues that there is no reason that Tolko should be treated differently from all other respondents with respect to the allocation of costs.

Department's Position:

We disagree with Tolko that the Department should exclude length as a characteristic in the value-based cost allocation. As noted by both Tolko and the petitioner, all parties to this proceeding have asserted that length has an effect on price. However, Tolko asserts that the Department cannot properly deconstruct the mixed-length tally sales in order to ascertain length-specific prices. See Comment 5 above.

In developing a value allocation for lumber, because of the inherent uneven distribution of prices among different lengths of wood within a tally, we had to set-up a two-step process. First we allocated costs across all physical characteristics except for length. We note that both tally and non-tally sales were used for this purpose. The second step was to allocate product costs between lengths. We gave the respondents general guidance as to how to accomplish this second step, but allowed them to create the programing that extrapolates tally sale values to specific lengths.

The underlying assumption to Tolko's argument is that because it has a smaller number of length-specific prices it has fewer data points. Thus, Tolko asserts an accurate value allocation for length cannot be made. We note that all of the respondents had significant tally sales and that the same problem would apply to all respondents. We also note that the other respondents are not asking us to change our value allocation for dimension. We believe that the same methodology should be applied to all respondents.[172] The second assumption that Tolko makes is that the prices are volatile and that its few data points would not be representative for purposes of performing the value allocation as directed to the Department. We note the volatile prices argument is made by the respondents that are arguing for the Department to scrap the value allocation entirely and use the MBF prices from the respondents' records. See Comment 3. Tolko is not one of the respondents arguing for us to use the MBF costs from their records. As discussed in Comment 3, we realize that there are certain

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[172] This would exclude West Fraser since they were able to report length-specific prices.

distortions with a value allocation that defy solution, but the majority of respondents have argued the alternatives are even less desirable. In arguing that we should continue to use a value allocation they have argued that: 1) the volatility is not so significant to abandon a value allocation and 2) that the use of average prices mitigates distortions due to price fluctuations. As stated in Comment 3, we are continuing to use a value allocation for purposes of calculating COP, CV, and DIFMERs in this review. We have therefore decided to continue to treat Tolko the same as the other respondents.

Issues Specific to West Fraser

Comment 31: Exemption from Administrative Review

West Fraser refers to the Department's April 21, 2004, redetermination of the original antidumping duty investigation of West Fraser. This redetermination, required by the remand of the NAFTA Panel, resulted in a de minimis antidumping duty margin for West Fraser in the original investigation. West Fraser argues that the absence of an affirmative antidumping duty investigation means that the Department has no power to require the imposition of antidumping duties against West Fraser in this review or any subsequent review.[173]

As support for its position, West Fraser cites section 731 of the Act, which provides that an antidumping duty shall be imposed on the subject merchandise only if the Department finds that the merchandise is being, or is likely to be, sold in the United States at less than fair value. Moreover, West Fraser refers to the language of Asociacion Colombiana de Exportadores de Flores v. United States, 916 F.2d 1571, 1577 (Fed. Cir. 1990), which states, "{w}ithout a valid antidumping determination in the original order, there can be no valid determination in a later annual review." Finally, West Fraser refers to Ferrosilicon from Brazil, Kazakhstan, People's Republic of China, Russia, Ukraine, and Venezuela, 64 FR 51097, 51098 (September 21, 1999), which states, "{a}s a necessary element for the imposition and enforcement of antidumping...duty orders does not exist, the Department has no legal authority to maintain and/or enforce any of the above listed orders."

West Fraser acknowledges the Department's argument that section 516A(g)(5)(B) of the Act requires the Department to assess antidumping duties on West Fraser's imports that entered the United States during the first review despite the remand determination. West Fraser, however, disagrees with the Department's interpretation of this section of the statute. It cites Jilin Henghe Pharmaceutical Co. v. United States, Slip. Op. 04-77, at 12-21 (June 29, 2004) currently on appeal, Fed. Cir. 04-1565 (Jilin), in which the CIT rejected the Department's interpretation of the liquidation of entries during CIT litigation and granted retroactive relief through an equitable, Declaratory Judgement. Although Jilin relates to section 516A(c)(1) of the Act, West Fraser argues that the situation in this case parallels section 516A(g)(5)(B) of the Act, which relates to the suspension of liquidation during NAFTA Panel appeals. Therefore, West Fraser argues that the Department has no authority to assess antidumping duties on West Fraser's imports that entered during the first POR.

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[173] See West Fraser's Case Brief at 1-2 (August 23, 2004).

The petitioner counters that the Department is legally obligated to continue the administrative review of West Fraser. The petitioner points out that even if the NAFTA Panel could grant retroactive relief, it has not affirmed the Department's remand redetermination, meaning that West Fraser is still subject to the antidumping duty order. If the NAFTA Panel has not affirmed the Department's remand redetermination prior to the statutory deadline for the final results of this administrative review, the petitioner argues, the results of the current review will control the assessment of antidumping duties.[174]

Even if the NAFTA Panel affirms the Department's remand determination of a de minimis margin for West Fraser, the petitioner further argues, the Department still does not have the statutory authority to refund West Fraser's cash deposits. The petitioner cites section 516A(g)(5)(B) of the Act, claiming that this section of the statute requires the Department to liquidate West Fraser's entries that were entered or withdrawn from warehouse on or before the publication date of a Panel decision. As the Panel has not yet reaffirmed the Department's remand determination, the petitioner believes that the Department must implement the statute by liquidating all entries that occur prior to the publication of the NAFTA Panel's final decision consistent with the results of this administrative review.

The petitioner also contests West Fraser's application of the Jilin decision to its current argument. The petitioner points out that the Jilin decision involved the liquidation of entries under section 516A(c)(1) of the Act, which occurs in the context of a judicial review at the CIT. This, according to the petitioner, does not relate to the liquidation of entries under section 516A(g)(5)(B) of the Act, which occurs in the context of a NAFTA Panel review. Furthermore, the petitioner claims that West Fraser had the opportunity to bring its argument to the CIT and address how the facts of Jilin apply to its current situation. Finally, the petitioner argues that the Jilin case related to the Declaratory Judgment Act, which, by definition, pursuant to 28 U.S.C. § 2201 and 19 U.S.C. § 1516 a(f)(10), does not apply to free trade area countries such as Canada.

Department's Position:

We agree with the petitioner. Section 516A(g)(5)(B) of the Act is unequivocal in providing that NAFTA Panel decisions are prospective, not retroactive. The statute states,

> {E}ntries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

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[174] See petitioner's rebuttal brief dated September 8, 2004 at 2-4.

The statute requires the liquidation of entries in accordance with the original determination if the subject merchandise entered the United States prior to the publication of a panel decision that changes the results of the determination. Under NAFTA Article 1904(8), a NAFTA Panel does not have equity power and has no authority to suspend the liquidation of entries. Therefore, the Panel does not have the authority to order the Department to refund retroactively West Fraser's deposits on entries of subject merchandise.

West Fraser argues that section 731 of the Act conflicts with the Department's interpretation of section 516A(g)(5)(B) of the Act and asserts that section731 requires the Department to apply an antidumping duty only if there is evidence of both dumping and injury. However, the Department sees no conflict between the language of the two sections of the statute. Prior to any determination that results in exclusion of a company, pursuant to a CIT or NAFTA Panel decision, an affirmative finding of dumping and injury exists. In the event of an affirmative determination, section731 of the Act directs the Department to liquidate entries at the rate set forth in the investigation. As we have already stated above, a NAFTA Panel does not have the authority to direct the liquidation of entries during a judicial challenge to an investigation. An affirmative finding of dumping and injury exists for West Fraser until the Panel affirms the Department's remand determination. Accordingly, the Department has the statutory authority to order the liquidation of all of West Fraser's entries that enter the United States prior to the publication of the Panel's final decision. Therefore, the Department must deny West Fraser's remedy request because it does not conform to the statute.

With respect to the holding in Jilin, the CIT's analysis does not apply in this case. First, the Court found jurisdiction pursuant to 28 U.S.C. § 1581(i) in that case, as a result of the Department's issuance of liquidation instructions. Section 1581(i) provides jurisdiction only to the CIT and the Federal Circuit and does not apply to NAFTA Panels. Second, the CIT addressed the language of Sections 19 U.S.C. § 1516a(c)(1) and 1516a(e) in the Jilin case. Again, these provisions apply in CIT and Federal Circuit challenges, not NAFTA disputes. The language of 19 U.S.C. § 1516a(g)(5)(B) specifically limits the application of adverse NAFTA determinations and Jilin does not address the effect of this provision.

Finally, the CIT in Jilin explained that it had the inherent equitable power, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, as well as its enforcement of Section 1581(I), to enter declaratory judgment, regardless of whether an injunction existed. See Jilin at 23-24. Neither NAFTA Panels, nor the Department has the ability to unilaterally issue injunctions and grant retroactive remedies. In any case, declaratory relief, as explained by the petitioner in its submissions, is not available to "free trade area" countries, including Canada, as defined by 19 USC § 1516a(f)(10). See 28 U.S.C. § 2201. Accordingly, for all of these reasons, the CIT's reasoning in Jilin does not apply to West Fraser in this case.

Comment 32: Length-Specific Background Prices

West Fraser claims that the Department made a ministerial error in the calculation of West Fraser's cost of production for the preliminary margin calculation. West Fraser explains that even though the Department stated it was using West Fraser's length-specific background prices when allocating joint

production costs, it actually used the two-tiered cost allocation methodology that it used for the other respondents in this case. West Fraser explains that to fix this error, the Department can amend the cost allocation program used in the Preliminary Results to rely upon West Fraser's length-specific background prices submitted on May 19, 2004, with adjustments as needed to reflect corrections discovered at verification.

The petitioner did not comment on this issue.

Department's Position:

We agree with West Fraser that an error was made in the calculation of its cost of production in the preliminary margin calculation. As stated in the Memorandum from Michael P. Harrison, Accountant, to Neal Halper, Director, Office of Accounting, Re: West Fraser Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results at 1, dated June 2, 2004, "We used West Fraser's sales information which reported random-length sales (i.e., tally sales) based on length-specific prices from its sales system. Unlike the other respondents, there was no need for a second tier allocation for West Fraser in order to allocate costs to length-specific characteristics." Therefore, for the final results, we have used West Fraser's cost file based on the length-specific prices.

Comment 33: Start-Up Adjustment

West Fraser argues that the Department should reconsider its decision from the Preliminary Results and allow a start-up adjustment at the Chasm mill. As explained in its prior submissions, West Fraser states that the evidence on the record contradicts the Department's decision in the Preliminary Results.

The petitioner argues that the Department's decision in the Preliminary Results was correct. The petitioner points out that West Fraser did not make any further arguments or cite any evidence on the record to support its claim for a start-up adjustment. The petitioner cites 19 CFR 351.309(C)(2) which states that a "case brief must present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination..., including any arguments presented before the date of publication of the preliminary determination or preliminary results." The petitioner states that in its case brief, West Fraser did not present an argument for the Department to allow the start-up adjustment, but rather issued a statement referring to its prior submissions. Therefore, the petitioner argues that because West Fraser has provided no argument on this point, the Department should not reconsider its decision from the Preliminary Results and should not allow the start-up adjustment. Additionally, the petitioner states that section 773(f)(1)(C)(ii)(II) of the Act allows a start-up adjustment if "production levels are limited by technical factors associated with the initial phase of commercial production." The petitioner points out that in the Preliminary Results, the Department decided that West Fraser's claimed start-up adjustment did not meet this criterion and since the Preliminary Results, West Fraser has not provided any additional information to support its claim. Therefore, the Department should not allow West Fraser's claimed start-up adjustment.

Department's Position:

We have continued to deny West Fraser's claimed start-up adjustment. According to section 773(f)(1)(C)(ii) of the Act, adjustments "shall be made for start-up operations only where- (I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of commercial production." The SAA at 838 provides that "companies must demonstrate that, for the period under investigation or review, production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to start-up." As explained in the SAA at 836 and 837 "in making a determination as to when a producer reaches commercial production levels, the Department will measure the producer's actual production levels based on the number of units processed..." The SAA further states that the "start-up period will be considered to end at the time the level of commercial production characteristic of the merchandise, producer, or industry concerned is achieved. The attainment of peak production levels will not be the standard for identifying the end of the start-up period, because the start-up period may end well before a company achieves optimum capacity utilization." The SAA also states at 836, "{m}ere improvements to existing facilities will not qualify for a start-up adjustment." See also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246, 72253 (December 31, 1998), where the Department denied the claimed start-up adjustment because the respondent failed to show that commercial production levels were limited by technical factors, and the expansion of capacity failed to qualify as a new production facility or the production of a new product that required substantial additional investment.

In this case, West Fraser is claiming a start-up adjustment from May 2002 until December 2002 for the retooling of its Chasm mill. In its supplemental responses, West Fraser provided the cubic meters of logs sawn (i.e., throughput) at the Chasm sawmill. To determine when the Chasm mill reached commercial production, we examined the cubic meters of logs sawn at the mill from when the mill was put back into operation in March 2002 until December 2003. Based on the production information provided in Exhibit 9 of West Fraser's December 3, 2003 response (Section D) and Exhibit SD 17 of West Fraser's March 4, 2004 Supplemental Section D response, (Supplemental D) it appears that the Chasm sawmill had reached commercial levels of production prior to the POR. Therefore, we have disallowed the entire amount of the start-up adjustment.

Even if West Fraser reached commercial production during the POR, its claim for a start-up adjustment fails because West Fraser did not provide any specific technical factors that may have limited production levels. Therefore, as explained in the Preliminary Results, we do not believe West Fraser has met the second criteria of the law and we have denied the start-up adjustment.

The Department is required to consider all arguments and record evidence in making its determination. However, to the extent that a party wishes for the Department to consider, and respond to, a particular company's suggested methodology or calculations, that company does have a minimal obligation to describe the merits of its arguments. See 19 CFR 351.309(c)(2). In its case brief, West Fraser articulated no further discernable analysis. Thus, the Department has fully addressed those arguments affirmatively offered up by West Fraser in its submissions.

Issues Specific to Weyerhaeuser

Comment 34: Freight Calculations

The petitioner argues that, instead of a transaction-specific freight calculation, Weyerhaeuser provided inaccurate and distorted freight amounts allocated on the basis of sales values. These calculations, according to the petitioner, were similar to those submitted during the LTFV investigation, during which the Department put Weyerhaeuser on notice that it must fix its sales system to track the necessary information to calculate a weight- or volume-based freight expense, the Department's preferred methodology. The petitioner contends that since Weyerhaeuser did not fix its system and reported the same value-based freight amount, the Department should use facts otherwise available pursuant to section 776(a) of the Act. Futhermore, the petitioner argues that Weyerhaeuser did not act to the best of its ability in providing its freight allocations, and therefore, pursuant to section 776(b) of the Act, the Department should apply partial AFA.

The petitioner explains that in the original questionnaire response, Weyerhaeuser reported freight charges incurred by Weyerhaeuser Building Materials (WBM) and Trade Group (TG) based on the value of the particular sale. Allegedly, this calculation created inaccuracies and distortions, and the Department instructed Weyerhaeuser to report a customer-specific freight expense using quantity/volume. Instead, according to the petitioner, Weyerhaeuser provided a revised value-based allocation that resulted in the same types of distortions. Next, the Department requested a third allocation, which the petitioner contends is also flawed because it results in the same freight amount for all sales from an individual warehouse and allocates by value freight expense incurred on subject and non-subject merchandise.

The petitioner argues that at verification, the Department confirmed that the first two calculations (INLFWCU/H and INLFWC1U/H) for freight expense from the warehouse to the final customer were inaccurate because shipments to the same location had different expenses, if the gross unit prices were different. Likewise, according to the petitioner, the third calculation (INLFWC2U) was shown to produce distortions because the freight expense was allocated between subject and non-subject merchandise based on sales value, and all lumber shipments from the same warehouse incur the same per-unit freight expense, regardless of the customer's distance from the warehouse.

The petitioner states that in the LTFV investigation, Weyerhaeuser submitted the same value-based calculation as INLFWCU/H in this review, and the Department found the methodology unacceptable, ultimately relying upon neutral facts available for freight expense. Therefore, the petitioner argues, Weyerhaeuser was on notice that a sales-based allocation did not satisfy the Department's reporting requirements for freight expense. Yet, the petitioner argues, in spite of having the capability and information to provide correct weight information for the freight calculation, Weyerhaeuser made no effort to submit an accurate freight allocation. Moreover, according to the petitioner, Weyerhaeuser's Odyssey (ODY) system offers the capability of tracking weight, but Weyerhaeuser failed to complete the process of programming the correct information into ODY in time for the first administrative review.

In conclusion, the petitioner asserts that pursuant to section 776(a) and (b) of the Act, Weyerhaeuser did not act to the best of its ability in reporting freight expense because (1) the company did not comply with the regulatory requirement to provide an allocation that did not cause inaccuracies and distortions; (2) the company never explained why its freight calculation did not cause inaccuracies and distortions; (3) the company had the system in place to report corrected weight information but did not do so; (4) the company had the ability to report distance information; and (5) the company did not inform the Department of its inability to submit information as instructed in the questionnaires and failed to suggest alternative methodologies.[175] Therefore, the petitioner argues, the Department should apply partial AFA by (1) using the highest freight-out amount reported for WBM-U.S. inventory sale or TG inventory for all WBM and TG sales incurring the freight expense in question and (2) by making no freight adjustment to affected home market sales.[176] In support of its argument, the petitioner cites NTN Corp. v. United States, 306 F. Supp. 2d 1319 (CIT 2004) (NTN Corp.) where the court upheld the Department's decision to apply partial AFA, where the respondent did not explain that its freight allocation was not distortive, regardless of the fact that the respondent did not keep records based on weight or volume.[177]

Weyerhaeuser argues that it acted to the best of its ability in reporting WBM's freight expense and, therefore, AFA is unwarranted in this circumstance. Weyerhaeuser states that it fully responded to the Department's requests for information regarding freight expense and fully explained its allocations. Weyerhaeuser adds that the petitioner's claim that the TGs reported freight on a value basis is incorrect. According to Weyerhaeuser, the company also fully explained in the response why it could not calculate freight to WBM on a transaction-specific, quantity basis, stating that (1) WBM sells and ships a wide variety of building materials in addition to lumber; (2) many of these products are not accounted for on an MBF basis and have their own units of measure; (3) each truck hauls a variety of products destined for multiple customers; (4) each freight invoice aggregates numerous truckloads; and (5) the freight expense on the invoice is based on a variety of factors, none of which includes volume or product weight.[178]

Weyerhaeuser argues that the Department's verification of the reported freight expenses showed that the company could not report freight on a transaction-specific basis and that WBM did not incur freight expense on a volume or weight basis. Additionally, Weyerhaeuser contends that the Department validated the three freight allocations at verification and any errors discovered were subsequently corrected.

Weyerhaeuser argues that it did not have the ability to report a weight-based allocation, despite petitioner allegations, because the company did not maintain accurate product weight information

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[175] See the petitioner's case brief dated August 20, 2004 at 14.

[176] Id. at 15.

[177] Id. at 14.

[178] See the Weyerhaeuser's rebuttal brief dated September 8, 2004 at 5.

during the review. Weyerhaeuser also states that it could not have corrected product weight information for the review, as asserted by the petitioner. According to Weyerhaeuser, WBM relied on three different sales systems during the review and was in the process of migrating two of them during the POR to the ODY system. Weyerhaeuser contends that the weight information tracked in the systems was inaccurate and the process of correcting the data did not begin until December 2002 (when the migration was completed), because WBM does not rely on weight for any purpose in the ordinary course of business. Accordingly, Weyerhaeuser asserts that to commit resources to correcting the data during the conversion process, when the information was not relevant to the company's operations, would have been unreasonable for the Department to require of Weyerhaeuser.

Contrary to the petitioner's argument, Weyerhaeuser contends that the use of a value-based freight calculation is consistent with law and Department practice. Weyerhaeuser states that the statute does not require the application of a specific methodology for calculating freight and the only guidance on the subject comes from the SAA stating that in the absence of transaction-specific reporting, the respondent must provide an allocation that does not cause inaccuracies or distortions.[179] Additionally, Weyerhaeuser states that the Department's regulations allow for an expense allocation methodology if (1) the allocation is based on records maintained by the respondent; (2) it does not cause inaccuracies and distortions; and (3) the party requesting the allocation explains why it does not cause inaccuracies and distortions.[180] Weyerhaeuser claims it explained why allocating freight by value was appropriate and reasonable.

Finally, Weyerhaeuser argues that freight allocation based on value is consistent with Department precedent. Weyerhaeuser states that the petitioner erred in citing NTN Corp. in support of its argument because Weyerhaeuser explained why the methodology was not distortive unlike the respondent in NTN Corp. Further, according to Weyerhaeuser, the company provided complete responses to the Department's questions and even submitted an alternative allocation with an adjustment for distance.

Department's Position:

We disagree with the petitioner's contention that AFA should be applied to Weyerhaeuser's freight from the warehouse to the customer for WBM's Customer Service Center (CSC) and TG warehouse sales.[181] Instead, we have continued to use the freight calculation employed at the Preliminary Results of this review. Weyerhaeuser submitted three value-based freight calculations in the course of the review. We have rejected the first two, which apply a factor to gross unit price, as too distortive and

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[179] Id. at 11.

[180] Id. at 11.

[181] The petitioner included Weyerhaeuser's TG sales in its argument for the application of AFA. However, the discussion in the petitioner's case brief refers to WBM's CSC's calculations and not TG's calculations, which are based on a per-unit MBF methodology instead of a value allocation. Therefore, we considered the petitioner's case brief only in the context of CSC's value-based freight expense.

are using the third, which the Department requested on February 3, 2004. For a description of this calculation, see the Memorandum from James Kemp and Salim Bhabhrawala, International Trade Compliance Analysts, to Gary Taverman, Director, Office 5, Re: Verification of the Sales Response of Weyerhaeuser Company in the Antidumping Duty Administrative Review of Certain Softwood Lumber Products from Canada (Weyerhaeuser Sales Verification Report) (June 2, 2004) at 56.

We disagree with petitioner that Weyerhaeuser did not act to the best of its ability in providing requests for information. During the course of this review, the Department requested information pertaining to Weyerhaeuser's freight expense calculation in various questionnaires and at verification. Starting with the initial questionnaire issued on August 1, 2003, we required Weyerhaeuser to submit and explain its warehouse to customer freight expense calculation. Subsequent to that, we issued supplemental questionnaires on December 11, 2003, and February 2, 2004, requesting, among other things, that Weyerhaeuser explain why, for sales made through WBM's CSCs it could not report a volume or weight-based calculation and why the weights in its system (which would allow for a weight-based calculation) had not been corrected in time for this review. Further, we requested an additional freight expense calculation that was subsequently used for the preliminary and final results. In the questionnaire responses, Weyerhaeuser provided the requested information with detailed explanations of the issues in question.

Morever, at verification, we spent considerable time in the review of Weyerhaeuser's three freight calculations. We also examined the freight calculations for specific pairs of sales destined for the same delivery locations to understand possible inaccuracies inherent in the methodology of each allocation. Id. at 57. In response to all of our requests for information at verification, Weyerhaeuser provided its full cooperation. Therefore, in responding to our questionnaires and at verification, we find that Weyerhaeuser complied with the Department's requests for information and, thus, the Department does not have a basis for concluding that the company did not act to the best of its ability with respect to the calculation of CSC's freight expense from the warehouse to the customer.

Section 776(a) of the Act provides that if information requested by the Department of a respondent is not provided, the Department may, if necessary, apply facts otherwise available. In this case, it is true that the Department would have preferred that Weyerhaeuser provide the record with transaction-specific freight calculation information. It could not do so because each invoice aggregates numerous truck loads.

Section 782(d) of the Act further provides that if there are deficiencies in the responses of a respondent, the Department shall allow parties to explain those deficiencies in a timely manner. In addition, section 782(e) indicates that if a respondent, whose information has been found to be deficient, provides alternative information on the record which is (1) submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties, the Department "shall not decline to consider" that information. In this case, Weyerhaeuser indicated early in the proceeding that it could not

provide the exact data the Department was requesting, and explained the reason for this deficiency in its responses. Then it submitted three value-based freight calculations, the third of which the Department has determined it can use in Weyerhaeuser's calculations because (1) it was submitted by the necessary deadlines, (2) it was verified, (3) we believe that it is complete enough to be useable, (4) we believe that Weyerhaeuser did act to the best of its ability in this review, and (5) we believe that the information can be used without undue difficulties. Accordingly, pursuant to sections 782(d) and 782(e), we are using Weyerhaeuser's third reported value-based freight calculations.

We believe petitioner's claim that section 776(b) of the Act is applicable in this case is incorrect because we have determined that Weyerhaeuser acted to the best of its ability. Furthermore, we do not agree with the petitioner that Weyerhaeuser's value-based freight calculation warrants the application of AFA because Weyerhaeuser did not explain why the allocation was not distortive or unreasonable. In NTN Corp. at 1327, the Department applied AFA when the respondent failed to respond properly to the Department's request that NTN demonstrate that its allocation methodology was not distortive. Instead, the respondent simply stated that the same methodology had been accepted in previous reviews. We note that Weyerhaeuser submitted two freight calculations which were rejected by the Department as distortive. The third freight calculation was mandated by the Department, and, therefore, the burden does not fall on Weyerhaeuser to explain why it is not distortive. The Department asked for the allocation because it represented the best alternative calculation, given that Weyerhaeuser did not have the necessary data to employ a preferable methodology. We note that Weyerhaeuser's CSC freight expenses are incurred in a variety of ways including flat fees, cost for number of miles, and cost for number of stops, and by the hour. Id. at 54. Clearly, it is impossible for Weyerhaeuser to report its CSC freight on the basis in which it is incurred, necessitating some type of alternative methodology. At verification, we confirmed that Weyerhaeuser was unable to submit either a volume- or weight-based calculation because (1) numerous products (e.g., lumber, rebar, and caulk) were aggregated in a single shipment, (2) the non-lumber products are not measured on an MBF-basis, and (3) WBM's sales system tracked weights inaccurately. Id. at 58.

We recognize the petitioner's concern that, in adopting this methodology for the final results, all shipments from the same warehouse will have the same freight expense, regardless of destination. However, unlike other allocations, this calculation, which is applied to home and U.S. market sales, does not apply a factor to gross unit price. Thus, the methodology avoids the distortions in freight expense caused by widely varying gross unit prices. Additionally, while the calculation does not represent the Department's preferred methodology of calculating freight on the basis on which it is incurred, it is easily verified and tied to Weyerhaeuser's books and records. Id. at 56. Therefore, given the difficulties involved in determining a more accurate freight rate with the available data, we find that the allocation used for the final results constitutes a reasonable alternative methodology and is superior to other options for reporting this freight expense.

Lastly, we address the petitioner's contention that Weyerhaeuser was put on notice in the LTFV investigation to correct the weights in its sales system and report a volume or weight-based freight calculation for the administrative review. In the investigation, the Department found that Weyerhaeuser's allocation resulted in "unreasonable amounts being reported" and applied neutral

facts available in place of the submitted expense. See Softwood Lumber LTFV Decision Memorandum at Comment 38. At that time, it was the Department's preference and expectation that Weyerhaeuser would complete the process of correcting the weights in its sales system in advance of the first administrative review. However, given that Weyerhaeuser did not finish its migration to the ODY system until December 2002, and Weyerhaeuser maintains hundreds of WBM locations in the United States and Canada selling a wide array of products, it is not unreasonable that the company would not have completed correcting the weights in its sales system prior to the start of the POR.

Comment 35: General and Administrative Expense Calculation-Severance and Closure Sale of Timber Mill

A. Closure and Severance Expenses

The petitioner argues that, in order to capture all costs pertaining to the sale of subject merchandise,[182] the Department should reject Weyerhaeuser's attribution of certain G&A costs [183] as corporate-wide (parent company) G&A expenses and instead include the expenses in the subsidiary company where the expenses were incurred (i.e., WCL and WSL). The petitioner asserts that Weyerhaeuser ignored its own books and records when it claimed that certain closure and severance expenses at two of Weyerhaeuser's subsidiaries were fungible and, thus, should be treated as part of the parent company's G&A expense. The petitioner objects to Weyerhaeuser's argument that the Department considers G&A expenses to be fungible, and maintains that the Department's focus should be on the nature and level at which a particular expense is incurred, not whether an expense is fungible. The petitioner argues that closure expenses and severance payments incurred at the subsidiary level and expressly related to the operation of the subsidiary (i.e., reflected as G&A expenses on the subsidiary's financial statements) do not relate to the entire consolidated company and, therefore, are not to be considered corporate-level expenses.

According to the petitioner, Weyerhaeuser's reference to Corus, as evidence that these closure and severance expenses are analogous to restructuring expenses, is misconstrued. In that case, the petitioner contends that the CIT found the Department had reasonably allocated the restructuring expenses related to the shut-down of certain facilities that produced merchandise no longer being produced by the respondent, to the remaining merchandise being produced.[184] The petitioner contends that in the instant case, the severance and closure expenses clearly relate to merchandise that continues to be produced by Weyerhaeuser's subsidiaries. Moreover, asserts the petitioner, the Corus case acknowledged that these costs are not fungible.

Weyerhaeuser asserts that the Department has consistently treated closure and severance expenses as corporate-wide G&A expenses that relate to a company's operations as a whole. Moreover,

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[182] The petitioner cites 773(b)(3)(B) of the Act.

[183] See the petitioner's case brief at FN53.

[184] See Corus at 18-19, 22.

Weyerhaeuser notes that the CIT affirmed the Department's treatment of such expenses in Corus. Weyerhaeuser contends that in Corus, the respondent did continue to manufacture non-subject merchandise of the same type previously manufactured at the closed facilities. Weyerhaeuser also states that in Corus, the Court confirmed that the costs associated with closing facilities from that product line related to the company's operations as a whole. The petitioner, according to Weyerhaeuser, is thus incorrect in arguing that the Corus opinion supports the petitioner's argument.[185] Weyerhaeuser concludes, that consistent with Department practice and the CIT's decision in Corus, Weyerhaeuser appropriately included the closure and severance expenses, for facilities shut-down as part of its acquisition of another integrated wood products business, as part of its consolidated company-wide G&A expenses.

Weyerhaeuser further asserts that the petitioner fails to recognize that, while the Department may rely on a respondent's unconsolidated financial statement, the Department will make an adjustment if an expense on that financial statement does not relate to the product under investigation.[186] Weyerhaeuser contends that it is, therefore, the Department's practice to adjust unconsolidated financial statements to exclude costs that are not related to the product under investigation, such as when a mill is decommissioned, no longer productive, and no longer related to the product under investigation.

Moreover, Weyerhaeuser asserts that the Department and a NAFTA Panel have agreed that Weyerhaeuser Company's decision to treat an expense in its audited financial statement as a parent company general expense is further evidence that the expense should be properly treated as a parent company general expense and not a product-specific expense by the Department.[187] In the instant case, Weyerhaeuser states that it has properly excluded the closure and severance expenses from WCL's and WSL's G&A expense rates, and included the expenses in the parent's G&A expense rates, because Weyerhaeuser treated these expenses as general, company-wide expenses in its audited consolidated financial statements.

Weyerhaeuser contends that the petitioner's reliance on Stainless Steel Sheet and Strip in Coils from Germany, 64 FR 30710 (June 8, 1999), is misplaced.[188] Weyerhaeuser argues that the Department in that case, did not decide whether to assign the severance expenses to the parent or the subsidiary, as implied by the petitioner, but instead considered whether to include the expenses at all.

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[185] Id.

[186] For support of this claim, Weyerhaeuser cites Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan, 58 FR 37154, 37166 (July 9, 1993) (comment 23).

[187] See NAFTA Panel Decision 2003 (July 17, 2003), at 139 and 141.

[188] See Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany, 64 FR 30710, 30744 (June 8, 1999).

Department's Position:

We agree with the petitioner that the closure and severance expenses incurred by Weyerhaeuser's subsidiaries, WCL and SWL, should be included in the company-specific (i.e., WCL and SWL) G&A expense rate calculation. These expenses clearly arise at the WCL and SWL company level and are related to their respective general operations, not the Weyerhaeuser corporate headquarters level. The only reason these costs show up at the Weyerhaeuser consolidated level is because WCL and SWL are part of the consolidated entity. It is the Department's practice to calculate G&A expenses based on the producing company as a whole (i.e., not the consolidated corporate party) and to include only the portion of the parent company's G&A expenses that the parent incurs on behalf of its subsidiaries.[189] As such, we followed our normal practice of calculating the G&A expense rate based on the respondent's unconsolidated company-wide operations. This approach recognizes the general nature of these expenses and the fact that they relate to the specific producing company and is consistent with GAAP treatment of such period costs. This approach is both reasonable and predictable. To allow a respondent to choose between the Department's normal method and an alternative method simply because one method results in a lower rate, would be a results oriented approach. Therefore, for the final results, we have included the closure expenses and severance payments in the G&A expense rates for WCL and WSL. However, to avoid double counting and allocating any expenses related to closures and severance payments for Weyerhaeuser's consolidated operations, we have excluded all charges for closure and severance expenses from the headquarter parent company G&A expense rate calculation.

With respect to Weyerhaeuser's reliance on Corus, we note the facts in this proceeding differ from Corus. Specifically, the issue in the Corus case relates to costs incurred within divisions of a corporate entity, whereas the issue here relates to expenses incurred at the subsidiary level (i.e., company-specific) and whether these expenses should be reclassified as a parent company expense (i.e., company-wide). Further, we agree with petitioner that G&A expenses and other non-operating income and expense items are not "fungible," but represent actual costs incurred by a particular company for specific activities.

B. Weyerhaeuser's Real Estate Company

The petitioner asserts that the Department should reject Weyerhaeuser's attribution of its parent G&A expenses to Weyerhaeuser's Real Estate Company, a separate and distinct subsidiary from Weyerhaeuser's manufacturing operations. Because Weyerhaeuser maintains separate accounting for its real estate company and the manufacturing operations, the petitioner holds that the parent's G&A includes only those expenses related to the manufacturing operation, not those expenses related to Weyerhaeuser's Real Estate Company. The petitioner contends that Weyerhaeuser's attribution of its G&A expenses in its reported costs is inconsistent with its treatment of such expenses in

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[189] See Final Determination in the Antidumping Investigation of Light-Walled Rectangular Pipe and Tube from Mexico, 69 FR 53677 (September 2, 2004).

Weyerhaeuser's consolidated audited financial statements as well as the Department's stated view that G&A expenses are not fungible in nature.[190]

Weyerhaeuser argues that the Department should reject the petitioner's request and continue to include Weyerhaeuser Real Estate Company's cost of sales in the denominator of its G&A expense ratio as it did in the LTFV investigation. Weyerhaeuser asserts that the petitioner is incorrect in arguing that the G&A expenses incurred by its parent related only to the manufacturing operations and not Weyerhaeuser Real Estate Company. Weyerhaeuser contends that the petitioner overlooked the record evidence showing that Weyerhaeuser's G&A expenses consist of corporate-wide expenses that relate to both Weyerhaeuser's manufacturing and real estate businesses[191] and benefit the company as a whole. Furthermore, Weyerhaeuser contends that the petitioner's argument, that the record evidence shows that Weyerhaeuser's corporate expenses do not pertain to Weyerhaeuser Real Estate Company, is wrong because the record evidence cited by the petitioner is not the appropriate record evidence.

Weyerhaeuser refutes the petitioner's argument that including Weyerhaeuser Real Estate Company's cost of sales in the denominator of Weyerhaeuser's G&A expense ratio is inconsistent with Weyerhaeuser's own treatment of G&A expenses in its audited consolidated financial statements. Weyerhaeuser suggests that the petitioner's argument stems from the fact that Weyerhaeuser Company (i.e., the parent) does not publish unconsolidated financial statements[192] but instead organizes its income statement into two sections (i.e., "Weyerhaeuser" and "Real Estate and Related Assets") based on its segmental organizational structure. Weyerhaeuser asserts that it includes the corporate segment under the heading "Weyerhaeuser" despite the fact that the entire company benefits from the general corporate expenses. Weyerhaeuser argues that, contrary to the petitioner's claims, Weyerhaeuser's parent company expenses are not exclusively manufacturing expenses. Weyerhaeuser concludes that, consistent with the model established by the Department in the LTFV investigation, the company has properly included the cost of sales of the real estate companies in the denominator of the headquarters' G&A rate.

Department's Position:

We disagree with the petitioner that the cost of sales of the real estate and related assets segment should be excluded from the cost of sales denominator used to calculate the corporate headquarters-wide G&A expense rate. The purpose of the Department's corporate headquarters-wide G&A expense methodology is to properly allocate only those headquarter G&A expenses that the parent

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[190] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa, 67 FR 35485 (May 20, 2002) and accompanying Issues and Decision Memorandum at Comment 6, and Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review, 61 FR 46618 (September 4, 1996).

[191] See Weyerhaeuser Cost Verification Report at 30.

[192] Weyerhaeuser asserts that the Department noted this fact in Softwood Lumber LTFV Final Determination and accompanying Issues and Decision Memorandum at Comment 48(d).

incurs on behalf of its subsidiaries. As such, as noted by Weyerhaeuser, its real estate segment and the entire company benefit from the general headquarter G&A expenses; therefore, a portion of the expense should be allocated to the real estate segment. Accordingly, consistent with the Preliminary Results, we continue to include the cost of sales from the real estate and related assets segment in the cost of sales denominator used to calculate the G&A expense rate.

C. Gain From the Sale of Timberlands

The petitioner asserts that Weyerhaeuser improperly included a gain from the sale of timberlands in the United States in its calculation of its parent's G&A expenses. According to the petitioner, the Department generally disallows gains from the sale of land because land is a non-depreciable asset that is not consumed in the production process.[193] Assuming the Department allowed the inclusion of that portion of the gain related to the sale of the timber on the land sold, the petitioner argues that Weyerhaeuser did not identify the portion of the gain related to the sale of timber. Furthermore, the petitioner asserts that Weyerhaeuser has provided no evidence that the timber located in the United States was used in any manner by Weyerhaeuser's Canadian operation during the period of review.[194]

Weyerhaeuser objects to the petitioner's argument that Weyerhaeuser improperly deducted the gain from the sale of timberlands in the United States from its G&A expenses. According to Weyerhaeuser, the standard articulated by the petitioner does not apply to Weyerhaeuser's sale of timberlands because Weyerhaeuser depletes its private timberlands[195] and this depletion is equivalent to the depreciation of fixed assets.[196] Therefore, Weyerhaeuser concludes that the Department should treat this gain in the same manner it treats gains realized on the sale of fixed assets.

Finally, Weyerhaeuser asserts that the petitioner misconstrues Weyerhaeuser's sale of timberlands by ignoring the relationship between the sale of the timberlands and the company-wide decision to acquire Williamette.[197] Weyerhaeuser contends that the sale of the timberlands is analogous to the closure of a mill, with the resulting gain considered a company-wide gain, similar to the costs

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[193] See, e.g., Carbon Steel Products from Korea; Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756 (July 19, 1999); and Final Results of Antidumping Duty Administrative Review: Antifriction Bearings and Parts Thereof from France, 57 FR 28360 (June 24, 1992).

[194] The petitioner refers to Weyerhaeuser's May 20, 2004 submission at 9.

[195] See Certain Softwood Lumber Products from Canada: Accompanying Issues and Decision Memorandum at Comment 47 (June 2, 2004), and Weyerhaeuser's Supplemental Section D questionnaire response at 18.

[196] Weyerhaeuser refers to Kermit D. Larson and William W Pyle, Fundamental Accounting Principles (11th edition) (1987) at 97, stating that the timberlands satisfy the definition of fixed assets. Weyerhaeuser also notes that the depletion of the timberlands is captured in Weyerhaeuser's cost of production in the same manner as depreciation of fixed assets (See Certain Softwood Lumber Products from Canada: Decision Memorandum (June 2, 2004), Comment 47, and Weyerhaeuser's Supplemental Section D questionnaire response at 18).

[197] See Weyerhaeuser Cost Verification Report at Exhibits 17 at 11.

associated with closing mills should be considered company-wide costs. As a result, Weyerhaeuser asserts that it would be improper to attribute the gain to only Weyerhaeuser's U.S. operations. Further, Weyerhaeuser asserts that it would be improper to allocate a certain portion of the gain to timber for the same reason and because such an allocation is not supported by the record.[198]

Department's Position:

We agree with the petitioner. As noted above in part A, it is the Department's practice to calculate G&A expenses based on the producing company as a whole (i.e., not the consolidated corporate parent) and include only the portion of the parent company's G&A expense that the parent incurs on behalf of its subsidiaries. Thus, in this case it would be appropriate to only capture a portion of the parent's non-operating income and expenses that the parent incurs on behalf of its Canadian subsidiaries. The gain on the sale of the timber was recognized by a subsidiary company located in the United States and there is no evidence that the activities of this subsidiary had anything to do with the general operations of the producing Canadian company.

With regard to Weyerhaeuser's assertions that depletion expense, in the instant case, is equivalent to depreciation expense of a fixed asset, we agree. However, this assertion is not relevant to this issue because we determined that the entity recognizing the gain is a U.S. company that is not involved in Weyerhaeuser's Canadian operations. Therefore, for the final results, we have excluded the gain on the sale of the timberlands from the G&A expense ratio calculation.

Comment 36: British Columbia Coastal's Log Costs

Weyerhaeuser asserts that the Department unlawfully disregarded the books and records of Weyerhaeuser's British Columbia Coastal's (BCC) timberlands by reallocating BCC's log costs based on a value-based methodology in its Preliminary Results. Weyerhaeuser argues that 773(f)(1)(A) of the Act requires the Department to rely on the costs of a respondent as recorded in the respondent's books and records except in rare situations. Weyerhaeuser argues further that the same provision requires the Department to consider all available evidence on the proper allocation of costs, if such allocations have been historically used by the respondent. Weyerhaeuser points to Thai Pineapple Public Co. v. United States, 187 F. 3d 1362, 1366 (Fed. Cir. 1999) (Thai Pineapple) as evidence that the Court has confirmed the statute's clear preference for using a respondent's books and records when calculating COP unless such records do not reasonably reflect costs.[199] Weyerhaeuser notes that in Thai Pineapple, the Federal Circuit stated that the Department, in finding an alternative to the respondent's cost allocation records, must find an alternative methodology that more reasonably reflects the producer's costs than the producer's records.

Weyerhaeuser contends that the Department should rely on the BCC timberlands' records to determine the manner in which the BCC timberlands' costs should be allocated because the

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[198] Weyerhaeuser refers to the petitioner's case brief dated August 20, 2004 at 28.

[199] Weyerhaeuser also cites Mushrooms from India 1998.

timberland units are in the best position to identify the cost drivers in producing logs (which in turn should dictate the proper allocation bases). Weyerhaeuser states that the BCC timberlands record and allocate costs on a volume basis.[200] Weyerhaeuser claims that it allocates the BCC timberlands' costs by volume in order to prepare Weyerhaeuser Company Limited's (WCL) cost of sales and inventory values, which were reconciled by the Department to Weyerhaeuser's audited consolidated financial statements.[201]

Weyerhaeuser argues that there are several reasons a volume-based log cost allocation methodology reasonably reflects costs. First, the BCC timberlands' practice of recording log costs using a volume-based allocation is consistent with the manner in which Weyerhaeuser's SWL Canada's timberlands units and the seven other respondents participating in this review record and allocate costs. Weyerhaeuser asserts that the Department accepted the volume-based log cost allocations submitted for Weyerhaeuser's non-BCC operations and all other respondents in the LTFV investigation and the Preliminary Results of this review, thereby determining that the volume-based allocation methodology reasonably reflects costs. Weyerhaeuser contends that nothing in the record evidence of this review distinguishes the BCC timberlands' costs from Weyerhaeuser's interior operations across four provinces or the woodlands cost centers of the other respondents in a way that supports the Department's decision to deviate from Weyerhaeuser's books and records. Second, Weyerhaeuser contends that a volume-based log cost allocation is reasonable because the costs incurred to harvest and transfer logs to a sawmill are incurred on a volume basis and do not vary by species or grade of timber. Weyerhaeuser concludes that the volume of timber harvested is the appropriate cost driver such that costs increase as more timber is harvested.

Weyerhaeuser asserts that it is unlawful and illogical for the Department to ignore the cost allocation recorded by the timberlands units in their normal books and records in favor of records maintained by sawmills that have no experience in, or responsibility for, tracking and accounting for the cost of producing logs. Weyerhaeuser maintains that the Department's reallocation of BCC log costs on a value basis using internal transfer prices, reflected on certain management reports of the sawmills, was based on several misconceptions regarding the nature of the internal transfer prices.

First, Weyerhaeuser contends that the Department's methodology improperly treats the cost of logs reflected in the sawmills' management reports as the actual cost of producing logs. Weyerhaeuser argues that the Department in its reallocation effectively treats the transfer between the BCC timberlands' unit and the sawmills as a sale between separate entities and the price of that transfer as an acquisition cost rather than a transfer between business divisions. Weyerhaeuser asserts

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[200] Weyerhaeuser refers to the Weyerhaeuser Cost Verification Report at 2, as evidence that the Department verified that the log costs are recorded at an average cost per cubic meter by month.

[201] Weyerhaeuser cites Weyerhaeuser Cost Verification Report at 14. See also, Weyerhaeuser's brief dated August 20, 2004 at footnote 1, where Weyerhaeuser contends that certain revenues and costs related to the transfer of logs between timberlands' units and sawmills were eliminated when preparing consolidated financial statements, in accordance with U.S. and Canadian GAAP, and the volume-based cost allocation records prepared by the BCC timberlands' unit were used instead.

that the Department has consistently determined that the cost of an input transferred from one division of an integrated or collapsed producer (such as Weyerhaeuser) to another division must be based on the production costs of the unit producing the input, not transfer prices.[202]

Weyerhaeuser argues that regardless of the structure of its business, both the BCC and SWL Canada business units allocate log costs by volume. Weyerhaeuser asserts that the elimination of the transfer prices and use of the volume-based cost allocation, in preparation of the consolidated financial statements of WCL and Weyerhaeuser Company, reinforce the fact that the transfer prices relate only to the purpose of viewing the BCC timberlands and sawmills as separate profit centers. Moreover, Weyerhaeuser argues that the Department improperly overlooked the fact that BCC discontinued the use of market-based transfer prices as of January 1, 2003, when it reallocated the timberlands POR-wide log costs. Weyerhaeuser contends that if the Department continues to reallocate BCC timberland's log costs using transfer prices, it must implement a hybrid approach (i.e., value-based allocation for the first eight months of the POR and a volume-based allocation for the remaining four months of the POR).[203]

Weyerhaeuser contends that the Department's reallocation methodology resulted in over-allocated costs to the BCC sawmills and created artificial losses. Weyerhaeuser argues that the reallocation produces haphazard profit margins by species and customer when it should have resulted in uniform margins. Weyerhaeuser asserts that in a value allocation methodology, joint costs should be allocated to joint products in proportion to their ability to absorb those costs and inherent in this approach is the assumption that all products earn the same profit percentage.[204] Weyerhaeuser contends that under the Department's methodology, the gross margins are not uniform but instead vary considerably by timberland unit and also by species for each timberland unit.

Weyerhaeuser believes there are several reasons why the Department's reallocation methodology distorts the BCC log costs. First, the methodology ignores the fact that the log costs are properly allocated based on value through the implementation of the Department's NRV methodology. Weyerhaeuser argues that the Department has undermined the efficacy of the NRV methodology by introducing a second value-based allocation of costs that has no references to the value of lumber. Weyerhaeuser reasons that the Department, in its reallocation methodology of the BCC log costs, attempts to trace a portion of the joint production costs of lumber (log costs) to individual lumber products based on a sales realization method. Weyerhaeuser asserts that this reallocation is inconsistent with the Department's established practice in this case because it relies on sales prices

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[202] Weyerhaeuser cites Certain Cold-Rolled and Corrosion-resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review, 62 FR 18404 (April 15, 1997).

[203] Weyerhaeuser cites the Weyerhaeuser Cost Verification Report at Exhibit 24, where Weyerhaeuser submitted a log cost report showing that the log costs allocated during the first 8 months (May 22, 2002 through December 31, 2002) of the POR were allocated based on transfer price while log costs for the last four months of the POR (January 1, 2003, through April 30, 2003) were allocated based on volume.

[204] See Weyerhaeuser's case brief dated August 20, 2004 at 12 (In support, Weyerhaeuser cites Charles T. Horngren et al., Cost Accounting, A Managerial Emphasis 540 n.4 (10th edition 2000) ("Horngren 10th edition")).

and transfer values of intermediate products without any relationship established between the sales price of the log and the value of the lumber processed from that log.

Weyerhaeuser contends that in the instant case, the Department relied on intra-company transfer prices when its normal practice is to ignore such transfer prices between affiliated companies because they are not governed by market forces. Weyerhaeuser asserts that the transfer prices recorded by the BCC sawmills are not equivalent to market sales prices because Weyerhaeuser unilaterally sets the transfer prices using the Vancouver log market as a guide. Furthermore, the market nature of these transfer prices, asserts Weyerhaeuser, were not and could not be verified by the Department. Additionally, Weyerhaeuser asserts that the transfer prices did not account for several variables (e.g., volume discounts, variations in movement expenses, and other direct selling factors) that significantly affect true market prices. Weyerhaeuser concludes that the use of such transfer prices consequently distorts the allocation of BCC's log costs.

Weyerhaeuser argues that the Department's use of transfer values that were established for only the first eight months of the POR (i.e., because BCC changed its allocation methodology in January 2003) also distorts costs because the allocation base does not reflect the entire POR's product mix.

Finally, Weyerhaeuser argues that if the Department continues to reallocate BCC's log costs based on value, then the Department should use the cost data files submitted by Weyerhaeuser in its Supplemental Section D response[205] rather than those cost data files it developed and submitted during verification. Weyerhaeuser asserts that due to the time constraints during verification, it did not have the opportunity to evaluate the alternative methodology requested by the Department's verifiers. Full evaluation, according to Weyerhaeuser, confirms that the method insisted on by the Department has several fundamental flaws that cause it to generate inaccurate and distortive results (e.g., it allocates costs based on a customer/species basis rather than a species basis).

The petitioner refutes Weyerhaeuser's claims that the Department violated the statute and acted contrary to agency precedent when it reallocated BCC's log costs based on transfer prices. The petitioner argues that the Department properly relied on the log transfer prices used by BCC's sawmills to allocate BCC's log costs because during the POR, those transfer prices were recorded in the normal books and records of the BCC sawmills and they appropriately account for BCC's product mix.[206] The petitioner contends that, given BCC's particular circumstances, the recording of log transfer prices in the normal books and records of the sawmills based on market prices was appropriate.

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[205] Weyerhaeuser refers to the cost data files it submitted with its Second Supplemental Section D response. Weyerhaeuser states that in developing these cost data files, it replaced the transferred-in value recorded at the sawmill segment with the timberland's actual cost of harvesting and purchasing of logs (i.e., eliminating intra-company profit and losses) and then allocated this actual cost pool by using the intra-company transfer values.

[206] The petitioner cites Weyerhaeuser's Section A questionnaire response at A-10.

According to the petitioner, BCC utilized a mix of various log species to produce the subject merchandise and these different log species have different costs, as is evident by the different average stumpage rates charged by the BC provincial government.[207] The petitioner argues that BCC utilizes a mix of various log species to produce subject merchandise, including cedar,[208] which has significantly higher stumpage rates compared to those of Douglas fir and hemlock/balsam.[209] The petitioner adds that the volume of BCC's sales of harvested logs to third parties,[210] and the difference between the log species mix sold and the log species mix transferred to the sawmills, also contribute to BCC's unique circumstances.

Under these unique circumstances, the petitioner contends that it was appropriate for BCC to record log transfer prices based on market prices in order to recognize and account for these significant cost differences.[211] According to the petitioner, the use of market prices allowed the BCC timberlands and sawmills to reasonably account for profits from the sale of subject merchandise produced by BCC and thus, reasonably account for the cost of the logs used to produce the subject merchandise. The petitioner notes that the fact that Weyerhaeuser treats the BCC timberlands and sawmills as separate profit centers confirms Weyerhaeuser's ability to account for its actual costs and profits in producing the subject merchandise and the relative costs and profits realized by the timberland units in selling its logs to third parties and to BCC's sawmills.

The petitioner contends that, in the Preliminary Results of this review, the Department properly relied on the transfer prices, adjusted for profit,[212] because the transfer prices reasonably reflected the cost of

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[207] The petitioner's case brief dated August 20, 2004 at 3.(In support, petitioner cites Letter from British Columbia (B.C.) Government to the Department, case C-122-839, Re: B.C.'s Response to the 9/12/03 Questionnaire at Exhibit BC-S-111 (November 12, 2003), as evidence that the B.C. provincial government determines stumpage rates based on species and grade. The petitioner also refers to the Memorandum from Michael Martin and Peter Scholl, Accountants, to Neal Halper, Director, Office of Accounting, Re: Verification Report on the Cost of Production and Constructed Value Data Submitted by Weyerhaeuser Company Ltd. (LTFV Cost Verification Report - Weyerhaeuser) dated January 22, 2002 at 2, for the Department's recognition that the BCC provincial government charges stumpage based on the average of the combined species harvested from a timber stand, that stumpage rates vary widely by species, and that Weyerhaeuser's reporting of average stumpage costs did not reflect the actual amounts assessed by the B.C. provincial government on each species.

[208] The petitioner points to Weyerhaeuser's Section A questionnaire response at A-10.

[209] The petitioner refers to B.C.'s Response to the 9/12/03 Questionnaire at Exhibit BC-S-111.

[210] The petitioner cites Weyerhaeuser's Supplemental Section D submission dated March 15, 2004 at Exhibit SD-15. See also, the petitioner's rebuttal brief dated September 8, 2004 at Attachment 1.

[211] The petitioner acknowledges that these market prices include both cost and profit. See attachment 1 of the petitioner's rebuttal brief dated September 8, 2004, for further evidence, that the petitioner claims supports the conclusion that BCC's circumstances in this case were unique .

[212] The petitioner refers to the Memorandum from Taija Slaughter, Accountant, to Neal Halper, Director, Office of Accounting, Re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results (Weyerhaeuser Prelim Calc Memo) dated June 2, 2004 at 1-2, as evidence that transfer prices were used to

logs used to produce the subject merchandise pursuant to the statute.[213] The petitioner contends that the Department verified that the BCC sawmills recorded transfer prices in their normal books and records.[214] According to the petitioner, the log cost allocation used by Weyerhaeuser in its submitted costs failed to properly account for the different species of logs sold and consumed thereby inaccurately allocating the total log cost.[215] The petitioner asserts that the Department, as evidenced by the Weyerhaeuser Cost Verification Report,[216] recognized that using the recorded log transfer prices (adjusted for profit) in BCC's particular circumstances reasonably accounts for the fact that stumpage rates vary in large part due to species, that BCC sold logs that it harvested,[217] and that BCC's product mix varied.

The petitioner asserts that the Department correctly rejected Weyerhaeuser's volume-based cost allocation methodology because that allocation resulted in a uniform per-unit log cost for all species. The petitioner claims that Weyerhaeuser did not report the specific costs incurred by BCC timberland units in acquiring crown logs supplied to the BCC sawmills but instead reported a uniform average stumpage cost.[218] The use of a uniform average stumpage cost, according to the petitioner, results in a uniform per-unit log cost that does not allow the proper allocation of costs to logs of different species.

The petitioner refutes Weyerhaeuser's argument that the Department should allow BCC to use a volume-based cost allocation because the Department accepted that methodology for Weyerhaeuser's SWL and the other seven respondents to this review. The petitioner argues that Weyerhaeuser's argument is dispositive of the issue because neither SWL nor any other respondents is similarly situated to BCC. The petitioner also objects to Weyerhaeuser's argument that the Department acted improperly by not relying on the company's audited, consolidated financial statements when the Department used the log transfer prices. The petitioner claims that Weyerhaeuser's statement that it used a volume-based cost allocation in preparing the financial statements, as shown in the

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arrive at log costs.

[213] The petitioner cites 773(f)(1)(A) of the Act.

[214] The petitioner points to the Weyerhaeuser Cost Verification Report at 21.

[215] The petitioner refutes Weyerhaeuser's argument that the Department, if it continues to employ a value-based log cost allocation, should rely on the cost allocations submitted by Weyerhaeuser. The petitioner claims that the Department found that both allocations submitted by Weyerhaeuser failed to properly allocate the total pool of costs at the timberlands units (See Weyerhaeuser Cost Verification Report at 21).

[216] Id. at 21 and 22.

[217] The petitioner cites Weyerhaeuser's Supplemental Section D submission dated March 15, 2004 at Exhibit SD-15. See also the petitioner's rebuttal brief at attachment 1.

[218] The petitioner refers to the LTFV Cost Verification Report - Weyerhaeuser at 2, and the Weyerhaeuser Cost Verification Report, at 21 and 22, as evidence that the Department found that Weyerhaeuser improperly reported an average stumpage cost in the original investigation, and that Weyerhaeuser again reported an average stumpage cost in the current review of this case.

Weyerhaeuser Cost Verification Report, is unsubstantiated.[219] Further, Weyerhaeuser's audited, consolidated financial statements do not, according to the petitioner, indicate that the company eliminated the log transfer prices by employing the volume-based costs.[220] Additionally, the petitioner argues that a footnote to those financial statements suggests that the log transfer prices were used in preparing the company's audited, consolidated financial statements.[221] The petitioner concludes that for these reasons, the Department must continue to reject Weyerhaeuser's submitted cost allocation and instead rely on costs that are reasonably reflective of the production and sale of subject merchandise.[222]

In regard to Weyerhaeuser's argument that the Department's value-based log cost allocation yields unreasonable results, the petitioner asserts that the analysis provided by Weyerhaeuser in its brief is incorrect and does not support Weyerhaeuser's argument.[223] The petitioner also asserts that it is appropriate for the Department to rely on the value-based log cost allocation methodology for the entire POR because that methodology accounts for both logs consumed and sold and, therefore, accurately captures the cost of producing the subject merchandise. The petitioner argues that Weyerhaeuser's argument that the Department routinely ignores intra-company transfer prices because they are not governed by market forces is incorrect. Because the transfer prices were set by the company based on market value, as Weyerhaeuser itself has acknowledged, the petitioner argues that Weyerhaeuser's claims are without merit. Further, the petitioner notes that the Department did not take the transfer prices as the cost but adjusted the transfer prices to obtain the cost of the logs (i.e., by adjusting for profit) just as Weyerhaeuser did for its own accounting purposes.

Finally, the petitioner asserts that the Department cannot employ either of the value-based log cost allocations submitted by Weyerhaeuser because both methods use volume to allocate costs between logs sold by BCC and logs consumed by BCC's sawmills and then apply value to allocate costs across products only within the consumed category.[224] Because the Department correctly found at verification that both allocations failed to allocate the total log costs at the timberland units properly,[225] the petitioner concludes that the Department should continue to reject Weyerhaeuser's BCC timberlands' log cost allocations for these final results.

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[219] The petitioner contends that Weyerhaeuser's reference to the Weyerhaeuser Cost Verification Report at 14 and Exhibit 9 does not substantiate Weyerhaeuser's claim.

[220] The petitioner cites Weyerhaeuser's Section A questionnaire response at Exhibit A-16.

[221] The petitioner refers to FN 22 in Exhibit A-16 of Weyerhaeuser's Supplemental Section A response.

[222] The petitioner cites 773(f)(1)(A) of the Act and Micron Technology.

[223] See the petitioner's rebuttal brief dated September 8, 2004 at 14.

[224] See petitioner's rebuttal brief dated September 8, 2004 at 15; see also, Weyerhaeuser Cost Verification Report at 21.

[225] The petitioner cites the Weyerhaeuser Cost Verification Report at 22.

Department's Position:

We agree with the petitioner that, for the Preliminary Results, we properly relied on market values maintained in Weyerhaeuser's normal books and records to accurately capture the cost differences associated with BCC's log product mix. We note, however, that in relying on the market values maintained in Weyerhaeuser's books and records, we had to use facts available under section 776(a) of the Act. See the detailed discussion below.

Section 773(f)(1)(A) of the Act states that the Department must rely on data from a respondent's normal books and records where those records are prepared in accordance with home country GAAP and reasonably reflect the costs of producing the merchandise. Further, the Act stipulates that authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer. In this proceeding, prior to the POR and for the first eight months of the POR, Weyerhaeuser's BCC sawmills in their normal books and records recorded the logs transferred from the BCC timberland units at each log's perceived market value, taking into account the quality and species of the logs transferred. The BCC timberland units, however, only kept track of costs incurred related to logs harvested on a per unit volume basis. That is, they did not separately track costs by species or quality of log harvested. For the last four months of the POR, Weyerhaeuser's BCC sawmills changed their method of recording the cost of logs transferred from the BCC timberland units. Instead of recording the transferred logs at their market value, the sawmills record the cost of the transferring timberland units average cost of logs harvested, ignoring differences associated with the quality, and species of the logs. See Weyerhaeuser' Cost Verification Report at 14.

In considering the proper allocation of log costs, we reviewed the methods, used historically and for the last four months of the period of investigation (POI), by Weyerhaeuser in its normal books and records at both the timberland units and sawmills. As mentioned above, both a volume- and value-based allocation methodology is used in Weyerhaeuser's normal books and records. Thus, it is important to note, that in considering each of these allocation methods, the purpose of the allocation is to assign costs to the logs transferred to the sawmills that capture the cost differences, if any, associated with the logs, in order to calculate accurately the cost of manufacture of lumber produced at each of these sawmills.

Historically, for purposes of recording log costs at the BCC sawmills and during the majority of the POR, the BCC timberland units transferred logs using a market-price-based cost allocation methodology to assign costs to logs. We note that for reporting purposes, Weyerhaeuser's submitted costs employed a volume-based cost allocation for logs harvested at the timberlands. As record evidence demonstrates, the BCC timberland units harvest a diverse product mix of logs.[226] These logs of multiple qualities and species are then sold on the open market or transferred to BCC sawmills. In determining which logs are sold and which logs are transferred to each respective sawmill, a number

[226] See Weyerhaeuser Cost Verification Report attachment, Cost Verification Exhibit (CVE) 13.

of factors are considered, such as quality, species and size. For example, certain sawmills are dedicated to producing lumber of only one species and certain lower quality logs are sold. As such, it is clear from the record, based on the differences on the stumpage fees paid for varying species and quality of logs, that there is a significant cost difference associated with each of these factors.[227]

Record evidence demonstrates that the stumpage system set up by the BC provincial government accounts for factors including height, species and quality. Specifically, in order for Weyerhaeuser to obtain a cutting permit to harvest crown timber, it must provide an appraisal, based on information gathered during a timber cruise, of the quality and species mix of a tree stand of timber. This appraisal is used to determine the stumpage fees paid when the logs are harvested.[228] Thus, it is apparent that there is a significant cost difference associated with quality and species. Therefore, in order to accurately and reasonably capture these cost differences associated with the diverse product mix of logs harvested by the BCC timberlands, we concluded it is appropriate to rely on the allocation method used historically in Weyerhaeuser's normal books and records at its BCC sawmills for logs transferred from the BCC timberlands (i.e., a log-price-based allocation methodology).

Weyerhaeuser, as set forth in its briefs, advocates a volume-based cost allocation for logs transferred from its BCC timberlands to its BCC sawmills. Weyerhaeuser asserts that based on the method used in the Preliminary Results, the Department is disregarding its books and records at the BCC timberlands and treating BCC differently than its interior BC division (i.e., SWL) and the other seven respondents in this review. We disagree. First, we note that we are not disregarding its BCC timberlands books and records. In fact, by using a value-based allocation methodology, we are adopting the BCC timberlands methodology used historically to value the different quality and species of logs transferred to its sawmills and sold on the open market, and we are relying on the costs normally recorded by the BCC sawmills for logs consumed. Moreover, if we relied on Weyerhaeuser's volume-based cost allocation for logs transferred to the sawmills, we would not capture any of the cost differences associated with the diverse range in quality and species of logs harvested. In addition, if we adopted the volume-based methodology, we would be ignoring the allocation methods used historically and for a majority of the POR for a method that changed midstream in this review.

Second, we recognize, as noted by Weyerhaeuser, that while the Department has treated Weyerhaeuser's SWL division and the seven other respondents in this review differently, this difference is a natural outgrowth of the varied facts pertaining to the respondents on the record. Weyerhaeuser's interior BC division (i.e., SWL) and the other respondents do not harvest logs and produce lumber of such a diverse range in quality and species, and nothing on the record undermines this assessment of the facts. Indeed, even Weyerhaeuser itself has not placed information on the record which would refute the idea that as a matter of geography, Weyerhaeuser's BCC timberlands are situated differently from all of the other respondents. In addition, the other respondents do not sell

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[227] Id.

[228] See Weyerhaeuser's December 3, 2003 Section D questionnaire response at 26.

a significant volume of logs. As such, the inconsistent treatment is not only warranted but necessary to accurately capture the costs for the lumber produced at the BCC sawmills.

We believe that the facts presented above establish that a value-based allocation methodology is warranted. However, the means of implementing this allocation are not so straight forward. In the first supplemental questionnaire, we requested that Weyerhaeuser provide a cost database using the value-based log cost allocation methodology maintained in its BCC sawmill's normal books and records for the majority of the POR. At verification, we found that Weyerhaeuser's submitted value-based log cost allocation data failed to allocate the total log costs at the BCC timberlands based on market prices as historically maintained at its BCC sawmills.[229] Instead, the log costs at the BCC timberlands were first allocated to the respective sawmills, logs sold, etc. based on an average cost per cubic meter measure. The resulting pool of costs for each sawmill was then allocated to the log species received at each respective sawmill using a value-based allocation. In effect, Weyerhaeuser's reported BCC log costs failed to account for cost differences associated with differences in the mix of log grades and species sold versus those transferred to their sawmills. Thus, for this reason, we cannot use Weyerhaeuser's submitted value-based log allocation data.

In accordance with section 776(a) of the Act, the Department may apply facts otherwise available if requested information is not reported. Accordingly, consistent with the Preliminary Results, as neutral facts available, we have continued to adjust Weyerhaeuser's submitted volume-based cost file to reflect a value-based cost allocation methodology at the BCC timberlands using the market values of logs, as maintained in Weyerhaeuser's normal books and records and used for the first eight months of the POR, to allocate the BCC sawmill's log costs.

According to Weyerhaeuser, using the transfer prices obtained at verification as an allocation base undermines the proper application of the Department's NRV methodology used to determine the costs for lumber and distorts the allocation of the BCC log costs. We disagree. The NRV method adopted by the Department is for a joint product scenario such is the case at the sawmill. However, the log transfer prices between divisions are simply being used as a means to allocate the actual costs of the BCC timberlands to capture the cost differences associated with different products (i.e., species, quality, etc.) and to account properly for the different species and grades of logs sold and consumed. Although we acknowledge that the transfer prices used as the allocation base do not reflect the entire POR, we believe they are representative of the log species and quality harvested during the POR. Thus, as facts otherwise available, these prices, are considered a reasonable basis to allocate log costs to BCC sawmills.

Comment 37: Below-Cost Sales

According to Weyerhaeuser, the Department requires that products be classified within NLGA categories and, as a result, a wide variety of products with varying prices can be classified under a single grade. When this happens, Weyerhaeuser claims, the dumping margins for the products in a

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[229] See Weyerhaeuser Cost Verification Report at 21 and 22.

particular grade have a significant range. This occurs, Weyerhaeuser asserts, because products similar enough to be put in the same NLGA category are assigned the same cost even though their quality and pricing may vary greatly with the result that many sales fall below cost, creating the appearance of dumping where none exists. Weyerhaeuser contends that because the Department considers such sales outside the ordinary course of trade, the Department disregards 70 percent of Weyerhaeuser's sales.

Weyerhaeuser states that this problem is much worse for it, in comparison with other respondents, because in most AD cases, product categorization seldom results in such distortions as described here. Additionally, according to Weyerhaeuser, in most AD cases the producer can control production, but in the lumber industry, manufacturers are limited in this regard because the "forest inherently limits what producers can make."[230]

Weyerhaeuser proposes that the Department solve this problem by not finding below-cost sales outside the ordinary course of trade and including them in NV. Weyerhaeuser argues that the guidelines set forth by the Act at 773(a)(1)(B)(i) indicate that below-cost sales must be included in the NV, if the Department determines that they were made within the ordinary course of trade.[231] Moreover, 773(b)(1) of the Act and the Department's regulations at 351.406(a) provide that sales below cost "may" be excluded from the NV calculation, according to Weyerhaeuser.[232] Weyerhaeuser points to the Trade Act of 1974 and the SAA as legislative history that sanctioned the use of below-cost sales in NV.[233] Specifically, Weyerhaeuser states that the World Trade Act of 1974 (see S. Rep. No. 93-1231 at 173 (1974)) refers to the sale of commercial aircraft as a situation where NV might properly be based on below cost sales. Likewise, according to Weyerhaeuser, the SAA points to sales of obsolete or end-of-model-year merchandise. See Uruguay Round Agreement Act SAA, Pub. L. No. 103-465, at 833. Additionally, Weyerhaeuser asserts that in Large Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan, 61 FR 38139, 38147 (July 23, 1996) (Large Printing Presses from Japan), "the Department explained that it would be appropriate to exercise its discretion where forces beyond the producers' control may cause below cost sales."[234] Weyerhaeuser explains that while the Department refused to exercise its discretion in Large Printing Presses from Japan, the case established guidelines where sales below-cost may not be excluded, referencing perishable agriculture products as an example.

Citing Softwood Lumber LTFV Decision Memorandum at Comment 5, the petitioner asserts that the Department rejected the same argument made by Weyerhaeuser in the LTFV investigation, and for

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[230] See Weyerhaeuser's case brief dated August 20, 2004 at 20.

[231] Id. at 21.

[232] Id. at 21.

[233] Id. at 22.

[234] Id. at 22.

the reasons set forth at that time, the Department should reject Weyerhaeuser's assertions in this review. Moreover, the petitioner contends that Weyerhaeuser offers no new facts, no new cases, and no convincing reason why the Department should ignore 771(15) of the Act, the SAA at 833, or longstanding Department practice regarding this issue.

Department's Position:

We agree with the petitioner and have continued to disregard Weyerhaeuser's below-cost sales on the basis that they are outside the ordinary course of trade.

As a preliminary matter, we note that Weyerhaeuser writes at length about the limitations of the NLGA grading system, stating that entire product categories must be "shoe-horned' into a single NLGA grade.[235] We note, however, that Weyerhaeuser has not argued for a change in the matching criteria. The NLGA grade groups and grade equivalents establish grading standards accepted throughout the lumber industry by producers, producer organizations, and the U.S. and Canadian regulatory agencies charged with monitoring building codes. In circumstances where a company's products are not well matched to the NLGA grade equivalents, such as the situation alleged by Weyerhaeuser, the antidumping questionnaire offers reporting alternatives stating, "{i}f you use grades which you believe have no NLGA equivalent, identify the grades and provide the specifications for those grades."[236] We note that respondents participating in this review have used this option in reporting grade equivalents with a stricter criteria than those established by the NLGA.

Section 771(15) of the Act states:

> The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:
>
> (A) Sales disregarded under section 773(b)(1).

Section 773(b)(1) specifically refers to sales made below the cost of production, and it has been the Department's longstanding practice to disregard such sales from the antidumping calculations. See LTFV Decision Memorandum at Comment 5 where we describe the exclusion of below-cost sales as our "normal practice." Nevertheless, the Department does have the authority to include below-cost sales in its calculations when certain conditions are met. The SAA at 833 states that "{t}he Administration intends that Commerce will disregard sales when the conditions of the law are met. However, in some cases, below-cost sales may be used to determine NV if those sales are of obsolete or end-of-model year merchandise." However, in this administrative review, as in the LTFV

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[235] See the petitioner's brief dated August 20, 2004 at 18.

[236] See antidumping questionnaire issued to Weyerhaeuser on September 5, 2003 at B-7.

investigation, we have seen no evidence on the record that would lead us to depart from our longstanding practice of disregarding sales below cost of production. See Softwood Lumber LTFV Decision Memorandum at Comment 5.

In Large Printing Presses from Japan, the Department did not employ its discretionary authority to include sales made below cost in the calculation of NV, but considered circumstances where the Department may do so because the products are "{s}ubject to forces beyond the producer's control which may cause occasional sales below cost." See Large Printing Presses from Japan at 38147. In this context, Large Printing Presses from Japan refers specifically to flowers, fruits, and vegetables, which are highly perishable products "subject to various conditions of weather, have a short shelf-life, and are often sold on a consignment basis." See Large Printing Presses from Japan at 38147. Lumber, on the other hand, is not a highly perishable product, nor is it subject to most of the conditions just described. The respondent argues that its sales are subject to forces beyond its control because "{t}he forest inherently limits what producers can make."[237] However, contrary to the market conditions typical of perishable products, our understanding of trade practices and product characteristics in the industry indicate that lumber producers have the option of holding their merchandise for a relatively lengthy period when prices drop for a certain product. Moreover, our experience analyzing the lumber industry indicates that pricing may change radically over a short period of time providing producers with some ability to control below-cost sales by waiting until market conditions improve. Thus, we do not consider lumber to be a product subject to forces beyond the producers control resulting in occasional below-cost sales.

Therefore, for the foregoing reasons, we have followed our normal practice of disregarding sales-below-cost in the calculation of NV because they are outside the ordinary course of trade. See Section 771(15) of the Act.

Comment 38: Level of Trade Classification of Home Market and U.S. Vendor Managed Inventory Sales

Weyerhaeuser argues that home market and U.S. vendor managed inventory (VMI) sales should be classified as level of trade (LOT)1 instead of LOT2 for the final results of this administrative review. According to Weyerhaeuser, for the VMI sales, which allow customers to receive lumber shipments on a regular basis without being invoiced, the selling functions performed by Weyerhaeuser are the same as those performed on LOT1 sales (mill direct and reload) in both markets. Additionally, Weyerhaeuser asserts that to the extent that there were additional selling functions performed with respect to U.S. VMI sales, the activities were primarily provided in the United States and, therefore, should be ignored for purposes of the LOT analysis.

With respect to home market VMI sales, Weyerhaeuser asserts that these sales share the same selling expenses as home market mill direct and reload sales. Weyerhaeuser lists the functions associated with home market VMI, mill direct, and reload sales, citing to the appropriate questionnaire response,

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[237] Id. at 20.

and states that the functions are the same across these different channels of distribution.[238] Despite these similarities, Weyerhaeuser argues that the Department found the VMI sales to be at a more advanced LOT because of the activities associated with a designated sales team responsible for these sales. Weyerhaeuser contends that the selling functions are not unique to VMI sales and any differences are minimal and do not justify differentiation of VMI sales as a different LOT. Weyerhaeuser cites Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review, 65 FR 13359 (March 13, 2000) (Flat Products from Korea) and accompanying Issues and Decision Memorandum at Comment 13, as a case in which the Department found significantly more differences in selling functions but not a separate LOT.

With respect to U.S. market VMI sales, Weyerhaeuser argues that the selling functions shared among U.S. VMI, reload, and mill direct sales parallel those shared in the home market. In fact, citing the chart at Exhibit SA-6 of the November 19, 2003, Supplemental Section A response (Supplemental Section A Response), Weyerhaeuser asserts that there is not a single selling function in the U.S. market that is uniquely identified with VMI sales. Weyerhaeuser also argues that the selling functions for VMI sales are performed in the United States and should not be included in the LOT analysis. According to Weyerhaeuser, it reported in the Supplemental Section A Response at 31-32 that sales personnel in the United States manage the U.S. VMI sales to certain customers. Weyerhaeuser argues that the Department erred in the Preliminary Results of this review by finding that the selling functions took place in Canada instead of the United States and, accordingly, designating the U.S. VMI sales as a more advanced LOT.

Finally, Weyerhaeuser argues that in the Preliminary Results, the Department was inconsistent across respondents in its LOT findings with regard to VMI sales. Weyerhaeuser asserts that six respondents identified VMI sales, with the same material terms of agreement, as separate channels of distribution. Yet, according to Weyerhaeuser, the Department concluded that all the other respondents sold lumber within a single LOT in the U.S. and home markets.

The petitioner argues that U.S. and home market VMI sales are at a more advanced LOT than direct and reload sales, noting that Weyerhaeuser reported two LOTs to the Department in the questionnaire responses. With respect to U.S. VMI sales, the petitioner argues that certain selling activities continue to be performed in Canada, as reported by the Department in the Preliminary Results. Likewise, regarding home market VMI sales, the petitioner contends that the key distinguishing selling activity, Just-In-Time (JIT) inventory management, was provided for VMI sales, but not for mill direct or reload sales.

The petitioner asserts that if the Department finds that all VMI sales are at the same LOT as direct and reload sales, the Department must also determine that home market WBM inventory sales are at the same LOT. According to the petitioner, VMI sales and WBM inventory sales were determined to be at the same LOT because of the JIT selling activity performed for both. Additionally, the petitioner

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[238] Id. at 26.

claims that certain selling functions are performed for VMI sales but not for WBM inventory sales and, thus, WBM inventory sales could not be at a more advanced LOT.

Department's Position:

We agree with the respondent in part. The Department continues to find that home market VMI sales are at LOT2 because of the substantial differences in selling functions between the VMI sales and mill-direct and reload sales. However, we agree with Weyerhaeuser that the U.S. VMI sales are at LOT1 because most of the selling functions take place in the United States.

Weyerhaeuser states that the home market VMI sales share the same selling functions as home market mill-direct and reload sales. However, our analysis of Weyerhaeuser's information on the record indicates that this is not the case. As stated on page A-26 of the September 2, 2003, Section A response (Section A response), the respondent has an established "Home Improvement Warehouse (HIW) Team" that is responsible for managing VMI sales in Canada. Weyerhaeuser goes on to list seven selling functions for which the team is responsible. While the respondent may provide some of the same functions for certain sales in other channels of distribution, it appears that all VMI sales in Canada are uniquely afforded the entire combination of services described on page A-26 of the Section A response. Likewise, while a limited number of sales in other channels of distribution may be managed by the HIW team, Weyerhaeuser only discusses the HIW Team in the context of VMI sales made in Canada. Section 351.412(c)(2) of the Department's regulations states that "{s}ome overlap in selling activities will not preclude a determination that two sales are at different stages of marketing."

In addition to the services provided by the HIW team, Weyerhaeuser's Canadian VMI sales are further distinguished by their inventory maintenance system. Except for WBM's warehouse sales, which are also designated as LOT2, no other channel of distribution in the home market employs the JIT inventory system. We consider the level of inventory maintenance to be a critical factor in determining LOTs. According to page A-35 of the Section A response, JIT management requires substantial activity on the part of Weyerhaeuser and "refers to a customer's ability to obtain a vast array of products with short lead times, flexible delivery hours, and on-time shipments without having to purchase railcar loads of product." We find that the combination of selling functions provided by the HIW team and the JIT inventory system are substantial and define a separate, more advanced LOT for Canadian VMI sales. See 19 CFR 351.412(c)(2).

Weyerhaeuser claims that in Flat Products from Korea the Department found only one LOT although there were significantly more differences in selling functions between channels of distribution. However, in that case, the Department states that "the cumulative functions" of the two channels in question "are essentially the same." See Flat Products from Korea and accompanying Issues and Decision Memorandum at Comment 13. Moreover, in the preliminary results of Flat Products from Korea, which were upheld in the final results, the Department states that "{t}he only substantive additional function that the affiliated service centers perform is slitting and shearing of coils, which is not a sales function...." See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews 64 FR 48767, 48773

(September 8, 1999). In this case, we have found, as described above, significant and substantial differences (e.g., JIT inventory and the HIW team) between home market VMI sales and the sales designated as LOT1.

With regard to U.S. VMI sales, we agree with Weyerhaeuser that the sales should be reclassified as LOT1 for the final results of this administrative review. The reason for our decision is that the most significant selling functions take place in the United States, provided by SWL Western (U.S.). As stated on page A-31 of the Supplemental Section A response, "{s}ales personnel at SWL Western manage U.S. VMI sales to customers...." SWL's management in the United States is responsible for ensuring that proper inventory levels are maintained, reviewing weekly usage reports, invoicing customers, placing orders, and arranging transportation. See Supplemental Section A response at A-31 and A-32. Since these functions are provided by SWL in the United States and are not reflected in the price after the deduction of expenses, we do not consider them in our LOT analysis. See 19 CFR 351.412(c)(ii). Therefore, we find that U.S. VMI sales do not have the necessary differences in selling functions required to define them as a separate LOT. Accordingly, we changed the designation of LOT2 sales in the margin calculation to LOT1. See Memorandum from James Kemp, International Trade Compliance Analyst, through Constance Handley, Program Manager, to The File, Re: Analysis Memorandum for Weyerhaeuser Company, December 13, 2004, (Weyerhaeuser Analysis Memorandum).

Weyerhaeuser argues that the Department was inconsistent in the Preliminary Results because other respondents in this review with VMI sales were not found to have separate LOTs. However, the Department followed its normal practice of analyzing each company on an individual basis. There are no specific selling functions or channels of distributions (e.g., VMI sales) that indicate, *per se*, that a company has a more advanced LOT. Instead, each company must be analyzed in the context of its unique business model and the Department's regulations. In this administrative review, several of the respondents reported channels of distribution consisting of VMI sales. However, we found that only Weyerhaeuser's home market VMI sales had sufficient selling functions (e.g., JIT inventory and the HIW team) to distinguish them as a more advanced LOT.

Comment 39: Interest Rate for U.S. Inventory Carrying Costs

Weyerhaeuser argues that the Department erred in using Weyerhaeuser's U.S. dollar interest rate on short-term loans in Canada to calculate inventory carrying costs for sales out of U.S. reloads and VMI locations. Weyerhaeuser cites section 772(d)(1) of the Act in support of its argument. Weyerhaeuser asserts that the correct rate is the short-term borrowing rate of the company that holds title to the subject merchandise and invoices the ultimate customer. To support this point, Weyerhaeuser cites Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold Rolled Carbon Steel Flat Products from Germany, 67 FR 62116, 62119 (October 3, 2002) and Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review 69 FR 33539, 33540 (June 28, 1995). In both of these cases, the Department used a U.S. dollar short-term borrowing rate to calculate inventory carrying costs incurred in the United States.

Weyerhaeuser states that SWL Canada's sales out of reloads and VMI locations in the United States are managed by SWL Western, a business unit of Weyerhaeuser U.S. According to Weyerhaeuser, SWL Western takes title to the merchandise, holds it in U.S. inventory, and invoices the customer. Therefore, Weyerhaeuser contends that the correct interest rate to use in the calculation of inventory carrying costs (INVCAR1U) is the Weyerhaeuser U.S. interest rate on short-term borrowing.

The petitioner did not comment on this issue.

Department's Position:

We agree with Weyerhaeuser and have recalculated inventory carrying costs (INVCAR1U) using Weyerhaeuser's U.S. dollar short-term borrowing rate on loans in the United States. We have also changed the calculation to include the sales price, net of selling expenses incurred by the U.S. reseller, instead of total cost of manufacturing.

Comment 40: Clerical Errors

Weyerhaeuser argues that the Department made two clerical errors in its calculation. According to Weyerhaeuser, contrary to the established methodology in this proceeding, the Department matched sales of lumber products across product category, species, and NLGA grade group. Furthermore, Weyerhaeuser states that an upward adjustment should be made to NV when U.S. sales at the more advanced LOT are compared to home market sales at a less advanced LOT. However, according to Weyerhaeuser, at line 2247 of the margin program, the LOT adjustment is erroneously subtracted from NV instead of added to it.

The petitioner did not comment on the above-mentioned issues.

Department's Position:

We agree with Weyerhaeuser. Consistent with the calculations for the other seven mandatory respondents in this review, we have modified Weyerhaeuser's margin program so that no matches are made across product category, species, or NLGA grade group and the LOT adjustment is added to NV in the margin program for the final results.

Comment 41: Clerical Errors in Cost Calculation

A. BCC Wood Cost Adjustment

Weyerhaeuser contends that the Department, in its Preliminary Results, made two clerical errors when it increased the BCC wood costs to account for the possible double-counting of the BCC timberlands' non-operating revenues. The first error, according to Weyerhaeuser, occurred when the Department applied the factor, used to increase BCC wood costs, to both the BCC sawmills' and the re-manufacturers' wood costs. Weyerhaeuser asserts that the factor should have been applied only to the

BCC sawmills' wood costs because Weyerhaeuser did not adjust the re-manufacturers' wood costs to avoid the double-counting of G&A expenses.[239]

The second error, asserts Weyerhaeuser, occurred when the Department calculated the adjustment ratio. Weyerhaeuser contends that the Department calculated the adjustment ratio by dividing the amount double-counted by the timberlands' harvesting costs. Weyerhaeuser argues that the Department was inconsistent when it applied this ratio to both purchased and harvested logs. Weyerhaeuser asserts that the denominator and the value to which the ratio is being applied must be on the same basis, therefore the Department should revise its calculation by including the value of purchased logs in the denominator of the adjustment ratio.

The petitioner contends that the Department correctly applied the adjustment factor used to increase BCC's wood costs. According to the petitioner, the adjustment factor was applied to specific BCC facilities. The petitioner argues that Weyerhaeuser, in its case brief, failed to identify the re-manufacturing facilities whose costs were purportedly adjusted incorrectly. The petitioner asserts that the Department did not adjust the wood costs of the two re-manufacturing facilities identified by Weyerhaeuser as the only re-manufacturing facilities of the BCC operations. To the extent that Weyerhaeuser is referring to these re-manufacturing facilities, the petitioner contends that these facilities' costs were not adjusted[240] and the Department should therefore disregard Weyerhaeuser's claim of clerical error. To the extent that Weyerhaeuser is referring to the BCC facilities that process and/or re-manufacture lumber under tolling arrangements, the petitioner asserts that the Department indicated[241] that it intended to adjust the log costs of those facilities[242] and consequently, the adjustment cannot be considered a clerical error. Further, the petitioner notes that because these facilities consumed logs supplied by the BCC timberlands, the adjustment applies to these facilities.

Department's Position:

We disagree in part with Weyerhaeuser. Weyerhaeuser alleged that for the Preliminary Results, the Department incorrectly applied an adjustment related to the double counting of miscellaneous non-operating revenues to the re-manufacturers' wood costs. However, after examining the record, we found that the adjustment was applied correctly. Specifically, we made two adjustments to the BCC woods costs for the Preliminary Results. First, we adjusted the wood costs for the BCC sawmills based on a value allocation methodology, including the BCC facilities that process and/or re-manufacture lumber under tolling arrangements. We noted that each of the re-manufacturing facilities purchased BCC rough lumber and arranged for re-manufacturing on a fee-for-service basis. Thus, it

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[239] See Weyerhaeuser's Exhibit SSD-5 of its April 5, 2004, Second Supplemental Section D questionnaire response.

[240] The petitioner refers to the Weyerhaeuser Cost Verification Report at 4-9.

[241] See Weyerhaeuser Cost Verification Report at 2.

[242] The petitioner points to the Department's Weyerhaeuser Prelim Calc Memo at 2.

was appropriate to increase the re-manufacturers' wood costs based on the increase to the BCC sawmills for the value-based allocation adjustment. Second, we revised the wood costs for WCL's BCC mills to exclude a net gain related to miscellaneous revenues and expenses and non-operating gains and losses (i.e., the double counting adjustment at issue here). This adjustment was made because we found at verification that the per-unit log costs calculated at the timberland units and transferred to the sawmills already included the non-operating revenue offset, which was also included as an offset in the G&A expenses. Therefore, because the re-manufacturers' wood costs were based on the BCC sawmill wood costs and the BCC sawmill wood costs were understated due to the inclusion of the double counted miscellaneous non-operating revenue, it was appropriate to also apply the adjustment in question to the re-manufacturer's wood costs. Further, Weyerhaeuser's argument that Exhibit SSD-5 of the April 5, 2004 Second Supplemental Section D questionnaire response clearly shows that the adjustment was only made to sawmill wood costs is misplaced because the adjustment at issue here relates to an error found in the calculation of wood costs at the timberlands that flow through to both the BCC sawmills and re-manufacturers. The G&A adjustment, to which Weyerhaeuser eludes to is not related to the error found at verification.[243]

We agree, however, with Weyerhaeuser that we should increase the denominator used to calculate the adjustment factor for the non-operating revenues to include purchased log costs. As noted by Weyerhaeuser, the calculated adjustment factor is being applied to wood costs that include both purchased and harvested logs. Therefore, for the final results, we recalculated the adjustment factor by including purchased wood costs in the denominator used to calculate the adjustment.

B. Finger-Jointing Costs

Weyerhaeuser argues that the Department made two clerical errors in its calculation, and the petitioner argues that Weyerhaeuser itself made an error in its own cost allocation program. Weyerhaeuser first asserts that the Department made a clerical error when it improperly applied finger-jointing costs to all products at certain BCC mills and not just finger-jointed products. It then proposes language in its case brief to correct the alleged errors.[244]

Weyerhaeuser also argues that the Department made a clerical error when it relied on the incorrect G&A ratio, presented by Weyerhaeuser as a correction on the first day of verification, to calculate Weyerhaeuser's G&A expenses, rather than the G&A ratio that was subsequently revised and accepted by the Department during the course of the verification.[245]

In its rebuttal brief, the petitioner raises the argument that the value-based cost allocation program submitted by Weyerhaeuser, and employed by the Department in the Preliminary Results contained a

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[243] See Weyerhaeuser Cost Verification Report at 2.

[244] See Weyerhaeuser's case brief dated August 20, 2004 at 38 and 39.

[245] Id. at 39 where Weyerhaeuser refers to Weyerhaeuser Cost Verification Report at Exhibit 1.

clerical error. Because the petitioner believes that this clerical error is technical in nature, the petitioner argues that it is appropriate to raise the issue in their rebuttal brief.

Department's Position:

We agree with Weyerhaeuser that we made a clerical error by improperly applying finger-jointing costs to all products at certain BCC mills and not just finger-jointed products. Therefore, for the final results, we will revise the programming to correct this error. With respect to Weyerhaeuser's alleged clerical error in applying the correct G&A ratio, this allegation no longer has merit because, based on the Department's analysis on Comment 35, we are recalculating the G&A expense ratio for the final results and, thus, neither G&A expense rate at issue here will be used.

We also agree with the petitioner that the value-based cost allocation program used in the Preliminary Results contained a clerical error. Therefore, for the final results, we have revised the program to include the correct variables throughout the program so that total cost of manufacturing (COM) prior to the value allocation equals the total COM after the value allocation. For further information, please see Memorandum from Taija Slaughter, senior Accountant, to Neal Halper, Director, Office of Accounting, Re: Weyerhaeuser Cost Calculation Memorandum (December 13, 2004), for detailed programming instructions for the COP and CV database.

Issues Specific to Lignum

Comment 42: Respondents Selected for Administrative Review

Lignum argues that the Department should have reviewed its antidumping questionnaire response and has not given a legally sufficient basis for not doing so. According to Lignum, the Department's Respondent Selection Memorandum[246] does not address voluntary respondents and does not demonstrate that additional respondents would be unduly burdensome or prohibit the timely completion of the proceeding. Lignum also argues that according to the SAA, the Department "will endeavor to investigate all firms that voluntarily provide timely responses in the form required,"[247] and has not sufficiently done so. Finally, Lignum states that even if the Department were unable to review all three voluntary respondents with timely submissions, the Department is obligated to determine whether it could review any of the three.

The petitioner did not comment on this issue.

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[246] See Memorandum from Keith Nickerson and Amber Musser, International Trade Compliance Analysts, through Gary Taverman, Director, Office 5, to Holly Kuga, Acting DAS, Re: Selection of Respondents, August 1, 2003 (Respondent Selection Memo).

[247] See SAA at 873.

Department's Position:

We disagree with Lignum. As stated in the Respondent Selection Memo the Department limited its analysis to the eight largest companies because of the large number of requests, the Department's limited resources, and the complexity and time constraints of the review. In an investigation, all respondents are selected by the Department and it is uncertain as to whether companies selected will be willing to participate. In this review, the eight largest companies, in addition to the petitioner's request for a review, requested their own review, making it highly unlikely that one would not respond. For that reason, we did not address the possibility of voluntary respondents in the Respondent Selection Memo.

In its August 20, 2004 letter to Lignum, the Department stated that "For the same reasons cited in the August 1, 2003, respondent selection memorandum, we conclude that we must continue to limit participation in this review to the eight mandatory respondents."[248] We also stated that voluntary respondents would only be considered "in the event that one of the mandatory respondents chooses not to participate..."[249] All mandatory respondents participated fully in the review. In its January 16, 2004 letter to Lignum, the Department re-iterated that it was unable to accept any additional respondents and would not consider accepting any voluntary or additional mandatory respondents.[250] Our position has not changed.

For the reasons outlined in the Respondent Selection Memo, the Department was unable to review any more respondents than those chosen as mandatory respondents in this segment of the proceeding. Accordingly, neither Lignum's, nor any other voluntary respondent's, antidumping questionnaire responses has been be reviewed.

Issues Specific to the Changed Circumstances Review

Comment 43: Changed Circumstances Review

Canfor and the petitioner do not object the Department's determination in the Changed Circumstances Preliminary Results to assign to Canfor a cash deposit rate reflecting a weighted-average of Canfor's and Slocan's respective cash deposit rates prior to the merger. Canfor asserts that the weights assigned should be the total U.S. values that constitute the denominators in the individual company deposit rate calculations in the first administrative review. Furthermore, the petitioner consents that the deposit rate established in the changed circumstances review results shall remain in effect until publication of the final results of the next administrative review in which Canfor participates.

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[248] See Letter from Gary Taverman, Director, Office 5, to Lignum, Re: Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada (August 20, 2003).

[249] Id.

[250] See Letter from Holly Kuga, Acting DAS to Lignum, Re: Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada (January 16, 2004).

Department's Position:

The Department will proceed as announced in the Changed Circumstances Preliminary Results and assign a cash deposit rate reflecting a weighted-average of Canfor's and Slocan's respective cash deposit rates prior to the merger which will remain in effect until publication of the final results of the next administrative review. The deposit rate and final results of the changed circumstances review will be published with the final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish in the Federal Register the final results of the AD review, changed circumstances review, and the final weighted-average dumping margins.

Agree _____ Disagree _____ Let's Discuss _____

_____
James J. Jochum
Assistant Secretary
for Import Administration

_____
Date