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A-122-838  
Changed Circumstances Review  
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MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

DATE: March 10, 2006

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
Antidumping Duty Changed Circumstances Review of Certain  
Softwood Lumber Products from Canada: West Fraser Mills Ltd. /  
Weldwood of Canada Limited

### **Summary**

We have analyzed comments in the case and rebuttal briefs submitted by interested parties in the above-referenced changed circumstances review. Based on this analysis, we are affirming the preliminary results of this review. We recommend that you approve the position we have developed in the Discussion section of this memorandum.

### **Background**

On January 13, 2006, the Department of Commerce (the Department) published the preliminary results of the changed circumstances review (CCR) of Weldwood of Canada Limited (Weldwood) and West Fraser Mills Ltd. (West Fraser).<sup>1</sup> For the *Preliminary Results*, the Department found that the post-acquisition West Fraser was the successor-in-interest to the pre-acquisition West Fraser and assigned the pre-acquisition West Fraser's cash deposit rate to the post-acquisition West Fraser. We invited parties to comment on the *Preliminary Results*. The Coalition for Fair Lumber Imports Executive Committee (the Coalition), a domestic interested party in this segment of the proceeding, submitted a case brief on February 13, 2006.<sup>2</sup> West Fraser submitted a rebuttal brief on February 21, 2006.

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<sup>1</sup> See *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 71 FR 2189 (January 13, 2006) (*Preliminary Results*).

<sup>2</sup> The Department rejected the Coalition's initial case brief because it contained new factual information. See letter from the Department to the Coalition dated February 15, 2006. The Coalition submitted a redacted case brief on February 16, 2006.

## **Discussion**

### **Coalition's Arguments**

The Coalition argues that the Department's conclusion from the *Preliminary Results* has deleterious implications for future policy. It claims that this decision would set the cash deposit rate for the combined company solely on the sales activity of West Fraser during the most recently completed period of review (POR), thereby ignoring Weldwood's significant sales and production activity. Furthermore, the Coalition posits that the Department's successor-in-interest determination will lead to manipulation. To demonstrate its point, it uses a hypothetical example of a merger of two companies: Company A, which has a five percent market share and a five percent dumping margin; and Company B, which has a 50 percent market share and a 12.5 percent dumping margin. Under the Coalition's scenario, the Department would find that post-merger Company A is the successor-in-interest to the pre-merger Company A because of a narrow focus on the degree of management personnel changes and assign the merged entity the cash deposit rate of Company A. The Coalition argues that this is bad policy. It claims that the better enforcement mechanism is to assign the post-merger company a cash deposit rate that is a weighted-average of Company A's and Company B's deposit rates prior to the merger.

Furthermore, the Coalition contends that because of the relative size of the companies involved, the combining of West Fraser's and Weldwood's operations should be viewed as a merger, not simply as an acquisition. Accordingly, the Coalition argues that the Department cannot reconcile the *Preliminary Results* with the *Canfor-Slocan CCR*.<sup>3</sup> It argues that both the instant CCR and the *Canfor-Slocan CCR* involved the merger of two giant Canadian softwood lumber producers and followed a similar fact pattern. Citing the Department's statement that significant components of the pre-merger Canfor's and Slocan's management, production facilities, supplier relationships, and customer base were incorporated into the merged entity,<sup>4</sup> the Coalition claims that the post-merger West Fraser no longer operates as its predecessor through its incorporation of significant components of the pre-merger Weldwood. Therefore, the Coalition argues that the Department must find that the post-merger West Fraser is the successor-in-interest to both the pre-merger West Fraser and Weldwood. The Coalition's arguments on these four factors are summarized below.

#### **A) Management**

The Coalition claims that West Fraser's management changed significantly as a result of the merger. It points out that the post-merger West Fraser named a senior Weldwood officer as its vice-president for export sales outside of North America. Furthermore, the Coalition points out that two former Weldwood officers became operations managers for West Fraser. It alleges that

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<sup>3</sup> See *Notice of Preliminary Results of Changed Circumstances Review: Softwood Lumber from Canada*, 69 FR 55406 (September 14, 2004) (*Canfor-Slocan CCR*).

<sup>4</sup> See *Canfor-Slocan CCR*, 69 FR at 55408.

the Department attempted to diminish the importance of this by referring to these as “non-officer positions.” The Coalition argues that these operations managers oversee a significant percentage of the post-merger West Fraser’s mills. Finally, the Coalition claims that the Department cited the absence of any former Weldwood officers on West Fraser’s board as evidence of the merged entity’s unchanged management structure. The Coalition argues that the Department cannot place any credence in this lack of change because Weldwood had a single-member board.

### **B) Supplier Relationships**

The Coalition argues that the Department’s analysis of changes to West Fraser’s supplier base is flawed. Referring to stumpage supplied by the provinces of Alberta and British Columbia and transportation services provided by Canadian National (CN), it claims that the Department’s conclusion that West Fraser’s nationalized suppliers did not change is an analytical straw man. The Coalition also notes that CN is not a supplier of raw material inputs because it delivers inputs instead of supplying them. Arguing that the proper analysis is to examine the suppliers of raw material inputs to the pre-merger companies, the Coalition claims that the merged entity’s supplier relationships have changed. The Coalition cites West Fraser’s statement that many of Weldwood’s logging contractors and local suppliers have become vendors to West Fraser as evidence that West Fraser’s supplier base changed. Therefore, citing the Department’s conclusion in the *Canfor-Slocan CCR* that Canfor’s supplier base became more diversified, the Coalition argues that the Department must determine that West Fraser’s supplier base is more diversified because of its acquisition of Weldwood.

### **C) Customer Base**

The Coalition claims that the Department did not properly analyze West Fraser’s customer base because it based the analysis on a similarity between the customer bases of the pre-merger companies. It alleges that the Department failed to consider that West Fraser expanded its customer base and increased its sales to markets where Weldwood had a larger presence. Furthermore, the Coalition argues that the Department concluded in the *Canfor-Slocan CCR* that the merger allowed Canfor to increase its customer base significantly. It argues that the analysis in the *Preliminary Results*, by contrast, focuses on the outcome-determinative similarity between the customer bases of Weldwood and West Fraser. Therefore, the Coalition argues that West Fraser increased the number of customers to whom it sells, which it finds is consistent with the circumstances from the *Canfor-Slocan CCR*.

### **D) Production Facilities**

Noting that the Department found that the most significant change to West Fraser’s operations as a result of the merger was its production capacity, the Coalition argues that the Department emphasized the importance of Canfor’s increased production capacity in the *Canfor-Slocan CCR*. The Coalition claims that post-merger West Fraser produces a significantly wider range of products than the pre-merger West Fraser. Therefore, the Coalition argues that substantial

increases in West Fraser's production capacity and product line confirm that the post-merger West Fraser is materially dissimilar from the pre-merger West Fraser.

### **West Fraser's Arguments**

In response, West Fraser contends that the Department correctly applied its successor-in-interest methodology in determining that the pre- and post-acquisition West Fraser were the same entity. West Fraser asserts that the Department properly considered changes to West Fraser's management, production facilities, supplier relationships, customer base, and other aspects of its operations. It argues that the Department should not, as suggested by the Coalition, allow only one factor or the *Canfor-Slocan CCR* to influence the final results. Furthermore, West Fraser argues that the Coalition has not supported the arguments made in its case brief to lead the Department to a different conclusion.

With regard to the Coalition's hypothetical example, West Fraser argues that it is misplaced, as the Department would never conduct such a narrow successor-in-interest analysis that is limited to one factor (management). Instead, as in this case, the Department examines several factors (as stated above) to determine a successor-in-interest issue. Therefore, West Fraser requests that the Department reject the Coalition's arguments and continue to find that the post-acquisition West Fraser is the successor-in-interest to the pre-acquisition West Fraser. Finally, West Fraser points out that the Coalition has misrepresented the West Fraser/Weldwood financial transaction throughout its case brief as a merger rather than an acquisition. West Fraser states that it purchased and absorbed Weldwood and has submitted documentation to the Department supporting this fact. West Fraser's responses to the Coalition's arguments on the four specific CCR analysis criteria are summarized below.

#### **A) Management**

Citing *Industrial Phosphoric Acid from Israel*<sup>5</sup> and *Stainless Steel Pipe from Korea*,<sup>6</sup> West Fraser points out that a claim of successorship to a respondent company only involves the subject merchandise. West Fraser states, in this instance, the Weldwood officer in question was hired by West Fraser to direct export sales outside of North America. Therefore, West Fraser argues that the Coalition's claim is misplaced as the officer in question has no impact or dealings with the outcome or shaping of sales practices with respect to its U.S. sales of subject merchandise.

Furthermore, West Fraser contends that the placing of Weldwood officers as operations managers in the post-acquisition West Fraser has no bearing on the successorship issue. West Fraser states that the duties of the operations manager concern the running and functioning of

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<sup>5</sup> See *Industrial Phosphoric Acid from Israel; Final Results of Antidumping Changed Circumstances Review*, 59 FR 6944 (February 14, 1994) (*Industrial Phosphoric Acid from Israel*).

<sup>6</sup> See *Certain Welded Stainless Steel Pipe from Korea; Final Results of Antidumping Duty Changed Circumstances Review*, 63 FR 16979 (April 7, 1998) (*Stainless Steel Pipe from Korea*).

mills and have no direct impact on the overall decisions of the company. Therefore, as in *Structural Steel Beams from Korea*,<sup>7</sup> the company's hierarchal structure and decision-making process remained unchanged and were not directly affected by the hiring of lower-level managers.

Moreover, West Fraser counters the Coalition's claim that the Department's examination of West Fraser's board of directors is immaterial. Although Weldwood had one board member, West Fraser contends that the lack of Weldwood's influence on the post-acquisition West Fraser board of directors is significant. West Fraser argues that if the sale of Weldwood to West Fraser were on equal terms, then the composition of the board would have been restructured in members or number to allow Weldwood a greater presence in the post-acquisition company. However, as that is not the case, West Fraser asserts that the company's board of directors, as it remained unchanged, reflects the true nature of the Weldwood purchase, namely that West Fraser intended to acquire Weldwood outright and never envisaged it as a merged entity.

West Fraser also contends that, despite the Coalition's assertions, the *Canfor-Slocan CCR* has no bearing on this proceeding in terms of management. West Fraser states that the Canfor-Slocan merger involved a comprehensive management restructuring where several Canfor and Slocan senior managers and board managers were placed in the new Canfor entity. In contrast, West Fraser states that only one officer from Weldwood was placed in West Fraser and his duties involve only third-country sales (*i.e.*, sales outside of the U.S. and Canada).

## **B) Supplier Relationships**

With regard to supplier relationships, West Fraser counters that the Department correctly assessed West Fraser's supplier relationships and found them to be the same before and after the acquisition. For timber inputs, West Fraser states that the national suppliers in question were actually provincial government entities and notes that the Department is aware of the different policies related to timber within each Canadian province. Based on these facts, the pre- and post-acquisition West Fraser both received its timber from the same regional governments, and the acquisition of Weldwood has not altered this.

Moreover, West Fraser argues that the use of CN is significant in the supplier base analysis. West Fraser concedes that the railway company does provide services for companies across Canada. However, West Fraser notes that the examination of CN, and its other railway supplier BC Rail, points to the fact that West Fraser's major supplier of transportation services, which is an important part of a lumber company's operations, remained essentially the same during the pre- and post-acquisition period.

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<sup>7</sup> See *Structural Steel Beams from Korea: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 66 FR 15834 (March 21, 2001) (*Structural Steel Beams from Korea*).

Finally, West Fraser asserts that the Coalition's argument on West Fraser's use of Weldwood's logging contractors and local suppliers is misplaced. West Fraser notes that logging contractors and local suppliers do not sell or set the price for timber; rather, the provincial governments of British Columbia and Alberta do. Given these circumstances, West Fraser asserts that the use of Weldwood's former logging contractors or local suppliers would still not represent any meaningful change in the post-acquisition West Fraser. West Fraser also points out that the Coalition did not challenge other record evidence showing Weldwood and West Fraser had other similar suppliers (*e.g.*, energy and mill equipment/service suppliers) that continue to be used by the post-acquisition West Fraser.

### **C) Customer Base**

West Fraser concedes that the Weldwood acquisition did result in West Fraser having a greater presence in third-country markets, but it asserts that the point is irrelevant as it has no bearing on the selling of subject merchandise in the United States. In terms of North American sales, West Fraser argues, as did the Department in the *Preliminary Results*, that the post-acquisition West Fraser's customer base did not change or expand significantly after the acquisition. Therefore, West Fraser contends that the Department should still continue to find that the post-acquisition West Fraser's customer base is similar to that of the pre-acquisition West Fraser.

### **D) Production Facilities**

West Fraser notes, as did the Department in the *Preliminary Results*, that its sale of products produced only by Weldwood prior to the acquisition accounted for only 2.5 percent of its total North American sales volume during the period following the acquisition. Given the minimal amount of new products, West Fraser argues that there is no clear evidence to claim that the acquisition of Weldwood created any material change in the product line of the post-acquisition West Fraser.

With regard to increased production, West Fraser argues that the Department did not minimize the facts, as suggested by the Coalition, but rather stated that the increased production was the only factor that significantly changed out of the many factors analyzed. West Fraser asserts that the Department, when weighing this factor with others (*e.g.*, management, suppliers and customer base), would only be able to conclude that West Fraser was the successor-in-interest to itself. Furthermore, West Fraser argues that the Department is following the same methodology as in the *Canfor-Slocan CCR*. West Fraser notes that the Department found that pre-merger Canfor and Slocan were succeeded by the post-merger Canfor based on the same factors. However, it points out that in the *Canfor-Slocan CCR*, the Department found evidence that several factors (*e.g.*, management, customer base and production) changed significantly. West Fraser argues that in this case, by contrast, the Department found that the change to West Fraser's production capacity was outweighed by the absence of significant changes to other aspects of its operations.

## Department's Position:

We agree with West Fraser. Our positions with respect to the four specific CCR analysis criteria and our conclusions are discussed below.

### A) Management

In its analysis, the Coalition states,

In the Canfor CCR, the Department found determinative the fact that “as a result of the amalgamation, Canfor’s management structure has been revised to incorporate former Slocan managers...{M}anagers of both companies play important roles in senior management of the post-merger Canfor.”<sup>8</sup>

The facts on the record of the instant proceeding, however, differ significantly from those of the *Canfor-Slocan CCR*. First, in the *Canfor-Slocan CCR*, four of the post-merger Canfor’s board of directors were former Slocan employees.<sup>9</sup> Slocan’s Chief Executive Officer (CEO) became the president and CEO of the post-merger Canfor. A former Slocan officer also was appointed to the post-merger Canfor’s board of directors. By contrast, West Fraser’s Board of Directors did not change as a result of the acquisition.<sup>10</sup> The only change to West Fraser’s managing officers was the appointment of a Weldwood officer as vice-president for third-country sales. The difference between the two cases is clear. In the *Preliminary Results*, we stated, “We find that the overall changes to West Fraser’s operations are well within the range of changes that one would expect over time in the same operation.”<sup>11</sup> The addition of one officer to West Fraser’s top management is clearly within this range of changes.

Second, the Coalition cites the appointment of two former Weldwood officers to positions in operations for West Fraser as further evidence of the post-acquisition West Fraser’s changed

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<sup>8</sup> See the Coalition’s case brief at page 8.

<sup>9</sup> See *Canfor-Slocan CCR*, 69 FR at 55408.

<sup>10</sup> The Coalition states, “The Department’s finding that there are no Weldwood directors on post-merger West Fraser’s board of directors as evidence of the merged entity’s unchanged management structure (*id.* at 2,190) cannot withstand even cursory scrutiny.” The fact that Weldwood’s single board member was not appointed to the West Fraser board was not the focus of our analysis. Rather, the focus of our analysis was whether West Fraser’s board of directors was unchanged from the pre-acquisition board of directors. In the *Preliminary Results*, we stated, “West Fraser’s board of directors did not change as a result of the acquisition.” See *Preliminary Results* at page 6. The post-acquisition West Fraser’s board of directors did not include the former Weldwood’s board member, other representatives of Weldwood, or other representatives of Weldwood’s former parent company, International Paper. The absence of any changes to West Fraser’s board of directors provides evidence of the post-acquisition company’s unchanged management structure.

<sup>11</sup> See *Preliminary Results*, 71 FR at 2191.

management structure. Although the Coalition compares this change to changes in the *Canfor-Slocan CCR*, the Department made no reference to operations managers or other positions below top management in the *Canfor-Slocan CCR*. The Department only included Canfor-Slocan's board of directors, its president and CEO, and the vice-presidents of its divisions in its analysis of management changes.<sup>12</sup> This is consistent with our analysis in the instant review and with *Structural Steel Beams from Korea*. In *Structural Steel Beams from Korea*, the Department stated,

An examination of the record reveals that, with respect to the upper-level management, as defined by Inchon, these positions are predominantly occupied by the same persons who had occupied these positions prior to the merger. Hence, the upper-level management scheme is reflective of the pre-merger Inchon.<sup>13</sup>

In analyzing the respondent's upper-level management structure in *Structural Steel Beams from Korea*, the Department considered the company's presidents, vice-presidents, directors, and executive directors.<sup>14</sup> With regard to operations managers, the Department stated,

Thus, while Inchon employs a number of former Kangwon lower-level management personnel, their responsibilities appear to be primarily devoted to the operational activities associated with the Pohang facility, and there is no indication that these lower-level managers possess significant policymaking responsibilities with regard to the operation of Inchon as a whole.<sup>15</sup>

Therefore, the Coalition's argument that the Department must consider the appointment of these operations managers as evidence of the post-acquisition West Fraser's changed management is inconsistent with both the *Canfor-Slocan CCR* and *Structural Steel Beams from Korea*. Consistent with these cases, we have analyzed the changes to West Fraser's board of directors and managing officers because individuals in these positions establish policy for West Fraser's overall operations. We continue to find that the single change to West Fraser's top management as a result of the acquisition is within the range of top management changes that one would expect over time in a continuous operation.

## **B) Supplier Relationships**

We disagree with the Coalition that the Department is precluded from considering government suppliers because all Canadian manufacturers avail themselves of government services. The

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<sup>12</sup> See *Canfor-Slocan CCR*, 69 FR at 55408.

<sup>13</sup> See *Structural Steel Beams from Korea*, 66 FR at 15835.

<sup>14</sup> *Id.*

<sup>15</sup> See *Structural Steel Beams from Korea*, 66 FR at 15835-15836.



specific provincial governments of Alberta and British Columbia supplied West Fraser and Weldwood prior to the acquisition, and both continue to supply West Fraser. West Fraser did not purchase a company with major operations in other parts of Canada, in which case it would have purchased timber from other provincial governments or, in the case of the Maritime Provinces, from private sources. While we recognize the importance of the provincial governments of Alberta and British Columbia in providing stumpage to virtually all lumber companies in those provinces, this does not change the basic fact that stumpage is by far West Fraser's costliest and most important raw material input, and that its supplier of this input did not change after its acquisition of Weldwood. The reliance of many lumber companies in the same provinces on the same provider is not sufficient reason to alter our analysis to deemphasize suppliers of major inputs in favor of suppliers of minor inputs, as the petitioner suggests.

Further, we disagree with the Coalition that suppliers of freight services should not be considered in our analysis. As evidenced by the Coalition's comments in every segment of this proceeding, the cost of freight services is a key component in the calculation of the dumping margin because it is by far the highest selling expense incurred by lumber companies. Therefore, we have considered the freight providers as important suppliers which merit consideration in our analysis. As an initial matter, CN was privatized in 1995 and is no longer owned by the government.<sup>16</sup> While CN and BC Rail are undoubtedly used by many lumber producers in areas where they provide service, this does not render unimportant the fact that these two railroads were the principal suppliers of freight services to West Fraser before and after its purchase of Weldwood. We note that depending on a mill's or customer's access to rail lines, a company may be more or less dependent on rail service, or on service from a particular railroad. Therefore, because of the absence of changes to West Fraser's suppliers of stumpage, freight services, major equipment, and energy, we determine that West Fraser's supplier relationships did not change significantly following the acquisition.

### **C) Customer Base**

For the *Preliminary Results*, we examined specific record information on the customer base of pre-acquisition West Fraser and Weldwood as well as post-acquisition West Fraser. We noted the similarities between the pre-acquisition West Fraser's and Weldwood's customers. We also stated that a high percentage of the post-acquisition West Fraser's sales volume was to customers of the pre-acquisition West Fraser.<sup>17</sup> Therefore, we noted no changes in post-acquisition West Fraser's customer base that would be deemed "significant" when compared to either Weldwood or pre-acquisition West Fraser.

In its case brief, the Coalition has not provided arguments that address this comparison. Instead, the Coalition argues that the analysis should focus on third-country markets. The Coalition argues further that the Department should follow the analysis applied in the *Canfor-Slocan CCR*.

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<sup>16</sup> See <http://www.cn.ca/about/investors/pdf/CompanyProfile.pdf>.

<sup>17</sup> See *Preliminary Results*, 71 FR at 2191.

We note, however, that in the *Canfor-Slocan CCR*, we examined the customer bases of the pre-merger and post merger companies, as we did for Weldwood and pre- and post-acquisition West Fraser in this review. In the *Canfor-Slocan CCR*, however, the Department found that the post-merger Canfor had an overall customer base that was significantly different when compared to either of the pre-merger companies. Based upon evidence on the record, we do not find a significant change between the overall customer base of the pre-acquisition West Fraser and the post-acquisition West Fraser. Therefore, in contrast to the situation of the *Canfor-Slocan CCR*, the operations at issue in this review did not change significantly with respect to the customer base.

#### **D) Product Line / Production Capacity**

In the *Preliminary Results*, we acknowledged that the most significant change to West Fraser's operations as a result of the acquisition was the increase in its production capacity. As we explained, the acquisition of Weldwood increased West Fraser's softwood lumber production capacity by either 36 percent or 48.7 percent, depending on the timing of the measurement.<sup>18</sup> We also found, however, that a very minor amount (approximately 2.5 percent) of West Fraser's combined U.S. and Canadian sales volume during the first five months of 2005 was of a grade and species combination not sold by West Fraser in 2004.<sup>19</sup> Thus, despite the increase in capacity, West Fraser's product line did not change significantly as a result of the acquisition. Although the production capacity increase is the most significant change to West Fraser's operations, the significance of this fact in the Department's analysis is reduced by the absence of any substantial change to its product line.

#### **Conclusions**

In its introductory comments, the Coalition compares the *Preliminary Results* to a hypothetical example in which a company with a five percent market share (Company A) acquires a company with a 50 percent market share (Company B). Under the Coalition's scenario, the Department determines that Company A is the successor to Company A prior to the acquisition "because of a narrow focus on the degree of management personnel changes."<sup>20</sup> This hypothetical example, however, is not instructive of the facts or of our analysis in this review. Our analysis does not focus only on changes to management personnel. As we stated in the *Preliminary Results*, "In analyzing whether West Fraser's operations have changed significantly as a result of the acquisition, however, the Department must consider West Fraser's operations as a whole."<sup>21</sup> We

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See the Coalition's case brief at page 3.

<sup>21</sup> See *Preliminary Results*, 71 FR at 2191.

also stated in the *Preliminary Results* that the Department does not consider one single factor or combination of factors as dispositive in its CCR analysis methodology.<sup>22</sup> Based on this analysis of West Fraser's operations, we concluded, "(T)he capacity increase is outweighed by the absence of significant changes to West Fraser's board of directors, top management, suppliers, customer base, product line, corporate structure, brand identification, sales process, and sales operations."<sup>23</sup> Although West Fraser's production capacity increased substantially, the preponderance of evidence on the record continues to demonstrate clearly that the post-acquisition West Fraser's operations did not change significantly as a result of the acquisition.

Our reliance on the totality of information on the record as opposed to focusing solely on an individual factor is consistent with our practice in previous changed circumstances reviews. In *Stainless Steel Pipe from Korea*, for example, the Department found that one company's purchase of a plant from another company did not by itself result in the creation of a hybrid operation.<sup>24</sup> In *Structural Steel Beams from Korea*, the Department addressed a merger of two respondent companies, which included the addition of a production plant and other changes to the successor company's operations. For example, in examining one of the four specific CCR analysis factors, the Department noted that the post-merger successor company gained a number of customers, but concluded that its core customer group remained the same as it was prior to the merger.<sup>25</sup> Based on an overall analysis of the merged company's operations, the Department found that the post-merger successor company operated in a manner not substantially different from the predecessor company. Finally, in the recent CCR of *Pipe and Tube from Taiwan*,<sup>26</sup> a company that had not been previously producing subject merchandise acquired the pipe and tube production facility of another company. The post-acquisition company chose to purchase raw material inputs from an established supplier line, which differed from the supply channel maintained by the predecessor company. The Department concluded that the change in suppliers by itself did not demonstrate that the companies were materially dissimilar in this case. Therefore, the Department found the post-acquisition company to be a successor-in-interest to only the predecessor company, not the successor-in-interest to a hybrid of the two companies prior to the acquisition.

Although the individual circumstances of each of these cases are different, the Department in each case analyzed the totality of evidence on the record. Throughout its brief, the Coalition cites minor changes to West Fraser's operations as evidence that the post-acquisition West Fraser

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<sup>22</sup> See *Preliminary Results*, 71 FR at 2190.

<sup>23</sup> See *Preliminary Results*, 71 FR at 2191.

<sup>24</sup> See *Stainless Steel Pipe from Korea*, 63 FR at 16981.

<sup>25</sup> See *Structural Steel Beams from Korea*, 66 FR at 15836.

<sup>26</sup> See *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Preliminary Results of Antidumping Duty Changed Circumstance Review*, 70 FR 60279 (October 17, 2005) (*Pipe and Tube from Taiwan*).

represents a hybrid of the pre-acquisition West Fraser and Weldwood. By weighing all of the evidence, we find that these changes do not demonstrate that West Fraser's overall operations have changed significantly. Furthermore, the Coalition did not address or challenge other record information on factors that contributed to our decision in addition to the specific four CCR criteria. For example, as we noted in the *Preliminary Results*, only one Weldwood salesperson for North America has accepted a position with West Fraser.<sup>27</sup> In addition, we noted that the acquisition did not lead to significant changes in West Fraser's corporate structure. In a CCR analysis, the Department is not limited to an analysis of the four specific CCR criteria.<sup>28</sup> Therefore, in conjunction with our analysis of the four criteria, we find that the totality of evidence on the record indicates that West Fraser's operations have not changed significantly as a result of the acquisition.

If we accept the Coalition's argument, then every changed circumstances review in which any remnants of both companies survive would have to follow the result of the *Canfor-Slocan CCR*. This would require the Department to abandon its well-established CCR analysis methodology for a much narrower analysis. In comparing the *Preliminary Results* to the *Canfor-Slocan CCR*, the Coalition itself relies on the Department's established CCR analysis methodology.<sup>29</sup> As we have demonstrated in this memorandum, however, the facts in the two cases differ, and the results of the analyses must differ accordingly. The results of the *Canfor-Slocan CCR* were based on the facts of that case and did not represent a shift by the Department in favor of finding hybrid successorship. Therefore, our reliance on the Department's established CCR analysis methodology and our conclusions from this analysis are appropriate, supported by evidence on the record, and consistent with Department precedent.

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<sup>27</sup> See *Preliminary Results*, 71 FR at 2191. In the *Canfor-Slocan CCR*, by contrast, the Department stated, "Ultimately, the post-merger Canfor's sales organization plans to maintain nearly all of Canfor and Slocan's combined number of sales employees." See *Canfor-Slocan CCR*, 69 FR at 55408.

<sup>28</sup> See *Brass Sheet and Strip from Canada; Preliminary Results of Antidumping Duty Changed Circumstances Review*, 57 FR 5128 (February 12, 1992).

<sup>29</sup> See the Coalition's case brief at page 4, citing *Canfor-Slocan CCR*, 69 FR at 55408; and *Brass Sheet and Strip from Canada; Notice of Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992). ("In an antidumping duty changed circumstances review involving a successor-in-interest determination, the Department's longstanding practice is to examine several factors, 'including, but not limited to, changes in (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.'")

**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 this changed circumstances review.

Agree\_\_\_\_\_

Disagree\_\_\_\_\_

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

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Date