



C-122-858
Administrative Review
POR: 01/01/2019 – 12/31/2019
Public Document
E&C/OIII: Team

November 23, 2021

MEMORANDUM TO: Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Administrative Review of the Countervailing Duty Order on
Certain Softwood Lumber Products from Canada; 2019

I. SUMMARY

Commerce has completed its administrative review of the *CVD Order* on softwood lumber from Canada for the period January 1, 2019, through December 31, 2019. We determine that countervailable subsidies are being provided to producers and exporters of softwood lumber from Canada, as provided in section 705 of the Act. After analyzing the comments raised by the interested parties in their case and rebuttal briefs, we made certain changes to the *Lumber V AR2 Prelim*, which are fully discussed in this memorandum. Below is a complete list of the issues for which we received comments from the interested parties.

II. LIST OF ISSUES

A. General Issues

Comment 1: Whether Commerce Should Have Used a Sampling Methodology to Select Respondents for This Review

Comment 2: Whether Commerce Properly Required Respondents to Report “Other Assistance”

Comment 3: Whether Electricity Is a Good or a Service

Comment 4: Whether Electricity Curtailment Programs Are Countervailable

Comment 5: Whether Ontario and Québec Agreements with Consumers to Reduce GHG Are Grants

Comment 6: Whether Commerce Should Include Fontaine and Mobilier Rustique in the Final Customs Instructions



Comment 7: Whether Various Grant Programs Are Government Purchases of Services

B. General Stumpage Issues

Comment 8: Whether Stumpage Is an Untied Subsidy

Comment 9: Whether to Compare Government Transaction-Specific Prices to an Average Benchmark Price

Comment 10: Whether Commerce Should Calculate Negative Benefits in the Stumpage for LTAR Program

C. Alberta Stumpage Issues

Comment 11: Whether the Alberta Stumpage Market Is Distorted

Comment 12: Whether There Is a Useable Tier-One Benchmark in British Columbia

D. British Columbia Stumpage Issues

Comment 13: Whether There Is a Useable Tier-One Benchmark in British Columbia

E. New Brunswick Stumpage Issues

Comment 14: Whether the Private Stumpage Market in New Brunswick Is Distorted and Should be Used as a Tier-One Benchmark

F. Ontario Stumpage Issues

Comment 15: Whether Ontario's Crown Stumpage Market Is Distorted

Comment 16: Whether Ontario's Stumpage Prices Distort the Log Market

Comment 17: Whether the Ontario Standing Timber Market is Distorted and Whether the MNP Ontario Survey Prices May Serve as an Appropriate Tier One Benchmark

Comment 18: Whether Commerce Should Revise Resolute's Stumpage Benefit Calculation Regarding Corrected Transactions

G. Québec Stumpage Issues

Comment 19: Whether Québec's Stumpage Market Is Distorted

Comment 20: Whether Québec's Auction Prices Are an Appropriate Tier-One Benchmark to Measure Whether the GOO Sold Crown-Origin Standing Timber for LTAR

H. British Columbia Stumpage Benchmark Issues

Comment 21: Whether Commerce Should Use F2M Pricing Data for a U.S. PNW Log Benchmark

- Comment 22: Whether Commerce Should Continue to Use a Beetle-Killed Benchmark Price for the Final Results
- Comment 23: Whether Commerce’s Selection of a Log Volume Conversion Factor Was Appropriate
- Comment 24: Whether Commerce Should Adjust for Tenure Security in British Columbia
- Comment 25: Whether Commerce Should Adjust the BC Log Benchmark Price for Scaling and G&A Costs
- Comment 26: Whether to Account for BC’s “Stand-as-a-whole” Stumpage Pricing

I. Nova Scotia Stumpage Benchmark Issues

- Comment 27: Whether the 2017-2018 Private Stumpage Survey Is Sufficiently Contemporaneous for Use as a Tier-One Benchmark
- Comment 28: Whether Nova Scotia Is Comparable to Québec, Ontario, and Alberta in Terms of Haulage Costs and Whether to Otherwise Adjust the Nova Scotia Benchmark to Account for Such Differences
- Comment 29: Whether to Revise the Conversion Factor Used in Calculation of the Nova Scotia Benchmark
- Comment 30: Whether Commerce Should Adjust the Method Used to Index the Nova Scotia Benchmark
- Comment 31: Whether to Adjust the Nova Scotia Benchmark to Account for Fire-Killed Timber Harvested in Alberta
- Comment 32: Whether to Adjust the Nova Scotia Benchmark to Account for Beetle-Killed-Timber Harvested in Alberta
- Comment 33: Whether to Adjust the Nova Scotia Benchmark to Account for Beetle Killed-Timber Harvested in Québec
- Comment 34: Whether Commerce Should Adjust the Nova Scotia Benchmark to Account for Log Product Characteristics
- Comment 35: Whether SPF Tree Species in Nova Scotia Are Comparable to SPF Tree Species in Québec, Ontario, and Alberta
- Comment 36: Whether to Adjust the Nova Scotia Benchmark to Account for Species Differences
- Comment 37: Whether Log Pricing Differences Between Nova Scotia and New Brunswick Require an Adjustment to the Nova Scotia Benchmark Utilized in JDIL’s Stumpage Benefit Analysis
- Comment 38: Whether Commerce Should Adjust the Nova Scotia Benchmark for Regional Price Disparities Within Nova Scotia
- Comment 39: Whether Private Standing Timber Prices in Nova Scotia Are Available in the Provinces at Issue
- Comment 40: Whether the Tree Size in Nova Scotia, as Measured by Diameter, Is Comparable to Tree Size in Québec, Ontario, and Alberta
- Comment 41: Whether Nova Scotia’s Forest Is Comparable to the Forests of New Brunswick, Québec, Ontario, and Alberta

- Comment 42: Whether Pulpmill Consumption of Standing Timber in Nova Scotia Creates Unique Market Conditions that Are Not Comparable to Market Conditions in Québec, Ontario, and Alberta
- Comment 43: Whether There Is a Fragmented and Shrinking Market for Private Timber in Nova Scotia That Has Caused Standing Timber Prices to Increase
- Comment 44: Reliability of Nova Scotia Private-Origin Standing Timber Benchmark
- Comment 45: Whether Commerce Should Publicly Disclose the Anonymized Data that Comprise the 2017-2018 Private Market Survey and the Price Index Used to Calculate the Nova Scotia Benchmark
- Comment 46: Whether Commerce Should Make Adjustments to Stumpage Rates Paid by the Respondents to Account for “Total Remuneration” in Alberta, New Brunswick, Ontario, and Québec

J. Log Export Restraint Issues

- Comment 47: Whether Commerce Should Find Restrictions on Log Exports in Alberta, New Brunswick, Ontario, and Québec to Be Countervailable Subsidies
- Comment 48: Whether the LER in British Columbia Results in a Financial Contribution
- Comment 49: Whether Log Export Restraints Have an Impact in British Columbia

K. Purchase of Goods for MTAR Issues

- *British Columbia*

- Comment 50: Whether Commerce Correctly Calculated a Benefit for BC Hydro EPAs
- Comment 51: Whether Benefits Under the BC Hydro EPA Program Are Tied to Electricity Production and Not Lumber Products

- *Ontario and Québec*

- Comment 52: Whether Resolute’s Ontario and Québec Electricity PPAs Are Tied to Non-Subject Merchandise
- Comment 53: Whether Commerce’s Specificity and Benchmark Analyses Were Inconsistent for Ontario’s and Québec’s Electricity PPA Programs
- Comment 54: Whether Commerce Applied the Correct Benchmark to Calculate the Benefit Under IESO’s CHP III Program
- Comment 55: Whether IESO’s CHP III Program Is Specific
- Comment 56: Whether Commerce Applied the Correct Benchmark to Calculate the Benefit Under Hydro-Québec’s PAE 2011-01 Program
- Comment 57: Whether Hydro-Québec’s PAE 2011-01 Program Is Specific

L. Grant Program Issues

- *Alberta*

- Comment 58: Whether the Payments Made from AESO to West Fraser for Load Shedding Constitute a Financial Contribution
- Comment 59: Whether the AESO Load Shedding Program Is a Grant
- Comment 60: Whether the Benefit for Load Shedding Payments to West Fraser Should Be Adjusted For West Fraser's Costs Incurred
- Comment 61: Whether the Canada-Alberta Job Grant Is Regionally Specific
- Comment 62: Whether the CES Program Is Specific

- *British Columbia*

- Comment 63: Whether the BC Hydro PowerSmart Incentives Subprogram Is Specific
- Comment 64: Whether the Purchase of Carbon Offsets from Canfor Is Countervailable
- Comment 65: Whether Payments Made to West Fraser for Cruising and Block Layout Are Countervailable

- *New Brunswick*

- Comment 66: Whether Commerce Should Continue to Find the Silviculture and License Management Programs Countervailable
- Comment 67: Whether Commerce Should Find LIREPP Countervailable
- Comment 68: Whether Disaster Relief Provided to JDIL to Repair Roads Is Countervailable
- Comment 69: Whether the DTI Settlement with JDIL Was Countervailable

- *Ontario*

- Comment 70: Whether the OFRFP Is Countervailable
- Comment 71: Whether the TargetGHG Program Is Specific
- Comment 72: Whether the TargetGHG Is Tied to Non-Subject Merchandise
- Comment 73: Whether the IESO Retrofit Program Is Specific
- Comment 74: Whether the IESO IEI Is Specific
- Comment 75: Whether the IESO Demand Response Is Countervailable

- *Québec*

- Comment 76: Whether the PCIP Is Countervailable
- Comment 77: Whether the Paix des Braves Is Countervailable
- Comment 78: Whether the Côte-Nord Wood Residue Program Is Countervailable
- Comment 79: Whether Québec's Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances Is Countervailable
- Comment 80: Whether Québec's MCRP Is Countervailable
- Comment 81: Whether Road Clearing Contracts with Hydro-Québec Are Countervailable

- Comment 82: Whether the PAMVFP Is Countervailable
- Comment 83: Whether the Formabois/FDRCMO Is Countervailable
- Comment 84: Whether the MFOR Is *De Facto* Specific
- Comment 85: Whether the MFOR Is a Non-Recurring Subsidy
- Comment 86: Whether the PIB Is Countervailable
- Comment 87: Whether the SOPFEU/SOPFIM Is Countervailable
- Comment 88: Whether Hydro-Québec's IRR Program Is Countervailable
- Comment 89: Whether Hydro-Québec's ISEE Program Is Countervailable
- Comment 90: Whether Hydro-Québec's EDL Is Countervailable
- Comment 91: Whether Hydro-Québec's Special L Rate Is Tied to Pulp and Paper
- Comment 92: Whether Hydro-Québec's Special L Rate Confers a Benefit
- Comment 93: Whether Hydro-Québec's IEO Is Countervailable

M. Tax Programs Issues

- *Federal*

- Comment 94: Whether the Federal and Provincial SR&ED Tax Credits Are Specific
- Comment 95: Whether Class 43.2 Assets Are Tied to Non-Subject Merchandise
- Comment 96: Whether the Class 43.2 Assets Program Is *De Facto* Specific
- Comment 97: Whether the ACCA for Class 29 and Class 53 Assets Program Is Specific
- Comment 98: Whether Commerce Was Correct to Treat the Both the ACCA and Class 1 Additional CCA as Individual Programs
- Comment 99: Whether the Class 1 Additional CCA Program Provides a Financial Contribution that Confers a Benefit
- Comment 100: Whether the Class 1 Additional CCA Program Is Specific
- Comment 101: Whether the FLTC and PLTC Are Countervailable

- *Alberta*

- Comment 102: Whether Alberta's TEFU and British Columbia's Coloured Fuel Program Are Countervailable
- Comment 103: Whether the Benefit Calculation for Tax Savings Under Alberta's TEFU Is Correct
- Comment 104: Whether the EOA Property Tax Is Countervailable
- Comment 105: Whether Tax Savings Under Alberta's Schedule D Are Countervailable

- *British Columbia*

- Comment 106: Whether the IPTC Is Countervailable
- Comment 107: Whether Class 7 Managed Forest Lands Assessment Rates Constitute a Financial Contribution
- Comment 108: Whether the CleanBC Industrial Incentive Program Is Countervailable

- *New Brunswick*

- Comment 109: Whether Commerce Should Find New Brunswick's Property Tax Incentives for Private Forest Producers Program Countervailable
- Comment 110: Whether the Gasoline and Fuel Tax Program Provides a Financial Contribution in the Form of Revenue Forgone or Can Be Found Specific

- *Ontario*

- Comment 111: Whether Ontario's Tax Credit for Manufacturing and Processing Is *De Jure* Specific

- *Québec*

- Comment 112: Whether Québec's Refund of Fuel Tax Paid on Fuel Used for Stationary Purposes Is Specific
- Comment 113: Whether Québec's Research Consortium Tax Credit Is *De Facto* Specific
- Comment 114: Whether Québec's Tax Credit for Investments Relating to Manufacturing and Processing Equipment Is Specific

N. Company-Specific Issues

- *JDIL*

- Comment 115: Whether Commerce Should Include HST in JDIL's Benefit Calculations

- *Resolute*

- Comment 116: Whether Sales of By-products in the Stumpage for LTAR Sales Denominator Were in the Proper Currency
- Comment 117: Whether Countervailing Road Credit Reimbursements Imposes a Double Remedy on Resolute
- Comment 118: Whether the Benefits of Certain Tax Credits Received by Resolute Were Extinguished In the AbitibiBowater Bankruptcy
- Comment 119: Whether Commerce Should Reconsider If the GOO Forgave Debt Owed by Resolute
- Comment 120: Whether Payments Made By the GOO to Resolute Based on Gaming the IESO System Constitute a Countervailable Subsidy
- Comment 121: Whether Commerce Should Correct the Benefit Calculation for Certain Non-Stumpage Programs Used by Resolute

- *West Fraser*

- Comment 122: Whether Commerce Properly Calculated West Fraser's Benefit Under the Class 1 CCA and Class 29/53 ACCA

III. CASE HISTORY

The selected mandatory respondents in this administrative review are Canfor, Resolute, and West Fraser.¹ Commerce also accepted JDIL as a voluntary respondent.² On May 27, 2021, Commerce published the *Lumber V AR2 Prelim*.³

Following the *Lumber V AR2 Prelim*, Commerce requested additional information from the GNB on June 2, 2021.⁴ On June 16, 2021, Commerce received a timely response from the GNB.⁵

On June 25, 2021, the petitioner and Canadian Parties requested that Commerce hold a hearing.⁶ On July 14, 2021, various interested parties submitted timely filed case briefs.⁷ On August 2, 2021, various interested parties submitted timely filed rebuttal briefs on those case issues contained in the case briefs.⁸

On October 26, 2021, Commerce held a public hearing.⁹

On August 13, 2021, Commerce extended the deadline for the final results of this administrative review until no later than November 23, 2021.¹⁰

IV. PERIOD OF REVIEW

The POR is January 1, 2019, through December 31, 2019.

V. SCOPE OF THE ORDER

The merchandise covered by this order is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or

¹ See Respondent Selection Memorandum.

² See Voluntary Respondent Selection Letter.

³ See *Lumber V AR2 Prelim*, and accompanying PDM.

⁴ See GNB DTI Grant SQR.

⁵ See GNB DTI Grant SQR Response.

⁶ See Petitioner Request for Hearing; see also Canadian Parties Request for Hearing.

⁷ See Appendix III (Case-Related Documents) attached to this memorandum for a listing of the case briefs received.

⁸ *Id.*, for a listing of the rebuttal briefs received.

⁹ See Hearing Transcript.

¹⁰ See Extension of Final Results.

faces, whether or not planed, whether or not sanded, or whether or not end-jointed.

- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Finished products are not covered by the scope of this order. For the purposes of this scope, finished products contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products, and such products can be readily differentiated from merchandise subject to this order at the time of importation. Such differentiation may, for example, be shown through marks of special adaptation as a particular product. The following products are illustrative of the type of merchandise that is considered “finished,” for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.

The following items are excluded from the scope of this order:

- Softwood lumber products certified by the Atlantic Lumber Board as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in Newfoundland and Labrador, Nova Scotia, or Prince Edward Island.
- U.S.-origin lumber shipped to Canada for processing and imported into the United States if the processing occurring in Canada is limited to one or more of the following: (1) Kiln drying; (2) planing to create smooth-to-size board; or (3) sanding.
- Box-spring frame kits if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails must be radius-cut at both ends. The kits must be individually packaged and must contain the exact number of wooden components needed to make a particular box-spring frame, with no further processing required. None of the components exceeds 1” in actual thickness or 83” in length.
- Radius-cut box-spring-frame components, not exceeding 1” in actual thickness or 83” in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantially cut so as to completely round one corner.

Softwood lumber product imports are generally entered under Chapter 44 of the HTSUS. This chapter of the HTSUS covers “Wood and articles of wood.” Softwood lumber products that are subject to this order are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44: 4406.11.00.00; 4406.91.00.00; 4407.10.01.01; 4407.10.01.02; 4407.10.01.15;

4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4407.11.00.01; 4407.11.00.02; 4407.11.00.42; 4407.11.00.43; 4407.11.00.44; 4407.11.00.45; 4407.11.00.46; 4407.11.00.47; 4407.11.00.48; 4407.11.00.49; 4407.11.00.52; 4407.11.00.53; 4407.12.00.01; 4407.12.00.02; 4407.12.00.17; 4407.12.00.18; 4407.12.00.19; 4407.12.00.20; 4407.12.00.58; 4407.12.00.59; 4407.19.05.00; 4407.19.06.00; 4407.19.10.01; 4407.19.10.02; 4407.19.10.54; 4407.19.10.55; 4407.19.10.56; 4407.19.10.57; 4407.19.10.64; 4407.19.10.65; 4407.19.10.66; 4407.19.10.67; 4407.19.10.68; 4407.19.10.69; 4407.19.10.74; 4407.19.10.75; 4407.19.10.76; 4407.19.10.77; 4407.19.10.82; 4407.19.10.83; 4407.19.10.92; 4407.19.10.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; 4418.50.0010; 4418.50.00.30; 4418.50.0050; and 4418.99.10.00.¹¹

Subject merchandise as described above might be identified on entry documentation as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. Items so identified might be entered under the following ten-digit HTSUS subheadings in Chapter 44: 4415.20.40.00; 4415.20.80.00; 4418.99.90.05; 4418.99.90.20; 4418.99.90.40; 4418.99.90.95; 4421.99.70.40; and 4421.99.97.80.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.¹²

VI. SUBSIDIES VALUATION

Allocation Period

Commerce made no changes to, and interested parties raised no issues in their case briefs, regarding the allocation period or the allocation methodology used in the *Lumber V AR2 Prelim*. For a description of the allocation period and the methodology used for these final results, see the *Lumber V AR2 Prelim*.¹³

¹¹ The following HTSUS numbers have been deleted, deactivated, replaced, or are invalid: 4407.10.0101, 4407.10.0102, 4407.10.0115, 4407.10.0116, 4407.10.0117, 4407.10.0118, 4407.10.0119, 4407.10.0120, 4407.10.0142, 4407.10.0143, 4407.10.0144, 4407.10.0145, 4407.10.0146, 4407.10.0147, 4407.10.0148, 4407.10.0149, 4407.10.0152, 4407.10.0153, 4407.10.0154, 4407.10.0155, 4407.10.0156, 4407.10.0157, 4407.10.0158, 4407.10.0159, 4407.10.0164, 4407.10.0165, 4407.10.0166, 4407.10.0167, 4407.10.0168, 4407.10.0169, 4407.10.0174, 4407.10.0175, 4407.10.0176, 4407.10.0177, 4407.10.0182, 4407.10.0183, 4407.10.0192, 4407.10.0193; and 4418.90.2500. These HTSUS numbers however have not been deactivated in CBP's ACE secure data portal, as they could be associated with entries of unliquidated subject merchandise.

¹² See *CVD Order*, 83 FR at 349.

¹³ See *Lumber V AR2 Prelim* PDM at 6.

Attribution of Subsidies

Interested parties raised issues in their case briefs regarding the attribution of subsidies. *See* Comments 8, 51 52, 72, 91, and 95. For a description of the methodology used for these final results, *see* the *Lumber V AR2 Prelim*.¹⁴

Denominators

Interested parties raised issues in their case briefs regarding the denominators we used to calculate the countervailable subsidy rates for the subsidy programs described *infra*. *See* Comments 8 and 116. For information on the denominators used in these final results, *see* the *Lumber V AR2 Prelim*¹⁵ and the Final Calculation Memoranda.¹⁶

Benchmark and Discount Rates

Commerce made no changes to, and interested parties raised no issues in their case briefs, regarding the benchmark interest rates used to calculate the benefit for certain subsidy programs. For information on the long-term interest rate and discount rate benchmarks used in these final results, *see* the *Lumber V AR2 Prelim*¹⁷ and the Final Calculation Memoranda.¹⁸

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Provision of Stumpage for LTAR

Provision of Stumpage for LTAR – Alberta

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹⁹ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.²⁰

Canfor:	1.10 percent <i>ad valorem</i>
West Fraser:	3.16 percent <i>ad valorem</i>

¹⁴ *See Lumber V AR2 Prelim* PDM at 6-10.

¹⁵ *See Lumber V AR2 Prelim* PDM at 11.

¹⁶ *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; Resolute Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.

¹⁷ *See Lumber V AR2 Prelim* PDM at 11.

¹⁸ *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; Resolute Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.

¹⁹ *See* Comment 8-10.

²⁰ *See Lumber V AR2 Prelim* PDM at 15-16.

Provision of Stumpage for LTAR – British Columbia

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.²¹ Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.²²

Canfor: 0.07 percent *ad valorem*

West Fraser: 0.10 percent *ad valorem*

Provision of Stumpage for LTAR – New Brunswick

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.²³ Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.²⁴

JDIL: 2.03 percent *ad valorem*

Provision of Stumpage for LTAR – Ontario

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.²⁵ Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.²⁶

Resolute: 3.37 percent *ad valorem*

Provision of Stumpage for LTAR – Québec

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.²⁷ Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.²⁸

Resolute: 8.00 percent *ad valorem*

²¹ See Comment 8-10.

²² See *Lumber V AR2 Prelim* PDM at 20-21.

²³ See Comment 8-10.

²⁴ See *Lumber V AR2 Prelim* PDM at 17-20; Comment 8; and JDIL Final Calculation Memorandum at 1-2 and Attachment 2.

²⁵ See Comments 8-10 15-18, 20, 116.

²⁶ See *Lumber V AR2 Prelim* PDM at 16-17; Comments 18 and 116; and Resolute Final Calculation Memorandum at 1-2 and Attachment 2.

²⁷ See Comment 8, 19, 20, 116.

²⁸ See *Lumber V AR2 Prelim* PDM at 21-23; Comment 116; and Resolute Final Calculation Memorandum at 2 and Attachment 2.

2. British Columbia LER

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.²⁹ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.³⁰

Canfor: 0.02 percent *ad valorem*
West Fraser: No measurable benefit

3. Grant Programs

Federal Grant Programs

Canada – Alberta Job Grant / Canada – Alberta Workforce Development Agreement

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.³¹ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.³²

West Fraser: 0.01 percent *ad valorem*

Alberta Grant Programs

a. Custom Energy Solutions Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.³³ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.³⁴

West Fraser: 0.01 *ad valorem*

Load Shedding Services for Imports

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.³⁵ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.³⁶

West Fraser: 0.07 percent *ad valorem*

²⁹ See Comments 48 and 49.

³⁰ See *Lumber V AR2 Prelim* PDM at 86-87.

³¹ See Comment 6.

³² See *Lumber V AR2 Prelim* PDM at 43.

³³ See Comment 62.

³⁴ See *Lumber V AR2 Prelim* PDM at 21-23.

³⁵ See Comments 58, 59, and 60.

³⁶ See *Lumber V AR2 Prelim* PDM at 42-45.

British Columbia Grant Programs

a. Carbon Offset Grants

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.³⁷ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.³⁸

Canfor: 0.03 percent *ad valorem*

BC Hydro Power Smart: Incentives

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.³⁹ **Commerce has not modified** its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁴⁰

West Fraser: 0.07 percent *ad valorem*

New Brunswick Grant Programs

a. New Brunswick Provision of Silviculture Grants

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁴¹ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁴²

JDIL: 0.34 percent *ad valorem*

b. New Brunswick License Management Fees

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁴³ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁴⁴

JDIL: 0.34 percent *ad valorem*

c. New Brunswick LIREPP

³⁷ See Comment 64.

³⁸ See *Lumber V AR2 Prelim* PDM at 46-47.

³⁹ See Comment 63.

⁴⁰ See *Lumber V AR2 Prelim* PDM at 47-48.

⁴¹ See Comment 66.

⁴² See *Lumber V AR2 Prelim* PDM at 48.

⁴³ See Comment 66.

⁴⁴ See *Lumber V AR2 Prelim* PDM at 48.

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁴⁵ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁴⁶

JDIL: 0.09 percent *ad valorem*

d. New Brunswick DTI

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁴⁷ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁴⁸

JDIL: 0.06 percent *ad valorem*

Nova Scotia Grant Programs

a. Nova Scotia Provision of Silviculture Grants

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁴⁹ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁵⁰

JDIL: 0.01 percent *ad valorem*

Ontario Grant Programs

a. IESO Demand Response

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁵¹ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁵²

Resolute: 0.08 percent *ad valorem*

b. IESO IEI

⁴⁵ See Comment 67.

⁴⁶ See *Lumber V AR2 Prelim* PDM at 49.

⁴⁷ See Comment 69.

⁴⁸ See *Lumber V AR2 Prelim* PDM at 49-50.

⁴⁹ See Comment 66.

⁵⁰ See *Lumber V AR2 Prelim* PDM at 50.

⁵¹ See Comment 4 and 75.

⁵² See *Lumber V AR2 Prelim* PDM at 51.

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁵³ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁵⁴

Resolute: 0.08 percent *ad valorem*

c. TargetGHG Industrial Demonstration Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁵⁵ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁵⁶

Resolute: 0.03 percent *ad valorem*

d. OFRFP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁵⁷ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁵⁸

Resolute: 0.62 percent *ad valorem*

e. IESO Retrofit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁵⁹ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁶⁰

Resolute: 0.02 percent *ad valorem*

Québec Grant Programs

a. PCIP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁶¹ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁶²

⁵³ See Comment 74.

⁵⁴ See *Lumber V AR2 Prelim* PDM at 52.

⁵⁵ See Comment 71 and 72.

⁵⁶ See *Lumber V AR2 Prelim* PDM at 52-53.

⁵⁷ See Comment 70.

⁵⁸ See *Lumber V AR2 Prelim* PDM at 53.

⁵⁹ See Comment 73.

⁶⁰ See *Lumber V AR2 Prelim* PDM at 53-54.

⁶¹ See Comment 76.

⁶² See *Lumber V AR2 Prelim* PDM at 55.

Resolute: 0.03 percent *ad valorem*

b. Paix des Braves

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁶³ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁶⁴

Resolute: 0.05 percent *ad valorem*

c. PIB

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁶⁵ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁶⁶

Resolute: 0.04 percent *ad valorem*

d. MFOR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁶⁷ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁶⁸

Resolute: 0.01 percent *ad valorem*

e. FDRCMO⁶⁹

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁷⁰ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁷¹

Resolute: 0.02 percent *ad valorem*

⁶³ See Comment 77.

⁶⁴ See *Lumber V AR2 Prelim* PDM at 55-56.

⁶⁵ See Comment 86.

⁶⁶ See *Lumber V AR2 Prelim* PDM at 56-57.

⁶⁷ See Comment 84 and 85.

⁶⁸ See *Lumber V AR2 Prelim* PDM at 57-58.

⁶⁹ Commerce preliminarily referred to the program as the Formabois Fund. See *Lumber V AR1 Prelim* PDM at 58.

⁷⁰ See Comment 83.

⁷¹ See *Lumber V AR2 Prelim* PDM at 58.

f. Côte-Nord Wood Residue Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁷² Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁷³

Resolute: 0.02 percent *ad valorem*

g. PAMVFP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁷⁴ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁷⁵

Resolute: 0.01 percent *ad valorem*

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁷⁶ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁷⁷

Resolute: 0.02 percent *ad valorem*

i. MCRP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁷⁸ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁷⁹

Resolute: 0.45 percent *ad valorem*

⁷² See Comment 78.

⁷³ See *Lumber V AR2 Prelim* PDM at 58-59.

⁷⁴ See Comment 82.

⁷⁵ See *Lumber V AR2 Prelim* PDM at 60-61.

⁷⁶ See Comment 79 and 121.

⁷⁷ See *Lumber V AR2 Prelim* PDM at 61.

⁷⁸ See Comment 80.

⁷⁹ See *Lumber V AR2 Prelim* PDM at 62.

j. Hydro-Québec's Special L Rate for Industrial Consumers Affected by Spruce Budworm

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁸⁰ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁸¹

Resolute: 0.43 percent *ad valorem*

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁸² Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁸³

Resolute: 0.88 percent *ad valorem*

l. Hydro-Québec's ISEE

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁸⁴ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁸⁵

Resolute: 0.03 percent *ad valorem*

m. Hydro-Québec's IEO

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁸⁶ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁸⁷

Resolute: 0.11 percent *ad valorem*

⁸⁰ See Comment 91 and 92.

⁸¹ See *Lumber V AR2 Prelim* PDM at 62-63.

⁸² See Comment 90.

⁸³ See *Lumber V AR2 Prelim* PDM at 63-64.

⁸⁴ See Comment 89.

⁸⁵ See *Lumber V AR2 Prelim* PDM at 64-65.

⁸⁶ See Comment 4 and 93.

⁸⁷ See *Lumber V AR2 Prelim* PDM at 65.

n. Hydro-Québec's IRR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁸⁸ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁸⁹

Resolute: 0.02 percent *ad valorem*

o. Hydro-Québec's Reimbursement for Road Clearing

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁹⁰ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁹¹

Resolute: 0.01 percent *ad valorem*

4. Tax and Other Revenue Foregone Programs

Federal Tax Programs

a. ACCA for Class 29 and Class 53 Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁹² Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁹³

Canfor: 0.11 percent *ad valorem*

JDIL: 0.14 percent *ad valorem*

Resolute: 0.02 percent *ad valorem*

West Fraser: 0.24 percent *ad valorem*

b. CCA for Class 1 Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁹⁴ Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁹⁵

⁸⁸ See Comment 88.

⁸⁹ See *Lumber V AR2 Prelim* PDM at 65-66.

⁹⁰ See Comment 81.

⁹¹ See *Lumber V AR2 Prelim* PDM at 66-67.

⁹² See Comment 97 and 122.

⁹³ See *Lumber V AR2 Prelim* PDM at 68; Comment 122; and West Fraser Final Calculations Memorandum at 2 and Attachment 2.

⁹⁴ See Comments 98, 99, 100, and 122.

⁹⁵ See *Lumber V AR2 Prelim* PDM at 69; Comment 73; and West Fraser Final Calculations Memorandum at 2 and Attachment 2.

Canfor: 0.01 percent *ad valorem*
JDIL: 0.06 percent *ad valorem*
Resolute: 0.03 percent *ad valorem*
West Fraser: 0.02 percent *ad valorem*

c. CCA for Class 43.2 Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁹⁶ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁹⁷

Resolute: 0.20 percent *ad valorem*

d. FLTC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.⁹⁸ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.⁹⁹

Canfor: 0.57 percent *ad valorem*
West Fraser: 0.57 percent *ad valorem*

e. SR&ED – GOC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹⁰⁰ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹⁰¹

Canfor: 0.06 percent *ad valorem*
Resolute: 0.06 percent *ad valorem*
West Fraser: 0.06 percent *ad valorem*

Atlantic Investment Tax Credit

Interested parties did not submit comments in their case and rebuttal briefs regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹⁰²

JDIL: 0.16 percent *ad valorem*

⁹⁶ See Comment 95 and Comment 96.

⁹⁷ See *Lumber V AR2 Prelim* PDM at 69-70.

⁹⁸ See Comment 101.

⁹⁹ See *Lumber V AR2 Prelim* PDM at 71.

¹⁰⁰ See Comment 94.

¹⁰¹ See *Lumber V AR2 Prelim* PDM at 71-72.

¹⁰² See *Lumber V AR2 Prelim* PDM at 52.

Alberta Tax Programs

a. Carbon Levy Rebate

Interested parties did not submit comments in their case and rebuttal briefs regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹⁰³

West Fraser: 0.01 percent *ad valorem*

Schedule D Depreciation

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹⁰⁴ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹⁰⁵

Canfor: 0.01 percent *ad valorem*

SR&ED – GOA

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹⁰⁶ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹⁰⁷

West Fraser: 0.01 percent *ad valorem*

Alberta TEFU

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹⁰⁸ Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹⁰⁹

West Fraser: 0.02 percent *ad valorem*

¹⁰³ See *Lumber V AR2 Prelim* PDM at 72-73.

¹⁰⁴ See Comment 105.

¹⁰⁵ See *Lumber V AR2 Prelim* PDM at 75.

¹⁰⁶ See Comment 94.

¹⁰⁷ See *Lumber V AR2 Prelim* PDM at 73-74.

¹⁰⁸ See Comment 102 and 103.

¹⁰⁹ See *Lumber V AR2 Prelim* PDM at 73-74; Comment 103; and West Fraser Final Calculations Memorandum.

Alberta Property Tax – EOA

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹¹⁰ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹¹¹

West Fraser: 0.02 percent *ad valorem*

British Columbia Tax Programs

CleanBC Program for Industry – Industrial Incentive Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹¹² Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹¹³

West Fraser: 0.01 percent *ad valorem*

Managed Forest Lands / Property Tax Program for Private Forest Land

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹¹⁴ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹¹⁵

Canfor: 0.01 percent *ad valorem*

Industrial Property Tax Credit (IPTC) / School Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹¹⁶ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹¹⁷

Canfor: 0.02 percent *ad valorem*

¹¹⁰ See Comment 104.

¹¹¹ See *Lumber V AR2 Prelim* PDM at 74-75.

¹¹² See Comment 108.

¹¹³ See *Lumber V AR2 Prelim* PDM at 76-77.

¹¹⁴ See Comment 107.

¹¹⁵ See *Lumber V AR2 Prelim* PDM at 77-78.

¹¹⁶ See Comment 106.

¹¹⁷ See *Lumber V AR2 Prelim* PDM at 79-80.

Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹¹⁸ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹¹⁹

Canfor:	0.07 percent <i>ad valorem</i>
West Fraser:	0.01 percent <i>ad valorem</i>

PLTC - GBC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹²⁰ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹²¹

Canfor:	0.29 percent <i>ad valorem</i>
West Fraser:	0.29 percent <i>ad valorem</i>

SR&ED – GBC

Interested parties did not submit comments in their case and rebuttal briefs regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹²²

Canfor:	0.03 percent <i>ad valorem</i>
West Fraser:	0.02 percent <i>ad valorem</i>

Training Tax Credit

Interested parties did not submit comments in their case and rebuttal briefs regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹²³

Canfor:	0.01 percent <i>ad valorem</i>
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¹¹⁸ See Comment 102.

¹¹⁹ See *Lumber V AR2 Prelim* PDM at 79.

¹²⁰ See Comment 101.

¹²¹ See *Lumber V AR2 Prelim* PDM at 80.

¹²² See *Lumber V AR2 Prelim* PDM at 78.

¹²³ See *Lumber V AR2 Prelim* PDM at 80-81.

New Brunswick Tax Programs

a. GNB Gasoline & Fuel Tax Exemptions and Refund Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹²⁴ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹²⁵

JDIL: 0.03 percent *ad valorem*

b. New Brunswick R&D Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹²⁶ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹²⁷

JDIL: 0.01 percent *ad valorem*

c. New Brunswick Property Tax Incentives for Private Forest Producer

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹²⁸ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹²⁹

JDIL: 0.14 percent *ad valorem*

Québec Tax Programs

a. SR&ED – GOQ

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹³⁰ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹³¹

Resolute: 0.01 percent *ad valorem*

¹²⁴ See Comment 110.

¹²⁵ See *Lumber V AR2 Prelim* PDM at 81.

¹²⁶ See Comment 94.

¹²⁷ See *Lumber V AR2 Prelim* PDM at 82.

¹²⁸ See Comment 109.

¹²⁹ See *Lumber V AR2 Prelim* PDM at 82-83.

¹³⁰ See Comment 94 and 121.

¹³¹ See *Lumber V AR2 Prelim* PDM at 83.

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹³² Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹³³

Resolute: 0.38 percent *ad valorem*

c. Tax Credit for Investments Relating to Manufacturing and Processing Equipment

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹³⁴ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹³⁵

Resolute: 0.04 percent *ad valorem*

d. Research Consortium Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹³⁶ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹³⁷

Canfor: 0.01 percent *ad valorem*

Resolute: 0.01 percent *ad valorem*

West Fraser: 0.01 percent *ad valorem*

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹³⁸ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹³⁹

Resolute: 0.01 percent *ad valorem*

¹³² See Comment 117 and 118.

¹³³ See *Lumber V AR2 Prelim* PDM at 84.

¹³⁴ See Comment 114.

¹³⁵ See *Lumber V AR2 Prelim* PDM at 84-85.

¹³⁶ See Comment 113 and 121.

¹³⁷ See *Lumber V AR2 Prelim* PDM at 85-86.

¹³⁸ See Comment 112.

¹³⁹ See *Lumber V AR2 Prelim* PDM at 86.

5. Purchase of Goods for MTAR

a. BC Hydro Electricity Purchase Agreements

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹⁴⁰ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹⁴¹

West Fraser: 0.40 percent *ad valorem*

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹⁴² Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹⁴³

Resolute: 1.84 percent *ad valorem*

c. GOO Purchase of Electricity for MTAR under PAE 2011-01

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹⁴⁴ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹⁴⁵

Resolute: 1.02 percent *ad valorem*

6. Debt Forgiveness

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.¹⁴⁶ Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR2 Prelim*.¹⁴⁷

Resolute: 0.12 percent *ad valorem*

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

The respondents reported receiving benefits under various programs, some of which Commerce

¹⁴⁰ See Comment 50, 51.

¹⁴¹ See *Lumber V AR2 Prelim* PDM at 86-87.

¹⁴² See Comment 52, 53, 54, and 55.

¹⁴³ See *Lumber V AR2 Prelim* PDM at 87-89.

¹⁴⁴ See Comment 52, 53, 56, and 57.

¹⁴⁵ See *Lumber V AR2 Prelim* PDM at 89-90.

¹⁴⁶ See Comment 119.

¹⁴⁷ See *Lumber V AR2 Prelim* PDM at 90-91.

initiated and others that were self-reported. Based on the record evidence, we determine that the benefits from certain programs were fully expensed prior to the POR or are less than 0.005 percent *ad valorem* when attributed to the respondent's applicable sales as discussed above in the "Attribution of Subsidies" section of the *Lumber V AR2 Prelim*.¹⁴⁸ Consistent with Commerce's practice,¹⁴⁹ we have not included these programs in the final subsidy rate calculations for the respondents. We also determine that it is unnecessary for Commerce to make a determination as to the countervailability of those programs.

We received comments from interested parties for three of these programs.¹⁵⁰

For the subsidy programs that do not provide a numerically significant benefit for each respondent, *see* the Final Calculation Memoranda.¹⁵¹

C. Programs Determined Not To Be Used During the POR

Our findings regarding programs that were not used remains unchanged from the *Lumber V AR2 Prelim*.¹⁵² Interested parties submitted comments in their case and rebuttal briefs regarding the SOPFEU/SOPFIM program, which are addressed *infra*.¹⁵³ Each respondent reported non-use of programs under examination. For a list of the subsidy programs not used by each respondent, *see* the Final Calculation Memoranda.¹⁵⁴

We received no additional comments from interested parties on the programs referenced in this section.

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

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limited its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. We also note that section 777A(e)(2) of the Act provides that "the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section {705(c)(5) of the Act}." Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by using the weighted average countervailable subsidy rates established for each of the companies

¹⁴⁸ *See Lumber V AR2 Prelim* PDM at 91-92.

¹⁴⁹ *See, e.g., CFS from China* IDM at 15; *Steel Wheels from China* IDM at 36; *Aluminum Extrusions from China First AR* IDM at 14; and *CRS from Russia* IDM at 31.

¹⁵⁰ *See* Comment 65, 68, and 120.

¹⁵¹ *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; Resolute Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.

¹⁵² *See Lumber V AR2 Prelim* PDM at 92.

¹⁵³ *See* Comment 87.

¹⁵⁴ *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; Resolute Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.

individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available. As indicated in the accompanying *Federal Register* notice of the final results, dated concurrently with this memorandum, we determine that Canfor, JDIL, Resolute, and West Fraser received countervailable subsidies that are above *de minimis* and that the rates are not based solely on the facts available. We, therefore, applied to the non-selected companies the weighted average of the net subsidy rates calculated for Canfor, JDIL, Resolute, and West Fraser for the POR.¹⁵⁵ We received no comments from interested parties on the methodology to calculate the non-selected rate.

IX. ANALYSIS OF COMMENTS

A. General Issues

Comment 1: Whether Commerce Should Have Used a Sampling Methodology to Select Respondents for This Review

*Petitioner's Comments*¹⁵⁶

- Commerce improperly rejected the petitioner's request that Commerce should select mandatory respondents using sampling and ignored the purpose of the countervailing duty law.
- Absent sampling, the Canadian federal and provincial governments can continue to strategically provide their subsidies based on who will and will not be subject to review.
- The petitioner illustrated the difference in subsidy usage by comparing Resolute and several smaller companies.¹⁵⁷ This evidence provided Commerce sufficient basis to conclude that the government's subsidization of large exporters differs from that of unexamined exporters.
- Commerce has repeatedly acknowledged that “{t}he Act does not express a preference for either methodology” in situations where individual review of all known exporters is not practicable, and the SAA explains that Commerce “will employ a sampling methodology designed to give representative results.”¹⁵⁸
- Commerce would not have to select 30 companies to create a statistically valid sample as it has suggested previously. In a previous administrative review for an AD order on softwood lumber from Canada, Commerce decided to sample and select eight respondents based on comments and data received by parties to construct a statistically valid sampling methodology.¹⁵⁹

*GOC's Comments*¹⁶⁰

- Sampling is not practicable at this point in the proceeding, is a disfavored methodology for respondent selection, and is unjustified based on the facts of this review.

¹⁵⁵ See Non-Selected Final Rate Memorandum. Consistent with *MacLean-Fogg*, we included the net subsidy rate calculated for JDIL, a voluntary respondent, in the non-selected rate calculation.

¹⁵⁶ See Petitioner's Case Brief at 104-112.

¹⁵⁷ See Petitioner CBP and Sampling Comments at 39-41.

¹⁵⁸ See SAA at 872 and Petitioner CBP and Sampling Comments at Exhibit 1.

¹⁵⁹ See Petitioner's Case Brief (citing Respondent Selection Memorandum at 7).

¹⁶⁰ See GOC's Case Brief Rebuttal at 20-26.

- It is not feasible for Commerce to restart the review using the sampling methodology both in terms of resources it would require and the amount of time remaining to meet statutory deadlines.
- The petitioner does not provide Commerce with a “reasonable basis to believe” subsidization differs between larger and smaller exporters.¹⁶¹ The only two programs which the petitioner alleged were used by smaller companies, but not by Resolute, were not limited by company size and other large, individually examined companies used these two programs.¹⁶²
- The petitioner misleadingly quotes the SAA stating that Commerce will use sampling to ensure it receives “representative results.”¹⁶³ The SAA does not address the threshold for when Commerce should select respondents through sampling and does not indicate that sampling is Commerce’s preferred method to achieve representative results.
- None of the measures used in the respondent selection process would guarantee broad geographic coverage without selecting an impractically large number of respondents.

Commerce’s Position: Statutory deadlines and the inherent complexity that are part of AD and CVD proceedings require Commerce to select respondents for individual examination at the beginning of proceeding, which is exactly what Commerce did in the instant review. Commerce initiated the review on March 10, 2020. After receiving comments from multiple interested parties, on May 19, 2020, Commerce issued the Respondent Selection Memorandum, in which we explained that we relied on CBP data for the value of U.S. imports of softwood lumber to select the three largest shippers, Canfor, Resolute, and West Fraser, as mandatory respondents.¹⁶⁴ Commerce later selected JDIL as a voluntary respondent.¹⁶⁵ While the petitioner continues to object to Commerce’s decision not to select mandatory respondents based on a sampling method, the fact remains that it is simply not feasible for Commerce to revise its respondent selection decision at this late stage of the review. Furthermore, we continue to find that our decision in this review to select the mandatory respondents that account for the largest share of imports of subject merchandise, by value, during the POR was sound.

Section 777A(e)(2)(A)(i) of the Act provides that Commerce may limit its examination to “a sample of exporters or producers that {Commerce} determines is statistically valid based on the information available...at the time of selection.” Although the SAA recognizes that Commerce may employ sampling to select respondents when it is not practicable to individually examine all known exporters and producers, the SAA does not express a preference for sampling in respondent selection.¹⁶⁶ Thus, although the statute allows for sampling in CVD proceedings, we continue to find that it is not feasible in this administrative review to achieve a statistically valid sample as the statute requires. The petitioner has argued that sampling is warranted because there are wide variances in both the size of lumber companies and the level of subsidization between and even within provinces.¹⁶⁷ The petitioner has also argued that we should devote resources to select, *i.e.*, individually examine, using a sampling method at least four mandatory

¹⁶¹ See *Respondent Selection Notice*, 78 FR at 65965.

¹⁶² See *Lumber V AR2 Prelim PDM* at 68 and 75.

¹⁶³ See GOC Case Brief Rebuttal at 25 (citing Petitioner’s Case Brief at 105).

¹⁶⁴ See Respondent Selection Memorandum at 8.

¹⁶⁵ See Voluntary Respondent Selection Letter.

¹⁶⁶ See SAA at 872.

¹⁶⁷ See Respondent Selection Memorandum at 7 (citing Petitioner CBP and Sampling Comments).

respondents in this review.¹⁶⁸ However, we continue to find that to construct a statistically valid sample using company size and geography as the petitioner has suggested, would require selecting more than four respondents, given the number of provinces in Canada. For example, a sample stratified even fairly simply by size (small, medium or large), and by Canada's ten provinces, would require selecting at least 30 companies (*i.e.*, at least one small, medium, and large company for each of the ten provinces).¹⁶⁹ To assuage the concerns the petitioner raised at the outset of this review about differing subsidization within certain provinces would likely require selecting an even larger number of respondents. Using a sampling method to select a smaller number of mandatory respondents, as the petitioner has suggested, would require drastically simplifying the sample stratification further, *e.g.*, to large or small, and east or west, which would likely fail to address the petitioner's stated concerns regarding the variance in subsidization levels among provinces and sub-provinces.¹⁷⁰

In its case brief, the petitioner also argues that Commerce could arrive at a statistically sound sample pool of respondent firms that accounts for company size and geography by selecting as few as eight mandatory respondents.¹⁷¹ We disagree. Commerce made it clear in this review that pursuant to section 777A(e)(2)(A) of the Act and 19 CFR 351.204(c)(2), it had the resources to select only three mandatory respondents, which Commerce later increased to four total respondents when it selected JDIL as a voluntary respondent.¹⁷² Thus, given its available resources, it would not have been feasible for Commerce to have selected an additional four firms as mandatory respondents. We also find that the petitioner's citation to the proceeding in which Commerce selected eight firms using a sampling method involves facts that are distinct from those of the instant review. Specifically, the petitioner cites to Commerce's November 3, 2005, decision in the 2004-2005 AD review of softwood lumber from Canada to select eight mandatory respondents using a sampling methodology that utilized two sample pools, one for companies producing more than 550,000 MBF and the other for firms producing less than 350,000 MBF.¹⁷³ Such a sampling approach may be sound in an AD proceeding, where there is little reason to conclude that the pricing behavior of potential mandatory respondent firms varies by region. However, the petitioner itself argued in the instant review that to account for levels of subsidization that vary across Canada's provinces, Commerce must utilize a sampling method that stratifies not only by company size but by company location, as well. As explained in the Respondent Selection Memorandum, Commerce would need to select as many 30 companies (*i.e.*, at least one small, medium, and large company for each of the ten provinces), to achieve such an outcome and even more than 30 companies if Commerce sought to account for the petitioner's concerns about differing subsidization levels within certain Canadian provinces.¹⁷⁴ Therefore, we disagree with the petitioner that Commerce's decision in a prior AD review of softwood lumber from Canada should have led Commerce to select eight mandatory respondents in the instant CVD review by means of a sampling method.

¹⁶⁸ See, *e.g.*, Respondent Selection Memorandum at 6 (citing Petitioner CBP and Sampling Comments).

¹⁶⁹ See Respondent Selection Memorandum at 7.

¹⁷⁰ See, *e.g.*, Respondent Selection Memorandum at 7 (citing Petitioner CBP and Sampling Comments).

¹⁷¹ See Petitioner Case Brief at 110 (referencing Petitioner CBP and Sampling Comments at Exhibit 13, which contains Commerce's respondent selection memorandum from the 2004-2005 AD review of softwood lumber from Canada at 2).

¹⁷² See Respondent Selection Memorandum at 2-3; *see also* Voluntary Respondent Selection Letter.

¹⁷³ See Petitioner CBP and Sampling Comments at Exhibit 13.

¹⁷⁴ See Respondent Selection Memorandum at 7.

Lastly, we note that by selecting the three largest producers/exporters as mandatory respondents and subsequently selecting JDIL as a voluntary respondent, we have examined the provision of subsidies in the five largest lumber-producing Canadian provinces (*i.e.*, Alberta, British Columbia, New Brunswick, Ontario, and Québec), thus addressing one of the primary concerns raised by the petitioner - that there is a wide variance in the level of subsidization between provinces. Additionally, as noted by the Canadian Parties, relatively few of the many dozens of subsidy programs Commerce examined in this review involve programs that are based on the size of firms' operations, a fact that undercuts the petitioner's claim that Commerce's decision to select as mandatory respondents the three firms that accounted for the largest share of the value of U.S. imports of softwood lumber during the POR prevented Commerce from adequately exploring subsidy programs that the Canadian Central and Provincial Governments provide to small and medium-sized enterprises.

Comment 2: Whether Commerce Properly Required Respondents to Report "Other Assistance"

*GOC's Comments*¹⁷⁵

- Commerce's practice regarding the reporting and treatment of "other assistance" improperly places the burden on respondents to make the petitioner's case and is contrary to the plain requirements of the statute. As the CIT stated in *SolarWorld Ams. Inc.*, the petitioner is responsible for presenting evidence to justify initiation based on section 702(b)(1) of the Act.
- Commerce's "other assistance" question is overly broad. Without any limitation on the scope of the question, everything a government does could conceivably fall within the definition of assistance and becomes a significant undertaking for respondents.
- The legislative history of section 775 of the Act, which pertains to programs discovered during the proceeding, indicates that the same threshold requirements for initiating subsidy programs also apply to programs discovered during the proceeding.
- Commerce's reliance on the CIT's language in *Changzhou Trina Solar Energy v. U.S. (2016)* is misplaced as the facts of the case are different from those of the present review. In the proceeding at issue in *Changzhou Trina Solar Energy v. U.S. (2016)*, Commerce investigated programs for which it had already received information, either in a prior, related, CVD proceeding, or obtained during the verification process. In this review, neither Commerce nor the petitioner possessed information suggesting the existence of any "other assistance" programs.

*Petitioner's Rebuttal Comments*¹⁷⁶

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

Commerce's Position: Canadian Parties raised these same arguments in the prior administrative review.¹⁷⁷ We continue to disagree that Commerce's request that respondent interested parties

¹⁷⁵ See GOC Case Brief at 193-200; see also GBC/BCLTC Case Brief at 100-101.

¹⁷⁶ See Petitioner Rebuttal Brief at 8-11.

¹⁷⁷ See *Lumber V ARI Final IDM* at Comment 4.

report “other assistance” received by the respondents from the Canadian Central and Provincial Governments is inconsistent with domestic law or the United States’ international obligations.

First, with respect to the Canadian Parties’ argument that Commerce’s “other assistance” question is incongruent with the United States’ international obligations, we find that the Act is fully consistent with the international obligations of the United States. Moreover, Commerce is governed by U.S. law, and, as explained in more detail below, our “other assistance” question is fully consistent with section 775 of the Act. The Canadian Parties’ reading of the SCM Agreement has no bearing upon these proceedings. Commerce’s “other assistance” question is governed by, and consistent with, U.S. law.

In addition, the “other assistance” question does not unlawfully shift the burden from the petitioner to respondents. As explained below, the result is consistent with section 775 of the Act and 19 CFR 351.311(b), which require that Commerce investigate potentially countervailable subsidies when sufficient time remains in the proceeding to do so.¹⁷⁸ Here, at the outset of the administrative review, sufficient time remained for Commerce to inquire about other forms of assistance received by the respondents during the POR, and so Commerce requested that the respondent interested parties report such information for Commerce to examine.

The Canadian Parties cite to *SolarWorld Ams. Inc.* for the proposition that Commerce’s “other assistance” question unlawfully shifts the burden from the petitioner to respondents.¹⁷⁹ We disagree. In *SolarWorld Ams. Inc.*, the CIT held that Commerce reasonably declined to initiate an investigation into subsidy programs alleged in the petition that lacked a sufficient evidentiary basis.¹⁸⁰ The court rejected SolarWorld’s assertions that Commerce should have supplemented the allegations on its own accord, holding that “under section 702(b)(1), it is not for Commerce to seek out evidence supporting the interested party’s petition.”¹⁸¹ Thus, the CIT’s holding in *SolarWorld Ams. Inc.* relates to Commerce’s discretion under section 702(b)(1) of the Act not to initiate where evidence is insufficient; it says nothing about the boundaries of Commerce’s authority under section 775 of the Act.

Investigations into potentially countervailable subsidies to a class or kind of merchandise are initiated in one of two ways. First, an investigation can be self-initiated by Commerce.¹⁸² Second, a domestic interested party may file a petition for the imposition of countervailing duties on behalf of an industry.¹⁸³ Under the second mechanism, those parties are obligated to support their subsidy allegations with information reasonably available to them, and those allegations

¹⁷⁸ See *Changzhou Trina Solar Energy v. U.S.* (2016), 195 F. Supp. 3d at 1345 (“The petitioner’s burden is irrelevant when Commerce chooses to exercise its independent investigative authority under section 775 of the Act... {and thus} Commerce did not unlawfully shift any burden from the petitioner” through its request that respondents report any other forms of governmental assistance).

¹⁷⁹ See *SolarWorld Ams Inc.*, 125 F. Supp. 3d at 1318; see also GOC Case Brief Volume 1 at 225.

¹⁸⁰ See *SolarWorld Ams Inc.*, 125 F. Supp. 3d at 1330.

¹⁸¹ See *SolarWorld Ams Inc.*, 125 F. Supp. 3d at 1330 (referring to section 702 of the Act).

¹⁸² See section 702(a) of the Act.

¹⁸³ See section 702(b) of the Act.

must identify the elements of a countervailable subsidy (*i.e.*, specificity, benefit, and financial contribution).¹⁸⁴

However, once an investigation has been initiated through one of the above mechanisms, then, under section 775 of the Act, Commerce may also investigate potential subsidies it discovers during the proceeding. Specifically, in the course of an investigation, Commerce may “discover{} a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in the countervailing duty petition.”¹⁸⁵ In such a case, Commerce “*shall* include the practice, subsidy, or subsidy program in the proceeding.”¹⁸⁶ Thus, section 775 of the Act imposes an affirmative obligation on Commerce to “consolidate in one investigation ... all subsidies known by petitioning parties to the investigation or by the {Department} relating to {subject} merchandise” to ensure “proper aggregation of subsidization practices.”¹⁸⁷ Commerce’s regulations carve out a limited exception to its obligation to investigate what “appear{}” to be countervailable subsidies: when Commerce discovers a potential subsidy too late in a proceeding, it may defer its analysis of the program until a subsequent review, if any.¹⁸⁸ Moreover, Commerce has broad discretion to determine which information it deems relevant to its determination, and to request that information.¹⁸⁹

We disagree that the facts at issue in *Changzhou Trina Solar Energy v. U.S. (2016)* are distinct from the instant review because the “other assistance” programs examined in that case pertained to previously examined programs or programs discovered during verification. The Court was clear in *Changzhou Trina Solar Energy v. U.S. (2016)* that Commerce has “independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise,” and this “broad investigative discretion” permits Commerce to require respondents to report additional forms of governmental assistance.¹⁹⁰

Thus, consistent with the CIT’s holding in *Changzhou Trina Solar Energy v. U.S. (2016)*,¹⁹¹ we find that Commerce’s “other assistance” question enables Commerce to effectuate its obligation to investigate subsidies that it discovers that appear to be countervailable during a proceeding and is consistent with its broad discretion to seek information it deems relevant to its determination.

¹⁸⁴ See section 702(b)(1) of the Act.

¹⁸⁵ See section 775 of the Act.

¹⁸⁶ See section 775 of the Act (emphasis added).

¹⁸⁷ See S. Rep. No. 96-249 at 98 (1979); see also *Allegheny I*, 112 F. Supp. 2d at 1150 n.12 (“Congress ... clearly intended that all potentially countervailable programs be investigated and catalogued, regardless of when evidence on these programs became reasonably available.”).

¹⁸⁸ See 19 CFR 351.311(b).

¹⁸⁹ See *Changzhou Trina Solar Energy v. U.S. (2016)*, 195 F. Supp. 3d at 1341; see also, e.g., *Ansaldo Componenti, S.p.A.*, 628 F. Supp. at 205; *Essar Steel Ltd. v. U.S.*, 721 F. Supp. 2d at 1298 – 1299, *revoked in part on other grounds*; *Acciai Speciali Terni S.p.A.*, 26 CIT at 167; and *PAM, S.p.A.*, 495 F. Supp. 2d at 1369.).

¹⁹⁰ See *Changzhou Trina Solar Energy v. U.S. (2016)*, 195 F. Supp. 3d at 1341.

¹⁹¹ See *Changzhou Trina Solar Energy v. U.S. (2016)*, 195 F. Supp. 3d at 1346 (“Commerce’s inquiry concerning the full scope of governmental assistance provided by the {Government of China} and received by the Respondents in the production of subject merchandise was within the agency’s independent investigative authority pursuant to {sections 702}(a) and {775 of the Act}, this inquiry was not contrary to law.”).

Furthermore, the legislative history from the 1979 legislation that first enacted section 775 of the Act does not support the contention that Commerce was expected to apply the same threshold standards that apply where a subsidy is alleged by a petitioner under section 702 of the Act whenever Commerce itself “discovers” a potential subsidy under section 775 of the Act. Such an interpretation is not supported by the statute. The second option presented under section 775 of the Act refers to the requirement that Commerce will refer any discovered potential subsidies not connected to the merchandise under investigation to the public library maintained by Commerce.¹⁹² That is, the House Ways and Means Committee expected that any potential subsidies not relating to the subject merchandise under investigation would be investigated in a separate investigation under the normal standards of an investigation initiated under section 702(a) of the Act. We find that the Committee’s expectation does not preclude Commerce from investigating a program or subsidies that appear to be countervailable with respect to merchandise which is the subject of the proceeding, and that we are not precluded from asking questions that enable Commerce to effectuate this obligation.¹⁹³

Similarly, although the Canadian Parties rely on the *1988 CVD Preamble* to argue that Commerce has “acknowledged that its usual initiation standard would apply under section 775” of the Act,¹⁹⁴ we find that this argument is misplaced. Commerce stated, in the *1988 CVD Preamble*, that its regulations “adequately describe the requirements for the initiation and conduct of a *countervailing duty* investigation,” and, thus, there was no further need to describe “how {Commerce} would investigate a subsidy practice discovered *during an antidumping investigation*.”¹⁹⁵ As this is a countervailing duty proceeding, Commerce’s statement in the *1988 CVD Preamble* regarding investigations of subsidy practices discovered during antidumping duty investigations is irrelevant. Here, Commerce has followed the requirements for the conduct of a countervailing duty administrative review, and that the “other assistance” question is not precluded by those requirements.

The Canadian Parties also cite to *Allegheny II* to support the existence of a threshold countervailability finding requirement before including non-initiated programs in an investigation.¹⁹⁶ However, *Allegheny II* is distinguishable, as it concerned Commerce’s decision not to investigate a late-filed subsidy allegation. In that disparate context, the CIT examined what it meant for a practice to “appear” to be countervailable within the meaning of section 775 of the Act, such that Commerce had an obligation to investigate the discovered program. Commerce explained that when an allegation was insufficient, it was not required to go on “fishing expeditions” to determine whether an alleged subsidy or practice was countervailable. However, the facts of this administrative review differ. Here, Commerce requested information regarding potentially countervailable subsidies, to determine whether any such assistance appeared to be countervailable (*i.e.*, the elements necessary for the imposition of countervailing

¹⁹² See H. Rep. No. 96 – 317 at 75 (1979).

¹⁹³ See S. Rep. No. 96 – 249 at 98 (1979); see also *Allegheny I*, 112 F. Supp. 2d at 1150 n.12.

¹⁹⁴ See GOC Case Brief Volume 1 at 198 (citing *1988 CVD Preamble*, 53 FR at 52344).

¹⁹⁵ See *1988 CVD Preamble*, 53 FR at 52344 (emphasis added).

¹⁹⁶ See *Allegheny II*, 25 CIT 816, 821; see also GOC Case Brief Volume 1 at 198.

duties are present) and attributable to subject merchandise. The request was within Commerce’s independent investigative authority and not precluded by *Allegheny II*.¹⁹⁷

Although the Canadian Parties argue that the question is too broad and could conceivably encompass programs such as “general infrastructure . . . , general reduction in income taxes, or social services such as health care,” without regard to countervailability, we disagree.¹⁹⁸ We have not faulted any party for failing to identify obvious general infrastructure spending, and we have not “penalize{d} respondents” for failing to disclose unreported other assistance in this segment of the proceeding. Even if the question implicates some generally available programs, Commerce is not precluded from inquiring about other assistance to determine whether a program or subsidy is countervailable and attributable to the subject merchandise.¹⁹⁹

Comment 3: Whether Electricity Is a Good or a Service

*GOQ’s Comments*²⁰⁰

- Commerce erred by treating government purchases of electricity as a purchase of a “good,” rather than as a non-countervailable purchase of a “service.”
- The statute provides that “{t}he term ‘financial contribution’ means—. . . (iii) providing goods or services, other than general infrastructure, or (iv) purchasing goods.”²⁰¹ Under the statute, a government’s provision of services can be countervailed, the purchase of services cannot.
- That plain meaning is confirmed in the statutory provision defining “benefit,” which reads: “{a} benefit shall normally be treated as conferred where there is a benefit to the recipient, including—. . . (iv) in the case where goods or services are provided, if such goods or services are provided for less than adequate remuneration, and in the case where goods are purchased, if such goods are purchased for more than adequate remuneration.”²⁰² The purchase of goods is included as a potential source of benefit; however, purchases of services are not included.
- Electricity is a service, not a good, and Hydro-Québec’s purchases of that service are non-countervailable as a matter of law.

Commerce’s Position: We disagree with the GOQ that electricity is a service and not a good. Commerce has consistently found the purchase of electricity to be the purchase of a good.²⁰³ In the *Lumber V Final* and *Lumber V ARI Final*, Commerce determined, after analyzing the same evidence as presented in this review, that the purchase of electricity from a government-

¹⁹⁷ See *Changzhou Trina Solar Energy v. U.S.* (2016), 195 F. Supp. 3d at 1343 (“{B}ecause the issue here is not whether Commerce was required to examine these additional programs pursuant to a petitioner’s request that the agency invoke {section 775 of the Act}, cf. *Allegheny Ludlum*, 25 CIT at 824. . . , but rather whether Commerce reasonably exercised its own independent investigative authority, *Allegheny Ludlum* is not controlling.”).

¹⁹⁸ See GOC Case Brief Volume I at 196.

¹⁹⁹ See *Ansaldo Componenti S.p.A.*, 628 F. Supp. at 205; see also *Essar Steel Ltd.*, 721 F. Supp. 2d at 1298-1299; *Acciai Speciali Terni S.p.A.*, 26 CIT at 167; and *PAM, S.p.A.*, 495 F. Supp. 2d at 1369.

²⁰⁰ See GOQ Case Brief Volume 8.B at 8-9.

²⁰¹ *Id.* at 8 (citing sections 771(5)(D)(iii) and (iv) of the Act).

²⁰² *Id.* at 9 (citing section 771(5)(E)(iv) of the Act).

²⁰³ See, e.g., *HRS from Thailand* IDM at Comment 10 (stating “electricity at issue here is not a service, as respondents argue, but a good”); and *Rebar from Turkey Final Results* IDM at Comment 5 (stating “Cebi Enerji produces and sells a good (*i.e.*, electricity)”). While we recognize that the LTAR and MTAR analysis differs in that both goods and services sold for LTAR can be countervailed, in both *HRS from Thailand* and *Rebar from Turkey Final Results*, we clearly stated that electricity was a good.

owned entity was the purchase of a good and not a service.²⁰⁴ In this review, the GOQ raises the same arguments that Commerce has already addressed in those proceedings.²⁰⁵ There is no new information on the record which would cause us to reconsider the determination that electricity is a good. Accordingly, we continue to find that the purchase of electricity by a government-owned utility is the purchase of a good that constitutes a financial contribution under section 771(5)(D)(iv) of the Act and confers a benefit under section 771(5)(E)(iv) of the Act.

Comment 4: Whether Electricity Curtailment Programs Are Countervailable

*GOO's Comments*²⁰⁶

- In the DR Auction, IESO uses a market-based bidding process to purchase the services of participants to curtail their electricity use when asked to do so. Because the statute circumscribes the definition of a financial contribution to circumstances in which an authority is purchasing goods, Commerce cannot countervail IESO's purchases of demand response, which is a service.
- The Demand Response payments are not grants because the payments are provided in exchange for a valuable service. The DR Auction operates in a manner similar to demand response programs in the United States.
- Commerce's prior findings with respect to the purchase of electricity being the purchase of a good are not applicable here because the IESO is not purchasing electricity under the Demand Response. The Supreme Court found that Demand Response payments do not constitute the purchase or provision of a good.²⁰⁷

*GOQ Comments*²⁰⁸

- The IEO program is for the benefit of Hydro-Québec so that it can meet its mandate to reliably supply electricity during peak demand periods. IEO is similar to demand response programs in the United States.
- Under the IEO, Hydro-Québec purchases the service of demand reduction (*i.e.*, the ability to curtail electricity service). The "direct transfer of funds" functions as a reimbursement for the service provided at a cost to the participant. This type of reimbursement is distinct from a grant and cannot be countervailed.²⁰⁹
- The IEO is a non-countervailable purchase of a service. The ability to curtail the electricity service to which companies have a contractual right is the purchase of a service not a good. Under the statute, the provision of services can be countervailed but purchases of services cannot.²¹⁰ Further, the Supreme Court refers to demand response measures as "services."²¹¹

²⁰⁴ See *Lumber V Final IDM* at Comment 48; and *Lumber V ARI Final IDM* at Comment 5; see also *Groundwood Paper from Canada Final IDM* at Comment 36.

²⁰⁵ *Id.*

²⁰⁶ See GOO Case Brief Volume 7 Part 2 at 26-29.

²⁰⁷ *Id.* at 28-29 (citing *FERC v. Electric Power Supply Association*, 577 U.S. 260 (Slip op. at 1 and 28)).

²⁰⁸ See GOQ Case Brief Volume 8.B at 64-70.

²⁰⁹ *Id.* at 67 (citing *DS 533 Panel Report* at para. 7.10.3.1 (finding that reimbursements involving a reciprocal obligation do not constitute grants)).

²¹⁰ *Id.* at 67 (citing section 771(5)(D) of the Act).

²¹¹ *Id.* at 68-69 (citing *FERC v. Electric Power Supply Association*, 136 S. Ct. at 760).

- The actual interruptions that occur under the IEO distinguish the program from other demand side management schemes previously analyzed by Commerce where the curtailment of electricity was extremely unlikely, such as in the *Silicon Metal from Australia Final*.²¹²

*Resolute and Central Canada's Comments*²¹³

- Commerce should find that payments to Resolute under Hydro-Québec's IEO and IESO's Demand Response are government purchases of services—electricity curtailment upon demand—and that they are not countervailable electricity credits. The *CVD Preamble* explains that the purchase of services by a government is not countervailable.²¹⁴ Commerce confirmed in the *Lumber VARI Final* that only government purchases of goods, not services, are potentially countervailable.²¹⁵
- Under the IEO and Demand Response, Resolute sells the service to stop its electricity consumption when directed to help the utilities meet peak demand. The utilities are not making grants, which is a gift without consideration,²¹⁶ but rather are paying for something of value (the action by Resolute to stop its electricity consumption) that they need. As such, the electricity curtailment programs are for the benefit of the utilities because they help maintain the integrity of the grids during peak demand.
- The U.S. Congress, Supreme Court, and FERC recognize that demand response is a service the buyer of electricity provides to the sellers of electricity. The identical activity that is a “service” in the United States cannot be a “good” in Canada.²¹⁷

*Petitioner's Rebuttal Comments*²¹⁸

- Commerce has consistently treated electricity curtailment payments as grants.²¹⁹
- The arguments presented by the GOO, GOQ, and Resolute were previously considered and rejected by Commerce.²²⁰ No party has presented any new arguments that warrant a change in Commerce's countervailable finding with regard to Hydro-Québec's IEO and the IESO's Demand Response.
- For all the reasons discussed in the *Lumber VARI Final*, Commerce should continue to find electricity curtailment programs to be countervailable.

Commerce's Position: We continue to disagree with the respondents that the electricity curtailment programs under consideration in this review are not grants. The respondents raised the same arguments in the first administrative review.²²¹ We found the arguments unpersuasive then and continue to do so here.

²¹² *Id.* at 63 (citing *Silicon Metal from Australia Final* IDM at Comment 2).

²¹³ See Resolute and Central Canada Case Brief at 64-69.

²¹⁴ *Id.* at 65 (citing *CVD Preamble*, 63 FR at 65379).

²¹⁵ *Id.* (citing Lumber VARI Post-Prelim Memorandum: Canfor and West Fraser at 9).

²¹⁶ *Id.* at 69 (citing *Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d at 1383; and *United States – Large Civil Aircraft* (Second Complaint) at paras. 616-617).

²¹⁷ *Id.* at 67 (citing *FERC v. Electric Power Supply Association*, 136 S. Ct. at 760, 763, and 766; and *Energy Policy Act*).

²¹⁸ See Petitioner Rebuttal Brief at 201-202, 239-241, and 268-271.

²¹⁹ *Id.* at 201 (citing *e.g.*, *Groundwood Paper from Canada Final* IDM at Comment 66; and *Silicon Metal from Australia Final* IDM at Comment 2).

²²⁰ *Id.* at 240 (citing *Lumber VARI Final* IDM at Comment 8).

²²¹ See *Lumber VARI Final* IDM at Comments 8, 73, and 84.

As we explained in the *Lumber VARI Final*, we disagree that the curtailment of electricity usage during peak demand equates to the performance of a service by the company for the government-owned utility.²²² Commerce has consistently determined that electricity is a good and not a service. *See* Comment 3. Further, Commerce has found in prior cases that load curtailment programs are, in fact, the provision of a grant.²²³

It is clear from the record that the purpose of the Hydro-Québec’s IEO and IESO’s Demand Response is to incentivize the companies, through electricity credits, to lower energy usage. Hence, the payments under the programs are properly treated as grants, not as compensation. Incentive payments made as part of an electricity curtailment program benefit the recipient company in the manner of a recurring grant. Accordingly, the respondents’ argument that we unlawfully countervailed compensation for services purchased by government-owned utilities is misplaced.

We disagree that the *Silicon Metal from Australia Final* supports a finding that the Ontario and Québec electricity curtailment programs are not countervailable. That case did not establish a requirement that there be no actual curtailments in order for the curtailment payments to be countervailable. In the *Silicon Metal from Australia Prelim*, no company participating in the program curtailed its electricity consumption during the POI.²²⁴ Commerce’s analysis, however, did not end there; the absence of curtailment activities was only one of the factors Commerce considered when determining that the load curtailment program was a grant.²²⁵

We also continue to disagree that Hydro-Québec and IESO, and not Resolute, benefit from the electricity curtailment programs, or that any advantages to the utilities in administering the programs are relevant to the benefit that the companies received from those authorities. In analyzing the benefit received by a grant, Commerce considers the benefit to be the amount of the grant received by the company, pursuant to 19 CFR 351.504(a). Commerce’s regulations at section 351.504 do not contemplate any advantages the government might receive by administering the program.²²⁶ Further, the fact that companies may incur costs when interrupting energy usage does not impact the benefit calculation. *See* Comment 75 and 93.

Consequently, we find no reason to deviate from our preliminary finding that, as payment for complying with electricity interruption notices from Hydro-Québec and IESO, Resolute received electricity credits in its electricity invoices. Because the government-owned utilities made a “direct transfer of funds” via a grant to Resolute, pursuant to section 771(5)(D)(i) of the Act and 19 CFR 351.504(a), we continue to find that the payments confer a benefit in the amount of the

²²² *See Lumber VARI Final* IDM at Comment 8.

²²³ *See, e.g., Groundwood Paper from Canada Final* IDM at Comment 66; *Wire Rod from Italy Final* IDM at Comment 2; *Silicon Metal from Australia Final* IDM at Comment 2; and *CTL Steel Plate from Korea Final*, 64 FR at 73182.

²²⁴ *See Silicon Metal from Australia Prelim* PDM at 6-8, unchanged in *Silicon Metal from Australia Final* IDM at Comment 2.

²²⁵ *See Silicon Metal from Australia Prelim* PDM at 6-8, unchanged in *Silicon Metal from Australia Final* IDM at Comment 2. In this investigation, Commerce also analyzed the reserved electricity capacity.

²²⁶ *See CVD Preamble*, 63 FR at 65361 (“{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the ‘effect’ of a subsidy.”).

electricity credits received by Resolute. Since we have determined that load curtailment is a grant, we need not address the respondents' arguments that load curtailment programs are non-countervailable purchases of a service.

We also disagree that, consistent with the *Government of Sri Lanka v. U.S.*, Commerce must define the term "benefit" as a "gift without consideration" or that it is appropriate to consider the context in which a grant is provided. A grant is not limited to a transfer of money without consideration, nor must a grant only be a gift. Pursuant to the regulations, Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations.²²⁷ Section 771(5)(D)(i) of the Act includes the word "grant" in its definition of a "financial contribution," stating that it is "the direct transfer of funds, such as grants...." According to 19 CFR 351.504(a), "a benefit exists in the amount of a grant." Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.²²⁸ Under this framework, any grant payments are, in fact, a benefit to the recipient.

The respondents cite to *FERC v. Electric Power Supply Association* to support the claim that demand response measures are services and that transactions under these programs are compensation, stating that the Demand Response program is similar to demand response programs in the United States. However, merely pointing to this case does not support the respondents' argument. Nowhere in this case does it discuss the merits of whether a demand response measure is a service.²²⁹ Although demand response measures are discussed in this case, it is only in discussing whether the FERC has the authority to regulate the demand response measures or has the statutory power to do so, issues which are not applicable here. While electricity curtailment programs may be common in countries other than Canada, it does not follow that such programs cannot be countervailable under U.S. CVD law. Further, Commerce is not bound by the interpretations of different statutes made by other U.S. agencies and, thus, the FERC's interpretation of its own statute and finding that demand response measures at issue in that case are a service are not controlling here.

Lastly, in support of their arguments, the respondents cite to *United States – Large Civil Aircraft* (Second Complaint) and the *DS 533 Panel Report*, which were disputes at the WTO. However, WTO panel and Appellate Body conclusions are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.²³⁰ Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel or Appellate Body dispute settlement reports limit automatically Commerce's discretion in applying the statute in an AD or CVD proceeding.²³¹ Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."²³²

²²⁷ See 19 CFR 351.503(a).

²²⁸ See 19 CFR 351.503(c).

²²⁹ See generally *FERC v. Electric Power Supply Association*, 577 U.S. 260 (2016).

²³⁰ See *Corus Staal BV v. U.S.*, 395 F. 3d 1347-49, accord *Corus Staal BV v. U.S.*, 502 F. 3d 1375; and *NSK Ltd. v. U.S.*, 510 F. 3d 1379-80.

²³¹ See 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

²³² See SAA at 659.

Comment 5: Whether Ontario and Québec Agreements with Consumers to Reduce GHG Are Grants

*Resolute's Comments*²³³

- Commerce ignores Resolute's contribution to the policy objectives of IESO's Retrofit and Hydro-Québec's ISEE and EDL—programs addressing global climate change. Such programs are not grants because they involve contracts with valuable consideration.
- Commerce has said about the Hydro-Québec programs: “{W}e disagree that the {} program benefits Hydro-Québec and not the participating companies,” and “{a}ny advantages to Hydro-Québec in administering the program are not relevant.”²³⁴
- The trade law, however, recognizes that governments can and do receive benefits from transactions with industry, *e.g.*, remuneration in exchange for goods or services.²³⁵ If Commerce were allowed to ignore the consideration received from a private company, the trade law/regulations would read differently, making no distinctions among types of financial contributions or ways to determine benefit.
- Commerce must assess reciprocity, the consideration provided by and to companies doing business with governments, to determine whether payment for something can be called a “grant” or a “financial contribution,” as if there were nothing in exchange.
- Commerce must also recognize the policy of the United States to take climate change into account in all matters of international trade.

*Petitioner's Rebuttal Comments*²³⁶

- Resolute's argument that Commerce should consider the impact of climate change in reaching its final determination is inconsistent with the statute.
- Commerce has repeatedly explained that whether or not a subsidy program is also intended to achieve environmental policy goals is irrelevant to Commerce's countervailable subsidy analysis.²³⁷

Commerce's Position: We disagree with Resolute's argument that IESO's Retrofit and Hydro-Québec's ISEE and EDL programs are not grants because, according to Resolute, they involve contracts with valuable consideration. Commerce has determined that these provincial programs provide countervailable subsidies in the form of grants to program participants.²³⁸ There is no information or argument on the record of this review that would cause Commerce to reconsider its findings that the assistance provided under these programs constitutes a financial contribution in the form of a direct transfer of funds from the government, pursuant to section 771(5)(D)(i) of the Act. We, therefore, continue to determine that the programs bestow a benefit in the amount of the grants provided, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).

²³³ See Resolute Case Brief at 87-91.

²³⁴ *Id.* at 89 (citing *Lumber V ARI Final IDM* at Comment 85).

²³⁵ *Id.* at 90 (citing 19 CFR 351.505, 351.507, 351.511, and 351.512).

²³⁶ See Petitioner Rebuttal Brief at 267-268.

²³⁷ *Id.* at 268 (citing *Lumber V Final Results of Expedited Review IDM* at Comment 7, noting that “where the government imposes an additional cost to a firm (in this example an environmental regulation) and then creates a subsidy to reduce that firm's cost of compliance,” such a subsidy is fully countervailable).

²³⁸ See *Lumber V ARI Final IDM* at Comment 85 and 86; see also *Lumber V ARI Prelim PDM* at 53-54 and 63-65; and Comment 73, 89, and 90 contained within this memorandum.

The fact that the Retrofit, ISEE, and EDL may benefit the Ontario and Québec utilities with energy efficiencies and reduced GHG emissions is immaterial under the benefit to the recipient standard applied by Commerce when analyzing these programs. When analyzing the benefit, Commerce considers the amount of the grant received by the company, pursuant to 19 CFR 351.504(a), to be the benefit. Under the Retrofit, ISEE, and EDL, Resolute received a financial contribution from the GOO and GOQ in the form of direct transfers of funds. Under this framework, any grant payments are, in fact, a benefit to the recipient.

To be clear, under 19 CFR 351.504, Commerce does not contemplate any advantages the government might receive by administering the program.²³⁹ As Commerce explained in the *CVD Preamble*, “{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the ‘effect’ of a subsidy.”²⁴⁰ Commerce does not consider “the effect of the government action” on a respondent’s performance, or whether the respondent altered its behavior for government policy objectives.²⁴¹ Any advantages to the government or society at large as a result of the programs are not relevant to the benefit that Resolute actually received under the programs.

We disagree that a grant is a gift without consideration or that it is appropriate to consider the context in which a grant is provided. Section 771(5)(D)(i) of the Act includes the word “grant” in its definition of a “financial contribution,” stating that it is “the direct transfer of funds, such as grants... .” Therefore, under the statute, a grant is not limited to a transfer of money without consideration, nor must a grant only be a gift. Pursuant to the regulations, Commerce measures the extent to which a financial contribution confers a benefit as provided for the specific type of benefit.²⁴²

We, thus, disagree that the Retrofit, ISEE, and EDL do not benefit the participating companies, like Resolute, but rather the provincial governments and the general public. Further, whether the GOO and GOQ were able to realize energy efficiencies or advance their climate change policies are immaterial to Commerce’s examination. The focus of Commerce’s analysis is the direct transfer of funds that IESO and Hydro-Québec made to Resolute, within the meaning of section 771(5)(D)(i) of the Act, which conferred a benefit to the company in the amount of the grants received, pursuant to 19 CFR 351.504(a). As such, Resolute’s argument that Commerce must consider climate change in all matters of international trade is misplaced in the context of this review. Within a CVD proceeding, Commerce is charged with administering and enforcing the CVD law to all subsidies under examination equally, notwithstanding the purpose or secondary effects of a program.

²³⁹ See *CVD Preamble*, 63 FR at 65361 (“{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the ‘effect’ of a subsidy.”).

²⁴⁰ *Id.*

²⁴¹ See 19 CFR 351.503(c).

²⁴² See 19 CFR 351.503(a).

Comment 6: Whether Commerce Should Include Fontaine and Mobilier Rustique in the Final Customs Instructions

*Petitioner's Comments*²⁴³

- The petitioner requested, and Commerce initiated, a review of Fontaine and Mobilier Rustique, but the draft cash deposit and liquidation instructions excluded the companies.
- Commerce should include Fontaine and Mobilier Rustique in the final customs instructions to be issued at the conclusion of this review.

Commerce's Position: Fontaine and Mobilier Rustique were inadvertently omitted from Commerce's draft cash deposit and liquidation instructions.²⁴⁴ The petitioner requested an administrative review of Fontaine and Mobilier Rustique,²⁴⁵ and Commerce initiated a review of these companies.²⁴⁶ The petitioner did not withdraw its review requests of Fontaine and Mobilier Rustique. Consequently, Fontaine and Mobilier Rustique are subject to this administrative review and will be included in the cash deposit and liquidation instructions to be transmitted to CBP after completion of this administrative review.

Comment 7: Whether Various Grant Programs Are Government Purchases of Services

*GOC's Comments*²⁴⁷

- Commerce countervailed the governmental purchases of services, which are not subject to the countervailing duty law. In addition, Commerce treated government payments made for certain obligations performed by the company as "grants." In doing so, Commerce unlawfully found that several provincial programs involving payments or credits to companies in exchange for their performing services conferred a benefit and were countervailable.²⁴⁸
- The statute does not define either "good" or "service." Where a term is undefined, the Congressional intent is to give the term its ordinary meaning. The ordinary distinction between a "good" and "service" depends on whether or not it is tangible: goods are tangible; services are not.²⁴⁹ Elsewhere in the *Lumber V AR2 Prelim*, Commerce defined "goods" as "encompassing all property or possessions" and "saleable commodities."²⁵⁰ None of the programs cited previously above meet any of these definitions of "goods."
- The CIT has interpreted "grant" in accordance with the ordinary meaning of the word: that is, a grant is a "gift-like transfer," with nothing received in return.²⁵¹ The WTO has also ruled that

²⁴³ See Petitioner Case Brief at 11-12.

²⁴⁴ See Draft Customs Instructions.

²⁴⁵ See Petitioner Request for Review.

²⁴⁶ See *Initiation Notice*, 85 FR at 13868-70.

²⁴⁷ See GOC Case Brief Volume 1 at 185-192.

²⁴⁸ *Id.* at 185-186 citing the following programs: Alberta Load Shedding Services for Imports, BC Hydro Power Smart Incentives, Ontario's IESO Demand Response Program, Hydro Québec IEO and ISEE, Hydro Québec's L-Rate Rebate program (or the EDL), IESO Retrofit, TargetGHG, New Brunswick Silviculture and License Management Programs, Nova Scotia JDIL Silviculture Program, Hydro-Québec's Reimbursement for Road clearing, Québec MCRP, OFRFP, Québec PCIP, PdB. and the Québec Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances.

²⁴⁹ *Id.* at 187 (citing Good, *Oxford Dictionary of Economics* (5th ed. 2017) and Service, *Oxford Dictionary of Economics* (3d ed. 2009)).

²⁵⁰ *Id.* at 187-188 (citing *Lumber V AR2 Prelim* PDM at 12).

²⁵¹ *Id.* at 189 (citing *Government of Sri Lanka v. United States*, 308 F. Supp. 3d 1373, 1383).

“a grant normally exists when money or money’s worth is given to a recipient without an obligation or expectation that anything will be provided to the grantor in return.”²⁵²

- Commerce, therefore, unlawfully treated the programs cited above as “grants” under section 771(5)(D)(i) of the Act and 19 CFR 351.504(a), as the government payments were made in exchange for certain obligations performed by the company and for which the government received value.

*Resolute’s Comments*²⁵³

- Commerce has improperly taken the view that the mere transfer of a certain amount of money, regardless of the obligations undertaken in exchange for that money, constitutes a grant or, more broadly, a direct transfer of funds, with a presumed benefit of the full amount of the money transferred. This approach is unsupported by the statute and regulations, U.S. case law, and WTO decisions interpreting the SCM Agreement.²⁵⁴
- In the *Lumber V AR2 Prelim*, Commerce unlawfully countervailed multiple transactions between Resolute and the GOO and GOQ by treating transactions as unilateral “grants” or “direct transfers of funds” from the governments. The transactions consistently involve government payments exchanged for reciprocal obligations by which Resolute returned valuable consideration to the governments and should be reconsidered in the final results.

*Petitioner’s Rebuttal Comments*²⁵⁵

- Commerce’s methodology for the programs at issue is consistent with section 771(5)(D)(i) of the Act and 19 CFR 351.504(a). Commerce should reject the Canadian Parties’ arguments regarding whether various grant programs are government purchases of services because they lack new facts or evidence of changed circumstances.

Commerce’s Position: We disagree with the GOC and Resolute that Commerce inappropriately countervailed the government’s purchases of services. The GOC argues that: (1) Commerce incorrectly countervailed the government’s purchases of services for multiple energy and forestry services agreements, contrary to the countervailing duty law; and (2) Commerce incorrectly treated government payments made for certain obligations performed by companies as “grants.” Similarly, Resolute argues that Commerce unlawfully countervailed multiple transactions involving government payments exchanged for reciprocal obligations which should be reconsidered in the final results.

As an initial matter, we agree with the GOC and Resolute that a government’s purchase of services is not countervailable under the statute, as Commerce has stated previously in this proceeding.²⁵⁶ However, we disagree that Commerce inappropriately countervailed the 15 programs the GOC references.²⁵⁷ In total, there are seven energy agreements and eight forestry

²⁵² *Id.* at 190-191 (citing *DS 533 Panel Report* at paragraph 7.618).

²⁵³ See Resolute Case Brief at 61-63.

²⁵⁴ *Id.* at 61-62 (citing *Government of Sri Lanka v. United States*, 308 F. Supp. 3d 1373, 1383; and *Wilmar Trading PTE Ltd. v. United States*, 466 F. Supp. 3d 1334, 1343).

²⁵⁵ See Petitioner Rebuttal Brief at 199-201, 203-204, 216-219, 223-225, 265-268, 273-274, 278-280, 289-291, and 293-295.

²⁵⁶ See *Lumber V AR1 Post-Prelim Memorandum: Canfor and West Fraser* at 10-16.

²⁵⁷ See GOC Case Brief Volume 1 at 185-186.

agreements that the GOC argues Commerce incorrectly countervailed.²⁵⁸ The GOC argues that Commerce avoided all discussion of “financial contribution” for the programs described since the *Lumber VARI Final*. Each of the programs the GOC describes is discussed in detail in this memorandum, including the subject of financial contribution. Thus, the GOC’s argument, as it regards the prior review, is moot.

In sum, we disagree that any of the 15 programs referenced by the GOC or Resolute that Commerce has countervailed constitute the government’s purchase of services. *Chevron* holds that “if the statute is silent or ambiguous with respect to {a} specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.”²⁵⁹ Commerce’s consistent case practice for analyzing these subsidies demonstrate an understanding and reasoned application of the statute’s scope, as detailed in each program’s analysis in this memorandum. While the GOC states that “{n}one of the programs identified above meet any of these definitions of ‘goods,’” it does not provide a detailed rationale or theme in its argument for Commerce to rebut beyond its disagreement regarding the Alberta Load Shedding Services for Imports program, which Commerce discusses in detail elsewhere in this memorandum.²⁶⁰

Resolute’s program specific reference to transactions between Resolute and the Governments of Québec and Ontario are also discussed in further detail elsewhere in this memorandum.²⁶¹

Next, we disagree that Commerce incorrectly treated government payments made for certain obligations performed by companies as grants. There is no legal basis for the argument that direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act, such as grants, are limited to “gift-like” transfers conferred without consideration. To the extent that the CIT previously construed “grant” according to a dictionary definition that references “gift,” a dictionary definition does not supersede Commerce’s application of the Act. Rather, the regulations state that Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations.²⁶²

Additionally, in support of its arguments, the GOC cites the *DS 533 Panel Report*. However, WTO panel conclusions are without effect under U.S. law “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URAA.²⁶³ Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel reports limit automatically Commerce’s discretion in applying the statute in an AD or CVD

²⁵⁸ *Id.*

²⁵⁹ *See Chevron*, 467 U.S. at 843.

²⁶⁰ *See* Comment 58; *see also* Comment 59.

²⁶¹ *See* Comment 70; *see also* Comment 71; *see also* Comment 74; *see also* Comment 75; *see also* Comment 76; *see also* Comment 77; *see also* Comment 79; *see also* Comment 80; *see also* Comment 81; *see also* Comment 89; *see also* Comment 90; *see also* Comment 92; *see also* Comment 93.

²⁶² *See* 19 CFR 351.503(a).

²⁶³ *See Corus Staal BV v. U.S.*, 395 F. 3d 1347-49, accord *Corus Staal BV v. U.S.*, 502 F. 3d 1375; and *NSK Ltd. v. U.S.*, 510 F. 3d 1379-80.

proceeding.²⁶⁴ Put simply, WTO reports “do not have any power to change U.S. law or to order such a change.”²⁶⁵

Finally, Commerce is not redefining the meaning of “grant.” As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the “benefit” as “the amount of the grant.” Under 19 CFR 351.504(a) Commerce does not contemplate any advantages the government might receive by administering the program, nor do the regulations require Commerce to consider advantages other parties, such as the general public, may or may have not received. Thus, in these programs where a “direct transfer of funds” via a grant has taken place, we find that the company received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

B. General Stumpage Issues

Comment 8: Whether Stumpage Is an Untied Subsidy

*JDIL’s Comments*²⁶⁶

- First, JDIL sold subject merchandise through sawmills to Kent Building Supplies, a home improvement retailer; however, Commerce inadvertently omitted Kent Building Supplies’ sales of subject merchandise from the denominator in the *Lumber V AR2 Prelim*. Commerce corrected the same inadvertent omission in the original investigation and should do the same here.
- Second, in accordance with 19 CFR 351.525(b)(5)(ii), Commerce should revise the sales denominator used in JDIL’s stumpage benefit calculation to include all of JDIL’s sales of downstream paper products, specifically the sales of wood chips, which are used to make pulp and paper products, sales by JDIL’s Lake Utopia Paper Division of corrugating medium products, and sales by IPP, IPL, and Irving Tissue, minus intercompany sales.
- JDIL supplied wood chips (a by-product of the sawmill process) to IPP and IPL for the production of pulp, and IPP supplied pulp to IPL and Irving Tissue for the production of paper products.
- Commerce has previously determined that wood chips are “primarily dedicated” to the production of pulp, and pulp is “primarily dedicated” to the production of paper; therefore, in accordance with 19 CFR 351.525(b)(6)(iv), subsidies received by JDIL must be attributed not only to JDIL’s sales, but also to sales of downstream products by its cross-owned companies, IPP, IPL, and Irving Tissue, minus intercompany sales.²⁶⁷
- Commerce’s interpretation of the attribution rule under 19 CFR 351.525(b)(6)(iv) is inconsistent with the plain language of the statute, because the regulation’s text refers to “input product” and “downstream product” – without qualification – yet Commerce interprets this regulation as applying only to suppliers of an “an input that is primarily dedicated to the

²⁶⁴ See 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

²⁶⁵ See SAA at 659.

²⁶⁶ See JDIL Case Brief at 23-25 and 45-52.

²⁶⁷ *Id.* at 47-48 (citing *SC Paper from Canada – Expedited Review* – PDM at 10, unchanged in *SC Paper from Canada – Expedited Review – Final Results* IDM).

production of subject merchandise to a cross-owned, downstream producer of subject merchandise.”²⁶⁸

- Commerce’s interpretation of the attribution rule is also mathematically incorrect and results in a biased application of the provision and overcollection of countervailing duties because Commerce applies the attribution regulation to increase the respondent’s overall subsidy rate but disregards the instruction of the regulation when doing so would decrease the respondent’s overall subsidy rate, and this unequal application of the attribution rule results in over-collecting countervailing duties.
- Commerce’s finding in the *Lumber V AR2 Prelim* that the wood chips JDIL sold to cross-owned companies are not an input primarily dedicated to the production of subject merchandise and that the attribution rule does not apply is flawed because Commerce applies this regulation only to capture subsidies received by upstream, cross-owned companies when the respondent is the downstream producer but does not equally apply the regulation to include sales made by downstream, cross-owned companies when the input producer is the respondent.

*Resolute’s Comments*²⁶⁹

- Commerce should use Resolute’s total sales as the sales denominator for stumpage, because Crown stumpage rights in Ontario and Québec are not tied to sawmill products, and Resolute is only able to produce pulp and paper because its sawmills process standing timber from stumpage and supply the wood chips to the company’s pulp and paper mills.
- Resolute’s sawmills consume stumpage and produce lumber in addition to wood chips, which are sold to Resolute’s affiliated pulp and paper mills to produce non-subject pulp and paper.
- In *Groundwood Paper from Canada Final*, Commerce found that stumpage is an untied subsidy and attributed Resolute’s stumpage purchases for LTAR to paper and all other forest products, and Commerce should make the same finding in this proceeding.²⁷⁰
- Commerce treats Resolute’s electricity sales as an untied subsidy (with the exception of biomass cogenerated electricity, which Commerce found to be tied to non-subject merchandise) and uses all of Resolute’s sales, including sales of products from sawmills, as the denominator for the electricity for MTAR benefit calculation.
- Stumpage is an input in all of Resolute’s forest products and chips produced from stumpage are transferred between sawmills and pulp and paper mills; therefore, Commerce should apply the same principle of attribution to stumpage that that it applies to electricity and find that stumpage is an input in Resolute’s downstream products of pulp and paper, making it an untied subsidy that should be attributed to all of the company’s sales.

*Petitioner’s Rebuttal Comments*²⁷¹

- Commerce’s established practice is to attribute subsidies from the provision of timber or logs for LTAR used in sawmills to the products produced in sawmills (*i.e.*, softwood lumber and its co-products), which is consistent with 19 CFR 351.525(b)(5)(i), which states that if a subsidy

²⁶⁸ *Id.* at 49 (citing *Lumber V AR1 Final* IDM at Comment 114).

²⁶⁹ See Resolute and Central Canada Case Brief at 21 and 39-45.

²⁷⁰ *Id.* at 41 (citing *Lumber V AR1 Final* IDM at 65).

²⁷¹ See Petitioner Rebuttal Brief at 106-110.

is “tied to the production or sale of a particular product, {Commerce} will attribute the subsidy only to that product.”²⁷²

- Commerce’s practice has been to consider only the subsidy on timber (or logs) entering sawmills, and to attribute that subsidy to the products produced in sawmills, because the Canadian provinces know that when they provide standing timber suitable for lumber manufacture to lumber producers, this timber will be used to produce lumber and other sawmill products.²⁷³
- Commerce has determined in previous proceedings that the proper sales denominator for the stumpage for LTAR programs is sales of lumber and by-products by sawmills and should continue to do so in this administrative review.²⁷⁴
- Specifically, Commerce should continue to include in the stumpage denominator all subject merchandise, both softwood lumber produced in sawmills, as well as softwood lumber that undergoes additional processing but remains subject merchandise, and the value of co-products and residual products produced in sawmills, excluding any value added that may turn subject merchandise into non-subject merchandise (e.g., I-joists) or value added that may turn co-products and residual products into other products after the softwood lumber production process (e.g., pulp, paper, or electricity).
- Commerce should reject JDIL’s argument that the sales denominator should include sales by IPP, IPL, and Irving Tissue, as was done in *SC Paper from Canada – Expedited Review – Final Results*, because JDIL is an “input supplier” to IPL, IPP, and Irving Tissue, and under 19 CFR 351.525(b)(6)(iv) the wood chips that JDIL supplies to these companies are not an input primarily dedicated to softwood lumber.²⁷⁵

Commerce’s Position: The CVD rate is equal to the benefit received by a respondent divided by the respondent’s appropriate sales. As the *CVD Preamble* explains, with respect to the attribution rules, a benefit generally is conferred when a firm pays less than it otherwise would pay in the absence of the government-provided input or when a firm receives more revenue than it otherwise would earn.²⁷⁶ Thus, subsidies are by these rules attributed, to the extent possible, to the sales for which costs are reduced (or revenues increased). For example, an export subsidy reduces the costs of a firm’s exports and is, therefore, attributed only to export sales. A subsidy provided by a government for a specific product is attributed only to sales of that product for which the subsidy was provided, and any downstream products produced from that product. Here, our calculation of the benefit was limited only to benefits conferred to Resolute’s sawmills which produced lumber and lumber co-products. Thus, these subsidies reduce the production costs of lumber and lumber co-products. Therefore, we attributed benefits received by sawmills to the sales of lumber and lumber co-products.

Further, as we explained in the *Lumber IV ARI Final*:

²⁷² *Id.* at 107 (citing *Lumber V Final* IDM; *Lumber V ARI* IDM at 65, and *Lumber IV Final Results of 1st AR* IDM at 7).

²⁷³ *Id.* at 107-110 (citing *Lumber IV Final* IDM at 20-21; *Lumber V Final* IDM; and *Lumber V ARI Final* IDM at 7).

²⁷⁴ *Id.* at 106 (citing *Lumber V Final* IDM at Comment 83; and *Lumber V ARI Final* IDM at Comment 10).

²⁷⁵ *Id.* (citing *Lumber V Final* IDM at Comment 83).

²⁷⁶ See *CVD Preamble*, 63 FR at 65400.

In the numerator of the calculation, Commerce included only the benefit from those softwood Crown logs that entered and were processed by sawmills during the POR (*i.e.*, logs used in the lumber production process). Accordingly, the denominator used for this final calculation included only those products that result from the softwood lumber manufacturing process. Consistent with Commerce's previously established methodology, we included the following in the denominator: softwood lumber, including softwood lumber that undergoes some further processing (so-called "remanufactured" lumber), softwood co-products (*e.g.*, wood chips) that resulted from lumber production at sawmills, and residual products produced by sawmills that were the result of the softwood lumber manufacturing process, specifically, softwood fuelwood and untreated softwood ties.²⁷⁷

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

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

However, we do not agree with Resolute that we should attribute subsidies received by sawmills to all sales. While 19 CFR 351.525(b)(2) states that Commerce will attribute a domestic subsidy to all products sold by a firm, as explained in the *CVD Preamble*, that is because an untied domestic subsidy reduces the costs of all products sold by the firm.²⁷⁸ Thus, if we were to attribute a subsidy to all sales by Resolute, we would need to make sure that we capture all domestic subsidies (*i.e.*, stumpage subsidies) that reduce the costs of all products sold by Resolute. The current record indicates that Resolute's total sales values include lumber and its co-products, as well as non-lumber products, such as sales of pulp and paper products.²⁷⁹ Thus, to utilize a total sales denominator, we would need a numerator that not only captures sawtimber stumpage subsidies but also stumpage subsidies on pulp logs. The record does not contain stumpage subsidies on pulp logs delivered to Resolute's pulp mills. The record only contains stumpage subsidies for sawlogs delivered to Resolute sawmills.²⁸⁰ Subsidies for lumber and its co-products can only reduce production costs for lumber and its co-products. Thus, we did not attribute stumpage subsidies on this record to all sales. Further, as stated above, consistent with

²⁷⁷ See *Lumber IV ARI Final* IDM at 7.

²⁷⁸ See *CVD Preamble*, 63 FR at 65400.

²⁷⁹ See Resolute Non-Stumpage IQR Response at Exhibit RES-NS-SALES-1.2.

²⁸⁰ See Resolute Stumpage IQR Response at Exhibit RES-STUMP-ON-1 at Table 1 and Exhibit RES-STUMP-QC-; Resolute Stumpage SQR1 at Exhibit RES-STUMP-QCCOM-1.1; and Resolute Stumpage SQR2 at Exhibit RES-STUMP-QC-1-JAN2019.

Lumber IV, with regard to stumpage for LTAR, our practice is to include in the stumpage denominator all sales of subject merchandise—both softwood lumber produced in sawmills, as well as co-products of the sawmills—but not any value-added products produced from the lumber or co-products that are non-subject merchandise, such as pulp, paper, or electricity.

Resolute further argued that Commerce’s treatment of the denominator for Resolute’s purchases of stumpage for LTAR should be no different than its treatment of the denominator for sales of electricity for MTAR, for which Commerce “divided the sum of the benefits by the total sales of Resolute during the relevant calendar year.” We disagree. As we explained in Comment 52, electricity is an input that benefits all products produced by a company and, thus, benefits from electricity subsidies are attributed to a company’s total sales. Further, from the sales of electricity to the provincial utilities, Resolute is receiving more revenue than it otherwise would have earned. Because money is fungible, the revenue from the electricity sales benefits Resolute’s overall production and sales of products. Thus, the proper denominator for calculating the subsidy rate from the sale of electricity for MTAR is Resolute’s total sales of all products produced.

We continue to disagree with JDIL’s comments that Commerce should include sales by cross-owned producers of downstream products in its sales denominator when calculating the net subsidy rate under the provision of Crown-origin stumpage for LTAR program.²⁸¹

In the *Lumber V AR2 Prelim*, we attributed the benefit from subsidies that JDIL received to its total sales, because JDIL is the sole subject merchandise producer.²⁸² Furthermore, to calculate JDIL’s benefit from the provision of stumpage for LTAR, Commerce limited the sales denominator to JDIL’s “total softwood lumber sales and total softwood co-product sales (*i.e.*, products produced by sawmills) during the CY 2017 and 2018.”²⁸³ Thus, 19 CFR 351.525(b)(6)(iv) is inapplicable to this case proceeding, because JDIL is not an “input supplier” for the purpose of attribution in this case.

JDIL, nonetheless, argues that, pursuant to 19 CFR 351.525(b)(6)(iv), JDIL supplies an input (wood chips) to its cross-owned companies (IPP, IPL, and Irving Tissue), for production of downstream products (pulp and paper) for which the supplied wood chips are primarily dedicated. Thus, JDIL argues that Commerce must attribute subsidies received by JDIL to the combined sales of JDIL and its cross-owned producers of pulp and paper (minus intercompany sales). In the *Lumber V AR2 Prelim*, Commerce did not include as part of its calculations IPP, IPL, or Irving Tissue’s sales of pulp and paper products, pursuant to 19 CFR 351.525(b)(6)(iv).²⁸⁴ Commerce adopted this approach because 19 CFR 351.525(b)(6)(iv) is only applicable to subsidies received by suppliers who provide an input that is primarily dedicated to the production of subject merchandise to a cross-owned, downstream producer of subject merchandise. JDIL, the producer of subject merchandise, supplied non-subject inputs (wood chips) to cross-owned, downstream producers of non-subject merchandise (pulp and paper producers). Furthermore, information from JDIL acknowledges that subsidies received by IPP,

²⁸¹ See *Lumber V AR1 Final IDM* at Comment 114.

²⁸² See *Lumber V AR Prelim PDM* at 31 and 36.

²⁸³ *Id.*

²⁸⁴ See *Lumber V AR Prelim PDM* at 31 and 36; see also JDIL Preliminary Calculation Memorandum.

IPL, and Irving Tissue do not meet any of the four exceptions for attributing to the production of subject merchandise subsidies received by cross-owned corporations under 19 CFR 351.525(b)(6)(ii) - (v), such that questionnaire responses were required from these companies.²⁸⁵ As none of these three companies fall under the exceptions provided in 19 CFR 351.525(b)(6)(ii) – (v), we have not expanded the denominator to include their sales.

Although JDIL attempts to argue that we should expand its denominator because it is an “input supplier” to IPL, IPP, and Irving Tissue under 19 CFR 351.525(b)(6)(iv), the wood chips it supplies to these companies are not a primarily dedicated input to the production of subject merchandise, softwood lumber. As discussed above and consistent with the prior review,²⁸⁶ 19 CFR 351.525(b)(6)(iv) is inapplicable here, given that we attributed the benefit from subsidies that JDIL received to its total sales, because JDIL is the sole subject merchandise producer. JDIL is not an input supplier in this case.

JDIL cites to the *SC Paper from Canada – Expedited Review– Preliminary Results* as support for including IPP, IPL, and Irving Tissue’s sales in the denominator. However, the situation in that case is very different. Unlike this proceeding, in the *SC Paper from Canada – Expedited Review*, Commerce treated JDIL as an input supplier.²⁸⁷ Thus, under 19 CFR 351.525(b)(6)(iv), in the *SC Paper from Canada – Expedited Review*, Commerce needed to account for sales of subject merchandise or a derived downstream product. This is not the case here.

JDIL also argues that Commerce inadvertently omitted Kent Building Supplies’ sales of subject merchandise from the denominator in the *Lumber V AR2 Prelim*. We agree and have corrected this omission in the final results.²⁸⁸

Comment 9: Whether to Compare Government Transaction-Specific Prices to an Average Benchmark Price

*GOC’s Comments*²⁸⁹

- Commerce’s LTAR regulation requires comparing “the government price to a market-determined price” or to a world market price when calculating benefit.²⁹⁰
- The regulation uses the term “price” in the singular and thus implies that a single government price must be compared to a single market-determined price; however, Commerce’s methodology of comparing each transaction price to a single average benchmark price, even when that benchmark price derives from a series of discrete transactions, effectively interprets “government price” as plural and “market-determined price” as singular.
- A provincial stumpage program does not confer a benefit by providing standing timber if it results in aggregate standing timber prices that are the same or higher, on average, than the benchmark; however, Commerce’s asymmetrical comparison of individual transaction prices

²⁸⁵ JDIL states that IPP, IPL, and Irving Tissue do not have a reporting obligation per 19 CFR 351.525(b)(6)(ii) – (v) and therefore did not provide a full questionnaire response for these companies. See JDIL Company Affiliation Response at Exhibit 2.

²⁸⁶ See *Lumber V AR1 Final IDM* at Comment 114.

²⁸⁷ See *SC Paper from Canada – Expedited Review– Preliminary Results PDM* at 10.

²⁸⁸ See JDIL Final Calculation Memorandum; see also *Lumber V Final IDM* at Comment 81.

²⁸⁹ See GOC Case Brief Volume 1 at 160-166.

²⁹⁰ *Id.* at 160 (citing *Lumber IV NAFTA June 7, 2004 Panel Decision On Remand Determination* at 18).

to an average benchmark price is distortive and is likely to yield a positive benefit because a respondent typically pays different prices over time.

- Due to significant differences in prevailing market conditions (*e.g.*, geography, species, size, haul costs), Commerce calculated a benefit based solely on price differences due to the asymmetry of comparing the average market conditions reflected in the full range of prices included in the benchmark to the particular, idiosyncratic conditions reflected in each individual transaction with a price less than the benchmark, whereas if Commerce were to compare the average of the respondent's transaction prices, the positive and negative variations from the mean of each individual transaction price would cancel each other out.
- To comply with the regulation, Commerce must make a symmetrical comparison that takes into account the entire remuneration paid for the goods received by comparing a benchmark to an average of a respondent's transaction prices.²⁹¹

*Petitioner's Rebuttal Comments*²⁹²

- Commerce has articulated that its "preference is to compare the prices of individual transactions with the government to monthly average benchmark prices, where possible."²⁹³
- The Canadian Parties have not provided a basis for Commerce to depart from its prior reasoning, other than that Commerce's methodology results in "negative benefits," an argument which Commerce should reject, as detailed in rebuttal comments regarding Comment 10.

Commerce's Position: The Canadian Parties argue that Commerce should compare the respondents' individual purchases of Crown-origin standing timber with a benchmark that is similarly transaction specific so that benefits calculated on one transaction may be offset with negative benefits from another transaction. We find the Canadian Parties' criticism of Commerce's price comparison method in the stumpage LTAR benefit analysis is, essentially, the same zeroing argument they made in the prior review. Consistent with the prior review, we reject this argument.²⁹⁴ As we stated in the investigation:

In a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked or otherwise offset by "negative benefits" from other transactions. The adjustment the {Canadian Parties} are seeking is essentially a credit for transaction that did not provide a benefit – this is an impermissible offset, contrary to the Act, and inconsistent with {Commerce}'s practice.²⁹⁵

As we explained in the investigation and in *Lumber IV*, the Act defines the "net countervailable subsidy" as the gross amount of the subsidy less three statutorily prescribed offsets: (1) the deduction of application fees, deposits or similar payments necessary to qualify for or receive a

²⁹¹ *Id.* at 162-163 (citing *DS 533 Panel Report*, para. 7.584).

²⁹² See Petitioner Rebuttal Brief at 95-97.

²⁹³ *Id.* at 97 (citing *Lumber V ARI Final IDM* at Comment 11; *OCTG China 2011 IDM* at Comment 7; and *Stainless Steel Sinks China INV* at Comment 21).

²⁹⁴ See *Lumber V ARI Final IDM* at Comment 11.

²⁹⁵ See *Lumber V Final IDM* at Comment 15.

subsidy, (2) accounting for losses due to deferred receipt of the subsidy, and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy.²⁹⁶

Congress and the courts have confirmed that the statute permits only these specific offsets.²⁹⁷ Offsetting the benefit calculated with a “negative” benefit is not among the enumerated permissible offsets.

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

{I}f there is a financial contribution and a firm pays less for an input than it would otherwise pay in the absence of that financial contribution (or receives revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit is concerned.²⁹⁸

Thus, if Commerce determines that a province has sold timber for LTAR, a benefit exists and the inquiry ends. Commerce will not “reduce” the amount of that benefit by offsetting for purported “negative” benefits.

We further note that Commerce’s preference is to compare the prices of individual transactions with the government to monthly average benchmark prices, where possible.²⁹⁹ For example, in *Stainless Steel Sinks from China INV*, one of the respondents reported its purchases of stainless steel coils based on entries into its accounting system, rather than individual invoices. We discovered at verification that “each line item in Yingao’s purchase database... may represent multiple VAT invoices and/or multiple line items on a VAT invoice.”³⁰⁰ We went on to explain that “because Yingao did not report its purchases based on each line item in its VAT invoices, we cannot determine the total benefit from each purchase of {stainless steel coil} (*i.e.*, each unique price, quantity and specification) from a government authority. We are unable to determine the total benefit because any individual purchases above the benchmark price improperly offset the subsidy benefit from individual purchases below the benchmark price.”³⁰¹ We applied AFA for the prices of Yingao’s purchases of stainless steel coil. Meanwhile, for another respondent examined in *Stainless Steel Sinks from China INV*, we followed our practice and “compared the monthly benchmark prices to Superte’s actual purchase prices for {stainless steel coil}.”³⁰² Thus, the Canadian Parties’ suggestion that Commerce average each respondents’ stumpage purchases by month and compare the result to a benchmark composed of

²⁹⁶ See section 771(6) of the Act; see also *Lumber V Final IDM* at Comment 15; and *Lumber IV AR2 Final IDM* at Comment 43.

²⁹⁷ See S. Rep. No. 96-249 at 86 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 472 (“[t]he list is narrowly drawn and is all inclusive.”); see also *Kajaria Iron Castings v. United States* at 11 (“we agree that {section 771(6) of the Act} provides the exclusive list of permissible offsets ...”); and *Geneva Steel* at 62 (explaining that section 771(6) of the Act contains “an exclusive list of offsets that may be deducted from the amount of a gross subsidy”).

²⁹⁸ See *CVD Preamble*, 63 FR at 65361.

²⁹⁹ See *Lumber V Final IDM* at Comment 13; see also *SC Paper from Canada – Expedited Review – Final Results IDM* at Comment 25; *OCTG from China 2011 IDM* at Comment 7; and *Stainless Sinks from China INV IDM* at Comment 21.

³⁰⁰ See *Stainless Steel Sinks from China INV IDM* at 11-12.

³⁰¹ *Id.*

³⁰² *Id.* at 21.

monthly averages would have the same effect as Yingao's failure to report individual transactions for its purchases of stainless steel coil. By offsetting positive benefits with negative benefits, this methodology would distort the benefit that respondents received from stumpage provided for LTAR. Therefore, for the final results, we have continued to calculate the benefit from stumpage provided for LTAR by comparing the prices for individual transactions to a benchmark reflecting a monthly average of private prices in the 2017-2018 Private Market Survey.

In this review, in making our determination regarding what comparison methodology is most appropriate, Commerce considered the specific stumpage and log data collected and reported by the respective provincial governments and the level of detail of such data within the context of the provincial stumpage regimes. Where a comparison of individual transactions to monthly average benchmark prices was not possible, Commerce developed methodologies that best adhered to Commerce's preference.³⁰³

Other than the zeroing arguments that Commerce has consistently rejected in this proceeding, we find the Canadian Parties have not identified any specific distortions resulting from the use of transaction-specific prices in the stumpage calculations in the *Lumber V AR2 Prelim*. Therefore, we find that there is insufficient evidence to support a change in calculation methodology to rely on average prices for the final results.

Comment 10: Whether Commerce Should Calculate Negative Benefits in the Stumpage for LTAR Program

*Canadian Parties' Comments*³⁰⁴

- The plain terms of the LTAR statute under sections 771(5)(E)(i)–(iii) of the Act require Commerce to calculate a singular “benefit” for the provision of the plural “goods.”
- The mandate to calculate a single benefit requires Commerce to calculate a single program-wide benefit for Crown standing timber in British Columbia or New Brunswick for each relevant period in the benchmark comparison.
- However, Commerce improperly calculated a separate benefit for each transaction by comparing individual transactions to average benchmark prices, and then disregarded all comparisons in which the purchase price exceeded the benchmark, thereby failing to calculate a single program-wide benefit that reflects the entire remuneration paid for the entirety of the goods received.
- To calculate a single benefit, Commerce must compare an average of transaction prices to an average of benchmark prices.

³⁰³ For example, based on how JDIL reported its purchases of Crown-origin standing timber, we used a monthly benchmark price, whereas for Resolute's purchases of Crown-origin standing timber we used an annual average price by sawmill and species because the company's Québec stumpage transactions included monthly billing adjustments as the scaling factor is updated throughout the harvest season. For the BC respondents, we relied on a timbermark-based approach and further disaggregated the stumpage calculations by species in order to conduct the benefit analysis on a basis that is as close to a transaction-specific analysis as possible given the available record evidence. See the Respondents' Final Calculation Memoranda for further information.

³⁰⁴ See GOC Case Brief Volume 1 at 158-160.

- In *Lumber VARI*, Commerce argued that disregarding transactions prices that exceed the benchmark as consistent with the statute because accounting for them would constitute disallowed “offsets” under section 771(6) of the Act; however, this argument misreads the statute, because the “offsets” referenced in section 771(6) of the Act are those that are ancillary to the benefit flowing directly from the “financial contribution” at issue, such as application fees or export taxes.
- A NAFTA panel found that “Canada’s claim does not call for an ‘offset,’ but, rather, for valuation of the ‘good’” provided with Commerce’s interpretation of the statute and directed Commerce to recalculate the benefit.³⁰⁵

*JDIL’s Comments*³⁰⁶

- The method Commerce used to calculate JDIL’s stumpage benefit in the *Lumber V AR2 Prelim*, in which it compared individual Crown transactions to monthly average benchmarks and disregarded comparisons in which JDIL’s purchase price exceeded the benchmark price, is distortive and inconsistent with section 771(5)(E) of the Act.
- Commerce’s “transaction-to-average” methodology is inconsistent with the statutory requirement to measure the adequacy of remuneration “in relation to prevailing market conditions for the good” and is distortive because it disregards inferior harvesting conditions, such as harvests subject to the GNB’s “Operational Adjustments” that “account for lower value timber and higher operational costs arising from difficult terrain and certain harvest treatments.”³⁰⁷
- Commerce should use an average-to-average comparison without zeroing negative benefits in order to account for prevailing market conditions in accordance with the Act.

*Petitioner’s Rebuttal Comments*³⁰⁸

- Section 771(6) of the Act explicitly provides for just three offsets to a subsidy benefit amount: (1) the deduction of application fees, deposits or similar payments necessary to qualify for or receive a subsidy; (2) accounting for losses due to deferred receipt of the subsidy; and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy.
- The plain language of the statute is clear that, in the words of Commerce, “{o}ffsetting the benefit calculated with a ‘negative’ benefit is not among the enumerated permissible offsets.”³⁰⁹
- Commerce has explained that its preference is “to compare the prices of individual transactions with the government to monthly average benchmark prices, where possible.”³¹⁰
- Commerce has rejected similar arguments regarding “negative” benefits and should again dismiss this argument for the final results.³¹¹

³⁰⁵ *Id.* at 160 (citing *Lumber IV NAFTA June 7, 2004 Panel Decision On Remand Determination* at 18).

³⁰⁶ See JDIL Case Brief at 25-27.

³⁰⁷ *Id.* at 26 (citing GNB Stumpage IQR Response at STUMP-14).

³⁰⁸ See Petitioner Rebuttal Brief at 95-97.

³⁰⁹ *Id.* at 96 (citing *Lumber VARI Final IDM* at Comment 11).

³¹⁰ *Id.* at 97 (citing *Lumber VARI Final IDM* at Comment 11).

³¹¹ *Id.* at 96-97 (citing *SC Paper from Canada – Expedited Review – Final Results IDM* at Comment 26; *Lumber IV Final Results NSR IDM* at Comment 6).

Commerce’s Position: The Canadian Parties argue that Commerce should conduct the stumpage benefit calculation by comparing the monthly Nova Scotia stumpage benchmark to a monthly average of JDIL’s Crown-origin standing timber transactions and a monthly U.S. PNW benchmark to the Crown-origin standing timber transactions of Canfor and West Fraser. First of all, no matter how the NAFTA Panel described the argument in the *Lumber IV NAFTA June 7, 2004 Panel Decision On Remand Determination*, the Canadian Parties are arguing for an “offset” of positive benefits with “negative benefits,” and the issue before us is whether such an offset is reasonable and in accordance with section 771(6) of the Act. We find that consistent with the prior review and for the same reasons provided above in Comment 9, such a comparison would be unreasonable³¹² and would be inconsistent with the offsets to subsidy benefit amounts expressly provided for in section 771(6) of the Act.

C. Alberta Stumpage Issues

Comment 11: Whether the Alberta Stumpage Market Is Distorted

*GOA’s Comments*³¹³

- The Brattle and Kalt Reports both show that a market with an overwhelming government share is not, by definition, distorted, even if the government price is below the market price.
- Commerce does not offer any metric by which to judge its finding that “a small number of tenure-holding companies continue to dominate the Crown-origin standing timber harvest.” Commerce also does not explain how this purported concentration reduces stumpage prices.
- The “overhang” of unharvested timber in Alberta is not connected to distortion. For example, West Fraser’s unused AAC in Alberta was not economically harvestable standing timber, but rather, was impossible or uneconomical to harvest from during the POR. Further, Commerce acknowledged in the *Lumber V AR2 Prelim* that the Crown timber “overhang” in Alberta was lower than in the prior POR.
- That the GOA charges a flat stumpage rate for a small volume of marginal or undersized logs reflects sound forest management principles and does not distort the stumpage market.

*West Fraser’s Comments*³¹⁴

- Commerce has not identified any mechanism by which the Alberta log market, prices which make up the TDA data, would be affected by Alberta’s system for selling standing timber.
- Commerce has not explained how the purported concentration of standing timber buyers in Alberta could depress prices for standing timber, particularly given that Alberta Crown timber is sold, in part, based on prices from the highly fragmented and competitive U.S. lumber market.
- West Fraser’s unused AAC in Alberta was not economically harvestable standing timber, but rather due to certain areas being impossible or uneconomical from which to harvest during the POR.

³¹² See *Lumber V AR1 Final IDM* at Comment 11.

³¹³ See GOA Case Brief Volume 4.A at 43-50.

³¹⁴ See West Fraser Case Brief at 36-40.

*Petitioner's Rebuttal Comments*³¹⁵

- Over 98 percent of Alberta's harvest was Crown-origin timber and a small number of companies account for the large majority of both Crown and private timber harvested in Alberta. Furthermore, the significant "overhang" indicates that Alberta lumber producers had the option to source timber from the government at a fixed price during the POR, which inevitably affects their private timber purchases.

Commerce's Position: The GOA, relying primarily on arguments that Commerce addressed and rejected in the *Lumber V Final* and *Lumber V ARI Final*, claims that the factors Commerce cited in the *Lumber V AR2 Prelim* as contributing to the Alberta stumpage market's distortion do not individually distort that market.³¹⁶ The GOA's arguments, however, do not engage with how the combination of multiple factors leads to the Alberta stumpage market's distortion. As in the *Lumber V ARI Final Results*, "Commerce relies on the overall and cumulative effect of multiple distorting elements"³¹⁷ in finding that the Alberta stumpage market is distorted, including: (1) Crown-origin timber accounted for the vast majority of the harvest volume in the province; (2) a small number of tenure-holding companies dominated the Crown-origin standing timber harvests, ensuring that private-origin standing timber prices track the prices of Crown-origin timber; and (3) a supply "overhang" existed between the volume of Crown-origin standing timber allocated and the volume harvested, which indicates that the willingness of tenure-holding sawmills to pay for private-origin standing timber will be limited by their costs for obtaining standing timber for their own tenures.

Crown origin harvest constitutes over 98 percent of the standing timber harvest.³¹⁸ Moreover, the same companies are active in both the Crown stumpage and private stumpage markets. Specifically, the 10 largest corporation accounted for approximately 82.6 percent of the allocated Crown-origin standing timber volume and 87.1 percent of the harvested Crown-origin standing timber volume.³¹⁹ Furthermore, a significant share of private-origin harvest, the exact amount of which is BPI, was received by tenure holding mills in Alberta.³²⁰ Comparing these data against other record evidence demonstrates that a significant percent of the private origin timber harvest in Alberta was accounted for by just the five largest harvesters of Crown-origin timber.³²¹

Additionally, private-origin standing timber is a relatively minor and residual source of standing timber for companies that harvest standing timber from both provincial and private lands.³²² Taken together, these facts indicate that the market for both Crown-origin and private-origin standing timber in Alberta is concentrated among a small number of tenure-holding companies and the significant presence of these companies in the private stumpage market ensures that private-origin standing timber prices track the prices of Crown-origin timber. Thus, due to the concentration of the same group of buyers in both the Crown and private stumpage markets, and the availability of significant additional volumes of Crown-origin timber due to the supply

³¹⁵ See Petitioner Rebuttal Brief at 126-129.

³¹⁶ See GOA Case Brief Volume 4.A at 43-44.

³¹⁷ See *Lumber V ARI Final* IDM at 69.

³¹⁸ See GOA IQR Response at Exhibit AB-AR-S-3

³¹⁹ See GOA Market Memorandum at Att 2 'Market Share' tab.

³²⁰ *Id.* at Att. 3 'Table 2 CY 2019' Tab

³²¹ *Id.* at Att. 1 'Summary' Tab

³²² *Id.* at Att. 3 'Table 2 CY 2019' Tab and Att. 1 'Summary' Tab.

“overhang,” we conclude that Crown-origin timber in Alberta is sold at prices not responsive to market forces.³²³

The Canadian Parties argue that the HHI is the preferred economic model used by the U.S. Department of Justice and the Federal Trade Commission in assessing market concentration. Regarding the HHI and concentration metrics, we continue to find that this is not an antitrust case. We are not seeking to identify violations of competition law by sellers, but, rather, we are analyzing whether prices for private-origin standing timber in Alberta, which account for less than two percent of Alberta’s overall standing timber market, are independent of the prices charged for Crown-origin standing timber, which account for over 98 percent of the Province’s overall market. Further, even if the HHI is considered to be meaningful for assessing this proceeding, we note that, according to the Brattle Report, the HHI shows the Alberta timber market to have “‘moderate’ concentration.”³²⁴ Thus, rather than contradicting or disproving Commerce’s distortion finding, use of the HHI as opposed to a concentration ratio merely qualifies one individual prong of Commerce’s finding.

West Fraser separately challenges Commerce’s finding of concentration contributing to distortion by claiming that Commerce does not make clear how a concentration of standing timber buyers in Alberta could depress prices for standing timber in Alberta, given, in particular, that Alberta Crown timber prices are set in part based on U.S. lumber market prices. However, as noted above, Commerce has found that the same set of companies dominate both the Crown-origin and private timber market and that those companies only procure a limited amount of their supply from the private timber market, such that their demand for private timber would be residual. Furthermore, as discussed below, a significant share of the timber sold in Alberta is sold based on a pricing formula that does not have any connection to the U.S. lumber market or any market-determined value whatsoever.

The GOA’s claim that “the Brattle expert report analyzes the stumpage market using standard economic models to demonstrate that the stumpage market is not distorted in Alberta”³²⁵ is a clear mischaracterization of the Brattle Report. The section cited to by the GOA provides economic analysis in support of the GOA’s position that the Alberta log market is not distorted by the GOA’s role in the Alberta stumpage market.³²⁶ This is also true of the Brattle Report in general, with the report stating in the introduction that, “resource economics dictates that prices in the relevant market—the log market—are not suppressed as a result of Provincial stumpage.”³²⁷ However, while the GOA and the Brattle Report may characterize logs as the “relevant market,” the product in question is stumpage, and as such, we find the Brattle Report of little relevance to our analysis of distortion of the Alberta stumpage market.

Unlike the Brattle Report, the Kalt Report does directly claim that a stumpage market with an overwhelming government share, even assuming for argument’s sake that the government share

³²³ See *Lumber V AR2 Prelim* PDM at 15-16.

³²⁴ See AR1 Brattle Report at 42.

³²⁵ See GOA Case Brief Volume 4.A at 44-45.

³²⁶ See Brattle Report at 33-37.

³²⁷ *Id.* at 4.

is provided at a below-market administered price, is not necessarily distorted.³²⁸ The section of the Kalt Report cited by the GOA concludes that “the stumpage rates on these {government} stands would not set, depress and/or distort the market-determined stumpage rate for stand 3,”³²⁹ using the following supply/demand logic as an explanation:

With the pricing of stand 3 left to market forces, the demand and competitive conditions vis-à-vis stand 3 are unaltered by putatively “below-market” government-set stumpage on stands 1, 2, 4, and 5. Those latter stands get harvested anyway and are insufficient to bring overall log supply into balance with overall log demand. They do not provide competitive discipline on stumpage rates for stand 3. The market needs stand 3 for supply and demand to balance, and this occurs at a log price of $P_{\log \text{ mkt}}$.³³⁰

Essentially, the Kalt Report defines away the role of government predominance by pointing out that, in a transaction between two private actors, the price will be set by the intersection of the (market-based) demand curve of stumpage buyers and the (market-based) supply curve of the private stand owners. However, we find this to be both a truism and highly misleading, because it implicitly assumes, without justification, that the demand curve is not affected by the presence of the administered sector. This is crucial, because the intersection of the supply and demand curves is the price that the Kalt Report claims is unaffected and that the GOA claims would be an appropriate benchmark. If the market demand curve is affected—for example, if it is shifted to the left due to reduced demand for market-based stumpage—the intersection of the supply and demand curves would then take place at a lower price than without the administered sector.

As in the prior review,³³¹ West Fraser challenges Commerce’s finding that the supply “overhang” means that prices for standing timber from non-Crown sources would mirror the administratively-set prices charged by the GOA on Crown lands. West Fraser cites to the impracticality of harvesting certain stands of lumber, environmental considerations related to the harvesting of certain stands, and ongoing negotiations with First Nations over certain stands.³³² This does not change that, on the margin, a tenure holder has access to additional supply from Crown lands that it can harvest rather than going to the private market, not only because there is unused volume allocation during the POR, but also because mills are awarded periodic allotments that span five years. This remains true even though the supply overhang during this POR is smaller than what it was during the periods covered by the investigation and prior review. Thus, because the same companies are active in both the Crown-origin stumpage and private stumpage markets, the willingness of tenure-holding sawmills to pay for private-origin standing timber will be limited by their costs for obtaining standing timber from their own tenures regardless of the reasons for why certain companies chose not to harvest the entirety of their AAC.

³²⁸ See Kalt Report at 35-36.

³²⁹ *Id.* at 36.

³³⁰ *Id.* at 36.

³³¹ See *Lumber V ARI Final IDM* at 70.

³³² See West Fraser Case Brief at 39-40.

Finally, the GOA argues that Commerce was wrong to conclude that the administratively set prices for Grade 06 and Code 99 logs contribute to Alberta stumpage market distortion because the GOA's prices for these logs merely reflect a sustainable forestry policy that encourages harvesters to clear and use logs that may not be suitable for lumber production.³³³ However, the GOA does not explain why its sustainable forestry policy would call for charging a administratively-set price that does not respond to market forces for lower-value logs, rather than simply charging a lower price for those logs or how the GOA's forestry objectives are relevant to Commerce's analysis of whether stumpage prices in Alberta are freely determined by market forces.

Thus, we find that the record demonstrates the overwhelming Crown share of the Alberta stumpage market, the concentration of the same group of buyers in both the Crown and private stumpage markets, the availability of significant additional volumes of Crown timber due to the supply "overhang," and the presence of a significant share of Alberta Crown timber priced in a manner not responsive to market forces. Based on the combination of these factors, we find the Alberta stumpage market distorted.

Comment 12: Whether TDA Survey Prices Are an Appropriate Benchmark for Alberta Crown-Origin Stumpage

*GOA's Comments*³³⁴

- The TDA survey prices are the only valid basis for a tier-one benchmark for Alberta standing timber. They are market-determined, in-jurisdiction prices for private arm's length sales of logs in Alberta that are used in the ordinary course of business to value standing timber in Alberta. They reflect the prices and characteristics of timber actually used and sold in Alberta.
- By contrast, the 2017-2018 Private Stumpage Survey that Commerce used in the *Lumber V AR2 Prelim* to value Alberta timber is not a viable tier-one benchmark for Alberta timber. Furthermore, each of the reasons that Commerce found to make the Nova Scotia survey a suitable tier-one benchmark applies to an even greater extent to the TDA survey prices.

*West Fraser's Comments*³³⁵

- The standing timber prices in the TDA tables satisfy each element of Commerce's requirement for a tier-one benchmark and reflect Alberta's prevailing market conditions. While the TDA survey data principally pertain to log sales, the methodology for deriving standing timber prices from log sales is well-established and used by Commerce to value standing timber in British Columbia.
- Standing timber in Nova Scotia is not available in Alberta. There are also extensive differences in forest composition, transportation costs, and lumber product markets between Nova Scotia and Alberta.

³³³ See GOA Case Brief Volume 4.A at 48-50.

³³⁴ *Id.* at 37-43.

³³⁵ See West Fraser Case Brief at 32-36.

*Petitioner's Rebuttal Comments*³³⁶

- A tier-one benchmark must be for the good or service in question and logs are not stumpage. Thus, the TDA survey log prices are, by definition, not a tier-one benchmark.
- The TDA survey standing timber prices represent a very small share of both private stumpage transactions and the overall stumpage market in Alberta and thus is not a broad market average.
- In the event that Commerce wrongly rejects Nova Scotia timber prices as a benchmark for Alberta Crown stumpage, Commerce should analyze the viability of TDA survey prices as a tier-three benchmark. Such an analysis would demonstrate that TDA prices are not a viable benchmark, because they are not market-determined, as Commerce found in the *Lumber V Final*.³³⁷

Commerce's Position: The GOA argues that Commerce should adopt an Alberta log benchmark calculated based on a residual value methodology using log prices from the TDA survey.³³⁸ However, TDA prices cannot be used for Alberta stumpage because, under the benchmark hierarchy established by 19 CFR 351.511(a)(2), our first preference for determining the adequacy of remuneration is to compare the government price to a market-determined price "for the good or service resulting from actual transactions in the country in question." The good at issue in this review is stumpage. The TDA survey prices that the GOA and West Fraser propose using as a benchmark are, by their own recognition, primarily for a different product, *i.e.*, harvested logs, that is downstream from standing timber. As such, the TDA prices are not a tier-one benchmark "for the good or service." Furthermore, the small amount of standing timber prices contained in the TDA survey are distorted, as discussed in Comment 11, and unusable as a tier-one benchmark. At best, were Commerce to consider TDA prices for a benchmark, the TDA prices would be a tier-three benchmark by our hierarchy. As noted in Comments 27-46, Nova Scotia stumpage prices are usable as a tier-one benchmark for Alberta stumpage and render use of TDA prices as unnecessary for stumpage. Accordingly, Commerce continues to rely on Nova Scotia private stumpage prices as a preferred tier-one benchmark under 19 CFR 351.511(a)(2).

D. British Columbia Stumpage Issues

Comment 13: Whether There Is a Useable Tier-One Benchmark in British Columbia

*GBC's Comments*³³⁹

- Contrary to Commerce's preliminary finding, BCTS auctions produced market-determined stumpage prices during the POR. The *CVD Preamble* notes conditions under which government auctions could be a benchmark, and the BCTS auction system meets those conditions.

³³⁶ See Petitioner Rebuttal Brief at 124-132.

³³⁷ *Id.* at 130 (citing *Lumber V Final* IDM at Comment 16 at 49-50).

³³⁸ See GOA Case Brief Volume 4.A at 38-39.

³³⁹ See GBC Case Brief Volume 5 at 6-21. The GBC and GOC filed a joint brief discussing both whether BC's LER is a countervailable subsidy and also whether the BC LER distorts the BC stumpage market. See Comment 49 for discussion of the arguments raised in that brief are discussed.

- In the *Lumber V AR2 Prelim*, Commerce found the BC stumpage market distorted simply by restating language from the *Lumber V AR1 Final*, thus failing to acknowledge new evidence and arguments on the issue of distortion.
- Commerce claims that its distortion finding for British Columbia is not solely based on majority government control, but rather on the “combination” of majority government control and BC’s LER. However, Commerce does not explain how these factors, either combined or individually, make BCTS auction prices not a viable benchmark. Further, the record contradicts the notion that government predominance affects BCTS prices.
- Likewise, there is extensive record evidence that British Columbia’s LER has little or no impact on log prices or supply. Even if the LER were hypothetically assumed to have an effect in certain areas, there is significant new evidence, ignored by Commerce, that it would *not* have an impact in the BC interior. Commerce must engage with new evidence that shows the LER to have no effect on BCTS prices.
- Commerce’s finding that the “three-sale limit” renders BCTS not “competitively run” is both groundless and contradicted by new record evidence that Commerce ignored. With respect to the three-sale limit, Commerce ignored new evidence from the mandatory respondents explaining that the practice of “proxy” bidding in no way contributes to market distortion.
- Data from FY 2018/19 show that more than 1,000 companies were registered to bid in BCTS auctions, over 200 bidders won BCTS auctions, and there were 2.86 bidders per auction. Most of the bidders were loggers rather than sawmills. In other words, BCTS auctions have low barriers to entry and healthy competition. Commerce ignored this and recited previous criticisms of submissions by Dr. Athey. Commerce also ignored the AR2 Athey Report and BCTS auction bidding data submitted separately from Dr. Athey’s report.
- Commerce’s contention in the *Lumber V AR1 Final* that Dr. Athey’s analysis of high-diversity bidders was flawed because some winning bidders have the same surname and may not be separate bidders is wrong. Had bidders been aggregated by surname, as suggested by Commerce, there would have been *more* high-diversity bidders, and the share of the BC harvest accounted for by these bidders would have been *higher*.

*Petitioner’s Rebuttal Comments*³⁴⁰

- There is no dispute that the same conditions that led Commerce to reject BCTS auctions as a viable tier-one benchmark in past segments of this proceeding—the overwhelming Crown share of the harvest, BC’s LER, and the BCTS three-sale limit—continue to exist during the POR. Commerce should reject the GBC’s efforts to relitigate this issue.
- The GBC continues to account for an overwhelming share of the BC stumpage market. While Commerce did not assume that any specific percentage of government market share would lead to distortion, government market share is relevant evidence of influence.
- The BC Parties cite to statements by Dr. Athey to argue for the competitiveness of the BCTS system, but a separate expert report by Dr. Kalt contradicts Dr. Athey’s claims. This is part of a pattern where results-oriented expert reports prepared by the Canadian Parties for this proceeding contradict each other and the record evidence.
- Record evidence contradicts the Canadian Parties’ claims that BC’s LER does not restrain any log exports in the BC interior. The petitioner has placed on the record several documents indicating that the LER artificially lowers the value of logs within British Columbia, such as a

³⁴⁰ See Petitioner Rebuttal Brief at 165-184.

2006 report prepared at the request of the GBC and testimony in a NAFTA Chapter 11 proceeding from a BC log exporter.

- There is also a new (to the AR2 record) affidavit from a BC interior log seller stating that: “as a seller of logs harvested from private land in the interior region of British Columbia, I am forced to subsidize BC producers of lumber and other wood products by selling them at a price lower than I could have received in export markets.”³⁴¹ This log seller also noted that, even when logs are not “blocked” by domestic mills it is because the seller has reached an agreement with the mills to not block the advertisement of logs for export in exchange for the supply of other logs at lower prices.
- This statement from an actual log seller in the BC interior contradicts the Schuetz Report’s use of hypothetical assumptions to conclude the LER has no effect on log supply in the BC interior.
- The Canadian Parties cite various expert reports commissioned for this proceeding to argue that log exports from the BC interior would be infeasible even without the LER. However, the petitioner has added to the record several independent studies showing that log markets can be integrated over large areas.
- While the GBC claims that there is an “updated” Athey Report that Commerce failed to engage with, the report it refers to is, in fact, wholly recycled from Dr. Athey’s reports for the investigation and previous review. Dr. Athey’s conclusion in this report that “{t}he three-sale limit is pro-competitive because it encourages long-term competition by preventing the emergence of dominant firms”³⁴² is contradicted by the BC respondents’ explanations that they use intermediaries to circumvent the limit.
- The BC Parties make no effort to rebut Commerce’s key conclusion from the *Lumber V AR1 Final* that, “instead of fostering competition where large mills are bidding against the high diversity bidders...the restrictions caused by the three-sale limit result in these parties submitting a joint bid (in essence reducing the motivated parties participating in the auctions).”³⁴³ Rather, record evidence submitted by the BC respondents continues to support this conclusion.

Commerce’s Position: In the *Lumber V AR2 Prelim*, Commerce determined that BCTS auction prices could not serve as a tier-one benchmark because the majority of the market is controlled by the government and the GBC continues to restrict exports of logs from the province through government imposed log export restraints.³⁴⁴ Commerce also preliminary determined that BCTS auctions were not competitively-run government auctions that could serve as a tier-one benchmark because the GBC imposes an artificial barrier to participation through a three-sale limit.³⁴⁵

As we explain below, we continue to find for these final results that the government controls the majority of the market, and this control, combined with the existence of a province-wide LER, increases the supply of logs available to domestic users and, in turn suppresses log prices in British Columbia. We also continue to find that the three-sale limit restricts participation in

³⁴¹ See Petitioner Comments on IQR Responses at Exhibit Vol I-96.

³⁴² See AR2 Athey Report at 8.

³⁴³ See *Lumber V AR1 Final* IDM at Comment 14.

³⁴⁴ See *Lumber V AR2 Prelim* PDM at 20-21.

³⁴⁵ *Id.*

BCTS auctions, which means that the auctions are not the “competitively run government auctions” envisioned under 19 CFR 352.511(a)(2)(i).

As we explained in the prior review, Commerce’s distortion framework is not based on a *per se* finding that the government’s control of over 90 percent of the harvest in British Columbia automatically results in prices in the province being distorted. Commerce’s finding is that this overwhelming government control, combined with a province-wide LER, has resulted in a scenario where the government controls both the supply of timber that is harvested (the BCTS determines how much land to sell through auctions each year, while the GBC sets annual allowable cut volumes on the non-auction tenures), and also restricts the flow of timber outside of the province through the LER. The BC Parties raise arguments regarding the LER’s distortion of the stumpage market throughout the province, including in the BC interior. We have addressed the various arguments and rebuttal comments relating to distortion caused by the LER in Comment 49 and we have also analyzed new evidence placed on the record of this review that specifically addresses the LER’s impact on the market. As discussed in that comment, Commerce continues to find that record evidence supports the finding that the LER increases the supply of logs available to domestic users, and, as a result, suppresses prices in British Columbia.

The BC Parties also raised various arguments regarding Commerce’s findings relating to the three-sale limit in the BCTS auctions. The respondents’ arguments mainly rely on the various submissions from Dr. Athey. The GBC argues that in the *Lumber V AR2 Prelim*, Commerce ignored Dr. Athey’s updated report for the second review. However, the updates in the AR2 Athey Report simply provide new data covering the 2019 POR but do not contain substantive arguments that Commerce has not previously addressed. Moreover, in the *Lumber V ARI Final*, Commerce explained its method of weighing the evidence presented in the Athey Report, which was prepared for the purposes of this proceeding:

Commerce has not categorically dismissed the reports of experts prepared for the purpose of this review or the investigation but has evaluated the arguments in those reports with a consideration of how any potential bias might affect the conclusions reached in those reports. Commerce does have serious concerns of bias regarding Dr. Athey’s submission. The record demonstrates that Dr. Athey was hired by the GBC to create the BCTS auction system. No reasonable decision-making body would consider Dr. Athey an impartial evaluator of the BCTS system; she is essentially grading her own work in her submissions. To be clear, Commerce is not calling into question Dr. Athey’s credentials, but rather taking into account her potential impartiality in assessing the weight we accord her arguments. Further, any assertions made by Dr. Athey without citations to other sources, and that are not corroborated by other record evidence, will be accorded less weight than those that are supported by citations or other record evidence.³⁴⁶

For example, in the *Lumber V ARI Final*, Commerce addressed Dr. Athey’s argument that restrictions on auctions can be pro-competitive, noting that the argument itself was brief and

³⁴⁶ See *Lumber V ARI Final* IDM at Comment 14.

further lacked support in the form of citations to other studies that would have allowed Commerce to evaluate her claims:

Dr. Athey argues that both auction theory and practice demonstrate that restrictions on auctions can be pro-competitive and, therefore, the existence of a restriction does not make an auction insufficiently competitive to produce market determined prices. Dr. Athey then references examples of auctions, spectrum auctions and Treasury Bill auctions, that have what Dr. Athey describes as pro-competitive restrictions. However, there is no record evidence to back up this assertion. In fact, Dr. Athey has not described the auction theory she references other than to state that restrictions can improve “the extent to which auction outcomes reflect competitive market forces over the long run.” That is the entirety of the discussion. Dr. Athey has not explained this theory nor provided a single citation to any other source that discusses this auction theory to support her assertion. Later in the same paragraph, she mentions spectrum auctions and Treasury Bill auctions as examples of auctions with pro-competitive restrictions, but again does not discuss what the restrictions in these auctions entail or how they are pro-competitive. Dr. Athey does not provide citations to any evidence relating to the restrictions themselves or arguing that these restrictions are considered to be pro-competitive. It is not possible for Commerce to even begin to evaluate whether the auction restrictions Dr. Athey discusses are akin to those at issue in this review because there is not enough argumentation in her reports to evaluate, nor is there citation to other studies which would allow us to assess whether her assertions are corroborated by other evidence or experts. The lack of citations, combined with Dr. Athey’s impartiality in assessing the auction that she designed, means we find these arguments on the pro-competitive nature of auction restrictions unpersuasive.³⁴⁷

We find these observations to remain true for the record of this review. A comparison of the AR2 Athey Report and the AR1 Athey Report shows that the AR2 Athey Report relies on the same exact same text to argue this point.³⁴⁸ Thus, this “new” report does not give us any reason to reconsider Commerce’s prior finding on the issue; the substantive arguments made in the report are similarly identical. Thus, Commerce has not ignored any data placed on the record of this review regarding Athey’s findings.

Notably, the GBC’s citation to the number of registered bidders is not indicative of the actual number of entities participating in the BCTS auction. In this review, the AR2 Athey Report states that “{i}n fiscal year 2018/2019, more than 1,000 companies were registered to bid on BCTS auctions.³⁴⁹ However, the auction data on the record show that there were 377 bidders during FY 2018/2019.³⁵⁰ Thus, citation to registered bidders overstates the number of actual auction participants.

³⁴⁷ See *Lumber V ARI Final IDM* at Comment 14 (citations omitted).

³⁴⁸ See AR2 Athey Report at 55; see also AR1 Athey Report at 54.

³⁴⁹ See AR2 Athey Report at 48.

³⁵⁰ See GBC IQR Response at Exhibit BC-AR2-S-148.

The GBC also challenges Commerce’s finding that the three-sale limit does not encourage competition, because entities that have reached their quota submit bids through “proxy” bidders. The GBC argues that Commerce’s finding on this point in the *Lumber V ARI Final* was unsupported in this proceeding because:

the Department failed to engage with the evidence provided by the mandatory respondents confirming that their processes for determining the appropriate bid are pro-competitive and essentially the same regardless of whether the companies are bidding in their own name or through a “proxy” bidder. Thus, there is no evidence that the relationship with proxy bidders has any effect on the bids submitted in a given auction.³⁵¹

The evidence referenced in the GBC’s case brief is two declarations by individuals familiar with the bidding processes of Canfor and West Fraser, respectively. Canfor’s Feldinger Affidavit only provides a high-level explanation of Canfor’s auction bidding practices and while the affidavit does include the assertion that “CFP’s bid pricing methodology is the same regardless of whether it is the bidder or it uses a surrogate bidder,”³⁵² it fails to substantiate, explain or elaborate on that statement other than to say that it bases bids on market values.³⁵³ As such, we find the Feldinger Affidavit of limited value in supporting the GBC’s arguments that the use of proxy bidders does not decrease the competitiveness of the BCTS auctions. However, the Feldinger Affidavit does indicate that in some instances, Canfor partners with proxies to circumvent the three-sale limit, rather than submitting bids directly.

West Fraser’s Gardner Declaration provides even more detail, some BPI, some public, regarding West Fraser’s participation in BCTS auctions and the company’s bidding practices with respect to surrogate bidding. The declaration specifically lists the types of surrogate bidders used by West Fraser during the POR and notes that due to the three-sale limit, the company was only able to bid indirectly on BCTS timber during the POR.³⁵⁴ Some of the third-party bidders are company employees (who receive no compensation) or affiliated individuals, often retired employees, who receive very limited compensation.³⁵⁵ A significant share of bidders are unaffiliated parties who either bid at a price set by West Fraser or who bid for timber after having agreed to a price for which they will sell delivered logs to West Fraser.³⁵⁶

We thus find that West Fraser’s explanation of how it obtains BCTS timber from unaffiliated bidders supports Commerce’s finding that large mills unable to bid directly on BCTS auctions due to the three-sale limit are partnering with independent loggers to submit joint bids in the auctions, demonstrating that, instead of fostering competition where large mills are bidding against other bidders and theoretically driving up auction prices, the restrictions caused by the three-sale limit result in these parties submitting a joint bid (in essence reducing the motivated parties participating in the auction).

³⁵¹ See GBC Case Brief Volume 5 at 20 (citing Gardner Declaration at Paragraph 55, Feldinger Affidavit at Paragraph 11).

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ See Gardner Declaration at Paragraph 54.

³⁵⁵ *Id.* at Paragraphs 55 through 59.

³⁵⁶ *Id.* at Paragraphs 57 through 58.

The GBC criticizes Commerce's finding in the *Lumber V ARI Final* that the AR1 Athey Report's analysis of high-diversity bidders was flawed. As Commerce explained in the *Lumber V ARI Final*, Dr. Athey defined high-diversity bidders according to two criteria: (a) the maximum share of volume delivered to any one company; and (b) the number of different companies receiving timber deliveries.³⁵⁷ Dr. Athey then set up ranges for these two criteria and stipulated that any licensee that is above these defined ranges are high diversity bidders.³⁵⁸ The rationale for how Dr. Athey established these ranges is not explained in her analysis.³⁵⁹ Furthermore, the record of the prior review contained proprietary data for the period 2009-2018 that allowed Commerce to demonstrate that the number of high diversity bidders in Athey's analysis was overstated, because there were multiple instances in which several entities with a common name were likely the same party bidding on behalf of another entity to get around the three-sale limit.³⁶⁰

Although the record of this review lacks data that would allow us to undertake a similar analysis for these final results, the experiences of Canfor and West Fraser described above indicate that the use of proxies, including unaffiliated bidders, to get around the three-sale limit is a practice that persisted during the POR. Moreover, although the GBC argues that Commerce failed to realize that, by not aggregating bidders with the same surname, Dr. Athey was taking a conservative approach to counting the number of high-diversity bidders and there would have been a higher share of high-diversity if surnames were aggregated,³⁶¹ this argument is speculative and not supported by evidence on the record of this review. The GBC also did not challenge Commerce's finding from *Lumber V ARI* that the three-sale limit is reducing competition by fostering joint bids, rather than having its alleged pro-competitive impact. Thus, the record does not support the conclusion that the three-sale limit is leading to diversification of auction bids.

Notwithstanding Dr. Athey's arguments regarding the three-sale limit, Commerce has been clear that the three-sale limit itself ensures that the BCTS auctions are not the competitively run government auctions contemplated by the *CVD Preamble* that might serve as a tier-one benchmark. Specifically, the *CVD Preamble* identifies situations where it would be appropriate to use as a tier-one benchmark sales from government-run auctions, which includes those with "competitive bid procedures that are *open to everyone*."³⁶² As we explained in *Lumber V Final* and *Lumber V ARI Final* with respect to the limits to participation imposed by the three-sale limit:

We note that the GBC has recognized this large-company dominance to be a problem. Specifically, the GBC introduced the so-called three-sale limit—restricting the number of active TSLs that a company may hold simultaneously to three—ostensibly to encourage competition by imposing a cap on the extent of

³⁵⁷ See *Lumber V ARI Final* IDM at Comment 14.

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ See AR1 BC Stumpage Memo at 2-5.

³⁶¹ See GBC Case Brief Volume 5 at 20-21.

³⁶² See *CVD Preamble*, 63 FR at 65377.

participation by any one company and thus preventing the large companies from dominating all the auctions. However, by so doing, the GBC imposes an artificial barrier to participation in the BCTS auctions; while no companies are per se excluded from the auction system as a whole, the three-sale quota means that, to the extent some companies have already reached the quota, any given auction will find fewer bidders that could otherwise participate. In this manner, the BCTS auctions are not the type of “competitively run government auctions” envisioned under 19 CFR 351.511(a)(2)(i). For this reason alone, the auctions could not provide a tier-one benchmark under our regulations even if we were to find a non-distorted market overall such that the first tier in our methodology would apply.³⁶³

We reiterated this position in the *Lumber V ARI Final*:

Furthermore, in the investigation, Commerce determined that the BCTS auctions are not “competitively run government auctions” envisioned under 19 CFR 351.511(a)(2)(i) because the GBC imposes an artificial barrier to participation in the BCTS auctions through a three-sale limit. We found that, for this reason alone, the auctions could not provide a tier-one benchmark under our regulations even if we were to find a non-distorted market overall such that the first tier in our methodology would apply.³⁶⁴

For the reasons explained above, we continue to find that BCTS auctions are not an appropriate tier-one benchmark.

E. New Brunswick Stumpage Issues

Comment 14: Whether the Private Stumpage Market in New Brunswick Is Distorted and Should be Used as a Tier-One Benchmark

*GNB and JDIL’s Comments*³⁶⁵

- The record of the review demonstrates that the prices for private origin standing timber in New Brunswick are not distorted, and as such, purchases of such timber in New Brunswick are appropriate tier-one benchmarks.
- During the POR, there was net demand for standing timber from private woodlots; a negligible “overhang”; a vibrant market with a sizeable private softwood sector; a material amount of imports and exports; and a large number of buyers and sellers of private-origin standing timber.
- Prices for Crown-origin standing timber during the POR were higher than comparable private-origin standing timber prices.
- The *2020 Report of the Auditor General of New Brunswick* concluded that private-origin stumpage prices are market-determined and is a more reliable source than the *Report of the Auditor General – 2008* cited by Commerce.
- According to the lead author of the *2012 Private Forest Task Force Report* cited by Commerce, there have been substantial changes in the New Brunswick softwood lumber

³⁶³ See *Lumber V Final* IDM at Comment 18 (citations omitted); see also *Lumber V ARI Final* IDM at Comment 14.

³⁶⁴ See *Lumber V ARI Final* IDM at Comment 14.

³⁶⁵ See GNB Case Brief Volume 6 at 12 to 44; see also JDIL Case Brief at 3 to 16.

market since the time the report was written. More recent data sources such as the *2020 Report of the Auditor General of New Brunswick*, the 2018-19 FMV Study, and the study produced by Professor Brian Kelly should be used by Commerce.

- Hundreds of independent contractors dominate the purchase of stumpage in New Brunswick, not a small number of companies as cited by Commerce. The New Brunswick Forest Products Commission found in its most recent private stumpage survey (covering October 2018 through December 2019), “that mill-purchased stumpage represents approximately 15% of all of the stumpage purchased from private woodlots in New Brunswick and 85% is purchased from woodlot owners by independent contractors.”³⁶⁶
- A new analysis demonstrates that New Brunswick faces even more competitive conditions on average than Nova Scotia based on the larger concentration of mills and sawmills in New Brunswick than in Nova Scotia by examining the distance between mills.
- As Crown softwood stumpage prices were higher than private stumpage prices during the POR, the benefit would be zero should Commerce use an in-province tier-one benchmark.
- Commerce has no basis to conclude that there is an “essential linkage” that would allow Crown-origin standing timber prices to affect private-origin standing timber prices.

*Petitioner’s Comments*³⁶⁷

- In the *Lumber V AR2 Prelim*, Commerce correctly found that private origin standing timber prices in New Brunswick are not usable as benchmarks. Commerce also cannot contradict its prior finding as it continues to examine the same set of facts.
- There is no “essential linkage” standard for Commerce to follow; as such, this should not be the framework for its analysis of the New Brunswick market.
- The GNB market memorandum,³⁶⁸ *Report of the Auditor General – 2008*, and *2012 Private Forest Task Force Report*, affirm the existence of an oligopsony and that mills dominate the market. The generalized statements made by the author of *2012 Private Forest Task Force Report* are irrelevant to Commerce’s analysis of the level of government involvement in the market and the relationship between Crown timber and the private timber market.
- Record evidence shows an overhang of 7.55 percent in New Brunswick, which represents a significant amount of available Crown stumpage whenever the need arises and decreases mills’ reliance on private stumpage.
- The *2020 Report of the Auditor General of New Brunswick* assumes that the underlying transactions took place in a free market and does not define the term “fair market value” in its report or in the FMV studies. As such, the analysis in the *2020 Report of the Auditor General of New Brunswick* of private stumpage transactions has no bearing to this market distortion issue as these transactions are a product of the market distortion.
- The distance between mills is not evidence of strong competition, as the GNB argues, as it does not account for who owns the mills or where they tend to source wood from and provides a distorted view of the concentration of mills in the province.

³⁶⁶ See JDIL Case Brief at 11 (citing the GNB Factual Information to Measure the Adequacy of Remuneration at Exhibit NB-AR2-BENCH-STUMP-1 and Exhibit NB-AR2-BENCHSTUMP-3).

³⁶⁷ See Petitioner Rebuttal Brief at 132 to 144.

³⁶⁸ See Petitioner Rebuttal Brief at 134 citing *Lumber V AR2* New Brunswick Preliminary Market Memorandum at Table 2.1.

- The independent harvester the GNB cites as evidence of non-distortion is a declaration from a single observation and should carry little weight compared to the definitive evidence of market concentration in New Brunswick.
- What the benefit would be if Commerce used an in-province tier-one benchmark is not a criterion that Commerce should consider, as it does not change the distortion in the private stumpage market in New Brunswick.
- In sum, the GNB and JDIL have misconstrued the facts in their arguments regarding overhang, net demand for private woodlot stumpage, the oligopsony effect in the market, and prices mills paid for private stumpage.

Commerce’s Position: In the *Lumber V AR2 Prelim Results*, Commerce found the market for private-origin standing timber in New Brunswick to be distorted, and thus, private standing timber prices within the province to not be appropriate as tier-one benchmarks.³⁶⁹ Specifically, we found the GNB to be the dominant supplier of standing timber within the province, and the mills to be the dominant customers of standing timber in the province, creating an oligopsony effect.³⁷⁰ Additionally, Commerce found Crown lands accounted for the majority of logs harvested in New Brunswick during the POR and that consumption of private and Crown-origin standing timber continues to be concentrated among a small number of corporations.³⁷¹ Finally, we found that an “overhang” existed between the volume of Crown-origin standing timber allocated and the volume harvested.³⁷²

For purposes of these final results and the same reasons discussed in *Lumber V AR2 Prelim Results*, we continue to find that private standing timber prices in New Brunswick are distorted, and thus, are not suitable for use as tier-one benchmarks. Both the GNB and JDIL have made numerous arguments to support their assertion that the New Brunswick market is not distorted and the private prices within the province constitute an appropriate tier-one benchmark, which we address below. However, neither the GNB nor JDIL have cited to information on the record that causes us to come to a different conclusion from our finding in *Lumber V AR2 Prelim Results*³⁷³ or *Lumber V AR1 Final*³⁷⁴ regarding the private stumpage market in New Brunswick.

In its case brief, the GNB argues that: (1) the *2020 Report of the Auditor General of New Brunswick* supports the use of private woodlot stumpage prices as representing fair value; (2) there are substantial changes in the New Brunswick private stumpage market between the *Lumber IV* period, the 2012 period, and the POR, according to the lead author of the *2012 Private Forest Task Force Report*; (3) new evidence demonstrates negligible overhang; (4) New Brunswick’s FMV Studies provide reliable data on private woodlot stumpage prices; (5) mills paid more on average for private stumpage than did independent contractors during the POR; (6) there is net demand for softwood saw material in New Brunswick; (7) demand is strong and the private woodlot stumpage market is operating at the sustainable annual allowable cut; (8) a new analysis of distance to multiple mills demonstrates competition for private woodlots in New

³⁶⁹ See *Lumber V AR2 Prelim Results* PDM at 17-20.

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ See *Lumber V AR1 Final* IDM at Comment 17.

Brunswick; (9) there is substantial additional evidence on the record showing that the private stumpage market is not distorted; and (10) the *Lumber V AR2 Prelim Results* do not articulate a viable theory of market distortion.

Similarly, in its case brief, JDIL states that the record of the current review refutes several of Commerce's findings in the *Lumber V AR2 Prelim Results*. Specifically, JDIL contends that in New Brunswick during the POR: (1) the GNB did not dominate the supply of softwood timber; (2) New Brunswick mills lack market power to artificially suppress the prices of private-origin stumpage; and (3) there was an insignificant amount of overhang. As a result, JDIL maintains that private-origin standing timber accounted for a large share of the softwood timber market in the province during the POR, and that the province's private timber market is vibrant and open to trade. Thus, JDIL argues that private standing timber prices in New Brunswick are appropriate tier-one benchmarks. JDIL argues that record information demonstrates that the GNB's involvement did not significantly distort private-origin standing timber prices in New Brunswick.

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

Commerce Appropriately Relied on the *Report of the Auditor General – 2008, 2012 Private Forest Task Force Report*, and *Report of the Auditor General*

First, we address the argument by the GNB that more “authoritative reports” are on the record of this administrative review.³⁷⁵ The GNB argues that the *2020 Report of the Auditor General of New Brunswick*, the 2018-19 FMV Study, and the study produced by Professor Brian Kelly (the Kelly Report), more accurately reflect the private New Brunswick stumpage market. Additionally, the GNB argues that the three reports Commerce has relied upon are no longer relevant to the POR.³⁷⁶ We disagree with the GNB that we should rely upon these studies over the findings in the three reports used previously, *Report of the Auditor General – 2008, 2012 Private Forest Task Force Report*, and *Report of the Auditor General – 2015*.

Regarding the *2020 Report of the Auditor General of New Brunswick*, the GNB argues that the two top-level conclusions were: “Private woodlot stumpage market study significantly improved over 2008 survey”; and “Private woodlot stumpage prices can represent the fair value of transactions in the New Brunswick private wood market.”³⁷⁷ The GNB further concludes that the report reaffirms the position that private-origin stumpage prices in New Brunswick are market-determined.

We disagree with the GNB that the findings of the report lead to the position that private-origin stumpage prices in New Brunswick are market-determined or that Commerce's findings of less than adequate remuneration for Crown stumpage contradicts the Auditor General. In contrast, we find that the *2020 Report of the Auditor General of New Brunswick* confirms our previous

³⁷⁵ See GNB Case Brief Volume 6 at 35.

³⁷⁶ *Id.*

³⁷⁷ *Id.* at 13 (citing the *2020 Report of the Auditor General of New Brunswick* at p. 173).

findings that oligopsonistic conditions continue to exist in New Brunswick that contribute to the distortion of the market for private-origin standing timber in the province. The report shows:

- There has been very little change in New Brunswick Forest Ownership.³⁷⁸
- In 2019, only 4 companies, including JDIL, held nine of the ten Crown timber licenses issued by the Province.³⁷⁹
- In 2018-2019 private woodlot timber was sold to:
 - Crown timber licensees and sub-licensees (76 percent of harvest volume);
 - Other in-Province processors (7 percent of harvest volume); or
 - Exported out of Province (17 percent of harvest volume)³⁸⁰

The report states, “{I}t is these stumpage sales transactions, completed through the private wood stumpage market, that the {GNB} considers fair market value and uses to calculate Crown timber royalty rates.”³⁸¹ Further, the report also indicates while the GNB has attempted some clarity regarding fair market value, this term has not been clearly defined in legislation, regulation, or policy.³⁸²

Therefore, we continue to find that the GNB’s dominance as the supplier of stumpage, coupled with a limited number of mills as the dominant consumers of stumpage created oligopsonistic conditions in the province during the POR in which private woodlot owners and the Crown are responsive to price-setting behavior by the dominant mills.

In addition to the GNB, JDIL also argues that based on the findings of the *2020 Report of the Auditor General of New Brunswick*, private transactions represent the “fair value” of transactions.³⁸³ We disagree with both JDIL and the GNB, as the Auditor General’s conclusion was only based on the assumption that the sample transactions are between two independent parties: the private landowner, and the buyer. Since the private woodlot owner chooses to sell timber, the Auditor General concluded that this can represent a fair value transaction in this market. However, such a conclusion does not address the issue of whether GNB’s dominance as a standing timber supplier as well as the fact that a small number of mills are the dominant consumers of Crown-origin and private-origin standing timber in the province impedes the independence of the prices for private-origin standing timber charged by private woodlot owners. Thus, we find the conclusions in the *2020 Report of the Auditor General of New Brunswick* concerning the “fair value” of transactions for private-origin standing timber fail to address the issue of concern in this review, which is whether oligopsonistic conditions in New Brunswick (*i.e.*, the GNB’s dominance as a standing timber supplier and the fact that a small number of

³⁷⁸ See GNB Factual Information to Measure the Adequacy of Remuneration at Exhibit NB-AR2-BENCH-STUMP-1 at p. 181 and Exhibit 4.1.

³⁷⁹ *Id.* at 182 and Exhibit 4.2

³⁸⁰ *Id.* at 190.

³⁸¹ *Id.* at 197.

³⁸² *Id.* at 8.

³⁸³ See JDIL Case Brief at 9.

mills are the dominant consumers of Crown-origin and private-origin standing timber in the province) causes private prices for standing timber not to be independent of the prices charged for Crown-origin standing timber.

Further, while the *2020 Report of the Auditor General of New Brunswick* report acknowledged that there have been improvements since 2008, the report also pointed out that while the GNB has authority to require independent contractors to provide standing timber purchase data when requested, the GNB does not enforce this requirement.³⁸⁴ The *2020 Report of the Auditor General of New Brunswick* indicates that the overall response rate of the contractors to the Commission's request was low, approximately 20-30 percent.³⁸⁵ The Auditor General report also found that while the GNB has taken steps to improve the private wood stumpage survey, the Crown timber royalty rates had not been updated to match the provincial average stumpage prices calculated by the GNB from the annual stumpage studies since 2014-2015.³⁸⁶

With respect to statements referencing the Kelly Report in the *2020 Report of the Auditor General of New Brunswick*, in the underlying investigation, Commerce stated that the Kelly Report was commissioned by the GNB for the purpose of the lumber investigation. Therefore, consistent with the underlying investigation, we continue to not rely on the Kelly Report.³⁸⁷ More importantly, in recognizing the Kelly Report's conclusions about New Brunswick's private stumpage market, the *2020 Report of the Auditor General of New Brunswick* stated that its review of the Kelly Report was limited. The *2020 Report of the Auditor General of New Brunswick* also lacks any analysis as to how the Auditor General came to its conclusion regarding the Kelly Report.³⁸⁸

Commerce Reasonably Declined to Rely on Pricing Data Presented in the FMV Studies

In addition to the *2020 Report of the Auditor General of New Brunswick* and the Kelly Report, the GNB argues that that the FMV studies are more reliable sources of private woodlot stumpage price information. We disagree with the GNB that we should rely upon the FMV studies' findings over the information in *Report of the Auditor General – 2008, 2012 Private Forest Task Force Report*, and *Report of the Auditor General – 2015*. As described above, we continue to find private stumpage market to be distorted, and therefore, we cannot use private prices as a tier-one benchmark. Thus, we continue to find that the FMV studies do not provide an appropriate source for price comparison purposes. Moreover, we continue to find the three reports Commerce referenced in the *Lumber V AR2 Prelim* to be reliable for purposes of these final results because they were prepared by the GNB in the ordinary course of business.³⁸⁹ We also find that the three GNB-produced reports Commerce cited in the investigation continue to provide reliable analyses of facts pertaining to private stumpage prices in the province, were conducted by individuals who were familiar with the stumpage market in New Brunswick, and were authored in the ordinary course of business during a period that pre-dated the initiation of

³⁸⁴ See *2020 Report of the Auditor General of New Brunswick* at p. 194.

³⁸⁵ *Id.*

³⁸⁶ *Id.* at p. 197.

³⁸⁷ See *Lumber V Final IDM* at 82-83.

³⁸⁸ See the GNB Factual Information to Measure the Adequacy of Remuneration at Exhibit NB-AR2-BENCHSTUMP-1.

³⁸⁹ See *Lumber V AR2 Prelim PDM* at 19; see also *Lumber V Final IDM* at 99.

the *Lumber V* proceeding.³⁹⁰ Further, the information provided by the GNB for this POR confirms the conclusions in these reports.³⁹¹ Neither the GNB nor JDIL have provided or pointed to any unique information that would cause us to reconsider the reliability of these reports.

In addition, similar to our findings in the *Lumber V Final* and *Lumber V ARI Final*, we continue to have concerns regarding the FMV studies despite the changes to the FMV study for 2018-2019 cited by the GNB.³⁹² The GNB argues that Commerce's criticism of the FMV studies during AR1 reflected "misunderstandings" by Commerce and offers clarification on the following points: (1) owner-operator transactions; (2) lump-sum transactions; (3) stumpage purchases versus all private sources for mills; and (4) province-wide information versus data within the survey results. We find the GNB's arguments unavailing.

With regard to owner-operator transactions, the GNB argues that Commerce misunderstands the NBFPC's omission of such transactions as "there are no owner/operator transactions in stumpage as the owner of a private woodlot harvests its own trees and sells the resulting roundwood logs. Thus, there are no stumpage transactions for the FMV study to collect."³⁹³ However, as JDIL acknowledges, these owners and operators do not solely consume logs internally and (like independent contractors) do sell their harvested logs to sawmills.³⁹⁴ The NBFPC states their study is based on data from "transactions wherein standing timber originating from a private woodlot was purchased and harvested by someone other than the woodlot owner."³⁹⁵ Thus, owner operator transactions are not included in the FMV studies, and the NBFPC provides no evidence or analysis of how that omission skews the pricing data. Furthermore, without information on the behavior of these owners and operators (who account for approximately 27 percent of private woodlot consumption in New Brunswick), we are unable to evaluate whether sawmills exercise their market power to exert downward pressure on private stumpage prices.³⁹⁶ As such, we find the GNB's claim that these data do not impact the reliability of actual stumpage transactions data collected in the 2018-2019 FMV study to be unsupported.

Next, the GNB argues that the 2018-2019 FMV study used a new methodology to include lump sum transactions with an allocated pricing methodology. Specifically, in the 2018-2019 FMV study, the NBFPC calculated a "pro-rated per-unit stumpage prices for the lump sum block using the percentage difference in Step 3 applied to the provincial per-unit stumpage price." This differed from the 2016-2017 and 2017-2018 FMV studies, which calculated "adjusted per-unit stumpage prices," and after doing so, determined not to include the data from lump-sum

³⁹⁰ See *Lumber V Final* IDM at Comment 28 (citing the *Report of the Auditor General – 2008, 2012 Private Forest Task Force Report*, and *Report of the Auditor General – 2015*); see also *SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 23.

³⁹¹ For example, the record indicates that the market continues to be dominated by a small number of companies and one supplier, the GNB (see, e.g., New Brunswick 2nd AR Final Market Memorandum), which is consistent with the findings in the *2012 Private Forest Task Force Report*.

³⁹² See *Lumber V Final* IDM at Comment 28; see also *Lumber V ARI Final* IDM at Comment 17.

³⁹³ See GNB Case Brief Volume 6 at 24.

³⁹⁴ See JDIL Case Brief at 5.

³⁹⁵ *Id.*

³⁹⁶ See the GNB Factual Information to Measure the Adequacy of Remuneration at Exhibit NB-AR2-BENCHSTUMP-3 at 4-5).

transactions in the weighted provincial mean calculation.³⁹⁷ However, despite the inclusion of these data in the 2018-2019 FMV study, Commerce still finds this study and its data unreliable. The 2018-2019 FMV study calculations are still based on the prices published in the NB Stumpage Study Results from October 2014-September 2015 that are, in turn, used to calculate the pro-rated per-unit stumpage price for the lump sum transactions. The 2014-2015 FMV survey, also cited in the *Lumber V Final*, stated that it did not include the volume of timber harvested from primary forest produced by woodlot owners/operators or the volume of stumpage sold through lump-sum transactions, which represented approximately 50 percent of the total (private) harvest in the province.³⁹⁸ The omission of these transactions led Commerce to find the 2014-2015 FMV survey to be incomplete, and as a result, we did not rely on the findings of the 2014-2015 FMV survey in the *Lumber V Final*.³⁹⁹ Thus, while the GNB claims the 2018-2019 FMV study uses a new methodology to include lump sum transactions, these modifications still do not address concerns about the total volume of lump-sum transactions within the province.

The GNB also continues to argue that even if the FMV studies did not include lump sum transactions, it would not have impacted the validity of the results.⁴⁰⁰ We continue to disagree, as Commerce is evaluating whether the market for private stumpage in New Brunswick is distorted such that private transaction prices are not useable as a tier-one benchmark. Commerce need not determine whether it was reasonable for the NBFPC to set the survey parameters by lump-sum transactions. The GNB refers to the FMV studies to show that sawmills paid more for private stumpage than independent contractors (thus undermining Commerce's finding that mills suppress private stumpage prices). However, Commerce reasonably found that the FMV studies do not accomplish this goal because they omit data for nearly a quarter of the private stumpage transactions in the province. As such, we find the GNB's claim that these data do not impact the validity of the results in the FMV studies to be unsupported.

The GNB and JDIL's Arguments Regarding Market Conditions in New Brunswick Are Unpersuasive and Do Not Detract from Commerce's Finding

Both the GNB and JDIL also claim the data from the 2018-2019 FMV study indicate that mills paid more on average for SPF sawlogs and studwood than independent contractors, that JDIL's crown stumpage purchases were higher than the private woodlot prices during the POR, and that this information undercuts Commerce's finding that the market for private-origin standing timber in New Brunswick is distorted.⁴⁰¹ For the reasons discussed above, we have concerns regarding the information and figures in these FMV studies, and therefore, we have not relied on the price comparisons in the FMV studies.

In addition, we disagree with the argument that mills have no power to control the pricing mechanism of private woodlot owners because woodlot owners' primary customers are independent contractors, as opposed to mills. Citing to the FMV studies, both the GNB and JDIL argue that mills account for a small portion of private-origin standing timber purchases in

³⁹⁷ *Id.*

³⁹⁸ See *Lumber V Final* IDM at Comment 28.

³⁹⁹ *Id.*

⁴⁰⁰ See GNB Case Brief Volume 6 at 24; see also *Lumber V ARI Final* IDM at Comment 17 at 100.

⁴⁰¹ *Id.* at 29; see also JDIL Case Brief at 11-13.

the province and, therefore, lack market power to artificially suppress the prices of private-origin stumpage. The GNB and JDIL's characterization of the data cited in the studies is misleading. Referring to the reports and the *2020 Report of the Auditor General of New Brunswick*, the GNB and JDIL argue that mills account for 15 percent of the purchases of private-origin standing timber in New Brunswick, with independent contractors accounting for the remaining 85 percent of these purchases.⁴⁰²

When citing these numbers from *2020 Report of the Auditor General of New Brunswick*, JDIL fails to acknowledge a critical fact in the report which also states, "it is important to note that private woodlot owners do harvest their own timber and sell it on the market. However, since there is no stumpage transaction, it is not a stumpage sale. These transactions are not included in the private wood stumpage process."⁴⁰³ As a result, the report does not indicate the percentage of which the private woodlot owners consume their own timber. Therefore, the numbers cited by JDIL do not accurately represent actual consumption of private stumpage and for the purpose of this proceeding, we are not relying on the numbers cited. However, regardless of the volume of private-origin standing timber harvested by non-sawmill-owning, independent contractors, these independent contractors are not the final consumers of sawtimber. Such independent contractors will, in-turn, sell private origin standing stumpage to the mills, who are the ultimate consumers of the sawtimber. As such, the dominance of these mills will be reflected in the price they are willing to pay to the independent contractors. In other words, we find the pricing of independent harvesters for private-origin sawtimber will be responsive to the price-setting behavior of the small number of mills who dominate the market in the province.

Finally, we continue to find inconsistencies between the volume of mill purchased stumpage in the 2018-2019 FMV study and the volume of mill purchased stumpage reported by the GNB in its questionnaire responses. Specifically, the 2018-2019 FMV study indicates that, "{b}ecause there are few mills that purchase stumpage directly from woodlot owners to supplement their wood supply, the Commission can collect data for 100% of the mill-purchased stumpage during the study period, and this data represents just under a third of the data collected."⁴⁰⁴ However, the total volume purchased in these studies is significantly lower than the reported volume of timber processed by sawmills sourced from private land reported by the GNB.⁴⁰⁵ The GNB argues that Commerce has misinterpreted the two datasets stating, "{T}he FMV Studies include 100 percent of *direct* mill purchases of stumpage from private woodlots, while the questionnaire responses and stumpage tables include all softwood *originally sourced* from private land that was processed by sawmills."⁴⁰⁶ The GNB also argues that Commerce confused province-wide totals with survey sample proportions in the FMV studies. Specifically, the GNB alleges that Commerce incorrectly assumed that the sum of the quantities reported in the FMV studies for direct mill purchases and purchases by contractors would total to 100 percent of private woodlot sales.⁴⁰⁷ However, any comparison of direct sawmill stumpage fees to independent contractor

⁴⁰² See JDIL Case Brief at 11 (citing the GNB Factual Information to Measure the Adequacy of Remuneration at Exhibit NB-AR2-BENCH-STUMP-1 and Exhibit NB-AR2-BENCHSTUMP-3).

⁴⁰³ *Id.* at Exhibit NB-AR2-BENCH-STUMP-1 at 189.

⁴⁰⁴ See GNB Factual Information to Measure the Adequacy of Remuneration at Exhibit NB-AR2-BENCHSTUMP-3).

⁴⁰⁵ See GNB Stumpage IQR Response at Exhibit NB-AR2-STUMP-1 at Table 2.

⁴⁰⁶ See GNB Case Brief Volume 6 at 25.

⁴⁰⁷ *Id.* at 25-26.

stumpage fees is misleading and incomplete. As the consumption data show, a substantial volume of the private timber harvest flows to sawmills indirectly through independent harvesters, and these transactions are highly relevant to an assessment of oligopsonistic conditions in the province.⁴⁰⁸ Thus, we continue to find that the FMV studies do not provide an appropriate source for price comparison purposes, and we continue to find the three reports Commerce referenced in the *Lumber V AR2 Prelim* to be reliable for purposes of these final results.

In the *Lumber V AR2 Prelim*, Commerce relied on information in three reports, *Report of the Auditor General – 2008*, *2012 Private Forest Task Force Report*, and *Report of the Auditor General – 2015*, as evidence indicating that the New Brunswick stumpage market is distorted.⁴⁰⁹ As described above, our analysis of the *2020 Report of the Auditor General of New Brunswick*, further confirms this conclusion. Taken together, these reports confirm Commerce’s analysis and conclusions about the stumpage market in New Brunswick, based on the data for the POR that the market was dominated by a small number of parties, and that private prices in New Brunswick market cannot serve as a reliable market determined price.

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

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

and

{T}he royalty system provides an incentive for processing facilities to keep prices paid to private landowners low.⁴¹⁰

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

New Brunswick’s forest products market combines aspects of a bilateral monopoly (a single dominant seller, the Crown; and a single dominant buyer, JDIL) and an oligopsony (many small sellers, the private woodlot owners; and a few buyers, the mills, which purchase from both private woodlot owners and the Crown.) Two parties dominate the transactions, and prices for a large proportion of the total harvest are set administratively. Thus, it is difficult to establish fair market value.⁴¹¹

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

⁴⁰⁸ See, e.g., New Brunswick 2nd AR Final Market Memorandum.

⁴⁰⁹ See *Lumber V AR2 Prelim Results* PDM at 19-20; see also GNB Stumpage IQR Response at STUMP-28 and Exhibits NB-AR2-STUMP-16, STUMP-17 and STUMP-18.

⁴¹⁰ See GNB Stumpage IQR Response at STUMP-28 and Exhibit NB-AR2-STUMP-16.

⁴¹¹ *Id.* at Exhibit 17.

since the most significant source of departmental revenue is Crown timber royalties, any increase in Crown timber supports the Department's efforts to balance budgets.⁴¹²

The GNB, however, argues that due to changes in the private stumpage market, the *2012 Private Forest Task Force Report* Commerce relied on is no longer relevant.⁴¹³ The GNB's argument relies primarily on a declaration made by the author of the 2012 report, Donald W. Floyd. In his declaration, Dr. Floyd stated, "{t}here have been substantial changes in the New Brunswick softwood market and government oversight over the last decade."⁴¹⁴ In addition to this declaration, the author of the report submitted data collected by the New Brunswick Forest Products Commission illustrating the significant increase in private woodlot harvest volume since 2012 and the range of private woodlot harvest volumes between 2005 to 2018.⁴¹⁵ Based on these data, the GNB highlights that both the *2008 Auditor General Report* and the *2012 Private Forest Task Force Report* examined years where the private woodlot softwood participation was between approximately one-third and just over one-half of the 2019-2020 volume.⁴¹⁶ The GNB's subsequent argument is twofold: (1) the current POR reflects a rebound in the sources of softwood lumber supply and private harvest volume and is, therefore, more comparable to the market percentages of the *Lumber IV* period, when Commerce found the New Brunswick market to be undistorted and suitable for use as a benchmark; and (2) new evidence provided by the author of the *2012 Private Forest Task Force Report* should encourage Commerce to review the private woodlot participation and identify studies and reports that are more relevant to the POR, such as the *2020 Report of the Auditor General of New Brunswick*, the FMV Study for 2018-19, and the Kelly Report discussed previously.

While taking into account the declaration and data provided by the author of the *2012 Private Forest Task Force Report*, we continue to disagree with the GNB's argument that because the harvest volume of private-origin timber has increased since the time the three reports were issued, that the three reports cited by Commerce are no longer relevant. We find that the data presented by itself are not meaningful, as the GNB has not indicated to what extent a change in private harvest volume compares to the total volume change in the province during this time. In other words, if the total harvest within the province also increased during this time period, the total private woodlot production percent in comparison to the rest of the province would be the same, and thus, its level of participation would remain unchanged. Beyond this, the GNB has provided insufficient information regarding how the private woodlot market has substantially changed (*i.e.*, significant increase/decrease in freehold land production) since the issuance of the three reports. Therefore, Commerce is continuing to rely on information in these reports for purposes of evaluating whether the private stumpage market in New Brunswick should be used as a tier-one benchmark.

⁴¹² *Id.* at Exhibit 18.

⁴¹³ *See* GNB Case Brief Volume 6 at 18.

⁴¹⁴ *See* GNB Case Brief Volume 6 at 15 (citing GNB Factual Information to Measure the Adequacy of Remuneration at Exhibit NB-AR2-BENCH-STUMP-2).

⁴¹⁵ *Id.*

⁴¹⁶ *Id.* at 18.

Commerce Appropriately Evaluated Distortion in the New Brunswick Stumpage Market

Consistent with our findings in *Lumber V Final*⁴¹⁷ and the *Lumber V ARI Final*,⁴¹⁸ we base our conclusion that the New Brunswick private stumpage market is distorted on a number of factors including: the GNB being the dominant supplier, and the mills being the dominant consumers, of stumpage in New Brunswick (oligopsony effect); the GNB accounting for a majority of the softwood harvest volume during the POR; and consumption of both Crown-origin standing timber and private standing timber being concentrated among a small number of corporations. Thus, the GNB's assertion that our distortion finding hinges on our overhang finding is misplaced.

Regarding Commerce's overhang finding, the GNB and JDIL argue that: (1) an insignificant portion of Crown allocations was unharvested during the POR; and (2) the GNB has provided new supporting documentation which justifies additional downward adjustments to the overhang calculation and clarifies any unused allocations. To support its argument, the GNB provides declarations from the Timber Market & Utilization Forester for the DNRED and the Twin Rivers Paper Company Inc. (Twin Rivers) regarding the circumstances when DNRED did not correctly reallocate harvest volumes.⁴¹⁹ We disagree that revisions to our overhang calculations, as proposed by the GNB and JDIL, are warranted. We further rebut the GNB's specific calculation arguments in a separate memorandum.⁴²⁰

First, the GNB and JDIL argue that Commerce is obligated to make adjustments to its calculations to account for allocations that could not be used based on company specific circumstances. The GNB provides supporting documentation in the form of a declaration from the Timber Market & Utilization Forester for the DNRED discussing the specific events which led to overhang. In addition, the GNB submitted a declaration from Twin Rivers with incorporated documentation to clarify the context of its unused allocation.⁴²¹ We find the conclusions contained in this supporting documentation unpersuasive.

In the DNRED's declaration, they also confirm that mills may "over-harvest by up to 10 percent (*i.e.*, 110 percent of allocation) or under-utilize by up to 10 percent (90 percent of allocation)."⁴²² Commerce recognizes that there are multiple reasons why a company may over-harvest or under-utilize beyond their full allocation; however, this does not contradict that overhang in New Brunswick exists or that allowing mills to have an annual overhang volume equal to 10 percent of their annual allocated volume creates a significant overhang that, in turn, depresses the need for the mills to obtain private-origin standing timber in New Brunswick.

Next, we disagree with the GNB and JDIL that an insignificant portion of Crown allocations was unharvested during the POR.⁴²³ The GNB argues that the Crown's share of the standing timber

⁴¹⁷ See *Lumber V Final* IDM at Comment 28.

⁴¹⁸ See *Lumber V ARI Final* IDM at Comment 17.

⁴¹⁹ See GNB Case Brief Volume 6 at 19-20 (citing GNB Factual Information to Measure the Adequacy of Remuneration at Exhibit NB-AR2-BENCH-STUMP-6 and Exhibit NB-AR2-BENCH-STUMP-7).

⁴²⁰ See New Brunswick Overhang Calculations Memorandum dated concurrently with this decision memorandum.

⁴²¹ *Id.*

⁴²² *Id.* at Exhibit NB-AR2-BENCH-STUMP-6 at 1.

⁴²³ See JDIL Case Brief at 16-17; *see also* GNB Base Brief Volume 6 at 19-21.

harvest in New Brunswick, which was approximately 50 percent during the POR,⁴²⁴ is not large enough for Commerce to find that distortion exists. The GNB further argues that reaching an affirmative distortion determination based solely on the Crown's share of the standing timber market would constitute an inappropriate application of a *per se* rule and that substantial evidence of significant market distortion is needed for Commerce to determine that a market is distorted.⁴²⁵

Commerce did not apply a *per se* rule in the *Lumber V AR2 Prelim*. Rather, in the *Lumber V AR2 Prelim*, Commerce based its affirmative distortion finding on multiple factors. As detailed in both the preliminary and final market memoranda regarding the New Brunswick market, Crown lands accounted for approximately half of the softwood timber harvest volume in the province.⁴²⁶ The fact that Crown-origin standing timber constitutes approximately half the supply in the province and, thus, is the dominant supplier of softwood timber during the POR, is a factor in our decision to find the New Brunswick private-origin standing timber market to be distorted, but it is not the only factor. Commerce's conclusion that in-province private stumpage prices are distorted is, thus, fundamentally a determination that the prices are, "significantly distorted as a result of the government's involvement in the market."⁴²⁷ However, as explained in the *Lumber V AR2 Prelim*, additional factors, such as the small number of mills that dominate standing timber consumption and the existence of an overhang of allocated Crown-origin standing timber volume, contributed to our finding that New Brunswick's private-origin standing timber market was distorted.

The GNB next states that private woodlots experience strong demand and collectively were able to sell volumes near or above sustainable levels for the province.⁴²⁸ To illustrate this, the GNB notes in a new exhibit that for softwood species in 2018-19, that the private woodlot softwood stumpage harvest was at 97 percent of sustainable levels, and in 2019-20, it was at 106 percent.⁴²⁹ Further, both the GNB and JDIL cite to record information indicating that mills throughout the province source logs from private woodlots and imports affirming that the GNB does not dominate the supply of dominate of softwood timber in New Brunswick.⁴³⁰

We find that the GNB's arguments regarding net demand within the province are unpersuasive for purposes of determining whether the private stumpage prices in the province are appropriate tier-one benchmarks. While the record shows that mills sourced wood from private suppliers and imports, these facts do not address our concerns regarding the conditions of New Brunswick's market for standing timber. In particular, a single supplier, the GNB, accounts for approximately half of the province's standing supply. Meanwhile, a limited number of large consumers dominate the demand for Crown-origin and private-origin standing timber in the province.⁴³¹ Neither the GNB nor JDIL have provided any information that addresses the concerns regarding the concentration of consumption of Crown and private timber among a

⁴²⁴ See, e.g., New Brunswick 2nd AR Prelim Market Memorandum.

⁴²⁵ See GNB Case Brief Volume 6 at 42-43.

⁴²⁶ See, e.g., New Brunswick 2nd AR Final Market Memorandum.

⁴²⁷ See JDIL Case Brief at 16 (citing *CVD Preamble*, 63 FR at 65377).

⁴²⁸ See GNB Case Brief Volume 6 at 32-33.

⁴²⁹ *Id.* at 32.

⁴³⁰ See JDIL Case Brief at 4-5; see also GNB Case Brief Volume 6 at 32-33.

⁴³¹ See, e.g., New Brunswick 2nd AR Final Market Memorandum.

small number of corporations. Thus, while the mills in New Brunswick sourced a portion of their timber from private woodlots and imports, it does not change the fact that supply in the province is dominated by the GNB and demand is dominated by a few large timber consuming mills.⁴³² Further, in the case of JDIL, New Brunswick's largest consumer of standing timber and logs, its ability to purchase imported logs through non-arm's length transactions (*i.e.*, logs it imports from its own land holdings in Maine) adds to the market power it can exert in the province and, thus, contributes to the oligopsonistic conditions that exist in the province.⁴³³

We also find that tenure holding mills have an incentive not to purchase timber from private woodlots unless the price is at or near the Crown prices, because these private purchase prices form the basis of the New Brunswick Crown stumpage prices. As such, we find that tenure-holding mills have ready access to additional Crown-origin standing timber and continue to find that private woodlot owners mainly serve as a supplemental source to large mills. As a result, we find that in New Brunswick, sellers of private-origin standing timber cannot expect to charge a price that is independent of the prices charged for Crown-origin standing timber.

New Arguments from the GNB and JDIL Are Unpersuasive and Do Not Detract from Commerce's Findings

In this review, the GNB presents a new argument that New Brunswick faces even more competitive conditions on average than Nova Scotia based on the larger concentration of mills and sawmills in New Brunswick than in Nova Scotia.⁴³⁴ Based on data from the New Brunswick Department of Natural Resources and Energy Development for softwood mills active in CY 2019, 97 percent of land segments are within 70 km of two or more mills and 89 percent of land is within 70 km of two or more sawmills in New Brunswick. In addition, 91 percent of land segments are within 70 km of three or more mills and 68 percent of land is within 70 km of three or more sawmills in New Brunswick. In contrast, according to data from the NS Registry of Buyers for softwood mills for CY 2019, 33 percent of land segments in Nova Scotia are within 70 km of only one mill and that 45 percent of land is within 70 km of zero or only one sawmill.⁴³⁵ Thus, due to the higher level of proximity of mills and sawmills, the GNB argues that "New Brunswick faces even more competitive conditions on average than Nova Scotia."

We find the argument that distance between mills and sawmills demonstrates higher levels of competition unpersuasive for purposes of determining whether the New Brunswick private stumpage market is distorted and suitable for use as a tier-one benchmark. First, the GNB does not provide key information such as the owner of the mills, their production levels, or the original source of wood. While there are hundreds of buyers of private-origin standing timber in New Brunswick, only a small number of mills are the dominant consumers of Crown-origin and private-origin standing timber in the province, and the GNB continues to be the market's dominant supplier of standing timber.⁴³⁶ This important data point, however, is not captured by the GNB's analysis, which measures distance only and does not address which suppliers are

⁴³² *Id.*

⁴³³ See GNB Stumpage IQR Response at Exhibit NB-AR2-LER-7.

⁴³⁴ See GNB Case Brief Volume 6 at 33-34.

⁴³⁵ *Id.* (citing GNB Factual Information to Measure the Adequacy of Remuneration at Exhibit NB-AR2-BENCH-STUMP-4).

⁴³⁶ See New Brunswick 2nd AR Final Market Memorandum. The exact percentages are proprietary.

price leaders and/or which mills are the largest consumers of standing timber in New Brunswick. Second, the GNB provides minimal support for the argument of correlating distance and competition. The GNB's only source cited is a statement from the Chief Forester who stated, "in a competitive market like New Brunswick, the wood basket of one mill can overlap with one or multiple other mills."⁴³⁷ As a result, Commerce finds no sufficient basis to conclude, based on the record evidence, that New Brunswick faces more competitive conditions on average than Nova Scotia based on the concentration of mills and sawmills in New Brunswick and Nova Scotia.

In addition to the recent data presented by the GNB regarding distance to mills, the GNB notes that it has presented several data points and expert reports relevant to the current period whereas the petitioner "has not introduced a single expert report, economic analysis or other piece of authoritative economic evidence examining the Current Market Period (roughly 2014-15 to the present) in New Brunswick."⁴³⁸ The GNB argues that the reports and studies it has submitted to the record, such as the *2020 Report of the Auditor General of New Brunswick*, the 2018-19 FMV study, and the Kelly Report are more applicable to the current period and thus are more relevant for this administrative review. In addition, the GNB submitted declarations from an independent contract harvester and an owner-operator of a large private woodlot in northwest New Brunswick to describe the nature of the private stumpage market and the lack of practical relevance of Crown stumpage to the private stumpage market.⁴³⁹ The GNB argues that these declarations contradict Commerce's findings in the *Lumber V AR2 Prelim* as they illustrate that in the current market environment, mills do not dictate or apply downward pressure on private stumpage prices, and Commerce should, therefore, alter its view that the private stumpage market in New Brunswick is distorted.

Commerce first notes that it uses the most recent data available when conducting its analysis of whether the private stumpage market in New Brunswick is distorted and should be used as a tier-one benchmark. Commerce's conclusion that Crown-origin is the dominant supplier of softwood during the POR, a small number of mills dominate standing timber consumption, and the existence of an overhang of allocated Crown-origin standing timber volume were all based on data from the POR. Similarly, regardless of the volume of private-origin standing timber harvested by non-sawmill-owning, independent contractors such as the contractor cited by the GNB, independent contractors are not the final consumers of sawtimber as discussed previously. Such contractors will, in-turn, sell private origin standing stumpage to the mills, who are the ultimate consumers of the sawtimber. As such, the dominance of these mills will be reflected in the price they are willing to pay to the independent contractors. We, therefore, continue to find the pricing of independent harvesters for private-origin sawtimber will be responsive to the price-setting behavior of the small number of mills who dominate the market in the province.

⁴³⁷ See GNB Case Brief Volume 6 at 33 (citing GNB Stumpage IQR Response at Exhibit NB-AR2-LER-6 at 3, paragraph 15).

⁴³⁸ *Id.* at 35.

⁴³⁹ *Id.* at 36-39 (citing GNB Factual Information to Measure the Adequacy of Remuneration at Exhibit NB-AR2-BENCH-STUMP-4).

Finally, the GNB argues that the *Lumber V AR2 Prelim* does not articulate a viable theory of market distortion.⁴⁴⁰ Specifically, the GNB argues that: (1) Commerce’s finding is flawed, as the number of competing buyers is a prevailing market condition, and the remaining Crown share issue has been ruled by Commerce itself not to *per se* give rise to distortion; and (2) Commerce does not provide any example of how mills can actually impact private stumpage prices.

In the GNB’s argument that the number of competing buyers is a prevailing market condition, the GNB does not rebut Commerce’s argument that oligopsonistic conditions exist in New Brunswick. Instead, the GNB argues that, “The Tariff Act and its implementing regulations do not permit the Department to arbitrarily guess at what constitutes too many or too few competitors in a free and private market.”⁴⁴¹ Further, the GNB argues that prevailing market conditions vary as, “{s}ome markets are made of two competitors. Other markets have a large number of small competitors.”⁴⁴² In other words, under the GNB’s argument, the number of competitors in a market cannot lawfully be the basis for a finding of market distortion if that is the “prevailing market condition.” We disagree that the two factors: (1) the existence of the GNB as the dominant supplier of stumpage; and (2) the mills as the dominant consumers of stumpage in New Brunswick, *i.e.*, the prevailing market conditions in New Brunswick, are ones on which Commerce cannot base a distortion finding. GNB would argue that we have to use a tier-one benchmark and find that the private stumpage market in New Brunswick is not distorted despite these conditions. To the contrary, 19 CFR 351.511(a)(2) states that Commerce will not rely on in-country benchmarks where the government’s involvement in a market has “caused actual transaction prices within the country to be distorted.” As a result, Commerce reasonably determined in the *Lumber V AR2 Prelim* that the GNB’s predominant market presence, in combination with other factors such as the oligopsonistic conditions in the province, distorted prices within the province.⁴⁴³

Finally, the GNB argues that the evidence indicates that there is no path for softwood mills to dictate the prices of private origin standing timber. As stated previously, we disagree with the argument that mills have no power to control the pricing mechanism of private woodlot owners because woodlot owners’ primary customers are independent contractors, as opposed to mills. The dominance of softwood mills will be reflected in the price they are willing to pay to the independent contractors. As a result, we continue to find the pricing of independent harvesters for private-origin sawtimber will be responsive to the price-setting behavior of the small number of mills who dominate the market in the province. In addition, while the GNB argues overhang does not exist, and, therefore, Crown allocation that they can use or not use is irrelevant to the ability of mills to dictate prices, we disagree.

As detailed in both the preliminary and final market memoranda regarding the New Brunswick market, and as stated earlier, Crown lands accounted for approximately half of the softwood timber harvest volume in the province.⁴⁴⁴ While the GNB argues that reaching an affirmative

⁴⁴⁰ *Id.* at 39-44.

⁴⁴¹ *Id.* at 42.

⁴⁴² *Id.*

⁴⁴³ See *Lumber V AR2 Prelim* PDM at 17-20.

⁴⁴⁴ See, e.g., New Brunswick 2nd AR Final Market Memorandum.

distortion determination based solely on the Crown's share of the standing timber market would constitute an inappropriate application of a *per se* rule and that substantial evidence of significant market distortion is needed for Commerce to determine that a market is distorted, we disagree.⁴⁴⁵ Allowing mills to have an annual overhang volume equal to 10 percent of their annual allocated volume creates a significant overhang that, in turn, depresses the need for the mills to obtain private-origin standing timber in New Brunswick. While Commerce's finding of distortion is not the only metric for its finding that the private stumpage market in New Brunswick is distorted and should be used as tier-one benchmark, it does significantly impact mills' ability to dictate prices. In sum, Commerce's conclusion that in-province private stumpage prices are distorted is, thus, fundamentally a determination that the prices are, "significantly distorted as a result of the government's involvement in the market."⁴⁴⁶

F. Ontario Stumpage Issues

Comment 15: Whether Ontario's Crown Stumpage Market Is Distorted

*GOO's Comments*⁴⁴⁷

- The *Lumber V AR2 Prelim* does not point to any affirmative evidence that private timber prices in Ontario are distorted or depressed by Crown stumpage rates.
- While Commerce claims that *private* timber prices in Ontario are distorted due to the relatively small size of the private market relative to the Crown's share of the market, the volumes of private timber harvested annually in Ontario are substantial.
- The Hendricks Report examined Ontario's private and Crown stumpage markets and found that Crown timber sales did not affect private timber prices.
- The MNP Ontario Survey found that there is substantial demand for private timber and that average prices for private standing timber were higher than the average Crown stumpage rates during the POR.
- The *CVD Preamble* does not permit Commerce to conclude that when a government provider consists of a majority or a substantial portion of the market, the market price is *per se* distorted; rather, the *CVD Preamble* requires Commerce to examine the record evidence and to assess whether the prices in question have been distorted in fact. Record evidence demonstrates that private timber prices in Ontario are not distorted by Crown stumpage prices.
- A WTO Panel has also rejected Commerce's finding that private transactions are distorted merely due to the government's role as a majority supplier.⁴⁴⁸
- Commerce's finding that the "combination of tenure holders being able to harvest at levels above {AWS} targets and transfer Crown timber between mills expands the Crown timber market, {thereby} reducing demand {and} prices for timber from the private market" is unsupported by record evidence because: (1) AWS targets are not binding and the extent to which harvesters of Crown timber exceed or fall short of such targets in a given period are not relevant to the validity of the private market; (2) the ability of Ontario harvesters to acquire Crown logs from third parties actually contradicts Commerce's distortion analysis and

⁴⁴⁵ See GNB Case Brief Volume 6 at 42-43.

⁴⁴⁶ See JDIL Case Brief at 16 (citing *CVD Preamble*, 63 FR at 65377).

⁴⁴⁷ See GOO Case Brief Volume 7 Part 1 at 16-25.

⁴⁴⁸ *Id.* at 19-20 (citing *DS 533 Panel Report* at paragraph 7.61).

demonstrates that a robust and competitive market for Crown and private timber exists; and (3) sawmills in Ontario were operating below their full capacities during the POR.⁴⁴⁹

*Petitioner's Rebuttal Comments*⁴⁵⁰

- Record evidence indicates that the Ontario timber market is distorted for three reasons: (1) the market is dominated by Crown timber; (2) the majority of private timber is sold to a handful of dominant firms, who also dominate the Crown market; and (3) the structure of the Crown timber market allows companies flexibility in choosing when to harvest timber.
- The Crown dominates Ontario's timber market with 95.15 percent of the softwood harvest volume in Ontario, according to data submitted by the GOO, and with the government constituting a vast majority of the market, it is reasonable for Commerce to conclude that the market is distorted and to seek a benchmark outside the province.
- The GOO argues that "the volumes of private timber harvested annually in the province are substantial," but the absolute volume of private timber harvested annually is irrelevant to Commerce's analysis of the level of government involvement in the market.⁴⁵¹
- Record evidence contradicts the claims of the GOO and Resolute that private prices are not impacted by market concentration given that the top ten consumers of non-Crown timber account for more than 60 percent of total non-Crown consumption, and these same companies account for 54 percent of total Crown timber.⁴⁵²
- The arguments of the GOO and Resolute that the flexible structure of Ontario's timber market is not "legally or economically relevant" is contradicted by evidence that flexible harvest limits allow companies to increase their reliance on Crown timber before turning to the private market.⁴⁵³
- The GOO's and Resolute's arguments rely almost wholly on the Hendricks Report; however, this report is neither reliable nor refutes Commerce's factual findings regarding the distortions in the Ontario timber market because, as Commerce explained in the *Lumber V Final*, the Hendricks Report ignores the fact that there is one dominant price setter, the GOO, in the Ontario market.⁴⁵⁴

Commerce's Position: As explained in the *Lumber V AR2 Prelim Results*, we examined the Ontario Crown stumpage market and, based on the Crown's overwhelming share of the Ontario stumpage market, the small number of firms that purchase a large share of both Crown and private timber, and the ability of tenure holders to harvest Crown timber above AWS targets and transfer timber between mills, we determined that stumpage prices for timber from private land in Ontario are distorted and are thus unusable as a benchmark.

The GOO disputes our finding that the Crown's involvement in the Ontario market affects the prices of private-origin standing timber such that private stumpage prices in Ontario are not market determined. In support of its arguments, the GOO cites frequently to the Hendricks

⁴⁴⁹ *Id.* at 23 (citing *Lumber V AR2 Prelim PDM* at 17).

⁴⁵⁰ See Petitioner Rebuttal Brief at 144-151.

⁴⁵¹ *Id.* at 147 (citing GOO Case Brief Volume 7 Part 1 at 16).

⁴⁵² *Id.* at 147-148 (citing *Lumber V AR2 PDM* at 17; Ontario Market Memorandum at Attachment 2). Resolute incorporates the GOO's arguments by reference. See Resolute Case Brief at 7-9.

⁴⁵³ *Id.* at 149 (citing GOO Case Brief Volume 7 Part 1 at 23).

⁴⁵⁴ *Id.* at 145 (citing *Lumber V Final IDM* at Comment 31).

Report, which has been updated for the current proceeding. The Hendricks Report examines the concentration of the Crown timber market and the relative size of the private timber market compared to the Crown market and analyzes data on private timber transactions in the MNP Ontario Survey, which is a survey of Ontario private timber prices. Citing to the Hendricks Report, the GOO asserts that Ontario sawmills are not operating at full capacity, and thus, have harvested all profitable Crown timber.⁴⁵⁵ In addition, the Hendricks Reports cites evidence that private stumpage prices are driven by prices for lumber end-products, that market participants are well-informed, and that private timber owners have multiple buyers, and asserts that Ontario harvesters are price takers in softwood lumber markets and thus unable to affect the residual value of standing softwood timber.⁴⁵⁶ Thus, according to the Hendricks Report, the price of the remaining Crown timber, which is unprofitable to harvest, has no impact on the cost of private timber.⁴⁵⁷ However, in the *Lumber V Final*, we noted:

{T}he Hendricks Report ignores the fact that there is one dominant price setter, the GOO, in the Ontario timber market. The Crown supplied 96.5 percent of the market during the POI {and} set administered prices that do not fully consider market conditions.⁴⁵⁸

In the *Lumber V ARI Final*, we noted that the Hendricks Report also fails to address the fundamental issue of a market that is dominated by a single supplier with administratively set prices:

{T}he framing of Hendricks Report’s conclusion that “under these prevailing conditions, the price of Crown timber on one stand cannot affect the price of private timber on another” is misleading. It is not only the price of Ontario Crown timber that could impact the price of private timber but also the supply of Ontario Crown timber. A fundamental element of market pricing is that greater demand will lead to a higher price. The GOO’s Crown stumpage charge, however, is not responsive to the amount of Ontario Crown stumpage demanded.⁴⁵⁹

Record evidence shows that during the POR, the GOO supplied the overwhelming majority of standing timber in Ontario at government-set prices to companies that have been granted multi-year tenure rights by the GOO.⁴⁶⁰ According to information from the GOO, for FY 2019-2020, Crown-origin timber accounted for 92.13 percent of the harvest volume in Ontario.⁴⁶¹ In addition, the Crown-origin standing timber is supplied at an administratively set price that does not adjust in response to demand. The Hendricks Report ignores the effect of a dominant government supplier on the Ontario timber market but instead conducts a selective analysis of the Ontario standing timber market that results in a carefully worded claim that the “price” of

⁴⁵⁵ See Petitioner Rebuttal Brief at 17-18.

⁴⁵⁶ See GOO Stumpage IQR Response at Exhibit ON-PRIV-5 at 5-7.

⁴⁵⁷ *Id.*

⁴⁵⁸ See *Lumber V Final* IDM at 94.

⁴⁵⁹ See *Lumber V ARI* IDM at Comment 18.

⁴⁶⁰ See GOO Stumpage IQR Response at ON-STUMP-66 – ON-STUMP-78 and Exhibit ON-STATS-1; *Lumber V AR2 Prelim* PDM at 16.

⁴⁶¹ *Id.* (citing GOO Stumpage IQR Response at ON-STUMP-66 – ON-STUMP-78).

Ontario Crown timber has no effect on private timber prices.⁴⁶² As such, we find the arguments in the Hendricks Report to be unpersuasive and that the report is not a reliable source for understanding the relationship between Ontario's Crown timber supply and private timber market.

The GOO argues that "the size of Ontario's private market does not impact the validity of private market transactions as a benchmark" and that the volume of private timber harvested in Ontario is substantial.⁴⁶³ According to the GOO, Commerce did not support this claim with any economic analysis, while the Hendricks Report provides clear proof that competition among sawmills in Ontario is sufficient to produce market-determined private timber prices.⁴⁶⁴ The GOO also suggests that Commerce conducted an unfair *per se* distortion analysis to find the Ontario timber market distorted solely based on a predominant government share, without considering other evidence that Ontario's private timber prices are not distorted by government involvement.⁴⁶⁵

Our analysis in the *Lumber V AR2 Prelim Results* did not solely examine the absolute volume of Ontario's private market, but rather examined the relative size of the private market compared to the government-controlled market to determine whether the government constitutes a majority of the market. As noted above, Crown-origin timber accounted for 92.13 percent of the harvest volume in Ontario,⁴⁶⁶ and the *CVD Preamble* provides that where a government constitutes a majority of the market, and "where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy."⁴⁶⁷ Therefore, in the *Lumber V AR2 Prelim Results*, we examined all information on the record regarding the Ontario standing timber market, including how the Crown standing timber prices are determined and the conditions applied on Crown tenure holders, in order to determine whether it is reasonable to conclude that private transactions are distorted by the government's involvement in the market.⁴⁶⁸

As explained in the *Lumber V AR2 Prelim Results*, we find that the record evidence demonstrates that Ontario's private-origin standing timber market was dominated by a small number of tenure holders and that tenure holders were able to harvest Crown timber above AWS targets and transfer timber between mills.⁴⁶⁹ For example, during FY 2017-2019, the 10 largest firms that source from both the private and Crown forest, as ranked by total volume of softwood timber received, accounted for a significant portion of private market consumption, and the top five firms in the crown market account for 77 percent of all softwood received from Ontario Crown sources.⁴⁷⁰ We also found that, based on these facts, it is reasonable to conclude that private

⁴⁶² See Hendricks Report at paras. 7 and 44-47.

⁴⁶³ *Id.* at 15-17; see also GOO Case Brief Volume 7 Part 1 at 15.

⁴⁶⁴ See GOO Case Brief Volume 7 Part 1 at 16.

⁴⁶⁵ *Id.* at 18-19.

⁴⁶⁶ See GOO Stumpage IQR Response at Exhibit ON-STATS-1.

⁴⁶⁷ See *CVD Preamble*, 63 FR at 65377.

⁴⁶⁸ See *Lumber V AR2 Prelim PDM* at 16-17.

⁴⁶⁹ *Id.* at 17; GOO Stumpage IQR Response at Exhibit ON-TAB-9; Ontario Market Memorandum at Attachments 1 and 2.

⁴⁷⁰ See GOO Stumpage IQR Response at Exhibit ON-TAB-9; Ontario Market Memorandum at Attachments 1 and 2.

market prices in Ontario were distorted by government involvement in the timber market, such that there are no viable standing timber prices within Ontario that could serve as a benchmark.⁴⁷¹

The GOO acknowledges that Commerce addressed attributes of the Ontario timber market other than government predominance in the *Lumber V AR2 Prelim Results*, but argues that these attributes are not relevant to a distortion finding or were misunderstood by Commerce.⁴⁷² The GOO disputes the market features Commerce identified as evidence that private transactions are distorted by the government's involvement; specifically, the small number of tenure holders that dominate the private market, the non-market nature of the government-set price, the overlap in buyers between the private and Crown timber markets, and the ability of Crown tenure holders to turn to government timber when prices are high.⁴⁷³

The GOO also argues that Commerce was incorrect to find that the "combination of tenure holders being able to harvest at levels above {the AWS } targets and transfer Crown timber between mills expands the Crown timber market, reducing demand—and therefore, prices—for timber from the private market."⁴⁷⁴ According to the GOO: (1) AWS targets are not binding and the extent to which harvesters of Crown timber exceed or fall short of such targets in a given period are not relevant to the validity of the private market; (2) the ability of Ontario harvesters to acquire Crown logs from third parties actually contradicts Commerce's distortion analysis and demonstrates that a robust and competitive market for Crown and private timber exists; and (3) sawmills in Ontario were operating below their full capacities during the POR.⁴⁷⁵

We find these criticisms of the *Lumber V AR2 Prelim Results* distortion analysis unconvincing. While the GOO extensively quotes the Hendricks Report on the economic conditions required for a market to be competitive and on competition within the Ontario private timber market, Commerce's distortion analysis was not intended to determine whether a market satisfies certain theoretically-established competitiveness benchmarks, but rather, whether prices are distorted by government involvement in the market. Based on our analysis of Ontario Crown- and private-origin timber consumption, we concluded that the high concentration of a small number of tenure holding firms in the private timber market made that private market subject to influence by the Crown timber market.⁴⁷⁶ Furthermore, the GOO's point that AWS targets are non-binding underscores that tenure holders in Ontario have the flexibility to harvest more Crown timber at a guaranteed price when demand for softwood lumber is high. Commerce has acknowledged AWS targets are only estimates employed for planning purposes and thus are not relevant to Crown harvest volumes.⁴⁷⁷ The GOO also notes that sawmills can process timber harvested by other companies.⁴⁷⁸

As a result, we find that private-origin standing timber prices in Ontario, such as the prices in the MNP Survey, cannot serve as a benchmark for Ontario Crown-origin stumpage. The GOO

⁴⁷¹ See *Lumber V AR2 Prelim PDM* at 17.

⁴⁷² See GOO Case Brief Volume 7 Part 1 at 23.

⁴⁷³ *Id.* at 15.

⁴⁷⁴ *Id.* (citing *Lumber V AR2 Prelim PDM* at 17).

⁴⁷⁵ *Id.* at 18 (citing Hendricks Report at paragraph 46).

⁴⁷⁶ See *Lumber V AR2 Prelim PDM* at 17.

⁴⁷⁷ *Id.*

⁴⁷⁸ See GOO Case Brief Volume 7 Part 1 at 24.

provides several alternative benchmarks that it argues should be used to measure the adequacy of remuneration of Ontario Crown stumpage. First, the GOO advocates for an Ontario log benchmark calculated based on a residual value methodology.⁴⁷⁹ However, this would be a tier-three benchmark, while Nova Scotia's private stumpage prices are a preferred tier-one benchmark. As an alternative to an Ontario log benchmark, the GOO argues that Commerce should consider a benchmark based on the Québec auction market, given the similarities between Québec and Ontario's forests.⁴⁸⁰ However, as discussed in Comment 19, we find Québec's private standing timber prices to be distorted by government involvement and thus not suitable as a tier-one benchmark for any province.

Finally, the GOO cites to the *Lumber IV NAFTA Panel Decision* and the *DS 533 Panel Report* as support for its arguments. In the dispute at the WTO, the WTO Panel rejected Commerce's finding that the Ontario stumpage market is distorted due to the Crown's majority share of the market; however, WTO panel and Appellate Body conclusions are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.⁴⁸¹ Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel or Appellate Body dispute reports limit automatically Commerce's discretion in applying the statute in an AD or CVD proceeding.⁴⁸² Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."⁴⁸³ Moreover, the GOO's reliance on the decision in *Lumber IV NAFTA Panel Decision* is unavailing as the record evidence in this review stands on its own.

For the reason explained above, we continue to find that the Crown's administered stumpage rates and the Crown's overwhelming share of the market, as well as the flexible supply of Crown timber that is available to tenure holders, influences the prices for private standing timber such that private standing timber prices in Ontario are not suitable as a tier-one benchmark for measuring the adequacy of remuneration received by purchasers of Crown-origin standing timber.

Comment 16: Whether Ontario's Stumpage Prices Distort the Log Market

*GOO's Comments*⁴⁸⁴

- If Commerce does not use Ontario private stumpage prices as a benchmark, then it should rely on private log prices in Ontario, which reflect the "prevailing market conditions" in Ontario, similar to the first remand proceeding from the NAFTA Panel in *Lumber IV*, in which Commerce used a residual value methodology based on a KPMG study of log price data to calculate a log price benchmark for Crown stumpage.
- Record evidence confirms that prices for logs purchased from private land are market determined and undistorted by Crown stumpage charges; therefore, Commerce should use a

⁴⁷⁹ *Id.* at 28-30.

⁴⁸⁰ *Id.* at 33 and 44-50.

⁴⁸¹ See *Corus Staal BV v. U.S.*, 395 F. 3d 1347-49, accord *Corus Staal BV v. U.S.*, 502 F. 3d 1375; and *NSK Ltd. v. U.S.*, 510 F. 3d 1379-80.

⁴⁸² See 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

⁴⁸³ See SAA at 659.

⁴⁸⁴ See GOO Case Brief Volume 7 Part 1 at 28-30.

benchmark based on Ontario log prices if it chooses not to use private stumpage prices in the KPMG Report as a benchmark.

*Petitioner's Rebuttal Comments*⁴⁸⁵

- Ontario lumber producers face the option of purchasing more Crown timber from the government at a fixed price (plus its harvesting and hauling costs) or purchasing other timber or logs (plus harvesting and hauling costs, if applicable) from private sources; therefore, private log prices are distorted for the same reasons as private timber prices and are unusable as a benchmark.
- The use of a log benchmark would be a tier-three benchmark, which is not appropriate as there is a usable in-Canada tier-one benchmark for Ontario stumpage.

Commerce's Position: The GOO provides multiple alternative benchmarks in the event Commerce rejects an Ontario private stumpage benchmark. The GOO first argues that Commerce should adopt an Ontario log benchmark calculated based on a residual value methodology.⁴⁸⁶ However, this would be a tier-three benchmark under 19 CFR 351.511(a)(2). As an alternative, the GOO argues that Commerce should consider a benchmark based on the Québec auction market, given the similarities between Québec and Ontario.⁴⁸⁷ However, as discussed in Comment 19, we find Québec standing timber prices to be distorted by government involvement and, thus, not suitable as a tier-one benchmark for any province. Accordingly, Commerce continues to rely on Nova Scotia private stumpage prices as a preferred tier-one benchmark under 19 CFR 351.511(a)(2).

Comment 17: Whether the Ontario Standing Timber Market Is Distorted and Whether the MNP Ontario Survey Prices May Serve as an Appropriate Tier One Benchmark

*GOO's Comments*⁴⁸⁸

- For the reasons provided in case brief arguments regarding Comment 15, Commerce should reverse its decision that Ontario's private stumpage market is distorted and should use the private stumpage prices in the MNP Ontario Survey as a tier-one benchmark to measure the adequacy of remuneration for Ontario Crown stumpage.
- A NAFTA panel in *Lumber IV* and a WTO panel in *Lumber V* have both recognized that standing timber is inherently local and that the prevailing market conditions (*i.e.*, quality, price, marketability, transportation, availability) vary widely by region, and record evidence shows that the Nova Scotia benchmark does not reflect the local prevailing market conditions in Ontario.⁴⁸⁹
- The five reasons for which Commerce found the Ontario private stumpage market distorted are contradicted by record evidence, in particular the Hendricks Report, which found that: (1) the size of Ontario's private market does not impact the validity of private market transactions as a

⁴⁸⁵ See Petitioner Rebuttal Brief at 144-151.

⁴⁸⁶ See GOO Case Brief Volume 7 Part 1 at 28-30.

⁴⁸⁷ *Id.* at 44-45.

⁴⁸⁸ See GOO Case Brief Volume 7 Part 1 at 5-15 and 25-28.

⁴⁸⁹ *Id.* at 6-9 (citing *Lumber IV NAFTA Panel Decision* at 31-33; and *DS 533 Panel Report* at paragraphs 7.40 and 7.113).

benchmark; (2) the purported concentration of harvesters of standing timber in Ontario does not distort private market transactions; and (3) the absence of practical constraints on harvesting Crown timber and selling Crown logs does not depress or suppress prices for private standing timber.⁴⁹⁰

- Further, the Hendricks Report found that private timber owners in Ontario have a number of potential buyers, there is a high level of competition among suppliers of private timber, demand for timber exceeds the supply of Crown timber, and purchases in Ontario are willing to buy timber from private suppliers at prices above that charged by the Crown. Therefore, private prices of SPF delivered to sawmills are a valid benchmark for Crown stumpage.⁴⁹¹
- Commerce did not address any of the facts in the Hendricks Report that supported the conclusion that the Ontario private timber market is not distorted.
- The respondents to the MNP Ontario Survey explained that private timber prices are high, and that purchases are made only when the price makes such private timber profitable, which indicates that they are price takers. The Hendricks Report concluded that the MNP Ontario Survey demonstrates that private landowners in Ontario have multiple potential end-buyers.⁴⁹²
- The *Lumber IV NAFTA Panel Decision* found that Commerce cannot point to significant government involvement in the market, by itself, as a basis for rejecting a tier-one benchmark.⁴⁹³
- The *Lumber IV NAFTA June 7, 2004 Panel Decision On Remand Determination* found that “it is incumbent on {Commerce} to evaluate the prevailing market conditions for the provision of stumpage in Ontario as the basis for {Commerce’s} benchmark calculations.”⁴⁹⁴
- *DS 533* also found that Commerce acted inconsistently with U.S. WTO obligations when it failed to compare Ontario Crown stumpage prices to a benchmark in Ontario in the *Lumber V INV*.⁴⁹⁵
- The MNP Ontario Survey reflects all obligations and costs incurred by harvesters, whereas the price of Crown timber only reflects the stumpage charge, exclusive of other significant obligations incurred by harvesters of Crown timber. Therefore, if Commerce uses the MNP Ontario Survey as a benchmark, it must adjust the price of Crown timber to reflect the full cost of obligations on harvesters of softwood timber on Crown land, including road construction and maintenance costs, forest management planning, fire and insect protection, and consultations with Indigenous Peoples, all of which the KPMG Report found to cost C\$ 2.62/m³ during the POR.

*Petitioner’s Rebuttal Comments*⁴⁹⁶

- Commerce has correctly found that private timber prices in Ontario are distorted, and thus, cannot serve as a benchmark. Therefore, the GOO’s arguments regarding the representativeness of the MNP Ontario Survey and the survey’s inclusion of obligations and costs incurred by harvesters of timber in Ontario are moot.

⁴⁹⁰ *Id.* at 15-17 and 20-23 (citing the Hendricks Report at paras. 44-47 and 52-62).

⁴⁹¹ *Id.* at 15-18 (citing Hendricks Report at para. 44-47 and 62; and MNP Cross Border Report at Appendix 4).

⁴⁹² *Id.* at 14 (citing MNP Cross Border Report at 3; and Hendricks Study at paragraph 51).

⁴⁹³ *Id.* at 19 (citing *Lumber IV NAFTA Panel Decision* at 26).

⁴⁹⁴ *Id.* at 8 (citing *Lumber IV NAFTA June 7, 2004 Panel Decision On Remand Determination* at 19).

⁴⁹⁵ *Id.* at 8 (citing *DS 533 Panel Report* at paragraph 7.113).

⁴⁹⁶ See Petitioner Rebuttal Brief at 144-151.

- The GOO’s claim that Commerce has not provided “sufficient analysis” to dismiss private prices as benchmarks, as instructed by *Lumber IV NAFTA Panel Decision*, should be dismissed as Commerce has clearly met this standard. Commerce has also met the legal standard articulated in the *CVD Preamble*, where it is “reasonable to conclude” that private prices will not be used as a benchmark when they are distorted by the government’s involvement in the market.
- The GOO’s reliance on WTO reports is misplaced given that WTO reports have no persuasive or other value to this proceeding.

Commerce’s Position: As discussed above in Comment 15, we continue to find that the GOO’s overwhelming share of the Ontario stumpage market, the small number of firms that purchase a large share of both Crown and private timber, and the ability of tenure holders to harvest Crown timber above AWS targets and transfer timber between mills, distorts private stumpage prices in Ontario. Therefore, there are no in-province private stumpage prices that could serve as a viable benchmark price. As we explain in Comments 27, 28, and 39-44, we continue to find that it is appropriate to use private prices in Nova Scotia as a tier-one benchmark to measure the adequacy of remuneration for Resolute’s purchases of Crown timber in Ontario. Moreover, as discussed above/below, the GOO’s reliance on the decisions in *Lumber IV NAFTA Panel Decision* and *Lumber IV NAFTA June 7, 2004 Panel Decision On Remand Determination* are unavailing, as the record evidence in this review stands on its own.

Comment 18: Whether Commerce Should Revise Resolute’s Stumpage Benefit Calculation Regarding Corrected Transactions

*Resolute’s Comments*⁴⁹⁷

- Resolute’s Ontario Crown stumpage purchases included certain record-keeping adjustments that correspond to transactions for which incorrect contract details inadvertently were entered at the time of delivery, and these values were later corrected by issuing a credit to the contractor and the Crown and entering a debit with the correct contract details.
- In the *Lumber V AR2 Prelim*, Commerce disregarded or “zeroed” the negative adjustment transactions in calculating Resolute’s stumpage benefit, while counting both the “original” transaction and the “corrected” transaction; thus, the stumpage purchases subject to adjustments – and the corresponding benefit – were double counted.
- Commerce should correct this error in the final results to avoid improperly double counting both the original and the corrected transactions.

Commerce’s Position: We analyzed Resolute’s comments, and we have made several revisions to Resolute’s Ontario stumpage for LTAR calculations to avoid the double counting of incorrect transactions that were later corrected. For further details, *see* Resolute Final Calculation Memorandum at 1-2.

⁴⁹⁷ See Resolute and Central Canada Case Brief at 20-21.

G. Québec Stumpage Issues

Comment 19: Whether Québec's Stumpage Market Is Distorted

*GOQ's Comments*⁴⁹⁸

- Record evidence demonstrates that Québec's public forest supply is insufficient to meet sawmill demand, leading to substantial demand for timber from private lands and imports of softwood logs, and Commerce's finding that Québec's timber market is distorted because "the GOQ continues to be the largest supplier of stumpage" is unsupported by record evidence.
- The volume of softwood fiber that could be supplied from public sources in Québec falls short of the quantity demanded by sawmills during the POR; therefore, Québec sawmills must turn to competitive sources of supply (*i.e.*, auctions, private land sales, and imports).
- The record demonstrates that Québec's auctions produce market-determined prices, and Commerce's observation that public lands in Québec are the largest source of stumpage and its conclusion that Québec's auctions are distorted is unsupported by any analysis or economic theory.
- Commerce's finding that TSG-holding corporations "wield market power" is based on the false assumption that sawmills satisfy their demand for timber through TSGs such that they do not need to resort to public auctions or other sources; however, auction volumes do not compete with TSG volumes and TSGs cover substantially less than sawmills' residual timber requirements, forcing them to obtain additional supply elsewhere.
- It is unclear why Commerce concluded that the bids of contractors and sawmills "tracked each other very closely" when auction bids are submitted at one time by contractors and sawmills – who are both competing for the same auction blocks, possess the same information about the blocks, and are equally skilled in evaluating timber – and when bids are opened at one time under third party supervision, and only the winning bid is disclosed.
- Commerce should explain what it means by "track" and how tracking occurs given that Québec's auctions use sealed bidding because Commerce cites no evidence that independent harvesters track sawmills bids.
- The only reason auction bids "track" is the underlying value of the timber blocks being auctioned, and bids by all bidders—TSG holders and non-TSG-holders alike—"track" each other because all bidders have similar knowledge of the characteristics of the auction blocks.
- The *Lumber V AR2 Prelim* incorrectly states that "under a TSG, a sawmill can source up to 75 percent of its supply need at a government-set price" when in fact, mills can obtain their final residual need after deductions for priority sources (auctions, imports, and private forests), but that the lower, theoretical maximum is irrelevant to the supply that mills actually obtained from their TSGs.
- Commerce's belief that TSG holding mills can simply meet 75 percent of their needs from TSGs is unsupported by record evidence; rather, TSG holding mills have a wide variety of timber sources, and they must include timber sourced from the public auctions to fully satisfy their demands.
- To conclude that the public auction system in Québec is distorted when the ten largest corporate groups obtain less than 75 percent of their need from their TSGs, and, therefore,

⁴⁹⁸ See GOQ Case Brief Volume 8.A at 10-45.

must source timber through auctions or logs from independent harvesters, is unreasonable and unsupported by record evidence and is contrary to Commerce's *2003 Policy Bulletin*.⁴⁹⁹

- Commerce's conclusion that "any timber purchased by the contractors is effectively competing with administratively supplied timber from TSGs" is false because the record demonstrates that the winning bids by independent contractors and co-operatives are often higher than the equivalent TSG stumpage values of auctioned blocks.⁵⁰⁰
- The Marshall Report found that there were no statistical differences between the bids made by TSG-holding corporations and those made by other parties who did not hold TSGs.
- Commerce found that TSG holders "wield market power in the auction system" without defining how those mills wield that power in the auctions, how auction prices are influenced by TSG-holding mills when all bids are sealed and that only winning bids are disclosed, why independent harvesters continue to enter the auction market and succeed at auction, or why TSG-holding mills often lose auctions to smaller TSG-holding mills, independent harvesters, and to mills without TSGs.
- The timber auction market in Québec is not concentrated when applying either the HHI standard or a simple concentration ratio.
- Commerce's assertion that "sawmills transferred a significant portion of their TSG-allocated Crown timber, further diminishing their need to source supplies from non-administered sources" is incorrect because transfers are nothing but swaps in which volume is exchanged between mills—typically affiliated mills—in response to processing efficiencies, TSG-holding mills do not gain or lose significant timber volumes, and their need to source from "non-administered sources" is not affected.
- Transfers under Articles 92 and 93 are between TSG holders and involve sending and receiving within the universe of TSG holders. Commerce has recognized that transfers cannot, and do not, increase the aggregate volume of timber available under TSGs as a whole, but inexplicably concludes that individual mills can obtain additional timber via transfers even though aggregate volumes do not increase.⁵⁰¹
- The most common reasons for transfers are to optimize log size processed in specific mills and "for cause" transfers under Article 93, which require advance approval of the MFFP, which contradicts the conclusion that transfers are a strategy to avoid auctions.
- The sawmills that transfer the largest volumes are also the most active participants in the auction, which indicates that transfers have no discernable effect on auction participation.
- Commerce found that auctions are not "truly open" because of the requirement that logs harvested on public land be first processed in Québec; however, this is contradicted by the fact that Québec's log processing requirement does not limit any competition for timber and logs, and there is no export demand for Québec-origin logs.
- Commerce's finding that Québec's log processing requirement limits bidding in Québec's auctions thereby rendering the auctions not "truly open" ignores Commerce's findings in prior proceedings, in which it examined similar facts and concluded that the processing requirement has no effect because there is no export demand for Québec logs.⁵⁰²

⁴⁹⁹ *Id.* at 19 (citing *2003 Policy Bulletin*).

⁵⁰⁰ *Id.* (citing GOQ IQR Response at Exhibit QC-STUMP-7).

⁵⁰¹ *Id.* at 34 (citing *Lumber V AR1 IDM* at 116).

⁵⁰² *Id.* at 42-43 (citing *Lumber III Prelim*, *Lumber III Final IDM* at 84, and *Lumber IV AR2 Final IDM* at 63.)

- The record of this review continues to show that blanket export authorizations allow exports without a need for applications, fees, or taxes, and do not limit the number of potential bidders in Québec's auctions.

*Resolute's Comments*⁵⁰³

- Québec adopted public auctions to price stumpage in response to pressure from the United States in *Lumber IV*, and during the POR, 21 percent of stumpage sold in Québec came from auctions, 21 percent came from private forests, and the remaining 51 percent came from sales of Crown stumpage that was priced according to the market-based prices resulting from the public auctions; therefore, all of Québec's stumpage prices are market based.⁵⁰⁴

*Petitioner's Rebuttal Comments*⁵⁰⁵

- Commerce correctly found that record information regarding Québec's auction system is insufficient to alter the agency's finding in the *Lumber V Final* and *Lumber V ARI Final* that Québec's auction prices are distorted and thus inappropriate to serve as a tier-one benchmark.
- Commerce's decision is based on two well-supported findings: (1) "the largest sawmills continue to dominate both the allocated Crown timber consumption and softwood sawlog auction sale volumes,"⁵⁰⁶ and that these sawmills can source the vast majority of their supply needs at a fixed government-set price through TSGs or other means and, therefore, there is little incentive for TSG-holders to bid for Crown timber at auctions above the TSG administered price; and (2) while non-sawmills also participate in the auctions, Québec's log export restraints force those non-sawmills to sell the bulk of timber they purchased at the auctions to the Québec sawmills.
- The GOQ claims that Commerce's findings are false or based on a misunderstanding; however, these arguments are meritless, and Commerce should continue to find that Québec's auction prices are not an appropriate tier-one benchmark under 19 CFR 351.511(a)(2)(i).
- Given that Commerce has found that the Québec auction prices are distorted due to government intervention in the timber market, it does not need to analyze whether they best represent the prevailing market conditions in Québec compared to other tier-one benchmarks.
- The GOQ's argument that sawmills can only obtain up to 75 percent of their "final residual need" from TSGs after deductions for priority sources (auctions, imports, and private forests) is misleading because it implies that mills first must obtain wood from private parties before accessing their TSG allocation and that they are legally limited to obtaining only 75 percent of their residual need from TSGs; however, the 75 percent limit is based on the GOQ's five-year estimations of mill need and is not reflective of a sawmill's actual consumption volume. Therefore, if a mill's actual need is lower, it still has access to the fixed allocated TSG volume based on the GOQ's assumptions, the mill is not legally required to first source timber from non-TSG sources before turning to their allocated TSG volumes, and the mill is not required to source timber from private lots or auctions.⁵⁰⁷

⁵⁰³ See Resolute and Central Canada Case Brief at 4.

⁵⁰⁴ *Id.* at 4 (citing GOQ IQR Response at Exhibit QC-STUMP-4).

⁵⁰⁵ See Petitioner Rebuttal Brief at 110-124.

⁵⁰⁶ See *Lumber V AR2 Prelim PDM* at 21-22.

⁵⁰⁷ *Id.* at 114 (citing See GOQ IQR Response at Exhibit QC-STUMP-46, *Lumber V INV IDM* at Comment 35, and *Lumber V ARI IDM* at Comment 19).

- The GOQ argues that sawmills were not able to satisfy their needs through TSGs and must compete with each other in the auctions, and they compare sawmills' TSG consumption with their supply need "as listed on supply scenarios" as evidence; however, this comparison is misleading because the "supply scenario" for each mill is a theoretical estimation by the GOQ and is not reflective of the actual supply need of any given sawmill.⁵⁰⁸
- There are several issues with the GOQ's arguments concerning section 92 and section 93 transfers, which provide sawmills with additional flexibility to obtain wood at a government-set price and lowers their need to turn to auctions:
 - The GOQ and Resolute argue that section 92 and 93 transfers are utilized at a very low rate and are thus inconsequential; however, they compare transfer volumes with volume sold at auction instead of volume consumed from auctions, which is misleading because auction winners do not need to consume all volumes won in the fiscal year.
 - They argue that transferred timber decreases the volume available to satisfy a sawmill's own residual need, thereby forcing it to source timber from auctions or other sources; however, there is no evidence to suggest that sawmills would willingly transfer timber volumes away that they need.
 - They argue that most transfers occur between affiliated sawmills; however, the relationship between sawmills that conduct transfers is not germane to Commerce's analysis and does not disprove the finding that the ability to transfer and receive transferred volumes provides individual sawmills with greater supply flexibility and reduces their need to resort to auction.
- The GOQ and Resolute argue that the AAC is decreasing, which puts pressure on mills to find timber from alternative sources; however, this is directly contradicted by record evidence, which demonstrates that the AAC has steadily increased since 2014.⁵⁰⁹
- Record evidence demonstrates that the Québec auctions are dominated by TSG-holding sawmills, who can obtain the vast majority of their actual need for timber at the TSG price and thus have little motivation to bid higher than the TSG price in auctions. The GOQ's argument that the market share of TSG-holding sawmills would not be considered concentrated under the HHI should be dismissed because Commerce is not applying U.S. or Canadian antitrust laws.
- Commerce has found that Québec's LER increases the market power of TSG-holding sawmills in auctions because these legal requirements force non-sawmills to sell most of the timber purchased at the auctions to Québec sawmills which, in turn, forces non-sawmills to compete with timber available to sawmills at the TSG price.⁵¹⁰
- The GOQ and Resolute argue that the Québec LER does not limit any competition for timber and logs in Québec, not because the law is not enforced, but because there is no export demand for Québec logs. However, they have not provided any evidence to show that the absence of log exports from Québec was not the result of the GOQ's LER, and there is no way to know what Québec's trade flows would look like absent the GOQ's LER.
- The GOQ argues that timber purchased by non-sawmills does not compete with timber from TSGs because independent contractors and co-operatives "regularly bid {} above the equivalent TSG stumpage values of auctioned blocks" by comparing the winning bids of selected contractors and co-ops to the equivalent stumpage values of the blocks they won at auction. However, the GOQ arbitrarily excluded contractors and co-ops "who purchased more than {C

⁵⁰⁸ *Id.* at 115 (citing GOQ IQR Response at QC-S-56-57).

⁵⁰⁹ *Id.* at 117 (citing GOQ IQR Response at QC-S-41).

⁵¹⁰ *Id.* at 115 (citing *Lumber V INV* IDM at Comment 35).

\$}1.0 {million} at auctions” and excluded “auctions with less than 75% SPFL” from their analysis.

- The GOQ’s comparison of a particular block’s auction value and stumpage value is an inaccurate approach to examine whether timber sold at auctions competes with timber sold through the TSGs, which was rejected by Commerce in the *Lumber V AR1 Final* because there is no requirement for winners to harvest the timber during a set time period and because stumpage prices change every year; while the price of timber won at auctions remains the same, a direct comparison between the stumpage price and the auction price is difficult and does not address whether timber sold at auctions competes with TSG timber.⁵¹¹
- The correct approach to assess whether timber at auctions competes with TSG-priced timber is to examine whether bids by contractors track bids by sawmills, which Commerce found to be the case in the *Lumber V AR2 Prelim*.⁵¹²
- The GOQ argues that bids of contractors and TSG-holding sawmills track each other, not because logs sold by contractors compete with TSG prices, but because all parties are informed of all the characteristics of the blocks being auctioned. However, the reality is that contractors sell to sawmills, and, given the wide availability of administratively-priced wood, contractors must bid at prices deemed reasonable by sawmills in order to make a profit.
- The GOQ disputes Commerce’s finding that the percentage point difference between sawmill and contractor bids is not small enough to be considered “closely tracking” one another; however, such a decision is within the discretion of Commerce, which reasonably concluded that bids by sawmills and contractors closely tracked each other during the POR.⁵¹³
- The GOQ and Resolute cite the Marshall Report and the *2003 Policy Bulletin* throughout their briefs; however, both of these sources were considered and dismissed by Commerce in prior proceedings. Commerce should continue to find that the Marshall Report was not relevant to its analysis and that the auction system does not meet the regulatory criteria as an appropriate benchmark as set forth under 19 CFR 351.511(a)(2)(i).⁵¹⁴

Commerce’s Position: The GOQ and Resolute raised similar arguments in the first administrative review and during the investigation. We found the arguments unpersuasive then and continue to do so here.⁵¹⁵ We, therefore, continue to find that Québec’s timber market is distorted by government intervention and, as a result, that Québec auction prices are not a suitable tier-one benchmark for measuring the adequacy of remuneration received by purchasers of Crown-origin standing timber.

Specifically, we find that: (1) the non-auction Crown market is large (*i.e.*, timber from TSGs make up 53 percent of all timber consumed in CY2019, whereas timber from auctions makes up 19 percent, timber from private land makes of nearly 18 percent, and imports make up 10 percent);⁵¹⁶ (2) a small number of firms dominate both the TSG market and the auction market,

⁵¹¹ *Id.* at 121 (citing *Lumber V AR1* IDM at 116).

⁵¹² *Id.* at 121-122 (citing *Lumber V AR2* PDM at 22).

⁵¹³ *Id.* at 122-123 (citing *Lumber V AR2* PDM at 22).

⁵¹⁴ *Id.* at 124 (citing *Lumber V AR2* PDM at 21).

⁵¹⁵ See *Lumber V AR1 Final* IDM at Comment 19; see also *Lumber V Final* IDM at Comment 35.

⁵¹⁶ See GOQ IQR Response at Exhibit QC-STUMP-004.2 (Table 5); Québec Market Memorandum at Attachment 1 at worksheet, “AggregateConsumptionData.PUB.”

and auction volumes account for a relatively small percentage of these firms' supply;⁵¹⁷ (3) a significant share of auctions was unsold (*i.e.*, 26 percent were unsold in FY19-20);⁵¹⁸ (4) the SFDA allows TSG holders to transfer Crown timber to other sawmills (both affiliated and unaffiliated), which lessens their need to turn to the auction or non-Crown sources to meet their supply needs;⁵¹⁹ and (5) the GOQ's requirement that logs harvested in Québec be processed within Québec limits auction participation.⁵²⁰

The GOQ does not contest our finding that the share of Crown non-auction timber is large relative to other sources, but rather argues that the Marshall Report found that Crown timber auctions produced viable market-based prices free of distortion and that the TSG prices are based on those market-based auction prices.⁵²¹ The GOQ also argues that confidentiality of auction bids prevents auction participants from setting their bids based on the bids of other auction participants, and thus rather than the bids of non-sawmills tracking the bids of sawmills, they are driven by the actual value of the auction block.⁵²² The GOQ cites to a conclusion in the Marshall Report that there was no statistical difference between the bids made by TSG-holding corporations and those made by other parties who did not hold TSGs in Québec's public auction bidding data.⁵²³

We examined the Marshall Report in the previous administrative review and, given that the Marshall Report is reliant upon data from 2015 for all its conclusions,⁵²⁴ we continue to find that the assumptions and the data underlying the Marshall Report are not reflective of the period of review.⁵²⁵ In addition, we continue to hold similar concerns as we did in the previous review regarding the validity of the conclusions in the Marshall Report to this POR as we explained in *Lumber V AR1 Final*.⁵²⁶ Among our concerns addressed in *Lumber V AR1 Final* regarding the Marshall Report's conclusions are: (1) the report's assumption that the GOQ's policy of limiting supply guarantee distribution to 75 percent of a sawmill's residual capacity induces high auction participation without providing evidence that sawmills could maintain profitability above 75 percent of their residual capacity; (2) the report does not address the possibility that the Québec stumpage market is already depressed and that companies, rather than trying to lower prices with low bids on the auction, are simply bidding at that low level to preserve the undervaluation present in the supply guarantee market; (3) the report does not sufficiently analyze the effect of TSG prices on auction prices; (4) the report fails to fully support the claim that the volume of TSG timber supplied is sufficiently limited to ensure competitive auctions; and (5) the report

⁵¹⁷ See GOQ IQR Response at Exhibits QC-STUMP-002.1 (Table 1), QC-STUMP-010.2 (Table 12), QC-STUMP-008 (Table 9), and QC-STUMP-011 (Table 11); Québec Market Memorandum at Attachment 1 at worksheets, "CrownHarvest&Allocation.BPI" and "Harvest&AllocByHeadOffice.BPI."

⁵¹⁸ See GOQ IQR Response at Exhibit STUMP-007 (Table 9).

⁵¹⁹ *Id.* at QC-S-49 – QC-S-50 and QC-S-77 – QC-S-85.

⁵²⁰ See *Lumber V AR2* PDM at 21; see also *Lumber V Final* IDM at Comment 35; and *Lumber V AR1* IDM at Comment 19.

⁵²¹ See GOQ Case Brief Volume 8.A at 5-6

⁵²² *Id.* at 8-9.

⁵²³ *Id.* at 21 (citing Marshall Report at 59-61).

⁵²⁴ See Marshall Report at Appendix B.

⁵²⁵ See *Lumber V AR1 Final* IDM at Comment 19, where Commerce explains that "Although pre-POR data can be informative with proper context and substantiation, the Marshall Report relies on this data to rebut assumptions about specific circumstances" that are at issue concerning later time periods.

⁵²⁶ See *Lumber V AR1 Final* IDM at Comment 19.

draws conclusions from the way auction prices in other markets, such as used cars and metal markets, are used to set non-auction prices without considering the fact that the government has minimal involvement in the used vehicle market and in metal markets but controls the vast majority of the Québec stumpage market.⁵²⁷

The GOQ argues that Commerce’s finding that TSG holding mills can simply meet 75 percent of their needs from TSGs is unsupported by record evidence, because TSG holding mills have a wide variety of timber sources, and they must therefore include timber sourced from the public auctions to fully satisfy their demands.⁵²⁸ The GOQ notes that the ten largest corporate groups obtain less than 75 percent of their need from their TSGs, and therefore must source timber through auctions or logs from independent harvesters.⁵²⁹

We find these arguments to be unpersuasive. First, the fact that TSG holdings sawmills supplied 51 percent of their timber needs through TSGs is significant.⁵³⁰ Moreover, the GOQ continues to be the largest supplier of stumpage, with administered TSGs and government auctions, accounting respectively for 53 percent and close to 20 percent of Québec’s overall timber market in FY 2019-2020.⁵³¹ Third, 86 percent of TSG-holders purchased all their allocated Crown timber in FY 2018-2019 and 83 percent purchased all their allocated Crown timber in FY 2019-2020, which indicates that sawmills consider their TSGs to be their primary source of wood and not a source for their residual needs.⁵³² Finally, over 12 percent of waived TSG volumes in FY 2019-2020 were sold by the MFFP to sawmills via one-year contracts at the TSG price, and the ability of sawmills to purchase waived volumes at the government-set price diminishes their need to source supply from the auctions.⁵³³

The GOQ and the Marshall Report both present arguments that because sawmills can only source 75 percent, and not 100 percent, of their residual capacity through TSGs, this limit induces these TSG holding sawmills to participate against non-TSG holders in auctions.⁵³⁴ However, neither the GOQ nor the Marshall Report provides evidence that sawmills could maintain profitability up to 100 percent of their residual capacity. In a situation where lumber prices fall or input costs increase, it may no longer be profitable for sawmills to operate at 100 percent of their residual capacity. For example, if a sawmill could only expect to sell 70 percent of the lumber it produces at prices which would be profitable, any volume of production over that 70 percent capacity would be logically unprofitable. A 70 percent capacity is well below the 100 percent benchmark employed by the GOQ and the Marshall Report.

⁵²⁷ *Id.*

⁵²⁸ *See* GOQ Case Brief Volume 8.A at 19.

⁵²⁹ *Id.* at 17-19.

⁵³⁰ *See* GOQ IQR Response at Exhibit QC-STUMP-4.

⁵³¹ *Id.* at Exhibit QC-STUMP-004.2 (Table 5); Québec Market Memorandum at Attachment 1 at worksheet, “AggregateConsumptionData.PUB.”

⁵³² *See* GOQ IQR Response at Exhibit QC-STUMP-009.1 (Table 11 for FY 2018-2019) and STUMP-009.2 (Table 11 for FY 2019-2020); Québec Market Memorandum at Attachment 1 at worksheet, “AllocatedVolUsage.BPI” (for FY 2019-2020).

⁵³³ *Id.* at QC-S-95 – 96; *see also* Québec Market Memorandum at Attachment 1 at worksheet, “WaivedVolumes.BPI.”

⁵³⁴ *Id.* at 14 and 18-19; Marshall Report at 28.

The GOQ argues that the volume of timber that could be supplied from public sources falls short of the quantity demanded by sawmills during the POR; therefore, Québec sawmills must turn to competitive sources of supply, such as private timber and imports of logs. However, the fact that TSG holders also consume some timber from private and imported sources does not negate the fact that private timber and imports of logs make up a significantly smaller share of the timber consumed in Québec than Crown timber.

The GOQ also argues that TSG-holding mills cannot fully meet their residual fiber needs from their TSGs and thus must compete to secure TSG timber.⁵³⁵ The GOQ also contests Commerce’s findings in the *Lumber V AR2 Prelim Results* that the sawmills have an ability to “source up to 75 percent of {their} supply need at a government-set price,” which contributes to the distortion of Québec standing timber market. On this point, the GOQ argues that the 75 percent harvest ceiling, in fact, refers to a theoretical maximum, and during the POR, Québec’s largest wood processing groups did not meet their wood requirements through TSGs.⁵³⁶ Additionally, the GOQ claims that TSG-sourced log volumes transferred under sections 92 and 93 of the SFDA are simply exchanges of volume between mills and do not change the overall volume of available TSG timber.⁵³⁷

We disagree with these assertions. First, the 75 percent harvest ceiling limit is a theoretical estimate based on five-year estimates of mill need, such that a mill still has access to fixed TSG volumes even if its actual supply need is lower.⁵³⁸ Regarding the transfer of TSG-origin timber, we continue to find that the ability to transfer timber at the TSG price under sections 92 and 93 or via contracts for “waived volumes” reduces the need for sawmills to resort to auctions and affects their bidding behavior. In particular, after examining the GOQ’s data, we disagree with the GOQ’s contention that the volumes transferred under this section are not significant relative to auction volumes.⁵³⁹ Furthermore, while these transfers may not increase the total Crown-origin timber available to sawmills, they make the timber sourced from TSG more flexible as mills can transfer volumes to and from affiliated and unaffiliated sawmills in order to optimize the size and type of logs processed at each sawmill, thus allowing mills to process more TSG-origin timber than they would absent the ability to conduct transfers. This, in turn, lessens the need for tenure holders to go to non-tenure sources to secure logs that match the capabilities and needs of their sawmills.

The GOQ argues that Commerce failed to adequately explain how the auction bids of non-TSG holders track the bids of TSG-holders when auction bids are tendered at one time by contractors and sawmills who are both competing for the same auction blocks, possess the same information and are equally skilled in evaluating timber, and bids are opened at one time under third party supervision, and only the winning bid is disclosed. Underlying this argument is the GOQ’s assertion that non-TSG holders do not compete against timber supplied from TSGs. This is

⁵³⁵ *Id.* at 16.

⁵³⁶ *Id.* at 17 (citing *Lumber V AR2 PDM* at 22).

⁵³⁷ *Id.* at 32 (citing GOQ IQR Response at QC-S-49 – QC-S-50 and QC-S-81 – QC-S-87).

⁵³⁸ See GOQ IQR Response at Exhibit QC-STUMP-046.

⁵³⁹ *Id.* at Exhibits QC-STUMP-004.2 and QC-STUMP-069; Québec Market Memorandum at Attachment 1 at worksheet, “Article92&93Comparison.BPI.”

contradicted by record evidence which shows that the customers of non-TSG holders are largely sawmills in Québec that have TSGs.

The term “non-sawmills” or “non-TSG holders” refers primarily to independent harvesters who purchase stumpage, harvest standing timber, and then are restricted to selling the logs to sawmills in Québec. In the *Lumber V AR2 Prelim Results*, we noted a concern regarding how non-sawmill bids are influenced by the supply and demand of administratively priced timber sold through TSGs, as the buyers of auction timber harvested by independent harvesters is largely composed of TSG-holding sawmills that consume a large share of both auction and TSG-origin timber.⁵⁴⁰ In FY 2019-2020, independent harvesters purchased over 40 percent of the Crown auction volume,⁵⁴¹ and it is reasonable to assume that independent harvesters subsequently sold all of the timber they harvested to entities that own and operate a sawmill in Québec (the GOQ noted that it made the same assumption when reporting data on log sales of Crown-origin timber).⁵⁴² The GOQ also reported that the vast majority of Crown auction timber consumed during FY 2019-2020 was processed by sawmills that hold a TSG as opposed to sawmills without a TSG.⁵⁴³ According to the GOQ, there is little export demand for Québec’s logs,⁵⁴⁴ which indicates that primary buyers of logs harvested by independent harvesters are TSG-holding sawmills in Québec.

This finding also comports with the specific experience of Resolute, which is the largest consumer of Crown timber in Québec.⁵⁴⁵ According to information from Resolute, the majority of the logs the company purchased during the POR from unaffiliated companies were logs harvested via Crown auction.⁵⁴⁶ Based on the data provided by the GOQ showing that TSG-holding sawmills processed the vast majority of Crown auction timber, and the information from Resolute regarding its sources of timber, we conclude that independent harvesters sell the bulk of their harvested logs to TSG holders. As a result, to determine the factors that independent harvesters take into account when bidding in the Crown auctions, it is important to focus on the market that independent harvesters operate in when purchasing Crown auction, in particular the timber sources and prices available to the TSG-holding sawmills that purchase the majority of logs sold by independent harvesters.

The independent harvesters are selling to TSG-holding sawmills who have a choice to purchase additional volumes of Crown timber at an administered price through a TSG or through auctions, either directly by bidding and winning an auction or indirectly from independent harvesters who have secured an auction block. Given that TSG-holding sawmills are the dominant buyer of Crown auction timber in Québec, and that independent harvesters are selling the bulk of their

⁵⁴⁰ See *Lumber V AR2 Prelim PDM* at 22.

⁵⁴¹ See GOQ IQR Response at Exhibit QC-LER-Table 9. TSG holding sawmills accounted for a majority of Crown auction purchase volume, therefore the vast majority of Crown timber sold via auction is sold either to TSG holding sawmills or to independent harvesters who in turn primarily sell to TSG holding sawmills. See GOQ IQR Response at Exhibit QC-STUMP-007 (Table 9).

⁵⁴² *Id.* at Section II at 14.

⁵⁴³ *Id.* at Exhibit QC-STUMP-010.2.

⁵⁴⁴ *Id.* at Section II at 1-2.

⁵⁴⁵ *Id.* at Exhibit QC-STUMP-009.2.

⁵⁴⁶ See Resolute Initial Stumpage IQR Response at Exhibit RES-STUMP-QC-1 at Table 5.1, Resolute’s 1st Stumpage Supplemental Questionnaire at Exhibit RES-STUMP-QCCOM-1.1.

logs to firms that have access to timber at an administered price through a TSG, the TSG-holding sawmills are therefore not willing to pay more for logs sold by independent harvesters than they pay for TSG-origin timber. After taking into account harvesting and transportation costs, independent harvesters must offer prices that are competitive with the timber that TSG-holding sawmills would pay for timber harvested via a TSG. In effect, independent harvesters are competing indirectly with TSG-origin timber and, as a result, the conditions in the market for TSG-origin timber impact the prices that independent harvesters are able to charge to the majority of their customers (*i.e.*, TSG-holding sawmills). For these reasons, it is reasonable to conclude that the bidding behavior of independent harvesters is informed by the fact that the largest buyer of Crown auction-origin logs are TSG-holding sawmills who have access to timber at an administered price.

The GOQ disputes our finding that auctions are not “truly open” because of the requirement that logs harvested on public land must be first processed in Québec by noting that there is no export demand for Québec-origin logs and that the log processing requirement does not limit any competition for timber and logs. Our finding in the *Lumber V AR2 Prelim Results* was strictly that timber purchased at auction must be milled in Québec, and that this restriction on the use of timber results in a situation where independent harvesters must sell the bulk of the timber they purchase via auctions to TSG holding sawmills.⁵⁴⁷ Within this market, the sale of timber by the non-sawmills competes with the timber available to these sawmills at the guaranteed government price via TSGs; therefore, independent harvesters have little reason to bid for timber at a price above which they can sell the timber to the sawmills.⁵⁴⁸ Fundamentally, this restriction on where timber can be processed demonstrates that the market for logs sourced via auctions is not truly open.

According to the GOQ, Commerce also failed to define market power and explain how the auction market was concentrated such that TSG holders wielded market power in the auctions.⁵⁴⁹ The GOQ suggests that Commerce use the HHI to analyze Québec’s auction market or to otherwise explain how market power is wielded.⁵⁵⁰ As noted in the *Lumber V Final* and the *Lumber V AR1 Final*, we are “not seeking to identify market conditions that would be anti-competitive in violation of U.S. or Canadian antitrust laws,” and as such, we are not obligated to use the HHI to evaluate the degree of market concentration.⁵⁵¹ More specifically, we are not attempting to determine whether the largest consumers of timber in Québec hold enough market share to wield monopolistic pricing power. Such an analysis would be illogical, given that we are not examining the sales by these companies, but rather their purchases of an input to determine whether the auction price is independent of the administratively set TSG price. The independent harvesters participating in the auction timber market are primarily selling timber that they harvest to other participants in the Québec timber market. The market power we refer to is the ability of the large TSG-holding mills to obtain timber at lower prices than they would in a fully competitive market due to the lack of options independent harvesters face when selling their timber.

⁵⁴⁷ See *Lumber V AR2 Prelim Results* at 21-22.

⁵⁴⁸ See *Lumber V Final* IDM at Comment 35; *Lumber V AR1* IDM at Comment 19; and *Lumber V AR2* PDM at 22.

⁵⁴⁹ See GOQ Case Brief Volume 8.A at 28-29.

⁵⁵⁰ *Id.* at 29.

⁵⁵¹ See *Lumber V Final* IDM at 51-52.

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

With respect to the GOQ's claim that Commerce failed to connect market power to auction behavior, the GOQ takes issue with our finding that "bids by contractors closely track those of the sawmills, as any timber purchased by the contractors is effectively competing with administratively supplied timber from TSGs."⁵⁵² The GOQ claims that this merely reflects that well-informed bidders have similar valuations of auction blocks and criticizes the use of "track" to describe the bidding, given that auction bids are confidential.⁵⁵³ As explained above, based on the dominant position of TSG-holding sawmills in the market for logs sold by independent harvesters, we do not find the GOQ's arguments persuasive.

The GOQ disputes Commerce's characterization of TSG-holding mills as a single entity that source from TSGs without constraint by arguing that record evidence shows that both sawmills and independent contractors regularly bid above the equivalent stumpage value of auction blocks.⁵⁵⁴ According to the GOQ, this bidding behavior shows that auction and TSG timber are not in competition and that TSG-holders have only a limited supply of TSG timber.

We find these arguments to be unpersuasive. When an auction participant wins a block, they submit no more than a 10 percent deposit and are not committed to harvesting the timber in the year of purchase.⁵⁵⁵ Stumpage prices change yearly, while the price of timber won at auctions remains the same, so a direct comparison between stumpage and auction prices does not address whether the two types of timber are competing. More importantly, the fact that in some cases auction bidders may bid above the equivalent stumpage value of a block does not, as the GOQ alleges, prove that auction and TSG timber are not in competition. In fact, the record shows that the existence of a large supply of administratively-priced wood in Québec has only one effect on competition – it reduces sawmills' need to procure competitively sourced timber and thus reduces, not increases, competition in Québec and the need to participate and bid in the auction market.

The GOQ cites various pro-competitive features of the auctions in Québec, such as bids being solely based on price, publication of relevant information on auction blocks, and anti-collusion measures.⁵⁵⁶ In the *Lumber V Final* and the *Lumber V ARI Final*, however, Commerce took these factors into account, noting that "Québec's auction system displays several competitive features," but nonetheless found that the auction prices are not free of distortion.⁵⁵⁷ Based on the totality of the evidence regarding Québec's TSG and auction systems, we continue to conclude

⁵⁵² See GOQ Case Brief Volume 8.A at 13-14 (citing *Lumber V AR2* PDM at 22).

⁵⁵³ *Id.* at 15 and 25.

⁵⁵⁴ See GOQ Case Brief Volume 8.A at 20-23.

⁵⁵⁵ See GOQ IQR Response at QC-S-3.

⁵⁵⁶ See GOQ Case Brief Volume 8.A at 14-15 and 23-25 and 28.

⁵⁵⁷ See *Lumber V Final* IDM at Comment 35; and *Lumber V ARI Final* IDM at Comment 19.

that timber prices in Québec are distorted and, therefore, that Crown timber auction prices are not a suitable benchmark for measuring the adequacy of remuneration for TSG-provided timber.

Comment 20: Whether Québec's Auction Prices Are an Appropriate Tier-One Benchmark to Measure Whether the GOO sold Crown-Origin Standing Timber for LTAR

*GOO's Comments*⁵⁵⁸

- If Commerce chooses not to use Ontario's private timber and log markets as a benchmark, the next most appropriate benchmark is not the Nova Scotia benchmark but rather a benchmark based on Québec's vibrant and competitive auction system that is next door to Ontario.
- It is possible to assess what prices Ontario timber auctions would yield by applying Québec's transposition equation to the same variables modeling Ontario timber characteristics.
- Conducting such an analysis derives a predicted Ontario timber value of C\$ 14.35/m³ for FY 2019–2020.
- Commerce should use this derived auction value in Ontario as the tier-one benchmark for Ontario.

*GOQ's Comments*⁵⁵⁹

- Under 19 CFR 351.511, a tier-one benchmark includes actual sales from competitively run government auctions under which goods are sold through competitive bid procedures that are open to all participants, that protect confidentiality, and are based solely on price.⁵⁶⁰
- Québec's public auctions are market-based and suitable for use as a tier-one benchmark because they lack unreasonable impediments to bidder participation, employ an appropriate threshold price; ensure bidders have access to all pertinent information necessary to make informed bidding decisions; deter collusion through multi-wave offerings and maintaining confidentiality of bids, and a first-price winning bid structure.
- Québec's auctions are open to all types of bidders, sawmills and non-sawmills, in and outside of Québec, and auction awards are based solely on price.
- The auctions involve a diverse set of bidders, including independent bidders who do not own and are not affiliated with a sawmill and resell their logs in competition with imported logs and logs harvested from private land.
- The BMMB implements numerous measures to prevent collusive behavior in the auctions, including disclosing only the identity and price of the winning bidder and not revealing the offer prices or identities of the non-winning bidders, announcing which blocks will be auctioned but not when they will be auctioned, and selling blocks in waves instead of one at a time.
- The BMMB selects a diverse and representative sample of blocks for the public auctions.
- The BMMB sets aggressive reserve and estimated prices, which is evident in the fact that only 73 percent of the total volume offered at auction was sold in FY 2019-2020.
- Québec's timber auctions carefully adhere to the prescriptions in the *2003 Policy Bulletin*.

⁵⁵⁸ See GOO Case Brief Volume 7 Part 1 at 49-50.

⁵⁵⁹ *Id.* at 45-55.

⁵⁶⁰ *Id.* at 45 (citing *CVD Preamble*, 63 FR at 65377).

*Petitioner's Rebuttal Comments*⁵⁶¹

- Commerce has found in the *Lumber V AR2 Prelim* that Québec standing timber prices are distorted by government involvement and thus are not suitable as a tier-one benchmark for any province.⁵⁶²
- Given the reasons outlined in the petitioner's rebuttal brief comments regarding Comment 19, Commerce should continue to find that Québec's auction system does not operate independently of the government stumpage system and, therefore, Québec auction prices are not an appropriate benchmark as set forth under 19 CFR 351.511(a)(2)(i).

Commerce's Position: As discussed in Comment 19, we continue to find that all stumpage prices in Québec, including the BMMB auction prices, are distorted by the GOQ's involvement in the market and, therefore, Commerce cannot use private-origin or Crown-auction standing timber prices from Québec as a tier-one benchmark under 19 CFR 351(a)(2)(i). Under our established hierarchy, as set forth in 19 CFR 351.511(a)(2), we first seek a benchmark price based on market-determined prices resulting from actual transactions in the country (*i.e.*, a tier-one benchmark), and, as we explain in Comments 27, 28, and 39-44, we continue to find that it is appropriate to use private prices in Nova Scotia as a tier-one benchmark to measure the adequacy of remuneration for Resolute's purchases of Crown timber in Québec.

H. British Columbia Stumpage Benchmark Issues

Comment 21: Whether Commerce Should Use F2M Pricing Data for a U.S. PNW Log Benchmark

*Petitioner's Pre-Prelim Comments and Case Brief*⁵⁶³

- Evidence new to the record of this review contradicts Commerce's finding from the prior review that F2M's Market Guides "do not include smaller, less valuable logs used to produce lumber{.}"⁵⁶⁴ As this finding was central to Commerce's rejection of F2M Market Guides as a U.S. PNW log price benchmark in the prior review, Commerce must reevaluate its choice of a BC stumpage benchmark. F2M has also provided new information on the derivation of the F2M Price Tables submitted on the record of the second review.
- F2M's data are derived from actual transaction prices, as opposed to the price quotes underlying the WDNR data. Commerce has repeatedly expressed a preference for actual, final, prices over quotes, which may only represent the start of negotiations. As an affidavit from the WDNR official responsible for compiling the price quotes explicitly states, "{t}here can be a substantial difference between the survey price and what is actually paid by the sawmill."⁵⁶⁵ Several U.S. PNW lumber producers have also explained how offer prices can differ from actual transaction prices.⁵⁶⁶
- F2M stays "true to market" by only including actual transactions and not incorporating any survey data. F2M also subjects its data to stringent quality checks and abides by high

⁵⁶¹ See Petitioner Rebuttal Brief at 110-124.

⁵⁶² *Id.* at 110 (citing *Lumber V AR2 Prelim PDM* at 21).

⁵⁶³ See Petition Pre-Prelim Comments at 4-14 and Petitioner Case Brief at 12-17.

⁵⁶⁴ See *Lumber V AR1 Final IDM* at 85.

⁵⁶⁵ See Petitioner Pre-Prelim Comments at 5 (citing Petitioner Comments on IQR Responses at Exhibit I-1).

⁵⁶⁶ *Id.* at 5-6 (citing Petitioner Comments on IQR Responses at Exhibits I-3 and I-4).

standards of accuracy and impartiality that allow F2M to take legal responsibility for errors. By contrast, the WDNR disclaims responsibility for any errors contained in its price quotes.

- The Price Tables are based on the same data underlying the Market Guides and are also inclusive of these smaller logs, as they combine MBF and tonnage prices into a single weighted-average MBF price. F2M has newly explained on the record of this review the manner in which it converted tonnage transactions to an MBF basis and explained the derivation of the conversion factor, as well as the relative significance of that conversion factor for the averages in the Price Tables.
- Commerce cannot merely point out flaws in the F2M data to justify a decision not to use a benchmark derived from F2M prices. Rather, Commerce must compare the relative merits of the F2M and WDNR data. While the F2M data may not allow a perfect match to the grades and species of logs harvested by respondents, neither does the WDNR data.

*Sierra Pacific's Comments*⁵⁶⁷

- The concerns that led Commerce to reject the use of F2M Market Guide reports as a U.S. PNW log price benchmark in the *Lumber VARI Final* are no longer valid.
- F2M's additional clarification shows that Commerce's concerns regarding that lack of smaller logs in the F2M data are not supported by the record of this review.
- Record evidence also shows that the WDNR data do not have superior coverage of lower value logs, as the WDNR survey data only have "utility" prices for a single species. Furthermore, the "chip-and-saw" that Commerce highlighted for being included in the WDNR data are not uniformly higher priced than camprun logs.

*GBC Comments and Rebuttal Brief*⁵⁶⁸

- The F2M benchmarks proffered by the petitioner suffer from the same deficiencies that led Commerce to reject them in the prior review. The Price Tables are prepared for litigation, unverifiable, and not supported by underlying data. The Market Guides are upwardly biased due to a lack of the small-diameter logs that account for a significant percentage of the logs used by the mandatory respondents to produce lumber.
- As an initial matter, the petitioner has failed to follow Commerce's regulations by attempting to "incorporate" its pre-preliminary comments into its case brief. This obscures exactly which arguments the petitioner views as most relevant. Commerce should reject this approach, but, to the extent that the petitioner's pre-preliminary comments continue to be relevant, the BC Parties have already rebutted them.
- The petitioner's argument that Commerce must "compare" the F2M and WDNR data sets, rather than merely pointing out flaws in the F2M data, ignores Commerce's extensive analysis in prior proceedings as to why the F2M datasets were not viable benchmarks.
- While F2M's clarification suggests that Market Guide prices might include a minor, undisclosed volume of smaller diameter logs, those prices still, by definition, do not include a significant volume of small diameter logs that are additionally sold in the PNW.⁵⁶⁹ Given this exclusion of lower value logs, the F2M data still suffer from a significant upward bias. This

⁵⁶⁷ See Sierra Pacific Case Brief at 1-5.

⁵⁶⁸ See GBC Volume 3 Rebuttal Brief at 4-13 and GBC/BCLTC Pre-Prelim Comments at 3-9.

⁵⁶⁹ See GBC/BCLTC Volume 3 Rebuttal Brief at 9 (citing GBC Benchmark Rebuttal at 3-7).

bias is highly relevant given that small diameter logs are a significant percentage of the logs West Fraser and Canfor use to produce lumber.⁵⁷⁰

- Just as in the prior review, U.S. PNW log transaction price averages from independent sources are significantly lower than the log price data from F2M,⁵⁷¹ thus confirming that the F2M prices are upwardly biased, not just compared to WDNR, but in general.
- No regular F2M subscriber would be able to obtain from either F2M's monthly summaries or its SilvaStat 360 platform the Price Tables F2M has prepared for the petitioner for this litigation. These Price Tables also continue to be unverifiable.
- While the WDNR data do not have species-specific utility grade pricing, that has little relevance because utility prices are generally not species-based.⁵⁷² The F2M data also is not superior to the WDNR in this area.

Commerce's Position: As discussed in Comment 13, we continue to find that BCTS auction prices are not a viable benchmark price. We have previously found that private log prices in British Columbia, or prices from other provinces within Canada are not appropriate tier-one benchmark prices for British Columbia.⁵⁷³ We have also previously determined that U.S. stumpage prices cannot serve as a tier-two benchmark for British Columbia.⁵⁷⁴ There is no information on the record of this review that would lead us to a different finding for these final results. Following our established hierarchy under 19 CFR 351.511(a)(2)(iii), we find that it is appropriate to continue to use U.S. PNW delivered log prices as tier-three benchmarks.

In the *Lumber V AR2 Prelim*, Commerce utilized delivered log prices from WDNR surveys as the basis for its species-specific delivered log benchmark prices.⁵⁷⁵ In selecting the WDNR survey prices, Commerce rejected F2M pricing data the petitioner placed on the record of this review, but acknowledged that the petitioner had placed new information regarding F2M pricing data onto the record of this review.⁵⁷⁶ Commerce stated that in advance of these final results of review, it would continue to examine the new information the petitioner provided on the F2M pricing data.⁵⁷⁷ Commerce has considered the new information and, for the reasons discussed below, continues to find it appropriate to reject the F2M pricing data for these final results and to continue using the WDNR delivered log prices as the benchmark for BC stumpage.

In the *Lumber V ARI Final*, Commerce declined to use the F2M data as a benchmark because, in part, the record of that review indicated the F2M data excluded smaller, less valuable logs used to produce softwood lumber.⁵⁷⁸ The petitioner and Sierra Pacific (collectively, the domestic parties) argue that a clarification from F2M submitted by the petitioner on the record of this review regarding F2M's collection of pricing data on small diameter logs means that Commerce's reasoning in the *Lumber V ARI Final* for not using prices from F2M Market Guides is not supported by the record of this review. According to the petitioner, “{t}he 2019 Market

⁵⁷⁰ *Id.* at 10, (citing GBC Benchmark Rebuttal at 7-9).

⁵⁷¹ *Id.* at 10, (citing GBC Benchmark Rebuttal at 10-13).

⁵⁷² *Id.* at 13 (citing AR2 Cross-Border Report at 9).

⁵⁷³ See *Lumber V Final* IDM at Comment 21; *Lumber V ARI Final* IDM at 80.

⁵⁷⁴ *Id.*

⁵⁷⁵ See *Lumber V AR2 Prelim* PDM at 29-30.

⁵⁷⁶ *Id.*

⁵⁷⁷ *Id.*

⁵⁷⁸ *Lumber V ARI Final* IDM at 85.

Guide...reflect actual transaction prices for smaller, less valuable logs used to produce lumber.”⁵⁷⁹

In the *Lumber VARI Final*, Commerce analyzed two separate benchmark averages sourced from F2M: Price Tables and Market Guides. Commerce found that because the Price Tables were prepared specifically for the *Lumber* proceeding and were not accompanied by the underlying data or a reference to the data source or search parameters used to extract the data, they were strongly disfavored as a benchmark when compared to WDNR offer averages, which were not prepared specifically for this proceeding.⁵⁸⁰ For reasons explained in more detail below, we continue to find that the F2M Price Tables cannot serve as a reliable benchmark in this review. However, the Market Guides submitted on the record of both the *Lumber VARI* review and this review, in contrast to the Price Tables, were prepared by F2M in the ordinary course of business. Thus, for these final results, as in the *Lumber VARI Final*, Commerce undertook a detailed comparison of the Market Guides and WDNR benchmark suitability.

The Market Guides averages on the record of both this review and the prior review are sourced from actual transaction prices, while the WDNR averages are based on offer prices. Although Commerce has expressed a preference for benchmarks derived from actual transaction prices over those derived from quotes,⁵⁸¹ Commerce’s preference does not and has not precluded Commerce from using price offers/quotes over transaction prices if there are concerns and/or defects with transaction prices or if the price quotes/offers represent the best information available on the record.⁵⁸² Thus, in the *Lumber VARI Final*, Commerce found that, although the WDNR prices were offer prices, this was outweighed by record evidence showing that the Market Guides, unlike the WDNR offer prices, excluded small diameter, less valuable logs used to produce lumber in both the U.S. PNW and BC interior, including by the respondents themselves.⁵⁸³

In reaching this conclusion, Commerce examined the log categories listed in the Market Guides and WDNR prices, while also noting the relative prices of F2M and WDNR averages to two other U.S. PNW interior log price averages on the record.⁵⁸⁴ Commerce also confirmed the significance of the lack of smaller logs in the F2M Market Guides by referencing U.S. PNW interior log price data and the relative share of smaller logs used by the BC mandatory respondents during the AR1 POR.⁵⁸⁵ Commerce discussed concerns raised by the Canadian Parties over the ton-to-MBF conversion factor used by F2M and the possible lack of ton logs in the Market Guides, noting that while neither criticism was confirmed by record evidence, such unresolved issues cast further doubt on the completeness and reliability of the F2M data.⁵⁸⁶ For this review, we have conducted a comparison akin to that underlying Commerce’s conclusion in

⁵⁷⁹ See Petitioner Pre-Prelim Comments at 10.

⁵⁸⁰ See *Lumber VARI Final* IDM at 84.

⁵⁸¹ See *Light Truck Tires from China AR 14-15* IDM at Comment 17 and *Violet Pigment 23 from China* IDM at Comment 5.

⁵⁸² See *Aluminum Foil from Oman* IDM at 15; *Aluminum Sheet from Bahrain* IDM at Comment 4; *PET Resin from Oman* at 15.

⁵⁸³ See *Lumber VARI Final* IDM at Comment 15.

⁵⁸⁴ See *Lumber VARI Final* IDM at Comment 15; see also AR1 BC Stumpage Memo.

⁵⁸⁵ See *Lumber VARI Final* IDM at Comment 15

⁵⁸⁶ *Id.* at Comment 15.

the *Lumber VARI Final*. As the Market Guides are BPI in their entirety, certain sections of the comparison are in the accompanying BC Stumpage and LER Memorandum.

While the record demonstrates that 6 inches⁵⁸⁷ is a minimum diameter size category used by some mills in the U.S. PNW, the record also shows that logs as small as 5 inches are often requested by mills. For example, Idaho Forest Group's Grangeville and Lewiston mills list 6 inches as the smallest diameter they purchase, while the same company's Chilco and St. Regis mills lists size categories of 5", 6-7", and 8"+ for many of their species in its mill price quotes.⁵⁸⁸ The record also contains WDNR delivered log sale results from the POR. The log sorts in these auctions contain various diameter classes, but most often the categories of the log sorts being auctioned are 5"-6", 7"-10", and 11"+.⁵⁸⁹ The record demonstrates that these 5"-6" log sorts were bought by a lumber manufacturer.⁵⁹⁰ Thus, smaller logs are a relevant segment of the U.S. PNW lumber market.

The record of this review demonstrates that, as in the prior review,⁵⁹¹ these smaller logs have a lower value than all other size categories. The U.S. PNW mill price quotes show that logs in the 5" categories often are priced lower than logs of the same species and length in the 6-7" category.⁵⁹² For instance, the Idaho Forest Group Chilco and St. Regis price quote sheets for 5" lodgepole and spruce in August 2019 show a discount of \$90/mbf when compared to the 6-7" category.⁵⁹³ The WDNR delivered log sales also show a discount for smaller logs during the POR. Compared to the log sorts of the same species from the same site, prices for 5-6" log sorts ranged from \$95/mbf lower than 7-10" sorts, with the majority of the comparisons showing a discount falling in the range of \$60/mbf.⁵⁹⁴ These are significantly lower values. Further, log usage data from respondents show that, as in the prior review,⁵⁹⁵ the BC respondents continue to process significant volumes of smaller logs.

As explained in more detail in the BC Stumpage and LER Memorandum, Commerce continues to have concerns regarding the inclusion of smaller diameter logs in the F2M Market Guides. Moreover, F2M's explanation on the record of this review confirms that the relevant Market Guide prices are denominated in MBF and do not include ton logs.⁵⁹⁶ The GBC argues that the lack of ton-denominated logs in the Market Guides will lead to an upward skew in Market Guide prices, as ton logs are likely to be lower value than logs sold on an MBF basis.⁵⁹⁷ However, while the claim that small diameter logs are more likely to be sold by the ton is supported by tax reporting instructions from the WDNR describing "small logs" as "conifer logs generally measuring seven inches or less in scaling diameter, delivered to and purchased by weight

⁵⁸⁷ While the diameter category is 6", under Scribner scaling rules a 6" diameter includes logs down to an actual 5.6" top diameter. As such, we have measured the logs processed by the mandatory respondents with a diameter under 5.6." See GBC Benchmark Rebuttal Submission at Exhibit BC-AR2-BMR-1.

⁵⁸⁸ See GBC IQR Response at Exhibit BC-AR2-S-175.

⁵⁸⁹ See GBC Benchmark Rebuttal Submission at Exhibit BC-AR2-BMR-1 at Attachment D.

⁵⁹⁰ *Id.*

⁵⁹¹ See AR1 BC Stumpage Memo at 7.

⁵⁹² See GBC IQR Response at Exhibit BC-AR2-S-175.

⁵⁹³ *Id.* at 7 and 9.

⁵⁹⁴ See GBC Benchmark Rebuttal Submission at Exhibit BC-AR2-BMR-1 at Attachment D.

⁵⁹⁵ See Petitioner Comments on Canfor February 12, 2021 SQR at Exhibit 1 at 6.

⁵⁹⁶ See Petitioner Factual Information to Measure the Adequacy of Remuneration at Exhibit 1b at 3-4.

⁵⁹⁷ See GBC/BCLTC Rebuttal Brief at 9.

measure at the following approved destinations,”⁵⁹⁸ the record lacks definitive information on both the value of ton logs and also on the share of transactions for lower value logs that they account for. Thus, the record suggests that the F2M Market Guide prices may skew upward as a result of lacking ton logs, although it is not clear how significant this effect would be.

In sum, extensive record evidence from a variety of sources supports Commerce’s conclusion that the clarification on the F2M data provided in this review is not sufficient to alter Commerce’s finding that the Market Guides cannot serve as a viable benchmark for BC stumpage in this review.

Furthermore, while the Market Guides themselves were created in the ordinary course of business, we note that F2M’s “clarification” was not. Rather, it was created for this proceeding to address Commerce’s conclusion regarding the Market Guides in the *Lumber VARI Final*. This does not disqualify the clarification as relevant evidence, but we do find that it is appropriate to carefully examine the clarification’s content and the extent to which it is supported by other record evidence. As discussed in the BC Stumpage and LER Memorandum, we find that the combination of the Market Guides’ actual content, U.S. PNW interior pricing data, and the lack of clarity in the clarification means that that the totality of the record shows that F2M Market Guide prices are not preferable to WDNR survey prices.⁵⁹⁹

The domestic parties argue that the difference between F2M and WDNR prices could be attributed to WDNR prices only being quotes that represent the “start of negotiations,” whereas F2M prices are final prices. While Commerce has noted this as justification for its general preference for actual transaction prices over offer prices, it is unclear to what extent that is the case here. Specifically, the WDNR averages, which are offer prices, track the MTBBER and NMI averages, which are not offer prices, very closely.⁶⁰⁰

Further, in terms of log coverage, the WDNR survey data contain species-specific prices for both camprun and chip-and-saw logs “so named because such a log should yield two 2x4’s and chips, are usually 5-7’ in diameter on the small end and 12-40’ in length.”⁶⁰¹ This indicates that the WDNR data include logs down to 5 inches. As noted elsewhere, the F2M Market Guide Prices may reflect a small, but unknown quantity of small diameter logs. Given that these logs make up a significant portion of lumber production, this relative lack of clarity is an important distinction between the F2M and the WDNR data.

Sierra Pacific argues that WDNR data are not superior to F2M data with respect to the inclusion of lower-value logs, because they break out only a single utility price and chip-and-saw logs discussed above “are not uniformly priced lower than camprun logs.”⁶⁰² While chip-and-saw logs are not *uniformly* lower in price than camprun logs, there is still an overall trend for them to be lower-priced than camprun logs.⁶⁰³ With regard to utility logs, we find Sierra Pacific’s

⁵⁹⁸ See GBC Benchmark Rebuttal Submission at Attachment A.

⁵⁹⁹ See *Lumber VARI Final* IDM at 85.

⁶⁰⁰ See BC Stumpage and LER Memorandum at tab “U.S. PNW Pricing Data”.

⁶⁰¹ See AR1 BC Stumpage Memo at 7.

⁶⁰² See Sierra Pacific Case Brief at 4.

⁶⁰³ See BC Stumpage and LER Memorandum at tab “U.S. PNW Pricing Data”.

argument regarding the WDNR data only containing a single non-species specific ‘conifer’ utility price for each month to be of limited significance given that record evidence does not support the contention that utility grade logs vary significantly in value by species.⁶⁰⁴

In addition to the clarification regarding the Market Guides, the record of this review contains an explanation from F2M on the derivation of the ton to MBF conversion factor used in the Price Tables.⁶⁰⁵ The GBC criticizes the accuracy and representativeness of this conversion factor on various grounds, noting in particular that it appears to convert between tons and Scribner Long Log Scale, as opposed to the Scribner Short Log Scale used in the U.S. PNW interior.⁶⁰⁶ As F2M’s description of the conversion factor is primarily BPI, our analysis of the conversion factor’s appropriateness is contained in the BC Stumpage and LER Memorandum.⁶⁰⁷ Based on this analysis, we find that the conversion factor may not be appropriate, although the significance of this for the Price Tables remains unclear.

Regardless of these issues with the ton to MBF conversion factor, in the *Lumber V ARI Final*, Commerce found the Price Tables not viable primarily because “{t}he data and search parameters used to construct the species-specific prices are not on the record of this review and are unverifiable.”⁶⁰⁸ The petitioner argues the “Forest2Market data are compiled and analyzed independently of this proceeding”⁶⁰⁹ and that “there should be no question as to the F2M’s data reliability,”⁶¹⁰ while also citing Commerce’s decision in *Tool Chests from China* to use subscription sources to calculate a benchmark for steel inputs without requiring that the underlying data be on the record.⁶¹¹

However, we find that the petitioner’s citation to *Tool Chests from China* does not support relying on the Price Tables. In that case, Commerce agreed to accept proprietary pricing data from four separate subscription services because, even though the underlying data were not present, the prices were from “commercially published independent sources for use in steel and other industries.” By contrast, F2M’s describes the Price Tables as “the total combined species price that was reported to {counsel for the petitioner},” and there is no indication anywhere in F2M’s benchmark submission or elsewhere on the record that the Price Tables themselves are commercially published or used by any parties other than the petitioner.

Given this, we continue to find it appropriate to consider the verifiability of this source. Such an evaluation shows that the record of this review lacks information that would allow Commerce to verify whether the Price Tables are complete, representative, or reliable. F2M’s statement that “data is principally reported through Forest2Market’s SilvaStat360 online platform and also through .pdf Market Guide summaries that are produced on a monthly basis”⁶¹² does not make clear the exact data source or search parameters used to construct the

⁶⁰⁴ See GBC Benchmark Rebuttal Submission at Attachment D.

⁶⁰⁵ See Petitioner Factual Information to Measure the Adequacy of Remuneration at Exhibit 1b at 3-4.

⁶⁰⁶ GBC Benchmark Rebuttal Submission at Exhibit BC-AR2-BMR-1 at 21-24.

⁶⁰⁷ See BC Stumpage and LER Memorandum at 1-4.

⁶⁰⁸ See *Lumber V ARI Final* IDM at 84.

⁶⁰⁹ See Petitioner Pre-Prelim Comments at 11.

⁶¹⁰ See Petitioner Case Brief at 14.

⁶¹¹ *Id.* at 14-15.

⁶¹² *Id.* at 3.

Price Tables, much less allow Commerce to verify the underlying data. As such, we continue to find that the Price Tables are not a usable benchmark.

Thus, we find that neither of the two price averages from F2M that the petitioner has placed on the record of this review are superior to the WDNR offer prices for use as a benchmark. Quantitative record evidence such as U.S. PNW log pricing data supports Commerce's conclusions regarding the Market Guides in the *Lumber VARI Final*. Qualitative record evidence, including F2M's clarification new to the record of this review, paint an unclear picture that does not fully address Commerce's concerns regarding the inclusion of smaller, less valuable logs in the Market Guides. The Price Tables, in spite of the additional information on their ton to MBF conversion factor, were still created for this proceeding and not accompanied by the underlying data. As such, for the final results we have used annualized species-specific averages from the WDNR prices as the U.S. PNW log benchmark, consistent with our methodology in the prior review and investigation.

Comment 22: Whether Commerce Should Continue to Use a Beetle-Killed Benchmark Price for the Final Results

*Petitioner's Pre-Prelim Comments and Case Brief*⁶¹³

- Commerce's beetle-kill benchmark has three fundamental flaws. It is not representative of the respondents' beetle-killed log purchases, does not reflect the relationship between beetle-killed logs and the price of lumber produced from those logs, and does not reflect the purported value reduction associated with higher log processing costs.
- Concerning the representativeness of the Beetle-Killed Log Offer Price Benchmark, it is largely limited to logs intended for use as appearance grade lumber and does not reflect the value of beetle-killed logs intended for structural lumber production. Extensive record evidence shows that blue-stain is a cosmetic issue that has no effect on structural lumber grade.⁶¹⁴
- Statements from U.S. lumber producers confirm that the low prices for blue-stain logs offered by certain mills reflect that those mills focus on appearance grade lumber, which is not representative of the much larger non-appearance grade market. By contrast, mills that specialize in non-appearance grade lumber, a much larger market, are willing to pay much higher prices for blue-stained lumber.⁶¹⁵
- Canfor produces large volumes of structural (non-appearance) lumber at its mills in British Columbia.⁶¹⁶ In contrast, the low offer prices for beetle-killed logs can simply be a general means of indicating a lack of interest in such logs by U.S. mills that are focused on production of appearance grade lumber.⁶¹⁷
- Under Commerce's theory of derived demand, there is a clear relationship between the log grade and the volume of merchantable lumber. The existing beetle-kill benchmark assigns a

⁶¹³ See Petitioner Pre-Prelim Comments at 14-38 and Petitioner Case Brief at 16-38.

⁶¹⁴ See Petitioner Case Brief at 19-23.

⁶¹⁵ *Id.* at 23-25 (citing Petitioner Comments on IQR Responses at Exhibits I-3, I-4, and I-6).

⁶¹⁶ See Petitioner Pre-Prelim Comments at 30-31 (citing Canfor Affiliation Response at Exhibit 6 and Canfor IQR at Exhibit 13).

⁶¹⁷ *Id.* (citing Petitioner Comments on IQR Responses at Exhibits I-4).

uniform value to all beetle-killed timber and, thus, does not reflect that relationship.⁶¹⁸ The Canadian Parties have themselves acknowledged that there is significant variation in the quality of beetle-killed logs.

- In the *Lumber VARI Final*, Commerce rejected actual transactions from F2M for use as a benchmark because of a purported failure to capture “a wide spectrum of price and quality.”⁶¹⁹ As such, it would be inconsistent to use a beetle-kill benchmark that clearly flattens the “spectrum of price and quality” of beetle-killed logs.
- The Canadian Parties have attempted to argue that, in and of themselves, the blue-stain offer prices reflect a value for the “overall spectrum of quality and value characteristics exhibited by such logs.”⁶²⁰ However, the purchasers themselves have confirmed that the blue-stain offer prices reflect issues unrelated to quality outside of appearance.⁶²¹
- Furthermore, as the Canadian Parties have repeatedly argued, the U.S. Scribner Scale “makes volume deductions for many more types of defects” than the BC Metric Scale.⁶²² Thus, a sawmill grade log per the U.S. Scribner system will have limited defects under the scaling rules. As such, it is hard to understand why mills would offer just a fraction of the green log price for blue logs when those logs are still scaled as sawmill grade.
- During the POR, the BC respondents reported significant wood fiber supply constraints.⁶²³ The beetle-kill benchmark reflects a lack of interest among certain U.S. mills for beetle-killed logs, while the BC respondents were engaged in a region-wide bidding war for scarce wood. Thus, the beetle-killed benchmark is not reflective of the prevailing market conditions (which include “availability”) in the BC interior during the POR.
- The value of lumber produced from beetle-killed logs should be tied to the discount for the products they are used to produce. Record evidence shows that the beetle-killed benchmark is untethered to the value of lower-grade lumber products.⁶²⁴
- Beetle-killed logs can result in less valuable finished products that are more expensive to manufacture, but that does not mean that the massive value reduction in the benchmark is accurate. The respondents have the obligation to support their request for a separate benchmark with affirmative evidence. Instead, they have only provided vague and anecdotal information about the product mix of lumber produced from beetle-killed logs.
- The respondents have made significant investments since the start of the MPB epidemic to reduce the processing costs of processing beetle-killed wood. Canfor, for example, does not mention the costs associated with milling beetle-killed logs in its annual report.⁶²⁵
- The 2009 FIIP study that Commerce cited in the prior review found the worst yield loss among three BC mills due to beetle-kill to be 8.2 percent and the largest lumber value loss was 23.5 percent. This does not come close to justifying the beetle-kill reduction applied in this proceeding. Further, the study’s authors highlighted the importance of the “average check

⁶¹⁸ See Petitioner Case Brief at 25-26.

⁶¹⁹ See Petitioner Pre-Prelim Comments at 25 (citing *Lumber VARI Final* IDM at Comment 15).

⁶²⁰ See Petitioner Case Brief at 28 (citing GBC/BCLTC Pre-Prelim Comments at 18).

⁶²¹ *Id.* (citing Petitioner Comments on IQR Responses at Exhibits I-3, I-4, and I-6).

⁶²² *Id.* at 28-29 (citing AR2 Cross-Border Report at 7).

⁶²³ See Petitioner Pre-Prelim Comments at 25-26 (citing Canfor Affiliation Response at Exhibit 6 and WF IQR vol. IV at 20-21).

⁶²⁴ See Petitioner Case Brief at 20-30 (citing Petitioner Pre-Prelim Comments at 28-30).

⁶²⁵ See Petitioner Pre-Prelim Comments at 32-33 (citing Canfor Affiliation Response at Exhibit 6).

length” of mill logs for lumber recovery, an issue that mills have mitigated with improved technology.

- The 2016 Montana mill study reported that cracking/checking had the largest impact on log value, while trim/waste and breakage at the mill had the greatest impact on mill costs.⁶²⁶ Record evidence shows that BC respondents have made significant capital investments to mitigate these issues, while there is nothing on the record suggesting that Montana mills have done so. Thus, this study is a completely inappropriate comparison for the BC market. Furthermore, the GBC’s consultants overestimate the value reduction implied by this study.⁶²⁷
- While in principle it might be reasonable to account for the costs of technological investment related to improved processing of beetle-killed logs in the benchmark, it is unclear how Commerce would factor those costs into any calculation, particularly given that such investments can impact and improve processing of both beetle-killed and green logs.⁶²⁸
- While the petitioner does not dispute that any reduction in lumber volume yield between green and beetle-killed logs increases per-unit processing costs for lumber produced from beetle-killed logs, the issue is again one of degree. Extensive evidence shows that the cost of processing beetle-killed logs is highly variable.⁶²⁹ While Commerce need not select a benchmark that exactly reflects those factors, the benchmark it chooses must be supported by substantial evidence regarding the factors affecting comparability.
- If Commerce wrongly continues to apply a beetle-killed benchmark based on offer prices collected by Jendro & Hart, it should correct certain inaccuracies in that benchmark.
- Jendro & Hart did not include written price offers for Woodgrain Millwork’s La Grande and Pilot Rock sawmills. While this offer did not include a separate “blue-stained” price, the company specified different prices only by diameter and noted that for the Pilot Rock sawmill Woodgrain Millwork is only purchasing pine.⁶³⁰ There is no evidence that these sawmills distinguish between green and beetle-killed logs or that they would refuse to purchase such logs.
- Offer prices from Bennett Lumber Products that were included in the beetle-killed benchmark state that logs delivered to the company’s mills be “fresh, green cut in a workman like manner.”⁶³¹ Green logs are by definition not beetle-killed,⁶³² and as such, Commerce should find these prices exclusive of beetle-killed logs.

GBC/BCLTC’s Pre-Prelim Comments and GBC’s Rebuttal Brief

- Contrary to the petitioner’s characterization, affidavits from U.S. PNW lumber producers explicitly confirm that blue stain has a detrimental effect on the marketability and price of both appearance grade and non-appearance grade lumber.⁶³³

⁶²⁶ *Id.* at 34-35 (citing AR2 Cross-Border Report at 19-20).

⁶²⁷ *Id.* at 35-36 (citing AR2 Cross-Border Report at 20 and 22 and GBC IQR Response at Exhibit BC-AR2-S-196).

⁶²⁸ See Petitioner Case Brief at 33-34 (citing Petitioner Comments on IQR Responses at Exhibit I-11 and Canfor Affiliation Response at Exhibit 6 at 21-22).

⁶²⁹ *Id.* at 34.

⁶³⁰ *Id.* at 35-37 (citing AR2 Cross-Border Report at Tables 4 through 7).

⁶³¹ *Id.* at 37-38 (citing GBC IQR Response at Exhibit BC-AR2-S-175 at 13-16).

⁶³² *Id.* at 37 (citing AR2 Cross-Border Report at 12 and 13).

⁶³³ See GBC/BCLTC Case Brief at 17 (citing GBC Reply to Petitioner Comments on IQR Responses at Exhibit BC-AR2-RPR-1 at 8-9)

- As the BC parties have previously explained, blue stain is not the only defect associated with beetle-killed logs, rather, beetle-killed logs have higher rates of splits, cracks, and checks.⁶³⁴
- Commerce has considered and rejected the petitioner's arguments that the beetle-kill price lists are not reflective of the overall lumber production market. As in AR1, the U.S. PNW mill price lists were compiled with a robust and verifiable methodology.⁶³⁵
- If a sawmill does not want a certain type of log, it will simply offer a zero price or specify that it is rejecting those logs.⁶³⁶ As such, the petitioner's argument that low offer prices for blue-stained logs from certain mills is simply a sign that these mills are "largely uninterested" in buying such logs is groundless. As Commerce found in the *Lumber V AR1 Final*, "the prices in the mill price quote sheets are prices that the mills are actually willing to pay for logs."⁶³⁷
- While the petitioner claims that using a single benchmark price for beetle-killed logs ignores the quality range of those logs, the benchmark reflects a market price for a range of beetle-killed logs that producers in the U.S. PNW are willing to buy.⁶³⁸
- The petitioner's argument regarding U.S. Scribner scaling rules shows nothing. Under the U.S. Scribner scale, defect levels can range from zero to up to two-thirds of log gross scale volume.⁶³⁹ As such, there is a very wide spectrum of quality and value among sawmill grade logs. Furthermore, because many U.S. PNW sawmills only accept sawmill grade logs, any beetle-killed logs they purchase will not be utility-grade, which are a significant portion of the beetle-killed logs purchased by BC respondents.⁶⁴⁰
- The BC Parties have repeatedly explained how comparisons of relative prices for different lumber grades ignore that the difference in finished lumber value is only part of the difference between green and beetle-killed log values.⁶⁴¹ The petitioner accurately notes that beetle-killed logs can "result in less valuable finished product mixes that are more expensive to manufacture."
- The petitioner's argument that West Fraser and Canfor's investments in technology for processing beetle-killed logs have mitigated costs has multiple flaws. Investments by the respondents to improve their processing of beetle-killed logs should be amortized against volumes of logs produced, and many of these investments relate to dust abatement, not increasing lumber recovery.⁶⁴²
- Even with technological improvements, cutting dead logs still requires slower processing speeds, more frequent blade changes, and more downtime. Regardless of whatever technological investments have been made by the purchasing sawmill, beetle-killed logs still possess serious physical defects.⁶⁴³
- Ultimately, the basic facts are unchanged from the prior proceeding. There is significant record evidence that beetle-killed logs are much less valuable than green logs and the record

⁶³⁴ *Id.* at 18 (citing Canfor NFI on Petitioner Comments on Canfor Stumpage SQR1 at Attachment 1 at 7-10 and AR2 Cross-Border Report at 19).

⁶³⁵ See GBC/BCLTC Pre-Prelim Comments at 13-15.

⁶³⁶ *Id.* at 16 (citing GBC IQR Response at Exhibit BC-AR2-S-175 at 7).

⁶³⁷ See *Lumber V AR1 Final* IDM at Comment 21.

⁶³⁸ See GBC/BCLTC Pre-Prelim Comments at 18.

⁶³⁹ See GBC/BCLTC Case Brief. at 19 (citing GBC IQR Response at Exhibit BC-AR2-S-176 at 8).

⁶⁴⁰ *Id.* at 19-20 (citing GBC IQR Response at Exhibit BC-AR2-S-176 at 36).

⁶⁴¹ *Id.* at 20 (citing AR2 Cross-Border Report at 19-20, GBC IQR Response at Exhibits BC-AR2-S-101 at 41-44, and BC-AR2-S-173 18-22).

⁶⁴² See GBC/BCLTC Pre-Prelim Comments at 18-21.

⁶⁴³ See GBC/BCLTC Case Brief at 21-22 (citing GBC IQR Response at Exhibit BC-AR2-S-101 at 43-44).

contains market prices for beetle-killed logs in the U.S. PNW. Commerce should continue to use those prices to account for this important prevailing market condition.

- Woodgrain Millwork, the company whose two sawmills the petitioner requests be added to the beetle-killed benchmark average, exclusively processes Ponderosa Pine.⁶⁴⁴ Commerce found in the prior review that it was not appropriate to use prices for Ponderosa Pine in the beetle-killed benchmark,⁶⁴⁵ and as such, should reject the petitioner's argument to include this company's mills in the benchmark.
- The specifications accompanying Bennett Lumber Products' price sheets refer to fire-damaged and blued pine logs, indicating Bennett Lumber Products will still accept non-green logs for purchase, even if they are not preferred.⁶⁴⁶

Commerce's Position: In the *Lumber V AR2 Prelim*, Commerce compared prices of beetle-killed timber the respondents purchased in British Columbia to a separate beetle-killed benchmark average of prices obtained in a survey of U.S. PNW mills.⁶⁴⁷ At the same time, Commerce noted that the petitioner had added new evidence and argument to the record of this review.⁶⁴⁸ Notwithstanding certain salient evidence and arguments presented by the petitioner concerning Commerce's beetle-kill benchmark, for the reasons discussed below, we find in this review that the totality of evidence supports continuing to compare the price of beetle-killed timber purchased by the respondents in British Columbia to the separate U.S. PNW mill benchmark.

Commerce rejected a U.S. PNW mill beetle-kill benchmark in the *Lumber V Final* due to a lack of underlying data and also because there was no evidence that the WDNR log offer price benchmark did not already include blue-stained log quotes.⁶⁴⁹ In contrast, in the *Lumber V AR1 Prelim*, Commerce applied a beetle-kill benchmark, based on the U.S. PNW mill price surveys, after the GBC added information to the record that addressed both of the deficiencies Commerce had noted in the investigation.⁶⁵⁰ In the *Lumber V AR1 Final*, Commerce explained that applying a beetle-kill benchmark was consistent with the tier-three derived demand benchmark framework, citing to Commerce's application of a beetle-killed benchmark in the *Lumber IV AR2 Final*, and rejected various arguments by the petitioner regarding the accuracy and reliability of the benchmark.⁶⁵¹

The petitioner's case brief and pre-preliminary comments in this review raise numerous individual criticisms of the beetle-kill benchmark. The case brief delineates three overarching issues under which it categorizes these individual criticisms: failure to represent the respondents' beetle-killed log purchases; failure to reflect the relationship between beetle-killed logs and the price of lumber produced from those logs; and failure to accurately reflect the value loss resulting from costs associated with processing of beetle-killed logs.⁶⁵²

⁶⁴⁴ *Id.* at 22-23 (citing GBC IQR Response at Exhibit BC-AR2-S-179 at 33).

⁶⁴⁵ See *Lumber V AR1 Final* IDM at Comment 21.

⁶⁴⁶ See GBC/BCLTC Case Brief at 23-24 (citing GBC IQR Response at Exhibit BC-AR2-S-175 at 11).

⁶⁴⁷ See *Lumber V AR2 Prelim* IDM at 30-31.

⁶⁴⁸ *Id.*

⁶⁴⁹ See *Lumber V Final* IDM at 75-76.

⁶⁵⁰ See *Lumber V AR1 Prelim* IDM at 27.

⁶⁵¹ See *Lumber V AR1 Final* IDM at Comment 21.

⁶⁵² See Petitioner Case Brief at 17.

Representativeness of Beetle-Killed Benchmark

The first of the petitioner's three overarching arguments is that the beetle-kill benchmark is flawed, because there is a mismatch between the demand for beetle-killed logs of the respondents and the U.S. PNW mills surveyed and also because the mills surveyed have distinct preferences associated with their focus on appearance grade lumber. The petitioner highlights extensive evidence from third-party sources that the mere presence of blue-stain "has no effect on the structural grade of the log"⁶⁵³ and raises this as a relevant issue not simply for the price difference, but rather for benchmark comparability. The petitioner argues that Commerce must examine whether the value associated with this aesthetic issue is representative of all beetle-killed logs purchased by respondents. We note that blue-stained logs must be manufactured into lumber. Given record evidence demonstrating significant manufacturing and processing costs associated with beetle-killed logs (discussed below), that blue-stain is not a structural defect in lumber is not determinative of the value reduction associated with beetle-killed logs when compared to green logs. Furthermore, even if it may not be a structural defect, blue-stain can still significantly reduce the value of the lumber.

According to the petitioner, the U.S. PNW mills surveyed and BC respondents have "particular purchaser preferences relating to specific appearance-grade products and mill capabilities,"⁶⁵⁴ and that "while such offers may represent a market value for blue-stained logs insofar as they are used to supply the appearance grade lumber market, those offers cannot be considered representative of the market price for blue-stained logs used to supply the much larger non-appearance grade, industrial lumber market."⁶⁵⁵ However, even taking this into account, the record evidence does not support the petitioner's assertions. The petitioner does not provide any direct citation for its claim that the blue-stain offers cannot be considered representative of a much larger market. Rather, the petitioner presents this as the logical conclusion of affidavits from U.S. PNW sawmills added to the record by the petitioner.⁶⁵⁶ However, we find that these affidavits do not support the petitioner's assertions.

First, Alan Harper of IFG notes that mills that produce industrial studs are willing to pay more for blue-stained logs than other mills.⁶⁵⁷ However, this simply confirms what is shown by the beetle-kill prices in the U.S. PNW price list. The affidavit also notes that "{w}hen we sell lumber to retail or 'big box' stores, we have to meet appearance standards even for industrial lumber because retail customers refuse blue stain or have to deeply discount it even if the structural integrity of the lumber is unaffected by the stain."⁶⁵⁸ We find that this casts significant doubt on the significance of the petitioner's blanket claim that blue stained log prices will be higher for sawmills focusing on the "much larger non-appearance grade, industrial lumber market," because the affidavit indicates that industrial lumber sold to retailers still must meet appearance standards.

⁶⁵³ *Id.* at 22 (citing Petitioner Comments on Canfor February 12, 2021 SQR at Exhibits 8-10, 12 and Petitioner Comments on IQR Responses at Exhibits Vol-I.7 through Vol-I.9).

⁶⁵⁴ *See* Petitioner Case Brief at 23.

⁶⁵⁵ *Id.*

⁶⁵⁶ *Id.* at 24-25 (citing Petitioner Comments on IQR Responses at Exhibits Vol. I-3, vol. I-4, and vol. I-6).

⁶⁵⁷ *See* Petitioner Comments on IQR Responses at Exhibit vol. I-3.

⁶⁵⁸ *Id.*

Another U.S. PNW lumber producer noted that while blue-stain does not alter the quality of lumber, due to the producer's "focus on appearance grade lumber and customer base, log procurement operations for our mill discourage the purchase of blue stained timber and logs."⁶⁵⁹ Nevertheless, the lumber producer noted that blue-stain logs are "not completely avoidable however, and in these cases, blue stained lumber is not sold into the retail 'Big Box' market in any significant quantity."⁶⁶⁰ A different producer again emphasized the difference between the markets, although from the opposite perspective as a producer of more structural lumber: "With regard to studs made from blue stained logs, the stain is not a structural defect in Lodgepole pine. It is an appearance grading issue for the box stores. on home construction projects, studs are covered up by walls, so appearance for the Wholesaler/builder is a non-issue, it's all about strength and on-grade for them."⁶⁶¹

These statements do not provide clarity on the share of the overall market sold to retail/big box customers. However, the record does contain information on this question. The 2017 Statistical Yearbook of the Western Lumber Industry has data on the distribution channels of lumber produced in the U.S. inland west.⁶⁶² The data break down the destination of lumber produced in the region by the percentage of lumber going to various distribution channels. The four largest channels were by far the most significant, accounting for over a 90 percent share. They were, in percent: direct to retailer (32.3); stocking distributor (25.1); "to remanufacturing facilities" (17.6); and independent office wholesalers (15.9).⁶⁶³ Setting aside remanufacturing facilities, even if it were assumed that all lumber sold to stocking distributors is sold to wholesale customers who do not care about price, a comparison of the combined independent office wholesalers plus stocking distributors share shows that the retail market is still large. This evidence on the distribution of lumber sales from the inland U.S. west, taken in conjunction with the explanation in Alan Harper's affidavit that even industrial lumber sold to big box/retail customers still must meet appearance standards, undercuts the petitioner's assertion that blue-stain is only a relevant factor for a small and unrepresentative share of the overall lumber market.

There is also additional information on the record that, when taken together, allows us to evaluate the petitioner's claims that the mills in the U.S. PNW survey are unrepresentative specifically with regards to their focus on appearance-grade lumber. In the AR2 Cross-Border Report, Jendro and Hart provided estimates of the survey coverage rate of the U.S. PNW mill survey by comparing the mills against 2018 and 2019 production capacity figures from FEA, a forestry consultancy.⁶⁶⁴ The underlying FEA data are on the record and lists not only the capacity figures for the sawmills used by Jendro and Hart, but also lists the type and location of the mills.⁶⁶⁵ This allows us to examine the overall production capacity of different types of mills in the U.S. PNW. The more precise details are discussed in the BC Stumpage and LER

⁶⁵⁹ *Id.* at Exhibit vol. I-4.

⁶⁶⁰ *Id.*

⁶⁶¹ *Id.* at Exhibit vol. I-6.

⁶⁶² See GBC IQR Response at Exhibit BC-AR2-S-189.

⁶⁶³ *Id.*

⁶⁶⁴ See AR2 Cross-Border Report at 16 and GBC IQR Response at Exhibit BC-AR2-S-190.

⁶⁶⁵ See GBC IQR Response at Exhibit BC-AR2-S-190.

Memorandum,⁶⁶⁶ but, looking at the “type” category in the FEA data show that the mills that responded to the survey do not appear to be anomalous.⁶⁶⁷

Additional information on U.S. PNW interior sawmills can be found in the *Random Lengths* Big Book, which contains a listing of U.S. PNW sawmills.⁶⁶⁸ The Big Book contains a listing of relevant information for individual sawmills such as their contact information, location, production capacity (for some), and product mix. An examination of the information does not indicate that the mills are significantly unrepresentative. Thus, we find that the petitioner’s claims that the beetle-kill benchmark is flawed because it only reflects the preferences of a skewed sample of U.S. PNW mills to be unsupported by record evidence.

The petitioner also argues that the beetle-kill benchmark fails to account for the range of grades present in beetle-killed logs and that this is a flaw under a derived demand benchmark given that the grades directly reflect value.⁶⁶⁹ However, the legal requirements governing Commerce’s selection of benchmarks do not require perfection.⁶⁷⁰ For all the reasons stated herein, we find the overall data included in the U.S. PNW mill survey prices to serve as a reliable benchmark for the beetle-killed benchmark in this review.

The petitioner’s pre-preliminary comments also emphasizes an affidavit provided by Mr. Richards, the WDNR official responsible for the offer prices used in Commerce’s benchmark, that: “WA DNR’s Delivered Log Price Survey cannot be relied upon to establish whether there is a pricing differential between blue-stained and non-blue stained Pine logs because the purchaser’s requirements and pricing for such logs will vary depending on the products manufactured by that sawmill.”⁶⁷¹ We underscore that Commerce is not using the WDNR prices referred to by Mr. Richards to value beetle-killed timber, and thus, Mr. Richards’ comments are not relevant to the beetle-killed benchmark.

We also note that the U.S. PNW Mill Survey coverage ratio, which is derived from the proprietary FEA data, undermines the petitioner’s claims regarding representativeness, as discussed in the BC Stumpage and LER Memorandum.⁶⁷² Further, we note that while the petitioner emphasizes the significance of the difference between appearance-grade and other lumber, the petitioner offers only very limited factual evidence, as opposed to assertions, that the mills in the survey are unreflective of the broader lumber market.

The petitioner notes that the BC Parties have repeatedly emphasized that the U.S. Scribner Scale “makes volume deductions for many more types of defects” than the BC Metric Scale and thus, a sawmill grade log per the U.S. Scribner system will have limited defects under the scaling

⁶⁶⁶ See BC Stumpage and LER Memorandum at 4-6.

⁶⁶⁷ See GBC IQR Response at Exhibit BC-AR2-S-190.

⁶⁶⁸ *Id.* at Exhibit BC-AR2-S-179.

⁶⁶⁹ See Petitioner Case Brief at 25-26.

⁶⁷⁰ See, e.g., *HRS from India* IDM at Comment 12: “There is no requirement that the benchmark used in the Department’s LTAR analysis be identical to the good sold by the foreign government. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511. In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis.”

⁶⁷¹ See Petitioner Pre-Prelim Comments at 17 (citing Petitioner Comments on IQR Responses at Exhibit vol. I-1).

⁶⁷² See BC Stumpage and LER Memorandum at 4-6.

rules.⁶⁷³ Given that the logs here are being purchased by sawmills, the petitioner argues that it is hard to understand why mills would offer just a fraction of the green log price for blue logs. However, as noted by the GBC, “sawmill grade” still encompasses a large range of potential log defect, from zero to up to two-thirds of gross scale volume.⁶⁷⁴ Given this wide variation, the petitioner’s suggestion that the beetle-kill prices appear “too low” for sawmill grade has only limited support.

The petitioner also asserts that the beetle-killed log benchmark is based on a lack of interest for beetle-killed logs among certain U.S. PNW mills, while in the BC interior there was a “region-wide bidding war for scarce wood” during the POR, which bears on “availability” and thus is relevant to analysis of the prevailing market conditions.⁶⁷⁵ However, while the petitioner provides evidence on high demand for wood fiber in British Columbia, it does not actually provide evidence—or even assertions—regarding the level of demand for wood fiber in the U.S. PNW. Instead, the petitioner attempts to substitute the U.S. mills’ supposed “disinterest” in beetle-killed logs for actual information regarding differing market conditions.⁶⁷⁶

Value of Lumber Produced from Beetle-Killed Logs

The petitioner highlights price differentials between different lumber grades, noting that even if one assumes that the lumber produced from beetle-killed logs is significantly lower in quality than lumber produced from non-beetle killed logs, the resulting differential does not justify a reduction of the magnitude present in the beetle-kill benchmark.⁶⁷⁷ The petitioner acknowledges that beetle-killed logs can, on the whole, result in less valuable product mixes that are more costly to manufacture. However, the petitioner argues that these issues still do not justify the very large discount in the benchmark.⁶⁷⁸ The petitioner also notes that, given that Commerce’s derived demand framework assumes that log value derives from lumber value, the lower differences in lumber values are significant.

We do not find the petitioner’s arguments on relative lumber cost differentials persuasive. The subsidy program Commerce is analyzing is provision of standing timber for LTAR, using a log benchmark. While it is an uncontroversial proposition that log values are derived from lumber values, it is unclear that the percentage discount associated with lower-grade lumber versus higher grade lumber should correspond closely to the percentage discount associated with beetle-killed logs versus green logs, given that, not only do beetle-killed logs produce lower quality lumber, but they can also be more expensive to process and have a lower lumber recovery rate.⁶⁷⁹

In addition, in relation to manufacturing costs, as noted below, the petitioner discusses a document submitted by West Fraser in its initial questionnaire response. We note that this document contains some information relevant to the issue of relative cash flow from lumber products from beetle-killed timber. The document submitted by West Fraser is entirely

⁶⁷³ See Petitioner Case Brief at 27-29 (citing *e.g.*, AR2 Cross-Border Report at 7).

⁶⁷⁴ See GBC Rebuttal Brief at 19-20 (citing GBC IQR Response at Exhibit BC-AR2-S-176 at 8).

⁶⁷⁵ See Petitioner Pre-Prelim Comments at 25-26.

⁶⁷⁶ *Id.*

⁶⁷⁷ See Petitioner Case Brief at 29-30 (citing Petitioner Pre-Prelim Comments at 28-30).

⁶⁷⁸ *Id.* at 31.

⁶⁷⁹ See GBC IQR Response at Exhibit BC-AR2-S-178.

proprietary, so our analysis of it is contained in the BC Stumpage and LER Memorandum.⁶⁸⁰ While we acknowledge the petitioner's arguments, both here and below, regarding the relative magnitude of the value differences in lumber from beetle-killed logs and other logs, this document also does not entirely support the petitioner's arguments on this issue.⁶⁸¹ Further, the record still contains evidence, both in the Joint Montana Study and in the document noted, supporting the notion that there *are* value reductions associated with the MPB-affected timber and logs.⁶⁸²

Manufacturing Costs Associated with Beetle-Killed Logs

In the prior review, the petitioner provided only limited evidence discussing the costs of manufacturing beetle-killed logs, evidence that Commerce found of limited value in the *Lumber VARI Final*.⁶⁸³ In this review, the petitioner has provided significantly more evidence and argument on this point. The general point the petitioner asserts is that, while costs associated with manufacturing beetle-killed logs may be real, those costs do not rise to a level that supports the use of a benchmark that reflects the discount for beetle-killed logs in the U.S. PNW mill survey blue-stain price average that was utilized by Commerce in the *Lumber VAR2 Prelim*.⁶⁸⁴

The petitioner cites to various information such as public statements by West Fraser and Canfor on the actions they have taken to allow their mills to better process and utilize beetle-killed logs.⁶⁸⁵ The petitioner then connects those statements to the relevance of the Joint Montana Study emphasized by the respondents and cited to by Commerce in the *Lumber VARI Final*. According to the petitioner, this study is not fully reflective of West Fraser and Canfor's experiences with processing beetle-killed logs, because, unlike Montana mills, West Fraser and Canfor have invested specifically to mitigate the issues the study highlights as particularly significant.⁶⁸⁶ The petitioner also criticizes beetle-killed log value reduction estimates Jendro & Hart derived from the study sourced from proprietary data on U.S. PNW inland average lumber recovery rates.⁶⁸⁷ For the reasons discussed in the BC Stumpage and LER Memorandum, we largely disagree with the petitioner's specific claim regarding the value reduction estimate derived from the study.

The petitioner discusses a document submitted by West Fraser in its initial questionnaire response that contains information relevant to the issue of manufacturing costs resulting from the processing of beetle-killed logs. The document submitted by West Fraser is entirely proprietary, so our analysis of it is contained in the BC Stumpage and LER Memorandum.⁶⁸⁸ Based on that analysis, we agree with the petitioner that the document raises points to consider regarding the application of the beetle-killed benchmark, although we note that this is a company-specific document, and it is unclear the extent to which it reflects West Fraser's overall operations. It

⁶⁸⁰ See BC Stumpage and LER Memorandum at 5-6.

⁶⁸¹ *Id.*

⁶⁸² See GBC IQR Response at Exhibit BC-AR2-S-178.

⁶⁸³ See *Lumber VARI Final* IDM at Comment 21.

⁶⁸⁴ See Petitioner Case Brief at 33-35 (citing Petitioner Pre-Prelim Comments at 31-37).

⁶⁸⁵ See Petitioner Pre-Prelim Comments at 32-33.

⁶⁸⁶ *Id.* at 33-35.

⁶⁸⁷ *Id.* at 36.

⁶⁸⁸ See BC Stumpage and LER Memorandum at 5-6.

further does not allow for apples-to-apples comparisons of beetle-killed and non-beetle-killed timber. Moreover, after considering the points raised by the petitioner, we find that the petitioner has failed to fully support a number of its claims regarding cost recovery from beetle killed logs.

MPB infestation is a prevailing market condition in British Columbia for which Commerce has adjusted under the tier-three derived demand benchmark used to measure the adequacy of remuneration for BC stumpage.⁶⁸⁹ Benchmarks do not require perfection, but the record still shows that there are major differences in value between beetle-killed and green timber.⁶⁹⁰ Furthermore, while the petitioner has tried to distinguish between the mills that responded to the U.S. PNW mill survey and the broader lumber market,⁶⁹¹ we find these claims unconvincing as discussed in more detail above. In fact, when looking at product mix, the sawmills that make up the beetle-kill benchmark provide a reasonable reflection of the overall characteristics of U.S. PNW interior sawmills.⁶⁹²

To the extent that respondents have improved their processing of beetle-killed logs via capital investments, whereas U.S. PNW mills may not have made such investments, the petitioner does not make clear the extent to which this would alter the benchmark calculus, given that the petitioner acknowledges those investments would be costs incurred by respondents to process beetle-killed timber.⁶⁹³

In summary, we are cognizant of issues raised by the petitioner regarding the magnitude of price reductions present in the beetle-kill benchmark and the potential overstatement of value losses relative to the costs incurred by the respondents, and Commerce will continue to consider these arguments and evidence from parties in future administrative reviews. However, notwithstanding the petitioner's arguments on this point, we find that the record remains consistent in the sense that it still contains evidence that there are significant value reductions, losses in yield, and increased manufacturing costs associated with the MPB epidemic. Therefore, when considering the totality of record evidence on this matter, we do not find the petitioner's arguments on this issue persuasive. Ultimately, we have valuations that we find reliable of beetle-killed logs provided by producers who are reasonably reflective of the U.S. PNW interior lumber market.⁶⁹⁴ We have previously found the U.S. PNW interior timber market comparable to the BC interior timber market.⁶⁹⁵ Thus, for the final results, we continue to compare the respondents' purchases of beetle-killed timber to the U.S. PNW mill survey average.

Beetle-Kill Benchmark Calculation

We continue to find that the U.S. PNW mill surveys conducted by Jendro and Hart are a reliable source for the beetle-killed benchmark. Although Jendro and Hart are consultants retained by the GBC, we find that the methodology underlying their collection of beetle-kill prices guards

⁶⁸⁹ See *Lumber IV AR2 Final* IDM at 82; see also *Lumber V AR1 Final* IDM at Comment 21.

⁶⁹⁰ See GBC IQR Response at Exhibit BC-AR2-S-178.

⁶⁹¹ See Petitioner Case Brief at 23-29.

⁶⁹² See GBC IQR Response at Exhibit BC-AR2-S-190.

⁶⁹³ See Petitioner Case Brief at 34.

⁶⁹⁴ See the discussion in the section "Representativeness of Beetle-Killed Benchmark" above.

⁶⁹⁵ See *Lumber V Final* IDM at Comment 21.

against any concerns of bias in the prices presented in the survey. In the *Lumber V AR1 Prelim*, Commerce found that the GBC provided sufficient support, in the form of the actual correspondence with mills and verifiable data showing that the mills surveyed made up a significant percentage of the U.S. PNW interior lumber market, to allow Commerce to conclude that it was reasonable to rely on the prices contained therein for a separate beetle-killed benchmark.⁶⁹⁶ As in the prior review, the GBC has provided on the record of this review the correspondence with mills and data showing that the mills that were surveyed and that responded both made up a significant share of U.S. PNW lumber production.⁶⁹⁷

Separate from its request for Commerce to not apply a beetle-killed benchmark, the petitioner also claims that, in the event it does continue to use the U.S. PNW mill survey to apply such a benchmark, Commerce should make changes to the list of prices obtained from the U.S. PNW mill survey that are used to create the beetle-kill benchmark average.⁶⁹⁸

First the petitioner requests that Commerce include Woodgrain Millwork's La Grande and Pilot Rock sawmills. Although Woodgrain Millwork's offer prices did not include a separate "blue-stained" price, Woodgrain Millwork specified different prices only by diameter and noted that for the Pilot Rock sawmill, it is only purchasing pine. Thus, according to the petitioner, there is no evidence that these sawmills distinguish between green and beetle-killed logs or that they would refuse to purchase such logs.⁶⁹⁹ However, as stated by the GBC in its rebuttal brief and confirmed by reference to the *Random Lengths Big Book*, this sawmill exclusively processes Ponderosa Pine.⁷⁰⁰ In the *Lumber V AR1 Final*, Commerce found it appropriate to not include prices for Ponderosa Pine in the beetle-kill benchmark.⁷⁰¹ As such, we find it appropriate to not include these prices.

Second, the petitioner alleges that offer prices from Bennett Lumber Products that were included in the beetle-killed benchmark average should be removed. The petitioner explains that the log price sheet that contains those offers states that logs delivered to the company's mills be "fresh, green cut in a workman like manner"⁷⁰² and that green logs are, by definition, not beetle-killed. While this is true regarding beetle-killed logs, we find this to be a selective reading of the price sheet by the petitioner. Taking into consideration both the offer price sheet and the accompanying scaling specifications referring to fire-damaged and blued pine logs, the statement regarding green logs can clearly be seen as a general preference, to which the purchase of beetle-killed logs is an exception (the offer sheet italicizes "All Blued Pine" and not any other species listed on the sheet, emphasizing the distinctness of this category).⁷⁰³

As we do not find either claim by the petitioner concerning the data for Woodgrain Millwork and Bennett Lumber Products to be convincing, we are continuing to use the same prices that we did in the *Lumber V AR2 Prelim* to calculate the beetle-killed benchmark average.

⁶⁹⁶ See *Lumber V AR1 Prelim* PDM at 27.

⁶⁹⁷ See AR2 Cross-Border Report and GBC IQR Response at Exhibit BC-AR2-S-175.

⁶⁹⁸ See Petitioner Case Brief at 35-37.

⁶⁹⁹ *Id.* at 37-38.

⁷⁰⁰ See GBC IQR Response at Exhibit BC-AR2-S-179.

⁷⁰¹ See *Lumber V AR1 Final* IDM at 21.

⁷⁰² See GBC IQR Response at Exhibit BC-AR2-S-175 at 13.

⁷⁰³ *Id.* at 11-13.

Comment 23: Whether Commerce’s Selection of a Log Volume Conversion Factor Was Appropriate

*Petitioner Comments*⁷⁰⁴

- In the *Lumber V AR2 Prelim*, Commerce used the “Fonseca adjustment” to account for alleged differences between the U.S. cubic scale and BC metric scale. In doing so, Commerce used data that only accounted for log diameter and length, while ignoring other factors such as taper and defect. Without information on these other factors, the Fonseca Adjustment is flawed and unreliable.
- Commerce has put the onus of providing information that would account for these additional volume measurement factors on the petitioner.⁷⁰⁵ However, information on these factors is held by the respondents, not the petitioner.
- The respondents have repeatedly acknowledged that conversion factors are impacted by factors beyond diameter and length. In a presentation included in the GBC IQR, Jendro & Hart state conversions between BC metric and Scribner scales “varies substantially depending on log diameter, length, shape (taper, crook, sweep, etc.) and defect.”⁷⁰⁶ The Fonseca analysis itself states that “the determination of diameters, length, taper, gross volume and defect can contribute to substantial discrepancies in volume determination between scaling systems even when the procedures appear very similar.”⁷⁰⁷ Independent forestry expert Henry Spelter has also found that “the relationships among these different scaling systems vary systematically with log diameter, as well as length, taper, defects, and measurement and utilization conventions.”⁷⁰⁸
- The Fonseca Analysis cautions against manipulation of conversion factors via selective use of the variables that determine volume ratios.⁷⁰⁹ Given the consensus among the respondents and experts that factors such as taper and defect significantly affect conversion factors, Commerce’s adjustment that is solely based on diameter and length is unreliable.
- In the *Lumber V AR2 Prelim*, Commerce rejected using the 4.525 standard conversion factor proposed by the petitioner and utilized by other U.S. government agencies because it did not address Commerce’s “primary concern with precision in identifying a scale-specific conversion factor for our calculations.”⁷¹⁰ Commerce should reconsider this decision.
- The logs selected for the benchmark are logs from the U.S. PNW, not from British Columbia. Thus, “precision” should focus on logs used for the benchmark, not the stumpage being countervailed.
- Information on the record concerning the U.S. PNW supports the use of a 4.53 conversion factor in this review. A 2016 report from the USDA that contains a detailed survey of over 180 primary forest product facilities in Oregon utilizes a conversion factor of 4.53.⁷¹¹ A

⁷⁰⁴ See Petitioner Case Brief at 38-44.

⁷⁰⁵ *Id.* at 38 (citing *Lumber V AR2 Prelim* PDM at 34).

⁷⁰⁶ *Id.* at 40 (citing GBC IQR Response at Exhibit BC-AR2-S-210).

⁷⁰⁷ *Id.* at 40 (citing GBC IQR Response at Exhibit BC-AR2-S-204).

⁷⁰⁸ *Id.* at 43 (citing GBC IQR Response at Exhibit BC-AR2-S-204).

⁷⁰⁹ *Id.* at 44 (citing GBC IQR Response at Exhibit BC-AR2-S-204).

⁷¹⁰ *Id.* at 51 (citing *Lumber V AR2* PDM at 34)

⁷¹¹ *Id.* at 51-52 (citing Petitioner Comments on IQR Responses at Exhibit Vol I-46).

similar USDA report provides information on the forest products sectors of states including those used in the benchmark and also uses the 4.53 conversion factor.⁷¹²

- *Random Lengths*, the leading lumber industry publication uses a log conversion factor of “1 mbf Scribner=4,525 m3.”⁷¹³ As both industry and the U.S. government use this conversion factor in the ordinary course of business, Commerce should utilize it when calculating the U.S. PNW benchmark.

*GBC Rebuttal Comments*⁷¹⁴

- Commerce was correct to apply the Fonseca Adjustment.
- Information about log taper is not available for the log sample for which the USFS conversion factor is derived; however, the USFS Cubic and BC Metric scales treat taper the same way, and thus, differences in taper are irrelevant to the relationship between these cubic scaling systems.
- The BC Parties have emphasized that the Fonseca Adjustment not accounting for defect means that it *understates* the actual conversion factor, because the Fonseca Analysis did not include dead timber.⁷¹⁵ If Commerce were to include a defect adjustment as the petitioner suggests, the result would be an even more significant adjustment for beetle-killed logs.
- Commerce should continue to reject the 4.525 conversion factor proposed by the petitioner. As noted in the *Lumber V AR2 Prelim*, Commerce analyzed this conversion factor “in detail” in the *Lumber V AR1 Final* and rejected it.
- The petitioner repeats the same arguments for this conversion factor that Commerce has already rejected over “concern with precision in identifying a scale-specific conversion factor{.}”⁷¹⁶ As this concern remains unaddressed, there is no reason for Commerce to change its findings.

*GBC Comments*⁷¹⁷

- Commerce improperly used a flawed 5.93 conversion factor based on a 1984 USFS dual-scale study while rejecting conversion factors derived from the AR1 Dual-Scale Study due to a misunderstanding of the site sampling methodology used by Jendro & Hart and the GBC in the AR1 Dual-Scale Study.
- The purpose of the AR1 Dual-Scale Study was to provide robust cubic meter to MBF conversion factor estimates across each of the main species, grade, and condition categories of logs in the BC interior harvest. As a result, the sampling needed to be non-random to ensure that the study would capture a sample of logs of each species, grade, and condition.
- The characteristics of the BC interior harvest were already known. The purposive sampling of sites was done to ensure that the study would capture a sufficient sample of logs in each of the *already known* categories of species, grade, and condition.
- If Commerce incorrectly continues not to rely on the AR1 Dual-Scale Study, it must at least continue to use the Fonseca Adjustment.
- Additionally, Commerce should include any “negative” benefits calculated for any individual species. This is because the 5.93 conversion factor represents just one specific diameter among

⁷¹² *Id.* at 52 (citing Petitioner Comments on IQR Responses at Exhibit Vol I-45).

⁷¹³ *Id.* at 53 (citing Petitioner Comments on IQR Responses at Exhibit Volume I-48).

⁷¹⁴ See GBC Volume 3 Rebuttal Brief at 13-15 and 24-25.

⁷¹⁵ *Id.* at 15 (citing AR2 Cross-Border Report at 32-34).

⁷¹⁶ *Id.* at 25 (citing *Lumber V AR2 Prelim* PDM at 34).

⁷¹⁷ See GBC Volume 5 Case Brief at 27-31.

a range of log diameters in the 1984 study.⁷¹⁸ This will cause an overstatement of the conversion factor for individual transactions where the log diameter profile is less than that specific diameter and an overstatement of volume where the diameter profile is greater. This would tend to average out across the entire log population, except that Commerce's practice of "zeroing" negative benefits means that understatements of volume will create or increase negative benefits that will be zeroed out in the overall subsidy calculation.

*Petitioner's Rebuttal Comments*⁷¹⁹

- The GBC did not address Commerce's concerns with the AR1 Dual-Scale Study, but rather, claims that Commerce's analysis was based on a "misunderstanding" of the study's purpose. There was no misunderstanding, and Commerce should continue to reject proposed conversion factors based on this study.
- The GBC has not disputed that the site selection methodology used was biased.
- Given the overlap in scaling sites between the investigation dual-scale study and the AR1 Dual-Scale Study, the results should be identical year over year. However, the conversion factor is in fact heavily influenced by the type of logs shown for the survey, as can be seen from the different conversion factors for grade 6 balsam logs depending on the percentage of "sawlogs" between the two studies.⁷²⁰
- Because, as noted by the GBC, there is no direct correspondence between BC Metric Scale and U.S. PNW Scribner Scale grades,⁷²¹ the type of logs chosen by the respondents can distort the conversion factors. In the Scribner system, certain utility logs are assigned a volume of zero, while in the BC Metric system, those logs have positive volume.⁷²² The conversion factors calculated by Jendro & Hart divided the total BC volume (including utility logs with positive m3 volume) over the net Scribner volume (including Scriber logs with an MBF volume of zero).
- In effect, this assumes that BC logs classified as "cull utility" in British Columbia and scaled with an MBF volume of zero would have been given to sawmills for free because their MBF volume is zero. However, if a U.S. sawmill purchased such a log, it would simply pay for the log on a ton basis rather than in MBF. As indicated by the WDNR surveys, U.S. sawmills pay for utility grade logs, but report those prices by ton and not MBF. The WDNR price surveys convert tons to MBF using a standard conversion factor, which Jendro & Hart did not do.
- Assigning to logs a volume of zero in the Scribner system, while having positive volume in the BC metric system is factually wrong and clear evidence of bias. U.S. government agencies have recognized the inherent difficulty of calculating a "representative" conversion factor and have, as such, adopted a standard conversion factor of 4.52 m3/MBF for use in the ordinary course of business. Commerce should use this conversion factor for the final results.

Commerce's Position: In the *Lumber VARI Final*, Commerce considered the following MBF to cubic meter conversion factors placed on the record of that review: (1) the 5.93 conversion factor derived from a 2002 USFS study; (2) the "standard" conversion factor of 4.53 used by some U.S. government agencies and lumber industry publications; and (3) a set of species- and

⁷¹⁸ *Id.* at 30 (citing GBC IQR Response at Exhibits BC-AR2-S-205, BC-AR2-S-183, and BC-AR2-S-101).

⁷¹⁹ See Petitioner Rebuttal Brief at 190-196.

⁷²⁰ *Id.* at 193-194 (citing AR1 Dual-Scale Study at 8-9).

⁷²¹ *Id.* at 194 (citing AR1 Dual-Scale Study at 6).

⁷²² *Id.* at 194 (citing AR1 Dual-Scale Study at 19).

grade-specific conversion factors derived from the AR1 Dual-Scale Study. This comparison led to the conclusion that:

The 2002 USFS study is the only conversion factor on the record, free from bias, that demonstrates a direct relationship to the scales used to measure the benchmark data.⁷²³

We find that this conclusion is still true for the record of this review. Thus, we still disagree with the GBC's claim that we should rely on conversion factors from the AR1 Dual-Scale Study and the petitioner's claim that we should rely on the purported "standard" conversion factor used by other U.S. government agencies.

In the *Lumber V ARI Final*, Commerce explained in detail why the "standard" 4.53 conversion factor was not appropriate for the purposes of this proceeding, even though the "standard" conversion factor is used in the ordinary course of business by other U.S. government agencies. Crucial to this underlying rationale was that tracking and estimating log trade flows—the task for which the 4.53 conversion factor is used—is a different exercise from a CVD benchmark comparison. A standard conversion factor may be appropriate for tracking and estimating trade flows because a standard factor provides simplicity and consistency. An accurate conversion requires knowing the specific log scale used but tracking trade flows would become far more complicated with a scale-specific conversion factor, as the relevant data collecting body would also have to collect data on the scale used to determine log volume at the port of exportation. By contrast, in this proceeding, we have an overriding interest in accuracy and thus in precision with regard to the conversion factor.⁷²⁴

The petitioner's case brief also argues that because the benchmark logs are from the U.S. PNW, the conversion factor should also reflect logs from the U.S. PNW.⁷²⁵ The petitioner then notes two USDA studies and export statistics from industry publication Random Lengths that use the "standard" conversion factor.⁷²⁶ Neither point addresses nor is relevant to Commerce's prior determination to not use the "standard" conversion factor. In the prior review, the record also contained USDA studies tracking trade flows and Random Lengths export data, but as noted above, Commerce found that tracking trade flows is a fundamentally different exercise than a CVD benchmark comparison and thus the "standard" conversion factors use for tracking trade flows is not determinative. The petitioner's point regarding U.S. PNW logs only supports the use of the 2002 USFS study, as that conversion factor is based on a Washington state logs.⁷²⁷

The GBC argues that Commerce misunderstands the purposive (non-random) methodology used in the AR1 Dual-Scale Study to choose the harvest sites in British Columbia at which to undertake the scaling. According to the GBC, the site sampling needed to be non-random to capture a representative swath of each species grade, and condition from the already known

⁷²³ See *Lumber V ARI Final* IDM at Comment 22.

⁷²⁴ See *Lumber V ARI Final* IDM at Comment 22.

⁷²⁵ See Petitioner Case Brief at 51.

⁷²⁶ *Id.* at 51-53.

⁷²⁷ See GBC IQR Response at Exhibit BC-AR2-S-184.

overall characteristics of the BC harvest. These claims were also made in the prior review.⁷²⁸ As an initial matter, as Commerce explained in the *Lumber V Final* and *Lumber V ARI Final Results*:

{i}n instances where parties have presented a self-commissioned study specifically in anticipation of an investigation for the Department’s consideration, the Department must carefully examine the study to ensure that it is based on sound methodologies that guard against any study bias. That is, the Department must evaluate whether any study or report placed on the record of a proceeding by an interested party is free of data and conclusions that were tailored to generate a desired result. Therefore, the essential issue here is whether the BC Dual Scale Study produced conversion factors that were based upon a valid sampling methodology.⁷²⁹

Commerce also explained in the *Lumber V ARI Final*:

{A}n interested party such as the GBC in this proceeding is not a disinterested party. Rather, it is a party that is arguing for a desired outcome favorable to its interest and the interests of its softwood lumber industry. Therefore, the self-selection of the scale sites by the GBC is fundamentally inconsistent with our *Lumber V Final* in which we stated that Commerce must evaluate whether any study or report by an interested party is free of data and conclusions that were tailored to generate a desired (biased) result. Self-selection by an interested party is fundamentally inconsistent with that principle.⁷³⁰

Although Commerce thus expressed concern that the Dual Scale Study may have been tailored to reach a particular result, Commerce analyzed the methodology underlying the study to determine whether it employed a sampling methodology that might guard against potential bias.

Specifically, in examining the GBC’s explanation for its contention that a non-random sampling methodology is necessary for purposes of the Dual Scale Study, Commerce found in the *Lumber V ARI Final* that the GBC “provided no analytical data or third-party peer-reviewed analysis to support its contention that a valid random sampling methodology would produce an invalid conversion factor.”⁷³¹ Commerce further explained that “{a}lthough the fact that the site selection is not probability-based does not in itself invalidate the GBC’s methodology, the study’s authors must clearly explain the criteria underlying their selection.”⁷³² However, after analyzing the explanations for the scaling site selection methodology underlying the Dual Scale Study, Commerce found that the “GBC’s purposive (*i.e.*, not random) and judgment-based selection methodology is not fully explained and the extent to which it protects against bias

⁷²⁸ See *Lumber V ARI Final* IDM at Comment 22.

⁷²⁹ See *Lumber V ARI Final* IDM at Comment 22; *Lumber V Final* IDM at 59.

⁷³⁰ *Lumber V ARI Final* IDM at Comment 22.

⁷³¹ *Id.* at Comment 22.

⁷³² *Id.* at Comment 22.

remains unclear.”⁷³³ Commerce, therefore, concluded that the Dual Scale Study did not represent a source of viable conversion factors for the review.⁷³⁴

We, therefore, find that Commerce’s rejection of the Dual Scale Study in the *Lumber VARI Final* was not based on a “misunderstanding” of the study’s sampling methodology, as the GBC asserts. There is no new evidence on the record of this review that would lead us to reach a different conclusion for these final results. As such, we continue to find that the Dual-Scale Study is not a valid source of conversion factors.

In the *Lumber VARI Prelim*, *Lumber VARI Final*, and *Lumber V AR2 Prelim*, Commerce adjusted the 2002 USFS study conversion factor using the “Fonseca Adjustment.” This adjustment accounts for certain differences in net log volume measurement between the U.S. Cubic Scale and the BC Metric Scale.⁷³⁵ To apply this adjustment, in the *Lumber V AR2 Prelim*, we used respondent-specific diameter data on the record to calculate company- and species-specific ratios to apply to the 5.93 conversion factor to convert the U.S. benchmark prices from MBF to cubic meters.⁷³⁶

The petitioner argues that, if Commerce does rely on the 2002 USFS study for a conversion factor, Commerce should not apply the Fonseca Adjustment.⁷³⁷ We continue to find that it is appropriate to apply the adjustment to account for differences between the U.S. cubic scale and BC metric scale.

The petitioner’s case brief elaborates on a single point that was raised in the petitioner’s pre-preliminary comments—that the Fonseca Adjustment is flawed, because it only accounts for length and diameter, while ignoring other factors that affect volume measurement ratios.⁷³⁸ The petitioner specifically notes the lack of accounting for taper and defect, citing to various sources that highlight the significance of taper and defect for volume measurement. As an initial matter, the Fonseca publication provides an overview of various timber measurement systems and contains a number of comparisons demonstrating how various factors, such as length, diameter, taper, and defect differ across timber measurement systems. In the *Lumber VARI Final*, Commerce used Table A.1.M from the Fonseca publication, which contains volume measurements of a control group of logs, disaggregated by length and diameter, under different scaling rules, including USFS Cubic and BC Metric.⁷³⁹ The petitioner, in its case brief, relies on various quotations from the Fonseca publication on the general significance of taper and defect, as well as a chart showing the impact of taper on volume measurement between the BC Metric Scale and a number of other measurement methods, not including the USFS Cubic scale.⁷⁴⁰ While we agree with the petitioner that taper and defect can have an effect on volume measurement and thus on conversion factors, the Fonseca publication also contains information

⁷³³ *Id.*

⁷³⁴ *Id.*

⁷³⁵ See *Lumber VARI Prelim* IDM at 31-32, *Lumber VARI Final* IDM at Comment 22, and *Lumber V AR2 Prelim* PDM at 34-35.

⁷³⁶ See *Lumber V AR2 Prelim* PDM at 34-35.

⁷³⁷ See Petitioner Case Brief at 38-44.

⁷³⁸ See Petitioner Case Brief at 39 (citing Petitioner Pre-Prelim Comments at Section IV(B)).

⁷³⁹ See *Lumber VARI Final* IDM at Comment 22.

⁷⁴⁰ See Petitioner Case Brief at 38-44 (citing Fonseca publication at 6, 83, 90, 120).

that allows for direct analysis of the extent to which not accounting for taper and defect would introduce bias to a conversion from USFS Cubic Scale to BC Metric scale. Specifically, sections 2.2.1 and 2.2.2 of the book cover the volume measurement procedures of, respectively, the USFS Cubic and BC Metric scales.⁷⁴¹ When this information is taken in combination with the information quoted by the petitioner regarding the impact of not accounting for taper and defect, it is clear that the allegations of bias in the adjustment are groundless.

For defect, the petitioner quotes a segment from the Fonseca Publication regarding the importance of defect for conversion factors.⁷⁴² However, the quote underscores that the BC metric scale only deducts for a limited number of defects, while by contrast, the U.S. Cubic scale deducts volume for “anything that causes a loss in volume of lumber,” a much broader definition of defect.⁷⁴³ This lesser deduction for defect in BC metric scale relative to the U.S. cubic scale means that in a group of logs containing some moderate defect, the volume measurement under the BC Metric scale will be higher, so by not accounting for this, Commerce is being conservative in its estimation of how large of a Fonseca adjustment should be applied.

For taper, the petitioner cites to a section of the Fonseca Publication, a presentation by Jendro and Hart, and a study by forestry expert Henry Spelter in support of the proposition that taper can have a major impact on conversion factors.⁷⁴⁴ However, these excerpts all emphasize the importance of taper in converting between cubic and product output measurements. The diagram from Jendro and Hart provided by the petitioner refers to conversions between BC Metric and Scribner Short Scale.⁷⁴⁵ The Spelter publication is a conversion between cubic meters and board feet.⁷⁴⁶ The quote from the Fonseca publication excerpted by the petitioner is referring specifically to how taper differs between “cubic measure” and “board foot rules.”⁷⁴⁷

This is because, as explained in the Fonseca Publication, in the product output rules, logs are treated as cylinders, while the cubic rules adjust for taper by calculating volume based on the small-end and large-end diameters of the logs.⁷⁴⁸ The Fonseca Publication does note that increased taper can reduce the volume of “Huber based” cubic measures compared to “Smalian based” measures, but the USFS Cubic and BC Metric scales are both Smalian.⁷⁴⁹ Thus, we find no support on the record for the petitioner’s claim that the Fonseca Adjustment is flawed because it does not account for taper.

⁷⁴¹ See Fonseca Publication at 13-17.

⁷⁴² *Id.* at 43 (citing Fonseca Publication at 84-89).

⁷⁴³ See Fonseca Publication at 13-17.

⁷⁴⁴ See Petitioner Case Brief 39-43 (citing Fonseca Publication at 6, 83, 90, 120), Exhibit BC-AR2-S-195 at 2, and Exhibit BC-AR2-S-210)

⁷⁴⁵ See Exhibit BC-AR2-S-195 at 2 (citing INV Dual-Scale Study at 25).

⁷⁴⁶ See Exhibit BC-AR2-S-195 at 2

⁷⁴⁷ See Fonseca Publication at 91

⁷⁴⁸ *Id.* (which notes that Swedish Cubic and JAS are exceptions as cubic scales that view the log as a cylinder).

⁷⁴⁹ *Id.* at 91 and 13-17.

Moreover, the legal requirements governing Commerce’s selection of benchmarks do not require perfection.⁷⁵⁰ Thus, while we might prefer to use a source for the benchmark adjustment that considers additional log characteristics to length and diameter in an accurate manner, the lack of certain log features such as taper and defect in the Fonseca Adjustment does not render the BC benchmark unviable. Moreover, the petitioner has not provided – and the record contains no other – usable data sources that would account for taper and defect, in addition to other log characteristics.

Furthermore, we emphasize, as noted in the *Lumber V AR2 Prelim*, “Commerce faces a mathematical challenge in that the conversion factors convert from Scribner to U.S. Cubic, while we ultimately need to convert to BC Metric.”⁷⁵¹ The Fonseca Publication is an independent, third-party source that provides a framework to make such a conversion, and is the only usable source on the record for making an adjustment to the benchmark. Given that, along with the lack of evidence in support of the petitioner’s allegations, we are continuing to apply the Fonseca Adjustment to the 2002 USFS study conversion factor for these final results.

Finally, we disagree with the GBC’s claim that we must include “negative” benefits calculated for individual species.⁷⁵² As discussed in Comment 9 in Commerce’s subsidy analysis, a benefit is either conferred or not conferred. Calculating negative benefits based on specific characteristics of timber conferred as requested by the GBC would not be consistent with this.

Comment 24: Whether Commerce Should Adjust for Tenure Security in British Columbia

*Petitioner Comments*⁷⁵³

- In the *Lumber V AR1 Final*, Commerce rejected tenure security adjustments proposed by the petitioner because the calculations underlying the adjustment were based on individual timber stands and were not grounds for an overall benchmark adjustment. For this review, the petitioner has addressed this issue by proposing a targeted tenure security benchmark adjustment that covers only stands that have data on the record to value tenure security.
- In the *Lumber V AR2 Prelim*, Commerce rejected this new, targeted, adjustment on the basis that the tenure exchange at issue “may reflect a wide variety of stand- and company-specific characteristics, such that we do not see a clear means of identifying the value specifically attributable to tenure security.”⁷⁵⁴ However, the finding that the values assigned to the stand may reflect stand- and company-specific characteristics does not mean that the petitioner’s proposed adjustment is invalid. Rather, the ability of West Fraser and Canfor to exchange tenures based on their particular operational situations is an example of the valuable benefit that is not available to similar U.S. companies and thus not present in the U.S. PNW log benchmark. The value of tenure security does not need to be separated from other theoretical considerations; these considerations are tenure security playing out in practice.

⁷⁵⁰ See, e.g., *HRS from India* IDM at Comment 12: “There is no requirement that the benchmark used in the Department’s LTAR analysis be identical to the good sold by the foreign government. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511. In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis.”

⁷⁵¹ See *Lumber V AR2 Prelim* IDM at 35

⁷⁵² See GBC Volume 5 Case Brief at 30-21.

⁷⁵³ See Petitioner Case Brief at 44-50.

⁷⁵⁴ *Id.* at 44 (citing *Lumber V AR2 Prelim* PDM at 38).

- Commerce should use the net present value (NPV) methodology for calculating the value of tenure security. Canfor and West Fraser regularly use NPV calculations in the ordinary course of business, and Commerce uses NPV to determine the value of non-recurring subsidies under its regulations. Each of the variables in the NPV equation are accounted for by data submitted by the respondents.
- Commerce should adjust the benchmark upward for the West Fraser's purchases in the Lakes Timber Supply Area by the amount indicated by the NPV equation.

*GBC Rebuttal Comments*⁷⁵⁵

- Commerce has rejected the petitioner's tenure security adjustment in all iterations of the *Lumber V* proceeding, as well as in *Lumber IV* and *Lumber III*. Commerce correctly rejected the purportedly updated adjustment in the *Lumber V AR2 Prelim* and should do so as well for the final results.
- The petitioner's claim that the value of tenure security need not be "parsed out" from other issues such as operational concerns is illogical. Commerce has repeatedly noted that, even if there may be a value in tenures, the petitioner has not proposed a means of isolating that from other aspects that a given tenure's value may reflect. In its NAFTA brief regarding the *Lumber V Final*, Commerce noted that the petitioner did not differentiate between 'tenure security' and other tenure rights and that the petitioner illogically assumed that because a long-term lease provides more stability than a month-to-month arrangement, the value of any incremental extra stability would be the entire amortized cost of the lease.
- Further, the record shows that the transfer was the result of West Fraser and Canfor seeking timber closer to their own mills in the context of declining timber supply and not reflective of tenure security. Furthermore, West Fraser purchased the tenure from Canfor in an arms-length transaction; the GBC did not award it to West Fraser. Thus, even if a value for tenure security existed and could be isolated (not the case), no adjustment is warranted.
- The characterization of tenure security by the petitioner also ignores that BC tenureholders face uncertainties related to long-term tenures. For example, BC tenureholders bear the risk of reductions to their harvestable timber due to pine beetle infestation, government decisions to reallocate AAC, loss of tenure from fires, competing claims from First Nations, and other related issues. U.S. mills do not face these risks. Additionally, BC tenureholders face quarterly changes to their stumpage prices and take on silviculture and forest planning responsibilities. U.S. mills do not have these risks and obligations.
- Finally, the petitioner's proposed adjustment is illogical in the context of Commerce's cross-border stumpage methodology. This methodology is based on the premise that U.S. PNW log prices are market-determined and an appropriate basis for measuring the purported true market value of timber harvested in British Columbia. It necessarily follows that the benchmark captures distortions that would cause BC stumpage prices to be lower than they would be otherwise. To the extent that tenure security has the effect claimed by the petitioner—producing lower timber values—this would already be captured by the cross-border benchmark, meaning that a tenure security adjustment would be double-counted.
- BC stumpage rates are set with reference to prices in BCTS auctions, which are spot prices to harvest a single tract of timber to which there is clearly no possible tenure security value. There is no difference between the prices paid for timber over the life of a long-term tenure and

⁷⁵⁵ See GBC/BCLTC Volume 3 Rebuttal Brief at 25-31.

what would have been in a series of auctions, except for tenure obligation adjustments. Thus, both the U.S. benchmark and BC stumpage rates are set based on spot prices.

*West Fraser Rebuttal Comments*⁷⁵⁶

- Commerce has rejected tenure security adjustment requests in numerous prior proceedings. While the petitioner's updated request to only apply a tenure security adjustment to a single West Fraser tenure addresses Commerce's prior representativeness concerns, it fails to address the fundamental problem that a valuation from a tenure swap may reflect many factors other than a purported value for tenure security.
- The petitioner's conclusory argument that any other theoretical considerations "are tenure security in action" fails to actually explain which theoretical considerations fall under tenure security or would otherwise constitute a countervailable financial contribution and benefit, as opposed to non-countervailable market forces.
- If it were incorrectly assumed that the GBC conferred a tenure security benefit to Canfor, the source of any "benefit" to West Fraser would be Canfor and, thus, there would be no countervailable government benefit to incorporate into the stumpage benchmark.

Commerce's Position: In *Lumber IV*, the *Lumber V Final*, and the *Lumber V ARI Final*, we determined that it was not necessary to analyze whether a countervailable benefit could be conferred through tenure security without the necessary data on the record with which to quantify any benefits allegedly conferred by tenure security.⁷⁵⁷ While the petitioner has provided some new evidence and argument on the record of this review, we continue to lack the data to quantify the value of tenure security during the POR.

The petitioner, as in the prior review, presented an NPV calculation of the approximate value during the POR of a specific tenure exchange between West Fraser and Canfor in 2013.⁷⁵⁸ However, the petitioner is no longer, as it did in prior segments of this proceeding, requesting that the NPV calculation be the basis of an overall blanket adjustment to all tenure-sourced timber harvested by West Fraser and Canfor, but rather be used to adjust the benchmark comparison only for timber harvested from the specific tenures that were the subject of the swap.⁷⁵⁹

We agree with the petitioner that their narrowed tenure security adjustment proposed for this review may address Commerce's concern in the *Lumber V ARI Final* that an adjustment based on valuations from a small number of stands might be inaccurate when applied to all of a respondent's tenure timber purchases, because the valuations could be "specific to those particular stands { }"⁷⁶⁰ However, we continue to find that the petitioner has failed to provide sufficient evidence that would allow Commerce to accurately make the tenure security adjustment proposed in this review.

⁷⁵⁶ See West Fraser Rebuttal Brief at 3-8.

⁷⁵⁷ See *Lumber IV Final* IDM at Comment 2; see also *Lumber IV Final Results of 2nd AR* IDM at Comment 60; *Lumber V Final* IDM at Comment 27; and *Lumber V ARI Final* IDM at Comment 24.

⁷⁵⁸ See Petitioner Pre-Prelim Comments at 44-45.

⁷⁵⁹ See Petitioner Case Brief at 46.

⁷⁶⁰ See *Lumber V ARI Final* IDM at Comment 24.

The respondents argue that the proposed adjustment does not isolate the specific value of “tenure security.”⁷⁶¹ West Fraser argues that “the valuation of specific tenures in this West Fraser-Canfor tenure swap reflects many factors other than a purported value for tenure security.”⁷⁶² The petitioner argues for the proposed adjustment by claiming that any value contained in a tenure is *per se* attributable to tenure security:

This observation that the value assigned to tenures captures “operational concerns” is not inconsistent with Petitioner’s claim that tenures provide increased security...Tenure owners enjoy increased security precisely because they are able to stave off competition for inputs and swap or sell tenures in order to meet operational and market concerns. A party may decide to swap or sell because of operational concerns, but the values assigned during the transaction are determined by the value parties anticipate that the tenure will hold in the future, which is the security and flexibility it allows the owner. In other words, the value of tenure security does not need to be parsed out from the value of other theoretical considerations; any stand- or company-specific considerations are tenure security in action.⁷⁶³

However, the petitioner’s contention that *any* tenure-associated value is tenure security is not supported by any citations or references to record evidence. Thus, we continue to find that the request for a tenure security adjustment is not supported by adequate explanation or sufficient quantitative evidence with which Commerce can isolate the value of tenure security and make such an adjustment, even on a tenure-specific basis.

Finally, the tenure transaction that took place between Canfor and West Fraser and for which the petitioner is requesting an adjustment occurred in 2013.⁷⁶⁴ During the 2019 POR, the GBC enacted Bill 22, which added to the *Forest Act* a requirement that tenure swaps be approved by the BC Minister of Forests and in turn requires that the Minister of Forests apply a public interest test in deciding whether to approve swaps.⁷⁶⁵ The petitioner added factual information to the record relating to the discussion of Bill 22 to the record of this review in support of its assertion that tenure security has value. For example, West Fraser and Canfor claimed that Bill 22 would “undermine the value and security of tenure,”⁷⁶⁶ while a BC legislator arguing against the bill asserted that “{t}imber across this province and the allocation of timber, the tenure across this province, is worth over {C}\$10 billion”⁷⁶⁷

However, while the petitioner cites to arguments on the value of tenure raised by parties debating Bill 22, we find that the petitioner’s case brief and other comments on the record do not address the implications of Bill 22 for the proposed tenure security adjustment. The petitioner characterizes tenure security as including “the ability to swap or sell tenures in order to meet operational and market concerns.”⁷⁶⁸ However, Bill 22’s requirement that such swaps be

⁷⁶¹ See GBC Rebuttal Brief Volume 3 at 28.

⁷⁶² See West Fraser Rebuttal Brief at 6.

⁷⁶³ See Petitioner Case Brief at 45.

⁷⁶⁴ See Petitioner Comments on IQR Responses at Exhibit vol. I-62

⁷⁶⁵ *Id.* at Exhibit vol. I-51

⁷⁶⁶ *Id.* at Exhibit vol. I-54

⁷⁶⁷ *Id.* at Exhibit vol. I-52

⁷⁶⁸ See Petitioner Case Brief at 45.

approved by the GBC places limits on the ability of BC tenureholders to carry such tenure swaps or sales.⁷⁶⁹ As these restrictions were not in place at the time of the swap in 2013, it is not clear, separate from the concerns raised above, whether the valuation of the 2013 swap would reflect an alleged value of tenure security in British Columbia during the 2019 POR, nor has the petitioner properly addressed this, even though their definition of tenure security includes “the ability to swap or sell tenures.”

Thus, we continue to find that the record information does not permit a calculation that could properly quantify a potential benefit that might be conferred during the POR by the tenure security adjustment petitioner proposes.

Comment 25: Whether Commerce Should Adjust the BC Log Benchmark Price for Scaling and G&A Costs

*Petitioner Comments*⁷⁷⁰

- Commerce should not adjust the U.S. PNW log benchmark for scaling and G&A costs that are already included in the benchmark price.
- In *Uncoated Paper from Indonesia*, Commerce used cross-border Malaysian log prices as a benchmark for Indonesian stumpage. Commerce did not adjust the benchmark for freight because “{t}he data also represents actual log prices at the mill gate, thus we do not need to make adjustments for freight expenses {.}”⁷⁷¹ Here, the issue is what costs a sawmill would incur if it either harvests standing timber or buys logs from an unaffiliated logger.
- In the *Lumber IV AR2 Final*, which established Commerce’s methodology for BC cost adjustments, Commerce found that “activities such as scaling and delivering logs to mills or markets are not included as an adjustment because they are not necessary to access the standing timber for harvesting.”⁷⁷² Scaling costs are incurred by sawmills whether they purchase logs from unaffiliated loggers or if they harvest logs themselves from standing or Crown timber. Because scaling costs occur in both situations, the benchmark price is already comparable to the stumpage program.
- Affidavits from two U.S. softwood lumber producers attest that they incur scaling costs both for harvesting their own timber and buying logs from third-party sellers. As all softwood lumber producers use scaling to determine payment for timber, it is a cost incurred even if the producer is purchasing from an unaffiliated logger. As such, the U.S benchmark price already includes this cost.
- The affidavits also note that G&A costs associated with log procurement are incurred both when making third-party log purchases and harvesting from standing timber, and as such, Commerce should not allow the G&A adjustment to the benchmark for the final results.

*Canfor’s Rebuttal Comments*⁷⁷³

- The petitioner relies on again anecdotal descriptions of costs incurred by two U.S. lumber companies to argue that Commerce should not adjust the benchmark for scaling and G&A

⁷⁶⁹ See Petitioner Comments on IQR Responses at Exhibit vol. I-51.

⁷⁷⁰ See Petitioner Case Brief at 53-55.

⁷⁷¹ *Id.* at 54 (citing *Uncoated Paper from Indonesia Final IDM* at Comment 7).

⁷⁷² *Id.* at 55 (citing *Lumber IV AR2 Final IDM* at Comment 49).

⁷⁷³ See Canfor Rebuttal Brief at 2-4.

costs. Commerce previously examined the exact same affidavits and in the *Lumber V Final* did not rely on them regarding scaling and G&A costs.⁷⁷⁴

- The petitioner continues to misunderstand Commerce’s consistent framework that legally-mandated expenses are allowed as adjustments to the benchmark because lumber producers incur those costs in addition to the stumpage price. The legal obligation for scaling costs in the BC stumpage system has not changed, so there is no reason for Commerce to revisit its finding.
- Canfor also disputes the petitioner’s claim that the general statements from the two U.S. lumber producers prove that G&A costs “are included in the benchmark price.”⁷⁷⁵ As Commerce found in the *Lumber V AR1 Final*, it is not even clear which costs these companies are referring to and the petitioner is vague about which of Canfor’s G&A costs are “comparable.”
- Further, Commerce verified in the investigation that these G&A costs were tied either to tenure obligations or to expenses related to accessing, harvesting, or hauling, timber and thus that adjusting for them is consistent with market principles for a tier three benchmark.⁷⁷⁶

Commerce’s Position: Having reviewed the record evidence and case briefs on this issue, we agree with the petitioner that it is not appropriate to deduct legally mandated scaling costs incurred by the respondents from the WDNR log benchmark average. However, we find that it is appropriate to continue deducting certain G&A costs.

As an initial point we note that, similar to the prior review, the petitioner’s case brief makes a fundamentally inaccurate comparison to Commerce’s framework for cost adjustments under a tier-one stumpage benchmark.⁷⁷⁷ This framework is not relevant to cost adjustments under the cross-border tier-three log benchmark. In the *Lumber V AR1 Final*, Commerce explained that deducting scaling and G&A from the U.S. PNW delivered log price tier-three benchmark was fully consistent with Commerce’s prior practice for BC cost adjustments:

As we discussed in Comment 21, our derived demand methodology for stumpage determines the market value of a log at the mill-gate as the lumber price minus the mill’s own, non-wood, production costs to determine the maximum amount it would pay for a log. As Commerce determined in the *Lumber V Final*, “it is appropriate in British Columbia to adjust the benchmark delivered log price not just for the respondents’ access, harvest and hauling costs, but also for certain additional costs associated with the respondents’ Crown tenure obligations, to arrive at a derived stumpage price.”⁷⁷⁸

The framework Commerce uses for cost adjustments in BC was established in the *Lumber IV AR2 Final*, where it was explained as follows:

To calculate “derived market stumpage prices” to compare with Crown stumpage, we deducted the harvesting costs reported by harvesters of Crown and private

⁷⁷⁴ *Id.* at 2-3 (citing *Lumber V AR1 Final* IDM at Comment 23).

⁷⁷⁵ *Id.* at 3 (citing Petitioner Case Brief at 54).

⁷⁷⁶ *Id.* at 4 (citing *Lumber V Final* IDM at Comment 24).

⁷⁷⁷ See *Lumber V AR1 Final* IDM at Comment 23.

⁷⁷⁸ *Id.*

timber in British Columbia from the U.S. log price benchmarks. The costs we made adjustments for were, inter alia, costs associated with the tenure contract and with accessing timber for harvesting, and costs of acquiring timber. Because these cost adjustments were made with respect to market conditions in British Columbia, the derived market stumpage prices were representative of the prevailing market condition in the province.⁷⁷⁹

In other words, under the tier-three market principles benchmark used in British Columbia, Commerce takes the costs “already included” in a delivered log and then removes them in order to compare that log price to stumpage. For example, a delivered log price by definition contains delivery costs, and as such, those costs must be subtracted from the log benchmark for a fair comparison to a stumpage price. Commerce also subtracts from the benchmark costs associated with accessing the timber under the prevailing market conditions in British Columbia. We continue to find that this framework is appropriate for applying cost adjustments. However, we have further assessed record evidence regarding scaling costs related to the BC log benchmark. The fundamental purpose of certain cost adjustments is to remove from the benchmark costs associated with accessing the timber under the prevailing market conditions in British Columbia. However, with respect to scaling, the affidavits of the U.S. PNW lumber producers, unrebutted by the GBC or BC respondents, show that log scaling costs are incurred as a matter of course when accessing timber or purchasing delivered logs in the U.S. PNW.⁷⁸⁰ Thus, this “prevailing market condition” is present on both sides of the comparison and does not need to be subtracted from the U.S. PNW log benchmark to account for BC’s market conditions.⁷⁸¹ Significant portions of these affidavits are BPI and as such they are discussed in the BC Stumpage and LER Memorandum.

While the explanation of scaling is clear, and consistent with other record evidence, the affidavits provide only vague explanation on G&A. The first U.S. PNW lumber producer states the following regarding certain G&A costs:

“When buying logs unaffiliated sellers, {this U.S. PNW lumber producer} incurs overhead and administrative costs for activities related to “log procurement.” These costs are similar to the overhead and administrative costs {this U.S. PNW lumber producer} incurs when it harvests logs from standing timber. The similar cost categories include: salaries, bonuses, payroll, benefits and taxes, operating supplies, vehicles, communication, travel, insurance, and training and seminars for employees.⁷⁸²

The second U.S. PNW lumber producer states:

When buying logs from unaffiliated third party sellers {this U.S. PNW lumber producer} incurs overhead and administrative costs for activities related to “log procurement” and forest management. These costs are similar to the overhead

⁷⁷⁹ See *Lumber IV AR2 Final IDM* at 81-82.

⁷⁸⁰ See BC Stumpage and LER Memorandum at 7-8.

⁷⁸¹ See Petitioner Factual Information to Measure the Adequacy of Remuneration at Exhibit 2.

⁷⁸² *Id.*

and administrative costs {this U.S. PNW lumber producer} incurs when it harvests logs from standing timber and include, for example, costs for road maintenance, construction, and deposits.⁷⁸³

As noted in the petitioner’s case brief, an analysis of comparability is “fundamental” in CVD benchmark comparisons.⁷⁸⁴ We are not deducting scaling costs from the log benchmark in these final results because the petitioner has provided clear evidence that scaling is a specific activity that is a prevailing market condition both for accessing timber in British Columbia and delivered logs in the U.S. PNW. In contrast these two vague statements regarding certain G&A costs incurred and the related arguments by the petitioner do not provide an accurate basis to find that the U.S. PNW benchmark price reflects, as a matter of course, comparable costs to those Commerce has verified are a market condition of the respondents accessing Crown standing timber in British Columbia. Accordingly, we will continue deducting certain G&A costs from the WDNR log benchmark average.

Comment 26: Whether to Account for BC’s “Stand-as-a-whole” Stumpage Pricing

*GBC Comments*⁷⁸⁵

- “Stand-as-a-whole” pricing for stumpage is a prevailing market condition in British Columbia that Commerce must account for in calculating benefits under the Stumpage for LTAR program.
- The GBC does not sell Crown timber by species, but rather through a single price that applies to all species in a stand. This single price is based on the MPS equation and fully accounts for the relative volume and value of different species within a stand. However, this accounting for the relative volume and value of all species within the stand is reflected in the total price, while the per-unit stumpage fees are merely a statistical construct from dividing the total value of the stand by the total volume of the stand.
- These constructed species-specific prices are not analogous to the WDNR’s actual species-specific prices. The difference in this “condition of sale” under section 771(5)(E) of the Act must be accounted for in measuring the adequacy of remuneration.
- Given the infeasibility of creating benchmarks that would reflect the quality of each timber stand in British Columbia harvested from by the respondents, the simplest approach that would still account for stand-as-a-whole pricing is to apply a single, weighted-average “all species” benchmark. This benchmark could be based on the timber species and quality profiles actually consumed by each of the BC respondents during the review.
- In the *Lumber VARI Final*, Commerce rejected accounting for stand-as-a-whole pricing by claiming that the GBC’s stumpage pricing system is irrelevant to Commerce’s benefit analysis and asserted that a single benchmark would be less accurate.⁷⁸⁶ However, Commerce did not explain how this benchmark would be less accurate given the prevailing market condition of stand-as-a-whole pricing. To the contrary, Commerce’s transaction-specific calculations are less accurate as they refuse to account the actual market conditions in British Columbia.

⁷⁸³ *Id.*

⁷⁸⁴ See Petitioner Case Brief at 54.

⁷⁸⁵ See GBC/BCLTC Volume 5 Case Brief at 22-27.

⁷⁸⁶ *Id.* at 26-27 (citing *Lumber VARI Final* IDM at 90).

*Petitioner's Rebuttal Comments*⁷⁸⁷

- Commerce rejected the same arguments by the GBC on stand-as-a-whole pricing in the investigation and first administrative review and should continue to reject them in the current review.
- As Commerce explained, “the species of a tree is an integral part of the value of that tree.”⁷⁸⁸ A weighted-average combined species benchmark would not reflect this and thus not be consistent with market principles. Furthermore, Commerce has a long-standing preference for a transaction-specific analysis.
- The GBC does, in fact, invoice and collect stumpage on a species-specific basis and Commerce follows that methodology in its benefit calculation. The GBC also does not charge a single stumpage rate for all species in a stand, as Grade 4 and 6 timber are sold for a fixed minimum price.⁷⁸⁹
- The GBC’s argument that stand-as-whole pricing is a “prevailing market condition” confuses market conditions with contractual conditions set by the government. As Commerce has found, it would be impractical to compare for differences in market conditions that do not have a clear effect on comparability. Further, as the Canadian Parties argued extensively elsewhere, the species of a tree is an integral part of a tree’s value. As such, selling timber by the stand, regardless of species is inconsistent with market principles and should not be defined as a prevailing market condition.

Commerce’s Position: As discussed in the *Lumber V AR2 Prelim*, Commerce found that the record did not permit us to measure the adequacy of remuneration for the provision of BC stumpage under a tier-one or tier-two analysis.⁷⁹⁰ Thus, we used a tier-three analysis, pursuant to 19 CFR 351.511(a)(2)(iii), in which we measured the adequacy of remuneration by assessing whether the government price is consistent with market principles.⁷⁹¹ As such, to calculate a benefit for stumpage purchases in British Columbia, Commerce used species-specific benchmarks and compared them to the respondents’ purchases of Crown-origin standing timber aggregated by timbermark and species. This was consistent with Commerce’s methodology in the *Lumber V AR1 Final*.⁷⁹² For purposes of these final results, we continue to find that the methodology used in the *Lumber V AR2 Prelim* to be appropriate, and thus, we continue to aggregate the standing timber by timbermark and species in British Columbia for purposes of making a comparison with species-specific Washington state benchmarks for these final results.

The GBC case brief argues that stand-as-whole pricing is a prevailing market condition in British Columbia, specifically a “condition of sale” that differs between the WDNR benchmark and the U.S. PNW log benchmark.⁷⁹³ To account for this difference, the GBC proposes that Commerce rely on an weighted-average “all species” benchmark weighted based on the quality and species of timber harvested by respondents during the POR and then compare that to the overall amount paid by the respondents for BC crown timber.⁷⁹⁴ Commerce rejected this approach in the

⁷⁸⁷ See Petitioner Rebuttal Brief at 185-190.

⁷⁸⁸ *Id.* at 186 (citing *Lumber V AR1 Final* IDM at 89-90).

⁷⁸⁹ *Id.* at 188-189 (citing GBC IQR Response at 108).

⁷⁹⁰ See *Lumber V AR2 Prelim* IDM at 28-29.

⁷⁹¹ *Id.*

⁷⁹² See *Lumber V AR1 Final* IDM AT Comment 22.

⁷⁹³ See GBC/BCLTC Volume 5 Case Brief at 22-24.

⁷⁹⁴ *Id.* at 25-26.

Lumber VARI Final, finding that a weighted-average all species benchmark would not accurately assess the adequacy of remuneration, given that the species of a tree is an integral part of that tree's value.⁷⁹⁵ We continue to find that, given the importance of species for the value of a tree, a weighted-average benchmark would not accurately assess the adequacy of remuneration for stumpage.

The GBC case brief criticizes Commerce's *Lumber VARI Final* finding for refusing to account for this BC market condition. However, we disagree with the GBC that Commerce's prior analysis was incorrect. While the GBC argues that Commerce must set aside a transaction-specific analysis and apply a single all-species price to the entirety of the respondent's purchases, we disagree with GBC's characterization of certain aspects of its pricing. The GBC claims that:

while the total price paid for the stand accurately reflects the relative volume and value of the individual species within that stand based on the timber cruise, the per-unit stumpage fees that appear on the Government of British Columbia's invoices are purely a statistical construct, derived by dividing the total value in a stand by the total volume in that same stand. These constructed "species-specific" values are manifestly not an accurate reflection of the actual value that the Government of British Columbia would charge if it sold standing timber on a species-specific rather than stand-as-a-whole basis, nor does the record permit any basis for accurately estimating such species-specific stumpage values.⁷⁹⁶

Notably, while the GBC refers to these species-specific values as "constructed," those values are the actual amount that respondents are invoiced per unit of timber in the stand.⁷⁹⁷ While the GBC asserts that it "would not" charge these prices if it sold timber by the species, that is not the focus of our inquiry. Further, while the GBC claims to be requesting that Commerce address the "conditions of sale," what the GBC is in fact requesting is for Commerce to make an adjustment based on the internal considerations used by the GBC, rather than the actual invoiced value per unit, by species, contained in GBC invoices.

Rather than the GBC's internal calculations, we are concerned with the prices paid by the respondents compared to the value of the good. Commerce has consistently found, as discussed in Comment 9 that this comparison between the price paid and value is most accurately made through a transaction-specific analysis. In utilizing a timbermark-based approach and further disaggregating by species, Commerce is conducting the calculation on the basis that is as close to a transaction-specific analysis as possible.

Finally, as in the prior review, the GBC cites a NAFTA panel decision from *Lumber IV* to support its contention that Commerce must account for "stand as a whole" pricing as a prevailing market condition in British Columbia.⁷⁹⁸ However, we do not agree with the conclusions of that *Lumber IV* panel decision and, as that decision is not binding on

⁷⁹⁵ See *Lumber VARI Final* IDM at 89.

⁷⁹⁶ See GBC/BLTC Volume 5 Case Brief at 24.

⁷⁹⁷ See GBC IQR Response at 5-6.

⁷⁹⁸ See GBC/BLTC Volume 5 Case Brief at 25-26 (citing *Lumber IV Second NAFTA Remand Determination* at 11)

Commerce in this segment of the softwood lumber CVD proceeding, we are not reaching the same conclusions as that NAFTA panel in these final results.

I. Nova Scotia Stumpage Benchmark Issues

Comment 27: Whether the 2017-2018 Private Stumpage Survey Is Sufficiently Contemporaneous for Use as a Tier-One Benchmark

*GOA's Comments*⁷⁹⁹

- Despite the availability of a tier-one Alberta benchmark price, reflecting POR transactions, Commerce used data from the 2017-2018 Private Stumpage Survey that reflects price data from between nine and 20 months prior to the POR.
- Commerce's reliance on a benchmark that is not contemporaneous with the POR is inconsistent with its prior practice, in which it has prioritized contemporaneity of data as an important prevailing market condition in selecting a benchmark.
- For example, in litigation involving *Pipe and Tube from Turkey 2011* and *CRS from Russia*, Commerce cited contemporaneity as an important factor when selecting a benchmark that is comparable.⁸⁰⁰
- Where Commerce has articulated a prior practice, Commerce is obligated to follow that practice in similar circumstances or explain why it is departing from that practice.⁸⁰¹
- Commerce did not do so here and must correct this error in the final results.

*GOO's Comments*⁸⁰²

- The 2017-2018 Private Market Survey reflects prices that do not correspond to the CY 2019 POR of the instant review.
- Commerce's attempt to cure this deficiency by means of a purchase price index is an illegitimate half-measure that fails to correct the absence of actual transactions from the POR.

No interested party submitted rebuttal arguments regarding this comment.

Commerce's Position: In the prior review, the Canadian Parties argued that the prices contained in the 2017-2018 Private Market Survey were not suitable for use as a tier-one benchmark because they did not contain prices for the first six months of the POR of the first review. Commerce rejected this line of argument in the *Lumber V ARI Final* finding that "the legal requirements governing Commerce's selection of benchmarks do not require perfection and, thus, a tier-one benchmark need not reflect prices for the entire period under examination to be suitable for use."⁸⁰³ We reach the same conclusion in the instant review.

⁷⁹⁹ See GOA Case Brief Volume 4A at 64 to 66.

⁸⁰⁰ See GOA Case Brief Volume 4A at 65 (citing *Toscelik Profil v. Sac Endustrisi A.S.* at 4 and *Cold-Rolled Steel from Russia* IDM at 70).

⁸⁰¹ See GOA Case Brief Volume 4A at 65 (citing *NMB Singapore*).

⁸⁰² See GOO Case Brief Volume 7 Part 1 at 44 to 49.

⁸⁰³ See *Lumber V ARI Final* IDM at Comment 29 (citing *HRS from India* IDM at Comment 12, "There is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government.").

As indicated elsewhere in this memorandum, we find the prices in the 2017-2018 Private Market Survey are the only tier-one prices on the record that are free from government distortion and reflect prices for standing timber that are comparable to Crown-origin standing timber in Québec, Ontario, and Alberta. Thus, while contemporaneity is a factor that Commerce considers when selecting an LTAR benchmark, in this review, the survey prices for private-origin standing timber in Nova Scotia corresponding to FY 2017-2018 constitute the best available tier-one benchmark price.

Additionally, Commerce has indexed benchmark information in other CVD proceedings.⁸⁰⁴ Thus, we reject the GOA's assertion that the dates of the tier-one prices in the 2017-2018 Private Market Survey necessarily must overlap with the POR to be suitable for benchmark purposes.

Furthermore, the Canadian Parties criticize Commerce's reliance on FY 2017-2018 standing timber benchmark prices that are indexed to the POR yet ignore the fact that Canadian Provincial Governments set prices for their Crown-origin standing timber using indexed price information. For example, the GNS used indexed prices in the 2017-2018 Private Market Survey to set the prices it charged for Crown-origin standing timber in FY 2019-2020.⁸⁰⁵ The GNB used indexed prices obtained during November 1, 2011, through October 31, 2012, to set Crown-origin standing timber prices it charged during the POR.⁸⁰⁶ And, in Ontario, the Crown-origin stumpage price charged during the POR was the sum of the following four charges: minimum price, residual value price, forest renewal charge, and a forestry futures charge. Information from the GOO indicates that the residual value price is, in turn, based on "base cost allowance" data from FY 1999/2000 that the GOO indexed to the POR.⁸⁰⁷

On this basis, we find it was reasonable for Commerce to base its tier-one standing timber benchmark for Québec, Ontario, and Alberta on 2017-2018 Private Market Survey data that it indexed to the POR.

Comment 28: Whether Nova Scotia Is Comparable to Québec, Ontario, and Alberta in Terms of Haulage Costs and Whether to Otherwise Adjust the Nova Scotia Benchmark to Account for Such Differences

*GOC's Comments*⁸⁰⁸

- Nova Scotia's small size and dense infrastructure, in addition to low labor costs, allow mills to pay less to haul logs and, accordingly, pay more for stumpage.
- Harvesters of Crown-origin standing timber in Québec, Ontario, and Alberta incur hauling costs that are higher than those incurred by harvesters of private-origin standing timber in Nova Scotia.

⁸⁰⁴ See, e.g., *Wood Mouldings from China* IDM at 6 and Comment 10, where Commerce explained that its use of an indexed 2010 land benchmark to measure the adequacy of remuneration of government land acquired in 2017 and 2019 was consistent with its practice.

⁸⁰⁵ See GNS IQR Response at 4 and 19; see also Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 1.

⁸⁰⁶ See GNB IQR Response at 5-7.

⁸⁰⁷ See GOO IQR Response at 66-76 and Exhibit ON-TEN-36.

⁸⁰⁸ See GOC Case Brief Volume 1 at 85-90 and 131-134.

- Hauling costs are a condition of the Nova Scotia market that does not prevail in the other provinces at issue.
- Labor costs are significantly lower in Nova Scotia than other provinces for sectors such as forestry and logging, forestry support activities, sawmills and wood preservation, and transportation.⁸⁰⁹
- Canadian Parties submitted the IFS Report as well as the Miller Report, which provides additional review of the IFS Report's conclusions. The Miller Report confirms that the information in the IFS Report quantifies the log hauling costs that Nova Scotia mills incur.⁸¹⁰ The IFS Report based its analysis on disturbance mapping from satellite imagery, Nova Scotia inventory data, land ownership, road network maps, a geographic information system, linear programming model, formulas that sawmills use to derive trucking rates.
- Based on this information, the IFS Report assigned timber harvested in Nova Scotia to nearby mills and measured how far the logs would be hauled. The IFS Report then calculated a haul cost using a distance traveled formula published by HC Haynes.
- The IFS Report used the information to calculate an average haul cost for Nova Scotia's softwood sawmills for the POR. The haul rate is conservative because the analysis is limited to Nova Scotia's ten largest sawmills, and a registered forester in Nova Scotia confirmed the accuracy of the assumptions the IFS Report used to derive the hauling cost.
- The information in the IFS Report confirms that the hauling costs in Nova Scotia are lower than the hauling costs the mandatory respondents incurred in their respective provinces.⁸¹¹ Thus, Commerce should lower the Nova Scotia benchmark to account for the differences in hauling costs.
- Specifically, the IFS Report indicates that the average haul cost for Nova Scotia's softwood sawmills during the POR was C\$12.76/m³, lower than the average for each of the respondents.⁸¹²
- The Miller Report confirmed that the assumptions made in the IFS Report were reasonable given that harvesters attempt to shorten their haul distances as much as possible to minimize expenses.⁸¹³
- Consistent with the WTO's findings, Commerce should find that the material differences in transportation costs render prices in Nova Scotia unsuitable for use as a tier-one benchmark.⁸¹⁴

*GOA's Comments*⁸¹⁵

- There are significant differences in public road infrastructure in Alberta and Nova Scotia, leading to higher harvesting costs in Alberta.
- Transportation costs to market from Alberta are also higher than they are from Nova Scotia, due to the disparate size of the provinces and distance to markets. The average cost of shipping lumber to market from Alberta is significantly higher than from Nova Scotia due to Alberta's remote geography.

⁸⁰⁹ *Id.* at 90 (citing GOA, GOO, & GOQ Comments GNS IQR Response at Exhibits PR-NSR-AR2-9, PR-NSR-AR2-10, PR-NSR-AR2-11, and PR-NSR-AR2-12).

⁸¹⁰ *Id.* at 132 (citing IFS Report at Exhibit PR-NSR-AR2-2).

⁸¹¹ *Id.* at 134 at Table 8.

⁸¹² *Id.* at 88 (citing IFS Report at Table 8).

⁸¹³ *Id.* at 88 (citing Miller Report at 3-4).

⁸¹⁴ *Id.* at 89 (citing *DS 533 Panel Report* at paragraph 7.388).

⁸¹⁵ See GOA Case Brief Volume 4.A at 61-62.

- To this point, the cost of shipping lumber from Nova Scotia to its closest market (Boston) is approximately 47 percent lower than shipping costs from Alberta to its most profitable major market (Minneapolis).⁸¹⁶
- The differences in hauling costs disqualify Nova Scotia standing timber prices for use as a tier-one benchmark for Alberta.

*GOO's Comments*⁸¹⁷

- Transportation costs do not simply increase the cost borne by harvesters. They cause a reduction in the value of timber that can only be accessed from greater distances—which can result in a significant reduction in the price paid for that standing timber.⁸¹⁸
- Hauling costs reported by harvesters of Ontario Crown-origin standing timber were on average C\$ 14.36/m³;⁸¹⁹ hauling costs for Nova Scotia private timber are only C\$ 12.76/m³.⁸²⁰ This means that average hauling costs in Ontario are 13 percent higher than average hauling costs in Nova Scotia.
- This very significant difference in transportation conditions in Ontario and Nova Scotia and its implications for standing timber values in the two provinces is entirely unaccounted for in the *Lumber V AR2 Prelim*, and it is yet another reason why the two forests and timber markets are not comparable. Thus, Commerce should not use Nova Scotia standing timber prices as a tier-one benchmark.

*West Fraser's Comments*⁸²¹

- Commerce should use the MNP Cross Border Report to quantify the hauling cost differences that exist for log harvesters in Nova Scotia and Alberta.⁸²²
- Additionally, the costs of transporting lumber from the mill to the market are higher in Alberta than they are in Nova Scotia, as evidenced by the haulage distance and wage rate information in the MNP Cross Border Report.⁸²³
- Commerce should adjust the Nova Scotia benchmark downward to account for these cost differences.

*Petitioner's Rebuttal Comments*⁸²⁴

- Commerce should not adjust the Nova Scotia benchmark for supposed hauling costs that the Canadian parties claim are incurred either exclusively or to a greater degree in Ontario, Québec, and Alberta.
- In arguing that Nova Scotia's hauling costs are low, the Canadian Parties primarily rely on the IFS Report.

⁸¹⁶ *Id.* at 62 (citing GOA IQR Response at MNP Cross Border Report).

⁸¹⁷ See GOO Case Brief Volume 7 Part 1 at 43-44.

⁸¹⁸ *Id.* at 43 (citing Miller Report, Appendix 1 at 44).

⁸¹⁹ *Id.* at 44 (citing KPMG Report, Schedule I).

⁸²⁰ *Id.* at 44 (citing IFS Report at Table 8).

⁸²¹ See West Fraser Case Brief at 48-50. The GOA reiterates the arguments of the West Fraser. See GOA Case Brief Volume 4A at 59-62 and 89-90.

⁸²² See West Fraser Case Brief at 49 (citing MNP Cross Border Report at 68-70)

⁸²³ *Id.* at 49 (citing MNP Cross Border Report at 68-70).

⁸²⁴ See Petitioner Rebuttal Brief at 48-53 and 65-68.

- Reliance on the IFS Report is misplaced as it is both inaccurate and speculative. The Canadian Parties' proposed hauling and harvest cost adjustments compare individual lumber-producing respondents' recorded hauling and harvesting costs to an inaccurate estimate of Nova Scotia hauling and harvest costs.
- Fundamental to the IFS Report's calculation of an average haul cost is the following "assumption":

Information regarding which cut block volume was delivered to which sawmill is not known. However, the allocation of hundreds of cutblocks to a large number of sawmills would likely occur in a manner that would result in the least cost to all sawmills, subject to a sawmill's sawlog demand."⁸²⁵

- An official from the Nova Scotia Department of Lands and Forestry has explained why the Canadian Parties' "assumption" is incorrect for Nova Scotia's private-origin standing timber market. Namely, the official has stated that the private-origin standing timber market would not likely allocate hundreds of cutblocks in a manner that would result in the least cost to all sawmills.
- Rather, the official explains that the private-origin standing timber market in Nova Scotia is one where owners of small parcels of land sell land at various points in time of their choosing and where purchasers must navigate lands owned by various owners to access a given stand, which makes it incorrect to assume that woodlots are allocated in economic order.⁸²⁶
- There is no dispute the author of the IFS Report failed to contract officials from the Nova Scotia Department of Lands and Forestry.
- Hauling costs are not factors affecting the comparability of a stumpage-to-stumpage comparison. Commerce previously determined that the stumpage prices in Nova Scotia are those charged to the purchaser in exchange for harvesting rights, do not reflect any post-harvest costs to the seller, and thus that a "proper stumpage-to-stumpage comparison must logically exclude the cost of such activities" as hauling and scaling costs from the LTAR benefit calculation.⁸²⁷
- The haulage and harvest cost information in the MNP Cross Border Report purport to demonstrate that Nova Scotia's haulage and harvesting costs are significantly lower than those incurred by lumber producers in Alberta.
- Information in the FP Innovations Report indicates that the harvest and haulage costs for Nova Scotia sawmills was higher than the costs listed in the MNP Cross Border Report.
- The Canadian Parties prepared the MNP Cross Border Report for purposes of the lumber proceeding.
- FP Innovations, a not-for-profit research firm that specializes in assessing the Canadian forest sector's global competitiveness, conducted its report partnership with the GOC, the Atlantic Canada Opportunities Agency and the "hub partners."⁸²⁸
- Importantly, unlike the generalized data supplied by the GOA, the FP Innovations Report allows the user to accurately simulate the current costs of Nova Scotia's forest products supply

⁸²⁵ *Id.* (citing IFS Report at Section 5.0).

⁸²⁶ *Id.* at 49-50 (citing Petitioner Comments on IQR Responses at Exhibit Volume I-25).

⁸²⁷ *Id.* at 67-68 (citing *Lumber V Final* IDM at Comment 43).

⁸²⁸ *Id.* at 52 (citing FP Innovations Report at 1).

chain and to modify many of the key variables within the harvesting and transportation operations.

- The Marshall Report submitted by the GOQ acknowledges that costs, such as harvesting, are largely beyond the control of sellers and purchasers of standing timber:

Even though sawmills have strong incentives to keep harvesting, transport, and conversion costs as low as possible, they have limited influence over those costs as those costs are largely determined by fuel and energy prices, prevailing wages, etc. Differences in mill profitability are, therefore, largely due to factors within the influence of sawmills' efficiency in transforming timber into lumber (*i.e.*, wood conversion yield).⁸²⁹

- The explanation from the Marshall Report demonstrates that it is the provision of standing timber for LTAR that drives mill profitability in the provinces under review, rather than any contrived differences in harvesting costs.
- Information in the FP Innovations Report demonstrates that Nova Scotia's harvesting costs for standing timber are comparable to the costs in Québec, Ontario, and Alberta.⁸³⁰

Commerce's Position: The Canadian Parties raised the same arguments in the first administrative review.⁸³¹ We found the arguments unpersuasive then and continue to do so here. Under section 771(5)(E)(iv) of the Act, Commerce is required to measure the adequacy of remuneration in relation to the "prevailing market conditions for the good or service being provided." The good being provided is Crown-origin standing timber. The private prices in the 2017-2018 Private Market Survey are "pure" stumpage prices, *i.e.*, prices charged to the purchaser for the right to harvest private-origin standing timber, which therefore do not reflect any related costs.⁸³² Consistent with the prior review, we find log haulage costs are not part of "pure" stumpage prices but are, instead, related costs.⁸³³ Consequently, including such costs would introduce an external factor unrelated to the "pure" stumpage price, and, pursuant to section 771(5)(E)(iv) of the Act, we find that a proper stumpage-to-stumpage comparison must exclude the cost of such related expenses from the calculation. Thus, due to our determination that the Nova Scotia benchmark is a "pure" stumpage price, which does not reflect these other activities, fees, and charges, we find that a proper stumpage-to-stumpage comparison must exclude the cost of such related expenses from the calculation. Accordingly, we have excluded all the related expenses that are not the "pure" stumpage price paid. Likewise, the administrative costs considered by the Canadian Parties are considered overhead expenses, which are not directly related to stumpage prices.

Additionally, as in the prior review, we find that the reports cited by the Canadian Parties do not compel Commerce to conclude that Nova Scotia private-origin standing timber prices are

⁸²⁹ *Id.* at 50 (citing Marshall Report at 9).

⁸³⁰ *Id.* at 52 (citing FP Innovation Report at Figure 17).

⁸³¹ See *Lumber VARI Final IDM* at Comments 34 and 43.

⁸³² See GONS IQR Response at NS-7 at 6, which contains the GNS verification report from the investigation in which Commerce verifiers confirmed that the prices in the 2017-2018 Private Market Survey only reflected standing timber prices, and NS-18 at 1, in which the questionnaire to the 2017-2018 Private Market Survey instructs respondents to report "only the pure stumpage price."

⁸³³ See *Lumber VARI Final IDM* at Comments 33, 34 and 43.

unsuitable for use as a tier-one benchmark to measure the adequacy of remuneration of Crown-origin standing timber in Québec, Ontario, and Alberta or otherwise require an adjustment to the standing timber prices contained in the 2017-2018 Private Market Survey.

For example, we continue to disagree with the Canadian Parties' argument that information in the IFS Report demonstrates that differences in haulage costs between Nova Scotia and the provinces at issue are so great as to disqualify private-origin standing timber prices in Nova Scotia from use as a tier-one benchmark. As discussed in the prior the review,⁸³⁴ in reaching its conclusions concerning haulage costs in Nova Scotia, the IFS Report assumes:

Information regarding which cutblock volume was delivered to which sawmill is not known. However, the allocation of hundreds of cutblocks to a large number of sawmills would likely occur in a manner that would result in the least cost to all sawmills, subject to a sawmill's sawlog demand.⁸³⁵

Management at the Nova Scotia Department of Lands and Forestry has provided the following critique of the assumptions that comprise the haulage cost analysis contained in the IFS Report. In particular, GNS officials states that the IFS Report assumes:

... the allocation of hundreds of cutblocks to a large number of sawmills would likely occur in a manner that would result in the least cost to all sawmills, subject to a sawmill's sawlog demand." This is not how the private land stumpage market operates. There is not one owner of one large tract of land that has sold various portions to different purchasers. Rather, in Nova Scotia, there are smaller parcels of land where harvestable timber may be found. One owner may own a parcel of land next to an access road while another owner may own a parcel of land behind that first landowner. {The} IFS {Report} assumes that both landowners would sell stumpage at the same time and harvesting would occur in the least costly manner. A private market does not function this way. Landowners sell stumpage rights when they want to, and purchasers need to navigate land owned by another landowner in between the woodlot being harvested and the access road. It is, therefore, incorrect to assume any allocation of woodlots in economic order.⁸³⁶

Based on this information, we continue to find the assumptions made in the IFS Report concerning how the market for private-origin standing timber operates are flawed, and therefore, we find the claims the IFS Report makes concerning haulage cost differences between Nova Scotia and the provinces at issue to be unavailing.

We also disagree with the argument that Commerce should adjust the Nova Scotia benchmark downward using the haulage price differences in the MNP Cross Border Report. The conclusion in the MNP Cross Border Report that higher wage rates in Alberta drive the differences in

⁸³⁴ *Id.* at Comment 33.

⁸³⁵ See IFS Report at Section 5.0 entitled, "Assumptions."

⁸³⁶ See Petitioner Comments on IQR Responses at Exhibit Volume I-25, which contains the affidavit of Heidi Jane Higgins, Manager of Scaling and Forest Regulation Administration, Department of Land and Forestry, paragraph 6.

haulage costs between the two provinces relies on wage data corresponding to a three-digit NAICS code for the transportation sector in general that is not specific to wages paid to haul logs from harvest sites to sawmills in Alberta and Nova Scotia.⁸³⁷

Further, the MNP Cross Border Report states that the Nova Scotia haul distances are “unknown” and, thus, attempts to compare Nova Scotia’s haulage costs to those of Alberta by an indirect method.⁸³⁸ Specifically, the MNP Cross Border Report inputted average haul distances in Alberta into a haulage cost formula from HC Haynes, a harvest and trucking company that operates in Nova Scotia, and notes that the haulage cost generated by the HC Haynes formula is lower than the average hauling costs for Alberta reported in the MNP Cross Border Report.⁸³⁹ However, there is information on average haulage costs in Nova Scotia, as contained in the FP Innovations Report that permits Commerce to compare haulage costs in Alberta and Nova Scotia. The MNP Cross Border Report states that in 2019, Alberta’s average haul costs was C\$17.43/m³ and the average haul distance was 111 km, with some haul distances reaching 490 km.⁸⁴⁰ However, the FP Innovations Report determined that the average haulage cost in Nova Scotia was 24.57 C\$/m³, the average log transport distance to sawmills in Nova Scotia was 146 km, and the maximum log transport distance to any particular mill in the study was approximately 550 km.⁸⁴¹ Thus, the information in these two studies indicates that Nova Scotia has higher transportation costs than Alberta.

We also find that the Nova Scotia haulage analysis in the FP Innovations Report is more reliable than the indirect estimate of Nova Scotia haulage costs contained in the MNP Cross Border Report. Unlike the MNP Cross Border Report, which was commissioned for purposes of the *Lumber V* proceeding, the GNS commissioned the FP Innovations Report in 2016, prior to the filing of the petition in the *Lumber V* proceeding.⁸⁴² Further, unlike the MNP Cross Border Report, the GNS commissioned the FP Innovations Report in the ordinary course of business. As the GNS explains:

In 2016, NSDNR partnered with the Atlantic Canada Opportunities Agency (ACOA), Innovacorp, and Emera Corporation to create an Innovation Hub tasked with identifying new products and processes that could positively impact the competitiveness of Nova Scotia’s forestry and natural resource sectors. The partnership commissioned FP Innovations, a not-for profit research firm that specializes in assessing the Canadian forest sector’s global competitiveness. FP Innovations conducted several studies of the Nova Scotia forestry system to assess the current state of provincial fibre supply and cost.⁸⁴³

Additionally, the method FP Innovations used to derive average log haulage costs in Nova Scotia relied on broader data and a significantly more sophisticated method than the indirect method the

⁸³⁷ See MNP Cross Border Report, Volume II at paragraph 5.2.1, Table II-22 and footnote 127.

⁸³⁸ See MNP Cross Border Report at paragraph 5.2.1.

⁸³⁹ *Id.* at paragraph 5.2.1.

⁸⁴⁰ *Id.* at paragraph 5.2.1 and Table II-20.

⁸⁴¹ See GNS IQR Response at 21-22 (citing FP Innovations Report at 3 and 39).

⁸⁴² *Id.*; see also FP Innovations Report at 1, which indicates that the report was issued in July 2016, which was prior to the November 2016 filing of the *Lumber V* petition.

⁸⁴³ See GNS IQR Response at 21.

MNP Cross Border Report used to estimate Alberta's haulage costs relative to Nova Scotia. As noted above, the MNP Cross Border Report states that it lacks any data on Nova Scotia hauling distances. Thus, absent this key piece of information, the MNP Cross Border Report cannot directly compare estimated hauling costs in Alberta and Nova Scotia. Instead, the MNP Cross Border Report inputted an average log haul distance for Alberta into a single log hauling price formula from HC Haynes (a log transportation company in Nova Scotia) to conclude that Alberta's log haulage costs would have been lower under Nova Scotia pricing conditions.⁸⁴⁴ In contrast, the FP Innovations Report based its log haulage cost calculations for Nova Scotia on road network shapefiles (*e.g.*, a vector datafile used for geospatial analysis), road speed classes, road cost data, transportation cost data, and sawmill network data.⁸⁴⁵ The FP Innovations Report determined and incorporated into its analysis, among other things, an examination of "optimal transportation routes between the origin of the fibre and its destination at the mills," truck travel speeds, Nova Scotia's entire road network (taking into account road classifications by weight restrictions), and Nova Scotia sawmill wood requirements.⁸⁴⁶ As part of its haulage analysis, the FP Innovations Report also determined and incorporated minimum, maximum, and average log haul distances to mill for 39 different sawmills broken down by region.⁸⁴⁷ Thus, comparing the log haulage cost information for Nova Scotia in the FP Innovations Report to the log haulage cost information for Alberta in the MNP Cross Border Report, we find that log hauling distances and costs in Nova Scotia are comparable to those of Alberta and, thus, that it is not necessary to adjust the Nova Scotia standing timber benchmark for log hauling costs as advocated by Canadian Parties.

We also continue to find that statements in other reports placed on the record undercut the Canadian Parties' claims concerning haulage costs in Nova Scotia and the provinces at issue. While we disagree with the Marshall Report's conclusions that the prices generated by the GOQ's auction system result in prices that may be used as a tier-one stumpage benchmark, we nonetheless note that the Marshall Report states the following as it regards the factors that impact standing timber prices:

Even though sawmills have strong incentives to keep harvesting, transport, and conversion costs as low as possible, they have limited influence over those costs as those costs are largely determined by fuel and energy prices, prevailing wages, etc. Differences in mill profitability are, therefore, largely due to factors within the influence of sawmills stumpage and efficiency in transforming timber into lumber (*i.e.*, wood conversion yield).⁸⁴⁸

⁸⁴⁴ See MNP Cross Border Report at paragraph 5.2.1: "Though Nova Scotia haul distances are unknown, we can consider the difference in truck/labor rates and productivity in Nova Scotia and Alberta.

⁸⁴⁵ See FP Innovations Report at 8-9.

⁸⁴⁶ *Id.* at 14-15.

⁸⁴⁷ *Id.* at 16.

⁸⁴⁸ See Marshall Report at 9.

Comment 29: Whether to Revise the Conversion Factor Used in Calculation of the Nova Scotia Benchmark

*GOC's Comments*⁸⁴⁹

- The conversion factor of 1.167 in the 2017-2018 Private Market Survey used to convert logs from Canadian dollars (C\$) per ton to C\$ per cubic meters (C\$/m³) is flawed.
- The flaw in the conversion factor understates the volume of wood contained in a given mass of logs, and thus overstates the C\$/m³ actually paid by respondents to the 2017-2018 Private Market Survey. The overstated prices in the 2017-2018 Private Market Survey, in turn, create an apparent stumpage benefit that does not, in fact, exist.
- New record evidence obtained by means of a Freedom of Information Request indicates that the 1.167 conversion factor was developed at a single scaling site in Nova Scotia, specifically a now-defunct pulp and paper mill operated by Scott Paper.⁸⁵⁰
- While the GNS may have analyzed whether the scaling data from that particular mill constituted a statistically large sample size at that site, there is no evidence to indicate the scaling data are representative of logs scaled throughout all of Nova Scotia.
- In the investigation, Commerce rejected a conversion factor developed in the BC Dual Scale Study because it relied on data from “only 13 scaling sites” and lacked evidence that it was derived from a statistically valid sample size that was reflective of all trees in British Columbia.⁸⁵¹
- Per the standard employed in the investigation, Commerce should determine here that there is no basis to conclude the 1.167 conversion factor reflects observations reflective of all of Nova Scotia.
- Evidence does not establish that the values used to calculate the relationship of 1.167 cubic meters per ton of logs were actual measurements of the number of cubic meters per ton of logs.
- Rather evidence indicates the data that comprise the 1.167 conversion factor were recorded for certain physical properties of the timber loads sampled at Scott Paper and that some of those values did not reflect direct measurements of the timber; they were derived by applying a fixed conversion factor to the values recorded for other physical properties.
- While the 1.167 conversion factor data contain mass and volume figures representing measures for mass (in tons), cubic meters, cubic meters (stacked), tons per cubic meters (stacked), and tons per cord, it is apparent that not all these figures were actually measured. Rather, the data used to derive the 1.167 conversion factor can only have been derived by applying a fixed conversion factor.
- This is problematic because scaling standards recommend against using the same conversion factor for stacked cubic volume and solid wood cubic volume.⁸⁵²
- The prices in the 2017-2018 Private Market Survey apply the same conversion factor to a range of different log products. Applying a standard conversion factor for all log products may be

⁸⁴⁹ See GOC Case Brief Volume 1 100 to 114 and 128-131. The GOA and West Fraser argue the same points in their case briefs.

⁸⁵⁰ See GOC Case Brief Volume 1 at 102-103 (citing GNS IQR Response at Exhibit NS-17 at 9 and GOA, GOO, & GOQ Comments on GNS Private Stumpage Survey at Exhibit GOC-ADEQ-AR2-11 at 1-16).

⁸⁵¹ See GOC Case Brief Volume 1 at 103 (citing *Lumber V Final* IDM at Comment 19).

⁸⁵² See GOC Case Brief Volume 1 at 104 (citing GBC IQR Response at Exhibit BC-AR2-S-204 at 79).

understandable and practical, but as a measure of wood consumed by a mill, a standard conversion factor applied across all logs types is never accurate.⁸⁵³

- The 1.167 conversion factor was developed between 1989 and 1994 when Nova Scotia sold most of its harvested timber on a treelength basis. The data observations from Scott Paper that form the basis of the 1.167 conversion factor reflect treelength timber.⁸⁵⁴
- However, standing timber purchases in Nova Scotia are now virtually all cut-to-length, which means that each tree is cut into different tops of log products at the time of harvest.⁸⁵⁵
- The 1.167 conversion factor applies to all log products derived from the harvested timber and, thus, underestimates the volume (and overestimates the value) of larger log products like sawlogs and studwood that are sold on a product basis.
- The GNS developed the 1.167 conversion factor in 1994 and it states that it confirmed the reliability of the 1.167 conversion factor in 2005.
- Nova Scotia's Supervisor of Scaling has stated in 2000 that the 1.167 conversion factor needed to be reviewed and adjusted every three years. Yet, despite the Scaling Supervisor's recommendation, the GNS has not updated the 1.167 conversion factor since 2000.
- Meanwhile, the record indicates that the composition of Nova Scotia's forest has changed since 2000.⁸⁵⁶
- The 1.167 conversion factor was derived prior to the 2001 enactment of the Scalers Act and Scaling Regulations.⁸⁵⁷
- The Scaling Regulations inform the procedures in Nova Scotia's Scaling Manual for determining log volume in cubic meters. The GNS last updated its scaling procedures in 2007. Thus, the datapoints used to develop the 1.167 conversion factor pre-date the latest scaling standards specified in Nova Scotia's Scaling Manual. Therefore, it is reasonable to conclude that the datapoints used to compile the 1.167 conversion factor would generate a different conversion factor if GNS's current scaling standards were applied.
- Based on this information, Commerce should refrain from relying on the 1.167 conversion factor when converting the prices contained in the 2017-2018 Private Market Survey into C\$/m³.
- In the prior review, Commerce justified its use of the 1.167 conversion factor because the GNS supposedly used it in the ordinary course of business. However, no evidence exists indicating that the GNS relies on the 1.167 conversion factor for purposes of measuring or pricing Crown timber for any or for any business purpose that requires precision.
- Proprietary information from the GNS verification performed during the investigation indicates that the GNS has no incentive to develop or use an accurate set of conversion factors in Nova Scotia.⁸⁵⁸

⁸⁵³ See GOC Case Brief Volume 1 at 106 (citing *Coated Free Sheet Paper from Indonesia* IDM at Comment 19).

⁸⁵⁴ See GOC Case Brief Volume 1 at 106 (citing GOA, GOO, GOQ Comments on Nova Scotia Weight-to-Volume Conversion Factor at GOC-ADEQ-AR2-11 at 3).

⁸⁵⁵ See GOC Case Brief Volume 1 at 106 (citing GOC IQR Response GOC-AR2-Stumpage-46 at 4).

⁸⁵⁶ See GOC Case Brief Volume 1 at 109 (citing GNS IQR Response at 10 indicating that "natural changes" occurred in Nova Scotia's forests over time).

⁸⁵⁷ See GOC Case Brief Volume 1 at 109 (citing GNS IQR Response at Exhibit NS-13 at 4 and Exhibit NS-14).

⁸⁵⁸ See GOC Case Brief Volume 1 at 111 (citing GOC IQR Response at Exhibit GOC-AR2-STUMP-71 at NS-VE-7, NS-VE-8, and NS-VE-8F).

- The only apparent use of the 1.167 conversion factor by the GNS is in connection with the reporting of harvest volumes and in assessing silviculture obligations for Registered Buyers in Nova Scotia. Neither of these non-pricing uses require precision.
- The GNS imposes a C\$3/m³ silviculture fee on Registered Buyers. However, virtually all Registered Buyers avoid paying such fees by instead performing silviculture activities that satisfy their regulatory obligations.
- Because neither the dollar amounts expended nor the levels of required activity closely track the volumetric assessments derived from use of the conversion factor, neither the GNS nor Registered Buyers have an incentive or need to precisely quantify the volumes of stumpage that are purchased by weight.
- The GNS's approach to its conversion factor contrasts with other Canadian Provinces. The GOA utilizes a statistically valid, continuous mass scaling process of sample loads over the course of each year, stratified into populations based on species, age, moisture, and other factors affecting weight-to-volume ratios, to compute conversion factors that are recalculated monthly as new sample loads are measured and factored into the conversion ratio each year.
- Similarly, the GNB generates product- and species-specific conversion factors that are based on yearly samples and that are updated annually. The rigorous approaches in Alberta and New Brunswick demonstrate how unsuitable the GNS's conversion is for Commerce's benchmarking purposes.
- To remove the distortion caused by GNS's use of the 1.167 conversion factor, Commerce should divide the stumpage unit prices contained in the 2017-2018 Private Stumpage Survey by 1.167 then multiply the unit prices by New Brunswick's conversion factors. Specifically, Commerce should use the seasonal and product-specific conversion factors from New Brunswick's Zone 3 for sawlogs and studwood.⁸⁵⁹ The conversion factor for Zone 3 is appropriate because it borders Nova Scotia. In other parts of its analysis, Commerce has used data from New Brunswick as a proxy for analyzing forest conditions in Nova Scotia.⁸⁶⁰

*GOA's Comments*⁸⁶¹

- If in the final results Commerce continues to use Nova Scotia prices as a benchmark for Alberta, Commerce must apply the 2019 annual Alberta conversion factor of 763.3 kg/m³ to the 2017-2018 Private Market Survey transaction prices to convert the transactions from weight into volume to ensure a fair comparison with the Alberta respondents' transactions. Using the same conversion factor for both provinces ensures an "apples-to-apples" comparison.
- Alternatively, Commerce should use the conversion factor developed and used by the GNB for purposes of converting the prices in the 2017-2018 Private Market Survey into C\$/m³.

*GNS Rebuttal Comments*⁸⁶²

- The GNS directed its counsel to submit the anonymized database that comprises the 2017-2018 Private Stumpage Survey to Commerce. The database provides wood type, product category, species category, total amount paid, and volume in cubic meters.

⁸⁵⁹ See GOC Case Brief Volume 1 at 130 at Table 7.

⁸⁶⁰ See GOC Case Brief Volume 1 at 130 (citing *Lumber V AR2 Prelim PDM* at 27).

⁸⁶¹ See GOA Volume 4.A Case Brief at 84-89.

⁸⁶² See GNS Rebuttal Brief at 8-11.

- Any party can therefore calculate a weight-based dollars-per-ton figure by using Nova Scotia's regulatory conversion factors to convert volume in cubic meters to weight in tons and using that to calculate a per-ton dollar figure.
- From there, any party could use any conversion factor to derive unit prices on a C\$/m³ basis. Canadian Parties acknowledge this fact.⁸⁶³ Thus, the conversion factor simply does not affect the underlying prices reported in the survey.
- That said, the Canadian Parties are wrong to argue that GNS's conversion factor is outdated and inaccurate.
- The GNS uses the 1.167 conversion factor to calculate the volume of primary forest products they have acquired under the Registration and Statistical Returns Regulations to establish the amount of silviculture they are obligated to conduct.⁸⁶⁴ The GNS reports the volume of standing timber harvested in the Registry of Buyers using the 1.167 conversion factor.
- In light of the GNS's use of the conversion factor in its ordinary operations, the GNS directed Deloitte to prepare the 2017-2018 Private Stumpage Survey using the same conversion factor. The GNS uses the prices in the 2017-2018 Private Stumpage Survey as the basis for the prices it charges for Crown-origin standing timber. Thus, the 1.167 conversion factor directly impacts the stumpage prices the GNS charges in its Crown forest.
- Therefore, it is incorrect to claim that the GNS merely uses the 1.167 conversion factor to assess the silviculture obligations of Registered Buyers.
- The GNS developed the conversion factor between 1989 and 1994 using the Scaling Roundwood Standard (CAN3-0302.1-M86) developed by the Canadian Standards Association. The GNS confirmed the accuracy of the conversion factor in 2009.
- The Manager of the GNS' Scaling and Forest Regulation Administration has stated that the 2009 review "yielded an almost identical conversion factor, and {the GNS's} statistician at the time . . . termed the difference to be statistically insignificant."⁸⁶⁵
- Whether the GNS based the initial conversion factor on data collected only from one site (the Scott Paper Mill) does not detract from the evidence in the Canadian Government Parties' own Freedom of Information Request that the data collected between 2001 and 2009 to confirm the 1.167 conversion factor were from multiple sites.⁸⁶⁶
- The Canadian Parties rely on statements of the Supervisor of Scaling that conversion factors should be reviewed every three years in an attempt to undermine the conclusion by the Manager of the GNS' Scaling and Forest Regulation Administration in 2009 that the 1.167 conversion factor continued to be accurate.
- However, the Manager of the GNS' Scaling and Forest Regulation Administration stated that the species type, species mix, and relative moisture content were all variables the GNS measured over an 8-year period from 2001 to 2009 and that the results of that study determined "an almost identical conversion factor" to the one established in 1994.⁸⁶⁷
- Further, the Manager of the GNS' Scaling and Forest Regulation Administration has explained that the GNS has a strong incentive to maintain the accuracy of its conversion factor given that

⁸⁶³ See GNS Rebuttal Brief at 9 (citing GOC Case Brief at 129).

⁸⁶⁴ See GNS Rebuttal Brief at 10 (citing GNS IQR Response at Exhibit NS-17).

⁸⁶⁵ See GNS Rebuttal Brief at 11 (citing GNS IQR Response at Exhibit 5).

⁸⁶⁶ See GNS Rebuttal Brief at 12 (citing GOC Factual Information to Measure the Adequacy of Remuneration at Exhibit GOC-ADEQ-AR2-7).

⁸⁶⁷ See GNS Rebuttal Brief at 12 (citing Petitioner Comments on IQR Responses, Exhibit Volume I-25 at Exhibit 2).

it directly “impacts the integrity of our forestry policy measures, including the silviculture requirements of Registered Buyers.”⁸⁶⁸

- Thus, when the government reviewed the factor, as the Supervisor of Scaling recommended, the results were that no changes were needed as the 1.167 conversion factor remained accurate and reliable.
- The Canadian Parties claim that the 2007 updates to the GNS’s scaling manual required the GNS to change the 1.167 conversion factor. However, the 2007 update to the Scaling Manual occurred during the same period as the Manager of the GNS’ Scaling and Forest Regulation Administration conducted the evaluation of the standard conversion factor (*i.e.*, from 2001 through 2009). Thus, the GNS’s decision to leave the 1.167 conversion factor unchanged reflected the 2007 modifications to the GNS’ scaling manual.
- Furthermore, as to the relevance of the GNS’s 2007 Scaling Manual, the current Manager of the GNS’ Scaling and Forest Regulation Administration has stated: “Nova Scotia’s Scaling Manual does not actually include any factor for converting weight of a log to volume of a log, nor does it provide any method for calculating such a conversion factor.”⁸⁶⁹

*Petitioner’s Rebuttal Comments*⁸⁷⁰

- Commerce rejected the Canadian Parties’ same arguments in the first administrative review. Specifically, Commerce explained that it verified the process and information that went in to the GNS’s conversion factor.
- In the prior review, Commerce further noted that the GNS undertook period reviews to ensure the accuracy of the 1.167 conversion factor and that the GNS relied on the conversion factor as part of the 2017-2018 Private Market Survey that the GNS used as the basis to set Crown-origin stumpage prices for FY 2019-2020.
- Accordingly, in the prior review, Commerce concluded that the conversion factor accurately reflects the characteristics of Nova Scotia’s timber.⁸⁷¹
- Further, business proprietary information reviewed by Commerce at the verification undertaken during the investigation indicates that members of the wood products industry use the 1.167 conversion factor in the ordinary course of business.⁸⁷²
- The evidence the Canadian Parties obtained via a Freedom of Information request reaffirms Commerce’s finding that the conversion factor used in the 2017-2018 Private Market Survey is the same that is used by Nova Scotia’s Registered Buyers, thereby making it reliable.
- The information from the Freedom of Information request indicates that the GNS’ 2009 review of the 1.167 converted factor found the factor was “unbiased.”⁸⁷³
- Further, according to the Manager of the GNS’ Scaling and Forest Regulation Administration, the GNS’ 2009 review of the 1.167 conversion factor, which resulted in no change to the factor, gave the GNS “confidence in the continued applicability” of the factor.⁸⁷⁴

⁸⁶⁸ See GNS Rebuttal Brief at 12 at 13 (citing Petitioner Comments on IQR Responses, Exhibit Volume I-25 at Exhibit 2).

⁸⁶⁹ See GNS Rebuttal Brief at 12 (citing Petitioner Comments on IQR Responses, Exhibit Volume I-25 at Exhibit 3).

⁸⁷⁰ See Petitioner Rebuttal Brief 60-62 and 86-88.

⁸⁷¹ See Petitioner Rebuttal Brief at 61 (citing Lumber V AR1 Final IDM at Comment 32).

⁸⁷² See Petitioner Rebuttal Brief at 61 (citing GNS IQR Response at Exhibit NS-7).

⁸⁷³ See Petitioner Rebuttal Brief at 61 (citing GOC Case Brief at 128-130).

⁸⁷⁴ See Petitioner Rebuttal Brief at 62 (Petitioner Comments on IQR Responses, Exhibit Volume I-25).

- Absent any real methodological critique of how the GNS assessed the continued accuracy of the conversion factor, Commerce has previously and properly concluded that there was no basis to disregard the 2017-2018 Private Market Survey's conversion factor for any of the alternatives advocated for by the Canadian Parties.
- The conversion factor from the 2017-2018 Private Market Survey was scientifically developed using actual samples, whereas the alternative conversion factors proposed by Canadian Parties were "created using information from the {Nova Scotia} scaling manual with assumptions on average species composition."⁸⁷⁵
- Additionally, the Canadian Parties' argument that a New Brunswick conversion factor would "most closely match the conditions" in Nova Scotia is difficult to reconcile with the Canadian Parties' steadfast arguments that species and size differences between the provinces render interprovincial comparisons unreasonable.⁸⁷⁶

Commerce's Position: The Canadian Parties raise many of the same critiques of the conversion factor used in the 2017-2018 Private Market Survey that Commerce rejected in the prior review.⁸⁷⁷ We continue to reject these arguments and find the conversion factor used in the 2017-2018 Private Market Survey to be reliable and that the Canadian Parties' proposed modifications and alternatives to the 1.167 conversion factor are unwarranted.

The following chronology of events demonstrates that for over twenty years, the GNS has used and relied upon the conversion at issue for some of the important aspects of its forest policy. Further, record information demonstrates that during this decades-long period, the GNS has undertaken additional reviews of its forest inventory and harvest data to ensure that the 1.167 conversion factor continues to accurately reflect the characteristics of Nova Scotia's timber.

The GNS began the process to develop a standard conversion rate in 1989.⁸⁷⁸ From 1989 to 1994, the GNS surveyed SPF timber delivered to sawmills to derive a tons to cubic meter conversion factor.⁸⁷⁹ When developing the 1.167 conversion factor, the GNS followed the Canadian Standards Association (CSA) Scaling Roundwood Standard CAN3-0202.1-M86, which is a nation-wide standard.⁸⁸⁰ Between 2001 and 2009, in accordance with CSA scaling standards, the GNS conducted another sampling survey of its forests to check the accuracy of the conversion factor at issue, and the results showed virtually no differences in the 1.167 conversion factor, which led the GNS to leave the factor unchanged.⁸⁸¹

In 2000, the GNS's Department of Lands and Forestry established the Forest Sustainability Regulations, which included into the Registration and Statistical Returns Regulations a provincial annual conversion factor (*e.g.*, the 1.167 conversion factor at issue) for Registered Buyers to use when reporting harvest information for the Registry of Buyers and calculating their

⁸⁷⁵ See Petitioner Rebuttal Brief at 87 (citing Petitioner Comments on IQR Responses at Exhibit Volume I-25).

⁸⁷⁶ *Id.* at 87 (citing GOC Case Brief at 129).

⁸⁷⁷ See *Lumber VARI Final IDM* at Comments 29 and 32.

⁸⁷⁸ See GNS IQR Response at 16.

⁸⁷⁹ See GNS IQR Response at Exhibit NS-17 at 9.

⁸⁸⁰ See GNS IQR Response at 16-17; *see also* Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 2.

⁸⁸¹ See GNS IQR Response at 17.

silviculture obligations pursuant to the Forest Sustainability Regulations.⁸⁸² Further, as noted in the prior review, the GNS utilized the conversion factor at issue when soliciting private-origin standing timber prices as part of the 2015-2016 Private Market Survey.⁸⁸³ During the investigation, Commerce verifiers examined the process and information that went into the GNS's development and continued evaluation of the conversion factor.⁸⁸⁴ In the investigation and first review, Commerce determined that the GNS's conversion factor was reliable and accurate.⁸⁸⁵ In this review, record information indicates that the GNS relied upon the same conversion factor as part of the 2017-2018 Private Market Survey, which the GNS, in turn, used to set the prices charged for Crown-origin standing timber during FY 2019-2020.⁸⁸⁶

We disagree with Canadian Parties' claims that the GNS's 1.167 conversion factor does not reflect various log characteristics. Record information demonstrates that in keeping with CSA methodologies, the conversion factor at issue accounted for wood attributes that impact the development of conversion factors.⁸⁸⁷ For example, in his declaration, Kevin Hudson, Chief Scaler for the GNS, explains that the GNS developed the conversion factor at issue to reflect the species, species mix, and moisture content of Nova Scotia standing timber.⁸⁸⁸ Further, from 2001 to 2009, the GNS conducted multi-year "sample programs" on SPF species, that adhered to CSA standards, to confirm the accuracy of the 1.167 conversion factor.⁸⁸⁹

We also disagree with the Canadian Parties' claim there is no evidence the GNS used the conversion factor in the ordinary course of business, thereby demonstrating that the 1.167 conversion factor is unreliable. The GNS requires Nova Scotia sawmills to report the volumes of standing timber they annually acquire to the Registry of Buyers using the 1.167 conversion factor.⁸⁹⁰ Moreover, as discussed in the prior review⁸⁹¹ and demonstrated in the current review, record evidence indicates the GNS used the conversion factor at issue for purposes of the 2017-2018 Private Market Survey and that the GNS, in turn, used the 2017-2018 survey results to set the prices charged for Crown-origin standing timber during FY 2019-2020.⁸⁹² Therefore, it is simply inaccurate to claim that the conversion factor at issue is not used by the GNS in the ordinary course of business or is not reflected in the prices the GNS charges for Crown-origin standing timber. Additionally, information indicates that Nova Scotia lumber companies use the 1.167 conversion factor in the ordinary course of business to convert purchases of private origin

⁸⁸² *Id.* at 10 and Exhibits NS-12, NS-15, and NS-17; *see also* Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 2.

⁸⁸³ *See Lumber V ARI Final IDM* at Comment 32.

⁸⁸⁴ *See Lumber V Final IDM* at Comment 41.

⁸⁸⁵ *Id.* at Comment 41; *see also Lumber V ARI Final IDM* at Comment 32.

⁸⁸⁶ *See* GNS IQR Response at 7 and Exhibit 6B; *see also* Petitioner Comments on IQR Responses, Volume I-25 at Exhibits 1 and 4.

⁸⁸⁷ *See* Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 2.

⁸⁸⁸ *See* Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 2.

⁸⁸⁹ *See* GNS IQR Response at 17; *see also* Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 2, which contains a declaration from a GNS official who served as Nova Scotia's Chief Scaler from 2001 to 2019. Further, the GNS once again confirmed the accuracy of the 1.167 conversion factor in 2009.

⁸⁹⁰ *See* Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 2.

⁸⁹¹ *See Lumber V ARI Final IDM* at Comment 32.

⁸⁹² *See* GNS IQR Response at 7 and Exhibit 6B; *see also* Petitioner Comments on IQR Responses, Volume I-25 at Exhibits 1 and 4.

standing timber into cubic meters,⁸⁹³ which further demonstrates that the GNS's use of the 1.167 conversion factor in the 2017-2018 Private Market Survey is reasonable and reliable.

We disagree with the Canadian Parties' claim that the GNS's use of a 1.167 conversion factor in the 2017-2018 Private Market Survey is inappropriate because the factor reflects timber harvested on a treelength basis while virtually all harvested timber in Nova Scotia during the POR involved purchases of cut-to-length logs. The Canadian Parties cite to an updated version of the Miller Report in support of the argument in which the author asserts that treelength transactions (*i.e.*, stumpage prices paid for an entire tree) rarely occur in Nova Scotia. However, the author of the Updated Miller Report provides no documentation to support that contention.⁸⁹⁴ Further, the claim made in the Updated Miller Report that stumpage prices in Nova Scotia do not reflect a felled tree, are not consistent with the experience of sawmill operators in Nova Scotia. For example, the co-owner of Harry Freeman & Son Ltd. stated:

Concluding the transaction requires that the buyer and seller come to an agreement as to what product has been harvested. That is: whether the felled tree is classified as a sawlog or studwood log, or pulpwood. This information is maintained on cutting slips, invoices, truck slips, or the like, depending on the harvester's practice or the mill's requirements.⁸⁹⁵

The GNS Registry of Buyers for 2019 indicates that Harry Free & Son Ltd. is one of only four sawmill operators in Nova Scotia that acquired more than 200,000 cubic meters of timber during the POR, and thus, it is reasonable to conclude that its practice of paying stumpage fees for the "felled tree" likely reflects the pricing practices of other sawmill operators in the province. Moreover, the claim made in the Updated Miller Report does not reflect how prices were solicited and collected as part of the 2017-2018 Private Market Survey. Namely, the 2015-2016 Private Market Survey instructed respondents to report "pure" stumpage prices for standing timber (*i.e.*, the prices for standing timber as opposed to cut-to-length segments of timber).⁸⁹⁶ Further, purchase documentation of survey respondents, that Commerce verifiers reviewed at the GNS verification confirmed that the prices in the 2015-2016 Private Market Survey reflected prices for standing timber (*e.g.*, "pure stumpage").⁸⁹⁷ The 2017-2018 Private Market Survey similarly instructed respondents to report prices paid for "pure stumpage."⁸⁹⁸ Thus, we find it was appropriate for the GNS to utilize the 1.167 factor when converting the "pure stumpage" prices in the 2017-2018 Private Market Survey into cubic meters.

⁸⁹³ See GNS IQR Response at VE-7, which contains the GNS Verification Report from the investigation that discusses how purchase documents as well as internal company information demonstrates that the 1.167 conversion factor is used in Nova Scotia by harvesters of private-origin standing timber in the ordinary course of business.

⁸⁹⁴ See Updated Miller Report at 4.

⁸⁹⁵ See Petitioner Comments on IQR Responses at Volume I-25, which contains the affidavit of Richard Freeman, co-owner of Harry Freeman & Son).

⁸⁹⁶ See *Lumber V AR Final* IDM at Comment 43; GNS IQR Response at Exhibit NS-7 at 6, which contains the GNS Verification Report from the investigation indicating that the 2015-2016 Private Market Survey reflected "pure" stumpage prices for standing timber.

⁸⁹⁷ See GNS IQR Response at Exhibit NS-7 at 8.

⁸⁹⁸ See GNS IQR Response at NS-18, which contain the instructions provided to respondents to the 2017-2018 Private Market Survey.

The Canadian Parties argue that in the prior review, Commerce applied rigorous statistical sampling requirements when determining not to rely on the conversion factor data contained in the Dual Scale Study yet chose not to apply those same statistical sampling requirements when it determined to rely on the 1.167 conversion, which was derived from data from the Scott Paper mill. However, in making their arguments, the Canadian Parties do not reference the entirety of Commerce's decision as it regards the Dual Scale Study. Namely, Commerce determined that: (1) the GBC commissioned the Dual Scale study for purposes of the lumber proceeding; (2) the GBC is not a disinterested party; (3) the GBC has an interest in a desired outcome favorable to the interests of its softwood lumber industry; and (4) the "self-selection of the scale sites by the GBC is fundamentally inconsistent with Commerce's finding that it must evaluate whether any study or report by an interested party is free of data and conclusions that were tailored to generate a desired (biased) result."⁸⁹⁹ In contrast, the GNS conducted its conversion factor analysis involving the Scot Paper Mill in 1994, which is well in advance of the filing date of the *Lumber V Initiation*.⁹⁰⁰ Therefore, it cannot be said that the GNS developed its conversion factor for purposes of the lumber proceeding. Moreover, we find that the multi-year analysis the GNS conducted on the 1.167 conversion factor in the years following the factor's development in 1994 confirms its accuracy. To this point, a GNS official who served as the Chief Scaler of Nova Scotia from 2001 to 2019 states the following in a declaration:

Between 2001 and 2009, DLF conducted additional sampling on SPF species to verify the accuracy of the 1.167 conversion factor. Following the CSA Standard, samples were measured over this period. The results yielded an almost identical conversion factor, and our statistician at the time, Peter Townsend, termed the difference to be statistically insignificant. The results of this extensive additional sampling gave us confidence in the continued applicability of this factor, and the factor was left unchanged.⁹⁰¹

Also, in developing, re-examining, and confirming the continued applicability of the 1.167 conversion factor, the GNS followed CSA scaling guidelines.⁹⁰² The CSA is a national standard, and the GNS maintains an active membership on the National Technical Committee on Scaling of Primary Forest Products that develops the CSA.⁹⁰³ Therefore, unlike the Dual Scale Study, we find it is reasonable for Commerce to rely on the 1.167 conversion factor because it was developed and re-examined pursuant to industry standards, and it was utilized by the GNS and the Nova Scotia forest industry in the ordinary course of business.

The Canadian Parties also argue the documents obtained by means of a Freedom of Information Request regarding the development of the 1.167 conversion factor demonstrate the factor's unreliability. We disagree. As we have noted, re-examinations of the 1.167 conversion factor conducted by the GNS from 2001 to 2009 confirmed the factors' accuracy. Further, documents the Canadian Parties obtained via their Freedom of Information Request indicate the reliability of the factor. For example, under the heading "Sample Selection," a document regarding the

⁸⁹⁹ See *Lumber V ARI Final IDM* at Comment 22.

⁹⁰⁰ See *Lumber V Initiation*, 81 FR at 93897.

⁹⁰¹ See Petitioner Comments on IQR Responses at Volume I-25 at Exhibit 2.

⁹⁰² See GNS IQR Response at 16-17.

⁹⁰³ See GNS IQR Response at 17.

conversion factor's development that was collected as part of the Freedom of Information Request, states, "Samples shall be selected in an unbiased manner that conforms to the logistics of the wood arriving at the mill site."⁹⁰⁴

The Canadian Parties assert the GNS has no incentive to develop and maintain a conversion factor sufficiently precise for use in a stumpage benchmark. However, in making this claim the Canadian Parties' fail to acknowledge that the GNS: (1) requires Registered Buyers to report their timber purchases in cubic meters usage using the 1.167 conversion factor and publishes the resulting harvest volume information in the Registry of Buyers Report in cubic meters based on the 1.167 conversion factor;⁹⁰⁵ (2) has instructed respondents to its periodic price surveys of Nova Scotia's private-origin standing timber market to report standing timber prices in cubic meters utilizing the 1.167 conversion factor;⁹⁰⁶ and (3) used the prices in the 2017-2018 Private Market Survey to set Crown-origin standing timber prices in FY 2019-2021.⁹⁰⁷ We find the GNS's regular use of the 1.167 conversion factor in connection with important aspects of its forest management activities demonstrates that the GNS is incentivized to develop and maintain a reliable conversion factor.

We disagree with Canadian Parties' arguments that the conversion factor used in the 2017-2018 Private Stumpage Survey improperly applies a single conversion factor for all products included in the survey results despite different products having weight to volume ratios that vary by wood products. The GNS acknowledges that conversion factors may vary by species and product but notes that its analysis of Nova Scotia's forest and harvest data as well as its derivation of the conversion factor (all of which adhered to CSA methodologies) yielded a single conversion factor that is applicable to coniferous sawlogs, studwood, and pulpwood.⁹⁰⁸ We also disagree with the Canadian Parties' claims that the 1.167 conversion factor is unreliable because it does not reflect actual timber measurements and because it used a single, fixed conversion factor for stacked cubic volumes and solid wood cubic volumes. As we have explained, from 2001 to 2009 the GNS conducted a "sampling program on SPF" species to check the accuracy of the 1.167 conversion factor. The GNS's years long re-examination of the 1.1.67 conversion factor adhered CSA scaling standards for Roundwood/Measurement of Woodchips, Tree Residues, and Byproducts 0302.1-00/0302.2-00. The sampling results yielded almost the exact same conversion factor whose minor differences were statistically insignificant.⁹⁰⁹ Thus, the Canadian Parties' claims that the 1.167 conversion factor fails to reflect Nova Scotia's forest conditions, did not reflect actual measurements, and was derived using a flawed methodology is belied by

⁹⁰⁴ See GOC Factual Information to Measure the Adequacy of Remuneration at Exhibits Exhibit GOC-ADEQ-AR2-6 and Exhibit GOC-ADEQ-AR2-7.

⁹⁰⁵ See GNS IQR Response 10 and Exhibits NS-12, NS-15, and NS-17; see also Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 2.

⁹⁰⁶ See *Lumber V AR Final* IDM at Comment 43; GNS IQR Response at Exhibit NS-18, which contains the instructions that Deloitte provided to the survey respondents of the 2017-2018 Private Market Survey; and Exhibit NS-7 at 6, which contains the GNS Verification Report from the investigation indicating that the 2015-2016 Private Market Survey reflected "pure" stumpage prices for standing timber.

⁹⁰⁷ See GNS IQR Response at 7 and Exhibit 6B; see also Petitioner Comments on IQR Responses, Volume I-25 at Exhibits 1 and 4.

⁹⁰⁸ See Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 2.

⁹⁰⁹ See GNS IQR Response at 17; see also Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 2, which contains a declaration from a GNS official who served as Nova Scotia's Chief Scaler from 2001 to 2019. Further, as noted above the GNS once confirmed the accuracy of the 1.167 conversion factor in 2009.

the fact that the GNS confirmed the accuracy of the conversion factor based on sampling studies that followed CSA scaling standards.

We disagree with the Canadian Parties' claims that the GNS's 2007 update to its scaling manual means that the 1.167 conversion factor no longer reflects or follows the province's most recent scaling standards. The GNS conducted its re-examination of the 1.167 conversion factor from 2001 to 2009, a period that encompassed the year in which the GNS updated its scaling manual. Thus, the conclusion the GNS made in 2009 that the 1.167 conversion factor was reliable and required no modification occurred after the GNS updated its scaling manual. Further, the Manager of the GNS Scaling and Forest Regulation Administration has explained that Nova Scotia's scaling manual "does not actually include any factor for converting the weight of a log, nor does it provide any method for calculating such a conversion factor."⁹¹⁰

We also disagree with the GOA's argument that Commerce should adjust the conversion factor used in the 2017-2018 Private Market Survey downward using the GOA's conversion factor to account for differences in scaling standards and the moisture content of Alberta's Crown-origin standing timber compared to Nova Scotia's private-origin standing timber. Commerce's regulations and the statute do not require that a tier-one benchmark perfectly match the goods that are the subject of the LTAR benefit analysis.⁹¹¹ Furthermore, as discussed elsewhere in this memorandum, we find that private-origin standing timber in Nova Scotia is comparable to the Crown-origin standing timber that grows in Québec, Ontario, and Alberta in terms of tree size, species, and overall forest conditions, all of which play an important role in deriving conversion factors.⁹¹² Therefore, we do not find there is a sufficient basis to adjust Nova Scotia's conversion factor to account for any purported differences in moisture content between Nova Scotia and Alberta.

We also disagree with the Canadian Parties that Commerce should recalculate the cubic meter prices in the 2017-2018 Private Market Survey using conversion factor data for a single region in New Brunswick as developed by the GNB. As we have explained: (1) the record demonstrates that from 2001 to 2009 the GNS developed the 1.167 conversion factor in the ordinary course of business; (2) the GNS performed sampling exercises on SPF timber using nationally accepted CSA guidelines to confirm the accuracy of the 1.167 conversion factor; (3) the GNS uses the 1.167 conversion factor in the ordinary course of business track harvest activity in the province; (4) the GNS uses the 1.167 conversion factor to convert survey prices of Nova Scotia private-origin standing timber into cubic meters; and (5) the GNS used the survey prices of Nova Scotia private-origin standing timber (which are a partial function of the 1.167 conversion factor) to set standing timber prices for Crown-origin standing timber during FY 2019-2020. Further, as discussed above, record evidence demonstrates that sawmill operators in Nova Scotia utilize the 1.167 conversion factor in the ordinary course of business. Based on these facts, we find the 1.167 conversion factor, which was developed by the GNS and is used by the GNS and Nova Scotia's forest industry, to be reliable and, thus, we find no reason to replace the 1.167 conversion with conversion factor data from outside of Nova Scotia.

⁹¹⁰ See Petitioner Comments on IQR Responses, Exhibit Volume I-25 at Exhibit 3.

⁹¹¹ See, e.g., *HRS from India* IDM at Comment 12.

⁹¹² See Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 2.

On this basis, we continue to find that the 1.167 conversion factor is reliable, its use in the 2017-2018 Private Market Survey was appropriate, and that no adjustment to the conversion factor is required when deriving benchmarks from the prices for private-origin standing timber that are contained in the 2017-2018 Private Market Survey.

Comment 30: Whether Commerce Should Adjust the Method Used to Index the Nova Scotia Benchmark

*GOC's Comments*⁹¹³

- In the investigation, Commerce used the “closest month methodology,” in which it indexed the price data from the most recent month covered by the 2015-2016 Private Market Survey to generate benchmark prices for months not covered by the survey.
- However, in the *Lumber V AR1 Final* and the *Lumber V AR2 Prelim*, Commerce used the “corresponding month methodology,” in which it indexed the data from the corresponding month in the year covered by the 2017-2018 Private Market Survey to the month in the POR that was not covered by the survey (e.g., indexing data from April 2017 to April 2019).
- Commerce has not provided a basis or cited any precedent for why it changed its indexing method from the investigation.
- No evidence or logic supports the proposition that indexing prices to the same month in a different year would more accurately reflect price movements than starting with the most recent information available and indexing that based on subsequent changes in the market.
- The most recent price information would best reflect demand conditions in the most recent period available.

*Petitioner Rebuttal's Brief*⁹¹⁴

- The Canadian Parties are dissatisfied with Commerce’s decision to index the monthly prices from the 2017-2018 Private Stumpage Survey to the corresponding months in 2019, arguing that it is unexplained in indexing methodology.
- Yet, the GNS confirmed that it uses such indexing to “market prices using publicly available data” in “years when a survey is not conducted” to update its Crown-origin standing timber prices.⁹¹⁵
- Thus, the GNS’s use of such an indexing method demonstrates the reasonableness of the indexing method employed by Commerce in the *Lumber V AR2 Prelim*.
- The Courts have provided Commerce broad discretion to determine the relevant “factors affecting comparability.”⁹¹⁶
- The Canadian Parties fail to provide Commerce with any evidence that indexing prices to the “closest month” for which information is available (e.g., using March 2018 to estimate December 2018 prices) more accurately reflects prices than using the same month from the previous year.

Commerce’s Position: In the investigation, Commerce relied on a “closest month methodology” where it utilized an all-commodities price index from the IMF to index the price

⁹¹³ See GOC Case Brief Volume 1 at 135-137.

⁹¹⁴ See Petitioner Rebuttal Brief at 88-91.

⁹¹⁵ See Petitioner Rebuttal Brief at 89 (citing GNS IQR Response on Crown-origin Stumpage Rates at 3).

⁹¹⁶ See Petitioners Rebuttal Brief (citing *Eurodif*, 555 U.S. at 316).

data from the most recent month covered by the 2015-2016 Private Market Survey to generate benchmark prices for months not covered by the survey.⁹¹⁷ In objecting to the indexing method used in the investigation, the Canadian Parties argued:

. . .because the commodity index inflator that the Department relied upon was higher in the first quarter of the POI than during the remainder of the year, the Department's indexing method created a stumpage unit price for the first quarter that was higher than the rest of the POI. . . . this disparity stems from seasonal patterns in timber harvesting for which Commerce's indexing method fails to account.⁹¹⁸

In the final results of the first review, based on comments from Canadian Parties, Commerce replaced the all-commodities index with the FLCI index for purposes of indexing prices in the 2017-2018 Private Market Survey to the POR.⁹¹⁹ Further, when utilizing the FLCI index, Commerce employed the "corresponding month methodology," in which it indexed the data from the corresponding month in the year covered by the 2017-2018 Private Market Survey to the month in the POR that was not covered by the survey (e.g., indexing data from April 2017 to April 2019). In determining to use the "corresponding month methodology" Commerce explained:

The GOC argues that the FLCI should be used to index price data for a given month to the adjacent month, as opposed to indexing price data for one month to the corresponding month in the other year; however, the GOC has not provided any evidence indicating that the FLCI should only be used to index prices from month to month.⁹²⁰

In the *Lumber V AR2 Prelim*, Commerce again utilized the "corresponding month methodology" when using a lumber products-based index to index prices in the 2017-2018 Private Market Survey to the POR.⁹²¹ Canadian Parties continue to object to Commerce's use of the "corresponding month methodology" in the *Lumber V AR2 Prelim*:

While lumber prices fluctuate between seasons, those fluctuations are already accounted for in the index itself, which covers the entire calendar year. The Department does not need to tie its methodology back to the same month in another year in order to account for those price effects, especially since no evidence indicates that indexing prices to a month from the previous year would more accurately reflect changes in demand than the most recent information available.⁹²²

⁹¹⁷ See *Lumber V Final* IDM at Comment 42.

⁹¹⁸ See *Lumber V Final* IDM at Comment 42.

⁹¹⁹ See *Lumber V AR1 Final* IDM at Comment 35.

⁹²⁰ See *Lumber V AR1 Final* IDM at Comment 35.

⁹²¹ See *Lumber V AR2 Prelim* PDM at 32-33.

⁹²² See GOC Case Brief Volume 1 at 136.

Thus, a review of the Canadian Parties' various arguments in the *Lumber V* proceeding demonstrates their inconsistency on the issue of indexing. In the investigation, Canadian Parties objected to Commerce's application of the "closest month methodology" because it failed to account for seasonal price hikes for lumber that occurred during the first quarter of the POI. In the current review, the Canadian Parties argue that, despite the seasonal patterns that exist in the lumber industry, the "closest month methodology" should be used to index the Nova Scotia benchmark prices. In making this argument, Canadian Parties claim that fluctuations between seasons are "already accounted for in the index itself, which covers the entire year."⁹²³ Yet, the Canadian Parties provide no information to support this assertion.

Further, unlike the all-commodities index used in the investigation, monthly price fluctuations for the lumber products-based index reflect seasonal and other demand trends specific to the lumber industry. Indeed, Commerce noted in the prior review that the GNS uses a lumber products-based index to set Crown stumpage prices, and the U.S. lumber industry uses the lumber-products based index to "analyze market trends and negotiate private prices."⁹²⁴ In these circumstances, it was not unreasonable for Commerce to apply an indexing method in the *Lumber V AR2 Prelim* that more closely reflects fluctuating demand trends in the lumber industry.⁹²⁵

The Canadian Parties are also incorrect that Commerce's determination to use the "corresponding month methodology" in the *Lumber V AR2 Prelim* is unsupported by substantial evidence. As explained above, Commerce's indexing methodology accounts for the ebb and flow of lumber demand over a given year. The Canadian Parties nonetheless claim that it is better to rely on a "closest month methodology" because lumber conditions can vary from year-to-year. Regardless of the validity of this assertion, we find the Canadian Parties have not substantiated why it was unreasonable for Commerce to prefer a methodology (the "corresponding month methodology") that accounts for seasonal demand patterns that the Canadian Parties readily acknowledge exist. Additionally, while Commerce has used the "closest month methodology" to index benchmark data in prior cases, that does not necessarily compel Commerce to continue to use that methodology if the facts of a proceeding, as they do here, do not warrant its use.

Comment 31: Whether to Adjust the Nova Scotia Benchmark to Account for Fire-Killed Timber Harvested in Alberta

*GOA's Comments*⁹²⁶

- Record information establishes that Alberta experienced significant forest fires in 2019. As a result, a significant percentage of West Fraser's Crown-origin timber harvest was fire-killed timber. West Fraser paid a reduced stumpage rate for such fire-killed Crown-origin timber.
- Record information demonstrates that costs associated with harvesting fire-killed wood are approximately 18 percent higher than costs associated with harvesting green timber and that

⁹²³ See GOC Case Brief Volume 1 at 136.

⁹²⁴ See *Lumber V ARI Final IDM* at Comment 35.

⁹²⁵ By contrast, because Commerce used an all-commodities index in the investigation, monthly price fluctuations did not necessarily reflect demand conditions specific to the lumber industry.

⁹²⁶ See GOA Case Brief Volume 4.A at 92-94.

fire-killed timber has a value that is 25 to 30 percent lower than green timber by the end of year two after the fire.

- Nova Scotia’s forests did not experience such forest fires in 2019. Thus, the prices in the 2017-2018 Private Market Survey do not include any prices for fire-killed timber.
- Should Commerce continue to use the prices in the 2017-2018 Private Market Survey as the benchmark for Crown-origin standing timber in Alberta, it should adjust the benchmark down by 33 to 38 percent.

No interested party submitted rebuttal arguments regarding this comment.

Commerce’s Position: We disagree with Canadian Parties that an accurate LTAR benefit analysis requires that Commerce reduce the Nova Scotia benchmark price that it compares to the respondents’ purchases of fire-killed, Crown-origin timber in Alberta by 33 to 38 percent. Central to the Canadian Parties’ argument is that the respondents incur higher harvesting costs on fire killed timber. As explained in elsewhere in this memorandum, the private prices in the 2017-2018 Private Market Survey are “pure” stumpage prices, *i.e.*, prices charged to the purchaser for the right to harvest private-origin standing timber, which therefore do not reflect any related costs.⁹²⁷ Consistent with the prior review, we find harvesting costs are not part of “pure” stumpage prices but are, instead, related costs.⁹²⁸ Consequently, including the such costs would introduce an external factor unrelated to the “pure” stumpage price, and, pursuant to section 771(5)(E)(iv) of the Act, we find that a proper stumpage-to-stumpage comparison must exclude the cost of such related expenses from the calculation. Thus, due to our determination that the Nova Scotia benchmark is a “pure” stumpage price, which does not reflect these other activities, fees, and charges, we find that a proper stumpage-to-stumpage comparison must exclude the cost of such related expenses from the calculation. Accordingly, we have excluded all the related expenses that are not the “pure” stumpage price paid.

Further, the fire damaged timber in Alberta that was acquired by respondents during the POR was graded as 01, which, as explained elsewhere in this memorandum, we find corresponds to sawlog grade timber. Additionally, record information indicates that the fire damaged timber graded as 01 was delivered to the respondents’ sawmills during the POR, thereby indicating the grade 01 timber was sawn into lumber.⁹²⁹ Thus, to ensure that our stumpage benefit analysis compares prices for sawable timber (*e.g.*, timber processed in sawmills), we find it is necessary for Commerce to utilize a Nova Scotia benchmark that reflects prices for sawable timber as contained in the 2017-2018 Private Market Survey. In the *Lumber V AR2 Prelim*, we compared respondents’ purchases of fire-killed, Crown-origin timber in Alberta to the sawlog prices in the 2017-2018 Private Market Survey. We further note that the price charged for fire killed timber coded as 01 is the same price charged for undamaged fir timber that is coded as 01 and that fir timber coded as 01 is priced higher than green timber the GOA grades as 06 and 99.⁹³⁰

⁹²⁷ See GNS IQR Response at NS-7 at 6, which contains the GNS verification report from the investigation in which Commerce verifiers confirmed that the prices in the 2017-2018 Private Market Survey only reflected standing timber prices, and NS-18 at 1, in which the 2017-2018 Private Market Survey Questionnaire instruct respondents to report “only the pure stumpage price.”

⁹²⁸ See *Lumber V AR1 Final IDM* at Comments 33, 34 and 43.

⁹²⁹ See Canfor and West Fraser Final Calculation Memoranda.

⁹³⁰ See, *e.g.*, Canfor IQR Response at Exhibit Stump-A-1; see also Canfor Preliminary Calculation Memorandum at “2019 Calcs from Table1.BPI.”

Therefore, because the fire damaged timber in question was coded as 01 and was priced higher than other grades that we are comparing to studwood prices in Nova Scotia, we have continued to compare such timber to sawlogs in Nova Scotia.

Comment 32: Whether to Adjust the Nova Scotia Benchmark to Account for Beetle-Killed-Timber Harvested in Alberta

*GOA's Comments*⁹³¹

- Information on the record demonstrates that, during the POR, a widespread MPB infestation in Alberta severely damaged timber stands in the province, including a significant portion of Canfor's Crown-origin timber volume.
- The GOA charges beetle-killed timber at a reduced Crown timber dues rate of C\$0.95 per cubic meter.
- Consistent with Commerce's finding in the *Lumber VARI Final* with respect to the MPB infestation in British Columbia,⁹³² record information establishes that the MPB infestation directly impacted timber value and costs in Alberta, decreasing timber value by between 75 percent and 90 percent.
- The 2017-2018 Private Market Survey includes no prices for such beetle-killed timber, and no evidence exists that Nova Scotia experienced a MBP or any other insect infestation during the POR.
- If Commerce continues to use the prices in the 2017-2018 Private Market Survey as the benchmark, it must adjust the benchmark downward to account for lower value and higher costs associated with beetle-killed timber harvested in Alberta.
- Canfor provided evidence indicating that beetle-killed timber is valued consistently 75 to 90 percent less than green timber and this factor could serve as the basis of a downward adjustment to the Nova Scotia benchmark.⁹³³ Specifically, for purposes of comparison to respondent's beetle-killed Crown-origin timber harvested in Alberta, Commerce should apply a benchmark that is between 10 to 25 percent of the Nova Scotia stumpage price.
- Alternatively, Commerce could apply the same MPB adjustment applied in the stumpage calculations for British Columbia to the Alberta stumpage calculations.

*Canfor's Comments*⁹³⁴

- In the *Lumber VARI Final*, Commerce correctly adjusted the benchmark used to compare to Crown-origin standing timber prices in British Columbia to account for the market conditions caused by the MPB.
- In particular, Commerce found that a downward adjustment to the benchmark for the presence of MPB was required because such insect damage significantly reduced the value of harvested timber, the WDNR survey prices did not include beetle-killed prices, the record contained beetle-killed price data that made a MPB adjustment possible, beetle-killed logs had lower yield rates, and beetle-killed timber suffered from defects.

⁹³¹ See GOA Case Brief Volume 4.A 90-92.

⁹³² *Id.* at 91 (citing *Lumber VARI Final* IDM at Comment 21).

⁹³³ See GOA Case Brief Volume 4.A at 9-10 (citing Canfor Factual Information to Measure the Adequacy of Remuneration at 5-6 and Attachments 10-11).

⁹³⁴ See Canfor Case Brief at 1-10.

- The findings Commerce made with respect to the MPB infestation in British Columbia, the subsequent decrease in value of the timber attacked by MPB, and the lack of MPB prices in the WDNR benchmark applies equally to the situation in Alberta and the Nova Scotia benchmark.
- The record demonstrates that Alberta suffered a severe MPB infestation that affected millions of hectares in the Province.
- A significant volume of Canfor's harvest of Crown-origin standing timber during the POR was beetle-killed, which indicates that the MPB was a market condition in Alberta that must be accounted for in the stumpage price comparisons.
- As with British Columbia, record evidence demonstrates that the 2017-2018 Private Market Survey does not contain beetle-killed stumpage prices, Nova Scotia has not experienced an MPB infestation, and only 0.07 percent of Nova Scotia's total productive harvest has been damaged due to insects.

*Petitioner's Rebuttal Comments*⁹³⁵

- Rather than rely on offer prices to purportedly value beetle-killed standing timber in Alberta, Canadian Parties argue Commerce should reduce the Nova Scotia benchmark by 75 to 90 percent based on U.S. PNW benchmarks and a 2017 study of the costs associated with beetle-killed standing timber in Montana.
- Commerce must reject the proposed requested adjustment because it is unreliable.
- The Canadian Parties have failed to demonstrate how U.S. PNW benchmarks and the Joint Montana Study are relevant to standing timber prices in Alberta.
- Record evidence demonstrates that the MPB's impact on lumber recovery varied among the regions of British Columbia where the infestation occurs.⁹³⁶
- Thus, British Columbia's experience with the MPB demonstrates that province-specific data are required to quantify the impact that the insect has on standing timber and lumber prices.
- Provincial forest management mandates have blunted the impact of the MPB, and information from Canfor and West Fraser indicate that they are well-equipped to mitigate the threat of the MPB by harvesting standing timber before insect damage has occurred, which makes the 75 to 90 percent reduction in the Nova Scotia benchmark unnecessary.
- The GOA makes no attempt to address these Alberta-specific circumstances in the context of its requested adjustment, and thus, there is no basis to assume, as Canfor does, that the damaged caused by the MPB in British Columbia "applies equally" to the situation in Alberta.⁹³⁷
- It is inaccurate and distortive to rely on benchmarks calculated for British Columbia as a basis for adjusting the benchmark for stumpage in Alberta. Commerce has repeatedly found that standing timber in British Columbia is not comparable to standing timber in Nova Scotia and is also distinct in terms of size to Alberta. Further Commerce has repeatedly determined that standing timber in Nova Scotia is more comparable to Alberta than standing timber in British Columbia.
- The Canadian Parties have failed to demonstrate how a MBP adjustment based on the Joint Montana Study (which would reduce the Nova Scotia benchmark by 90 percent) is appropriate.

⁹³⁵ See Petitioner Rebuttal Brief at 68-79.

⁹³⁶ See Petitioner Rebuttal Brief at 70 (citing Petitioner Comments on IQR Responses at Exhibit Volume I-10).

⁹³⁷ See Petitioner Rebuttal Brief at 72 (citing Canfor Case Brief at 7).

- There is nothing on the record to suggest that the sawmills that took part in the Joint Montana Study made investments and undertook actions that are similar to those of Canfor and West Fraser that mitigated the impact of the MPB.
- Contrary to the Canadian Parties' claims, the Joint Montana Study does not report a consistent devaluation of beetle-killed standing timber by 90 percent. Rather, the study purports to show a progression in value loss depending on tree standing condition, with costs decreasing by 34 percent for trees in early stages of infestation to 57 percent for trees in the mid to late stages of infestation.
- Thus, given information from Canfor and West Fraser that they strive to harvest MPB damaged trees during the early stages of infestation, it is not accurate to argue that Commerce should reduce the Nova Scotia benchmark by 90 percent, when that figure is the value reduction the Joint Montana Study attributes to late-stage damaged trees.
- The fact the GOA charges a 0.95 C\$/m³ price for beetle-killed timber does not corroborate the Canadian Parties' arguments concerning the need for Commerce to make a MPB adjustment when comparing Crown-origin standing timber in Alberta to private-origin standing timber in Nova Scotia.
- A timber price explicitly set by the GOA to encourage the harvest of such timber is utterly irrelevant to the question of the market value of such timber.
- Record evidence demonstrates that the GOA sets the rate for beetle-killed timber without regard for factors that may affect the price of such timber. For example, the GOA's Timber Management Regulations make no allowance for severity of insect infestation, tree condition, time since tree death, conversion costs, etc.⁹³⁸
- The record demonstrates that the Nova Scotia benchmark does, in fact, reflect the full spectrum of timber products that exist in Alberta.
- Canfor nor the GOA have identified or quantified any meaningful distinctions between beetle-killed timber in Alberta and Nova Scotia timber.
- Beetle-killed timber and lumber can span a range of quality, and evidence indicates that Canfor and West Fraser are able to harvest beetle-killed timber before significant value loss occurs. Therefore, Commerce must require a demonstration that the beetle-killed standing timber harvested by the respondent firms is, in fact, sufficiently distinct from Nova Scotia standing timber to require an adjustment.
- The respondents have failed to make that demonstration.

Commerce's Position: We disagree with the Canadian Parties that Commerce must reduce the NS benchmark prices to account for the impact of MPB-infested, Crown-origin standing timber in Alberta using the U.S. PNW MPB benchmark that was utilized as part of the British Columbia stumpage benefit analysis. Commerce has found that: (1) "standing timber in British Columbia is not comparable to the standing timber in Nova Scotia, and is distinct, in terms of size, to standing timber in Alberta, the western-most province for which Nova Scotia standing is being used as a benchmark;"⁹³⁹ (2) "timber species in British Columbia were generally larger and produced more valuable lumber than timber species harvested in Nova Scotia;"⁹⁴⁰ and (3) "that Nova Scotia—not the U.S. PNW—is the appropriate benchmark source for measuring the

⁹³⁸ See Petitioner Rebuttal Brief at 77 (citing GOA IQR at Exhibit AB-AR2-S-83 at 5 and Exhibit AB-AR2-S-15).

⁹³⁹ See *Lumber V Prelim* PDM at 46-47, unchanged in *Lumber V Final*.

⁹⁴⁰ See *Lumber V Prelim* PDM at 48, unchanged in *Lumber V Final*; and *Lumber V ARI Prelim* PDM at 26, unchanged in *Lumber V ARI Final*.

adequacy of remuneration for the provision of stumpage in Alberta.”⁹⁴¹ We find the Canadian Parties have not provided any information that would cause Commerce to revise this finding. Therefore, we find it would be inappropriate to rely on a MPB adjustment that is based on prices from the U.S. PNW.

We also disagree with the Canadian Parties that data from the Joint Montana Study may serve as a basis to adjust the Nova Scotia benchmark. In the *Lumber VARI Final*, Commerce compared Canfor and West Fraser’s purchases of beetle-killed timber to a benchmark derived from the simple average of the prices for “blue-stained” logs in offer sheets from U.S. PNW interior sawmills. The value reduction for beetle-killed timber that can be derived from the Joint Montana Study substantiated the use of the beetle-kill benchmark, but the report itself was not used to adjust price comparisons.⁹⁴²

The AR2 Cross-Border Report calculates a 90 percent reduction in stumpage value for grey stage beetle-killed timber based on four value loss categories from the Joint Montana Study: (1) higher per unit costs of harvesting and hauling logs from beetle-damaged trees; (2) the reduced volume and quality of usable fiber obtained from beetle-damaged trees; (3) the higher costs of manufacturing the beetle-damaged logs into lumber; and (4) the reduced value of the lumber products manufactured from beetle-damaged logs.⁹⁴³ However, as noted by the AR2 Cross-Border Report, while the Joint Montana Study discusses all four items, it provided a quantitative analysis for only items one and four.⁹⁴⁴ In other words, the Canadian Parties’ proposed adjustment to the Nova Scotia benchmark relies on cost data from the Joint Montana Study for harvesting, hauling, and manufacturing MPB-infested timber.

Regarding the harvest and manufacturing costs contained in the Joint Montana Study that, in turn, form the basis of the Canadian Parties’ requested adjustment to the Nova Scotia benchmark, we have stated elsewhere in this memorandum that the private prices in the 2017-2018 Private Market Survey are “pure” stumpage prices, *i.e.*, prices charged to the purchaser for the right to harvest private-origin standing timber, which therefore do not reflect any related costs.⁹⁴⁵ Consistent with the prior review, we find harvesting and manufacturing costs are not part of “pure” stumpage prices but are, instead, related costs.⁹⁴⁶ Consequently, including the such costs would introduce an external factor unrelated to the “pure” stumpage price, and, pursuant to section 771(5)(E)(iv) of the Act, we find that a proper stumpage-to-stumpage comparison must exclude the cost of such related expenses from the calculation. Thus, due to our determination that the Nova Scotia benchmark is a “pure” stumpage price, which does not reflect these other activities, fees, and charges, we find that a proper stumpage-to-stumpage comparison must exclude the cost of such related expenses from the calculation. Accordingly, we have excluded all the related expenses that are not the “pure” stumpage price paid. We note that this is a

⁹⁴¹ See *Lumber V Final* IDM at Comments 17 and 40.

⁹⁴² See *Lumber V Final* IDM at Comment 21.

⁹⁴³ See AR2 Cross-Border Report at 19 discussing the Joint Montana Study.

⁹⁴⁴ See AR2 Cross-Border Report at 19 and 20.

⁹⁴⁵ See GONS IQR Response at NS-7 at 6, which contains the GNS verification report from the investigation in which Commerce verifiers confirmed that the prices in the 2017-2018 Private Market Survey only reflected standing timber prices, and NS-18 at 1, in which the 2017-2018 Private Market Survey Questionnaire instruct respondents to report “only the pure stumpage price.”

⁹⁴⁶ See *Lumber VARI Final* IDM at Comments 33, 34 and 43.

distinct situation from British Columbia, where Commerce uses a tier-three benchmark log benchmark to assess the adequacy of remuneration for BC crown stumpage based on market principles.

Furthermore, regarding the hauling costs contained in the Joint Montana Study on which Canadian Parties also rely as the basis of their proposed adjustment to the Nova Scotia benchmark, we discuss elsewhere in this Memorandum that record evidence indicates that haulage costs in Nova Scotia (as reflected in the FP Innovations Report) are not only comparable but are higher than Alberta haulage costs (as reflected in the MNP Cross Border Report submitted by Canadian Parties).⁹⁴⁷ We find this information undercuts the Canadian Parties' claims that the MPB increases haulage costs in Alberta relative to Nova Scotia that, in turn, require a downward adjustment to the Nova Scotia Benchmark that is based on data from the Joint Montana Study.

In the *Lumber V AR2 Prelim*, we compared the respondents' purchases of beetle killed, Crown-origin timber in Alberta to the sawlog prices in the 2017-2018 Private Market Survey. We further note that the price charged for beetle killed timber is the same price charged for undamaged fir timber that is coded as 01 and is priced higher than timber the GOA grades as 06 and 99. Therefore, because the timber in question was coded as 01 and was priced higher than other grades that we are comparing to studwood prices in Nova Scotia, we have continued to compare it to sawlogs in Nova Scotia.

Comment 33: Whether to Adjust the Nova Scotia Benchmark to Account for Beetle Killed-Timber Harvested in Québec

*Resolute's Comments*⁹⁴⁸

- In the *Lumber V AR2 Prelim*, Commerce compared the stumpage fees paid by Resolute's Outardes sawmill (SDO mill) for spruce-budworm-infested Crown-origin standing timber to a benchmark consisting of stumpage prices for healthy private-origin standing timber in Nova Scotia.
- In doing so, Commerce failed to consider the market condition unique to the Cote Nord Region of an ongoing and severe spruce budworm outbreak that is destroying trees in the area and causing auction prices of timber in the region to fall.
- Commerce has previously stated that it will adjust the LTAR benefit calculation to ensure an appropriate comparison where the record establishes substantial differences between the government and benchmark price.⁹⁴⁹
- Evidence demonstrates that the spruce budworm has infected nearly 50 percent of the Cote Nord region in which the SDO mill harvests its Crown-origin standing timber.
- Due to the infestation, the SDO mill incurred increased harvesting, road construction, hauling, processing, and forest planning costs, all of which Resolute has quantified on a C\$/m³ basis.⁹⁵⁰

⁹⁴⁷ See GNS IQR Response at 21-22 (citing FP Innovations Report at 3 and 39); see also MNP Cross Border Report at paragraph 5.2.1 and Table II-20.

⁹⁴⁸ See Resolute Case Brief at 13-17.

⁹⁴⁹ See Resolute Case Brief at 14 (citing *HRS from India* IDM at Comment 12).

⁹⁵⁰ See Resolute Case Brief at 15-16 for the proprietary per unit costs.

- Commerce concluded in the *Lumber V ARI Final*, in examining a separate program related to the Cote Nord forest, that the spruce budworm impact was so severe that the GOQ had to provide direct financial assistance to induce Resolute to conduct salvage harvesting of spruce budworm-infested forests.⁹⁵¹
- Yet Commerce also concluded in the *Lumber V AR2 Prelim* that the prices paid by Resolute's SDO mill for Crown-origin standing timber in Cote Nord region resulted in a purported financial benefit that exceeded any supposed benefit Resolute received from any other forests in Québec in which it harvested Crown-origin standing timber during the POR.
- These contradictory conclusions are unreasonable, arbitrary, and capricious.
- The large benefit calculated for the purchases made by the SDO mill results from the lack of insect infestations in Nova Scotia's forest. Thus, the price divergence between the benchmark price and the government price does not identify a benefit but instead demonstrates Commerce's flawed comparison of two incomparable prices.
- If Commerce continues to utilize a benchmark consisting of private standing timber prices from Nova Scotia, then it must adjust the LTAR benefit calculation to account for the additional costs incurred by the SDO mill due to the spruce budworm infestation that exists in the Cote Nord forest.

*Petitioner's Rebuttal Comments*⁹⁵²

- Commerce previously considered Resolute's request for a beetle-kill adjustment for Crown-origin timber purchased by its SDO mill and found that it was not reliable to warrant an adjustment.⁹⁵³
- Resolute's beetle-kill adjustment argument rests on a report prepared by DGR, a forest consultancy firm, which was commissioned by Resolute for the purposes of seeking additional subsidies from the GOQ.
- Discussions Resolute held with the GOQ resulted in the GOQ awarding an electricity discount to two of Resolute's pulp mills in response to difficulties caused by the spruce budworm.
- Additionally, the GOQ awarded technical and financial support to mills in the Cote Nord region of Québec, including Resolute's SDO mill, to address the impact of the spruce budworm.
- Thus, the record evidence shows that the DGR report was used to lobby the GOQ for "a series" of subsidies for Resolute's mills in the Cote-Nord region, and thus, is not an independent report.
- As such, consistent with the prior review, Commerce should refrain from making the spruce budwood adjustment in the LTAR benefit calculations pertaining to purchases of Crown-origin standing timber made by Resolute's SDO mill.

Commerce's Position: Resolute previously raised these arguments in the first administrative review.⁹⁵⁴ No new argument has been presented in this review to cause Commerce to reconsider its determination that it is not necessary to adjust the Nova Scotia benchmark when determining whether Resolute's SDO mill purchased Crown-origin standing timber for LTAR.

⁹⁵¹ See Resolute Case Brief at 16 (citing *Lumber V ARI Final* IDM at Comment 78).

⁹⁵² See Petitioner Rebuttal Brief at 97-100.

⁹⁵³ See Petitioner Rebuttal Brief at 97 (citing *Lumber V ARI Final* IDM at Comment 20).

⁹⁵⁴ See *Lumber V ARI Final* IDM at Comment 20.

As Commerce explained in the investigation and prior review, in instances where parties have presented a self-commissioned report, Commerce “must carefully examine the study to ensure that it is based on sound methodologies that guard against any study bias {and} evaluate whether {the} study or report placed on the record of a proceeding by an interested party is free of data and conclusions that were tailored to generate a desired result.”⁹⁵⁵ In this case, Resolute commissioned the DGR Report to support the company’s request to the GOQ for preferential electricity rates to mitigate costs related to the spruce budworm infestation.⁹⁵⁶ The DGR report estimates the impact on the cost of harvesting, hauling, and processing timber in Québec’s North Shore region due to spruce budworm.

We continue to find that the underlying data in the DGR Report are not reliable for several reasons. First, Resolute’s proposed adjustment is based on a single study that was commissioned by Resolute for the purpose of receiving financial support from the GOQ in the form of reduced electricity rates under the Côte-Nord Rate L agreement.⁹⁵⁷ Given that it is not an independent report and was commissioned by a party to this proceeding for the purpose of receiving financial support from the GOQ, we are unable to determine whether the report is free of bias and that the report’s conclusions were not tailored to generate a desired result. Second, the underlying data behind those estimates in the report are not on the record of this review. Third, the underlying data behind the conclusions in the report on the cost impact of spruce budworm are not on the record of this review.

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

Comment 34: Whether Commerce Should Adjust the Nova Scotia Benchmark to Account for Log Product Characteristics

*GOC’s Comments*⁹⁵⁸

- Commerce preliminarily constructed the Nova Scotia benchmark prices from a relatively small portion of high-value sawlog and studwood stumpage transactions. It then compared those benchmarks to a relatively large portion of Crown-origin stumpage transactions that covered a range of both high-value and low-value products in the provinces of Québec, Ontario, and Alberta.
- Overall, Commerce compared a relatively small volume of Nova Scotia’s largest-sized, most valuable standing timber to 94 percent of Alberta’s harvest, 81 percent of Ontario’s harvest, and 100 percent of Québec’s harvest. Therefore, Commerce compared prices from surveyed stumpage transactions that did not include sales of pulpwood in Nova Scotia to stumpage transactions in other provinces that would be classified as pulpwood in Nova Scotia.
- Products in Nova Scotia are defined based on their intended use such that any harvested logs processed at sawmills or studmills (*i.e.*, mills that produce lumber) are deemed “sawable fiber,”

⁹⁵⁵ See, e.g., *Lumber VARI Final IDM* at Comment 20.

⁹⁵⁶ See Resolute Non-Stumpage IQR Response at Exhibit RES-NS-LRateB-APP.

⁹⁵⁷ *Id.*

⁹⁵⁸ See GOC Case Brief Volume 1 at 69-80 and 118-123.

while any harvested logs processed at pulp mills (*i.e.*, mills that produce pulp or paper) are deemed “pulpwood.”

- Nova Scotia has a unique product classification and a pulpwood market where lower-quality sawable timber is directed to pulp mills while a higher-quality proportion of standing timber is directed to sawmills. This condition of the Nova Scotia timber market means that the 2017-2018 Private Market Survey is skewed toward higher value logs that are categorized as sawlogs and studwood.
- Meanwhile, due to growing conditions, sawmills in Québec, Ontario, and Alberta must use smaller-sized logs that would otherwise be sent to pulp mills in Nova Scotia.
- The good at issue is Crown-origin standing timber in Québec, Ontario, and Alberta, so the market conditions in those provinces must dictate Commerce’s inquiry.
- Thus, to compare similar products, Commerce should incorporate pulpwood prices into the Nova Scotia benchmark.
- In Québec, logs are classified using a grading system that relies on objective measurements of physical characteristics, rather than their destination or use. The vast majority of harvested timber in Québec is classified as either grade B (“sawlogs”) or grade C (pulpwood). Grade B logs have a minimum small-end diameter of 14 cm (5.5 inches) and a minimum length of 2.5 meters. Logs that do not meet both of those specifications (a small-end diameter of 14 cm or more and a length of 2.5 meters or above) are classified as grade C logs.
- In Québec, almost all grade C logs are purchased by and processed in Québec sawmills, even though they are referred to as “pulpwood.”
- While Nova Scotia mills do specify certain minimum and maximum product dimensions to which logs must conform, harvesters can still determine how they want to use any given log within those size specifications. Harvesters in Québec do not have that same flexibility to determine a log’s product classification. This difference in how logs are classified between provinces makes an apples-to-apples comparison between provincial products impossible.
- Commerce improperly compared grade C logs in Québec to Nova Scotia studwood and grade B logs in Québec to Nova Scotia sawlogs. However, almost all of Québec grade C logs have a length or diameter that is too small to produce either studwood or sawlogs in Nova Scotia, while grade B logs in Québec cover a range of dimensions that include studwood logs and sawlogs in Nova Scotia.
- The discount the GOQ charges for grade C logs reflects the logs’ value as pulpwood and, thus, it is inaccurate to compare them to Nova Scotia studwood logs.
- Comparing Nova Scotia sawlogs to Québec’s grade B logs accounts for only the larger end of grade B logs’ product specifications and results in Commerce comparing a relatively small portion of Nova Scotia’s harvest (of sawlogs) to a grade of logs in Québec (grade B) that accounts for nearly two-thirds of Québec’s harvest.
- Similarly, Alberta does not classify logs based on destination. Rather, it classifies timber according to physical characteristics.
- Commerce improperly compared prices for sawable material in Nova Scotia (studwood and sawlogs) to Alberta grades “01”, “06”, “20,” and “99,” which comprise nearly all the GOA’s product codes for coniferous logs, including logs processed at sawmills and pulp mills.
- Thus, Commerce improperly concluded that none of Nova Scotia’s pulplogs are comparable to anything in Alberta while sawable Nova Scotia logs (studwood and sawlogs) are comparable to nearly all of Alberta’s harvest.

- Commerce cannot refuse to acknowledge or account for differences in production classification that determine what timber qualifies as sawtimber based on the claim that it seeks to conduct a sawtimber-to-sawtimber comparison.
- Commerce must cease its reliance on the Nova Scotia benchmark or revise its LTAR benefit calculation to properly account for differences in production classifications.

*GOQ's Comments*⁹⁵⁹

- Commerce preliminarily compared Crown-origin standing timber prices in Québec that include pulpwood processed by sawmills (e.g., grades C and M and in Québec) with a Nova Scotia benchmark that excludes pulpwood.
- Pulpwood accounted for nearly 33 percent of the total softwood inputs to Québec sawmills.
- The omission of pulpwood prices and volumes from the Nova Scotia benchmark fails to reflect prevailing market conditions in Québec, inflates the benchmark, and distorts the LTAR benefit calculation to the disfavor of Resolute.
- In the final results Commerce must adjust for this discrepancy which precludes the Nova Scotia benchmark from even approaching the prevailing market conditions for standing timber in Québec.
- Specifically, Commerce must adjust the Nova Scotia benchmark to include the pulpwood prices contained in the 2017-2018 Private Market Survey.

*Resolute's Comments*⁹⁶⁰

- Timber in Nova Scotia is classified based on its intended use such that any harvested logs processed at a sawmill or studmill are deemed “sawable fiber,” while any harvested logs processed at a pulp mill are deemed “pulpwood.”
- Québec, in contrast, classifies timber based on physical characteristics, rather than their destination or use.
- Timber going into Québec sawmills is not distinguished as sawlog or studwood but rather by grade such as grade “B”, “C”, “M” or “R,” depending on the size and quality of the log. The different classification schemes create a mismatch between certain classes of timber in Québec and Nova Scotia, rendering the Nova Scotia timber prices incomparable and unsuitable for measuring the adequacy of remuneration for stumpage in Québec.
- Commerce’s finding that Québec Grades C, M, and R are comparable to Nova Scotia’s studwood is not supported by substantial evidence.
- Most of Québec’s Grade C logs would not qualify as, and thus are not comparable to, studwood under Nova Scotia’s classification scheme.
- There are significant differences in size between Québec’s grade C logs and Nova Scotia’s studwood logs. Nova Scotia defines studwood as a log with a small end diameter between 9 – 30 cm and length between 8 – 10 feet (2.4 - 3.0 m).
- In contrast, the Québec grading manual identifies grade C logs as having a small-end diameter of 14 cm or less, and a length of 2.5 meters or less. The length of Québec’s C logs is too short to qualify as studwood in Nova Scotia.
- Commerce compared Québec grades M and R timber to Nova Scotia’s studwood without articulating any reasons for doing so.

⁹⁵⁹ See GOQ Case Brief Volume 8.A at 59-60.

⁹⁶⁰ See Resolute Case Brief at 8-13.

- Grade M denotes logs that are dead before harvest, and grade R denotes rejected logs due to substantial reduction caused by decay, specifically 66.7 percent reduction on one end or 50 percent reduction on both, which is considered as having no sawable value.
- Nova Scotia's studwood is defined by size with no decay concerns.
- Québec grades M and R are not comparable to Nova Scotia studwood.
- Without addressing evidence of significant size and quality disparities between Québec grade C, M, and R timber and Nova Scotia's studwood, Commerce has not properly considered product similarity and comparability and, thus, its benchmark selection is not supported by substantial evidence and is contrary to law.

*GOA's Comments*⁹⁶¹

- Alberta bases its log categories on size while Nova Scotia bases its log categories on use. Nova Scotia's product categories are reflected in how standing timber transactions take place in Nova Scotia, with the logs harvested from trees being merchandized and sold to different buyers, at different prices, based on end use.
- Further, the transactions reported in the 2017-2018 Private Market Survey appear to reflect purchases of truckloads of logs for a particular end use, and thus, the standing timber prices in the 2017-2018 Private Market Survey reflect prices for the truckload of logs of a particular category (sawlogs, studwood or pulpwood) harvested from the standing timber, after the logs are sorted into those categories).
- Therefore, it appears that a single standing tree might be part of multiple transactions recorded in the 2017-2018 Private Market Survey, with the larger, more valuable segments of the tree sold to lumber mills as sawlogs or studwood, while the smaller lesser valuable segments of the tree are sold as pulpwood or biomass.
- In contrast, in Alberta, all segments of a given tree would be received by a lumber mill, regardless of the size or value of the constituent logs, and the Alberta lumber mill would pay the relevant stumpage price for all segments of the tree.
- These differences in product categories make a one-to-one mapping of Nova Scotia codes to Alberta codes impossible and demonstrate that Nova Scotia is not comparable to Alberta.
- Additionally, Commerce arbitrarily limited the transactions it considered for benchmarking. As a result, it relied on prices for only a small portion of Nova Scotia's standing timber transactions to benchmark purchases corresponding to the code 01 log transactions representing more than 65 percent of Alberta's Crown-origin standing timber harvest.
- This comparison results in Commerce comparing Nova Scotia's sawlogs, which account for a relatively small portion of its harvest, to Alberta's code 01 logs, which account for a considerably higher portion of Alberta's harvest.
- Nova Scotia grades harvested standing timber by use while Alberta grades standing timber by size. Thus, Alberta's code 01 captures a wide range of logs that in Nova Scotia would be considered sawlogs, studwood, or pulplogs, depending on their use.
- Using only the most valuable Nova Scotia sawlogs as the benchmark for Alberta's code 01 logs significantly overestimates any benefit to the Alberta Respondents from purchases of Alberta's Crown-origin timber.

⁹⁶¹ See GOA Case Brief Volume 4.A at 79-83.

- Commerce's matching of Alberta's code 06 and 99 undersize log purchases to Nova Scotia studwood log transactions produces a similar inflation of any benefit received by Alberta respondents.
- Alberta's code 01 log category includes sawlogs as well as other types of log products. Thus, it is not accurate to compare such code 01 logs to a Nova Scotia log category that consists solely of sawlogs.
- If Commerce continues to find that Nova Scotia's forest and standing timber harvest is comparable to that of Alberta, then Commerce cannot also assume that Alberta's code 01 harvest, which accounts for 69 percent of Alberta's Crown-origin standing timber harvest, is most comparable to a sawlog grade while only a relatively small amount of Nova Scotia's standing timber harvest is comparable to a sawlog grade.
- The existing product categories in Nova Scotia and Alberta allow a very close mapping based on the proportion of the harvest.⁹⁶²
- Based on such mapping of the provinces' proportion of the harvest, Commerce should compare the price of code 01 logs to a weighted-average price of sawlog and studwood logs, as contained in the 2017-2018 Private Stumpage Survey. Such a comparison more closely aligns to the proportion of the Alberta Crown-origin standing timber harvest for code 01 transactions.
- Similarly, a mapping based on the proportion of the harvest in Nova Scotia and Alberta demonstrates that it was wrong for Commerce to compare Alberta's code 06 and 99 standing timber to prices for private-origin studwood in Nova Scotia. Code 06 and 99 standing timber reflect the least valuable timber and only accounted for 26 percent of Alberta's Crown-origin standing timber harvest.
- The data in the 2017-2018 Private Stumpage Survey indicate that the private-origin studwood standing timber harvested in Nova Scotia is considerably more valuable than Code 06 and 99 standing timber in Alberta and that studwood accounts for a significantly larger share of Nova Scotia's overall private-origin harvest than code 06 and 99 standing timber.
- Pulpwood standing timber harvested in Nova Scotia do, in fact, reflect the smallest and least valuable timber in the province. Further, pulpwood's share of the Nova Scotia harvest is similar to the share attributable to code 06 and 99 standing timber in Nova Scotia.⁹⁶³
- Thus, Commerce should compare the respondent's purchases of Crown-origin Code 06 and 99 standing timber to pulplog prices in Nova Scotia.

*West Fraser's Comments*⁹⁶⁴

- Alberta classifies timber principally based on the size of the log, specifically the gross volume-to-length ratio. The larger logs with a volume-to-length ratio greater than 0.024 m³/m are classified as code 01 and accounted for 69.3 percent of the Alberta harvest in 2019.
- Marginal, small-size logs with a volume-to-length ratio less than 0.024 m³/m are classified as code 06 and accounted for 24.2 percent of the 2019 harvest.
- Finally, logs that fall below the minimum utilization standard in Alberta are classified as code 99 and made up only 1.5 percent of the 2019 harvest.
- In contrast, Nova Scotia classifies logs not by size but instead by end use after being trimmed and cut-to-size. The most valuable logs (*i.e.*, those with the fewest defects and largest

⁹⁶² See GOA Case Brief Volume 4.A at 80, Figure 4.

⁹⁶³ See GOA Case Brief Volume 4.A at 82.

⁹⁶⁴ See West Fraser Case Brief at 41-44.

- diameters) are classified as sawlogs and delivered to sawmills. Less valuable logs suitable for 8 to 10-foot stud lumber are classified as studwood and are also processed at sawmills.
- The least valuable logs in Nova Scotia are classified as pulpwood and are sold directly to pulp mills.
 - In Alberta, the entire output of a tenure area, inclusive of all log sizes and qualities, is purchased by a single tenure holder. Thus, the entire harvest from a particular stand will be delivered to the sawmill.
 - In Nova Scotia, the prices in the 2017-2018 Private Market Survey appear to reflect sales of truckload quantities of logs that have been sorted into categories in which the most valuable portions of a single tree are sold to a sawmill at one price and the least valuable portions of the tree are sold at lower prices to pulp mills.
 - In the *Lumber V AR2 Prelim*, Commerce essentially mapped Nova Scotia's use-based classification system onto the size-based Alberta system for classifying standing timber.
 - Specifically, Commerce compared Nova Scotia sawlog prices to code 01 timber in Alberta and Nova Scotia studwood prices to code 06 and 99 timber.
 - This approach failed to account for the mix of timber products purchased by sawmills in Alberta.
 - In particular, Commerce's methodology compared sawlogs, the most valuable portion of Nova Scotia's harvest and which accounted for a relatively small portion of the Province's harvest volume, to lower quality logs in Alberta that accounted for a substantial share of Alberta's timber harvest.
 - Further, Commerce neglected to include prices for Nova Scotia pulpwood, despite that pulplogs accounted for a substantial portion of the Nova Scotia harvest and despite that sawmills purchased large values of low-quality logs that are most comparable to Nova Scotia pulplogs.
 - To mitigate Commerce's product matching errors, in the final results, Commerce should use data in the 2017-2018 Private Market Survey to calculate a weighted-average sawlog and studwood benchmark price to compare to purchases of code 01 logs.
 - Similarly, Commerce should compare the respondent's purchases of code 06 and 99 logs to prices of pulpwood logs in Nova Scotia.

*Petitioner Rebuttal Brief*⁹⁶⁵

- As an initial matter, while the Canadian Parties have argued in prior proceedings that Nova Scotia's classification system was unique among all provinces, in this review, the Canadian Parties limit their arguments to Québec and Alberta.
- Commerce rejected this line of argument in the prior review: "we find that the Nova Scotia benchmark incorporates a range of log types that are used by sawmills (including log types on the small end of the sawlog spectrum) that results in a conservative and comparable benchmark."⁹⁶⁶
- The record is clear that Nova Scotia is not unique among provinces for classifying timber by destination (*e.g.*, timber destined for pulp mills or sawmills).
- For Ontario, the Resolute Preliminary Calculation Memorandum states that: "GOO reported that it does not assign a class or grade distinction to softwood timber at the time of harvest,

⁹⁶⁵ See Petitioner Rebuttal Brief at 41 to 46 and 81-86.

⁹⁶⁶ See Petitioner Rebuttal Brief at 42 (citing *Lumber V AR1 Final IDM* at Comment 31).

rather it classifies stumpage based on the destination. If harvested timber is going to a sawmill, the GOO considers it a sawlog, no matter how small the diameter.”⁹⁶⁷

- For Alberta, the GOA’s Scaling Manual states: “{t}he end product of a load of logs (*i.e.*, lumber, pulp, etc.) will dictate the product code assigned to load, population, or disposition.”⁹⁶⁸
- Thus, although “sawlog” could include “coniferous logs used not only to produce softwood lumber but also pulp, paper, and other roundwood products,”⁹⁶⁹ information from the GOA demonstrates that “{o}nly 1 percent of the total volume of harvested Crown softwood logs, of all product codes, are used to make pulp.”⁹⁷⁰
- The record establishes that the GOA’s grade 01 logs must be spruce/pine logs that are green and healthy (referred to as GR logs) and may be used to make sawlog products. Code 01 logs were actually used by sawmills to make subject merchandise. Such evidence demonstrates that the GOA’s product codes are mill destination-based and, thus, similar to the destination-based systems of the GNS and GOO.
- In Québec, the Resolute Preliminary Calculation Memorandum indicates that “{s}tumpage dues in Québec are billed after the wood has been scaled by the permit holders.”⁹⁷¹ Permit holders in turn are defined by the product they produce.
- Further, in Québec, logs produced from timber harvested under a TSG must be processed in the mill that purchased the TSG.
- Thus, even more restrictive than specifying a general type of mill (*e.g.*, pulp or saw), the timber in Québec is classified by the exact mill specified by the GOQ.
- It is undisputed that the mandatory respondents have reported their purchases of Crown-origin stumpage to produce lumber with exacting detail, down to the single invoice line.⁹⁷² Thus, Commerce is able to determine the species and type of timber that enter these sawmills for production into subject merchandise.
- Similarly, private stumpage prices in the 2017-2018 Private Market Survey reflect the species and type of timber that enter Nova Scotia sawmills for production of softwood lumber.⁹⁷³
- Attestations from Nova Scotia producers confirms this fact:

Concluding the transaction requires that the buyer and seller come to an agreement as to what product has been harvested. That is: whether the felled tree is classified as a sawlog or studwood log, or pulpwood. This information is maintained on cutting slips, invoices, truck slips, or the like, depending on the harvester’s practice or the mill’s requirements.⁹⁷⁴

- Because Commerce is seeking a benchmark for each respondent’s purchases of standing timber used to make softwood lumber, and not logs purchased for other uses, the Nova Scotia

⁹⁶⁷ See Petitioner Rebuttal Brief at 42 (citing Resolute Preliminary Calculation Memorandum at 5 and GOO IQR Response at 3-4).

⁹⁶⁸ See Petitioner Rebuttal Brief at 42 (citing GOA IQR Response at Exhibit AB-AR2-S-18, Section 2.12, page 25).

⁹⁶⁹ See Petitioner Rebuttal Brief at 42 (citing GOA IQR Response GOA IQR Response at 15).

⁹⁷⁰ See Petitioner Rebuttal Brief at 42 (citing GOA IQR Response GOA IQR Response at 20, footnote 40).

⁹⁷¹ See Petitioner Rebuttal Brief at 42 (citing Resolute Preliminary Calculation Memorandum at 3 and GOQ IQR Response at QC-S-62).

⁹⁷² See Petitioner Rebuttal Brief at 83 (citing Initial Questionnaire at Alberta Companies Crown Stumpage Purchases, Table 1 and *Lumber V Final IDM* at Comment 40).

⁹⁷³ See Petitioner Rebuttal Brief at 44 (citing *Lumber V Final IDM* at Comment 41).

⁹⁷⁴ See Petitioner Rebuttal Brief at 45 (citing Petitioner Comments on IQR Responses at Volume I-25).

benchmark appropriately uses only sawlogs and studwood, the types of timber also used by the mandatory respondents in their sawmills.

- By excluding purchases of logs intended for pulp mills from both the Nova Scotia benchmark and the Crown-origin standing timber volumes reported by the respondents, Commerce properly created an accurate stumpage-to-stumpage comparison of timber used for the production of softwood lumber.
- The Canadian Parties argue that Commerce’s use of the Nova Scotia benchmark results in high-value Nova Scotia products being compared with a wider range of provincial products and fault Commerce for not including a greater range of products in its benchmark for standing timber, which they argue are Nova Scotia pulpwood prices.
- These arguments are speculative, and Commerce rejected them in the prior review.⁹⁷⁵
- In the Nova Scotia Registry of Buyers for CY 2019, the term pulpwood is defined as “{a}ny wood intended to be either ground or chemically broken down to a pulp to be used in products such as paper, packaging, hardboard, etc.,” while sawtimber is defined as “{a}ny log intended to be sawn to produce lumber but does not include studwood or lathwood.” The Buyers Registry defines “studwood” to mean “{a}ny log between 8- and 10-foot lengths plus trim intended to be sawn into lumber used for vertical support in the wall of buildings.”⁹⁷⁶
- Thus, by definition, pulpwood is not used in Nova Scotia to make softwood lumber, while studwood and sawlogs are used to make softwood lumber.
- Including pulplogs in the benchmark would introduce an imbalance into the LTAR benefit calculation.
- The Canadian Parties’ abstract discussion of the comparability of timber has no bearing on the fundamental fact that the mandatory respondents’ purchases of Crown-origin standing timber in this review were only used to make softwood lumber.
- For example, the general log grade makeup of all of Québec is not relevant to Commerce’s analysis of Resolute’s actual usage of grade C logs to produce softwood lumber, which, by definition, would be considered a sawable log in Nova Scotia because it is intended for use in a sawmill.
- Commerce should not implement the proposal of the GOA and West Fraser to compare the respondents’ purchases of code 01 Crown-origin standing timber to a benchmark comprised of the studwood and sawlog prices contained in the 2017-2018 Private Market Survey.
- Information from the GOA indicates that Alberta’s code 01 logs must be “spruce/pine logs that are green and healthy (GR) and may be used to make sawlog products.”⁹⁷⁷
- These requirements as well as evidence indicating that nearly all code 01 logs are sawn into lumber makes Alberta’s code 01 transactions exactly the same as the GNS’ definition of sawlogs.
- Commerce properly excluded Nova Scotia pulpwood from the Nova Scotia benchmark as it is not used in the production of lumber, while Alberta logs purchased by the respondents with product codes 6 and 99 were destined for sawmills.

⁹⁷⁵ See Petitioner Rebuttal Brief at 82 (citing *Lumber VARI Final* IDM at Comment 40, where Commerce determined that including pulpwood prices in the Nova Scotia benchmark would create a “mismatch” between respondents sawable timber and a broader Nova Scotia benchmark comprised of sawable standing timber and pulplogs not purchased by Nova Scotia sawmills).

⁹⁷⁶ See Petitioner Rebuttal Brief at 82 (citing GNS IQR Response at Exhibit NS-10, Appendix I).

⁹⁷⁷ See Petitioner Rebuttal Brief at 85 (citing GOA IQR Response at 186).

- Consistent with its findings in the prior review, Commerce should continue to exclude pulpwood prices from the Nova Scotia benchmark.⁹⁷⁸
- Québec and Resolute similarly resort to a discussion of the general make-up of Québec's timber harvest to argue why Commerce's product matching for Resolute was incorrect.
- Their general discussion is not relevant to Resolute's actual usage logs (such as grade C logs) to make lumber.
- Commerce has already accounted for any differences in diameter and quality of Resolute's harvested timber relative to the Nova Scotia benchmark.
- Consistent with the first review, Commerce found that Nova Scotia studwood and grade C logs are based on size and reflect smaller logs and, thus, are comparable. Commerce has also explained that the GOQ's scaling manual indicates that grades M and R are decayed timber. Thus, Commerce compared the prices that Resolute paid for sawable, M and R grades of Crown-origin standing timber to the prices for Nova Scotia studwood, as contained in the 2017-2018 Private Market Survey.⁹⁷⁹
- Commerce should continue to find that the Nova Scotia prices in the 2017-2018 Private Market Survey are comparable to the Crown-origin prices the mandatory respondents paid in Québec, Ontario, and Alberta and should not make the revisions to the LTAR benefit calculation advocated by the Canadian Parties.

Commerce's Position: The Canadian Parties raised the same arguments in the prior review regarding timber classification and comparisons, which we continue to reject.⁹⁸⁰ We disagree with the Canadian Parties' claim that the sawable standing timber that comprises the Nova Scotia benchmark is considerably larger and, thus, incomparable to the sawable Crown-origin standing timber harvested by the respondents in Québec, Ontario, and Alberta. Consistent with the prior review,⁹⁸¹ we continue to find the average DBH (diameter measured at breast height – 4.5 feet above ground, measured outside the bark) of Nova Scotia's SPF timber is within the same DBH range as SPF timber in Québec, Ontario, and Alberta. Therefore, we disagree that Commerce should compare non-sawlog standing timber prices (e.g., pulplog prices), as contained in the 2017-2018 Private Market Survey, to certain sawable Crown-origin standing timber grades in Alberta and Québec that the respondents purchased during the POR.⁹⁸²

As an initial matter, we disagree with the Canadian Parties that Nova Scotia is unique in terms of classifying standing timber based on its use or destination. For Ontario, the GOO explained:

. . . The majority of Ontario's softwood timber stumpage sales to consuming mills would be classified as pulpwood. Since no class/grade distinction is made at the time of harvest, the Province of Ontario tracks the destination of its timber harvest and stumpage sales and classifies timber based on destination.⁹⁸³

And

⁹⁷⁸ See Petitioner Rebuttal Brief at 85 (citing *Lumber VARI Final IDM* at Comment 40).

⁹⁷⁹ See Petitioner Rebuttal Brief at 46 (citing *Lumber ARI Final IDM* at Comment 31).

⁹⁸⁰ See *Lumber VARI Final IDM* at Comment 40.

⁹⁸¹ See *Lumber VARI Final IDM* at Comment 26.

⁹⁸² We use the term "sawable" to refer to timber that is suitable for use by sawmills to make lumber products.

⁹⁸³ See GOO IQR Response at 3.

Ontario does not classify or grade timber as “sawlogs” or “pulpwood.” Spruce-pine-fir (which includes larch/tamarack) (“SPF”) timber is tracked and stumpage invoiced based on the timber’s destination, not attributes such as diameter.⁹⁸⁴

Regarding Alberta, the GOA’s scaling manual states, “{t}he end product of a load of logs (*i.e.*, lumber, pulp, etc.) will dictate the product code assigned to load, population, or disposition.”⁹⁸⁵

Concerning Québec, record information indicates that “{s}tumpage dues in Québec are billed after the wood has been scaled by the permit holders.”⁹⁸⁶ In Québec, permit holders are defined by the products they produce. Thus, while the GOQ does not have a product classification that specifically denotes sawable timber, it is reasonable to conclude that harvested, Crown-origin standing timber that is scaled by permit holding sawmills in Québec will be processed as sawable timber.

However, regardless of how Nova Scotia, Québec, Ontario, and Alberta classify their standing timber, we disagree with Canadian Parties’ argument that the focus of Commerce’s LTAR analysis should be all Crown-origin standing timber (*e.g.*, sawable and non-sawable timber) in Québec, Ontario, and Alberta. The goal of Commerce’s LTAR benefit analysis is to compare the respondents’ purchases of sawable Crown-origin standing timber (*e.g.*, standing timber that was processed into lumber) to a market benchmark that is similarly comprised of prices for sawable standing timber. Consistent with the prior review, we instructed the respondent firms to report the volume and value of Crown-origin sawable standing timber they purchased for their sawmills during the POR.⁹⁸⁷ Accordingly, we have utilized a benchmark that is similarly comprised of prices charged for sawable standing timber in Nova Scotia.⁹⁸⁸ In this way, we ensure a comparison that consists solely of logs used by sawmills to make lumber. Thus, as we explained in the prior review,⁹⁸⁹ to include pulplog grade standing timber in the Nova Scotia benchmark would create a mismatch between the respondents’ reported sawable timber and a broader Nova Scotia benchmark comprised of sawable standing timber as well as non-sawable pulplog grade standing timber that is not purchased by Nova Scotia sawmills.⁹⁹⁰

We also disagree with the Canadian Parties that the overall share of the Crown-origin harvest accounted for by certain grades of standing timber in the provinces at issue relative to the overall share of sawable standing timber grades in Nova Scotia should lead Commerce to compare the respondents’ purchases of such Crown-origin grades to pulplog grade standing timber prices in Nova Scotia. The overall share of standing timber accounted for by a particular grade in Nova

⁹⁸⁴ See GOO IQR Response at 3.

⁹⁸⁵ See GOA IQR Response at Exhibit AB-AR2-S-18 at Section 2.12).

⁹⁸⁶ See Petitioner Rebuttal Brief at 42 (citing Resolute Preliminary Calculation Memorandum at 3 and GOQ IQR Response at QC-S-62).

⁹⁸⁷ See Initial Questionnaire at Part 2: Questionnaire for Producers/Exporters of Subject Merchandise at Table 1, which instructs Resolute to report Crown-origin standing timber purchased by sawmills.

⁹⁸⁸ See, *e.g.*, Resolute Final Calculation Memorandum; see also GNS IQR Response at NS-5B and NS-6B.

⁹⁸⁹ See *Lumber V ARI Final IDM* at Comment 40.

⁹⁹⁰ See GNS IQR Response at Exhibit NS-6B at 3 and Exhibit NS-10 at Appendix I, which contains the GNS uses to define sawlog, studwood, and pulplogs. These definitions indicate that standing timber that produces sawlogs and studwood is sawable and that standing timber that produces pulplogs is not sawable.

Scotia (*e.g.*, sawlogs and studwood) or in the provinces at issue (*e.g.*, grades 06 or 99 in Alberta or grades B and C in Québec) is not relevant to our price comparisons. What is relevant are the prices and categories of sawable, Crown-origin standing timber actually purchased by and sent to the respondents' sawmills compared to benchmark prices of sawable, private-origin standing timber. The 2017-2018 Private Market Survey contains prices for harvested, standing timber categorized as sawlogs and studwood, which the record makes clear are sawable timber.⁹⁹¹ Thus, we have utilized the sawlog and studwood standing timber prices contained in the 2017-2018 Private Market Survey as the basis of our standing timber benchmark. In the investigation, Commerce verifiers confirmed that while both sawlogs and studwood are softwood sawable logs used in the production of softwood lumber products, studwood generally denotes smaller diameter logs suitable for sawing into 8-foot, 9-foot, or 10-foot studs.⁹⁹² Thus, consistent with the prior review and as discussed below, we find that the Nova Scotia benchmark incorporates a range of standing timber types that are used by sawmills (including standing timber types on the small end of the sawable timber spectrum, such as studwood) that results in a conservative and comparable benchmark.⁹⁹³

The GOQ's scaling manual defines grade B SPF logs as having "a fine end diameter in the 14 cm class and a length of 2.50 m" and defines grade B hemlock and cedar logs as having a minimum nominal length of 2.5 meters and minimum end diameter of 20 cm for hemlock or 16 cm for cedar and minimal defects (*i.e.*, decay, holes, cracks, and any defects that affect the internal quality of the timber).⁹⁹⁴ Based on this information, we continue to find that the grade B standing timber purchased by Resolute is comparable to the sawlog prices contained in the 2017-2018 Private Market Survey.⁹⁹⁵ The GOQ's scaling manual defines grade C SPFL logs as "{l}ogs or parts of logs that do not meet the criteria for each method {used to classify grade B logs}, but which are of marketable and billable size..." and defines grade C hemlock and cedar logs as logs which do not meet the minimum standards of grade B.⁹⁹⁶ The GNS's classification of studwood is similarly based on size.⁹⁹⁷ Thus, because the GOQ's description of grade "C" logs and the GNS's description of studwood both hinge primarily on size, and both descriptions encompass smaller sawable timber (*e.g.*, timber that is smaller than sawlogs), we determine it is more appropriate to compare Resolute's purchases of grade C Crown-origin standing timber to the prices for studwood as listed in the 2017-2018 Private Market Survey.⁹⁹⁸ We note that our approach to Resolute's stumpage benefit calculations is consistent with the stumpage benefit calculation for JDIL, which compares the prices of JDIL's purchases of Crown-origin sawlogs to sawlog benchmark prices and the prices of JDIL's purchases of Crown-origin studwood to studwood benchmark prices.⁹⁹⁹

⁹⁹¹ See GNS IQR Response at Exhibit NS-6B at 3 and Exhibit NS-10 at Appendix I.

⁹⁹² See GNS IQR Response at NS-7 at 4.

⁹⁹³ See *Lumber VARI Final* IDM at Comment 40.

⁹⁹⁴ See GOQ IQR Response at Exhibit STUMP-34 at 156-157, and 174.

⁹⁹⁵ See GOQ IQR Response at Exhibit STUMP-34 at 174.

⁹⁹⁶ See GOQ IQR Response at Exhibit QC-STUMP-34 at 179; *see also* GOQ IQR Response at Exhibit QC-STUMP-34 at 157.

⁹⁹⁷ See GNS IQR Response at NS-10 at Appendix I.

⁹⁹⁸ See Resolute Final Calculation Memorandum.

⁹⁹⁹ See JDIL Final Calculation Memorandum.

Resolute argues that the Crown-origin grade C timber it purchased is incomparable to Nova Scotia studwood because the former is defined as having a small-end diameter of 14 cm or less and a length of 2.5 meters or less while the latter is defined as having a small end diameter between 9 – 30 cm and length between 2.4 - 3.0 m.¹⁰⁰⁰ We disagree that these two timber types are incomparable for purpose of LTAR benefit analysis. As noted elsewhere in this memorandum, our benchmark methodology does not require perfection, as such a standard would preclude Commerce from ever utilizing a tier-one benchmark.¹⁰⁰¹ We also note the size parameters of Nova Scotia’s studwood and Québec’s grade C timber overlap. Further, absent from Resolute’s arguments are the minimum diameter and length parameters of the Crown-origin grade C timber processed at its sawmills, which is information that is needed when determining the full extent to which the diameter and length of Resolute’s grade C timber overlaps with the low-end diameter and length parameters of Nova Scotia studwood. Additionally, while we lack information on the average small-end diameter of studwood timber harvested in Nova Scotia, there is information on the optimal small-end diameter of studwood timber harvested in New Brunswick. As noted elsewhere in this memorandum, we find that diameter information for timber harvested in New Brunswick may serve as a reasonable proxy for standing timber diameter in Nova Scotia. The information for New Brunswick indicates that the optimal small-end diameter for studwood timber is between 10.16 and 15.24 CM.¹⁰⁰² Thus, while the GNS may indicate that studwood may include harvested timber with a small-end diameter as large as 30 cm, information from New Brunswick indicates that optimally-sized studwood timber falls within a range that is similar to the small-end diameter for grade C timber in Québec.

Additionally, regarding grade C timber, the GOC argues that:

While almost none of the Grade C logs in Québec would qualify as either studwood or sawlogs in Nova Scotia, almost all Grade C logs are purchased by and processed in Québec sawmills. To account for their lower-quality, the GOQ charges sawmills a lower price for Grade C logs, a discount which reflects Grade C logs’ value as pulpwood.¹⁰⁰³

The GOC argues grade C logs are of poor quality, yet only references length and diameter size to support that claim.¹⁰⁰⁴ The GOQ does not provide any record evidence to support its claim that grade C logs’ “discounted” price are a result of its poor quality. Accordingly, as discussed above, we find that the length and size of the GOQ’s grade C timber are comparable to the length and size of Nova Scotia studwood. Thus, under the GOQ’s pricing scheme, Resolute purchased grade C timber (whose length and diameter parameters overlap with those of studwood timber in Nova Scotia) from the GOQ at a “discounted” pulpwood price. Then, rather than process the grade C timber into pulp at its pulpmills, Resolute sawed the timber into lumber at its sawmills. Thus, as evident from the GOQ’s argument, the GOQ’s discussion of “discounted” timber prices demonstrates why Resolute’s purchases of grade C timber yields a benefit.

¹⁰⁰⁰ See Resolute Case Brief at 11 (citing GNS IQR Response at 19 and NS-10).

¹⁰⁰¹ See, e.g., *HRS from India* IDM at Comment 12.

¹⁰⁰² See GNB IQR Response at Exhibit NB-AR2-Stump-18 at 21 (Figure 8).

¹⁰⁰³ See GOC Case Brief Volume I at 77.

¹⁰⁰⁴ *Id.*

Regarding the Crown-origin timber grades M and R that Resolute harvested during the POR, the GOQ's scaling manual indicates they denote decayed timber.¹⁰⁰⁵ Thus, consistent with the prior review, we have compared the prices that Resolute paid for sawable, M and R grades of Crown-origin standing timber to the prices for studwood in the 2017-2018 Private Market Survey, which reflect the lowest prices for sawable standing timber in the survey.¹⁰⁰⁶ We find this is an appropriate comparison given that Resolute processes lumber from these grades of timber.

Regarding Alberta, information in the GOA's Scaling Manual indicates that Crown-origin standing timber graded as 01 refers "spruce/pine logs that are green and healthy ('GR') and may be used to make sawlog products."¹⁰⁰⁷ Based on this information, we find purchases of standing timber graded as 01 and purchased by West Fraser and Canfor are comparable to Nova Scotia sawlog quality grade standing timber. Information in the GOA's Scaling Manual also indicates that the codes for Crown-origin standing timber graded as 06 and 99 are for small-stem and undersized logs.¹⁰⁰⁸ The smaller-size grades are included in the volume of the sawable timber volume purchased by Canfor and West Fraser during the POR, as indicated by the sawmill data templates they submitted as part of their respective questionnaire responses.¹⁰⁰⁹ Thus, we find that while such grades are sawable, they are smaller than standing timber the GOA grades as 01. Therefore, we have compared the prices Canfor and West Fraser paid for such 06 and 99 grades of Crown-origin standing timber to the prices of Nova Scotia studwood standing timber, which are small than Nova Scotia sawlog timber.

We disagree with the GOQ that Commerce should use a pulplog standing timber benchmark price to compare to Resolute's reported purchases of grade C standing timber purchases because such grades are "referred to as pulpwood."¹⁰¹⁰ How a grade of standing timber is referred to in Québec is not relevant to our LTAR benefit analysis. Our goal is to compare Resolute's purchases of Crown-origin standing timber delivered to sawmills (in other words sawable standing timber) to a sawable standing timber benchmark in Nova Scotia. The grade C purchases reported by Resolute were delivered to its sawmills, thereby demonstrating they are sawable.¹⁰¹¹ No information on the record suggests otherwise. Accordingly, we compared those grade C purchases to a similar, sawable benchmark price, specifically, the price for studwood standing timber, as contained in the 2017-2018 Private Market Survey.

Similarly, the Canadian Parties argue that Commerce improperly compared prices for sawable material in Nova Scotia (studwood and sawlogs) to Alberta grades 01, 06, 20, and 99, which they state comprise nearly all the GOA's product codes for coniferous logs, including logs processed at sawmills and pulpmills. They also argue that Commerce improperly concluded that none of Nova Scotia's pulplogs are comparable to anything in Alberta while sawable Nova Scotia logs (studwood and sawlogs) are comparable to nearly all of Alberta's harvest. Again, the Canadian Parties misconstrue as to the point and nature of Commerce's analysis. Our method for

¹⁰⁰⁵ See GOQ IQR Response at Exhibit QC-STUMP-34 at 171, 174, 180.

¹⁰⁰⁶ See Resolute Final Calculation Memorandum; see also Lumber V AR1 Final IDM at Comment 31.

¹⁰⁰⁷ See GOA IQR Response at 17, 186 and Exhibit AB-AR1-S-18.

¹⁰⁰⁸ See GOA IQR Response at 18 and Exhibit AB-AR1-S-18.

¹⁰⁰⁹ See Canfor and West Fraser Final Calculation Memoranda, which indicate the volume and value of Crown-origin standing timber purchased by their respective sawmills.

¹⁰¹⁰ See GOC Case Brief at Volume I at 76.

¹⁰¹¹ See, e.g., Resolute IQR Response at Exhibit RES-STUMP-ON-01.

comparing grades of standing timber in the stumpage LTAR benefit analysis does not hinge on the characteristics of Alberta's overall harvest or the usage patterns of all of Alberta's saw and pulp mills relative to that of Nova Scotia. Rather, our LTAR benefit analysis focuses on the Crown-origin standing timber purchased by respondents during the POR and the standing benchmark that is most comparable to those purchases.¹⁰¹² Thus, for Alberta, we obtained the volume and value of Crown-origin standing timber delivered to the sawmills of Canfor and West Fraser.¹⁰¹³ As a result, the universe of the respondents' Crown-origin standing timber purchases is comprised of sawable timber and does not include standing timber that was processed by pulpmills. Accordingly, we conducted the LTAR benefit analysis using a benchmark that is similarly comprised of sawable standing timber.

We disagree with the arguments of the GOA and West Fraser that: (1) industry practice in Nova Scotia is to classify and price timber after it is trimmed and cut-to-length; (2) the sawlog and studwood prices contained in the 2017-2018 Private Market Survey reflect log segments of trees and not stumpage fees charged for standing timber; and (3) the survey's prices are, thus, incomparable to the "whole-tree" price categories charged by the GOA. As explained elsewhere in this memorandum, a declaration from one of Nova Scotia's largest timber harvesters indicates that buyers and sellers of stumpage determine prices for "felled" trees:

Concluding the transaction requires that the buyer and seller come to an agreement as to what product has been harvested. That is: whether the felled tree is classified as a sawlog or studwood log, or pulpwood. This information is maintained on cutting slips, invoices, truck slips, or the like, depending on the harvester's practice or the mill's requirements.¹⁰¹⁴

Moreover, the 2017-2018 Private Market Survey (as well as the prior 2015-2016 Private Market Survey) instructed respondents to report "pure" stumpage prices for standing timber (*i.e.*, the prices for standing timber as opposed to cut-to-length segments of timber).¹⁰¹⁵ Further, purchase documentation of survey respondents that Commerce verifiers reviewed at the GNS verification confirmed that the prices in the 2015-2016 Private Market Survey reflected prices for standing timber (*e.g.*, "pure stumpage").¹⁰¹⁶ The 2017-2018 Private Market Survey similarly instructed respondents to report prices paid for "pure stumpage."¹⁰¹⁷ Thus, we disagree that the 2017-2018 Private Market Survey reflect pricing methods that are incomparable to the pricing methods the GOA used when selling Crown-origin standing timber to the respondents during the POR.

¹⁰¹² See Initial Questionnaire at Part 2: Questionnaire for Producers/Exporters of Subject Merchandise at Table 1, which instructs Respondents to report Crown-origin standing timber purchased by sawmills.

¹⁰¹³ See Canfor and West Fraser Final Calculation Memoranda.

¹⁰¹⁴ See Petitioner Comments on IQR Responses at Volume I-25, which contains the affidavit of Richard Freeman, co-owner of Harry Freeman & Son.

¹⁰¹⁵ See *Lumber V AR Final* IDM at Comment 43; GNS IQR Response at Exhibit NS-18, which contains the instructions that Deloitte provided to the survey respondents of the 2017-2018 Private Market Survey; and Exhibit NS-7 at 6, which contains the GNS Verification Report from the investigation indicating that the 2015-2016 Private Market Survey reflected "pure" stumpage prices for standing timber.

¹⁰¹⁶ See GNS IQR Response at Exhibit NS-7 at 8.

¹⁰¹⁷ See GNS IQR Response at NS-18, which contain the instructions provided to respondents to the 2017-2018 Private Market Survey.

Comment 35: Whether SPF Tree Species in Nova Scotia Are Comparable to SPF Tree Species in Québec, Ontario, and Alberta

*GOC's Comments*¹⁰¹⁸

- Each species of standing timber has unique characteristics and mills do not value them equally. These unique characteristics affect the costs that mills incur and the benefits that mills derive from various species when they are used to produce lumber. These costs and benefits are driven by factors that include the size, moisture content, growth pattern, limb distribution, and defect tendencies of each species.
- Nova Scotia primarily produces its sawable products from red spruce, a species that does not grow in Ontario or Alberta and of which little is grown in southern Québec.
- Red spruce grows and has fewer defects than other species. These characteristics create large, high-quality timber that Nova Scotia mills prefer over other species.
- Nova Scotia sawmills reduce offer prices for harvested timber containing other species, like balsam fir, in contrast to sawmills in other provinces that must accept less valuable species due to the lack of high-quality timber stock that grows in Nova Scotia.
- Black spruce constitutes the majority of softwood inventories in Québec and Ontario.
- In Nova Scotia, black spruce accounts for only 6 percent of the forest inventory and often does not meet sawmills size and quality standards.
- Black spruce cannot produce high-quality products at the same rate as red spruce, and thus, black spruce has a lower value.
- Resolute noted that a mill it relocated from Nova Scotia to Québec experienced loss of productivity and higher costs attributable to lower quality inputs of comprised of black spruce.¹⁰¹⁹
- White spruce, which constitutes 21 percent of Nova Scotia's spruce inventory is not uniformly accepted by Nova Scotia's sawmills. For example, two of the province's four largest sawmills do not accept white spruce for the highest value products, and mills discount the species' value for lumber production due to its flaws relative to other SPF species.
- The abundance of valuable red spruce timber stock enables Nova Scotia mills to avoid sourcing white spruce. However, in Alberta, where white spruce accounts for 37.4 percent of the softwood timber harvest and 76 percent of its spruce, Alberta sawmills have no choice but to use it, even though white spruce in Alberta is of a lower quality than the white spruce that grows in Nova Scotia.
- Québec and Ontario mills process jack pine more frequently than Nova Scotia mills. Resolute reported that a mill it relocated from Nova Scotia to Québec found that the poor quality of jack pine decreased the mill's productivity.
- The GOQ specifically discounts pricings for Crown-origin standing timber in stands containing jack pine to account for the species' poor quality.
- In Nova Scotia, jack pine accounts for less than one percent of the forest inventory, and sawmills generally use it to produce less value products, such as railway ties and poles.

¹⁰¹⁸ See GOC Case Brief Volume I at 48 to 61. The GOA reiterates the arguments of the GOC. See GOA Case Brief Volume 4.A at 54-57.

¹⁰¹⁹ See GOC Case Brief Volume I at 53 (citing Resolute Factual Information to Measure Adequacy of Remuneration, Attachment 1 at 3).

- In Alberta, lodgepole pine is Alberta's most prominent species, but it does not grow in Nova Scotia. Lodgepole pine is prone to defects that impact its quality. It makes no sense to compare lodgepole pine in Alberta to standing timber prices in Nova Scotia that lack any lodgepole pine species.
- While balsam fir grows in Nova Scotia, Québec, and to a lesser extent in Ontario, it commands a lower price because it is prone to defects, which explains why Nova Scotia mills avoid or outright refuse to accept balsam fir logs and divert such logs to pulp mills.
- Species differences between Nova Scotia and Québec, Ontario, and Alberta preclude the use of the Nova Scotia prices as a tier-one benchmark.

*GOO's Comments*¹⁰²⁰

- As a threshold matter, acknowledging the species composition in provinces other than Nova Scotia is not evidence that the species composition of forests in those provinces is comparable to Nova Scotia. Completely absent from Commerce's analysis is data about Nova Scotia's forest composition.
- Moreover, record evidence demonstrates that Ontario's species composition has unique features that must be accounted for in any benchmark comparison.
- Commerce also improperly relies on data from *Lumber IV* that corresponds not to the share of SPF in Nova Scotia's timber market but to the share of SPF in timber markets across the Maritimes. Consequently, instead of demonstrating comparability, or even prevailing market conditions in Nova Scotia, Commerce's own preliminary findings highlight a key difference between Ontario and Nova Scotia demonstrating the lack of comparability between the two jurisdictions.
- In fact, the overlap of commonly harvested species in Ontario and Nova Scotia is minimal.¹⁰²¹
- The MNP Cross Border Report indicates that red spruce is highly valued. Red spruce accounts for a substantial portion Nova Scotia's harvest and is non-existent in Ontario.¹⁰²²
- The MNP Cross Border Report also indicates that white pine is highly valued. White pine comprises a larger share of Nova Scotia's harvest than in Ontario.¹⁰²³
- The SPF species that grow in Nova Scotia are meaningfully different from the SPF species that grow in Ontario in terms of price, quality, availability, and marketability. These differences should preclude Commerce from using Nova Scotia prices as a tier-one price in the LTAR stumpage benefit calculations.

*Petitioner's Rebuttal Comments*¹⁰²⁴

- Commerce rejected the Canadian Parties' claims that the species that comprise the Nova Scotia benchmark are incomparable to the species of Crown-origin trees that grow in Québec, Ontario, and Alberta.¹⁰²⁵
- Commerce correctly determined in the *Lumber V AR2 Prelim* that private-origin trees in Nova Scotia are comparable to Crown-origin trees in Québec, Ontario, and Alberta because SPF species are the dominant species that grow east of British Columbia, SPF species represent the

¹⁰²⁰ See GOO Case Brief Volume 7 Part 1 at 39-43.

¹⁰²¹ See GOO Case Brief Volume 7 Part 1 at 41.

¹⁰²² See GOO Case Brief Volume 7 Part 1 at 7-8.

¹⁰²³ See GOO Case Brief Volume 7 Part 1 at 7.

¹⁰²⁴ See Petitioner Rebuttal Brief at 14 to 29.

¹⁰²⁵ See Petitioner Rebuttal Brief at 27 (citing *Lumber AR1 Final IDM* at Comment 27).

majority of the mandatory respondents' Crown-origin timber harvest, and the DBH of SPF trees in Nova Scotia is comparable to the DBH of SPF trees that grow in Québec, Ontario, and Alberta.

- Evidence on the record demonstrates the comparability of Nova Scotia's stumpage to those trees in Alberta, Ontario, Québec, and New Brunswick that are actually used to make softwood lumber. During the POR, the share of SPF species in the harvest volume of Crown-origin standing timber accounted for: (1) 99 percent of the harvest in Québec; (2) 96.1 percent of the harvest for Ontario; and (3) 99.9 percent of the harvest for Alberta.
- Fundamental to the Canadian Parties' arguments about comparability is the assertion that species in those {SPF} proportions are significantly different and have significantly different qualities and values.
- This argument is flatly contradicted by the GOA's, GOO's, and GOQ's treatment of Crown-origin SPF stumpage. Like Nova Scotia, the GOA, GOO, GOQ, and GNB have all admitted that they sell government-owned stumpage in a bundled or "basket" price for SPF species categories.
- Schedule 3 of the GOA's Timber Management Regulation sets one general rate for all "coniferous timber," SPF or otherwise.
- The GOO uses a formula for "all softwood species used in softwood lumber production," which demonstrates that the GOO does not distinguish between different SPF or other softwood lumber species.¹⁰²⁶ Further the GOO explains that the residual value, which is a component of its Crown-origin standing timber price method, "increases and decreases in the representative net mill price (also referred to as Average Monthly Price or 'Basket of Goods')." ¹⁰²⁷
- The GOQ continues to utilize a regression equation for Crown-origin SPFL species for purposes of pricing Crown-origin standing timber.
- While the Canadian Parties claim that black spruce is a low-value species used for pulp, the GOQ reported that it is a species with a "higher value with a lower cost of transformation compared to balsam fir. . ." ¹⁰²⁸ Additional information from the GOQ indicates that Resolute has sought access to black spruce stands because of their profitability.¹⁰²⁹
- The GNB has stated that it "charges a single rate for SPF saw material, which includes SPF studwood and SPF sawlogs." ¹⁰³⁰
- Thus, any purported variation between individual species within the SPF basket is not relevant.
- In other words, Commerce's examination of the amount paid for standing timber that one region of Canada may have colder winters and shorter warm summers has no bearing on the provincial governments' treatment of SPF species as a single group for purposes of setting their Crown stumpage rates and recordkeeping.
- Accordingly, Commerce correctly found in the prior review that:

. . . the two forests are comparable in terms of species and DBH in that both forest regions are dominated by SPF-based species and the DBH of the forests' trees are in line with one another. Having determined that the species mix and DBH of the

¹⁰²⁶ See Petitioner Rebuttal Brief ta 23 (citing GOO IQR Response at ON-STUMP-69).

¹⁰²⁷ *Id.* at 23 (citing GOO IQR Response at ON-STUMP-69).

¹⁰²⁸ *Id.* at 25 (citing GOQ IQR Response at QC-S-25).

¹⁰²⁹ *Id.* at 26 (citing Petitioner Comments on IQR Responses at Exhibit Volume II-88).

¹⁰³⁰ *Id.* at 29 (citing GNB IQR Response at Exhibit STUMP-10).

trees in the Acadian and Boreal forests are comparable, we therefore also determine that information cited by the Canadian Parties (*e.g.*, the Cross Border Analysis) has not demonstrated that growing conditions in the Acadian and Boreal forests are so different as to render trees from the two forests incomparable to one another.¹⁰³¹

- A paid consultant for the Canadian Parties explained in his report, “it is true that every tree and stand will exhibit unique characteristics that impact their value, so it is impossible to say, for example, that every spruce tree has a higher value than every fir tree.”¹⁰³²
- For this reason, Commerce correctly focused on how the provincial government treat SPF collectively for purposes of pricing standing timber.

Commerce’s Position: Under 19 CFR 351.511(a)(2)(i), in choosing in-country prices, Commerce considers factors affecting comparability. However, the legal requirements governing Commerce’s selection of benchmarks do not require perfection.¹⁰³³ Consistent with the *Lumber IV* proceeding, *Lumber V Final*, and *Lumber V ARI Final*, Commerce preliminarily determined in the current review that tree size and species composition are key factors determining the market value of standing timber.¹⁰³⁴ Once again, the Canadian Parties argue that various species differ between the provinces to such an extent that the prices in the 2017-2018 Private Stumpage Survey are not suitably comparable as a tier-one benchmark. We continue to disagree with these arguments and continue to find that, though there are minor variations in the relative concentration of individual species across provinces, the standing timber in Nova Scotia, New Brunswick, Québec, Ontario, and Alberta is harvested from the same core species group—SPF.¹⁰³⁵ Accordingly, we find that the transactions for private-origin standing timber in Nova Scotia are comparable to the Crown-origin standing timber in New Brunswick, Québec, Ontario, and Alberta in terms of species comparability.

While the Canadian Parties point out what they claim are distinct physical differences between the various species that comprise the SPF category in provinces west of Nova Scotia, consistent with the prior review, we continue to find that the coniferous species that comprise the SPF category in the Canadian provinces at issue have “sufficiently common characteristics to be treated interchangeably in the lumber market.”¹⁰³⁶ We also continue to find that these purported physical differences among species in the SPF category are not reflected in the how Provincial Governments price Crown-origin standing timber. Consistent with the prior review,¹⁰³⁷ record information indicates the GOO charges the same unit price for all Crown-origin standing timber

¹⁰³¹ *Id.* at 20 (citing *Lumber ARI Final* IDM at Comment 28).

¹⁰³² *Id.* at 27 (citing Miller Report at 3).

¹⁰³³ *See, e.g., HRS from India* IDM at Comment 12: “There is no requirement that the benchmark used in the Department’s LTAR analysis be identical to the good sold by the foreign government. *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511. In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis.”

¹⁰³⁴ *See Lumber V AR2 Prelim* PDM at 25 (citing and *Lumber V ARI Final* IDM at Comments 27 and 28 and *Lumber V Final* IDM at Comment 39).

¹⁰³⁵ The GOQ considers the Larch species to be part of the SPF species category in Québec. In Ontario, the GOO also includes Larch/Tamarack in its SPF species category.

¹⁰³⁶ *See Lumber V ARI Final* IDM at Comment 27.

¹⁰³⁷ *Id.* at Comment 27.

that falls within the SPF species category. The GOO groups black spruce, white spruce, jack pine, tamarack/larch and balsam fir into a single SPF category and treats them as interchangeable for “commercial purposes.”¹⁰³⁸ As for the GOQ, in FY 2017-2018, the GOQ calculated a price for Crown-origin standing timber for each species that comprised its SPF category.¹⁰³⁹ However, the starting point for each species’ prices was, nonetheless, a common SPF price to which the GOQ applied a species-species net revenue adjustment.¹⁰⁴⁰ Thus, we find the manner in which the GOO, and GOQ set prices for Crown-origin trees that fall within the SPF species category undercuts the Canadian Parties’ claims that physical differences within the SPF species category make them incomparable to Nova Scotia SPF trees on an individual or group basis.

Moreover, sawmills in New Brunswick, Nova Scotia, Québec, Ontario, and Alberta process SPF species into the same product, dimensional lumber. Further, SPF was the dominant coniferous species harvested by sawmills in Nova Scotia, New Brunswick, Québec, Ontario, and Alberta during the POR. For example, during the POR, SPF species accounted for 97.66 percent for New Brunswick,¹⁰⁴¹ 99 percent for Québec,¹⁰⁴² 96.1 percent for Ontario,¹⁰⁴³ and 99.9 percent for Alberta.¹⁰⁴⁴ Concerning Nova Scotia, the GNS indicates that SPF is “by far the predominant group of trees harvested.”¹⁰⁴⁵ Data supplied by the three mandatory respondents and the sole voluntary respondent also indicate that SPF species represent the majority of the companies’ respective Crown timber harvest.¹⁰⁴⁶ Additionally, as noted elsewhere in this memorandum, we find that despite variances among the species that comprise the SPF categories in Nova Scotia, New Brunswick, Québec, Ontario, and Alberta, tree size, as measured by DBH, remains in the same general range. Therefore, we continue to find that the species that make up the private-origin standing timber in Nova Scotia are comparable to the species that comprise Crown-origin standing timber in New Brunswick, Québec, Ontario, and Alberta.

Comment 36: Whether to Adjust the Nova Scotia Benchmark to Account for Species Differences

*GOC’s Comments*¹⁰⁴⁷

- Purchasers of standing timber value different species differently, even those that are used to produce SPF lumber.
- Thus, if Commerce determines to continue to rely on a benchmark based on private-origin standing timber purchases in Nova Scotia, then it must adjust for differences in species.
- Pine and fir are not considered high-quality and cannot be used to produce the highest-value products in Nova Scotia.

¹⁰³⁸ See GOO IQR Response at 17 and Exhibit ON-TEN-33 and ON-TEN-38.

¹⁰³⁹ See GOQ IQR Response at 65-67.

¹⁰⁴⁰ *Id.* at 65.

¹⁰⁴¹ See GNB Stumpage IQR Response at Exhibit NB-AR2-Stump-1 at Table 5A.

¹⁰⁴² See GOQ IQR Response at Exhibit QC-Stump-13.

¹⁰⁴³ See GOO Stumpage IQR Response at Exhibit ON-STATS-1. The percentage is based on FY 2019-2020 data.

¹⁰⁴⁴ See GOA IQR Response at Exhibits AB-AR2-S-7 and AB-AR2-S-11.

¹⁰⁴⁵ See GNS IQR Response at 8.

¹⁰⁴⁶ See Final Calculation Memoranda for the three mandatory respondent companies and voluntary respondent, which identify the species of Crown-origin standing timber acquired during the POR.

¹⁰⁴⁷ See GOC Case Brief Volume I at 123-127.

- None of Nova Scotia’s principal sawmills that purchase and process sawlogs accept pine logs, and only certain sawmills accept a limited amount of fir.¹⁰⁴⁸
- Due to the limited value of pine and fir logs, Nova Scotia sawmills rely almost exclusively on spruce for their sawlog supply. The ability to rely exclusively on high-value spruce logs is a market condition unique to Nova Scotia mills.
- Thus, Commerce should not compare the respondents’ purchases of Crown-origin, non-spruce, species of standing timber to a benchmark comprised almost exclusively of spruce prices.
- To avoid a distorted outcome, Commerce should compare respondents’ purchases of Crown-origin fir and pine standing timber to a Nova Scotia benchmark comprised of studwood and pulpwood prices.¹⁰⁴⁹
- It is feasible for Commerce to make this adjustment because the respondents separately reported their spruce, pine, and fir Crown-origin purchases.
- Commerce’s practice is to adjust for prevailing market conditions when the information is available, and evidence exists that the market in question accounts for grade or product characteristics.¹⁰⁵⁰

Petitioner’s Rebuttal Comments

- According to the Canadian Parties, Commerce should adjust for supposed differences in values between species by comparing the respondents’ purchases of Crown-origin fir and pine timber to non-sawlog prices in Nova Scotia (*i.e.*, studwood and pulplog prices).
- Commerce has consistently rejected this argument.¹⁰⁵¹
- The Canadian Parties’ latest argument for a species adjustment relies on speculation and immaterial observations.
- The Provincial Governments treat all SPF species as a single group for purposes of setting Crown stumpage rates.¹⁰⁵²
- The ITC cited reports that found “WSPF {Western spruce-pine-fir}, ESPF {Eastern spruce-pine-fir} and SYP {Southern Yellow Pine} are basically interchangeable in terms of end-user application . . . All three products sell into Canada and the US for homebuilding, renovation and remodeling.”¹⁰⁵³
- Such facts support finding that SPF species are interchangeable and, thus, that no species adjustment to the Nova Scotia benchmark is required.

Commerce’s Position: As discussed elsewhere in this memorandum, we rejected the Canadian Parties’ argument that the species comprising their respective SPF categories are not comparable to the species comprising the SPF categories that grow in Nova Scotia. We note elsewhere in this memorandum that during the POR, SPF was the dominant coniferous species harvested by

¹⁰⁴⁸ See GOC Case Brief Volume 1 at 124 and Table 5 (citing GNS IQR Response at Exhibit NS-10 at 14, and Miller Report at Appendix 2 at 8).

¹⁰⁴⁹ In the absence of such an adjustment, the GOC argues that Commerce should reduce the distortions to the benefit calculation that results from species differences between Nova Scotia and the Canadian Provinces at issue by comparing respondents’ pine and fir Crown-origin standing timber purchases to a Nova Scotia benchmark comprised entirely of studwood prices, as Nova Scotia studmills accept more non-spruce species than do Nova Scotia sawmills.

¹⁰⁵⁰ See GOC Case Brief Volume I at 127 (citing *Pipe and Tube from Turkey 2017* IDM at Comment 1).

¹⁰⁵¹ See Petitioner Rebuttal Brief at 80 (citing *Lumber V AR1 Final* IDM at Comment 41).

¹⁰⁵² See Petitioner Rebuttal Brief at 80 (citing GNS IQR Response at 8, GOO IQR at ON-STUMP-70).

¹⁰⁵³ See Petitioner Rebuttal Brief at 81 (citing *ITC Softwood Lumber from Canada* at 38).

sawmills in Nova Scotia, New Brunswick, Québec, Ontario, and Alberta. For example, during the POR, SPF species accounted for 97.66 percent for New Brunswick,¹⁰⁵⁴ 99 percent for Québec,¹⁰⁵⁵ 96.1 percent for Ontario,¹⁰⁵⁶ 99.9 percent for Alberta,¹⁰⁵⁷ and in Nova Scotia SPF was “by far the predominant” species harvested.¹⁰⁵⁸ Data supplied by the three mandatory respondents and the sole voluntary respondent also indicate that SPF species represent the majority of the companies’ respective Crown timber harvest.¹⁰⁵⁹ Further, information from the GNS indicates that SPF species are “by far the predominant group of trees harvested in Nova Scotia.”¹⁰⁶⁰ Thus, the record demonstrates that SPF species are dominant in the Canadian provinces where Commerce seeks to measure the adequacy of remuneration and SPF dominates in the benchmark market of Nova Scotia.

As explained in this memorandum, we further find that these purported physical differences among species in the SPF category in Québec and Ontario are not reflected in how the Provincial Governments price Crown-origin standing timber. Specifically, we continue to find the GOO groups SPF species together when pricing Crown-origin standing timber and that the starting point of the GOQ’s species-specific prices for Crown-origin standing timber is a common SPF price to which the GOQ applies a species-species net revenue adjustment. Thus, we find that lack of differentiation in the treatment of SPF species in Québec and Ontario undercuts the Canadian Parties’ arguments that Commerce should adjust the Nova Scotia benchmark for SPF species downward to account for supposed differences that exist between SPF species in Nova Scotia and the two provinces.

Additionally, DBH is a key, standard metric utilized by the forest industry to evaluate quality and suitability of logs for use in softwood lumber production.¹⁰⁶¹ As explained in this memorandum and consistent with the prior review,¹⁰⁶² we find that despite variances among the species that comprise the SPF categories in Nova Scotia, Québec, Ontario, and Alberta, tree size, as measured by DBH, remains in the same general range among the provinces. Thus, any supposed differences that exist between the SPF species baskets in Québec, Ontario, and Alberta compared to Nova Scotia are not reflected the provinces’ respective average DBH measurements for SPF species.

We also disagree with the Canadian Parties’ argument that Commerce should adjust for the purported differences that exist between Nova Scotia SPF species and SPF species that grow in Québec, Ontario, and Alberta by comparing the respondents’ purchases of Crown-origin fir and pine timber to non-sawlog SPF prices in Nova Scotia (*i.e.*, studwood and pulplog prices). First, for the aforementioned reasons, we find no such adjustment is necessary. Secondly, Commerce has consistently rejected arguments to compare respondents’ purchases of Crown-origin sawable

¹⁰⁵⁴ See GNB Stumpage IQR Response at Exhibit NB-AR2-Stump-1 at Table 5A.

¹⁰⁵⁵ See GOQ IQR Response at Exhibit QC-Stump-13.

¹⁰⁵⁶ See GOO Stumpage IQR Response at Exhibit ON-STATS-1. The percentage is based on FY 2019-2020 data.

¹⁰⁵⁷ See GOA IQR Response at Exhibits AB-AR2-S-7 and AB-AR2-S-11.

¹⁰⁵⁸ See GNS IQR Response at 8.

¹⁰⁵⁹ See Final Calculation Memoranda for the three mandatory respondent companies and voluntary respondent, which identify the species of Crown-origin standing timber acquired during the POR.

¹⁰⁶⁰ See GNS IQR Response at 8.

¹⁰⁶¹ See, *e.g.*, *Lumber VARI Final IDM* at Comment 28.

¹⁰⁶² See *Lumber VARI Final IDM* at Comment 31.

timber (*e.g.*, sawlogs and studwood) to a benchmark comprised of non-sawable timber (*e.g.*, pulplogs that are used to make pulp). As Commerce has explained:

Consistent with the investigation, in this review, we instructed the respondent firms to report the volume and value of Crown-origin sawlogs that they purchased during the POR. Accordingly, we have used a benchmark that was similarly comprised of prices charged for standing saw timber in Nova Scotia. In this way, we ensure a comparison that consists solely of logs used by sawmills to make lumber. Thus, to include pulplogs into the Nova Scotia benchmark would create a mismatch between the respondents' reported sawable timber (exclusive of pulplogs) and a broader Nova Scotia benchmark including both sawable logs and pulplogs.¹⁰⁶³

The same remains true for this administrative review.

Comment 37: Whether Log Pricing Differences Between Nova Scotia and New Brunswick Require an Adjustment to the Nova Scotia Benchmark Utilized in JDIL's Stumpage Benefit Analysis

*GNB's Comments*¹⁰⁶⁴

- Commerce's refusal in the prior review to account for the presence of treelength rates was flawed, and Commerce should not use this finding as a basis to continue to deny making the necessary adjustments related to treelength pricing.¹⁰⁶⁵ The GNB's DNRED calculates a single treelength rate by determining Crown stumpage rates for products (saw log, studwood, pulp and roundwood biomass), and considering what percentage of a tree is expected to be constituted by each product.
- The treelength rates were not all the same during the POR, and reflected the product mix, tree size and age of the stands from which the trees were harvested.
- The GNB has submitted two declarations from DNRED officials further discussing the process for determining and applying treelength rates.¹⁰⁶⁶ These declarations address the proper comparison of product and treelength rates for Commerce to consider.
- Treelength rates the GNB charges for Crown-origin standing timber apply to the full tree when harvested and involve the application of a weighted combined price encompassing higher value saw log and studwood and lower value pulp/chips/biomass.
- Where there are product-specific stumpage rates, a different rate is applied to each part of the tree (*e.g.*, saw log, studwood, pulpwood). As a result, prices for product-specific stumpage for saw logs and studwood generally are higher than the treelength rate for a comparable stand and cannot be reasonably compared.
- The lower cost of pulp in New Brunswick causes the treelength rate to be lower than sawlogs rates. Thus, an apples-to-apples comparison would require a comparison of treelength-to-treelength rates, or product-to-product rates.

¹⁰⁶³ See *Lumber VARI Final IDM* at Comment 31.

¹⁰⁶⁴ See GNB Case Brief at 45-48.

¹⁰⁶⁵ See GNB Case Brief at 47 (citing *Lumber VARI Final IDM* at Comment 39).

¹⁰⁶⁶ See GNB Case Brief at 45 (citing GNB IQR Response at NB-AR2-STUMP-12 and GNB Factual Information to Measure the Adequacy of Remuneration at NB-AR2-BENCH-STUMP-5).

- Commerce acknowledged the differences of saw material versus full-tree material for New Brunswick in another context in the investigation where it found that figures calculated by JDIL included quantities for all inputs (including non-sawmill material) that are less expensive than softwood lumber inputs and that the inclusion of these items reduced the average unit value that JDIL reported for private-origin standing timber prices.¹⁰⁶⁷
- The GNB has provided information to assist Commerce carry out this benchmark adjustment on the basis for the two ratios used in treelength calculations which includes: (1) the percentage of the tree that is saw material (sawlog and studwood) versus the percentage that is pulpwood; and (2) the ratio of sawlogs to studwood.
- JDIL has also provided detailed information that allows Commerce to recognize and carry out this benchmark adjustment.

*JDIL's Comments*¹⁰⁶⁸

- At a treelength price, the purchaser pays the same unit price for primary parts of a tree (e.g., the pulplog, studwood log, and sawlog). At a product rate, the purchaser pays a unit price for specific portion of the tree.¹⁰⁶⁹
- JDIL purchased the large majority of its Crown-origin standing timber at treelength rates, while the company purchased private-origin standing timber entirely at product rates.
- Consequently, to ensure an appropriate comparison with JDIL's purchase of SPF stumpage from the GNB at treelength rates, the SPF benchmarks (at product rates) must be converted to treelength rates.
- Continuing to compare treelength rate unit prices to product rate unit prices results in a distortive benefit calculation.
- Commerce's practice is to adjust for prevailing market conditions when the information is available, and evidence exists that the market in question accounts for grade or product characteristics.¹⁰⁷⁰
- JDIL has provided worksheets demonstrating how to convert its private-origin standing timber purchases from Nova Scotia from product rates to treelength rates.¹⁰⁷¹ Specifically, JDIL used the GNB-approved SPF treelength calculation for Crown-origin purchases it made in connection with License #7 to convert its SPF purchases of private-origin standing timber from Nova Scotia from product rates to treelength rates.
- JDIL's purchases of standing timber from License #7 are comparable to the forest regions in New Brunswick and Nova Scotia.
- New information on the record of the current review should lead Commerce to reconsider its position regarding utilization rates for License #7 and the ratio of studwood and sawlog within a given treelength.
- There is no data available for logs harvested in Nova Scotia to permit JDIL to convert private-origin timber in Nova Scotia from product rates to treelength rates. That said, JDIL's method of using information from License #7 is a reasonable and conservative proxy because in Nova Scotia, a higher portion of the tree is typically used for pulpwood than in New Brunswick.¹⁰⁷²

¹⁰⁶⁷ See GNB Case Brief at 46-47 (citing *Lumber V Final IDM* at Comment 28).

¹⁰⁶⁸ See JDIL Case Brief at 16-23.

¹⁰⁶⁹ See JDIL Case Brief at 18.

¹⁰⁷⁰ See JDIL Case Brief at 19 (citing *HRS from India* at Comment 12).

¹⁰⁷¹ See JDIL Case Brief at 19 (citing JDIL Benchmark Submission at Exhibits BM-02A, BM-02B & BM-03).

¹⁰⁷² See JDIL Case Brief at 21 (citing JDIL Benchmark Submission at Exhibit BM-01).

Thus, using data from License #7, where more of the tree is used for saw material, yields higher stumpage rates than would the use of Nova Scotia data.

- Regarding Commerce’s second critique from the prior review of JDIL’s proposed adjustment, there is no recognized standard for distinguishing a sawlog portion of an SPF tree from the studwood portion.¹⁰⁷³
- JDIL disagrees with Commerce’s concerns regarding the GNB’s sawlog-studwood ratio calculations. The GNB’s Crown timber utilization standard recognizes that the “saw material” portion of an SPF tree typically has a diameter of 12 cm or higher. “Saw material” refers to both sawlogs and studwood. Thus, the GNB charges a blended saw material rate for Crown SPF stumpage: “to ensure the Province receives fair value for Crown SPF sawlogs and studwood – regardless of how individual mills utilize the sawable portion of the tree.”¹⁰⁷⁴
- JDIL has demonstrated the differences between standing timber priced on a product or treelength-basis. The failure to account for such differences distorts JDIL’s benefit calculation. Thus, Commerce should account for such pricing differences using the information supplied by JDIL and the GNB.

*Petitioner’s Rebuttal Comments*¹⁰⁷⁵

- The Canadian Parties have not placed any new information on the record concerning this issue; rather, they have merely reiterated their disagreement with Commerce’s approach from the prior review.¹⁰⁷⁶
- With respect to JDIL’s reliance on its tenure license data from New Brunswick rather than Nova Scotia, JDIL argues that it used License #7 treelength calculations because it was “unable to convert” logs harvested in Nova Scotia and, “nevertheless,” its License #7 treelength calculations are “conservative.”¹⁰⁷⁷ However, an incorrect estimate is still incorrect.
- Commerce has previously noted that JDIL, itself, offered the data for conversions of Crown-origin purchases it made in connection with License #7 in order to convert its SPF purchases of private-origin standing timber from Nova Scotia from product rates to treelength rates.¹⁰⁷⁸ Having offered this information, JDIL could also have provided data from its Nova Scotia stumpage purchases from private landowners, but it did not do so.
- The ratio of studwood and sawlogs proposed by JDIL of 61.19 percent for studwood and 38.81 percent for sawlog is based on the overall percentages of studwood timber and sawlog timber purchased in the province, not the ratio of such wood within a single treelength.¹⁰⁷⁹
- JDIL’s proposed ratios are not representative of the ratio of studwood to sawlog in a single treelength.¹⁰⁸⁰ JDIL does not deny this fact in its brief, instead arguing that “there is no recognized standard.”¹⁰⁸¹ Given this lack of information, applying a province-wide harvest ratio to one “treelength” is not more accurate than Commerce’s chosen methodology and would not result in an apples-to-apples comparison.

¹⁰⁷³ See JDIL Case Brief at 21 (citing JDIL Benchmark Submission at Exhibit BM-01).

¹⁰⁷⁴ *Id.* at 22 (citing JDIL Benchmark Submission at Exhibit BM-01).

¹⁰⁷⁵ See Petitioner Rebuttal Brief at 91-95.

¹⁰⁷⁶ *Id.* at 91 (citing *Lumber V ARI Final IDM* at Comment 39).

¹⁰⁷⁷ *Id.* at 91 (citing JDIL Case Brief at 20-21).

¹⁰⁷⁸ *Id.* at 92 (citing *Lumber V ARI Final IDM* at Comment 39).

¹⁰⁷⁹ *Id.* at 93 (citing JDIL IQR Response at Exhibit STUMP-13).

¹⁰⁸⁰ *Id.* at 93 (citing JDIL IQR Response at Exhibit STUMP-14).

¹⁰⁸¹ *Id.* at 93 (citing JDIL Case Brief at 21).

- The treelength rate proposed by the GNB is based on a commissioned study that was included in the GNB's initial questionnaire response.¹⁰⁸² This study, however, states there is no distinction between studwood and sawlogs in treelength classification.¹⁰⁸³
- Given the lack of distinction by the GNB itself, there is no reason for Commerce to depart from its benchmark calculation methodology to instead use an artificial calculation created by JDIL for purposes of this review.

Commerce's Position: In the *Lumber V AR2 Prelim Results* and prior review, we used JDIL's purchases of private-origin standing timber in Nova Scotia as the benchmark to determine whether JDIL purchased Crown-origin standing timber for LTAR. The GNB and JDIL argue that Commerce must adjust JDIL's stumpage benchmark downward because JDIL's stumpage benchmark reflects product-based stumpage prices, whereas JDIL's purchases of Crown-origin standing timber in New Brunswick reflect treelength-based prices. Consistent with the prior review, we continue to disagree that such an adjustment is warranted.¹⁰⁸⁴

We disagree with the GNB and JDIL that Commerce should make adjustments to the Nova Scotia benchmark utilized in JDIL's stumpage benefit analysis due to log pricing differences between Nova Scotia and New Brunswick because: (1) the conversion from product prices to treelength prices relies on information from one of JDIL's tenure licenses in New Brunswick rather than on data for private origin logs in Nova Scotia, as stated in the prior review; (2) the GNB's sawlog-studwood calculations rely in part on ratios that reflect the overall percentage of studwood timber and sawlog timber harvested in New Brunswick rather than on the ratio of studwood and sawlog within a given treelength, as stated in the prior review; and (3) neither JDIL nor the GNB have provided sufficient supporting documentation to establish that JDIL purchased private-origin standing timber in Nova Scotia at product rates.

We continue to disagree with JDIL's conversion from product prices to treelength prices as it relies on information from one of JDIL's tenure licenses in New Brunswick rather than on data for private origin logs in Nova Scotia. JDIL argues that Commerce's argument is unjustified as there is no data available for logs harvested in Nova Scotia to permit JDIL to convert private-origin timber in Nova Scotia from product rates to treelength rates. In addition, JDIL states that JDIL's method of using information from License #7 is a reasonable and conservative proxy because in Nova Scotia, a higher portion of the tree is typically used for pulpwood than in New Brunswick. Thus, JDIL argues that using data from License #7, where more of the tree is used for saw material, yields higher stumpage rates than would the use of Nova Scotia data.¹⁰⁸⁵ As stated elsewhere in this memorandum, however, Commerce continues to find that private standing timber prices in New Brunswick are distorted, and thus, are not suitable for use as tier-

¹⁰⁸² *Id.* at 94 (citing JDIL Case Brief at Exhibit NB-AR2-STUMP-9).

¹⁰⁸³ *Id.* at 95 (citing GNB IQR Response at Exhibit NB-AR2-STUMP-9 at 3, which contains a study entitled, "Assessment of Product Distribution in Tree Length Operations" that states: "... Note studwood and saw logs were combined into a single product ratio class... While there are apparent differences in product volumes and product ratios by License and Site, these may not materialize as differences in product distribution as a function of SBD or piece size, since these also vary by License and Site.").

¹⁰⁸⁴ See *Lumber V Final Results* at Comment 39.

¹⁰⁸⁵ See JDIL Case Brief at 21 (citing JDIL Benchmark Submission at Exhibit BM-01).

one benchmarks.¹⁰⁸⁶ As a result, relying on pricing information from one of JDIL's tenure licenses in New Brunswick would result in relying on benchmark information in a distorted market.

Regarding the GNB's sawlog-studwood ratio calculations, we continue to disagree with JDIL and the GNB that the conversion proposed is appropriate. Citing a declaration from Brent Thompson, JDIL's Director of Wood Procurement and Measurement for the Woodlands Division, JDIL states that "there is no recognized standard for distinguishing the sawlog portion of an SPF tree from the studwood portion."¹⁰⁸⁷ Thus, in the absence of a physical dividing line between sawlogs and studwood for SPF trees in the Province, Brent Thompson states that the GNB's calculation of the sawlog-studwood ratio is "a reasonable, accurate, and market-based approach" based on the volumes consumed by sawlog mills versus studwood mills.¹⁰⁸⁸ Further, the GNB cites the methodology and survey techniques employed from the 2013 FMV study from which the calculations derived including the DNRED's determination of the ratio of sawlogs to studwood, which was submitted by JDIL.¹⁰⁸⁹ Consequently, both JDIL and the GNB argue that using a benchmark for an SPF treelength rate, which incorporates lower-value pulpwood in the C\$/m³ price, is distortive whereas the calculation JDIL provides results in in a more accurate "apples-to-apples" comparison.¹⁰⁹⁰

We remain unpersuaded by these arguments from the JDIL and GNB. While both parties argue that the conversion of SPF benchmarks at product rates to treelength rates provides a more accurate comparison, the requisite calculation of a sawlog-studwood ratio in the absence of a physical dividing line between sawlogs and studwood results in a reliance on overall percentages of studwood timber and sawlog timber purchased in the province, not the ratio of such wood within a single treelength.¹⁰⁹¹ As a result, this broad calculation does not produce the "apples-to-apples" comparison described by both parties or sufficiently support the argument that the method proposed is more accurate than Commerce's current practice.

We also find that JDIL and the GNB have provided insufficient supporting documentation to establish that JDIL purchased private-origin standing timber in Nova Scotia at product rates. In its initial questionnaire response, JDIL added the field "rate type" in the stumpage data it reported to Commerce as part of its initial questionnaire response. For each private-origin standing timber transaction in Nova Scotia, JDIL reported that the price it paid was a product rate.¹⁰⁹² JDIL additionally responded to Commerce's supplemental questionnaire, which requested JDIL to provide purchase documentation for the five largest invoices (by volume) of treelength purchases from the GNB and what it stated were product-based purchases from private sellers in Nova Scotia. Both the GNB and JDIL also submitted information on the record

¹⁰⁸⁶ See Comment 14. (need to add later – Whether the Private Stumpage Market in New Brunswick is Distorted and Should be Used as Tier-One Benchmarks)

¹⁰⁸⁷ See JDIL Case Brief at 22 (citing JDIL Benchmark Submission at Exhibit BM-01 at 2-3).

¹⁰⁸⁸ *Id.*

¹⁰⁸⁹ See GNB Case Brief Volume 6 at 47 (citing JDIL Benchmark Submission at NB-AR2-BENCH-STUMP-5, Appendix B).

¹⁰⁹⁰ *Id.* at 45; see JDIL Case Brief at 18.

¹⁰⁹¹ See JDIL Case Brief at 21-22; see also JDIL Benchmark Submission at Exhibit BM-01; see also GNB IQR Response at Exhibit NB-AR2-STUMP-9.

¹⁰⁹² See JDIL Stumpage IQR Response at Exhibit STUMP-02.a, STUMP-02.b, and STUMP-02.c.

regarding JDIL's purchases of stumpage at product rates and treelength rates in their submissions of factual information to measure the adequacy of remuneration which included public declarations by officials and examples to assist Commerce calculate the benchmark using the method proposed by JDIL.¹⁰⁹³

Despite the numerous submissions, we find that the documentation submitted by the GNB and JDIL does not sufficiently establish that JDIL purchased private-origin standing timber in Nova Scotia at product rates. In a supplemental questionnaire, we instructed JDIL to:

Please provide the five largest invoices (by volume) for J.D. Irving's purchases of private-origin softwood standing timber that J.D. Irving that it bought on a product rate basis in Nova Scotia during the POR. In providing this information, please specify where the invoices indicate that the prices charged are product-based.¹⁰⁹⁴

In response, JDIL explained that during the POR, "Nova Scotian private woodlot owners did not issue invoices to J.D. Irving with line items for individual loads scaled at J.D. Irving's mill."¹⁰⁹⁵ Thus, in response to Commerce's question, JDIL provided the following for its five largest purchases of private-origin standing timber in Nova Scotia that it states it purchased on a product-rate basis:

(1) the transportation certificate; (2) the load slip (which is generated when the load is scaled at the mill); (3) the corresponding "tally" entry (which is generated by J.D. Irving Woodlands Division's information system to record the load data); and (4) J.D. Irving's contract with the private woodlot owner. We provide specific information with respect to each individual load below.¹⁰⁹⁶

The information in the transportation certificates, load slips, and tally entries identify these purchases as studwood "product."¹⁰⁹⁷ However, the documentation contained in the transportation certificates, load slips, and tally entries for JDIL's five largest purchases of Crown-origin standing timber that it reported as having purchased at treelength rates from GNB contain the same entries for purchases of studwood and sawlog "products."¹⁰⁹⁸ In other words, the transportation certificates, load slips, and tally entries that JDIL maintains for Crown-origin standing timber in New Brunswick that it purchased at treelength rates are characterized in the same way as the private-origin standing timber that JDIL states it purchased on a product-rate basis. In its supplemental questionnaire response, JDIL also provides the sales contracts that corresponded to its five largest purchases of private-origin standing timber that it claims it purchased at product rates.¹⁰⁹⁹ These contracts refer to prices for various timber "products" that

¹⁰⁹³ See JDIL Benchmark Submission; see also GNB Factual Information to Measure the Adequacy of Remuneration.

¹⁰⁹⁴ See JDIL Stumpage SQ on Treelength and Product Rates at 3.

¹⁰⁹⁵ See JDIL Stumpage SQR Response on Treelength and Product Rates at 7.

¹⁰⁹⁶ See JDIL Stumpage SQR Response on Treelength and Product Rates at 7.

¹⁰⁹⁷ See JDIL Stumpage SQR Response on Treelength and Product Rates at Exhibit Supp-3.

¹⁰⁹⁸ See JDIL Stumpage SQR Response on Treelength and Product Rates at Exhibit Supp-1.

¹⁰⁹⁹ See JDIL Stumpage SQR Response on Treelength and Product Rates at Exhibit Supp-3.

include sawlogs and studwood.¹¹⁰⁰ We find the wording in the contracts supplied by JDIL similarly do not sufficiently demonstrate that JDIL purchased private-origin standing timber in Nova Scotia at product rates, particularly when considered alongside other information on the record of the review.

For example, evidence on the record indicates that harvesters of private-origin standing timber in Nova Scotia use the terms studwood and sawlog to refer to whole trees. As stated elsewhere in this memorandum, a declaration from an official from Harry Free & Son Ltd., one of only four sawmill operators in Nova Scotia that acquired more than 200,000 cubic meters of timber during the POR, states:

Concluding the transaction requires that the buyer and seller come to an agreement as to what product has been harvested. That is: whether the felled tree is classified as a sawlog or studwood log, or pulpwood. This information is maintained on cutting slips, invoices, truck slips, or the like, depending on the harvester's practice or the mill's requirements.¹¹⁰¹

The use of the terms sawlog, studwood, and pulpwood, to refer to whole, "felled trees," as described by the official from Harry Free & Son Ltd., tracks how the GNS utilizes the terms in the surveys that the GNS commissions on the prices for private-origin standing timber in Nova Scotia.¹¹⁰² Thus, while JDIL argues that the contracts it submitted indicate that it purchased private-origin timber in Nova Scotia at product rates, we find a single reference to rates charged for timber "products" does not definitively demonstrate that JDIL purchased private-origin standing in Nova Scotia at product rates, particularly when considered alongside the other record information indicating how private-origin standing timber is purchased in the Nova Scotia.

Comment 38: Whether Commerce Should Adjust the Nova Scotia Benchmark for Regional Price Disparities Within Nova Scotia

*GOC's Comments*¹¹⁰³

- The 2017-18 Nova Scotia Private Market Survey "employed a methodology whereby the survey data were rescaled so the adjusted sample quantity would match the actual harvest volumes from the 2017 Registry of Buyers Report" because "the survey volumes were not a constant share of the total actual harvest volumes in Nova Scotia's three regions..."¹¹⁰⁴
- Because the 2017-18 Private Market Survey rescaled the raw survey data to match the actual harvest volume in Nova Scotia, it was able to control for the regional price differences across Nova Scotia.
- To reproduce the survey results that the GNS allegedly uses in the ordinary course of business, Commerce must also adjust for these regional differences. Specifically, using information

¹¹⁰⁰ See JDIL Stumpage SQR Response on Treelength and Product Rates at Exhibit Supp-3.

¹¹⁰¹ See Comment 29 (need to add later – Whether to Revise the Conversion Factor Used in Calculation of the Nova Scotia Benchmark); see also Petitioner Comments on IQR Responses at Volume I-25, which contains the affidavit of Richard Freeman, co-owner of Harry Freeman & Son).

¹¹⁰² See, e.g., GNS IQR Response at NS-18, which contain the instructions provided to respondents to the 2017-2018 Private Market Survey.

¹¹⁰³ See GOC Case Brief Volume I at 137-139.

¹¹⁰⁴ See GOC Case Brief Volume I at 137 (citing GNS IQR Response at Exhibit NS-6B at 7).

available on the record, Commerce should reweight the monthly prices for each region, as contained in the 2017-2018 Private Market Survey, based on the actual harvest volumes recorded for each region in the GNS's Registry of Buyers.

- The prices of private-origin standing timber in Nova Scotia vary significantly across Nova Scotia's three regions.¹¹⁰⁵ Therefore, it is important that Commerce adjust the prices in the 2017-2018 Private Market Survey to reflect this reality in a manner similar to the adjustment made by the authors of the 2017-2018 Private Market Survey.
- It would be anomalous for Commerce to continue to use the prices in the 2017-2018 Private Market for purposes of the Nova Scotia Benchmark but disregard the weighting adjustment the authors of the survey made to account for regional price differences.

*Petitioner's Rebuttal Comments*¹¹⁰⁶

- Commerce has previously rejected the Canadian Parties' request for adjustments to account for purported regional disparities, among others, finding that a "pure" stumpage-to-stumpage comparison does not require adjustments that would result in a less accurate calculation.¹¹⁰⁷

Commerce's Position: As background, Deloitte weighted the survey data that comprised the 2015-2016 Private Market Survey using a methodology that differed from the GNS's preferred weighting methodology.¹¹⁰⁸ In the *Lumber V Final*, Commerce relied on unweighted, raw survey data from the 2015-2016 Private Market Survey to derive the Nova Scotia benchmark. In producing the 2017-2018 Private Market Survey, Deloitte revised its weighting methodology to reflect the GNS's preferred weighting method.¹¹⁰⁹ In first review, Commerce requested and utilized the underlying, raw data that comprised the 2017-2018 Private Market Survey as the basis of the Nova Scotia benchmark. These datapoints were unweighted.¹¹¹⁰ In the current review, Commerce again utilized the underlying, raw data comprising the 2017-2018 Private Market Survey and used that dataset to derive the Nova Scotia Benchmark.¹¹¹¹ Further, in this review, our raw data set continues to lack the county-level information that Deloitte used to perform its weighting calculation that followed the GNS's preferred weighting method.¹¹¹²

The Canadian Parties argue that Commerce should strive to recreate the weighting methodology that Deloitte used when calculating the annual weighted-average prices for private-origin standing timber that are listed in the 2017-2018 Private Market Survey. We do not disagree with that argument. However, the fact remains that the county-level data required to recreate Deloitte's weighting methodology are not on the record. The Canadian Parties further argue that, absent such data, Commerce should attempt to approximate Deloitte's weighting method using annual harvest data, by region, as contained in the Registry of Buyers. We find there is not sufficient information on the record to demonstrate that an approximation of Deloitte's weighting method that lacks county-level information and is based solely on annual harvest volumes for Nova Scotia's three regions will result in monthly benchmarks, by species and timber product,

¹¹⁰⁵ See GOC Case Brief at 138, Table 9.

¹¹⁰⁶ See Petitioner Rebuttal Brief at 62-65.

¹¹⁰⁷ See Petitioner Rebuttal Brief at 64 (citing *Lumber V AR1 Final IDM* at Comment 43).

¹¹⁰⁸ See Petitioner Comments on IQR Responses at Volume I-25, Exhibit 1.

¹¹⁰⁹ *Id.*

¹¹¹⁰ See *Lumber V AR1 Final IDM* at Comment 29; see also GNS IQR Response at Exhibit 5B.

¹¹¹¹ See, e.g., Resolute Preliminary Calculation Memorandum; see also GNS IQR Response at Exhibit 5B.

¹¹¹² See GNS IQR Response at Exhibit 5B.

that is more accurate than the monthly benchmarks, by species and timber product, that Commerce derived using the raw survey data. On this point, we further note that the 2017-2018 Private Market Survey states:

On a regional basis when compared to the private land tenure reported in the 2017 Registry of Buyers Report, the survey coverage of the Western region accounted for 32% of the total volume of private land timber harvested in that region, the Central region accounted for 46%, and the Eastern region accounted for 22%. This regional dispersion of volume reported in the survey generally tracks the private land harvest reported in the Registry of Buyers Report.¹¹¹³

Thus, because we lack the data needed to recreate Deloitte's weighting methodology and because the "regional dispersion of volume" reported in the 2017-2018 Private Market Survey "generally tracks" the regional private land harvest reported Registry of Buyers Report, we find it is better to use the unweighted, raw data from the 2017-2018 Private Market Survey as the basis of the Nova Scotia benchmark for purposes of these final results.

Comment 39: Whether Private Standing Timber Prices in Nova Scotia Are Available in the Provinces at Issue

*GOC's Comments*¹¹¹⁴

- Transactions involving standing timber on private lands in Nova Scotia, even if accurately surveyed, are not comparable to transactions in Alberta, Ontario, and Québec and do not reflect the prevailing market conditions under which the respondents purchased standing timber from those provinces.
- For programs alleged to provide a subsidy through government provision of goods, section 771(5)(E) of the Act allows Commerce to find that a benefit is conferred if the government goods are provided for LTAR.
- Commerce's benchmark hierarchy expresses a preference for benchmark prices that actual transactions in the country in question, which is commonly referred to as a tier-one price.
- Commerce characterizes private-origin standing timber from Nova Scotia as tier-one prices. However, such Nova Scotia prices are not available to the respondents who purchased Crown-origin standing timber in Alberta, Ontario, and Québec. Further, the use of the Nova Scotia prices as a benchmark for government prices in Alberta, Ontario, and Québec contravene the statutory requirement that "adequacy of remuneration shall be determined in relation to prevailing market conditions."¹¹¹⁵
- Section 351.511(a)(2) of Commerce's regulations requires that Commerce select a benchmark the respondent paid or would pay, including delivery charges.
- Standing timber is rooted into the ground, however, so it cannot be transported between markets as standing timber and a delivered price cannot be calculated.
- Because a delivered price cannot be calculated, prices for standing timber in Nova Scotia cannot reflect prices that firms would pay for standing timber in other provinces and so cannot constitute a tier-one benchmark for standing timber in those provinces. A NAFTA Panel

¹¹¹³ *Id.* at Exhibit 6B at 6.

¹¹¹⁴ See GOC Case Brief Volume 1 at 24-33.

¹¹¹⁵ See GOC Case Brief Volume I at 26 (citing section 771(5)(E)(iv) of the Act).

acknowledged this very point as part of the *Lumber IV* proceeding as did the WTO in *DS 533*.¹¹¹⁶

- Once the timber is removed from the stump, it ceases to be “standing” and becomes a collection of logs (the intermediate products between standing timber), lumber, and other products. Although neither harvested nor delivered logs are the relevant government-provided good, even they have almost no availability to markets outside of Nova Scotia because of Nova Scotia-specific log movement restrictions and high transportation costs due to the logs’ low value relative to their size and weight. These high costs cut off availability of Nova Scotia timber to those other provinces and forecloses the possibility of Nova Scotia prices acting as a first-tier benchmark.
- Commerce has previously determined that transportation challenges resulting in an electricity benchmark price being unavailable to respondents precludes that price as a tier-one benchmark.¹¹¹⁷
- In prior segments of the lumber proceeding, Commerce as attempted to distinguish its finding in the *SC Paper from Canada Final* by arguing that standing timber, unlike electricity, is not dependent upon a single means of purchase and transport that causes its price to inflate.¹¹¹⁸
- Yet, standing timber, the good at issue, like electricity cannot be transported. Even if one considers logs to be the relevant point of comparison, aside from the inter-provisional shipments of logs from Nova Scotia to the adjacent province of New Brunswick, there is no evidence that logs from Nova Scotia were transported to Québec, Ontario, or Alberta. Further, even the inter-provisional shipments between Nova Scotia and New Brunswick are limited in number.¹¹¹⁹
- Further, the costs to transport sawlogs from Nova Scotia to Alberta would exceed the cost of the log itself.
- Commerce has previously determined in *Uncoated Paper from Indonesia* that standing timber is not traded across borders and not suitable as a tier-two benchmark.¹¹²⁰

*GOO’s Comments*¹¹²¹

- To use Nova Scotia standing timber prices as the benchmark for Crown-origin standing timber prices is to treat Canada as a single stumpage market. However, Commerce’s analysis in the *Lumber V AR2 Prelim* treats each provincial stumpage system and market separately.
- Commerce’s individual examination of each provincial stumpage market should compel Commerce to utilize a standing timber benchmark that accurately reflects each province’s market condition, starting with benchmarks that are available in Ontario.
- If Commerce continues to use a standing timber price from outside of Ontario as the Ontario benchmark, then it should utilize auction prices from the GOQ’s auction system as the benchmark as they are more reflective of Ontario’s market conditions than standing timber prices in Nova Scotia.

¹¹¹⁶ See GOC Case Brief Volume I at 27-28 (citing *Lumber IV NAFTA Panel Decision* at 29 and *DS 533* at paragraphs 7.38 and 7.40).

¹¹¹⁷ See GOC Case Brief Volume I at 29 (citing *SC Paper from Canada Final* IDM at 41-42).

¹¹¹⁸ *Id.* at 29 (citing *Lumber V AR1 Final* IDM at Comment 25).

¹¹¹⁹ *Id.* at 31 (citing JDIL Stumpage IQR Response at Exhibit Stump-02.E).

¹¹²⁰ *Id.* at 32 (citing *Uncoated Paper from Indonesia* IDM at 14).

¹¹²¹ See GOO Case Brief Volume 7 Part 1 at 30-36.

*GOA's Comments*¹¹²²

- The MNP Cross Border Report establishes several reasons why standing timber in Nova Scotia is not available in Alberta.¹¹²³

*Petitioner's Rebuttal Comments*¹¹²⁴

- The Canadian Parties ignore the plain language of the statute, which states:

{T}he adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review.

- Under U.S. law, no clause, sentence, or word, namely “country,” is superfluous. Thus, Commerce’s regulations under 19 CFR 351.511(a)(2)(i) make clear that the tier-one benchmark at issue requires “actual transactions in the country in question.”
- As Commerce explained in the prior review, Nova Scotia is a political subdivision in the country of Canada, and Canada is the foreign country that is the subject of the *Lumber V* proceeding.¹¹²⁵ As such, the Canadian Parties’ arguments fail as a matter of U.S. law.
- Commerce previously distinguished the *SC Paper from Canada Final* from the instant proceeding when it found that standing timber, unlike electricity, is not transmitted exclusively through dedicated power transmission corridors but is available for sale across provincial borders to any willing buyer, such as sales from Nova Scotia to New Brunswick.¹¹²⁶
- The GNS reported that 28 percent of private-origin wood is sold to processing facilities outside of Nova Scotia.¹¹²⁷
- In contrast, the GOA, GOO, and GOQ impose strict limitations on the ability of purchasers of standing timber to process standing timber outside of the respective provinces.
- Commerce has previously found that land prices from one part of a country, such as Turkey, may be used as a benchmark to measure government land sales in another part of the country.¹¹²⁸ Land, like standing timber, is rooted in the ground.

Commerce’s Position: We find that the Canadian Parties have not raised any arguments that warrant a change in Commerce’s finding that stumpage prices for private-origin standing timber in Nova Scotia constitute prices that are inside the “country that is subject to the investigation” and, therefore, may serve as a tier-one benchmark under 19 CFR 351.511(a)(2)(i).¹¹²⁹ Section 771(5)(E)(iv) of the Act expressly provides that Commerce must determine the adequacy of remuneration “in relation to prevailing market conditions for the good . . . being provided. . . in the country which is subject to the investigation or review.” Under section 771(3) of the Act, the term “country” means a “foreign country, a political sub-division, dependent territory, or

¹¹²² See GOA Case Brief Volume 4.A at 62-64.

¹¹²³ See GOA Case Brief Volume 4.A at 63 (citing MNP Report at Volumes I-III and GNS IQR Response at Exhibit NS-10, which indicates that no Nova Scotia logs were exported to Alberta).

¹¹²⁴ See Petitioner Rebuttal Brief at 36-41.

¹¹²⁵ See Petitioner Rebuttal Brief at 38 (citing *Lumber V ARI Final IDM* at Comment 25).

¹¹²⁶ See Petitioner Rebuttal Brief at 38 (citing *Lumber V ARI Final IDM* at Comment 25).

¹¹²⁷ See Petitioner Rebuttal Brief at 39 (citing GNS IQR Response at Exhibit NS-20).

¹¹²⁸ See Petitioner Rebuttal Brief at 38 (citing *Lumber V ARI Final IDM* at Comment 25 and *2010 Review of CWP from Turkey IDM* at Comment 4).

¹¹²⁹ See *Lumber V ARI Final IDM* at Comment 25.

possession of a foreign country . . .” Commerce has previously found the inclusion of “political subdivision” within the definition of the term “country” ensures that Commerce may investigate subsidies granted by sub-federal level government entities and ensures that those governments qualify as interested parties under the statute.¹¹³⁰ In other words, an examination of subsidies granted by the government of the exporting country includes subsidies granted by sub-federal governmental authorities.

Furthermore, 19 CFR 351.511(a)(2)(i) provides that Commerce “will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question,” *i.e.*, a tier-one benchmark. Thus, under our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the “country” under investigation. The province of Nova Scotia is a “political subdivision” located within the “country” of Canada, and Canada is the “foreign country” that is subject to the instant CVD administrative review. Thus, we find that under the statute and Commerce’s regulations, we are not precluded from using prices for private-origin standing timber in Nova Scotia as a tier-one benchmark when analyzing whether the various provincial governments at issue sold Crown-origin standing timber for LTAR during the POR.

Regarding the Canadian Parties’ reliance on *SC Paper from Canada Final*, we continue to disagree that the *SC Paper from Canada* electricity finding should be used as a precedent to calculate stumpage subsidies in this proceeding. As an initial matter, stumpage is a different type of good from electricity. The purchase and transport of standing timber within Canada is not dependent upon a single, limited, means, which contrasts with the facts considered in *SC Paper from Canada* involving dedicated power transmission corridors, and, thus, it is possible for standing timber to be sold across provincial borders.¹¹³¹ Electricity transmitted over long distances also suffers from line losses which greatly inflate the electricity’s price.¹¹³² Thus, an end user of electricity in Nova Scotia has no way of buying electricity from other provinces without actual electricity power transmission corridors. The record evidence in the *SC Paper from Canada Final* showed that Nova Scotia’s sole inter-provincial electricity transmission connection was with New Brunswick.¹¹³³ Therefore, in the *SC Paper from Canada Final*, we did not use electricity prices from Alberta. Further, the electricity data from Alberta were not, in fact, based on actual transactions under 19 CFR 351.511(a)(2)(i). Rather, it was constructed based on existing tariffs in Alberta as if Port Hawkesbury operated in that province.¹¹³⁴

The Nova Scotia stumpage data in this proceeding, unlike the hypothetical Alberta benchmark in *SC Paper from Canada*, are actual transactions. Further, the market for stumpage is not limited to each province or region. The purchase of standing timber within Canada is not dependent upon a single, limited, means, which contrasts with the facts considered in *SC Paper from Canada* involving dedicated power transmission corridors, and, thus, it is possible for standing timber to be sold across provincial or regional borders. A lumber producer is free to purchase

¹¹³⁰ See *Lumber IV Final Results of 1st AR* IDM at Comment 35; see also *Lumber V AR1 Final* IDM at Comment 25.

¹¹³¹ See *SC Paper from Canada Final* IDM at 41 – 42 and 128– 130.

¹¹³² See *SC Paper from Canada Final* IDM at 41 – 42 and 128– 130.

¹¹³³ See *SC Paper from Canada Final* IDM at 41 – 42 and 128– 130.

¹¹³⁴ See *SC Paper from Canada Final* IDM at 41 – 42 and 128– 130.

stumpage across provincial boards or regions. Indeed, evidence on the record indicates that New Brunswick-based JDIL purchased standing timber in Nova Scotia.¹¹³⁵

Stumpage, akin to land, are both rooted in the ground, and an end user is free to purchase the good across provincial or regional borders. In the *2010 Review of CWP from Turkey*, Commerce used industrial land prices across Turkey as benchmarks to calculate the benefit conferred by a land for LTAR program.¹¹³⁶

We also continue to disagree that *Uncoated Paper from Indonesia* should lead Commerce to conclude that private-origin standing timber from Nova Scotia is not a good that is available to the respondents subject to this review and, thus, may not serve as a viable stumpage benchmark. In *Uncoated Paper from Indonesia*, Commerce determined that prices for standing timber that originated outside of Indonesia could not serve as a stumpage benchmark at all because it was not available to firms inside Indonesia.¹¹³⁷ Thus, Commerce's decision on that particular matter did not address the viability of stumpage prices from inside the borders of Indonesia. As such, we find that the facts of *Uncoated Paper from Indonesia* are distinct from the facts concerning the Nova Scotia-based stumpage benchmark, which is completely comprised of stumpage prices from inside Canada.

Furthermore, as discussed elsewhere in this memorandum, the Canadian parties' reliance on the decisions in *Lumber IV NAFTA Panel Decision* are unavailing, as the record evidence in this review stands on its own. Likewise, as discussed, WTO panel and Appellate Body conclusions are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.¹¹³⁸ Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel or Appellate Body dispute reports limit automatically Commerce's discretion in applying the statute in an AD or CVD proceeding.¹¹³⁹ Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."¹¹⁴⁰

Having determined that stumpage prices for private-origin standing timber in Nova Scotia constitute prices from within the "country" of provision, Commerce examined whether such prices are comparable as discussed under 19 CFR 351.511(a)(2)(i). As discussed elsewhere in this memorandum, we continue to find that private-origin standing timber in Nova Scotia is comparable to the Crown-origin timber sold in the provinces at issue and that the prices for Nova Scotia timber, as contained in the 2017-2018 Private Market Survey, constitute a reliable data source to serve as a tier-one benchmark.

¹¹³⁵ See JDIL Final Calculation Memorandum, where the calculations for JDIL's stumpage benefit indicates that it purchased standing timber from Nova Scotia.

¹¹³⁶ See *2010 Review of CWP from Turkey* IDM at Comment 4.

¹¹³⁷ See *2010 Review of CWP from Turkey* IDM at Comment 4.

¹¹³⁸ See *Corus Staal BV v. U.S.*, 395 F. 3d 1347-49, accord *Corus Staal BV v. U.S.*, 502 F. 3d 1375; and *NSK Ltd. v. U.S.*, 510 F. 3d 1379-80.

¹¹³⁹ See 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

¹¹⁴⁰ See SAA at 659.

Comment 40: Whether the Tree Size in Nova Scotia, as Measured by Diameter, Is Comparable to Tree Size in Québec, Ontario, and Alberta

*GOC's Comments*¹¹⁴¹

- The DBH of a standing tree does not directly translate into a measure of the diameter of the logs that may be harvested from that tree, as other physical characteristics such as height, taper, bark thickness, etc., impact a tree's value.
- Thus, a comparison of average DBH across provinces provides only incomplete evidence at best as to the comparability of trees across provinces.
- Commerce based its LTAR benefit calculations on Crown-origin standing timber used to make softwood lumber. However, when Commerce assessed the comparability of timber sizes, it compared data sets that have no relation to Crown-origin standing timber that was harvested to make softwood lumber.
- For example, Commerce's size analysis for Québec used Crown-origin standing timber in Québec's tariffing zones compared to all Nova Scotia standing timber with a DBH greater than 9 cm. Commerce's size analysis for Ontario used Crown-origin standing timber in Québec tariffing zones that border Ontario compared to all Nova Scotia standing timber with a DBH greater than 9 cm. Commerce's size analysis for Alberta used harvested timber in Alberta compared to standing timber harvested in New Brunswick.
- For Commerce to ensure that it compares prices for standing timber of comparable size, it needs to match the products compared across provinces to the sizes of the timber compared across provinces. On the Nova Scotia side of the comparison, this means that Commerce should have looked at information about the size of timber that produced the sawlogs and studwood from which it derived its benchmarks.
- In the *Lumber V AR2 Prelim*, however, Commerce relied on information about timber size in Nova Scotia that has no relationship to the size of the timber underlying the Nova Scotia benchmarks.
- Specifically, Commerce should have examined the size of the Nova Scotia harvested sawtimber (e.g., sawlogs and studwood) included in the 2017-2018 Private Market Survey on which the benchmarks are based. Instead, Commerce relied on DBH data from the GNS reflecting merchantable standing timber with a DBH greater than 9 cm. The average DBH of merchantable timber, which includes non-sawable products, is necessarily smaller than the DBH of harvested standing saw timber.
- Thus, the 15.64 cm DBH for Nova Scotia cited by Commerce in the *Lumber V AR2 Prelim* understates the actual average DBH of trees underlying the Nova Scotia benchmark.
- Commerce relied on an inconsistent mix of datasets to determine the DBH of standing timber in Québec, Ontario, and Alberta.
- Commerce dismissed evidence of the average diameter of logs in Ontario and, instead, used the DBH of unharvested timber in adjacent tariffing zones in Québec as a proxy for the DBH of Crown-origin standing timber in Ontario, a comparison that says nothing of the comparability of the DBH of sawlogs and studwood in Nova Scotia to the DBH of Crown-origin standing timber in Ontario.
- Similarly, Commerce compared the DBH of harvested standing timber in Alberta to the DBH of harvested timber in New Brunswick to argue that the DBH of harvested timber in Nova

¹¹⁴¹ See GOC Case Brief Volume I at 61 to 68.

Scotia is comparable to that of Alberta. However, this comparison fails to compare the relevant jurisdictions (Nova Scotia and Alberta) or timber (*i.e.*, harvested standing timber that produces sawlog or studwood grade logs).

- Commerce’s DBH analysis improperly relies on *ad hoc* comparisons that are inaccurate and constitutes a flawed analysis that fails to demonstrate that Nova Scotia standing timber that is harvested to make lumber is comparable to Crown-origin standing timber in Québec, Ontario, and Alberta.
- Nova Scotia’s Acadian forest produces larger logs than trees in the other provinces’ boreal forests. A USDA study found that the average small-end diameter of sawlogs in the Maritimes was 9.9 inches, which was 3.7 inches larger than the small-end diameter of logs in Québec, Ontario, and Alberta.¹¹⁴²
- Information from the petitioner indicates that the dollar amount for a log significantly increases over the range of sizes from small-end diameter logs of 6.2 inches to 9.9 inches.¹¹⁴³

*GOA’s Comments*¹¹⁴⁴

- Commerce preliminarily determined that the DBH of standing timber in Alberta is comparable to the DBH of standing timber in Nova Scotia. In making its determination, Commerce deemed it reasonable to use the DBH of New Brunswick harvested timber as a proxy for the DBH of Nova Scotia harvested timber “{b}ecause Nova Scotia and New Brunswick are contiguous.”¹¹⁴⁵
- However, the DBH of New Brunswick’s harvest does not provide evidence as to the comparability the Nova Scotia private woodlot transactions captured in the *2017-2018 Private Stumpage Survey* to timber harvested from Alberta’s Crown forests.
- Commerce may not engage in “speculation” or “mere assumptions,” nor make its determinations “on the basis of mere conjecture or supposition.”¹¹⁴⁶
- Accordingly, in the final results, Commerce must reconsider its inappropriate use of a proxy DBH and identify *actual* record evidence to support its conclusion that Alberta and Nova Scotia standing timber are comparable in size.

*Petitioner’s Rebuttal Comments*¹¹⁴⁷

- The Supreme Court of the United States has granted Commerce broad discretion to determine the relevant “factors affecting comparability” when identifying and calculating a benchmark as the implementing agency of the Act.¹¹⁴⁸
- In the *Lumber V AR2 Prelim*, Commerce utilized DBH, which is a “commonly utilized metric in the forest industry,”¹¹⁴⁹ to determine the comparability of private-origin standing timber in Nova Scotia to Crown-origin standing timber in Québec, Ontario, and Alberta.

¹¹⁴² See GOC Case Brief Volume I at 67 (citing GOC IQR Response at Exhibit GOC-AR2-STUMP-100 at 5).

¹¹⁴³ See GOC Case Brief Volume I at 68, Figure 3 (citing Petitioner Comments on IQR Responses at Volume I-30 at 13).

¹¹⁴⁴ See GOA Case Brief Volume 4.A at 57-59.

¹¹⁴⁵ See GOA Case Brief Volume 4.A at 57 (citing *Lumber V Prelim PDM* at 25).

¹¹⁴⁶ See GOA Case Brief Volume 4.A at 5 (citing *LMI-La Metalli Indus.*, 912 F.2d at 460).

¹¹⁴⁷ See Petitioner Case Brief 29 to 36.

¹¹⁴⁸ See Petitioner Rebuttal Brief at 29 (citing *Eurodif*, 555 U.S. at 305).

¹¹⁴⁹ See Petitioner Rebuttal Brief at 29 (citing Marshall Report at 11).

- The Canadian Parties claim Commerce dismissed evidence of the average diameter of logs in Ontario. However, it was the GOO that failed to provide Commerce with DBH information, even though the GOO was able to do so in the investigation.¹¹⁵⁰
- Further, when asked by Commerce, Resolute was also unable to provide information regarding the DBH of the Crown-origin standing timber it harvested in Ontario and Québec during the POR.¹¹⁵¹
- Therefore, in the absence of the requested information and in accordance with section 776(a) of the Act, Commerce reasonably relied on facts otherwise available (e.g., the average DBH of Crown-origin timber in the Québec tariffing zones that are adjacent to Ontario) to determine that the DBH of Ontario’s Crown-origin standing timber is comparable to the DBH of private-origin trees in Nova Scotia.¹¹⁵²
- The Canadian Parties have not challenged the comparability of timber in that province with Nova Scotia nor have they challenged that New Brunswick and Nova Scotia are adjacent and part of the Arcadian forest.
- The GNB provided information indicating the optimal DBH of SPF standing timber from private woodlots in New Brunswick was 20.32 to 27.94 cm and that the average DBH of sawable standing timber was approximately 22 cm. Thus, Commerce reasonably determined that the DBH data from New Brunswick may serve as a proxy for the DBH of harvested private-origin standing timber in Nova Scotia.
- For Québec, Commerce relied on information from the GOQ demonstrating that it measures DBH in the Crown forest using a merchantable timber standard that is defined by a minimum DBH of 9 cm.
- Further, using information from the GOQ and Resolute, Commerce determined that the DBH of Crown-origin, SPFL standing timber ranges from 15.2 to 28.7 cm and the average DBH of SPF-L Crown-origin standing timber in the tariffing zones where Resolute harvested during the POR was approximately 15.98 cm.
- The Marshall Report reflects the same DBH measurements.¹¹⁵³
- The evidence Commerce relied upon in the *Preliminary Results* directly rebuts the Canadian Parties’ flawed arguments that Commerce’s DBH analysis compared data sets that have no relation to the Crown-origin timber in Québec and harvested by Resolute.
- Concerning Alberta, Commerce correctly declined to rely on the “QMD-based forest inventory measure” from the GOA because the GOA stated in its questionnaire response that DBH and QMD target different tree populations and are “not comparable” and because “QMD is not used for scaling purposes or to measure harvested timber” and “has no effect on stumpage rate calculations” in Alberta.¹¹⁵⁴
- Commerce correctly compared the GOA’s DBH data for harvested trees in Alberta contained in the MNP Cross Border Report, which includes DBH data from Canfor and West Fraser, to DBH data for private-origin harvested trees in New Brunswick, which Commerce used as a proxy for the DBH of harvested trees in Nova Scotia.

¹¹⁵⁰ See Petitioner Rebuttal Brief at 30 (citing *Lumber V Final* IDM at Comment 40, in which the GOO reported that the DBH of SPF logs destined to sawmills and pulpmills in 2015 was 15.32 cm).

¹¹⁵¹ See Petitioner Rebuttal Brief at 30 (citing Resolute Stumpage SQR1 at 2).

¹¹⁵² See Petitioner Rebuttal Brief at 30 (citing *Lumber V Prelim* PDM at 26).

¹¹⁵³ See Petitioner Rebuttal Brief at 32 (citing Marshall Report at 27 and Figure 4).

¹¹⁵⁴ See Petitioner Rebuttal Brief at 33 (citing GOA IQR Response at 39-40).

- Contrary to the Canadian Parties' claims, the DBH in the MNP Cross Border Report of 21.9 cm for all harvested Crown-origin timber in Alberta is directly comparable to the DBH data verified by Commerce in the investigation:

We observed GNS staff perform a query of the database of the average DBH for SPF crown and private trees in the province. . . The DBH for trees harvested in private lands matched the figure (15.90 cm) reported in the minor corrections exhibit.¹¹⁵⁵

- Further, the DBH measurement of 21.9 cm from the MNP Cross Border Report is comparable to the 22 cm DBH for harvested, private-origin SPF standing timber in New Brunswick, which Commerce reasonably used as a proxy for harvested, private-origin, SPF standing timber in Nova Scotia.
- Lastly, information from, "Data Collection Related to the U.S. Softwood Lumber Industry: Sources and Methods," a study submitted by the GOC, indicates that the average diameter of SPF trees harvested in Maine, which is also part of the Arcadian forest, is 20.6 cm and, thus, provides additional evidence that the DBH of harvested standing timber in the Arcadian forest, which includes Nova Scotia, is comparable to the DBH of harvested standing timber in Alberta.¹¹⁵⁶

Commerce's Position: We disagree with the Canadian Parties' claim that Commerce's preliminary DBH analysis is flawed. Consistent with the prior review,¹¹⁵⁷ we have continued to rely on the DBH comparison utilized in the *Lumber V AR2 Prelim*.

The Canadian Parties argue that Commerce's analysis is incomplete because it only includes DBH, which is but one of several physical characteristics, such as height, taper, bark thickness, etc., that impact a tree's value. We disagree. DBH is a "commonly used metric" in the forestry sector, and therefore, it is reasonable to make it a key aspect of our comparison analysis.¹¹⁵⁸ Further, in addition to DBH, as discussed elsewhere in this memorandum, we continue to find that SPF is the core softwood species that grows in Nova Scotia, New Brunswick, Québec, Ontario, and Alberta. We have also incorporated timber height into the LTAR benefit analysis as part of our grade matching methodology. Furthermore, interested parties have not even placed on the record uniform measurement data for the provinces at issue as it regards such additional physical characteristics as taper and bark thickness.

The GOQ contends Commerce's DBH analysis was not conducted on an apples-to-apples basis because it compared a province-wide DBH measurement in Nova Scotia to an average DBH that reflected all of Québec's tariffing zones. But, the GOQ fails to acknowledge that Crown-origin standing timber harvested from Québec's tariffing zones, either through TSGs or its auction system, accounted for approximately 79 percent of Québec-origin softwood timber processed in

¹¹⁵⁵ See Petitioner Rebuttal Brief at 34 (citing GNS IQR Response at Exhibit NS-7, which contains the GNS Verification Report from the investigation).

¹¹⁵⁶ See Petitioner Rebuttal Brief at 36 (citing GOC IQR Response at Exhibit GOC-AR2-STUMP-14 at 33-34).

¹¹⁵⁷ See *Lumber V AR1 Final* IDM at Comment 26.

¹¹⁵⁸ See, e.g., Marshall Report at 11.

Québec during the POR.¹¹⁵⁹ Further, Québec’s tariffing zones encompass the vast majority of land area from which standing timber was harvested in the province during the POR.¹¹⁶⁰ Thus, we find it was reasonable to compare the province-wide DBH for all softwood species in Nova Scotia (16.91 CM) and a DBH for private-origin SPF in Nova Scotia (15.64 cm) to the average DBH for SPFL standing timber for Québec’s tariffing zones (16.1 cm) when determining that the DBH of standing timber in the two provinces are comparable.¹¹⁶¹ Furthermore, Commerce demonstrated that the average DBH of Crown-origin standing timber in the tariffing zones from which Resolute harvested during the POR was 15.98 cm, which we found was comparable to the province-wide DBH of standing timber in Nova Scotia.¹¹⁶² Additionally, the Canadian Parties’ critique of Commerce’s analysis of the DBH of standing timber in Nova Scotia and Québec fails to acknowledge that Nova Scotia and Québec both base their DBH measurements on merchantable timber with a DBH that is 9 cm and above, which indicates that the provinces measure DBH in the same way.¹¹⁶³

We continue to find that the QMD-based forest inventory measure reported by the GOA in response to our request for DBH information is not appropriate for use in our DBH comparison analysis. Record evidence indicates that the QMD-based measure of 9.4 cm for softwood standing timber in Alberta is unclear as to whether it reflects merchantable timber (*e.g.*, trees large enough to be processed in a mill) or all timber in the forest (*e.g.*, mature as well as unmerchantable, immature trees).¹¹⁶⁴ In particular, we find the QMD-based measure includes trees whose ages range from zero to 39 years as well as datapoints for “juvenile stand types.”¹¹⁶⁵

In addition to diameter information using a QMD-based method, the GOA provided information on the DBH of harvested trees in Alberta. Specifically, information in the 2019 MNP Cross Border Report indicates that the average DBH of harvested softwood timber in Alberta was 21.9 cm in 2019.¹¹⁶⁶ Canfor and West Fraser confirmed that the DBH information in the 2019 MNP Cross Border Report included DBH data on the Crown-origin standing timber they harvested in 2019.¹¹⁶⁷ Thus, while the 21.9 DBH for harvested softwood timber in Alberta is in the range of the 16.91 cm DBH the GNS reported for merchantable timber, we acknowledged in the *Lumber V AR2 Prelim* that a DBH based on harvest volumes is not on the same basis as a DBH reflecting merchantable inventory.¹¹⁶⁸ Therefore, in the absence of information regarding the DBH of harvested, private-origin standing timber in Nova Scotia that would be compared to the DBH of harvested Crown-origin standing timber in Alberta, we must rely on the facts available on the

¹¹⁵⁹ See GOQ IQR Response at Table 5.

¹¹⁶⁰ See, *e.g.*, Marshall Report at Figure 4.

¹¹⁶¹ See *Lumber V AR2 Prelim* PDM at 25-26 (citing GNS IQR Response at 10 and Marshall Report Data Submission at Exhibit “DHP SPF by zone.xls”),

¹¹⁶² See *Lumber V AR2 Prelim* PDM at 26 (citing DBH Memorandum at Table 1). Commerce sought DBH information for standing timber harvested by Resolute during the POR, but Resolute indicated that it does not collect such information. See Resolute Stumpage SQR1 at 2.

¹¹⁶³ See *Lumber V AR1 Final* IDM at Comment 26; see also Marshall Report Data Submission at Exhibit “Portrait des Ressources Forestières – Nov 2006.pdf,” Table 11.

¹¹⁶⁴ See GOA IQR Response at Exhibit AB-AR2-S-123.

¹¹⁶⁵ See GOA IQR Response at Exhibit AB-AR2-S-123.

¹¹⁶⁶ See GOA IQR Response at Exhibit AB-AR-S-23.

¹¹⁶⁷ See West Fraser Stumpage SQR1 at 1-2; see also Canfor Stumpage SQR1 at 1.

¹¹⁶⁸ See *Lumber V AR2 Prelim* PDM at 27.

record, as provided under section 776(a) of the Act, to inform our DBH comparison analysis. As explained in the *Lumber V AR2 Prelim*, there is record evidence indicating the overall DBH of harvested standing timber in New Brunswick as well as the DBH of harvested, private-origin standing timber in New Brunswick. Because New Brunswick and Nova Scotia are contiguous and are encompassed by the same Arcadian forest, we find that the DBH information for harvested standing timber in New Brunswick may serve as a proxy for the DBH of private-origin standing timber harvested in Nova Scotia. Information from the GNB indicates that the average DBH of softwood timber harvested in New Brunswick is 22 cm.¹¹⁶⁹ Regarding the private forest, information in the New Brunswick Task Force Report on New Approaches for Private Woodlots contains information concerning the DBH of SPF standing timber harvested from private woodlots in New Brunswick.¹¹⁷⁰ The information in the report indicates that the optimal DBH of SPF standing timber from private woodlots in New Brunswick ranges from 20.32 cm to 27.94 cm.¹¹⁷¹ The DBH data for standing timber harvested in New Brunswick approximates the DBH of SPF species trees that are harvested in Alberta (*i.e.*, 21.9 cm). Thus, using DBH data for softwood, standing timber harvested in New Brunswick as a proxy for the DBH of softwood standing timber harvested in Nova Scotia, we continue to find that the DBH of private-origin standing timber in Nova Scotia is comparable to the DBH of Crown-origin standing timber in Alberta.

Similarly, the GOO did not report a DBH measurement for merchantable, standing timber in Ontario.¹¹⁷² Further, when we requested that Resolute provide information on the DBH of the standing timber it harvested in Ontario during the POR, Resolute indicated that it was unable to do so.¹¹⁷³ Thus, in the absence of information on the DBH of merchantable standing timber and in accordance with section 776(a) of the Act, we have conducted our DBH comparison analysis using DBH information from Québec as a proxy. Specifically, we used the DBH measurements for the Québec Tariffing Zones that border Ontario, which reflect the DBH of merchantable, standing timber.¹¹⁷⁴ This information indicates that the average DBH of SPFL Crown-origin standing timber in the Québec tariffing zones that border Ontario is 16.29 cm, while the average DBH of SPFL Crown-origin standing timber in northern tariffing zones that are contiguous to the Ontario border (*e.g.*, those tariffing zones that are to the north of Québec tariffing zone 858) is 15.20 cm. We continue to find that, in the absence of DBH information for merchantable standing timber in Ontario, our analysis was reasonable and reliable, and therefore, we continue to find that standing timber in Nova Scotia is comparable to that of Ontario in terms of tree size, as measured by DBH.

The Canadian Parties argue that Commerce's DBH comparison analysis was flawed in the case of Ontario because it failed to incorporate diameter information from the Ontario Forest Research Institute indicating that the diameter of SPF trees harvested in Ontario during the POR was 15.88 cm.¹¹⁷⁵ However, the diameter information from the Ontario Forest Research Institute reflects inside bark diameters for harvested trees, whereas the DBH information from the GNS is

¹¹⁶⁹ See GNB Stumpage IQR Response at 29 and Exhibit Stump-19.

¹¹⁷⁰ See GNB Stumpage IQR Response at Exhibit NB-AR2-Stump-18.

¹¹⁷¹ See GNB Stumpage IQR Response at Exhibit NB-AR2-Stump-18 at 21 (Figure 8) and 22 (Table 13).

¹¹⁷² See GOO IQR Response at 20.

¹¹⁷³ See Resolute Stumpage SQR1 at 2.

¹¹⁷⁴ See *Lumber V AR2 Prelim* PDM at 26 (citing See DBH Memorandum at Table 4).

¹¹⁷⁵ See GOC Case Brief Volume I at 65 (citing GOO IQR Response at Exhibit ON-GEN-7-A).

an outside the bark calculation, and thus, we find the information in the report is not comparable to the average DBH reported by the GNS.¹¹⁷⁶

We further disagree with the Canadian Parties' argument that a 2005 study from the USDA indicates that the Acadian forest, which encompasses Nova Scotia, produces standing timber that is larger, and thus, incomparable to the standing timber that grows in the boreal forest, which encompasses parts of Québec as well as Ontario and Alberta. The datapoint from the 2005 USDA Report cited by Canadian Parties is a table entitled, "2004 North America Average Sawlog Diameters by Region, Measured at Small-End in Centimeters and Inches."¹¹⁷⁷ According to the Canadian Parties, the table indicates that the average small-end diameter of sawlogs in the Maritimes was 25.1 cm inches, which was 9.2 cm larger than the small-end diameter of logs in Québec, Ontario, and Alberta. However, the Canadian Parties fail to note how regions are defined in the table. Footnotes in the table indicate that "Maritime" region includes "Canadian Provinces and parts of Québec east of the Saint Lawrence River and states north of Massachusetts." Thus, the "Maritime" region in the table of the 2005 USDA Report includes far more territories than Nova Scotia, and moreover, even includes parts of Québec. Additionally, the table provides information on small-end diameter, which is not comparable to the DBH data included in Commerce's analysis. Further, the log size differences between Nova Scotia and Québec, Ontario, and Alberta that are, according to Canadian Parties, demonstrated by the table in the 2005 USDA Report are not reflected in the DBH data for merchantable, standing timber in Nova Scotia and Québec (which indicate DBH measurements of 15.64 cm and 16.1 cm, respectively), or the DBH data for harvested timber in Alberta and New Brunswick (which indicate DBH measurements of 21.9 cm and 22 cm, respectively). Additionally, the log size differences in the table from the 2005 USDA Report are not consistent with a study submitted by the GOC indicating that the DBH of harvested timber in Maine is 20.6 cm, a measurement that is comparable to the DBH of 21.9 cm for harvested timber in Alberta.¹¹⁷⁸

In sum, having considered the arguments submitted by interested parties, we continue to find that private-origin standing timber in Nova Scotia is comparable to Crown-origin standing timber in Québec, Ontario, and Alberta.

Comment 41: Whether Nova Scotia's Forest Is Comparable to the Forests of New Brunswick, Québec, Ontario, and Alberta

*GOC's Comments*¹¹⁷⁹

- Nova Scotia's climate and forest differ from Alberta, Ontario, and Québec. Although Commerce has previously acknowledged that growing conditions are a "key factor" in determining the market value of standing timber,¹¹⁸⁰ it has generally rejected the significance, and even the existence, of most differences between the climates and forests in the different provinces.

¹¹⁷⁶ See GOO IQR Response at Exhibit ON-GEN-7-A; see also GNS IQR Response at 10, which states that the GNS's DBH measurement is based on standing timber in the forest, as opposed to a harvested log, which we find indicates that the measurement is performed outside of the bark.

¹¹⁷⁷ See GOC IQR Response at GOC-AR2-STUMP-100 at 5, Table 7.

¹¹⁷⁸ See GOC IQR Response at Exhibit GOC-AR2-STUMP-14 at 33-34.

¹¹⁷⁹ See GOC Case Brief Volume 1 at 40-48. The GOO and the GOA reiterate the arguments made by the GOC.

¹¹⁸⁰ See GOC Case Brief Volume 1 at 40 (citing *Lumber VARI Final IDM* at Comment 27).

- Ecozones describe geographical areas that exhibit unique combinations of climatic conditions, vegetation, soil, geology, and other characteristic while forest regions describe geographical areas with unique combinations of tree species and growing conditions.
- Physical differences distinguish Nova Scotia's timber, and those differences stem from Nova Scotia's unique climate. Nova Scotia is located in an entirely separate ecozone (the Atlantic Maritime Ecozone) and located in a different forest region (the Arcadian forest region) than Alberta, Ontario, and Québec, which are within the boreal forest region.
- The Arcadian forest region enjoys relatively high temperatures and precipitation amounts that results in longer growing seasons, and Nova Scotia benefits from good drainage and conditions that permit year-round harvesting access. These conditions combine to produce large trees growing in concentrated areas that, in turn, makes harvesting more efficient in Nova Scotia compared to Québec, Ontario, and Alberta.
- Ontario and Québec are located in the Boreal Shield Ecozone, which is characterized by cooler temperatures and less precipitation and where the most common softwood species are associated with swampy harvest sites. These conditions result in trees that are relative smaller and more difficult to access.
- Alberta's growing conditions are similarly poor relative to trees in the Arcadian forest. In Alberta, temperatures are significantly cooler than in Nova Scotia, growing seasons are much shorter, and harsh terrain is more common. These conditions create smaller trees that, in turn, result in higher harvesting costs compared to Nova Scotia.
- No evidence indicates that Nova Scotia's forest has been degraded by infestations, such as by the spruce budwood worm, or wildfires, as is the case in Québec, Ontario, and Alberta.
- The differences in the forests and ecozones between Nova Scotia and Québec, Ontario, and Alberta make the prices for private-origin standing timber in Nova Scotia incomparable to Crown-origin standing timber in Québec, Ontario, and Alberta.

*GOO's Comments*¹¹⁸¹

- The NAFTA panel reviewing the *Lumber IV* proceeding found that an analysis of forest characteristics must be taken into account when selecting an LTAR benchmark.¹¹⁸²
- Nova Scotia's unsupported claims made in this proceeding that Acadian forests have become "borealized" does not overcome the overwhelming evidence of these significant differences in timber harvested from the Boreal and Acadian forests.

*Petitioner's Rebuttal Comments*¹¹⁸³

- The CIT and Federal Circuit have long found that a "price can ultimately serve as a benchmark source so long as it is a 'comparable market-determined price' – the priced input need not be 'identical' in order for Commerce to use it."¹¹⁸⁴
- Commerce addressed and rejected the Canadian Parties' same arguments in the investigation and first review.¹¹⁸⁵

¹¹⁸¹ See GOO Case Brief Volume 7 Part 1 at 36-39.

¹¹⁸² See GOO Case Brief Volume 7 Part 1 at 36 (citing *Lumber IV NAFTA Panel Decision* 31-33).

¹¹⁸³ See Petitioner Rebuttal Brief at 19-20.

¹¹⁸⁴ See Petitioner Rebuttal Brief at 15 (citing *Essar Steel Ltd. v. U.S.*, 678 F.3d at 1273-1274).

¹¹⁸⁵ See Petitioner Rebuttal Brief at 16 (citing, e.g., *Lumber V ARI Final IDM* at Comment 28).

- That one region of Canada may have colder winters and shorter warm summers has no bearing on the provincial governments' treatment of SPF species as a single group for purposes of setting their Crown stumpage rates and recordkeeping.
- Commerce previously found that both forests are comparable in terms of species and DBH, and thus the growing conditions in the Acadian and boreal forests are not so different that trees from both forests are incomparable to one another.
- Commerce reached the same conclusion in the *Lumber V AR2 Prelim* and should continue to do so in the final results.

Commerce's Position: Consistent with the *Lumber V AR1 Final*,¹¹⁸⁶ we continue to disagree with the Canadian Parties that there are fundamental differences between the Acadian forest (which encompasses Nova Scotia) and the Boreal forest (which encompasses Québec, Ontario, and large areas of Alberta) that render private-origin standing timber prices in Nova Scotia incomparable to Crown-origin standing timber prices in Québec, Ontario, and Alberta. As discussed elsewhere in this decision memorandum, we find that species and DBH are the two most critical elements when assessing whether prices for private-origin standing timber in Nova Scotia are comparable to Crown-origin standing timber in New Brunswick, Québec, Ontario, and Alberta. Thus, if growing conditions in the Acadian and Boreal forests caused significant differences in the physical characteristics of their respective standing timber, one would expect those conditions to be borne out in the types of species and the size of trees that grow in the forests. Yet, as discussed in this memorandum, record information demonstrates that while Nova Scotia is not located in the same forest as Québec, Ontario, and Alberta, the two forests are comparable in terms of species and DBH in that both forest regions are dominated by SPF-based species and the DBH of the forests' trees are in line with one another. Having determined that the species mix and DBH of the trees in the Acadian and Boreal forests are comparable, we therefore also determine that information cited by the Canadian Parties (*e.g.*, the Cross Border Analysis) has not demonstrated that growing conditions in the Acadian and Boreal forests are so different as to render trees from the two forests incomparable to one another.

Comment 42: Whether Pulpmill Consumption of Standing Timber in Nova Scotia Creates Unique Market Conditions that Are Not Comparable to Market Conditions in Québec, Ontario, and Alberta

*GOC's Comments*¹¹⁸⁷

- Data from AFRY, a consulting service in the pulp industry, indicates that in every province except Nova Scotia, sawmills consume the vast majority of harvested logs, while pulpmills rely almost exclusively on lumber by-products for their inputs. In Nova Scotia, pulpmills purchase and consume a large share of logs.¹¹⁸⁸ Thus, sawmills in Nova Scotia face active competition for standing timber from a different industry, competition that sawmills outside of Nova Scotia do not face.
- This competition increases the prices for sawlog grade standing timber.

¹¹⁸⁶ See *Lumber V AR1 Final* IDM at Comment 28.

¹¹⁸⁷ See GOC Case Brief Volume I at 80-85.

¹¹⁸⁸ See GOC Case Brief Volume I at 82 (citing GOC Factual Information to Measure the Adequacy of Remuneration at Exhibit GOC-ADEQ-AR2-1, which contains proprietary information on pulp mill inputs by province).

- Further, data from AFRY on pulpmill inputs by province indicate that pulp mills in Nova Scotia consume low-quality logs that in Québec, Ontario, and Alberta are purchased as inputs for sawmills.
- Thus, the absence in the Nova Scotia benchmark of such low-quality log prices that are bought and consumed by pulpmills in Nova Scotia increases the Nova Scotia benchmark price that, in turn, artificially inflates the stumpage LTAR benefit.

*Petitioner's Rebuttal Comments*¹¹⁸⁹

- Commerce rejected the Canadian Parties' arguments in the prior review finding that they failed to quantify how the purported log demand by pulpmills in Nova Scotia impacts standing timber prices and relied on mere "general statements" to assert that a disproportionate demand for sawable logs exists in Nova Scotia that precludes use of private-origin standing timber prices in Nova Scotia as a tier-one benchmark.¹¹⁹⁰
- The Canadian Parties offer no new information in the current review for Commerce to reach a different conclusion.
- Information in the Canadian Parties' briefs showing the breakdown between inputs of logs to lumber by-products consumed by pulpmills in each province does not demonstrate how or why purchase of logs from a certain type of mill – sawmill or pulpmill – necessarily exerts upward pressure on prices.¹¹⁹¹
- Further, the Canadian Parties' claims are refuted by information from the GOA that sawmills and pulpmills pay the same stumpage rates.
- The burden is on Canadian Parties to provide new information to warrant reconsideration of Commerce's prior finding. They have failed to do so.

Commerce's Position: As an initial matter, Commerce rejected the Canadian Parties' comments on this issue in the *Lumber V ARI Final*, and we continue to do so here for the same reasons. In the prior administrative review, Commerce explained:

The Canadian Parties also argue that the Nova Scotia market for softwood stumpage is influenced by the number and distribution of pulp mills in the province. Specifically, the Canadian Parties argue that the demand from pulp mills for wood fiber exerts upward pressure on stumpage prices by creating competition for stumpage rights and by providing an outlet for lower-quality timber harvested by sawmills and for sawmill residual products, which may result in sawmills paying more for standing timber. They claim the upward pressure on stumpage prices in Nova Scotia is not present in Québec, Ontario, and Alberta, and should lead the Department to refrain from using private prices for standing timber as a tier-one benchmark.

Once again, the Canadian Parties claim a difference exists between the market for private-origin standing timber in Nova Scotia and the other provinces at issue but, other than claiming that pulp mill distribution "influences" stumpage prices in Nova Scotia in a manner that is not present elsewhere in Canada, they fail to

¹¹⁸⁹ See Petitioner Rebuttal Brief at 46-48.

¹¹⁹⁰ See Petitioner Rebuttal Brief at 46 (citing *Lumber V ARI Final* IDM at Comment 30).

¹¹⁹¹ See Petitioner Rebuttal Brief at 46 (citing GOO Case Brief Volume 1 at 82-83).

quantify the extent of the purported difference or even to demonstrate that such a difference exists. Thus, we find that the Canadian Parties have not substantiated their claims concerning the “influence” of pulp mill distribution, nor have they demonstrated that any such difference renders the two sources incomparable on that basis.¹¹⁹²

As in prior segments of this proceeding, Canadian Parties fail to quantify how the purported pulplog demand impacts sawlog prices in Nova Scotia. Rather, the Canadian Parties cite to consumption patterns in a study by AFRY as a basis for claiming that a distinct and disproportionate demand as well as upward price pressures for sawable logs exist in Nova Scotia that should compel Commerce not to use private-origin standing timber prices in Nova Scotia as a tier-one benchmark.¹¹⁹³ Yet, the information from the AFRY study contains no quantification of the purported impact that is caused by disproportionate sawlog demand in Nova Scotia.

Moreover, information that Commerce noted in the prior review refutes the Canadian Parties’ claim that pulpmills drive the demand for sawable standing timber in Nova Scotia:

the Nova Scotia Economic Impact Analysis indicates that the demand for sawable standing timber impacts the costs of the pulp and paper sector and not the other way around: “Although the pulp and paper mills can influence their own costs, the overall driver clearly is at the sawmill.” Further, the Nova Scotia Economic Impact Analysis indicates that sawmill costs are driven by the availability of sawlogs.”¹¹⁹⁴

There is no new information on the record which would cause us to reconsider this finding. Therefore, we continue to reject the Canadian Parties’ unsubstantiated and unquantified claim that high pulplog demand in Nova Scotia drives sawlog demand to extremely high levels that renders sawlogs prices in Nova Scotia incomparable to sawlog prices in other provinces.

Comment 43: Whether There Is a Fragmented and Shrinking Market for Private Timber in Nova Scotia That Has Caused Standing Timber Prices to Increase

*GOC’s Comments*¹¹⁹⁵

- Information in the Asker Report indicates that the available supply of stumpage in Nova Scotia is limited by, among other things, the province’s fragmented land ownership and high rate of non-industrial private ownership.¹¹⁹⁶
- Many of these private landowners have disengaged from commercial timber operations, while others do not have the necessary information to engage with commercial timber harvesters if they wanted to.

¹¹⁹² See *Lumber V ARI Final IDM* at Comment 30 (citing *Lumber V Final IDM* at Comment 40).

¹¹⁹³ See GOC Factual Information to Measure the Adequacy of Remuneration at Exhibit GOC-ADEQ-AR2-1.

¹¹⁹⁴ See *Lumber V ARI Final IDM* at Comment 30.

¹¹⁹⁵ See GOC Case Brief Volume 1 at 90-92.

¹¹⁹⁶ See GOC Case Brief Volume 1 at 90 (citing Asker Report at 45-49).

- The “Great Recession” drove loggers in Nova Scotia out of business when demand dipped, and it was more difficult for Nova Scotia loggers to re-enter the market because of high information and negotiation costs caused by fragmented ownership of forests.
- Thus, Nova Scotia’s softwood timber harvest declined substantially from 2000 to 2018, which was attributable to shrinking amount of private land available for harvest.
- The limited supply of private-origin standing timber has caused standing timber prices to increase as well as the volume of imported logs to increase. Meanwhile, the volume of Nova Scotia’s log exports has dropped significantly since the “Great Recession.”
- Available supply of private-origin standing timber in Nova Scotia is a key prevailing market condition that is significantly different from supply conditions in Québec, Ontario, and Alberta.

*Petitioner Rebuttal Comments*¹¹⁹⁷

- The Canadian Parties argue that the lack of an oligopsony in Nova Scotia (*i.e.*, “the province’s fragmented land ownership and high rate of non-industrial private ownership”) makes the province incomparable to Alberta, Ontario, and Québec where Crown ownership dominates stumpage transactions. Such an argument is exactly the “circular” analysis that would result in the “benchmark price ... reflect{ing} the very market distortion which the comparison is designed to detect.”¹¹⁹⁸
- As Commerce has previously determined, the lack of competitiveness in the standing timber markets in Québec, Ontario, and Alberta cannot be considered a prevailing market condition.¹¹⁹⁹
- Thus, differences in the ownership structure between Nova Scotia and Québec, Ontario, and Alberta do not mean Nova Scotia is incomparable; rather, it indicates that Nova Scotia is unique in having a functioning private standing timber market that is independent of Crown-origin standing timber prices.
- Nova Scotia’s private forest is owned by independent owners who use their woodlots as a supplement to their incomes. Thus, they will seek to maximize the prices paid for their standing timber.
- The Canadian Parties are wrong to argue that Nova Scotia experienced a shrinking supply of private-origin standing timber that resulted in prices increasing to such an extent that prices for standing timber in Nova Scotia are not comparable to Crown-origin prices in Québec, Ontario, and Alberta.
- Commerce has found Nova Scotia’s private-origin standing timber market operates as a functioning free market that is not impacted by government distortion. Thus, in such a market, private landowners may delay harvesting, where appropriate, to maximize the long-term value of their timber. Such actions do not disqualify private-origin standing timber prices in Nova Scotia for use as a tier-one benchmark.

Commerce’s Position: We disagree with the Canadian Parties’ claim that a decrease in the supply of private-origin timber has created demand conditions that are unique to Nova Scotia, and thus, render prices for such standing timber to be incomparable to prices for Crown-origin standing timber in Québec, Ontario, and Alberta. The information cited by the Canadian Parties

¹¹⁹⁷ See Petitioner Rebuttal Brief at 54-56.

¹¹⁹⁸ See Petitioner Rebuttal Brief at 54 (citing *Lumber V Final* IDM at Comment 16).

¹¹⁹⁹ See Petitioner Rebuttal Brief at 54 (citing *Lumber V Final* IDM at Comment 16).

does not quantify the impact the purported shortage of private-origin standing timber has on standing timber prices.

As explained in elsewhere in this memorandum, the private-origin standing timber in Nova Scotia is an appropriate tier-one benchmark. Further, that private-origin standing timber accounted for the substantial majority of standing timber harvested in Nova Scotia during the POR¹²⁰⁰ coupled with information referenced in the Canadian Parties' case brief indicating that Nova Scotia's private-origin standing timber is not concentrated among a small group of large supports the conclusion that Nova Scotia's private-origin standing timber market is market-based and that prices for private-origin standing timber may serve as a viable benchmark. Commerce also determined in the investigation that market distortions, such as what Commerce has found exists in Québec, Ontario, and Alberta, do not constitute a "prevailing market condition" that must be accounted under section 771(E)(iv) of the Act and 19 CFR 351.511(a)(2).¹²⁰¹ Therefore, we continue to find that Nova Scotia's undistorted market for private-origin standing timber does not preclude Commerce from using the prices paid for such timber as a tier-one benchmark when determining whether the provincial governments sold Crown-origin standing timber for LTAR.

Comment 44: Reliability of Nova Scotia Private-Origin Standing Timber Benchmark

*GOC's Comments*¹²⁰²

- The 2015-2016 Private Market Survey relied upon by Commerce in the investigation improperly contained non-stumpage costs in the reported stumpage prices and incorrect volumes that skewed the results.
- The GNS has not indicated how it remedied these flaws in the 2017-2018 Private Market Survey.
- The WTO concluded that the errors Commerce found at the verification of the survey during the investigation would have led an impartial investigating authority to find the survey unreliable.¹²⁰³
- The 2017-2018 Private Market Survey continues to rely on product definitions that the Nova Scotia Department of Lands and Forestry uses in its Registry of Buyers Report, which defines products based on their intended use.
- However, it is still unclear when or how intended use is determined, especially because one tree or stem can produce multiple products.
- The 2015-2016 Private Market Survey was, in fact, never used to set Crown-origin standing timber prices in Nova Scotia. Thus, Commerce should not rely on the GNS's assurances that it commissioned the 2017-2018 Private Market Survey in the ordinary course of business, and absent adequate information, Commerce cannot precisely determine how the GNS used the survey to set the prices for Crown-origin standing timber.
- For example, the GNS has only stated that the 2017-2018 Private Market Survey "formed the basis for the Government of Nova Scotia to set its Crown stumpage rates."¹²⁰⁴ Yet, the GNS has not explained what the term "form the basis of" means, and Commerce did not seek a

¹²⁰⁰ See *Lumber V Prelim PDM* at 23 (citing *See GNS IQR Response* at Exhibit at 6 and NS-10).

¹²⁰¹ See *Lumber V Final IDM* at Comment 16.

¹²⁰² See GOC Case Brief Volume 1 at 94-100.

¹²⁰³ *Id.* at 97 (citing *DS 533 Panel Report* at paragraph 7.428).

¹²⁰⁴ *Id.* at 99 (citing GNS IQR Response at 4).

clarification. Instead, Commerce opted to generously interpret the vague phrasing as meaning that the GNS sets its Crown stumpage rates on the results of the 2017-2018 Private Market Survey without adjustment.

- Commerce ignored the Canadian Parties' request that the GNS reveal the respondents to the 2017-2018 Private Market Survey, and Commerce ignored the Canadian Parties' request that Commerce verify the results of the survey.
- Commerce cannot rely on incomplete data that it did not even try to verify.
- Thus, Commerce should find the 2017-2018 Private Market Survey unsuitable for use as a tier-one benchmark.

*GOO's Comments*¹²⁰⁵

- Commerce has previously declined to use benchmark data because the data and search parameters were not on the record.¹²⁰⁶
- Similarly, the underlying data and search parameters for the 2017-2018 Private Market Survey are not on the record of this review.
- The 2017-2018 Private Market Survey does not specify the types of transactions upon which it relies nor whether it used a reliable methodology that excluded fees and other costs that are not part of standing timber transactions.
- The GNS has acknowledged that private landowners incur such fees and other costs that would be separate from the standing timber charge (*e.g.*, felling, forwarding, delimiting, road building and maintenance, brokerage, land management fees, etc.).¹²⁰⁷
- There is no indication the 2017-2018 Private Market Survey excluded these costs from the reported standing timber prices.
- In the investigation, Commerce relied on Nova Scotia private-origin survey prices commissioned by the GNS as the basis of the benchmark used to measure the adequacy of remuneration for Crown-origin standing timber in Québec, Ontario, and Alberta.
- However, in the investigation, Commerce found the 2015-2016 Private Market Survey contained significant conversion factor errors and included non-stumpage costs that skewed the price data.
- The GNS has not indicated how it remedied these deficiencies in the 2017-2018 Private Market Survey. Further, Commerce has failed to properly scrutinize the 2017-2018 Private Market Survey to determine whether the flaws contained in the 2015-2016 Private Market Survey have been carried forward.
- The 2017-2018 Private Market Survey contains gerrymandered transactions that excluded private market purchases by industrial freeholds and small buyers. Specifically, the 2017-2018 Private Market Survey targeted the largest Registered Buyers and independent private landowners in the Nova Scotia private timber market, thereby excluding timber sourced by small loggers and harvesters.
- The 2017-2018 Private Market Survey also improperly excluded transactions involving industrial freeholds, which account for a substantial share of the private-origin standing timber market in Nova Scotia.

¹²⁰⁵ *Id.* at 44 to 49.

¹²⁰⁶ *Id.* at 46 (citing *Lumber V Final IDM* at Comment 20).

¹²⁰⁷ *Id.* at 47 (citing GNS IQR Response at 18).

- The limited sample population of the transactions in the 2017-2018 Private Market Survey also prevents Commerce and interested parties from making necessary adjustments to the survey.
- For example, according to the GNS, industrial land accounted for approximately 30 percent of the volume of timber harvested from land subject to potential silviculture obligations (*i.e.*, private land) and 10 percent of the total harvest but accounted for approximately 24 percent of the land area on which softwood silviculture activities occurred.
- These data indicate industrial landowners buy stumpage from private woodlots and then perform silviculture work on their own lands. The record evidence compiled by the authors of the 2017-2018 Private Market Survey does not permit Commerce to make required adjustments for these facts.

*GOQ's Comments*¹²⁰⁸

- Commerce chose to ask none of the questions proposed by the Canadian Parties that sought clarification regarding the suitability of Nova Scotia as the basis of the standing timber benchmark used in the stumpage calculations for Québec, Ontario, and Alberta.
- Commerce refused to solicit such information despite requesting similar information from the GOQ, GOO, and GOA as it regards their respective public and private forests.
- Commerce applied a double standard.
- For example, while Commerce places great weight on the market power of sawmills in the Québec market and their influence on prices, it failed to examine the similar market power sawmills have in Nova Scotia, namely that five sawmills in Nova Scotia produced 89 percent of the province's lumber.¹²⁰⁹
- Commerce cannot willfully blind itself to relevant data by not even asking Nova Scotia questions of the same kind and caliber that it demands of Québec, Ontario, and Alberta.
- Such a flawed process precludes selection of the 2017-2018 Private Market Survey as a rationale benchmark choice supported by substantial evidence on the record.
- The 2017-2018 Private Market Survey indicates the average volume per surveyed transaction is 39 m³, which is roughly equivalent to a single truck load of logs. In contrast, Québec's public stumpage auctions in the FYs encompassing the POR had an average transaction volume that is substantially larger.
- The total volume captured by the 2017-2018 Private Market Survey is not only unrepresentative *vis-à-vis* the total auctioned volume in Québec but also when compared at the level of individual transaction volumes in Nova Scotia and Québec.

*GNS's Rebuttal Comments*¹²¹⁰

- The GNS used the 2017-2018 Private Market survey to set the stumpage prices for Crown-origin standing timber in Nova Scotia, and both the 2015-2016 and 2017-2018 Private Market Surveys were conducted in the ordinary course of business.
- Due to confidentiality considerations, the GNS did not itself conduct the survey of prices contained in the 2017-2018 Private Market Survey. However, it was the GNS that issued the 2017-2018 Private Market Survey, which contain the results of the commissioned survey.

¹²⁰⁸ See GOQ Case Brief Volume 8.A at 57-61.

¹²⁰⁹ *Id.* at 58 (citing GNS IQR Response, NS-10 at 22).

¹²¹⁰ See GNS Rebuttal Brief at 2-11.

- Further, in the 2017-2018 Private Market Survey, the GNS states that it “. . . finds the Deloitte survey results provide a reliable basis to use for updating Crown stumpage prices in the Province.”¹²¹¹
- When the GNS states in its initial questionnaire response that the 2017-2018 Private Market Survey that was released in January 2019, “formed the basis for the Government of Nova Scotia to set its Crown stumpage rates,” it means that the prices in the stumpage survey became the prices used for Crown-origin standing timber.¹²¹²
- Thus, there is no ambiguity. The GNS used the data from the 2017-2018 Private Market Survey to set the prices of Crown-origin standing timber in Nova Scotia.
- Declarations from the Executive Director of the Renewable Resources Division at the Nova Scotia Department of Lands and Forestry and the co-owner of Nova Scotia sawmill reflect this fact.¹²¹³
- The GNS has a long history of conducting period stumpage surveys to evaluate whether it should update Crown-origin standing timber prices.
- Nova Scotia commenced the process to conduct the 2015-2016 Private Market Survey in February 2016, well before the petition was filed.
- The GNS conducted the 2017-2018 Private Market Survey closely after the completion of the 2015-2016 Private Market Survey because the latter results were re-weighted using a methodology that differed from the GNS’s preferred methodology, and the GNS lacked the raw data weight the data as it desired.
- The 2017-2018 Private Market Survey includes stumpage prices for logs that are not used to make softwood lumber, such as pulp grade and hardwood standing timber prices, a fact that belies the Canadian Parties’ claim that the GNS commissioned the survey merely for purposes of the softwood lumber proceeding.
- The Canadian Parties wrongly claim that there were flaws in the 2015-2016 Private Market Survey and that those flaws were not remedied and were carried forward into the 2017-2018 Private Market Survey.
- Record evidence demonstrates that the 2017-2018 Private Market Survey reflects hardwood and softwood species prices and was weighted using the GNS preferred regional weighting method.¹²¹⁴
- The Canadian Parties claim the 2017-2018 Private Market Survey includes non-stumpage costs, unclear product definitions, and misreported results, yet they point to nothing in the survey to support those claims.
- As the GNS has used the 2017-2018 Private Market Survey to set prices for Crown-origin standing timber, it disagrees that the survey results contain any such flaws.
- Declarations from members of Nova Scotia’s forest industry indicate that the 2017-2018 Private Market Survey was used to set Crown-origin standing timber prices.¹²¹⁵
- The 2017-2018 Private Market Survey explicitly instructed respondents only to report a pure stumpage price and not to include any non-stumpage costs.¹²¹⁶

¹²¹¹ *Id.* at 2 (citing GNS IQR Response at Exhibit 6B).

¹²¹² *Id.* at 2 (citing GNS IQR Response at 2).

¹²¹³ *Id.* at 3 (citing Petitioner Comments on IQR Responses, Volume I-25 at Exhibits 1 and 4).

¹²¹⁴ *Id.* at 6 (citing Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 1).

¹²¹⁵ *Id.* at 6 (citing Petitioner Comments on IQR Responses, Volume I-25 at Exhibit 1).

¹²¹⁶ *Id.* at 7 (citing GNS IQR Response at 7).

- The 2017-2018 Private Market Survey utilized product definitions contained in the GNS' Registry of Buyers Report. The GNS and the Nova Scotia forest sector regularly use these definitions.
- The 2017-2018 Private Market Survey reflects a large, robust, and statistically representative sample.
- Purposely excluding industrial freehold transactions from the 2017-2018 Private Market Survey is not distortive and, in fact, constitutes a sound survey decision because: (1) industrial freeholds only accounted for 9.9 percent of Nova Scotia's harvest during the POR; and (2) industrial freehold owners do not typically sell their standing timber to third parties.
- Further, self-produced timber pricing would be inherently unreliable as an arm's length transaction, and the GNS would never intend to have any such transactions in a survey that measures private standing timber prices.

*Petitioner's Rebuttal Comments*¹²¹⁷

- Consistent with the prior review, Commerce explained in the *Lumber V AR2 Prelim* that Crown-origin standing timber in Nova Scotia accounted for less than a quarter of the softwood harvest volume and, thus, it continued to find that government sales of standing timber in Nova Scotia did not have a distortive impact on the province's private standing timber market.
- In the prior review, Commerce found that the 2017-2018 Private Market Survey was conducted in the ordinary course of business, contained a sizable number of transactions, reflected a variety of softwood species and log types, and thus constituted a reliable tier-one benchmark.¹²¹⁸
- In the *Lumber V AR2 Prelim*, Commerce continued to use the prices in the 2017-2018 Private Market Survey as a tier-one benchmark to determine the adequacy of remuneration of Crown-origin standing timber sold in Québec, Ontario, and Alberta.¹²¹⁹
- The Canadian Parties have offered no new evidence to warrant Commerce's reconsideration of these consistent findings, and, as such, Commerce should maintain the use of the 2017-2018 Private Market Survey as the tier-one benchmark in the standing timber for LTAR benefit calculations for Québec, Ontario, and Alberta.
- Commerce previously rejected the Canadian Parties' claim that the 2017-2018 Private Market Survey is unclear as to which types of transactions it surveyed. Citing to the survey itself, Commerce found that it solicited information by log type (e.g., sawlog, studwood, pulplog) and that it instructed survey respondents to report only prices paid for "stumpage," (e.g., the price paid for a standing tree).¹²²⁰
- The 2017-2018 Private Market Survey contains nearly 20,000 individual transactions that represent all of Nova Scotia.
- In the prior review, Commerce noted that the GNS has an established history of relying on periodic survey to set Crown-origin stumpage prices and that the GNS used the 2017-2018 Private Survey to set stumpage rates for Crown-origin standing timber in Nova Scotia for FY 2019-2020.¹²²¹

¹²¹⁷ See Petitioner Rebuttal Comments at 11-13 and 57-58.

¹²¹⁸ See Petitioner Rebuttal Brief at 12 (citing *Lumber V AR1 Final IDM* at 29).

¹²¹⁹ See Petitioner Rebuttal Brief at 12 (citing *Lumber V AR2 Prelim PDM* at 24-25).

¹²²⁰ See Petitioner Rebuttal Brief at 57 (citing GNS IQR Response at Exhibit NS-7 and *Lumber V AR1 Final IDM* at Comment 29).

¹²²¹ See Petitioner Rebuttal Brief at 59 (citing *Lumber V AR1 Final IDM* at Comment 29)

- There is no dispute that Commerce conducted an on-site verification of the 2015-2016 Private Market Survey during the investigation. At that verification, Deloitte, the firm commissioned to conduct the survey, provided Commerce officials with access to the unredacted and disaggregated survey results. Based on its verification findings, Commerce found the methodology and data of the 2015-2016 Private Market Survey to be reliable and suitable for use as a tier-one benchmark.
- Consistent with the prior review, the GNS provided Commerce with an anonymized dataset that was collected as part of the 2017-2018 Private Market Survey.
- The GNS provided this data to Commerce even though it itself does not possess these data. The GNS further authorized Deloitte and its trade counsel to fully cooperate with Commerce in providing product- and month-specific weighted-average values using this anonymized data.
- Commerce should dismiss the Canadian Parties' unfounded speculation and continue to find the 2017-2018 Private Market Survey to be reliable.

Commerce's Position: The Canadian Parties raised the same arguments regarding the reliability of the 2017-2018 Private Market Survey in the prior review, and Commerce rejected them.¹²²² We continue to reject the arguments in the instant review, and we continue to find that the 2017-2018 Private Market Survey is reliable and may serve as a tier-one benchmark when determining whether provincial governments at issue sold Crown-origin standing timber for LTAR.

The Canadian Parties continue to argue that the 2015-2016 Private Market Survey is unreliable, that the 2017-2018 Private Market Survey suffers from the same flaws, and thus that Commerce cannot rely on prices from the 2017-2018 Private Market Survey as the source of its tier-one benchmark. As explained in the prior review,¹²²³ we find: (1) the 2015-2016 Private Market Survey to be reliable; (2) the 2017-2018 Private Market Survey utilized many of the same key data collection methodologies as the 2015-2016 survey; (3) and there is no evidence in this review that calls into question the reliability of the 2017-2018 survey. Thus, we continue to find the results of the 2017-2018 Private Market Survey are also reliable.

Repeating arguments from the prior review,¹²²⁴ the Canadian Parties claim that the GNS commissioned the 2015-2016 Private Market Survey for purposes of the lumber proceeding, and therefore is not reliable, and thus Commerce must also conclude that the 2017-2018 Private Market Survey was commissioned for purposes of the review and is unreliable. To support their argument, they assert that the 2015-2016 Private Market Survey was not used to set the prices for Crown-origin standing timber prices in Nova Scotia and neither was the 2017-2018 Private Market Survey. As in the prior review, we continue to find that the 2015-2016 Private Market Survey was not commissioned or conducted for purposes of the investigation.¹²²⁵ The GNS has an established history of conducting periodic stumpage surveys to evaluate whether it should update Crown stumpage rates.¹²²⁶ The GNS began the process to survey private-origin standing timber prices for FY 2015-2016 well before the initiation of the investigation. For example, in December 2015, a year before the initiation of the investigation, the GNS learned that the GNB

¹²²² See *Lumber VARI Final* IDM at Comment 29.

¹²²³ *Id.* at Comment 29.

¹²²⁴ *Id.* at Comment 29.

¹²²⁵ *Id.* at Comment 29.

¹²²⁶ See Petitioner Comments on IQR Responses at Volume I-25 at Exhibit 1; see also GNS IQR Response at 3.

was preparing its own survey of private-origin standing timber prices and, thus, was approached by various stakeholders to similarly conduct a survey covering private-origin standing timber prices in Nova Scotia.¹²²⁷ The record indicates that in February 2016, the GNS then commenced a procurement process to find a vendor to develop a new stumpage survey.¹²²⁸ All of these events transpired prior to the initiation of the investigation. Even though the GNS ultimately determined not to use the results of the 2015-2016 Private Market Survey to set the prices for Crown-origin standing timber in the province due to concerns with how the contractor, Deloitte, weighted the survey results,¹²²⁹ the evidence on the record demonstrates that the GNS commissioned the study well before the *Lumber V* proceeding even began. Therefore, we continue to disagree with the Canadian Parties' claims that the 2015-2016 Private Market Survey was conducted for purposes of this proceeding and that the survey and any updated versions of the study are unreliable.

Information on the record of the current review also clearly demonstrates that the GNS used the results of the 2017-2018 Private Market Survey to set the prices for Crown-origin standing timber charged in FY 2019-2020. For example, the GNS states in its initial questionnaire that the 2017-2018 Private Market Survey "formed the basis for the Government of Nova Scotia to set its Crown stumpage rates."¹²³⁰ The Canadian Parties claim this is a vague statement that does not prove the GNS, in fact, relied on the 2017-2018 Private Market Survey to set prices for Crown-origin standing timber. However, a declaration from the Executive Director of the Renewable Resources Division at the GNS's Department of Lands and Forestry definitively explains what the GNS already made clear in its initial questionnaire response:

Accordingly, the Department commissioned Deloitte to conduct a survey for the 2017-2018 period for all species and products. In Attachment 4, I am providing a packet of information that was released publicly pursuant to a request for documents under Nova Scotia's FOIPOP Act. Deloitte completed this survey in the Fall of 2018. The Department used these 2017-2018 survey results to update Crown stumpage rates in FY2019- 2020.

The Crown stumpage royalty rates in effect covering species and products used for producing softwood lumber products are identical to the rates reported in the private stumpage survey...¹²³¹

Therefore, the Canadian Parties are simply wrong to claim that the GNS did not use the results of the survey as the basis for setting the prices for Crown-origin standing timber. Furthermore, the 2017-2018 Private Market Survey contains prices for hardwood and pulpwood grade standing timber (*e.g.*, prices for standing timber that is not used to make softwood lumber). This fact, along with the fact that the GNS utilized the results of the 2017-2018 Private Market Survey to set the price of Crown-origin standing timber charged for FY 2019-2020, a period that post-dates Nova Scotia's exclusion from the *CVD Order*, constitute additional proof that the GNS

¹²²⁷ See Petitioner Comments on IQR Responses at Volume I-25 at Exhibit 1 and Attachments 1-2.

¹²²⁸ See Petitioner Comments on IQR Responses at Volume I-25 at Exhibit 1 and Attachments 1, 3.

¹²²⁹ See GNS IQR Response at Exhibit 6B at 9.

¹²³⁰ *Id.* at 4.

¹²³¹ See Petitioner Comments on IQR Responses at Volume I-25 at Exhibit 1.

commissioned and relied upon the 2017-2018 survey in the ordinary course of business. Given these facts, it is simply not credible for the Canadian Parties to claim the GNS commissioned the 2017-2018 Private Market Survey for purposes of the *Lumber V* proceeding and, thus, Commerce should not rely upon the survey for purposes of deriving tier-one standing timber benchmark prices.

We also disagree with the Canadian Parties' claims that the underlying data from 2015-2016 Private Market Survey, such as the identities of the survey respondents, were not examined or on the record of the investigation and that their absence was a fatal flaw that continued in the 2017-2018 Private Market Survey. In the investigation, the GNS explained that Deloitte, the firm that conducted the 2015-2016 Private Market Survey, did not disclose the identities of the survey respondents to the GNS or provide it with disaggregated survey results but that the counsel to the GNS, nonetheless, provided Commerce with the proprietary, disaggregated survey results of the 2015-2016 Private Market Survey.¹²³² The disaggregated survey results redacted the identities of the purchasers of the private-origin standing timber.¹²³³ At verification, Deloitte provided Commerce officials with access to the unredacted and disaggregated survey results.¹²³⁴ As explained in the *Lumber V Final*, based on its review of the underlying data at verification, Commerce determined that the 2015-2016 Private Market Survey was reliable and suitable for benchmark purposes.¹²³⁵ Thus, because the GNS submitted the disaggregated survey results from the 2015-2016 Private Market Survey on the record and because Commerce examined unredacted information in the survey results (including the identities of survey respondents), it is simply incorrect for the Canadian Parties to claim the data were not disclosed or available during the investigation. In the current review, the GNS once again provided a disaggregated, anonymized version of the results of the 2017-2018 Private Market Survey.¹²³⁶ Therefore, we find that the GNS has adequately disclosed the underlying data of the 2017-2018 Private Market Survey.

The Canadian Parties argue that Commerce cannot rely on the 2017-2018 Private Market Survey because it was not verified during the current review. These arguments are both legally and factually misplaced. Unlike in an investigation, verification of questionnaire responses is not mandatory in the first or second administrative review of a CVD order.¹²³⁷ Instead, Commerce has discretion in deciding whether to conduct verification in a first or second administrative review and will do so only where it finds that "good cause" exists.¹²³⁸ Thus, to the extent the Canadian Parties fault Commerce for not conducting a full verification of the 2017-18 Private Market Survey, we clarify that no such obligation existed in the first or current administrative review. Nor have the Canadian Parties attempted to articulate any claim under 19 CFR 351.307(b)(1)(iv) that verification was mandatory.

¹²³² See *Lumber V Final* IDM at Comments 40 and 41.

¹²³³ *Id.*

¹²³⁴ *Id.* at Comment 41, ("Further, other than the survey respondents whose source documents the Department examined at verification, the identities of the survey respondents are not on the record.")

¹²³⁵ See *Lumber V Final* IDM at Comment 41.

¹²³⁶ See GNS IQR Response at Exhibit 6B.

¹²³⁷ See section 782(i) of the Act (specifying when verification is required in administrative reviews).

¹²³⁸ See 19 CFR 351.307(b)(1)(iv).

Moreover, as discussed above, Commerce verified a prior version of the 2017-2018 Private Market Survey in the underlying investigation of this proceeding and found it to be “sound, reliable, and therefore suitable for use a tier-one benchmark . . .”¹²³⁹ Because the 2017-2018 Private Market Survey depended on the same key data collection methodologies (*e.g.*, instructing survey respondents to report “pure stumpage prices” and utilizing product definitions from the GNS’s Registry of Buyers),¹²⁴⁰ and there was no evidence to question the survey’s reliability, we continue to find that the 2017-18 Private Stumpage Survey is likewise reliable and suitable as a tier-one benchmark.¹²⁴¹

Further, to argue that Commerce should have instead found the 2017-18 Nova Scotia Private Market Survey to be unreliable because there is no evidence in this review that confirms its accuracy and because Commerce did not examine it as part of a verification process is to misstate Commerce’s obligations under the law. Commerce is not required to assume that factual information submitted with appropriate certifications is inaccurate. Instead, “{i}n the absence of evidence in the record suggesting the need to examine further the supporting evidence itself, the agency may accept the credibility of the document at face value.”¹²⁴² This is particularly true in the case of the 2017-2018 Private Market Survey that, as discussed above, was conducted by the GNS in the ordinary course of business with the express purpose of using the survey results to set the prices of Crown-origin standing timber in Nova Scotia.

We continue to disagree with the Canadian Parties’ claim that the 2015-2016 Private Stumpage Survey included costs that were not part of the stumpage prices included in the survey and that such additional costs were also included in the 2017-2018 Private stumpage Survey. In the investigation, Commerce rejected the Canadian Parties’ claims that the 2015-2016 version of the study contained extraneous costs not related to stumpage prices and lump-sum transaction prices that distorted the survey results.¹²⁴³ In the investigation, Commerce also explained that the survey instructed respondents to only report prices paid for stumpage (*e.g.*, standing timber).¹²⁴⁴

We also continue to find the Canadian Parties’ claims that the 2017-2018 Private Market Survey similarly contains additional, non-stumpage costs are unfounded and factually mistaken. The 2017-2018 Private Market Survey instructed respondents to report prices paid for “pure” stumpage and instructed the survey participants not to include any other non-stumpage costs.¹²⁴⁵ Further, the survey instructed survey respondents not to report lump-sum transactions.¹²⁴⁶ Therefore, there is simply no basis to conclude that the prices in the 2017-2018 Private Market Survey are improperly inflated by extraneous costs or improper reporting methods.

We disagree with the Canadian Parties’ claim that the 2017-2018 Private Market Survey does not reflect prices for standing timber and contains vague product definitions. As noted elsewhere,

¹²³⁹ See *Lumber V AR I Final* IDM at Comment 29; see also GNS IQR Response at Exhibit NS-7, which includes the GNS Verification Report from the investigation.

¹²⁴⁰ See GNS IQR Response at 20, Exhibit NS-7 at 4, 7, and Exhibit NS-18.

¹²⁴¹ See *Lumber V AR I Final* IDM at Comment 29.

¹²⁴² See *NTN Bearing Corp.* at 1331 (citing *Pohang Iron & Steel Co.* at 1).

¹²⁴³ See *Lumber V Final* IDM at Comment 41.

¹²⁴⁴ *Id.*

¹²⁴⁵ See GNS IQR Response at Exhibit NS-18.

¹²⁴⁶ *Id.* at Exhibit NS-18.

Deloitte instructed respondents to the 2017-2018 Private Market Survey to report “pure” stumpage prices for “standing timber,” and the instructions to the survey further direct respondents not to report purchases of “logs.”¹²⁴⁷ A declaration from the co-owner of a Nova Scotia lumber mill confirms that the 2017-2018 Private Market Survey solicited purchase information for standing timber using product definitions that were well-understood by the survey respondents:

Since Crown stumpage royalty rates are set with reference to fair market value surveys of private land stumpage, it is in our economic interest for the private land stumpage price to be as low as possible. Likewise, it is in our economic interest to secure the lowest private land stumpage prices when harvesting private land standing timber. These same economic incentives exist across sawmills and purchasers of standing timber, especially those with Crown licenses.

... {t}he prices reported {in the 2017-2018 survey} — and carried forward into our Crown stumpage royalty rates — strike me as being representative prices of standing timber in Nova Scotia.¹²⁴⁸

As to the product definitions themselves, in the prior review we explained:

The classification terms used in the 2017-2018 are based on the definitions contained in the GNS’s Registry of Buyer’s Report, and the GNS and members of the wood products industry in Nova Scotia use terms such as sawlog and studwood in the ordinary course of business as a means of describing sawable standing timber that is for sale. Further, because the GNS and members of its wood products industry regularly use such terms in the ordinary course of business to describe standing timber, we reject the Canadian Parties’ claims that respondents to the 2017-2018 Private Market Survey would interpret such terms as sawlog or studwood to mean only a certain portion or length of standing timber, particularly when the 2017-2018 instructed survey respondents to report the prices they paid for “stumpage,” (*i.e.*, the price paid for a standing tree).¹²⁴⁹

Additionally, a declaration from the co-owner of Harry Freeman & Sons Ltd. further demonstrates that prominent members of Nova Scotia’s forest product industry interpret the product definitions in the same manner as the 2017-2018 Private Market Survey:

Concluding the transaction requires that the buyer and seller come to an agreement as to what product has been harvested. That is: whether the felled tree is classified as a sawlog or studwood log, or pulpwood. This information is maintained on cutting slips, invoices, truck slips, or the like, depending on the harvester’s practice or the mill’s requirements.¹²⁵⁰

¹²⁴⁷ *Id.* at Exhibit NS-18.

¹²⁴⁸ See Petitioner Comments on IQR Responses at Volume I-25 at Exhibit 4.

¹²⁴⁹ See *Lumber VARI Final* IDM at Comment 29.

¹²⁵⁰ See Petitioner Comments on IQR Responses at Volume I-25, which contains the affidavit of Richard Freeman, co-owner of Harry Freeman & Son).

The information discussed above demonstrates that the parameters of the 2017-2018 Private Market Survey were reasonable, transparent, and reflected the operating procedures of the GNS and the Nova Scotia forest products industry. Thus, we find the positive evidence indicating the clarity of the terms and definitions contained in the 2017-2018 Private Market Survey overcome the unsubstantiated speculation to the contrary from the Canadian Parties.

We also disagree that the lack of price data from firms with access to standing timber located on private industrial freehold lands makes the 2017-2018 Private Market Survey unreliable. Commerce rejected this same argument in the investigation and prior review explaining that:

(1) “softwood timber harvested on industrial freehold lands is not a significant portion of the softwood timber harvested in Nova Scotia,” (2) “the purchase and harvesting of timber on industrial freehold lands has no meaningful impact on the purchase and harvesting of timber on small private woodlots,” and (3) “generally speaking, owners of industrial freehold lands do not typically offer their standing timber for sale to unrelated third parties. If any industrial freehold wood is sold to third parties, these transactions typically involve the sale of harvested logs where the owner does not have a use for those logs in its own facility.”¹²⁵¹

Additionally, as in the prior review,¹²⁵² softwood standing timber sourced from industrial freehold lands did not account for a significant share of Nova Scotia’s total harvest of softwood standing timber during the POR.¹²⁵³ We also continue to find that standing timber from a given industrial freehold is generally internally consumed by the owner of the industrial freehold land.¹²⁵⁴ The lack of arm’s length sales prices involving industrial freehold land would make such sales unusable as tier-one benchmarks. Therefore, our finding on this point remains unchanged from the investigation and prior review.

The Canadian Parties argue that Commerce subjected the functioning and nature of the standing timber markets in Québec, Ontario, and Alberta to great scrutiny yet unfairly chose not to subject Nova Scotia’s standing timber to a similarly stringent analysis. However, the Canadian Parties’ argument fails to acknowledge the central differences that exist between Nova Scotia and Québec, Ontario, and Alberta, namely that there is no allegation that the GNS sells Crown-origin standing timber for LTAR. Furthermore, unlike Québec, Ontario, and Alberta, Crown-origin standing timber in Nova Scotia accounts for a substantially smaller share of the overall standing timber market in Nova Scotia.¹²⁵⁵ Therefore, consistent with the prior review,¹²⁵⁶ we continue to find that it is not necessary to make the use of private-origin standing timber prices in Nova Scotia as a tier-one benchmark contingent upon the results of a distortion analysis of Nova Scotia’s standing timber market.

¹²⁵¹ See *Lumber V Final* IDM at Comment 41; see also *Lumber V ARI Final* IDM at Comment 29

¹²⁵² See *Lumber V ARI Final* IDM at Comment 29.

¹²⁵³ See GNS IQR Response at Exhibit NS-1.

¹²⁵⁴ See *Lumber V ARI Final* IDM at Comment 29.

¹²⁵⁵ See, e.g., GNS IQR Response at Table 1, which indicates the share of the Nova Scotia’s total harvest during the POR sourced from private-origin and Crown-origin standing timber.

¹²⁵⁶ See *Lumber V ARI Final* IDM at Comment 29.

We continue to disagree that Commerce should not use the 2017-2018 Private Market Survey as the source of its tier-one benchmark for standing timber because the total volume of the private market sales transactions contained in the survey are substantially less than the total volume of Crown-origin standing timber harvested in Québec during the POR.¹²⁵⁷ It is not appropriate to compare surveyed volumes to total volumes, because the former represents a sample of the total universe of observations while the latter represents the total universe of observations. Rather, the proper analysis is one that examines whether the information in the 2017-2018 Private Market Survey is representative of Nova Scotia's overall, private-origin standing timber market. Information on the record demonstrates that the transaction volume in the 2017-2018 Private Market Survey reflects approximately 34 percent of the total volume of private-origin standing timber purchased in Nova Scotia during the same period.¹²⁵⁸ Further, the volumes of the individual transactions contained in the 2017-2018 Private Market Survey are within the range of volumes of Crown-origin standing timber purchased by the respondents.¹²⁵⁹

We also disagree with the Canadian Parties' claims that the 2017-2018 Private Market Survey is not reliable because the survey results do not reflect independent harvesters or small volume harvesters. The 2017-2018 Private Market Survey indicates that it identified and solicited respondents using the Registry of Buyers, which permitted the GNS to identify for Deloitte those buyers who would likely have purchases of private-origin standing timber of various timber and species types.¹²⁶⁰ Nova Scotia's Forest Sustainability Regulations state that the definition of a Registered Buyer does not require a party to own or operate a sawmill and includes parties who buy or sell as little as 1,000m³ of primary forest products.¹²⁶¹ Thus, it is incorrect for the Canadian Parties to simply assume that the 2017-2018 Private Market Survey was limited to Nova Scotia sawmills that consume the largest volume of private-origin standing timber, particularly when there is no evidence to support such an assumption.

Lastly, the Canadian Parties contend that Commerce should find the 2017-2018 Private Market Survey to be unreliable based on the WTO Panel's conclusions in *DS 533*. However, WTO panel and Appellate Body conclusions are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.¹²⁶² Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel or Appellate Body dispute reports limit automatically Commerce's discretion in applying the statute in an AD or CVD proceeding.¹²⁶³ Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."¹²⁶⁴

¹²⁵⁷ *Id.*

¹²⁵⁸ See GNS IQR Response at Exhibit NS-6B at 6.

¹²⁵⁹ See GNS IQR Response at Exhibit NS-5B; see also, e.g., Resolute Final Calculation Memorandum reflecting Crown-origin standing timber it purchased in Québec and Ontario

¹²⁶⁰ See GNS IQR Response at Exhibit NS-6B at 4.

¹²⁶¹ See GNS IQR Response at Exhibit NS-15 at Article 2.(l).

¹²⁶² See *Corus Staal BV v. U.S.*, 395 F. 3d 1347-49, accord *Corus Staal BV v. U.S.*, 502 F. 3d 1375; and *NSK Ltd. v. U.S.*, 510 F. 3d 1379-80.

¹²⁶³ See 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

¹²⁶⁴ See SAA at 659.

Comment 45: Whether Commerce Should Publicly Disclose the Anonymized Data that Comprise the 2017-2018 Private Market Survey and the Price Index Used to Calculate the Nova Scotia Benchmark

*GOC's Comments*¹²⁶⁵

- Commerce redacted the anonymized dataset that comprises the results of the 2017-2018 Private Market Survey as well as the price index used to calculate the Nova Scotia benchmark.
- As a result, officials from the GOC, Provincial Governments, and respondent firms are not able to review the calculations used to determine stumpage LTAR benefit calculations.
- Commerce has a practice of using only benchmarks that can be shared with a respondent when assessing adequacy of remuneration for that respondent's purchase of a government-provided good.
- For example, Commerce refrained from using the prices JDIL paid for Crown-origin standing timber as a benchmark on the grounds that it could not use a proprietary benchmark to calculate the benefit received by parties other than JDIL.
- Commerce has not identified a single case in which it assessed the adequacy of remuneration paid or received by a respondent using a proprietary benchmark that the respondent could not review.
- The GNS designated the individual transactions reported by Nova Scotia survey respondents as BPI under 19 CFR 351.105(c)(11), but Commerce did not use individual transactions as its benchmark.
- Instead, Commerce used the individual transactions to derive monthly and annual averages for different timber products. The monthly and annual averages are what Commerce used as the tier-one benchmark to measure the adequacy of remuneration for Québec, Ontario, and Alberta.
- These monthly and annual averages do not qualify for proprietary treatment under 19 CFR 351.105(c)(11) as they are not specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.
- Commerce's benchmark calculations do not qualify for proprietary treatment under any other provision of its regulations.
- The averages of the anonymized dataset that comprises the results of the 2017-2018 Private Market Survey do not disclose the proprietary data of any specific respondents, and, thus, do not constitute proprietary data.
- The average prices fit the definition for public information under 19 CFR 351.105(b) that has been published or made available to the public because the GNS itself publishes annual averages from the 2017-2018 Private Market Survey.
- When Commerce calculates the weighted-average all others rate it redacts the sales information used as the weights, but it discloses the respondent-specific CVD and dumping margins that comprise the weighted-average all-others rate. Thus, disclosing the averages in the benchmark calculation adheres to Commerce's existing policy.
- Similarly, Commerce should not treat as BPI the index Commerce used to index prices in the 2017-2018 Private Market Survey into POR prices. Contrary to the GNS's claim, its use of the

¹²⁶⁵ See GOC Case Brief Volume 1 at 139-144.

index in question is public knowledge, and the GNS published it online in response to a freedom of information request.¹²⁶⁶

- Further, Commerce relied on the index in question to calculate the Nova Scotia benchmark in the prior review.¹²⁶⁷

*Resolute's Comments*¹²⁶⁸

- Information used as a benchmark for LTAR determinations must generally be publicly available. Resolute finds no precedent for non-disclosure to parties of essential benchmark information determining the rates of duties they are expected to pay.
- Trade remedies are remedial when the respondent cannot know the benchmark used to calculate the subsidy and adjust accordingly.
- The bracketed information shields from Resolute even some of its own information as used to calculate the duty margin. Failure to release the information that would enable a company to understand how and why it is being required to pay duties would be, again, unprecedented, unfair, and contrary to the remedial purposes of the statute.

*GNS Rebuttal Comments*¹²⁶⁹

- The GNS consents to the public release of Commerce's SPF benchmark derived from individual transactions in the Nova Scotia private stumpage database.
- The GNS does not consent to the public disclosure of the benchmark for any product other than SPF studwood and sawlogs.
- The GNS explained in detail with supporting information how monthly average stumpage prices for product categories other than SPF studwood and sawlogs could reveal confidential information as there are too few individual transactions to allow for the release of monthly averages.
- The GNS explained that since the individual transactions are entitled to protection pursuant to 19 CFR 351.105(c)(5), release of averages that would circumvent that protection should likewise not be released publicly.
- The GNS requires such information to be kept confidential to secure participation in the survey process and release of the information could compromise the collection of survey data in the future.

*Petitioner's Rebuttal Comments*¹²⁷⁰

- The Canadian Parties appear to be making two separate requests: (1) Commerce cannot use the Nova Scotia benchmark because it contains information subject to Commerce's APO; and (2) Commerce must disclose to the public the information granted APO protection to the GNS.
- Both sets of arguments are without merit.
- There is no dispute that the weighted average results of the 2017-2018 Private Market are publicly available.

¹²⁶⁶ See GOC Case Brief Volume 1 at 145 (citing GOA, GOO, & GOQ Comments GNS IQR Response at Exhibit PR-NSR-AR2-15.

¹²⁶⁷ See GOC Case Brief Volume 1 at 145 (citing *Lumber VARI Final IDM* at Comment 35.

¹²⁶⁸ See Resolute Case Brief at 21-24.

¹²⁶⁹ See GNS Rebuttal Brief at 14-15.

¹²⁷⁰ See Petitioner Rebuttal Brief at 100-106.

- The only data that are not available to the public is the information that was obtained as part of a confidential survey process, the disclosure of which might harm the competitive position of the survey user.
- Thus, the GNS rightly redacted the information to protect the confidentiality of survey respondents.
- Nonetheless, the GNS provided the disaggregated information to parties with APO access even though it was not the “owner” of the information.
- Commerce has consistently used sources that do not have the underlying transaction-specific or user-specific data.¹²⁷¹
- In the investigation, Commerce examined actual underlying data collected by the surveyor, Deloitte, and concluded that the GNS’s commission stumpage survey was reliable and suitable for benchmark purposes. Thus, the Canadian Parties’ claims that access to the redacted information is necessary to analyze the reliability of the prices in the 2017-2018 Private Market Survey are without merit.
- The GNS has demonstrated in prior filings that certain averages in the 2017-2018 Private Market Survey should be treated as proprietary.
- The CIT has held the APO process is “among the most delicate and important provisions in the statute and touches on some of the most sensitive decisions to be made in the administrative process.”¹²⁷²
- The GNS uses the index in question in the ordinary course of business to set the price for Crown-origin standing timber. In years when no survey is conducted, such as the instant POR, the GNS uses an indexing method that is not disclosed to the public.
- The disclosure of the index data used in the derivation of the Nova Scotia benchmark would necessarily reveal the GNS’ indexing methodology, and as such, should not be made public.

Commerce’s Position: As an initial matter, the GNS consents to the public release of Commerce’s monthly benchmark SPF standing timber prices for sawlogs and studwood derived from individual transactions in the 2017-2018 Private Market Survey database, thereby resolving much of the Canadian Parties’ complaints regarding the redaction of the Nova Scotia benchmark data in the *Lumber V AR2 Prelim*.

The remaining datapoints in the 2017-2018 Private Market Survey dataset reflect either standing timber prices for private-origin, non-sawable timber and hardwood species or sawable prices for softwood species that do not fall within Nova Scotia’s SPF basket (*e.g.*, Eastern White Pine, Hemlock, Red Pine, or other non-identified species). The monthly averages for non-sawable timber and hardwood species are not relevant to Commerce’s LTAR price comparison, which is limited to sawable, softwood species. Therefore, we find it prudent to continue to redact those prices. The number of observations corresponding to survey transactions for non-SPF species and SPF grades other than studwood and sawlogs in the 2017-2018 Private Market Survey dataset are such that their disclosure could lead to the disclosure of the survey respondents. Therefore, for these reasons, we find the GNS’s request that Commerce should continue to redact the sales information for these transactions and their corresponding monthly weight average prices to be reasonable.

¹²⁷¹ *Id.* at 101 (citing *Tool Chests from China* IDM at Comment 5).

¹²⁷² *Id.* at 105 (citing *Sacilor*, 542 F. Supp at 1024).

Because the GNS has consented to the disclosure of the monthly, weighted average prices for SPF sawlogs and studwood, as contained in the 2017-2018 Private Market Survey database, but has requested proprietary treatment of the index used to inflate the survey prices to 2019 prices, the 2019 SPF sawlogs and studwood prices must also be redacted. In other words, in an indexing calculation, if the base price and the indexed price are disclosed, but the index used to inflate the base price is redacted, one can derive the index from this calculation. Thus, while the GNS has consented to disclose the 2017-2018 Private Market Survey database, the proprietary index used to inflate the monthly SPF benchmark prices in the 2017-2018 Private Market Survey to 2019 SPF prices would be divulged if the 2019 SPF prices were disclosed.

Comment 46: Whether Commerce Should Make Adjustments to Stumpage Rates Paid by the Respondents to Account for “Total Remuneration” in Alberta, New Brunswick, Ontario, and Québec

*Canadian Parties’ Comments*¹²⁷³

- West Fraser and the GOA argue that Commerce does not distinguish between dues, costs, and the charges paid by the Alberta respondents related to “long-term tenure rights” for remuneration of Crown-origin standing timber. Tenure holders receive no good or service from their tenure holdings other than standing timber, and the fees paid by the Alberta respondents cannot be separated from the cost of stumpage.¹²⁷⁴
- Commerce’s reliance on the results in the *SC Paper Expedited Review Final* is misplaced as the facts of the two proceedings are different. While JDIL was partially reimbursed for its other stumpage-related expenses, the GOA does not reimburse the Alberta respondents at all. Though not all costs incurred by Alberta harvesters should be considered remuneration, Alberta respondents’ in-kind costs to provide services or goods, such as reforestation or public road building and maintenance costs, should be considered remuneration as the GOA requires the Alberta respondents to incur these costs by law for the benefit of the government as landowner.¹²⁷⁵

*GOQ’s Comments*¹²⁷⁶

- Under section 95 of the SFDA, the GOQ requires tenure holders to pay annual royalties that are separate from the per cubic meter stumpage fees they pay to harvest Crown-origin standing timber.
- In Québec, tenure holders are responsible for building and maintaining primary and secondary roads located in the tenure areas. The GNS does not impose such requirements on harvesters of private-origin standing timber in Nova Scotia.
- Québec’s Crown-origin forests are concentrated in the Province’s northern tier, far from population centers and support services. As a result, tenure holders must maintain remote forest camps where they house and feed their forestry workforce. Nova Scotia is a relatively

¹²⁷³ See GOA Case Brief Volume 4.A at 12-24.

¹²⁷⁴ See GOA Case Brief Volume 4.A at 12-16; see also West Fraser Case Brief at 24-26.

¹²⁷⁵ See GOA Case Brief Volume 4.A at 16-18 citing *SC Paper Expedited Review Final* IDM at 113–114 and Alberta August 5, 2020 Questionnaire Response, vol. II at ABII-3–4, ABII-112–113.

¹²⁷⁶ See GOQ Case Brief Volume 8.A at 62.

small province whose harvest areas are close to population centers and, thus, do not require the operation of remote forest camps.

- The GOQ requires tenure holders to perform scaling, forest planning, supervision, and environmental management activities.
- To ensure a fair comparison, Commerce should adjust the Nova Scotia benchmark downward to account for the aforementioned costs incurred by Crown tenure holders in Québec. Specifically, Commerce should base the downward adjustment on average cost data supplied by the GOQ.

*Petitioner's Rebuttal Comments*¹²⁷⁷

- The Canadian Parties have offered no new evidence or changed circumstance to warrant Commerce to adjust the Nova Scotia benchmark.
- The Nova Scotia benchmark is a “pure” stumpage price, unadjusted by other fees such as royalties and road construction. Commerce’s prior use of adjustments in *Lumber IV* were due to a different benchmark, and comparisons between *Lumber IV* and this review are thus misplaced.
- Commerce should not make adjustments to the costs paid by the respondents for stumpage beyond the cost of the standing tree as such adjustments would include fees and services not accounted for in the benchmark.

Commerce’s Position: As in the prior review, the Canadian Parties argue that Commerce should adjust their purchase prices of Crown-origin standing timber by adding the cost of certain activities, fees, and charges that are part of the “total” remuneration paid by the respondents. We continue to disagree.¹²⁷⁸ As noted elsewhere in this memorandum, we find the private prices in the 2017-2018 Private Stumpage Survey and JDIL’s purchases private-origin standing timber in Nova Scotia are “pure” stumpage prices, *i.e.*, prices charged to the purchaser for the right to harvest timber, which therefore do not reflect any of the related costs.¹²⁷⁹ Further, prices in Nova Scotia are the proper tier-one benchmark. Thus, due to our determination that the Nova Scotia benchmark is a “pure” stumpage price, which does not reflect these other activities, fees, and charges, we find that a proper stumpage-to-stumpage comparison must exclude the cost of such related expenses from the calculation.

Accordingly, we have excluded all the related expenses that are not the “pure” stumpage price paid. We have not added the costs for certain post-harvest activities, such as scaling and hauling logs to the mill, because such costs are incurred after harvesting standing timber, and after the purchase/sale of stumpage. Likewise, the administrative costs cited by the Canadian Parties are considered overhead expenses, which are not directly related to stumpage prices. We also find no record evidence that the Nova Scotia benchmark or JDIL’s Nova Scotia purchases incorporate the cost of long-term tenure obligations (*e.g.*, unreimbursed license expenses, annual fees, FRIAA dues, holding and protection charges, *etc.*, which the respondents argue we should adjust

¹²⁷⁷ See Petitioner Rebuttal Brief at 62-65.

¹²⁷⁸ See *Lumber VARI Final* IDM at Comment 43.

¹²⁷⁹ See GNS IQR Response at Exhibits 5B and 6B; *see also* JDIL IQR Response at Exhibit STUMP-02.c at Table 3.

for in the benefit calculation).¹²⁸⁰ Our findings in this regard are consistent with our approach in the investigation.¹²⁸¹

Concerning the distinction between “long-term tenure rights” and “stumpage,” we continue to find as we did in the prior review that costs associated with long-term tenure rights are separate from and substantively different than the “pure” stumpage price.¹²⁸² Such costs are billed on separate invoices or as separate line items by the provinces, rather than incorporated into the stumpage price,¹²⁸³ and there is no evidence on the record that these costs are taken into account by provincial governments when setting stumpage prices. As noted in the prior review, section 771(5)(E)(iv) of the Act does not require Commerce to include all costs that a purchaser bears in relation to the purchase of a good when measuring the adequacy of remuneration for that purchase.¹²⁸⁴ As discussed above, our benchmark excludes these long-term tenure costs, and as such, including these costs would distort the calculation of benefit by adding costs on one side of the equation (respondents’ purchase price) without similar costs being incorporated into the other side (the Nova Scotia benchmark or JDIL’s Nova Scotia purchases). Regarding in-kind and other related expenses in Alberta, we find they are part of the respondents’ long-term tenure rights and are not part of the “pure” stumpage price as calculated from the *2017-2018 Private Stumpage Survey*.¹²⁸⁵ Consequently, Commerce cannot adjust for such costs without distorting the benchmark.

J. Log Export Restraint Issues

Comment 47: Whether Commerce Should Find Restrictions on Log Exports in Alberta, New Brunswick, Ontario, and Québec to Be Countervailable Subsidies

*Petitioner’s Comments*¹²⁸⁶

- Commerce determined in the *Lumber V ARI Final* that LERs in Alberta, New Brunswick, Ontario, and Québec were not countervailable subsidies through a “price effect” test that was inconsistent with the Act.¹²⁸⁷ Commerce must reverse this determination and examine these programs solely based on the enumerated statutory elements of a countervailable subsidy - financial contribution, benefit, and specificity.
- The U.S. Supreme Court has emphasized that administrative agencies have no power to act unless given power by Congress.¹²⁸⁸ As such, Commerce is not allowed to create new requirements for an affirmative legal finding additional to those laid out by Congress. In *Timex*, the CAFC found that “the agency by regulation cannot impose, either implicitly or explicitly, a requirement that Congress did not intend to have imposed.” In *B.F. Goodrich Co.*, the CIT found that a U.S. Customs Service regulation not based on statutory language or intent

¹²⁸⁰ See GNS IQR Response at Exhibits 5B and 6B; see also JDIL IQR Response at Exhibit STUMP-02.c at Table 3.

¹²⁸¹ See *Lumber V ARI Final* IDM at Comment 43.

¹²⁸² See *Lumber V ARI Final* IDM at Comment 43.

¹²⁸³ See, e.g., GOA IQR Response at Exhibit AB-AR2-S-17, Canfor IQR at Exhibit A-7

¹²⁸⁴ See *Lumber V ARI Final* IDM at Comment 43.

¹²⁸⁵ See GNS IQR Response at Exhibits 5B and 6B; JDIL IQR Response at Exhibit STUMP-02.c at Table 3; and Canfor IQR at Exhibit A-7

¹²⁸⁶ See Petitioner Case Brief at 56-89.

¹²⁸⁷ *Id.* at 56-57 (citing *Lumber V ARI Final* IDM at Comment 44).

¹²⁸⁸ *Id.* at 57 (citing *LA Public Service Commission*).

was invalid. In *API*, the Court of Appeals for the D.C. Circuit specifically found that an agency “cannot use the general rulemaking authority...as justification for adding new factors to a list of statutorily specified ones.”¹²⁸⁹

- The Act is unambiguous regarding the elements of a countervailable subsidy. Read together, the Act directs Commerce to find a subsidy countervailable if: (1) there is a financial contribution made by an authority or through entrustment or direction; (2) the subsidy is specific; and (3) the subsidy confers a benefit to the recipient. There is no additional requirement that there be a “price effect,” and in fact, the Act explicitly states that “the effect of a subsidy” is not a required element of a subsidy existing.
- A “price effect” analysis is also not a permissible component of any of the three elements of a subsidy.
- Financial contribution is based on the existence of qualifying practice and the nature of the entity that provides the contribution. None of the provisions in the Act allow for consideration of price suppression when analyzing these two factors. The purpose of the “entrustment or direction” analysis is to determine whether a government authority is acting through a private body, not to examine the “price effects” of such actions.
- Under the Act, a benefit is conferred where goods or services are provided for less than adequate remuneration, in other words, whether the price, considering prevailing market conditions, is lower than a benchmark price. There is no requirement to show a price effect.
- While neither Congress nor Commerce has established a precise definition of “entrustment or direction,” Commerce has made clear that entrustment or direction can encompass a broad range of meanings, and the SAA explicitly lists export restrictions as a scenario that could entail entrustment or direction. Commerce’s past practice involves examining record evidence to see if the government has a specific policy objective to benefit the industry or companies in question. There is clear such record evidence for each of the provincial governments, and as such, the LERs satisfy the entrustment or direction standard. Furthermore, the LERs all satisfy the “government function” requirement under section 771(5)(B)(iii) of the Act, as each of the provincial governments has extensive control over forest management in their respective provinces and logs are harvested from standing timber in forests.
- The LERs are *de jure* specific because their benefit is limited by law to the timber processing industry and are also *de facto* specific because the entities receiving the subsidy are limited in number and the timber processing industry is the predominant user.
- The Crown and private stumpage markets in the four provinces at issue are all distorted, and Commerce has previously found that demand and value of logs is linked to demand and value of stumpage. Thus, private log prices in these provinces do not reflect the fair market value of Crown origin logs, nor does the price of logs imported into these provinces. By contrast, U.S. log export prices to worldwide trade partners (excepting Canada) are comparable to species of logs sold in Canada and reasonably available in Canada.
- In using these prices, Commerce should calculate the adjustment for international freight required by 19 CFR 351.511(a)(2)(iv) by using the haulage cost formula placed on the record by the GOA.

¹²⁸⁹ *Id.* at 58-60 (citing *Killip*, *Timex V.I.*, *B.F. Goodrich Co.*, and *API*).

*Canadian Parties' Joint Rebuttal Comments*¹²⁹⁰

- “Entrustment or direction” requires both a government action that affirmatively causes a private entity to carry out a governmental subsidy function and a clear link between the government action and the conduct of a private party. The petitioner’s arguments provide no basis to revisit Commerce’s correct determination in the *Lumber V ARI Final* that there was no linkage between the government action and the private party’s provision of a good and thus no entrustment or direction.
- While the petitioner claims that Commerce’s finding has no basis in the Act, the courts have consistently found section 771(5)(B)(iii) of the Act to require the existence of a causal nexus between the government provision of a financial contribution to the respondent. Further, section 771(5)(B) of the Act clearly requires that “a benefit is thereby conferred,” a clear indication of linkage or causality that the petitioner omits by removing “thereby” when quoting from this section of the Act.
- This requirement for linkage is made clear in both the *CVD Preamble* and the *SAA*, as was recognized by the CAFC in *AK Steel*, and has been upheld in more recent CIT decisions.¹²⁹¹ Commerce has also upheld this standard in recent cases such as *Utility Scale Wind Towers from Indonesia* and *Steel Concrete Reinforcing Bar from Turkey*.¹²⁹²
- The petitioner also repeatedly mischaracterizes Commerce’s analysis as adding an additional factor in determining whether a countervailable subsidy exists, when in fact, Commerce was simply analyzing whether there was entrustment or direction.
- If Commerce incorrectly reverses the finding that there was no linkage and thus no subsidy, the alleged LERs in each of the four provinces would still not be entrustment or direction, as none of the provincial governments affirmatively caused private parties to provide a good for LTAR. Furthermore, the “government function” requirement is clearly not satisfied as none of the four provincial governments at issue normally, regularly, or routinely sell logs.
- The proposed U.S. log export benchmark is not representative of logs used by mandatory respondents, and the AUVs are anomalous and not market prices. Further, as explained by Dr. Reishus, higher export prices are a standard outcome of markets with no meaningful restrictions.¹²⁹³ Unused export authorizations also show that there is zero or minimal export demand from the provinces at issue, thus clearly showing a lack of impact.
- The petitioner’s comparison of domestic Canadian prices to U.S. export prices clearly does not meet the standard for finding a price effect from an indirect subsidy first articulated by Commerce in *Leather from Argentina* and upheld by the CIT in *TMK IPSCO*.¹²⁹⁴

Commerce’s Position: We continue to find that the alleged LERs in Alberta, New Brunswick, Ontario, and Québec are not countervailable based on the record of this review, which contains nothing that would lead us to change our determination from the prior review.

¹²⁹⁰ See Canadian Parties Joint Rebuttal Brief Volume 2 at 1-20.

¹²⁹¹ *Id.* at 5 (citing *SAA* at 926, *CVD Preamble*, 63 FR at 65361; and *AK Steel* at 1376, *TMK IPSCO* at 1340, and *Beijing Tianhai* at 1351)

¹²⁹² *Id.* at 6-7 (citing *Utility Scale Wind Towers from Indonesia Final IDM* at 25-30 and *Steel Concrete Reinforcing Bar from Turkey Final Results 2017 IDM* at 15-16).

¹²⁹³ *Id.* at 6 (citing Reishus Report at 66).

¹²⁹⁴ *Id.* at 19 (citing *Leather from Argentina* at 40213-40214 and *TMK IPSCO* at 1328, 1340).

As stated in the *Lumber VAR I Final*, the SAA, which lays out authoritative guidance for Commerce’s evaluation of indirect subsidies, provides the following:

...Commerce has found a countervailable subsidy to exist where the government took or imposed (through statutory, regulatory or administrative action) a formal, enforceable measure which directly led to a discernible benefit being provided to the industry under investigation. ... In cases where the government acts through a private party, such as in *Certain Softwood Lumber Products from Canada*¹²⁹⁵ and *Leather from Argentina*¹²⁹⁶ (which involved export restraints that led directly to a discernible lowering of input costs), the Administration intends that the law continue to be administered on a case-by-case basis consistent with the preceding paragraph.¹²⁹⁷

As an initial matter, it is essential to stress the language in the above paragraph that we intend to administer the law on a case-by-case basis. The findings for this case are based on the record evidence of this case. Interpreting the evidence on this case-specific manner gives Commerce the flexibility to address indirect subsidization. When facing indirect subsidy allegations in future CVD cases, we intend to make our determinations based on the records of those cases.

After the URAA became law, Commerce’s analysis of export restraints in certain cases involved a consideration of multiple elements, including long-term price trend data or independent studies.¹²⁹⁸ Some parties have placed economic analysis on the record in this review,¹²⁹⁹ and we have determined to consider that analysis along with other relevant record evidence, in making our determination on these export restraints.

The SAA’s reference to proceedings under a former iteration of the Canadian Softwood Lumber CVD Order, as well as *Leather from Argentina*, suggests that the “discernable lowering of input costs” was part of our analysis of whether the alleged program constitutes a subsidy in pre-URAA proceedings. In light of the language of the SAA and the arguments raised by interested parties, we have determined that in some post-URAA cases involving export restraints, as well, we not only conducted a financial contribution and benefit analysis, but we also considered information about whether the market for the good was influenced by the alleged restraints.¹³⁰⁰ Accordingly, consistent with that comprehensive analysis, we have conducted a thorough analysis of the record of this

¹²⁹⁵ See *Lumber III CVD Final Determination*, 57 FR at 22604–22610.

¹²⁹⁶ See *Leather from Argentina*, 55 FR at 40213-40214.

¹²⁹⁷ See SAA at 926.

¹²⁹⁸ See *Coated Paper from Indonesia* IDM at 25 – 35; *SC Paper from Canada – Expedited Review – Final Results* IDM at Comments 11 and 14; *Biodiesel from Argentina* IDM at Comment 1; *Biodiesel from Indonesia* IDM at Comment 5; and *Lumber V Final* IDM at Comment 44.

¹²⁹⁹ See GOC IQR Response at Exhibits FED. APP. LER-5 and FED. APP. LER-6; see also Marshall Report at 76-79.

¹³⁰⁰ See *HRS from Thailand Initiation*, 65 FR at 77584; *OCTG from China* IDM at Comments 29 and 32 (In *TMK IPSCO*, 170 F. Supp. 3d at 1338-1341, the CIT affirmed Commerce’s determination in *OCTG from China* to not countervail certain alleged export restraints on steel rounds when the record did not contain evidence that the restraints affected the domestic prices for steel rounds).

review and determined there is no information on the record that the alleged log export restraints have affected prices for Crown-origin logs during the POR in Alberta, New Brunswick, Ontario, or Québec. Notably, the petitioner has provided no evidence on the record to support its claims in this regard, and points to no information on the record that substantiates the claim that log export restraints have influenced prices for Crown-origin logs during the POR in the provinces at issue. Considering all this information as a whole, we do not find that the log export restraints in any of those provinces satisfy the elements necessary to determine that these alleged programs are a subsidy. Consequently, in these final results we find that the log export restraints at issue in Alberta, New Brunswick, Ontario, and Québec are not countervailable.

As these programs are not countervailable, other issues raised by interested parties in their briefs are moot.

Comment 48: Whether the LER in British Columbia Results in a Financial Contribution

*GBC's Comments*¹³⁰¹

- Any governmental action that falls outside of financial contribution under section 771(5)(D) of the Act cannot constitute a financial contribution as a matter of law and cannot be countervailed. The British Columbia LER does not fit any the categories outlined under section 771(5)(D) of the Act.
- The British Columbia LER is simply a process by which permits are issued for the export of logs held by private parties who harvested the logs and not the direct provision of a good.
- The British Columbia LER does not fall within the provision for indirect bestowal of a financial contribution under section 771(5)(B)(iii) of the Act. The British Columbia LER does not entrust or direct a private entity to carry out the provision of goods. Commerce has established a two-part “affirmative action” test that requires both a policy to support an industry or company and a pattern of government practices in pursuit of the policy.¹³⁰²
- Commerce has found that “entrustment or direction cannot merely be a by-product of government regulation,”¹³⁰³ nor based on mere “encouragement.”¹³⁰⁴ Even “broad control” has been deemed insufficient.¹³⁰⁵
- Commerce’s finding that “the laws and regulations that govern the provision of logs within British Columbia compel suppliers of B.C. logs to supply to B.C. consumers, including mill operators”¹³⁰⁶ is incorrect. It is factually incorrect because the surplus test almost always leads to an export authorization and is only one of multiple mechanisms for export approval. During FY 2018-2019, more than 99 percent of applications for authorization to export were approved, and during the POR, log exports made up 27 percent of the British Columbia Coast timber harvest. This contradicts the notion that the GOC and GBC “compel” logs to be sold domestically.

¹³⁰¹ See GBC Case Brief Volume 3 at 7-20.

¹³⁰² See GBC Case Brief vol. III at 9 (citing *Dynamic RAM Semiconductors from Korea*).

¹³⁰³ *Id.* at 10 (citing *SC Paper from Canada Final IDM* at 126).

¹³⁰⁴ *Id.* (citing *PRCBs from Vietnam IDM* at 24).

¹³⁰⁵ *Id.* (citing *CFS from Korea IDM* at 21, 33-34).

¹³⁰⁶ *Id.* at 11 (citing *Lumber V AR2 Prelim IDM* at 40).

- The surplus test also does not meet the affirmative action requirement for a financial contribution. Private companies making offers on export advertisements are merely market responses that are an effect of a regulation and cannot form the basis for a financial contribution finding. That an offer is placed does not mean that logs cannot be exported, and even if the offer price is deemed fair, there is no requirement that log suppliers sell to the offeror. In the British Columbia interior, log harvesters can apply for permits to export standing timber. The WTO Panel noted these facts in determining that Commerce did not have a proper basis to conclude that the GOC and GBC gave responsibility to, or exercised their authority over, log suppliers to sell to mill operators.
- Further, market impact cannot be the basis of a financial contribution determination. Commerce improperly relied on such an analysis in the investigation and prior review and must not do so in this review.
- The Act clearly defines a financial contribution with reference to the nature of the government action. Thus, identifying a financial contribution merely through effects would contravene the statute. Rather, Commerce must show that the government has taken affirmative measures to entrust or direct a private body to provide goods for LTAR.
- The record also lacks the demonstrable link between the government's actions and the conduct of the private party that is necessary to find entrustment or direction. The CAFC has recognized a "causal nexus," while the SAA and Commerce's own *CVD Preamble* also recognize the requirement for a linkage between the government action and that of the private party. Commerce has repeatedly applied this standard and declined to find entrustment or direction where it was not found.
- Commerce did not address the requirement for entrustment or direction that the financial contribution "would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments."¹³⁰⁷ In the investigation and prior review, it did address the issue but merely noted that the GBC has a long history of forest management and export restraints have been in place for a long time.¹³⁰⁸ However, the alleged practice is the provision of logs, not the restraint of exports or management of forests. There is no record evidence supporting the notion that any government normally, regularly, or routinely sells logs, and as such, emphasizing the longevity of other practices does not withstand scrutiny.

*Petitioner's Rebuttal Comments*¹³⁰⁹

- The British Columbia Parties' arguments rely on the fundamental mischaracterization that Commerce's findings in proceedings such as *DRAMS from Korea* establish fixed definitions of entrustment or direction. Commerce has stated that entrustment or direction can "encompass a broad range of meanings," and that it does not believe it is "appropriate to develop a precise definition of the phrase."¹³¹⁰
- In *Hynix*, the CIT found that the statute does not define entrustment or direction, Congress acknowledged in the SAA that entrustment or direction would be open to interpretation, and that Commerce should be given deference to reasonably interpret its meaning.¹³¹¹ The CIT

¹³⁰⁷ *Id.* (citing section 771(5)(B)(iii) of the Act).

¹³⁰⁸ *Id.* (citing *Lumber V ARI Final IDM* at Comment 45).

¹³⁰⁹ See Petitioner Rebuttal Brief at 152-165.

¹³¹⁰ *Id.* at 153 (citing *CVD Preamble*, 63 FR at 65349).

¹³¹¹ *Id.* at 154 (citing *Hynix* at 1345).

also stated Commerce's approach to entrustment or direction was permissible given that Congress directed Commerce to interpret the CVD law broadly to address loopholes that would allow for indirect subsidies, while noting that the alternative approach proposed by Hynix would "significantly limit Commerce's valuable case-by-case discretion."¹³¹²

- In the SAA, Congress specifically authorized Commerce to consider export restrictions as scenarios that could constitute government entrustment or direction and specifically mentioned previous iterations of Softwood Lumber proceedings.¹³¹³
- Commerce has previously explained that an entrustment or direction inquiry involves examining the relevant facts to determine if the government had a specific policy objective to benefit, and does in operation benefit, the industry or companies in question. The British Columbia Parties may disagree with this approach, but the CIT has found it a reasonable exercise of Commerce's discretion.¹³¹⁴
- Extensive record evidence shows that the GBC and GOC execute measures to restrict log exports with the explicit policy objectives to support the forestry industry, an objective realized through causing the provision of logs to the lumber industry by log suppliers.
- The evidence includes: the British Columbia *Forest Act*'s ban on log exports, unless one of three statutory exemptions is met; the federal government's Notice 102 that bans log exports under federal jurisdiction unless logs proposed for export undergo a surplus test; sellers of logs subject to British Columbia jurisdiction must offer logs to British Columbia mill operators before export; the British Columbia government requires that mill operators be made aware of log availability; any mill offer for logs is evaluated by TEAC, which determines the "fairness" of the offer based on British Columbia domestic log prices; if TEAC finds the offer to be "fair" the logs will be deemed not surplus and the application rejected; logs subject to provincial jurisdiction must pay a fee in lieu of manufacturing; Notice 102 lays out a similar requirement to the British Columbia surplus test for logs in British Columbia under federal jurisdiction; and the EIPA outlines legal penalties for log exports that do not meet the conditions above.
- *Rebar from Turkey* is not relevant to this program, because Commerce's finding in that case was simply that government-induced distortion could not lead to a finding of entrustment or direction; by contrast, the record here has clear evidence of requirements to sell to wood processors.
- The GBC is wrong that Commerce failed to consider the exemptions to the LER. Rather, Commerce made clear that these exemptions did not change the finding of financial contribution, as its analysis is focused on the process by which logs are authorized for export and is not dependent on the existence of a total ban. Commerce found that the LER is designed to benefit downstream customers and allows for exemptions only if there are no customers in British Columbia that want to purchase the logs.
- Further, the exemptions are not the subject of Commerce's findings. Rather, Commerce's findings concern the logs that were not exported. By definition, these logs are purchased by British Columbia mills and are subject to the LER because they are not surplus to requirements of timber processing facilities. These logs were, in fact, entrusted or directed by the GBC to processors and that sellers received permits to export other logs is irrelevant.

¹³¹² *Id.* at 154-155 (citing *Hynix* at 1345-1346).

¹³¹³ *Id.* at 155 (citing SAA at 925-926).

¹³¹⁴ *Id.* at 156 (citing *Hynix* at 1346).

- Commerce provided a reasonable explanation of why the LER satisfies the “government function” requirement under section 771(5)(B)(iii). The GBC repeats arguments that Commerce previously responded to and fails to explain why Commerce’s findings were unreasonable.
- The GBC argues that the LER has no impact on the British Columbia log market and British Columbia interior, where Canfor and West Fraser operate. Neither of these points bear on financial contribution. As the GBC itself has noted “market effect cannot be the basis for an affirmative financial contribution determination.”¹³¹⁵ Commerce has also previously found that section 771(5)(B) of the Act requires only that a private entity be entrusted to make a financial contribution and does not contain a further requirement that the private entity be entrusted or directed to provide a benefit.¹³¹⁶

Commerce’s Position: In the *Lumber VARI Final*, Commerce stated that the Canadian Parties had:

largely recycled their arguments from *Lumber V Final* in challenging Commerce’s preliminary finding in this review that the British Columbia LER directs private log suppliers to provide logs to mill operators within the meaning of section 771(5)(B)(iii) of the Act, and provide a financial contribution of logs, in accordance with section 771(5)(D)(iii) of the Act.¹³¹⁷

This is also true of this review. The GBC continues to rely on the same cases, cites the same language, and relies on the same lines of argument. We continue to find their points on this issue unconvincing. The operation of the British Columbia LER has not materially changed since the prior review or the *Lumber V* investigation. We continue to find that the British Columbia LER directs private log suppliers to provide logs to mill operators within the meaning of section 771(5)(B)(iii) of the Act, and provides a financial contribution of logs, in accordance with section 771(5)(D)(iii) of the Act.

Citing *DRAMS from Korea*, the GBC argues that Commerce has explained that “entrustment or direction only exists when ‘a government affirmatively causes or gives responsibility to a private entity or a group of private entities to carry out what might otherwise be a government subsidy function...’”¹³¹⁸ As Commerce explained in *Lumber V Final* and the prior review, *DRAMS from Korea* “does not stand for the proposition that the Department has found that entrustment or direction can only occur where the government has ‘affirmatively’ given responsibility to a private entity to carry out what might otherwise be a governmental subsidy function.”¹³¹⁹ Commerce has not defined the boundaries of what could be considered entrustment or direction, and the SAA provides that any analysis of entrustment or direction must be conducted on a “case-by-case basis.”¹³²⁰ The CIT has stated that “the ‘entrusts or directs’ language presents precisely the type of ambiguity which an administrative agency, like Commerce, is given

¹³¹⁵ *Id.* at 164 (citing GOC/GBC LER Case Brief Volume 3 at 16).

¹³¹⁶ *Id.* (citing *Certain Wheat from Canada* IDM at 19).

¹³¹⁷ See *Lumber VARI Final Results* IDM at 217.

¹³¹⁸ See GBC Case Brief vol. III at 10 (citing *DRAMS from Korea*).

¹³¹⁹ See *Lumber V Final* IDM at Comment 46; see also *Lumber VARI Final Results* IDM at 217.

¹³²⁰ See SAA at 926.

deference...to reasonably interpret.”¹³²¹ Under U.S. law, the government need not “affirmatively” compel a private party to act, and the phrase entrustment or direction “could encompass a broad range of meanings,” including restraining exports through in-province use requirements.¹³²² As we highlighted in *Lumber V Final* and the prior review, the SAA explicitly cites to the countervailability of a prior iteration of the very log export restraint program in *Certain Softwood Lumber Products from Canada* that is at issue in this review.¹³²³

The prior Commerce determinations cited by the GBC in an attempt to limit the scope of providing a financial contribution through entrustment or direction are inapplicable to this case. First, *PRCBs from Vietnam* does not support the claim that Commerce had in the past required a clear linkage between the government action and the private action and that Commerce has failed to do so in this review. There is a clear distinction between *PRCBs from Vietnam* and the facts of this review. In *PRCBs from Vietnam*, Commerce found that although private entities received low cost, expropriated farmland from the government of Vietnam and might be in a position to pass those savings forward to their tenants, there was no evidence that that they were required or expected to do so and that despite the government’s “involvement” in industrial zone planning, there was no evidence of interference in or restrictions on the private parties’ ability to negotiate prices.¹³²⁴

The Canadian Parties also quote Commerce’s statement in *SC Paper from Canada Final* that “entrustment or direction cannot merely be a by-product of government regulation.”¹³²⁵ This statement acknowledges that there are many government regulations that affect the behavior of private parties such as environmental regulations, antitrust laws, and financial regulations. It simply sets forth the proposition that, for example, a government regulation that requires fiscal soundness in the banking sector cannot be the basis of finding that a private commercial bank has been entrusted or directed to provide a financial contribution in the form of loans to an enterprise or industry. This intent is clear from the definition of the word “by-product” which means “an incidental or secondary product;” “a secondary and sometimes unexpected or unintended result.”

In contrast, Commerce has found that the log suppliers’ provision of logs to in-province processors is not merely incidental to the laws constituting the GOC and GBC log export restraints, or merely encouraged by those laws. Commerce found that “official government action compels suppliers of BC logs to supply to BC customers.”¹³²⁶ The relevant laws expressly require logs to be used in British Columbia or further manufactured within the province.¹³²⁷ Other than for reasons of waste or uneconomic processing,¹³²⁸ which the record shows were not used during the POR,¹³²⁹ the only way for an entity to obtain an exception is to demonstrate that its logs are surplus to the needs of processors.¹³³⁰ As we explained in the investigation, the

¹³²¹ See *Hynix Semiconductors*, 391 F. Supp. 2d at 1345.

¹³²² See *CVD Preamble*, 63 FR at 65349.

¹³²³ See *Lumber V AR 1 Final* IDM at 217 (citing SAA at 926; *Lumber V Final* IDM at Comment 46).

¹³²⁴ See *PRCBs from Vietnam* IDM at Comment 8.

¹³²⁵ See *SC Paper from Canada Final* IDM at Comment 11.

¹³²⁶ See *Lumber ARI Final* IDM at Comment 45; *Lumber V Final* IDM at 55.

¹³²⁷ See GOC/GBR LER Response at Exhibit LEP-8

¹³²⁸ *Id.*

¹³²⁹ *Id.* at 28-29.

¹³³⁰ See GOC/GBR LER Response at Exhibit LEP-8

provincial and federal surplus criteria involve committees of individuals (*i.e.*, TEAC/FTEAC) that evaluate whether any offers received reflect a fair price, and where they find in the affirmative, the application for export is denied, and the applicant may not reapply to export those logs.¹³³¹ As we have previously determined, this process directly interferes with the ability of log suppliers to sell to foreign purchasers at all, to the extent that their logs are not deemed surplus to the needs of in-province processors.¹³³² The facts regarding this surplus test and legal requirements have not changed since the investigation. In addition, and as noted in *Lumber V Final*, the record demonstrates that the government imposes fees in-lieu of manufacturing for logs that are exported out of the province, and, potentially, penalties for unauthorized exports.¹³³³ This surplus test and legal requirements, in addition to the fees associated with the export of logs outside the province, result in a policy whereby the GBC has entrusted or directed private log suppliers to provide logs to mill operators within the meaning of section 771(5)(B)(iii) of the Act.

This review and the facts detailed above present a stark contrast to *PRCBs from Vietnam*, where there was both a lack of any direct mandate to provide land to the respondents, and a lack of indirect, circumstantial evidence demonstrating that the private entities were entrusted or directed to do so. Here, Commerce identified specific laws and processes that *require* log suppliers to fill the needs of timber processors in British Columbia.

The facts of this case are, thus, distinct from the ones contemplated in *DRAMS from Korea*. Accordingly, Commerce has not departed from the following two criteria as articulated in *DRAMS from Korea* for determining whether a government has entrusted or directed an entity to provide a financial contribution: (1) whether the government has in place during the relevant period a governmental policy to support that respondent; and (2) whether evidence on the record established a pattern of practices on the part of the government to act upon that policy to entrust or direct the associated private entity decisions. Although each potential instance of entrustment or direction is reviewed on a case-by-case basis, Commerce may apply the two-part test “where there is no direct legislation to entrust or direct private parties to provide a financial contribution,” and “rely on circumstantial information to determine that there was entrustment or direction.”¹³³⁴ For example, in *Wind Towers from Indonesia*, Commerce applied the two-part test because there was no direct legislation that entrusted or directed an entity to make a financial contribution. *Id.* Similarly, in *Rebar from Turkey*, Commerce found that the government of Turkey had neither laws nor a policy or pattern of practices entrusting or directing private entities to supply natural gas to rebar producers.¹³³⁵

However, in *SC Paper from Canada – Investigation*, Commerce stated that the two-part test applied in *DRAMS from Korea* was unnecessary in that proceeding because the GNS entrusted or directed a private entity to provide a financial contribution of electricity directly through legislation.¹³³⁶

¹³³¹ See *Lumber V Prelim* PDM at 59; see also *Lumber V Final* IDM at Comment 46.

¹³³² See *Lumber V Final* IDM at Comment 46.

¹³³³ *Id.* at Comment 46.

¹³³⁴ See *Wind Towers from Indonesia* PDM at 12 (internal quotations omitted), unchanged in *Wind Towers from Indonesia* IDM at 26.

¹³³⁵ See *Rebar from Turkey* IDM at 15-16.

¹³³⁶ See *SC Paper from Canada – Investigation* IDM at 125.

In contrast, the laws and regulations in British Columbia – including the *Forest Act* – impose in-province processing requirements and other fees and potential penalties meant to restrain exports. These are not mere policy pronouncements or encouragement, but formal, enforceable measures through which the governments compel private log suppliers to offer logs to processors in British Columbia. This thus goes beyond the “broad control” the GBC asserts is insufficient for a finding of entrustment or direction.¹³³⁷

We also disagree with the GBC’s arguments that the BC LER is simply a permitting process and does not compel parties to provide logs to consumers in British Columbia. The *Forest Act* requires log suppliers to provide their logs to consumers of logs in British Columbia. As Commerce explained in the prior review:

{T}he *Forest Act* explicitly states that all timber harvested in British Columbia is required to be used in British Columbia or manufactured in British Columbia into wood products. These logs cannot be exported unless they meet certain criteria, the most common of which is that they are surplus to the needs of the timber processing industry in British Columbia. Therefore, the {Government of British Columbia} requires private log suppliers to offer logs to mill operators in British Columbia, and may export the logs only if there are no customers in British Columbia that want to purchase the logs. Thus, the nature of the actions undertaken by the {Government of British Columbia} require private suppliers of BC logs to sell to, and satisfy the demands of, BC consumers, including mill operators.¹³³⁸

Further, notwithstanding the GBC’s arguments about the other exemptions provided for under the *Forest Act* (*i.e.*, the economic processing exemptions and utilization exemption), the record indicates that the only exemption actually used during the POR was the surplus criterion.¹³³⁹ Therefore, we find the Canadian Parties’ arguments that Commerce “ignored” other possible exemptions under the *Forest Act* to be unconvincing.

The GBC also argues that the BC LER does not satisfy the definition of financial contribution under section 771(5)(D)(iii) of the Act, which requires that the financial contribution “would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments.” The GBC argues that the provision of logs is at issue in this review, and there is no record evidence of the GBC or the GOC providing logs to any party.

In the investigation, we explained that the relevant financial contribution is the provision of a good or service, *i.e.*, logs.¹³⁴⁰ As such, the financial contribution is countervailable pursuant to section 771(5)(D)(iii) of the Act. Through its entrustment or direction finding, Commerce found that the GOC and GBC had delegated to licensed log harvesters the function of providing logs to consumers, including mill operators, in the province. In the investigation, Commerce found that

¹³³⁷ See GOC/GBC LER Case Brief at 10 (citing *CFS from Korea* IDM at Comment 1).

¹³³⁸ See *Lumber V ARI Final* IDM at Comment 45.

¹³³⁹ See GOC/GBC LER Case Brief at 28-29.

¹³⁴⁰ See *Lumber V Final* IDM at Comment 46.

the “long history of government management of the forest in British Columbia” supports the conclusion that the provision of logs is the type of function that would normally be vested in the government.¹³⁴¹ Commerce did not find – and was not required to find – that the governments of British Columbia and Canada actually sell logs. But those governments control and provide timber – the input used to make logs, which is the input used to make softwood lumber products – and the control and management of the timber resource is a government function in British Columbia. Moreover, Commerce did not cite the mere existence of the log export restraints, but rather that they endured for *over 125 years*.¹³⁴² The longevity of these measures, which entrust or direct log suppliers to provide logs, is evidence of what functions are “normally,” *i.e.*, consistently over many decades, vested in the government in British Columbia. For the reasons described above, we continue to find that the record supports our continued finding that the BC LER satisfies the government functions requirement of section 771(5)(B)(iii) of the Act.

Comment 49: Whether Log Export Restraints Have an Impact in British Columbia

*GOC/GBC LER Comments*¹³⁴³

- Commerce has never explained how the LER increases the supply of logs within British Columbia, and abundant record evidence demonstrates that it does not have such an impact.
- During the POR, over 99 percent of requests to export logs on a federal and provincial basis were approved. In the PME, where the purported impact of the LER would be greatest, only 0.1 percent of logs advertised were found not to be surplus. Log exports as a share of the harvest were higher in coastal British Columbia than for private land in the U.S. PNW coast, which are not subject to export restrictions.
- Exporters in both the BC interior and PME are not using their full export authorizations. This clearly shows that there is no remaining unmet demand for exports and that the LER does not materially increase the supply of logs within British Columbia. The WTO Panel noted that this was evidence contrary to the LER having an impact that was ignored by Commerce.
- The practice of “blocking” cited by the petitioner is both a misnomer and overstated. Mill operators are not able to block a proposed export and, even if the export is not authorized, there is no requirement for the log seller to accept the offer. Further, as the WTO Panel found, unused export authorizations undermine the argument that greater exports would have occurred in the absence of blocking. Further, the threat of blocking is clearly not significant given how small the number of logs that are prevented from being exported by the LER is so small.
- The Reishus Report thoroughly reviewed the relevant evidence and found that “the applicable log export policies do not depress the price of logs in BC by artificially increasing their supply within BC.”¹³⁴⁴ Commerce’s contrary finding is not based on any evidence.
- The purportedly blocked exports described in an affidavit by a BC interior log exporter had no relevant impact on log market or supply in the BC interior. The blocking related to standing timber. If offers for standing timber are not authorized for export, the timber does not have to be harvested and sold, and thus, there is no evidence that an additional supply of logs was made available to the BC interior through the LER. Furthermore, the export authorizations

¹³⁴¹ *Id.*

¹³⁴² *Id.*

¹³⁴³ See GOC/GBC Case Brief Volume 3 at 24-38.

¹³⁴⁴ *Id.* at 28 (citing Reishus Report at 67).

exceeded the volume harvested. This again shows that there was no increase in log supply in the BC interior market.

- The exporter only used a portion of the available opportunities to export, which undercuts the claim that the LER increased the log supply, because if there was unmet demand for exports, these logs would have been exported. The volumes involved are trivial compared to the overall BC interior harvest.

*GBC's Comments*¹³⁴⁵

- Waterborne transport is what makes log exports from British Columbia economically feasible. The mandatory respondents' sawmills operate far from such waterborne log transport options.
- During FY 2017/2018, over 99 percent of applications for authorization to export logs from British Columbia were approved, leading to the export of millions of cubic meters of logs.
- There is no evidence of "blocking" and, to the contrary, export authorizations were significantly underutilized during the POR, which undermines Commerce's claim that more logs would have been exported without the LER as well as the claim that the LER leads to any measurable distortion.
- New expert reports and affidavits submitted to the record explain why log exports from the BC interior are uneconomical, even for areas relatively close to the U.S. border or PME. This evidence directly contradicts Commerce's conclusion in the *Lumber VARI Final* that the mandatory respondents' sawmills are located in areas where exports are viable. Commerce did not even engage with this new evidence.
- Even if there were a demonstrated impact on log prices (which there is not) from the LER, that would not be a sufficient ground to conclude that the LER "significantly distorts" the BC stumpage market.

*Petitioner's Rebuttal Comments*¹³⁴⁶

- Extensive record evidence shows that "blocking" is a common tactic used by timber processors within British Columbia to influence log prices. Commerce has previously found that blocking creates an environment that lowers export volumes and domestic prices. Furthermore, the petitioner has newly added to the record of this review an affidavit from a BC interior log seller explaining how blocking lowers log prices in the BC interior.¹³⁴⁷
- The BC Parties argue that, regardless of the LER's potential impact on the BC coast, the LER has no impact on the BC interior where the mandatory respondents' operations are located. Not only has Commerce rejected this logic in prior proceedings, in this review, the new affidavit from a BC interior log seller clearly refutes the theoretical claims of expert reports commissioned by the BC Parties that the LER has no effect on the interior.
- Furthermore, the petitioner has added to the record a map showing that even if the LER only affected log prices near the BC border, those effects would ripple across the entire province given the proximity of mills within British Columbia. A study commissioned by a Canadian institute also found that many logs could be exported from TSAs within the BC interior.
- While the Canadian Parties rely on expert reports commissioned for this proceeding to show that log markets are localized, the petitioner has added to the record independent studies

¹³⁴⁵ See GBC Case Brief Volume 5 at 13-18.

¹³⁴⁶ See Petitioner's Rebuttal Comments at 164-165 and 172-180.

¹³⁴⁷ *Id.* at 174 (citing Petitioner Comments on IQR Responses at Vol I- Exhibit 96).

showing that log markets can be integrated across areas much larger than one sawmill's typical harvest area. These studies also show that logs do not have to be traded for timber and log markets to be integrated if there is strong competition for the downstream product. The GOC IQR contains a map of British Columbia showing that the mandatory respondents in British Columbia have sawmills located near both U.S. border crossings in the south of British Columbia and water ports in the north of British Columbia.

Commerce's Position: In the *Lumber V AR2 Prelim*, Commerce found that prices in British Columbia were significantly distorted, in part, as a result of the combination of the government's control of the timber market in British Columbia and the BC LER's continued restriction of exports of logs from the province.¹³⁴⁸ We preliminarily determined that these factors increased the supply of logs available to domestic users and, in turn, suppressed prices in British Columbia.¹³⁴⁹ Separately, Commerce also determined that the BC LER itself provided a benefit and calculated said benefit in accordance with section 771(5)(E)(iv) of the Act.¹³⁵⁰ This is consistent with our findings in the *Lumber V AR1 Final* and *Lumber V Final*.¹³⁵¹ There are no new facts in this review regarding the manner in which the LER operates that would cause us to change our determination. Accordingly, for these final results, we continue to find that the BC LER increases log supply and suppresses log prices throughout the province, including where the mandatory respondents operate.

In challenging Commerce's *Lumber V AR2 Prelim*, the GBC makes two primary arguments regarding the impact of the BC LER: (1) there is no evidence that the LER has an impact on exports in British Columbia; and (2) even if it is assumed that the LER has an impact in coastal British Columbia, log exports from the BC interior are not viable, and thus, the LER would not have an effect on the interior where the mandatory respondents are located. The GBC argues that this means there is no basis for Commerce to find that the BC market is distorted due to the LER. Since these arguments largely overlap, we will deal with them together.

Regarding the impact of the LER throughout the province, we underscore that the LER applies in both coastal and interior British Columbia, though certain aspects of its application, such as the fees-in-lieu-of-manufacture and export advertisement process differ between the regions.¹³⁵² In both instances, once logs have been declared surplus, the seller cannot re-apply to export those same logs.

Logs harvested in British Columbia fall under either federal or provincial jurisdiction. Exports of logs under provincial jurisdiction are regulated under the *Forest Act*.¹³⁵³ Exports of logs under federal jurisdiction are regulated under Federal Notice to Exporters No. 102.¹³⁵⁴ Although there are slight differences between the provincial LER and accompanying regulations, and the federal LER for British Columbia established by the GOC's Notice 102, the fundamental

¹³⁴⁸ See *Lumber V AR2 Preliminary PDM* at 20.

¹³⁴⁹ *Id.*

¹³⁵⁰ *Id.* at 40.

¹³⁵¹ See *Lumber V AR1 Final IDM* at Comment 46; see also *Lumber V Final IDM* at Comment 44.

¹³⁵² See GBC IQR Response at Exhibit BC-AR2-S-19 and GOC/GBC LER Response at 17-18 and 47-48.

¹³⁵³ See GOC/GBC LER Response at 15 and Exhibit LEP-8.

¹³⁵⁴ *Id.* at 14 and Exhibit LEP-4.

mechanism of both is a surplus test that allows domestic processors to block log exports.¹³⁵⁵ However, the GBC claims there is no evidence that the LER restrains exports from the PME,¹³⁵⁶ and “{t}here is also no evidence of a “blocking system” in British Columbia that allegedly restrains exports and suppresses log prices.”¹³⁵⁷ In support of these claims, the GBC notes that export permits are typically approved as a matter of course, with over 99 percent of applications for authorization during FY 2017/2018 being approved, while also citing to the Reishus Report to argue that underutilized export authorizations show that the LER does not increase the supply of logs within British Columbia.¹³⁵⁸ The GBC also argues in a footnote that several of the reports relied on by Commerce regarding the impacts of the LER and “blocking” are outdated.¹³⁵⁹ These claims are analogous to those made by the GBC in the *Lumber V ARI Final*.¹³⁶⁰

We continue to find that the reports we cited in the *Lumber ARI Final*, which are also on the record of this review,¹³⁶¹ are relevant to and support our finding that the BC LER has a material impact on the ability to export logs out of British Columbia. First, the GBC provided only cursory argument as to changes in the BC market that would lead to those reports not being relevant for the POR,¹³⁶² and there is no record evidence that the LER has changed to a significant extent in the interval between the publication of these documents and the 2019 POR.¹³⁶³ Further, while the GBC cites to more “recent” evidence consisting of expert reports it has commissioned for this proceeding, there is extensive evidence new to the record of this review that confirms the information in the record evidence Commerce previously cited to support its conclusions that the LER restricts log exports from British Columbia.

This new evidence is contemporaneous with the POR and contains extensive evidence on the impact of the LER in British Columbia. The first piece of new evidence relates to a July 2020 filing by Mosaic, a timberland owner operating on the coast, requesting judicial review of decisions by the Ministry of Foreign Affairs to deny log export permits following decisions from the FTEAC that the logs were “not surplus” to domestic needs.¹³⁶⁴ We find that a timberland owner filing a lawsuit to reverse rejections of export permit applications casts doubt in and of itself on the GBC’s claim that there is no evidence that the LER has an effect. Mosaic’s legal filings document both price divergences between BC domestic log prices and export log

¹³⁵⁵ See GOC/GBC LER Response at 16-33.

¹³⁵⁶ The PME, Pacific Maritime Ecozone, is a geographic zone of British Columbia running along the province’s coastline. By contrast the “coast” and “interior” referred to in this proceeding are administrative zones used by the GBC in appraising timber values. The GOC/GBC assert that certain regions contained within the interior appraisal area are nonetheless geographically part of the PME and thus more similar to coastal PME areas with respect to the purported viability of log exports. See GOC/GBC LER Response at 8-10.

¹³⁵⁷ See GBC/BCLTC Case Brief at 14-15

¹³⁵⁸ *Id.* at 14-15 (citing Reishus Report at 50-51 and GOC/GBC LER Response at 2, 22, 26-27).

¹³⁵⁹ *Id.* at 15.

¹³⁶⁰ See *Lumber V ARI Final* IDM at Comment 46.

¹³⁶¹ See Petitioner Comments on IQR Responses at Exhibits I-97 through 103; and *Lumber V ARI Final* IDM at Comment 46.

¹³⁶² See GBC/BCLTC Case Brief at 14-15

¹³⁶³ See GOC/GBC LER Response at 16-27.

¹³⁶⁴ See Petitioner Comments on IQR Responses at Exhibit vol. I-82.

prices,¹³⁶⁵ and the impact of the LER's "surplus test" in negotiations with domestic processors.¹³⁶⁶

The Mosaic filings also show how "blocking," as well as the related practice of "blockmailing" enabled by the LER play a fundamental role in the BC market. As we explained in the *Lumber V Final*:

Under the "blocking" system, processors in the province will block a harvester's export application in order to force the harvester to provide logs to the processor at low prices. To export their logs from the province, most exporters in British Columbia are required to first offer their logs to processors in the province. As such, most potential exports are subject to this blocking process.¹³⁶⁷

This process of opposing or threatening to oppose a potential export permit unless the blocker is supplied with a sufficient quantity of logs is sometimes referred to as "blockmailing."¹³⁶⁸

The Jaccard Affidavit, contained in the Mosaic filings, explains in detail how the "blocking" allowed by the surplus test means that the threat of blocking (blockmail) gives log processors significant leverage in negotiations. The affidavit notes that this blockmail is effective because blocking imposes costs on would-be exporters that go well beyond any gap between domestic and international log prices. Mosaic's log export process involves significant advance preparation and expense; if an advertisement is blocked, Mosaic will incur significant costs and also suffer reputational damage with its customers, who value certainty of supply.¹³⁶⁹ Domestic log processors are fully aware of the leverage provided by the threat of blocking; hence, in March 2020, log processor Teal-Jones appended to a confirmation of log sales offer from Mosaic that Teal-Jones "reserves the right to make offers on export at any time and {does} not want to encumber Teal's rights to make offers."¹³⁷⁰ These are not just hypothetical scenarios. In April 2020, Mosaic had export advertisements blocked by both Teal-Jones and CIPA, another log processor, and internally calculated a value loss of C\$437,000 due to the gap in domestic and export log prices and also estimated a loss of C\$100,000 due to expenses from having to change log export shipping plans.¹³⁷¹ Similarly, Mosaic estimated C\$40,000 in losses solely from one aspect of shipping costs after receiving blocking letters from CIPA in October 2019.¹³⁷² Thus, there is contemporaneous evidence that log processors can and do block potential log exports, and that such blocking has a financial impact on BC log sellers.

This is further underscored by a May 2020 press release, in which twelve BC log processors responded to a request by Mosaic to relax the application of Notice 102 with respect to some of Mosaic's log exports.¹³⁷³ These processors described Notice 102 as "designed to ensure that a

¹³⁶⁵ *Id.* at Exhibit vol. I-83.

¹³⁶⁶ *Id.* at Exhibit vol. I-84.

¹³⁶⁷ *See Lumber V Final* IDM at Comment 44.

¹³⁶⁸ *See Lumber V ARI Final Results* at Comment 46.

¹³⁶⁹ *See Jaccard Affidavit* at 10-13; and *e.g.*, Exhibit 12.

¹³⁷⁰ *Id.* at Exhibit 26.

¹³⁷¹ *Id.* at Exhibit 27.

¹³⁷² *Id.* at Exhibit 12.

¹³⁷³ *See* Petitioner Comments on IQR Responses at Exhibit vol. I-87.

sufficient volume of logs is made available to domestic manufacturers to support local companies and workers before those logs can be exported to international markets.”¹³⁷⁴ The statement criticizes Mosaic’s request to export logs more freely by claiming that Mosaic’s log exports had been at “elevated levels” and asserts that Mosaic’s request would “skew the volume {Mosaic} would be able to freely export.”¹³⁷⁵ Finally, the statement asserts that Notice 102 is not an “antiquated rule,” but to the contrary, “provides a fair mechanism to export logs while ensuring a secure supply of fiber to domestic manufacturers{.}”¹³⁷⁶ These assertions, made by supporters of the LER, thus support the conclusion that the LER is designed to restrain log exports from British Columbia and increase the supply of logs available to domestic processors.

Neither the GBC nor the GOC contest the claims or offer rebuttal evidence against the documents in the Mosaic legal filings or the related statements from the domestic processors in support of the LER. This evidence, new to the record of this review, combined with the evidence of blocking submitted on the record of this and the prior review, undercuts the respondents’ statements such as “that so many Canadian companies exported their logs... in significant amounts permits only one conclusion—that the Governments of Canada and British Columbia do not ‘compel’ the companies to sell their logs domestically”¹³⁷⁷ or there is “no evidence of the operation of a ‘blocking system’ in British Columbia that allegedly restrains exports and suppresses log prices.”¹³⁷⁸ Record evidence on the “blocking” system demonstrates that even high approval rates for export permits do not indicate that the LER does not restrain exports. Rather, the actual experiences of both log sellers and processors shows the LER has a significant impact on the market, specifically by ensuring a supply of logs to domestic processors.¹³⁷⁹

While ignoring record evidence on blocking, the GOC and GBC argue that unused export authorizations demonstrate that the LER has no effect on the supply and prices of logs in the province. Drawing on the Reishus Report, the GBC argues:

{U}nderutilized export authorizations further undermine the Department’s speculative claim that more logs would have been exported absent the LEP process. They also demonstrate that the LEP process does not increase the supply of logs in the domestic market in any appreciable manner and could not give rise to significant market distortion. The Department utterly ignored this contradictory evidence in the Preliminary Results.¹³⁸⁰

The GBC/GOC case brief uses the unused export authorizations to argue against the significance of blocking, noting that:

¹³⁷⁴ *Id.*

¹³⁷⁵ *Id.*

¹³⁷⁶ *Id.*

¹³⁷⁷ See GOC/GBC Case Brief Volume 3 at 12.

¹³⁷⁸ See GBC Case Brief Volume 5 at 15.

¹³⁷⁹ *Id.* at Exhibit vol. I-84 at Exhibit 6 through Exhibit 22.

¹³⁸⁰ See GBC/BCLTC Volume 3 Case Brief at 15 (emphasis added).

the presence of significant unutilized export authorizations undermines the Department's argument that exporters would have been able to export anything more in the absence of the "blocking system."¹³⁸¹

These claims are based on the Reishus Report, which compares export authorizations to actual exports, both for British Columbia as a whole and also for the BC interior, while also noting unused exports in areas with blanket Orders-in-Council that allow for log exports without needing to go through the surplus test process for individual sales.¹³⁸² According to the logic, once a log has passed through the advertising process without receiving an offer and is authorized for export, the LER no longer has an impact on it, and because many logs permitted for export were not exported during the POR, there would not be higher export volumes in the absence of the LER.

However, the argument that unused export authorizations show the LER has no impact is based on an overly narrow conception that once the log has been declared surplus and authorized for export it no longer has an impact on the LER process. As explained above, log processors objecting to Mosaic's request to relax Notice 102 observed that Mosaic had been exporting at "elevated levels" and that further authorizations would "skew the volume {Mosaic} would be able to freely export."¹³⁸³ This suggests that log processors monitor exports of log sellers and assess what they believe to be a "fair" volume of exports. Given the domestic processors' leverage to obtain a supply of logs through the threat of blocking, log sellers may be hesitant to use authorized export permits at the risk that processors might deem their export volumes as too high and therefore block other applications for export. Given the significant damage that log processors can do to the log seller's business via blocking, this undermines the argument that, once export authorization has been granted, there is no possibility of the LER – and the related process of blocking and threat thereof – affecting log exports.

Additionally, business proprietary evidence on the record of this review and described in the BC Stumpage and LER Memorandum indicates the argument that unused export authorizations demonstrate the LER has no impact is not fully supported by record evidence.

The Reishus LER Rebuttal Filing argues that the Mosaic filings underscore the difference between the BC coast and interior regions and that Mosaic itself operates in the BC coast,¹³⁸⁴ the record also contains documents discussing the impact on the LER on BC interior.¹³⁸⁵ Some of these documents add little substantive new information or argument; for example, the GOC/GBC's Reishus Report submitted to the record of this review largely repeats arguments analyzed in the *Lumber VARI Final* that were made in the Kalt-Reishus report submitted to the prior review's record, with some updates to the underlying data to cover the 2019 POR.¹³⁸⁶

¹³⁸¹ See GOC/GBC Case Brief Volume 3 at 27.

¹³⁸² See Reishus Report at 50-51, 55-56, and 80-81.

¹³⁸³ See Petitioner Comments on IQR Responses at Exhibit vol. I-87.

¹³⁸⁴ See Reishus LER Rebuttal at 13-14.

¹³⁸⁵ See Petitioner Comments on IQR Responses at Exhibits I-83 through I-88, I-92 through I-94 and I-96.

¹³⁸⁶ See Reishus Report and *Lumber VARI Final* IDM at Comment 46.

New to this review, Canfor and West Fraser both submitted declarations regarding the following finding from Commerce in the *Lumber VARI Final* regarding the impact of the LER on the BC Interior:

The record evidence does not support the contention that the mandatory respondents' mills are in areas where exports are not viable. First, the record demonstrates that there were exports from the southern interior during the POR, both to the United States and to Asia. The record also demonstrates that Canfor has multiple mills in the southern interior near timbermarks with export permitted volume during FY 2017/18. Even as you move further north into the interior, there are timbermarks with volumes permitted for export near both respondents' mills. The respondents also have mills just outside of the PME, adjacent to the Tidewater, that are near timbermarks with export permitted volume. Therefore, the record demonstrates that many of the mandatory respondents' mills are in locations where exports are viable.¹³⁸⁷

The respondents cite several documents rebutting Commerce's conclusion. The Declaration of D'Arcy Henderson emphasizes that, even West Fraser's sawmill located closest to the PME "does not and cannot practically purchase meaningful volumes of timber harvested from the PME"¹³⁸⁸ primarily due to the very different timber species profiles of the interior and PME. The declaration also notes that, due to the lack of straight-line transport from the sawmill to the PME, it is 350 km by truck from the sawmill to the closest water port.¹³⁸⁹

The Statement of Ross Lennox likewise notes that Canfor's closest sawmill to the PME is over 300 km by truck from the nearest port and also that PME logs differ significantly from interior logs such that it is not economic for Canfor mills to process PME logs without incurring significant costs.¹³⁹⁰ As Canfor, unlike West Fraser, has several sawmills located close to British Columbia's southern border with the United States, the statement addresses that region by noting that it is not economical to export logs at the distance from the U.S. border that the mills are located.¹³⁹¹

Both declarations use distance from their sawmills to the nearest port to argue that log exports are not relevant to the log markets faced by those sawmills. However, in the *Lumber VARI Final*, we noted that both respondents had mills located near timbermarks with volumes permitted for export.¹³⁹² Neither statement addresses that aspect of Commerce's analysis, and thus, we continue to find it relevant for this review and find that the LER would have an impact on the interior regions where Canfor and West Fraser operate.

Furthermore, we find the respondents' claims regarding the differing log profiles of the PME and interior to be of limited relevance for reasons discussed using BPI in the BC Stumpage and LER

¹³⁸⁷ See *Lumber VARI Final* IDM at Comment 46.

¹³⁸⁸ See West Fraser Benchmark Factual Information at 4.

¹³⁸⁹ *Id.* at 10.

¹³⁹⁰ See Canfor Pre-Prelim NFI Submission at Attachment 12 at paragraph 5.

¹³⁹¹ *Id.* at paragraphs 9-10.

¹³⁹² See *Lumber VARI Final* IDM at Comment 46.

Memorandum.¹³⁹³ Finally, given that record evidence demonstrates that there were exports from the interior,¹³⁹⁴ we find that these statements merely dispute the significance of the LER rather than proving that it cannot have any effect.

These statements denying the impact of the LER on the BC interior are also undercut by new evidence to the record of this review – an affidavit from a BC interior log seller regarding the impact of the BC LER on log exports from the interior during the POR. According to the seller:

{W}hen I sell logs for export to the United States, I generally achieve much higher prices than the offer prices at which BC processing mills can block exports of logs of the same species and quality. When a proposed export sale is blocked, and an export permit is denied, I can only sell the logs to a BC buyer at a significantly lower price than I could obtain in the export market. In substance, as a seller of logs harvested from private land in the Interior region of British Columbia, I am forced to subsidize BC producers of lumber and other wood products by selling them logs at a price lower than I could have received in export markets.¹³⁹⁵

The specific details of the export permit applications and price comparisons provided by the seller are proprietary and are further discussed in the BC Stumpage and LER Memorandum.¹³⁹⁶ However, the affidavit also contains further non-BPI discussions of the LER and its impact on the BC interior. The exporter notes that in 2019, 16 percent of the exporter's advertised logs were blocked, a relatively low percentage compared to prior years where up to 94 percent have been blocked. The affidavit explains that the lower share of blocked exports in 2019 is due to a decision by the seller to focus in 2019 on exports of species less attractive to domestic mills, while selling higher-value species to those domestic mills for prices lower than those on the international market.¹³⁹⁷ Thus, the record of this review contains evidence of blocking in the BC interior during the POR.

The Reishus Report, as well as the Reishus LER Rebuttal, both discuss the export permits from the BC interior raised in the affidavit and conclude that the lack of authorization for certain permits has not discernibly affected log supply within British Columbia, and thus, necessarily cannot have had any impact on BC log markets.¹³⁹⁸ The GBC, also drawing on the logic of the Reishus Report and Reishus LER Rebuttal, emphasizes that the BC interior log seller did not utilize all of the available export permits during the POR, thus showing that the LER neither prevented export demand from being met nor increased the log supply within British Columbia. We find this logic flawed in multiple regards.

The affidavit of the BC interior log sellers makes clear that the LER benefits domestic sawmills not merely by increasing log supply by preventing logs from being exported, but also by

¹³⁹³ See BC Stumpage and LER Memorandum Memo at 8-9.

¹³⁹⁴ See GOC/GBC LER Response at 12.

¹³⁹⁵ See Petitioner Comments on IQR Responses at Exhibit vol. I-96 at 6-7.

¹³⁹⁶ *Id.* at BC Stumpage and LER Memorandum at 9.

¹³⁹⁷ See Petitioner Comments on IQR Responses at Exhibit vol. I-96.

¹³⁹⁸ See Reishus Report at 81-82 and Reishus LER Rebuttal at 14-16.

enabling sawmills to receive logs from sellers in return for agreeing to not “block” exports by the sellers.¹³⁹⁹ The GBC argues that the surplus test is less significant in the interior, because interior log sellers may offer up for export standing timber, as opposed to logs that have already been harvested. However, as explained by Dr. Haley, when logs are advertised for export as standing timber, frivolous bids bear no consequence and are hard to detect.¹⁴⁰⁰ This point by Dr. Haley is supported by the actual experience of the BC log seller, who noted that in one year, 94 percent of advertisements had been blocked.¹⁴⁰¹ The interior log seller then explains how pervasive blocking leads to sellers not even offering up species desired by domestic mills for export.¹⁴⁰² This behavior is not captured in export authorization data.

The Reishus LER Rebuttal obliquely references blocking by dismissively prefacing a conclusion with “{r}egardless of the interactions with potential bidders and/or prices received for logs,”¹⁴⁰³ and the Reishus Report likewise dismisses claims that blocking are widespread as “inconsistent with the pattern of advertisements and bids” with minimal elaboration and explanation.¹⁴⁰⁴ This is consistent with the prior review, as Commerce noted in the *Lumber VARI Final* that:

The Kalt-Reishus Report that the Canadian Parties have submitted on the record to demonstrate that the LER has no impact on export volumes or prices in British Columbia is 890 pages when including the appendices. In those 890 pages, the report discusses blocking for two sentences.¹⁴⁰⁵

Aside from only referencing in passing a key component of how the LER actually operates, the GBC and GOC’s expert reports on the LER’s impact are also premised around assuming away the existence of the LER. The Schuetz Report finds that only a minimal share of BC interior cutblock area is locationally advantaged for U.S. sawmills,¹⁴⁰⁶ which the GBC cites as evidence that the LER has no effect.¹⁴⁰⁷ However, the BC interior log seller provided clear evidence of frequently being blocked from exporting logs to U.S. mills during the POR, even when the U.S. mills offer significantly higher prices.¹⁴⁰⁸ This is a clear competitive disadvantage for the U.S. mills relative to Canadian mills and supports the conclusion that the LER, as intended, discourages exports to mills in the United States that would rely on logs from the BC interior, as any such logs would be highly susceptible to blocking. As such, we do not find analysis that concludes the LER has no impact by relying on the existing distribution of sawmills convincing, given that the GBC for over 100 years has had laws and policies in place that seek to benefit domestic sawmills by preventing the export of unprocessed wood fiber from the entirety of the province – including the Interior.¹⁴⁰⁹

¹³⁹⁹ See Petitioner Comments on IQR Responses at Exhibit vol. I-96 at 2 and 4-5.

¹⁴⁰⁰ *Id.* at Exhibit Vol I-97 at 6.

¹⁴⁰¹ *Id.* at Exhibit vol. I-96 at 4.

¹⁴⁰² *Id.*

¹⁴⁰³ See Reishus LER Rebuttal Report at 14-16.

¹⁴⁰⁴ See Reishus Report at 67.

¹⁴⁰⁵ See *Lumber VARI Final* IDM at Comment 46.

¹⁴⁰⁶ See Schuetz Report at Table 4.

¹⁴⁰⁷ See GOC/GBC Case Brief Volume 5 at 31-33 (citing Schuetz Report).

¹⁴⁰⁸ See Petitioner Comments on IQR Responses at Exhibit vol. I-96.

¹⁴⁰⁹ See *SC Paper from Canada – Expedited Review – Final Results* IDM at 47.

We also find, as in the *Lumber V ARI Final*, that the GBC continues to impose a fee in-lieu-of-manufacture to export unprocessed logs under provincial jurisdiction, and the GOC continues to charge a fee of \$14.00 for all export permits.¹⁴¹⁰ These are additional costs that the GBC and accompanying GOC export restraints impose on log suppliers that wish to export.

For the reasons discussed above, Commerce finds that the record evidence shows that the BC LER impacts the British Columbia log market, including in the interior of the province.

K. Purchase of Goods for MTAR Issues

British Columbia

Comment 50: Whether Commerce Correctly Calculated a Benefit for BC Hydro EPAs

*Canadian Parties' Comments*¹⁴¹¹

- Commerce improperly used BC Hydro's regulated retail electricity tariff schedule to measure the benefit West Fraser received from selling incremental, green, non-retail, company-generated energy to BC Hydro. Also, the EPA process is market-based and as such confers no benefit.
- BC Hydro's retail electricity rates are set by administrative determination of BC Hydro's costs and a reasonable rate of return on capital, a process that does not reflect "prevailing market conditions." In the *Lumber V ARI Final*, Commerce did not justify using a benchmark that failed to meet the statutory obligation to reflect market conditions. References to the benefit framework in 19 CFR 351.503(b) do not overwrite the Act's requirements.
- Furthermore, the source, duration, market, and pricing methodology are completely different for the two different electricity products Commerce compared. The Rosenzweig Report, supported by extensive record evidence, explained that it would be "highly improbable" that a comparison between retail electricity and incremental company-generated electricity would have any meaning given the differences between the two products. The report also explains that these two separate products exist in two distinct markets.¹⁴¹² Commerce capriciously ignored the report.
- The truism that "electricity is electricity" cannot obscure the differences between the two products being compared. Moreover, contrary to claims by Commerce that BC Hydro does not distinguish between different sources of electricity, when BC Hydro acquires electricity through EPAs, it accounts for the costs of those purchases and recovers them in rates charged to customers.
- Per the Rosenzweig Report, the BC biomass electricity market is very competitive.¹⁴¹³ Further, the power call that led to the EPAs was an open and transparent best-offer bidding process. There is no need for a benchmark to measure what was by definition adequate remuneration.
- If Commerce incorrectly persists with a benchmark comparison, it should switch to a benchmark that reflects average incremental green, non-retail company-generated energy

¹⁴¹⁰ See GOC/GBC LER IQR at 41 and 47.

¹⁴¹¹ See GBC Case Brief Volume 5 at 42-56.

¹⁴¹² *Id.* at 50 (citing Rosenzweig Report at 13, 18).

¹⁴¹³ *Id.* at 53 (citing Rosenzweig Report at 15).

prices from calls other than Bioenergy Phase 2, such as the Bioenergy Phase 1 and Clean Power Calls.

- Alternatively, Commerce could determine the market price West Fraser would have received for its biomass energy in the absence of the EPAs.

*West Fraser's Comments*¹⁴¹⁴

- In addition to using an improper benchmark, Commerce failed to account for the costs West Fraser incurs to sell electricity under the EPAs. These costs are prevailing market conditions of biomass electricity, and Commerce must include them in the price comparison.

*Petitioner's Rebuttal Comments*¹⁴¹⁵

- The Canadian Parties' arguments on this issue rest on a non-existent difference. Market structure and BC Hydro pricing policies do not change the fact that there is no evidence of physical or qualitative differences between biomass electricity and electricity generated from other sources. BC Hydro does not trace the source of individual electrons, and energy supplied to the BC Hydro system by IPPs is treated the same as electricity from BC Hydro's own resources. Thus, there is no basis to alter Commerce's use of the "benefit-to-the-recipient" standard to determine the adequacy of remuneration in this situation where the government is buying and selling the same good.
- The GBC's suggestion that Commerce compare the prices from the same power call at issue in this case would clearly be a circular comparison of a subsidy to itself. Moreover, while the GBC suggests as an alternative that Commerce use prices from other power calls in British Columbia, Commerce's subsidy definition is not limited to the specific power call under which West Fraser sold electricity to the GBC. Rather, the subsidy at issue is BC Hydro EPAs, whatever the call. Comparing the prices BC Hydro paid to West Fraser to what BC Hydro paid under other EPAs would thus still be a circular comparison of a subsidy to itself.
- The "costs" that West Fraser claims should offset any benefit received do not fall under the narrowly enumerated offsets included in the Act.

Commerce's Position: The Canadian Parties raise largely the same arguments that Commerce addressed, and found unconvincing, in the prior review.¹⁴¹⁶ We continue to disagree with the Canadian Parties' arguments that Commerce was incorrect to use BC Hydro's tariff rate as a benchmark in this administrative review.

The SAA explains that section 771(5)(E) of the Act provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy.¹⁴¹⁷ As discussed in the prior review, under the statute, a benefit is normally treated as conferred where there is a benefit to the recipient.¹⁴¹⁸ The facts under examination continue to indicate that not only is West Fraser selling electricity to BC Hydro, but West Fraser is also purchasing electricity from BC Hydro. For an MTAR program with these unique facts, such as the BC Hydro EPAs, where the government is acting on both sides of the transaction—*i.e.*, selling a good to, and purchasing

¹⁴¹⁴ See West Fraser Case Brief at 67-69.

¹⁴¹⁵ See Petitioner Rebuttal Brief at 345-347 and 351-358.

¹⁴¹⁶ See *Lumber VARI Final* IDM at Comment 50.

¹⁴¹⁷ See SAA at 927.

¹⁴¹⁸ See *Lumber VARI Final* IDM at Comment 7 and Comment 50 (citing section 771(5)(E) of the Act).

that good back from, a respondent—Commerce has decided to measure the benefit to the respondent as the difference between the price at which the government is selling the good to the company, and the price at which the government is purchasing that good back from the company.¹⁴¹⁹

Regarding the use of a “incremental, green wholesale firm electricity” benchmark on the basis of a “tier” under 19 CFR 351.511(a)(2), we continue to disagree that 19 CFR 351.511(a)(2) provides the appropriate framework given the unique facts of the transaction under examination. As discussed in the prior review and in the *CVD Preamble*, Commerce has not codified a regulation which expressly provides instruction on how to analyze the benefit conferred by a government’s purchase of goods for MTAR.¹⁴²⁰ In the *CVD Preamble*, we stated that “{u}nlike the case with the provision of goods and services, ... we have not had the opportunity to gain sufficient experience” with MTAR allegations and, thus, were “hesitant” to set forth how we would analyze such allegations.¹⁴²¹ We further explained that that we “expect{ed}” that 19 CFR 351.511, regarding the provision of goods and services by a government for LTAR, would provide Commerce with an approach to calculating the benefit received by a respondent where the government procures goods and services for MTAR.¹⁴²²

However, neither the regulations nor the *CVD Preamble* address a situation where the government is both a provider and purchaser of the good in question. BC Hydro’s presence on both sides of the electricity transaction with West Fraser presents an unusual situation that is different from either a standard provision program, in which the government only provides the respondent with a good, or what we envisioned as a standard procurement program at the time of the *CVD Preamble*, where the government is only a purchaser of a good from a respondent. Therefore, we continue to disagree that our regulations establish a clear three-tiered hierarchy for the identification of benchmarks for these unique types of MTAR programs, or that an analysis informed by 19 CFR 351.511(a)(2) is necessary to calculate West Fraser’s benefit.¹⁴²³

The Canadian Parties argue that a more appropriate benchmark would be the winning bids received either from the same power calls as West Fraser’s EPAs that Commerce is examining or winning bids from other clean power calls in British Columbia. BC Hydro purchases energy from independent power producers pursuant to long-term EPAs, and we are investigating the benefit conferred by the EPAs signed between the provincially-owned utility company and West Fraser. The benchmarks that West Fraser and the GBC propose are winning bids on other EPAs.¹⁴²⁴ In the prior review, the GBC acknowledged that it treats EPAs signed under different power calls as part of a single program.¹⁴²⁵ Thus, using prices from other EPAs, regardless of whether they originated from a different power call as the two EPAs we are examining in this proceeding, would be inconsistent with the statute and Commerce’s regulations because the

¹⁴¹⁹ See *Lumber V Final IDM* at Comment 51; see also *Lumber V ARI Final IDM* at Comment 50.

¹⁴²⁰ See *Lumber V ARI Final IDM* at Comment 7 and Comment 50; see also *CVD Preamble*, 63 FR at 65379.

¹⁴²¹ See *CVD Preamble*, 63 FR at 65379.

¹⁴²² *Id.*

¹⁴²³ See *Lumber V ARI Final IDM* at Comment 7 and Comment 50.

¹⁴²⁴ See, e.g., West Fraser Case Brief at 66.

¹⁴²⁵ See *Lumber V ARI Final IDM* at Comment 50.

benchmark used to measure the benefit from an investigated program cannot be from the same program being investigated.¹⁴²⁶

West Fraser also continues to propose alternative benchmarks that it claims avoid the circularity issue of using EPAs as a benchmark for EPAs. West Fraser suggests the Québec Biomass Cogeneration CFT and Wind CFT calls for power in 2009 and 2010. Because Commerce has determined that the standard for evaluating sales of electricity for these unique types of MTAR programs should be the benefit-to-the-recipient standard, it is not necessary for us to determine a benchmark using an LTAR “tiered” approach.¹⁴²⁷

Second, we continue to find the GBC and West Fraser’s argument that Commerce is comparing “different” goods in its benchmark analysis fundamentally flawed. The good on both sides of the benchmark is electricity. In the prior review, we found that:

While electricity can be generated using various sources - hydro, coal, gas, oil, solar, nuclear, biomass - there is no information on the record to demonstrate that the method used to generate electricity changes the physical characteristics of electricity or the fungibility of electricity. Indeed, BC Hydro itself does not track the source of the electricity that it sells to its customers.¹⁴²⁸

The GBC claims that the Rosenzweig Report disproves Commerce’s description of the fungibility of electricity. We continue to find this claim unconvincing.¹⁴²⁹ The Rosenzweig Report discusses how the *market* for green wholesale firm electricity differs from the *market* for non-firm retail electricity such that electricity procured in one market cannot necessarily be substituted for the other.¹⁴³⁰ We continue to find that different markets operate by different rules and that it may be difficult to exchange or transmit even identical goods across such markets. However, that does not change the fundamental nature of the good at question, *i.e.*, electricity is electricity.¹⁴³¹

West Fraser’s Fraser Lake and Chetwynd mills purchase electricity from BC Hydro at a regulated tariff rate. These mills also sell electricity back to BC Hydro through EPAs. Thus, we are continuing to treat the benefit to West Fraser as the difference between these two prices. Consequently, we continue to find that the appropriate benchmark to calculate the benefit that West Fraser received from the sale of electricity back to BC Hydro is the BC Hydro tariff rate.

We continue to reject the argument that West Fraser’s sales of electricity under EPAs with BC Hydro are necessarily adequate such that no benchmark analysis is needed because they result from a competitive and open bidding process. As the GBC recognizes, for policy reasons, BC Hydro seeks to specifically acquire clean and renewable energy from sources within British

¹⁴²⁶ See *e.g.*, section 771(5)(E) of the Act; 19 CFR 351.503(b); 19 CFR 351.505; 19 CFR 351.506; 19 CFR 351.507; and 19 CFR 351.511(a)(2)(i)(ii).

¹⁴²⁷ See *Lumber VARI Final IDM* at Comment 50.

¹⁴²⁸ See *Lumber VARI Final IDM* at Comment 50 (citing *Lumber V Final IDM* at Comment 51).

¹⁴²⁹ See *Lumber VARI Final IDM* at Comment 50.

¹⁴³⁰ See Rosenzweig Report at 13 – 18.

¹⁴³¹ See *Lumber VARI Final IDM* at Comment 50.

Columbia.¹⁴³² In the prior review, we noted that the GBC characterizes the EPAs as part of an attempt to fulfill that objective.¹⁴³³ Because this policy framework limits the sources from which BC Hydro can source electricity, Commerce cannot simply assume the prices that result from the EPA process are market-based and, thus, that they do not require any price comparison with a market-based benchmark to determine whether a benefit was conferred. We continue to find that arguing that “green, wholesale firm electricity” should be the relevant good for comparison is an attempt to assume away the GBC’s policy choices to prefer electricity from certain sources procured from within British Columbia.

Similarly, we disagree that the costs West Fraser incurred to perform the EPAs should be taken into consideration. As explained above, we determine the amount of any benefit conferred to West Fraser under the benefit-to-the recipient standard. This standard requires that we calculate the benefit by comparing the price at which the government purchased electricity to the price at which the government sold electricity; the reason for any pricing difference is not part of this analysis. Similarly, under this standard, the argument that because BC Hydro’s costs are affected by the prices it pays IPPs for electricity, the cost-based BC Hydro tariff rates suffer from the same circularity issue as other EPAs is not relevant.¹⁴³⁴

Additionally, in this review the GBC argues that, as an alternative approach, Commerce could determine the market price West Fraser would have received for its biomass energy in the absence of the EPAs. With this argument, the GBC appears to contend that Commerce could estimate what the GBC would have paid West Fraser in the absence of the program. We find this proposed approach is speculative and does not adhere to the practice, as discussed above, that Commerce has developed when determining whether a benefit is conferred from an MTAR program, much less the kind of unique MTAR program we are examining in this instance. As noted above, Commerce’s general practice with MTAR programs is to follow the benefit methodology it uses for LTAR programs, namely that Commerce compares the prices stemming from the transaction involving the government and respondent to a price or prices stemming from a comparable, benchmark transaction. As such, our benefit calculation methodology for MTAR programs does not attempt to estimate or speculate what the price established between the government and respondent would have been in the absence of the MTAR program issue.

Commerce calculates benefits under tax programs by determining what the respondent’s tax payments would have been in the absence of the program and then comparing that tax amount by what the respondent actually paid (or did not pay) under the tax program at issue. However, for such tax programs, the tax payment due in the absence of the program is typically known, as the payment is simply what is paid by firms that are ineligible under a given program. Here, what the GBC would have paid to West Fraser for electricity in the absence of the BC Hydro EPA program is not known, and thus, any proposed benchmark price that attempts to derive what that price would have hypothetically been necessarily requires a significant degree of speculation. Therefore, we reject the GBC’s proposed alternative benefit methodology.

¹⁴³² See GBR IQR Response at BC-II-50.

¹⁴³³ See *Lumber VARI Final* IDM at Comment 50.

¹⁴³⁴ *Id.*

Based on the above, we continue to use West Fraser's purchases of electricity from BC Hydro as a benchmark for determining whether West Fraser's sales of electricity to BC Hydro were for MTAR.

Comment 51: Whether Benefits Under the BC Hydro EPA Program Are Tied to Electricity Production and Not Lumber Products

*GBC's Comments*¹⁴³⁵

- The record evidence demonstrates that, at the time of bestowal, BC Hydro tied its EPA payments to *West Fraser's sales of electricity* to BC Hydro. The EPAs clearly state that BC Hydro pays West Fraser to deliver this electricity to BC Hydro's transmission and distribution systems.
- BC Hydro paid to purchase this particular type of electricity from West Fraser; the amounts paid had nothing to do with West Fraser's production or sale of subject merchandise or with use of an input.
- The payments that West Fraser received from BC Hydro were tied explicitly to West Fraser's *sales of this electricity* to BC Hydro. Commerce did not address this evidence in the *Lumber V AR2 Prelim* or the *Lumber V AR1 Final* upon which it based its conclusions, nor did Commerce identify *any* evidence that ties these payments at the time of bestowal to the production or sale of subject merchandise.
- Under 19 CFR 351.525(b)(5)(ii), "If a subsidy is tied to *production of an input product*, then the {Department} will attribute the subsidy to both *the input and downstream products* produced by a corporation." However, this regulation does not apply here.
- It would have been *impossible* for West Fraser to both sell the particular type of electricity sold to BC Hydro pursuant to the EPAs and use that *same* electricity as an input in its production of subject merchandise. Thus, there is no basis to find that the alleged subsidy at issue is tied to West Fraser's production of inputs.
- In the prior review, Commerce objected to the aforementioned arguments claiming that it would lead to electricity benefits escaping the remedies of the CVD law.
- This argument is irrelevant. The policy consequences that Commerce identifies do not change the unambiguous terms of its attribution regulation or the undisputed record facts.
- Finding that West Fraser's sales of electricity to BC Hydro under the BC Hydro EPA program are tied to electricity sales would not prohibit Commerce from finding that West Fraser's purchase of electricity from BC Hydro are attributable to West Fraser's total sales.
- The claim that West Fraser's "{e}lectricity benefits the production and manufacture of the subject merchandise since electricity is required to operate the production facilities of the softwood lumber producer" is flawed in the context of an MTAR program.
- The logic would apply to purchases of electricity for LTAR if West Fraser used the electricity to produce subject merchandise but does not apply in instances in which West Fraser purchases electricity.
- Electricity sold by West Fraser to the GBC simply cannot be used as an input into West Fraser's production of softwood lumber.
- Thus, Commerce should conclude that when a company sells electricity to a public body, those sales are by definition tied electricity sales.

¹⁴³⁵ See GBC Case Brief Volume 5 at 33 to 42.

*Petitioner's Rebuttal Comments*¹⁴³⁶

- The Canadian Parties raised the same arguments in the prior review. Commerce rejected them.
- Commerce found that “{e}lectricity benefits the production and manufacture of the subject merchandise since electricity is required to operate the production facilities of the softwood lumber producer.”¹⁴³⁷
- As such, under 19 CFR 351.525(a) and (b)(5)(ii), subsidies bestowed on the input product, *i.e.*, electricity, should be attributed to sales of all products produced by the respondent companies, as Commerce did in the prior review and in the *Lumber V AR2 Prelim*.
- The Canadian Parties argue that any revenue from the sale of electricity or generation capacity is inherently tied to that sale. They further claim that under 19 CFR 351.525(b)(5)(ii), which deals with the attribution of subsidies on the production of inputs, does not apply to sales of inputs.
- However, this interpretation would lead to virtually all government procurement subsidies to escape CVD remedies.
- Commerce intended its tying rules to be predictable but flexible to account for the myriad ways in which governments structure and target their subsidy programs, the *CVD Preamble* specifically mentions that with regard to attribution of subsidies, Commerce is “extremely sensitive to potential circumvention of the countervailing duty law.”
- The Canadian Parties’ proposed interpretation of the attribution regulations would be that a government procurement program would only be attributable to domestic sales, as government purchases could never benefit exports which are, by definition, purchased by parties outside of the country at issue.
- Commerce correctly found that electricity is an input to a company’s entire operation. West Fraser sold electricity. To the extent that West Fraser and Resolute receive more revenue than they otherwise would have earned, Commerce should continue to attribute that benefit to West Fraser and Resolute’s total sales.

Commerce’s Position: In the investigation and prior review, Commerce addressed the same attribution arguments raised by the GBC as it regards benefits under the BC Hydro EPA program.¹⁴³⁸ As we explained in those final determinations, the argument that benefits from an electricity subsidy program are tied exclusively to electricity or to less than a company’s overall production reflects a misunderstanding of the CVD law.

For the reasons explained in the prior review and in Comment 52, we find there is no cause to change Commerce’s finding that the benefits from a company’s sale of electricity to the government are appropriately attributed to all products of the company.

Ontario and Québec

¹⁴³⁶ See Petitioner Rebuttal Brief at 340-345.

¹⁴³⁷ See Petitioner Rebuttal Brief at 340 (citing *Lumber V ARI Final IDM* at Comment 6).

¹⁴³⁸ See *Lumber V Final IDM* at Comment 49; and *Lumber V ARI Final IDM* at Comment 6, 54, and 57; see also *Groundwood Paper from Canada Final IDM* at Comment 41.

Comment 52: Whether Resolute's Ontario and Québec Electricity PPAs Are Tied to Non-Subject Merchandise

*GOO's Comments*¹⁴³⁹

- The IESO's CHP III PPA with Resolute compensates the company for generating power for Ontario's electricity grid. Resolute produces the electricity at its biomass facility co-located with its pulp and paper mill.
- Because the contract is directly tied to Resolute's production of pulp and paper, and may not be attributed to Resolute's other operations, Commerce is precluded under U.S. law (*see* 19 CFR 351.525(b)(5)) from attributing any subsidy to Resolute's other production.

*GOQ's Comments*¹⁴⁴⁰

- Hydro-Québec's objective is the purchase of energy from residual forest biomass cogeneration power plants. In this case, the production of the plants at issue were tied to pulp and paper, not lumber, a fact that was known to Hydro-Québec at the point of bestowal.¹⁴⁴¹
- Any benefit under the PAE 2011-01 program would therefore benefit the pulp and paper mill where that electricity is generated and used. Because the purchase of Resolute's biomass cogenerated electricity is tied to the production of pulp and paper for which a portion of that electricity could have been used as an input, rather than to softwood lumber, it is not countervailable under 19 CFR 351.525(b)(5)(i).

*Resolute's Comments*¹⁴⁴²

- The purpose of the PPAs between Resolute and Hydro-Québec and Resolute and IESO is for Hydro-Québec and IESO to purchase biomass cogenerated electricity from Resolute's pulp and paper mills. The PPAs have no connection to the production of the subject merchandise. The electricity produced was not used as an input in the production of softwood lumber; rather, it was sold and transmitted to the electricity grid in Québec and Ontario, or it was recaptured for use in the production of pulp and paper.
- Resolute produces and sells electricity to Hydro-Québec at the Gatineau newsprint mill and the Dolbeau specialty paper mill, and to IESO at the Thunder Bay pulp and paper mill. The revenues are booked as offsets against the cost of goods sold at those mills, thereby reducing the overall production costs of those mills. These pulp and paper mills are separated from any sawmills, and electricity is not transmitted between them. Likewise, there was no transfer of revenue or benefit from the electricity production at the pulp and paper mills to any other Resolute facility.
- Commerce may not countervail subsidies tied to the production of electricity in an investigation of subsidies to softwood lumber. The only exception to the attribution rule arises when the subsidy is to an input product, in which case Commerce would attribute the subsidy to both the input and downstream products produced by the company. Neither the payments for the electricity, nor the recaptured electricity itself, nor the pulp and paper produced at the

¹⁴³⁹ *See* GOO Case Brief Volume 7 Part 2 at 35-38.

¹⁴⁴⁰ *See* GOQ Case Brief Volume 8.B at 33-35.

¹⁴⁴¹ *Id.* at 34 (citing GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibits QC-BIO-10 and QC-BIO-50).

¹⁴⁴² *See* Resolute Case Brief at 49-53.

mills, were inputs in the production of softwood lumber. Therefore, the exception does not apply here.

*Petitioner's Rebuttal Comments*¹⁴⁴³

- The respondents' tying argument ignores Commerce's finding that, because electricity is an input to the overall operations of the company, Commerce will attribute the subsidy to sales of all products produced by the company, including electricity, pulp and paper, and softwood lumber.¹⁴⁴⁴
- How Resolute decides to keep its books is a business decision which does not dictate how Commerce should attribute subsidies.¹⁴⁴⁵
- Commerce properly considered the subsidies for electricity that Resolute produced at its pulp and paper mills to be subsidies on Resolute's overall operations.

*Sierra Pacific Rebuttal Comments*¹⁴⁴⁶

- Commerce previously rejected the arguments made by the respondents and should do so again.¹⁴⁴⁷ The statute requires Commerce to countervail subsidies that are provided "directly or indirectly" to the manufacture or production of subject merchandise. Revenue earned from sales of electricity benefits the respondent's overall operations.
- There is no evidence on the record demonstrating that, at the time of bestowal, the benefits from Hydro-Québec's and IESO's purchases of electricity were tied to the production or sale of pulp or paper products.

Commerce's Position: In the *Lumber V Final* and *Lumber V ARI Final*, Commerce addressed the same attribution arguments raised by the GOO, GOQ, and Resolute in this review regarding Resolute's PPAs with Hydro-Québec and IESO.¹⁴⁴⁸ As we explained in those final determinations, the argument that benefits from an electricity subsidy program are tied exclusively to electricity or to less than a company's overall production reflects a misunderstanding of the CVD law.

If, as the respondents continue to argue, a subsidy provided to the sale of electricity is tied to electricity, then electricity subsidies would escape the remedies provided under the CVD law. Under the premise of the respondents' argument, Commerce would be unable to countervail such programs as electricity subsidies, water subsidies, and land subsidies because the benefits from

¹⁴⁴³ See Petitioner Rebuttal Brief at 344-345.

¹⁴⁴⁴ *Id.* at 344 (citing *Lumber V ARI Final* IDM at Comment 6).

¹⁴⁴⁵ *Id.* at 345 (citing *CFS from China* IDM at 95 ("{G}overnment regulations may make it more or less costly to use certain inputs depending on where the product is to be sold. In such situations, it is perfectly rational for the producer to create a business model that takes these factors into account. However, these business choices should not dictate how {Commerce} attributes subsidies bestowed on the inputs.")).

¹⁴⁴⁶ See *Sierra Pacific Rebuttal* Brief at 24-27.

¹⁴⁴⁷ *Id.* at 25 (citing *Lumber V Final* IDM at Comment 49).

¹⁴⁴⁸ See *Lumber V Final* IDM at Comment 49; and *Lumber V ARI Final* IDM at Comment 6, 54, and 57; see also *Groundwood Paper from Canada Final* IDM at Comment 41.

these programs would only benefit electricity, water, or land. This argument is at odds with 30 years of case precedent with respect to electricity alone.¹⁴⁴⁹

As explained in the *Lumber V Final* and *Lumber V ARI Final*, Commerce has consistently attributed the benefits from electricity subsidies to all products.¹⁴⁵⁰ Furthermore, the attribution of MTAR benefits over sales of all products is consistent with precedent. For example, in *CRS from Korea*, the benefit conferred from the purchase of electricity for MTAR was attributed over the respondents' total sales.¹⁴⁵¹

Moreover, section 701(a) of the Act requires Commerce to countervail subsidies that are provided "directly or indirectly" to the manufacture or production of the subject merchandise. Electricity benefits the production and manufacture of the subject merchandise since electricity is required to operate the production facilities of the softwood lumber producer. Under the CVD regulations, if subsidies allegedly tied to a particular product are, in fact, provided to the overall operations of a company, Commerce will attribute the subsidy to sales of all products produced by the company.¹⁴⁵² Under 19 CFR 351.525(a) and (b)(5)(ii), subsidies bestowed on an input product, *i.e.*, electricity, should be attributed to sales of all products produced by a company. No party has contested the finding that electricity is consumed in the production of softwood lumber.

Consequently, to the extent that Resolute receives more revenue than it otherwise would have earned from the sale of electricity to the GOO and GOQ, Commerce will attribute that benefit to Resolute's total sales as mandated under 19 CFR 351.525(a) and (b)(5)(ii). Further, section 771(5)(D) of the Act states that the government purchase of a good is a financial contribution, and section 771(5)(E)(iv) of the Act provides that the purchase of a good provides a benefit if that good is purchased for MTAR. Therefore, the statute explicitly provides that a government purchase of a good can constitute the provision of a countervailable subsidy to a company. If we interpreted the attribution rules as suggested by the respondents, Commerce would effectively negate the language of the statute with respect to the provision of a good.

¹⁴⁴⁹ See, e.g., *Flowers from Mexico*, 49 FR at 15009; *Textile Mill Products and Apparel from Singapore*, 50 FR at 9842; *Carbon Steel Wire Rod from Saudi Arabia*, 51 FR at 4211; *Steel Wire Nails from New Zealand*, 52 FR at 37198; *Ball Bearings from Thailand*, 54 FR at 19133; *Magnesium from Canada*, 57 FR at 30949; *Extruded Rubber Thread from Malaysia*, 57 FR at 38474; *Certain Steel Products from Korea*, 58 FR at 37350; *OCTG from Argentina*, 62 FR at 32309; *Steel Wire Rod from Trinidad and Tobago*, 62 FR at 55006; *Steel Wire Rod from Venezuela*, 62 FR at 55021; *Cut-to-Length Carbon-Quality Steel Plate from Indonesia*, 64 FR at 73162; *LEU from France* IDM at Purchase at Prices that Constitutes MTAR; *Kitchen Racks from China* IDM at Government Provisions of Electricity for LTAR; *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman* IDM at Provision of Electricity for LTAR; *Shrimp from Ecuador* IDM at Comment 3; *Melamine from Trinidad and Tobago* IDM at Provision of Electricity for LTAR; *Welded Line Pipe from Korea* IDM at Korea Electric Power Corporation Provision of Electricity for LTAR; *Chlorinated Isocyanurates from China* IDM at Electricity for LTAR; and *Cut-To-Length Plate from Korea* IDM at Provision of Electricity for LTAR.

¹⁴⁵⁰ See *Lumber V Final* IDM at Comment 49; and *Lumber V ARI Final* IDM at Comment 6; see also *Groundwood Paper from Canada Final* IDM at Comment 41.

¹⁴⁵¹ See *CRS from Korea* IDM at 37. The final determination was based upon AFA; see also *SC Paper from Canada Prelim PDM* at 42 (where Commerce allocated the benefit from the purchase of land for MTAR over the respondent company's total sales).

¹⁴⁵² See *CVD Preamble*, 63 FR at 65400.

Additionally, the fact that Resolute manufactures non-subject merchandise at the Dolbeau, Gatineau, and Thunder Bay mills does not change the fact that the mills are part of the Resolute corporate group. These pulp and paper mills are not distinct corporate entities, which would require Commerce to conduct an analysis under 19 CFR 351.525(b)(6)(ii)-(v) to determine whether subsidies received by them are attributable to Resolute. Rather, Resolute is the corporate entity which files the tax documents and consolidates the financial statements of all of its mills as one corporate entity.¹⁴⁵³ Neither the statute nor Commerce’s regulations “provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm.”¹⁴⁵⁴ Further, Commerce does not tie subsidies on a plant- or factory-specific basis.¹⁴⁵⁵

Commerce recognizes that money is fungible and its use for one purpose may free up money to benefit another purpose. Subsidies provided to a division of a company, such as a pulp and paper mill, will impact the overall production and sale of all other products of the company. Consequently, there is no need to address attribution because money is fungible within a single, integrated corporate entity (as opposed to a conglomeration of entities for which an analysis under 19 CFR 351.525(b)(6) may be required). The manner in which Resolute records the benefit from the CHP III and PAE 2011-01 programs internally within its financial accounts is irrelevant to our analysis, which is informed by our regulations and practice.

An exception is whether the subsidy is tied to the production or sale of a particular product. Section 351.525(b)(5)(i) of Commerce’s regulations states that, generally, “(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.” In making this determination, Commerce analyzes the purpose of the subsidy based on information available at the time of bestowal.¹⁴⁵⁶ Commerce’s practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed rather than examine the use or effect of subsidies (*i.e.*, to trace how the benefits are used by companies). A subsidy is only tied to a particular product when the intended use is known to the subsidy provider (here, the GOO and the GOQ) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been previously upheld by the CIT.¹⁴⁵⁷

However, contrary to the respondent parties’ claims, there is no information on the record that establishes, at the time of approval or bestowal, the benefits from Resolute’s sale of electricity under the CHP III to IESO or under the PAE 2011-01 to Hydro-Québec were tied to the production of pulp or paper, or any other good. Under the CHP III program, IESO’s aim is solely the procurement of up to 100 MW of combined heat and power fueled by renewable energy sources.¹⁴⁵⁸ Hydro-Québec’s objective under the PAE 2011-01 program is the purchase

¹⁴⁵³ See Resolute Non-Stumpage IQR Response at Exhibits RES-NS-GEN-4 and RES-NS-GEN-5.

¹⁴⁵⁴ See *SC Paper from Canada Final IDM* at 161 (citing *CFS from China IDM* at Comment 8).

¹⁴⁵⁵ See, e.g., *SC Paper from Canada – Expedited Review – Final Results IDM* at 99.

¹⁴⁵⁶ See *CVD Preamble*, 63 FR at 65403.

¹⁴⁵⁷ See, e.g., *Essar Steel Ltd. v. U.S.* 678 F. 3d at 1296.

¹⁴⁵⁸ See GOO Non-Stumpage IQR Response at Exhibit ON-CHP-4 (Request for Proposals, p. 1); see also Resolute Non-Stumpage IQR Response at Exhibits RES-NS-CHP-3 and RES-NS-CHP-4 (for Resolute’s CHP III PPA with IESO and amendment, respectively).

of 300 MW of energy from residual forest biomass cogeneration power plants.¹⁴⁵⁹ Neither program has any qualification that the electricity to be purchased must be from producers of non-subject merchandise. Notably, the lack of any language or criteria in the request for proposals and PPAs tying the benefits of the CHP III and PAE 2011-01 to the production of a particular product at a participant's facility indicate that the programs are untied subsidies.

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

Comment 53: Whether Commerce's Specificity and Benchmark Analyses Were Inconsistent for Ontario's and Québec's Electricity PPA Programs

*Resolute's Comments*¹⁴⁶⁰

- Commerce defined the industry for biomass cogenerated electricity differently in its specificity and benchmark analyses. Commerce narrowly focused on producers of biomass cogenerated electricity to find PPAs with those kinds of electricity producers to be limited in number. However, when Commerce looked for a comparable electricity sales benchmark for the benefit analysis, it looked broadly to electricity sales by the utilities originating from all fuel sources.
- Narrowing the specificity analysis of biomass cogenerated PPAs favors a countervailable subsidy finding, while expanding the comparison of biomass cogenerated electricity to include other forms of electricity favors a high countervailable subsidy margin.
- Commerce should limit its specificity analysis to forest biomass cogenerated electricity contracts. The benefit comparison should be to a benchmark of forest biomass cogeneration electricity sales rather than sales of predominately hydropower and nuclear power, and those sales should be the wholesale prices the government contracted to pay, not prices the public utility charges to consumers.

*Petitioner's Rebuttal Comments*¹⁴⁶¹

- Commerce has rejected the argument that it defines the industry narrowly for specificity but defines the industry broadly when determining a benchmark.¹⁴⁶² The legal standards and Commerce's analyses for specificity and benefit are separate and distinct.
- Resolute's argument ignores the fact that Commerce never made an industry definition finding in its specificity analysis. Commerce did not state that the Ontario and Québec PPA programs were specific because they were limited to "producers of biomass cogenerated electricity." Instead, Commerce examined the evidence and found that the programs are *de facto* specific because the number of actual recipients of each respective subsidy program is limited.

*Sierra Pacific Rebuttal Comments*¹⁴⁶³

¹⁴⁵⁹ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-BIO-A (p. GOQ-BIO-14), Exhibit QC-BIO-35 (PAE 2011-01 Contract between Hydro-Québec and Resolute (Gatineau)), and Exhibit QC-BIO-47 (PAE 2011-01 Contract between Hydro-Québec and Resolute (Dolbeau)).

¹⁴⁶⁰ See Resolute Case Brief at 109-111.

¹⁴⁶¹ See Petitioner Rebuttal Brief at 359-360.

¹⁴⁶² *Id.* (citing *Groundwood Paper from Canada Final IDM* at Comment 49).

¹⁴⁶³ See Sierra Pacific Rebuttal Brief at 27-29.

- In the prior review, Commerce rejected the respondents' specificity and benchmark arguments regarding the government purchases of electricity for MTAR programs.¹⁴⁶⁴ The respondents fail to identify any legal authority or record evidence that would compel a different conclusion in this review.

Commerce's Position: In the first administrative review, Resolute made the same arguments with regard to the analyses of specificity and benefit for the programs GOO Purchase of Electricity for MTAR under CHP III PPA and GOQ Purchase of Electricity for MTAR under PAE 2011-01. For all the reasons discussed in the *Lumber V ARI Final*,¹⁴⁶⁵ we continue to disagree with Resolute that our determinations regarding specificity and benefit are inconsistent or arbitrary for the Ontario and Québec electricity PPA programs.

As we explained in the *Lumber V ARI Final*,¹⁴⁶⁶ Commerce's practice is to use the benefit-to-the-recipient standard set forth in 19 CFR 351.503(b) to determine the benefit from the sale of electricity for MTAR programs. The application of that standard is separate and distinct from the specificity analysis of a program that Commerce performs pursuant to section 771(5A)(D) of the Act. Our findings that there exist only a limited number of actual recipients under the Ontario and Québec electricity MTAR programs (*see* Comment 55 and 57) in no way calls into question the determinations that a benefit was conferred to Resolute from each program under the benefit-to-the-recipient standard (*see* Comment 54 and 56), and *vice versa*. As such, the specificity and benchmark analyses conducted for both programs in this review were in accordance with Commerce's regulations and the Act, and there is no statutory requirement that Commerce use the same comparisons in those different analyses.

Comment 54: Whether Commerce Applied the Correct Benchmark to Calculate the Benefit Under IESO's CHP III Program

*GOO's Comments*¹⁴⁶⁷

- Commerce's finding that IESO purchased electricity from Resolute for MTAR was based on an incorrect comparison between the price of biomass cogenerated electricity and the price of hydroelectric and nuclear electricity. Prices of biomass cogenerated electricity produced and wholesale electricity prices consumed are inherently different because the underlying services are not the same, thereby rendering Commerce's approach inconsistent with the prevailing market conditions requirement set forth in the statute.
- The CHP III contract was a commercial agreement under which Resolute sold biomass cogenerated electricity to the Ontario electricity grid. Resolute entered into a CHP III contract for its Thunder Bay Condensing Turbine following competitive RFP and bilateral negotiation processes.

¹⁴⁶⁴ *Id.* at 28 (citing, e.g., *Lumber V ARI Final* IDM at Comment 51).

¹⁴⁶⁵ *See Lumber V ARI Final* IDM at Comment 51.

¹⁴⁶⁶ *See Lumber ARI Final* IDM at Comment 7.

¹⁴⁶⁷ *See* GOO Case Brief Volume 7 Part 2 at 35-38.

*Resolute's Comments*¹⁴⁶⁸

- Commerce used the price of electricity purchased by Resolute as a benchmark for Resolute's biomass cogenerated electricity under the CHP III, but Resolute's electricity consumption rate (based predominately on nuclear fuel and hydropower) does not reflect the prevailing market conditions for the sale of biomass cogenerated electricity by a private seller to the GOO. The price, availability, and transmission of electricity generated by Resolute are all different from and incomparable to those of electricity obtained and redistributed by IESO to consumers.
- The costs of electricity for nuclear and hydroelectric energy are much lower than the costs of biomass cogenerated electricity. Commerce, thus, selected a non-market benchmark price that never would allow producers of biomass cogenerated electricity to recover their costs.
- The pricing models for the electricity that Resolute buys and the biomass cogenerated electricity that it produces are different. The price of electricity that Resolute purchases from the IESO grid fluctuates hourly based on the supply of electricity from different types of sources and the demand of different types of industrial producers. Resolute's electricity purchase price is also a function of its ability to choose when and how much electricity to consume. None of these factors is a relevant consideration for the GOO as a purchaser of biomass cogenerated electricity.
- Commerce's benchmark also fails to reflect prevailing market conditions for Resolute's biomass cogenerated electricity service because the sellers and purchasers are different for each with different market conditions, different demand factors, and different purposes in their purchase decisions. Commerce's benchmark consists of a regulated government supplier selling to many industrial consumers, whose demand for electricity is determined by the consumption needs of their businesses. By contrast, the GOO is the sole purchaser in the market for biomass cogenerated electricity and its demand for Resolute's service is a function of maintaining stability of the electricity grid.
- Should Commerce continue using an electricity consumption price benchmark, it should include a Global Adjustment rate, as included in the Thunder Bay PPA. Calculating the benchmark price without taking into account the Global Adjustment appropriate to the prevailing market conditions for biomass would be contrary to section 771(5)(E)(iv) of the Act.
- Further, the price Resolute is paid to provide biomass-generated power resulted from an open bid, competitive procurement process conducted by the OPA.

*Petitioner's Rebuttal Comments*¹⁴⁶⁹

- There is no evidence on the record demonstrating that the electricity purchased by IESO is any different than the electricity that it sold to Resolute. As Commerce observed in the first review, "there is no information on the record to support that the method used to generate electricity changes the physical characteristics of electricity or the fungibility of electricity."¹⁴⁷⁰
- The GOO does not set the price of electricity sold to consumers based on the generation or fuel source of electricity.¹⁴⁷¹
- Although Resolute references a breakdown of electricity consumed by fuel sources,¹⁴⁷² this information represents Ontario's total electricity supply attributable to various generation

¹⁴⁶⁸ See Resolute Case Brief at 30-37.

¹⁴⁶⁹ See Petitioner Rebuttal Brief at 348-349, 352-355, and 358.

¹⁴⁷⁰ *Id.* at 348 (citing *Lumber V ARI Final IDM* at Comment 7).

¹⁴⁷¹ *Id.* (citing GOO Non-Stumpage IQR Response at Exhibit ON-CHP-8 (p. 1-7)).

¹⁴⁷² *Id.* (citing Resolute Case Brief at 32).

sources and does not reflect the generation sources of electricity specifically consumed by Resolute.¹⁴⁷³ In fact, Resolute cannot provide such information, because the GOO does not track the flow of electricity based on the generation source. Record evidence shows that the GOO treats electricity, regardless of fuel source, as a single good.¹⁴⁷⁴

- Section 771(5)(E) of the Act instructs Commerce to consider the prevailing market conditions for the good in question, including other conditions of purchase or sale. Given that the GOO was buying and selling electricity, Commerce properly determined that the relevant conditions of purchase and sale in this instance are: (1) the fact that Resolute was purchasing, consuming, and selling the same good, and (2) the fact that the GOO was also acting on “both sides” of the transaction for the same good.
- Commerce thus correctly found that the benefit conferred under the electricity for MTAR program is the difference between the government’s purchase price of the good and selling price of the good.
- Because it is unclear what Resolute is requesting Commerce to do with the Global Adjustment, the benchmark should not be adjusted.
- Resolute’s costs arguments relate to the supply side considerations of the specific types of electrical generation. Under section 771(6) of the Act, Commerce need only take into consideration certain defined costs when calculating benefits. Given that the alleged “costs” Resolute incurred for receiving the subsidy under the program do not fall into any of the enumerated categories, those costs are irrelevant to Commerce’s benefit analysis.

Commerce’s Position: The GOO and Resolute previously raised these arguments in the first administrative review.¹⁴⁷⁵ In the *Lumber VARI Final*, we explained the interpretive framework applied in conducting a benefit analysis where the government is both the purchaser and provider of a good.¹⁴⁷⁶ No new argument has been presented in this review to cause Commerce to reconsider its determination that it is appropriate and reasonable to analyze the benefit conferred from the sale of electricity by a company to its government based on the benefit-to-the-recipient standard set forth in 19 CFR 351.503(b). Thus, for all the reasons discussed below, we continue to apply the benefit-to-the-recipient standard to the GOO’s purchase of electricity for MTAR program in these final results and apply as the benchmark Resolute’s electricity consumption rate to determine the benefit under the CHP III program in this administrative review.

During the POR, Resolute sold electricity to IESO under a CHP III PPA and purchased electricity from IESO. We find that an electricity tariff benchmark, which allows us to compare the prices that the utility charged Resolute for electricity to the rates that the utility paid Resolute when purchasing electricity under the PPA, best reflects the “benefit-to-the-recipient” standard that is set forth under section 771(5)(E) of the Act and the SAA,¹⁴⁷⁷ and conforms with the standard of benefit language codified within 19 CFR 351.503(b).

The respondents argue that the prices at which IESO, a government utility, purchases electricity under the CHP III are consistent with “market principles” and that a biomass cogenerated

¹⁴⁷³ *Id.* (citing GOO Non-Stumpage IQR Response at Exhibit ON-DR-8).

¹⁴⁷⁴ *Id.* at 348-349 (citing GOO Non-Stumpage IQR Response at Exhibit ON-CHP-1).

¹⁴⁷⁵ See *Lumber VARI Final* IDM at Comment 52.

¹⁴⁷⁶ *Id.* at Comment 7.

¹⁴⁷⁷ See SAA at 927.

electricity benchmark should be applied. However, our analysis of the appropriate benchmark is based upon 19 CFR 351.503(b), and not a tiered analysis set forth in the regulation for the government provision of a good or service under 19 CFR 351.511. Section 351.511(a)(2) of Commerce’s regulations does not provide the appropriate framework given the unique facts of the transaction under examination. IESO’s presence on “both sides” of the electricity transaction with Resolute presents an unusual situation that is different than either a standard provision program, in which the government only provides the respondent with a good, or what we envisioned as a standard procurement program at the time of the *CVD Preamble*,¹⁴⁷⁸ where the government is only a purchaser of a good from a respondent.

As discussed the *CVD Preamble*, Commerce has not codified a regulation which expressly provides instruction on how to analyze a government’s purchase of goods for MTAR.¹⁴⁷⁹ We stated that “{u}nlike the case with the provision of goods and services . . . we have not had the opportunity to gain sufficient experience” with MTAR allegations and, thus, were “hesitant” to set forth how we would analyze such allegations.¹⁴⁸⁰ We stated that we “expect{ed}” that 19 CFR 351.511, regarding the provision of goods and services by a government for LTAR, would provide Commerce with an approach to calculating the benefit received by a respondent where the government procures goods for MTAR.¹⁴⁸¹

However, for an MTAR program such as this one, where the government is acting on “both sides” of the transaction—*i.e.*, both selling a good to, and purchasing that good from, a respondent—Commerce is presented with a situation not contemplated in the regulations or in the *CVD Preamble*. Thus, applying the benefit-to-recipient standard set for in 19 CFR 351.503(b), which outlines the principles that Commerce will follow when dealing with alleged subsidies for which the regulations do not establish a specific rule, the benefit to the respondent is the difference between the price at which the government is selling the good to the company, and the price at which the government is purchasing that good back from the company.¹⁴⁸²

Resolute’s Thunder Bay mill purchases electricity from IESO at the electricity consumption rate. The Thunder Bay mill also sells electricity back to IESO under the CHP III at an administratively-set price.¹⁴⁸³ Thus, the benefit to Resolute is the difference between these two prices. The costs incurred by Resolute to generate biomass electricity is irrelevant to Commerce’s analysis. We therefore need not adjust the electricity consumption rate benchmark for a Global Adjustment charge. The reasons for any pricing differential are not part of our analysis.

We also disagree with the respondents’ assertion that, because the electricity consumption rate is a price predominately based on hydroelectric and nuclear energy, it cannot serve as the benchmark for a biomass energy program. There is no evidence that electricity is differentiated based upon the manner in which it is generated. In fact, information submitted by the GOO

¹⁴⁷⁸ See *CVD Preamble*, 63 FR at 65379.

¹⁴⁷⁹ See *CVD Preamble*, 63 FR at 65379.

¹⁴⁸⁰ *Id.*

¹⁴⁸¹ *Id.*

¹⁴⁸² See *Lumber VARI Final IDM* at Comment 7.

¹⁴⁸³ See Resolute Non-Stumpage IQR Response at Exhibit RES-NS-CHP-3.

shows that the IESO treats electricity as a single good regardless of the energy source.¹⁴⁸⁴ There is no evidence on the record to show that the method used to generate electricity changes the physical characteristics of electricity or the fungibility of electricity. Electricity, regardless of its fuel source, is electricity as the record demonstrates.

For all the above stated reasons, we continue to find that the appropriate benchmark to calculate the benefit that Resolute received from the sale of electricity to IESO under the CHP III program is the electricity consumption rate.

Comment 55: Whether IESO's CHP III Program Is Specific

*GOO's Comments*¹⁴⁸⁵

- The CHP III RFP was open to all parties interested in developing new biomass CHP generation capacity in the Ontario electricity market. Interested parties meeting the eligibility criteria participated in a competitive procurement process. Eligibility was not limited to a particular industry or set of industries, and administration of the procurement process was subjected to a review to ensure the process was fair and impartial.

*Resolute's Comments*¹⁴⁸⁶

- The CHP program is not specific because: (1) the CHP procurement process was competitive and subject to a fairness review by an external auditor; and (2) the GOO contracts electricity generation from other renewable sources (not just biomass cogenerated) and hydropower.
- These facts show that the CHP program is neither *de jure* nor *de facto* specific because it is part of a wider initiative for green energy and neither the forestry industries nor Resolute benefited disproportionately from the CHP.

*Petitioner's Rebuttal Comments*¹⁴⁸⁷

- The record shows that there were only two companies with IESO CHP III contracts in place during the POR.¹⁴⁸⁸ The actual recipients are limited in number when compared to the universe of all potential users, *i.e.*, 808,910 corporate tax filed in Ontario.¹⁴⁸⁹
- The argument that Commerce should compare the number of users of the subsidy program in question, *i.e.*, CHP III, to that of other potential subsidy programs not currently under investigation (*i.e.*, PPAs for electricity produced from other sources) in determining *de facto* specificity has no basis in law and should be rejected.
- Resolute's argument that the CHP III procurement process was conducted in a procedurally fair manner is not germane to Commerce's specificity analysis. At best, it shows that Resolute did not improperly obtain the subsidy.
- It is irrelevant that IESO's CHP is part of a larger public policy green energy initiative. Section 771(5A)(D)(iii) of the Act directs Commerce to analyze specificity of only the program used by Resolute, *i.e.*, the CHP III.

¹⁴⁸⁴ See GOO Non-Stumpage IQR Response at Exhibits ON-CHP-1, ON-CHP-8, and ON-DR-8.

¹⁴⁸⁵ See GOO Case Brief Volume 7 Part 2 at 35-38.

¹⁴⁸⁶ See Resolute Case Brief at 113-114.

¹⁴⁸⁷ See Petitioner Rebuttal Brief at 359-361.

¹⁴⁸⁸ *Id.* at 360 (citing GOO Non-Stumpage IQR Response at CHP-18 and CHP-19).

¹⁴⁸⁹ *Id.* (citing GOC IQR Response at Exhibit GOC-AR2-CRA-CLASS53-7).

Commerce's Position: The GOO and Resolute raised the same arguments in the first administrative review.¹⁴⁹⁰ We found the arguments unpersuasive then and continue to do so here. Section 771(5A)(D)(iii) of the Act directs Commerce to determine whether a subsidy may be specific as a matter of fact by examining the enterprises and industries which received assistance under the program being examined. During the POR, Resolute used the CHP III program. Therefore, the program under examination in this review is IESO's CHP III. Other programs that IESO may have implemented for the purchase of other types of power or prior iterations of the CHP, in addition to public policy initiatives the GOO may have in place to encourage alternative energy supplies, are not under examination by Commerce in this instance because those programs were not used by Resolute.

Further, the fact that the CHP III was open to all parties interested in developing new biomass cogeneration capacity and considerations of whether it was conducted in fair manner does not negate the fact that the actual recipients of the subsidy are limited in number. As reported by the GOO, there were only two companies, one of which was Resolute, with CHP III contracts in place during the POR.¹⁴⁹¹ Based on such data, we continue to find IESO's purchase of electricity under the CHP III to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because recipients of the subsidy are limited in number.

Comment 56: Whether Commerce Applied the Correct Benchmark to Calculate the Benefit Under Hydro-Québec's PAE 2011-01 Program

*GOQ's Comments*¹⁴⁹²

- By comparing a selling price for electricity (L Rate) based almost wholly on inexpensive hydropower, to the purchase price of costly green electricity produced from forest biomass, Commerce failed to account for prevailing market conditions affecting comparability. Commerce's comparison is also flawed because it compares a wholesale price (the purchase of electricity) to a retail price (the selling of electricity).¹⁴⁹³
- If electricity is a good, then the evidence establishes that electricity produced from new biomass plants commands a premium price because of its high costs of generation, and thus, Hydro-Québec's pricing was in line with prevailing market conditions.
- Comparison of an all-sources electricity benchmark to the price of electricity produced from forest biomass is the comparison the WTO Appellate Body rejected in *Canada-Feed-In Tariff Program*.¹⁴⁹⁴ Similarly, in the *DS 533 Panel Report*, the WTO considered Commerce's benchmark as it relates to the PAE 2011 program and found that Commerce acted inconsistently with the WTO agreements “{b}y selecting a benchmark that reflected prevailing market conditions for the sale of electricity at the retail level {.}”¹⁴⁹⁵
- The record contains evidence of the prevailing market conditions and pricing for green electricity produced from forest biomass to permit a valid comparison. Commerce can rely on

¹⁴⁹⁰ See *Lumber V ARI Final IDM* at Comment 53.

¹⁴⁹¹ See GOO Non-Stumpage IQR Response at CHP-19.

¹⁴⁹² See GOQ Case Brief Volume 8.B at 16-32.

¹⁴⁹³ *Id.* at 5-6 (citing *Glycine from Thailand IDM* at 19, where Commerce stated, “Wholesale prices are not comparable to the retail prices, the adequacy of remuneration of which we are trying to determine.”).

¹⁴⁹⁴ *Id.* at 6 (citing *Canada-Feed-In Tariff Program*).

¹⁴⁹⁵ *Id.* (citing *DS 533 Panel Report*).

the benchmarking study done by Merrimack Energy Group, which confirms that Hydro-Québec did not make purchases of electricity for MTAR.¹⁴⁹⁶ In the alternative, Commerce can use the Expert Report from James Coyne of Concentric Energy Advisors as the benchmark, which also shows that Hydro-Québec did not make purchases of electricity for MTAR.¹⁴⁹⁷

*Resolute's Comments*¹⁴⁹⁸

- Commerce erred when it calculated a benefit to Resolute's electricity sales by comparing Hydro-Québec's purchase price for biomass cogenerated electricity to the selling price that Hydro-Québec charges industrial consumers for electricity.
- The market conditions of price and availability for biomass cogenerated electricity sold to the GOQ are not comparable to the conditions for electricity sold by the GOQ to industrial consumers. Hydro-Québec's L Rate is based almost entirely (98 percent) on inexpensive hydropower produced at hydroelectric plants that are fully depreciated. Even though all power sources are included in Hydro-Québec's cost base, the economics of large-scale hydropower drive the regulated selling rates.
- Biomass cogenerated electricity commands a premium price over hydropower because of the higher initial costs of generation. It is inconsistent with market principles for Commerce to select a benchmark price—the L Rate—that can never cover the costs of biomass cogenerated electricity.
- Commerce's benchmark also fails to reflect prevailing market conditions because the sellers and purchasers are different for each, with different market conditions and different purposes in their purchase decisions. Commerce's benchmark consists of a regulated government supplier selling electricity retail to a large number of industrial consumers whose demand for electricity is determined by the consumption needs of their businesses. The GOQ, however, is the sole purchaser in the market of wholesale electricity and its demand for Resolute's service is a function of maintaining stability of the electricity grid.
- Commerce should rely on the Merrimack Report for its benchmark, which shows that Hydro-Québec agreed to pay Resolute a market price for biomass-cogenerated electricity.¹⁴⁹⁹ This report was confirmed by the Coyne Report which found that Hydro-Québec pays a market price for biomass cogenerated electricity.¹⁵⁰⁰

*Petitioner's Rebuttal Comments*¹⁵⁰¹

- There is no evidence demonstrating that the electricity purchased by Hydro-Québec is any different than the electricity that it sold to Resolute. As Commerce observed in the first review, "there is no information on the record to support that the method used to generate electricity changes the physical characteristics of electricity or the fungibility of electricity."¹⁵⁰²

¹⁴⁹⁶ *Id.* at 28-31 (citing GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibits QC-BIO-29 and QC-BIO-32).

¹⁴⁹⁷ *Id.* at 31-32 (citing GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-BIO-51).

¹⁴⁹⁸ *See* Resolute Case Brief at 26-30.

¹⁴⁹⁹ *Id.* at 29 (citing GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at p. BIO-8 to BIO-9 and exhibits therein).

¹⁵⁰⁰ *Id.* at 29-30 (citing GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-BIO-51).

¹⁵⁰¹ *See* Petitioner Rebuttal Brief at 350-356.

¹⁵⁰² *Id.* at 348 (citing *Lumber V ARI Final IDM* at Comment 7).

- The record indicates that when Resolute participates in the electricity market as a purchaser from Hydro-Québec, the company does not know the type of electricity it is purchasing (*i.e.*, biomass, hydro, nuclear, etc.).¹⁵⁰³ When Hydro-Québec customers purchase electricity, the price paid for the electricity is the same regardless of the source. As such, when Hydro-Québec sells electricity, the pricing of the electricity generated from biomass is no different from that produced from other sources.¹⁵⁰⁴
- Section 771(5)(E) of the Act instructs Commerce to consider the prevailing market conditions for the good in question, including other conditions of purchase or sale. Given that the record evidence demonstrates the GOQ was buying and selling electricity, Commerce properly determined that the relevant conditions of purchase and sale in this instance are: (1) the fact that Resolute was purchasing, consuming, and selling the same good, and (2) the fact that the GOQ was also acting on “both sides” of the transaction for the same good. Commerce thus correctly found that the benefit conferred under Québec’s electricity for MTAR program is the difference between the GOQ’s purchase price of the good and selling price of the good.
- Commerce’s decision to rely on the L Rate—the rate that Resolute paid for electricity—as the benchmark is appropriate because it calculates the benefit conferred on Resolute under the PAE 2011-01 program by comparing the unit price for electricity that Resolute paid to Hydro-Québec to the unit price of electricity that Hydro-Québec paid to Resolute.
- Resolute’s costs arguments relate to the supply side considerations of the specific types of electrical generation. Under section 771(6) of the Act, Commerce need only take into consideration certain defined costs when calculating benefits. Given that the alleged “costs” Resolute incurred for receiving the subsidy under the program do not fall into any of the enumerated categories, those costs are irrelevant to Commerce’s benefit analysis.
- The WTO reports referenced by the GOQ are not law. Findings of WTO reports are without effect under U.S. law unless and until such reports are adopted pursuant to the specified statutory scheme established in the URAA.¹⁵⁰⁵

Commerce’s Position: The GOQ and Resolute previously raised these arguments in the underlying investigation and first administrative review.¹⁵⁰⁶ In both the *Lumber V Final* and *Lumber V ARI Final*, we explained the interpretive framework applied in conducting a benefit analysis where the government is both the purchaser and provider of a good.¹⁵⁰⁷ No new argument has been presented in this review to cause Commerce to reconsider its determination that it is appropriate and reasonable to analyze the benefit conferred from the sale of electricity by a company to its government based on the benefit-to-the-recipient standard set forth in 19 CFR 351.503(b). Thus, for all the reasons discussed below, we continue to apply the benefit-to-the-recipient standard to the GOQ’s purchase of electricity for MTAR program in these final results and apply as the benchmark Hydro-Québec’s L Rate to determine the benefit under the PAE 2011-01 program in this administrative review.

¹⁵⁰³ *Id.* at 350 (citing GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-BIO-A (p. GOQ-BIO-11)).

¹⁵⁰⁴ *Id.* at 350 (citing GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-BIO-A (p. GOQ-BIO-10)).

¹⁵⁰⁵ *Id.* at 355 (citing *Groundwood Paper from Canada Final* IDM at Comment 26).

¹⁵⁰⁶ See *Lumber V Final* IDM at Comment 54; and *Lumber V ARI Final* IDM at Comment 55.

¹⁵⁰⁷ See *Lumber V Final* IDM at Comment 51; and *Lumber V ARI Final* IDM at Comment 7.

During the POR, Resolute sold electricity to Hydro-Québec under a PAE 2011-01 PPA and purchased electricity from Hydro-Québec. We find that an electricity tariff benchmark, which allows us to compare the prices that the utility charged Resolute for electricity to the rates that the utility paid Resolute when purchasing electricity under the PPA, best reflects the “benefit-to-the-recipient” standard that is set forth under section 771(5)(E) of the Act and the SAA,¹⁵⁰⁸ and conforms with the standard of benefit language codified within 19 CFR 351.503(b).

The respondents argue that the prices at which Hydro-Québec, a government utility, purchases electricity under the PAE 2011-01 program are consistent with “market principles” and that a biomass cogenerated electricity benchmark should be applied. However, our analysis of the appropriate benchmark is based upon 19 CFR 351.503(b), and not a tiered analysis set forth in the regulation for the government provision of a good or service under 19 CFR 351.511. Section 351.511(a)(2) of Commerce’s regulations does not provide the appropriate framework given the unique facts of the transaction under examination. Hydro-Québec’s presence on “both sides” of the electricity transaction with Resolute presents an unusual situation that is different than either a standard provision program, in which the government only provides the respondent with a good, or what we envisioned as a standard procurement program at the time of the *CVD Preamble*,¹⁵⁰⁹ where the government is only a purchaser of a good from a respondent.

As discussed in the *CVD Preamble*, Commerce has not codified a regulation which expressly provides instruction on how to analyze a government’s purchase of goods for MTAR.¹⁵¹⁰ We stated that “{u}nlike the case with the provision of goods and services . . . we have not had the opportunity to gain sufficient experience” with MTAR allegations and, thus, were “hesitant” to set forth how we would analyze such allegations.¹⁵¹¹ We stated that we “expect{ed}” that 19 CFR 351.511, regarding the provision of goods and services by a government for LTAR would provide Commerce with an approach to calculating the benefit received by a respondent where the government procures goods for MTAR.¹⁵¹²

However, for an MTAR program such as this one, where the government is acting on “both sides” of the transaction—*i.e.*, both selling a good to, and purchasing that good from, a respondent—Commerce is presented with a situation not contemplated in the regulations or in the *CVD Preamble*. Thus, applying the benefit-to-recipient standard set for in 19 CFR 351.503(b), which outlines the principles that Commerce will follow when dealing with alleged subsidies for which the regulations do not establish a specific rule, the benefit to the respondent is the difference between the price at which the government is selling the good to the company, and the price at which the government is purchasing that good back from the company.¹⁵¹³

Resolute’s Dolbeau and Gatineau mills purchase electricity from Hydro-Québec at the L rate, which is the tariff in effect during the POR. Those same mills sell electricity back to Hydro-

¹⁵⁰⁸ See SAA at 927.

¹⁵⁰⁹ See *CVD Preamble*, 63 FR at 65379.

¹⁵¹⁰ See *CVD Preamble*, 63 FR at 65379.

¹⁵¹¹ *Id.*

¹⁵¹² *Id.*

¹⁵¹³ See *Lumber VARI Final IDM* at Comment 7.

Québec under the PAE 2011-01 program at an administratively-set price.¹⁵¹⁴ The benefit to Resolute is the difference between these two prices. We thus continue to find that the appropriate benchmark to calculate the benefit that Resolute received from the sale of electricity back to Hydro-Québec is the L rate.

The GOQ and Resolute assert that the L rate is a hydropower price that cannot serve as the benchmark for a biomass energy program. In support of their arguments, they rely on *Canada – Feed-In Tariff Program* and the *DS 533 Panel Report*, which were disputes at the WTO. However, WTO panel and Appellate Body conclusions are without effect under U.S. law “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URAA.¹⁵¹⁵ Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel or Appellate Body dispute reports limit automatically Commerce’s discretion in applying the statute in an AD or CVD proceeding.¹⁵¹⁶ Put simply, WTO reports “do not have any power to change U.S. law or to order such a change.”¹⁵¹⁷ Commerce’s determination to use the L rate is based on our interpretation of the Act regarding the calculation of benefit where a government procures a good for MTAR; the Act is fully consistent with the international obligations of the United States. Moreover, Commerce is governed by U.S. law, and, as we have explained, our calculation of benefit using the L rate as a benchmark is fully consistent with section 771(5)(E) of the Act. Further, there is no evidence that electricity is differentiated based upon the manner in which it is generated. The GOQ itself reported that, “Hydro-Québec pools the electricity together from the various sources and sells it for a uniform price. . . That is, the consumer does not know the underlying source of the electricity supplied by Hydro-Québec but knows that the price paid for the electricity is the same regardless of the source.”¹⁵¹⁸ Thus, Hydro-Québec makes no distinction between sources of electricity generated. The GOQ’s statement is corroborated by the tariff schedules which indicate that there is no distinction. Within the schedules, the L rate is listed with no disclosure as to the source from which that electricity is generated.¹⁵¹⁹ This evidence indicates that electricity is electricity regardless of the source from which it was generated. As such, we find no merit to the arguments that a rate for electricity which might be generated from hydropower cannot be used as a benchmark for the PAE-2011-01 program. Further, because we conclude that the appropriate benchmark to determine the benefit that Resolute received from the sale of electricity back to Hydro-Québec is the L rate, we need not address the respondent parties’ arguments that Commerce must use the Merrimack Study or Coyne Study as a benchmark under 19 CFR 351.511(a)(2).

Similarly, we disagree with the GOQ and Resolute that the capital costs of biomass cogeneration electricity facilities should be taken into consideration. As explained above, we determine the

¹⁵¹⁴ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-BIO-A (p. GOQ-BIO-15) and Exhibits QC-BIO-21, QC-BIO-35, and QC-BIO-47.

¹⁵¹⁵ See *Corus Staal BV v. U.S.*, 395 F. 3d 1347-49, accord *Corus Staal BV v. U.S.*, 502 F. 3d 1375; and *NSK Ltd. v. U.S.*, 510 F. 3d 1379-80.

¹⁵¹⁶ See 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

¹⁵¹⁷ See SAA at 659.

¹⁵¹⁸ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-BIO-A (p. GOQ-BIO-11).

¹⁵¹⁹ *Id.* at Exhibits QC-BIO-33 (Chapter 5) and QC-BIO-34 (Chapter 5).

amount of any benefit conferred to Resolute under the benefit-to-the recipient standard. This standard requires that we calculate the benefit by comparing the price at which the government purchased electricity to the price at which the government sold electricity; the reason for any pricing difference is not part of this analysis.

Lastly, contrary to the GOQ's assertion, *Glycine from Thailand*¹⁵²⁰ has no bearing on Commerce's selection of a benchmark for the PAE 2011-01 program. In that proceeding, Commerce was investigating the provision of electricity for LTAR—not the purchase of electricity for MTAR—finding that the wholesale prices on the record were not comparable to the retail prices for which the adequacy of remuneration was being measured. Here, as noted, Commerce is examining the government's purchase of electricity for MTAR where the government is both the provider and purchaser of the good. The benefit-to-the-recipient standard set forth under 19 CFR 351.503(b) is proper in this situation, and the price at which Resolute purchased electricity from Hydro-Québec is the appropriate benchmark to measure the adequacy of remuneration of Resolute's sales of electricity to Hydro-Québec.

Comment 57: Whether Hydro-Québec's PAE 2011-01 Program Is Specific

*GOQ's Comments*¹⁵²¹

- Hydro-Québec purchases power from a variety of renewable sources, including, but not limited to hydro-electric, wind, and biomass. There are 78 contracts in effect from these types of power.¹⁵²²
- Commerce, however, ignores that evidence and focuses only on the PAE 2011-01, which had 16 projects in effect during the POR with 12 different suppliers, to make its determination that the recipients were limited. Commerce also ignores the fact that among those 16 projects, one was related to biogas.¹⁵²³
- Viewing the recipients of PPAs as a whole, the statute's specificity provision is not met.

*Resolute's Comments*¹⁵²⁴

- Commerce's specificity analysis should examine biomass cogenerated PPAs in the context of government initiatives to purchase alternative forms of electricity services.
- The range of Hydro-Québec's PPAs is not limited to industries dependent on forest biomass cogeneration. Hydro-Québec has identified five industrial sectors capable of producing alternative and green electricity: hydroelectric, biogas, wind, forest biomass and other biomass sources.
- PAE 2011-01 contracts are not *de facto* specific because they were awarded to a wide range of industries. No sector is favored over any other sector.

¹⁵²⁰ See *Glycine from Thailand* IDM at Comment 4.

¹⁵²¹ See GOQ Case Brief Volume 8.B at 32-33.

¹⁵²² *Id.* at 33 (citing GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-BIO-6 (p. 16)).

¹⁵²³ *Id.* (citing GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-BIO-10).

¹⁵²⁴ See Resolute Case Brief at 111-112.

*Petitioner's Rebuttal Comments*¹⁵²⁵

- The record shows that there were only 16 PAE 2011-01 PPAs with 12 companies in place during the POR.¹⁵²⁶ The actual recipients are limited in number when compared to the universe of all potential users, *i.e.*, 460,410 corporate tax filers in Québec.¹⁵²⁷
- The argument that Commerce should compare the number of users of the subsidy program in question, the PAE 2011-01, to that of other potential subsidy programs not currently under investigation (*i.e.*, PPAs for electricity produced from sources other than biomass) in determining *de facto* specificity has no basis in law and should be rejected.
- It is irrelevant that the Hydro-Québec's PAE 2011-01 is part of a larger public policy green energy initiative. Section 771(5A)(D)(iii) of the Act directs Commerce to analyze specificity of only the program used by Resolute, *i.e.*, the PAE-2011-01.

Commerce's Position: The GOQ and Resolute raised the same arguments in the underlying investigation and first administrative review.¹⁵²⁸ We found the arguments unpersuasive then and continue to do so here.

We disagree with the GOQ and Resolute that Commerce's specificity analysis should focus on Hydro-Québec's relative purchase of electricity generated from various sources, such as wind, hydro-electric, natural gas, solar, etc. Neither the GOQ nor Resolute provided any evidence that the provision of electricity by Hydro-Québec is differentiated based upon the manner in which the electricity is generated.¹⁵²⁹ While electricity can be generated using various sources—hydro, coal, gas, oil, solar, nuclear, biomass—there is no information on the record to support a finding that the method used to generate electricity changes the physical characteristics of electricity or the fungibility of electricity. Electricity, regardless of its fuel source, is electricity as the record demonstrates.

Moreover, section 771(5A)(D)(iii) of the Act directs Commerce to determine whether a subsidy may be specific as a matter of fact by examining the enterprises and industries which received assistance under the program being examined. During the POR, Resolute used the PAE 2011-01 program. Therefore, the program under examination in this review is Hydro-Québec's PAE 2011-01. Other programs that Hydro-Québec may have implemented for the purchase of other types of green power and public policy initiatives the GOQ may have in place to encourage alternative energy supplies are not under examination by Commerce in this instance because those programs were not used by Resolute.

For the PAE 2011-01, the GOQ reported that there were 16 purchase agreements with 12 companies in place during the POR.¹⁵³⁰ On its face, the data show that the number of producers benefitting from the PAE 2011-01 is limited. We disagree with the argument that the program is

¹⁵²⁵ See Petitioner Rebuttal Brief at 359-361.

¹⁵²⁶ *Id.* at 360 (citing *Lumber V AR2 Prelim PDM* at 8).

¹⁵²⁷ *Id.* (citing GOC IQR Response at Exhibit GOC-AR2-CRA-CLASS53-7).

¹⁵²⁸ See *Lumber V Final IDM* at Comment 52; and *Lumber V ARI Final IDM* at Comment 56.

¹⁵²⁹ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-BIO-A (and referenced exhibits therein); see also Resolute Non-Stumpage IQR Response at Exhibit RES-NS-PAE-APP (and referenced exhibits therein).

¹⁵³⁰ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibits QC-BIO-10 and BIO-50.

used by a diverse set of industries and therefore, it is not *de facto* specific. The record shows that the number of companies that had PAE 2011-01 agreements is limited. The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available and used throughout an economy.¹⁵³¹ It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the countervailing duty law.¹⁵³²

Thus, we continue to find the purchase of electricity by Hydro-Québec to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because recipients of the subsidy are limited in number.

L. Grant Program Issues

Alberta

Comment 58: Whether the Payments Made from AESO to West Fraser for Load Shedding Constitute a Financial Contribution

*GOA's and West Fraser's Comments*¹⁵³³

- The load-shedding activities performed by West Fraser were a service provided to the AESO, and the statute excludes the purchase of a service by a government entity from the definition of “financial contribution.” The inclusion of services within the items a government could provide for LTAR indicates that the omission was intentional.
- By its design, the load shedding program compensates participants for load shedding services to the government. Commerce acknowledged that there are costs associated with providing such services. The payments made by the AESO to West Fraser do not constitute a financial contribution because they were in exchange for a service provided.
- The SCM Agreement omits the purchase of services from the definition of a subsidy: “a government provides goods or services other than general infrastructure, or purchases goods.”¹⁵³⁴ The *CVD Preamble* further supports the view that “if the government purchase of services were intended to be treated similarly to the government purchase of goods the statute and the SCM Agreement would specifically mention services as they do with the government provision of goods and services.”¹⁵³⁵

*Petitioner's Rebuttal Comments*¹⁵³⁶

- Information on the record establishes that: (1) the AESO is an authority within the meaning of section 771(5)(B) of the Act; (2) benefits to the AESO do not nullify the benefit conferred to West Fraser; and (3) the AESO's use of load shedding to pursue policy objectives does not preclude a countervailability finding. The GOA claims that a financial contribution does not exist because the AESO received something of value from West Fraser. However, Commerce

¹⁵³¹ See SAA at 930.

¹⁵³² *Id.*

¹⁵³³ See GOA Case Brief Volume 4.B at 6 – 8 and West Fraser Case Brief at 55 – 59.

¹⁵³⁴ See GOA Case Brief Volume 4.B at 7 (citing SCM Agreement at Art. 1.1(iii)).

¹⁵³⁵ *Id.* at 7 – 8 (citing *CVD Preamble* 63 FR at 65379).

¹⁵³⁶ See Petitioner Case Brief at 199 – 201.

has already made clear that it “disagree{s} . . . that any advantages to the governmental utilities in administering the programs are relevant to the benefit that the respondent companies received from those authorities.”¹⁵³⁷

- The GOA cites to *Government of Sri Lanka v. U.S.* in support of its argument that the payments are for the purchase of a service. However, this case involved a foreign producer providing an interest-free loan to the government, not the government providing a financial contribution to the respondent.
- Commerce’s preliminary finding that such payments constitute a financial contribution was correct, regardless of any corresponding benefit to the AESO.

Commerce’s Position: We continue to find that AESO’s payments for load shedding constitute a financial contribution. We disagree with the GOA’s argument that, consistent with *Government of Sri Lanka v. U.S.*, the payments AESO made to West Fraser are for the provision of a service, which are not countervailable. The Canadian Parties’ reliance on this point is misplaced with regard to the load shedding payments at issue. In *Government of Sri Lanka v. U.S.*, as the petitioner notes, a foreign producer provided an interest-free loan to the government.¹⁵³⁸ Here, AESO made payments to West Fraser for curbing its electricity usage. We disagree that the load shedding at issue here equates to the performance of a service by the company for the government-owned utility. As explained in Comment 59, we find that the payments for load shedding constitute a grant. We also explain in Comment 4 why electricity curtailment programs similar to the load shedding program at issue here constitute a grant.

The GOA also cites to *Government of Sri Lanka v. U.S.* to support its argument that the payments are in exchange for something of value (*i.e.*, curbing of electricity usage), and therefore do not constitute a “gift-like transfer.”¹⁵³⁹ Commerce rejected this argument in the *Lumber VARI Final*.¹⁵⁴⁰ There is no legal basis for the argument that grants are limited to “gifts” bestowed without consideration. As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) set forth the means of determining the benefit in the case of a grant, explicitly describing the “benefit” as “the amount of the grant.” Commerce’s regulations at 19 CFR 351.504 do not contemplate any advantages the government might receive by administering the program, nor do they nullify the benefit conferred to West Fraser.¹⁵⁴¹ Similarly, we need not consider any costs incurred by West Fraser that are associated with curtailing its energy usage as part of this program, as it does not affect the underlying benefit ultimately conferred to West Fraser. Any payments AESO made to companies that engaged in the curbing of electricity usage according to AESO requirements were, therefore, a direct transfer of funds to West Fraser that constitute a financial contribution in accordance with section 771(5)(D)(i) of the Act.

¹⁵³⁷ See *Groundwood Paper Final* IDM at 213.

¹⁵³⁸ See Petitioner Rebuttal Brief at 200 – 201 (citing *Government of Sri Lanka v. U.S.* at 1380-1381).

¹⁵³⁹ See GOA Case Brief Volume 4.B at 9 – 10 (citing *Government of Sri Lanka v. U.S.* at 1383).

¹⁵⁴⁰ See *Lumber VARI Final* IDM at Comment 8.

¹⁵⁴¹ See *CVD Preamble*, 63 FR at 65361 (“{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the ‘effect’ of a subsidy.”).

Comment 59: Whether the AESO Load Shedding Program Is a Grant

*GOA's Comments*¹⁵⁴²

- Commerce did not provide an analysis to support its characterization of the payments made by AESO to West Fraser for the provision of load shedding as a grant. Commerce also did not support its conclusion that the exchange of money for something of value was a “grant.”
- In *Government of Sri Lanka v. U.S.*, the CIT stated that the mere fact that money was given by a government to a respondent was insufficient to establish that a “direct transfer of funds” had been made. Further, the U.S. government has argued in submissions to the WTO related to this case that a “grant exists . . . when the government confers something on a recipient without getting anything in return.”¹⁵⁴³
- Since the payments to West Fraser cannot be considered grants, they should be considered payment for services. The value provided by the companies that engaged in load shedding was not a tangible item; it was a service.

*Petitioner's Rebuttal Comments*¹⁵⁴⁴

- Commerce has consistently treated load curtailment programs as grants.¹⁵⁴⁵
- In the *Lumber ARI Final*, Commerce found the IESO Demand Response and Hydro-Québec's GDP New Demand-Side Management, Interruptible Electricity Option, and Industrial Systems Energy Efficiency programs to constitute grants.
- West Fraser did not provide any support to demonstrate how the program is materially different from the other load curtailment programs countervailed in prior proceedings.

Commerce's Position: We agree with the petitioner that payments for load shedding in this program constitute grants. Commerce has found in previous cases that load curtailment programs are the provision of a grant, and no new arguments have been presented in this review to cause Commerce to reconsider those determinations.¹⁵⁴⁶ Similar to the previous cases, information on the record in this review indicates that the program's purpose is to incentivize companies to immediately decrease their energy usage by disconnecting from the electrical system at certain times.¹⁵⁴⁷ Payments made as part of this program benefit West Fraser in the manner of a recurring grant. Accordingly, we disagree with the GOA's assertion that the program involves the government purchase of a service.

As such, we find no reason to deviate from our preliminary finding that West Fraser received incentive payments for curtailing its energy usage. Because AESO made a “direct transfer of funds” via a grant to the respondent, pursuant to section 771(5)(D)(i) of the Act and 19 CFR 351.504(a), we continue to find that the payments confer a benefit in the amount of the payment received by West Fraser.

¹⁵⁴² See GOA Case Brief Volume 4.B at 8 – 12.

¹⁵⁴³ See *United States November 30, 2018 First Submission, US – Softwood Lumber V* at paragraph 619.

¹⁵⁴⁴ See Petitioner Rebuttal Brief at 201 – 203.

¹⁵⁴⁵ *Id.* at 201 (citing *Groundwood Paper from Canada Final IDM* at Comment 66).

¹⁵⁴⁶ See *Groundwood Paper from Canada Final IDM* at Comment 66.

¹⁵⁴⁷ See GOA Non-Stumpage SQR2 at 71 – 73.

Comment 60: Whether the Benefit for Load Shedding Payments to West Fraser Should Be Adjusted For West Fraser's Costs Incurred

*GOA's Comments*¹⁵⁴⁸

- Even if Commerce determines that the payments for load shedding constitute a financial contribution, and therefore are countervailable grants, it calculated the benefit incorrectly. Commerce determined that the benefit was equal to the full payment AESO made to West Fraser, which does not account for the obligations undertaken by West Fraser and the costs of fulfilling those obligations.

*West Fraser's Comments*¹⁵⁴⁹

- The payments AESO made to West Fraser were for the provision of load-shedding services, which Commerce acknowledged can be “disruptive and costly to operations.”¹⁵⁵⁰ Even if Commerce continues to find that the payments constitute a countervailable grant, it should not treat the full amount of the payments as a benefit without deducting the costs West Fraser would not have incurred had it not participated in the program.
- Commerce would need to conclude that the AESO paid West Fraser more than adequate remuneration, and there is no evidence on the record to make such a determination.

*Petitioner's Rebuttal Comments*¹⁵⁵¹

- Commerce has already rejected the Canadian Parties' argument that the benefit should be adjusted to account for West Fraser's costs associated with providing load shedding services to AESO.
- The statute permits only three offsets: application fees or deposits, losses stemming from deferred receipt of the subsidy, and export taxes. Costs incurred by West Fraser do not fall under any of the allowable offsets.

Commerce's Position: As discussed in Comment 58, above, any grant payments AESO made to West Fraser for costs incurred are a benefit to the respondent. We addressed this issue in the *Lumber V ARI Final*, in which we noted that “...the fact that companies may incur costs when interrupting energy usage does not impact the benefit calculation.”¹⁵⁵² The statute further supports this previous determination. Section 771(6) of the Act provides that, in determining the “net countervailable subsidy,” Commerce may reduce the “gross countervailable subsidy” by the amount of certain types of payments, loss of value, or export charges levied specifically to offset the countervailable subsidy received. We agree with the petitioner that the AESO payments at issue here do not fall under any of the allowable offsets. Accordingly, we have not made any adjustments to the benefit calculation for the final results.

¹⁵⁴⁸ See GOA Case Brief Volume 4.B at 12 – 14.

¹⁵⁴⁹ See West Fraser Case Brief at 59 – 60.

¹⁵⁵⁰ See *Lumber V AR2 Prelim PDM* at 46.

¹⁵⁵¹ See Petitioner Rebuttal Brief at 203 – 204.

¹⁵⁵² See *Lumber V ARI Final* at Comment 8.

Comment 61: Whether the Canada-Alberta Job Grant Is Regionally Specific

*GOA's Comments*¹⁵⁵³

- The record does not support Commerce's finding that CAJG is regionally specific as this program and its successor, the Canada Workforce Development program, is available in all provinces and territories in Canada.
- If a program is regionally specific, the administering authority limits program participants to a certain region. Commerce failed to define "the jurisdiction of the authority providing the subsidy" for CAJG.¹⁵⁵⁴ The record indicates that all provinces and territories are a part of the Canada Job Fund Agreements, which govern the CAJG program.
- Both the CAJG and the Canada Workforce Development program include a provision ensuring "Equality of Treatment" among the provinces, stating that if a provision or amendment to any province's agreement "is more favorable," Canada will amend its agreements with the other provinces to "afford similar treatments."¹⁵⁵⁵ This demonstrates that the programs are universally available across the country.
- Even if the GOA is considered the granting authority, both programs are available to all employers in Alberta, and there are no regional limitations within Alberta. Thus, there is no record evidence which supports the finding of regional specificity under section 771(5A)(D)(iv) of the Act.

*Petitioner's Rebuttal Comments*¹⁵⁵⁶

- Commerce correctly found this program to be countervailable and regionally specific as the "grants from the federal government ... are limited to the province of Alberta."¹⁵⁵⁷
- The GOC is not administering a single country-wide grant program. There are multiple province-specific programs that are being administered federally. The requirements for benefits under this program specifically state that only Albertans may be eligible. Given that the Canada-Alberta job grant is a federal program that is only available to those in Alberta, it is regionally specific under section 771(5A)(D)(iv) of the Act.
- In the first administrative review, Commerce found the Canada-BC Job Grant was also regionally specific as it was a federal program only available to those in British Columbia. As such, Commerce should continue to find that the Canada-Alberta Job Grant is specific within the meaning of section 771(5A)(D)(iv) of the Act.¹⁵⁵⁸

Commerce's Position: As explained in the *Lumber V AR2 Prelim*:¹⁵⁵⁹ (1) the Canada-Alberta Job Grant program is a federal-provincial partnership administered by the Alberta Ministry of Labor and Immigration;¹⁵⁶⁰ (2) the GOC provides the funding to the GOA to increase participation in the labor force by helping workers develop essential skills;¹⁵⁶¹ (3) the program

¹⁵⁵³ See GOA Case Brief Volume 4.B at 14 – 16. West Fraser reiterates the arguments of the GOA. See West Fraser Case Brief at 72.

¹⁵⁵⁴ *Id.* at 14 (citing *Lumber V AR2 Prelim* PDM at 43).

¹⁵⁵⁵ *Id.* at 15 (citing GOA Non-Stumpage SQR2 at AB-AR2-CAJG-1 and AB-AR2-CAJG-2).

¹⁵⁵⁶ See Petitioner Rebuttal Brief at 324 – 325.

¹⁵⁵⁷ *Id.* at 325 (citing *Lumber V AR2 Prelim* PDM at 46).

¹⁵⁵⁸ *Id.* at 325 (citing *Lumber V AR1 Final* IDM at Comment 58).

¹⁵⁵⁹ See *Lumber V AR2 Prelim* PDM at 43.

¹⁵⁶⁰ See GOA Non-Stumpage SQR2 at 3.

¹⁵⁶¹ *Id.* at 2.

was originally funded through the Canada-Alberta Job Fund Agreement, an agreement between the GOC and the GOA, which was replaced in 2018 by the Canada-Alberta Workforce Development Agreement;¹⁵⁶² 4) under the program, the GOC provides up to \$10,000 for training existing employees and up to \$15,000 for unemployed trainees per fiscal year;¹⁵⁶³ and 5) to be eligible for funding under the program, a business must be operating in the province of Alberta.¹⁵⁶⁴

Section 771(5A)(D)(iv) of the Act states that a subsidy is specific “where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy.” Further, pursuant to the SAA:

{Commerce’s longstanding} practice recognizes that subsidies granted by a state or province on a generally available basis within a state or province (*i.e.*, not limited to certain enterprises within a state or province) are not specific, and therefore are not actionable. However, central government subsidies limited to a region (including a province or state) are specific even if generally available throughout that region.¹⁵⁶⁵

Thus, that the GOC administers and provides funds for job training programs in other provinces (*e.g.*, the Canada - BC Job Grant Program)¹⁵⁶⁶ is not relevant to Commerce’s analysis as to whether the Canada-Alberta Job Grant program is regionally-specific. Rather, what is relevant are the eligibility requirements imposed under the Canada-Alberta Job Grant program and whether those requirements are limited to firms in Alberta. As noted above, the legislation that establishes eligibility for the Canada-Alberta Job Grant program limits benefits to business located in Alberta. As such, benefits under the Canada-Alberta Job Grant program are specific under section 771(5A)(D)(iv) of the Act. Our approach with regard to this program is consistent with Commerce’s practice.¹⁵⁶⁷

We note that our decision to treat the Canada-Alberta Job Grant and the Canada–BC Job Grant programs as separate programs is distinct from our decision to treat the Class 1a and Class 1b ACCA tax provisions as a single program. In the case of the Job Grant programs, the eligibility criteria differ for each province (*e.g.*, GOC job training assistance in each province is limited to businesses located in each province),¹⁵⁶⁸ whereas the Class 1a and Class 1b tax provisions at the provincial level are “harmonized” with the federal level, utilize the same depreciation rules, and are applied to the same asset type of asset - non-residential buildings.¹⁵⁶⁹

¹⁵⁶² *Id.* at 3 and Exhibit AB-AR2-CAJG-1.

¹⁵⁶³ *Id.* at 11.

¹⁵⁶⁴ *Id.* at Exhibit AB-AR2-CAJG-6.

¹⁵⁶⁵ *See* SAA at 914.

¹⁵⁶⁶ *See Lumber V ARI Final IDM* at Comment 58.

¹⁵⁶⁷ *See Groundwood Paper from Canada Final IDM* at Comment 78, in which Commerce found the BC Job Grant regionally-specific under section 771(5A)(D)(iv) of the Act because grants provided under the program were limited to business located in British Columbia.

¹⁵⁶⁸ *See* GOA Non-Stumpage SQR2 at Exhibit AB-AR2-CAJG-6; *see also Lumber V ARI Final IDM* at Comment 58.

¹⁵⁶⁹ *See* Resolute Non-Stumpage IQR Response at Exhibits RES-NS-GEN-CLASS1 and RES-NS-GENOCLASS1;” GOQ Non-Stumpage IQR Response at Exhibit QC-CCAB-A; and GOC Non-Stumpage IQR Response, Volume II at 62 and Exhibit GOC-AR2-CRA-CLASS1-1.

Comment 62: Whether the CES Program Is Specific

*GOA's Comments*¹⁵⁷⁰

- Finding that the CES program is *de jure* specific is flawed and contrary to the plain language of the statute because it is not expressly limited to particular enterprises or industries.
- Record evidence demonstrates that all industrial, institutional, and commercial customers with facilities operating within the Province of Alberta are eligible to receive funding via Custom Energy Solutions so long as they meet the objective criteria.
- The eligibility criteria establishes that there is no minimum threshold for greenhouse gas emissions, but those facilities emitting 100,000 tons or more of greenhouse gasses annually are not eligible under the CES program because they are eligible for different incentive programs tailored to larger emitters. The criteria also establishes that the specific project seeking funding must not be eligible for other incentive programs, nor does the program cover proposed projects seeking incentives for lighting or lighting controls. Thus, the program is not limited to an enterprise or industry and utilizes an objective criteria and conditions governing the eligibility for the program.
- Commerce should not find the CES program is limited because larger firms emitting more than 100,000 GHG per year are eligible for assistance under different incentive programs.
- The goal of Alberta's CES program is to provide flexible and cost-effective pathways to reduce the greenhouse gas emissions of companies operating in Alberta. Thus, countervailing this program is directly at odds with the President's stated policy goals, and Executive Order 14008, which focus on "tackling the climate crisis at home and abroad."¹⁵⁷¹
- In sum, the goal of the program is in line with the President's objective of tackling global climate change and is not *de jure* specific.

Petitioner's Rebuttal Comment:¹⁵⁷²

- The fact that a diverse set of industries participated in CES and that the GOA may not have limited the CES to "commonly defined enterprises or industries" does not negate the express limitation on the type of facility that is eligible for this subsidy.¹⁵⁷³
- Commerce has found similar programs to also be *de jure* specific, such as Hydro-Québec's New Demand-Side Management and Interruptible Electricity Option programs. These programs were limited to enterprises that meet specific energy and technical capacity requirements, and the GOQ similarly did not limit the program to "commonly defined enterprises or industries."¹⁵⁷⁴
- The GOA's discussion of environmental policy has no bearing on Commerce's legal analysis of whether the CES is *de jure* specific. Neither the statute nor Commerce's regulations require consideration of underlying policy rationales to determine specificity. Thus, the policy goals of the President do not change the facts on the record of this proceeding, which support Commerce's *de jure* specificity finding.

¹⁵⁷⁰ See GOA Case Brief Volume 4.B at 16-20.

¹⁵⁷¹ *Id.* at 19 (citing Canadian Parties Pre-Prelim Comments on Climate Crisis at 3).

¹⁵⁷² See Petitioner Rebuttal Brief at 196 – 198.

¹⁵⁷³ *Id.* at 198 (citing *Lumber V ARI Final Results* IDM at 310-313).

¹⁵⁷⁴ *Id.*

Commerce's Position: Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. The grants that are provided by the EEA, a crown corporation, under this program are expressly limited by the 2016 Energy Efficiency Alberta Act and the Carbon Competitiveness Incentive Regulation to only commercial, institutional, and industrial organizations that emit more than 5,000 tons, but less than 100,000 tons, of GHG per year.¹⁵⁷⁵ This evidence shows that the GOA has established, by law, a discrete group of enterprises—commercial, institutional, and industrial organizations that emit more than 5,000 tons, but less than 100,000 tons, of GHG per year—that can receive assistance from the EEA in the form of grants. That the GOA may not have limited eligibility to commonly defined enterprises or industries does not alter this conclusion. Therefore, we continue to find the CES program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity, we need not examine whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act. Our finding in this regard is consistent with our practice.¹⁵⁷⁶

The GOA argues that Commerce should not find the CES program is limited because larger firms emitting more than 100,000 GHG per year are eligible for assistance under different incentive programs. We disagree that the GOA's argument is a basis to find that the CES program is not *de jure* specific. Under 19 CFR 351.502(d), unless Commerce determines that two or more programs are integrally linked (*i.e.*, have the same purpose, the same type of benefit, bestow similar levels of benefits on similarly situated firms, and the subsidy programs were linked at inception), Commerce will determine the specificity of a program under section 771(5A)(D) of the Act solely on the basis of the availability and use of the particular program in question. The GOA has not provided any information to demonstrate that the EEA provides additional grants to other GHG emitters in manner that would result in Commerce treating any such grants as being integrally linked under 19 CFR 351.502() with the CES grants at issue in this review. Therefore, we disagree that Commerce should include the provision of any such additional grants provided to GHG emitters under separate programs when determining that the CES program is limited, by law, to firms that that emit more than 5,000 tons, but less than 100,000 tons, of GHG per year.

Moreover, whether the CES program advances climate change policies is immaterial to Commerce's examination. The focus of Commerce's analysis is that the program is available to only commercial, institutional, and industrial organizations that emit more than 5,000 tons, but less than 100,000 tons, of GHG per year, and thus is *de jure* specific within the meaning of 771(5A)(D)(i) of the Act. As such, the GOA's argument that Commerce must consider climate change in all matters of international trade is misplaced in the context of this review. Within a CVD proceeding, Commerce is charged with administering and enforcing the CVD law to all subsidies under examination equally, notwithstanding the purpose or secondary effects of a program.

¹⁵⁷⁵ See GOA Non-Stumpage SQR2 at 35 and Exhibit AB-AR2-CES-31.

¹⁵⁷⁶ See *Lumber V AR1 Final* IDM at Comment 85; see also Comment 90 in this memorandum.

British Columbia**Comment 63:** Whether the BC Hydro PowerSmart Incentives Subprogram Is Specific*GBC's and West Frasers' Comments*¹⁵⁷⁷

- The record does not support Commerce's finding that the Incentives subprogram is *de jure* specific because it is not expressly limited to particular enterprises or industries. The subprogram is not limited to industrial customers, as Commerce determined, and in fact is available to all BC Hydro customers spread across residential, commercial, and industrial classes in British Columbia. The subprogram is also not *de facto* specific since there is no positive evidence that only a limited number of enterprises or industries used it.
- Commerce based its *de jure* specificity finding on two BC Hydro sample documents published for industrial customers. However, while the documents identify the eligibility thresholds that proposals must meet, they do not expressly limit access to an enterprise or industry; rather, they demonstrate that all industrial customers that meet certain consumption, conservation, and lifespan thresholds may participate in the Incentives subprogram.
- If Commerce finds the subprogram is not *de jure* specific, it should also conclude that it is not *de facto* specific. BC Hydro has provided funding under the Incentives subprogram across its three customer classes (*i.e.*, residential, commercial, and industrial) to customers operating in various industries, including Pulp and Paper, Solid Wood, Cement, Mining, Oil & Gas, Government, Transportation, Manufacturing, Food and Beverage, Storage and Warehousing, Agriculture, Chemicals, and Others.

*Petitioner's Rebuttal Comments*¹⁵⁷⁸

- Commerce has already addressed the arguments presented by the GBC and West Fraser in the first administrative review, and it should continue to determine that the Incentives subprogram is *de jure* specific.
- The Incentives subprogram is *de jure* specific as it is limited to industrial customers who “use more than one GWh of electricity per year” and can demonstrate that their projects will have “a projected savings of at least 300 megawatt-hours annually.”
- Record evidence also supports finding the subprogram *de facto* specific under section 771(5A)(D)(iii)(II) of the Act since the pulp and paper and wood subsectors received the largest amount of payments under these subprograms and under section 771(5A)(D)(iii)(I) of the Act as users of the PowerSmart Incentives subprogram are limited in number.

Commerce's Position: The GBC raised similar arguments in the prior administrative review.¹⁵⁷⁹ We continue to find the Incentives subprogram to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. As stated in the *Lumber VARI Final*, record evidence demonstrates that eligibility is limited to industrial customers that consume more than 1 GWh of electricity annually and can identify an energy efficiency upgrade that meets certain minimum requirements, such as projected savings of at least 300 megawatt-hours annually and an expected lifespan of five years or more.¹⁵⁸⁰ The GBC claims that the record does not support

¹⁵⁷⁷ See GBC Case Brief Volume 5 at 56 – 63.

¹⁵⁷⁸ See Petitioner Rebuttal Brief at 219 – 221.

¹⁵⁷⁹ See *Lumber VARI Final* IDM at Comment 65.

¹⁵⁸⁰ See GBC IQR Response at Exhibit BC-AR2-BCH-4.

this finding because funding under the program is available to all BC Hydro customers. However, this directly contradicts the GBC's own description of the eligibility requirements under the Incentives subprogram. The GBC stated on the record that, regarding the PowerSmart programs as a whole, "...all 2.02 million BC Hydro customers are eligible to participate in Power Smart and its respective subprograms. Each subprogram has different eligibility criteria based on whether the customer is Residential, Commercial, or Industrial."¹⁵⁸¹ The GBC further explained that "all *Industrial* customers whose proposed projects meet certain consumption, conservation and lifespan thresholds may participate in the Incentives subprogram."¹⁵⁸²

Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. As described above and in the *Lumber V AR2 Prelim*,¹⁵⁸³ the subsidies that are provided by BC Hydro under each subprogram are expressly limited by law to a subset of Industrial enterprises that meet specific energy consumption requirements, meaning that the GBC has established, by law, a limited group of enterprises that may receive grants from BC Hydro under the Incentives subprogram. The fact that the GBC may not have limited eligibility for the Incentives subprogram to specific industries, as the GBC contends, does not alter this conclusion.

Therefore, we continue to find that the Incentives subprogram is *de jure* specific under section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity, we need not examine whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

Comment 64: Whether the Purchase of Carbon Offsets from Canfor Is Countervailable

*GBC's Comments*¹⁵⁸⁴

- The GBC did not provide a grant to Canfor, but rather purchased a good at negotiated prices for market value. The "good" purchased is offset units, defined as the reduction or removal of one ton of carbon dioxide equivalent emissions into the atmosphere.
- In the *Lumber V AR2 Prelim* and the *Lumber V AR1 Final*, Commerce inaccurately described the carbon offset program as a reimbursement, which implies that Canfor provided its project costs to the GBC, and the GBC subsequently paid Canfor for these costs. However, this is incorrect because the GBC receives something of value in return for its payment – an offset unit that has market value.
- If analyzed as the purchase of a good, the carbon offsets program does not provide a countervailable benefit because the GBC did not purchase the offset units for MTAR. During the POR, the prices for offset units purchased by the GBC from Canfor were within the lower end of the range and below the average of benchmark prices.
- Alternatively, Commerce should consider the carbon offset program to represent payment for the provision of a service, because the GBC pays Canfor in exchange for a public service: the reduction of greenhouse gas emissions. In this case, the carbon offsets program is similar to

¹⁵⁸¹ See GBC IQR Response at 20 – 21.

¹⁵⁸² See GBC Case Brief Volume 5 at 61 (citing GBC IQR Response at Exhibit BC-AR2-BCH-4 at 1 and Exhibit BC-AR2-BCH-5 at 1 {emphasis added}).

¹⁵⁸³ See *Lumber V AR2 Prelim* PDM at 47-48.

¹⁵⁸⁴ See GBC Case Brief Volume 5 at 63 – 71.

uranium enrichment contracts, in which the CAFC held that payments for such services were not countervailable under the statute.¹⁵⁸⁵

*Canfor's Comments*¹⁵⁸⁶

- The GBC's purchase of carbon offset units from Canfor represents the purchase of a good, rather than a reimbursement for expenditures related to Canfor's environmental projects. If Commerce treats this program as a countervailable subsidy, the payments from the GBC to Canfor should be treated as purchases of goods for MTAR.
- The unit prices were negotiated on a transactional basis between the seller and the buyer, and other market-based factors such as existing or prospective prices for comparable units. Canfor was not required to disclose its costs in this transaction, which is further evidence that the payments are not reimbursements. Once offset units are issued to the BC Carbon Registry, they are freely tradeable and may be sold to other parties, including, but not limited to, the GBC.
- In the *Lumber VARI Final*, Commerce indicated that the fact that the payment is not explicitly based on Canfor's estimated or actual costs is "immaterial when considering if it constitutes a financial contribution that confers a benefit."¹⁵⁸⁷ However, the question instead is whether a financial contribution was provided or whether it was the purchase of a good. Since the payments do not match Canfor's costs, this demonstrates that the payments were made in exchange for something of value (*i.e.*, a good), and should be analyzed as an MTAR program.
- For an MTAR analysis, Commerce should use the listing of offset units purchased by the GBC during the POR. The GBC provided benchmark prices for offset transfers in British Columbia and Québec, which satisfies Commerce's preference for in-country, market determined benchmarks, and California, which satisfies Commerce's preference for a tier-two benchmark. When these prices are used to calculate the benefit conferred to Canfor for its sales of offset units, it results in no benefit to Canfor as the prices at which the CIB purchased Canfor's offset units are lower than any of the benchmarks on the record.

*Petitioner's Rebuttal Comments*¹⁵⁸⁸

- Whether or not the GBC's payments to Canfor are reimbursements for its stated costs, such payments still constitute a financial contribution in the form of a direct transfer of funds. Record evidence from a GBC report indicates that through the "combined incentive of offset revenue and a reduced annual carbon tax bill," the program allowed a recipient firm to complete a multi-million dollar project.¹⁵⁸⁹ In order to qualify for carbon offset projects, the GBC requires applicants to demonstrate that carbon offset sales will help overcome barriers to

¹⁵⁸⁵ See GBC Case Brief Volume 5 at 71 (citing *Eurodif*).

¹⁵⁸⁶ See Canfor Case Brief at 23 – 31.

¹⁵⁸⁷ See *Lumber VARI Final* IDM at Comment 63.

¹⁵⁸⁸ See Petitioner Rebuttal Brief at 216 – 219.

¹⁵⁸⁹ *Id.* at 218 (citing Petitioner Comments on IQR Responses, Exhibit 59 at 19).

implementing a project. The program is similar to load curtailment programs, which Commerce has treated as grants in previous cases.¹⁵⁹⁰

- Because Commerce has analyzed the carbon offsets program as a grant, the use of a benchmark to measure the benefit is unnecessary.

Commerce's Position: The GBC and Canfor claim that the GBC's payments to Canfor for offset units cannot be reimbursements because Canfor was not required to provide the costs for an emissions-reducing project to the GBC to receive the payment. However, we agree with the petitioner that regardless of whether the payment is explicitly based on Canfor's estimated or actual costs incurred for the environmental project,¹⁵⁹¹ the payment received by Canfor provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and bestows a benefit in the amount of the reimbursement under section 771(5)(E) of the Act and 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.¹⁵⁹² Further, whether the payment amount Canfor received from the GBC is precisely equivalent to the total costs incurred by Canfor under the GBC's emissions requirements is immaterial when considering if it constitutes a financial contribution that confers a benefit. The *CVD Preamble* addresses a similar situation:

. . . the effect of government actions on a firm's subsequent performance, such as its prices or output, cannot be derived from any elements common to the examples in section 771(5)(E) of the Act or Article 14 of the SCM Agreement.

For example, assume that a government puts in place new environmental restrictions that require a firm to purchase new equipment to adapt its facilities. Assume also that the government provides the firm with subsidies to purchase that new equipment, but the subsidies do not fully offset the total increase in the firm's costs—that is, the net effect of the new environmental requirements and the subsidies leaves the firm with costs that are higher than they previously were. In this situation, section 771(5B)(D) of the Act, which deals with one form of non-countervailable subsidy, makes clear that a subsidy exists. Section 771(5B)(D) of the Act treats the imposition of new environmental requirements and the subsidization of compliance with those requirements as two separate actions. A subsidy that reduces a firm's cost of compliance remains a subsidy (subject, of course, to the statute's remaining tests for countervailability), even though the overall effect of the two government actions, taken together, may leave the firm with higher costs.

. . . the government action that constitutes the benefit is the subsidy to install the equipment, because this action represents an input cost reduction. The government action represented by the requirement to install the equipment cannot

¹⁵⁹⁰ *Id.* at 218 (citing *Lumber V Final IDM* at Comment 58; *Groundwood Paper from Canada Final IDM* at Comment 66; *Carbon & Alloy Steel Wire Rod from Italy IDM* at Comment 2; and *Silicon Metal from Australia Final IDM* at Comment 2).

¹⁵⁹¹ See *Groundwood Paper from Canada Final IDM* at 223.

¹⁵⁹² See *CVD Preamble*, 63 FR at 65361.

be construed as an offset to the subsidy provided to reduce the costs of installing the equipment.¹⁵⁹³

In the case of the program at issue, pursuant to the *Climate Change Accountability Act*, the GBC requires BC public sector organizations to achieve carbon neutrality from 2010 onwards. Under the Carbon Offset program, the GBC reviews applications submitted by parties that have conducted projects that reduce greenhouse gas emissions. For qualified projects, the GBC estimates a monetary value representing the amount of carbon reduction realized by a project and issues Offset Units representing that value to the BC Carbon Registry.¹⁵⁹⁴ Thus, the facts of the instant review mirror the scenario discussed in the *CVD Preamble*, namely the GBC provides assistance to eligible firms in connection with expenditures made to meet the GBC's greenhouse emission targets. That the amount of assistance the GBC provided may not have matched the expenditures Canfor incurred is immaterial as to whether a benefit was conferred that constitutes a financial contribution. It is also immaterial if that amount is described as a "reimbursement" for the same reason.

We also disagree that it is necessary to treat offset units as goods rather than as a grant, as the GBC and Canfor have proposed. The GBC payments operated as an incentive to Canfor to invest in equipment and related systems designed to reduce its carbon emissions. Whether Canfor's decision to engage in such a project was motivated by its own environmental objectives or for other strategic business purposes, proprietary information located in Canfor's response indicates this program ultimately benefitted Canfor's overall operations, and the GBC payments defrayed the total costs incurred.¹⁵⁹⁵ Even though other entities may also purchase offset units from Canfor, the record indicates that, during and prior to the POR, the GBC made payments to Canfor for offset units that it would not have made otherwise in the absence of the program. Therefore, we continue to find that the GBC's carbon offset payments to Canfor constitute a grant with a benefit in the amount of the payment received.

As we have not changed our analysis of this program and continue to treat it as a grant, not a good or service, we need not consider the GBC's and Canfor's arguments pertaining to an MTAR analysis.

Comment 65: Whether Payments Made to West Fraser for Cruising and Block Layout Are Countervailable

*Petitioner's Comments*¹⁵⁹⁶

- In the *Lumber V AR2 Prelim*, Commerce did not reference the payments made by the GBC to West Fraser for cruising and block layout. For the final results, Commerce should find that these payments constitute a grant that benefitted West Fraser during the POR.
- The Canadian Parties incorrectly argue that the payments are for services outside of the company's obligations as a tenure holder. In fact, the payments are reimbursements of costs associated with cruising and block layout undertaken on non-BCTS Crown land that belonged

¹⁵⁹³ See *CVD Preamble*, 63 FR at 65361.

¹⁵⁹⁴ See *Lumber V AR1 Prelim* PDM at 48-49.

¹⁵⁹⁵ See Canfor IQR Response at Exhibit B-16.

¹⁵⁹⁶ See Petitioner's Case Brief at 89 – 92.

to West Fraser. BCTS' obligations on its own stands are irrelevant when considering West Fraser's tenure obligations. Commerce has acknowledged this difference: "Because the reimbursements involve activities on Crown land initially allocated to tenure holders, which the tenure holders are otherwise responsible for, the allegation is distinct from the program Commerce found not countervailable in the First Administrative Review."¹⁵⁹⁷

- The GBC noted that cruising and engineering costs are part of the forest planning and administration costs of long-term licensees. According to the FRPA, tenure obligations include preparing a Forest Stewardship Plan, which requires a site plan for any cutblocks prior to harvest.¹⁵⁹⁸
- Tenure holders may decide not to harvest blocks they develop at any time in the block development process. If West Fraser decides not to harvest certain blocks and instead returns them to BCTS, the GBC reimburses West Fraser for costs incurred as part of the pre-harvest preparations it performed, which are part of tenure holders' obligations.

*West Fraser's Rebuttal Comments*¹⁵⁹⁹

- In the *Lumber VARI Final*, Commerce correctly found the GBC payments to West Fraser for cruising and block layout not countervailable. The petitioner's arguments have already been rejected by Commerce in this review and in the *Lumber VARI Final*.
- West Fraser is not obligated to develop blocks that it does not harvest. A tenure holder is obligated to perform cruising and block layout only if it harvests that block. Such surveying activities need not be performed at all if a tenure holder chooses not to harvest or sell a particular block. When a tenure holder plans to harvest a block, it performs cruising and block layout because as the harvester, the tenure holder is responsible for such development.
- If West Fraser had not already performed cruising and block layout on the block it sold to BCTS, BCTS would have been required to perform such activities itself. The activities West Fraser performed to survey the block is valued as an asset in the purchase agreement between West Fraser and BCTS, and West Fraser was compensated for these services as part of the agreement.

Commerce's Position: In the *Lumber VARI Final*, Commerce found that payments made by BCTS to the respondents did not constitute a financial contribution because the respondents performed cruising and block layout activities on BCTS land.¹⁶⁰⁰ Information on the record in this review, however, indicates that West Fraser received reimbursements for costs associated with cruising and block layout that it performed on its own non-BCTS tenure area during the 2019 POR.¹⁶⁰¹

Given the new information provided by West Fraser, further analysis of the countervailability of the reimbursements in connection with cruising and block layout is warranted if such payments meet the measurability threshold. However, any payments received during the POR in connection with activities performed *inside* the firm's tenure area were small enough as to be not

¹⁵⁹⁷ *Id.* (citing NSA Memorandum at 4)

¹⁵⁹⁸ See GBC IQR Response, Volume I at BC-I-110 – 111, Exhibit BC-AR2-S-124, and Exhibit BC-AR-S-18.

¹⁵⁹⁹ See West Fraser Rebuttal Brief at 13 – 15.

¹⁶⁰⁰ See *Lumber VARI Final* IDM at Comment 66.

¹⁶⁰¹ See West Fraser NSA QR at CBL-1 and CBL-4.

measurable when divided over West Fraser's total sales.¹⁶⁰² Payments received by Canfor for cruising and block layout activities were also not measurable for the POR.¹⁶⁰³ Given that these payments do not confer a measurable benefit during the POR to either Canfor or West Fraser, it is not necessary for Commerce to evaluate parties' various arguments on the countervailability of this program. However, we will continue to examine the payments associated with cruising and block layout in future administrative reviews.

New Brunswick

Comment 66: Whether Commerce Should Continue to Find the Silviculture and License Management Programs Countervailable

*GNB's Comments*¹⁶⁰⁴

- Each of the specific silviculture and license management activities performed under FMAs are services. In addition, the 2015 New Brunswick Auditor General Report described silviculture and license management as "services."¹⁶⁰⁵ The purchase of services by a government is not countervailable under U.S. law as a financial contribution or benefit.
- If Commerce determined that silviculture and license management are goods purchased by the GNB, which it should not, it still must assess the adequacy of remuneration under section 771(5)(D)(iv) of the Act and 19 CFR 351.512. There is no third option under the Act or Commerce's regulations that allows Commerce to treat a reciprocal transaction with performance and consideration as a grant.
- Licensees would not conduct silviculture and license management activities for free. As stated by the NB Chief Forester Declaration, "These activities involve significant costs to Licensees and are for the benefit of the GNB and public."¹⁶⁰⁶
- The potential for sub-licensee allocation of crown stumpage undermines the position that silviculture and management are for a licensee's benefit.

*JDIL's Comments*¹⁶⁰⁷

- The GNB's payments to JDIL were not grants. Rather, the GNB purchased services, which do not constitute a financial contribution.
- As the owner of Crown lands in New Brunswick, the GNB is responsible for the management and care of Crown timberlands. In exchange for Crown timber licensees' execution of the GNB's landowner responsibilities, section 38(2) of the Crown Lands and Forests Act and the FMAs direct the GNB to "reimburse" or "compensate" licensees for the "expenses" they incur in providing forest management and silviculture services on the areas covered by their licenses. Thus, the government's purchase of services is not a "financial contribution" under section 771(5)(D) of the Act.

¹⁶⁰² See West Fraser NSA QR at 9.

¹⁶⁰³ See Canfor Final Calculations Memorandum.

¹⁶⁰⁴ See GNB's Case Brief Volume 6 at 66-81.

¹⁶⁰⁵ *Id.* at 68 (citing GNB IQR Response at Exhibit NB-AR2-STUMP-17).

¹⁶⁰⁶ *Id.* at 74 (citing GNB IQR Response at Exhibit NB-AR2-SVC-7 at paragraph 12).

¹⁶⁰⁷ See JDIL's Case Brief at 27-37.

- The GNB's purchases did not confer a countervailable benefit, because the government did not pay JDIL more than adequate remuneration for its execution of forest management services on Crown land.

*Petitioner's Rebuttal Comments*¹⁶⁰⁸

- The arguments presented by the GNB and JDIL were previously considered and rejected by Commerce.¹⁶⁰⁹ Neither the GNB nor JDIL have presented any new arguments that warrant a change in Commerce's countervailable finding with regards to the Silviculture and License Management Programs.

Commerce's Position: In the *Lumber V AR2 Prelim*, Commerce found the reimbursement of both silviculture and license management expenses to be countervailable grants.¹⁶¹⁰ We determined that the reimbursements provided were grants and constituted a financial contribution in the form of a direct transfer of funds from the government, were specific, and bestowed a benefit in the amount of the grants, within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E) of the Act.¹⁶¹¹ The GNB and JDIL argue that these payments represent a purchase, by the GNB, of services provided by JDIL, and that the purchase of services is not countervailable.¹⁶¹²

JDIL is the Licensee on Crown timber licenses #6 and #7 (collectively referred to as License #7). JDIL, or another Irving cross-owned company, has been a long-term leaseholder of the Crown lands from which it sources part of its input supply.¹⁶¹³ At present, JDIL is under an FMA with the province. Under the CLFA,¹⁶¹⁴ JDIL is obligated to perform, and be reimbursed for, basic silviculture and forest management obligations. Specifically, paragraph 38(2) of the CLFA states:

The Minister (a) shall reimburse the licensee for such expenses of forest management as are approved in and carried out in accordance with the operating plan, including expenses with respect to

- i. pre-commercial thinning, ...
- iii. tree planting,

subject to the regulations and the provisions of any agreement between the licensee and the Minister, and (b) shall compensate the licensee for other expenses of forest management in accordance with the regulations.¹⁶¹⁵

¹⁶⁰⁸ See Petitioner Rebuttal Brief at 225-227.

¹⁶⁰⁹ *Id.* at 225 (citing *Lumber V AR1 Final IDM* at Comment 69).

¹⁶¹⁰ See *Lumber V AR2 Prelim PDM* at 48-49.

¹⁶¹¹ *Id.*

¹⁶¹² See JDIL's Case Brief at 32-35; see also GNB's Case Brief at 68-70.

¹⁶¹³ See JDIL IQR Stumpage Response at 3 and JDIL's IQR Non-Stumpage Response at Exhibit SILV-04.

¹⁶¹⁴ *Id.* at Exhibit SILV-02.

¹⁶¹⁵ *Id.*

In accordance with the CLFA, JDIL's FMA defines basic silviculture and further specifies JDIL's requirement for both basic silviculture and licensee silviculture.¹⁶¹⁶ In accordance with the FMA, basic silviculture is defined as the silvicultural activity required to produce the annual allowable harvest of timber as identified in paragraph 13.1.¹⁶¹⁷ Licensee silviculture is defined as silvicultural treatments carried out at the expense of the licensee.¹⁶¹⁸ Thus, the GNB is making a clear distinction between basic silviculture, which is required and for which the GNB provides funds, and licensee silviculture, which is beyond basic silviculture, as described in the CLFA and is to be performed at the expense of the licensee.

In the underlying investigation and prior review, Commerce found that basic silviculture and forest management activities provide countervailable subsidies because the GNB relieved JDIL of expenses incurred through a direct transfer of funds.¹⁶¹⁹ The FMA goes on to stipulate that JDIL "shall carry out basic silviculture,"¹⁶²⁰ "the Minister will fund the basic silvicultural program,"¹⁶²¹ and JDIL's "obligations...will correspond to the level of basic silviculture funding provided by the Minister."¹⁶²² Likewise the FMM, which forms part of the FMA, further outlines the specific responsibilities of the licensee and the Crown and defines license management fees as the "reimbursement to licensees for specific requested management services undertaken at the request of, and on behalf of DNR."¹⁶²³

We continue to find these programs are countervailable. First, the assertion that JDIL was not fully reimbursed for either the silviculture or the forest management activities it performed is immaterial. The notion that the payments received by JDIL from the GNB do not cover JDIL's actual expenses for both silviculture and forest management activities does not negate the benefit from the payments received.¹⁶²⁴ These are activities that involve the renewal and maintenance of forestry land, *i.e.*, the management of JDIL's input and supply chain, and which JDIL would undertake even in the absence of the reimbursements.

The GNB refers to its submission of a declaration from the NB Chief Forester as well as the total sums spent by JDIL in 2019 as support for its claim that JDIL would *not* conduct the silviculture and license management activities it currently undertakes.¹⁶²⁵ However, Commerce finds the reasoning presented in this declaration unavailing. First, the declaration states that "Licensees would not continue to implement these services if not compensated by the GNB. These activities involve significant costs to Licensees and are for the benefit of the GNB and public."¹⁶²⁶ However, this reasoning is contradicted by JDIL's case brief. In JDIL's submission, JDIL

¹⁶¹⁶ *Id.* at Exhibit SILV-04.

¹⁶¹⁷ *Id.*

¹⁶¹⁸ *Id.*

¹⁶¹⁹ See *Lumber V Final IDM* at Comment 61; see also *Lumber V ARI Final IDM* at Comment 69.

¹⁶²⁰ See JDIL IQR Non-Stumpage Response at Exhibit SILV-04.

¹⁶²¹ *Id.*

¹⁶²² *Id.*

¹⁶²³ *Id.* at Exhibit LMF-05.

¹⁶²⁴ See JDIL IQR Non-Stumpage Response at Exhibit SILV-04. JDIL's FMA para. 13.4 states that it "may, at its own expense ... Carry out licensee silviculture in addition to basic silviculture and the Company ... shall be the exclusive beneficiaries (on a prorated basis) of any immediate or future increase to the annual allowable harvest of timber as a result of such silvicultural treatments."

¹⁶²⁵ See GNB Case Brief at 72-73.

¹⁶²⁶ *Id.* at 73-74.

argues that GNB's reimbursement of silviculture and license management fees does not confer a benefit because "the GNB's payments failed to cover fully J.D. Irving's {JDIL} expenses."¹⁶²⁷

JDIL, as established, has been a Licensee for many years and would have a keen understanding of its relationship with the GNB and the reimbursements it receives each year for silviculture and license management fees. Therefore, it is illogical to assume that JDIL would intentionally spend *more* than it was minimally required to under its license agreement unless there was some value to JDIL's business that prompted it to do so. Therefore, Commerce must consider that this willingness on JDIL's part to conduct *more* silviculture and license management activities than it would be reimbursed for is due to JDIL's interest in ensuring its input and supply chain viability.

As discussed above, the respondents have provided no credible information or argument that this government action does not provide a benefit under the CVD law to JDIL. Therefore, because the GNB provides reimbursements to JDIL for costs JDIL incurs in the course of managing its wood fiber inputs and ensuring the efficient operation of its supply chain, *i.e.*, activities it was obligated to undertake as part of its operations, we continue to find that these programs provide a financial continuation in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act.

Comment 67: Whether Commerce Should Find LIREPP Countervailable

*GNB's Comments*¹⁶²⁸

- A WTO panel recently reviewed Commerce's determination in the investigation of this proceeding and ruled against key portions of Commerce's proposed findings in the current review.¹⁶²⁹ In light of this new development, Commerce should reassess its earlier rulings.
- Although the program is open to all qualifying industries, the LIREPP credits cannot be attributed to the subject merchandise in this administrative review, as the only eligible industry that has qualified for the LIREPP program since the program's inception is the pulp and paper industry.
- The program has been tied to the production of pulp and paper throughout its history.
- LIREPP is a program in which companies sell electricity from renewable sources to New Brunswick Power, and those sales cannot properly be treated as revenue foregone. Commerce's regulations explicitly require an MTAR benefit analysis for the purchase of goods such as electricity.

*JDIL's Comments*¹⁶³⁰

- In accordance with 19 CFR 351.525(b)(5), the GNB knew and acknowledged at the time of bestowal that JDIL's participation in LIREPP was meant to bring the company's electricity costs in line with those of its Canadian competitors in the pulp and paper industry. Because paper is non-subject merchandise, JDIL's participation in LIREPP was therefore tied to the production and sale of non-subject merchandise and not countervailable in this review of softwood lumber.

¹⁶²⁷ See JDIL Case Brief at 36.

¹⁶²⁸ See GNB Case Brief Volume 6 at 81-86.

¹⁶²⁹ *Id.* at 84-85 (citing *DS 533 Panel Report* at paragraph 7.11.3.6., 7.703, and 7.704).

¹⁶³⁰ See JDIL's Case Brief at 38-42.

- NB Power did not forgo revenue because the credit represents money that NB Power owes the Irving companies for renewable electricity purchased under LIREPP. Consequently, the financial contribution is the purchase of goods.

*Petitioner's Rebuttal Comments*¹⁶³¹

- The GNB and JDIL have not submitted any new information or arguments that warrant reconsideration. Thus, Commerce should continue to find the LIREPP tax credit countervailable and should continue to treat this program as revenue forgone.
- The GNB's citation to a WTO panel decision should not result in the panel reconsidering its previous determinations. As explained by Commerce, "WTO panel and Appellate Body conclusions are without effect under U.S. law 'unless and until such a {report} has been adopted pursuant to the specified statutory scheme' established in the URAA."¹⁶³²

Commerce's Position: JDIL reported receiving energy bill credits under this program in 2019.¹⁶³³ In the *Lumber V AR2 Prelim*, we found that interested parties did not submit any new information or arguments that warranted a reconsideration of Commerce's prior findings.¹⁶³⁴ Therefore, Commerce found this program constitutes a financial contribution, is specific, and confers a benefit under sections 771(5)(D), 771(5A), and 771(5)(E) of the Act, respectively.¹⁶³⁵

JDIL and the GNB argue that NB Power did not forego revenue, and that this program should be analyzed as an MTAR program to determine whether NB Power purchased renewable electricity from the participating Irving companies for more than adequate remuneration.¹⁶³⁶ The GNB also placed the average price paid by NB Power in New Brunswick for comparable electricity during the POR as support for its argument that Commerce should conduct an MTAR analysis should it continue to find this program countervailable.

We continue to find that the LIREPP program is properly analyzed as a revenue foregone program, rather than as a possible MTAR program. We continue to find that the amount of LIREPP credits that IPL transfers to JDIL confers a benefit to JDIL, in accordance with 19 CFR 351.525(b)(6)(v). We also continue to find that this LIREPP program is *de jure* specific in accordance with section 771(5A)(D)(i) of the Act, because the GNB expressly limits access to LIREPP to certain eligible enterprises by law.

As detailed in *SC Paper from Canada – Expedited Review*,¹⁶³⁷ LIREPP is a multifaceted program. The purpose of the LIREPP program is for New Brunswick to: (1) reach NB Power's mandate to supply 40 percent of its electricity from renewable sources by 2020; and (2) bring New Brunswick's large industrial enterprises' net electricity costs in line with the average cost of electricity in other Canadian provinces.¹⁶³⁸ According to the GNB verification report in *SC Paper from Canada – Expedited Review*, GNB officials from NB Power, a Crown corporation,

¹⁶³¹ See Petitioner's Rebuttal Case Brief at 227-230.

¹⁶³² *Id.* at 230 (citing *Lumber V AR1 Final IDM* at Comment 55).

¹⁶³³ See JDIL Non-Stumpage IQR Response at Exhibit LIREPP-06.

¹⁶³⁴ See *Lumber V AR2 Prelim Results PDM* at 49; see also *Lumber V AR1 Final IDM* at Comment 106.

¹⁶³⁵ *Id.*

¹⁶³⁶ See GNB Case Brief at 81.

¹⁶³⁷ See *SC Paper from Canada – Expedited Review – Final Results IDM* at Comment 27.

¹⁶³⁸ *Id.*

and from the NB Department, DERD, explained one of the reasons that the LIREPP program was implemented was for industries to get credit applied to their electricity bill for the renewable energy they generated.¹⁶³⁹

The NB Power officials stated that “the purpose of LIREPP is that ‘you want to buy enough to get them {the program participants} to the target discount,’” adding that “we want to buy a certain amount of {electricity}, then we resell at firm rates, then the difference is the NET LIREPP Adjustment.”¹⁶⁴⁰ In other words, the NET LIREPP adjustment is the difference between the amount of renewable electricity that NB Power will purchase from the LIREPP participant (here, the participating Irving companies), and the amount of electricity that NB Power will sell to the LIREPP participant (again, the participating Irving companies). The net LIREPP adjustment is provided to participating Irving companies, including JDIL, as credits that are applied to their monthly electricity invoices.¹⁶⁴¹ Thus, while the program does encompass, in part, the purchase of a good or service, the credits reduce the participating Irving Companies’ monthly electricity bills, and it is the amount of the monthly credits that we have determined is the countervailable benefit consistent with section 771(5)(E) of the Act.

The volume of electricity that the participating Irving Companies “sell” to NB Power, most of which is not transmitted to or through the grid, is derived each month using the target discount and the C\$95/MWh rate. The C\$95/MWh rate is fixed in the Electricity Act.¹⁶⁴² Thus, even if this rate varied, because NB Power works backwards from the target discount, the program guarantees that the target discount is reached each month by adjusting the volume of NB Power’s purchases of electricity from the participating Irving companies. In other words, NB Power has determined in advance the amount of credits it wishes to give the participating Irving companies. As such, we reaffirm our preliminary decision to treat the benefit from this program as the amount of Net LIREPP credits that are provided to participating Irving companies including JDIL to reduce their monthly electricity payments from NB Power, a Crown corporation.

We disagree with the GNB that Commerce should tie the subsidies JDIL received under the LIREPP program to JDIL’s pulp and paper sales because, while the program is open to all qualifying industries, the pulp and paper industry is the only one that has qualified for benefits since the program’s inception. As an initial matter, Commerce has consistently attributed the benefits from electricity subsidies to all products.¹⁶⁴³ Furthermore, the GNB’s argument inaccurately characterizes Commerce’s practice of analyzing whether benefits are tied to a firm’s particular market or sales. Under its practice, Commerce finds:

. . . a subsidy is tied to particular products or operations only if the bestowal documents, *e.g.*, the application, contract or approval, explicitly indicate that an intended link to the particular products or operations was known to the

¹⁶³⁹ *Id.*

¹⁶⁴⁰ *Id.*

¹⁶⁴¹ See JDIL Non-Stumpage IQR Response at Exhibit LIREPP-1.

¹⁶⁴² *Id.*

¹⁶⁴³ See *Lumber V Final* IDM at Comment 49.

government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.¹⁶⁴⁴

Thus, the fact that most or all recipients of subsidies under a given program belong to a particular industry does not result in Commerce necessarily finding that the subsidies are tied to products produced by that industry.

We also disagree with JDIL's argument that benefits under the LIREPP are tied to sales of pulp and paper products because the GNB knew and acknowledged at the time of bestowal that JDIL's participation in LIREPP was meant to bring the company's electricity costs in line with those of its Canadian competitors in the pulp and paper industry. As noted in the *Lumber V Final*, the eligibility criteria provided by the GNB indicate that the LIREPP program is available to any large industrial enterprise that owns and operates an eligible facility that generates eligible electricity.¹⁶⁴⁵

We further disagree with JDIL's argument that because GNB determines the *amount* of NET LIREPP credits issued to JDIL based, in part, on the electricity rates in effect for the pulp and paper facility operated by its Lake Utopia Paper Division, the LIREPP credits the facility received during the POR are tied to non-subject paper products. As noted in the investigation, Lake Utopia Paper Division was eligible to participate in the LIREPP program because of its ability to meet the program's requirements for producing eligible renewable energy, not because the company produces any specific products (such as pulp and paper products).¹⁶⁴⁶ Further, as explained in the investigation, the terms of the LIREPP agreements signed between the participating JDIL companies and NB Power do not link bestowal of LIREPP credits to any specific products and do not place any requirement on the participating JDIL companies to effectuate a transfer of the credit between Lake Utopia Paper Division and JDIL, nor do the agreements speak to how JDIL is to use the LIREPP credit once it is applied to Lake Utopia Paper Division's electricity bill.¹⁶⁴⁷ Thus, while the amount of the LIREPP credits issued by NB Power was a function of the electricity rates charged to Lake Utopia Paper Division, the eligibility and receipt of the LIREPP credits was not tied to the production of specified products. As such, we continue to find that LIREPP credits received by a division of JDIL was an untied subsidy that is attributable to the total sales of JDIL.

Lastly, we continue to find that while JDIL manufactures non-subject merchandise at its Lake Utopia Paper Division, it does not change the fact that the division is part of the JDIL corporate group.¹⁶⁴⁸ JDIL and its Lake Utopia Paper Division are not distinct corporate entities, which would require Commerce to conduct an analysis under 19 CFR 351.525(b)(6)(ii)-(v) to determine whether subsidies received by the affiliates are attributable to JDIL. Rather, JDIL is the corporate entity which files the tax documents and consolidates the financial statements of all

¹⁶⁴⁴ See *CVD Preamble*, 63 FR at 65402-65403.

¹⁶⁴⁵ See *Lumber V Final* IDM at Comment 77; see also GNB Non-Stumpage IQR Response at Exhibit NB-AR2-LIREPP-1.

¹⁶⁴⁶ See *Lumber V Final* IDM at Comment 77.

¹⁶⁴⁷ See *Lumber V Final* IDM at Comment 77; see also GNB Non-Stumpage IQR Response at Exhibit NB-AR2-LIREPP-5.

¹⁶⁴⁸ See JDIL Company Affiliation Response at Exhibit 2; see also GNB IQR Response at Exhibit NB-AR2-LIREPP-1.

its affiliates – including its Lake Utopia Paper Division – as one corporate entity.¹⁶⁴⁹ Neither the statute nor Commerce’s regulations “provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm.”¹⁶⁵⁰ Further, Commerce does not tie subsidies on a plant or factory specific basis.¹⁶⁵¹

Comment 68: Whether Disaster Relief Provided to JDIL to Repair Roads Is Countervailable

*Petitioner’s Comments*¹⁶⁵²

- The GNB and JDIL both acknowledge that the GNB provided JDIL with funding to repair Crown roads on License #7, of which JDIL “is the designated Crown timber licensee.”¹⁶⁵³ Record evidence demonstrates that this provincial funding is *de facto* specific and constitutes a financial contribution in the form of a grant, in accordance with sections 771(5A)(D)(iii) and 771(5)(D)(i) of the Act.
- The assistance provided under this subsidy program conferred a measurable benefit to JDIL during the POR and in the final results, Commerce should reverse its preliminary finding and countervail the benefits JDIL received under this program.

*JDIL’s Rebuttal Comments*¹⁶⁵⁴

- Commerce correctly declined to countervail GNB payments to JDIL for License #7 infrastructure repairs because the payments were made for disaster relief that was generally available to all affected parties. The petitioner’s claim that the GNB payments were a financial contribution and are *de facto* specific is contradicted by the record evidence and contrary to 19 CFR 351.502(g).
- The Crown forestlands covered by License #7 are owned by the GNB, not JDIL. Thus, JDIL provided the GNB with repair services, issuing invoices for the services; there was no countervailable financial contribution.
- The GNB payments were generally available disaster relief and were not *de facto* specific. Consistent with 19 CFR 351.502(g), Commerce “will not regard disaster relief as being specific under section 771(5A)(D) of the Act if such relief constitutes general assistance available to anyone in the area affected by the disaster.”
- As the GNB payments to JDIL were not a financial contribution, there is likewise no countervailable benefit.

Commerce’s Position: Under 19 CFR 351.502(g),¹⁶⁵⁵ Commerce will not regard disaster relief as being specific under section 771(5A)(D) of the Act if such relief constitutes general assistance available to anyone in the area affected by the disaster. The *CVD Preamble* further explains that:

¹⁶⁴⁹ See JDIL Non-Stumpage IQR Response at Exhibit JDIL-03 and JDIL-04; *see also* JDIL Company Affiliation Response at Exhibit 2.

¹⁶⁵⁰ See *SC Paper from Canada Final IDM* at 161 (citing *CFS from China IDM* at Comment 8).

¹⁶⁵¹ See, e.g., *SC Paper from Canada – Expedited Review – Final Results IDM* at 99.

¹⁶⁵² See Petitioner’s Case Brief at 92-94.

¹⁶⁵³ *Id.* at 92 (citing JDIL Non-Stumpage SQR Response at 3).

¹⁶⁵⁴ See JDIL’s Rebuttal Case Brief at 19-22.

¹⁶⁵⁵ 19 CFR 351.502(g) was 19 CFR 351.502(f) until last year, which is the reason the *CVD Preamble* language references paragraph (f). See *Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings*, 85 FR 6031, 6043 (February 4, 2020).

disaster relief is not selective in the same manner as other regional programs since there is no predetermination of eligible areas and no part of the country, and no industry, is excluded from eligibility in principle . . . However, before declaring a subsidy to be nonspecific under paragraph (f), the Department would have to be satisfied that the subsidy in question was, in fact, *bona fide* disaster relief.¹⁶⁵⁶

For the reasons discussed below, we find JDIL received the funds at issue in connection with a *bona fide* natural disaster that meets the criteria set out under 19 CFR 351.502(g), and, thus, we find that the GNB's Disaster Assistance Program is not specific under section 771(5A)(D) of the Act.

The GNB's Department of Public Safety, through the New Brunswick Emergency Measures Organization, administers the province's Disaster Financial Assistance program. The New Brunswick Emergency Measures Organization was established pursuant to section 3(1) of the Emergency Measures Act.¹⁶⁵⁷ The program offers assistance for extraordinary operating and capital costs arising from a natural disaster. Eligible operating costs are those incurred to protect public health, safety, and access to essential services. Eligible capital costs are those to repair public infrastructure or property to pre-disaster condition. Costs that would have been incurred if the disaster had not taken place are ineligible under the program.¹⁶⁵⁸

The event that resulted in the GNB providing the disaster financial assistance at issue stemmed from heavy flooding in New Brunswick that occurred during the period September 29 through October 1, 2015. The flooding damaged homes, small businesses, and public infrastructure in 12 of the Province's 15 counties.¹⁶⁵⁹ The affected areas included damage to Crown roads within the area of License #7.¹⁶⁶⁰ The GNB formally designated the flooding even as a disaster pursuant to the provincial government's Memorandum to the Executive Council and Decision of the Board of Management and the federal government's "Provincial Emergency Financial Assistance Order No. 194".¹⁶⁶¹

Under the Disaster Assistance Program, the GNB offered assistance to individuals, households, small business, and not-for-profit organizations in the area affected by the September 2015 Flood.¹⁶⁶² Concerning the disaster assistance at issue, the New Brunswick Emergency Measures Organization provided disaster assistance to the GNB's Department of Energy and Resource Development, which in turn, hired JDIL to provide repair-related services on Crown roads damaged by the flood event.¹⁶⁶³ Thus, JDIL, itself, did not apply for assistance under the program. Consistent with the requirements of the Disaster Assistance Program, all assistance provided for the repair of Crown roads in the License #7 area adhered to the GOC's Guidelines for the Disaster Financial Assistance Arrangements and the GNB's "Disaster Financial

¹⁶⁵⁶ See *CVD Preamble*, 63 FR at 65358

¹⁶⁵⁷ See GNB Non-Stumpage SQR1 at Exhibit NB-AR2-SQR-DFA-2.

¹⁶⁵⁸ *Id.* at 2 and Exhibit NBAR2-SQR-DFA-4.

¹⁶⁵⁹ *Id.* at 6.

¹⁶⁶⁰ *Id.* at 7.

¹⁶⁶¹ *Id.* at Exhibit NB-AR2-SQR-DFA-7.

¹⁶⁶² *Id.* at 22 and Exhibit NB-AR2-SQR-DFA-7.

¹⁶⁶³ *Id.* at 7.

Assistances Program: Provincial Damage Claims Guidelines.¹⁶⁶⁴ The repair services that JDIL provided to the GNB were made as part of a separate agreement, unrelated to the license management services it performs as a Crown timber licensee (License #7), as reflected in the invoices that that JDIL issued to the GNB indicating that the repairs were for the “September 2015 Heavy Rain Event.”¹⁶⁶⁵

Information on the record demonstrates that the funds the GNB paid to JDIL to repair damage to Crown roads in the License #7 area were not *ad hoc*. Rather, the GNB made the payments pursuant to a pre-existing disaster relief program that adhered to pre-existing funding guidelines. The record further demonstrates that the GNB designated areas impacted by the September 2015 flood pursuant to a formal declaration and that the GNB made the assistance widely available to individuals, small-businesses, and organizations in the impacted area. Therefore, we find that the funds JDIL received in connection with the disaster assistance program meet the criteria set out under 19 CFR 351.502(g) and, accordingly, determine that the program is not specific under section 771(5A)(D) of the Act.

Because we find this program is not specific and, thus, not countervailable, all other arguments concerning this program are moot.

Comment 69: Whether the DTI Settlement with JDIL Is Countervailable

*GNB’s Comments*¹⁶⁶⁶

- There can be no reasonable dispute that the GNB’s payment to JDIL was for services previously rendered for the benefit of the Province. The settlement payment made by DTI to JDIL in 2019 was associated with the purchase of services by a government and is not countervailable as a financial contribution or benefit.
- In accordance with *Government of Sri Lanka v. U.S.*, the CIT has held that a “grant” is a “gift-like transfer” of funds, meaning that there is no consideration for the payment consistent. A payment for the services of upgrading and maintaining roads is not a “gift.”
- Record evidence demonstrates that JDIL provided services to the GNB in exchange for use of a public road corridor, and that later, the GNB adopted a measure that deprived JDIL from receiving any benefit from its own investment in those services.
- The settlement payment was not part of any subsidy program. As the GNB showed, DTI routinely spends hundreds of millions of dollars on road construction annually and hired over 100 contractors to perform such services in fiscal years 2018-19 and 2019-20.¹⁶⁶⁷

*Petitioner’s Comments*¹⁶⁶⁸

- Commerce should continue to treat this payment as a grant that benefitted JDIL, pursuant to section 771(5)(D)(i) of the Act, and 19 CFR 351.504(a).

¹⁶⁶⁴ *Id.* at 9 and Exhibits NB-AR2-SQR-DFA-3 and NB-AR2-SQR-DFA-4.

¹⁶⁶⁵ See JDIL Non-Stumpage SQR Response at Exhibit Flood-06; see also GNB Non-Stumpage SQR1 at Exhibit NB-AR2-SQR-DFA-6.

¹⁶⁶⁶ See GNB’s Case Brief Volume 6 at 92-94.

¹⁶⁶⁷ *Id.* at 94 (citing GNB DTI Grant SQR at 5).

¹⁶⁶⁸ See Petitioner Rebuttal Brief at 223-225.

- Proprietary information on the record of the review demonstrates that the GNB's claim that its payment to JDIL was for the purchases of services has no merit.

Commerce's Position: The GNB argues that the settlement payment made by DTI to JDIL in 2019 was associated with the purchase of services by a government. As a result, the GNB argues that Commerce's determination in the *Lumber V AR2 Prelim* is not supported by evidence on the record and should be withdrawn.¹⁶⁶⁹ We disagree and continue to find that the assistance that JDIL received under this program constitutes a financial contribution in the form of a direct transfer of funds from the government, pursuant to section 771(5)(D)(i) of the Act, and that the program bestows a benefit in the form of a grant, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).

The GNB's argument regarding why the DTI payment is not a subsidy is twofold: (1) the GNB's payment to JDIL was not a "gift-like transfer" of funds but for services previously rendered for the benefit of the Province. Thus, according to the GNB, Commerce's determination is not consistent with the CIT which held that a "grant" is a "gift-like transfer" of funds. The GNB also argues that the government purchase of a service is not countervailable;¹⁶⁷⁰ and (2) DTI routinely spends hundreds of millions of dollars on road construction annually and hired over 100 contractors to perform such services in fiscal years 2018-19 and 2019-20. Thus, argues the GNB, the settlement payment was not part of any subsidy "program."¹⁶⁷¹ We disagree with the GNB that JDIL's receipt of a direct transfer of funds from DTI does not constitute a financial contribution in the form of a grant and is inconsistent with the CIT.

Regarding the reference to the rulings by the CIT, there is no legal basis for the GNB's argument that direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act, such as grants, are limited to "gifts." To the extent that the CIT previously construed "grant" according to a dictionary definition that references "gift," a dictionary definition does not supersede Commerce's application of the Act. Rather, the regulations state that Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations.¹⁶⁷² According to 19 CFR 351.504(a), "{i} in the case of a grant, a benefit exists in the amount of the grant."

Moreover, the GNB's payment to JDIL was not for services previously rendered for the benefit of the Province, but for a road located inside JDIL's tenure area that JDIL used as a part of its normal operations during the POR.¹⁶⁷³ JDIL assisted with constructing and repairing the road under a 2008 agreement with DTI, though JDIL did not seek or receive any compensation from that original agreement. After being notified of the road's closure, however, JDIL presented a claim for reimbursement of its costs for the upgrades and maintenance it had performed and received reimbursements during the POR as stated by the GNB.¹⁶⁷⁴ As a result, the direct transfer of funds from the GNB to JDIL constituted a financial contribution, pursuant to section

¹⁶⁶⁹ See GNB Case Brief Volume 6 at 92-94.

¹⁶⁷⁰ *Id.* at 93 (citing *Government of Sri Lanka, Camso Inc., Camso Loadstar (Private) Ltd., and Camso USA Inc. v. U.S.*, No. 17-00059, Slip. Op. 18-43 (CIT April 17, 2018) at 17).

¹⁶⁷¹ *Id.* at 93 (citing GNB DTI Grant SQR at p. 5)

¹⁶⁷² See 19 CFR 351.503(a).

¹⁶⁷³ See JDIL Non-Stumpage Supplemental Response at Exhibit 4 Supp.-01.

¹⁶⁷⁴ See GNB Case Brief Volume 6 at 93.

771(5)(D)(i) of the Act, and the program bestowed a benefit in the form of a grant, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).

Ontario

Comment 70: Whether the OFRFP Is Countervailable

*GOO's Comments*¹⁶⁷⁵

- The OFRFP does not provide a financial contribution or benefit to harvesters because: (a) the record shows that the program only partially reimburses for eligible roads constructed for the public—not forest harvest activities; and (b) the program is limited to public roads (primary and branch) that are part of Ontario's general infrastructure (and excludes operational roads that are for the harvesters' use).
- Commerce should apply case precedent¹⁶⁷⁶ and determine that Ontario's partial reimbursement for certain road obligations it imposes do not provide a countervailable subsidy because they constitute general infrastructure.
- When analyzing whether the OFRFP provides a benefit to harvesters, Commerce wrongly assessed the payments provided under the OFRFP separately from the legal obligations to incur those costs. Commerce ignores the purpose of the OFRFP as a cost-sharing arrangement related to forest management. The OFRFP imposes demonstrable net costs on harvesters for the construction of general infrastructure on Crown land, as required in their forest licenses.
- Commerce made no adjustment for these costs in its stumpage calculations despite that the GOO provided the KPMG Report on 2019 Ontario Softwood Timber Costs and Services.¹⁶⁷⁷ This contradicts the *Lumber IV* findings concerning road construction and maintenance costs borne by Ontario harvesters—obligations that have not changed since Commerce's earlier findings.¹⁶⁷⁸

*Resolute's Comments*¹⁶⁷⁹

- A grant is a gift-like transfer.¹⁶⁸⁰ Payments for road building and maintenance, under the OFRFP, are not gifts nor anything like gifts. The payments bought something of value.
- Purchases of services are not financial contributions, and no benefit may be conferred by such transactions. Under U.S. law and the SCM Agreement, a government purchase of a service is not countervailable.¹⁶⁸¹
- Commerce's view that these road activities are not services because they are performed in furtherance of harvesting activities is factually incorrect. If it were so, forestry companies could build roads without the obligations of planning and provincial approvals. However, Resolute must plan and coordinate road building with the GOO and make them publicly available.
- That the forestry company building the roads also benefits from them does not change the nature of the transaction with the government—a purchase of valuable services.

¹⁶⁷⁵ See GOO Case Brief Volume 7 Part 2 at 14-26.

¹⁶⁷⁶ *Id.* at 23-25 (citing, e.g., *Cold-Rolled Carbon Steel from Korea* IDM at 22).

¹⁶⁷⁷ *Id.* at 15 (citing GOO Stumpage IQR Response at Exhibit ON-STATS-3).

¹⁶⁷⁸ *Id.* at 16 (citing, e.g., *Lumber IV Final* IDM at 114-116, and *Lumber IV ARI Final* IDM at 19, and 106-108).

¹⁶⁷⁹ See Resolute Case Brief at 71-74.

¹⁶⁸⁰ *Id.* at 72 (citing *Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d 1373).

¹⁶⁸¹ *Id.* (citing section 771(5)(D) of the Act and *CVD Preamble*, 63 FR at 65379).

*Petitioner's Rebuttal Comments*¹⁶⁸²

- Whether or not the road obligations resulted in a net cost for Resolute is immaterial to Commerce's analysis. There is no statutory requirement that a subsidy program completely offset a cost incurred by a respondent for it to be countervailable.¹⁶⁸³ The fact is that Resolute's costs, legally incurred within its normal course of business, are offset to some degree by the reimbursements.
- Evidence on the record refutes the claim that the building of the roads constitutes general infrastructure. Specifically, that evidence shows that “these roads provide important forest operations that allow for strategic harvest,” and that primary and branch roads “provide principal access for the forest management unit” as well as “through areas of operations on a forest management unit,” respectively.¹⁶⁸⁴ The beneficiary of the OFRFP is the forestry sector not the province.
- Consistent with the *Lumber VARI Final*,¹⁶⁸⁵ Commerce should continue to find the OFRFP to be countervailable.

Commerce's Position: The GOO and Resolute raised the same arguments in the first administrative review.¹⁶⁸⁶ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that the OFRFP is a countervailable grant program that confers a benefit on Resolute.

As an initial matter, there is no legal basis for Resolute's argument that grants are limited to “gifts” bestowed without consideration. As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the “benefit” as “the amount of the grant.” In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.¹⁶⁸⁷

The record demonstrates that the OFRFP is designed to reduce costs that harvesters are legally required to incur under their tenure agreements in their normal course of business of harvesting Crown timber in Ontario.¹⁶⁸⁸ Because the GOO provides reimbursements to Resolute for costs it incurs for the construction and maintenance of roads in public forest areas to perform its harvesting activities, we find that the OFRFP provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and bestows a benefit in the amount of the reimbursement under section 771(5)(E) of the Act and 19 CFR 351.504(a). The fact that the reimbursements that Resolute received only partially covered its costs does not negate the fact that a benefit was received.

¹⁶⁸² See Petitioner Rebuttal Brief at 245-248.

¹⁶⁸³ *Id.* at 246 (citing *Groundwood Paper from Canada Final IDM* at Comment 86).

¹⁶⁸⁴ *Id.* at 247 (citing Petitioner IQR Comments at Exhibits Vol II-58 and Vol-59).

¹⁶⁸⁵ *Id.* at 245 (citing *Lumber VARI Final IDM* at Comment 71).

¹⁶⁸⁶ See *Lumber VARI Final IDM* at Comment 71.

¹⁶⁸⁷ See *CVD Preamble*, 63 FR at 65361.

¹⁶⁸⁸ See GOO Non-Stumpage IQR Response at Roads-1 to Roads-27 (and all referenced exhibits); see also Resolute Non-Stumpage IQR Response at Exhibit RES-NS-ONROADS-APP (and all referenced exhibits); and Resolute Stumpage IQR Response at Exhibit RES-STUMP-ON-3.

We disagree that Resolute’s road building activities for primary and branch roads under the OFRFP constitute a service to the GOO and, thus, the associated payments are not countervailable. The activities performed by Resolute — building and maintaining roads to access harvesting areas on Crown land—were performed in the furtherance of its harvesting activities, not to render a service to the GOO or general public. The respondent parties would have Commerce determine that because primary and branch roads can be used by the public, the roads built by Resolute are general infrastructure and, thus, the GOO’s partial reimbursement of Resolute’s road costs are not countervailable. However, a primary road is a road that provides principal access to a forest management unit, and is constructed, maintained, and used as part of the main system of the forest management unit in the Crown forest.¹⁶⁸⁹ Primary roads are “constructed to a standard that allows for the most cost-effective removal of wood from a harvest block to a destination mill.”¹⁶⁹⁰ A branch road branches off a primary road and provides further access to, through, or between areas of harvesting operations within a forest management unit.¹⁶⁹¹ Based on the evidence, we find that primary and branch roads were not built by Resolute for the betterment of the public’s welfare, but rather those roads were built by Resolute to get access to the forest areas, assigned under its forest license, where it could build operational roads (*i.e.*, roads within an area of operation that provides access for harvest) to allow for its harvesting activities.

The cases cited by the GOO¹⁶⁹² support a finding that, unless infrastructure is created for the broad societal welfare of a country, region, or municipality, it confers a countervailable subsidy on the recipient. Because we find Resolute’s construction of roads was to further its harvesting abilities, we do not find the roads to be “general infrastructure” as defined under 19 CFR 351.511(d). Therefore, Resolute’s road building activities do not fall under the rubric of “general infrastructure.”

Additionally, we disagree with the GOO that Commerce should make an adjustment for the road costs in the stumpage calculations. As we have explained in the prior and current review, in-kind and other related expenses are not part of the “pure” stumpage price as calculated from the *GNS Private Stumpage 2017-2018 Survey*.¹⁶⁹³ Commerce cannot adjust for such costs without distorting the benchmark. The GOO’s reference to *Lumber IV* is unavailing as the record evidence in this review stands on its own.

Comment 71: Whether the TargetGHG Program Is Specific

*GOO’s Comments*¹⁶⁹⁴

- OCE did not limit TargetGHG projects to enterprises, industries, sectors, or any group of enterprises, industries, or sectors. Applicants for the TargetGHG did not have geographic or

¹⁶⁸⁹ See GOO Non-Stumpage IQR Response at Roads-4.

¹⁶⁹⁰ Resolute Stumpage IQR Response, Exhibit RES-STUMP-ON-3 (Primary Roads) at 42.

¹⁶⁹¹ See GOO Non-Stumpage IQR Response at Roads-4; *see also* Resolute Stumpage IQR Response, Exhibit RES-STUMP-ON-3 (Branch Roads) at 44.

¹⁶⁹² See GOO Case Brief Volume 7 Part 2 at 22-25 (citing *PET Resin from Oman* IDM at 8; *Wire Rod from Saudi Arabia*, 51 FR at 4210; and *Cold-Rolled Carbon Steel from Korea* IDM at 22).

¹⁶⁹³ See Comment 46; *see also* *Lumber V AR1 Final* IDM at Comment 43.

¹⁶⁹⁴ See GOO Case Brief Volume 7 Part 2 at 39-40.

industry restraints. Eligible applicants were required to be an Ontario-based large industrial GHG emitter but did not have to be incorporated or headquartered within Ontario. TargetGHG is therefore not *de jure* specific.

- Record evidence demonstrates that the industries receiving funding under the TargetGHG during the POR were varied and represented a broad cross-section of Ontario industry.
- Resolute was the only forestry company that received funding, and its funding accounted for less than ten percent of total funds disbursed. Because neither Resolute nor the forestry industry received a disproportionate share of TargetGHG funding that was generally available to a wide range of industries, TargetGHG funding is not *de facto* specific.

*Resolute's Comments*¹⁶⁹⁵

- TargetGHG is not specific to an enterprise or industry or group of enterprises or industries because the program is open to all Ontario based industrial emitters regardless of industry.

*Petitioner's Rebuttal Comments*¹⁶⁹⁶

- The arguments presented by the GOO and Resolute were previously considered and rejected by Commerce.¹⁶⁹⁷ Neither the GOO nor Resolute has presented any new arguments that warrant a change in Commerce's countervailable finding with regards to the TargetGHG.
- For all the reasons discussed in *Lumber V ARI Final*, Commerce should continue to find the TargetGHG to be *de jure* specific.

Commerce's Position: The GOO and Resolute raised the same arguments in the first administrative review.¹⁶⁹⁸ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that the TargetGHG is *de jure* specific under section 771(5A)(D)(i) of the Act because the program is expressly limited to Ontario-based large industrial emitters.

The foremost eligibility criterion for a TargetGHG applicant is "must be an Ontario-based industrial emitter."¹⁶⁹⁹ The GOO reported that the TargetGHG is limited to companies in Ontario that are large emitters.¹⁷⁰⁰ Further, the GOO explained that the design of the "TargetGHG {Industrial Demonstration Program} encourages *large industrial emitters* to adopt and implement leading-edge technologies to reduce their emissions."¹⁷⁰¹

When establishing the eligibility criteria for the TargetGHG, the GOO created a discrete class of beneficiaries by limiting assistance to reduce GHG to only large industrial emitters. Consequently, the TargetGHG is not open to all industries, companies, or sectors in Ontario. For example, TargetGHG is not offered to transportation and commercial and residential sectors. Therefore, because the program expressly benefits only Ontario-based large industrial emitters, the TargetGHG is specific under section 771(5A)(D)(i) of the Act. Because we continue to

¹⁶⁹⁵ See Resolute Case Brief at 106 and 108.

¹⁶⁹⁶ See Petitioner Rebuttal Brief at 243-244.

¹⁶⁹⁷ *Id.* at 240 (citing *Lumber V ARI Final* IDM at Comment 72).

¹⁶⁹⁸ See *Lumber V ARI Final* IDM at Comment 72.

¹⁶⁹⁹ See GOO Non-Stumpage IQR Response at Exhibit ON-TGHG-11.

¹⁷⁰⁰ *Id.* at ON-TGHG-14.

¹⁷⁰¹ *Id.* at ON-TGHG-1 {emphasis added}.

determine that the TargetGHG is *de jure* specific, we need not address the arguments regarding whether this program is *de facto* specific.

Comment 72: Whether the TargetGHG Is Tied to Non-Subject Merchandise

*Resolute's Comments*¹⁷⁰²

- The contract between OCE and Resolute indicates that the GOO intended the TargetGHG funding to be used for equipment at the pulp and paper facility at Thunder Bay.¹⁷⁰³
- Any benefit of the TargetGHG must be attributed to the production of pulp and paper, not to softwood lumber.

*Petitioner's Rebuttal Comments*¹⁷⁰⁴

- Contrary to Resolute's assertions, the TargetGHG application shows that the benefit bestowed to Resolute is not exclusively tied to non-subject merchandise.¹⁷⁰⁵
- Because Commerce does not tie subsidies on a facility-specific basis, Resolute's argument is meritless, and the benefit received under the program should be attributed to Resolute's total sales.

Commerce's Position: Contrary to Resolute's claim, there is no information on the record establishing that, at the time of approval or bestowal, the benefit conferred to Resolute under the TargetGHG was tied to the production of pulp or paper, or any other good.

The TargetGHG supports projects with large industrial emitters to adopt and implement leading-edge technologies to reduce their GHG emissions.¹⁷⁰⁶ Nowhere within the TargetGHG's program literature is there any reference that such GHG reduction projects are to be connected or tied to the production or sale of a particular product. Additionally, within the TargetGHG application, there is no request for information regarding production or sales data for products manufactured by the project applicant.¹⁷⁰⁷ Further, there is no evidence within Resolute's project approval letter from the OCE or the project agreement which indicates that, at the point of bestowal, the benefits of the TargetGHG were tied to the production or sale of non-subject merchandise at the Thunder Bay mill.¹⁷⁰⁸

Notably, the lack of any language or criteria in the program's guidelines, application, and approval correspondence tying the benefits of the TargetGHG to the production of a particular product at a participant's facility indicate that the program is an untied subsidy.

¹⁷⁰² See Resolute Case Brief at 60.

¹⁷⁰³ *Id.* (citing Resolute Non-Stumpage IQR Response at Exhibit NS-OCE-4).

¹⁷⁰⁴ See Petitioner Rebuttal Brief at 244-245.

¹⁷⁰⁵ *Id.* at 244 (citing Resolute Non-Stumpage IQR Response at Exhibit RES-NS-OCE-2 (p. 4)).

¹⁷⁰⁶ See GOO Non-Stumpage IQR Response at Exhibit ON-TGHG-6.

¹⁷⁰⁷ *Id.* at Exhibit ON-TGHG-8; see also Resolute Non-Stumpage IQR Response at Exhibit RES-NS-OCE-2.

¹⁷⁰⁸ See Resolute Non-Stumpage IQR Response at Exhibits RES-NS-OCE-3 and RES-NS-OCE-4.

Comment 73: Whether the IESO Retrofit Program Is Specific

*GOO's Comments*¹⁷⁰⁹

- Based on the Retrofit's broad eligibility criteria, which include all owners and operators of industrial, commercial, and public institutional facilities, multi-family residential buildings, agriculture operations, or persons with the rights and authority to have the Retrofit measures installed, the program is neither *de jure* nor *de facto* specific.
- Eligibility was not limited to any particular industry or group of industries, but rather to persons and entities with residential or commercial facilities in which energy efficiencies could be installed.
- No particular industry, including the forestry industry, is a predominant user of the Retrofit program. More than 3,400 companies participated in the program during the POR. Resolute was not close to being a large recipient of Retrofit funding.

*Petitioner's Rebuttal Comments*¹⁷¹⁰

- The GOO's argument that the IESO Retrofit is available to multiple industries is immaterial to Commerce's finding because only one criteria of section 771(5A)(D)(iii) of the Act needs to be met.
- The IESO Retrofit is *de facto* specific because the actual recipients of the subsidy are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Commerce's Position: Because the Retrofit is available to owners and operators of industrial, commercial, institutional, and multi-family residential buildings, we agree with the GOO that the IESO Retrofit program is not limited, by law, to certain enterprises or industries. However, the usage data for the IESO Retrofit indicate that the program is limited as a matter of fact.

Section 771(5A)(D)(iii) of the Act directs Commerce to determine whether a subsidy may be specific as a matter of fact by examining the enterprises and industries which received assistance under the program being examined. The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available and used throughout an economy.¹⁷¹¹ It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the countervailing duty law.¹⁷¹²

The GOO reported that 3,485 companies received payments under the Retrofit in 2019.¹⁷¹³ Given the nature of this program, we find that it is reasonable to compare the number of companies that received Retrofit payments to the total number of companies operating/established in the jurisdiction of the granting authority, *i.e.*, the province of Ontario, to determine whether the recipients of grants were limited in number. For 2019, the GOC reported that there were 430,234 enterprises established in Ontario.¹⁷¹⁴

¹⁷⁰⁹ See GOO Case Brief Volume 7 Part 2 at 41-42.

¹⁷¹⁰ See Petitioner Rebuttal Brief at 248-249.

¹⁷¹¹ See SAA at 930.

¹⁷¹² *Id.*

¹⁷¹³ See GOO Non-Stumpage SQR Response on IESO Retrofit at 16.

¹⁷¹⁴ See GOC IQR Response at Exhibit GOC-AR2-StatCan-1.

Our analysis of the data finds that a limited number of Ontario companies—only 0.81 percent of all companies in the province—received grants under the Retrofit in the POR.¹⁷¹⁵ The IESO Retrofit is not widely used by companies throughout the provincial economy. We thus determine that the number of recipients of assistance under the Retrofit is limited in number under section 771(5A)(D)(iii)(I) of the Act.

Comment 74: Whether the IESO IEI Is Specific

*Resolute's Comments*¹⁷¹⁶

- IEI is not *de jure* specific because “large industrial consumers” is not a limited category of enterprises or industries. “Industrial consumer” is a broad category that does not create a discrete class of beneficiaries satisfying the specificity requirements under the statute.¹⁷¹⁷
- IEI is open to companies undertaking an activity under NAICS sector codes of 21, 31, 32, or 33. These designations include all companies in mining, quarrying, oil and gas extraction, and manufacturing.
- IEI is also not *de facto* specific. A total of 18 participants, in a wide range of industries, including the mining, iron, paper, wood pellet, food service industries, received payments during the POR. The wood products industry in general, and Resolute in particular, received only a small fraction of the funding distributed. As such, IEI does not favor a particular industry and no company is a disproportionate beneficiary.

*Petitioner's Rebuttal Comments*¹⁷¹⁸

- The arguments presented by Resolute were previously considered and rejected by Commerce.¹⁷¹⁹ Resolute has not presented any new arguments that warrant a change to Commerce's countervailable finding with regards to the IESO IEI.
- For all the reasons discussed in the *Lumber V AR1 Final*, Commerce should continue to find the IESO IEI to be countervailable.

Commerce's Position: Resolute raised the same specificity arguments in the first administrative review.¹⁷²⁰ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that the IESO IEI is *de jure* specific because the program remains expressly limited to certain energy-consuming customers classified within specific NAICS codes, in accordance with section 771(5A)(D)(i) of the Act.¹⁷²¹

Based on the record, the IEI is *de jure* specific because recipients of assistance under the IEI are limited to customers who undertake activity under certain 2012 NAICS sector codes.¹⁷²² Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits

¹⁷¹⁵ See Ontario Specificity Memorandum for usage data for 2019 and prior years 2016 to 2018. The usage data for 2016, 2017, and 2018 also indicate a limited number of recipients of assistance under the Retrofit.

¹⁷¹⁶ See Resolute and Central Canada Case Brief at 114-116.

¹⁷¹⁷ *Id.* at 115 (citing *Changzhou Trina Solar Energy v. U.S.*, 195 F.Supp.3d 1349, affirmed at 264 F.Supp.3d 1334).

¹⁷¹⁸ See Petitioner Rebuttal Brief at 241-243.

¹⁷¹⁹ *Id.* at 242 (citing *Lumber V AR1 Final* IDM at Comment 74).

¹⁷²⁰ See *Lumber V AR1 Final* IDM at Comment 74.

¹⁷²¹ In the *Preliminary Results*, Commerce inadvertently stated that the program was expressly limited to large industrial consumers. See *Lumber V AR2 Prelim* PDM at 52.

¹⁷²² See GOO Non-Stumpage IQR Response at IEI-17.

access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. In the November 1, 2012, letter of direction issued by Ontario's Minister of Energy to the OPA (now IESO) establishing the IEI program, the GOO defined the eligible industries as those classified in mining, quarrying, and oil and gas extraction (sector 21) and manufacturing (sector 31, 32, and 33).¹⁷²³ In the April 24, 2014, letter of direction issued by the Minister of Energy to OPA, IEI eligibility was expanded to include NAICS codes 1114 (greenhouse/floriculture production), 49312 (refrigerated warehousing), and 518 (data processing).¹⁷²⁴ This evidence shows that the subsidies provided by the GOO under the IEI program are expressly limited to certain energy-consuming customers classified within specific NAICS codes. The GOO established, by law, a limited group of enterprises that may receive grants under the IESO IEI. Therefore, we continue to find that the IEI program is *de jure* specific under section 771(5A)(D)(i) of the Act.

Because we continue to find the IESO IEI to be *de jure* specific, we need not address whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

Comment 75: Whether the IESO Demand Response Is Countervailable

*GOO's Comments*¹⁷²⁵

- If Commerce continues to determine that the DR Auction is a countervailable subsidy, then it must analyze whether the services were provided for MTAR. Commerce should compare the Demand Response payments made to Resolute with the DR Auction price during the POR, which reflects the prevailing market conditions of the electricity market in Ontario.
- However, even if Commerce were to construe the DR Auction as involving the provision of a service by the IESO to participants, the DR Auction still would not provide a financial contribution because the DR Auction is general infrastructure contributing to the availability of electricity in Ontario.
- The Demand Response is not *de facto* specific as a substantial number of companies provided demand response services representing many industries, such as paper manufacturing, primary metal manufacturing, utilities, and wood products. Participants can be individual entities or aggregates of different contributors (known as, aggregators).
- Consistent with Commerce's practice with other demand response programs, it should find the IESO Demand Response to not be specific.¹⁷²⁶

*Resolute and Central Canada's Comments*¹⁷²⁷

- In Ontario, the electricity price is bid by consumers in competition against other consumers based on the IESO's DR Auction. The amount that IESO pays to Resolute for curtailing electricity is a competitive, market price that represents adequate remuneration.
- Should Commerce continue to find that energy curtailment is not a service, it must recognize that the payments are made in exchange for a thing of value similar to a purchase of goods.

¹⁷²³ *Id.* at Exhibit ON-IEI-1.

¹⁷²⁴ *Id.* at Exhibit ON-IEI-5.

¹⁷²⁵ See GOO Case Brief Volume 7 Part 2 at 29-35.

¹⁷²⁶ *Id.* at 30-31 (citing *CTL Steel Plate from Korea Final*, 64 FR at 73186).

¹⁷²⁷ See Resolute and Central Canada Case Brief at 70 and 106-107.

Commerce, therefore, should adjust its benefit analysis to determine whether adequate remuneration is being provided for the purchase and not treat the payments as grants.

- The IESO Demand Response is not specific to an enterprise or industry or group of enterprises or industries because no industries are excluded nor are there disproportionate participants. Eligible entities include large industrial and commercial consumers.

*Petitioner's Rebuttal Comments*¹⁷²⁸

- The arguments presented by the GOO and Resolute were previously considered and rejected by Commerce.¹⁷²⁹ Neither the GOO nor Resolute has presented any new arguments that warrant a change in Commerce's countervailable finding with regard to the IESO Demand Response.
- For all the reasons discussed in the *Lumber V ARI Final*, Commerce should continue to find the IESO Demand Response to be countervailable.

Commerce's Position: The GOO and Resolute raised the same arguments regarding the IESO's Demand Response in the first administrative review.¹⁷³⁰ We found the arguments unpersuasive then and continue to do so here.

For all the reasons discussed in Comment 4, Commerce continues to find that an electricity curtailment program does not equate to a government-owned utility purchasing a service from a company that reduces its electricity consumption on demand. Given the manner in which load curtailment programs, like the IESO's Demand Response, operate, Commerce finds that such programs are, in fact, the provision of a grant.¹⁷³¹ Further, Commerce has consistently determined that electricity is a good and not a service. *See* Comment 3.

Therefore, based on the administrative record, we determine that Resolute received countervailable benefits under the Demand Response program in the form of a grant. The GOO has not provided any arguments in this review to warrant a change in Commerce's position. As such, we are not persuaded by the GOO's arguments that the Demand Response auction does not provide a benefit to the participants. Consequently, we continue to find that the electricity credits (*i.e.*, grants) that the IESO provided to Resolute under the Demand Response constitute a countervailable subsidy.

We also find no relevancy to the GOO's assertion that the DR Auction, which procures demand response capacity from participants, is general infrastructure because it contributes to the management and maintenance of Ontario's electrical grid. General infrastructure is defined under 19 CFR 351.511(d) as infrastructure that is created for the broad societal welfare of a country, region, or municipality. The auction process is part of program under which electricity credits are provided to participants, such as Resolute, who reduce their electricity consumption as directed by the IESO during peak times. The electricity credits that Resolute received on its

¹⁷²⁸ *See* Petitioner Rebuttal Brief at 239-241.

¹⁷²⁹ *Id.* at 240 (citing *Lumber V ARI Final* IDM at Comment 73).

¹⁷³⁰ *See Lumber V ARI Final* IDM at Comment 73.

¹⁷³¹ *See, e.g., Lumber V ARI Final* IDM at Comment 8, 73, and 84; *Groundwood Paper from Canada Final* IDM at Comment 66; *Wire Rod from Italy Final* IDM at Comment 2; *Silicon Metal from Australia Final* IDM at Comment 2; and *CTL Steel Plate from Korea Final*, 64 FR at 73182; *see also* Comment 4 of this memorandum.

monthly invoices for curtailing its electricity usage benefitted only Resolute and not the public at large.

We thus continue to find that the Demand Response confers a benefit equal to the amount of electricity credits received, as provided under section 771(5)(E) of the Act, which states that a benefit shall normally be treated as conferred where there is a benefit to the recipient. Under the Demand Response, participants—like Resolute—receive electricity credits when they curtail their power usage on demand in response to an interruption notice issued by IESO. Because the GOO provides grants and not services to the participants of the Demand Response program, we find that the respondents’ arguments on the adequacy of remuneration and application of a tier-one benchmark to measure the benefit are not relevant.

Further, 19 CFR 351.503(a) states that Commerce will “measure the extent to which a financial contribution (or income or price support) confers a benefit” as provided for the specific type of benefit, as described under the regulations. Commerce does not consider “the effect of the government action” on the respondents’ performance, or whether the respondents altered their behavior.¹⁷³² Under this framework, any grant payments of the associated costs incurred (*i.e.*, power interruption to their operations) are, in fact, a benefit to the recipient. As such, we disagree that the Demand Response benefits IESO and not the participating companies. Any advantages to IESO in administering the program are not relevant to the benefit that Resolute received under the program.

In analyzing the benefit of electricity credits, Commerce considers the benefit to be the amount of the grant received by the company, pursuant to 19 CFR 351.504(a). Under 19 CFR 351.504, Commerce does not contemplate any advantages the government might receive by administering the program.¹⁷³³ Consequently, whether IESO was able to maintain the integrity of the grid during peak demand because of the program is immaterial to Commerce’s analysis. The focus of Commerce’s analysis is the direct transfer of funds that IESO made to Resolute via electricity credits, which we find conferred a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

Similarly, we disagree with the argument that the program is used by a diverse set of industries and therefore, it is not *de facto* specific. The record shows that the number of companies that received electricity credits is limited. The GOO reported that only 13 participants received payments under the program in 2019.¹⁷³⁴ The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available and used throughout an economy.¹⁷³⁵ It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the countervailing duty law.¹⁷³⁶

¹⁷³² See 19 CFR 351.503(c).

¹⁷³³ See *CVD Preamble*, 63 FR at 65361 (“{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the ‘effect’ of a subsidy.”).

¹⁷³⁴ See GOO Non-Stumpage IQR Response at DR-20.

¹⁷³⁵ See SAA at 930.

¹⁷³⁶ *Id.*

We also continue to disagree with the respondent parties that the specificity analysis should consider “contributors” or “aggregators” rather than the number of participants. Under the Act, a subsidy is considered *de facto* specific if “{t}he actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.”¹⁷³⁷ Thus, the correct manner to conduct the specificity analysis of the Demand Response is to examine the actual number of recipients of the subsidy, which the GOO reported to be 13 during the POR.¹⁷³⁸ Because the actual recipients of the subsidy under the Demand Response are limited in number, we determine that the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. Lastly, we disagree with the GOO that Commerce should find the IESO Demand Response to be non-specific consistent with the *CTL Steel Plate from Korea Final*. A specificity analysis is case-specific. Commerce cannot apply a specificity finding in one case to another case which has its own separate and distinct facts. As discussed above, the record of this administrative review shows that the IESO Demand Response is specific as a matter of fact.

Québec

Comment 76: Whether the PCIP Is Countervailable

*GOQ's Comments*¹⁷³⁹

- Commerce’s finding that PCIP reimbursements are not a service is not supported by the evidence or the law. Assisting the GOQ to realize sustainable management of Québec’s public forests is a service provided by harvesters. Government purchases of services are not countervailable.
- No benefit is conferred to harvesters through the PCIP because the reimbursements are for costs incurred as a result of specific government action that benefits the GOQ. Even after reimbursements (which are not more than 90 percent of the additional costs associated with partial cuts) are received, harvesters still incur greater costs than those not subject to the mandates because they are charged the same stumpage rates as those harvesters that can use clear-cutting operations.
- Unlike a grant, which is “given,” PCIP reimbursements are for services rendered (*i.e.*, partial cutting of select stands). There is no evidence to support that such reimbursements are provided as gifts.¹⁷⁴⁰
- Commerce’s attempt to redefine the term “grant” is contrary to law because it departs from the Supreme Court’s instruction to construe a statutory term in accordance with its ordinary meaning.¹⁷⁴¹

*Resolute's Comments*¹⁷⁴²

¹⁷³⁷ See section 771(5A)(D)(iii)(I) of the Act.

¹⁷³⁸ See GOO Non-Stumpage IQR Response at DR-20.

¹⁷³⁹ See GOQ Case Brief Volume 8.B at 90-97.

¹⁷⁴⁰ *Id.* at 95 (citing *DS 533 Panel Report* at paragraph 7.627).

¹⁷⁴¹ *Id.* at 97 (citing *Smith v. U.S.*, 508 U.S. 223, 228 (1993)). According to the Oxford Dictionary, the ordinary meaning of “grant” is a sum of money given by a government or other organization for a particular purpose. See GOQ Case Brief Volume 8.B at 95.

¹⁷⁴² See Resolute Case Brief at 78-83.

- The exchange of partial cutting for partial reimbursement is a reciprocal obligation arising from the Québec Treasury Board Note.¹⁷⁴³ The Note recognizes that not every block to be cut is encumbered by a partial cut obligation and companies acquiring such blocks should not be disadvantaged because they are providing a valuable service. The cutting restrictions impose costs on Resolute and benefit the GOQ.
- The restricted harvesting activities are not goods, but services, and government purchases of services are not countervailable under U.S. law or the WTO Agreements.¹⁷⁴⁴ Partial reimbursement for additional harvesting costs imposed for public policy is not countervailable. The program results in a net loss of value to Resolute and, therefore, confers no benefit.
- Commerce characterizes PCIP reimbursements as grants by arguing that the restricted harvesting obligations are “legally required costs incurred by harvesters within the ordinary course of business.”¹⁷⁴⁵ If that were so, then the costs of these activities should be treated in the stumpage calculations as in-kind contributions, *i.e.*, part of the remuneration being provided in exchange for stumpage as was done in *Lumber IV*.

*Petitioner’s Rebuttal Comments*¹⁷⁴⁶

- The arguments presented by the GOQ and Resolute were previously considered and rejected by Commerce.¹⁷⁴⁷ Neither the GOQ nor Resolute has presented any new arguments that warrant a change in Commerce’s countervailable finding for the PCIP.
- Commerce should reject the argument to rescind its determination that the PCIP is a grant based on a WTO finding.¹⁷⁴⁸ WTO reports have no value in this proceeding.
- For all the reasons discussed in the *Lumber V ARI Final*, Commerce should continue to find the PCIP to be countervailable.

Commerce’s Position: The GOQ and Resolute raised the same arguments in the underlying investigation and first administrative review.¹⁷⁴⁹ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that the PCIP is a countervailable grant program that confers a benefit on Resolute.

Under the PCIP, there is a government action that confers a benefit, *i.e.*, reimbursements, which offset a portion of the legally required costs incurred by harvesters within the ordinary course of business.¹⁷⁵⁰ As the landowner and steward of the public forest, the GOQ sets silviculture prescriptions for every harvest block for harvesters to perform in order to maintain the long-term health and sustainability of the forest. Specifically, under the SFDA, the GOQ requires TSG holders to perform forest development activities, which include partial cuts, whereby a harvester is limited to removing no more than 50 percent of the volume of a harvest stand. Resolute secures a portion of its Crown-origin timber from TSGs; therefore, to ensure a secure supply of

¹⁷⁴³ *Id.* at 79 (citing GOQ IQR Response, Volume 2 (Non-Stumpage—MFFP Programs) at Exhibit QC-PCIP-A, (p. 3)).

¹⁷⁴⁴ *Id.* at 79 and 82 (citing sections 771(5)(D)(iii) and (iv) and 771(5)(E)(iv) of the Act, and *DS 533 Panel Report* at para. 7.628).

¹⁷⁴⁵ *Id.* at 83 (citing *Lumber V ARI Final* IDM at Comment 75).

¹⁷⁴⁶ See Petitioner Rebuttal Brief at 291-295.

¹⁷⁴⁷ *Id.* at 291 (citing *Lumber V ARI Final* IDM at Comment 75).

¹⁷⁴⁸ *Id.* at 292 (citing GOQ Case Brief Volume 8.B at 95-96).

¹⁷⁴⁹ See *Lumber V Final* IDM at Comment 63; and *Lumber V ARI Final* IDM at Comment 75.

¹⁷⁵⁰ See *CVD Preamble*, 63 FR at 65361.

timber, Resolute must carry out the activities required of TSG holders under the SFDA, including partial cuts on certain harvest stands.¹⁷⁵¹

During the POR, Resolute received payments in the form of reimbursements under the PCIP, which partially offset costs incurred for a legally required activity under its TSG; therefore, we determine that this program provides a benefit to Resolute under section 771(5)(E) of the Act, and that the benefit exists in the amount of reimbursements received by Resolute, pursuant to 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.¹⁷⁵² The fact that the reimbursements were only partial does not negate the fact that a benefit was received by Resolute.

We disagree that any advantages to Québec in undertaking the PCIP are relevant to the benefit that Resolute received from the GOQ. When analyzing the benefit received by a grant, pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Section 351.504(a) of the regulations does not contemplate any advantages the government might receive by administering the program, nor do the regulations require Commerce to consider advantages other parties, such as the general public, may or may have not received. Because the GOQ made a “direct transfer of funds” via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

Contrary to the GOQ’s assertion, Commerce is not redefining the meaning of “grant.” As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the “benefit” as “the amount of the grant.” As noted above, in the absence of the PCIP reimbursements, Resolute would still have been legally obligated to comply with the rules of the SFDA in order to harvest in the affected forest areas. Under this framework, any reimbursement of the associated costs incurred are, in fact, a benefit to Resolute in the form of a grant.

Further, we disagree that Resolute’s harvesting activities under the PCIP constitute a service, and, thus, the associated payments are not countervailable because the exchange of partial cutting for partial reimbursement is a reciprocal obligation. As a TSG holder, Resolute was legally required to perform partial cuts on certain harvest stands. Under the PCIP, the GOQ provided a grant to Resolute for harvesting on lands where such partial cutting of harvest stands was required. The partial cutting was performed in the furtherance of Resolute’s harvesting activities within its normal course of business, and not to render a service to the GOQ or general public.

Additionally, in support of their arguments, both the GOQ and Resolute cite the *DS 533 Panel Report*. However, WTO panel conclusions are without effect under U.S. law “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the

¹⁷⁵¹ See GOQ IQR Response, Volume 2 (Non-Stumpage—MFFP Programs) at Exhibit QC-PCIP-A (and all referenced exhibits therein); see also Resolute Non-Stumpage IQR Response at Exhibit RES-NS-PCIP-APP (and all referenced exhibits therein).

¹⁷⁵² See *CVD Preamble*, 63 FR at 65361.

URAA.¹⁷⁵³ Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel reports limit automatically Commerce’s discretion in applying the statute in an AD or CVD proceeding.¹⁷⁵⁴ Put simply, WTO reports “do not have any power to change U.S. law or to order such a change.”¹⁷⁵⁵

Lastly, Resolute’s argument that the costs of the partial harvesting should be treated in the stumpage calculations as in-kind contributions is baseless. As we have explained in the prior and current review, in-kind and other related expenses are part of Resolute’s TSG and are not part of the “pure” stumpage price as calculated from the *GNS Private Stumpage 2017-2018 Survey*.¹⁷⁵⁶ Commerce cannot adjust for such costs without distorting the benchmark. Resolute’s reference to *Lumber IV* is unavailing, as the record evidence in this review stands on its own.

Comment 77: Whether the Paix des Braves Is Countervailable

*GOQ’s Comments*¹⁷⁵⁷

- The Paix des Braves program, which is the result of the GOQ’s obligations under the “Agreement Respecting a New Relationship Between the Cree Nation and the GOQ,” offsets a portion of the costs associated with harvesting restrictions on Cree land. The program provides a service and benefit to Québec by allowing the GOQ to meet its obligations under the agreement.
- Government purchases of services are not countervailable.
- No benefit is conferred to harvesters, but to the GOQ, because the reimbursements are for costs incurred as a result of specific government action that imposes an additional financial burden on certain harvesters while not reducing the stumpage rate they are billed.
- Commerce provides no support for its conclusion that reimbursements are grants or justification for departing from the ordinary meaning of “grant.”¹⁷⁵⁸ Unlike a grant, which is “given,” the Paix des Braves reimbursements are made for services rendered. There is no evidence to support that such reimbursements are provided as gifts.

*Resolute’s Comments*¹⁷⁵⁹

- The Paix des Braves provides for reciprocal obligations of MFFP and Resolute. The mosaic cutting requirements on the First Nations lands result in increased harvesting costs. Resolute receives no benefits from the mosaic cutting, nor any benefits from the partial reimbursement of the additional costs it incurs in order to comply with the obligations imposed.
- The restricted harvesting activities undertaken by Resolute are not goods, but services, and government purchases of services are not countervailable under U.S. law or the WTO

¹⁷⁵³ See *Corus Staal BV v. U.S.*, 395 F. 3d 1347-49, accord *Corus Staal BV v. U.S.*, 502 F. 3d 1375; and *NSK Ltd. v. U.S.*, 510 F. 3d 1379-80.

¹⁷⁵⁴ See 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

¹⁷⁵⁵ See SAA at 659.

¹⁷⁵⁶ See Comment 46; see also *Lumber VARI Final IDM* at Comment 43.

¹⁷⁵⁷ See GOQ Case Brief Volume 8.B at 105-111.

¹⁷⁵⁸ *Id.* at 99 (citing Oxford Dictionary which states a grant is a sum of money given by a government or other organization for a particular purpose, and *DS 533 Panel Report* at para. 7.627).

¹⁷⁵⁹ See Resolute Case Brief at 78-83.

Agreements.¹⁷⁶⁰ Partial reimbursement for additional harvesting costs imposed for public policy is not countervailable. Further, the program results in a net loss of value to Resolute and, therefore, confers no benefit.

- Additionally, Commerce characterizes Paix des Braves reimbursements as grants by arguing that the restricted harvesting obligations are “legally required costs incurred by harvesters within the ordinary course of business.”¹⁷⁶¹ If that were so—that Québec required Resolute to give up volumes of wood and incur costs in addition to those normally agreed as part of the price for stumpage under the TSGs—then the costs of these activities should be treated in the stumpage calculations as in-kind contributions, part of the remuneration being provided in exchange for stumpage as was done in *Lumber IV*.

*Petitioner’s Rebuttal Comments*¹⁷⁶²

- The arguments presented by the GOQ and Resolute were previously considered and rejected by Commerce.¹⁷⁶³ Neither the GOQ nor Resolute has presented any new arguments that warrant a change in Commerce’s countervailable finding for the Paix des Braves.
- The fact that the Resolute’s receipt of grants under the Paix des Braves is tied to the GOQ’s fulfillment of its agreement with the Cree Nation, and that harvesters on Cree land are disadvantaged compared to harvesters operating elsewhere, do not negate the benefit conferred to Resolute. The GOQ’s payments to Resolute constitute an input cost reduction, such that Resolute actually pays less to harvest on Cree lands than it would absent this program.
- For all the reasons discussed in the *Lumber V ARI Final*, Commerce should continue to find the Paix des Braves program to be countervailable.

Commerce’s Position: The GOQ and Resolute raised the same arguments in the first administrative review.¹⁷⁶⁴ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that the Paix des Braves is a countervailable grant program that confers a benefit on Resolute.

Like the PCIP, under the Paix des Braves, there is a government action that confers a benefit, *i.e.*, reimbursements, which offset a portion of the legally required costs incurred by harvesters within the ordinary course of business.¹⁷⁶⁵ When harvesting on Cree Nation land, forestry companies are legally required to cut smaller blocks in a widely dispersed mosaic pattern and build additional roads. Pursuant to the “Agreement Respecting a New Relationship Between the Cree Nation and the GOQ,” the GOQ compensates forestry companies a portion of the increased costs of harvesting timber in forests located within the Cree territories.¹⁷⁶⁶

¹⁷⁶⁰ *Id.* at 79 and 82 (citing sections 771(5)(D)(iii) and (iv) and 771(5)(E)(iv) of the Act, and *DS 533 Panel Report* at para. 7.628).

¹⁷⁶¹ *Id.* at 83 (citing *Lumber V ARI Final IDM* at Comment 76).

¹⁷⁶² See Petitioner Rebuttal Brief at 291-295.

¹⁷⁶³ *Id.* at 294 (citing *Lumber V ARI Final IDM* at Comment 76).

¹⁷⁶⁴ See *Lumber V ARI Final IDM* at Comment 76.

¹⁷⁶⁵ See *CVD Preamble*, 63 FR at 65361.

¹⁷⁶⁶ See GOQ IQR Response, Volume 2 (Non-Stumpage—MFFP Programs) at Exhibit QC-CA-A (and all referenced exhibits therein); see also Resolute Non-Stumpage IQR Response at Exhibit RES-NS-PDB-APP (and all referenced exhibits therein).

During the POR, Resolute received payments in the form of reimbursements under the Paix des Braves, which partially offset its harvesting costs. We determine that this program provides a benefit to Resolute under section 771(5)(E) of the Act, and that the benefit exists in the amount of reimbursements received by Resolute, pursuant to 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.¹⁷⁶⁷ The fact that the reimbursements were only partial does not negate the fact that a benefit was received by Resolute.

We disagree that any cost advantages to harvesters cutting in other forest areas of the province are relevant to this issue. The fact that harvesters of Crown land in other areas are not participating in the Paix des Braves says nothing about the benefit that Resolute itself actually received under the program. Further, we disagree that any advantages to Québec in undertaking the Paix des Braves are relevant to the benefit that Resolute received from the GOQ. When analyzing the benefit received by a grant, pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Section 351.504(a) of the regulations does not contemplate any advantages the government might receive by administering the program, nor do the regulations require Commerce to consider advantages other parties, such as the general public, may or may have not received. Because the GOQ made a “direct transfer of funds” via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

Contrary to the GOQ’s assertion, Commerce is not redefining the meaning of “grant.” As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the “benefit” as “the amount of the grant.” We also disagree that Resolute’s harvesting activities under the Paix des Braves constitute a service, and, thus, the associated payments are not countervailable because the exchange of partial cutting for partial reimbursement is a reciprocal obligation. Under this program, the GOQ provided a grant in furtherance of Resolute’s harvesting activities within its normal course of business on Cree land, and not to render a service to the GOQ or general public.

Additionally, in support of their arguments both the GOQ and Resolute cite the *DS 533 Panel Report*. However, WTO panel conclusions are without effect under U.S. law “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URAA.¹⁷⁶⁸ Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel reports limit automatically Commerce’s discretion in applying the statute in an AD or CVD proceeding.¹⁷⁶⁹ Put simply, WTO reports “do not have any power to change U.S. law or to order such a change.”¹⁷⁷⁰

¹⁷⁶⁷ See *CVD Preamble*, 63 FR at 65361.

¹⁷⁶⁸ See *Corus Staal BV v. U.S.*, 395 F. 3d 1347-49, accord *Corus Staal BV v. U.S.*, 502 F. 3d 1375; and *NSK Ltd. v. U.S.*, 510 F. 3d 1379-80.

¹⁷⁶⁹ See 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

¹⁷⁷⁰ See SAA at 659.

Lastly, Resolute's argument that the costs of the mosaic harvesting and road building under the Paix des Braves should be treated in the stumpage calculations as in-kind contributions is baseless. As we have explained in the prior and current review, in-kind and other related expenses are not part of the "pure" stumpage price as calculated from the *GNS Private Stumpage 2017-2018 Survey*.¹⁷⁷¹ Commerce cannot adjust for such costs without distorting the benchmark. Resolute's reference to *Lumber IV* is unavailing, as the record evidence in this review stands on its own.

Comment 78: Whether the Côte-Nord Wood Residue Program Is Countervailable

*GOQ's Comments*¹⁷⁷²

- Commerce offers no justification for departing from the ordinary meaning of "grant" (*i.e.*, a sum of money given by a government or other organization for a particular purpose).¹⁷⁷³
- Payments under the program are not grants; they are not a "gift like" transfer, and therefore, do not confer a benefit. Rather, the payments are partial compensation for the R&D costs associated with investing in projects to improve efficiency and reduction of by-products in the Côte-Nord region by harvesters at their own costs. Commerce should find that payments provided to compensate harvesters for work performed under the Côte-Nord Wood Residue Program do not confer a benefit.

*Resolute's Comments*¹⁷⁷⁴

- Contrary to Commerce's finding, the Côte-Nord program does not confer countervailable grants but encourages forestry companies to contribute to the safety of the public forest.
- Resolute may be partially reimbursed for performing a public service, which provides a valuable consideration in exchange.

The petitioner did not comment.

Commerce's Position: We preliminarily determined that the assistance received by Resolute under the Côte-Nord Wood Residue Program constitutes a financial contribution in the form of a direct transfer of funds from the GOQ, pursuant to section 771(5)(D)(i) of the Act, and that the program bestows a benefit in the amount of the grants, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).¹⁷⁷⁵ We find the respondents' arguments that the program does not provide a benefit in the form of a grant to be unpersuasive.

Under the Côte-Nord Wood Residue Program, there is a government action that confers a benefit, *i.e.*, reimbursements, which offset the costs of projects to diversify market opportunities for the wood residue of the Côte-Nord region and to reduce the production of by-products from the Côte-Nord sawmills. Thus, when Resolute participated in the program during the POR, it did not receive funding to perform a public service, but to offset the costs of two projects undertaken at sawmills in the Côte-Nord region. Based on the evidence, we determine that this program

¹⁷⁷¹ See Comment 46; see also *Lumber V AR1 Final* IDM at Comment 43.

¹⁷⁷² See GOQ Case Brief Volume 8.B at 97-100.

¹⁷⁷³ *Id.* at 99 (citing Oxford Dictionary).

¹⁷⁷⁴ See Resolute Case Brief at 84-85.

¹⁷⁷⁵ See *Lumber V AR2 Prelim* PDM at 58-59.

provides a benefit to Resolute under section 771(5)(E) of the Act, and that the benefit exists in the amount of reimbursements received by Resolute, pursuant to 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.¹⁷⁷⁶ The fact that the reimbursements may only be partial does not negate the fact that a benefit was received by Resolute.

Further, when analyzing the benefit received by a grant, pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Section 351.504(a) of the regulations does not contemplate any advantages the government might receive by administering the program, nor do the regulations require Commerce to consider advantages other parties, such as the general public, may or may have not received. Because the GOQ made a “direct transfer of funds” via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

Contrary to the GOQ’s assertion, Commerce is not redefining the meaning of “grant.” As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the “benefit” as “the amount of the grant.” For all the aforementioned reasons, we continue to determine that the Côte-Nord Wood Residue Program is a grant program that confers a countervailable benefit.

Comment 79: Whether Québec’s Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances Is Countervailable

*GOQ Comments*¹⁷⁷⁷

- The Investment Program does not confer a benefit on harvesters but instead compensates for additional costs associated with performing salvage operations required to preserve the forest.
- Commerce provides no explanation to support its finding that a reimbursement under this program confers a benefit in the form of a grant. Commerce offers no justification for departing from the ordinary meaning of “grant” (*i.e.*, a sum of money given by a government or other organization for a particular purpose).¹⁷⁷⁸
- Unlike a grant, which is “given,” reimbursements under the Investment Program are made for services rendered. There is no evidence to support that such reimbursements are provided as gifts.
- The Investment Program incentivizes the management of natural disturbances to preserve the forest which is a service to the government and the public. Commerce’s finding that reimbursements for activities under the program were not a service is not supported by the record or U.S. law.

¹⁷⁷⁶ See *CVD Preamble*, 63 FR at 65361.

¹⁷⁷⁷ See GOQ Case Brief Volume 8.B at 100-105.

¹⁷⁷⁸ *Id.* at 103 (citing Oxford Dictionary).

*Resolute's Comments*¹⁷⁷⁹

- Commerce found that “payments under this program are provided to offset harvesting costs that Resolute is legally required to incur in its normal course of business and, thus, the payments confer a benefit under section 771(5)(E) of the Act,”¹⁷⁸⁰ but the legal authority requiring salvage harvests, the SFDA, is the same legal authority that authorized the program requiring the government to pay for some of the salvage harvesting costs. Partial reimbursement is a formal and legal bargain, the consideration for performing a service.
- The compensation does not confer grants on Resolute. Compensation for costly salvage operations is not a gift. Thus, the program confers no benefit on Resolute; it compensates Resolute, partially, for the increased costs it incurs in exchange for the service of saving the forest from ecological catastrophe.
- Resolute's salvage activities under the program are part of a mutual exchange of valuable consideration that benefits the province.

*Petitioner's Rebuttal Comments*¹⁷⁸¹

- Commerce should not overlook the benefit directly conferred to harvesters. Funding under this program directly offsets a portion of harvesters' operating expenses that are incurred as a result of greater dispersion of harvesting activities, additional road costs, higher difficulty of operations, and additional costs associated with salvage operations.
- This program's funding provides Resolute with an input cost reduction such that the company pays less to continue its harvesting operations in affected areas than it would otherwise.
- With regard to arguments that the reimbursements are made for services rendered, the GOQ explained that companies must submit a request in writing to the MFFP to obtain financial assistance.¹⁷⁸² The GOQ, thus, does not pay Resolute to perform specific services. Rather, Resolute applies for financial assistance, and the GOQ provides Resolute with a grant to compensate for the activities it must perform.
- Because the GOQ and Resolute have not provided any new arguments to warrant a change in the countervailable finding for the Investment Program, Commerce should continue to find the program to be countervailable, consistent with the *Lumber VARI Final*.¹⁷⁸³

Commerce's Position: The GOQ and Resolute raised the same arguments in the first administrative review.¹⁷⁸⁴ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that Québec's Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances is a countervailable grant program. Like the PCIP, payments under this program are provided to offset harvesting costs that Resolute is legally required to incur in its normal course of business and, thus, the payments confer a benefit under section 771(5)(E) of the Act.

As the landowner and steward of the public forest, the GOQ requires harvesters who hold TSGs to perform various reforestation and land stewardship activities in order to maintain the long-

¹⁷⁷⁹ See Resolute Case Brief at 91-94.

¹⁷⁸⁰ *Id.* at 93 (citing *Lumber VARI Final IDM* at Comment 78).

¹⁷⁸¹ See Petitioner Rebuttal Brief at 254-257.

¹⁷⁸² *Id.* at 256 (citing GOQ IQR Response, Volume 2 (Non-Stumpage—MFFP Programs), Exhibit QC-AD-A at 6).

¹⁷⁸³ *Id.* at 256-257 (citing *Lumber VARI Final IDM* at Comment 78).

¹⁷⁸⁴ See *Lumber VARI Final IDM* at Comment 78.

term health and sustainability of forest areas. Under the SFDA, the GOQ requires TSG holders to perform accelerated or selective harvesting in the public forest when a natural disturbance occurs.¹⁷⁸⁵

Section 771(5)(D)(i) of the Act defines the term “financial contribution” as “the direct transfer of funds, such as grants...” and 19 CFR 351.504(a) states that, in the case of a grant, “a benefit exists in the amount of the grant.” Because the GOQ made a “direct transfer of funds” via a grant to Resolute, we determine that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.¹⁷⁸⁶ The fact that Resolute received partial reimbursements for its harvesting activities does not negate the fact that a benefit was received.

We disagree that Resolute’s activities under this program constitute a service, and, thus, the associated payments are not countervailable. The manner in which the program operates confirms that payments are not for services rendered to the GOQ or general public, but for the furtherance of Resolute’s harvesting activities. Funds are disbursed under this program after companies “submit a request in writing to the Ministry to obtain financial assistance,” which takes the form of “grants or credits.”¹⁷⁸⁷ The funding offsets a portion of a harvester’s operating expenses that are incurred as a result of the greater dispersion of harvesting operations, additional road costs, additional accommodation costs, or higher difficulty of operation.¹⁷⁸⁸ The record evidence makes clear that the GOQ provided grants to Resolute to make the company’s salvage harvesting and processing of timber from forest areas impacted by fire, blowdown, and spruce budworm financially profitable.

Contrary to the GOQ’s assertion, Commerce is not redefining the meaning of “grant.” As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the “benefit” as “the amount of the grant.”

For the foregoing reasons, we continue to determine that the Investment Program provides grants that confer countervailable benefits.

Comment 80: Whether Québec’s MCRP Is Countervailable

*GOQ’s Comments*¹⁷⁸⁹

- Payments made, pursuant to contracts under the MCRP, are payments for the execution of services rendered to the MFFP. Because the program is a partial reimbursement, and, those payments are made for services rendered, payments under the program do not confer a benefit.

¹⁷⁸⁵ See GOQ IQR Response, Volume 2 (Non-Stumpage—MFFP Programs) at Exhibit QC-PCIP-4 (Article 60 of the SFDA).

¹⁷⁸⁶ See *CVD Preamble*, 63 FR at 65361.

¹⁷⁸⁷ See GOQ IQR Response, Volume 2 (Non-Stumpage—MFFP Programs) at Exhibit QC-AD-A at 6-7.

¹⁷⁸⁸ *Id.* at Exhibit QC-AD-A at 1.

¹⁷⁸⁹ See GOQ Case Brief Volume 8.B at 112-117.

- Commerce has provided no support for its conclusion that reimbursements are grants under 19 CFR 351.504(a). Further, unlike a grant, which is “given,” MCRP reimbursements are made for services rendered and are not “gifts.”
- Commerce also erred in its finding that Resolute’s activities under the MCRP do not constitute a non-countervailable service of maintaining and building Québec’s multi-use road network.

*Resolute’s Comments*¹⁷⁹⁰

- A grant is a gift-like transfer. Payments for road building and maintenance, under the MCRP, are not gifts nor anything like gifts. The payments bought something of considerable value. Commerce must evaluate the nature of the transactions to determine whether there is a financial contribution and a benefit conferred.
- Purchases of services are not financial contributions, and no benefit may be conferred by such transactions.¹⁷⁹¹
- Commerce’s view that these activities are not services because they are performed in furtherance of harvesting activities is factually incorrect. If it were so, forestry companies could build roads without the obligations of planning and provincial approvals. However, Resolute must plan and coordinate road building with the GOQ and make the roads publicly available.
- That the forestry company building the road also benefits from its construction and maintenance does not change the nature of the transaction with the government—a purchase of valuable services.

*Petitioner’s Rebuttal Comments*¹⁷⁹²

- With the exception of one argument, the comments presented by the GOQ and Resolute were previously considered and rejected by Commerce.¹⁷⁹³
- Here, the GOQ argues that Commerce erred in its finding, claiming that Commerce provided no basis for determining that the MCRP constitutes a grant. However, Commerce explains that its determination is based on the fact that the MCRP is designed to “{r}educe the costs that the forestry sector is legally required to incur ... in its normal course of business of harvesting in a public forest.”¹⁷⁹⁴
- For all the reasons discussed in *Lumber V ARI Final*, Commerce should continue to find the MCRP to be countervailable.

Commerce’s Position: The GOQ and Resolute raised similar arguments in the first administrative review.¹⁷⁹⁵ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that the MCRP is a countervailable grant program that confers a benefit on Resolute.

Under the MCRP, the MFFP provides reimbursements of up to 90 percent of the costs of construction, improvement, and repairs of multi-use public access roads in the public forest to

¹⁷⁹⁰ See Resolute Case Brief at 71-74.

¹⁷⁹¹ *Id.* (citing section 771(5)(D) of the Act and *CVD Preamble*, 63 FR at 65379).

¹⁷⁹² See Petitioner Rebuttal Brief at 289-291.

¹⁷⁹³ *Id.* at 289 (citing *Lumber V ARI Final* IDM at Comment 77).

¹⁷⁹⁴ *Id.* (citing *Lumber V ARI Final* IDM at Comment 77).

¹⁷⁹⁵ See *Lumber V ARI Final* IDM at Comment 77.

TSG-holders, buyers of timber on the open market, holders of a forestry permit stipulated in section 73 of the SFDA, Rexforêt, and holders of an over-the-counter contract for timber.¹⁷⁹⁶ Because the respondents did not provide any new information regarding the purpose of the MCRP, we continue to find that the program functions in a manner that is similar to Québec's Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas program. Like that program, the MCRP is designed to reduce costs that the forestry sector is legally required to incur under its TSGs, *i.e.*, road construction/maintenance, in its normal course of business of harvesting in the public forest.

We disagree with the GOQ's assertion that Commerce provided no support for its conclusion that reimbursements are grants under 19 CFR 351.504(a). As we explained in the *Lumber V AR2 Prelim*, which is consistent with the *Lumber V ARI Final*, under the MCRP, the GOQ provides payments to Resolute for costs it incurs for the construction and repair of roads in public forest areas to perform its harvesting activities.¹⁷⁹⁷ On the basis of that evidence, we find that the MCRP provides a financial contribution from the GOQ to Resolute in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and bestows a benefit in the amount of the reimbursement under section 771(5)(E) of the Act and 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.¹⁷⁹⁸ Here, Resolute received a direct payment from the GOQ. The fact that the reimbursements were only partial does not negate the fact that Resolute received a benefit under the MCRP.

Further, we disagree that Resolute's activities under the MCRP constitute a service to Québec, and, thus, the associated payments are not countervailable. In its "Guide to the Multi-resource Road Cost Reimbursement Program," the MFFP acknowledges that "{a} large proportion of these roads are built by the forest industry to carry out timber harvesting activities."¹⁷⁹⁹ As such, the activities performed by Resolute—building and repairing roads to access harvesting areas on Crown land—were performed in the furtherance of its harvesting activities, not to render a service to the GOQ or the general public. Because Resolute's roadwork was done to further its harvesting operations, we do not find that the roads were built for the societal welfare of the province.

For the foregoing reasons, we continue to determine that the MCRP is a grant program that provides a countervailable benefit.

Comment 81: Whether Road Clearing Contracts with Hydro-Québec Are Countervailable

*GOQ's Comments*¹⁸⁰⁰

- The notion of "grant" is intrinsically linked with the notion of "gift"—a thing willingly given to someone with no payment or counterpart in return.¹⁸⁰¹

¹⁷⁹⁶ See GOQ IQR Response, Volume 2 (Non-Stumpage—MFFP Programs) at Exhibit QC-MCRP-A.

¹⁷⁹⁷ See *Lumber V AR2 Prelim* PDM at 62; see also *Lumber V ARI Final* IDM at Comment 77.

¹⁷⁹⁸ See *CVD Preamble*, 63 FR at 65361.

¹⁷⁹⁹ See GOQ IQR Response, Volume 2 (Non-Stumpage—MFFP Programs) at Exhibit QC-MCRP-6 (p. 1) and Exhibit QC-MCRP-7 (p. 1).

¹⁸⁰⁰ See GOQ Case Brief Volume 8.B at 85-90.

¹⁸⁰¹ *Id.* at 87 (citing Oxford Dictionary).

- The contractual nature of the road clearing payments is a reimbursement of costs. Hydro-Québec made payments to Resolute in consideration of the performance of road clearing services by Resolute.
- The road clearing reimbursements are not grants, but rather, non-countervailable purchases of services by the GOQ.

*Resolute's Comments*¹⁸⁰²

- The record does not support Commerce's finding that the cost sharing agreement with Hydro-Québec relieved Resolute of financial burdens it otherwise would have incurred.
- The evidence shows that Resolute did not need to make the additional clearing of the roads in order to access standing timber.¹⁸⁰³ Pursuant to the contracts, Resolute may clear roads entirely for Hydro-Québec's benefit.
- Commerce is not allowed to countervail government purchases of services.¹⁸⁰⁴

*Petitioner's Rebuttal Comments*¹⁸⁰⁵

- The record supports Commerce's countervailable finding. The GOQ explained that "Hydro-Québec and Resolute simply agree to share costs for clearing roads where they have a common interest," and that "Resolute conducts the road clearing activities, and Hydro-Québec reimburses a portion of the cost where it also has a need for access to those roads."¹⁸⁰⁶
- "Common interest" means that each party has an interest. Therefore, Resolute conducts the clearing for roads that it has an interest in clearing, and thus when Hydro-Québec provides partial reimbursements for such road clearing, it is providing a financial contribution because Resolute would have cleared those roads even if not for the Hydro-Québec payments.

Commerce's Position: We find that the respondents' characterization of the road clearing contracts with Hydro-Québec as a government purchase of services misconstrues the nature of the assistance provided. The record demonstrates that Hydro-Québec provided to Resolute payments for road clearing which constitute a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and bestows a benefit in the amount of the reimbursements as provided under 19 CFR 351.504(a) and section 771(5)(E) of the Act.

Both the GOQ and Resolute explained that Hydro-Québec reimburses Resolute for a portion of the costs for snow removal, clearing, and sandblasting of roads within Resolute's allotted TSG and auction blocks.¹⁸⁰⁷ Hydro-Québec and Resolute agree to share costs of clearing roads where they have a common interest.¹⁸⁰⁸ During the POR, Hydro-Québec reimbursed Resolute for a portion of the clearing costs for forestry roads Route 125, Route 1, and Route 10.¹⁸⁰⁹ Based on

¹⁸⁰² See Resolute Case Brief at 77-78.

¹⁸⁰³ *Id.* at 78 (citing Resolute Non-Stumpage IQR Response Exhibit RES-NS-HQR-1).

¹⁸⁰⁴ *Id.* at 77 (citing section 771(5)(D)(iii) and (iv); section 771(5)(E)(iv); WTO SCM Agreement, Article 1.1; and Article 14.1).

¹⁸⁰⁵ See Petitioner Rebuttal Brief at 285-286.

¹⁸⁰⁶ *Id.* at 286 (citing GOQ IQR Response, Volume 3 (Non-Stumpage— Hydro-Québec Programs) at 7.

¹⁸⁰⁷ See GOQ IQR Response, Volume 3 (Non-Stumpage— Hydro-Québec Programs) at 7; see also Resolute Non-Stumpage IQR Response Exhibit RES-NS-HQR-APP at 1.

¹⁸⁰⁸ See GOQ IQR Response, Volume 3 (Non-Stumpage— Hydro-Québec Programs) at 7; see also Resolute Non-Stumpage IQR Response Exhibit RES-NS-HQR-APP at 1.

¹⁸⁰⁹ See GOQ IQR Response, Volume 3 (Non-Stumpage— Hydro-Québec Programs) at 7.

the record, we determine that the payments provided by Hydro-Québec relieved Resolute of a financial burden that the company would otherwise have incurred in its ordinary course of business. The road clearing activities for which Resolute received reimbursements from Hydro-Québec are activities that Resolute would have undertaken in furtherance of its harvesting operations even in the absence of its agreement with Hydro-Québec, and thus were not services rendered for the benefit of the GOQ, Hydro-Québec, or the general public.

There is no legal basis for the GOQ's argument that direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act, such as grants, are limited to "gifts" bestowed without consideration. As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the "benefit" as "the amount of the grant." ¹⁸¹⁰ In analyzing whether a benefit exists, Commerce is concerned with what goes into a company. ¹⁸¹⁰ Because Resolute received payments from Hydro-Québec for costs it would have incurred in the course of its harvesting operations, we continue to determine that Resolute's road clearing agreement with Hydro-Québec is a grant program that provides a countervailable benefit.

Comment 82: Whether the PAMVFP Is Countervailable

*GOQ's Comments*¹⁸¹¹

- Section 771(5)(E) of the Act states that a benefit shall normally be treated as conferred where there is a benefit to the recipient. Payments under the PAMVFP do not constitute a "gift-like" transfer and thus, do not confer a benefit. Rather, the payments are compensation for the silvicultural works performed by certified forest producers at their own costs to improve the social-economic development of the private forest.
- Even if Commerce continues to find that the PAMVFP confers a benefit, the program is not specific. Any forestland holder with more than four hectares is eligible to participate. Thus, the PAMVFP is not *de jure* specific.
- In 2019-2020, assistance under the program was fairly distributed to more than 50 different enterprises/industries. Given the numerous and diverse recipients that received assistance, the PAMVFP is not *de facto* specific, or otherwise falls within any of the enumerated factors of specificity under section 771(5A) of the Act.

*Resolute's Comments*¹⁸¹²

- Because the PAMVFP provides technical assistance to owners of private woodlots to encourage forest management activities, Commerce must treat the program as one for the purchase of government-provided services.
- A benefit calculation must determine the adequacy of remuneration provided in exchange. The record shows adequate remuneration provided by Resolute in relation to this program and, thus, no benefit.
- The forest industry must pay C\$1 per cubic meter of timber to the regional agencies for private forest development. The amount that Resolute paid to the regional agencies in 2019 was

¹⁸¹⁰ See *CVD Preamble*, 63 FR at 65361.

¹⁸¹¹ See GOQ Case Brief Volume 8.B at 120-124.

¹⁸¹² See Resolute Case Brief at 94-95.

greater than the amount paid to certified forestry advisers working on Resolute's woodlands.¹⁸¹³

*Petitioner's Rebuttal Comments*¹⁸¹⁴

- Both the GOQ and Resolute offer nonsensical arguments for why the PAMVFP is not countervailable, but none are supported by the record or U.S. law.
- The GOQ provides funding to forest producers or entities that perform silviculture on the forest producer's land, relieving the forest producer of the costs of such silviculture work that it is obligated to undertake. These payments that relieve participants of costs they would have otherwise incurred confer a benefit in the amount of the grant paid.
- Fees paid do not qualify as an offset to the grants received as indicated at section 771(6) of the Act, which enumerates the adjustments that can be made to the benefit conferred.
- Assistance under the program is limited by law to forestry producers recognized under section 130 of the SFDA. Because eligibility is limited to a specific industry and is prescribed in law, the program is *de jure* specific.

Commerce's Position: We find the respondents' arguments that the PAMVFP is not a countervailable grant program that confers a benefit which is specific to private forest producers to be unpersuasive. As discussed in the *Lumber V AR2 Prelim*, the PAMVFP provides financial assistance to private forest producers, who are certified forest producers, to carry out forest management activities, such as silvicultural treatments, in the private forests of Québec.¹⁸¹⁵ The amount of benefit conferred under the PAMVFP to Resolute, an owner of private woodlots, is equal to the grant of funds provided by the government.¹⁸¹⁶

The GOQ and Resolute argue that no benefit is provided under the program because sawmills are required to make contributions to the PAMVFP for lumber harvested on private land. Resolute states that its contributions were greater than the amount of silviculture reimbursements it received under the program during the POR. However, the record indicates that every holder of a wood processing plant operating permit, under section 162 of the SFDA, must pay the fee of C\$1 for every cubic meter of timber acquired from a private forest, regardless of whether the mill owns private forest land.¹⁸¹⁷ The fees paid, in part, the PAMVFP fund. As noted above, the recipients of payments under the PAMVFP are owners of private forest land. The sawmills that received assistance under the PAMVFP received assistance not because they used timber from private forest lands, but rather because they own private forest land. Therefore, we determine that the fees paid to harvest timber from private land do not qualify as an appropriate offset to the grants received under the PAMFVP pursuant to section 771(6) of the Act. Section 771(6) of the Act enumerates the only adjustments that can be made to the benefit conferred by a countervailable subsidy and these fees paid by processing facilities do not qualify as an offset against benefits received by private woodlot owners.

¹⁸¹³ *Id.* at 94 (citing Resolute Non-Stumpage SQR Response on Sales and Grant Programs at Exhibits RES-NS-SUPP-PF-1 and RES-NS-SUPP-PF-APP (p. 2)).

¹⁸¹⁴ See Petitioner Rebuttal Brief at 287-288.

¹⁸¹⁵ See *Lumber V AR2 Prelim* PDM at 60-61.

¹⁸¹⁶ *Id.*

¹⁸¹⁷ See GOQ IQR Response, Volume 2 (Non-Stumpage – MFFP Programs) at Exhibits QC-PF-A (p. 1-2), QC-PF-2, and QC-PF-5.

Given the nature of the PAMVFP program and how the GOQ provides assistance to private forest producers, *i.e.*, direct transfer of funds, the program constitutes a grant program under section 771(5)(D)(i) of the Act and thus the benefit exists in the amount of the grant, pursuant to 19 CFR 351.504(a) and section 771(5)(E) of the Act. The payments that Resolute received were for silviculture activities performed within its private forest that Resolute would be responsible for conducting with regard to its harvesting operations. Thus, under the PAMVFP, the GOQ provided a grant in furtherance of Resolute's harvesting activities and not to render a benefit to the government or general public. Consequently, there is no merit to Resolute's argument that Commerce should treat the PAMVFP as the purchase of government-provided services and determine the adequacy of remuneration.

There is no legal basis for the GOQ's argument that direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act, such as grants, are limited to "gifts" bestowed without consideration. As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the "benefit" as "the amount of the grant." In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.¹⁸¹⁸ Because Resolute received payments from the PAMFVFP for costs it would have incurred in the course of its harvesting operations, we continued to find that payments under the program constitute a grant that provides a countervailable benefit.

Further, we find the GOQ's arguments that the PAMVFP is not specific to be unavailing. The eligibility requirement is not that a private forest holder must have a forest area of at least four hectares to be eligible to participate, but rather that the private forest holder must be a certified forest producer. The GOQ explained that "only certified private producers under section 130 of the {SFDA} may use this program."¹⁸¹⁹ Under section 130 of the SFDA, the PAMVFP is expressly limited to private woodlot owners who are certified forest producers.¹⁸²⁰ The purpose of the program is to provide assistance to those certified forest producers for silviculture expenses incurred on private lands to ensure a sustainable yield of harvestable timber. Because assistance under the PAMVFP is limited, by law, to certified private forest producers, we determine that assistance provided under this program is *de jure* specific under section 771(5A)(D)(i) of the Act. Consequently, we need not address the GOQ's arguments regarding whether the PAMVFP is *de facto* specific.

For the foregoing reasons, we continue to determine that the PAMVFP provides a countervailable subsidy. This finding that is consistent with Commerce's countervailable determination for the program in the *Lumber IV Final*.¹⁸²¹

¹⁸¹⁸ See *CVD Preamble*, 63 FR at 65361.

¹⁸¹⁹ See GOQ IQR Response, Volume 2 (Non-Stumpage – MFFP Programs) at Exhibit QC-PF-A at 2 and 7.

¹⁸²⁰ *Id.* at Exhibit QC-PF-5 (Section 4.1 Eligible Clientele).

¹⁸²¹ See *Lumber IV Final* IDM at 153-154 and Comment 5; see also *Lumber IV Final Results of 1st AR* IDM at PFDP and Comment 53.

Comment 83: Whether the Formabois/FDRCMO Is Countervailable

*GOQ's Comments*¹⁸²²

- Formabois is an autonomous body incorporated as a non-profit organization, formally recognized as a Sectoral Labor Committee that serves the wood processing sector. The MTESS provides funding to Formabois through FDRCMO.
- Commerce preliminarily found that a financial contribution from the GOQ, under Formabois, exists in the form of a grant under section 771(5)(D)(i) of the Act. However, the statute specifies that a subsidy exists only where an “authority” provides a financial contribution, and Formabois is not a government agency or public authority. Record evidence does not show that the GOQ has meaningful control of Formabois, or that Formabois possesses, exercises, or is vested with government authority. Further, the MTESS plays no role in determining which projects get funds under Formabois initiatives.
- By finding the Formabois to be *de jure* specific, Commerce disregards evidence showing that Formabois is not a fund and that the money it disburses comes from the FDRCMO, a fund which is generally available and not limited to any sector of the economy. Specificity should be examined in connection with FDRCMO, not Formabois.

*Resolute's Comments*¹⁸²³

- The Formabois program is one of 16 components of the FDRCMO.
- Under the program, Resolute received a grant to pay for training offered to students, most of whom were not Resolute employees, at a local college. Payment for education and training of non-personnel cannot be considered a grant.
- Resolute provided valuable consideration for the funds in the training, and the recipients of the education mostly had no obligation to do anything for Resolute.
- The Formabois (FDRCMO) is generally available throughout the province and widely used.

*Petitioner's Rebuttal Comments*¹⁸²⁴

- Resolute contradicts the GOQ's arguments that Formabois is an autonomous body and cannot be considered specific by asserting that the Formabois Fund is a program.¹⁸²⁵
- Resolute seems to argue that Formabois and FDRCMO are one program or similar programs, rather than FDRCMO being a separate entity through which Formabois receives its funding, as described by the GOQ.¹⁸²⁶
- Considering Resolute's admission on the status and structure of the programs, and because the arguments present inconsistencies, Commerce should continue to find Formabois and FDRCMO to be countervailable. Commerce's decision to countervail the Formabois Fund is based on its assessment of the evidence.

Commerce's Position: After considering the parties' arguments and reevaluating the record, we find that the Formabois Fund and the FDRCMO are one and the same. We thus determine that

¹⁸²² See GOQ Case Brief Volume 8.B at 124-129.

¹⁸²³ See Resolute Case Brief at 96 and 109.

¹⁸²⁴ See Petitioner Rebuttal Brief at 257-258.

¹⁸²⁵ *Id.* at 257 (citing Resolute Case Brief at 96).

¹⁸²⁶ *Id.* at 258 (citing at Resolute Case Brief at 96 and 109 (Resolute describes the “Formabois program” as a component to FDRCMO and labels the program as “Formabois (FDRCMO)”).

there is one subsidy program, the FDRCMO, which is translated as the Workforce Skills Development and Recognition Fund.¹⁸²⁷ The FDRCMO is administered by MTESS and provides workforce skills and development training.¹⁸²⁸

The record demonstrates that the assistance provided by Formabois, which promotes skills development and training in the wood processing sector, is a component of the FDRCMO.¹⁸²⁹ The FDRCMO was created by the Act to Promote Workforce Skills Development and Recognition.¹⁸³⁰ Chapter III.2 of the Act states “to support workforce skills improvement in its sector of economic activity, a recognized sectoral workforce committee may participate in implementing the workforce skills development and recognition framework.”¹⁸³¹ Sectoral labor committees are an integral part of the FDRCMO.¹⁸³² The FDRCMO’s 2018-2019 Activity Report and MTESS’ Guide to the FDRCMO for 2019-2020 indicate that Formabois is a component of the FDRCMO.¹⁸³³

The financial assistance provided under the FDRCMO is granted in accordance with the criteria, requirements, and limits in the Act.¹⁸³⁴ MTESS provides funding to Formabois through FDRCMO via a Framework and Annual Financial Contribution Agreement between Formabois and MTESS.¹⁸³⁵ In turn, Formabois’ funding from the MTESS under the FDRCMO has to comply with the criteria, requirements, and limits in the Act.¹⁸³⁶ Workforce training assistance that Resolute received during the POR was provided under the FDRCMO via an agreement between Formabois and MTESS.¹⁸³⁷

Based on the totality of the evidence, we determine that, contrary to our preliminary finding,¹⁸³⁸ the Formabois Fund is not a subsidy program, but, in fact, is the FDRCMO. Consequently, we find, for these final results, that the FDRCMO is the subsidy program under which Resolute received workforce training grants during the POR.

¹⁸²⁷ See GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-FDRCMO-A at 1.

¹⁸²⁸ *Id.* at Exhibit QC-FDRCMO-A at 1-2.

¹⁸²⁹ See GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-FDRCMO-A (and all referenced exhibits therein); GOQ Non-Stumpage SQR Response on Grant Programs at 1-3 (and all referenced exhibits therein); and Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FDRCMO-APP (and all referenced exhibits therein) and Exhibit RES-NS-FOR-APP (and all referenced exhibits therein).

¹⁸³⁰ See GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-FDRCMO-A (p. 1) and Exhibit QC-FDRCMO-2.

¹⁸³¹ *Id.* at Exhibit QC-FDRCMO-2 (paragraph 44.6).

¹⁸³² *Id.* at Exhibit QC-FDRCMO-4 (p. 21-22).

¹⁸³³ *Id.* at Exhibit QC-FDRCMO-4 (p. 27 and 30 (at 3.1.6 Implementation of the Framework of development and recognition of the workforce’s skills.)) and Exhibit QC-FDRCMO-3 (at Implementation of the Framework of the Workforce Skills Development and Recognition Fund).

¹⁸³⁴ See GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-FDRCMO-A (p. 1) and Exhibit QC-FDRCMO-2.

¹⁸³⁵ See GOQ Non-Stumpage SQR Response on Grant Programs at 1-2 and Exhibit QC-FORM-2.

¹⁸³⁶ See GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-FDRCMO-2, and GOQ Non-Stumpage SQR Response on Grant Programs at Exhibit QC-FORM-2.

¹⁸³⁷ See GOQ Non-Stumpage SQR Response on Grant Programs at 3; *see also* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FOR-3.

¹⁸³⁸ See *Lumber V AR2 Prelim PDM* at 58.

Commerce found the FDRCMO countervailable in the *Lumber V ARI Final* and *Lumber V Final Results of Expedited Review*.¹⁸³⁹ Interested parties have not submitted any new information or argument on the record of this administrative to cause Commerce to reconsider its determination that the FDRCMO constitutes a financial contribution and confers a benefit under sections 771(5)(D) and 771(5)(E) of the Act, respectively.¹⁸⁴⁰

Given that Resolute received financial assistance from the GOQ, we find the company's argument that payment for education and training of students cannot be considered a grant to be meritless. The fact that recipients of the training had no obligation to do anything for Resolute in return is irrelevant to Commerce's analysis. When analyzing the benefit received by a grant, pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Section 351.504(a) of the regulations does not require Commerce to consider advantages other parties, such as the general public, may or may have not received. Because the GOQ made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

Because we determine that the FDRCMO is the subsidy program, we agree with the GOQ that specificity should be examined with regard to the FDRCMO. We continue to find that assistance under the FDRCMO is not limited, by law, to certain enterprises or industries under section 771(5A)(D)(i) of the Act. We therefore examined whether the program is specific as a matter of fact under section 771(5A)(D)(iii) of the Act. We reviewed the usage data that the GOQ submitted for the years 2016 to 2019.¹⁸⁴¹ Given the nature of this provincial program, it is reasonable to compare the number of companies that received FDRCMO grants to the total number of companies operating/established in the jurisdiction of the granting authority to determine whether the recipients of FDRCMO assistance were limited in number. Based on our analysis of the data, we find that a small number of companies received grants under the program in the years examined.¹⁸⁴² We thus determine that the number of recipients of assistance under the FDRCMO was limited in number under section 771(5A)(D)(iii)(I) of the Act in the POR. Because the record reflects that the FDRCMO is not widely used throughout the Québec economy, the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Concerning benefit, in accordance with 19 CFR 351.524(c)(1) and (2), we continue to treat the FDRCMO as a non-recurring subsidy because separate, project-specific approval is required to receive benefits and funding for projects under the FDRCMO.¹⁸⁴³ Accordingly, we applied the "0.5 percent test," as described under 19 CFR 351.524(b)(2), to determine whether to allocate benefits under the program to the year of receipt or across the years of the AUL. Because the grants did not pass the "0.5 percent test," we expensed them to the year of receipt, *i.e.*, 2019. To

¹⁸³⁹ See *Lumber V ARI Final* IDM at 20 and Comment 81 and 82; see also *Lumber V Final Results of Expedited Review* IDM at 7 and Comment 10.

¹⁸⁴⁰ See GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-FDRCMO-A (and all referenced exhibits therein); see also Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FDRCMO-APP (and all referenced exhibits therein).

¹⁸⁴¹ See GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-FDRCMO-6.

¹⁸⁴² See FDRCMO Specificity Memorandum. The usage data and the total number of companies operating/established in Québec are proprietary information.

¹⁸⁴³ See GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-FDRCMO-A at 6.

calculate the net countervailable subsidy rate, we divided the grant amount expended to the POR by Resolute's total sales for the POR. On this basis, we determine that Resolute received a net countervailable subsidy rate of 0.02 percent *ad valorem* for the POR.¹⁸⁴⁴

Lastly, because we determine that the FDRCMO is the subsidy program, under which Resolute received grants, we need not address the GOQ's arguments that Formabois is not a government authority and that the GOQ has no meaningful control of Formabois and its administration and disbursement of funds.

Comment 84: Whether the MFOR Is *De Facto* Specific

*GOQ's Comments*¹⁸⁴⁵

- In finding that a small number of companies received grants under the MFOR when compared to the total number of companies operating/established in Québec, Commerce failed to take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy, and the length of time during which the subsidy program has existed,¹⁸⁴⁶ and erroneously used a benchmark that is not reflective of the eligibility requirements under the program, namely the total number of companies established in Québec.
- Commerce's action is an improper specificity analysis and disregard of the record presented with respect to the program, conflating the possibility for companies from virtually all industries to participate in the program with the eligibility.
- The statute does not require a *de facto* specificity finding if less than all of the companies in the province receive a grant under a program. Rather, when considering whether a program is limited in number by enterprise, Commerce must consider whether a few companies received the grant such that the subsidy is targeted. Here the record evidence demonstrates that is not the case.¹⁸⁴⁷

*Resolute's Comments*¹⁸⁴⁸

- MFOR is not specific to an enterprise or industry or group of enterprises or industries.
- Resolute is not a predominant user, nor did it receive a disproportionately large amount of the training positions under MFOR, which has many participants in a wide range of sectors.

*Petitioner's Rebuttal Comments*¹⁸⁴⁹

- Disproportionate and predominant use are only two of the four factors that can constitute *de facto* specificity, and have no bearing on Commerce's *de facto* specificity finding under section 771(5A)(D)(iii)(I) of the Act, as that provision alone is sufficient.
- Based on the record evidence, Commerce should continue to find that the MFOR is *de facto* specific because the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.

¹⁸⁴⁴ See Resolute Final Calculation Memorandum.

¹⁸⁴⁵ See GOQ Case Brief Volume 8.B at 147-149.

¹⁸⁴⁶ *Id.* at 149 (citing section 771(5A)(D)(iii)(IV) of the Act).

¹⁸⁴⁷ *Id.* at 148 (citing GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-MFOR-5).

¹⁸⁴⁸ See Resolute Case Brief at 106 and 108.

¹⁸⁴⁹ See Petitioner Rebuttal Brief at 258-260.

*Sierra Pacific's Rebuttal Comments*¹⁸⁵⁰

- Commerce properly focused its *de facto* specificity analysis on the number of companies that actually used the program by comparing the number of actual subsidy recipients to the total number of eligible entities.
- This methodology is consistent with section 771(5A)(D)(iii)(I) of the Act and is not tantamount to a requirement that a subsidy be universally available and used in order to be non-specific.

Commerce's Position: The GOQ and Resolute raised the same arguments in the first administrative review.¹⁸⁵¹ We do not dispute that any company in Québec can apply for assistance under MFOR. However, the usage data submitted by the GOQ indicate that the actual recipients of assistance under the program are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.

As stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies that truly are broadly available and widely used throughout an economy.¹⁸⁵² The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies . . . used by discrete segments of an economy could escape the purview of the {countervailing duty} law."¹⁸⁵³ The SAA also states that, in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.¹⁸⁵⁴

Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, Commerce reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.¹⁸⁵⁵ Thus, we have followed the instructions of the SAA and our practice in determining whether MFOR is *de facto* specific.

Contrary to the insinuation by the GOQ, the MFOR is not a new program, but was created in 1998.¹⁸⁵⁶ The GOQ provided usage data for each year 2014 to 2019. Consistent with Commerce's practice, we analyzed the usage data for the POR (2019) and the three preceding years to evaluate the program's specificity.¹⁸⁵⁷ The data submitted by the GOQ show that a small number of companies received grants under the MFOR in each year 2016 to 2019, when compared to the total number of companies operating/established in Québec.¹⁸⁵⁸ As such, we determine that the MFOR program is not widely used throughout Québec's economy; therefore, the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

¹⁸⁵⁰ See Sierra Pacific Rebuttal Brief at 30-32.

¹⁸⁵¹ See *Lumber V ARI Final* IDM at Comment 81.

¹⁸⁵² See SAA at 929.

¹⁸⁵³ *Id.*

¹⁸⁵⁴ *Id.* at 931.

¹⁸⁵⁵ See *CRS from Korea* IDM at Comment 13; see also *Lumber V Final* IDM at Comment 62.

¹⁸⁵⁶ See GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-MFOR-A at 1.

¹⁸⁵⁷ See Initial Questionnaire at Section II, Standard Questions Appendix.

¹⁸⁵⁸ See Québec Specificity Memorandum. The number of companies that received disbursements under MFOR and the number of companies operating/established in Québec for the years 2016 to 2019 are proprietary data.

Resolute maintains that it is not a predominant user, nor did it receive a disproportionately large amount of assistance under MFOR. However, predominant and disproportionate use are addressed by sections 771(5A)(D)(iii)(II) and (III) of the Act, respectively. Neither statutory section is the basis upon which Commerce reached its specificity determination for MFOR. Moreover, as set forth under 19 CFR 351.502(a), in determining whether a subsidy is *de facto* specific, Commerce will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially in order of appearance. If a single factor warrants a finding of specificity, Commerce will not undertake further analysis.¹⁸⁵⁹ Therefore, because recipients of the subsidy under MFOR were limited in number on an enterprise basis, under section 771(5A)(D)(iii)(I) of the Act, we find the program *de facto* specific.

Comment 85: Whether the MFOR Is a Non-Recurring Subsidy

*GOQ's Comments*¹⁸⁶⁰

- Commerce should consider 19 CFR 351.524(c)(2) only if a subsidy is not on the illustrative list of recurring benefits, or is not addressed elsewhere in the regulations, or if a party claims that a subsidy on the recurring list should be treated as non-recurring.
- MFOR is a worker training program and included on the illustrative list of recurring benefits.¹⁸⁶¹ No party claimed that the MFOR program is not on the illustrative list.
- Even if the three-factor test in 19 CFR 351.524(c)(2) were to apply, Commerce should still find the MFOR as recurring because: (1) it is not connected to the capital structure/assets of the firm; (2) the program's grants are not exceptional as recipients receive grants under multiple contracts year after year; and (3) the program is based on objective criteria which results in essentially automatic approval of grant applications.
- Program approval from an agency is itself is not determinative of whether a program is recurring or non-recurring—if this were true, then every tax program would be non-recurring.
- Commerce has previously found worker training programs, where grants are administered pursuant to government approval of an application, to be a recurring benefit.¹⁸⁶²

*Petitioner's Rebuttal Comments*¹⁸⁶³

- The GOQ misunderstands the test for determining whether a benefit is recurring or non-recurring at 19 CFR 351.524(c)(2). Commerce need not find all three criteria for there to be a non-recurring benefit.
- The assistance under the MFOR is not automatic, requires separate government approval, provided for in specific agreements between the company and MTESS, and is limited in duration. Commerce properly determined MFOR to be a non-recurring subsidy.

¹⁸⁵⁹ See section 771(5A)(D)(iii) of the Act (providing that a program is *de facto* specific if “one or more” of the enumerated factors exist).

¹⁸⁶⁰ See GOQ Case Brief Volume 8.B at 157-183.

¹⁸⁶¹ *Id.* at 160 (citing 19 CFR 351.524(c)(1)).

¹⁸⁶² *Id.* at 163 (citing *Certain Pasta from Italy Final Results AR7 IDM* at 12).

¹⁸⁶³ See Petitioner Rebuttal Brief at 258-260.

Commerce's Position: The GOQ raised the same arguments in the first administrative review.¹⁸⁶⁴ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that the MFOR provides non-recurring benefits.

While Commerce's regulations include a non-binding illustrative list of the programs "normally" treated as providing recurring benefits (*i.e.*, "direct tax exemptions and deductions; exemptions and excessive rebates of indirect taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; wage subsidies; and upstream subsidies"), they also provide a non-binding illustrative list of the programs "normally" treated as providing non-recurring benefits (*i.e.* "grants"). Here, while the benefit provided is for worker's training, the benefit is also in the form of grants. Section 351.524(c)(2) of Commerce's regulations provides the following:

If a subsidy is not on the illustrative lists, or is not addressed elsewhere in these regulations, or if a party claims that a subsidy on the recurring list should be treated as non-recurring or a subsidy on the non-recurring list should be treated as recurring, the Secretary will consider the following criteria in determining whether the benefits from the subsidy should be considered recurring or nonrecurring:

- (i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;
- (ii) Whether the subsidy required or received the government's express authorization for approval (*i.e.*, receipt of benefits is not automatic); or
- (iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

Therefore, in examining whether this program is recurring or non-recurring, Commerce will examine whether the worker training grant is received on a regular or predictable basis, or if it requires express approval from the government, or if it is provided for, or tied to the capital structure or assets.¹⁸⁶⁵

We do not dispute that Commerce treated a worker training program as a recurring subsidy in *Certain Pasta from Italy Final Results AR7*, and the program is not tied to capital assets. However, as Commerce explained in the *Wire Rod from Italy Final*, when worker training grants relate to specific, individual projects where each requires separate government approval, then those grants will be treated as non-recurring subsidies.¹⁸⁶⁶ Therefore, in determining whether the MFOR is providing recurring or non-recurring benefits, we examined whether the grants disbursed under the program are for specific projects that require the express approval of the GOQ.

¹⁸⁶⁴ See *Lumber VARI Final* IDM at Comment 82.

¹⁸⁶⁵ We note that there is a specific regulation pertaining to worker-related subsidies (19 CFR 351.513), but this does not detract from our determination to treat the programs at issue here as non-recurring based on the record evidence.

¹⁸⁶⁶ See *Wire Rod from Italy Final*, 63 FR at 40488.

The record indicates that, under MFOR, a company must submit a request for intervention for each worker training project, and that express approval by MTESS is required in order to receive financial assistance for the training.¹⁸⁶⁷ Once the intervention application is approved, the company and MTESS enter into a subsidy agreement of one to three years.¹⁸⁶⁸ These facts indicate that assistance under MFOR is not automatic—each grant must be applied for individually and receive separate government approval, and the financial assistance to be provided is based on specific agreements between the company and MTESS. Further, grants under the MFOR are not received on a regular or predictable basis. We, therefore, continue to determine that the MFOR is properly treated as a non-recurring subsidy for these final results. This finding is consistent with *Groundwood Paper from Canada Final*.¹⁸⁶⁹

Comment 86: Whether the PIB Is Countervailable

*GOQ's Comments*¹⁸⁷⁰

- The PIB is not *de jure* specific because it is not limited to any specific industry in Québec. Any enterprise/industry that uses forestry products to develop innovative new products or processes is eligible for the PIB.
- Commerce's finding equates the existence of eligibility requirements for a program to *de jure* specificity. The statute requires that, for a *de jure* specificity finding, the legislation must affirmatively limit the program to a small number of enterprises/industries. The statute does not tie a *de jure* specificity finding to limitations on the activities conducted by enterprises/industries.¹⁸⁷¹
- All approved projects during the POR were determined to be innovative, *i.e.*, the products intended to be developed were non-existent, and, therefore, not subject merchandise.

*Resolute Comments*¹⁸⁷²

- Because the PIB promotes innovation/diversification of new/different products that do not yet exist, it should be attributed to non-subject merchandise.
- Resolute's Alma and Kénogami paper mills—mills that do not produce subject merchandise—are the only mills that participated in the PIB. The bestowal does not specify pulp and paper, but it does specify “a diversification of the product basket” which expressly does not refer to softwood lumber.¹⁸⁷³
- The PIB is not specific to an enterprise or industry or group of enterprises or industries because eligible participants must either work in the forest products industries or use products from these industries, which means the participants may work in any industry.

¹⁸⁶⁷ See GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-MFOR-A (p. 5-6 and 9); see also Resolute Non-Stumpage IQR Response at Exhibit RES-NS-MFOR-1 (p. 1-2).

¹⁸⁶⁸ See GOQ IQR Response, Volume 4 (Non-Stumpage—Emploi Québec Programs) at Exhibit QC-MFOR-A (p. 14).

¹⁸⁶⁹ See *Groundwood Paper from Canada Final* IDM at Comment 80.

¹⁸⁷⁰ See GOQ Case Brief Volume 8.B at 117-120.

¹⁸⁷¹ *Id.* at 118 (citing 19 USC 1677(36)(D)).

¹⁸⁷² See Resolute Case Brief at 59, 106, and 108.

¹⁸⁷³ *Id.* at 59 (citing Resolute Non-Stumpage IQR at Exhibit RES-NS-PIB-1).

*Petitioner's Rebuttal Comments*¹⁸⁷⁴

- The arguments presented by the GOQ and Resolute were previously considered and rejected by Commerce.¹⁸⁷⁵ Neither the GOQ nor Resolute has presented any new arguments that warrant a change in Commerce's countervailable finding for the PIB.
- The PIB is expressly limited to companies that use/intend to use wood/wood biomass to develop innovative products, processes, or pilot plants, and any enterprise/industry that uses forestry products to develop innovative new products/processes is eligible for the program. The possibility that there are many industries that use forestry products does not negate this limitation.
- Eligibility for this subsidy is in no way tied to non-subject merchandise. The innovative products, processes, and technologies developed with assistance from the PIB may take on a variety of forms, none of which are solely limited to non-subject merchandise. The framework of the PIB also makes clear that the funding is intended to support the forest products industry as a whole.
- Commerce should continue to find the PIB to be countervailable, consistent with the *Lumber V ARI Final*.

Commerce's Position: The GOQ and Resolute raised the same arguments in the first administrative review.¹⁸⁷⁶ We found the arguments unpersuasive then and continue to do so here. We therefore are not moved to reconsider the countervailability finding for the PIB.

The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available and used throughout an economy.¹⁸⁷⁷ It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the countervailing duty law.¹⁸⁷⁸ Commerce may make a finding of *de jure* specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.

The 2016 Forest Innovation Program Normative Framework, under which the PIB was established explicitly states that an eligible applicant must be "specializing in the forest products industry."¹⁸⁷⁹ The 2019 Forest Innovation Program Normative Framework continues the eligibility requirement stating that "the applicant must work in the forest products industry or use forest products."¹⁸⁸⁰ Because the GOQ expressly limits access to the subsidy to particular enterprises, *i.e.*, entities specializing or working in the forest products industry, the PIB is *de jure* specific, under section 771(5A)(D)(i) of the Act.

We disagree with the GOQ that our specificity finding equates the existence of "objective criteria" for a program to *de jure* specificity. Under section 771(5A)(D)(ii) of the Act, the term

¹⁸⁷⁴ See Petitioner Rebuttal Brief at 278-280.

¹⁸⁷⁵ *Id.* at 278 (citing *Lumber V ARI Final* IDM at Comment 79).

¹⁸⁷⁶ See *Lumber V ARI Final* IDM at Comment 79.

¹⁸⁷⁷ See SAA at 930.

¹⁸⁷⁸ *Id.*

¹⁸⁷⁹ See GOQ IQR Response, Volume 2 (Non-Stumpage—MFFP Programs) at Exhibit QC-PIB-1 (p. 5).

¹⁸⁸⁰ *Id.* at Exhibit QC-PIB-4 (section 5).

“objective criteria” mean criteria “that are neutral and that do not favor one enterprise or industry over another.” However, under this program, the eligibility criteria limit access to the subsidy to only those that specialize in the forest products industry. Therefore, the eligibility criteria do not meet the statutory definition of “objective criteria,” because they favor certain enterprises.

Further, there is no evidence to suggest, as the respondents do, that the PIB cannot confer a benefit on softwood lumber producers because the PIB stimulates investments in innovative products and innovative products are not subject merchandise. The Normative Framework makes clear that the projects funded under PIB are to enhance the value of wood fibre, diversify the product offer, promote the competitiveness of the forest industry, and increase or maintain the consumption of low-quality wood (hardwood or softwood) without qualification.¹⁸⁸¹ The record shows that eligibility for this subsidy is not tied to non-subject merchandise.¹⁸⁸² Rather, the Normative Framework indicates that the PIB supports the forest industry, defined as “industry covering the first, second and third processing of the pulp, paper and bioproducts, panels, sawmill, wood construction and bioenergy sectors.”¹⁸⁸³ As such, we continue to find that the PIB bestowed a benefit to Resolute during the POR, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).

Comment 87: Whether the SOPFEU/SOPFIM Is Countervailable

*Petitioner’s Comments*¹⁸⁸⁴

- Pursuant to Québec’s *Forest Protection Regulation*, SOPFEU/SOPFIM fees were reduced in 2016, and then eliminated in 2018. As such, the *Forest Protection Regulation* is a mechanism by which the GOQ subsidizes the costs of forest protection for the industry. Absent the program, TSG-holders would have to pay the fees because all TSG-holders must be members of SOPFEU/SOPFIM.
- The fee exemption relieves entities, like Resolute, from a financial burden that would otherwise be incurred. The GOQ does not collect revenue that, but for the *Forest Protection Regulation*, would otherwise be due. This constitutes a financial contribution pursuant to section 771(5)(D)(ii) of the Act.
- While the *Forest Protection Regulation* applies to all SOPFEU/SOPFIM members, entities requesting the organizations’ services for areas not covered under the annual treatment plans must make direct contributions for the added services. The fact that Resolute did not purchase additional services from SOPFEU/SOPFIM is irrelevant to the subsidy at issue, which is the exemption of fees that would otherwise be paid.
- The record contains information to calculate the amount of fees Resolute would have paid in the POR based on its TSG volume and the SOPFEU/SOPFIM charges for FY 2015-2016, the most recent year for which Resolute fully contributed to the programs.

*GOQ’s Rebuttal Comments*¹⁸⁸⁵

¹⁸⁸¹ See GOQ IQR Response, Volume 2 (Non-Stumpage—MFFP Programs) at Exhibit QC-PIB-1 (p. 4) and Exhibit QC-PIB-4 (section 3).

¹⁸⁸² *Id.* at Exhibit QC-PIB-A and all referenced exhibits.

¹⁸⁸³ *Id.* at Exhibit QC-PIB-4 (section 1).

¹⁸⁸⁴ See Petitioner Case Brief at 100-104.

¹⁸⁸⁵ See GOQ Rebuttal Brief Volume 6 at 28-35.

- It is wrong to characterize the change in the financing structure of SOPFEU/SOPFIM as a flat “fee exemption” to the industries that constitutes a financial contribution as revenue foregone by the government.¹⁸⁸⁶
- The legal requirement to collect such fees directly was eliminated and, therefore, the government is not foregoing or not collecting revenue that is otherwise due. The GOQ has no revenue foregone or any other sort of countervailable financial contribution to Resolute pertaining to SOPFEU/SOPFIM.
- The elimination of direct payments from private industries to fund SOPFEU/SOPFIM had the effect of increasing stumpage rates by eliminating the offset for those payments that had been a feature of stumpage pricing.
- SOPFEU/SOPFIM’s responsibilities are no different than any other forest protection agency. Thus, SOPFEU/SOPFIM constitute general infrastructure created for broad societal welfare within the meaning of 19 CFR 351.511(d) and are not countervailable.

*Resolute’s Rebuttal Comments*¹⁸⁸⁷

- In the *Preliminary Results*, Commerce correctly found that SOPFEU/SOPFIM transactions conferred no countervailable benefit during the POR. Commerce also was correct in finding that the program was not used during the POR because Resolute did not purchase services from SOPFEU or SOPFIM.
- There was no financial contribution—no revenue foregone, no grant, no purchase of goods or services for LTAR from SOPFEU/SOPFIM.

Commerce’s Position: The record evidence does not support the petitioner’s argument that the GOQ is foregoing or not collecting revenue from the forest industry that is otherwise due for SOPFEU/SOPFIM. In fact, the record shows that there is no exemption of SOPFEU/SOPFIM fees that would otherwise be paid by the forest industry to the government during the POR.

Pursuant to the *Regulation to Amend the Forest Protection Regulation* (July 2016), the industry’s contributions to SOPFEU and SOPFIM were reduced in FY 2016 and 2017, and then completely eliminated in FY 2018.¹⁸⁸⁸ Beginning April 1, 2018, the industry contributions to SOPFEU and SOPFIM ceased, and 100 percent of the organizations’ funds is paid directly by the GOQ.¹⁸⁸⁹ Consequently, effective April 1, 2018, there was no longer a legal obligation imposed by the GOQ on the forestry industry to make contributions to SOPFEU and SOPFIM. Based on the regulation enacted, we find that there was no revenue forgone by the GOQ for SOPFEU and SOPFIM, pursuant to section 771(5)(D)(ii) of the Act, because there were no legal requirements for anyone other than the government to make payments to the organizations during the POR.

During the POR, Resolute did not directly request any services from SOPFEU or SOPFIM, for which fees would have been charged by SOPFEU and SOPFIM.¹⁸⁹⁰ Because Resolute did not

¹⁸⁸⁶ *Id.* at 32 (citing Petitioner Case Brief at 100-103).

¹⁸⁸⁷ *See* Resolute Rebuttal Brief at 8.

¹⁸⁸⁸ *See* GOQ IQR Response, Volume 2 (Non-Stumpage – MFFP Programs) at Exhibit QC-SOP-A (p. 3) and Exhibit QC-SOP-4.

¹⁸⁸⁹ *Id.*

¹⁸⁹⁰ *See* GOQ Non-Stumpage SQR Response on SOPFEU/SOPFIM at 16; *see also* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-SOPFIM/FEU-APP.

purchase services from SOPFEU or SOPFIM in 2019, we determine that this program was not used by Resolute during the POR.

Comment 88: Whether Hydro-Québec’s IRR Program Is Countervailable

*GOQ Comments*¹⁸⁹¹

- The IRR is only available to Rate L customers. However, this group encompasses virtually all large industrial power customers in Québec, such that the IRR is not limited in number or to a specific industry.
- While Resolute is the only Rate L customer to have enrolled in the IRR, this is due to the novelty of the program, which did not exist prior to April 1, 2018. To determine whether a subsidy is specific as a matter of fact, the statute requires Commerce to take into account the length of time during which the subsidy program has been in operation.¹⁸⁹²
- The purchase of IRR power is not a grant, or otherwise a transfer of funds within the meaning of section 771(5)(D)(i) of the Act. The transaction that occurs between Hydro-Québec and its customers is one in which Hydro-Québec provides goods or services within the meaning of section 771(5)(D)(iii) of the Act, given that those eligible for the IRR are purchasing power from Hydro-Québec.
- The transaction confers no benefit to IRR customers. The IRR charged to Resolute differed on average from Rate L by approximately 1.5 cents/kWh.¹⁸⁹³ This discount is reasonable compensation given that Hydro-Québec can suspend supplemental electricity on only two hours’ notice.

*Resolute’s Comments*¹⁸⁹⁴

- The IRR is not specific to an enterprise or industry or group of enterprises or industries because the program is available to all large industrial power consumers who meet the program’s requirements.

*Petitioner’s Rebuttal Comments*¹⁸⁹⁵

- An electricity program that is limited by law to enterprises that meet specific energy generation and consumption requirements is *de jure* specific. The IRR is only available to Hydro-Québec customers with a Rate L contract (or eligible for a Rate L contract). Rate L is limited to large power industrial customers. Commerce has found subsidies limited to Rate L customers to be *de jure* specific.¹⁸⁹⁶
- The GOQ admits that the IRR results in a benefit stating that the “small discount” granted to IRR participants “is reasonable as compensation.”¹⁸⁹⁷
- The GOQ’s argument that Hydro-Québec IRR’s discount is a reimbursement for the risks associated with the availability of surplus power is without merit. In doing its benefit analysis,

¹⁸⁹¹ See GOQ Case Brief Volume 8.B at 70-76.

¹⁸⁹² *Id.* at 74 (citing section 771(5A)(D)(iii) of the Act).

¹⁸⁹³ *Id.* at 76 (citing GOQ IQR Response, Volume 3 (Non-Stumpage— Hydro-Québec Programs) at Exhibit QC-IRR-A (p. at 4)).

¹⁸⁹⁴ See Resolute Case Brief at 106 and 108.

¹⁸⁹⁵ See Petitioner Rebuttal Brief at 274-278.

¹⁸⁹⁶ *Id.* at 276 (citing *Lumber V ARI Final IDM* at Comment 85).

¹⁸⁹⁷ *Id.* at 277 (citing GOQ Case Brief Volume 8.B at 76).

Commerce does not contemplate any advantages the government might receive by administering a program.

Commerce's Position: We are unpersuaded by the respondents' assertions about Hydro-Québec's IRR for Rate L Customers program. We therefore continue to find that the IRR program constitutes a financial contribution, is *de jure* specific, and confers a benefit under sections 771(5)(D), 771(5A)(D)(i), and 771(5)(E) of the Act, respectively.

The record demonstrates that the GOQ established, by law, a limited group of enterprises—Rate L customers—that may receive electricity savings from Hydro-Québec under the IRR program.¹⁸⁹⁸ That the GOQ may not have limited eligibility to commonly defined enterprises or industries does not alter this conclusion. Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to the subsidy, that subsidy is specific as a matter of law. Therefore, the IRR program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity, we need not examine whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act, or address the GOQ's argument that Commerce must consider the length of time during which the subsidy program has been in operation.

Given the nature of the IRR, we also disagree with the GOQ that the program is the provision of a good or service within the meaning of section 771(5)(D)(iii) of the Act, rather than a grant within the meaning of section 771(5)(D)(i) of the Act. Effective April 1, 2018, Hydro-Québec made a discounted, supplemental electricity rate available to Rate L customers who return to productive use all or part of an industrial plant's unused capacity, or who convert one or more industrial processes to use electricity.¹⁸⁹⁹ Under the IRR, participants receive electricity credits that are reflected on their monthly invoices from Hydro-Québec.¹⁹⁰⁰

As the GOQ reported, the IRR charged to Resolute differed on average from Rate L by approximately 1.5 cents/kWh.¹⁹⁰¹ Consistent with Commerce's practice,¹⁹⁰² we find that the electricity savings is the difference between the standard Rate L and the IRR. We thus determine that the assistance that Resolute received under this electricity discount program constitutes a financial contribution in the form of a direct transfer of funds (*i.e.*, electricity savings) from the government, pursuant to section 771(5)(D)(i) of the Act, and that the program bestows a benefit in the amount of grants (*i.e.*, electricity savings), pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).

¹⁸⁹⁸ See GOQ IQR Response, Volume 3 (Non-Stumpage— Hydro-Québec Programs) at Exhibits QC-IRR-A (p. 1), QC-IRR-1, and QC-IRR-2.

¹⁸⁹⁹ See GOQ IQR Response, Volume 3 (Non-Stumpage – Hydro-Québec Programs) at Exhibit QC-IRR-A (p.1) and Exhibit QC-IRR-2.

¹⁹⁰⁰ *Id.* at Exhibit QC-IRR-A (p. 10) and Exhibit QC-IRR-4; see also Resolute Non-Stumpage IQR Response at Exhibit RES-NS-IRR-2.

¹⁹⁰¹ See GOQ IQR Response, Volume 3 (Non-Stumpage— Hydro-Québec Programs) at Exhibit QC-IRR-A (p. 4).

¹⁹⁰² See, e.g., *CTL Plate from Korea Final Results 2018* IDM at 7.

Comment 89: Whether Hydro-Québec’s ISEE Program Is Countervailable

*GOQ’s Comments*¹⁹⁰³

- ISEE recipients are not limited in number. Between 2016 and 2019, more than 1,000 companies received assistance. The forestry, wood, and paper industry is not a predominant user of the program, does not receive a disproportionately large amount of funds, and Hydro-Québec does not exercise discretion to favor a particular enterprise or industry as eligibility is automatic based on set criteria.
- ISEE assistance is available to any individual/corporation that owns, operates, or occupies an industrial building associated with a goods-producing industry. Thus, the ISEE is not limited to a specific enterprise or industry as a matter of law or fact.
- Payments made under the ISEE correlate to a company’s reduced electricity usage. Under this arrangement, the “direct transfer of funds” functions as a reimbursement for the service provided at a cost to the participant. As such, the ISEE does not confer a benefit.
- Through the ISEE, Hydro-Québec purchases a reduction in electricity use, a valuable tool that helps it balance supply and demand during peak times. Hydro-Québec is not purchasing a good, but rather purchasing the service of energy efficiency, and a government’s purchase of a service is not countervailable.

*Resolute’s Comments*¹⁹⁰⁴

- The ISEE does not confer a benefit because the GOQ is purchasing the service of energy efficiency.
- The ISEE is not specific to an enterprise or industry or group of enterprises or industries because the program is available to any individual or entity that owns, operates, or occupies an industrial building in Québec associated with a goods-producing industry.
- The 2,955,432 ISEE participants belong to a broad variety of sectors.

*Petitioner’s Rebuttal Comments*¹⁹⁰⁵

- The benefit and specificity arguments presented by the GOQ and Resolute were previously considered and rejected by Commerce.¹⁹⁰⁶ Neither the GOQ nor Resolute has presented any new arguments that warrant a change in Commerce’s countervailable finding with regards to Hydro-Québec’s ISEE.
- For all the reasons discussed in the *Lumber VARI Final*, Commerce should continue to find that Hydro-Québec’s ISEE is *de facto* specific and confers a benefit.

Commerce’s Position: The GOQ and Resolute raised the same arguments in the first administrative review.¹⁹⁰⁷ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that the ISEE program constitutes a financial contribution, is *de facto* specific, and confers a benefit under sections 771(5)(D), 771(5A)(D)(iii)(I), and 771(5)(E) of the Act, respectively.

¹⁹⁰³ See GOQ Case Brief Volume 8.B at 42-52.

¹⁹⁰⁴ See Resolute Case Brief at 87-89 and 107-108.

¹⁹⁰⁵ See Petitioner Rebuttal Brief at 265-268.

¹⁹⁰⁶ *Id.* at 266-267 (citing *Lumber VARI Final* IDM at Comment 86).

¹⁹⁰⁷ See *Lumber VARI Final* IDM at Comment 86.

The GOQ argues that the program is not *de facto* specific because the softwood lumber industry is not a predominant user of the program, does not receive a disproportionately large amount of assistance under the program, and Hydro-Québec did not exercise discretion to favor the industry when providing assistance under the program. However, under section 771(5A)(D)(iii)(I) of the Act, Commerce may find a subsidy program to be *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in number. The fact that companies in many different industries received assistance under the program does not negate the fact that from 2016 through 2019, only 1,010 companies received assistance under the ISEE, which represents a small percentage of the total number of companies operating or established in Québec.¹⁹⁰⁸ The usage data indicate that the ISEE program is not widely used throughout the Québec economy, and, therefore, we continue to find the program to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act.

Further, we disagree that the ISEE does not confer a benefit to Resolute. The record evidence clearly shows that Resolute received payments under the ISEE for energy efficient projects.¹⁹⁰⁹ The fact that the ISEE may benefit Hydro-Québec with efficiencies is immaterial under the benefit to the recipient standard applied by Commerce. Rather, what is relevant is that Resolute received a direct transfer of funds from Hydro-Québec under the ISEE program in the form of grants during the POR. We also disagree that the ISEE is not countervailable because the GOQ is purchasing a service (*i.e.*, energy efficiency). We do not agree that the reduction of electricity usage amounts to the performance of a service for which the government is paying. Record evidence indicates that the ISEE payments are incentives to companies to support the realization of energy efficiency projects that will reduce the average amount of electricity used per unit produced.¹⁹¹⁰ On basis of the evidence, we continue to find that the ISEE provides a benefit under section 771(5)(E) of the Act, and that the program conferred a benefit to Resolute equal to the amount of the grants received, pursuant to 19 CFR 351.504(a).

Comment 90: Whether Hydro-Québec's EDL Is Countervailable

*GOQ's Comments*¹⁹¹¹

- Assistance under the EDL is available to all Hydro-Québec Rate L customers that make eligible investments in Québec. Though the EDL is only available to Rate L customers, program recipients are not limited in number or to a specific industry.
- During the POR, 52 companies were accepted under the program. Customers in the sawmill and wood preservation industry are not the largest or predominant users of the EDL, and do not receive a disproportionately large amount of the funds. Moreover, the GOQ did not exercise discretion to favor a particular enterprise or industry.
- Payments made under the EDL do not confer a benefit because the amount of the reimbursement directly correlates to the eligible costs incurred for specific investments. Due

¹⁹⁰⁸ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-ISSE-A (p. 18-19).

¹⁹⁰⁹ See GOQ IQR Response, Volume 3 (Non-Stumpage – Hydro-Québec Programs) at Exhibit QC-ISEE-A (p. 3-4); see also Resolute Non-Stumpage IQR Response at Exhibit RES-NS-ESP-APP (p. 1) and Exhibit RES-NS-ESP-6.

¹⁹¹⁰ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-ISSE-A (p. 13).

¹⁹¹¹ See GOQ Case Brief Volume 8.B at 77-85.

to the contractual nature of the payment, a financial contribution, in the form of a grant, cannot be considered under section 771(5)(D)(i) of the Act.

- Under the EDL, the GOQ is purchasing a service that benefits Québec, *e.g.*, improved energy efficiency and reduced GHG emissions. A government's purchase of a service cannot be countervailed under the statute.

*Resolute's Comments*¹⁹¹²

- The EDL does not confer a benefit on Resolute. Commerce's treatment of the program ignores the fact that the program addresses the global climate crisis. Resolute's participation in the EDL represents a contribution to the GOQ's policy objectives.
- The EDL is not specific to an enterprise or industry or group of enterprises or industries because the program is available to all businesses having at least one establishment billed at Rate L regardless of industrial sector. The forest products sector was not the greatest recipient of funding under the program.

*Petitioner's Rebuttal Comments*¹⁹¹³

- The arguments presented by the GOQ and Resolute were previously considered and rejected by Commerce.¹⁹¹⁴ Neither the GOQ nor Resolute has presented any new arguments that warrant a change in Commerce's countervailable finding with regards to the EDL.
- For all the reasons discussed in the *Lumber VARI Final*, Commerce should continue to find that the EDL is *de jure* specific and confers a benefit on Resolute.

Commerce's Position: The GOQ and Resolute raised the same arguments in the first administrative review.¹⁹¹⁵ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that the EDL program constitutes a financial contribution, is *de jure* specific, and confers a benefit under sections 771(5)(D), 771(5A)(D)(i), and 771(5)(E) of the Act, respectively.

As the GOQ reported, "the purpose of the program is to encourage large industrial power consumers—defined as Rate L customers—to undertake eligible investments."¹⁹¹⁶ Under the program, businesses billed at the large power industrial rate (Rate L) that carry out eligible investment projects can receive government assistance in the form of reduced electricity costs.¹⁹¹⁷

Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. The subsidies that are provided by Hydro-Québec through this program are expressly limited by Decree 675-2016 to only "consumers billed at Rate L."¹⁹¹⁸ This evidence shows that the GOQ has established, by law, a discrete group of enterprises—Rate L consumers—that can

¹⁹¹² See Resolute Case Brief at 87-89 and 106-107.

¹⁹¹³ See Petitioner Rebuttal Brief at 271-274.

¹⁹¹⁴ *Id.* at 272 and 274 (citing *Lumber VARI Final* IDM at Comment 85).

¹⁹¹⁵ See *Lumber VARI Final* IDM at Comment 85.

¹⁹¹⁶ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-EDL-A (p. 1).

¹⁹¹⁷ *Id.*

¹⁹¹⁸ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-EDL-2.

receive assistance from Hydro-Québec in the form of electricity rebates for investment projects. That the GOQ may not have limited eligibility to commonly defined enterprises or industries does not alter this conclusion. Therefore, we continue to find the Rate L discount program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity, we need not examine whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

Decree 676-2016 states that “the discount applied to electricity bills will enable consumers billed at Rate L to free up additional funds to make investments that enhance their competitiveness.”¹⁹¹⁹ The reduced electricity costs (in the form of electricity rebates) allow for the reimbursement of up to 50 percent of the eligible costs of an investment.¹⁹²⁰ Section 771(5)(E) of the Act states that a benefit shall normally be treated as conferred where there is a benefit to the recipient. Based on the evidence, we continue to find that the Rate L discount program confers a benefit to the recipient equal to the amount of electricity rebates received on monthly electricity bills, as provided under section 771(5)(E) of the Act.

Under 19 CFR 351.503(a), Commerce measures the extent to which a financial contribution confers a benefit as provided for the specific type of benefit. Commerce does not consider “the effect of the government action” on a respondent’s performance, or whether the respondent altered its behavior.¹⁹²¹ Under this framework, any grant payments of the associated costs incurred (*i.e.*, the investment projects) are, in fact, a benefit to the recipients. We further disagree that the Rate L discount program does not benefit the participating companies, but rather the GOQ. Any advantages to the GOQ or the general public as a result of the EDL are not relevant to the benefit that Resolute received under the program. In analyzing the benefit of investment incentives, Commerce considers the benefit to be the amount of grant received by the company, pursuant to 19 CFR 351.504(a). Under 19 CFR 351.504, Commerce does not contemplate any advantages the government might receive by administering the program.¹⁹²² Consequently, whether the GOQ was able to realize energy efficiencies or advance its climate change policy are immaterial to Commerce’s examination. The focus of Commerce’s analysis is the direct transfer of funds that Hydro-Québec made to Resolute in the form of electricity rebates, within the meaning of section 771(5)(D)(i) of the Act, which conferred a benefit to the company in the amount of the grant received, pursuant to 19 CFR 351.504(a). Lastly, we disagree with the assertion that the GOQ purchases a service under the EDL. As discussed above, the evidence clearly shows that under the EDL, the GOQ is providing grants to Hydro-Québec’s Rate L consumers. It is clear from the record that the purpose of the electricity rebates is to incentivize the companies to undertake certain investment projects. Hence, these rebates are properly treated as grants to companies, not as compensation for services purchased by the government. In light of the evidence, the argument that Commerce unlawfully countervailed compensation for services purchased by the GOQ is unavailing.

¹⁹¹⁹ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-EDL-2.

¹⁹²⁰ *Id.* at Exhibit QC-EDL-A (p. 1).

¹⁹²¹ See 19 CFR 351.503(c).

¹⁹²² See *CVD Preamble*, 63 FR at 65361 (“{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the ‘effect’ of a subsidy.”).

Comment 91: Whether Hydro-Québec's Special L Rate Is Tied to Pulp and Paper

*GOQ's Comments*¹⁹²³

- The Côte-Nord Special L Rate program is tied to the production of pulp and paper at Resolute's Baie-Comeau and Clermont mills and has no relationship to the production of softwood lumber. Decree 1147-2015, which implemented the Special L Rate, was issued with respect "to the fixing of the rates and conditions at which electricity is distributed by Hydro-Québec to Resolute FP Canada Inc. for its pulp and paper mills in Baie-Comeau and Clermont."¹⁹²⁴
- Based on the Decree, the terms of the program are directly tied to the production of pulp and paper and reimbursement is for the increased costs associated with the spruce budworm.
- Pursuant to Commerce's regulations, subsidies are to be attributed only to the products to which they are tied at the time of bestowal.¹⁹²⁵

*Resolute's Comments*¹⁹²⁶

- As indicated in the Québec Decree and contracts between Hydro-Québec and Resolute,¹⁹²⁷ the purpose of the Special L Rate program was for the production of paper at Resolute's Baie Comeau and Clermont mills in response to the spruce budworm epidemic affecting that production.
- Pulp and paper products are the only products that the Baie Comeau and Clermont mills produce. Therefore, any benefit of the Special L Rate must be attributed to the production of pulp and paper only.

*Petitioner's Rebuttal Comments*¹⁹²⁸

- The attribution arguments presented by the GOQ and Resolute were previously considered and rejected by Commerce.¹⁹²⁹ Neither the GOQ nor Resolute has presented any new arguments that warrant a change in Commerce's countervailable finding with respect to the Special L Rate program.
- A finding that the Special L Rate is not tied to non-subject merchandise is consistent with Commerce's practice and the record evidence. Attribution is established at the point the subsidy is bestowed, and not the point at which it is used. Commerce does not trace the use of subsidies through a firm's books and records.¹⁹³⁰
- Consistent with the *Lumber V ARI Final*, Commerce should continue to find that the Special L Rate program is not tied to non-subject merchandise.

¹⁹²³ See GOQ Case Brief Volume 8.B at 36-38 and 40-41.

¹⁹²⁴ *Id.* at 41 (citing GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-SB-2).

¹⁹²⁵ *Id.* (citing 19 CFR 351.525(b)(5)(i)).

¹⁹²⁶ See Resolute Case Brief at 45-49.

¹⁹²⁷ *Id.* at 46 (citing GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibits QC-SB-A (p. 3), QC-SB-2, QC-SB-4, and QC-SB-5).

¹⁹²⁸ See Petitioner Rebuttal Brief at 261-263.

¹⁹²⁹ *Id.* at 263 (citing *Lumber V ARI Final* IDM at Comment 87).

¹⁹³⁰ *Id.* at 262 (citing *CVD Preamble*, 63 FR at 65403).

Commerce’s Position: The GOQ and Resolute raised the same arguments in the first administrative review.¹⁹³¹ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that there is no evidence to show that the Special L Rate is tied to the production or sales of pulp and paper at Resolute’s Baie Comeau and Clermont mills. Consequently, for these final results, we continue to attribute the benefit from the Special L Rate program to Resolute’s total sales.

As we explained in the *Lumber VARI Final*,¹⁹³² the fact that Resolute manufactures non-subject merchandise at the Baie Comeau and Clermont mills does not change the fact that those two mills are part of the Resolute corporate group. The Baie Comeau and Clermont mills are not distinct corporate entities, which would require Commerce to conduct an analysis under 19 CFR 351.525(b)(6)(ii)-(v) to determine whether subsidies received by those two mills are attributable to Resolute. Rather, Resolute is the corporate entity which files the tax documents and consolidates the financial statements of all of its mills as one corporate entity.¹⁹³³ Neither the statute nor Commerce’s regulations “provide for, or require, the attribution of a domestic subsidy to a specific entity (*e.g.*, a mill) within a firm.”¹⁹³⁴

Moreover, Commerce does not tie subsidies on a plant or facility-specific basis.¹⁹³⁵ Commerce recognizes that money is fungible, and its use for one purpose may free up money to benefit another purpose. Subsidies provided to a division of a company, such as a pulp and paper mill, will impact the overall production and sale of all other products of the company. Consequently, there is no need to address attribution because money is fungible within a single, integrated corporate entity (as opposed to a conglomeration of entities for which an analysis under 19 CFR 351.525(b)(6) may be required).

The only exception is if the subsidy is tied to the production or sale of a particular product. Section 351.525(b)(5)(i) of Commerce’s regulations states that, generally, “(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.” In making this determination, Commerce analyzes the purpose of the subsidy based on information available at the time of bestowal.¹⁹³⁶ Commerce’s practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed rather than examine the use or effect of subsidies (*i.e.*, to trace how the benefits are used by companies). A subsidy is only tied to a particular product when the intended use is known to the subsidy provider and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been previously upheld by the CIT.¹⁹³⁷

The respondents claim that the Special L Rate was tied to the operations of the Baie Comeau and Clermont mills, which produce pulp and paper products. However, there is no information on the record to establish that, at the time of approval or bestowal, the benefit of the Special L Rate was explicitly tied to the production or sale of pulp and paper at those mills. The GOQ reported

¹⁹³¹ See *Lumber VARI Final* IDM at Comment 87.

¹⁹³² See *Lumber VARI Final* IDM at Comment 87.

¹⁹³³ See Resolute Non-Stumpage IQR Response at Exhibits RES-NS-GEN-4 and RES-NS-GEN-5.

¹⁹³⁴ See *SC Paper from Canada Final* IDM at 161 (citing *CFS from China* IDM at Comment 8).

¹⁹³⁵ See, *e.g.*, *SC Paper from Canada – Expedited Review – Final Results* IDM at 99.

¹⁹³⁶ See *CVD Preamble*, 63 FR at 65403.

¹⁹³⁷ See, *e.g.*, *Essar Steel Ltd. v. U.S.*, 678 F. 3d at 1296.

that, “in response to the request by certain Côte-Nord forestry companies, including Resolute, to address the sustainability of the Côte-Nord forest industry afflicted by the spruce budworm epidemic, the Government of Québec announced a series of operational measures, technical support, and financial support to put an end to the forestry crisis on the Côte-Nord on August 31, 2015. Upon approval by the Council of Ministers, Order in Council 1147-2015 was issued on December 16, 2015.”¹⁹³⁸ Nowhere within that Order, or subsequent agreements/service contracts, did the GOQ state that the application of a 20 percent rate discount is tied to the production or sales of pulp and paper products, or the production or sales of products in general.¹⁹³⁹ Rather, the Order announces that the purpose of the Special L Rate is to compensate forestry companies on the North Shore for the financial difficulties caused by the spruce budworm epidemic to ensure the long-term viability of the forest industry.¹⁹⁴⁰

Based on the foregoing reasons, we thus continue to find that, at the point of bestowal, the Special L Rate was not tied to production or sales of pulp and paper at Resolute’s mills in the Côte-Nord region.¹⁹⁴¹

Comment 92: Whether Hydro-Québec’s Special L Rate Confers a Benefit

*GOQ’s Comments*¹⁹⁴²

- The Côte-Nord Special L Rate program does not confer a benefit on recipients, but rather compensates them for the additional costs associated with performing salvage operations to preserve the health of the forest.
- Because the program only provides a partial reimbursement for the increased costs associated with harvesting in a budworm-infested region, it does not constitute a countervailable subsidy. By harvesting the infected timber, Resolute provides an important service to Québec.

*Resolute’s Comments*¹⁹⁴³

- Commerce must find an appropriate benchmark for electricity provided under the program, or determine that the Special L Rate is consistent with market principles.
- The benchmark rate must be analyzed in reference to the prevailing market conditions, not only in reference to the regular L Rate. The effects of the spruce budworm in the Côte Nord Region are the prevailing market conditions that necessitated the program.

*Petitioner’s Rebuttal Comments*¹⁹⁴⁴

- The benefit argument presented by the GOQ was previously considered and rejected by Commerce.¹⁹⁴⁵ The GOQ has not presented any new arguments that warrant a change in

¹⁹³⁸ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-SB-A.

¹⁹³⁹ *Id.* at Exhibits QC-SB-2, QC-SB-4, and QC-SB-5.

¹⁹⁴⁰ *Id.* at Exhibit QC-SB-2.

¹⁹⁴¹ This finding is consistent with the *Groundwood Paper from Canada Final*, where Commerce also analyzed the Special L Rate discount program and did not find it to be tied to the production of pulp and paper. See *Groundwood Paper from Canada Final* IDM at 16, Comment 10 (where Commerce determined to use Resolute’s total sales value as a denominator for all programs except for the NIER, FSPF, and FPPGTP for which the use of Resolute’s pulp and paper sales as the denominator was appropriate), and Comment 72.

¹⁹⁴² See GOQ Case Brief Volume 8.B at 36-40.

¹⁹⁴³ See Resolute Case Brief at 37.

¹⁹⁴⁴ See Petitioner Rebuttal Brief at 263-265.

¹⁹⁴⁵ *Id.* at 264 (citing *Lumber V ARI Final* IDM at Comment 88).

Commerce's countervailable finding that the Special L Rate discount provides a benefit under section 771(5)(E) of the Act.

- For all the reasons discussed in the *Lumber VARI Final*, Commerce should continue to find the Special L Rate program confers a benefit on Resolute.

Commerce's Position: The GOQ and Resolute raised the same benefit arguments in the first administrative review.¹⁹⁴⁶ We found the arguments unconvincing then and continue to do so here. We therefore are not persuaded that the Special L Rate does not provide a benefit because it provides only partial reimbursement for the increased electricity costs associated with harvesting budworm-infested timber. The notion that the payments provided do not cover the full electricity costs does not negate the benefit from the payments that Resolute actually received from Hydro-Québec.¹⁹⁴⁷ Partial use of, or partial payment under, a program does not negate the fact that a benefit was received.¹⁹⁴⁸ When analyzing whether a benefit exists, Commerce is concerned with what goes into a company.¹⁹⁴⁹ Resolute reported that it received electricity credits under the Special L Rate program on its monthly invoices during the POR.¹⁹⁵⁰

We also disagree that Resolute is providing a service to Québec by harvesting timber affected by spruce budworm. The harvesting of the timber was in furtherance of Resolute's own activities within its normal course of business, and not to render a service to the GOQ. Additionally, we find no basis to Resolute's argument that Commerce must apply a benchmark that reflects the prevailing market conditions for the Special L Rate, or find the Special L Rate consistent with market principles. Consistent with the *Lumber VARI Final*,¹⁹⁵¹ we continue to determine that the Special L Rate program conferred a benefit to Resolute equal to the amount of the electricity credits that Hydro-Québec applied to its monthly electricity invoices. Given the nature of the subsidy, there is no basis or need to measure the benefit of the Special L Rate to a benchmark as Resolute seems to suggest. As such, the issue of the prevailing market conditions in the Côte-Nord region is irrelevant to Commerce's analysis of the benefit under the Special L Rate program.

For the aforementioned reasons, we continue to find that the Special L Rate discount provides a benefit under section 771(5)(E) of the Act, and that the benefit exists in the amount of electricity credits received by Resolute, pursuant to 19 CFR 351.504(a).

Comment 93: Whether Hydro-Québec's IEO Is Countervailable

*GOQ Comments*¹⁹⁵²

- Industrial users with the technical capacity to curtail power on notice of interruption are not an "enterprise or industry" within the meaning of the statute.¹⁹⁵³ Hydro-Québec's IEO program is

¹⁹⁴⁶ See *Lumber VARI Final* IDM at Comment 88.

¹⁹⁴⁷ See, e.g., *CVD Preamble*, 63 FR at 65361 (for discussion of benefit).

¹⁹⁴⁸ See, e.g., *SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 31.

¹⁹⁴⁹ See *CVD Preamble*, 63 FR at 65361.

¹⁹⁵⁰ See Resolute Non-Stumpage IQR Response at Exhibits RES-NS-LRateB-APP (p. 5), RES-NS-LRateB-6, and RES-NS-LRateB-7.

¹⁹⁵¹ See *Lumber VARI Final* IDM at Comment 88.

¹⁹⁵² See GOQ Case Brief Volume 8.B at 59-64.

¹⁹⁵³ *Id.* at 59 (citing section 771(5A)(D)(i) of the Act).

available to all Medium-Power Customers, Large-Power Customers on Rate L (industrial), and Rate LG Customers. Thousands of entities from a wide variety of industry sectors comprise these customer types. Therefore, Commerce's *de jure* specific finding is unsupported.

- Even if Commerce finds the IEO to be *de jure* specific, the program does not confer a benefit on participants. Under the IEO, participating companies must curtail power on demand when directed to so, or be penalized. Disruption in production activities is a cost, not a benefit, which can only be offset by the credits available under the IEO program. These credits merely compensate customers for the actual risk of interruption to their electricity and to their production activities. Credits under the program function only as a reimbursement for those risks and thus provide no benefit.

*Resolute and Central Canada's Comments*¹⁹⁵⁴

- Hydro-Québec's IEO is generally available to all Medium-Power Customers, Large-Power Customers on Rate L, and Rate LG Customers agreeing to curtail power on notice of interruption from Hydro-Québec. As such, the IEO is not specific to an enterprise or industry or group of enterprises or industries.
- Payments under the IEO are made in exchange for a thing of value, and are not grants.
- Should Commerce continue to find that energy curtailment is not a service, it should conduct a benefit analysis to determine whether Resolute receives more than adequate remuneration for its electricity curtailment. As a benchmark, under 19 CFR 351.511(a)(2), Commerce should determine the adequacy of remuneration in relation to the prevailing market conditions in Québec. Should there be no actual transactions that may serve as a benchmark, Commerce should measure the adequacy of remuneration by assessing whether Hydro-Québec's price is consistent with market principles.

*Petitioner's Rebuttal Comments*¹⁹⁵⁵

- The arguments presented by the GOQ and Resolute were previously considered and rejected by Commerce.¹⁹⁵⁶ Neither the GOQ nor Resolute has not presented any new arguments that warrant a change in Commerce's countervailable finding with regard to Hydro-Québec's IEO.
- For all the reasons discussed in *Lumber V ARI Final*, Commerce should continue to find the IESO Demand Response to be countervailable.

Commerce's Position: The GOQ and Resolute raised the same arguments regarding the Hydro-Québec's IEO in the first administrative review.¹⁹⁵⁷ We found the arguments unpersuasive then and continue to do so here.

For all the reasons discussed in Comment 4, Commerce continues to find that an electricity curtailment program does not equate to a government-owned utility purchasing a service from a company that reduces its electricity consumption on demand. Given the manner in which load

¹⁹⁵⁴ See Resolute and Central Canada Case Brief at 70 and 106-107.

¹⁹⁵⁵ See Petitioner Rebuttal Brief at 268-271.

¹⁹⁵⁶ *Id.* at 240 (citing *Lumber V ARI Final* IDM at Comment 73).

¹⁹⁵⁷ See *Lumber V ARI Final* IDM at Comment 84.

curtailment programs, like the Hydro-Québec’s IEO, operate, Commerce finds that such programs are, in fact, the provision of a grant,¹⁹⁵⁸ and not the purchase of a service by the GOQ. We are unpersuaded by the respondent parties’ assertion that the IEO program is not specific. Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. The subsidies that are provided by Hydro-Québec through the IEO are expressly limited by law to enterprises that meet specific energy generation and consumption requirements and have the technical capacity to curtail power on notice of interruption.¹⁹⁵⁹ The IEO is available to only Medium-Power Customers, Large-Power Customers on Rate L (industrial), and Rate LG Customers.¹⁹⁶⁰

Thus, the evidence shows that the GOQ has established, by law, a limited group of enterprises that may receive electricity credits from Hydro-Québec under this program. That the GOQ may not have limited eligibility to commonly defined enterprises or industries does not alter this conclusion. Therefore, we continue to find the IEO program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

Similarly, we continue to find that the IEO confers a benefit equal to the amount of electricity credits received, as provided under section 771(5)(E) of the Act, which states that a benefit shall normally be treated as conferred where there is a benefit to the recipient. Under the IEO, participants—like Resolute—receive electricity credits when they curtail their power usage on demand in response to an interruption notice issued by Hydro-Québec.

Further, 19 CFR 351.503(a) states that Commerce will “measure the extent to which a financial contribution (or income or price support) confers a benefit” as provided for the specific type of benefit, as described under the regulations. Commerce does not consider “the effect of the government action” on the respondents’ performance, or whether the respondents altered their behavior.¹⁹⁶¹ Under this framework, any grant payments of the associated costs incurred (*i.e.*, power interruption to their operations) are, in fact, a benefit to the recipients. As such, we disagree that the IEO benefits Hydro-Québec and not the participating companies. Any advantages to Hydro-Québec in administering the program are not relevant to the benefit that Resolute received under the program.

In analyzing the benefit of electricity credits, Commerce considers the benefit to be the amount of grant received by the company, pursuant to 19 CFR 351.504(a). Under 19 CFR 351.504, Commerce does not contemplate any advantages the government might receive by administering the program.¹⁹⁶² Consequently, whether Hydro-Québec was able to maintain the integrity of the grid during peak demand because of the IEO program is immaterial to Commerce’s analysis. The focus of Commerce’s analysis is the direct transfer of funds that Hydro-Québec made to

¹⁹⁵⁸ See, e.g., *Lumber V ARI Final IDM* at Comment 8, 73 and 84; *Groundwood Paper from Canada Final IDM* at Comment 66; *Wire Rod from Italy Final IDM* at Comment 2; *Silicon Metal from Australia Final IDM* at Comment 2; and *CTL Steel Plate from Korea Final*, 64 FR at 73182; see also Comment 4 of this memorandum.

¹⁹⁵⁹ See GOQ IQR Response, Volume 3 (Non-Stumpage—Hydro-Québec Programs) at Exhibit QC-IEO-1.

¹⁹⁶⁰ *Id.* at Exhibit QC-IEO-A (p. 13).

¹⁹⁶¹ See 19 CFR 351.503(c).

¹⁹⁶² See *CVD Preamble*, 63 FR at 65361 (“{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the ‘effect’ of a subsidy.”).

Resolute via electricity credits, which we find conferred a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

M. Tax Program Issues

Federal

Comment 94: Whether the Federal and Provincial SR&ED Tax Credits Are Specific

*GOC's Comments*¹⁹⁶³

- Commerce's method for assessing *de facto* specificity for the Federal SR&ED tax credit by comparing program users to tax filers is not consistent with prior findings for the program or relevant case precedent for similar programs. Additionally, this method is unlawful.
- Commerce failed to acknowledge that it previously found this program not specific in *OCTG from Canada* and *Lumber II*. In the *Lumber V ARI Final*, Commerce dismissed these cases as predating the URAA, but the SAA clearly states that URAA amendments on specificity were not meant to change Commerce's practice in that area.
- Commerce must amend its formulaic percentage comparison to consider factors such as the breadth of industries represented by SR&ED tax credit users. Commerce has previously found programs with far smaller numbers of users not to be *de facto* specific.
- In *Royal Thai Gov't v. U.S.*,¹⁹⁶⁴ the CIT upheld a Commerce finding that a program prioritizing 351 industries for debt restructuring was not specific. In *Bethlehem Steel Corp. v. U.S.*,¹⁹⁶⁵ the CIT upheld a Commerce finding that a Chinese electricity curtailment program with 190 users was not *de facto* specific. In *AK Steel Corp. v. U.S.*,¹⁹⁶⁶ the CIT upheld a finding that a program with 207 users was not *de facto* specific. Cases where Commerce did find *de facto* specificity involved far smaller groups. By contrast, approximately 20,000 enterprises from a broad range of industries used the SR&ED tax credit in 2019.
- Commerce claimed in the *Lumber V ARI Final* that some of the cited cases above involved the predominant or disproportionate use tests for *de facto* specificity under sections 771(5A)(D)(iii)(II) and (III) of the Act, whereas it analyzed SR&ED under the limited in number test in section 771(5A)(D)(iii)(I) of the Act.¹⁹⁶⁷ This claim ignores that under Commerce's own policy of sequential analysis, it could not have gotten to the disproportionate or predominant tests unless it had first found that the number of users was not limited.
- For other cited cases, Commerce dismissed their relevance by saying the facts of those cases "were specific to those particular proceedings," so that "those cases are not applicable to this review and do not dictate a particular finding in this review."¹⁹⁶⁸ This is not a legally acceptable response. Similarly situated cases must be treated similarly, until Commerce explains its reason for departing from prior practice, or properly explains why cases are not similarly situated.

¹⁹⁶³ See GOC Brief Volume 2 at 34-60.

¹⁹⁶⁴ See *Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d at 1335-1336.

¹⁹⁶⁵ See *Bethlehem Steel*, 140 F. Supp. 2d at 1368.

¹⁹⁶⁶ See *AK Steel Corp. v. U.S.*, 192 F. 3d at 1385.

¹⁹⁶⁷ See GOC Brief Volume 2 at 43 (citing *Lumber V ARI Final* IDM at Comment 89).

¹⁹⁶⁸ *Id.* (citing *Lumber V ARI Final* IDM at Comment 89).

- SR&ED is used by tens of thousands of enterprises across almost every part of the economy. This clearly satisfies any reading of the SAA’s injunction not to countervail measures that are “truly broadly available and widely used throughout an economy.”¹⁹⁶⁹
- The SAA directs Commerce to “seek and consider information relevant to all of {the four *de facto* specificity} factors.” The CIT has also noted, “{i}t is nonsensical to simply count the number of proffered industries, regardless of their composition,” in order to determine specificity.¹⁹⁷⁰ Commerce cannot look solely at the number of users under section 771(5A)(D)(iii)(I) of the Act and ignore record evidence showing that the SR&ED is spread throughout the Canadian economy.
- Commerce increasingly has purported to make determinations of *de facto* specificity by comparing the number of users of a tax program to the total number of corporations filing tax returns during the relevant period. If the resulting percentage is small, Commerce finds the program to be *de facto* specific. Commerce cannot simply rely on having followed this methodology in other recent cases as justification for doing so here; each decision on its own must comply with the statute.
- By comparing the number of users of a tax program with the total number of tax return filers, and taking no other factors into account, Commerce replaces the statutorily required inquiry into the “number” of enterprises using a program with an inquiry that focused solely on the percentage of enterprises using a program. Yet, section 771 (5A)(D)(iii)(I) of the Act requires Commerce to determine whether the users of a program are “limited in number,” not “limited in percentage.”
- The percentage of tax filers approach as applied by Commerce does away with the legally required case-by-case examination of all the relevant facts of each case. Commerce’s percentage approach could thus lead to the levy of countervailing duties on almost any imported product whose production benefits from almost any foreign government tax measure, regardless of how widely available and how broadly used, and would amount to the kind of result rejected by the court in *Carlisle* and by Congress in the SAA.¹⁹⁷¹
- There is no support in the SAA for an approach that bases a *de facto* specificity finding solely on a comparison of the number of enterprises using a program with the total number of enterprises in the jurisdiction. Commerce inaccurately summarized a portion of the SAA that focuses on the number of industries, not enterprises, in the economy, and only does so within the context of assessing the degree of diversification in the relevant economy.¹⁹⁷²
- If Commerce does persist in using a percentage approach, it should make appropriate adjustments to the numerator and denominator to ensure a fair comparison. The numerator should include the number of corporations that have used the SR&ED program over a number of years, and the denominator should include only companies in a position to use the credit. The CRA number for reported tax filers is also an overestimate, as it counts separate corporate entities part of a single group and includes non-profits, tax-exempt companies, and some non-Canadian companies. The number of business enterprises reported by StatCan is a better denominator.¹⁹⁷³

¹⁹⁶⁹ *Id.* at 44.

¹⁹⁷⁰ See *Changzhou Trina Solar Energy v. U.S.* (2018), 352 F.Supp.3d at 1331.

¹⁹⁷¹ See GOC Case Brief Volume 2 at 49 (citing SAA at 929; *Carlisle*, 564 F. Supp. at 838).

¹⁹⁷² See GOC Brief Volume 2 at 50 (citing *Lumber V AR1 Final IDM* at Comment 89).

¹⁹⁷³ *Id.* at 53-54.

- Only looking at the absolute number of users ignores the significance of particular sectors for a country's economy, particularly given that many sectors with a large number of enterprises account for a smaller share of the economy than their number would suggest, and vice versa.
- Given that the CVD law applies only to physical commodities, the specificity analysis should only be carried out within the goods-producing sectors of the economy. Otherwise, any government programs to goods production could be found specific given that small share of the economy such production accounts for in a mature economy like the United States or Canada.
- Softwood lumber producers are not predominant or disproportionate users of this tax credit under the meaning of sections 771(5A)(D)(iii)(II) and (III) of the Act. Nor is there any discretion in determining eligibility.

*GOA's Comments*¹⁹⁷⁴

- Contrary to Commerce's preliminary finding that the SR&ED program is *de facto* specific, the record in this review establishes that the SR&ED credit program is widely available, widely used, and the benefits of the program are spread throughout the economy.
- With respect to section 771(5A)(D)(iii)(IV) of the Act, the GOA's decisions to award SR&ED credit do not indicate either that the forestry industry as a whole or an enterprise within the forestry industry "is favored over others." The record establishes that as long as companies meet the eligibility requirements as outlined in the *Alberta Corporate Tax Act*, they will always and automatically receive the Alberta SR&ED credit.¹⁹⁷⁵ No additional approval is required, and there is no discretion that goes beyond the criteria laid out in *Alberta's Corporate Tax Act*.

*GBC's Comments*¹⁹⁷⁶

- The BC SR&ED tax credit is not *de facto* specific. All companies are eligible for the credit. Many different activities qualify for the credit, and many companies from a broad range of sectors use it every year. The forestry industry, which includes softwood lumber, is not a predominant user of the program, and the tax credit is granted automatically when eligibility criteria are met.

*GNB's Comments*¹⁹⁷⁷

- New Brunswick's Research and Development Tax Credit is not countervailable for the reasons explained by the GOC in its discussion of the Federal SR&ED program. Any taxpayer in New Brunswick can use the program, and usage is broad.

*GOQ's Comments*¹⁹⁷⁸

- Québec's SR&ED tax credit is not limited to the softwood lumber or any other industry, and it is widely available and used by a diverse group of industries. As a result, Commerce should find that the SR&ED tax credit is not *de facto* specific.

¹⁹⁷⁴ See GOA Case Brief 4.B at 31-33.

¹⁹⁷⁵ *Id.* at 32 (citing GOA IQR Response at 69 and Exhibit AB-AR2-SRED-5).

¹⁹⁷⁶ See GBC Case Brief Volume 5 at 81-84.

¹⁹⁷⁷ See GNB Case Brief Volume 6 at 91-92.

¹⁹⁷⁸ See GOQ Case Brief Volume 8.B at 144-145.

*Resolute's Comments*¹⁹⁷⁹

- Commerce should reverse its preliminary finding and recognize that Resolute received no benefit for the amount of Federal SR&ED and Québec tax credits claimed during the POR that it accrued before the bankruptcy proceeding for Resolute's predecessor, AbitibiBowater. The alleged subsidies AbitibiBowater accrued as tax credits could not provide a benefit to Resolute when it claimed them years later during the POR because Resolute already had paid the fair market value of the tax assets before emerging from bankruptcy.
- The Federal SR&ED tax credit is also not countervailable for the reasons explained by the GOC in its discussion of the Federal SR&ED program.

*West Fraser's Comments*¹⁹⁸⁰

- Commerce's findings that the Federal, British Columbia, and Alberta SR&ED tax credits are *de facto* specific are incorrect. All these programs are broadly available and widely used throughout the economies in which they are provided.

*Petitioner's Rebuttal Comments*¹⁹⁸¹

- The arguments advanced by the respondents have been considered and rejected on multiple occasions. As a result, Commerce should continue to find the federal and provincial SR&ED programs to be countervailable in the final results of this administrative review.
- Commerce's preliminary finding that the federal SR&ED program is specific should not be reconsidered absent "new facts or evidence of changed circumstances."¹⁹⁸²
- The issue of "whether the benefit of SR&ED tax credits claimed by Resolute was extinguished when AbitibiBowater emerged from bankruptcy" has previously been resolved by Commerce. As Resolute received its federal SR&ED credits during the POR, Commerce should continue to conclude that the bankruptcy of Resolute's predecessor did not extinguish benefits received during the POR.

• **Commerce's Position:** In the *Lumber VARI Final*, Commerce found that the SR&ED programs were *de facto* specific because the number of actual recipients, relative to the total number of corporate tax filers, were limited on an enterprise basis under section 771(5A)(D)(iii)(I) of the Act and then explained how these findings accorded with the Act, the SAA, and past case precedent.¹⁹⁸³ Commerce also explained the legitimacy of using a percentage analysis to determine whether the Québec SR&ED was specific in the *Groundwood Paper from Canada Final*.¹⁹⁸⁴ In the *Lumber VARI Final*, Commerce again found that the SR&ED programs were *de facto* specific and responded to the Canadian Parties' arguments that the *Lumber VARI Final's* finding on this issue was incorrect.¹⁹⁸⁵ In this review, the Canadian Parties make substantively the same arguments as in the prior proceedings, and we continue to find their arguments unconvincing.

¹⁹⁷⁹ See Resolute and Central Canada Case Brief at 104-106.

¹⁹⁸⁰ See West Fraser Case Brief at 69-70.

¹⁹⁸¹ See Petitioner Rebuttal Brief at 208-209; 221-223; 230-232; 295-296; 299-303.

¹⁹⁸² See *Magnola*, 508 F.3d at 1358.

¹⁹⁸³ See *Lumber VARI Final* IDM at Comment 89.

¹⁹⁸⁴ See *Groundwood Paper from Canada Final* IDM at Comment 61.

¹⁹⁸⁵ See *Lumber VARI Final* IDM at Comment 89.

As Commerce explained in the *Lumber V AR1 Final*,¹⁹⁸⁶ the SAA states that the specificity test is an initial screening mechanism to winnow out only those foreign subsidies that are truly broadly available and widely used throughout an economy.¹⁹⁸⁷ The specificity test is not, however, “intended to function as a loophole through which narrowly {focused} subsidies . . . used by discrete segments of an economy could escape the purview of the {countervailing duty} law.”¹⁹⁸⁸ The SAA also states that, in determining whether the number of industries or enterprises using a subsidy is large or small, Commerce can take into account the number of industries or enterprises in the economy in question.¹⁹⁸⁹ Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, Commerce reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.¹⁹⁹⁰ Thus, we have followed the instructions of the SAA and our practice in determining whether this program is *de facto* specific, and we continue to disagree with the GOC’s argument that we were required to analyze only the absolute number of users under section 771(5A)(D)(iii)(I) of the Act.

Furthermore, section 771(5A)(D)(iii)(I) of the Act, which provides the first factor in the *de facto* specificity test under the statute, does not require Commerce to examine whether the governments took actions to limit the number of recipients of the federal or provincial tax credits. We also note that if a single factor warrants a finding of specificity, “{Commerce} will not undertake further analysis.”¹⁹⁹¹ Because we made a specificity finding under section 771(5A)(D)(iii)(I) of the Act, the first factor in the *de facto* specificity test under the Act, we were not obligated to examine other factors under the Act, or to consider government actions in limiting the actual number of recipients of the federal and provincial tax credit programs.

The GOC notes that the tens of thousands of users of the Federal SR&ED program is “large” and that the users represent “every sector in the Canadian economy.”¹⁹⁹² The provincial governments that administer SR&EDs likewise argue that these programs have many users representing diverse industries in their respective provincial economies.¹⁹⁹³ However, a specificity analysis under section 771(5A)(D)(iii)(I) of the Act does not require the administering authority to make a determination based on the number of industries that use a program, but instead states that a program is specific if the “actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.”

In the *Lumber V AR2 Prelim*, Commerce considered whether the recipients of the Federal, Alberta, British Columbia, New Brunswick, and Québec programs were limited in number on an industry or enterprise basis. For each program, we found that the usage data provided by the

¹⁹⁸⁶ See *Lumber V AR1 Final* IDM at Comment 89.

¹⁹⁸⁷ See SAA at 930 (referencing *Carlisle Tire v U.S.*, 564 F. Supp. 834 (CIT 1983)).

¹⁹⁸⁸ *Id.*

¹⁹⁸⁹ *Id.* at 931.

¹⁹⁹⁰ See *Cold-Rolled Steel from Korea* IDM at Comment 13.

¹⁹⁹¹ See 19 CFR 351.502(a).

¹⁹⁹² See GOC Case Brief Volume 2 at 34.

¹⁹⁹³ See, e.g., GBC Cas Brief Volume 5 at 82-83, “These industries range from manufacturing to finance and insurance to healthcare and social assistance.

respective government showed that the actual users of the program were limited relative to either the number of enterprises or corporate tax filers.¹⁹⁹⁴

The GOC posits that because the CVD law applies only to physical commodities, the specificity analysis should only be carried out within the goods-producing sectors of the economy, given that small share of the economy such production accounts for in a mature economy like the United States or Canada.¹⁹⁹⁵ The GOC also argues that Commerce was wrong in comparing the number of users of the program with the total number of tax return filers instead of comparing the number of users of the program with only those companies that conduct research and development (and therefore hypothetically could have benefited from the program).¹⁹⁹⁶ Both arguments emphasize that the Federal SR&ED's users are not "limited" when compared against a much smaller denominator.

However, Commerce looks at the economy as a whole in determining whether or not the number of industries or enterprises receiving a subsidy is, in fact, limited.¹⁹⁹⁷ Commerce's analysis in this administrative review, as well as its analysis in the underlying investigation, expedited review, and the *Groundwood Paper Final* was therefore fully consistent with Commerce's current practice, regulations, and the language of the SAA accompanying the change in the law as part of the URAA.

We also disagree with the GOC that our specificity analysis for this program is inconsistent with prior Commerce analysis in cases where we found no *de facto* specificity for programs with fewer users than the Federal SR&ED. In *AK Steel*, the CAFC affirmed Commerce's specificity analysis in light of facts and circumstances of that particular case and explained that "(d)eterminations of disproportionality and dominant use are not subject to rigid rules, but rather must be determined on a case-by-case basis taking into account all the facts and circumstances of a particular case."¹⁹⁹⁸ We note that in *CTL Steel Plate from Korea Final* (litigated in *Bethlehem Steel*), Commerce based its negative *de facto* specificity determination with regard to an electricity discount program, on an analysis of *disproportionate* and *predominant use*.¹⁹⁹⁹ Therefore, we find that the references to *AK Steel* and *Bethlehem Steel*, which addressed disproportionality and predominant use, are not applicable to our analysis of these tax programs, where we found that the actual recipients are limited in number, in accordance with section 771(5A)(D)(iii)(I) of the Act.

With respect to *Royal Thai Gov't v. U.S.*, also cited by the GOC, Commerce addressed the unique and distinguishing facts of that case in the *Lumber V Final*.²⁰⁰⁰ The GOC has made no additional arguments in this case from that in the underlying investigation to have us reconsider our analysis of the facts in *Royal Thai Gov't v. U.S.* and this program. Because the facts of every subsidy and case are different, the CAFC has acknowledged that Commerce is afforded

¹⁹⁹⁴ See *Lumber V AR2 Prelim Results* PDM at 71 (Federal), 73-74 (Alberta), 78 (British Columbia), 82 (New Brunswick), and 83 (Québec).

¹⁹⁹⁵ See GOC Case Brief Volume 2 at 56.

¹⁹⁹⁶ *Id.* at 47-50.

¹⁹⁹⁷ See SAA at 930.

¹⁹⁹⁸ See *AK Steel Corp v. U.S.*, 192 F. 3d at 1385 {emphasis added}.

¹⁹⁹⁹ See *CTL Steel Plate from Korea Final*, 64 FR at 73186 and 73192 – 93 {emphasis added}.

²⁰⁰⁰ See *Lumber V Final* IDM at Comment 64.

significant latitude and is not subject to rigid rules when determining if a particular program is specific under section 771(5A) of the Act.²⁰⁰¹

The GOC additionally cites to four cases in which Commerce found *de facto* specificity to argue that Commerce's precedent for finding *de facto* specificity based on a limited number of enterprises or industries has involved much smaller numbers than in the instant proceeding: *Citric Acid from China*,²⁰⁰² *OCTG from Turkey*,²⁰⁰³ *CRS from Russia*,²⁰⁰⁴ and *Compressors from Singapore*.²⁰⁰⁵ However, as stated above, the CAFC has stated, Commerce is afforded latitude and not subject to rigid rules when determining specificity.²⁰⁰⁶ Most importantly, however, as detailed above, Commerce conducts its *de facto* specificity analysis under section 771(5A)(D)(iii) of the Act on a case-by-case basis. As the CAFC stated, specificity "must be determined on a case-by-case basis taking into account all facts and circumstances of a particular case."²⁰⁰⁷ Because the facts of *Citric Acid from China*, *OCTG from Turkey*, *CRS from Russia*, and *Compressors from Singapore* were specific to those particular proceedings, Commerce's determinations in those cases are not applicable to this review and do not dictate a particular finding in this review.

Commerce properly determined on the record of this case that the recipients of the Federal and provincial SR&ED credits in Canada were limited in number and that the programs were therefore *de facto* specific, in accordance with the Act, regulations and the SAA. As Commerce has explained above, and in prior decisions,²⁰⁰⁸ this program is specific because the number of users was limited.

Comment 95: Whether Class 43.2 Assets Are Tied to Non-Subject Merchandise

*Resolute's Comments*²⁰⁰⁹

- The record shows that Resolute's qualifying project for the capital cost allowance is tied to the paper products produced at Resolute's Alma and Kénogami mills, which have small-scale hydro-electric installations.²⁰¹⁰
- Resolute also has three cogeneration systems in the paper mills at Dolbeau and Gatineau, and in the pulp and paper mills at Thunder Bay; however, none of the electricity generated at these

²⁰⁰¹ See *Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d at 1335 – 1336 (citing *AK Steel Corp v. U.S.*, 192 F. 3d at 1385); see also *Bethlehem Steel Corp. v. U.S.*, 140 F. Supp. 2d at 1368 ("Commerce on a case-by-case basis sequentially analyze each of the four factors listed in {section 771(5A)(D)(iii)}.").

²⁰⁰² See *Citric Acid from China* IDM at 18.

²⁰⁰³ See *OCTG from Turkey* (affirmed in *Borusan*, Supp. 61 F. 3d at 1342 – 343).

²⁰⁰⁴ See *CRS from Russia* IDM at 117.

²⁰⁰⁵ See *Compressors from Singapore*, 61 FR at 10316.

²⁰⁰⁶ See *Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d at 1335 – 1336 (citing *AK Steel Corp. v. U.S.*, 192 F. 3d at 1385); see also *Bethlehem Steel Corp. v. U.S.*, 140 F. Supp. 2d at 1368 ("Commerce on a case-by-case basis sequentially analyze each of the four factors listed in {section 771(5A)(D)(iii)}.").

²⁰⁰⁷ See *AK Steel*, 192 F. 3d at 1385; *Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d at 1335 – 1336 (Commerce's determinations of *de facto* specificity "are not subject to rigid rules, but rather must be determined on a case-by-case basis.").

²⁰⁰⁸ See *Lumber V ARI Final* IDM at Comment 89; *Lumber V Final* IDM at Comment 65; see also *Groundwood Paper from Canada Final* IDM at Comment 61.

²⁰⁰⁹ See Resolute Brief at 60-61.

²⁰¹⁰ *Id.* at 61 (citing Resolute Non-Stumpage IQR Response at Exhibit RES-NS-GEN-CLASS43.2 at 1-2).

facilities goes to a sawmill so any benefits from this program must be attributed to production of pulp and paper sales, which are non-subject merchandise.²⁰¹¹

- As such, Commerce should find there is no basis to find that benefits under this program are attributable to subject merchandise.

*Petitioner's Rebuttal Comments*²⁰¹²

- According to the *CVD Preamble*, “if subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, {Commerce} will attribute the subsidy to sales of all products by the company.”
- In this case, accelerated depreciation for certain properties is a benefit “provided to the overall operations of a company,” and eligibility under the program does not specify that the clean energy generation and conservation properties must provide energy for the production of certain products, nor does it require that such properties be located at pulp and paper mills.²⁰¹³
- Where Resolute chooses to put eligible properties and how Resolute chooses to use any generated energy has no bearing on Commerce’s analysis of the tax benefit received by the company; therefore, Commerce should reject Resolute’s arguments that CCA for Class 43.2 are tied to non-subject merchandise.

Commerce’s Position: We disagree with Resolute’s assertion that the record shows that its qualifying project for the capital cost allowance is tied to the non-subject paper products produced at Resolute’s Alma and Kénogami mills. Under 19 CFR 351.525(b)(5)(i), “if a subsidy is tied to the production or sale of a particular product,” Commerce “will attribute the subsidy only to that product.” To determine whether a subsidy is “tied,” Commerce’s focus is on “the purpose of the subsidy based on information available at the time of bestowal” (that is, when the terms for the provision are set), and not on how a firm has actually used the subsidy.²⁰¹⁴ Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents—*e.g.*, the application, contract or approval—explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.²⁰¹⁵

The record indicates no such evidence of tying. Instead, Resolute states that it applied depreciation under the CCA for Class 43.2 program on its small-scale hydroelectric installations, which is one of 16 categories of systems and equipment qualify for the this program, and Resolute’s claims that its small-scale hydroelectric installations provided electricity only to its paper mills and thus it related to non-subject merchandise.²⁰¹⁶ However, we find that this information does not indicate that the federal and relevant provincial governments’ decisions to bestow the tax credit were contingent upon using this tax depreciation program on clean energy generation and energy conservation projects related to certain merchandise, to the exclusion of subject merchandise. Nor has Resolute cited any evidence that the CCA for Class 43.2 program

²⁰¹¹ *Id.* (citing Resolute Non-Stumpage IQR Response at Exhibit RES-NS-GEN-CLASS43.2 at 1-2).

²⁰¹² *See* Petitioner Rebuttal Brief at 315-317.

²⁰¹³ *Id.* at 316-317 (citing *CVD Preamble*, 63 FR at 65399-65400 and Petitioner Comments on IQR Responses at Exhibit vol. II-12).

²⁰¹⁴ *See CVD Preamble*, 63 FR at 65403.

²⁰¹⁵ *Id.* at 65402; *see also CRS from Korea* IDM at Comment 14 and *Solar Cells from China* IDM at Comment 13.

²⁰¹⁶ *See* Resolute Brief at 60-61.

can only be claimed for non-subject merchandise. Furthermore, the benefits received under this tax depreciation program reduce Resolute's overall tax burden. Accordingly, there is no basis to find that the benefits are tied to any merchandise at the point of approval or bestowal. Thus, we continue to find benefits received under the program to be untied subsidies that are attributable to the total sales of Resolute, as provided under 19 CFR 351.525(b)(3).

Comment 96: Whether the Class 43.2 Assets Program Is *De Facto* Specific

*GOC's Comments*²⁰¹⁷

- There is no limitation on the industries or enterprises that can use the Class 43.2 Assets Program; rather, it is available to all taxpayers in all industries and sectors.²⁰¹⁸
- Commerce correctly concluded that the Class 43.2 Assets Program "is not limited, by law, to certain enterprises or industries under section 771(5A)(D)(i) of the Act;" however, it then incorrectly determined that the program is *de facto* specific under section 771(5A)(D)(iii) of the Act because, during the POR, 3,200 companies, out of approximately 2.1 million tax filers, claimed this depreciation deduction.²⁰¹⁹
- Relying on a rigid mathematical formula that only compares the number of users to the total number of tax filers is flawed because it counts enterprises in non-goods producing sectors and those that did not pay taxes at all.
- Instead, Commerce must consider factors such as the type of tax measure, the absolute number of enterprises using a program, and the breadth of industries using this program. Under those criteria, Commerce should find the CCA for Class 43.3 Assets program to not be *de facto* specific.

*GOQ's Comments*²⁰²⁰

- Record evidence indicates that numerous companies across a diverse set of industries (*e.g.*, agriculture, manufacturing, construction, wholesale trade, retail trade, finance and insurance, and accommodation, food, beverage, business, educational, government, health, social and other services industries) used the CCA for Class 43.2 Assets program, which demonstrates that the program is widely available and is used broadly throughout the economy, and therefore, Commerce should find this program to not be *de facto* specific.²⁰²¹

*Petitioner's Rebuttal Comments*²⁰²²

- The GOC and the GOQ disagree with Commerce's specificity finding on the grounds that comparing the number of users to the number of companies in the economy is not sufficient to find *de facto* specificity; however, Commerce's statute requires only one of the following criteria need to be met in order to find *de facto* specificity: (I) the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number; (II) an enterprise or industry is a predominant user of the subsidy; (III) an enterprise or industry receives a disproportionately large amount of the subsidy; (IV) the manner in which the

²⁰¹⁷ See GOC Case Brief Volume 2 at 1-2 and 60-61.

²⁰¹⁸ *Id.* at 60 (citing GOC SQR Response on Class 43.2 Assets at 10).

²⁰¹⁹ *Id.* (citing *Lumber V AR2 Prelim IDM* at 69-70).

²⁰²⁰ See GOQ Case Brief Volume 8.B at 143-144.

²⁰²¹ *Id.* at 144 (citing GOQ March 3, 2021 Second Supp. QR at Ex. QC-CCAE-10).

²⁰²² See Petitioner Rebuttal Brief at 315-317.

authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise of industry is favored over others.²⁰²³

- Regarding the Class 43.2 Assets program, only 3,200 recipients claimed the CCA under Class 43.2 during the POR, and compared to 2.1 million tax filers, only 0.15 percent of companies in the province received payments under this program. Therefore, the program is *de facto* specific.²⁰²⁴

Commerce's Position: We continue to find this program to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the recipients are limited in number. The GOC and the GOQ argue that this program is not *de facto* specific because its users were spread across a wide range of industries. The fact that the Class 43.2 Assets program was open to all firms with certain clean energy generation and energy conservation property and that firms in industries other than the forestry and paper industry used this program does not negate the fact that there are 3,200 users of this program, out of approximately 2.1 million tax filers. As explicitly stated in the SAA, the purpose of the specificity test is to serve as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy.

As reported by the GOC itself, there were 3,200 companies, out of approximately 2.1 million tax filers, that claimed this depreciation deduction during the POR.²⁰²⁵ Based on such data, we continue to find the Class 43.2 Assets program to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because recipients of the subsidy are limited in number. Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number. Commerce reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.

Comment 97: Whether the ACCA for Class 29 and Class 53 Assets Program Is Specific

*West Fraser's*²⁰²⁶ and the GOC's Comments²⁰²⁷

- Commerce was wrong to find the federal ACCA *de jure* specific. In fact, no enterprise or industry is excluded, and the deduction is broadly available throughout the Canadian economy. The mere presence of eligibility requirements on activities does not make a program *de jure* specific.
- In *CRS from Russia*, Commerce found a program that all enterprises or industries could claim, but only for natural resource exploration, to not limit eligibility. In the prior review, Commerce wrongly claimed that this Russian tax measure did not stipulate eligibility requirements. The Russian tax deduction is, in fact, much more restrictive than the ACCA, since only enterprises engaged in natural resource exploration would ever be able to claim the

²⁰²³ *Id.* at 315-316 (citing section 771(5A)(D)(iii) of the Act).

²⁰²⁴ *Id.* at 316 (citing GOC SQR Response on Class 43.2 Assets at Exhibits GOC-AR2-SUPP-1-CRA-CLASS43.2-4, GOC-AR2-SUPP1-CRA-CLASS43.2-5, and GOC-AR2-SUPP1-CRA-CLASS43.2-8.)

²⁰²⁵ See GOC SQR Response on Class 43.2 Assets at Exhibit GOC-AR2-SUPP1-CRACLASS43.2-4, GOC-AR2-SUPP1-CRACLASS43.2-5, and GOC-AR2-SUPP1-CRA-CLASS43.2-8.

²⁰²⁶ See West Fraser Case Brief at 72 – 73.

²⁰²⁷ See GOC Case Brief Volume 2 at 3 – 34.

deduction. Under the ACCA, any enterprise or industry engaging in any manufacturing or processing is eligible to claim the deduction.

- In *Non-Oriented Electrical Steel from Taiwan*, Commerce found a program that was limited to innovative R&D activities to not be *de jure* specific because the benefits were not limited to any industry.
- If the Russian and Taiwanese measures above were not *de jure* specific, then there is no basis for reaching a different conclusion regarding the ACCA.
- Commerce cited *Nails from Oman* and *CWP from the UAE* in the *Lumber V Final* and the *Lumber V ARI Final* in support of its *de jure* specificity finding for the ACCA, but those cases involved tariff exemptions that certain enterprises could not claim; for the ACCA, only certain equipment is not eligible.
- Commerce has also correctly found SR&ED credits to not be *de jure* specific. Just as certain activities are excluded from the definition of “manufacturing and processing” for the ACCA, certain activities are excluded from receiving SR&ED benefits. Consistency calls for the same determination.
- Even if Commerce incorrectly conflates activity and industry such that it finds some industries are excluded, the SAA makes clear that a measure is not specific if it is widely available. However, Commerce has turned the SAA’s guidance into a requirement of near universal availability.
- The ACCA is available to companies in almost all of Canada’s industries, including sectors that Commerce erroneously claimed were excluded from receiving it. In numerous prior cases, Commerce has found programs to not be specific despite clear limitations on the number or type of industries that could use the programs. For example, in *Laminated Hardwood Trailer Flooring from Canada*, Commerce found a program that all commercial non-retail enterprises were eligible for was not *de jure* specific. In *Citric Acid from China*, Commerce found likewise for the provision of steam coal to six major industrial categories.
- If Commerce correctly finds the ACCA not *de jure* specific, it should also find the program to not be *de facto* specific, given that over 23,000 enterprises used the program in 2019. Sawmills made up only 3.1 percent of the deduction’s users, so softwood lumber producers are not disproportionate or predominant users of the deduction.

*GOQ’s Comments*²⁰²⁸

- The program provides additional depreciation for rates for Class 29 and Class 53 assets, but these assets do not represent an industry or group of industries.
- The program was used by a wide range of industries, including agriculture, mining, manufacturing, construction, transportation and storage, wholesale trade, retail trade, finance and insurance, as well as the accommodation, food, beverage, business, educational, government, health, social and other services industries.
- No industry, including the softwood lumber industry, accounts for a disproportionate share of the program’s benefits.

²⁰²⁸ See GOQ Case Brief Volume 8.B at 2 – 24.

*Petitioner's Rebuttal Comments*²⁰²⁹

- The Canadian Parties reiterated the same arguments from the first review that the program is not *de jure* specific because it is available to all industries and that activity-based restrictions do not render the ACCA *de jure* specific.
- The exclusion of certain activities may render a program *de jure* specific because such exclusion necessarily excludes enterprises and industries that are engaged solely in those activities.
- The GOC also argues that, even if the program is defined as excluding certain industries, the exclusion is limited, and the program is still widely available. However, Commerce already rejected this argument in the *Lumber VARI Final*, and there is no new information to substantiate these claims.

Commerce's Position: The Canadian Parties raised these same arguments in the prior administrative review.²⁰³⁰ We continue to find that the ACCA is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, eligibility for this tax program is expressly limited to certain enterprises or industries.

The GOC cites to numerous specificity analyses of other programs undertaken in Commerce's CVD proceedings to support its argument that this program is not *de jure* specific. However, Commerce has consistently found this program to be *de jure* specific across multiple CVD proceedings involving Canada. In the *Lumber VARI Final*, as well as the *Lumber V Final, SC Paper from Canada – Expedited Review – Final Results, Wind Towers from Canada Final, Groundwood Paper from Canada Final, and Lumber V Final Results of Expedited Review*, we found the ACCA for Class 29/53 assets program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because eligibility for the program is expressly limited as a matter of law to certain industries and explained why the GOC's references to other cases were unavailing.²⁰³¹

Section 1104(9) of the ITR regulations provide that “manufacturing or processing” does not include certain described categories of activities, as follows:

{F} or the purpose of ... Class 29 ... ‘manufacturing or processing’ does not include: (a) farming or fishing; (b) logging; (c) construction; (d) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation thereof; (e) extracting minerals from a mineral resource; (f) processing of (i) ore, other than iron ore or tar sands ore, from a mineral resource to any stage that is not beyond the prime metal stage or its equivalent, (ii) iron ore from a mineral resource to any stage that is not beyond the pellet stage or its equivalent, or (iii) tar sands ore from a mineral resource to any stage that is not beyond the crude oil stage or its equivalent; (g) producing industrial minerals; (h) producing or

²⁰²⁹ See Petitioner Rebuttal Brief at 303 – 310.

²⁰³⁰ See *Lumber VARI Final* IDM at Comment 92.

²⁰³¹ See *Lumber VARI Prelim* PDM at 69 – 70; see also *Lumber V Final* IDM at Comment 68; *SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 32; *Groundwood Paper from Canada Final* IDM at 184; *Lumber V Final Results of Expedited Review* IDM at Comment 6; and *Wind Towers from Canada Final* IDM at Comment 2.

processing electrical energy or steam, for sale; (i) processing natural gas as part of the business of selling or distributing gas in the course of operating a public utility; (j) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent; or (k) Canadian field processing.

The GOC asserts that this program is available to all enterprises and is, thus, like a program that Commerce examined in *CRS from Russia*, where Commerce found that a tax deduction program was not *de jure* specific because any company could claim a tax deduction if it performed certain activities.²⁰³² However, in *CRS from Russia*, and unlike here, we found that the program was not *de jure* specific because the applicable law’s “articles do not stipulate the eligibility requirements or any limitation on eligibility.”²⁰³³ Citing *Non-Oriented Electrical Steel from Taiwan*, where Commerce found a program to be not *de jure* specific where only companies with highly innovative research and development activities were eligible for a tax credit, the GOC asserts that any company that acquired machinery for manufacturing or processing as defined by the ITR can claim the ACCA deduction.²⁰³⁴ However, unlike the facts here, in *Non-Oriented Electrical Steel from Taiwan*, we found that the program was not *de jure* specific because the applicable law “indicates that benefits are not expressly limited to any industry ... or other criteria, and thus not *de jure* specific under section 771(5A)(D)(i) of the Act.”²⁰³⁵

The GOC argues that the ITR excludes activities and not industries and, therefore, this program is not specific under section 771(5A)(D)(i) of the Act.²⁰³⁶ The GOC contends that the excluded activities do not change the fact that eligibility for this program does not exclude any specific enterprises or industries from eligibility for the program and that all enterprises and industries are eligible to claim the deduction for the non-excluded activities that they perform.²⁰³⁷ The GOC further argues that a program available to all producers is not rendered specific merely because some producers may not claim the benefit for all of the activities that they undertake due to the program eligibility criteria. The GOC also argues that the ITR defines the underlying assets, and it does not exclude or limit particular industries.²⁰³⁸ However, as discussed above, the ITR explicitly excludes certain activities from the definition of manufacturing or processing. Thus, enterprises and industries engaged in the excluded activities are not eligible for this program. Therefore, access to the subsidy is expressly limited to non-excluded enterprises and industries. As such, we find unpersuasive the GOC’s argument that the program is not specific because it is limited to “activities” rather than “industries.” Further, in *Magnesium from Israel*, Commerce made no distinction between activity and industry for purposes of determining specificity, and we do not do so now.²⁰³⁹

²⁰³² See GOC Case Brief Volume 2 at 28 – 29.

²⁰³³ See *CRS from Russia Final IDM* at 117.

²⁰³⁴ See GOC Case Brief Volume 2 at 28 (citing *Non-Oriented Electrical Steel from Taiwan IDM* at 21).

²⁰³⁵ See *Non-Oriented Electrical Steel from Taiwan IDM* at 21.

²⁰³⁶ See GOC Case Brief Volume 2 at 10 – 11.

²⁰³⁷ *Id.*

²⁰³⁸ *Id.* at 13.

²⁰³⁹ See *Magnesium from Israel IDM* at Comment 2.

In support of its argument, the GOC argues Commerce’s decisions in *CWP from the UAE* and *Nails from Oman* are distinguishable from this proceeding.²⁰⁴⁰ We disagree. Contrary to the GOC’s arguments, in *CWP from the UAE* and *Nails from Oman*, Commerce found programs that excluded certain activities to be *de jure* specific. Those cases support Commerce’s specificity finding here. In *CWP from the UAE*, Commerce found *de jure* specificity because the law excluded enterprises involved with the extraction or refining of petroleum, natural gas, or minerals from receiving the benefit of tariff exemptions.²⁰⁴¹ Commerce explained that, where there is an explicit exclusion of certain industries in the law itself, such an exclusion is sufficient under section 771(5A)(D)(i) of the Act to support a finding that the law is expressly limited to a group of industries.²⁰⁴² Commerce further explained that section 771(5A)(D)(i) of the Act directs Commerce to consider “limitations” of availability to the program.²⁰⁴³ Similarly, in *Nails from Oman*, Commerce found that the government expressly limited access to the tariff exemption program to certain establishments and, therefore, the program was *de jure* specific because it excluded other enterprises or industries (*i.e.*, those engaged in the field of oil exploration and extraction and those engaged in the field of extraction of metal ores) from receiving benefits of the program.²⁰⁴⁴ The ACCA for Class 29 and Class 53 assets is likewise expressly restricted to non-excluded enterprises and industries.

Additionally, the GOC argues that the scope of the activity exclusion is very limited and that Commerce cannot equate the existence of limits on a program’s availability to be *de jure* specific.²⁰⁴⁵ The GOC further argues that a program is not *de jure* specific when it is widely available, and that the wide availability does not mean or require universal availability.²⁰⁴⁶ However, we disagree that the exclusion at issue is very limited or that this program is widely available. Section 771(5A)(D)(i) of the Act states that a program is *de jure* specific if the governing authority “expressly limits access to the subsidy.” Here, the ITR expressly limited access to the subsidy by excluding certain described categories, such as farming, fishing, and construction, from the definition of “manufacturing or processing.” Although the GOC is correct that the specificity test is intended to winnow out broadly available assistance spread throughout an economy, it is not “intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy would escape the purview of the CVD law.”²⁰⁴⁷

The GOC also argues that during the POR, companies listed in the excluded “industries” claimed the ACCA for the manufacturing and processing activities that they performed.²⁰⁴⁸ We find this argument unpersuasive because companies in industries that are engaged *exclusively* in the excluded activities under Class 29 or Class 53 are not eligible for the federal ACCA Class 29 assets program, based on the applicable tax laws for Class 29 and Class 53, as discussed above.

²⁰⁴⁰ See GOC Case Brief Volume 2 at 11 – 12.

²⁰⁴¹ See *CWP from the UAE* IDM at Comment 1.

²⁰⁴² *Id.* at 18.

²⁰⁴³ *Id.*

²⁰⁴⁴ See *Nails from Oman* IDM at Comment 1.

²⁰⁴⁵ See GOC Case Brief Volume 2 at 20.

²⁰⁴⁶ *Id.*

²⁰⁴⁷ See SAA at 930.

²⁰⁴⁸ See GOC Case Brief Volume 2 at 25.

As support, the GOC also references numerous cases, claiming that, in each case, Commerce found that programs were not *de jure* specific where a program was widely available.²⁰⁴⁹ We disagree that these cases support a different result here; we do not find that this program is widely available for the reasons discussed above, and the fact patterns in the cited cases are distinguishable from that of the Federal ACCA Class 29 assets program. For example, in *Laminated Hardwood Trailer Flooring from Canada*, Commerce found the Decentralized Fund for Job Creation Program (DFJC) of the Société Québécoise de Développement de la Main-d'Oeuvre not to be *de jure* specific.²⁰⁵⁰ However, Commerce also found assistance under the DFJC program to be “distributed to many sectors representing virtually every industry and commercial section found in Québec,” as it excluded only retail businesses, nonprofits, and local and regional municipalities.²⁰⁵¹ Here, the ACCA for Class 29/53 assets program contains numerous additional eligibility restrictions. Similarly, in *Live Swine from Canada*, Commerce found the Transitional Assistance/Risk Management Funding grant program not to be *de jure* specific because it was available to most of the agricultural sector with the exception of producers of processed agricultural products.²⁰⁵² In addition to the fact that this administrative review does not require that Commerce analyze specificity of an agricultural subsidy (which is governed by special rules, under 19 CFR 351.502(d)), again, the Federal ACCA for Class 29/53 assets program contains numerous additional eligibility restrictions. Additionally, in *Fresh Cut Flowers from the Netherlands*, Commerce found that a program was not *de jure* specific because it excluded “one narrow type of agricultural activity.”²⁰⁵³ This case predates the statutory amendments made under the URAA, and in any event, is not analogous to the numerous activities that are excluded under the ACCA for Class 29/53 assets program.

Moreover, in *Citric Acid from China*, Commerce stated that “there is no indication that {the provision of} steam coal is *de jure* specific under {section} 771(5A)(D)(i) of the Act” because (1) “users of steam coal range from producers of electricity, coal suppliers and manufacturers of processed food and nuclear fuel to office, hotels and caterers,” and “{w}ithin the major industrial category of manufacturing along users include food processors, nuclear fuel processors, smelters and pressers of ferrous and non-ferrous metal, and manufacturers of textiles, medicine, chemicals, transport equipment, among many others.”²⁰⁵⁴ However, here, the ACCA for Class 29/53 assets program contains numerous additional eligibility restrictions, as the ITR expressly limits access to the subsidy by excluding certain described categories from the definition of “manufacturing or processing,” as discussed above. Further, in *CRS from Russia*, Commerce found that the extraction tax deduction program not to be *de jure* specific as “the law does not appear to limit access to an enterprise, industry, group of industries, or region.”²⁰⁵⁵

Also, in *CTL Steel Plate from Korea Final*, Commerce found that the VCA program not to be *de jure* specific because “there were a large number of volunteers from across a wide range of industries.”²⁰⁵⁶ In addition, in *CTL Steel Plate from Korea Prelim*, Commerce found that the

²⁰⁴⁹ *Id.* at 27 – 30.

²⁰⁵⁰ See *Laminated Hardwood Trailer Flooring from Canada*, 61 FR at 59084.

²⁰⁵¹ *Id.*

²⁰⁵² See *Live Swine from Canada Final* IDM at 27.

²⁰⁵³ See *Fresh Cut Flowers from the Netherlands*, 52 FR at 3301 and 3306.

²⁰⁵⁴ See *Citric Acid from China* IDM at 50 – 51.

²⁰⁵⁵ See *CRS from Russia* IDM at 114.

²⁰⁵⁶ See *CTL Steel Plate from Korea Final*, 64 FR at 73193.

VCA program at issue not to be *de jure* specific under section 771(5A)(D)(i) of the Act because it “is available to numerous companies across all industries” and “the regulation does not explicitly limit eligibility of the program.”²⁰⁵⁷ However, again, the Federal ACCA for Class 29/53 assets program contains numerous additional eligibility restrictions, as the ITR expressly limits access to the subsidy by excluding certain described categories from the definition of “manufacturing or processing,” as discussed above. Lastly, in *CTL Steel Plate from Korea Final*, Commerce found tax benefits under technology for manpower development expenses were not specific as the program was provided to all manufacturing and mining industries.²⁰⁵⁸ On the contrary, the ITR explicitly limits access to the subsidy by excluding certain activities from the definition of manufacturing or processing; enterprises and industries engaged in the excluded activities are not eligible for this program.

Finally, the GOC argues that more than the existence of eligibility requirements need to be demonstrated to find *de jure* specificity, and Commerce’s approach is inconsistent with section 771(5A)(D)(ii) of the Act.²⁰⁵⁹ While we agree that the mere existence of eligibility criteria is not sufficient to find *de jure* specificity, the eligibility criteria do not satisfy the statutory requirement for “objective criteria,” insofar as they “favor one enterprise or industry over another.”²⁰⁶⁰ That is, the ITR favors enterprises or industries that are engaged in qualifying manufacturing and processing activities, over enterprises or industries that are not.

We therefore continue to determine that the ACCA for Class 29/53 assets is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, eligibility for this tax program is expressly limited to certain enterprises or industries. As a result of this finding, we need not address the respondents’ arguments regarding *de facto* specificity.

Comment 98: Whether Commerce Was Correct to Treat the Both the ACCA and Class 1 Additional CCA as Individual Programs

*Resolute’s Comments*²⁰⁶¹

- The Class 29 and Class 53 ACCAs are in fact six separate programs as they are applied by three different jurisdictions and should be examined separately.
- Class 53 covers similar equipment to Class 29, but the Class 53 ACCA operates differently than the Class 29 ACCA. Class 29, unlike Class 53, allows unused depreciation to be carried forward and used in a subsequent year. Class 29 also uses a straight-line method of depreciation with full depreciation possible after three years, whereas Class 53 uses a declining-balance method with only half the available amount available to be taken as depreciation.
- In the *Lumber VARI Final*, Commerce acknowledged that these classes cover assets purchased in different time periods but did not mention that the depreciation method and amounts available to depreciate also differ.

²⁰⁵⁷ See *CTL Steel Plate from Korea Prelim*, 64 FR at 40456.

²⁰⁵⁸ See *CTL Steel Plate from Korea Final*, 64 FR at 73192.

²⁰⁵⁹ See GOC Case Brief Volume 2 at 15 and 19.

²⁰⁶⁰ See section 771(5A)(D)(ii) of the Act.

²⁰⁶¹ See *Resolute Case Brief* at 98-102.

- In the *Lumber V ARI Final*, Commerce determined that even though there are different returns, different tax authorities, and different amounts claimed as deductions, “the basic intent of the program” is the same.²⁰⁶² Combining these separate programs is arbitrary and contrary to law as Commerce did not define what criteria was used to determine the “basic intent of the program”.
- Class 29 and Class 53 are administered by different agencies. The federal tax agency administers Class 29 and Class 53 for federal tax purposes and Ontario tax purposes. The Québec tax authority administers the program separately for Québec taxpayers.
- In sum, Class 29 and Class 53 “were enacted under different legislation, have different eligibility criteria, provided different benefits, and were administered by different {agencies}.”²⁰⁶³
- The Federal Class 1a and Class 1b capital cost allowances should not be conflated with the provincial allowances. Different jurisdictions have different policies and rules regarding the application of Class 1a and Class 1b.
- Enterprises are not required to claim the same amount for accelerated depreciation on the returns for all three governments, and Resolute did in fact claim different amounts on its Québec tax return from claims on its federal return. The programs are not integrally linked.
- At any time, either the Government of Canada, the Government of Québec, or the Government of Ontario could rescind Class 1a or Class 1b capital cost allocations without regard to what the other two governments might have decided to do.

*Petitioner’s Rebuttal Comments*²⁰⁶⁴

- As stated in the first administrative review, the ACCA for Class 53 assets is the successor to the Class 29 ACCA, and there are no substantive differences between the federal and provincial CCAs. Thus, there is no basis for Commerce to treat this program as separate programs.
- The GOC has explicitly stated that Class 53 is the successor program to Class 29.²⁰⁶⁵ Despite the GOC’s reference to Class 53 as an “amendment,” this does not contradict the linkage between Class 29 and Class 53.²⁰⁶⁶
- Subsidy programs often undergo minor changes or extensions. The only relevant difference between the Class 29 and Class 53 is the applicable tax rate, but that does not mean that there is a new program.
- The assets that fall under Class 29 and Class 53, the depreciation schedule and methods, and the years of acquisition for assets are under the same jurisdiction. Contrary to its assertion that the programs “do not act in harmony,” Resolute in fact reported that the Québec and Ontario CCAs for Class 29 and Class 53 assets are “fully harmonized” with the federal CCAs for these assets.
- Resolute presents no new evidence on the record to warrant a change in this finding. As with the ACCA for Class 29 and 53, as discussed above, there are no substantive differences between the Class 1a and Class 1b programs at different governmental levels.

²⁰⁶² See Resolute Case Brief at 100 (citing *Lumber V ARI Final* IDM at Comment 93).

²⁰⁶³ See Resolute Case Brief at 101-102 (citing *Non-Oriented Electrical Steel from Taiwan* IDM at Comment 7).

²⁰⁶⁴ See Petitioner Rebuttal Brief at 310 – 315.

²⁰⁶⁵ See Petitioner’s Rebuttal at 310 (citing GOC Case Brief Volume 2 at 3).

²⁰⁶⁶ *Id.* (citing GOC IQR Response at 35).

- The assets that fall under Class 1 and the resulting eligibility criteria are the same under each jurisdiction, and the provincial programs are “fully harmonized” with the federal program.

Commerce’s Position: In the prior review, Commerce treated tax benefits received under the federal and provincial Class 29 and Class 53 tax provisions as a single program and similarly treated federal and provincial tax benefits received under the Class 1a and Class 2b tax provision as a single program.²⁰⁶⁷ We find the Canadian Parties have not presented any evidence or arguments to warrant reconsideration of our prior finding.

As explained in the prior review, the Class 29 ACCA and Class 53 ACCA programs both provide accelerated depreciation for machinery and equipment acquired by taxpayers that are primarily for use in Canada for the manufacturing or processing of goods for sale or lease.²⁰⁶⁸ The primary difference between the two is that the Class 29 ACCA covers assets purchased from March 18, 2007 through 2015, while the Class 53 ACCA covers assets purchased from 2016 through 2025.²⁰⁶⁹ Further, the GOC characterizes the Class 53 ACCA as a successor to the Class 29 ACCA.²⁰⁷⁰ Thus, while Class 29 and Class 53 assets do not depreciate at identical rates, we continue to find that the commonality of the assets eligible for the program and the relatively small difference between the new and old depreciation formulas lead us to find that these should be treated as the same program.

We also continue to disagree that Commerce should treat the Class 1a and Class 1b tax savings provided to the respondents by the Canadian Central and Provincial governments as separate programs. Consistent with our findings in the prior review,²⁰⁷¹ we continue to find that: (1) the ACCA class 1a class 1b programs of the GOQ and GOO are harmonized with those of the GOC;²⁰⁷² (2) these allowances apply the same depreciation rules to the same assets in each jurisdiction;²⁰⁷³ (3) in the case of Ontario, the CCA credits are claimed on the same tax return as the federal CCAs;²⁰⁷⁴ and (4) in the case of Quebec, while Resolute files a separate Quebec tax return²⁰⁷⁵ and can choose to claim and use the Class 1a and Class 1b provisions at different times

²⁰⁶⁷ See *Lumber VARI Final* IDM at Comment 93.

²⁰⁶⁸ See *Lumber VARI Final* IDM at Comment 93; see also GOC Non-Stumpage QNR Response, Volume II at 1.

²⁰⁶⁹ See GOC Non-Stumpage QNR Response, Volume II at 1.

²⁰⁷⁰ See GOC Case Brief Volume 2 at 3, footnote 3: “Class 53 is the successor provision to Class 29; the physical assets covered are the same, but the method of taking the accelerated depreciation was changed from straight-line to a declining balance method.”

²⁰⁷¹ See *Lumber VARI Final* IDM at Comment 93.

²⁰⁷² See Resolute Non-Stumpage IQR Response at Exhibit RES-NS-GEN-CLASS1, “The Ontario Class 1a and Class 1b capital cost allowance is harmonized with the federal version but is limited to taxpayers carrying on business in Ontario;” see also GOQ Non-Stumpage IQR Response at Exhibit QC-CCAB-A, in reference to CCAs under the Class 1a and Class 1b provisions: “This measure is harmonized with federal legislation and regulations.”

²⁰⁷³ See GOC Non-Stumpage IQR Response, Volume II at 62 and Exhibit GOC-AR2-CRA-CLASS1-1; GOQ Non-Stumpage IQR Response at Exhibit QC-CCAB-A; and Resolute Non-stumpage IQR Response at Exhibit RES-NS-GENOCLASS1, discussing the GOO’s depreciation rules for this program.

²⁰⁷⁴ See Resolute Non-Stumpage IQR Response at Exhibit RES-NS-GENOCLASS1, “The CCA deduction is claimed in the company’s annual Federal income tax return (Schedule 8); the Federal government administers the deduction on behalf of the Government of Ontario.”

²⁰⁷⁵ See Resolute Non-Stumpage IQR Response at Exhibits RES-NS-GEN-CLASS1 and RES-NS-GEN-QCLASS1.

than it does on its federal returns, the basic intent of the program, to provide accelerated depreciation for a group of assets remains between the Quebec and Federal ACCAs.²⁰⁷⁶ Further, we continue to find that CCA credits under the Class 1a and Class 1b tax provisions should not be separated into two programs because they both provide increased depreciation over standard Class 1 assets to the same type of asset—non-residential buildings.²⁰⁷⁷

We also disagree that the analysis Commerce employed in *Non-Oriented Electrical Steel from Taiwan* to determine whether to treat two subsidy programs as separate programs should lead Commerce to treat the Class 1a and Class 1b programs operated by the Canadian Central and Provincial Governments as separate programs. In *Non-Oriented Electrical Steel from Taiwan*, Commerce determined to treat the two programs at issue as separate programs because they were enacted under different legislation, have different eligibility criteria, provided different benefits, and were administered by different Taiwanese Government entities.²⁰⁷⁸ As noted above, the Class 1a and Class 1b programs of the GOQ and GOO have been harmonized with those of the GOC, apply the same eligibility criteria, provide the same benefit amounts, and in the case of Ontario, the GOC administers the program on behalf of the GOO. Thus, we find the facts of the instant review are distinct from those Commerce considered in *Non-Oriented Electrical Steel from Taiwan*.

Comment 99: Whether the Class 1 Additional CCA Program Provides a Financial Contribution that Confers a Benefit

*GOC's Comments*²⁰⁷⁹

- The Class 1 Additional CCA does not provide a benefit, but rather reflects the shorter useful life of buildings used for manufacturing and processing. That Class 1 assets are all “buildings” does not mean that all buildings have the same characteristics or average useful lives. Furthermore, the 10 percent CCA does not provide a financial contribution by foregoing revenue “otherwise due.”
- The ten percent depreciation rate available for manufacturing buildings is not an accelerated rate above the normal rate for buildings. Instead, the ten percent depreciation rate is intended to reflect the actual shorter useful life of such assets that are used for manufacturing. Such buildings wear out more quickly than buildings with nonmanufacturing uses, as assessed by the GOC. This depreciation rate does not provide benefits to purchasers of such assets and was implemented to better reflect the true useful economic life of these assets. Commerce ignored the actual record evidence regarding the depreciation of different types of buildings in Class 1 and instead relied solely on their location in Canada’s tax regulations.
- Commerce has not previously countervailed a country’s tax depreciation system absent evidence that certain producers can benefit from accelerated depreciation. By doing so in this case, Commerce is finding that in countries whose tax system allows a deduction for

²⁰⁷⁶ See *Lumber V ARI Final IDM* at Comment 93; see also GOQ IQR Response, Exhibit QC-CCAB-A at 15, indicating no changes to the program from the prior review.

²⁰⁷⁷ See GOC Non-Stumpage IQR Response, Volume II at 62 and Exhibit GOC-AR2-CRA-CLASS1-1; GOQ Non-Stumpage IQR Response at Exhibit QC-CCAB-A; and Resolute Non-stumpage IQR Response at Exhibit RES-NS-GENOCLASS1, discussing the GOO’s depreciation rules for this program.

²⁰⁷⁸ See *Non-Oriented Electrical Steel from Taiwan IDM* at Comment 7.

²⁰⁷⁹ See GOC Case Brief Volume 2 at 64-74.

depreciation, all classes of depreciable assets and depreciation are a single program, and only the very lowest rate does not provide a countervailable benefit.

- U.S. CVD law does not require that a country have an income tax or define standards for collecting income tax. As there is no statutory definition of “otherwise due” and no U.S. standard for what a country’s tax system should look like, the “otherwise due” standard can only be taken to refer to the norms of the country whose tax measures are at issue.
- As such, only deviations from norms should be treated as a financial contribution. Canada’s norms include a set of tax depreciation rules with different rates linked to the actual rate at which depreciable assets wear out. There is no deviation from the norm for Class 1 Assets.
- In defending the U.S. Foreign Sales Corporation rules at the WTO, the U.S. explained that “revenue that is otherwise due is foregone or not collected” should be assessed “under the normative benchmark that is the Member’s “prevailing domestic standard.”²⁰⁸⁰
- All domestic U.S. CVD cases of which the GOC is aware involving a financial contribution involved some depreciation beyond the normal rate that would apply for those assets. In contrast, taxpayers claiming the 10 percent Class 1 CCA received no preferential treatment relative to Canadian norms.

*JDIL’s Comments*²⁰⁸¹

- The GOC did not provide a financial contribution by foregoing tax revenue through the creation of Class 1a and 1b Assets; rather, the designations were created in response to a Statistics Canada study finding that manufacturing facilities and non-residential buildings had shorter useful lives than other buildings. The GOC created the designations to avoid unjustifiably collecting tax revenue prematurely, not to forego tax revenue.
- These CCAs also do not provide a benefit, because they are merely aligned with the actual useful lives of the underlying assets.

*Petitioner Rebuttal Comments*²⁰⁸²

- Record evidence demonstrates that Class 1 buildings are usually depreciated at the CCA rate of 4 percent, but those used for manufacturing may receive an additional 6 percent deduction. Commerce’s benefit methodology followed the U.S. CVD law and regulations, and there is no basis to change that finding. WTO Reports have no value in this proceeding.

Commerce’s Position: We continue to find that by foregoing revenue otherwise due, the CCA for Class 1 Assets program provides a financial contribution.²⁰⁸³ The GOC’s arguments regarding financial contribution revolve around the interpretation of the language “foregoing or not collecting revenue that is otherwise due” in section 771(5)(D)(ii) of the Act. The GOC presents a multi-step argument on this point, noting first that the Act does not define “otherwise due,” and there is no U.S. standard for what a country’s tax system should look like, thus meaning that the language logically refers to deviations from the norms of the country at issue.²⁰⁸⁴ The GOC then explains that applying different tax depreciation rates to different classes of depreciable property is part of the norms of Canada’s tax system, leading to its

²⁰⁸⁰ See GOC Case Brief Volume 1 at 65-74 (citing *DS 108 Panel Report*).

²⁰⁸¹ See JDIL Case Brief at 42-45.

²⁰⁸² See Petitioner Rebuttal Brief at 314.

²⁰⁸³ See *Lumber V AR1 Final* IDM at Comments 93, 95, and 96; see also *Lumber V AR2 Prelim* PDM at 69.

²⁰⁸⁴ *Id.* at 70-71.

conclusion that the Class 1 CCA is not foregoing revenue otherwise due and in turn does not provide a financial contribution.²⁰⁸⁵ However, notwithstanding the Canadian Parties' arguments concerning the norms of a country's tax system, the fact remains, as explained in the *Lumber V ARI Final*, that under the program, the GOC maintains CCA rates for different classes of property.²⁰⁸⁶ Under the program, the standard CCA rate for Class 1 is four percent while an additional 6 percent CCA deduction is provided if at least 90 percent of the floor space of the eligible non-residential building is used at the end of a tax year for manufacturing or processing in Canada of goods for sale or lease.²⁰⁸⁷ Thus, under the program, qualifying firms pay less in taxes than they otherwise would, which falls squarely within the revenue forgone as described under section 771(5)(D)(ii) of the Act.

As to whether the Class 1 CCA confers a benefit, the Canadian Parties raise the same arguments from the prior review,²⁰⁸⁸ which we continue to reject. Thus, we continue to find that this program provides a benefit as a tax reduction in the amount of the difference between the tax the company paid and the tax the company would have paid absent the tax reduction, as provided in 19 CFR 351.509(a)(1).

As noted above, the GOC maintains CCA rates for different classes of property, including Class 1, under its tax system. The standard CCA rate for Class 1 is four percent. The GOC stated that “{i}n addition, an ‘eligible non-residential building’ as defined in subsection 1104(2) of the ITR may qualify for an additional CCA deduction” and that “a taxpayer can file an election in respect of each separate eligible non-residential building . . .” in order to receive an additional CCA (emphasis added).²⁰⁸⁹ Pursuant to the ITR, an eligible non-residential building “means a taxpayer’s building (other than a building that was used, or acquired for use, by any person or partnership before March 19, 2007) that is located in Canada, that is included in Class 1 {(emphasis added)} . . . and that is acquired by the taxpayer on or after March 19, 2007 to be used by the taxpayer, or lessee of the taxpayer, for a non-residential use.”²⁰⁹⁰ Paragraph 1100(1)(a.1) the ITR provides for an additional 6 percent CCA deduction if at least 90 percent of the floor space of the eligible non-residential building is used at the end of a tax year for manufacturing or processing in Canada of goods for sale or lease.²⁰⁹¹

Record evidence thus establishes that taxpayers qualify for the additional deduction for a certain Class 1 asset (*i.e.*, an “eligible non-residential building”) that is: (1) included in Class 1 and used for manufacturing and processing operations within the meaning of the ITR; or (2) included in Class 1 and used for non-residential use. Further, to receive an additional deduction, taxpayers need to file Schedule 8 elections with their income tax returns.²⁰⁹² Otherwise, they would not receive the additional six percent deduction and instead receive the basic four percent of the CCA. Under 19 CFR 351.509(a)(1) “{i}n the case of a program that provides a full or partial exemption or remission of a direct tax (*e.g.*, an income tax), or reduction in the base used to

²⁰⁸⁵ *Id.* at 72-73.

²⁰⁸⁶ *See Lumber V ARI Final* IDM at Comment 96; *see also* GOC IQR Response, Volume 2 at 61-62.

²⁰⁸⁷ *Id.*

²⁰⁸⁸ *See Lumber V ARI Final* IDM at Comment 96.

²⁰⁸⁹ *See* GOC IQR Response, Volume 2 at 61-62.

²⁰⁹⁰ *Id.*

²⁰⁹¹ *Id.* at 62.

²⁰⁹² *See* GOC IQR Response, Volume 2 at 64.

calculate a direct tax, *a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program.*²⁰⁹³

Here, in the absence of the Class 1 Additional CCA, the respondents would have paid more as the basic rate applicable is four percent for Class 1 assets. Because the respondents were able to pay less than the tax they would have paid due to the additional CCA in place, the appropriate benefit for Commerce to measure is the tax savings of the difference between the deduction calculated using the basic rate of depreciation and the deduction calculated using the total depreciation rate, including the additional CCA rate, that the respondents used.

As such, we continue to find, as we did in the *Lumber V AR2 Prelim*, that the four percent CCA under Class 1 is the appropriate reference for determining the revenue forgone by the GOC's financial contribution as defined in section 771(5)(D)(ii) of the Act.

Lastly, in support of their arguments, the respondents cite to the *DS 108 Panel Report*, which was a dispute at the WTO. However, WTO panel and Appellate Body conclusions are without effect under U.S. law “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URAA.²⁰⁹⁴ Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel or Appellate Body dispute reports limit automatically Commerce's discretion in applying the statute in an AD or CVD proceeding.²⁰⁹⁵ Put simply, WTO reports “do not have any power to change U.S. law or to order such a change.”²⁰⁹⁶

Comment 100: Whether the Class 1 Additional CCA Program Is Specific

*GOC's Comments*²⁰⁹⁷

- The Class 1 CCA is neither *de jure* nor *de facto* specific. If a taxpayer meets the objective criteria for the Class 1 CCA, it qualifies automatically. In addition, a program used by tens of thousands of companies across many industries cannot be considered “limited” in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.
- In 2019, taxpayers in NAICS codes 3211 and 3219 (which cover sawmills producing subject and non-subject merchandise) comprised only 5.4 percent of the number of users of the Class 1 CCA deduction, and 2.2 percent of the value of the deduction.²⁰⁹⁸ Thus, producers of softwood lumber cannot be considered to be predominant or disproportionate users of within the meaning of sections 771(5A)(D)(iii)(II) or (III) of the Act.

²⁰⁹³ See also *CVD Preamble*, 63 FR at 65375.

²⁰⁹⁴ See *Corus Staal BV v. U.S.*, 395 F. 3d 1347-49, accord *Corus Staal BV v. U.S.*, 502 F. 3d 1375; and *NSK Ltd. v. U.S.*, 510 F. 3d 1379-80.

²⁰⁹⁵ See 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

²⁰⁹⁶ See SAA at 659.

²⁰⁹⁷ See GOC Case Brief Volume 2 at 74-75.

²⁰⁹⁸ *Id.* at 75 (citing GOC IQR Response at Exhibits GOC-AR2-CRA-CLASS1-8 and GOC-AR2-StatCan-2).

*GOQ's Comments*²⁰⁹⁹

- While a Class 1 building must be used for manufacturing or processing to qualify, the program's criteria does not restrict the program to any specific industry.²¹⁰⁰
- Record evidence demonstrates the CCA for Class 1 Assets program is widely available to thousands of different companies across a range of industries. The companies that utilized the program span across nine economic sector groupings and dozens of different industries.²¹⁰¹ Thus, Commerce has no basis for finding the program *de facto* specific because the actual recipients of the program were limited in number on an enterprise basis.

*Petitioner's Rebuttal Comments*²¹⁰²

- The relevant question for specificity is not the absolute number of users, but whether the "actual recipients" are limited in number as compared to the population at issue.
- The total number of actual users of the program according to the GOC was 32,180 taxpayers in 2019.²¹⁰³ When compared to the total population at issue of 2.1 million taxpayers, the actual users of the CCA Class 1 program was approximately 1.4 percent of the population.²¹⁰⁴ As such, the CCA Class 1 program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Commerce's Position: In the *Lumber V AR2 Prelim*, we stated that 32,180 companies claimed the tax additional deduction under the Class 1 Additional CCA program during the POR, out of approximately 2.1 million tax filers, and thus, we found the actual recipients, relative to total corporate tax filers, are limited in number on an enterprise basis. Accordingly, we found that because the actual recipients, relative to total corporate tax filers, are limited in number on an enterprise basis, we preliminarily determined that this program is *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act.²¹⁰⁵ Our specificity analysis was consistent with Commerce's approach in the prior review.²¹⁰⁶

In response to Commerce's preliminary finding, the Canadian Parties raise the same arguments that Commerce rejected in the prior review and that we continue to reject in the current review.²¹⁰⁷

As stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies that truly are broadly available and widely used throughout an economy.²¹⁰⁸ The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies . . . used by discrete segments of an economy could escape the purview of the {countervailing duty} law."²¹⁰⁹ The SAA also states

²⁰⁹⁹ See GOQ Case Brief Volume 8.B Brief at 141-143.

²¹⁰⁰ *Id.* at 142 (citing GOQ IQR Response at Exhibit QC-CCAB-A at 7).

²¹⁰¹ *Id.* at 142-143 (citing GOQ IQR Response at Exhibit QC-CCAB-09).

²¹⁰² See Petitioner's Case Brief at 312 to 315.

²¹⁰³ *Id.* at 315 (citing GOC IQR Response at GOC-II-81).

²¹⁰⁴ *Id.* (citing GOC IQR Response at Exhibit GOC-AR2-CRA-CLASS1-7).

²¹⁰⁵ See *Lumber V AR2 Prelim* PDM at 69.

²¹⁰⁶ See *Lumber V AR1 Final* IDM at Comment 95.

²¹⁰⁷ *Id.*

²¹⁰⁸ See SAA at 929.

²¹⁰⁹ *Id.*

that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.²¹¹⁰

Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, Commerce reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.²¹¹¹ Thus, we followed the instructions of the SAA and our practice in determining whether the Class 1 CCA program is *de facto* specific.

As such, we continue to find that the Class 1 Additional CCA program is not widely used throughout the provincial economy, because the recipients are limited in number; therefore, the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. The breadth of industries that benefited from the program does not affect this finding.

Comment 101: Whether the FLTC and PLTC Are Countervailable

GOC,²¹¹² *GBC*,²¹¹³ *Canfor's*,²¹¹⁴ and *West Fraser's*²¹¹⁵ *Comments*

- Companies subject to the logging tax received no benefit from the FLTC and PLTC because the credits place companies in the same position as had there been no provincial logging tax at all, and in the same position as other taxpayers outside of the logging industry. The BC logging tax is specific to the logging industry, and the FLTC and PLTC operate as a “reduction {or a} repeal of the {logging} tax.”²¹¹⁶ Further, the tax credits are not selective as they apply to all entities subject to the logging tax in British Columbia.²¹¹⁷
- Since the logging income of companies in British Columbia is taxed as part of their overall income, the GOC and GBC put in place the FLTC and PLTC to avoid double taxation on the same income and to level the playing field by putting forestry companies in the same tax position as taxpayers in other sectors of the economy.²¹¹⁸
- Through the logging tax and the simultaneous crediting of the total amount of the tax by the provincial and federal governments, there is no net impact on the respondents’ tax liability. The only impact is that the provincial government received an increase in revenue equal to two-thirds of the logging tax, effectively financed by the federal government.
- In *Government of Sri Lanka v. U.S.* and *Inland Steel v. U.S.*, the companies at issue received government funds, but neither was considered to have received a benefit because the companies acted as intermediaries for the government to transfer money to a third-party entity.

²¹¹⁰ See SAA at 931.

²¹¹¹ See *CRS from Korea* IDM at Comment 13; see also *Lumber V Final* IDM at Comment 62.

²¹¹² See *GOC Case Brief* Volume 2 at 75 – 91.

²¹¹³ See *GBC Case Brief* Volume 5 at 84 – 88.

²¹¹⁴ See *Canfor Case Brief* at 11 – 23.

²¹¹⁵ See *West Fraser Case Brief* at 50 – 54.

²¹¹⁶ See *West Fraser Case Brief* at 52 (citing *Bethlehem Steel Corp. v. U.S.* at 348 – 349 (“The reduction is no more a subsidy than the basic tax law itself or the repeal of the law. Tax laws become {subsidies} only if the elimination, or reduction of the tax is selective.”)).

²¹¹⁷ *Id.* at 52.

²¹¹⁸ See *Canfor Case Brief* at 11.

Similarly, Commerce should consider the program in its entirety, as a mechanism for transferring funds from the federal to the provincial government.²¹¹⁹

- The FLTC, PLTC, and BC logging tax must be evaluated as a whole, and Commerce should consider the net flow of benefits.²¹²⁰ The respondents are acting as an intermediary for channeling funds from the federal to provincial government, and there is no net change in the respondents' tax liability, and therefore no benefit.
- Commerce should have subtracted the logging tax paid by the respondents from any benefit conferred by the FLTC and PLTC, resulting in zero net benefit. Commerce should treat the payment for the logging tax as a "similar payment" under section 771(6)(A) of the Act that is required in order to qualify for the FLTC and PLTC. In the *Lumber V Final Results of Expedited Review* and the *Lumber V ARI Final*, Commerce rejected this net benefit calculation on the grounds that the logging tax does not constitute an application fee or deposit.²¹²¹ Commerce did not provide a sufficient explanation for its interpretation of the statute in either proceeding, rendering its determination "arbitrary and impermissible."²¹²²

*Petitioner's Comments*²¹²³

- The FLTC and PLTC subsidy programs provide a financial contribution in the form of government revenue forgone under section 771(5)(D)(ii) of the Act. Commerce's regulations require the calculation of the benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a) be based on the difference between the tax the company actually paid with the subsidy program and the tax the company would have paid absent the tax program. In the absence of the FLTC and PLTC subsidy programs, Canfor and West Fraser each would have been responsible for the full amount of the BC provincial logging tax on logging income during the POR, as one-third of the logging tax is rebated under the PLTC and two-thirds of the logging tax is rebated under the FLTC.
- Unlike the recipients in *Government of Sri Lanka v. U.S.* and *Steel Products from France*,²¹²⁴ the GBC is not an industry or other third-party that receives funds channeled through the respondents. These cases involved the respondent who acted as a conduit of government funds, and thus received no subsidy. In contrast, the GBC, through the BCTS, and the GOC provide a financial contribution in the form of tax credits to companies subject to the BC provincial logging tax.
- In *Hynix Semiconductor v. U.S.*, the CIT held that the countervailing duty statute may be interpreted broadly to close any loopholes that might allow governments to provide indirect subsidies.²¹²⁵ This case does not support the GOC's argument that the FLTC, PLTC, and BC logging tax should be analyzed as a whole.
- The FLTC and PLTC do not operate as a wealth transfer mechanism from the GOC to the GBC. Rather, the GOC applies the funds to each company's individual tax return.

²¹¹⁹ See GBC Case Brief Volume 5 at 86.

²¹²⁰ See GOC Case Brief Volume 2 at 83 (citing *Dynamic RAM Semiconductors from Korea* IDM at 48; and *Hynix Semiconductor v. U.S.*, 391 F. Supp. 2d at 1345).

²¹²¹ See section 771(6)(A) of the Act.

²¹²² See citing *NSK v. U.S.* (2004), 390 F.3d at 1358 (vacating and remanding Commerce's interpretation of a provision of 19 U.S.C. 1677a), and *SKF USA v. U.S.*, 263 F.3d at 1381 – 1383 (vacating and remanding Commerce's inconsistent interpretations of the same statutory phrase in separate but related provisions).

²¹²³ See Petitioner Comments at 317 – 324.

²¹²⁴ In *Inland Steel v. U.S.*, the CIT affirmed Commerce's determination in *Steel Products from France*.

²¹²⁵ See Petitioner Rebuttal Brief at 322 (citing *Hynix Semiconductor v. U.S.*, 391 F. Supp. at 1346).

- The taxes should not be subtracted from any alleged benefit conferred by the FLTC and PLTC pursuant to section 771(6)(A) of the Act. If taxes operate as a “similar payment” to an “application fee” or “deposit” described in section 771(6)(A) of the Act, then tax credits would never confer a benefit because the benefit would be zero in such a benefit calculation. If tax credits never led to a benefit, the statutory language in section 771(5)(D)(ii) of the Act, which defines tax credits as a form of financial contribution, would be superfluous.²¹²⁶

Commerce’s Position: The Canadian Parties raised these same arguments in the prior review.²¹²⁷ The GOC’s, GBC’s, Canfor’s, and West Fraser’s arguments have not led us to reconsider the preliminary finding that the FLTC and PLTC are countervailable. The GBC has applied a tax on loggers’ income within the province of British Columbia, and the GOC and the GBC have applied tax credits that can be used to offset the logging income taxes paid. The GOC provides a tax credit on a company’s federal income tax return equal to two-thirds of the provincial tax that the company has paid for logging on its provincial tax return, and the GBC provides a tax credit equal to the remaining one-third of the provincial tax imposed on logging income.

With the credit from the federal government, the loggers are paying less tax than they otherwise would have paid, a fact which GOC acknowledged when it stated that “due to differences in the British Columbia provincial and federal legislation, situations could occur where the FLTC may be less than 2/3 of the logging taxes paid, resulting in the taxpayer being out of pocket for some part of the logging tax.”²¹²⁸ Thus, the GOC’s statement demonstrates that, in the absence of the FLTC subsidy program, eligible firms would be “out of pocket” for the entirety of the provincial tax on logging income. During the enactment of this provision, the GOC explained “{i}t is estimated that this {FLTC} concession may reduce revenues by {C}\$3 million net in a full year and {C}\$1½ million in 1962-63.”²¹²⁹ Thus, it is evident that the FLTC constitutes a financial contribution in the form of revenue foregone, within the meaning of section 771(5)(D)(ii) of the Act. We also continue to find that the PLTC is a financial contribution in the form of revenue foregone, pursuant to section 771(5)(D)(ii) of the Act, because by providing a tax credit, the GBC refrains from collecting revenue that would otherwise be due. We continue to find that the FLTC and PLTC tax programs are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because eligibility for both the FLTC and PLTC tax rebates are expressly limited by law to corporations that are part of the forest industry. Further, we continue to find that the FLTC and PLTC programs provide a benefit in the amount of the difference between the tax the company paid and the tax the company would have paid absent the tax credits, as provided in 19 CFR 351.509(a)(1).

The GOC, GBC, Canfor, and West Fraser argue that the FLTC and PLTC subsidy programs do not confer a benefit to the companies receiving the tax credits because such programs level the playing field between taxpayers in the forest industry and other sectors of the economy. Such arguments misinterpret the statute and Commerce’s regulations regarding the calculation of a

²¹²⁶ *Id.* at 324 (citing *Agro Dutch v. U.S.*, 508 F.3d at 1032 (“{i}t is a ‘cardinal principle of statutory construction that a statute ought... to be so construed that... no clause, sentence, or word shall be superfluous.’”)).

²¹²⁷ See *Lumber VARI Final IDM* at Comment 90.

²¹²⁸ See GOC IQR Response at GOC-II-158.

²¹²⁹ *Id.* at Exhibit GOC-AR2-CRA-FLTC-1 (p. 2710) (Federal Budget – April 10, 1962).

subsidy benefit. Instead of a comparison between tax rates paid by different sectors, section 771(5)(E) of the Act and 19 CFR 351.509(a) require that the benefit calculation be based on the difference between the tax the company actually paid with the subsidy and the tax the company would have paid absent the subsidy. Therefore, in accordance with the statute and regulations, Commerce calculated the benefit as the difference between the income tax a respondent actually paid during the POR using the FLTC and PLTC programs and the tax the respondent would have paid in the absence of these programs.

With respect to the argument of “double taxation,” both the federal and provincial governments may levy taxes how they see fit, subject to their country’s legislative initiatives. The concept of “double taxation” is not uncommon, as it exists in other tax regimes. The mere occurrence of double taxation and the Canadian government’s decision to eliminate such taxation does not render the FLTC and PLTC not countervailable.

The GOC and Canfor assert that to claim the FLTC, the taxpayer must first have “paid” the BC logging tax, and that it clearly acts as a payment that is similar to an application fee or deposit, within the meaning of section 771(6)(A) of the Act, needed to qualify for the FLTC. According to the GOC and Canfor, when the logging tax is subtracted from the FLTC, pursuant to section 771(6)(A) of the Act, there is zero net benefit. Contrary to the GOC and Canfor’s arguments, however, section 771(6)(A) of the Act does not apply to the FLTC because the taxes in this case do not constitute an application fee or a deposit. Section 771(6)(A) of the Act provides that Commerce “may subtract from the gross countervailable subsidy the amount of any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.” Commerce has, only in limited circumstances, provided offsets under 771(6)(A) of the Act, because the plain language of section 771(6)(A) of the Act is clearly limited to an application fee, deposit, or similar payment paid to qualify for the benefit of the countervailable subsidy. These limited circumstances can include fees paid to commercial banks for the required letters of guarantee or necessary application processing charges for obtaining a loan.²¹³⁰ Commerce does not interpret 771(6)(A) of the Act to mean we can offset taxes on which a potential subsidy benefit could be based.

The GOC argues that Commerce must consider the program in its entirety, as there has been no benefit to the logging companies. Through the imposition of the BC logging tax, and the simultaneous crediting of the total amount of that tax by the BC and federal governments, the GOC contends there has been no net impact on the tax liability of the logging companies. Rather, according to the GOC, the only impact is that the GBC received an increase in revenue for two thirds of the logging taxes that have been effectively financed by the federal government. The GOC claims that this is not the situation described in the *CVD Preamble*, where Commerce explained that it will not consider the “effects” of a subsidy on a firm’s behavior.²¹³¹

We disagree with the GOC’s assertion and find that it conflicts with several principles set forth in Commerce’s CVD regulations. As the GOC acknowledges, Commerce does not account for the effects of the subsidy when determining whether such a subsidy is countervailable pursuant

²¹³⁰ See *Welded Line Pipe from Turkey* IDM at 23 – 24; see also *PET Film from India* IDM at 11 and 13.

²¹³¹ See GOC Case Brief Volume 2 at 87 (citing the *CVD Preamble*, 63 FR at 65361; see also 19 CFR 351.503(c)).

to section 771(5)(C) of the Act.²¹³² Furthermore, the financial arrangement between the GOC and the GBC is not a factor that we consider in our benefit analysis. Under 19 CFR 351.509(a), a direct tax benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program. As noted above, the FLTC and PLTC reduce the logging tax that the respective company would have otherwise paid. The fact that the company does not receive funds directly, but rather through tax credits, does not render these tax credits not countervailable.

We further find the claim that the FLTC and PLTC are not countervailable because they do not confer a net benefit is similar to the comments that Commerce rejected in the *Lumber VARI Final* with respect to the accelerated depreciation (ACCA) program (*i.e.*, the argument that there is no net benefit conferred under the ACCA because the lower income, and resultant tax savings, in the year in which the respective taxpayer claimed the accelerated depreciation will be offset by increased net income (and higher tax payments) in future years).²¹³³ The GBC applied an additional tax on loggers that the GOC and the GBC decided to forgo, which results in a benefit to the loggers. Similar to the issue here, the *CVD Preamble* references a situation where the government imposes an additional cost to a firm (in this example an environmental regulation) and then creates a subsidy to reduce that firm's cost of compliance. The *CVD Preamble* is clear that, in this example involving an environmental regulation, there are two separate government actions and that even though the two government actions, taken together, may leave the firm with higher costs, the government action in providing a subsidy to reduce compliance cost is fully countervailable.²¹³⁴ Similarly, in the issue of the logging tax credits, there are two government actions: (1) the GBC imposes an additional tax on loggers; and (2) the GOC and GBC provide a tax credit for the provincial tax on logging income. Thus, the government actions in providing a subsidy via the FLTC and PLTC, which reduce the company's logging tax that is otherwise due, are fully countervailable.

Commerce does not find that *Off-the-Road Tires from Sri Lanka*²¹³⁵ (the determination at issue in *GOSL v. U.S.*) and *Inland Steel* are germane to the specific facts related to this issue. In the case of *Off-the-Road Tires from Sri Lanka*, the issue was whether the rubber purchasers received countervailable subsidies. Rubber purchasers serving as a conduit for subsidization of rubber producers could not be charged with receiving a countervailable benefit, merely because government money passed through them. In *Inland Steel*, Commerce found that government funds that the recipient was obligated to forward to a third party did not provide a countervailable benefit to the intermediary.²¹³⁶ In contrast, in this review, the logging tax credits are not flowing through an intermediary or to a third party but are, instead, received in the form of a tax credit directly by the respective company from the government.

²¹³² *Id.*

²¹³³ See, e.g., *Lumber VARI Final* IDM at Comment 90 (citing *CVD Preamble*, 63 FR at 65375 – 65376, explaining that for accelerated depreciation programs Commerce will calculate “... the tax benefits from accelerated depreciation schemes on a year-by-year basis,” as opposed to on a prospective basis).

²¹³⁴ See *CVD Preamble*, 63 FR at 65361.

²¹³⁵ See *Off-the-Road Tires from Sri Lanka*, 82 FR at 2949; see also *Off-the-Road Tires from Sri Lanka Order*, 82 FR at 12556.

²¹³⁶ See *Inland Steel v. U.S.*, 967 F. Supp. at 1367 – 1368.

We also disagree with the respondents' related argument that the FLTC and PLTC confer no benefit on respondents because the programs act as a transfer of funds from the federal to the provincial government. Although Canfor characterizes the purpose of the FLTC and PLTC as a transfer of funds from the GOC to the GBC, the fact remains that British Columbia has a law requiring corporate taxpayers in the logging industry to pay an additional 10 percent tax. The FLTC and PLTC provide a remission from the tax and therefore, it constitutes a benefit, in accordance with section 771(5)(E) of the Act and 19 CFR 351.509(a), in the amount of the difference between the tax a company actually paid under the subsidy program and the tax the company would have paid absent the tax program.

Furthermore, the record evidence for the FLTC does not demonstrate that this is a direct transfer of funds from the federal to the provincial government because the GOC tax credits are applied against each individual company's tax returns.²¹³⁷ Thus, this is, in fact, a transfer from the GOC to the company directly. Any arrangement that the GOC and GBC make regarding the relative proportion of the logging tax to be credited by the federal and provincial governments, and the purpose of such an arrangement, is beyond the purview of what Commerce is able to consider under the Act and its regulations. The fact that the GOC assumes a greater share than the GBC of crediting the logging tax does not change the fact that respondents received a benefit in the form of credits on taxes they would otherwise be obligated to pay.

As stated above, with respect to taxes, the financial contribution occurs when a government foregoes or does not collect revenue that is otherwise due. The GBC has decided to apply a tax on loggers' income within the province of British Columbia. The GOC and the GBC have, in fact, decided to forego the revenue that is otherwise due by applying tax credits and, thus, we find that the program constitutes a financial contribution that benefits the respondents under sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a).

Alberta

Comment 102: Whether Alberta's TEFU and British Columbia's Coloured Fuel Program Are Countervailable

*GOA's and West Fraser's Comments*²¹³⁸

- TEFU is not countervailable. It is not *de jure* specific, as it is a non-forestry program that can be accessed by any commercial or government entity that meets statutory eligibility criteria. TEFU is also not *de facto* specific, as consumers in a broad range of industries used the program, and the forestry industry is not a predominant user. TEFU also does not provide a financial contribution, as the GOA is not foregoing revenue that would otherwise be collected.
- There are no enterprise or industry access limitations established by the program's administering authorities or Alberta's *Fuel Tax Act* and *Fuel Tax Regulations*. The activity-based eligibility requirements of the *Fuel Tax Regulations* do not consider the industry or enterprise of the applicant. Furthermore, the plain language of the Act does not define activity-based restrictions as grounds for a specificity finding.

²¹³⁷ See Canfor IQR Response at Exhibit 18 (Canfor's 2018 Federal Tax Return (filed in 2019) at 8, line 640 and 34, line 651).

²¹³⁸ See GOA Case Brief Volume 4.B at B-25 – B-30 and West Fraser Case Brief at 72.

- TEFU is also not *de jure* specific under section 771(5A)(D)(ii) of the Act, because it operates under objective application criteria. The GOA will automatically issue a TEFU certificate to an applicant if none of the conditions for refusing the application apply.
- Commerce has previously found that a program is not specific as a matter of law where the program was available to applicants engaged in certain activities, but (as here) did not expressly limit access by industry or enterprise.²¹³⁹
- TEFU does not meet any of the criteria for *de facto* specificity. The program was used by a significant number of users and industries, the forestry industry is not a “predominant user” or disproportionate beneficiary of the program, and the GOA does not exercise any discretion in issuing TEFU certificates.
- TEFU is not foregoing any revenue that would otherwise be collected and thus does not provide a financial contribution.

*GBC’s Comments*²¹⁴⁰

- Commerce incorrectly countervailed British Columbia’s lower tax rate for coloured fuel. The purpose of the program is to fund public roads and infrastructure, and the GBC reasonably applies a lower tax rate to coloured fuel as users of coloured fuel primarily use it in non-highway activities. Thus, its usage does not contribute significantly to the deterioration of public roads and infrastructure.
- As the Federal Circuit has held, while eligibility criteria by definition limit those who may access a program, something more must be shown to prove that the program benefits only a specific group or groups of industries.²¹⁴¹ The *Motor Fuel Tax Act* defines only approved activities, not approved enterprises or industries. A wide variety of “off-road” machinery may use coloured fuel, including locomotives, ships and boats, tractors, and industrial machines, without regard to enterprise or industry.²¹⁴²
- The Act provides that a domestic program is not *de jure* specific if the relevant legislation “establishes objective criteria or conditions.” Further, the relevant implementing legislation may have eligibility criteria while still having “objective criteria or conditions” for implementation of the program.²¹⁴³ The record shows that the *Motor Fuel Tax Act* “establishes objective criteria or conditions” on the use of coloured fuel. Section 15(1)(a)–(m) of the *Motor Fuel Tax Act* lists the 14 uses for coloured fuel, ranging from ships to farm trucks to road building machinery and is “clearly set forth in the relevant statute, regulation, or other official document.”²¹⁴⁴ Thus, Commerce should find that the lower tax rates for coloured fuel program is not *de jure* specific in the final results.
- The record also contains no evidence that only a limited number of enterprises or industries use the subprogram. The lower tax rate is available to any individual, regardless of the enterprise or industry, who uses coloured fuel in an approved activity. Thus, the program is also not *de facto* specific.

²¹³⁹ See *Certain Pasta from Italy Final Results AR11* IDM at 17 and *Non-Oriented Electrical Steel from Taiwan* IDM at 21.

²¹⁴⁰ See GBC Case Brief Volume 5 at 72-81.

²¹⁴¹ *Id.* at 75 (citing *PPG Indus., Inc. v. United States*, 978 F.2d 1232, 1240 (Fed. Cir. 1992)).

²¹⁴² *Id.* at 76-77 (citing GBC IQR Response at Exhibit BC-AR2-GAS-4).

²¹⁴³ *Id.* at 77 (citing SAA at 930).

²¹⁴⁴ *Id.* at 78-79 (citing GBC IQR Response at Exhibit BC-AR2-GAS-4 and BC-AR2-GAS-5).

- The tax rate paid does not confer a benefit, but only reflects the different costs to government of maintaining normal public highways and the more remote, rural roads eligible for use of colored fuel.

*Petitioner's Rebuttal Comments*²¹⁴⁵

- Commerce correctly found in the *Lumber V ARI Final* and *Lumber V AR2 Prelim* that these programs are countervailable. No new information or argument was presented to warrant reconsideration that these programs constitute a financial contribution, confer a benefit, and are *de jure* specific.
- The GBC argues that this program does not confer a benefit because there is a policy rationale behind the lower tax rates, and it “simply reflects the different costs to government of maintaining normal public highways and the more remote, rural roads eligible for use of colored fuel.”²¹⁴⁶ However, Commerce made clear in the *Lumber V ARI Final* that this argument is not consistent with section 771(5)(D)(ii) of the Act or 19 CFR 351.510(a)(1).
- Only users purchasing fuel for a prescribed list of approved activities may obtain the tax exemption or reduction as both the GOA and GBC state on the record.²¹⁴⁷ Thus, *de jure* specificity is warranted given that eligibility is explicitly limited to certain activities since “only the industries involved” in those activities are eligible.²¹⁴⁸
- Commerce correctly determined that the eligibility criteria of both programs do not meet the definition of “objective criteria” under both sections 771(5A)(D)(i) and 771(5A)(D)(ii) of the Act.²¹⁴⁹
- As a finding of *de jure* specificity is warranted, Commerce need not address the parties’ arguments against a *de facto* finding in its final results.

Commerce’s Position: Consistent with the prior review,²¹⁵⁰ we continue to find that TEFU and the BC Coloured Fuel programs are *de jure* specific under section 771(5A)(D)(i) of the Act and provides financial contributions as defined in section 771(5)(D)(ii) of the Act that confer benefits. Thus, both programs are countervailable subsidies.

In the investigation and prior review, we found that both programs are specific under section 771(5A)(D)(i) of the Act, as they are “expressly limited to enterprises or industries engaged in certain activities,”²¹⁵¹ and that the respondents did not “argue or cite evidence that broad segments of the economy are engaged in one of the narrow, limited activities for which a tax exemption certificate can be granted.”²¹⁵²

In this segment of the proceeding, the GOA contests that finding for TEFU, noting that a TEFU applicant can select a use: “from among 21 diverse operations types and a catch-all, ‘other’

²¹⁴⁵ See Petitioner Rebuttal Brief at 329 to 335.

²¹⁴⁶ *Id.* at 331 (citing GBC Case Brief Volume 5 at 80).

²¹⁴⁷ *Id.* at 332-333 (citing GOA Case Brief Volume 4.B at 25 and GBC Case Brief Volume 5 at 75).

²¹⁴⁸ *Id.* at 333 (citing *CRS from Brazil* IDM at 51-54; *HRS from Brazil* IDM at 51-54, *Citric Acid from China* IDM at 22, and *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman* IDM at Comment 2).

²¹⁴⁹ *Id.* at 334 (citing *Lumber V ARI Final* IDM at Comment 97).

²¹⁵⁰ See *Lumber V ARI Final* IDM at Comment 97.

²¹⁵¹ See *Lumber V Final* IDM at Comment 73 (for TEFU) and Comment 74 (for BC Coloured Fuel); see also *Lumber V ARI Final* IDM at Comment 97.

²¹⁵² *Id.*

category...operations include ‘road or pipeline construction,’ ‘home heating,’ ‘waste management,’... TEFU is available and utilized by a diverse group of users, and the use-based eligibility criteria do not limit availability or favor one industry or enterprise over another.”²¹⁵³ However, this argument does not undermine the fact that the law expressly limited the program to enterprises or industries engaged in certain activities.

In the *Lumber V ARI Final*, we noted that the SAA states that the specificity test is not “intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the CVD law.”²¹⁵⁴ Rather, though the GOA cites potentially diverse uses, these uses are narrowly tailored “discrete segments” of the economy just as described in the SAA. As such, we find the GOA’s argument unpersuasive. We also find that the other arguments made by the GOA and West Fraser on the specificity under section 771(5A)(D)(i) of the Act of TEFU and the BC Coloured Fuel program were considered and rejected by Commerce in the *Lumber V ARI Final* and, as such, do not provide grounds for reconsideration.²¹⁵⁵

With regard to *de jure* specificity under section 771(5A)(D)(ii) of the Act, we found in the *Lumber V ARI Final* that for TEFU and BC Coloured Fuel, respectively:

{T}he eligibility criteria do not meet the statutory definition of “objective criteria,” because they favor certain enterprises, that is, those enterprises or industries that use marked fuel for one of those limited, prescribed purposes.²¹⁵⁶

Under this program, the eligibility criteria limits access to the subsidy to only those users purchasing fuel for a prescribed list of approved activities. Therefore, the eligibility criteria do not meet the statutory definition of “objective criteria,” because they favor certain enterprises {.}²¹⁵⁷

We note no additions or new factual information on the record of this review that would lead to a change in this finding for either program. The controlling statutes and eligibility criteria for TEFU and the BC Coloured Fuel programs have not changed since the prior review.²¹⁵⁸ Likewise, the arguments raised by West Fraser and the GOA in their case briefs as to why these programs are not *de jure* specific under section 771(5A)(D)(ii) of the Act were previously discussed in the *Lumber V ARI Final* and found unpersuasive.²¹⁵⁹

For financial contribution, Commerce found the following in the *Lumber V ARI Final* for TEFU and BC Coloured Fuel, respectively:

²¹⁵³ See GOA Case Brief Volume 4.A at 26.

²¹⁵⁴ See *Lumber V ARI Final* IDM at Comment 97.

²¹⁵⁵ *Id.*

²¹⁵⁶ See *Lumber V ARI Final* IDM at Comment 97 (citing *Lumber V Final* IDM at Comment 73).

²¹⁵⁷ *Id.* (citing *Lumber V Final* IDM at Comment 74).

²¹⁵⁸ See GOA IQR Response, Part 1 at 47 and Exhibits AB-AR2-TEFU-3 and AB-AR2-TEFU-4; see also GBC IQR Response at BC-V-9 and Exhibit BC-AR2-GAS-4.

²¹⁵⁹ See *Lumber V ARI Final* IDM at Comment 97.

we disagree with the GOA's argument that the {TEFU} program does not provide a financial contribution because marked fuel was originally not taxed, and only recently became taxed at a lower rate than other fuel. This exemption results in the GOA foregoing tax revenue that would otherwise be due.²¹⁶⁰

Vehicles that use coloured fuel on the highway, an unauthorized purpose, must pay the tax difference between 3 cents per liter for coloured fuel and the location-specific tax for clear fuel. Therefore, this program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone.²¹⁶¹

Arguments that these programs do not fall under the statutory definition of "foregoing or not collecting revenue that is otherwise due" and that marked fuel was previously not taxed in Alberta remain unpersuasive. The Alberta *Fuel Tax Act* refers to marked fuel as Tax-Exempt,²¹⁶² and in British Columbia, a purchaser will pay the standard fuel tax rate if they do not present a form certifying that coloured fuel will be used for authorized purposes.²¹⁶³ The record shows that the GOA provides a tax exemption of nine cents per liter to eligible companies and municipalities when fuel is used in unlicensed vehicles, machinery, and equipment for qualifying off-road activities.²¹⁶⁴

The GBC also repeats the argument that British Columbia taxing coloured fuel at a lower rate than clear fuel is supported by a logical policy rationale and asserts that Commerce was wrong to find this policy rationale irrelevant. However, we continue to find that the rationale outlined by the GBC is not relevant to our CVD determination. While the long-term repair costs generated by highway use may be relevant to the GBC in setting fuel tax rates, our analysis of whether a program provides a financial contribution and confers a benefit is not based on the net social costs of one activity relative to another activity. Rather, in this case, our analysis is guided by the language of section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1), which states that a financial contribution is provided when a government foregoes revenue that is otherwise due, and the recipient receives a benefit to the extent that the taxes it pays as a result of the program are less than what it would have paid in the absence of the program. The additional social policy rationale underlying a program argued by the GBC is simply not a factor for consideration under the applicable statutory and regulatory provisions pertinent to this program and the CVD law in general.

²¹⁶⁰ See *Lumber V ARI Final IDM* at Comment 97 (citing *Lumber V Final IDM* at Comment 73).

²¹⁶¹ See *Lumber V ARI Final IDM* at Comment 97 (citing *Lumber V Final IDM* at Comment 74).

²¹⁶² See GOA IQR Response, Part 1 at Exhibit AB-AR2-TEFU-4.

²¹⁶³ See GBC IQR Response at BC-V-8 – BC-V-9.

²¹⁶⁴ See GOA IQR Response, Part 1 at 39.

Comment 103: Whether the Benefit Calculation for Tax Savings Under Alberta’s TEFU Is Correct

*Petitioner’s Comments*²¹⁶⁵

- Commerce incorrectly calculated the tax savings under the TEFU program. For the final results, Commerce should calculate the benefit to West Fraser by multiplying the liters of fuel purchased by the lowered tax benefit per liter. This calculation results in the total tax savings West Fraser received during the POR.

No other parties provided comment on this issue.

Commerce’s Position: We agree with the petitioner that Commerce incorrectly calculated West Fraser’s subsidy rate for the Alberta TEFU program in the *Lumber V AR2 Prelim*. For the final results, we have corrected the benefit amount using the tax savings of nine cents per liter offered under the program.²¹⁶⁶ For West Fraser’s subsidy rate calculations, see West Fraser Final Calculations Memorandum.

Comment 104: Whether the EOA Property Tax Is Countervailable

*GOA’s and West Fraser’s Comments*²¹⁶⁷

- The economic obsolescence allowance is not a financial contribution.
- West Fraser received property tax abatement benefits, in the form of reduced property taxes, which reflected the diminished economic value for certain facilities. The GOA’s economic obsolescence allowance ensured an accurate assessment of West Fraser’s property value.
- The program does not provide a financial contribution, is not specific, and does not confer a countervailable subsidy.

No other parties provided comments on this issue.

Commerce’s Position: We do not find the arguments presented by the GOA to be persuasive, and, thus, are not moved to reconsider the countervailable finding in the *Lumber V ARI Final*.²¹⁶⁸ The EOA affords property abatements in the form of reduced property taxes for three of West Fraser’s Alberta production facilities that have experienced diminished economic value in 2019. The GOA argues that any reduction in West Fraser’s tax liability under the EOA represents an accurate valuation of its property and assets under the law, and thus does not confer a benefit.²¹⁶⁹ However, as Commerce has recognized in the *Lumber V ARI Final*, simply because tax savings are set forth in provincial law and regulations, it does not necessarily indicate that such tax savings do not confer a benefit.²¹⁷⁰

²¹⁶⁵ See Petitioner’s Case Brief at 6 – 7.

²¹⁶⁶ See GOA IQR Response at ABI-55 (“Under the greater TEFU program the Marked Fuel Exemption Program currently provides a partial fuel tax exemption for the purchase of marked fuel equal to nine cents per liter (\$0.09/liter) of fuel purchased.”)

²¹⁶⁷ See GOA Case Brief Volume 4.B at 22 – 23 and West Fraser Case Brief at 71.

²¹⁶⁸ See *Lumber V ARI Final* IDM at 27.

²¹⁶⁹ See GOA Case Brief Volume 4.B at 22 – 23.

²¹⁷⁰ See *Lumber V ARI Final* IDM at Comment 98.

The financial support provided under this program is administered by municipal governments in Alberta.²¹⁷¹ This additional depreciation, or economic obsolescence, is applied by assessors in each municipality in Alberta. Municipal assessors make value determinations based on a complete assessment of the property, including depreciation associated with economic obsolescence stemming from global competition, lower market prices, or depressed market conditions.²¹⁷² When factoring in such tax abatements, facilities ultimately have reduced property tax liability and pay less tax than they would in the absence of the tax abatements.

Based on this information, and consistent with the *Lumber V ARI Final*, we continue to find that the program constitutes a financial contribution in the form of revenue forgone, within the meaning of section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax savings pursuant to 19 CFR 351.509(a)(1) and section 771(5)(E) of the Act.²¹⁷³ Because the tax abatements are limited to the properties reflecting diminished economic value located within the municipality in question, we continue to find that the program is regionally specific under section 771(5A)(D)(iv) of the Act.²¹⁷⁴

Comment 105: Whether Tax Savings Under Alberta’s Schedule D Are Countervailable

*GOA’s Comments*²¹⁷⁵

- Schedule D depreciation is part of standard property assessment procedures to accurately assess the true value of a specific property that has experienced diminished value in Alberta. The program does not represent a financial contribution, nor is it specific.
- The property assessor reduced the value of Canfor’s Grande Prairie EcoPower Centre equipment during the POR because Canfor demonstrated that the capacity of the assets was impaired. The assessor applied a depreciation factor to reduce the value to reflect the current capacity of the facility.²¹⁷⁶ The record demonstrates that the application of Schedule D depreciation resulted in an accurate valuation of Canfor’s facility, and produced an accurate tax assessment.

*Canfor’s Comments*²¹⁷⁷

- a. Commerce stated that interested parties have not submitted any new information that warrants reconsideration of the prior determination in the *Lumber V ARI Final*.²¹⁷⁸ However, Canfor provides additional arguments to demonstrate that Schedule D depreciation does not represent revenue foregone, and that there is no benefit conferred to Canfor.
- b. Commerce noted that “simply because the tax savings under Schedule D depreciation are set forth in provincial law and regulations, that fact, in and of itself, does not necessarily indicate that such tax savings do not confer a benefit.”²¹⁷⁹ Canfor does not maintain that this fact

²¹⁷¹ See GOA IQR Response at ABI-87.

²¹⁷² *Id.* at 83.

²¹⁷³ See *Lumber V ARI Final* IDM at 27.

²¹⁷⁴ See *Lumber V ARI Prelim* IDM at 75.

²¹⁷⁵ See GOA Case Brief Volume 4.B at 20 – 22.

²¹⁷⁶ *Id.* at 22 (citing GOA IQR Response, vol. I at 103 – 104 and Exhibit AB-AR2-MPT-5).

²¹⁷⁷ See Canfor Case Brief at 31 – 39.

²¹⁷⁸ *Id.* at 31 (citing *Lumber V AR2 Prelim* PDM at 75).

²¹⁷⁹ *Id.* at 32 (citing *Lumber V ARI Final* IDM at Comment 98).

indicates that such tax savings do not confer a benefit, but rather contends that the purpose of the law must be examined. The purpose of Schedule D is not to provide tax savings but rather to ensure that industrial property is valued accurately for tax purposes.

- c. Canfor did not receive any benefit because the company paid the amount of taxes that it should have paid, commensurate with its facility's accurate, assessed value. Commerce did not consider the overall structure of the assessment guidelines and instead narrowly focused on the "reduction" in Canfor's taxes. The "reduction" in Canfor's taxes reflects a correction of an overcharge of taxes, based on an assessment of the facility's capabilities.
- d. Canfor provided a technical explanation and historical data to demonstrate the plant's inability to operate at full capacity. Canfor submitted that an accurate assessment of the plant's value would require depreciation under Schedule D, because the unique circumstances of the facility were "not reflected in Schedule C."²¹⁸⁰
- e. 19 CFR 351.509(a)(1) provides that a benefit exists if the tax paid is less than the tax the firm would have paid in the absence of a program "{i}n the case of a program that provides for a full or partial exemption or remission of a direct tax or a reduction in the base used to calculate a direct tax."²¹⁸¹ There is no exemption or remission in this case, nor is there a "reduction" in the base. Rather, the Alberta guidelines provide for an assessment of the actual capacity of the facility. The reduction in value is reflective of the demonstrated capabilities of the facility and is not a benefit but rather a rectification of a previously inaccurate assessment value.

*Petitioner Rebuttal Comments*²¹⁸²

- Commerce should continue to find the application of Schedule D depreciation to Canfor's Grande Prairie facility to be countervailable.
- The GOA's and Canfor's emphasis on the fact that the depreciation factor was proportionate to the facility's diminished capacity simply indicates that the subsidy was calculated in accordance with the rules set out in the *Alberta Linear Property Assessment Minister's Guideline*, not that it does not represent a financial contribution.²¹⁸³
- Schedule D depreciation is a preferential tax rate that affords Canfor with a lower property tax obligation, and clearly provides a benefit.
- This additional depreciation is also *de jure* specific. It is expressly limited to "designated industrial properties" defined in section 284(f.01) of the *Municipal Government Act*, and eligibility is not automatic.²¹⁸⁴ The company must demonstrate unusual site-specific circumstances to be eligible.
- It is also *de facto* specific due to its limited number of users. Five properties in Alberta received Schedule D depreciation in 2019, which demonstrated that the actual recipients were limited in number.

Commerce's Position: The Canadian Parties raised similar arguments in the prior administrative review.²¹⁸⁵ The GOA argues that any benefit prescribed in law cannot confer a benefit because under Schedule D, Canfor pays the rate prescribed by law. Canfor also provides

²¹⁸⁰ *Id.* at 34 (citing GOA IQR Response at Exhibit AB-AR2-MPT-6).

²¹⁸¹ *Id.* at 35 (citing 19 CFR 351.509(a)(1)).

²¹⁸² See Petitioner Rebuttal Brief at 205 – 208.

²¹⁸³ *Id.* at 207 (citing GOA IQR Response at Exhibit AB-AR2-MPT-3).

²¹⁸⁴ *Id.* (citing GOA IQR Response at Exhibit AB-AR2-MPT-1).

²¹⁸⁵ See *Lumber VARI Final IDM* at Comment 98.

a similar argument, noting that any reduction in its tax liability under Schedule D represents an accurate valuation of its property and assets under the law. In the *Lumber VARI Final*, Commerce determined that simply because the tax savings under Schedule D depreciation are set forth in provincial law and regulations, that fact, in and of itself, does not necessarily indicate that such tax savings do not confer a benefit.²¹⁸⁶ The additional depreciation under Schedule D lowers the tax Canfor would otherwise pay for the properties covered by that program and thus confers a benefit equal to the amount of tax savings under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).²¹⁸⁷ Under CFR 351.509(a)(1) a firm receives a benefit for the exemption or remission of a tax to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program.

Based on this information, we continue to find that the additional depreciation under Schedule D lowers the tax Canfor would otherwise owe for the properties covered by the program and thus confers a benefit equal to the amount of tax savings under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). In addition, Schedule D depreciation provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because the GOA foregoes revenue that would otherwise be due.

Canfor also emphasizes that Schedule D depreciation is available only for property that is proven to be operating at reduced capacity. Canfor then points to technical descriptions and historical data to establish that such reduced capacity necessitates an alternative valuation and depreciation allowance under Schedule D.²¹⁸⁸ We disagree with Canfor's reasoning regarding the purpose behind the GOA's rules in the *Alberta Linear Property Assessment Minister's Guideline*.²¹⁸⁹ A firm that demonstrates reduced capacity of particular equipment must first demonstrate that the equipment in question meets the requirements as defined in the *Municipal Government Act*.²¹⁹⁰ Property included are designated industrial properties, certain machinery and equipment limited to manufacturing, processing and similar industries, and farmland.²¹⁹¹

Based on the information above, we find that the Schedule D tax depreciation program is *de jure* specific under 771(5A)(D)(i) of the Act because it is limited to designated industrial properties, certain machinery and equipment limited to manufacturing, processing and similar industries, and farmland.

²¹⁸⁶ *Id.*

²¹⁸⁷ *Id.*

²¹⁸⁸ See Canfor Case Brief at 34 (citing GOA IQR Response at Exhibit AB-AR2-MPT-6).

²¹⁸⁹ See Petitioner Rebuttal Brief at 207 (citing GOA IQR Response at Exhibit AB-AR2-MPT-3).

²¹⁹⁰ See GOA Non-Stumpage SQR2 at 95 and GOA IQR Response at Exhibit AB-AR2-MPT-1.

²¹⁹¹ Here, Schedule D depreciation is limited not only to agricultural property, but also to designated industrial equipment and certain machinery and equipment described above. Therefore, consistent with the prior review, because the program is not solely limited to farmland, we find the agriculture provision under 19 CFR 351.502(e) does not apply to the program at issue. See *Lumber VARI Final* IDM at Comment 99.

British Columbia

Comment 106: Whether the IPTC Is Countervailable

*GBC's Comments*²¹⁹²

- Commerce failed to account for how Canfor and West Fraser's BC school tax rates were set. The school tax rate was not lowered for these companies; rather, the GBC sets the school tax rates for Class 4 property through two separate sections of the *School Act* and does not forego revenue in doing so. Additionally, this program is not *de facto* specific.
- The GBC did not significantly lower the school tax rate for Class 4 property in 2019. Rather, the GBC followed the law by setting a rate for Class 4 property under section 119(3) of the *School Act* and then by adjusting that rate automatically through section 119(6) of the same law.
- The actual recipients of the school tax credit are not limited in number. Over 12,000 Class 4 properties existed in British Columbia in 2019.²¹⁹³ The record demonstrates further that 17 categories of properties are classified as Class 4.²¹⁹⁴ These categories cover properties relating to industries as varied as mining, manufacturing cement, and building ships.
- The lumber industry is not a predominant user nor receives a disproportionately large amount of the school tax credit. The top categories of properties paying school tax are those involving the manufacture of refined petroleum product, loading cargo/grain elevators, the manufacture of pulp, paper, and lineboard, and mining metallic/non-metallic ore. These four categories comprised 64 percent of school tax paid in 2019.²¹⁹⁵ The lumber industry comprised less than 11 percent of the school tax paid in 2019.²¹⁹⁶
- The GBC does not exercise any discretion in granting the School Tax Credit to favor certain industries or companies. As evidenced in the record, the B.C. Ministry of Finance exercises no administrative discretion or special consideration for eligibility criteria outside of those listed in the statute for the Class 4 – Major Industry property tax rates.²¹⁹⁷

*Petitioner's Rebuttal Comments*²¹⁹⁸

- According to section 771(5)(D(ii)) of the Act, a financial contribution includes “foregoing or not collecting revenue that is otherwise due, such as granting tax credits or deductions from taxable income.” By the GBC's own admission, the *School Tax Act* “provides for a number of tax exemptions, refunds, and credits,” some of which benefit Class 4 industries.²¹⁹⁹ This program therefore constitutes a financial contribution under the statute.
- The GBC cites no case law or precedent to support its claim that because the discounted rate is set by two different sections of a law, it cannot be considered countervailable.

²¹⁹² See GBC Case Brief Volume 5 at 91-94.

²¹⁹³ *Id.* at 91 (citing GBC IQR Response at 11).

²¹⁹⁴ *Id.* at 92 (citing GBC IQR Response at 13).

²¹⁹⁵ *Id.* (citing GBC IQR Response at Exhibit BC-AR2-SCH-7).

²¹⁹⁶ *Id.*

²¹⁹⁷ *Id.* (citing GBC IQR Response at 8).

²¹⁹⁸ See Petitioner Rebuttal Brief at 212-214.

²¹⁹⁹ *Id.* at 213 (citing GBC IQR Response at 1).

- Commerce need only find the existence of “one or more” factors in determining *de facto* specificity.²²⁰⁰ Record evidence demonstrates that the actual recipients of this program are “limited in number,” compared to the total number of companies operating in British Columbia during the POR and is therefore *de facto* specific.

Commerce’s Position: Commerce found the IPTC program countervailable in the prior review, and in the current review, we continue to find that the IPTC provides a financial contribution in the form of revenue forgone, within the meaning of section 771(5)(D)(ii) of the Act that confers a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).²²⁰¹ The GBC’s argument that the statutory provisions for Class 4 tax rates are not revenue foregone does not address the Act’s plain language. The IPTC is a tax credit, and tax credits are explicitly listed in section 771(5)(D)(ii) of the Act as revenue foregone. As noted in the prior review, certain industries are eligible as classification as Class 4 –Major Industry, and the IPTC is a tax credit that is automatically applied to all properties classified as Class 4 –Major Industry.²²⁰² The GBC’s argument that the tax rates are set through multiple provisions of a law and therefore not revenue foregone is unconvincing, and does not negate the fact that the GBC applies the IPTC to the tax collection notices of Class 4 properties, for which they realize tax savings.²²⁰³ The GBC determining a tax liability and then subsequently relieving that liability in another provision is still a financial contribution that confers a benefit.

In addition, we continue to find that the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited in number relative to the number of companies operating in British Columbia.²²⁰⁴ The Canadian Parties object to the means by which we determined that the program is specific, in fact, under section 771(5A)(D)(iii)(I) of the Act. As stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies that truly are broadly available and widely used throughout an economy.²²⁰⁵ The specificity test is not, however, “intended to function as a loophole through which narrowly {focused} subsidies . . . used by discrete segments of an economy could escape the purview of the {countervailing duty} law.”²²⁰⁶ The SAA also states that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.²²⁰⁷

Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, Commerce reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.²²⁰⁸ Thus, we followed the instructions of the SAA and our practice in determining whether the IPTC program is *de facto* specific.

²²⁰⁰ *Id.* at 214 (citing section 771 (5A)(D)(iii)).

²²⁰¹ See *Lumber V ARI Final IDM* at Comment 100.

²²⁰² See *Lumber V ARI Prelim PDM* at 78; see also *Lumber V ARI Final IDM* at Comment 100.

²²⁰³ See GBC IQR Response at Exhibits BC-ARI-SCH-1 and BC-ARI-SCH-5.

²²⁰⁴ See *Lumber V ARI Final IDM* at Comment 100.

²²⁰⁵ See SAA at 929.

²²⁰⁶ *Id.*

²²⁰⁷ See SAA at 931.

²²⁰⁸ See *CRS from Korea IDM* at Comment 13; see also *Lumber V Final IDM* at Comment 62.

As such, we continue to find that the IPTC program is not widely used throughout the provincial economy, because the recipients are limited in number; therefore, the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. The breadth of industries that benefited from the program does not affect this finding.

Comment 107: Whether Class 7 Managed Forest Lands Assessment Rates Constitute a Financial Contribution

*GBC's Comments*²²⁰⁹

- The Private Managed Forest Lands property classification does not constitute a financial contribution.
- Commerce failed to account for how the GBC classifies private land. The BCAA classifies all private land in British Columbia into nine property classes, assesses the value of the property, and assigns a tax rate. None of the property classes is preferential to the others. The fact that different categories of land pay different tax rates does not mean that the GBC has conferred a subsidy on any landowner who pays less than the maximum rate for any property class.
- Commerce also failed to consider the commitments associated with Class 7 Managed Forest Land classifications. The tax rate reflects the fact that the Managed Forest Land designation results in more expenses for landowners than other property classifications. Landowners incur substantial costs to comply with the reforestation and environmental obligations associated with this designation. The tax rate is part of a tax regime that considers both the tax rate and other government-mandated costs associated with Class 7 property.

*Petitioner's Rebuttal Comments*²²¹⁰

- The GBC's arguments are unsupported by record evidence, and Commerce should continue to find the program countervailable. The GBC acknowledges that property "classified as managed forest land has assessed values that are generally lower than for other classes such as residential, which can result in lower property taxes."²²¹¹
- Additionally, if a private landowner exits the Managed Forest Land program, they must pay an exit fee, which is "based on the difference between the tax that was paid as managed forest land and the tax that would have been paid had the property not been classed managed forest land."²²¹² Such an exit fee indicates the GBC's preferential tax treatment for Class 7 property.

Commerce's Position: We disagree with the GBC's arguments, and continue to find that the property tax savings under the managed forest land property classification constitute a countervailable subsidy. The GBC claims that the preliminary finding failed to account for the how the GBC classifies land, and for the forest management commitments required of landowners. First, the manner in which the GBC classifies property in British Columbia is not at issue here. For the purposes of this analysis, it is clear that the property tax regime for the province is based upon the BCAA's property classification system.²²¹³ As described in the

²²⁰⁹ See GBC Case Brief Volume 5 at 97 – 100.

²²¹⁰ See Petitioner Rebuttal Brief at 214 – 215.

²²¹¹ *Id.* at 214 (citing Petitioner Comments on IQR Responses at Exhibit vol. II-40).

²²¹² *Id.* at 215 (citing Petitioner Comments on IQR Responses at Exhibit vol. II-40).

²²¹³ See GBC Non-Stumpage SQR2, Exhibit BC-AR2-SUPP2-3 at 1.

Lumber V AR1 Prelim, owners of managed forest land in British Columbia pay a property tax rate that is below that of the most applicable alternative land classification.²²¹⁴ Second, any costs related to reforestation or environmental commitments that are associated with the managed forest land designation are not part of our analysis. The environmental policy rationale argued by the GBC is not a factor for consideration under the applicable statutory and regulatory provisions.

Commerce previously countervailed this program under the name “British Columbia Private Forest Property Tax Program.”²²¹⁵ In those prior reviews, Commerce used the tax rate for Unmanaged Forest Land (Class 3) as the benchmark to calculate the benefit to respondents.²²¹⁶ The GBC has since eliminated the classification for unmanaged forest land, and we have instead used the classification for Light Industry, as described in the *Lumber V AR1 Prelim*.²²¹⁷ Given the above, and consistent with prior proceedings, we continue to find that the lower tax rates associated with the Managed Forest Land property classification are a financial contribution that confer a benefit in the form of revenue forgone under section 771(5)(D)(ii) of the Act.

Comment 108: Whether the CleanBC Industrial Incentive Program Is Countervailable

*GBC’s and West Fraser’s Comments*²²¹⁸

- Commerce preliminarily determined that the CIIP qualifies as a financial contribution in the form of revenue foregone. However, CIIP does not qualify as revenue foregone because it is a self-funding program with initial funds provided by industries themselves. The GBC imposed an incremental increase on the carbon tax from \$30 to \$35 per ton. This increase, plus incremental future increases, have funded the CIIP since its inception.
- Commerce incorrectly stated that the program “refunds{s} up to 75 percent of the provincial carbon tax paid by {eligible} industrial facilities.”²²¹⁹ In fact, the CIIP only refunds 75 percent of the *incremental* carbon tax paid by an eligible industrial facility. In other words, the industries themselves fund the program by paying incremental taxes that are paid on top of the \$30 per ton baseline from 2018, a portion of which can be reimbursed if the industries meet certain emissions-reduction standards.
- The GBC does not actually contribute any funds to the CIIP and does not provide funding to support the CIIP or its components. Thus, Commerce should reverse its preliminary finding and determine that the CIIP is not a countervailable subsidy.
- Commerce incorrectly determined that the CIIP is *de jure* specific.

²²¹⁴ See *Lumber V AR1 Prelim* IDM at 77.

²²¹⁵ See *Lumber IV Final Results of 1st AR* IDM at 27 – 28 and *Lumber IV Final Results of 2nd AR* IDM at 18 – 19 and Comment 72.

²²¹⁶ *Id.*

²²¹⁷ See *Lumber V AR1 Prelim* IDM at 77.

²²¹⁸ See GBC Case Brief Volume 5 at 94 – 96 and West Fraser Case Brief at 71 – 72.

²²¹⁹ See GBC Case Brief Volume 5 at 95 (citing *Lumber V AR2 Final* IDM at 76).

*Petitioner's Rebuttal Comments*²²²⁰

- The subsidy at issue here is the GBC's refund of the carbon taxes paid, not the initial collection of these taxes. The GBC and West Fraser acknowledge that, in the absence of the CIIP, the GBC would retain the entirety of the incremental carbon taxes paid by these industries.²²²¹
- The CIIP operates as a reimbursement mechanism, in which the GBC foregoes a portion of the revenue that it is owed and has collected.
- Commerce correctly determined that the tax savings under the CIIP constitute a financial contribution in the form of revenue foregone and should not alter its findings for the final results.
- West Fraser claimed that Commerce incorrectly found the CIIP to be *de jure* specific but provided no additional comment. The GBC explained that, to be considered for CIIP reimbursements, firms must meet a minimum greenhouse gas emissions threshold and must not operate in an ineligible sector. The CIIP excludes agricultural sectors and facilities that engage in natural gas distribution, sewage treatment, waste treatment and disposal, and fossil fuel electric power generation. Because the CIIP reimbursements are limited to certain industries, Commerce's *de jure* specificity finding is in accordance with section 771(5A)(D)(i) of the Act and should not be altered for the final results.

Commerce's Position: We disagree with the Canadian Parties' argument that the tax reimbursements under the CIIP do not constitute revenue forgone and continue to find that such reimbursements constitute a financial contribution under section 771(5)(D)(ii) of the Act. As an initial matter, we agree with the Canadian Parties that the CIIP only refunds up to 75 percent of the additional incremental carbon tax paid by eligible industrial facilities, rather than 75 percent of the total provincial carbon tax paid.²²²² As the GBC noted, it raised the carbon tax rate from \$30 to \$35 per ton in 2018, and announced a plan to incrementally increase the carbon tax rate annually until 2021.²²²³ The additional \$5 per ton imposed on industrial purchasers of fuel in 2018 funded the CleanBC Program for Industry for 2019.²²²⁴ A company's CIIP payments in 2019 were limited to 75 percent of the amount of the additional, incremental tax it paid in 2018 (*i.e.*, a firm cannot receive more CIIP funding than it paid in incremental tax during the prior year).²²²⁵

The Canadian Parties argue that the CIIP is a "self-funding" program that uses funds from the industries that ultimately receive the reimbursements.²²²⁶ However, the GBC's depiction of the CIIP funding mechanism is misconstrued. In fact, the GBC states explicitly that the purpose of the incremental carbon tax is to provide funding for the CIIP to incentivize companies to reduce their emissions.²²²⁷ The GBC's argument that it does not contribute any funds to the CIIP, essentially making the program "self-funded," ignores the fact that the GBC *itself* imposed a specific tax on carbon in the first place. Taxpayers in British Columbia did not have a choice in whether to pay the additional carbon tax. Conversely, as part of the CIIP, the GBC decided to

²²²⁰ See Petitioner Rebuttal Brief at 210 – 211.

²²²¹ *Id.* at 210 (citing GBC NSA QR at CIIP-1 – CIIP-10).

²²²² *Id.* (citing *Lumber V AR2 Prelim PDM* at 76).

²²²³ See GBC NSA QR at CIIP-1.

²²²⁴ *Id.* at CIIP-2.

²²²⁵ *Id.*

²²²⁶ See GBC Case Brief Volume 5 at 95.

²²²⁷ *Id.*

refund a portion of the additional carbon tax levied to companies that met certain emissions benchmarks. Under the same logic, nearly any financial contribution from a government to a company is “self-funded” simply because the funds are raised by imposing taxes.

The above arguments presented by the Canadian Parties are not persuasive. In the absence of the CIIP, West Fraser would not have received a partial refund of the incremental carbon tax it paid in 2018. Accordingly, we continue to find that CIIP payments to West Fraser constitute a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act.

West Fraser stated that Commerce incorrectly determined that the CIIP is *de jure* specific, but did not provide further explanation.²²²⁸ In the *Lumber V AR2 Prelim*, we found that funding under the CIIP was limited to certain industries because the program excludes some facilities and activities, such as natural gas distribution, sewage treatment, waste treatment and disposal, fossil fuel electric power generation, electric bulk power transmission and control, and electric import operation facilities.²²²⁹ We agree with the petitioner that there is no reason to change our preliminary finding, and we continue to find that funding under the CIIP is *de jure* specific under section 771(5A)(D)(i) of the Act.

New Brunswick

Comment 109: Whether Commerce Should Find New Brunswick’s Property Tax Incentives for Private Forest Producers Program Countervailable

*GNB’s Comments*²²³⁰

- The New Brunswick Assessment Act’s (Assessment Act) broadly available statutory assessment of C\$100 per hectare for freehold timberland cannot be considered *de jure* nor *de facto* specific to any industry or enterprise under section 771(5A) of the Act. Further, a standard and uniformly implemented property tax assessment policy does not constitute a financial contribution under section 771(5)(D)(ii) of the Act.
- Sections 16 and 17 of the Assessment Act do not mention any industry or enterprise, do not apply to any particular industry, and establish objective criteria governing eligibility for assessment as freehold timberland.
- Commerce’s finding in the preliminary results that “eligibility for this tax program is expressly limited to owners of freehold timberland” is without merit, as ownership of timberland is not equivalent to being engaged in the forest products industry, and the definition of “bona fide timberland” does not create any such linkage.²²³¹
- Commerce’s finding that this assessment would not be generally available to all landholders throughout the province, but only to a subset of the landholders is not based on record evidence. The assessment rates are available to 33,774 individuals and families, as well as companies in a wide range of business sectors.²²³²

²²²⁸ See West Fraser Case Brief at 71 – 72.

²²²⁹ See *Lumber V AR2 Prelim* IDM at 76 (citing GBC NSA QR at CIIP-8).

²²³⁰ See GNB Case Brief Volume 6 at 49-63.

²²³¹ *Id.* at 55 (citing *Lumber V AR2 Prelim* PDM at 82).

²²³² *Id.* at 56 (citing *Lumber V AR1 Final* IDM at Comment 103 and GNB IQR Response at Exhibit NB-AR2-SNB-13 at 2).

- Far from being “unique,” the assessment rate is the most common one applied by the GNB. Further, the assessment rate applies broadly where harvesting trees is impossible, legally prohibited or in conservation. Thus, there is no evidence supporting Commerce’s assertion from the prior review that the “GNB provides this benefit to groups that it expressly expects to produce subject merchandise.”²²³³
- New Brunswick, like all jurisdictions, has the sovereign right to establish property assessment and taxation policies. Commerce’s initial conclusion in the *Lumber V AR2 Prelim* that the statutory assessment rate for freehold timberland amounts to a financial contribution under section 771(5)(D)(ii) of the Act does not meet the requirements of the statute.
- Commerce’s conclusion is based on a misinterpretation of sections 15, 16 and 17 of the Assessment Act. Contrary to Commerce’s earlier understanding, section 15 is not a general rule that applies to all real property in New Brunswick. Sections 15, 16, and 17 of the Assessment Act each establish assessment policies for different classes of properties with disparate characteristics, thereby requiring distinct rules of valuation for each.
- There is no evidence on the record suggesting that SNB applies differential taxation for real property that is assessed as freehold timberland based on how it is managed or used. There is also no suggestion that any portion of the property taxes applicable to freehold timberland are exempt, reduced, waived, or otherwise not collected under the Assessment Act.

*Petitioner’s Rebuttal Comments*²²³⁴

- The Assessment Act did not change since the *Lumber V AR1 Final*. As such, Commerce accurately found the Assessment Act’s rules regarding freehold timberland continue to constitute a financial contribution and are *de jure* specific in the *Lumber V AR2 Prelim*.
- The Assessment Act effectively limited access to the subsidy to the forestry industry, and thus, the information cited by the GNB, such as the percentage of individual land holders versus corporate land holders and that the companies holding the land come from a variety of sectors, is immaterial to Commerce’s *de jure* analysis.
- While section 15 of the Assessment Act applies to “all real property,” sections 16 and 17 apply to “real property” that is classified as freehold timberland. As a result, freehold timberland, as a type of “real property,” is provided a preferential fixed assessment rate of one hundred dollars per hectare to the exclusion of other types of real property.
- Commerce has repeatedly determined that preferential tax rates for certain industries or activities and not others constitute financial contributions in the form of revenue foregone, and that “it is irrelevant to this inquiry whether the {government’s} differential tax scheme is supported by a policy rationale.”²²³⁵
- Freehold timberlands, defined as a type of real property, are exempted from the general assessment policy described under section 15 of the NB Assessment Act. As such, the GNB foregoes the tax revenue that it would have collected if the timberland was assessed as other real property, based on its “real and true value,” and provides a financial contribution under section 771(5)(D)(ii) of the Act.

²²³³ *Id.* at 56 (citing *Lumber V AR1 Final* IDM at Comment 103).

²²³⁴ See Petitioner’s Rebuttal Case Brief at 234-239.

²²³⁵ *Id.* at 237.

Commerce's Position: In the *Lumber V AR2 Prelim*, consistent with *Lumber V Final Results of Expedited Review* and the previous review,²²³⁶ we found the GNB's statutory property assessment rules regarding freehold timberland to be countervailable.²²³⁷ Specifically, we found this program *de jure* specific, because, under the Assessment Act, eligibility for this tax program is expressly limited to owners of freehold timberland.²²³⁸ Further, we found the program provided a financial contribution in the form of government revenue foregone and conferred a benefit to the extent that the property taxes paid by JDIL as a result of this program are less than the taxes the company would have paid absent the program.²²³⁹ For purposes of these final results, we continue to find this program to be countervailable.

Landowners in New Brunswick pay property taxes based on the assessed value of the land in accordance with the Assessment Act. Section 15 of the Assessment Act stipulates that all real property shall be assessed at its "real and true value."²²⁴⁰ However, this section specifically stipulates certain types of land to be unique and not subject to this standard assessment. One of these unique types of land, freehold timberland, is assessed at a rate of C\$100 per hectare, as stipulated under section 17(2) of the Assessment Act, which is lower than the rate at which non-freehold timberland is assessed.²²⁴¹

In the *Lumber V AR2 Prelim*, we stated that we found nothing to change our position from our finding in the prior review.²²⁴² The GNB again references numerous statements regarding ownership and uses of timberland properties on the record of this review.²²⁴³ For example, the GNB states that: (1) over 67 percent of all private land in the province is a recipient of this assessment policy subject to the lower C\$100 per hectare assessment rate;²²⁴⁴ (2) companies owned only 24 percent of the properties subject to the C\$100 per hectare assessment rate;²²⁴⁵ and (3) over 75 percent of all private land area in New Brunswick is subject to set administrative assessment rates under sections 16 and 17 of the Assessment Act.²²⁴⁶ On this basis, the GNB concludes that the majority of properties receiving the C\$100 per hectare assessment value are owned by individuals that are not owned for sale of timber in the production of wood and wood-related merchandise.

However, this information is irrelevant for Commerce's *de jure* analysis under section 771(5A)(D)(i) of the Act. Commerce based its specificity finding in this review and the prior review on a *de jure* finding, as this tax benefit is limited by law to owners of freehold timberland. As such, these facts regarding ownership and uses of timberland properties in the province are not relevant to our *de jure* specificity analysis.

²²³⁶ See *Lumber V Final Results of Expedited Review* IDM at Comment 20; see also *Lumber V AR1 Final Results* at Comment 103.

²²³⁷ See *Lumber V AR2 Prelim Results* PDM at 82-83.

²²³⁸ *Id.*

²²³⁹ *Id.*

²²⁴⁰ See GNB Non-Stumpage IQR Response at Exhibit NB-AR2-SNB-7 and Exhibit NB-AR2-SNB-8.

²²⁴¹ *Id.*

²²⁴² See *Lumber V AR2 Prelim Results* PDM at 82-83.

²²⁴³ *Id.*

²²⁴⁴ See at 51 (citing GNB Non-Stumpage IQR Response at Exhibit NB-AR2-SNB-8 and Exhibit NB-AR2-SNB-9.

²²⁴⁵ *Id.* at Exhibit NB-AR2-SNB-9.

²²⁴⁶ *Id.*

The GNB also argues that this program is not *de jure* specific under sections 771(5A)(D)(i) and 771(5A)(D)(ii) of the Act, and thus not countervailable. Specifically, the GNB argues that the C\$100 per hectare valuation is broadly available and widely used by a number of industries. For example, the GNB submits a declaration from Matthew Johnson, the senior official responsible for administering property assessment under the Assessment Act, who states that “SNB routinely assesses property in New Brunswick at the \$100 per hectare rate where the harvest of trees is practically or legally prohibited. This includes land that is marshland, steep or rocky, or otherwise terrain not practical for harvest.”²²⁴⁷

Further, the GNB argues that the SAA stipulates that assistance that is generally available and widely distributed is not an actionable subsidy.²²⁴⁸ As such, the GNB asserts that this program should not be considered specific under 771(5A)(D)(i) of the Act. However, we disagree, as we continue to find that record evidence indicates that this program is *de jure* specific. Consistent with *Lumber V Final Results of Expedited Review* and the *Lumber V AR1 Final*, we continue to find that the Assessment Act expressly restricts access to the subsidy to a limited number of landholders.²²⁴⁹

The record indicates that the relevant freehold timberland under consideration is assessed using a different methodology than other types of land in the province, including other similar types of land. For example, while freehold timberland, as defined under section 17(2) of the Assessment Act, is assessed at the C\$100 per hectare rate, certain types of timberland and farmland can also be assessed at their real and true value, as stipulated at sections 16.1 and 16.2 of the Assessment Act. Further, for a land parcel to be classified as freehold timberland under section 17(2) of the Assessment Act, it must be 10 hectares or more, and must be for bona-fide use as freehold timberland (*i.e.*, land that is capable of being harvested).²²⁵⁰ As such, we find that this assessment would not be generally available to all landholders throughout the province, but only to a subset of the landholders. Further, in the *Lumber V Final Results of Expedited Review*, we found that access to the benefit would be effectively limited to potential enterprises involving production of wood and wood-related merchandise because of the type of land at issue.²²⁵¹ This finding is further supported by information on the record of this review, which indicates that the GNB anticipates timberland to be used to grow trees used in the production of various wood products including lumber.²²⁵² Thus, the record indicates that the GNB provides this unique assessment with the knowledge that certain industries, including the lumber industry, will benefit from this program. As such, we find that this subsidy is expressly limited to a specific type of

²²⁴⁷ See GNB Case Brief Volume 6 at 53-54 (citing GNB Stumpage IQR Response at Exhibit NB-AR2-SNB-13 at 2).

²²⁴⁸ *Id.* at 58-59 (citing SAA at 913).

²²⁴⁹ See *Lumber V Final Results of Expedited Review* IDM at Comment 20; see also *Lumber V AR1 Final Results* at Comment 103.

²²⁵⁰ See GNB Non-Stumpage IQR Response at Exhibit NB-AR2-SNB-8 at 13-14.

²²⁵¹ See *Lumber V Final Results of Expedited Review* IDM at Comment 20.

²²⁵² See, e.g., JDIL Non-Stumpage IQR Response at Exhibit NBPT-02 (*The Minister of Municipal Affairs v. Robertson*, N.B.R. (2d) 60, 62 (1968), (stating timberland “refers to wild or unimproved land on which stand growing trees of species capable of being used in the production of lumber, pulpwood and other merchantable wood products.”)).

freehold timberland holders (*i.e.*, over 10 hectares and bona-fide use). For these reasons, we continue to find this program to be specific under section 771(5A)(D)(i) of the Act.

The GNB also argues that Commerce misinterpreted the Assessment Act, and therefore should find that the provision at issue is not a financial contribution in the form of revenue forgone.²²⁵³ Specifically, the GNB argues that sections 15 to 17 of the Assessment Act each establish assessment policies for different groups of properties with unique characteristics and therefore apply distinct rules of valuation. Further, the GNB stipulates that section 15 of the Assessment Act applies to a minority of NB properties that are smaller and more developed and are assessed based on a complex series of factors, whereas sections 16 and 17 of the Assessment Act establish assessment policies for freehold timberland, farm woodlots and farmland. The GNB states that sovereign governments are permitted to adopt taxation systems, and Commerce has incorrectly assumed that the policy in section 15 of the Assessment Act was a “baseline policy.” As such, the GNB concludes that it collects all revenue that is “otherwise due,” and no portion of the property tax revenue for freehold timberland is foregone.²²⁵⁴

The GNB made similar arguments in the expedited review and the *Lumber V ARI Final*,²²⁵⁵ and we continue to disagree with the GNB’s characterization that the sections of the Assessment Act following section 15 are not departures from the baseline policy. The first sentence of section 15 of the Assessment Act directly states that, aside from certain exceptions, “all property shall be assessed at its real and true value as of January 1 of the year for which the assessment is made” (emphasis added).²²⁵⁶ Thus, this first sentence under “Valuation of Real Property” indicates that there is a baseline policy for the GNB. Specifically, the Assessment Act stipulates that, unless a property falls under an exception, it will be assessed at its real and true value as of the beginning of the year in which the assessment is being made. Further, the Assessment Act directly lists freehold timberland, at section 17(2), to have a different assessment basis (*i.e.*, C\$100 per hectare)²²⁵⁷ than the “standard” real and true value of the property. To put it another way, the Assessment Act establishes a policy to assess the value of NB property based on its real and true value, and has provided certain exceptions to this rule, including the valuation of freehold timberland. On this basis, we conclude that these exceptions represent departures from the standard policy to which “ordinary” property is subject. As such, we find that given that the GNB is not assessing timberland property using its standard valuation policy, it is foregoing revenue and thus providing a financial contribution.

²²⁵³ See GNB Non-Stumpage IQR Response at 60-64.

²²⁵⁴ *Id.* at 60.

²²⁵⁵ See *Lumber V Final Results of Expedited Review* at Comment 20; see also *Lumber V ARI Final Results* at Comment 103.

²²⁵⁶ See GNB Non-Stumpage IQR Response at Exhibit NB-AR2-SNB-7.

²²⁵⁷ *Id.* at Exhibit SNB-8.

Comment 110: Whether the Gasoline and Fuel Tax Program Provides a Financial Contribution in the Form of Revenue Forgone or Can Be Found Specific

*GNB's Comments*²²⁵⁸

- The Gasoline and Fuel Tax Program does not result in a financial contribution in the form of revenue forgone. Excluding a certain category of uses from a tax does not result in the government foregoing tax revenue because revenue from such uses was never due.
- Implementing a statutory policy to tax fuel used in vehicles on public highways, in order to fund the public road system, is not a financial contribution. In the investigation, Commerce focused solely on the “structure of the law.” The language that operationalizes this policy and exempts fuel use not involving driving on public highways cannot be characterized as “foregoing or not collecting revenue” under section 771(5)(D)(ii) of the Act.²²⁵⁹
- Evidence on the record demonstrates that the policy is specific to behavior (*i.e.*, driving on public highways) and not to an industry, enterprise, or group thereof. Further, there is no evidence that the lumber industry is a predominant or disproportionate user of the policy or receives discretionary or favorable treatment.

*Petitioner's Rebuttal Comments*²²⁶⁰

- Commerce should continue to find this program countervailable because the GNB has not provided any new arguments that merit a change to Commerce's previous findings.
- The financial contribution and benefit components of this subsidy are prescribed in law. The exemption results in the GNB foregoing tax revenue that would otherwise be due, and it is irrelevant that this “differential tax scheme is supported by a policy rationale.”²²⁶¹

Commerce's Position: Consistent with the prior review, Commerce found this program countervailable in the *Lumber V AR2 Prelim* stating that no interested parties had submitted new information or argument that warranted a reconsideration of Commerce's prior determination in the underlying investigation.²²⁶² The GNB argues that the “policy goal of collecting taxes for public highways based on public highway use does not satisfy the financial contribution condition under {section 771(5)(D)(ii) of the Act}.”²²⁶³ Additionally, the GNB argues that the program is specific to *behavior* and not to an “industry, enterprise, or group thereof.”²²⁶⁴ The petitioner claims that these arguments have no merit and should not prompt Commerce to change its findings from the *Preliminary Results*. Commerce agrees with the petitioner and continues to find this program countervailable.

The GNB continues to rely on much of the same reasoning that was rejected by Commerce in the final determination in the underlying investigation, *i.e.*, that the purpose behind the imposition of an indirect tax might outweigh the structure of the law in practice and the regulation underlying

²²⁵⁸ See GNB Case Brief Volume 6 at 86-92.

²²⁵⁹ *Id.* at 90.

²²⁶⁰ See Petitioner Rebuttal Brief at 232-233.

²²⁶¹ *Id.* at 233 (citing GNB Case Brief Volume 6 at 88).

²²⁶² See *Lumber V AR2 Prelim Results* PDM at 81; see also *Lumber V AR1 Final* IDM at Comment 107.

²²⁶³ See GNB Case Brief Volume 6 at 90.

²²⁶⁴ *Id.* at 91.

the tax.²²⁶⁵ Similar to the previous administrative review, the GNB has also provided a “History of the Gasoline and Fuel Tax” and documents changes to the law dating to 1926 in an attempt to show the underlying policy goals of the tax and what the raised funds would be used for.²²⁶⁶ However, as in the underlying investigation, Commerce finds this argument and information unavailing.²²⁶⁷ The fact remains that, as a matter of law, certain professions or activities under this program are exempt from, or reimbursed for, taxes on the fuel used, regardless of the reasoning behind why some groups may or may not be exempted. Therefore, the GNB structured the program in such a way to forgo tax revenue to certain qualifying enterprises or industries that would otherwise be due. Thus, Commerce continues to find that this program provides a financial contribution, is specific, and confers a benefit under sections 771(5)(D), 771(5A), and 771(5)(E) of the Act, respectively.

Ontario

Comment 111: Whether Ontario’s Tax Credit for Manufacturing and Processing Is *De Jure* Specific

*Resolute’s Comments*²²⁶⁸

- Ontario’s tax credit for manufacturing and processing is not *de jure* specific because it is available to any company that earned income from any of the following activities: manufacturing and processing, farming, fishing, logging, mining, the generation of electrical energy for sale, or the production of steam for sale.
- The eligibility requirement for this tax credit restricts activities, not industries or enterprises, and grouping activities does not define industries.

*Petitioner’s Rebuttal Comments*²²⁶⁹

- Although Ontario’s tax credit for manufacturing and processing did not yield a measurable countervailable subsidy rate, Resolute argues that a *de jure* specificity finding for such a tax credit is unlawful and contrary to record evidence. However, foreign governments cannot circumvent U.S. CVD laws simply by using “activities” or “projects” as proxies for enterprises or industries. As long as a program’s criteria limit eligibility to enterprises or industries (or subsets of industries) engaged in those specific activities or projects—and exclude others—Commerce may lawfully make a finding of *de jure* specificity.

Commerce’s Position: We preliminarily determined that Ontario’s Tax Credit for Manufacturing and Processing did not provide a measurable benefit (*i.e.*, was less than 0.005 percent *ad valorem*) to Resolute during the POR.²²⁷⁰ We therefore determined that it was not necessary to make a preliminary finding as to the countervailability of this tax credit program.²²⁷¹ Commerce’s finding with regard to Ontario’s Tax Credit for Manufacturing and Processing

²²⁶⁵ See *Lumber V Final* IDM at Comment 75.

²²⁶⁶ See GNB Case Brief Volume 6 at 88-89.

²²⁶⁷ See *Lumber V Final* IDM at Comment 75.

²²⁶⁸ See Resolute Case Brief at 116-117.

²²⁶⁹ See Petitioner Rebuttal Brief at 328.

²²⁷⁰ See Resolute Preliminary Calculation Memorandum.

²²⁷¹ See *Lumber V AR2 Prelim* PDM at 91.

program remains unchanged for these final results. Consequently, we need not respond to Resolute's arguments.

If Resolute intended to comment on Commerce's preliminary finding for Québec's Tax Credit for Investments Relating to Manufacturing and Processing Equipment, we address specificity arguments for that program raised by the GOQ at Comment 114.

Québec

Comment 112: Whether Québec's Refund of Fuel Tax Paid on Fuel Used for Stationary Purposes Is Specific

*GOQ's Comments*²²⁷²

- Although the Fuel Tax Refund for Stationary Purposes is only provided for fuel used for stationary engines, this criterion does not limit the fuel tax refund to a group of enterprises or industries. Any enterprise or industry that uses fuel in qualified equipment for stationary purposes is eligible for the refund. Commerce's *de jure* analysis therefore does not meet the requirement that the legislation affirmatively limits the program to a small number of enterprises or industries.
- Commerce's finding equates the existence of eligibility requirements for a program to *de jure* specificity. However, a program cannot be found to be *de jure* specific only because the beneficiaries of the program must meet some eligibility requirements.
- The data for the Fuel Tax Refund for Stationary Purposes demonstrates that the refund is granted to a large number of companies across a wide set of industries.²²⁷³

*Resolute's Comments*²²⁷⁴

- This tax refund is not specific to an enterprise or industry or group of enterprises or industries because anyone operating an engine with gasoline, but not driving anywhere with that engine, is eligible. Additionally, no industry is preferred over any other.

*Petitioner's Rebuttal Comments*²²⁷⁵

- In the *Lumber VARI Final*, Commerce found that eligibility for the refund is limited to only those users operating specified stationary equipment.²²⁷⁶ The language from the application for a fuel tax refund remains unchanged and continues to limit the refund.²²⁷⁷
- Consistent with the *Lumber VARI Final*, Commerce should continue to find that this tax refund program is *de jure* specific.

²²⁷² See GOQ Case Brief Volume 8.B at 155-157.

²²⁷³ *Id.* at 157 (citing GOQ Non-Stumpage IQR Response, Volume 5 (Non-Stumpage—Revenu Québec Programs) at Exhibit QC-FTR-19).

²²⁷⁴ See Resolute Case Brief at 106 and 109.

²²⁷⁵ See Petitioner Rebuttal Brief at 296-298.

²²⁷⁶ *Id.* at 297 (citing *Lumber VARI Final* IDM at Comment 110).

²²⁷⁷ *Id.* (citing GOQ IQR Response, Volume 5 (Non-Stumpage—Revenu Québec Programs) at Exhibit QC-FTR-15).

Commerce’s Position: The GOQ and Resolute raised the same arguments in the first administrative review.²²⁷⁸ We found the arguments unpersuasive then and continue to do so here as there has been no change to the law under which this tax program is administered. We therefore continue to find refunds of fuel tax paid on fuel used for stationary purposes to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

As we explained in the *Lumber VARI Final*, under the *Fuel Tax Act*, the subsidy is expressly limited to companies that are entitled to refunds on fuel tax paid for certain specified activities.²²⁷⁹ In this review, the GOQ again reported that the refund of fuel tax for stationary purposes “is available for any qualifying equipment” used for commercial or public purposes.²²⁸⁰ The refund may be claimed for equipment whose use or purpose does not require that the vehicle be moving. The “Application for a Tax Refund Respecting Fuel Used for Stationary Purposes” makes clear the limited equipment and activities that qualify for the refund of fuel tax paid:

The refund may be claimed respecting equipment whose use or purpose does not require that the vehicle be moving. Accordingly, the refund measure applies to the equipment of vehicles such as power shovels, drilling machines, cranes, concrete mixers, tank trucks and garbage trucks, but does not apply to the equipment of vehicles such as bulldozers, graders, rotary mixers (soil stabilizers), compactors, scrapers, snow-grooming machines, snow ploughs, snow blowers, or spreaders of melting agents or abrasives.²²⁸¹

The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available and used throughout an economy.²²⁸² It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the countervailing duty law.²²⁸³ Commerce may make a finding of *de jure* specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.

We also continue to disagree that our finding equates the existence of “objective criteria” for a program to *de jure* specificity. Under section 771(5A)(D)(ii) of the Act, the term “objective criteria” mean criteria “that are neutral and that do not favor one enterprise or industry over another.” However, under this program, the eligibility criteria limit access to the subsidy to only those users operating specified stationary equipment of a vehicle. Therefore, the eligibility criteria do not meet the statutory definition of “objective criteria,” because they favor certain enterprises.

Because we continue to determine that this program is *de jure* specific, we need not address the arguments regarding whether this program is *de facto* specific.

²²⁷⁸ See *Lumber VARI Final* IDM at Comment 110.

²²⁷⁹ See *Lumber VARI Final* IDM at Comment 110.

²²⁸⁰ See GOQ IQR Response, Volume 5 (Non-Stumpage—Revenu Québec Programs) at Exhibit QC-FTR-A (p. 10).

²²⁸¹ *Id.* at Exhibit QC-FTR-14 (p. 4).

²²⁸² See SAA at 930.

²²⁸³ *Id.*

Comment 113: Whether Québec’s Research Consortium Tax Credit Is *De Facto* Specific

*GOQ’s Comments*²²⁸⁴

- Commerce’s finding that the Research Consortium Tax Credit is specific because a limited number of companies received the tax credit is not supported by record facts.
- Statistics demonstrate that this program was granted to an overwhelming majority of the companies that claimed the credit during the POR.²²⁸⁵ These companies span a diverse set of industries, including mining, manufacturing, food, and beverage, to name a few.²²⁸⁶

*Resolute’s Comments*²²⁸⁷

- This tax credit is not specific to an enterprise or industry or group of enterprises or industries because it is widely available and used by a variety of industries, and no industry is a predominant or disproportionate user.

*Petitioner’s Rebuttal Comments*²²⁸⁸

- The arguments presented by the GOQ and Resolute were previously considered and rejected by Commerce.²²⁸⁹ Neither the GOQ nor Resolute has presented any new argument that warrants a change in Commerce’s countervailable finding with regards to Québec’s Research Consortium Tax Credit program.
- For all the reasons discussed in *Lumber V ARI Final*, Commerce should continue to find the tax program to be *de facto* specific.

*Sierra Pacific’s Rebuttal Comments*²²⁹⁰

- Consistent with section 771(5A)(D)(iii)(I) of the Act, Commerce properly focused its *de facto* specificity analysis on the number of companies that actually used the program by comparing the number of actual subsidy recipients to the total number of eligible entities.

Commerce’s Position: The GOQ and Resolute raised the same arguments in the first administrative review.²²⁹¹ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find the Research Consortium Tax Credit to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Under this program, if a taxpaying corporation conducts business in Canada and is a member of an eligible research consortium in the course of its taxation year, it can claim a tax credit for fees and dues paid to the consortium.²²⁹² The SAA states that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries

²²⁸⁴ See GOQ Case Brief Volume 8.B at 146-147.

²²⁸⁵ *Id.* at 147 (citing GOQ IQR Response, Volume 5 (Non-Stumpage—Revenu Québec Programs) at Exhibit QC-C16-21).

²²⁸⁶ *Id.* (citing GOQ IQR Response, Volume 5 (Non-Stumpage—Revenu Québec Programs) at Exhibit QC-C16-20).

²²⁸⁷ See Resolute Case Brief at 106 and 109.

²²⁸⁸ See Petitioner Rebuttal Brief at 298-299.

²²⁸⁹ *Id.* (citing *Lumber V ARI Final* IDM at Comment 112).

²²⁹⁰ See Sierra Pacific Rebuttal Brief at 30-32.

²²⁹¹ See *Lumber V ARI Final* IDM at Comment 112.

²²⁹² See GOQ IQR Response, Volume 5 (Non-Stumpage—Revenu Québec Programs) at Exhibit QC-C16-16 (p. 21).

in the economy in question.²²⁹³ The GOQ reported the number of companies that received the tax credits during the POR.²²⁹⁴ We compared the number of companies that received benefits under the program to the total corporate tax filers in the province for the years 2016 to 2019.²²⁹⁵ On basis of that analysis, we find that this program is *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the tax credits are limited in number.²²⁹⁶

We disagree with the argument that the program is used by a diverse set of industries and, therefore, is not *de facto* specific. The record shows that the number of companies that received the tax credits, though diverse, is limited in number. The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available and used generally throughout an economy.²²⁹⁷ It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the countervailing duty law.²²⁹⁸

Arguments regarding predominant or disproportionate use of the tax credits are irrelevant to Commerce's analysis of the program. Predominant and disproportionate use are addressed by sections 771(5A)(D)(iii)(II) and (III) of the Act, respectively. Neither statutory section is the basis upon which Commerce reached its specificity determination with respect to this tax credit program. Moreover, as set forth under 19 CFR 351.502(a), in determining whether a subsidy is *de facto* specific, Commerce will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially in order of appearance. If a single factor warrants a finding of specificity, Commerce will not undertake further analysis.²²⁹⁹ Therefore, because recipients of the subsidy under this tax credit program were limited in number on an enterprise basis, under section 771(5A)(D)(iii)(I) of the Act, we find the program to be *de facto* specific.

Comment 114: Whether Québec's Tax Credit for Investments Relating to Manufacturing and Processing Equipment Is Specific

*GOQ's Comments*²³⁰⁰

- Commerce's specificity finding is incorrect because it mistakes the objective activity criteria of the program as targeting specific industries or enterprises.
- Although this program provides tax credits for the purchase of manufacturing and processing equipment, manufacturing and processing equipment is not an industry or group of industries. Manufacturing and processing equipment is purchased and used by companies in a wide variety of industries with no one industry accounting for a predominant or disproportionate share of the tax credits.

²²⁹³ See SAA at 931.

²²⁹⁴ *Id.* at Exhibit QC-C16-20.

²²⁹⁵ See Québec Specificity Memorandum. Program usage and number of corporate tax filers are proprietary data.

²²⁹⁶ *Id.*

²²⁹⁷ See SAA at 930.

²²⁹⁸ *Id.*

²²⁹⁹ See section 771(5A)(D)(iii) of the Act (providing that a program is *de facto* specific if "one or more" of the enumerated factors exist).

²³⁰⁰ See GOQ Case Brief Volume 8.B at 154-155.

*Petitioner's Rebuttal Comments*²³⁰¹

- The fact that there are several different sectors that purchase manufacturing and processing equipment does not negate a *de jure* specificity finding. This subsidy is still limited, by law, to only those industries that purchase qualified property for manufacturing or processing purposes.
- Whether or not the softwood lumber industry received a disproportionate or predominant share of the credits is irrelevant to Commerce's *de jure* specificity analysis.
- Commerce should continue to find this subsidy to be *de jure* specific consistent with the *Lumber V Final Results of Expedited Review*.²³⁰²

Commerce's Position: The GOQ raised the same arguments regarding this tax program in the expedited review.²³⁰³ We found the GOQ's arguments unpersuasive then and continue to do so here as there has been no change to the law under which this tax program is administered. We therefore continue to find this tax program to be *de jure* specific, within the meaning of section 771(5A)(D)(i) of the Act because recipients are limited, by law, to companies which purchase qualified manufacturing or processing equipment. We also continue to find this program akin to the ACCA for Class 29 and Class 53 program (*see* Comment 97) and have adopted that same reasoning herein.

To qualify for Tax Credit for Investments Relating to Manufacturing and Processing Equipment, the purchased property must, among other things, be manufacturing or processing equipment, be hardware used primarily for manufacturing or processing, or have been acquired after March 20, 2012, for purposes of smelting, refining, or hydrometallurgy activities related to ore extracted from a mineral resource located in Canada.²³⁰⁴ Section 1104(9) of the CITR defines manufacturing and processing, and explicitly excludes certain activities (such as farming and fishing, construction, logging, and extraction of natural gas, oil and minerals) from the definition of what constitutes manufacturing or processing.²³⁰⁵ Thus, enterprises and industries engaged in the excluded activities are not eligible for this program. Therefore, access to the subsidy is expressly limited to non-excluded enterprises and industries.

We disagree that our finding equates the existence of "objective criteria" for a program to *de jure* specificity. Under section 771(5A)(D)(ii) of the Act, the term "objective criteria" mean criteria "that are neutral and that do not favor one enterprise or industry over another." However, under this program, the eligibility criteria limit access to the subsidy to only those companies that purchase qualified manufacturing or processing equipment. Therefore, the eligibility criteria do not meet the statutory definition of "objective criteria," because they favor certain enterprises.

Because we continue to determine that this program is *de jure* specific, we need not address the GOQ's arguments regarding whether this program is *de facto* specific.

²³⁰¹ See Petitioner Rebuttal Brief at 326-327.

²³⁰² *Id.* at 327 (citing *Lumber V Final Results of Expedited Review* IDM at Comment 13).

²³⁰³ See *Lumber V Final Results of Expedited Review* IDM at Comment 13; *see also* *Groundwood Paper from Canada Final* IDM at Comment 62.

²³⁰⁴ See GOQ IQR Response, Volume 5 (Non-Stumpage—Revenu Québec Programs) at Exhibit QC-C85-A (p. 1).

²³⁰⁵ See GOC IQR Response at Exhibit GOC-AR2-CRA-CLASS53-1.

N. Company-Specific Issues

JDIL

Comment 115: Whether Commerce Should Include HST in JDIL's Benefit Calculations

*Petitioner's Comments*²³⁰⁶

- To account for the full benefit conferred to JDIL through the GNB silviculture grants and license management fees program, Commerce should include HST in JDIL's benefit calculations.
- In the investigation, Commerce decided to omit HST from the grant amounts received under the GNB silviculture and license management fees programs because “{t}he record indicates that HSTs are a value-added tax, not revenue.”²³⁰⁷ The statute articulates only three narrow offsets to a subsidy and a value-added tax is not one of these permissible offsets.
- The GNB reimburses any HST that JDIL would have had to pay on goods or services purchased while undertaking silviculture or license management work. Thus, HST is a payment that the GNB remits to JDIL in addition to the grant.
- Commerce should also include HST in JDIL's benefit calculations for the CCA for Class 1 Assets, NB Gasoline & Fuel Tax Exemptions and Refund, and LIREPP programs.

*JDIL's Rebuttal Comments*²³⁰⁸

- Commerce correctly excluded certain amounts from its benefit calculations for the GNB's purchases of silviculture and license management services from JDIL.
- The petitioner claims that HST should be included as part of the benefit calculations but ignores that HSTs are not revenue to JDIL or any other Canadian company.²³⁰⁹ Further, in asserting that the benefit calculation for license management fees omitted a GNB payment, the petitioner overlooks that Commerce's benefit calculation is limited to license management services provided during the POR.
- The petitioner's claim that the exclusion of HSTs is an impermissible “offset” under section 771(6) of the Act is also incorrect. Section 771(6) of the Act authorizes Commerce to deduct certain enumerated items from the “gross countervailable subsidy.” Because HSTs are not revenue, they are not part of any “subsidy” that would be reduced under the “offset” provision.
- The application of HSTs actually demonstrates that the GNB's purchases of silviculture and license management services from JDIL are not grants. JDIL is required to collect HSTs under Canadian tax law because it is providing a service to the GNB. The GNB's purchase of services from JDIL are not financial contributions under section 771(5)(D) of the Act.

Commerce's Position: The petitioner repeats arguments from the investigation that Commerce rejected²³¹⁰ and that we continue to reject in the current review. Concerning the petitioner's argument that HST should be included to the amount of silviculture and license management expense reimbursements the GNB paid to JDIL, in the investigation Commerce found:

²³⁰⁶ See Petitioner's Case Brief at 2-5.

²³⁰⁷ *Id.* at 2 (citing *Lumber V Final IDM* at Comment 61).

²³⁰⁸ See JDIL Rebuttal Brief at 14-16.

²³⁰⁹ *Id.* at 15 (citing JDIL IQR Response at Exhibit LER-08).

²³¹⁰ See *Lumber V Final IDM* at Comment 61.

Finally, while we disagree with the GNB and JDIL's assertions regarding the nature of these silviculture and license management expense reimbursements, we agree with JDIL's argument that the benefits under the silviculture program should be the total amount JDIL received from the GNB, net of HST. The record indicates that HSTs are a value added tax, not revenue. As such, we have excluded HST from JDIL's benefit under the silviculture program for this final determination.²³¹¹

In this review, JDIL has presented information indicating that while the invoices JDIL issued to the GNB in connection with the silviculture reimbursement program included HST, it should not be treated as revenue because:

Purchasers pay HST on their purchases, and sellers collect HST on their sales. If a company paid less in HST on its purchases than it collected for its sales, the company must remit the difference to CRA. Conversely, if the company paid more in HST than it collected on its sales, it is refunded the overpaid amount. From a financial perspective, HST is revenue neutral: neither costs nor revenue. Consequently, J.D. Irving does not record HSTs as an expense in its accounting system.²³¹²

Our decision on to exclude the HST that JDIL collected from the GNB from the benefit is consistent with Commerce's findings in other CVD proceedings where Commerce has not included value added taxes in the sales denominator used in the net subsidy rate calculation because such taxes do not constitute revenue:

As the Department has stated in past cases, the Department does not include taxes such as VAT in the FOB sales value that is the denominator of the subsidy calculation because these taxes are not part of a company's sales revenue. This is consistent with 19 CFR 351.525(b)(6)(i), which states that the Department normally will attribute a subsidy to the products produced by the corporation that received the subsidy (emphasis added).²³¹³

Accordingly, we have continued not to include HTS in the benefit amount JDIL received under the silviculture reimbursement program.

²³¹¹ See *Lumber V Final* IDM at Comment 61.

²³¹² See JDIL Stumpage IQR Response at LER-01 and LER-08.

²³¹³ See, e.g., *OCTG from Turkey* IDM at 45.

Resolute

Comment 116: Whether Sales of By-products in the Stumpage for LTAR Sales Denominator Were in the Proper Currency

*Resolute's Comments*²³¹⁴

- In calculating Resolute's by-products sales to unaffiliated third parties for use in the sales denominator used to calculate the net subsidy rate under the provision of Crown-origin standing timber for LTAR program in the *Lumber VAR2 Prelim*, Commerce inadvertently used sales values in two different currencies, which should be this corrected in the final results.
- Specifically, Commerce used mill-specific sales data in U.S. dollars instead of Canadian dollars even though the total by-products sales amount, and the sales denominator used in the stumpage benefit calculation, was calculated on a Canadian dollar basis.

No other party commented on this issue.

Commerce's Position: Commerce agrees with Resolute's argument. In the *Lumber VAR2 Prelim*, Commerce used a sales denominator in Canadian dollars to calculate the stumpage benefit margins. We listed sales of by-product sales for each of Resolute's sawmills in U.S. dollars but inadvertently labeled these values to be in Canadian dollars, and thus we did not properly convert the sales of by-products into Canadian dollars before including these sales in the sales denominator. Commerce has revised the currency labels and converted by-product sales into Canadian dollars, consistent with the other sales values used in the sales denominator.²³¹⁵

Comment 117: Whether Countervailing Road Credit Reimbursements Imposes a Double Remedy on Resolute

*GOQ's Comments*²³¹⁶

- The LCIA 81010 arbitral tribunal accounted for all the benefits received by Resolute under the Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas tax program. Commerce thus should not impose duplicative countervailing duties for the same benefits.²³¹⁷
- Resolute paid the 2.60 percent export fee (the roads credit accounted for 2.35 percent) as a direct result of the credits it expected to receive under the tax program. Resolute did not prepay the tax credit, but did prepay the penalty for the tax credit, which is the central point of the double-counting argument.
- Adding countervailing duties on top of the trade remedy imposed on all shipments of softwood lumber from Québec to the United States between 2010 and 2013 for a program that ended in 2013 is a double remedy that moves the result in this case from remediation to punishment.

²³¹⁴ See Resolute Case Brief at 19-20.

²³¹⁵ See Resolute's Final Calculations Memorandum at Attachment 2 at worksheet "SalesSummary.BPI" at the table titled "Sales of By-Products to Unaffiliated Third Parties (US\$)."

²³¹⁶ See GOQ Case Brief Volume 8.B at 163-170.

²³¹⁷ *Id.* at 170 (citing *Kajaria Iron Castings. v. U.S.*, 156 F. 3d 1175).

The road credits refund received by Resolute in 2019 is not a benefit because it has been offset by the compensation awarded in LCIA 81010.

*Resolute's Comments*²³¹⁸

- Commerce's countervailable finding for the road credits program is contrary to law and unsupported by evidence. Resolute already paid, pursuant to the SLA 2006 LCIA 81010, more in export taxes in advance than any amount it received through tax credit refunds during the POR.
- The LCIA 81010 tribunal determined an amount of export tax credits to be paid prospectively for the road credits program. Between 2011 and 2013, Resolute prepaid the entire export tax remedy for the program, including those that were not realized until the POR.
- Because Resolute paid remedial duties for the credits, any distortion caused by the program has been cured. Countervailing tax credits for the construction and repair of roads and bridges imposes a double remedy that is impermissible under U.S. law and the SCM Agreement.²³¹⁹

*Petitioner's Rebuttal Comments*²³²⁰

- Despite the fact that Commerce found this road credits program to be countervailable, the GOQ and Resolute continue to make meritless arguments that the LCIA 81010 arbitration award offsets the benefit conferred by the program. Commerce has already determined that the LCIA 81010 is irrelevant to its analysis of the subsidy and that any amounts paid in relation to the arbitral award cannot be used to offset the benefit of the subsidy.²³²¹
- Any parallel to *Kajaria Iron Castings v. U.S.* is invalid.²³²² Commerce correctly imposed a duty equal to the amount of the net benefit. The export taxes paid pursuant to the LCIA 81010 award do not fall within any of the offsets listed under section 771(6) of the Act.

Commerce's Position: The GOQ and Resolute raised the same arguments in the underlying investigation and first administrative review.²³²³ We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that the LCIA 81010 is irrelevant to Commerce's analysis of the benefit which Resolute received under the Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas program.

As we previously explained, Commerce is responsible for determining whether a government is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of subject merchandise sold for importation into the United States, pursuant to section 701(a) of the Act. Commerce examines subsidies that producers and exporters received during the review period, as stated in 19 CFR 351.213(e)(2)(i). Because Resolute received refundable tax credits during the POR, Commerce is permitted to examine the refunds. Based on our analysis of the record, we determine that the refundable tax credits

²³¹⁸ See Resolute Case Brief at 74-77.

²³¹⁹ *Id.* at 74 (citing *Kajaria Iron Castings v. U.S.*, 156 F.3d 1174-75; and SCM, Article 19.4).

²³²⁰ See Petitioner Rebuttal Brief at 280-285.

²³²¹ *Id.* at 282 (citing *Lumber V ARI Final IDM* at Comment 115).

²³²² *Id.* at 282-283 (citing GOQ Case Brief Volume 8.B at 167-168; Resolute Case Brief at 74; and *Kajaria Iron Castings v. U.S.*, 156 F.3d 1175).

²³²³ See *Lumber V Final IDM* at Comment 78; and *Lumber V ARI Final IDM* at Comment 115.

provided by the GOQ under the Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas program are countervailable subsidies.²³²⁴

Commerce is not imposing a double remedy by countervailing the refundable tax credits that Resolute received in the POR. These refunds are separate and distinct events from the LCIA 81010. Resolute contends that it prepaid the export tax remedy for the road credits between 2011 and 2013. However, when Resolute applied for the refundable tax credits, it did not know whether its claims for road credits would be approved by the MFFP (which performed an inspection of the roads built), or by Revenu Québec (which conducted a financial audit of the claims).²³²⁵ Resolute did not know if and when the claims would be ultimately approved and the amount of the refund, if any, to be received. As Resolute explained, “Revenu Québec also conducts a financial audit, which may result in a change in value of the credit earned.”²³²⁶ Therefore, we find that Resolute could not have prepaid road tax credits between 2011 and 2013, when the company could not have known if it would receive refundable tax credits and, if so, the amounts of any refund. It would be illogical for a company to prepay road credits that it does not know it will receive.

Further, we find the respondents have not established that any amounts paid in relation to the arbitral award are permissible offsets under section 771(6) of the Act, which identifies the limited circumstances under which Commerce will reduce the benefit amount.

Comment 118: Whether the Benefits of Certain Tax Credits Received by Resolute Were Extinguished in the AbitibiBowater Bankruptcy

*Resolute’s Comments*²³²⁷

- Commerce erroneously countervailed Resolute’s use of tax credits under the SR&ED and Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas programs.
- Resolute’s predecessor, AbitibiBowater, accrued the tax credits prior to its bankruptcy. Resolute paid fair market value in an arm’s length transaction for the credits that AbitibiBowater accrued.
- Commerce analyzed the bankruptcy proceedings and found that pre-bankruptcy subsidies were extinguished.²³²⁸
- Because the tax credits examined in the POR were from pre-bankruptcy accruals, Resolute did not receive any benefit from them.

*Petitioner’s Rebuttal Comments*²³²⁹

- The arguments presented by Resolute were previously considered and rejected by Commerce.²³³⁰ Resolute has not presented any new arguments that warrant a change in Commerce’s finding that the accrual of subsidies is irrelevant. Commerce is concerned with

²³²⁴ See *Lumber V AR2 Prelim* PDM at 84.

²³²⁵ See Resolute Non-Stumpage IQR Response at Exhibit RES-NS-GEN-QROADS (p. 2).

²³²⁶ *Id.* at Exhibit RES-NS-GEN-QROADS-1-1 (p. 8).

²³²⁷ See Resolute Case Brief at 104-106.

²³²⁸ *Id.* at 105 (citing *Groundwood Paper from Canada Final* IDM at Comment 6).

²³²⁹ See Petitioner Rebuttal Brief at 284-285.

²³³⁰ *Id.* (citing *Lumber V AR1 Final* IDM at Comment 117).

the benefits that Resolute received during the POR, which is well after the bankruptcy proceedings.

- For all the reasons discussed in the *Lumber VARI Final*, Commerce should continue to countervail the benefits that Resolute received in the POR under these tax programs.

Commerce's Position: Resolute raised these same arguments in the first administrative review.²³³¹ We found the arguments unpersuasive then and continue to do so here.

Extinguishment applies only to subsidies received prior to and during a bankruptcy proceeding. Resolute's predecessor, AbitibiBowater, emerged from bankruptcy on December 9, 2010.²³³² During the POR, Resolute received tax refunds under the SR&ED and the Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas programs.²³³³ The receipt of the tax refunds were well after AbitibiBowater's bankruptcy proceedings ended.

As instructed at 19 CFR 351.524(a), Commerce allocates (expenses) a recurring benefit to the year in which the benefit is received. Thus, regardless of when the tax credits accrued, Commerce finds Resolute received and benefitted from the tax refunds in 2019. The fact that AbitibiBowater's accrued tax assets were valued at fair market and sold to Resolute in an arm's length transaction years ago is irrelevant. Rather, what is material to Commerce's analysis is that, during the POR, Resolute received benefits from the tax programs. As such, under section 771(5)(E) of the Act and pursuant to 19 CFR 351.509(a)(1), we find that the SR&ED and Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas programs conferred benefits equal to the amount of tax savings on Resolute during the POR.

Comment 119: Whether Commerce Should Reconsider If the GOO Forgave Debt Owed by Resolute

*GOO's Comments*²³³⁴

- Commerce's finding with respect to the GOO's settlement with Resolute related to the FSPF is contradicted by the record and Commerce's prior finding in the *Groundwood Paper from Canada Final*, where Commerce determined that an FSPF grant related to the Fort Frances mill was extinguished and thus not countervailable as a result of the bankruptcy of Resolute's predecessor.²³³⁵
- The instant record demonstrates that the GOO and Resolute reached a commercial settlement to the satisfaction of both parties. The settlement resolved the potential legal claims of the parties against one another concerning the conditional FSPF grant, and costs incurred by Resolute in its efforts to comply with the conditions of that grant. Consequently, the settlement of Resolute's obligations under the now-extinguished FSPF grant between the GOO and Resolute did not benefit Resolute.

²³³¹ See *Lumber VARI Final* IDM at Comment 117.

²³³² See Resolute Non-Stumpage IQR Response at Exhibit RES-NS-GEN-QROADS (p. 1).

²³³³ *Id.* at Exhibit RES-NS-GEN-QROADS (p. 4).

²³³⁴ See GOO Case Brief Volume 7 Part 2 at 5-14.

²³³⁵ *Id.* at 11 (citing *Groundwood Paper from Canada Final* IDM at Comment 6).

- If Commerce continues to countervail this commercial settlement, then it must also conclude that any alleged benefit was tied to Resolute's Fort Frances pulp and paper mill, which does not produce softwood lumber.

*Resolute's Comments*²³³⁶

- Commerce is focused on whether the GOO provided a financial contribution to Resolute on June 29, 2017, but instead should consider the whole transaction. By not considering all facts, Commerce ignores the valuable consideration Resolute gave in exchange for the settlement.
- Had the GOO intended to forgive Resolute for a debt owed from the FSPF, it would not have needed a Settlement and Release Agreement.
- Commerce's treatment of the agreement does not conform to the attribution regulations. A tied subsidy cannot become untied and create a second new subsidy depending on whether the mill succeeded or failed in its efforts to produce pulp and paper.
- The 2007 FSPF conditional grant and the 2017 Settlement and Release Agreement are inseparable. Both were tied to the operations of Fort Frances, which does not make softwood lumber. The Settlement and Release Agreement could not confer a benefit on the production of softwood lumber that the original grant itself could not confer.
- Further, the value of the grant was extinguished by Resolute's bankruptcy,²³³⁷ and Commerce previously recognized that it was tied to pulp and paper.²³³⁸

*Petitioner's Rebuttal Comments*²³³⁹

- The GOO's debt forgiveness is not tied to the production of pulp and paper because the subsidy at issue is not the FSPF grant, but the forgiveness of money owed when Resolute broke the terms of the GOO grant agreement. Further, at the time of the debt forgiveness, the Fort Frances mill was not operational and, thus, not producing pulp and paper products.
- The debt forgiveness was bestowed in 2017, well after the AbitibiBowater bankruptcy. Resolute is the sole owner of the Fort Frances mill.
- Because the GOO and Resolute's arguments are meritless, Commerce should continue to find the debt forgiveness to be countervailable, which is consistent with the *Lumber V ARI Final*.²³⁴⁰

Commerce's Position: The GOO and Resolute raised the same arguments in the first administrative review.²³⁴¹ We found the arguments unpersuasive then and continue to do so here. There are no new arguments or evidence on the record of this review²³⁴² that would lead Commerce to reconsider its finding that, in 2017, the GOO forgave a debt of \$22.5 million that Resolute owed to the government.

²³³⁶ See Resolute Case Brief at 53-59 and 85-87.

²³³⁷ *Id.* at 54 (citing *Groundwood Paper from Canada Final IDM* at Comment 6).

²³³⁸ *Id.* at 53 (citing *Lumber V Prelim PDM* at 88).

²³³⁹ See Petitioner Rebuttal Brief at 249-253.

²³⁴⁰ *Id.* at 249 (citing *Lumber V ARI Final IDM* at Comment 118).

²³⁴¹ See *Lumber V ARI Final IDM* at Comment 118.

²³⁴² See GOO Non-Stumpage IQR Response at ON-18 to ON-33 (and all referenced exhibits); see also Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSPF-APP and Exhibit RES-NS-FSPF-1.

As we discussed in the *Lumber V ARI Final*,²³⁴³ in 2007, Resolute’s pre-bankruptcy predecessor, Abitibi-Bowater,²³⁴⁴ was approved for a C\$22.5 million grant (the Conditional Funding Agreement) under Ontario’s FSPF for the construction of a biomass co-generation plant at the Fort Frances pulp and paper mill. The funding was conditional on the continuous operation of the mill for at least three years following the final grant disbursement, which was in March 2012. However, in May 2014, Resolute permanently closed the Fort Frances mill. Pursuant to the terms of the Conditional Funding Agreement, which Resolute discussed in its filings with the SEC, in October 2014, the MNRF directed Resolute to repay the full amount of the FSPF grant.²³⁴⁵ On June 29, 2017, through the Settlement and Release Agreement between Resolute and the GOO, Resolute was excused of the requirement to repay the C\$22.5 million.

We recognize that in the *Lumber V Final* and *Groundwood Paper from Canada Final*, Commerce found the FSPF grant tied to the production of only pulp and paper products.²³⁴⁶ However, we determine that the subsidy at issue here is not the FSPF grant issued in 2007, but the 2017 forgiveness of debt owed when Resolute broke the terms of the Conditional Funding Agreement. By Resolute’s own admission, once the Fort Frances mill was idled, the conditions of the original FSPF grant were breached. Once the mill was closed, it was no longer operational, and Resolute was no longer producing pulp and paper products at the Fort Frances mill.

When making a finding of attribution, we analyze the purpose of the subsidy based on information available at the time of bestowal.²³⁴⁷ Commerce’s tying practice states that “a subsidy is tied to particular products or operations ... {when} an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.”²³⁴⁸

The subsidy provision on June 29, 2017—debt forgiveness—was separate and distinct from the FSPF grant in 2007. On June 29, 2017, the time of bestowal of the GOO’s forgiveness of the C\$22.5 million debt, Resolute was not producing pulp and paper at the Fort Frances mill. Thus, the GOO’s forgiveness of the money it was owed was no longer tied to the production of non-subject merchandise.

Further, the actions taken by the GOO on June 29, 2017, were not the resolution of a commercial dispute, but the provision of a subsidy by the GOO to Resolute. Resolute was the sole owner of the Fort Frances mill with no government ownership.²³⁴⁹ The Settlement and Release Agreement freed Resolute of its obligation to repay to the GOO the C\$22.5 million when it did not keep the Fort Frances mill operational. That Resolute may have incurred costs in searching for a buyer to operate the mill and negotiating the Settlement and Release Agreement is irrelevant to

²³⁴³ See *Lumber V ARI Final* IDM at Comment 118; see also *Lumber V ARI Post-Prelim Memorandum*: Resolute at 3-5.

²³⁴⁴ In 2012, Abitibi-Bowater legally changed its name to Resolute FP Canada Inc.

²³⁴⁵ See Resolute Non-Stumpage IQR Response at Exhibit RES-NS-GEN-2 (2017 Form 10-K), p. 111-112.

²³⁴⁶ See *Lumber V Prelim PDM* at 88, unchanged in *Lumber V Final* IDM at 18 – 18; see also *Groundwood Paper from Canada Final* IDM at 29 – 30 and Comment 10.

²³⁴⁷ See *CVD Preamble*, 63 FR at 65402-04.

²³⁴⁸ *Id.* at 65402.

²³⁴⁹ See Resolute Non-Stumpage Response at Exhibit RES-NS-GEN-2 (2017 Form 10-K), p. 111-112.

Commerce's subsidy examination. Commerce's analysis is focused on whether the GOO provided a financial contribution to Resolute on June 29, 2017. The evidence unequivocally shows that on June 29, 2017, the GOO forgave a debt of C\$22.5 million that Resolute was obligated to pay under the Conditional Funding Agreement.

Additionally, citing to *Groundwood Paper from Canada Final*, in which Abitibi-Bowater's 2009—2010 bankruptcy proceeding was examined, both Resolute and the GOO claim that Commerce found that the FSPF grants received, prior to and during the bankruptcy proceeding, were extinguished.²³⁵⁰ We acknowledge that Commerce found that payments under the FSPF program received prior to December 9, 2010, were extinguished as a result of Abitibi-Bowater's bankruptcy and subsequent change-in-ownership.²³⁵¹ However, as discussed, we find that the subsidy under examination in this review is not the 2007 FSPF grant issued to Abitibi-Bowater, but the debt forgiveness that was bestowed upon the newly formed company, Resolute, after Abitibi-Bowater emerged from bankruptcy. The notice from the GOO directing Resolute to repay the conditional incentive of C\$22.5 million was made in October 2014, and the GOO forgave the debt owned by Resolute on June 29, 2017; these are events that occurred several years after Abitibi-Bowater emerged from bankruptcy on December 9, 2010. Thus, the GOO's forgiveness of the debt owed by Resolute could not have been extinguished through the bankruptcy proceeding.

Based on the aforementioned facts, we continue to determine that the GOO's debt forgiveness of Resolute's obligation to repay the C\$22.5 million conditional grant for its Fort Frances mill constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because the GOO forgave the collection of revenue that was otherwise owed to it, and confers a benefit to Resolute under section 771(5)(E) of the Act.

Comment 120: Whether Payments Made By the GOO to Resolute Based on Gaming the IESO System Constitute a Countervailable Subsidy

*Petitioner's Comments*²³⁵²

- The record demonstrates that, in reaching a final settlement with Resolute for C\$8,750,000, the GOO forgave revenue that was otherwise due, which is the full amount of C\$20,400,000 in payments that Resolute gamed from the IESO.
- Commerce should treat the MSP's finding of C\$20,400,000 in excess IESO payments to Resolute (at Abitibi's Fort France Facility and Bowater's Thunder Bay Facility) as the actual amount of IESO overpayments gamed by Resolute. The GOO's failure to collect this full amount constitutes a financial contribution under section 771(5)(D)(ii) of the Act.
- Additionally, evidence demonstrates that C\$11,650,000 is the amount of debt forgiveness realized in 2016, and not C\$9,824,990, which Commerce found in the *Preliminary Results*.
- In August 2010, Abitibi repaid C\$1,825,000 in overpayments received, which was prior to the MSP's gaming investigation into Bowater's and Abitibi's electricity market conduct, and prior to the MSP's release of its report in February 2015. In the report, the MSP subtracted the C\$1,825,000 repayment from the total amount gamed by Resolute to calculate the

²³⁵⁰ See *Groundwood Paper from Canada Final* IDM at Comment 6.

²³⁵¹ *Id.*

²³⁵² See Petitioner Case Brief at 95-99.

C\$20,400,000 in overpayments. Commerce should not subtract this amount in its benefit calculation. Rather, Commerce should calculate the benefit to Resolute as C\$11,650,000, which is the full amount of overpayments, *i.e.*, C\$20,400,000, minus Resolute's settlement payment of C\$8,750,000.

*GOO's Rebuttal Comments*²³⁵³

- There is no authority under U.S. law, the CVD regulations, or judicial precedent supporting the petitioner's contention that Commerce may find that the settlement of enforcement actions are countervailable. Enforcement actions stand apart from the limited forms of governmental action identified in the definition of "financial contribution." Settlements in the context of enforcement actions are essentially contractual arrangements between a government enforcement authority and a firm/individual.²³⁵⁴
- Focus on the MSP report is misplaced as only the MACD has the authority under Ontario law to enter into settlements. The MSP's estimates of whether Resolute received CMSC overpayments are not pertinent to Commerce's analysis because the MSP has no enforcement mandate and merely issues non-binding, advisory recommendations.²³⁵⁵
- It is erroneous for the petitioner to claim that MACD's reference to MSP's estimates support the assertion that the MSP estimates are actual amounts of overpayments and *bona fide*.²³⁵⁶ The MSP's findings were just estimates of CMSC overpayments that Resolute may have obtained based on what MSP considered to be theoretically optimal market conduct.
- The MSP did not consider whether or to what extent Resolute received payments through conduct that breached the IESO's Market Rules or were in excess of what Resolute was entitled to receive under them.
- In the context of negotiated settlements between MACD and market participants, as in this case, there are no "actual amounts" determined to have been received in overpayments. Rather, there is an amount determined in the settlement between Resolute and the MACD, for the resolution of alleged overpayments associated with alleged breaches of the Market Rules. The amount arrived at by the MACD consisted of all amounts paid by Resolute under the settlement, including the voluntary repayment.

*Resolute's Rebuttal Comments*²³⁵⁷

- The settlement of a dispute between a private party and a government agency is not a government program. Governmental authority to settle disputes is neither specific nor a financial contribution and confers no benefit.
- The settlement of the dispute between IESO and Resolute over CMSC is not a financial contribution. It does not fall under any of the financial contribution categories outlined in the statute. The settlement is not a forbearance of revenue that is otherwise due to the GOO because the amount of CMSC to which Resolute was entitled was in dispute.
- Even if the petitioner's calculation were correct (*i.e.*, C\$20,400,000 as the amount of revenue foregone by the GOO), the revenue allegedly foregone would have been no more than

²³⁵³ See GOO Rebuttal Brief Volume 5 at 7-13.

²³⁵⁴ *Id.* at 9 (citing *Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d 1380-81).

²³⁵⁵ *Id.* at 10 (citing GOO Non-Stumpage IQR Response at SET-5 and SET-7).

²³⁵⁶ *Id.* at 11 (citing Petitioner Case Brief at 96).

²³⁵⁷ See Resolute Rebuttal Brief at 1-4.

C\$9,824,989.97, the difference between the C\$20,400,000 asserted by the petitioner and Resolute's voluntary payments.

- By arguing that the alleged financial contribution is C\$11,650,000, the petitioner is disregarding Resolute's initial voluntary repayment of C\$1,825,010, in order to increase the alleged benefit above a non-measurable threshold. The petitioner's argument is contradicted by the CMSC Settlement Agreement itself that accounts for Resolute's initial voluntary repayment.

Commerce's Position: In February 2015, MSP released a report finding that Resolute engaged in gaming²³⁵⁸ of the IESO-administered electricity markets and received C\$20,400,000 in excess CMSC payments²³⁵⁹ in 2010.²³⁶⁰ Subsequently, in August 2016, MACD, the investigatory unit within IESO, concluded the investigation of Resolute's market conduct with an Executed Minutes of Settlement and Non-Compliance Letter with Resolute. MACD determined that Resolute received C\$10,575,010 in excess CMSC as a result of breaches of the Market Rules.²³⁶¹ In response, Resolute paid C\$8,750,000 to IESO on August 31, 2016, which was in addition to Resolute's payment of C\$1,825,010 to IESO on August 31, 2010.²³⁶² Based on the evidence, we disagree with the petitioner that Commerce should countervail, in full, MSP's finding of C\$20,400,000 in excess CMSC payments. MACD also investigated Resolute's market conduct and reached a conclusion, which needs to be considered as part of Commerce's analysis of the debt forgiveness that the GOO provided to Resolute.

We also disagree with the petitioner that Commerce should not subtract from the debt owed by Resolute the C\$1,825,010 voluntary repayment the company made to IESO in August 2010. The petitioner claims that in calculating the C\$20,400,000 in excess CMSC payments, MSP had accounted for the C\$1,825,010 voluntary repayment, and thus the C\$20,400,000 is net of the repayment. According to the petitioner, Commerce should find a C\$11,650,000 benefit, which is C\$20,400,000 minus \$8,750,000 (Resolute's August 2016 payment). However, MSP's report shows that it did not compute the C\$20,400,000 based on the net CMSC payments to Resolute after clawbacks and the voluntary repayment.²³⁶³

In its investigation, MSP considered whether there were market defects which were exploited by Resolute to its profit or benefit as a result of gaming.²³⁶⁴ MSP concluded that Resolute profited from CMSC payments in the amount of C\$20,400,000, which was calculated as follows:

²³⁵⁸ Gaming is where a market participant exploits a defect in the design, rules, or procedures governing the wholesale electricity market, and obtains a profit or benefit at the expense or disadvantage of the market. See GOO Non-Stumpage IQR Response at Exhibit ON-SET-13 (p. 10).

²³⁵⁹ CMSC payments are intended to compensate a dispatchable market participant when, based on the constrained schedule, the IESO instructs it to supply (dispatchable generator or importer) or consume (dispatchable load or exporter) electricity at an amount that is less profitable for the participant relative to the operating profit that would have been expected from generating or consuming at the level indicated for the participant in the market schedule. See GOO Non-Stumpage IQR Response at Exhibit ON-SET-13 (p. 34). The Market Rules established CMSC payments as compensation for reduced operating profits that result from responding to dispatch instructions to produce or consume at a level different than the market schedule. *Id.* at Exhibit ON-SET-13 (p. 35).

²³⁶⁰ See GOO Non-Stumpage IQR Response at Exhibit ON-SET-13 (p. 9-10).

²³⁶¹ *Id.* at SET-3 – SET-4, Exhibit ON-SET-1, and Exhibit ON-SET-8.

²³⁶² *Id.* at SET-3 – SET-4, Exhibit ON-SET-1, and Exhibit ON-SET-8.

²³⁶³ See GOO Non-Stumpage IQR Response at Exhibit ON-SET-13 (at Sections 5, 7, 8, and 10).

²³⁶⁴ See GOO Non-Stumpage IQR Response at Exhibit ON-SET-13 (p. 27-28).

- Abitibi (Fort Frances Facility) profited by C\$9.4 million (Finding 32 and 33)²³⁶⁵
- Bowater (Thunder Bay Facility) profited by C\$11.0 million (Finding 13 and 15).²³⁶⁶

Contrary to the petitioner's claim, MSP did not take into consideration Resolute's voluntary repayment to IESO in 2010, when it calculated the amount of C\$20,400,000. Consequently, there is no basis not to reduce the amount of debt that Resolute owed to IESO in 2016 by the voluntary repayment that the company made in 2010. We thus continue to find that the amount of debt that the GOO forgave Resolute in 2016 is C\$9,824,990²³⁶⁷ and not C\$11,650,000.²³⁶⁸

In accordance with 19 CFR 351.508(b), any debt forgiveness by the GOO would have been realized when Resolute made its second payment to IESO in 2016. Additionally, under 19 CFR 351.508(a) and (c), the benefit conferred by debt forgiveness is equal to the amount of the debt forgiven and is a non-recurring subsidy. We thus applied the "0.5 percent test," as described under 19 CFR 351.524(b)(2), to determine whether to allocate the benefit (*i.e.*, C\$9,824,990) to the year of receipt or across the years of the AUL. We performed the 0.5 percent test by dividing the amount of debt forgiven in 2016 (*i.e.*, C\$9,824,990) by Resolute's total sales for 2016.²³⁶⁹ Because the resulting ratio is less than 0.5 percent of Resolute's total sales, we expensed the benefit to the year of receipt, *i.e.*, 2016.²³⁷⁰

Even assuming *arguendo* that there was a financial contribution provided by the GOO to Resolute under section 771(5)(D)(ii) of the Act, and the program is specific under section 771(5A) of the Act, there is no benefit allocated to Resolute from the GOO's debt forgiveness in the POR. Therefore, Commerce need not make a determination as to the countervailability of this program or address the respondents' arguments that the settlement of a dispute between a government and a private party is not a countervailable government program.

Comment 121: Whether Commerce Should Correct the Benefit Calculation for Certain Non-Stumpage Programs Used by Resolute

*Petitioner's Comments*²³⁷¹

- For Québec's Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances, Commerce should include in Resolute's benefit calculation the amount received for "Timber Salvage Operation in Recently Burned Area."
- For Québec's SR&ED and Research Consortium Tax Credit programs, Commerce should correct Resolute's total tax benefit.

²³⁶⁵ *Id.* at Exhibit ON-SET-13 (p. 166 and 168). Abitibi is a predecessor company to Resolute.

²³⁶⁶ *Id.* at Exhibit ON-SET-13 (p. 102). Bowater is a predecessor company to Resolute.

²³⁶⁷ The calculation is: C\$20,400,000 (excess CMSC) – C\$1,825,010 (2010 repayment) = C\$18,574,990 – C\$8,750,000 (2016 payment) = C\$9,824,990 (debt owed that was forgiven).

²³⁶⁸ The calculation proposed by the petitioner and rejected by Commerce is: C\$20,400,000 (excess CMSC) – C\$8,750,000 (2016 payment) = C\$11,650,000.

²³⁶⁹ See Resolute Preliminary Calculation Memorandum.

²³⁷⁰ *Id.*

²³⁷¹ See Petitioner Case Brief at 5-6.

*Resolute's Rebuttal Comments*²³⁷²

- Regarding the Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances, Commerce was correct not to include in the calculation the amount received for timber salvage because Resolute received no benefit from the partial reimbursement of costs incurred for performing salvage harvesting in areas affected by forest fires. Salvage activities should be considered non-countervailable services provided to the GOQ.
- The petitioner's suggestion regarding Québec's SR&ED and Research Consortium tax credits should be dismissed because it would lead to the double counting of benefits. These tax programs provide refundable tax credits. The credits are applied against a taxpayer's taxable income and produce refunds when they exceed taxable income. In the 2018 year-end tax returns filed in 2019, Resolute and Resolute Growth, claimed credits. However, no credits were applied against Resolute's and Resolute Growth's 2018 taxable income.
- The tax credits may be subject to future reviews if and when the credits are refunded. Countervailing them in this review and then again in future reviews (as to when credits might be realized) would constitute impermissible double counting of the same benefit. Commerce should consider only the refunds that received during the POR in the benefit calculation.

Commerce's Position: We disagree with the petitioner and are not modifying Resolute's benefit calculations for Québec's Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances for Timber Salvage Operation in Recently Burned Area, SR&ED, and Research Consortium Tax Credit.

With regard to the Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances, Resolute reported that, while the GOQ issued a check for logging in the burned area on December 28, 2019, the payment was not received by Resolute until January 2020.²³⁷³ Resolute submitted documentation demonstrating that the payment was not received and recorded in the company's financial accounts until January 2020.²³⁷⁴ Because the payment from the GOQ for Timber Salvage Operation in Recently Burned Area was not received by Resolute until 2020, this timber salvage portion of the Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances did not provide a benefit to Resolute in the 2019 review period. Given the evidence, there is no basis to include in the benefit calculation for the Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances the payment for Timber Salvage Operation in Recently Burned Area, which Resolute received outside the 2019 POR.

Under the SR&ED and Research Consortium Tax Credit programs, refundable tax credits are applied against tax liability and may be refunded if the credit exceeds the tax liability.²³⁷⁵ The credit is subject to taxable income when used. The record shows that Resolute reported, but did not apply, a SR&ED credit on its 2018 year-end tax return filed in 2019.²³⁷⁶ Resolute, however,

²³⁷² See Resolute Rebuttal Brief at 5-9.

²³⁷³ See Resolute Non-Stumpage IQR Response at Exhibit RES-NS-TSORB-APP (p. 3).

²³⁷⁴ *Id.* at Exhibit RES-NS-TSORB-4.

²³⁷⁵ See Resolute Non-Stumpage IQR Response at Exhibit RES-NS-GEN-QSR&ED (p. 4-5) and Exhibit RES-NS-GEN-QRC (p. 3).

²³⁷⁶ *Id.* at Exhibit RES-NS-GEN-QSR&ED (p. 5) and Exhibit RES-NS-GEN-5.

received a SR&ED tax refund in 2019 for amounts claimed in its 2017 year-end tax return.²³⁷⁷ Similarly, for the Research Consortium Tax Credit, the record shows that Resolute and Resolute Growth simply reported a Research Consortium Tax Credit on their respective 2018 year-end tax returns filed in 2019, but did not apply that credit on its tax return filed in 2019.²³⁷⁸ Resolute received a refund under the Research Consortium Tax Credit in 2019 from amounts claimed in its 2017 year-end tax return.²³⁷⁹

As instructed at 19 CFR 351.524(a), Commerce will allocate (expense) a recurring benefit to the year in which the benefit is received. On that basis, we included in Resolute's preliminary calculations only the tax refunds received in 2019 because the tax refunds were the benefits that Resolute received under the SR&ED and Research Consortium Tax Credit programs during the POR.

Countervailing tax credits claimed, but not applied against taxable income, in this review and then countervailing them in a subsequent review when refundable tax credits are received would be double counting the same benefit. Therefore, we are not making any changes to Resolute's final calculations. For these final results, we continue to countervail only the benefits that Resolute received, *i.e.*, tax refunds, under Québec's SR&ED and Research Consortium Tax Credit programs during the POR.

West Fraser

Comment 122: Whether Commerce Properly Calculated West Fraser's Benefit Under the Class 1 CCA and Class 29/53 ACCA

*Petitioner's Comments*²³⁸⁰

- In the *Lumber V AR2 Prelim*, Commerce relied on West Fraser's reporting of the total amount of tax savings received under these two programs. However, West Fraser did not report the correct amount, and Commerce should use a different value for the final results that is consistent with how it calculated the benefit for Canfor and Resolute under the program.²³⁸¹

*West Fraser's Comments*²³⁸²

- To the extent that either of the ACCA or CCA for Class 1 Assets are found countervailable, Commerce should account for the Bank of Canada's prime interest rate in calculating West Fraser's "benefit." Capital cost allowances are a form of accelerated depreciation, which is universally recognized is a form of tax deferral. As such, Commerce's regulations clearly require any benefit from this program to be calculated as "a government-provided loan in the amount of tax deferred."

²³⁷⁷ *Id.* at Exhibit RES-NS-GEN-QSR&ED (p. 5).

²³⁷⁸ *Id.* at Exhibits RES-NS-GEN-QRC (p. 3), RES-NS-GEN-5, and RES-NS-GEN-6.

²³⁷⁹ *Id.* at Exhibit RES-NS-GEN-QRCC (p. 3).

²³⁸⁰ See Petitioner Case Brief at 9-11.

²³⁸¹ *Id.* at 9-11 (citing WF IQR vol. II at Exhibits WF-AR2-OS-1, WF-AR2-ACCA-1 and West Fraser Preliminary Calculation Memorandum at Attach. II, Table Tax Calcs)

²³⁸² See West Fraser Rebuttal Brief at 10-12.

- Commerce did not treat capital cost allowances as tax deferrals in the prior review, but has appropriately corrected this error for West Fraser in the instant review.

Commerce's Position: As it regards the Class 1 and the Class 29/53 ACCA programs, we agree with the petitioner that Commerce's benefit calculation for West Fraser for these programs in *Lumber V AR2 Prelim* was incorrect and that we should calculate West Fraser's benefit for these programs in the same manner as for Canfor and Resolute. West Fraser describes all three of these programs as providing accelerated depreciation and argues that Commerce should calculate the benefit provided by this accelerated depreciation as though the amount of tax deferred was a government-provided loan in accordance with 19 CFR 351.509(a)(2).²³⁸³

The benefit that Commerce relied upon in the *Lumber V AR2 Prelim*, as reported by West Fraser, inadvertently reflected this benefit calculation methodology.²³⁸⁴ However, we did not intend to incorporate the benefit amount reported by West Fraser for this program into our calculations. In fact, Commerce has previously discussed and rejected the loan-based benefit calculation methodology that West Fraser proposes in the current review as it concerns benefits from accelerated depreciation programs.²³⁸⁵ Therefore, in the final results of this review, we have calculated the benefit amount for West Fraser under the Class 1 CCA and Class 29/53 ACCA programs as the tax difference between the CCA amounts that could be claimed under Class 1 and Class 29/53 provisions, which is the same method we used to calculate the benefit for Canfor and Resolute under the program.

²³⁸³ See West Fraser Rebuttal Brief at 11-12.

²³⁸⁴ See West Fraser Preliminary Calculation Memorandum at Attachment II at Tab 'Tax_Calcs' (citing WF IQR vol. II at Exhibits WF-AR2-OS-1, WF-AR2-ACCA-1).

²³⁸⁵ See *Lumber V Final* IDM at Comment 69.

X. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review in the *Federal Register*.

Agree

Disagree

11/23/2021

X



Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

APPENDIX I

Acronym/Abbreviation	Complete Name
2009 FIIP Report	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Initial Questionnaire Responses," dated September 15, 2020, at Exhibit Vol 1-10.
AAC	Annual Allowable Cut
Abitibi	Abitibi-Consolidated Company of Canada
Abitibi-Bowater	Abitibi-Bowater Canada Inc.
ACCA	Accelerated Capital Cost Allowance
ACE	Automated Commercial Environment
ACOA	Atlantic Canada Opportunities Agency
Act	Tariff Act of 1930, As Amended
AD	Antidumping Duty
AFA	Adverse Facts Available
ALB	Atlantic Lumber Board
AR	Administrative Review
AR1 Brattle Report	"Assessment of an Internal Benchmark for Alberta Crown Timber" by Dr. Mark Berkman and Dr. Charles Gibbons, dated July 15, 2019.
AR1 Dual-Scale Study	<i>"Dual Scale Study of the Principal Conifer Species of Interior British Columbia Applying the BC Metric and Scribner Short Log Measurement Rules"</i> by Jendro & Hart LLC (See GBC IQR Response at Exhibit BC-AR2-S-172).
AR2 Athey Report	<i>"British Columbia's Market-Based Pricing System for Timber"</i> by Susan Athey, dated August 2020 (See GBC IQR Response at Exhibit BC-AR2-S-120).
AR2 Cross-Border Report	<i>"Use of U.S. Prices as Benchmarks For B.C. Stumpage In The Second Administrative Review"</i> by Jendro & Hart LLC, dated July 30, 2020 (See GBC IQR at Exhibit BC-AR2-S-174)
AR2 Hendricks Report	<i>"An Economic Analysis Of The Ontario Timber Market And An Examination Of Private Market Prices In That Competitive Market"</i> by Ken Hendricks, Ph.D. (See GOO Stumpage IQR Response at Exhibits ON-PRIV-5 and ON-PRIV-7)
AUL	Average Useful Life
AUV	Average Unit Volumes
AWS	Annual Work Schedule
BC	British Columbia
BCAA	British Columbia Assessment Authority
BCLTC	British Columbia Lumber Trade Council
BCTS	British Columbia Timber Sales
BCUC	British Columbia Utilities Commission
BMMB	Wood Marketing Bureau (Quebec)
Bowater	Bowater Canadian Forest Products Inc.
BPI	Business Proprietary Information
CAFC	Court of Appeals for the Federal Circuit
CAJG	Canada-Alberta Job Grant

Canadian Parties	The Governments of Canada (GOC), Alberta (GOA), British Columbia (GBC), Manitoba (GOM), Ontario (GOO), Quebec (GOQ), and Saskatchewan (GOS), the Alberta Softwood Lumber Trade Council, and the British Columbia Lumber Trade Council; the Government of New Brunswick (GNB); Tolko Marketing and Sales Ltd. and Tolko Industries Ltd. (Tolko); West Fraser Mills Ltd. (West Fraser); Canfor Corporation (Canfor); Resolute FP Canada (Resolute); and J.D. Irving, Limited (JDIL)
Canfor	Canfor Corporation, Canfor Wood Products Marketing Ltd. and, Canadian Forest Products, Ltd.
CBP	U.S. Customs and Border Protection
CCA	Capital Cost Allowance
Central Canada	CIFQ and OFIA, collectively
CFP	Canadian Forest Products, Ltd.
CFR	Code of Federal Regulations
CIT	Court of International Trade
CITR	Canadian Income Tax Regulations
CLFA	Crown Lands and Forests Act
Commerce	U.S. Department of Commerce
CRA	Canada Revenue Agency
CES	Custom Energy Solutions
CVD	Countervailing Duty
CY	Calendar Year
DBH	Diameter at Brest Height
Deloitte	Deloitte LLP
DERD	Department of Energy and Resource Development
DFATD	Department of Foreign Affairs, Trade and Development
DNR	Department of Natural Resources
DNRED	Department of Natural Resources and Energy Development
DR Auction	Demand Response Auction
DTI	Department of Trade and Infrastructure
E&C	Enforcement and Compliance
EDL	Electricity Discount Program Applicable to Rate L
EGP	Export Guarantee Program
EIPA	Export and Import Permits Act
EPA	Electricity Purchase Agreement
Feldinger Affidavit	<i>See</i> Canfor IQR at Exhibit STUMP B-13.
FMA	Forest Management Agreement
Fontaine	Fontaine Inc.
FPPGTP	Federal Pulp and Paper Green Transformation Program
FRIAA	Forest Resource Improvement Association of Alberta
FSPF	Forest Sector Prosperity Fund
FTEAC	Federal Timber Export Advisory Committee
FY	Fiscal Year
G&A	General and Administrative

Gardner Declaration	See WF IQR Vol. IV at Exhibit WF-AR2-BCST-10
GBC	Government of British Columbia
GDP	General Development Plans
GHG	Greenhouse Gases
GNB	Government of New Brunswick
GNS	Government of Nova Scotia
GOA	Government of Alberta
GOC	Government of Canada
GOO	Government of Ontario
GOQ	Government of Québec
GTA	Global Trade Atlas
GWh	Gigawatt Hours
HBS	Harvest Billing System
Hendricks Report	Dr. Kenneth Hendricks - An Economic Analysis of the Ontario Timber Market and an Examination of Private Market Prices in that Competitive Market (March 10, 2017) (see GOO Primary QNR Response at Exhibit ON-PRIV-2)
HHI	Herfindahl-Hirschman Index
HST	Harmonized Sales Tax
HTS	Harmonized Tariff Schedule
HTSUS	Harmonized Tariff Schedule of the United States
IDM	Issues and Decision Memorandum
IEI	Industrial Electricity Incentive
IEO	Interruptible Electricity Option
IESO	Independent Electricity System Operator
IMF	International Monetary Fund
IPI	Implicit Price Index
IPL	Irving Paper Limited
IPP	Irving Pulp & Paper, Limited
IQR	Initial Questionnaire Response
IRR	Industrial Revitalization Rate
Irving Tissue	Irving Consumer Products Limited
ISEE	Industrial Systems Energy Efficiency
ITA	Income Tax Act
ITC	U.S. International Trade Commission
ITR	Income Tax Regulations
JDIL	J.D. Irving Limited
Kalt Report	Kalt, Joseph - Economic Analysis of Remuneration for Canadian Crown Timber: Are In-Jurisdiction Benchmarks Distorted by Crown Stumpage? (see GOC Etal Primary QNR at Exhibit GOC-Stump-5)
KPMG Report	KPMG LLP - Report on 2015-16 Ontario Softwood Timber Costs and Sources (March 6, 2017) (see GOO Primary QNR at Exhibit ON-PRIV-1)
LCIA	London Court of International Arbitration

LIREPP	Large Industrial Renewable Energy Purchase Program
LMF	License Management Fee
LTAR	Less Than Adequate Remuneration
Marshall Report	Marshall, Robert C. - Expert Report (March 2017) (see GOQ Primary QNR at Exhibit QC-Stump-78)
MBF	Thousand Board Feet
MCRP	Multi-resource Road Cost Reimbursement Program
MFFP	Ministry of Forests, Wildlife and Parks
MFOR	Manpower Training Measures
MNP Ontario Survey	MNP LLP - A Survey of the Ontario Private Timber Market (March 3, 2017) (see GOO Primary QNR at Exhibit ON-PRIV-1)
MNRF	Ministry of Natural Resources and Forestry
Mobilier Rustique	Mobilier Rustique (Beauce) Inc.
MPB	Mountain Pine Beetle
MPS	Market Pricing System
MTAR	More Than Adequate Remuneration
MTESS	Ministry of the Work, Employment and Social Solidarity
MW	Megawatts
MWh	Megawatt Hours
NAFP	North America Forest Products Ltd.
NAFTA	North American Free Trade Agreement
NAICS	North American Industry Classification System
NB	New Brunswick
NB Power	New Brunswick Power
NFI	New Factual Information
NIER	Ontario Northern Industrial Electricity Rate
NS	Nova Scotia
NSA	New Subsidy Allegations
NSDNR	Nova Scotia Department of Natural Resources
OFIA	Ontario Forest Industries Association
OFRFP	Ontario Forest Roads Funding Program
OPA	Ontario Power Authority
PAE 2011-01	Purchase Power Program 2011-01
PAMVFP	Private Forest Development Assistance Program
PCIP	Partial Cut Investment Program
PDM	Preliminary Decision Memorandum
Petitioner	Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (a.k.a. COALITION)
PIB	Program Innovation Bois (aka, Wood Innovation Program)
PNW	Pacific Northwest
POI	Period of Investigation
POR	Period of Review
PPA	Purchase Power Agreement

PPI	Producer Price Index
QNR	Questionnaire
QR	Questionnaire Response
R&D	Research and Development
RDTC	Research and Development Tax Credit
Reishus LER Rebuttal	"Response to Coalition's Submission of September 15, 2020," by David Reishus, Ph.D., dated October 1, 2020 (<i>See Canadian Parties Reply to Petitioner Comments on IQR Responses at Exhibit GOC-RPR-AR2-3</i>).
Reishus Report	"Economic Analysis of British Columbia Log Export Permitting Process, Stumpage and Log Markets," by David Reishus, Ph.D., dated August 5, 2020 (<i>See GOC IQR Response at Exhibit LEP-1</i>).
Resolute	Resolute FP Canada Inc.
Resolute Forest Products	Resolute Forest Products Inc.
Resolute Growth	Resolute Growth Canada Inc.
RFP	Request for Proposals
RILA	Retail Industry Leaders Association
Rosenzweig Report	"An Analysis of Certain Economic Issues Relating to BC Hydro's Electricity Purchase Agreements" by Dr. Michael Rosenzweig (<i>See GBC IQR Response at Exhibit BC-AR2-BCH-48</i>).
RV	Residual Value
SAA	Statement of Administrative Action (From the URAA)
SAFIS	Safety Achievement Financial Incentive System
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SEC	U.S. Securities and Exchange Commission
SFDA	Sustainable Forest Development Act
SLA	Softwood Lumber Agreement
SNB	Services New Brunswick
Softwood Lumber	Certain Softwood Lumber Products
SOPFEU	Society for the Protection of Forests Against Fire
SOPFIM	Society for the Protection of Forests Against Insects and Diseases
SPF	Spruce-Pine-Fir
SR&ED	Scientific Research and Experimental Development
SR&ED- GOA	Scientific Research and Experimental Development Tax Credit - Alberta
SR&ED-GBC	Scientific Research and Experimental Development Tax Credit - British Columbia
SR&ED-Quebec	Scientific Research and Experimental Development Tax Credit - Quebec
TDA	Timber Damage Assessment
TEAC	Timber Export Advisory Committee
TEFU	Tax Exempt Fuel Use
TSG	Timber Supply Guarantee
TSL	Timber Sale License
URAA	Uruguay Round Agreements Act
USFS	United States Forest Service
WDNR	Washington Department of Natural Resources

West Fraser	West Fraser Mills Ltd.
WTO	World Trade Organization

APPENDIX II
ADMINISTRATIVE DETERMINATIONS/NOTICES, REGULATORY, AND COURT
CASES TABLE

This section is sorted by Short Citation.

Short Citation	Administrative Case Determinations
<i>1988 CVD Preamble</i>	<i>Countervailing Duties</i> , 53 FR 52306 (December 27, 1988)
<i>2003 Policy Bulletin</i>	<i>Proposed Policies Regarding the Conduct of Changed Circumstance Reviews of the Countervailing Duty Order on Softwood Lumber from Canada (C 122 839)</i> , 68 FR 37456 (June 24, 2003)
<i>AK Steel</i>	<i>AK Steel Corp. v. United States</i> , 192 F.3d 1367 (Federal Circuit 1999)
<i>Acciai Speciali Terni S.p.A.</i>	<i>Acciai Speciali Terni S.p.A. v. United States</i> , 26 C.I.T. 148 (CIT 2002)
<i>Allegheny I</i>	<i>Allegheny Ludlum Corp. v. United States</i> , 112 F. Supp. 2d 1141 (CIT 2000)
<i>Allegheny II</i>	<i>Allegheny Ludlum Corp. v. United States</i> , 25 CIT 816 (2001)
<i>Aluminum Extrusions from China First AR</i>	<i>Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011</i> , 79 FR 106 (January 2, 2014)
<i>Ansaldo Componenti S.p.A.</i>	<i>Ansaldo Componenti S.p.A. v. United States</i> , 628 F. Supp. 198 (CIT 1986)
<i>API</i>	<i>API v. United States EPA</i> , 52 F.3d 1113, 1119 (D.C. Cir. 1995).
<i>Archer Daniels Remand</i>	<i>Final Results of Redetermination Pursuant to Remand, Archer Daniels Midland Co., et al. v. United States</i> , Consol. Court No. 11-00537, Slip Op. 13-66 (May 28, 2013)
<i>B.F. Goodrich</i>	<i>B.F. Goodrich Co. v. United States</i> , 794 F. Supp. 1148 (CIT 1992).
<i>Ball Bearings from Thailand</i>	<i>Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand; Final Negative Countervailing Duty Determinations: Antifriction Bearings (Other Than Ball or Tapered Roller Bearings) and Parts Thereof from Thailand</i> , 54 FR 19130 (May 3, 1989)
<i>Bethlehem Steel</i>	<i>Bethlehem Steel Corp. v. United States</i> , 140 F.Supp.2d. 1354 (CIT 2001).
<i>Borusan</i>	<i>Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States</i> , 61 F. Supp. 3d 1306 (CIT 2015)
<i>Canada – Feed-In Tariff Program</i>	<i>Canada – Measures Relating to the Feed-In Tariff Program</i> , (WT/DS426/AB/R), adopted May 6, 2013
<i>Carbon Steel Wire Rod from Saudi Arabia</i>	<i>Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod from Saudi Arabia</i> , 51 FR 4206 (February 3, 1986)
<i>Certain Pasta from Italy Final Results AR7</i>	<i>Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review</i> , 69 FR 70657 (December 7, 2004)
<i>Certain Pasta from Italy Final Results AR11</i>	<i>Certain Pasta from Italy: Final Results of the Eleventh (2006) Countervailing Duty Administrative Review</i> , 74 FR 5922 (February 3, 2009)
<i>Certain Steel Products from Korea</i>	<i>Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea</i> , 58 FR 37338 (July 9, 1993)

<i>CFS from China</i>	<i>Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007)</i>
<i>CFS from Korea</i>	<i>Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination, 72 FR 60639 (October 25, 2007)</i>
<i>Changzhou Trina Solar Energy v. U.S. (2016)</i>	<i>Changzhou Trina Solar Energy Co. v. United States, 195 F. Supp. 3d 1334 (CIT 2016) affirmed at 264 F. Supp. 3d 1325, 1334 (CIT 2017)</i>
<i>Changzhou Trina Solar Energy v. U.S. (2018)</i>	<i>Changzhou Trina Solar Energy Co. Ltd. v. United States, 352 F. Supp. 3d 1316 (Ct. Int'l Trade 2018)</i>
<i>Chlorinated Isocyanurates from China</i>	<i>Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review, 82 FR 27466</i>
<i>Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman</i>	<i>Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Final Affirmative Countervailing Duty Determination, 77 FR 64473 (October 22, 2012)</i>
<i>Citric Acid from China</i>	<i>Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010, 77 FR 72323 (December 5, 2012)</i>
<i>Coated Paper from Indonesia</i>	<i>Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007)</i>
<i>Coated Paper from China</i>	<i>Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China, 75 FR 59212 (September 27, 2010)</i>
<i>Cold-Rolled Carbon Steel from Korea</i>	<i>Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea, 67 FR 62102 (October 3, 2002)</i>
<i>CORE CVD Order</i>	<i>Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order, 81 FR 48387 (July 25, 2016)</i>
<i>Corus Staal BV v. U.S.</i>	<i>Corus Staal BV v. U.S., 395 F. 3d 1347-49 (Fed. Cir. 2005), accord Corus Staal BV v. U.S., 502 F. 3d 1375 (Fed. Cir. 2007)</i>
<i>CRS from Brazil</i>	<i>Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination, 81 FR 49940 (July 20, 2016)</i>
<i>CRS from Korea</i>	<i>Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination, 81 FR 49946 (July 29, 2016)</i>
<i>CRS from Russia</i>	<i>Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination, 81 FR 49935 (July 29, 2016)</i>
<i>CSPP from China</i>	<i>Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 79 FR 76962 (December 23, 2014)</i>

<i>CTL Plate from Korea Final Results 2018</i>	<i>Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; Calendar Year 2018, 85 FR 84296</i>
<i>CTL Steel Plate from Korea Prelim</i>	<i>Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 64 FR 40445 (July 26, 1999)</i>
<i>CTL Steel Plate from Korea Final</i>	<i>Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 64 FR 73176 (December 29, 1999)</i>
<i>Cut-to-Length Carbon-Quality Steel Plate from Indonesia</i>	<i>Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia, 64 FR 73155 (December 29, 1999)</i>
<i>Cut-to-Length Plate from Korea</i>	<i>Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination, 82 FR 16341 (April 4, 2017)</i>
<i>CVD Order</i>	<i>Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 83 FR 347 (January 3, 2018)</i>
<i>CVD Preamble</i>	<i>Countervailing Duties; Final Rule, 63 FR 65348 (November 25, 1998)</i>
<i>2010 Review of CWP from Turkey</i>	<i>Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review, 77 FR 46713 (August 6, 2012)</i>
<i>CWP from the UAE</i>	<i>Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Affirmative Countervailing Duty Determination, 77 FR 64465 (October 22, 2012)</i>
<i>DS 108 Panel Report</i>	<i>Panel Report, United States—Tax Treatment for “Foreign Sales Corporations,” Recourse to Art. 21.5 of the DSU by the European Community, WT/DS108/RW (adopted Jan. 29, 2002)</i>
<i>DS 533 Panel Report</i>	<i>Panel Report, United States – Countervailing Measures on Softwood Lumber from Canada, WT/DS533/R, dated August 24, 2020</i>
<i>DRAMS from Korea</i>	<i>Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003)</i>
<i>Energy Policy Act</i>	<i>Energy Policy Act, 42 U.S.C. § 15801 (2005)</i>
<i>Essar Steel Ltd. v. U.S.</i>	<i>Essar Steel Ltd. v. United States, 678 F. 3d 1268 (Fed. Cir. 2012)</i>
<i>Extruded Rubber Thread from Malaysia</i>	<i>Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread from Malaysia, 57 FR 38472</i>
<i>Eurodif</i>	<i>United States v. Eurodif S.A., 555 U.S. 305 (2009)</i>
<i>FERC v. Electric Power Supply Association</i>	<i>FERC v. Electric Power Supply Association, 136 S. Ct. 760 (2016) as revised (January 28, 2016)</i>
<i>Fresh Cut Flowers from Mexico</i>	<i>Certain Fresh Cut Flowers from Mexico; Final Negative Countervailing Duty Determination, 49 FR 15007 (April 16, 1984)</i>
<i>Fresh Cut Flowers from the Netherlands</i>	<i>Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers from the Netherlands, 52 FR 3301 (February 3, 1987)</i>

<i>FFC</i>	<i>Fabrique de Fer de Charleroi, SA v. United States</i> , 166 F. Supp. 2d 593, 600-604 (CIT 2001)
<i>Geneva Steel</i>	<i>Geneva Steel v. United States</i> , 914 F. Supp. 563 (CIT 1996)
<i>Government of Sri Lanka v. U.S.</i>	<i>Government of Sri Lanka v. United States</i> , 308 F. Supp. 3d 1373 (CIT 2018); 2018 WL 1831791 (CIT 2018)
<i>Glycine from Thailand</i>	<i>Glycine from Thailand: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination</i> , 84 FR 38007 (August 5, 2019)
<i>Groundwood Paper from Canada Final</i>	<i>Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination</i> , 83 FR 39414 (August 9, 2018)
<i>Groundwood Paper from Canada Prelim</i>	<i>Certain Uncoated Groundwood Paper from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination</i> , 83 FR 2133 (January 16, 2018)
<i>HRS from Brazil</i>	<i>Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Final Affirmative Determination, and Final Determination of Critical Circumstances, in Part</i> , 81 FR 53416 (Mach. 24, 2016)
<i>HRS from India</i>	<i>Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review</i> , 74 FR 20923 (May 6, 2009)
<i>HRS from Thailand</i>	<i>Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand</i> , 66 FR 50410 (October 3, 2001)
<i>IPA from Israel</i>	<i>Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review</i> , 63 FR 13626 (March 20, 1998)
<i>Initiation Notice</i>	<i>Initiation of Antidumping and Countervailing Duty Administrative Reviews</i> , 85 FR 13860 (March 10, 2020).
<i>Inland Steel v. U.S.</i>	<i>Inland Steel Industries, Inc. v. United States</i> , 967 F. Supp. 1338 (CIT 1997)
<i>ITC Softwood Lumber from Canada</i>	<i>Softwood Lumber Products from Canada</i> , Inv. Nos. 701-TA-566 and 731-TA-1342 (Final), USITC Pub. 4749 at 38 (December 2017)
<i>Kajaria Iron Castings v. U.S.</i>	<i>Kajaria Iron Castings v. United States</i> , 156 F. 3d 1163 (Fed. Cir. 1998)
<i>Kitchen Racks from China</i>	<i>Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> , 74 FR 37012 (July 27, 2009)
<i>Killip</i>	<i>Killip v. Office of Personnel Management</i> , 991 F.2d 1564, 1569 (Fed. Cir. 1993).
<i>LA Public Serv. Comm'n</i>	<i>LA Public Serv. Comm'n v. FCC</i> , 476 U.S. 355, 374 (1986).
<i>Laminated Hardwood Trailer Flooring from Canada</i>	<i>Preliminary Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring from Canada</i> , 61 FR 59079 (November 20, 1996)
<i>Large Civil Aircraft</i>	<i>United States – Large Civil Aircraft (Article 21.5 – EU)</i> , WT/DS353/AB/RW (adopted April 12, 2019)

<i>LEU from France</i>	<i>Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France</i> , 66 FR 65901 (December 21, 2001)
<i>Live Swine from Canada</i>	<i>Final Negative Countervailing Duty Determination: Live Swine from Canada</i> , 70 FR 12186 (March 11, 2005)
<i>LMI-La Metalli Indus.</i>	<i>LMI-La Metalli Indus., S.p.A. v. United States</i> , 912 F.2d 455, 460 (Federal Circuit 1990)
<i>Lumber III Prelim</i>	<i>Certain Softwood Lumber Products from Canada</i> , 57 FR 8800 (March 12, 1992)
<i>Lumber III Final</i>	<i>Certain Softwood Lumber Products from Canada</i> , 57 FR 22570 at 22621 (May 28, 1992)
<i>Lumber IV Final</i>	<i>Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada</i> , 67 FR 15545 (April 2, 2002)
<i>Lumber IV AR1 Final</i>	<i>Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products from Canada</i> , 69 FR 75917 (December 20, 2004)
<i>Lumber IV AR2 Final</i>	<i>Certain Softwood Lumber Products from Canada</i> , 70 FR 73448 (December 12, 2005)
<i>Lumber V Initiation</i>	<i>Certain Softwood Lumber Products From Canada: Initiation of Countervailing Duty Investigation</i> , 81 FR 93897 (December 22, 2016)
<i>Lumber V Final</i>	<i>Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances</i> , 82 FR 51814 (November 8, 2017)
<i>Lumber V Prelim</i>	<i>Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination</i> , 82 FR 19657 (April 28, 2017)
<i>Lumber V Final Results of Expedited</i>	<i>Certain Softwood Lumber Products from Canada: Final Results of Countervailing Duty Expedited Review</i> , 84 FR 32121 (July 5, 2019)
<i>Lumber V AR1 Final</i>	<i>Certain Softwood Lumber Products from Canada: Final Results and Partial Rescission of the Countervailing Duty Administrative Review; 2017 – 2018</i> , 85 FR 77163 (December 1, 2020)
<i>Lumber V AR1 Post-Prelim Memorandum: Canfor and West Fraser</i>	Memorandum, “Post-Preliminary Decision Memorandum for Canfor Corporation and West Fraser Mills Ltd.,” dated May 13, 2020
<i>Lumber V AR1 Post-Prelim Memorandum: Resolute</i>	Memorandum, “Post-Preliminary Decision Memorandum for Resolute FP Canada: Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada,” dated May 15,
<i>Lumber V AR1 Prelim</i>	<i>Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2017 – 2018</i> , 85 FR 7273 (February 7, 2020)
<i>Lumber V AR2 Prelim</i>	<i>Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2019</i> , 86 FR 28556 (May 27, 2021)
<i>Lumber IV Final</i>	<i>Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada</i> , 67 FR 15545 (April 2, 2002).

<i>Lumber IV Final Results of Expedited Review</i>	<i>Final Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada</i> , 67 FR 67388 (November 5, 2002)
<i>Lumber IV ARI Final</i>	<i>Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products from Canada</i> , 69 FR 75917 (December 20, 2004)
<i>Lumber IV AR2 Final</i>	<i>Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada</i> , 70 FR 73448 (December 12, 2005)
<i>Lumber IV Final Results NSR</i>	<i>Final Results of Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada</i> , 70 FR 56640 (September 28, 2005)
<i>Lumber IV NAFTA Panel Decision</i>	<i>Certain Softwood Lumber Products from Canada, Secretariat File No. USA-CDA-2002-1904-03, Panel Decision</i> (August 13, 2003)
<i>Lumber IV NAFTA June 7, 2004 Panel Decision On Remand Determination</i>	Certain Softwood Lumber Products from Canada, USA-CDA-2002-1904-03, Panel Decision on Remand Determination (June 7, 2004)
<i>MacLean-Fogg</i>	<i>MacLean-Fogg Co. v. United States</i> , 753 F.3d 1237 (Federal Circuit 2014)
<i>Magnesium from Canada</i>	<i>Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada</i> , 57 FR 30946 (July 13, 1992)
<i>Magnesium from Israel</i>	<i>Magnesium from Israel: Final Affirmative Countervailing Duty Determination</i> , 84 FR 65785 (November 29, 2019)
<i>Magnola</i>	<i>Magnola Metallurgy, Inc. v. United States</i> , 508 F.3d 1349 (Fed. Cir. 2007)
<i>Melamine from Trinidad and Tobago</i>	<i>Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination</i> , 80 FR 68849 (November 6, 2015)
<i>Nails from Oman</i>	<i>Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination</i> , 80 FR 28958 (May 20, 2015)
<i>NMB Singapore</i>	<i>NMB Singapore Ltd. v. United States</i> , 557 F.3d 1316, 1328 (CAFC 2009)
<i>Non-Oriented Electrical Steel from Taiwan</i>	<i>Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination</i> , 79 FR 61602 (October 14, 2014)
<i>NTN Bearing Corp.</i>	<i>NTN Bearing Corp.</i> , 186 F. Supp. 2d at 1331.
<i>NSK Ltd. v. U.S.</i>	<i>NSK Ltd. v. U.S.</i> , 510 F. 3d 1379-80 (Fed. Cir. 2007)
<i>OCTG from Argentina</i>	<i>Oil Country Tubular Goods from Argentina; Preliminary Results of Countervailing Duty Administrative Review</i> , 62 FR 32307 (June 13, 1997)
<i>OCTG from Turkey</i>	<i>Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part</i> , 79 FR 41971 (July 18, 2014)

<i>OCTG from China</i>	<i>Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009)</i>
<i>OCTG from China 2011</i>	<i>Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011, 78 FR 49475 (August 14, 2013)</i>
<i>Off-the-Road Tires from Sri Lanka</i>	<i>Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination, 82 FR 2949 (January 10, 2017)</i>
<i>Off-the-Road Tires from Sri Lanka Order</i>	<i>Certain New Pneumatic Off-the-Road Tires from India and Sri Lanka: Countervailing Duty Order, 82 FR 12556 (March 6, 2017)</i>
<i>Opportunity Notice</i>	<i>Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 85 FR 64 (January 2, 2020)</i>
<i>PAM S.p.A.</i>	<i>PAM, S.p.A. v. United States, 495 F. Supp. 2d 1360, (Ct. Intl. Trade 2007)</i>
<i>PET Film from India</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2008)</i>
<i>Pipe and Tube from Turkey 2011</i>	<i>Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011, 78 FR 64916 (October 30, 2013)</i>
<i>Pipe and Tube from Turkey 2017</i>	<i>Circular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part; Calendar Year 2017, 84 FR 56173 (October 21, 2019)</i>
<i>Pohang Iron & Steel</i>	<i>Pohang Iron & Steel Co., 1999 CIT</i>
<i>PPG Industries</i>	<i>PPG Indus. v. United States, 978 F.2d 1232, 1240 (Fed. Cir. 1992)</i>
<i>PRCBs from Vietnam</i>	<i>Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination, 75 FR 16428 (April 2, 2010)</i>
<i>Rebar from Turkey Final Results</i>	<i>Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014, 82 FR 26907 (June 12, 2017)</i>
<i>Respondent Selection Notice</i>	<i>Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings, 78 FR at 65965 (November 4, 2013)</i>
<i>Royal Thai Government v. S. Rep. No. 96-249</i>	<i>Royal Thai Gov't v. U.S., 341 F. Supp. 2d 1315 (CIT 2004)</i>
<i>SAA</i>	<i>Trade Agreements Act of 1979, Senate Report Number 96-249 (1979)</i>
<i>Sacilor</i>	<i>Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994)</i>
<i>Sacilor</i>	<i>Sacilor, Acieries et Laminoirs de Lorraine v. United States, 542 F. Supp. 1020, 1024 (CIT 1982)</i>
<i>SC Paper from Canada – Expedited</i>	<i>Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review, 82 FR 18896 (April 24, 2017)</i>
<i>SC Paper from Canada Final</i>	<i>Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination, 80 FR 63535 (October 20, 2015)</i>

<i>SC Paper from Canada Prelim</i>	<i>Supercalendered Paper from Canada: Preliminary Affirmative Countervailing Duty Determination, 80 FR 45951 (August 3, 2015)</i>
<i>Shrimp from Ecuador</i>	<i>Certain Fresh Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination, 78 FR 50389 (August 19, 2013)</i>
<i>Silicon Metal from Australia Final</i>	<i>Silicon Metal from Australia: Final Affirmative Countervailing Duty Determination, 83 FR 9834 (March 8, 2018)</i>
<i>Silicon Metal from Australia Prelim</i>	<i>Silicon Metal from Australia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 82 FR 37843 (August 14, 2017)</i>
<i>Solar Cells from China</i>	<i>Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administration Review, and Partial Rescission of Countervailing Duty Administration; 2014, 82 FR 32678 (July 17, 2017)</i>
<i>SolarWorld Ams Inc.</i>	<i>SolarWorld Ams., Inc. v. United States, 125 F. Supp. 3d 1318 (CIT 2015)</i>
<i>Softwood Lumber from Canada</i>	<i>Softwood Lumber Products from Canada, Inv. Nos. 701-TA-566 and 731-TA-1342 (Final), USITC Pub. 4749 at 38 (December 2017)</i>
<i>Smith v. U.S.</i>	<i>Smith v. United States, 508 U.S. 223, 228, 113 S. Ct. 2050, 124 L.Ed.2d 138 (1993)</i>
<i>Stainless Steel Sinks from China INV</i>	<i>Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 13017 (February 26, 2013)</i>
<i>Steel Wheels from China</i>	<i>Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012).</i>
<i>Steel Wire Nails from New Zealand</i>	<i>Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails from New Zealand, 52 FR 37196 (October 5, 1987)</i>
<i>Steel Wire Rod from Trinidad and Tobago</i>	<i>Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago, 62 FR 55003 (October 22, 1997)</i>
<i>Steel Wire Rod from Venezuela</i>	<i>Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela, 62 FR 55014 (October 22, 1997)</i>
<i>Textile Mill Products and Apparel from Singapore</i>	<i>Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Singapore, 50 FR 9840 (March 12, 1985)</i>
<i>Timex V.I.</i>	<i>Timex V.I. v. United States, 157 F.3d 879, 884 (Fed. Cir. 1998)</i>
<i>Tool Chests from China</i>	<i>Certain Tool Chests and Cabinets From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 82 FR 56582 (November 29, 2017)</i>
<i>Toscelik Profil v. Sac Endustrisi A.S.</i>	<i>Toscelik Profil v. Sac Endustrisi A.S., Slip Op. 15-28 (Court No. 13-00371) (CIT April 1, 2015)</i>
<i>Uncoated Paper from Indonesia</i>	<i>Certain Uncoated Paper From Indonesia: Final Affirmative Countervailing Duty Determination, 81 FR 3104 (January 20, 2016)</i>
<i>United States November 30, 2018 First Submission, US – Softwood Lumber V</i>	<i>First Written Submission of the United States, United States – Countervailing Duty Measures on Softwood Lumber from Canada, WT/DS/533 (November 30, 2018)</i>
<i>United States – Large Civil Aircraft (Second Complaint)</i>	<i>Appellate Body Report, United States – Measures Affecting Trade in Large Civil Aircraft – Second Complaint, WT/DS353/AB/R (March 12, 2012)</i>

<i>Welded Line Pipe from Korea</i>	<i>Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination, 80 FR 61365 (October 13, 2015)</i>
<i>Welded Line Pipe from Turkey</i>	<i>Welded Line Pipe from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination, 80 FR 14943 (March 20, 2015)</i>
<i>Wind Towers from Canada Final</i>	<i>Utility Scale Wind Towers from Canada: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 85 FR 40245 (July 6, 2020)</i>
<i>Wind Towers from Indonesia</i>	<i>Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 85 FR 40241 (July 6, 2020)</i>
<i>Wire Rod from Italy Final</i>	<i>Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy, 63 FR 40474 (July 29, 1998)</i>
<i>Wood Mouldings from China</i>	<i>Wood Mouldings and Millwork Products From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 86 FR 67 (January 4, 2021)</i>

Appendix III - Document Citation Table for Preliminary Results: Lumber CVD Second Administrative Review

Date	Submitting Party	Short Citation	Document Title	Pertaining To
3/11/20	Commerce	Initiation Notice	Memorandum, "Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Second Administrative Review; 2019," dated March 11, 2020 (Published in the Federal Register on March 10, 2020) (85 FR 13860)	Interested Parties
03/30/20	Commerce	CBP Data Query Results Memorandum	Memorandum, "Certain Softwood Lumber Products from Canada: Countervailing Duty Order, Second Administrative Review: Release of U.S. Customs and Border Protection Query," dated March 30, 2020	Interested Parties
03/30/20	Resolute	Resolute Additional Non-Stumpage SQR Response	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review Resolute's Response to Non-Stumpage Supplemental Questionnaire," dated March 30, 2021	Resolute
03/30/20	GOO	GOO Non-Stumpage SQR Response on Gaming of the IESO System	GOO's Letter, "Certain Softwood Lumber Products From Canada: Response of the Government of Ontario to the Department's March 9, 2021 Supplemental Questionnaire," dated March 30, 2021	GOO
03/31/20	Petitioner	Petitioner Comments on Non-Stumpage Subsidy Programs	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Comments on the SOPFIM/SOPFEU Programs and Request for Additional Information on Other Non-Stumpage Subsidy Programs," dated March 31, 2021	Interested Parties
4/7/20	West Wind Hardwood	West Wind Hardwood No Shipment Claim	West Wind Hardwood's Letter, "Notice of No Sales," dated April 7, 2020	West Wind Hardwood
4/7/20	Petitioner	Petitioner Comments on Gaming of the IESO System	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Comments on the Government of Ontario's and Resolute FP Canada Inc.'s March 30, 2021 Non-Stumpage Supplemental Questionnaire Responses," dated April 7, 2021	GOO & Resolute
4/23/20	Petitioner	Petitioner CBP and Sampling Comments	Petitioner's Letter, "Comments on CBP Data and Request for Sampling," dated April 23, 2020	Interested Parties
4/24/20	Commerce	First Tolling Memorandum	Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020	Interested Parties
05/19/20	Commerce	Respondent Selection Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Respondent Selection," dated May 19, 2020	Interested Parties
05/29/20	Commerce	Initial Questionnaire	Letter, "Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Initial Questionnaire for Second Administrative Review," dated May 29, 2020	Interested Parties
06/04/20	Commerce	Economic Diversification Memorandum	Memorandum, "Second Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Economic Diversification Memorandum," dated June 4, 2020	Interested Parties
06/10/20	Commerce	Revised Non-Stumpage Usage Template	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Revised Non-Stumpage Usage Template," dated June 10, 2020	Interested Parties
06/12/20	Resolute	Resolute Company Affiliation Response	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review - Resolute's Response to Affiliated Companies Questionnaire," dated June 12, 2020	Resolute
06/12/20	JDIL	JDIL Company Affiliation Response	JDIL's Letter, "Softwood Lumber from Canada: Response to Section III Questions Identifying Affiliated Companies," dated June 12, 2020	JDIL

6/12/2020	Canfor	Canfor Affiliation Response	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Affiliated Companies Response," dated June 12, 2020.	Canfor
6/12/2020	West Fraser	West Fraser Company Affiliation Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to Section III, Part I, Subpart I of the Department's May 29, 2020 Countervailing Duty Questionnaire Concerning Affiliated and Cross-Owned Companies," dated June 12, 2020.	West Fraser
06/26/20	Petitioner	Petitioner Comments on Affiliation Responses	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Affiliation Questionnaire Responses," dated June 26, 2020	Interested Parties
07/09/20	Commerce	Response to Canfor's Reporting Difficulty Letter	Letter, "Second Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada," dated July 9, 2021.	Canfor
07/16/20	GOM	GOM IQR Response	GOM's Letter, "Certain Softwood Lumber Products from Canada - Response of the Government of Manitoba to the Department's May 29, 2020 Questionnaire," dated July 16, 2020	GOM
07/16/20	GOS	GOS IQR Response	GOS's Letter, "Certain Softwood Lumber Products from Canada - Response of the Government of Saskatchewan to the Department's May 29, 2020 Questionnaire," dated July 16, 2020	GOS
07/21/20	Commerce	Second Tolling Memorandum	Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020	Interested Parties
7/28/20	GOQ	Marshall Report Data Submission	GOQ's Letter, "Certain Softwood Lumber Products from Canada: Filing of back-up data sets and files to the Expert Report of Robert C. Marshall, Ph.D.," dated July 28, 2020	GOQ
07/28/20	GOQ	Marshall Report	GOQ's Letter, "Certain Softwood Lumber Products from Canada: Submission of the Expert Report of Robert C. Marshall, Ph.D.," dated July 28, 2020	GOQ
07/29/20	Resolute	Resolute Stumpage IQR Response	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review - Resolute's Response to Initial Stumpage Questionnaire," dated July 29, 2020	Resolute
07/30/20	JDIL	JDIL Stumpage IQR Response	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to Part 2 (Stumpage and Log Export Restraints) of Section III of the Questionnaire for Producers / Exporters," dated July 30, 2020	JDIL
08/05/20	JDIL	JDIL Non-Stumpage IQR Response	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to Part 1 (non-stumpage programs) of Section III of the Questionnaire for Producers/Exporters," dated August 05, 2020	JDIL
08/05/20	GNB	GNB Stumpage IQR Response	GNB's Letter, "Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of New Brunswick," dated August 5, 2020	GNB
08/05/20	GNB	GNB Non-Stumpage IQR Response	GNB's Letter, "Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of New Brunswick," dated August 5, 2020	GNB
08/05/20	GNS	GNS IQR Response	GNS' Letter, "Softwood Lumber from Canada: Response of the Government of Nova Scotia to the Department's Initial Questionnaire," dated August 5, 2020	GNS
08/05/20	GNS	FP Innovations Report	GNS' Letter, "Softwood Lumber from Canada: Response of the Government of Nova Scotia to the Department's Initial Questionnaire," dated August 5, 2020 at Exhibit NS-19.	GNS
08/05/20	GNS	GNS IQR Response for JDIL	GNS' Letter, "Softwood Lumber from Canada: Response of the Government of Nova Scotia to the Department's Initial Questionnaire for the Government of Canada concerning Voluntary Respondent, J.D. Irving Limited," dated August 5, 2020	JDIL

08/05/20	GOO	GOO Stumpage IQR Response	GOO's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Ontario to the Department's May 29, 2020 Questionnaire," dated August 5, 2020	GOO
08/05/20	GOO	GOO Non-Stumpage IQR Response	GOO's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Ontario to the Department's May 29, 2020 Questionnaire," dated August 5, 2020	GOO
08/05/20	GOO	KPMG Report	GOO's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Ontario to the Department's May 29, 2020 Questionnaire," dated August 5, 2020 at ON-STATS-3.	GOO
08/05/20	GOQ	GOQ IQR Response	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Quebec's Response to the Department's May 29, 2020 Initial Questionnaire," dated August 5, 2020	GOQ
08/05/20	West Fraser	WF IQR Vol. IV	West Fraser's Letter, "Certain Softwood Lumber Products from Canada: Volume IV-British Columbia Stumpage," dated August 5, 2020	West Fraser
08/05/20	West Fraser	WF IQR Vol. III	West Fraser's Letter, "Certain Softwood Lumber Products from Canada: Volume III-Alberta Stumpage and Log Export Restraints," dated August 5, 2020	West Fraser
08/05/20	West Fraser	WF IQR Vol. II	West Fraser's Letter, "Certain Softwood Lumber Products from Canada: Volume II-Non-Stumpage Programs," dated August 5, 2020	West Fraser
08/05/20	West Fraser	WF IQR Vol. I	West Fraser's Letter, "Certain Softwood Lumber Products from Canada: Volume I-General Questions," dated August 5, 2020	West Fraser
08/05/20	Canfor	Canfor IQR	Canfor's Letter, Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Initial Questionnaire Response," dated August 5, 2020.	Canfor
08/05/20	GOA	GOA IQR Response	GOA's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Alberta to the Department's May 29, 2020 Initial Questionnaire," dated August 5, 2020.	GOA
08/05/20	GOA	MNP Cross Border Report	GOA's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Alberta to the Department's May 29, 2020 Initial Questionnaire," dated August 5, 2020, at Exhibit AB-AR2-S-23.	GOA
08/05/20	GBC	GBC IQR Response	GBC's Letter, "Second Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Initial Questionnaire Response," dated August 5, 2020	GBC
08/05/20	GBC	Reishus Report	GBC's Letter, "Second Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Initial Questionnaire Response," dated August 5, 2020, at Exhibit LEP-1	GBC
08/06/20	GOC	GOC IQR Response	GOC's Letter, "Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of Canada," dated August 6, 2020	Interested Parties
08/06/20	GOC	Asker Report	GOC's Letter, "Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of Canada," dated August 6, 2020, at Exhibit GOC-AR2-STUMP-45	GOC
08/06/20	GOC	Miller Report	GOC's Letter, "Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of Canada," dated August 6, 2020, at Exhibit GOC-AR2-STUMP-46	GOC

08/07/20	Resolute	Resolute Non-Stumpage IQR Response	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review - Resolute's Response to Initial Non-Stumpage Questionnaire," dated August 7, 2020	Resolute
08/07/20	Resolute	Resolute Stumpage IQR Response	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review Resolute's Response to Initial Stumpage Questionnaire," dated August 7, 2020	Resolute
09/14/20	Commerce	Voluntary Respondent Selection Letter	Letter, "Second Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Selection of JD Irving, Ltd. as a Voluntary Respondent," September 14, 2020	JDIL
09/15/20	GOA, GOO, GOQ	GOA, GOO, & GOQ Comments on GNS Private Stumpage Survey	GOA, GOO, & GOQ's Letter, "Certain Softwood Lumber from Canada: Request for the Department to Solicit Information from the Government of Nova Scotia Regarding the 2017-18 Private Stumpage Survey," dated September 15, 2020	GNS
09/15/20	GOA, GOO, GOQ	GOA, GOO, & GOQ Comments GNS IQR Response	GOA, GOO, & GOQ's Letter, "Certain Softwood Lumber from Canada: Comments from the Governments of Alberta, Ontario, and Quebec on the Government of Nova Scotia's Initial Questionnaire Response," dated September 15, 2020	GNS
09/15/20	GOA, GOO, GOQ	IFS Report	GOA, GOO, & GOQ's Letter, "Certain Softwood Lumber from Canada: Comments from the Governments of Alberta, Ontario, and Quebec on the Government of Nova Scotia's Initial Questionnaire Response," dated September 15, 2020, at Exhibit PR-NSR-AR2-2.	GNS
09/16/20	Petitioner	NSA Submission	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: New Subsidy Allegations," dated September 15, 2020	Interested Parties
09/16/20	Petitioner	Petitioner Comments on IQR Responses	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Initial Questionnaire Responses," dated September 15, 2020	Interested Parties
10/01/20	GOO	GOO NFI	GOO's Letter, "Certain Softwood Lumber Products from Canada: New Factual Information Regarding Petitioner's Comments on the Government of Ontario's Initial Questionnaire Responses," dated October 1, 2020	GOO
10/02/20	Canadian Parties	Canadian Parties Reply to Petitioner Comments on IQR Responses	GOC, GOA, GBC, GOO, and GOQ's Letter, "Certain Softwood Lumber Products from Canada: Reply of the Government of Canada and Provincial Governments to Petitioner's Comments on the Initial Questionnaire Responses," dated October 2, 2020	Petitioner
12/02/20	Commerce	Extension of Preliminary Results Memorandum	Memorandum, "Certain Softwood Lumber Products from Canada: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review, 2019," dated December 2, 2020	Interested Parties
01/13/21	Commerce	GOO Non-Stumpage SQ on Grant Program	Letter, "Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire on Grant Program," dated January 13, 2021	GOO
01/13/21	Commerce	GOQ Non-Stumpage SQ on Grant Programs	Letter, "Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire for Grant Programs," dated January 13, 2021	GOQ
01/13/21	Commerce	Resolute Non-Stumpage SQ on Sales and Grant Programs	Letter, "Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire on Sales and Grant Programs," dated January 13, 2021	Resolute
01/14/21	Commerce	JDIL Stumpage SQ on Treelength and Product Rates	JDIL's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for Treelength and Product Rates," dated January 14, 2021	JDIL
01/27/21	JDIL	JDIL Stumpage SQR Response on Treelength and Product Rates	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to the Supplemental Questionnaire for J.D. Irving," dated January 27, 2021	JDIL
01/27/21	GOO	GOO Non-Stumpage SQR Response on Grant Program	GOO's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Ontario to the Department's January 13, 2021 Supplemental Questionnaire," dated January 27, 2021	GOO
01/27/21	GOQ	GOQ Non-Stumpage SQR Response on Grant Programs	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Quebec's Response to the Department's January 13, 2021 Supplemental Questionnaire," dated January 27, 2021	GOQ

02/08/21	Resolute	Resolute Non-Stumpage SQR Response on Sales and Grant Programs	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review Resolute's Supplemental Non-Stumpage Questionnaire Response," dated February 8, 2021	Resolute
02/09/21	Commerce	Resolute Stumpage SQ	Letter, "Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Stumpage Supplemental Questionnaire," dated February 9, 2021	Resolute
02/10/21	Commerce	GOC Non-Stumpage SQ on Tax Program	Letter, "Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire on Tax Program," dated February 10, 2021	GOC
02/10/21	Commerce	GOO Non-Stumpage Second SQ on Grant Program	Letter, "Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Second Non-Stumpage Supplemental Questionnaire on Grant Program," dated February 10, 2021	GOO
02/10/21	Commerce	GOQ Non-Stumpage SQ on Tax Programs	Letter, "Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire for Tax Programs," dated February 10, 2021	GOQ
02/10/21	Commerce	Resolute Non-Stumpage SQ on Tax Programs	Letter, "Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire on Tax Programs," dated February 10, 2021	Resolute
02/10/21	Commerce	GNS SQ for Crown-origin Stumpage Rates	Letter, "Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for Crown-origin Stumpage Rates," dated February 10, 2021	GNS
02/11/21	Commerce	JDIL Stumpage SQ on DBH Data	JDIL's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Stumpage Supplemental Questionnaire," dated February 11, 2021	JDIL
02/17/21	GNS	GNS SQR Response on Crown-origin Stumpage Rates	GNS's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Nova Scotia to Commerce's First Supplemental Questionnaire," dated February 17, 2021	GNS
02/18/21	JDIL	JDIL Stumpage SQR Response on DBH Data	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Stumpage Supplemental Questionnaire Response, dated February 18, 2021	JDIL
02/19/21	Petitioner	Petitioner Comments on Resolute's Non-Stumpage SQR on Sales and Grant Programs	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Resolute FP Canada Inc.'s Feb. 8, 2021 Non-Stumpage Supplemental Questionnaire Response," dated February 19, 2021	Resolute
02/19/21	Commerce	GOQ Non-Stumpage SQ on SOPFEU/SOPFIM	Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire on SOPFEU/SOPFIM," dated February 19, 2021	GOQ
02/19/21	Commerce	Resolute Non-Stumpage SQ on SOPFEU/SOPFIM	Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire on SOPFEU/SOPFIM," dated February 19, 2021	Resolute
02/22/21	Fornebu	Fornebu Clarification of Company Name	Fornebu's Letter, "Certain Softwood Lumber Products from Canada: Clarification of Company Name of Fornebu Lumber Company Inc.," dated February 11, 2021	Fornebu
02/24/21	Resolute	Resolute Non-Stumpage SQR Response on Tax Programs	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review: Resolute's Response to Non-Stumpage Supplemental Questionnaire on Tax Programs," dated February 24, 2021	Resolute
02/25/21	Resolute	Resolute Response to Petitioner's Comments on Resolute's Non-Stumpage SQR on Sales and Grant Programs	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review: Resolute's Rebuttal to Petitioner's Feb. 19, 2021 Comments on Resolute's Non-Stumpages Supplemental Questionnaire Response," dated February 25, 2021	Resolute
03/01/21	Petitioner	Petitioner Comments on Canfor February 12, 2021 SQR	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Comments on Canfor's Supplemental Questionnaire Response," dated March 1, 2021.	Canfor

03/01/21	Petitioner	AR1 BC Stumpage Memo	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Comments on Canfor's Supplemental Questionnaire Response," dated March 1, 2021 at Exhibit 1.	BC Parties
03/01/21	GOA, GOO, GOQ	GOA, GOO, GOQ Comments on GNS' February 17, 2021 SQR Resposne	GOA, GOO, GOQ's Letter, Certain Softwood Lumber Products from Canada: Comments from the Governments of Alberta, Ontario, and Québec on the Government of Nova Scotia's Supplemental Questionnaire Response," dated March 1, 2021	GNS
03/01/21	Resolute	Resolute Stumpage SQR1	Letter, "Resolute's Supplemental Stumpage Questionnaire Response," dated March 1, 2021	Resolute
03/03/21	GOQ	GOQ Non-Stumpage SQR Response on Tax Programs	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Quebec's Response to the Department's February 10, 2021 Supplemental Questionnaire," dated March 3, 2021	GOQ
03/03/21	GOO	GOO Non-Stumpage SQR Response on IESO Retrofit	GOO's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Ontario to the Department's February 10, 2021 Supplemental Questionnaire," dated March 3, 2021	GOO
03/03/21	GOC	GOC SQR Response on Class 43.2 Assets	GOC's Letter, "Certain Softwood Lumber Products from Canada: Supplemental Non-Stumpage Questionnaire Response of the Government of Canada," dated March 3, 2021	GOC
03/04/21	Commerce	GNS Second SQ for Crown-origin Stumpage Rates	Letter, "Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Second Supplemental Questionnaire for Crown-origin Stumpage Rates," dated March 4, 2021	GNS
03/09/21	Commerce	GOO Non-Stumpage SQ on Gaming of the IESO System	Letter, "Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire on Fraud or Gaming of the IESO System," dated March 9, 2021	GOO
03/09/21	Commerce	Resolute Non-Stumpage SQ	Letter, "Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire," dated March 9, 2021	Resolute
03/10/21	West Fraser	West Fraser Stumpage SQR1	Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Response to the Department of Commerce's DBH Supplemental Questionnaire Dated March 3, 2021," dated March 10, 2021	West Fraser
03/10/21	Canfor	Canfor Stumpage SQR1	Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's DBH Supplemental Questionnaire Response," dated March 10, 2021	Canfor
03/10/21	Resolute	Resolute Non-Stumpage SQR Response on SOPFEU/SOPFIM	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review: Resolute's Response to Non-Stumpages Supplemental Questionnaire on SOPFIM-SOPFEU," dated March 10, 2021	Resolute
03/11/21	GOQ	GOQ Non-Stumpage SQR Response on SOPFEU/SOPFIM	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Québec's Response to the Department's February 19, 2021 Supplemental Questionnaire," dated March 11, 2021	GOQ
03/15/21	Resolute	Resolute NFI to GOO's March 3, 2021 SQR Response	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review - Resolute's Submission of New Factual Information to Clarify the Government of Ontario's March 3, 2021 Supplemental Questionnaire Response," March 15, 2021	Resolute
03/15/21	Canfor	Canfor NFI on Petitioner Comments on Canfor Stumpage SQR1	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Submission of Rebuttal Factual Information to the COALITION's Comments on Canfor's Supplemental Stumpage Questionnaire Response," dated March 15, 2021	Canfor
03/17/21	Commerce	JDIL Non-Stumpage SQ	JDIL's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire," dated March 17, 2021	JDIL
03/18/21	Commerce	GOQ Non-Stumpage Second SQ on SOPFEU/SOPFIM	Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Second Supplemental Questionnaire on SOPFEU/SOPFIM," dated March 18, 2021	GOQ

03/18/21	Commerce	GOQ Stumpage SQ	Letter, "Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Stumpage Supplemental Questionnaire," dated March 18, 2021	GOQ
03/25/21	GNS	GNS Second SQR Response on Crown-Origin Stumpage Rates	GNS' Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Nova Scotia to Commerce's Second Supplemental Questionnaire," dated March 25, 2021	GNS
03/25/21	GOQ	GOQ Second Non-Stumpage SQR Response on SOPFEU/SOPFIM	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Québec's Response to the Department's March 18, 2021 Supplemental Questionnaire," dated March 25, 2021	GOQ
03/26/21	JDIL	JDIL Non-Stumpage SQR Response	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to Non-Stumpage Supplemental Questionnaire, dated March 26, 2021	JDIL
03/30/21	Resolute	Resolute Additional Non-Stumpage SQR Response	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review Resolute's Response to Non-Stumpage Supplemental Questionnaire," dated March 30, 2021	Resolute
03/30/21	GOO	GOO Non-Stumpage SQR Response on Gaming of the IESO System	GOO's Letter, "Certain Softwood Lumber Products From Canada: Response of the Government of Ontario to the Department's March 9, 2021 Supplemental Questionnaire," dated March 30, 2021	GOO
03/30/21	GOQ	GOQ Stumpage SQR	"GOQ's Letter, ""Certain Softwood Lumber Products from Canada: The Government of Québec's Response to the Department's March 18, 2021 Stumpage Supplemental Questionnaire,"" dated March 30, 2021"	GOQ
03/31/21	Petitioner	Petitioner Comments on Non-Stumpage Subsidy Programs	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Comments on the SOPFIM/SOPFEU Programs and Request for Additional Information on Other Non-Stumpage Subsidy Programs," dated March 31, 2021	Interested Parties
4/1/2021	Commerce	NSA Memorandum	Memorandum, "Analysis of New Subsidy Allegations," dated April 1, 2021	Interested Parties
04/07/21	Petitioner	Petitioner Comments on IESO Gaming	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Comments on the Government of Ontario's and Resolute FP Canada Inc.'s March 30, 2021 Non-Stumpage Supplemental Questionnaire Responses," dated April 7, 2021	GOO
04/14/21	JDIL	JDIL Non-Stumpage SQR2 Response	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to Non-Stumpage Supplemental Questionnaire," dated April 14, 2021	JDIL
04/15/21	GOA	GOA Non-Stumpage SQR1	GOA's Letter, "Certain Softwood Lumber Products from Canada: Government of Alberta's Non-Stumpage Supplemental Questionnaire Response," dated April 15, 2021.	GOA
04/16/21	GBC	GBC Non-Stumpage SQR1	GBC's Letter, "Second Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Non-Stumpage Supplemental Questionnaire Response," dated April 16, 2021.	GBC
04/19/21	GNB	GNB Non-Stumpage SQR Response	GNB's Letter, "Certain Softwood Lumber Products from Canada: Supplemental Questionnaire Response," dated April 19, 2021	GNB
04/19/21	GBC	GBC NSA QR	GBC's Letter, "Government of British Columbia's New Subsidy Allegations Questionnaire Response," dated April 19, 2021.	GBC
04/19/21	Canfor	Canfor NSA QR	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's New Subsidy Allegations Questionnaire Response," dated April 19, 2021.	Canfor
04/20/21	Petitioner	er Factual Information to Measure the Adequacy of Remu	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Benchmark Information," dated April 20, 2021.	Petitioner
04/20/21	Canfor	r Factual Information to Measure the Adequacy of Remun	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Benchmark Factual Information Submission," dated April 20, 2021.	Canfor
04/20/21	Resolute	ute Factual Information to Measure Adequacy of Remunc	Resolute's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review New Factual Information," dated April 20, 2021	Resolute

04/20/21	GOC	GOC Factual Information to Measure the Adequacy of Remuneration	GOC's Letter, "Certain Softwood Lumber from Canada: Submission of Factual Information to Measure the Adequacy of Remuneration," dated April 20, 2021	GOC
04/20/21	GOA, GOO, GOQ	GOA, GOO, GOQ Comments on Nova Scotia Weight-to-Volume Conversion Factor	GOA, GOO, and GOQ's Letter, "Certain Softwood Lumber from Canada: Request for the Department to Solicit Information from the Government of Nova Scotia Regarding Its Weight-to-Volume Conversion Factor," dated April 20, 2021	Commerce
04/20/21	GNB	GNB Factual Information to Measure the Adequacy of Remuneration	GNB's Letter, "Certain Softwood Lumber Products from Canada: Submission of Factual Information," dated April 20, 2021	GNB
4/20/2021	West Fraser	West Fraser NSA QR	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Response to the Department of Commerce's New Subsidy Allegation Supplemental Questionnaire Dated April 1, 2021," dated April 20, 2021.	West Fraser
4/20/2021	BC Parties	BC Parties Pre-Prelim Rebuttal Comments	GBC's Letter, "Certain Softwood Lumber Products from Canada: Government of British Columbia and BCLTC's Pre-Preliminary Comments," dated April 30, 2021	BC Parties
4/20/2021	JDIL	JDIL Benchmark Submission	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Benchmark Submission," dated April 20, 2021	JDIL
04/21/21	Petitioner	Petitioner Pre-Prelim Comments	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Pre-Preliminary Comments," dated April 21, 2021	Interested Parties
04/21/21	Canfor	Canfor Pre-Prelim NFI Submission	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Benchmark Factual Information Submission," dated April 21, 2021	Canfor
04/21/21	Canfor	Updated Miller Report	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Benchmark Factual Information Submission," dated April 21, 2021 at Attachment 9.	Canfor
04/22/21	West Fraser	West Fraser Non-Stumpage SQR2	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Response to the Department of Commerce's Second Non-Stumpage Supplemental Questionnaire Dated April 15, 2021," dated April 22, 2021.	West Fraser
04/23/21	GOA	GOA Pre-Prelim Comments	GOA's Letter, "Certain Softwood Lumber Products from Canada: Pre-Preliminary Comments Concerning Alberta Programs," dated April 23, 2021	GOA
04/23/21	GOO	GOO Rebuttal Comments on IESO Gaming	GOO's Letter, "Certain Softwood Lumber Products From Canada: Rebuttal of the Government of Ontario to Petitioner's April 8, 2021 Comments on Ontario's March 30, 2021 Supplemental Questionnaire Response," dated April 23, 2021	Petitioner
04/26/21	GBC	GBC Non-Stumpage SQR2	GBC's Letter, "Second Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Second Non-Stumpage Supplemental Questionnaire Response," dated April 26, 2021.	GBC
04/28/21	GNS	GNS Reply Regarding Nova Scotia's Weight-to-Volume Conversion Factor	GNS's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Nova Scotia Concerning Nova Scotia's Weight-to-Volume Conversion Factor," dated April 30, 2021	GOA, GOO, GOQ
04/29/21	GOA	GOA Non-Stumpage SQR2	GOA's Letter, "Certain Softwood Lumber Products from Canada: Government of Alberta's Second Non-Stumpage Supplemental Questionnaire Response," dated April 29, 2021.	GOA

4/30/2021	GBC	GBC Benchmark Rebuttal Submission	GBC's Letter, "Second Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia Benchmark Rebuttal Information," dated April 30, 2021	GBC
4/30/2021	GBC/BCLTC	GBC/BCLTC Pre-Prelim Comments	GBC/BCLTC's Letter, "Certain Softwood Lumber Products from Canada: Government of British Columbia and BCLTC's Pre-Preliminary Comments," dated April 30, 2021.	GBC/BCLTC
04/30/21	Canadian Parties	Canadian Parties Reply to Petitioner Pre-Prelim Comments	Canadian Parties' Letter, "Certain Softwood Lumber Products from Canada: Response to Petitioner's Pre-Preliminary Comments," dated April 30, 2021	Petitioner
04/30/21	GOO	GOO Pre-Prelim Comments	GOO's Letter, "Certain Softwood Lumber Products From Canada: Government of Ontario Comments for the Preliminary Results," dated April 30, 2021	Commerce
04/30/21	Sierra Pacific	Sierra Pacific Pre-Prelim Comments	Sierra Pacific's Letter, "Certain Softwood Lumber Products from Canada: Prel-Preliminary Comments," dated April 30, 2021	Commerce
04/30/21	Commerce	Resolute Stumpage SQ2	Letter, "Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Second Stumpage Supplemental Questionnaire," dated April 30, 2021	Resolute
04/30/21	Petitioner	Petitioner Rebuttal to Canfor Benchmark Submission	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner Rebuttal Factual Information to Canfor Corporation's Benchmark Submission," dated April 30, 2021.	Petitioner
05/06/21	Commerce	Intent to Rescind Review In Part Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Intent to Rescind the 2019 Administrative Review, in Part," dated May 6, 2021	Interested Parties
05/11/21	Resolute	Resolute Stumpage SQR2	Resolute's Letter, "CVD Second Administrative Review Resolute's Second Stumpage Supplemental Questionnaire Response," dated May 11, 2021	Resolute
05/19/21	Canadian Parties	Canadian Parties Pre-Prelim Comments on Climate Crisis	Canadian Parties' Letter, "Certain Softwood Lumber Products from Canada: Canadian Parties' Pre-Preliminary Comments Relating to the Climate Crisis," dated May 19, 2021	Commerce
05/20/21	Commerce	Quebec Specificity Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Specificity Analysis of Québec Grant & Tax Programs," dated May 20, 2021	GOQ
05/20/21	Commerce	Ontario Specificity Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Specificity Analysis of Ontario Grant Program," dated May 20, 2021	GOO
05/20/21	Commerce	Lumber V AR1 Post-Prelim Memorandum - Resolute	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Placing on the Record Resolute's AR1 Post-Preliminary Calculations," dated May 20, 2021	Resolute
05/20/21	Commerce	Resolute's AR1 Post-Prelim Calculations	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Placing on the Record Resolute's AR1 Post-Preliminary Calculations," dated May 20, 2021	Resolute
05/20/21	Commerce	Company Name Corrections	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Company Name Corrections," dated May 20, 2021	Interested Parties
05/20/21	Commerce	DBH Memorandum	Memorandum, "DBH Analysis Memorandum," dated May 20, 2021	Quebec
05/20/21	Commerce	Nova Scotia Preliminary Benchmark Memorandum	Memorandum, "Nova Scotia Benchmark Calculation Memorandum for the Preliminary Results," dated May 20, 2021	Nova Scotia
05/20/21	Commerce	Ontario Market Memorandum	Memorandum, "Ontario Private Stumpage Market Distortion," dated May 20, 2021	GOO

05/20/21	Commerce	Québec Market Memorandum	Memorandum, "Québec Private Stumpage Market Distortion," dated May 20, 2021	GOQ
05/20/21	Commerce	New Brunswick Market Memorandum	Memorandum, "New Brunswick Private Stumpage Market Distortion," dated May 20, 2021	GNB
05/20/21	Commerce	Alberta Market Memorandum	Memorandum, "Alberta Stumpage Market Distortion," dated May 20, 2021	GOA
05/20/21	Commerce	JDIL Preliminary Calculation Memorandum	Memorandum, "Prelim Results Calculations for JDIL," dated May 20, 2021.	JDIL
05/20/21	Commerce	Resolute Preliminary Calculation Memorandum	Memorandum, "Preliminary Results Calculations for Resolute FP Canada Inc.," dated May 20, 2021	Resolute
05/20/21	Commerce	West Fraser Preliminary Calculation Memorandum	Memorandum, "Prelim Results Calculations for West Fraser," dated May 20, 2021.	West Fraser
05/20/21	Commerce	Canfor Preliminary Calculation Memorandum	Memorandum, "Preliminary Results Calculations for Canfor Corporation.," dated May 20, 2021	Canfor
05/20/21	Commerce	Non-Selected Preliminary Rate Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Selected Rate for the Preliminary Results," dated May 20, 2021	Interested Parties
05/20/21	Commerce	Draft Customs Instructions	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Draft Customs Instructions," dated May 20, 2021	Interested Parties
06/02/21	Commerce	GNB DTI Grant SQR	Commerce Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Supplemental Questionnaire on the Government of New Brunswick's Department of Trade and Infrastructure Settlement," dated June 2, 2021	GNB
06/17/21	GNB	GNB DTI Grant SQR Response	GNB Letter, "Certain Softwood Lumber Products from Canada: Supplemental Questionnaire Response of Government of New Brunswick," dated June 17, 2021	GNB
06/25/21	Petitioner	Petitioner Request for Hearing	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Hearing Request," dated June 25, 2021	Commerce
06/25/21	Canadian Parties	Canadian Parties Request for Hearing	Canadian Parties' Letter, "Countervailing Duty Administrative Review of Certain Softwood Lumber Products from Canada: Request for Hearing," dated June 25, 2021	Commerce
07/14/21	Petitioner	Petitioner Case Brief	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Case Brief," dated July 14, 2021	Petitioner
07/14/21	Sierra Pacific	Sierra Pacific Case Brief	Sierra Pacific's Letter, "Certain Softwood Lumber Products from Canada: Case Brief," dated July 14, 2021	Sierra Pacific
07/14/21	GBC/BCLTC	GBC Case Brief Volume 3	GOC/GBC's Letter, "Certain Softwood Lumber Products from Canada: Volume III: Log Export Permitting Process," dated July 14, 2021	GOC/GBC
07/14/21	GBC/BCLTC	GBC Case Brief Volume 5	GBC/BCLTC's Letter, "Certain Softwood Lumber Products from Canada: Case Brief of the Government of British Columbia and the British Columbia Lumber Trade Council," dated July 14, 2021	GBC/BCLTC
07/14/21	GOO	GOO Case Brief Volume 7 Part 1	GOO Letter, "Certain Softwood Lumber Products from Canada: Case Brief of the Government of Ontario, Part I-Stumpage," dated July 14, 2021	GOO
07/14/21	GOO	GOO Case Brief Volume 7 Part 2	GOO Letter, "Certain Softwood Lumber Products from Canada: Case Brief of the Government of Ontario, Part II-Non-Stumpage," dated July 14, 2021	GOO
07/14/21	GNB	GNB Case Brief Volume 6	GNB's Letter, "Certain Softwood Lumber Products from Canada: Case Brief of the Government of New Brunswick," dated July 14, 2021	GNB
07/14/21	GOQ	GOQ Case Brief Volume 8.A	GOQ Letter, "Certain Softwood Lumber Products from Canada: Non-Stumpage Case Brief of the Government of Quebec, Volume VIII(a)," dated July 14, 2021	GOQ
07/14/21	GOQ	GOQ Case Brief Volume 8.B	GOQ Letter, "Certain Softwood Lumber Products from Canada: Non-Stumpage Case Brief of the Government of Quebec, Volume VIII(b)," dated July 14, 2021	GOQ

07/14/21	Resolute & Central Canada	Resolute Case Brief	Central Canada's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review Resolute FP Canada Inc. and Central Canada's Case Brief," dated July 14, 2021	Resolute
07/14/21	JDIL	JDIL Case Brief	JDIL's Letter, "Softwood Lumber Products from Canada: Stumpage Case Brief," dated July 14, 2021	JDIL
7/14/2021	GOA/ASLTC	GOA Case Brief Volume 4.B	GOA/ASLTC's Letter, "Certain Softwood Lumber Products from Canada: Case Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council Volume IV.B - Non-Stumpage," dated July 14, 2021	GOA/ASLTC
08/02/21	Petitioner	Petitioner Rebuttal Brief	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Rebuttal Brief," dated August 2, 2021	Petitioner
08/02/21	Sierra Pacific	Sierra Pacific Rebuttal Brief	Sierra Pacific's Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief," dated August 2, 2021	Sierra Pacific
08/02/21	Canadian Parties	Canadian Parties Rebuttal Brief Volume 2	Canadian Parties' Letter, "Certain Softwood Lumber Products from Canada: Canadian Parties' Joint Rebuttal Brief," dated August 2, 2021	Canadian Parties
08/02/21	GBC/BCLTC	GBC Rebuttal Brief	GBC/BCLTC's Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief of the Government of British Columbia and the British Columbia Lumber Trade Council," dated August 2, 2021	GBC/BCLTC
08/02/21	GOO	GOO Rebuttal Brief Volume 5	GOO Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief of the Government of Ontario, Volume V," dated August 2, 2021	GOO
08/02/21	GOQ	GOQ Rebuttal Brief Volume 6	GOQ Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief of the Government of Quebec, Volume VI," dated August 2, 2021	GOQ
08/02/21	Resolute	Resolute Rebuttal Brief	Central Canada's Letter, "Softwood Lumber from Canada: CVD Second Administrative Review Resolute FP Canada Inc.'s Rebuttal Brief," dated August 2, 2021	Resolute
08/02/21	JDIL	JDIL Rebuttal Brief	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief," dated August 2, 2021	JDIL
08/02/21	GNB	GNB Rebuttal Brief Volume 4	GNB Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief of the Government of New Brunswick, Volume IV," dated August 2, 2021	GNB
08/02/21	GNS	GNS Rebuttal Brief	GNS's Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Brief," dated August 2, 2021	GNS
08/12/21	Commerce	Extension of Final Results	Memorandum, "Certain Softwood Lumber Products from Canada: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2019" dated August 12, 2021	Interested Parties
11/23/21	Commerce	FDRCMO Specificity Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Specificity Analysis of FDRCMO," dated November 23, 2021	GOQ
11/23/21	Commerce	Resolute Final Calculation Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Final Results Calculations for Resolute FP Canada Inc.," dated November 23, 2021	Resolute
11/23/21	Commerce	Non-Selected Final Rate Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Selected Rate for the Final Results," dated November 23, 2021	Interested Parties
11/23/21	Commerce	BC Stumpage and LER Memorandum	Memorandum, "Softwood Lumber from Canada: BC Stumpage and LER Memorandum for the Final Results of CVD Administrative Review; 2019," dated November 23, 2021	GBC
11/23/21	Commerce	New Brunswick Overhang Calculations Memorandum	Memorandum, "New Brunswick Overhang Calculations," dated November 23, 2021	GNB
11/23/21	Commerce	JDIL Final Calculation Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Final Results Calculations for J.D. Irving, Ltd.," dated November 23, 2021	JDIL

11/23/21	Commerce	Canfor Final Calculation Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Final Results Calculations for Canfor," dated November 23, 2021	Canfor
11/23/21	Commerce	West Fraser Final Calculation Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Final Results Calculations for West Fraser," dated November 23, 2021	West Fraser
1/31/2020	Petitioner	Petitioner Request for Review	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Request forAdministrative Review," dated January 31, 2020	Interested Parties
7/14/21	GOA/ASLTC	GOA Case Brief Volume 4.A	GOA/ASLTC's Letter, "Certain Softwood Lumber Products from Canada: Case Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council Volume IV.A -- Stumpage," dated July 14, 2021	GOA/ASLTC