

ARTICLE 1904 BINATIONAL PANEL REVIEW

Pursuant to the

NORTH AMERICAN FREE TRADE AGREEMENT

In the Matter of:

**Certain Softwood Lumber Products From
Canada: Final Affirmative
Countervailing Duty Determination**

Secretariat File No.

USA-CDA-2017-1904-02

DECISION OF THE PANEL

Panelists

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Table of Contents

I.	Introduction.....	1
II.	Standard of Review.....	1
III.	Analysis.....	2
A.	Conversion Factor for Alberta Stumpage Calculation.....	2
1.	Extent to which the 1.167 Conversion Factor was Actually Used by GNS and Applied to the Nova Scotia Prices	2
2.	What is Responsible for the Difference in the Alberta and Nova Scotia Conversion Factors.....	4
3.	Whether a Price Comparison of Different Weighted Timber is Distortive	6
4.	Whether Alberta’s Proposed Conversion Factor was Supported by Substantial Evidence.....	7
5.	Whether Alberta had Met its Burden of Showing Entitlement to Adjustment	8
B.	Log Export Restraints	9
IV.	Conclusion	9

I. Introduction

This Panel has been constituted pursuant to Article 1904(2) of the North American Free Trade Agreement (“NAFTA”). The Panel was appointed to review the Final Affirmative Determination (“the Final Determination”) issued by the U.S. Department of Commerce (“Commerce”) in its countervailing duty (“CVD”) investigation of *Certain Softwood Lumber Products from Canada*.

Familiarity will be assumed regarding the details of the procedural history of the original Commerce investigation and the subsequent proceedings before this Panel. This Panel remanded the original Final Determination to Commerce which then issued its Final Results of Redetermination Pursuant to Binational Panel Order (“Redetermination”). On March 6, 2026 the Panel remanded the Redetermination to Commerce which has now issued its Final Results of Redetermination Pursuant to Second Panel Remand Order (“Second Redetermination”).

It is that Second Redetermination which the Panel now has before it.

II. Standard of Review

As with Federal courts, the Panel “will sustain Commerce’s countervailing duty determinations on remand if they are in accordance with the remand order, are supported by substantial evidence, and are otherwise in accordance with law.”¹ “Where the statute does not prescribe a particular benchmark, Commerce’s methodological choices—including the selection of a benchmark dataset—are entitled to deference so long as they are reasonable.”² “{T}he question is not whether Commerce chose the best benchmark or whether a different combination of benchmark data would have been more reliable or more representative; rather, the {Panel} focuses on whether Commerce’s benchmark determination finds support in the record, rests on sound reasoning, and is otherwise reasonable.”³ The Panel “may not substitute its judgment for that of the {agency} when the choice is ‘between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it de novo.’”⁴

¹ *MacLean-Fogg Co. v. United States*, 100 F. Supp. 3d 1349, 1355 (Ct. Int’l Trade 2015).

² *Ellwood City Forge Co. v. United States*, No. 21-00077, 2026 WL 1864341, at *10 (Ct. Int’l Trade June 29, 2026).

³ *Hindalco Industries Limited v. United States*, 794 F. Supp. 3d 1367, 1384 (Ct. Int’l Trade 2025).

⁴ *Goldlink Indus. Co. v. United States*, 431 F. Supp.2d 1323, 1326 (Ct. Int’l Trade 2006), citing *Am. Spring Wire Corp. v. United States*, 8 CIT 20, 22, 590 F. Supp. 1273, 1276 (1984) (quoting *Penntech Papers, Inc. v. NLRB*, 706 F.2d 18, 22-23 (1st Cir. 1983) (quoting, in turn, *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487-88 (1951)).

III. Analysis

A. Conversion Factor for Alberta Stumpage Calculation

In our *Second Binational Panel Order*, the Panel remanded to Commerce to “explain why Commerce’s failure to make the adjustment to the conversion factor for Alberta stumpage prices was supported by substantial evidence and was in accordance with law. That is, explain why Alberta’s proposed conversion factor was not supported by substantial evidence, and if that factor is supported by substantial evidence explain why Commerce nevertheless determined that Alberta had not met its burden of showing entitlement to the adjustment.”⁵ The Panel also remanded to Commerce “to explain specifically (i) to what extent the 1.167 conversion factor was actually used by GNS and applied to the Nova Scotia prices at issue; (ii) what is responsible for the difference in the Alberta and Nova Scotia conversion factors; and (iii) why is a price comparison of different weighted timber not distortive.”⁶ The Panel will cover each of the four remand instructions to assess the extent to which Commerce followed the Panel’s instructions, discussing the first instruction last.

1. Extent to which the 1.167 Conversion Factor was Actually Used by GNS and Applied to the Nova Scotia Prices

In its Panel Decision on Remand, the Panel concluded that “the record is not clear whether and to what extent the 1.167 conversion factor was actually used by GNS in the prices at issue as opposed to the other conversion factors,” and remanded for Commerce to explain “to what extent the 1.167 conversion factor was actually used by GNS and applied to the Nova Scotia prices at issue.”⁷

In its Second Remand Redetermination,⁸ Commerce pointed to the Registration and Statistical Returns Regulations made under Section 40 of the Forests Act.⁹ Those Regulations provide in part:

- 6(1) In completing a registration form or an annual statistical return, a registered buyer must report in the following manner:
- (a) for primary forest products, in cubic metres solid by species type at the time the primary forest product is acquired, sold or exported;

⁵ *Second Binational Panel Order* at 11.

⁶ *Id.*

⁷ *Second Binational Panel Order* at 10, 11.

⁸ *Second Remand Redetermination*, at 11.

⁹ C.R. 808, Exhibit NS-14.

- (2) A registered buyer must use the conversion factors in Schedule 2 to convert units of primary forest products to the standard measure of cubic metres solid required by subsection (1).¹⁰

The referenced Schedule 2 lists Primary Wood Products Conversion Factors. For SPF the conversion factor is 1.167. There are different conversion factors for hemlock, larch, and white pine.¹¹

The Regulations define “registered buyer” as a person who:

- (i) owns or operates a wood processing facility in the Province,
- (ii) exports, or possesses for export, primary forest products,
- (iii) imports primary forest products,
- (iv) sells or acquires for sale more than 1000 m³ solid of primary forest products as a fuel, or
- (v) acquires primary forest products for producing energy.¹²

The Alberta Parties point out that in “Nova Scotia, most purchases and sales of timber, particularly sawable timber, use metric tons (tonnes) as the unit of measure.”¹³ That means that for completing a registration form or an annual statistical return most registered buyers in Nova Scotia must use the conversion factor of 1.167 for SPF in order to report quantities in cubic meters. Likewise, for the Deloitte Report, “A standardized unit table ensured that all data would be convertible to cubic metres (‘m³’) as requested by NSDNR.”¹⁴ Thus, whatever unit of measure was reported to Deloitte, it was standardized so that Deloitte reported the quantity in cubic meters.

The Alberta Parties state: “These materials further reinforce that the 1.167 factor served an administrative reporting function, which Commerce explains and the Alberta Parties do not dispute. However, no record evidence shows that buyers and sellers used that factor when negotiating, pricing, or paying for private stumpage transactions.”¹⁵ The Alberta Parties seem to be arguing that the Panel required that if Nova Scotia buyers and sellers did not normally convert the transactions from weight to cubic meters then the conversion factor is somehow invalid.

But the remand instructions simply state that Commerce is to explain “to what extent the 1.167 conversion factor was actually used by GNS and applied to the Nova Scotia prices at

¹⁰ *Id.* at Exhibit NS-14, p. 4.

¹¹ *Id.* at Exhibit NS-14, pp. 9-10.

¹² *Id.* at Exhibit NS-14, p. 1.

¹³ Alberta Parties’ Comments in Opposition to Remand Redetermination, at 14.

¹⁴ C.R. 805, Exhibit NS-5, at 2, n.1.

¹⁵ Alberta Parties’ Comments in Opposition to Remand Redetermination, at 15.

issue.”¹⁶ As the Alberta Parties put it, Commerce explained that the “1.167 factor served an administrative reporting function.” Commerce therefore explained, with support from the record, the extent to which the 1.167 conversion factor, as opposed to the other conversion factors, was actually used by GNS and applied to the Nova Scotia prices at issue. Its explanation is therefore supported by substantial evidence.

2. What is Responsible for the Difference in the Alberta and Nova Scotia Conversion Factors

In its Panel Decision on Remand, the Panel quoted Commerce as admitting that “the exact reasons for the difference between the Alberta and Nova Scotia conversion factors is unclear from the record,” and that “the record does not clarify why there are different conversion factors in Alberta and Nova Scotia.”¹⁷ The Panel remanded to Commerce to explain “what is responsible for the difference in the Alberta and Nova Scotia conversion factors.”

In its Second Remand Redetermination,¹⁸ Commerce dove deeper into the record. It cited a United Nations-produced report that examined conversion factors in sixteen countries.¹⁹ “The report identified four reasons why scaling standards in different jurisdictions can result in conversion factors that produce different volume measurements.”²⁰ First, there are at least five different cubic formulas, including Smalian, Huber, Newton, centroid, or two-end conic²¹. Second, some scaling standards require rounding down diameters and lengths while other standards do not.²² Third, there are variations in how scaling standards treat log defects.²³ “{S}ome national and subregional log scaling standards treat the log as a cylinder with a diameter of the small-end of the log; assume the log form is a cylinder with the diameter that exists in the middle of the log length; or use assumed taper rates to establish diameters other than the small-end.”²⁴ Finally, “some national standards calculate the over bark volume.”²⁵

The Nova Scotia Scaling Manual provides: “The gross volume of each individual log shall be calculated using one of the three following methods:” Volume table or formula; Smalian’s

¹⁶ *Second Binational Panel Order* at 11.

¹⁷ *Second Binational Panel Order* at 10.

¹⁸ *Second Remand Redetermination*, at 14-17.

¹⁹ C.R. 346, Attachment 24. The Panel appreciates this rare instance in which Commerce cited to the bar code when referring to this document. That makes the Panel’s job of finding the documents cited by the parties much easier. By contrast, simply citing to “GOA Stumpage IQR” as in fn. 77 takes extra work to find.

²⁰ *Second Remand Redetermination*, at 14. We count five reasons in the report.

²¹ *Id.* at 14-15.

²² *Id.* at 15.

²³ *Id.*

²⁴ C.R. 346, at 131 (internal 5).

²⁵ *Id.*

formula; or Huber's formula.²⁶ The Manual does not indicate a preference. The Alberta Scaling Manual states: "When scaling sample scale loads at mass scale sites, there are two primary approved scaling methods: the Smalian Scale and the Cube Scale. An operator approved for one method of scaling Crown timber is bound to scale by that method unless otherwise approved in writing by PLFD."²⁷ The Manual includes a table describing the differences between these two methods.²⁸

Commerce also notes the Nova Scotia and Alberta "scaling manuals provide different methods to calculate volume loss due to sweep (*i.e.*, a curvature of a log that reduces the quantity of lumber that can be produced)."²⁹ The Nova Scotia Manual categorizes logs into certain ranges of sweep,³⁰ while the Alberta Manual uses a formula to determine the percent loss for sweep.³¹

Commerce acknowledges that "softwood standing timber in these two provinces are not identical."³² It cites to the Nova Scotia response, which in its narrative states that the "quadratic mean diameter at breast height for SPF only on private lands is 15.9cm."³³ It then cites to a report prepared for the purposes of the CVD investigation by MNP LLP, "Cross Border Analysis of Stumpage and Log Prices in Alberta and Six Other Jurisdictions."³⁴ That report indicates that the average diameter at breast height for all softwood in Alberta is 21.7cm,³⁵ that is, larger than the Nova Scotia SPF. The MNP Report, however, proceeds to make the case that a softwood tree in Alberta takes up to 120 years to grow to a commercial size, while in Nova Scotia it takes 50 years, but that Nova Scotia may wait for 100 years before harvesting, making their trees larger than Alberta trees at harvest.³⁶ Thus, while there are some differences between the average size of Nova Scotia and Alberta trees, the record is contradictory as to which province has the largest trees at harvest.

Commerce further notes: "Minor differences in the prevalence of defects or rot, presence of lack of bark, moisture content, or small-end diameters below a minimum size, which are all excluded from the scaled volume but contribute to the weight of a log can likewise result in

²⁶ C.R. 346, Attachment 23, at 35-36.

²⁷ C.R. 373, Exhibit AB-S-18, at 333 (internal 3.0).

²⁸ *Id.*

²⁹ *Second Remand Redetermination*, at 16.

³⁰ C.R. 346, Attachment 23, at 32-33.

³¹ C.R. 373, Exhibit AB-S-18, at 333 (internal 3.1.4.3).

³² *Second Remand Redetermination*, at 16.

³³ C.R. 805 at 8.

³⁴ C.R. 374, Exhibit AB-S-23.

³⁵ *Id.* at 20.

³⁶ *Id.* at 20-21.

different weight-to-volume ratios.”³⁷ Finally, Commerce notes that the “age of the trees affects the size of the heartwood,” and that the “heartwood typically has less moisture than the sapwood, and thus older, generally larger trees have a greater volume of heartwood relative to sapwood and thus have a lower weight to volume ratio than that of younger, generally smaller trees.”³⁸

The Alberta Parties accept all these differences, but argue that these differences mean that the Panel must order Commerce to make their preferred adjustment to the Nova Scotia benchmark price.³⁹

To reiterate, the Panel’s remand instructions were simply to explain “what is responsible for the difference in the Alberta and Nova Scotia conversion factors.”⁴⁰ Commerce provided a plethora of reasons, all supported by substantial evidence, to explain why there are such differences. The Alberta Parties are asking the Panel to move the goalposts and come up with a reason to reject Commerce’s findings that is beyond the remand instructions. Commerce explained, with support from the record, what is responsible for the difference in the Alberta and Nova Scotia conversion factors. Its explanation is therefore supported by substantial evidence.

3. Whether a Price Comparison of Different Weighted Timber is Distortive

The Panel also remanded to Commerce with instructions to explain “why is a price comparison of different weighted timber not distortive.”⁴¹ In its Second Remand Redetermination,⁴² Commerce notes that “{T}he *weight* of a load of harvested timber does not indicate how much timber is usable and can be processed into final products such as dimensional lumber. ... If comparable timber harvested from two different regions exhibit factors that contribute to differences in weight, it would not necessarily be accurate to compare the price of two loads of harvested timber with the same weight if those two loads have different volumes of usable timber.”⁴³ The Alberta Parties do not dispute that characterization but counter that the record shows that in Nova Scotia, most purchases were on the basis of weight, so that the transactions in Nova Scotia generally were converted to cubic meters using the 1.167 conversion factor for purposes of the Deloitte report.⁴⁴

Commerce states: “To convert the prices of Nova Scotia SPF sawlogs and studwood in the Nova Scotia benchmark from C\$ per cubic meter to tonnes, and then to reconvert these weights back into C\$ per cubic meter using a conversion factor that is specific to Alberta timber, as the

³⁷ *Second Remand Redetermination*, at 17.

³⁸ *Id.*

³⁹ Alberta Parties’ Comments in Opposition to Remand Redetermination, at 24-28.

⁴⁰ *Second Binational Panel Order* at 11.

⁴¹ *Id.*

⁴² *Second Remand Redetermination*, at 18-22.

⁴³ *Id.* at 18.

⁴⁴ Alberta Parties’ Comments in Opposition to Remand Redetermination, at 6.

Alberta parties suggest, would be distortive because it would result in a volume measurement that does not accurately represent the usable volume of timber for the prices of Nova Scotia SPF sawlogs and studwood.” The Alberta Parties’ proposed adjustment in effect results in the prices being compared on a weight-to-weight basis instead of a volume-to-volume basis,⁴⁵ even though nominally the prices being compared are on a cubic meter basis.

No party disputes that two collections of harvested timber could have the same weight but have different volumes of cubic meters, depending on the conversion factor used. Likewise, two collections of harvested timber could have the same weight but result in different volumes of usable timber because of different characteristics of the wood collections being weighed. In other words, it is not established that either comparing weights (the end result of Alberta’s proposed adjustment) or comparing volume produces a more accurate comparison. Substantial evidence, as discussed in the previous section, supports a conclusion that comparing volumes under these circumstances is as likely to produce an accurate comparison of usable timber as comparing weights would.

As noted in the first section of this Panel Decision, the standard of review is that “the question is not whether Commerce chose the best benchmark or whether a different combination of benchmark data would have been more reliable or more representative; rather, the {Panel} focuses on whether Commerce’s benchmark determination finds support in the record, rests on sound reasoning, and is otherwise reasonable.”⁴⁶ If the Panel were making a decision *de novo*, it might have chosen the adjustment proposed by the Alberta Parties. But Commerce’s determination that a price comparison of different weighted timber not distortive finds support in the record, rests on sound reasoning, and is otherwise reasonable. Its explanation is therefore supported by substantial evidence.

4. Whether Alberta’s Proposed Conversion Factor was Supported by Substantial Evidence

The Panel remanded to Commerce with instructions to “explain why Alberta’s proposed conversion factor was not supported by substantial evidence.”⁴⁷ The parties did not directly address this portion of the Panel’s remand instructions, except that the Alberta Parties note that nobody disputes the reliability of the Alberta conversion factor.⁴⁸ In a footnote they cite to the parts of the record that support the accuracy and reliability of the factor. The Panel agrees that Alberta’s proposed conversion factor was supported by substantial evidence, which leads to the instruction

⁴⁵ *Id.* at 33. The Alberta Parties’ proposal starts with the Nova Scotia calculated price per tonne, and then applies the inverse of the Alberta conversion factor (the Alberta conversion factor of 1.316 converts tonnes to cubic meters, while the inverse (0.760) converts cubic meters to tonnes) to adjust that price per tonne, expressed as a price per cubic meter.

⁴⁶ *Hindalco Industries Limited v. United States*, 794 F. Supp. 3d 1367, 1384 (Ct. Int’l Trade 2025).

⁴⁷ *Second Binational Panel Order* at 11.

⁴⁸ Alberta Parties’ Comments in Opposition to Remand Redetermination, at 34.

that in such case Commerce was to explain why Commerce nevertheless determined that Alberta had not met its burden of showing entitlement to the adjustment.

5. Whether Alberta had Met its Burden of Showing Entitlement to Adjustment

It is the nature of proceedings of this complexity that there will be substantial evidence in support of contradictory conclusions. There is substantial evidence in support of using the unadjusted Nova Scotia benchmark, and substantial evidence in support of Alberta's proposed adjustment. In such a circumstance it is not the Panel's role to choose between two positions. Its role is to determine whether Commerce's position is supported by substantial evidence.

To review the evidence proffered by Commerce, as discussed above, Commerce presented substantial evidence that the conversion factor used to establish the benchmark for Nova Scotia harvested timber was actually used in the normal course of business, and it presented substantial evidence regarding the difference in the conversion factors used in Alberta and Nova Scotia. The question is whether Commerce's conclusion regarding this evidence "rests on sound reasoning, and is otherwise reasonable."⁴⁹ As Commerce wrote in its Response to the Alberta Parties' Comments:

{D}ifferent province-specific conversion factors are not necessarily indicative of "a known measurement mismatch." ... Rather, record evidence supports relying on a province's own conversion factor over that of an outside province. ... Commerce does not rely on the standard of a comparable benchmark (versus a "perfect" benchmark...) to escape its obligation to select a benchmark that is reflective of the prevailing market conditions, but rather to illustrate that the Alberta Parties' proposed adjustment is premised on the fallacy that Commerce must "perfectly match" the experience of Alberta Crown stumpage purchasers, which the statute does not require of Commerce.⁵⁰

As the court wrote in *Archer Daniels Midland Co. v. United States*:⁵¹

On remand, Commerce properly considered factors affecting comparability. ... Moreover, the court is unable to identify any authority indicating that Commerce's benchmark selection was improper. It appears to be consistent with past CVD determinations involving the PRC. ... RZBC {consolidated plaintiffs} takes the stance that Commerce must use benchmark prices at the ten and eleven-digit level of specificity, which implies that Commerce must use benchmark prices that are nearly identical to RZBC's reported purchases to satisfy the regulation. ... The regulation, however, does not manifest such a stringent standard. It requires only that the selected benchmarks be comparable. ... Although RZBC disputed

⁴⁹ *Hindalco Industries Limited v. United States*, 794 F. Supp. 3d 1367, 1384 (Ct. Int'l Trade 2025).

⁵⁰ Commerce Response to Alberta Parties' Comments, at 17 (citations omitted).

⁵¹ *Archer Daniels Midland Co. v. United States*, 968 F. Supp. 2d 1269, 1278-79 (Ct. Int'l Trade 2014)) (citations omitted).

Commerce's selection of benchmark prices, and cited some data to support its position, it did not establish evidence sufficient to overcome the deferential standard of review that applies to Commerce's factual determinations. Ultimately, RZBC has not demonstrated that its proposed benchmark calculation is the only reasonable outcome on this administrative record.

Likewise, here, Commerce articulated reasons that its choice of a benchmark was reasonable, and the Alberta Parties have not demonstrated that its proposed benchmark calculation is the only reasonable outcome on this administrative record. The Panel determines that Commerce's explanation of its decision to use the Nova Scotia benchmark without adjustment finds support in the record, rests on sound reasoning, and is otherwise reasonable. The Panel affirms Commerce's determination on this issue.

B. Log Export Restraints

In our *Second Binational Panel Order*, the Panel remanded to Commerce to explain "whether there is any *other* evidence on the record that shows that the LER has a direct and discernible impact on log prices, including but not limited to, suppressed log exports or log prices."⁵² In its Draft Results of Remand Redetermination regarding this Panel Order, Commerce concluded that the LERs do not provide a financial contribution, and recalculated the subsidy rates without regard for the LER.⁵³ In its Final Remand Redetermination, Commerce continued to conclude "that the LERs imposed by the GOC and GBC do not provide a financial contribution."⁵⁴

The Panel affirms Commerce's determination that the LERs do not provide a financial contribution.

IV. Conclusion

The Panel having affirmed all issues before it, this action is hereby dismissed.

⁵² *Second Binational Panel Order* at 42.

⁵³ Draft Results of Remand Redetermination, Second Binational Panel Order, dated May 15, 2026, at 26.

⁵⁴ *Second Remand Redetermination*, at 36.

ORDERED.

Issued: October 5 , 2026

SIGNED IN THE ORIGINAL BY:

/s/ Robert E. Ruggeri

ROBERT E. RUGGERI, CHAIRMAN

/s/ Calvin S. Goldman

CALVIN S. GOLDMAN

/s/ Paul W. Jameson

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