UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-122-858
Administrative Review
POR: 01/01/2021 – 12/31/2021
Public Document
E&C/OIII: Team

July 26, 2023

MEMORANDUM TO: Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

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

SUJBECT: Decision Memorandum for the Final Results of the Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021

I. SUMMARY

Commerce has completed its administrative review of the *Order* on softwood lumber from Canada for the period January 1, 2021, through December 31, 2021. 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 AR4 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.

A. General Issues

Comment 1: Whether Commerce Selected an Appropriate Number of Respondents
Comment 2: Whether Commerce's Specificity Analysis Is Consistent With the Law
Comment 3: Whether Commerce Should Consider Climate Change Goals

B. General Stumpage Issues

Comment 4: Whether Stumpage Is an Untied Subsidy
Comment 5: Whether Commerce Was Correct to Treat the GOA and GBC's Timber Tenure Systems as Part of Stumpage Subsidy Programs
Comment 6: The Appropriate Methodology to Calculate a Benefit in the Event Commerce Treats the GOA and GBC's Timber Tenures as Separate from Stumpage Subsidy Programs

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- *Alberta*

Comment 39: Whether the AESO Load Shedding Program Is Countervailable

- *British Columbia*

Comment 40: Whether the Purchase of Carbon Offsets from Canfor Is Countervailable
Comment 41: Whether British Columbia's Coloured Fuel Program Is Countervailable

- *New Brunswick*

Comment 42: Whether Commerce Should Continue to Find the Silviculture and License Management Programs Countervailable
Comment 43: Whether Commerce Should Find LIREPP Countervailable

K. Tax and Other Revenue Forgone Program Issues

- *Federal*

Comment 44: Whether the ACCA for Class 53 Assets Program Is Specific
Comment 45: Whether the AJCTC Is Specific
Comment 46: Whether the CCA for Class 1 Assets Is Countervailable
Comment 47: Whether the Federal and Provincial SR&ED Tax Credits Are Specific
Comment 48: Whether the FLTC and PLTC Are Countervailable

- *Alberta*

Comment 49: Whether the TEFU Program Is Countervailable
Comment 50: Whether the Property Tax EOA Is Countervailable
Comment 51: Whether Tax Savings Under Alberta's Schedule D Are Countervailable

- *British Columbia*

Comment 52: Whether the CleanBC CIIP and CIF Subprograms Are Countervailable
Comment 53: Whether the IPTC Is Countervailable

- *New Brunswick*

Comment 54: Whether the Gasoline and Fuel Tax Program Provides a Financial Contribution in the Form of Revenue Forgone or Can Be Found Specific
Comment 55: Whether Commerce Correctly Calculated the Benefit JDIL Received from the Atlantic Investment Tax Credit
Comment 56: Whether the New Brunswick R&D Tax Credit Is Specific
Comment 57: Whether Commerce Should Find New Brunswick's Property Tax Incentives for Private Forest Producers Program Countervailable

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- *Québec*

Comment 58: Whether the Research Consortium Tax Credit Is *De Facto* Specific
Comment 59: Whether the Federal CCA for Class 1 Assets and the ACCA for Class 29 and Class 53 Contain a Ministerial Error

L. Company-Specific Issues

- *Canfor*

Comment 60: Whether Commerce Should Correct a Ministerial Error in the British Columbia Stumpage Calculations for Canfor
Comment 61: Whether Commerce Should Correct a Ministerial Error in the Federal and British Columbia SR&ED Tax Credit Programs

- *West Fraser*

Comment 62: Whether Commerce Correctly Calculated West Fraser's Benefit Under the ACCA for Class 53 Assets Program
Comment 63: Whether to Revise West Fraser's Sales Denominators
Comment 64: Whether to Revise West Fraser's BC Stumpage and LER Calculations

II. CASE HISTORY

The selected mandatory respondents in this administrative review are Canfor and West Fraser.[1] Commerce also accepted JDIL as a voluntary respondent.[2] On January 27, 2023, Commerce published the *Lumber V AR4 Prelim*.[3] Below is a summary of the events that occurred after the publication of the *Lumber V AR4 Prelim*.

On January 24, 2023, we issued post-preliminary questionnaires to Canfor and West Fraser regarding cutting rights,[4] and received timely responses on February 3, 2023.[5] Between February 1 and 10, 2023, we issued verification outlines to the GOA, GBC, Canfor, and West Fraser.[6] From February 13 to 28, 2023, Commerce conducted verification of the questionnaire responses of the GOA, GBC, Canfor, and West Fraser. Commerce released the verification reports between April 4 and 11, 2023.[7]

[1] *See* Respondent Selection Memorandum. The complete name of each respondent as well as the names of other parties to this administrative review are identified in Appendix I to this memorandum.
[2] *See* Voluntary Respondent Selection Letter.
[3] *See Lumber V AR4 Prelim*.
[4] *See* Canfor Cutting Rights SQ; *see also* West Fraser Cutting Rights SQ.
[5] *See* Canfor Cutting Rights SQR; *see also* West Fraser Cutting Rights SQR.
[6] *See* GOA Verification Outline; *see also* GBC Verification Outline; Canfor Verification Outline; and West Fraser Verification Outline.
[7] *See* GOA Verification Report; *see also* GBC Verification Report; Canfor Verification Report; and West Fraser Verification Report.

On February 24 and 27, 2023, Commerce received timely requests to hold a hearing from the petitioner and the Canadian Parties, respectively.[8] On April 25 , 2023, various interested parties submitted timely filed letters in lieu of briefs and case briefs (first tranche) on issues related to the *Lumber V AR4 Prelim*.[9] On May 16, 2023, various interested parties submitted timely filed rebuttal briefs on those case issues contained in the first tranche case briefs.[10]

On May 17, 2023, Commerce issued its Post-Preliminary Analysis.[11]

On May 25, 2023, the petitioner submitted a timely filed case brief (second tranche) on issues related to the Post-Preliminary Analysis.[12] On June 7, 2023, the Canadian Parties submitted a timely filed rebuttal brief on those post-preliminary issues contained in the second tranche case brief.[13]

On June 29, 2023, Commerce held a public hearing.[14]

On May 4, 2023, Commerce extended the deadline for the final results of this administrative review until no later than July 26, 2023.[15]

III. PERIOD OF REVIEW

The POR is January 1, 2021, through December 31, 2021.

IV. FINAL RESCISSION OF ADMINISTRATIVE REVIEW, IN PART

As discussed in the *Lumber V AR4 Prelim*, Commerce stated its intention to rescind the administrative review of North American Forest Products Ltd. (located in Saint-Quentin, New Brunswick) because the company had no reviewable shipments, sales, or entries of subject merchandise during the POR based on an examination of the CBP data query results.[16] We invited interested parties to provide comments on the notice of intent to rescind and to submit factual information to demonstrate, if in fact, there were reviewable entries during the review period. We did not receive any comments. Therefore, in accordance with 19 CFR 351.213(d)(3), absent evidence of reviewable entries on the record, we are rescinding the administrative review of North American Forest Products Ltd. (located in Saint-Quentin, New Brunswick).

[8] *See* Petitioner Hearing Request; *see also* Sierra Pacific Hearing Request; and Canadian Parties Hearing Request.
[9] *See* Appendix III (Case-Related Documents) attached to this memorandum for a listing of the first tranche case briefs received.
[10] *Id*., for a listing of the first tranche rebuttal briefs received.
[11] *See Lumber V AR4* Post-Prelim Memorandum.
[12] *See* Petitioner May 25, 2023 Case Brief.
[13] *See* Canadian Parties June 7, 2023 Rebuttal Brief.
[14] *See* Hearing Transcript.
[15] *See* Extension of Final Results.
[16] *See Lumber V AR4 Prelim* PDM at 5.

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 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.

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- 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; 4407.13.00.00; 4407.14.00.00; 4407.19.00.01; 4407.19.00.02; 4407.19.00.54; 4407.19.00.55; 4407.19.00.56; 4407.19.00.57; 4407.19.00.64; 4407.19.00.65; 4407.19.00.66; 4407.19.00.67; 4407.19.00.68; 4407.19.00.69; 4407.19.00.74; 4407.19.00.75; 4407.19.00.76; 4407.19.00.77; 4407.19.00.82; 4407.19.00.83; 4407.19.00.92; 4407.19.00.93; 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; 4418.30.01.00; 4418.50.00.10; 4418.50.00.30; 4418.50.0050; and 4418.99.10.00; 4418.99.91.05; 4418.99.91.20; 4418.99.91.40; 4418.99.91.95; 4421.99.98.80.[17]

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.

[17] 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.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.[18]

VI. SUBSIDIES VALUATION

A. 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 AR4 Prelim*. For a description of the allocation period and the methodology used for these final results, *see* the *Lumber V AR4 Prelim*.[19]

B. Attribution of Subsidies

Interested parties raised issues in their case briefs regarding the attribution of subsidies. *See* Comments 36 and 43. For a description of the methodology used for these final results, *see* the *Lumber V AR4 Prelim*.[20]

C. 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 below. *See* Comments 4 and 63. For information on the denominators used in these final results, *see* the *Lumber V AR4 Prelim*[21] and the Final Calculation Memoranda.[22]

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 below.[23] Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[24]

Canfor: 0.19 percent *ad valorem*

[18] *See Order*, 83 FR at 349.
[19] *See Lumber V AR4 Prelim* PDM at 7-8.
[20] *Id.* at 8-11.
[21] *Id.* at 12.
[22] *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.
[23] *See* Comments 8-10 and 20-32.
[24] *See Lumber V AR4 Prelim* PDM at 35-36.

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West Fraser: 1.06 percent *ad valorem*

Provision of Stumpage for LTAR – British Columbia

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[25] Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[26]

Canfor: 0.02 percent *ad valorem*
West Fraser: 0.14 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 below.[27] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[28]

JDIL: 0.52 percent *ad valorem*

2. Grant Programs

Federal Grant Program

Green Jobs Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[29] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[30]

Canfor: 0.02 percent *ad valorem*

Alberta Grant Program

LSSi

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[31] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[32]

[25] *See* Comments 11-13 and 17-19.
[26] *See Lumber V AR4 Prelim* PDM at 34-35.
[27] *See* Comments 14-15 and 20-32.
[28] *See Lumber V AR4 Prelim* PDM at 33-34.
[29] *See* Comment 38.
[30] *See Lumber V AR4 Prelim* PDM at 36-37.
[31] *See* Comment 39.
[32] *See Lumber V AR4 Prelim* PDM 37-38.

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West Fraser: 0.06 percent *ad valorem*

British Columbia Grant Programs

Carbon Offsets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[33] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[34]

Canfor: 0.01 percent *ad valorem*

CIF

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[35] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[36]

West Fraser: 0.01 percent *ad valorem*

New Brunswick Grant Programs

New Brunswick's LIREPP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[37] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[38]

JDIL: 0.06 percent *ad valorem*

New Brunswick License Management Fees

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[39] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[40]

JDIL: 0.22 percent *ad valorem*

[33] *See* Comment 40.
[34] *See Lumber V AR4 Prelim* PDM at 38-39.
[35] *See* Comment 52.
[36] *See Lumber V AR4 Prelim* PDM at 39.
[37] *See* Comment 43.
[38] *See Lumber V AR4 Prelim* PDM at 39-40.
[39] *See* Comment 42.
[40] *See Lumber V AR4 Prelim* PDM at 40.

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New Brunswick Provision of Silviculture Grants

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[41] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[42]

JDIL: 0.24 percent *ad valorem*

Nova Scotia Grant Program

Nova Scotia Provision of Silviculture Grants

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[43]

JDIL: 0.01 percent *ad valorem*

3. Tax and Other Revenue Forgone Programs

Federal Tax Programs

ACCA for Class 53 Assets[44]

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[45] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[46]

Canfor: 0.19 percent *ad valorem*
JDIL: 0.02 percent *ad valorem*
West Fraser: 0.27 percent *ad valorem*

Apprenticeship Job Creation Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[47] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[48]

[41] *See* Comment 42.
[42] *See Lumber V AR4 Prelim* PDM at 40-41.
[43] *See Lumber V AR4 Prelim* PDM at 41.
[44] We previously titled this program "ACCA for Class 29 and Class 53 Assets." *See, e.g., Lumber V AR4 Prelim* PDM at 42. Because calendar year 2015 was the last year for the ACCA for Class 29 program, we have changed the program title to "ACCA for Class 53 Assets." *See* Comment 44.
[45] *See* Comments 44 and 59.
[46] *See Lumber V AR4 Prelim* PDM at 42-43.
[47] *See* Comment 45.
[48] *See Lumber V AR4 Prelim* PDM at 43.

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Canfor: 0.04 percent *ad valorem*

Atlantic Investment Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[49] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[50]

JDIL: 0.36 percent *ad valorem*

CCA for Class 1 Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[51] Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[52]

Canfor: 0.01 percent *ad valorem*
JDIL: 0.06 percent *ad valorem*
West Fraser: 0.01 percent *ad valorem*

FLTC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[53] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[54]

Canfor: 0.38 percent *ad valorem*
West Fraser: 0.16 percent *ad valorem*

SR&ED – GOC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[55] Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[56]

Canfor: 0.21 percent *ad valorem*
JDIL: 0.04 percent *ad valorem*

[49] *See* Comment 55.
[50] *See Lumber V AR4 Prelim* PDM at 44.
[51] *See* Comments 46 and 59.
[52] *See Lumber V AR4 Prelim* PDM at 44-45.
[53] *See* Comment 48.
[54] *See Lumber V AR4 Prelim* PDM at 45-46.
[55] *See* Comment 47.
[56] *See Lumber V AR4 Prelim* PDM at 46.

West Fraser: 0.05 percent *ad valorem*

Alberta Tax Programs

TEFU

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[57] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[58]

West Fraser: 0.01 percent *ad valorem*

Property Tax—EOA

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[59] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[60]

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 below.[61] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[62]

Canfor: 0.01 percent *ad valorem*

British Columbia Tax Programs

CIIP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[63] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[64]

West Fraser: 0.01 percent *ad valorem*

[57] *See* Comment 49.
[58] *See Lumber V AR4 Prelim* PDM at 47.
[59] *See* Comment 50.
[60] *See Lumber V AR4 Prelim* PDM at 47-48.
[61] *See* Comment 51.
[62] *See Lumber V AR4 Prelim* PDM at 48.
[63] *See* Comment 52.
[64] *See Lumber V AR4 Prelim* PDM at 49.

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IPTC / School Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[65] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[66]

Canfor: 0.01 percent *ad valorem*

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 below.[67] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[68]

Canfor: 0.04 percent *ad valorem*
West Fraser: 0.02 percent *ad valorem*

PLTC—GBC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[69] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[70]

Canfor: 0.19 percent *ad valorem*
West Fraser: 0.08 percent *ad valorem*

SR&ED Tax Credit—GBC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[71] Commerce has modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[72]

Canfor: 0.04 percent *ad valorem*
West Fraser: 0.03 percent *ad valorem*

[65] *See* Comment 53.
[66] *See Lumber V AR4 Prelim* PDM at 49-50.
[67] *See* Comment 41.
[68] *See Lumber V AR4 Prelim* PDM at 50.
[69] *See* Comment 48.
[70] *See Lumber V AR4 Prelim* PDM at 51.
[71] *See* Comment 47.
[72] *See Lumber V AR4 Prelim* PDM at 51-52.

New Brunswick Tax Programs

GNB Gasoline & Fuel Tax Exemptions and Refund Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[73] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[74]

JDIL: 0.05 percent *ad valorem*

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 below.[75] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[76]

JDIL: 0.12 percent *ad valorem*

New Brunswick R&D Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[77] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[78]

JDIL: 0.02 percent *ad valorem*

Québec Tax Program

Research Consortium Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[79] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[80]

West Fraser: 0.01 percent *ad valorem*

[73] *See* Comment 54.
[74] *See Lumber V AR4 Prelim* PDM at 52-53.
[75] *See* Comment 57.
[76] *See Lumber V AR4 Prelim* PDM at 53.
[77] *See* Comment 56.
[78] *See Lumber V AR4 Prelim* PDM at 53-54.
[79] *See* Comment 58.
[80] *See Lumber V AR4 Prelim* PDM at 54-55.

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4. Purchase of Goods for MTAR

BC Hydro EPAs

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[81] Commerce has not modified its calculation of the subsidy rate for this program from the *Lumber V AR4 Prelim*.[82]

West Fraser: 0.26 percent *ad valorem*

B. Programs Determined to Not Be Countervailable

Payments for Aerial Photography

No parties submitted briefs regarding this program. Commerce has not modified its preliminary determination that this program is not a countervailable subsidy. *See Lumber V AR4 Prelim*.[83]

Insurance Corporation of British Columbia Refunds for Premium Adjustments

No parties submitted briefs regarding this program. Commerce has not modified its preliminary determination that this program is not a countervailable subsidy. *See Lumber V AR4 Prelim*.[84]

C. Programs Determined to Not Provide Measurable Benefits During the POR

The respondents reported receiving benefits under various programs, some of which Commerce 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 AR4 Prelim*.[85] Consistent with Commerce's practice,[86] 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.

For the subsidy programs that do not provide a numerically significant benefit for each respondent, *see* the Final Calculation Memoranda.[87]

[81] *See* Comments 36 and 37.
[82] *See Lumber V AR4 Prelim* PDM at 55-56.
[83] *See Lumber V AR4 Prelim* PDM at 56-57.
[84] *See Lumber V AR4 Prelim* PDM at 57-58.
[85] *Id.* at 8-11.
[86] *See, e.g.*, *CFS from China* IDM at 15; *see also Steel Wheels from China* IDM at 36; *Aluminum Extrusions from China First AR* IDM at 14; and *CRS from Russia* IDM at 31.
[87] *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.

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D. Programs Determined to Not Be Used During the POR

Our findings regarding programs that were not used remains unchanged from the *Lumber V AR4 Prelim*.[88] For a list of the subsidy programs not used by each respondent, *see* the Final Calculation Memoranda.[89]

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 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, 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, and West Fraser for the POR.[90] We received no comments from interested parties on the methodology to calculate the non-selected rate.

IX. DISCUSSION OF ISSUES

A. General Issues

Comment 1: Whether Commerce Selected an Appropriate Number of Respondents

Petitioner's Comments[91]

- Commerce should reverse its respondent selection decision and select the appropriate number of respondents in this review that would allow it to fulfil its statutory obligation to address

[88] *See Lumber V AR4 Prelim* PDM at 58.
[89] *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.
[90] *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.
[91] *See* Petitioner Case Brief at 79-87.

subsidization across Canada's four major lumber producing provinces.

- Alternatively, Commerce should provide proper explanation as to: (1) how it was able to select at least four respondents in previous segments, but not here; and (2) how its resources changed such that it was constrained to only choose two mandatory respondents in April 2022 (Canfor and West Fraser) but then found additional resources to examine a voluntary respondent (JDIL) in August 2022.
- Commerce has a duty to calculate benefit margins "as accurately as possible."[92] Canfor and West Fraser operate only in Alberta and British Columbia. Thus, subsidies provided by the GOO and GOQ are not being captured. The *Initiation Notice* lists 78 companies located in either Ontario or Québec.[93] Given that the non-selected rate is a weighted average of the selected respondents' individual rates, these 78 companies will receive an inaccurate subsidy rate that is untethered to their actual experiences.
- In prior reviews, Commerce acknowledged the importance of geographical representation and selected a sufficient number of mandatory respondents to ensure that British Columbia, Alberta, Ontario, and Québec were examined.[94] Here, Commerce reversed its previous position, selecting only two mandatory respondents, because of resource constraints. However, the list of cases cited by Commerce, in the Respondent Selection Memorandum, to reflect its workload, includes nine of the same cases cited in prior memoranda.[95] It appears that Commerce's workload has remained unchanged from the first administrative review, but, while it had resources to examine four mandatory respondents in prior reviews, it now only has resources to examine two mandatory respondents.

No interested party submitted rebuttal comments.

Commerce's Position: Ideally, in an administrative review, Commerce would examine all exporters/producers for which a review was initiated. However, in this administrative review, a review of 289 companies was requested.[96] Because of the large number of exporters/producers covered by this review, it was not practicable for Commerce to examine each exporter/producer and determine an individual net countervailable subsidy rate for each. Commerce, thus, sought to limit its examination to a reasonable number of exporters or producers under section 777A(e)(2)(A) of the Act and 19 CFR 351.204(c)(2). Specifically, we evaluated statutory deadlines, case workload, and available staff resources to determine how many exporters/producers could reasonably be examined as mandatory respondents in the review.

As explained in the Respondent Selection Memorandum, examining each exporter/producer for which a review was requested demands significant resources because it requires Commerce to analyze each company's corporate structure, financial records, and participation in numerous and

[92] *Id*. at 79 (citing, *e.g.*, *Borusan v. U.S.*, 61 F. Supp. 3d 1337).
[93] *Id*. at 82 (citing Petitioner Request for Respondent Selection Reconsideration).
[94] *Id*. at 83 (citing *Lumber V AR1* Respondent Selection Memorandum (justifying its selection of three mandatory respondents (*i.e.*, Canfor, West Fraser, and Resolute) on the basis that the agency "will be examining the provision of subsidies in the four largest lumber-producing Canadian provinces … thus addressing one of the concerns … that there is a wide variance in the level of subsidization between provinces"). The *Lumber AR1* Respondent Selection Memorandum is contained within Petitioner Comments on CBP Data at Exhibit 11.
[95] *Id*. at 85 (citing Respondent Selection Memorandum at 3).
[96] *See Initiation Notice*, 87 FR at 13260-63; *see also Corrected Initiation Notice*, 87 FR at 21635.

complex subsidy programs.[97] In addition, pursuant to 19 CFR 351.525(b)(6)(vi) and 19 CFR 351.525(c), Commerce must examine the same categories of information for all companies which supplied subject merchandise that the individually-examined respondents exported, companies which exported subject merchandise that the individually-examined respondents produced, and certain companies determined during the course of the administrative review to be cross-owned with the respondents, *i.e.*, respondents' input suppliers and parent companies. Moreover, Commerce must solicit and analyze information from the federal and provincial governments further limiting Commerce's available resources.

To determine available resources for a segment of a proceeding, like this review, Commerce evaluates its case workload and staffing. As indicated in the Respondent Selection Memorandum, at the time of selecting mandatory respondents for this review, Office III, to which the *Order* is assigned, was also handling numerous concurrent AD and CVD proceedings.[98] The petitioner is incorrect to state that Commerce's "workload remains the same since the first administrative review,"[99] and then question why Commerce was able to select four respondents for that review, but only two mandatory respondents here. While the AD and CVD orders assigned to Office III may have remained consistent, for the most part, since *Lumber V AR1*, the number and overlapping active segments for those proceedings,[100] as well as new investigations and remands have not.

The petitioner is also mistaken that geography is a factor we are required to consider for purposes of respondent selection. There is no statutory obligation for Commerce to address subsidization across Canada's four major lumber producing provinces. As stated in the *Lumber V* Respondent Selection Memorandum, Commerce is not obligated to consider geographic coverage in selecting respondents for individual examination.[101] We explained that "where {Commerce} limits its examination to the largest exporters or producers by volume, the statute {section 777A(e)(2)(A)(ii) of the Act} requires only that {Commerce} examine the largest volume that can be reasonably examined."[102] In the *Lumber V AR1* Respondent Selection Memorandum, we reiterated that position by stating that "Commerce is not required to achieve a specific geographic coverage when selecting respondents for individual examination."[103] Subsequently in *Lumber V AR2* and *Lumber V AR3*, Commerce did not move from that position.[104] The petitioner has not raised any new arguments about geography in this review to warrant a change to Commerce's practice that geography is not a factor we are required to be considered when selecting mandatory respondents.

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[97] *See* Respondent Selection Memorandum at 3.
[98] *Id.* at 3 (footnote 10).
[99] *See* Petitioner Case Brief at 85.
[100] Active segments of a proceeding include administrative reviews, sunset reviews, change circumstances reviews, circumvention inquiries, and scope rulings.
[101] *See Lumber V* Respondent Selection Memorandum at 14 contained within Petitioner Comments on CBP Data at Exhibit 9.
[102] *Id*.
[103] *See Lumber AR1* Respondent Selection Memorandum at 8 contained within Petitioner Comments on CBP Data at Exhibit 11.
[104] *See Lumber AR2* Respondent Selection Memorandum and *Lumber AR3* Respondent Selection Memorandum contained within Petitioner Comments on CBP Data at Exhibits 7 and 14, respectively.

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Given the complexity of, and number of, programs under examination in this review, combined with overlapping statutory segment deadlines of other AD and CVD proceedings and Commerce's staffing level, we had to limit the number of mandatory respondents that could be reasonably examined when selecting those respondents on April 26, 2022.[105] Based on the organizational constraints at that time of respondent selection, we concluded that Commerce had the necessary resources to individually examine two mandatory respondents (Canfor and West Fraser) in the administrative review. Subsequently, after receipt of JDIL's voluntary initial questionnaire responses,[106] Commerce again evaluated the factors it considers when selecting respondents because deadlines, workload, and staffing are dynamic. Based on that reassessment, on August 19, 2022, Commerce then concluded that sufficient resources were available to take JDIL as a voluntary respondent in this review.[107]

As such, contrary to the petitioner's arguments, Commerce's decision to select two mandatory respondents and a voluntary respondent for this administrative review was neither arbitrary nor capricious. The decision to select Canfor, JDIL, and West Fraser as respondents in this review was based on Commerce's long-standing practice of evaluating certain factors to determine the level of available resources and thus the number of respondents that can be reasonably examined.

Thus, we find that Commerce selected an appropriate number of respondents in this administrative review, in light of the resource constraints faced by the agency and in accordance with 777A(e)(2)(A) of the Act and 19 CFR 351.204(c)(2). The mandatory respondents represent the two largest exporters/producers by value of subject merchandise imported into the United States during the POR. Furthermore, while Commerce is not obligated to achieve a specific level of geographic coverage in its selection of respondents, we disagree with the petitioner's statement that Commerce was only able to examine subsidization in Alberta and British Columbia. To the contrary, Commerce was able examine subsidies provided by not only the federal government, but also *five* provincial governments (Alberta, British Columbia, New Brunswick, Nova Scotia, and Québec).[108] We, thus, find that, the examination of three respondents in this review (two mandatory respondents and one voluntary respondent) allowed Commerce to sufficiently and accurately capture the subsidization provided to softwood lumber exporters/producers in Canada during 2021 and to determine subsidy rates, for both the individually-examined respondents and non-selected companies, which reflect that level of subsidization.

Comment 2: Whether Commerce's Specificity Analysis Is Consistent With the Law

GOC's Comments[109]

- Commerce incorrectly interprets the specificity test to require *universal* availability and use of a program, rather than the *widespread* availability and use contemplated by the Act.[110]

[105] *See* Respondent Selection Memorandum.
[106] *See* JDIL Non-Stumpage IQR Response; *see also* JDIL Stumpage IQR Response.
[107] *See* Voluntary Respondent Selection Letter.
[108] *See* "Analysis of Programs," section of this memorandum.
[109] *See* GOC Case Brief Volume I at 112-117
[110] Within its arguments, the GOC references the following programs: for *de jure* specificity—ACCA for Class 53 Assets, Apprenticeship Job Creation Tax Credit, TEFU, Lower Tax Rates for Coloured Fuel/BC Coloured Fuel

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- The SAA explains the purpose of having a specificity requirement—as a filter to exclude government provided benefits that are widely available in an economy. The specificity test is meant "to avoid the imposition of countervailing duties in situations where, because of widespread availability and use of a subsidy, the benefit of the subsidy is spread throughout an economy."[111] Similarly, the test for non-specificity is not whether the subsidy is universal or has near universal availability, but instead whether the availability and usage of the subsidy is widespread.
- The term "limits" in relation to *de jure* specificity means "to curtail or reduce" or "to restrict."[112] The term "limited" in relation to *de facto* specificity means "small in amount or number" or "restricted."[113]
- While there is no set mathematical formula for determining when a program is "limited," a program that is widely, but not universally, available cannot be considered "limited."
- Whether in a *de jure* or *de facto* inquiry, the specificity test is not one of universal accessibility but is instead an inquiry into whether the subsidy is widely available and used.

GOQ's Comments[114]

- In the *Lumber V AR4 Prelim*, Commerce incorrectly found the Research Consortium Tax Credit and the CCA for Class 1 Assets tax deduction to be *de facto* specific.[115] In reaching its finding, Commerce disregarded that the programs are not *de jure* specific and ignored that the pool of companies eligible for the tax programs is not all tax filers.
- When making a "limited in number" determination under section 771(5A)(D)(iii)(I) of the Act, Commerce should take into consideration the potential recipients to the extent that represents the enterprises that have met the criteria or conditions governing the eligibility of the subsidy.
- The sequence of analysis in the statute requires Commerce to first examine whether a program is *de jure* specific under sections 771(5A)(D)(i) and (ii) of the Act; where it is not, Commerce may then proceed to its *de facto* specificity analysis under clause (iii).[116] The *de jure* analysis informs the *de facto* analysis as to which enterprises or industries are potential recipients based on the eligibility requirements and based on the universe of enterprises eligible to receive the subsidy.
- Consequently, making a *de facto* determination requires an analysis that builds upon the program's eligibility requirements—*i.e.*, the criteria and conditions identified in the *de jure* prong of the specificity test. In other words, to trigger the *de facto* specificity analysis, Commerce must determine that the program is not *de jure* specific.
- *Bethlehem Steel Corp. v. U.S.* and *Bethlehem Steel v. U.S.* indicate that a *de facto* specificity analysis is not just an analysis of whether less than all of the eligible companies used the program. Rather, when looking at whether a program is limited in number, Commerce looks to whether: (1) the companies that received the benefits were limited to a few companies, or

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Certification, New Brunswick Property Tax Incentives for Private Forest Producer, and GNB Gasoline & Fuel Tax Exemptions and Refund Program; and for *de facto* specificity—SR&ED, CCA for Class 1 Assets, and New Brunswick R&D Tax Credit. *Id.* at 112.

[111] *Id.* at 113 (citing SAA at 930).

[112] *Id.* at 114 (citing the definition of "limit" from Webster's Dictionary).

[113] *Id.* (citing the definition of "limited" from the Cambridge Dictionary and Webster's Dictionary).

[114] *See* GOQ Case Brief Volume VII at 9-30.

[115] *Id.* at 9 (citing *Lumber V AR4 Prelim* PDM at 44-45 and 54-55).

[116] *Id.* (citing SAA at 930).

whether a lot of different companies in different industries received the benefit; (2) any industry or company received a predominant or disproportionate share of the program's benefits in in relation to the industry's or enterprise's role in the economy; and (3) in the case of discounts given pursuant to a standard mechanism, whether any industry is afforded favorable treatment.[117]

- An analysis of the "potential recipients" when making a "limited in number" determination under section 771(5A)(D)(iii)(I) of the Act is supported by WTO Panel and Appellate Body reports that address specificity under Article 2.1 of SCM Agreement. Such reports have persuasive effect in construction of a statute[118] and pursuant to the *Charming Betsy* principle, "courts should interpret U.S. law, whenever possible, in a manner consistent with U.S. international obligations."[119]

Petitioner's Rebuttal Comments[120]

- Commerce's *de facto* specificity methodology (*i.e.*, comparing the number of users of a program to the total number of companies operating in the province, or the total number of corporate tax filers during the POR) is a reasonable interpretation of the statute, as neither the Act nor the SAA dictate the exact methodology that must be applied, and has been relied upon since the investigation as well as in other CVD cases.[121]
- The statute instructs Commerce to take into account "the extent of diversification of economic activities" within the relevant jurisdiction.[122] Here, Commerce found that "Canada is economically diverse at the national level" and that "economies of sub-central regions in Canada are also economically diverse."[123] Commerce's determinations that the actual recipients of certain programs were limited in number are reasonable in light of the extent of economic diversification within Canada.
- In *Changzhou Trina Solar Energy v. U.S. (2019)*, the CIT affirmed Commerce's methodology, finding that its evaluation of "limited users" was reasonable when it found that "within the six broad industries mentioned, the actual users within those industries are also limited in number."[124]
- The Canadian Parties' reliance on *Bethlehem Steel* is off point. That case addressed disproportionality and predominant use under sections 771(5A)(D)(iii)(II)-(III) of the Act, which is not applicable to Commerce's *de facto* specificity analysis under section 771(5A)(D)(iii)(I) of the Act.
- Likewise, reliance on WTO decisions is without merit, as such decisions are irrelevant to the interpretation of domestic U.S. law.

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[117] *Id*. at 11-13 (citing *Bethlehem Steel Corp. v. U.S.*, 140 F. Supp. 2d. at 1367-1370; and *Bethlehem Steel v. U.S.*, 155 F. Supp. 2d. 7071).
[118] *Id*. at 16-22 (citing *Usinor v. U.S.*, 342 F. Supp. 2d 1279 at n. 13; *DS 353 Panel Report 2017* at para. 8.618; *DS 353 Appellate Report 2019* at para. 5.216, 5.237, 5.240, and 5.241; and *DS 353 Appellate Report 2012* at para. 887 and 883).
[119] *Id*. at 16 (citing *Timken v. U.S.*, 354 F.3d 1343 (citing *Murray v. Charming Betsy*, 6 U.S. (2 Cranch) 118)).
[120] *See* Petitioner Rebuttal Brief at 141-145.
[121] *Id*. at 141 (citing *Lumber V Final* IDM at Comment 64; SAA at 931; and *Cut-to-Length Plate from Korea* IDM at Comment 10).
[122] *Id*. at 142 (citing section 771(5A)(D)(iii) of the Act).
[123] *Id*. (citing Economic Diversification Memorandum at 3).
[124] *Id*. at 144 (citing *Changzhou Trina Solar Energy v. U.S. (2019)*, Slip Op. No. 17-00198 at 16).

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Sierra Pacific's Rebuttal Comments[125]

- Commerce explained the legitimacy of its *de facto* specificity analysis in prior segments of this proceeding.[126] The Canadian Parties' criticisms of Commerce's *de facto* specificity analysis remain substantially the same and continue to be unfounded.
- Regarding the programs at issue, Commerce properly focused its *de facto* specificity analysis on the number of companies that actually used the programs 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 the SAA, and it is not tantamount to a requirement that a subsidy be universally available and used in order to be non-specific.
- The Canadian Parties are incorrect to suggest that Commerce's approach to *de facto* specificity amounts to "rigid rules" or "mathematical formulas" and does away with the legally required case-by-case assessment of the facts.[127] Commerce does not apply a bright-line test for when the number of enterprises or industries using a subsidy is limited.
- Further, Commerce's practice demonstrates that a number which may be considered "limited" in certain circumstances—based on the total number of eligible enterprises or industries and the extent of economic diversification—may not be "limited" in other contexts.[128]

Commerce's Position: Since the investigation, the GOC and GOQ have raised the same arguments regarding Commerce's specificity analysis of certain programs, which we have consistently rejected.[129] As explained in those prior segments, we apply section 771(5A) of the Act to determine whether a subsidy program is specific. In arguing that certain subsidies are not *de jure* or not *de facto* specific under section 771(5A)(D)(i) or section 771(5A)(D)(iii)(I) of the Act, the Canadian Parties continue to make incorrect statements with respect to both the statute and Commerce's specificity analysis.

As stated in the SAA, the purpose of 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.[130] 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."[131] 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.[132]
In its specificity analysis, Commerce is guided by both the statute and SAA. Because the facts of every subsidy program are different, there is no one particular specificity test or method that Commerce applies to conduct its analysis. Rather, Commerce is afforded significant latitude and not subject to rigid rules when determining if a particular program is specific.[133]

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[125] *See* Sierra Pacific Rebuttal Brief at 22-26.
[126] *Id*. at 23 (citing, *e.g.*, *Lumber V AR3 Final* IDM at Comment 85).
[127] *Id*. at 24 (citing GOC Case Brief Volume I at 117).
[128] *Id*. at 25 (citing *Live Swine from Canada* at 13).
[129] *See*, *e.g.*, *Lumber V Final* IDM at Comment 8, 62, 64, 68, and 70; *see also Lumber V AR3 Final* IDM at Comment 2, 72, 76, 77, 78, 85, 86, 89, 101, 102, and 104.
[130] *See* SAA at 929.
[131] *Id.*
[132] *See* SAA at 931.
[133] *See Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d at 1335–1336.

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The standard employed by Commerce for its specificity analysis is found at section 771(5A) of the Act. The statute, under section 771(5A)(D)(i), informs that a subsidy is specific as a matter of law "where the authority {or legislation} providing the subsidy … expressly limits access to the subsidy to an enterprise or industry." Similarly, under section 771(5A)(D)(iii)(I), the statute informs that a subsidy is specific as a matter of fact where the "actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number." Accordingly, any express limitation, or limitation in fact, on the availability or use of a subsidy signifies that it is not widely available or used, and thus, is specific. As such, we disagree with the GOC that Commerce imposes a standard of "universal" availability when determining the specificity of a program. The specificity methodology applied by Commerce in this review is consistent with sections 771(5A)(D)(i) and (iii)(I) of the Act and the SAA, and, contrary to the GOC's arguments, is not tantamount to a requirement that a subsidy be universally available and used in order to be non-specific.

With respect to the subsidy programs referenced in the GOC's case brief,[134] we continue to disagree with the GOC that the programs are not specific. As discussed in detail at Comments 41, 44, 45, 46, 47, 49, 54, 56, and 57 below, we continue to find the tax and grant programs at issue to be either *de jure* specific under section 771(5A)(D)(i) of the Act, or *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Similarly, the GOQ continues to misconstrue the law and make inaccurate statements with respect to the analysis of *de facto* specificity. As an initial matter, we agree with the GOQ that the sequence of analysis in the statute requires Commerce to first examine whether a program is *de jure* specific under section 771(5A)(D)(i) of the Act, and where it is not, Commerce then proceeds to examine whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act. However, we disagree with the GOQ's interpretation of how Commerce should conduct its *de facto* specificity analysis.

Under the Act, *de facto* specificity is separate and distinct from *de jure* specificity. The *de jure* analysis does not inform the *de facto* analysis, given that the statute prescribes different requirements for each analysis. The *de facto* analysis does not rely on a *de jure* finding of which enterprises or industries are potential recipients of the subsidy based on eligibility requirements. A *de facto* specificity determination does not build upon the program's eligibility requirements or access as described by relevant laws and regulations governing the programs—*i.e.*, the criteria and conditions identified in the *de jure* prong of the specificity test.

Although access and eligibility as described by relevant laws and regulations governing the relevant subsidy programs are factors in the analysis of *de jure* specificity under section 771(5A)(D)(i) of the Act, under the *de facto* analysis at section 771(5A)(D)(iii)(I) of the Act, the factor that Commerce analyzes is whether the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number for the investigated program. Moreover, under the specificity test as set forth in the SAA, Commerce is required to determine

[134] *See* GOC Case Brief Volume I at 112 (footnote 326 and 327).

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whether the subsidy program is "widely used throughout an economy."[135] Accordingly, the potential recipients of a subsidy based on criteria or conditions governing the eligibility of the subsidy is irrelevant under a *de facto* specificity analysis.

As noted above, 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 or industry 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.[136] Our *de facto* specificity methodology—comparing the number of users of a program to the total number of companies operating in the province, or the total number of corporate tax filers during the POR—is a reasonable interpretation of the statute, as neither the Act nor the SAA dictate the exact methodology that must be applied, and has been relied upon since the investigation.[137]

Thus, for this review, we have again followed the instructions of the Act, SAA, and our practice in determining whether the subsidy programs referenced in the GOQ's case brief (*i.e.*, Research Consortium Tax Credit and CCA for Class 1 Assets) are *de facto* specific. Consistent with the *Lumber V AR3 Final*, we continue to disagree with the GOQ that Commerce was required to analyze only a subset of companies based on eligibility requirements described at section 771(5A)(D)(ii) of the Act (and therefore hypothetically could have benefited from the program).[138] 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 government took actions to limit, through eligibility criteria, the number of recipients of the subsidy programs.

In reaching its specificity finding, Commerce looks at the economy as a whole in determining whether or not the number of enterprises or industries receiving a subsidy is, in fact, limited.[139] Commerce's analysis in this administrative review, as well as its analysis in prior segments of this proceeding is fully consistent with Commerce's current practice, regulations, and the language of the SAA. Consequently, as discussed in detail at Comments 58 and 46, we continue to find the Research Consortium Tax Credit and CCA for Class 1 Assets programs to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Lastly, we find the GOQ's reference to *Bethlehem Steel Corp. v. U.S.* for support of its *de facto* specificity arguments to be irrelevant. *Bethlehem Steel Corp. v. U.S.* addresses disproportionality and predominant use under sections 771(5A)(D)(iii)(II)-(III) of the Act, which is not applicable to Commerce's *de facto* specificity analysis under section 771(5A)(D)(iii)(I) of the Act.[140] We determined that the subsidy programs at issue here are *de*

[135] *See* SAA at 929.
[136] *See CRS from Korea* IDM at Comment 13.
[137] *See Lumber V Final* IDM at Comments 62 and 64.
[138] *See Lumber V AR3 Final* IDM at Comment 2.
[139] *See* SAA at 930.
[140] *See Bethlehem Steel Corp. v. U.S.*, 140 F. Supp. 2d. at 1367-1370.

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facto specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the benefits under each subsidy program are limited in number on an enterprise or industry basis.[141]

Additionally, we find the GOQ's references to WTO reports to be immaterial. 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.[142] 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.[143] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[144]

Comment 3: Whether Commerce Should Consider Climate Change Goals

GOC's and GBC's Comments[145]

- Several programs in the *Lumber V AR4 Prelim* that involve sustainability, energy efficiency, and GHG emissions reduction were preliminarily found to be countervailable. These findings are at odds with the Biden Administration's executive order directing trade policy to address the global climate crisis. The countervailable findings are in direct conflict with the Biden Administration's mandate that climate change considerations be an essential element of U.S. foreign policy.
- Commerce should take into account the Administration's stated positions on climate change, reducing GHG, and protecting the environment in its considerations of these programs, and reverse the countervailable findings for the BC Hydro EPAs program, AESO LSSi program, CleanBC Program for Industry programs, Carbon Offsets, and the LIREPP for the final results.

Petitioner's Comments[146]

- The GOC's arguments have no basis in either U.S. treaty obligations or the U.S. statute.
- The argument that subsidies advance certain environmental and social justice policy goals plays no role in Commerce's administration of U.S. law. The GOC's argument regarding market-based compliance mechanisms specifically, and their underlying policy rationale, is also not relevant to CVD law.
- Commerce has made it clear that, "{w}ithin 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."[147] Commerce should continue to reject the Canadian Parties' arguments and rely only on the factors specifically enumerated in the statute to analyze countervailability in this review.

[141] The programs are SR&ED, CCA for Class 1 Assets, New Brunswick R&D Tax Credit, and Research Consortium Tax Credit.
[142] *See Corus Staal v. U.S. (2005)*, 395 F. 3d 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F. 3d 1375; and *NSK v. U.S.*, 510 F. 3d 1379-80.
[143] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[144] *See* SAA at 659.
[145] *See* GOC Case Brief Volume II at 117 – 119, and GBC Case Brief Volume V at 12.
[146] *See* Petitioner Rebuttal Brief at 8 – 9.
[147] *Id*. at 8 (citing *Lumber V AR3 Final* IDM at 48).

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Commerce's Position: British Columbia's CleanBC Program for Industry subprograms, BC Hydro EPA program, and Carbon Offsets program are discussed in Comment 52, 36, 37, and 40; Alberta's AESO LSSi program is discussed in Comment 39; and New Brunswick's LIREPP is discussed in Comment 43 of this memorandum. Similar arguments to those presented above have been previously considered and rejected in prior reviews.[148] We disagree with the GOC's arguments that Commerce should reverse its countervailability findings for subsidy programs that fulfill the Canadian government's social or environmental policy goals. Any advantages to the governments or the general public as a result of such subsidy programs, or the effect the subsidies may have, is not relevant to the benefit that the respondents received under the program. Under 19 CFR 351.504 and 351.509, the regulations related to measuring grants and direct taxes, Commerce does not contemplate any advantages the government might receive by administering the program.[149] Whether the governments were able to realize energy efficiencies or advance their climate change initiatives are immaterial to Commerce's examination.

As such, the GOC's arguments 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. Additional considerations, such as mitigating the effects of climate change, are beyond the purview of what Commerce is able to consider under the Act and its regulations.

B. General Stumpage Issues

Comment 4: Whether Stumpage Is an Untied Subsidy

JDIL's Comments[150]

- JDIL supplied inputs (*i.e.*, wood chips) to its cross-owned companies, IPP, IPL, and Irving Tissue, which were primarily dedicated to the production of downstream products (*i.e.*, pulp and paper); therefore, in accordance with 19 CFR 351.525(b)(6)(iv), the benefit should be attributed not only to JDIL's sales, but also to sales of these downstream products made by cross-owned companies.
- Commerce determined in the *SC Paper from Canada – Expedited Review – Final Results* that wood chips are "primarily dedicated" to the production of pulp, and pulp is "primarily dedicated" to the production of paper; therefore, under 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.[151]
- 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

[148] *See, e.g.*, *Lumber V AR3 Final* IDM at Comment 56 (Custom Energy Solutions) and Comment 83 (Hydro-Québec's EDL).
[149] *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.").
[150] *See* JDIL Case Brief at 63-71.
[151] *Id.* at 65 (citing *SC Paper from Canada – Expedited Review – Prelim Results*, unchanged in *SC Paper from Canada – Expedited Review – Final Results*).

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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 production of subject merchandise to a cross-owned, downstream producer of subject merchandise."[152]

- 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 does not also apply the regulation when doing so would decrease the respondent's overall subsidy rate. This unequal application of the attribution rule results in over-collecting countervailing duties.
- Commerce's finding 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.
- In addition, the sales denominator Commerce used for JDIL's stumpage for LTAR program, which consisted of only softwood lumber sales and sawmill byproduct/co-product sales, is inconsistent with 19 CFR 351.525(b)(6)(iv), because Crown stumpage is meant to "benefit the production of both the input and downstream products{,}"[153] and, as a result, the downstream sales by cross-owned input suppliers must also be included in the sales denominator.
- Subsidies received by JDIL, including stumpage for LTAR, must be attributed not only to JDIL's total sales, but also the downstream sales of affiliated companies IPP, IPL, and Irving Tissue, minus intercompany sales.

Petitioner's Rebuttal Comments[154]

- 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 is "tied to the production or sale of a particular product, {Commerce} will attribute the subsidy only to that product."[155]
- 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.
- Commerce has determined in previous segments of this proceeding 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.[156]

[152] *Id.* at 66 (citing *Lumber V AR3 Final* IDM at 57-58).
[153] *Id*. at 67 (citing *CVD Preamble*, 63 FR at 65401).
[154] *See* Petitioner Rebuttal Brief at 251-255.
[155] *Id*. at 253.
[156] *Id*. at 254 (citing *Lumber IV Final* IDM at 20-21 (quoting *Lumber III Final*, 57 FR at 22570, 22576)).

- 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'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.[157] 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 JDIL'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 AR1 Final*:

> 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.[158]

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.

[157] *See CVD Preamble*, 63 FR at 65400.
[158] *See Lumber IV AR1 Final* IDM at 7.

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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.[159] In the *Lumber V AR4 Prelim*, we attributed the benefit from subsidies that JDIL received to its total sales, because JDIL is the sole subject merchandise producer.[160] 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 POR."[161] 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 *Lumber V AR3* and *Lumber V AR2*, 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).[162] 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, JDIL acknowledges that subsidies received by IPP, 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.[163] 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,[164] 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.

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[159] *See Lumber V AR3 Final* IDM at Comment 9; *see also Lumber V AR2 Final* IDM at Comment 8; and *Lumber V AR1 Final* IDM at Comment 114.
[160] *See Lumber V AR4 Prelim* PDM at 10, 33-34, 40-41, 43-46, and 52-54.
[161] *Id.* at 28.
[162] *See Lumber V AR3 Prelim* PDM at 10 and 33-34, unchanged in *Lumber V AR3 Final*; *see also Lumber V AR2 Prelim* PDM at 31 and 36, unchanged in *Lumber V AR2 Final*.
[163] 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.
[164] *See Lumber V AR3 Final* IDM at Comment 9.

JDIL cites to prior Commerce decisions to argue that IPP, IPL, and Irving Tissue should be included in JDIL's sales denominator.[165] However, in the instant review, Commerce is not treating JDIL as an input supplier. As a result, there is no need to account for sales of input products or downstream products as described under 19 CFR 351.525(b)(6)(iv).

Comment 5: Whether Commerce Was Correct to Treat the GOA and GBC's Timber Tenure Systems as Part of Stumpage Subsidy Programs

Petitioner's Comments[166]

- Record evidence shows that the provision of cutting rights and stumpage are two separate subsidies pertaining to two separate goods. Countervailing this program is the appropriate means of effectuating the CVD law and is supported by the record, regardless of whether Commerce has applied a "tenure security" adjustment in British Columbia. Failing to countervail the provision of cutting rights based on the "purpose" of the provision is unreasonable and inconsistent with Commerce's practice.
- Commerce concluded in the Post-Preliminary Analysis that cutting rights and stumpage are part of one system, but the record shows that cutting rights and stumpage are two separate goods. That they are separate goods is made clear by both statements from British Columbia politicians and also the financial statements of West Fraser and Canfor, which contain tenure asset values that do not include values for logs harvested under the tenures, but rather have separate inventory valuations for logs. These financial statements clearly show that, regardless of, to use Commerce's parlance, "what the purpose of the tenure system is,"[167] Canfor, West Fraser, and their auditors recognize tenures and stumpage as separate assets.
- Tenures have value because they guarantee a *supply* of timber and not necessarily because the guarantee affects the stumpage *price*. This significance is substantiated by statements on the independent value of tenure on the record from entities including BC lumber producers, a BC parliamentarian, and the GOA. In other words, the real value provided by tenures is stability and security for long-term business operations, a stability and security not available *via* spot market purchases of timber.
- The benefits of tenure security are not merely theoretical. For example, Interfor provided as a rationale for a 2019 tenure purchase that the purchase would allow Interfor to pursue an investment opportunity, while a BC parliamentarian stated that the ability of West Fraser and Canfor to swap tenures allowed them to keep open mills that would have otherwise closed.
- While the tenure system is a mechanism for providing standing timber, the guarantees and security provided by the tenures, in contrast to auctions and spot sales, affect lumber producers' overall business operations. In contrast, Commerce's tenure security adjustment treats the tenure system as only affecting the stumpage price. Further, Commerce's methodology erroneously assumes that if a company chooses not to harvest from a given tenure in a particular year, the supply guarantee from the tenure is worthless. This assumption is incorrect because much of the value of tenures lies in allowing companies to conduct various

[165] *See* JDIL Case Brief at 65 (citing *Welded Line Pipe from Turkey* IDM at 43, and *IPA from Israel*, 63 FR at 13633).
[166] *See* Petitioner May 25, 2023 Case Brief at 2-16.
[167] *Id.* at 6 (citing *Lumber V AR4* Post-Prelim Memorandum at 4).

levels of harvesting in any given year without impacting future input supply. This security allows mills to continue running and making investments for the future, which has implications far broader than the current tenure security adjustment. Commerce's calculation, though flawed, does acknowledge this to at least an extent by dividing the POR value of tenures over tenure AAC for a given year, rather than stumpage volume harvested and paid for.

- The distinction between cutting rights and stumpage is also underscored by the timing at which the provisions of these goods occur. The provision of tenures occurs every 15-25 years for a given tenure, while the provision of stumpage occurs every year, multiple times per year.
- The provincial governments are providing an actual asset to the forestry industry, which is a separate asset from standing timber and thus a standalone financial contribution according to the plain language of section 771(5)(D) of the Act.
- Commerce's decision to make a tenure security adjustment does not eliminate the responsibility to countervail the separate provision of cutting rights. Further, Commerce has not accounted at all for the provision of cutting rights by the GOA, despite having found that tenures provide value. This plainly contradicts the Act's requirement that Commerce shall impose duties on identifiable and measurable countervailable subsidies. In *TMK IPSCO* and *GPX Tire Corp.*, the CIT remanded Commerce determinations for failing to fully evaluate certain subsidies, and in *Acciai Speciali Terni S.p.A.*, the CIT explained that once Commerce has begun a CVD investigation "it cannot, in the name of efficiency considerations, dispense with its obligation to render a fair and accurate determination."[168]
- Here, Commerce has found that tenure security has value and that the record allows that value to be quantified. As explained above, and confirmed in statements by members of the Alberta and British Columbia forestry industries, this value accrues to the respondents' wider business operations by allowing for greater economic certainty, rather than merely affecting the value of stumpage. Thus, Commerce has a statutory obligation to impose a countervailing duty equivalent to the net subsidy provided by the provision of these goods.
- The relevant question for Commerce is whether the price paid to the government for tenure assets is adequate. However, in the Post-Preliminary Analysis, Commerce only addressed whether the price paid for stumpage was adequate. Further, by conducting this analysis only through the stumpage price, Commerce ignored the separate value of tenure security in Alberta.
- Commerce found in the Post-Preliminary Analysis that cutting rights and stumpage could not be assessed separately because their purposes are interlinked. However, this reasoning, which assumes that two related government subsidy programs cannot be addressed separately, is inconsistent with Commerce's practice regarding findings of countervailability. For example, Commerce has repeatedly declined to consider the relationship between the FLTC and PLTC in the context of countervailability and has continued to countervail them separately, in spite of their related purposes. In the *CVD Preamble*, Commerce explains that "the impact of the benefit under one subsidy program should not be considered in calculating the benefit under a separate program."[169]
- Further, when looking at subsidy programs related to energy efficiency, green jobs, or reduction of emissions, Commerce has declined to take into account the broader social or political purpose, explaining that "Commerce is charged with administering and enforcing the

[168] *Id.* at 11 (citing *Acciai Speciali Terni S.p.A. v. U.S.*, 26 CIT 148, 164 (2002).
[169] *Id.* at 14 (citing *CVD Preamble* at 63 FR 65362).

CVD law to all subsidies under examination equally, notwithstanding the purpose or secondary effects of a program"[170] and that advantages for government or society stemming from a subsidy program are not relevant.

- Taking into account these practices, it is arbitrary for Commerce to rely on the purpose of a financial contribution or its relation to a separate financial contribution as a basis to not countervail the cutting rights program. The record shows that cutting rights are a valuable good separate from stumpage, and thus, there is a financial contribution within the meaning of the Act. Commerce's consideration should not be affected by the intent behind the provision or whether another financial contribution occurs as a result of this provision.

Canadian Parties' Rebuttal Comments[171]

- Commerce's decision to not treat the provision of tenures and stumpage as two separate subsidy programs was correct. Record evidence, verified by Commerce in this review, shows that the provision of long-term tenures and the purchases of stumpage from those tenures are integrally connected and cannot be separated into independent financial contributions. This approach is consistent with Commerce's long-standing findings and, further, has been argued for by the petitioner over the course of three separate *Lumber* proceedings stretching over 30 years.
- The courts have affirmed that Commerce has discretion in choosing an appropriate analytical model to carry out its statutory responsibilities. In the Post-Preliminary Analysis, Commerce found that the values of tenures and stumpage were intertwined and then made an adjustment to capture the alleged value of "tenure security," such that the numerator for West Fraser and Canfor's calculated countervailable subsidy rates increased.
- This approach is consistent with *CRS from Russia*, where Commerce treated mining licenses provided by the Government of Russia as a right to extract and constructed a benchmark based on the POI value of extracted coal. In other words, Commerce determined the benefit from the provision of the license in relation to the goods extracted under that license. Similarly, in *Phosphate Fertilizers from Russia*, Commerce calculated a benefit "not on the value of the mining rights *per se*, but on the value of the underlying good conveyed *via* the mining rights{.}"[172] Here, as in these two cases, Commerce accounted for the alleged benefit through the valuation of timber, the underlying and only good provided.
- The petitioner's argument that cutting rights and stumpage are two separate goods is inconsistent with Commerce's prior findings. In the *Lumber V Final*, Commerce explained that the good provided to the respondents was standing timber, and there was no separate provision of cutting rights or the right to harvest. Commerce has thus already concluded the right to harvest is not severable from stumpage, and the petitioner presents no evidence that establishes otherwise.
- If Commerce continues to find that long-term tenures confer security to holders, the methodology used in the Post-Preliminary Analysis of treating such security as part of the alleged provision of stumpage for LTAR is supported by record evidence.
- Timber tenures impact the price an entity pays for the right to harvest from a particular location. As Commerce noted in the GBC Verification Report, the GBC operates an integrated

[170] *Id.* (citing *Lumber AR3 Final* IDM at Comment 7).
[171] *See* Canadian Parties June 7, 2023 Rebuttal Brief at 1-14.
[172] *Id.* at 6 (citing *Phosphate Fertilizers from Russia* IDM at 18-19).

forestry system where long-term tenures are granted in return for the tenureholders operating under sustained-yield forest management. Under the 1947 *Forest Act*, which Commerce noted established the basic principles underpinning the GBC's forestry regime, timber tenures established not only rights and obligations, but also harvest volumes and stumpage rates. The close linkage between tenures and stumpage has characterized the GBC's forestry regime since that point.

- While the GBC's approach to determining allowable harvest volumes and calculating stumpage rates has evolved since the 1947 *Forest Act*, the basic linkage between tenures and stumpage remains. In addition to requiring holders to carry out forest management activities, long-term tenures, as noted by Commerce, oblige holders to pay stumpage for timber harvested on them.
- The petitioner's argument that the GBC's conferral of long-term tenures is a separate financial contribution contradicts the petitioner's own longstanding request for a tenure security adjustment to the British Columbia stumpage benchmark. This request was made in the *Lumber III* and *Lumber IV* proceedings and also in three separate segments of the *Lumber V* proceeding. The Post-Preliminary Analysis explained why Commerce found that the record supported such an adjustment, and there is no basis for abandoning that methodology.

Commerce's Position: We stress at the outset that the allegations at issue are novel and unique, as is Commerce's analysis of such allegations. However, after consideration, we disagree with the petitioner's claim that Commerce was incorrect to find the GBC and GOA's timber tenure systems to be part of those provinces' stumpage subsidy programs in the Post-Preliminary Analysis, and to capture any benefit conferred by tenure security via the stumpage for LTAR programs. These findings were in accordance with Commerce's consistent definition of stumpage, and the petitioner has not provided a basis for changing that definition.

In the Post-Preliminary Analysis, Commerce found that "the record of this review continues to support the prior findings that timber tenures are a component part of an overall stumpage system to provide standing timber to lumber producers."[173] The petitioner disputes this finding, arguing that a variety of record evidence confirms that cutting rights and stumpage are two separate goods that have distinct value.[174] For example, the timber tenure asset values recorded on West Fraser and Canfor's financial statements do not include logs harvested under the tenures; rather, all logs are separately valued as inventory.[175] The value of cutting rights, the petitioner emphasizes, comes from long-term security that benefits the entire operations of a company.[176]

We agree that timber tenures have value,[177] and the record demonstrates that companies may record that value as an individual line item in their books and records. However, we do not find these facts mean that the conferral of timber tenures is automatically a separate subsidy program from the provision of stumpage. Commerce has consistently rejected a narrow definition of

[173] *See* Post-Preliminary Analysis at 3.
[174] *See* Petitioner Case Brief (Second Tranche) at 2-5 (citing
[175] *Id.* at 3 (citing West Fraser Non-Stumpage IQR Response at Exhibit WF-AR4-GEN-6 at 15 and Canfor Company Affiliation Response at Exhibit 6 at 28).
[176] *Id.* at 6-8.
[177] *See* Post-Preliminary Analysis at 4 "extensive record evidence supports the contention that tenures have value."

"stumpage," explaining that while the word "stumpage" can have different meanings, in the context of these CVD proceedings, we define stumpage as the overall systems operated by provincial governments to provide Crown-origin standing timber to respondents.[178] Furthermore, Commerce has repeatedly stated that, "regardless of whether the provinces were supplying timber or making it available through a right of access, they were providing standing timber."[179] In the Post-Preliminary Analysis, Commerce evaluated record evidence concerning the part of the stumpage systems of British Columbia and Alberta represented by timber tenures and the value of those timber tenures to respondents.[180] In British Columbia, we adjusted the tier-three benchmark to account for the value of those tenures during the POR, while in Alberta we did not make any adjustment, because, as we have explained, the Nova Scotia benchmark is a "pure" stumpage benchmark, and it would be distortive to either add or subtract from it values other than direct stumpage prices such as those associated with tenure obligations.[181]

Thus, we have examined and analyzed the tenures and their value to respondents consistent with the analytical framework Commerce has applied across the course of the entirety of the *Lumber IV* and *Lumber V* proceedings. The petitioner has not explained why this framework would no longer apply nor provided an updated, narrower definition of stumpage that would be consistent with its arguments that Commerce should consider cutting rights and stumpage as separate programs.

The petitioner also argues that the Post-Preliminary Analysis was incorrect to consider the "purpose" of timber tenures, as doing so is inconsistent with Commerce's practice of not considering the intent or purpose of subsidy programs. While we agree with the petitioner's general point regarding not considering intent or purpose, we find that the petitioner has misconstrued the intent of Commerce's use of the word "purpose" in this context. The petitioner highlights as an example Commerce rejecting prior arguments that the FLTC and PLTC were part of an overall government policy that resulted in no net revenue being forgone and thus not countervailable subsidies.[182] However, that situation involved a claim by respondents that the FLTC and PLTC should not be countervailed because they merely undid a logging tax, so as to make forestry companies taxed at the same rate as other companies.[183] In other words, the respondents' request to consider the "purpose" of the subsidy was a request to use the logging tax as an offset, an offset that Commerce found did not fall under the permissible categories enumerated in the Act.[184] In contrast, Commerce's use of the word "purpose" in the context of provincial stumpage systems was not related to the potential benefit to the public from stumpage, but rather was illustrative in attempting to achieve a clear and consistent definition of the disputed term "stumpage."[185]

[178] *See, e.g., Lumber V Prelim* PDM at 25.
[179] *Id.* at 25.
[180] *See* Post-Preliminary Analysis at 4-5.
[181] *See Lumber V Final IDM* at Comment 43.
[182] *Id.* at 13 (citing *Lumber V AR1 Final* IDM at Comment 90).
[183] *See Lumber V AR1 Final* IDM at 328-329.
[184] *Id.* at 331-33.
[185] *See Lumber IV Final* IDM at 'Analysis of Programs - I. Provincial Stumpage Programs Determined To Confer Subsidies – Financial Contribution.'

Similarly, the petitioner cites to Commerce's prior explanations that"{w}ithin 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"[186] and that whether a subsidy "advances {government} policies is immaterial to Commerce's examination."[187] Once again, however, we find such citations are not relevant to this situation. These citations relate to Commerce's rejection of the notion that (alleged) societal benefit of subsidy programs bears on the countervailability of such programs. Similar to what we noted above, Commerce's use of the word "purpose" as it concerns provincial stumpage systems was not related to potential benefit to the public from stumpage somehow offsetting stumpage payments or making stumpage not countervailable, but rather used merely to achieve a clear and consistent definition of the disputed term "stumpage."[188]

Comment 6: The Appropriate Methodology to Calculate a Benefit in the Event Commerce Treats the GOA and GBC's Timber Tenures as Separate from Stumpage Subsidy Programs

Petitioner's Comments[189]

- A benefit is conferred every time a timber tenure is bestowed, renewed or replaced by the GOA or GBC. While the Canadian Parties have tried to argue that license renewal is "automatic" or "guaranteed," that is contrary to the actual record evidence. The GOA and GBC both operate lengthy renewal processes that involve the evaluation of various different factors, none of which would be required if the renewal processes were actually automatic. Further, the laws in British Columbia concerning compensation for tenure takebacks only consider the remaining term of the license.
- While West Fraser and Canfor may conduct their business operations on the assumption that licenses will be continually renewed, that does not change that both the GOA and GBC operate tenure systems where the renewal or replacement of a license is the result of a specific government action that constitutes the provision of a good and the conferral of a benefit.
- While Commerce's regulations call for LTAR subsidies to normally be treated as recurring, the regulations also note that the analysis of whether to consider subsidies recurring or non-recurring is flexible and contain three factors that would lead typically recurring benefits to be considered as non-recurring.
- These subsidies are exceptional, as the recipients cannot expect to receive them every year of the AUL. They require express government authorization or approval *via* specific and complex processes for license provision and replacement, with approval on a case-by-case basis. Finally, they are tied to the capital assets of the respondents, as record evidence shows that they benefit the expansion and continued existence of the firms and are thus tied to capital structures or assets.
- Separate from meeting the three criteria for non-recurring allocable subsidies, it is logical to allocate the benefit over the AUL given that these are long-term tenure rights, and it is

[186] *Id.* at 14 (citing *Lumber V AR3 Final* IDM at 31).
[187] *Id.* (citing *Lumber V AR3 Final* IDM at 324).
[188] *See Lumber IV Final* IDM at 'Analysis of Programs - I. Provincial Stumpage Programs Determined To Confer Subsidies – Financial Contribution.'
[189] *See* Petitioner May 25, 2023 Case Brief at 16-29.

nonsensical to imply that West Fraser and Canfor only benefit from the cutting rights in the single year a license is granted.
- In the Post-Preliminary Analysis, Commerce recognized that West Fraser and Canfor's tenure purchase valuations are reasonable valuations for tenures in the free market. These prices are based on negotiations with private third parties and represent valuations and considerations specific to particular stands of timber. As such, they provide a clear tier-one benchmark to measure the remuneration paid to the government for the provision of tenures in the manner explained below.

Canadian Parties' Rebuttal Comments[190]
- There is no reason for Commerce to consider the petitioner's arguments concerning benefit calculation if Commerce correctly treats tenure systems as part of stumpage.

Commerce's Position: As discussed in Comment 5 above, we are not altering our finding in the Post-Preliminary Analysis that any value conferred by timber tenures in Alberta and British Columbia are most appropriately examined as part of those provinces' stumpage systems, rather than as individual subsidy programs.[191] Thus, the petitioner's arguments on how to calculate benefits for timber tenures as individual subsidy programs are moot.

Comment 7: Whether Commerce Should Make Adjustments to Stumpage Rates Paid by the Respondents to Account for "Total Remuneration" in Alberta and New Brunswick

GOC's Comments[192]
- Under section 771(5)(E) of the Act, "there is a benefit to the recipient" if the government provides a good "for less than adequate remuneration."
- The fundamental question in an analysis of adequacy of remuneration, as with any assessment of benefit, is whether the government program—in this case the provision of Crown-origin standing timber—has placed the respondents in a better position than they would have been absent the program.[193]
- To answer that question in accordance with the Act and Commerce's regulations, Commerce must account for all the remuneration exchanged for the good.
- As remuneration for Crown-origin standing timber in Alberta, each of the provincial governments require respondents (and other stumpage purchasers) to provide compensation in various forms.
- That remuneration includes both the direct payment of per-unit timber dues and other payments allocated to specific uses as directed by the province, and obligations to perform services (resulting in quantifiable costs) that the provincial governments desire be performed (*e.g.*, road construction on, and management and reforestation of, Crown land).
- Extensive record evidence shows that firms must agree to incur these costs to purchase Crown-origin standing timber.

[190] *See* Canadian Parties June 7, 2023 Rebuttal Brief at 14.
[191] *See* Post-Preliminary Analysis at 3.
[192] *See* GOC Case Brief Volume I at 92-111.
[193] *Id*. at 94 (citing *CVD Preamble*, 63 FR 65359).

- All these costs together represent the remuneration that the seller (*i.e.*, the province) requires and that respondents incur in exchange for standing timber on the seller's land.
- Commerce's practice has been to limit the LTAR benefit analysis to "pure" stumpage.[194]
- The very concept of a "pure" stumpage price, however, does not exist for respondents because, to access Crown-origin standing timber, they must pay the monetary per-unit charges and provide other forms of remuneration.
- Commerce cannot use the invented concept of a "pure" stumpage price to justify excluding elements of the remuneration exchanged for Crown timber in Alberta.
- There is no evidence on the record that private stumpage sellers in Nova Scotia required private stumpage buyers to incur any additional costs in exchange for standing timber.
- Yet, Commerce has not included all the elements that comprise the compensation the respondents paid in exchange for Crown-origin standing timber; thus, Commerce has created an unbalanced price comparison.
- The WTO determined that Commerce's comparison method was incorrect and that it "should have considered all kinds of payments made for purchasing timber in all provinces to properly determine the adequacy of remuneration."[195]
- Section 771(5)(E)(iv) of the Act requires that Commerce determine adequacy of remuneration in relation to prevailing market conditions for the good being provided, including with respect to "price, quality, availability, marketability, transportation, and other conditions of purchase or sale."
- Thus, Commerce's LTAR comparison must account for prevailing market conditions in Alberta.
- However, Commerce has flipped that requirement on its head and focused on the market conditions in Nova Scotia.[196]
- Commerce must base its LTAR comparison on market conditions in Alberta and must consider alternative forms of remuneration in its analysis of "other conditions of purchase or sale" pursuant to section 771(5)(E)(iv) of the Act.[197]
- Commerce's LTAR comparison also contradicts its practice.[198]
- In *Lumber IV*, Commerce accounted for the total remuneration paid by the respondents.[199]
- Commerce has also accounted for total remuneration when applying the WDNR log price benchmark to assess whether the GBC sold Crown-standing timber for LTAR.
- In the past, Commerce has relied on its approach in the *SC Paper from Canada - Expedited Review – Final Results* to justify its "pure" stumpage price comparison method.
- However, Commerce has not explained how its decision in the *SC Paper from Canada - Expedited Review – Final Results* is more relevant than its approach in the *Lumber IV* proceeding, especially when the *SC Paper* case involved an expedited review of a product different from standing timber.

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[194] *Id*. at 95 (citing *Lumber V AR3 Final* IDM at Comment 42).
[195] *Id*. at 97 (citing *DS 533 Panel Report* at para. 7.440).
[196] *Id.* at 98 (citing *Lumber V AR3 Final* IDM at Comment 42: "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.").
[197] *Id.* at 98-99 (citing *Hyundai Steel v. U.S.*).
[198] *Id*. at 99 (citing *Royal Thai Gov't v. U.S. 2007*, 502 F. Supp. 2d at 1341; and *SKF USA*, 263 F 3d. at 1382).
[199] *Id*. at 99-100 (citing, *e.g.*, *Lumber IV Final* IDM at 84-88, 108-112, *Lumber IV AR1 Final* IDM at 11-12, 19, and 106-107).

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GOA's Comments[200]

- Record evidence shows that the GOA "has elected to collect remuneration through both cash fees and charges and the imposition of in-kind obligations in exchange for Crown standing timber" rather than imposing a single all-inclusive "stumpage" charge.[201]
- To determine in the final results whether Alberta Crown timber was provided for LTAR, Commerce must compare any stumpage benchmark to the total remuneration provided by the Alberta Respondents for Alberta Crown stumpage during the POR, which includes a cash compensation in the form of timber dues and holding and protection charges, other fees and charges, and the in-kind costs tenure holders must incur to provide services and goods to the Crown.
- The GOA tracks the full range of remuneration provided and considers in-kind remuneration when setting the rates for timber dues.
- If the GOA had incurred the in-kind costs, then it would have charged a significantly higher stumpage rate. Thus, Commerce must account for these in-kind costs when conducting its LTAR price comparisons.
- Commerce's unreasonable refusal to account for other forms of remuneration as part of the remuneration for Crown standing timber was based on its conclusory statement, made without any basis, that all of the additional remuneration is related to "long-term tenure rights" rather than to a "stumpage price" for standing timber.[202]
- Commerce neither defines "long-term tenure rights" nor provides any basis for distinguishing between dues, costs and charges the Province imposes related to so-called "long-term tenure rights," and dues, costs and charges that are part of a "stumpage price" that constitutes remuneration for Crown-origin standing timber.
- Neither the distinction itself nor the way that Commerce has drawn it is tenable; they simply are arbitrary.
- Commerce's distinction contradicts its prior statements that "regardless of whether the provinces were supplying standing timber or making it available through a right of access, they were providing standing timber."[203]
- All costs, dues, and stumpage fees must relate to the purchase of timber; therefore, Commerce's implicit distinction between stumpage prices and costs relating to long-term tenure rights is arbitrary and incorrect.
- For Commerce's finding that long-term tenure rights are distinct to have meaning, it must mean that long-term tenure holders have costs that short-term tenure holders do not. Yet, Commerce has disregarded costs required of short-term and long-term tenure holders.
- Commerce's prior reliance on the *SC Paper from Canada - Expedited Review – Final Results* is misplaced. Commerce's finding in that case is fundamentally different from the instant review.

[200] *See* GOA Case Brief Volume 4.A at 13-32.
[201] *Id.* at 13-14 (citing GOA Stumpage IQR Response, Volume II at ABII–104, GOA Verification Report at 3-4 and 15).
[202] *Id*. at 15-16 (citing *Lumber V AR4 Prelim* PDM at 28).
[203] *Id*. at 16 (citing *Lumber V AR4 Prelim* PDM at 13).

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- In the *SC Paper from Canada - Expedited Review – Final Results*, Commerce found the respondent had been reimbursed for certain silviculture fees and that the New Brunswick stumpage price under examination did not include silviculture costs.[204]
- There is no evidence that Canfor and West Fraser, the two respondents with operations in Alberta, received reimbursements for in-kind remuneration they provided to the GOA.
- It is also contrary to record evidence and Commerce's obligations under the statute to treat in-kind costs and FRIAA dues merely as tenure adjustments that do not warrant consideration instead of in-kind costs that must be incorporated into the LTAR benefit analysis.
- Rather than argue that Commerce account for all costs incurred by harvesters (mandatory and non-mandatory), the GOA argues that Commerce must account for costs that are legally required to harvest Crown-origin timber.
- Commerce must include the company-specific in-kind costs reported by each of the Alberta respondents, along with all the cash payments made by them to Alberta to harvest timber.
- Commerce failed to account for the in-kind costs borne by Canfor and West Fraser to reforest the land they have harvested, as required by statute and contract under the *Forests Act*, not by the mere fact that they hold tenure rights.[205]
- Commerce failed to account for forest management planning and inventory costs and holding and protection charges.[206]
- Commerce must account for costs borne by Canfor and West Fraser for standing timber they have harvested in Alberta because such costs are legally mandated. These costs relate directly to the volume of timber they harvest and not to any long-term tenure rights.
- Commerce must account for the road construction and maintenance costs borne by Canfor and West Fraser.
- In Alberta, rather than build and maintain the forestry roads itself and charge more for Crown-origin standing timber, the GOA requires harvesters to incur the costs to build and maintain the roads. Further, the roads built by harvesters are public roads.
- Commerce has not explained why it departed from its approach the *Lumber IV* proceeding where it accounted for non-cash in-kind cost obligations in its LTAR benefit analysis.[207]
- At a minimum, because there is no evidence that harvesters of privately-owned standing timber in Nova Scotia incur road building and maintenance costs, Commerce must make adjustments for road building costs incurred by Canfor and West Fraser in Alberta to properly conduct its LTAR benefit analysis.

West Fraser's Comments[208]

- Commerce failed to account for a significant portion of the cash remuneration that West Fraser was required to pay to harvest Crown-origin standing timber in Alberta.
- Commerce failed to account for a number of in-kind services (*e.g.*, road construction and maintenance costs, basic reforestation, forest management planning, holding and protection, environmental protection, inventory, reforestation levies, and costs for fighting fire, insects and disease holding and protection cash charges) that West Fraser is required to pay to the GOA for the right to harvest Crown-origin standing timber on its tenures.

[204] *Id*. at 17-18 (citing *SC Paper from Canada - Expedited Review – Final Results* IDM at Comment 31).
[205] *Id*. at 23-24 (citing GOA Stumpage IQR Response, Volume II at Exhibit AB-AR4-S-14).
[206] *Id*. at 24-27 for a description of these costs.
[207] *Id*. at 21 (citing *Lumber IV Final* IDM at 114-118).
[208] *See* West Fraser Case Brief at 33 to 47.

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- Commerce should correct this error by including these in-kind costs in its benefit calculations for West Fraser's harvest of Crown-origin standing timber in Alberta.
- These in-kind costs are part of the overall cash compensation the GOA requires from tenure holders for the right to harvest Crown-origin standing timber.[209]
- West Fraser's in-kind costs are part of the total remuneration required by the GOA to harvest Crown-origin standing timber.
- Commerce's refusal to account for these costs of purchasing stumpage in *Alberta* on the basis that the Nova Scotia prices used for the benchmark do not require such remuneration is an arbitrary reason to exclude a significant portion of the remuneration West Fraser pays to harvest Crown stumpage in Alberta.
- Commerce should include the in-kind costs West Fraser incurred in the stumpage price paid for Crown-origin standing timber that is compared to the Nova Scotia benchmark.
- The Federal Circuit has equated remuneration with compensation,[210] and 19 CFR 351.511(a) characterizes remuneration as a government price.
- Notably, none of these definitions indicate that remuneration is limited to cash payments for goods. Rather, remuneration is a broad term encompassing the entirety of compensation paid to a government.
- The obligatory in-kind service costs incurred by West Fraser include reforestation of harvested areas (silviculture), forest management planning, building and maintenance of public roads, and other obligations.[211]
- By excluding portions of both the cash component and the in-kind services required by the Province, Commerce's comparison in the *Lumber V AR4 Prelim* understated the total remuneration West Fraser paid for Crown-origin standing timber and thus overstated the benefit.

Canfor's Comments[212]

- Commerce's stumpage price comparison does not result in a true apples-to-apples comparison because there are certain elements included in the Nova Scotia stumpage price that are not currently included in the Alberta stumpage price.
- Canfor has submitted evidence indicating that Nova Scotia stumpage prices may include costs associated with silviculture, road maintenance, and fire protection and that the GNS has sought to assist private woodlot owners with those costs.[213]
- Just as private woodlot owners in Nova Scotia are incurring silviculture, road maintenance, and fire protection costs, Canfor incurs these same costs in Alberta.
- However, while such costs are included in the Nova Scotia benchmark, these costs are not included in the net price paid by Canfor.

[209] *Id*. at 48 (citing GOA Stumpage IQR Response at ABII-2, 64, 164-65).
[210] *Id*. at 34 (citing *Nucor Corp.*, 927 F.3d at 1249-50).
[211] *Id*. at 35 (citing GOA Stumpage IQR Response at 75 and GOA Verification Exhibits at Exhibit GOA VE-2 at 4).
[212] *See* Canfor Case Brief at 16-17.
[213] *Id*. at 16 (citing Canfor Stumpage IQR Response at Exhibit STUMP-A-6).

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Petitioner's Rebuttal Comments[214]

- In the *Lumber V AR4 Prelim*, Commerce found that "these costs are related to {the respondent companies'} long-term tenure rights under various tenure arrangements," and thus, do not warrant inclusion in the stumpage price.[215]
- Commerce's finding aligns with the agency's consistent practice in prior reviews, where Commerce distinguished the "in-kind" costs and holding protection charges as "costs of long-term tenure obligations," which are separate from the stumpage price paid for Crown-origin standing timber.[216]
- The Alberta Parties' arguments are meritless, and Commerce should continue to reject these proposed adjustments in the final results.
- Contrary to the GOA's statement that "tenure holders receive no good or service from their tenure holdings other than standing timber," these tenures serve effectively as a supply guarantee, providing the tenure holders a stable, steady, and secure supply of wood fiber, a value that is separate and distinct from standing timber.[217]
- In the underlying investigation, Commerce recognized that such "tenure security is inherently a subset of the overall value of the tenure."[218]
- Recognizing the value of tenure security, the GOA assigns certain responsibilities to tenure holders accordingly and, consistent with Commerce's understanding, the GOA considered the "in-kind" costs as "costs incurred by the industry as part of {the forest companies'} Crown forest tenure costs."[219]
- The GOA stated that holding and protection charges "are a payment the Province requires from tenure holders in exchange for the right to harvest Crown timber," which, similar to other "in-kind" costs, vary based on tenure types.[220]
- Record evidence show that the holding and protection charges are tied to the types and terms of the tenure, and not the Crown stumpage price.
- The GOA's stumpage rate setting formula does not support the GOA's argument that Alberta's Crown stumpage rates correspond to the amount of "in-kind" costs incurred by the companies in the province, there is no evidence on the record demonstrating that these "in-kind" costs are and should be part of the stumpage price.[221]
- In *Lumber V AR3*, Commerce further found that the "in-kind" costs and holding and protection charges are not part of the Crown stumpage price paid because "such costs are billed on separate invoices or as separate line items by the provinces, rather than incorporated into the stumpage price," and this continues to be true in this review.[222]
- The GNS explained in its initial questionnaire response, the government does not "impose{} charges or expenses for fire/bug prevention, fees to marketing boards/syndicates, forestry fund,

[214] *See* Petitioner Rebuttal Brief at 47-67.
[215] *Id.* at 47 (citing *Lumber V AR4 Prelim* PDM at 28).
[216] *Id.* (citing *Lumber V AR3 Final* IDM at 263 and *Lumber V AR2 Final* IDM at 233).
[217] *Id.*at 48 (citing GOA Case Brief Volume IV.A at 16)
[218] *Id.* (citing GOA Case Brief Volume IV.A at 16 and *Lumber V INV* IDM at 77).
[219] *Id.* at 49 (citing GOA Stumpage IQR Response at Exhibit AB-AR4-S-20 at 1).
[220] *Id.* at 52 (citing GOA Stumpage IQR at ABII-164).
[221] *Id*. at 55-59 (citing GOA Stumpage IQR at Exhibit AB-AR4-S-88, GOA Verification Exhibits at Exhibit 2 at 13, 43, and 54).
[222] *Id.* at 53-54 (citing *Lumber V AR3 Final* IDM at 263 and West Fraser Stumpage IQR Response at III-2 and Exhibit WF-AR4-ALBST-8).

first nation/indigenous peoples funds or environmental funds that are applicable to the harvesting of timber on private land."[223]
- Fundamental to this issue is the fact that these administrative and in-kind costs are not factors that affect the comparability of a stumpage-to-stumpage comparison, which Commerce has made clear in the investigation.[224]
- The Canadian Parties have provided no new evidence in this review to justify a departure from Commerce's previous findings. As such, Commerce should continue to reject these proposed adjustments in the final results.

Sierra Pacific's Rebuttal Comments[225]
- The Canadian Parties are incorrect that the aforementioned adjustments are required under section 771(5)(E)(iv) of the Act.
- Section 771(5)(E)(iv) of the Act provides that the adequacy of remuneration of the government provision of goods or services is to be measured "in relation to prevailing market conditions for the good or service being provided … in the country which is subject to … review."
- Section 771(5)(E)(iv) of the Act explains that "{p}revailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale."
- However, the courts have previously found that Congress' intent in adopting this language under the URAA is unclear, and thus Commerce has broad discretion in interpreting how best to account for relevant prevailing market conditions.[226]
- Thus, Commerce has substantial discretion to determine what, if any, adjustments are necessary to account for relevant prevailing market conditions.
- Commerce has repeatedly found that Nova Scotia private-origin stumpage prices reasonably reflect the "price, quality, availability, marketability, transportation, and other conditions for purchase or sale" in eastern Canadian provinces, and that the further adjustments to the Nova Scotia benchmark that the Canadian Parties advocate are not warranted to address comparability issues.[227]
- Commerce has previously found that a "pure" stumpage-to-stumpage price comparison means that Nova Scotia stumpage prices should not be adjusted to reflect the purported "full remuneration provided by the buyer," which includes costs associated with post-harvest activities (*e.g.*, scaling and hauling costs), in-kind costs (*e.g.*, for silviculture, road construction, forest management, etc.), and costs associated with long-term tenure obligations.[228]
- Contrary to the Canadian Parties' claims, section 771(5)(E)(iv) of the Act does not require Commerce to account for all costs that respondents incur in exchange for standing timber when measuring the adequacy of remuneration.
- The Canadian Parties acknowledge that the Nova Scotia benchmark excludes in-kind costs.[229]

[223] *Id*. at 46 (citing GNS Stumpage IQR Response at 17).
[224] *Id*. at 66-67 (citing *Lumber V Final* IDM at Comment 43).
[225] *See* Sierra Pacific Rebuttal Brief at 15-18.
[226] *Id*. at 16 (citing *Maverick Tube*).
[227] *Id*. (citing *Lumber V AR3 Final* IDM at Comment 31, 39, and 42).
[228] *Id*. at 16-17 (citing *Lumber V AR3 Final* IDM at Comments 42; and *Groundwood Paper from Canada Final* IDM at Comment 24).
[229] *Id*. at 17 (citing GOC Case Brief Volume I at 97).

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- Thus, including in-kind costs incurred by the respondents would distort the LTAR benefit price comparison.
- Commerce's treatment of in-kind costs in *Lumber IV* is not at odds with its approach in *Lumber V*. The benchmark in *Lumber IV* differed from the Nova Scotia benchmark.[230]
- The Canadian respondents fail to identify any new factual evidence that would warrant reaching different conclusions in this review. Accordingly, Commerce should continue to find that further adjustments to the Nova Scotia benchmark are unnecessary.

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.[231] As noted elsewhere in this memorandum, we find the private prices in the 2017-2018 Private Market Survey and JDIL's purchases of private-origin standing timber in Nova Scotia are 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.[232] Further, prices in Nova Scotia are the proper tier-one benchmark. Thus, due to our determination that the Nova Scotia benchmark is a stumpage price which does not reflect these other activities, fees, and charges, we continue 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 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, as evidenced by the fact that such expenses are not part of the total stumpage price as listed on Crown timber sales documentation.[233] Canfor cites to five news articles and press releases regarding programs related to silviculture, road maintenance, and fire protection that are administered and funded by the GNS, and Canfor speculates that the funding for these programs "appear{s} to be included in the Nova Scotia benchmark price."[234] However, we find Canfor's claim to be speculative and unsupported, and we 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, holding and protection charges, *etc*., which the respondents argue we should adjust for in the benefit calculation). Our findings in this regard are consistent with our approach in the prior review.[235]

[230] *Id*. (citing *Lumber V AR1 Final* IDM at Comment 43).
[231] *See Lumber V AR1 Final* IDM at Comment 43; *see also Lumber V AR2 Final* IDM at Comment 46; and *Lumber V AR3 Final* IDM at Comment 42).
[232] *See* GNS Stumpage IQR Response at Exhibit NS-8 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; *see also* JDIL Stumpage IQR Response at Exhibit STUMP-02.c at Table 3.
[233] *See* JDIL Stumpage IQR Response at Exhibit STUMP-03; *see also* West Fraser Stumpage IQR Response at Exhibit WF-AR4-ALBST-8; and Canfor Stumpage IQR Response at STUMP-A-3.
[234] *See* Canfor Case Brief at 16 (citing Canfor Stumpage IQR Response at Exhibit STUMP-A-6).
[235] *See Lumber V AR3 Final* IDM at Comment 42.

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Concerning the distinction between "long-term tenure rights" and "stumpage," we continue to find as we did in the prior reviews that costs associated with long-term tenure rights are separate from and substantively different than the stumpage price.[236] Such costs are billed on separate invoices or as separate line items by the provinces, rather than incorporated into the stumpage price.[237] 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.[238] 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 stumpage price as calculated from the 2017-2018 Private Stumpage Survey. Consequently, Commerce cannot adjust for such costs without distorting the benchmark. However, as noted elsewhere, we have determined to include the FRIAA dues that Canfor and West Fraser incurred on their purchases of Crown-origin standing timber in Alberta because record evidence indicates that FRIAA dues are charged on the same invoice as stumpage prices and are part of the total stumpage price charged.[239]

The Canadian Parties argue that it is not appropriate to justify our approach in the *Lumber V AR4 Prelim* concerning the LTAR benefit price comparison method by citing *SC Paper from Canada - Expedited Review Final Results* because that case was an expedited review that involved different subject merchandise. They further argue that because our LTAR benefit analysis in the *Lumber V AR4 Prelim* differs from the analysis in *Lumber IV*, Commerce has failed to treat similar facts and similar respondents similarly. We disagree with the Canadian Parties' arguments. Concerning *SC Paper from Canada – Expedited Review – Final Results*, the mere fact that cited case was conducted as an expedited review or involved a product that differs from subject merchandise does not necessarily render it irrelevant to Commerce's analysis in the instant review. The LTAR benefit analysis calculated under 19 CFR 351.511 is not altered when Commerce conducts a CVD proceeding on an expedited basis. Further, although *SC Paper from Canada – Expedited Review – Final Results* and the instant review are different proceedings with their own records, and the approach we took in *SC Paper from Canada – Expedited Review – Final Results* does not dictate our approach in this proceeding, under the facts of both proceedings, we independently found it appropriate to apply the same methodology. Concerning the Canadian Parties' comments on *Lumber IV*, it is also a different proceeding whose segments had their own records. In *Lumber V*, based on the record of each segment of this proceeding, we have determined it is appropriate to apply a different benefit analysis than we did in *Lumber IV*. Meanwhile the LTAR benefit analysis in the *Lumber V AR4 Prelim* is consistent with how we conducted the benefit analysis in the underlying investigation as well as the first, second, and

[236] *Id.*; *see also Lumber V AR1 Final* IDM at Comment 43; and *Lumber V AR2 Final* IDM at Comment 46.
[237] *See* JDIL Stumpage IQR Response at Exhibit STUMP-03; *see also* West Fraser Stumpage IQR Response at Exhibit WF-AR4-ALBST-8; and Canfor Stumpage IQR Response at STUMP-A-3.
[238] *See Lumber V AR3 Final* IDM at Comment 42.
[239] *See, e.g.*, West Fraser Stumpage IQR Response at Exhibit WF-AR4-ALBST-8 and Canfor Stumpage Response IQR at STUMP-A-3.

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third reviews. In this way, we have treated the respondents in the *Lumber V* proceeding consistently.

Lastly, the Canadian Parties cite to the *DS 533 Panel Report* as support for its argument that Commerce must consider "all kinds of payments … to properly determine the adequacy of renumeration {*sic*}."[240] 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.[241] 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.[242] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[243]

C. Alberta Stumpage Issues

Comment 8: Whether Commerce Should Annualize Alberta Stumpage Purchase and Benchmark Prices

Petitioner's Comments[244]

- In the *Lumber V AR4 Prelim*, consistent with the methodology used since the investigation to account for the prior-period adjustments embedded in GOA stumpage invoices, Commerce annualized the benchmark and stumpage purchase data used to calculate a benefit in the Alberta stumpage for LTAR program. However, this attempt to account for prior-period adjustments merely replaced one inaccuracy with another and created further inaccuracy. The prior-period adjustments make it impossible to get a complete and accurate picture of respondents' Alberta stumpage purchases during the POR and, because of significant price volatility in 2021, the annualized analysis introduces significant inaccuracy into Commerce's benefit calculation.
- The GOA operates on a timber year that goes from May to April and has explained that only monthly timber returns issued in April, that is, at the end of the timber year, reflect the final annual volume, billing, and conversion factor. Thus, the CY 2021 POR will have invoices from January through April 2021 that contain adjustments for the 2020 timber year (May 2020 – April 2021) and the purchases from May to December 2021 will not be finalized until the April 2022 invoice is issued. Thus, the annualized methodology both includes volumes from the prior year and fails to incorporate adjustments from the POR. This is true regardless of whether a monthly or annualized analysis is used, which shows that Commerce's annualized methodology does not remedy the accuracy issues stemming from prior-period adjustments.
- While the annualized and monthly calculations both fail to capture the impact of prior-period adjustments, a monthly calculation can address the impact of tremendously volatile stumpage prices in Alberta during the POR. Spruce and pine stumpage prices ranged from C$ 2.79 to C$

[240] *See* GOC Case Brief Volume I at 97 (citing *DS 533 Panel Report* at para. 7.440).
[241] *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.
[242] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[243] *See* SAA at 659.
[244] *See* Petitioner Case Brief at 36-41.

166.63 during the months of the POR, but Commerce's annualized methodology averages out the sharply varying prices during the year and results in negative benefits being brought into the analysis for both respondents.
- Under the Act, there are only three types of permissible offsets, and instances where companies may have paid greater than adequate remuneration do not fall under these enumerated types of offsets. Commerce has consistently explained that a benefit is either conferred or not conferred and that a positive benefit cannot be offset by a 'negative benefit'.

Sierra Pacific's Comments[245]
- Commerce's annualized comparison methodology is contrary to its preference for monthly comparisons and the record of this review shows that attempting to address the billing adjustment issue via annualized comparisons leads to less accurate benefit comparisons than a month-to-month comparison approach.
- In Alberta, timber dues varied tremendously during the POR, with the difference between the highest and lowest rates being more than double the difference in 2020 and 15 times the difference in 2019.
- In the *Lumber V Final* IDM, Commerce explained that offsetting the benefit calculation with "negative" benefits is impermissible under the Act.
- An annualized comparison methodology is unwarranted because the impact of retroactive adjustments is minor, with West Fraser characterizing positive or negative conversion factor adjustments as "small"[246] Further, the annualized comparison methodology does not even fully address the retroactive adjustments, because invoices from January to April 2021 will include adjustments for 2020 purchases and invoices from May through December 2021 will not be finalized until 2022.
- Thus, given the annualized comparison methodology's distortive effects and limited ability to remedy the issue it is purported to address, Commerce should adopt its preferred monthly comparison approach.

GOA's Rebuttal Comments[247]
- Commerce has consistently calculated a benefit for the Alberta stumpage for LTAR program through annualized comparisons between the respondents' average purchase prices for Alberta Crown stumpage and the average annual Nova Scotia benchmark price. This method is used to account for the rolling and cumulative billing adjustments recorded in the GOA's billing system, which themselves are used by the GOA to retroactively adjust the volumes of billed stumpage. There have been no changes to the GOA's billing system in the current POR, and as such, there is no basis for Commerce to change its calculation methodology.
- Due to the GOA's continuous mass scaling program, the weight-to-volume conversion factors and harvest volumes attributed to particular species, condition, and product codes are constantly updated via sample scaling data, with the updates applying retroactively. The updates can be positive or negative and also, as recognized by Commerce, can be embedded into a particular line item, such that the line item is made up of both a new delivery of logs and a volume adjustment due to conversion factor changes. Further, the GOA does not issue "revised" MTRs for prior months, but rather occasionally makes manual adjustments to correct

[245] *See* Sierra Pacific Case Brief at 1-6.
[246] *Id.* at 5 (citing West Fraser Stumpage IQR Response at III-5).
[247] *See* GOA Rebuttal Brief at 4-11

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issues identified during the scaling process. The rolling adjustments take place throughout the timber year and, as Commerce has previously recognized, the only way to account for them appropriately is to calculate annualized averages, as the monthly invoice totals do not reflect actual vales and volumes for particular months.

- The petitioner does not dispute that Alberta's continuously updated scaling data and conversion factor lead to retroactive updates and adjustments on MTRs and thus concedes that the volume and value on the monthly billing statement for a given month do not reflect the actual volume or value harvested in that particular month. The petitioner's argument that averaging across a 12-month comparison period is no more accurate than using one-month comparison periods is incorrect.
- Additionally, as noted in the GOC Rebuttal Brief Volume I, the GNS applies the Nova Scotia survey data to derive a single annual Crown stumpage rate, and there is no evidence that the monthly averaging (and monthly indexing) of the Nova Scotia benchmark would produce a more accurate price. Commerce has consistently defended the use of the Nova Scotia benchmarks by arguing that it treats the data in the same manner as the GNS does in the ordinary course of business. As the GNS does not apply a monthly benchmark, this does not support the petitioner.
- As explained in the GOC Rebuttal Brief Volume I, the petitioner's argument that this calculation methodology involves unlawful offsetting of benefit is incorrect. The section of the Act to which the petitioner cites lists permissible offsets and is unrelated to Alberta's retroactive billing adjustments and Commerce's means of accounting for them. The annualization methodology is a means of addressing inaccuracies that would be created by a monthly or a transaction-specific methodology, not any sort of "offset."

West Fraser's Rebuttal Comments[248]

- Commerce should continue to use an annual average to calculate the benefit for Alberta stumpage for LTAR. This approach takes into account the nature of the GOA's timber billing system, is consistent with the Act, is comparable to the manner in which the GNS uses survey data, and is not an impermissible offset.
- MTRs issued by the GOA incorporate both log deliveries during a month and retroactive adjustments arising from updated conversion factors and log profiles. With each new scaling of a Crown sample load, the conversion factors and log profiles become progressively more accurate. As this updating occurs throughout the year, the timber dues billed in a particular month are not meant to reflect logs delivered that month, but rather are a combination of new log deliveries, conversion factor adjustments, and changes to log profile. The adjustments that occur can be either positive or negative, and there can be invoices issued for months with no deliveries at all.
- The petitioner acknowledges that this system makes it "impossible" to accurately assess respondents' Alberta stumpage purchases during the POR using a monthly comparison.
- There is no requirement that Commerce use monthly comparisons. Commerce determines the adequacy of remuneration in relation to prevailing market conditions, which Commerce has equated with average market conditions. Commerce must determine its comparison method based on the actual data collected by the provincial governments in the context of their

[248] *See* West Fraser Rebuttal Brief at 13-24.

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stumpage regimes. Here, because of how the Alberta stumpage regime operates, Commerce has reasonably chosen to adopt an annual comparison methodology.

- The petitioner's argument that Commerce merely "replaced one inaccuracy with another"[249] in calculating an annual average is misleading and incorrect. According to the petitioner, January 2021 through April 2021 invoices will contain adjustments pertaining to the 2020 timber year, and the invoices from the remainder of the year are not finalized until April 2022 invoices are issued. First, this argument is misleading because it conflates the Alberta stumpage year, with the relevant object of Commerce's inquiry, the 2021 calendar year that makes up the POR. There is no dispute that the Alberta stumpage purchase data reflected what West Fraser paid during the POR, as the annual totals used by Commerce were verified and are consistent with West Fraser's audited financial records. Thus, the petitioner's claim that Commerce is omitting amounts is incorrect.
- For adjustments, the MTRs reflect volumes of logs harvested in the final four months of the stumpage year ending in April 2021, which are calculated based on increasingly accurate conversion factors, and eight months that are part of the stumpage year ending in April 2022, which end with December 2021 data that reflect the most accurate year-to-date conversion factors for the logs harvested by West Fraser from May to December 2021.
- The petitioner's request that Commerce apply a monthly benchmark further ignores that the GNS uses the 2017-2018 Private Market Survey to generate a single annual Crown stumpage price.
- While the petitioner cites to high volatility in prices as a reason to shift Commerce's benchmark methodology, every proceeding will inevitably have prices that are less than the prevailing or average prices. This provides no basis for Commerce to abandon its consistently applied methodology, particularly in light of the concerns raised above regarding the use of monthly comparisons.
- While the petitioner highlights certain extreme high and low prices paid by West Fraser, these prices pertained to only a minimal portion of the logs West Fraser harvested in Alberta.
- Finally, the section of the Act that the petitioner cites clearly does not address whether it is appropriate for Commerce to use an annualized average benchmark comparison methodology. As explained above, this decision by Commerce was reasonable given the nature of Alberta's billing system.

Canadian Parties' Rebuttal Comments[250]

- Separate from the myriad issues identified by the Alberta Parties with examining Alberta stumpage prices using monthly comparisons, there is the reality that there is no evidence any entity used monthly prices derived from the 2017-2018 Private Market Survey for any purpose. The GNS only uses the annual averages derived from the survey.
- Commerce has repeatedly defended methodological decisions regarding the Nova Scotia benchmark by stating that those decisions stem from the data and methodologies that the GNS employs in the ordinary course of business. The petitioner has made similar arguments. The GNS clearly does not use the individual monthly stumpage prices to set Crown stumpage rates and thus, in the ordinary course of business, does not use monthly average prices at all.

[249] *See* West Fraser Rebuttal Brief at 19 (citing Petitioner Case Brief at 37-38).
[250] *See* GOC Rebuttal Brief Volume I at 32-34.

- The petitioner's concerns about benefit offsetting do not apply in contexts where Commerce calculates the gross countervailable subsidy, but, regardless of the validity of this argument, the inaccuracies and deviation from the GNS's use of data in the ordinary course of business precludes the use of monthly averages.

Commerce's Position: We continue to find, as in prior proceedings, that it is appropriate to compare West Fraser and Canfor's aggregated POR purchases of Alberta Crown timber to an annualized benchmark average derived from the 2017-2018 Private Market Survey. The GOA maintains the same timber billing system during the POR that initially led us to reach this conclusion in the investigation, and the petitioner's arguments for why monthly comparisons should be adopted instead are unpersuasive.

In the *Lumber V Prelim*, Commerce explained that:

> The GOA's standing timber billing system features quarterly adjustments that apply retroactively to previous invoices. As a result, the species-specific volumes and values reported on the invoices do not represent the actual volume and value purchased in the month. Therefore, {Commerce} has determined that aggregating the respondents' POI purchases by species is a reasonable approach to addressing the inaccuracies that would result from relying on the volume and value as reported on a transaction-specific or monthly basis.[251]

While Commerce went on to state that it would continue to examine the GOA's invoicing system,[252] no adjustments to the annualized approach were made in the *Lumber V Final*. Commerce then applied this approached in three successive administrative reviews.[253] In this review, the petitioner and Sierra Pacific argue that the annualized approach is flawed, citing two overarching reasons: first, that annualizing does not, in fact, cure the inaccuracy associated with aggregating invoices that include prior-period adjustments; and second, that extreme price volatility during the POR means that an annualized comparison leads to impermissible offsetting of benefits bestowed during months with low stumpage prices with "negative" benefits that occur during months with high prices.[254] We do not agree with either claim.

With regard to accuracy, the petitioner acknowledges that monthly comparisons are flawed due to the GOA's retroactive updates to the weight-to-volume conversion factor and species/grade profiles over the course of the timber year.[255] However, the petitioner argues that Commerce's annualized approach is *also* flawed due to the GOA's retroactive adjustments occurring over a period that does not correspond to the POR, and thus, that, with the annualized approach not having an accuracy advantage, there is no reason to use it over monthly comparisons that provide the greater specificity Commerce usually prefers.[256] Specifically, the petitioner explains that the

[251] *See Lumber V Prelim* PDM at 56-57 (unchanged in *Lumber V Final*).
[252] *Id.*
[253] *See Lumber V AR1 Prelim* PDM at 36 (unchanged in *Lumber V AR1 Final*); *Lumber V AR2 Prelim* PDM at 40 (unchanged in *Lumber V AR2 Final*); and *Lumber V AR3 Prelim* PDM at 44 (unchanged in *Lumber V AR2 Final*).
[254] *See* Petitioner Case Brief at 37-41; *see also* Sierra Pacific Case Brief at 3-5.
[255] *Id.* at 38.
[256] *Id.*

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POR is CY 2021, while the GOA's timber years span May to April. Thus, the petitioner notes, GOA invoices from January through April 2021 will contain adjustments pertaining to CY 2020, while GOA invoices for May through December 2021 are not finalized until the issuance of April 2022 invoices.

We do not find this argument persuasive. While the petitioner and Sierra Pacific are correct that the POR and Alberta timber year do not exactly align, that fails to address that the conversion factor and species profile of timber nonetheless *continue to become more accurate with each month that passes* and that the invoices for any given individual month will contain numerous prior-period adjustments that cannot be separated from current-period bills. During our verification of the GOA in this review, we examined the GOA's stumpage billing system and confirmed that both the quantities and also the species types become more accurate as the timber year goes on.[257] Thus, we find that using the annualized comparison will allow for more accurate quantities and species-types than monthly comparisons.

We also do not agree with the petitioner's characterization that significant price fluctuations during the POR mean that the annualized methodology leads to "negative benefits being incorporated into the analysis,"[258] thus, creating "an unlawful distortion of the benefit analysis."[259] While Commerce does prefer using monthly benchmark prices in an LTAR analysis, we are not precluded from using annual benchmarks if such information is the best available on the record, or if the specific characteristics of the analysis require an annual comparison to render a more accurate calculation, as is the case with the Alberta stumpage system. Following the petitioner's line of argument, *any* price fluctuation during a POI or POR with an annualized comparison could lead to an "an unlawful distortion of the benefit analysis{,}" a conclusion we do not find logical, particular given that Commerce has used annualized comparisons for Alberta since the *Lumber V Prelim.*[260] Rather, the petitioner's underlying complaint is that the sheer magnitude of the price fluctuations during the POR distorts the annualized comparison.[261]

However, the petitioner and Sierra Pacific both fail to articulate any cognizable standard by which "too much" distortion to the benchmark from those fluctuations could be identified. In contrast, ensuring that we have accurate quantities and classifications of the good in question is fundamental to making a fair and accurate LTAR benchmark comparison and a clear and cognizable goal to aim for, as opposed to trying to eliminate variance arising from some degree of price fluctuation.

[257] *See* GOA Verification Report at 7-8; *see also* GOA Verification Exhibits at Exhibit VE-6 and VE-7.
[258] *See* Petitioner Case Brief at 39.
[259] *Id.* at 41.
[260] *See Lumber V AR1 Prelim* PDM at 36 (unchanged in *Lumber V AR1 Final*); *Lumber V AR2 Prelim* PDM at 40 (unchanged in *Lumber V AR2 Final*); and *Lumber V AR3 Prelim* PDM at 44 (unchanged in *Lumber V AR2 Final*).
[261] *See* Petitioner Case Brief at 39.

Comment 9: Whether the Alberta Stumpage Market Is Distorted

GOA's Comments[262]

- Commerce preliminarily found the Alberta stumpage market distorted based on an overwhelming Crown share of the harvest, domination by a small number of tenure-holding companies, a supply "overhang" of Crown-origin timber, and the GOA's sale of undersize timber at administratively set prices. All these findings are flawed and unsupported by record evidence.
- Commerce does not offer any explanation for why the Crown-origin share of the harvest distorts the stumpage market. Economic analyses like the Brattle and Kalt Reports 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's finding that a small number of tenure-holding companies consume a substantial majority of both private- and Crown-origin standing timber is based on an unsupported analysis of market concentration. Commerce has failed to explain why it had not used more accurate market concentration metrics like the HHI relied upon by the U.S Department of Justice and FTC. The Brattle Report explains that applying the HHI shows the Alberta stumpage market to have only "moderate" concentration." Commerce has declined to consider or even address this argument.
- Commerce's reliance on supply overhang is misguided and misunderstands Alberta's stumpage system. AAC is a forest management planning value and does not reflect a minimum or expected harvest level and, further, does not apply as an annual limitation, but rather over a five-year period, such that comparing AAC to annual harvest does not even show the existence of overhang.
- Aside from Commerce's misunderstanding, the GOA has added evidence to the record explaining that the vast majority of unused AAC during the POR was located in tenures that had distinct conditions making the AAC not available to harvest in practice. Thus, large portions of the purported "overhang" were not in fact available and thus could not be putting downward pressure on market prices.
- Commerce provides no support for the claim that the GOA's administratively-set stumpage prices for undersized (Code 06) and unmerchantable (Code 99) logs distort the stumpage market. That the GOA charges a flat stumpage rate for a small volume of marginal or undersized logs reflects the logical goal of ensuring that harvesters have incentives to clear even portions of harvested trees that may not be usable for sawn lumber. The record has established that tree size affects log value, and that smaller trees are more expensive to harvest than larger trees.
- Code 99 logs are generally not suited to produce lumber and are delivered to sawmills because they are attached to Code 01 or 06 logs that will be sawn into lumber. They also only make up 3.6 percent of the 2021 Crown harvest. Commerce does not explain how such a small volume of unmerchantable logs is relevant to the stumpage market.
- Commerce asserts that the non-responsiveness to the lumber market of pricing for Code 06 and 99 logs (30.1 percent of the Crown harvest combined) affects the stumpage market. However, this ignores that 69 percent of the Crown harvest is subject to timber dues derived from lumber prices.

[262] *See* GOA Case Brief Volume IV.A at 40-48.

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West Fraser's Comments[263]

- Commerce has never explained what level of market concentration it considers to be distortive or how market concentration affects standing timber prices. This is particularly significant given that Alberta Crown timber is sold, in part, based on prices from the highly fragmented and competitive U.S. lumber market.

Petitioner's Rebuttal Comments[264]

- Over 96 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. The GOA argues that market concentration in Alberta's lumber industry would not draw antitrust scrutiny, but this is not an antitrust proceeding.
- The availability of an "overhang" of Crown timber also undoubtedly affects the private purchasing behavior of Alberta stumpage purchasers.
- Commerce also found that 30 percent of sawable timber sold by the GOA is not responsive to market forces. While the GOA argues that this volume could not lead to market distortion, 30 percent is not negligible, and Commerce's distortion analysis is based on the totality of the evidence.

Commerce's Position: The GOA, relying primarily on arguments that Commerce has addressed and rejected in prior reviews,[265] claims that the factors Commerce cited in the *Lumber V AR4 Prelim* as contributing to the Alberta stumpage market's distortion do not individually distort that market. 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 AR3 Final Results*, "Commerce relies on the overall and cumulative effect of multiple distorting elements"[266] in finding that the Alberta stumpage market is distorted. During the POR: (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 because 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; (3) there was a supply "overhang" of unharvested Crown timber; and (4) the GOA supplied significant volumes of Crown timber at administratively-set prices not responsive to the lumber market. Crown-origin harvest constitutes over 97 percent of the standing timber harvest.[267] Moreover, the same companies are active in both the Crown stumpage and private stumpage markets. Specifically, the 10 largest corporations accounted for approximately 86.8 percent of the harvested Crown-origin standing timber volume.[268] Furthermore, a significant share of private-origin harvest, the exact amount of which is BPI, was received by tenure holding mills in Alberta.[269] Comparing these data against other record evidence demonstrates that a significant

[263] *See* West Fraser Case Brief at 60.
[264] *See* Petitioner Rebuttal Brief at 89-93.
[265] *See Lumber V AR3 Final* IDM at 58-59; *see also Lumber V AR2* IDM at 56.
[266] *See Lumber V AR3 Final* IDM at 60.
[267] *See* GOA Stumpage IQR Response at Exhibit AB-AR4-S-3.
[268] *See* GOA Market Memorandum at Attachment 3 at worksheet "Top 10 Market Share."
[269] *Id.* at Attachment 2 at worksheet "Table 2 Crown Private."

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percentage of the private origin timber harvest in Alberta was accounted for by the ten largest harvesters of Crown-origin timber.[270]

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.[271] 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 volumes of Crown-origin timber at administratively set prices, we conclude that Crown-origin timber in Alberta is sold at prices not responsive to market forces.[272]

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 95 percent of the province's overall market. Further, even if the HHI is considered to be meaningful for this proceeding, we note that, according to the Brattle Report, the HHI shows the Alberta timber market to have "moderate concentration."[273] 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.[274] However, as noted above, Commerce has found that the same set of companies dominate both the Crown-origin and private timber markets 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.

This domination of both the Crown and private timber markets by a small number of companies is further amplified by the presence of a Crown timber supply "overhang" during the POR.[275] The GOA argues that this overhang has no impact due to the impracticality of harvesting certain

[270] *Id.*
[271] *Id.*
[272] *See Lumber V AR4 Prelim* PDM at 16-17.
[273] *See* Brattle Report at 42.
[274] *See* West Fraser Case Brief at 60.
[275] *See* GOA Market Memorandum at Worksheet 'Attachment 1 Overhang'.

stands of lumber, environmental considerations related to the harvesting of certain stands, and ongoing negotiations with First Nations over certain stands. 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.[276] This remains true even though the supply overhang during this POR is smaller than what it was in prior periods.[277] 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.

The GOA's claim that "the Brattle report analyzes the stumpage market using standard economic models to demonstrate that the stumpage market is not distorted by such government share in Alberta"[278] 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.[279] 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."[280] 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 is provided at a below-market administered price, is not necessarily distorted.[281] 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,"[282] using the following supply/demand logic as an explanation:

> {w}ith 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} mkt.[283]

[276] *See* GOA Stumpage IQR at 70.
[277] *See* GOA Market Memorandum at Worksheet 'Attachment 1 Overhang'; *see also Lumber V AR2 Final* IDM at 57.
[278] *See* GOA Case Brief Volume IV.A at 41-42.
[279] *See* Brattle Report at 33-37.
[280] *Id.* at 4.
[281] *See* Kalt Report at 35-36.
[282] *Id.* at 36.
[283] *Id.* at 36.

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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.

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.[284] However, the GOA does not explain why its sustainable forestry policy would call for charging an 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 an overwhelming Crown share of the Alberta stumpage market, concentration of the same group of buyers in both the Crown and private stumpage markets, and availability of significant volumes of Crown timber priced in a manner that is not responsive to market forces. Based on the combination of these factors, we continue to find the Alberta stumpage market distorted.

Comment 10: Whether TDA Survey Prices Are an Appropriate Benchmark for Alberta Crown-Origin Stumpage

GOA's Comments[285]

- 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 AR3 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.
- Even taking for granted Commerce's incorrect finding on stumpage market distortion, there is no mechanism by which this distortion would impact the Alberta log market that provides the basis of the TDA survey data. The log market consists of independent entities operating on a

[284] *See* GOA Case Brief Volume IV.A at 45-48
[285] *See* GOA Case Brief Volume IV.A at 33-40 and 48-50.

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supply-demand basis. Commerce rejected the TDA data based on the purported stumpage distortion, but, as stumpage distortion is irrelevant to the log market, Commerce has not offered any grounds for rejecting Alberta's in-jurisdiction benchmark.

West Fraser's Comments[286]

- 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, such that Nova Scotia stumpage prices do not reflect Alberta's prevailing market conditions.
- As a large tenure-holder and sawmill operator in Alberta, West Fraser notes that its purchases of logs are priced based on log supply and sawmill demand for logs. While Commerce may have (incorrectly) found the Alberta timber market distorted, that finding does not make the log market distorted.

Petitioner's Rebuttal Comments[287]

- 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. Commerce is only required to account for prevailing market conditions to allow for a comparison independent of the distortion at issue.
- 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 are not a broad market average. Further, the private standing timber market in Alberta is distorted, rendering TDA stumpage prices unsuitable as a tier-one benchmark.
- If 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 Crown stumpage prices drive log market prices, and Alberta's ban on the export of Crown logs puts downward pressure on Alberta log prices.

Commerce's Position: The GOA and West Fraser argue that Commerce should adopt an Alberta log benchmark calculated based on a residual value methodology using log prices from the TDA survey.[288] 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

[286] *See* West Fraser Case Brief at 55-61.
[287] *See* Petitioner Rebuttal Brief at 93-97.
[288] *See* GOA Case Brief Volume 4.A at 48-50 and West Fraser Case Brief at 55-61.

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amount of standing timber prices contained in the TDA survey are distorted, as discussed in Comment 9, 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 20-32, Nova Scotia stumpage prices are usable as a tier-one benchmark for Alberta stumpage and render use of TDA prices as unnecessary as a benchmark 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 11: Whether British Columbia's Stumpage Market Is Distorted

Canadian Parties' Comments[289]

- Both government predominance and the factors cited by Commerce in addition to predominance are insufficient to establish distortion. The link between government predominance and distortion must be examined on a case-by-case basis.
- Commerce's distortion findings in the *Lumber V AR4 Prelim* are cursory, do not show evidence of a direct impact on the proposed in-region benchmark prices, are based on assumptions, and are not backed by a probing review of the evidence.
- Had Commerce fully engaged with expert reports and other evidence provided by the Canadian Parties, it would not have concluded that each province examined has a distorted stumpage market.

Sierra Pacific's Rebuttal Comments[290]

- Contrary to the Canadian Parties' arguments, Commerce's distortion findings are not based on assumptions. Rather, Commerce identified a number of factors contributing to distortion, largely the same factors identified in the investigation and prior reviews.
- For British Columbia, Commerce found that the stumpage market was distorted due to the majority control of the market by the GBC and the GBC's LER. Commerce also found that the "three-sale limit" represented an artificial barrier to participation in BCTS auctions.
- Commerce's analysis was not, as the Canadian Parties allege, cursory or not backed by review of the evidence. Commerce provided a reasoned and sufficient explanation, supported by the inclusion by reference of its findings from prior segments of the proceeding.
- While the Canadian Parties cite *Borusan v. U.S.* for support, that case merely held that Commerce could not apply a *per se* rule of substantial government supply leading to distortion. It did not, as the Canadian Parties suggest, require that Commerce demonstrate how specific individual transaction prices are distorted to reject them as a tier-one benchmark.

Commerce's Position: In the *Lumber V AR4 Prelim*, Commerce found that "prices within British Columbia, including prices from the BCTS auctions, cannot serve as a tier-one benchmark under 19 CFR 351.511(a)(2)(i)."[291] While the case briefs of the British Columbia respondents do not challenge this finding, the joint Canadian Parties case brief contains a section

[289] *See* GOC Case Brief Volume 1 at 16-19.
[290] *See* Sierra Pacific Rebuttal Brief at 4-7.
[291] *See Lumber V AR4 Prelim* PDM at 20.

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alleging that all of Commerce's preliminary distortion findings were flawed.[292] However, this brief does not cite to any specific issues with Commerce's finding of British Columbia stumpage market distortion, but rather relies on cursory and high-level arguments that Commerce applied improper standards of review and failed to consider relevant record evidence. We disagree that the finding of distortion as it relates to the British Columbia stumpage market in the *Lumber V AR4 Prelim* used incorrect standards of review and failed to engage with record evidence.

With regard to standard of review, in the *Lumber V AR3 Final*, Commerce considered more detailed arguments by the GBC that the factors cited by Commerce were insufficient because there was no proof they directly led to price distortion, and ultimately found such arguments unpersuasive.[293] With regard to purported insufficient evidence, Commerce's preliminary finding cited directly to record evidence and explained how such record evidence resulted in distortion.[294] Specifically, Commerce explained that "the record of this fourth review continues to indicate that the majority of the market is controlled by the government, and that the GBC continues to restrict exports of logs from the province through government imposed log export restraints."[295] Further, we find that the evidence Commerce analyzed and engaged with in the *Lumber V AR3 Final* in determining that, in spite of arguments to the contrary by the GBC, the British Columbia stumpage market was distorted continue to be present on the record of this review in either identical or analogous form.[296] Finally, while one of the most specific criticisms of the Canadian Parties is that Commerce did not engage with expert reports, the *Lumber V AR4 Prelim* provided an explanation as to why it did not find the AR2 Athey Report, a report commissioned by the GBC, persuasive.[297]

Comment 12: Whether Commerce Should Use the 2017-2018 Private Market Survey as a Benchmark for BC Stumpage for LTAR

Petitioner's Comments[298]

- The 2017-2018 Private Market Survey is the best available tier-one benchmark for the BC stumpage for LTAR program. While Commerce noted in the *Lumber V AR4 Prelim* that timber in British Columbia is not comparable to Nova Scotia timber, Commerce also stated that benchmarks do not require a perfect match, and record evidence shows that timber in the two provinces is sufficiently comparable such that Commerce should reverse its determination.

[292] *See* GOC Volume 1 Case Brief at 17-20.
[293] *See Lumber V AR3 Final* IDM at 67.
[294] *See Lumber V AR4 Prelim* PDM at 19-20.
[295] *Id.* at 19-20. Specifically, Commerce explained that evidence placed on the record by the petitioner indicates that the log export process suppresses prices throughout British Columbia, including through the process of "blockmailing" by which log processors use the threat of blocking log exports to obtain guaranteed supplies of logs from BC log sellers. *See* Petitioner Comments on IQR Responses at Exhibits I-111 through I-117. Record evidence also shows the direct impact of the export restraints on log sellers in the BC Interior, where West Fraser and Canfor's mills are located. *See* Petitioner Comments on IQR Responses at Exhibit I-126.
[296] *See Lumber V AR4 Prelim* PDM at 19-20; GBC Stumpage IQR Response at Exhibit BC-AR4-S-137 at Attachment 5; Henderson Declaration at 1-28; and Lennox Affidavit at 3-5. For record evidence regarding the impact of the LER in British Columbia *see* Comment 35.
[297] *Id.* at 20.
[298] *See* Petitioner Case Brief at 13-17.

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- Most trees harvested in both provinces are from the SPF species group, and thus, the predominant output of sawmills in both provinces is SPF lumber. Public information shows that there is no distinction among the species that make up the SPF category. Eastern and western SPF are graded identically and use the same commercial designations, while customers in big box stores do not have a choice of individual species within the SPF species basket.
- While the GBC has argued that lodgepole pine, Engelmann spruce, and subalpine fir, which are not present in Nova Scotia, make up more than half of the SPF lumber produced in the British Columbia interior, the end product of these members of the SPF species group is still SPF lumber, and thus, this difference is not relevant to Commerce's analysis.
- The GBC highlights Commerce's finding that log diameters in British Columbia are larger than those in Nova Scotia. However, even assuming this is true, that merely makes Nova Scotia a *conservative* benchmark for measuring the adequacy of remuneration for British Columbia timber. While the petitioner would prefer to not understate the value of British Columbia timber, the Nova Scotia benchmark is more reasonable and accurate than the flawed derived demand benchmark. It is illogical to argue that the Nova Scotia benchmark must be rejected because British Columbia timber is more valuable, only to use a tier-three benchmark that produces irrational benchmark valuations.
- The GBC has argued that Nova Scotia cannot be used as a benchmark because of the lack of beetle-killed timber in Nova Scotia. While the petitioner has refuted the need for a separate beetle-killed benchmark, the use of a Nova Scotia benchmark does not preclude Commerce from applying a beetle-killed benchmark to West Fraser and Canfor's purchases of beetle-killed timber. Such a benchmark should be based on the actual prices paid by IFG.

GBC's Rebuttal Comments[299]

- The petitioner's request to compare purchases of stumpage in British Columbia to prices from the 2017-2018 Private Market Survey is illogical and unsupported by record evidence, and its arguments for the comparability of British Columbia interior and Nova Scotia timber are meritless.
- First, the petitioner highlights the similarities between SPF *lumber* produced in both provinces, but, as the petitioner has highlighted elsewhere, the conditions prevailing in the market for *stumpage* are the relevant ones for purposes of Commerce's analysis. When the comparison is made at this level, the same conclusion that Commerce has reached many times before, that the timber profiles of the British Columbia interior and Nova Scotia are not comparable, is inescapable.
- Nova Scotia is located over three thousand miles from British Columbia, and the two provinces have very different forests, ecosystems, terrain, and forest management systems. Commerce first considered the issue in *Lumber IV*, concluding that differences in species between British Columbia and the Maritimes meant that the Maritimes were not appropriate benchmarks for British Columbia timber.[300] Commerce likewise in the *Lumber V Prelim*, and unchanged since, found that "the standing timber in British Columbia is not comparable to the standing timber in Nova Scotia."[301]

[299] *See* GBC Rebuttal Brief Volume III at 13-20.
[300] *Id.* at 15 (citing *Lumber IV AR1 Final* IDM at 12-13).
[301] *Id.* at 16 (citing *Lumber V Prelim* PDM at 46).

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- The SPF species mix, presence of dead timber, standing timber diameters, and harvesting costs all differ sharply between Nova Scotia and the British Columbia interior. These are all important differences that clearly show the timber to not be comparable. The petitioner's argument that the Nova Scotia benchmark is "conservative," because timber in Nova Scotia is lower value would only be relevant if, in fact, timber between the two regions was comparable. Further, the large share of dead timber and higher harvesting costs in the British Columbia interior when compared to Nova Scotia both contradict the notion that the Nova Scotia benchmark would be conservative when applied to British Columbia stumpage.
- Aside from the differences in timber between Nova Scotia and British Columbia, the petitioner's request ignores that such a comparison is simply not possible because there is no data or methodology that would allow for a conversion from the Nova Scotia log scale to the B.C. Metric scale, which have a number of differences, including that the Nova Scotia log scale requires volume deductions for defects that are not deducted in the B.C. metric scale.
- The 2017-2018 Private Market Survey prices are also flawed because they are from 2017-18, well before the current POR. The petitioner has proposed various inflationary indices to bring the prices in line with the current POR, but (as explained by the GOC), these indices are unreasonable.

Commerce's Position: We continue to find, consistent with prior Commerce's determinations in proceedings since the *Lumber IV AR1 Final* that timber in Nova Scotia and British Columbia are not comparable, and thus, that the 2017-2018 Private Market Survey is not an appropriate tier-one benchmark to measure the adequacy of remuneration for stumpage in British Columbia. The petitioner's case brief reiterates various concerns with the tier-three derived-demand log benchmark Commerce has used to measure the benefit. However, the petitioner has provided no new evidence on the record of the instant review that would lead us to reconsider our previous findings that the timber in Nova Scotia and British Columbia are not comparable. Thus, the petitioner's arguments do not overcome the fact that Nova Scotia timber is not comparable to British Columbia interior timber such that the 2017-2018 Private Market Survey could serve as a suitable tier-one benchmark for British Columbia stumpage.

The petitioner argues that timber in British Columbia is predominantly SPF and thus comparable to Nova Scotia timber. However, Commerce's finding in the *Lumber V Prelim* was not based on the timber species profiles of British Columbia and Nova Scotia. Rather, it was specifically based on larger tree sizes in the British Columbia interior, making the Nova Scotia benchmark an inappropriate tier-one benchmark.[302] As we noted in the *Lumber V AR4 Prelim*, the difference in tree size that was cited in the investigation continues to be present at a similar level, and thus, we find no basis to revise our prior conclusion.[303]

Furthermore, the tiered benchmark selection methodology outlined in 19 CFR 351.511(a)(2) is hierarchical in nature, wherein Commerce proceeds by first determining whether there are market-determined prices for the good or service stemming from actual transactions in the country in question – *i.e.*, a tier-one benchmark. If there are no such prices, Commerce then

[302] *See Lumber V Prelim* PDM at 46-47.
[303] *See Lumber V AR4 Prelim* PDM at 25-26 (citing GBC Stumpage IQR Response at Exhibits BC-AR4-S-174 and BC-AR4-S-201 and 202; *see also* GNS Stumpage IQR Response at 9).

turns to a tier-two benchmark, and then tier-three, if necessary. For example, in the *Lumber V Final*, Commerce explained that having found the private stumpage prices from Nova Scotia provided appropriate tier-one prices for Alberta stumpage, "given the hierarchical approach for benchmark selection under 19 CFR 351.511(a)(2), it is not necessary for {Commerce} to examine the suitability of or rely upon non-tier-one benchmark data, such as the TDA survey prices in Alberta{.}"[304] Fundamentally, the question before us is whether the 2017-2018 Private Market Survey can serve as a suitable tier-one benchmark for British Columbia stumpage. Since the *Lumber V* investigation, we have determined that because timber in Nova Scotia and British Columbia are not comparable, private stumpage prices from Nova Scotia are not suitable for use as a tier-one benchmark for British Columbia stumpage, and we have instead selected a tier-three benchmark for British Columbia stumpage. As explained above, the petitioner has not provided sufficient evidence here that would cause us to reach a different conclusion.

The petitioner also argues that it is irrational to reject the 2017-2018 Private Market Survey due to British Columbia timber being more valuable than Nova Scotia timber, only to use a tier-three benchmark that contains negative line-item benchmarks.[305] In this, the petitioner appears to be arguing for a results-based approach in our benchmark selection, but has provided no justification for why such a results-based analysis is appropriate. Commerce has otherwise addressed in this comment the deficiencies of the 2017-2018 Private Market Survey as a tier-one benchmark option, and the petitioner has not demonstrated why Commerce's analysis on this issue is incorrect.

However, as explained above, and consistent with Commerce's tiered benchmark selection methodology set out in 19 CFR 351.511(a)(2), Commerce continues to find that the 2017-2018 Private Market Survey is not suitable for use as a tier-one benchmark for British Columbia Stumpage.

Comment 13: Whether to Continue to Use a Tier-Three U.S. PNW Log Benchmark for BC Stumpage

Petitioner's Comments[306]

- Commerce should not use the tier-three benchmark methodology used in the *Lumber V AR4 Prelim* to measure the benefit from the BC stumpage for LTAR program because the constructed stumpage benchmarks used in the calculations do not reflect market reality.
- The negative benchmarks used under the current methodology are inconsistent with the regulatory standard that a tier-three benchmark must reflect the true, market-based value of the good in question. Commerce has previously explained, and the CAFC has affirmed, that a benchmark price aligns with market principles when it enables cost recovery and profit.[307] Without such a benchmark, Commerce cannot determine an accurate benchmark price.
- Under the current methodology, Commerce is essentially assuming that the prevailing market conditions in British Columbia are such that timber suppliers would be giving away or even

[304] *See Lumber V Final* IDM at 49.
[305] *See* Petitioner Case Brief at 17.
[306] *See* Petitioner Case Brief at 1-11.
[307] *Id.* at 5 (Citing *Nucor Corp.*, 927 F.3d at 1249 (upholding Commerce's determination as consistent with the statute and regulation because the pricing at issue "ensured cost recovery").

paying buyers to take timber off their hands. Thus, the suppliers would be ignoring cost recovery and profit, which would prevent sustainable operation and only benefit timber purchasers. Such behavior completely contradicts the market principles with which a tier-three benchmark must be consistent.

- The Canadian Parties make various assertions to justify the negative benchmarks, but they fail to offer any justification for how it would be rational for the free market price of stumpage in British Columbia to be negative.
- West Fraser argues that the negative benchmarks are due to Commerce choosing to calculate the benefit as the adjusted benchmark (WDNR prices minus respondents' costs) minus stumpage payments, rather than WDNR prices minus total remuneration (stumpage payment plus costs). However, this ignores that the good at issue is stumpage, not logs. Hence, Commerce has calculated derived stumpage benchmarks, and it is not germane what the log benchmarks might look like. Similarly, Canfor compares U.S. log prices to British Columbia constructed log prices, which does not address the issue of negative stumpage benchmarks.
- That British Columbia logging costs are high, even if market-based prices of similar logs of the same species are not, does not indicate whether the GBC is providing stumpage at a subsidized price. That simply suggests that British Columbia producers are less efficient than their U.S. counterparts and, indeed, that they might not even be able to compete in the marketplace without the advantage of stumpage subsidies.
- The extent of stumpage subsidies to British Columbia lumber producers must be determined by a comparison to an appropriate benchmark price. Commerce's "derived demand" methodology no longer produces an accurate price, and thus, an alternative benchmark must be found.

GBC's Rebuttal Comments[308]

- It is not unusual that a derived-demand benchmark methodology based on actual log market prices would in some cases generated negative constructed stumpage benchmarks, particularly when the log prices and the stumpage-associated costs that are subtracted from the log prices come from two separate jurisdictions and, as in this review, inflationary factors have driven stumpage-associated costs to historic highs.
- The petitioner also suggests that any reasonable methodology must produce positive constructed benchmarks and benefit amounts indicating subsidization, a results-oriented approach that is inconsistent with the relevant legal framework.
- The CAFC has confirmed that, while the Act and implementing regulations require Commerce to ensure "that the government authority's price is not too low considering what the authority is selling,"[309] Commerce also has broad discretion when establishing tier-three benchmarks.
- While the petitioner contends that under tier-three Commerce must use a benchmark price based on market principles, this approach is required by neither the Act nor Commerce's regulations. The courts have confirmed that Commerce is permitted to rely on an evaluation of whether the government entity's income from prices charged covers cost plus profit to determine whether a good was provided for LTAR.[310]

[308] *See* GBC Rebuttal Brief Volume III at 4-13.
[309] *Id.* at 8 (citing *Nucor Corp.*, 927 F.3d 1243, 1254).
[310] *Id.* at 9 (citing *Nucor Corp.*, slip op. at 13; *see also Nucor Corp.*, 927 F.3d at 1254-55).

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- Further, the petitioner's claim that the existence of negative benchmarks (which do not allow for cost recovery) renders the benchmark unusable is incorrect. While the petitioner is correct that Commerce seeks to identify what a fair free-market price for the good in question would be, this does not mean that every single transaction must produce a profit. Companies or government suppliers can make losses over individual periods and then recover those losses in later periods, which Commerce has acknowledged in finding that poor financial performance by a government-owned company in a particular year is not sufficient to establish a good was provided for LTAR.
- The petitioner emphasizes that for a tier-three benchmark, Commerce is focused on whether a seller sets prices based on recovering its own costs and making a profit, not the financial position of customers. However, Commerce has previously examined alleged LTAR programs not through a benchmark, but rather by evaluating whether the government entity covers its costs and earns a positive return on the sale of the good at issue, and the CAFC has confirmed that this approach is permissible.[311]
- Record evidence clearly shows that the GBC received revenue from Crown forests of over C$ 1.3 billion during FY 2020/21, against costs of just over C$ 1 billion. Thus, the GBC not only recovered its costs, but earned a profit from its Crown forests. Commerce can reasonably and lawfully conclude based on these revenues and costs that the GBC did not sell stumpage for LTAR during the POR.

Commerce's Position: We acknowledge, as we did in the *Lumber V AR4 Prelim*,[312] that the presence of negative line-item benchmarks raises concerns regarding the benchmark; we intend to further examine concerns raised regarding this benchmark in future proceedings. However, as noted above in Comment 12, we find that the 2017-2018 Private Market Survey prices in Nova Scotia are not usable as a tier-one benchmark given differences between timber in Nova Scotia and British Columbia, and the petitioner has not proposed an alternative methodology to the derived demand methodology (which we have utilized in every segment of this proceeding) that we would be able to apply based on the record of this review. As Commerce has stressed elsewhere in this memorandum and throughout the *Lumber V* proceeding, benchmarks do not require perfection, and Commerce has consistently sought to utilize the best available information on the record before us.

Commerce first used a tier-three derived-demand U.S. log price benchmark in the *Lumber IV AR1 Final*.[313] In the *Lumber V Prelim*, Commerce explained that this decision had been based on the following factors:

> (1) standing timber values are largely derived from the demand for logs produced from a given tree; (2) the timber species in the U.S. Pacific Northwest (U.S. PNW) and British Columbia are very similar and, therefore, U.S. log prices, properly adjusted for market conditions in British Columbia, are representative of prices for standing timber in British Columbia; and (3) U.S. log prices are market-determined.[314]

[311] *Id.* at 11 (citing *Nucor Corp*., Slip Op. at 13; *see also Nucor Corp*., at 1254-55).
[312] *See Lumber V AR4 Prelim* PDM at 32-33.
[313] *See Lumber IV AR1 Final* IDM at 16-18.
[314] *See Lumber V Prelim* PDM at 49 (citing *Lumber IV AR1 Final* IDM at 16).

Commerce then explained that these factors relied on in the *Lumber IV* proceeding continued to be accurate with respect to the *Lumber V* proceeding.[315] In the *Lumber V* proceeding, which has involved company-specific examination of respondents, Commerce has constructed company-specific derived-demand stumpage benchmarks by taking a U.S. PNW log price and then subtracting the respondents' own logging costs from that log price.[316] In this review, the petitioner argues that the presence of negative benchmarks means that this methodology is no longer viable. Specifically, the petitioner notes that negative derived stumpage benchmarks imply that standing timber suppliers in British Columbia would give away timber or pay buyers to take timber, an economically illogical result inconsistent with market principles; as such, standing timber suppliers would be forgoing cost recovery or profit and agreeing to endure continued losses.[317]

However, we note that the petitioner's argument on this matter relies on citations to litigation concerning proceedings involving the provision of electricity for LTAR. When measuring benefits conferred under an LTAR program, 19 CFR 351.511 requires us to take into account product characteristics of a good. Electricity and stumpage are two different types of good. Therefore, the method applicable to electricity does not apply to stumpage. When examining electricity for LTAR, Commerce's practice has been consistent, using the cost-recovery method.[318] With respect to BC stumpage, Commerce's methodology has been consistent since *Lumber IV*.[319] The petitioner does not challenge Commerce's consistent findings that standing timber values are largely derived from demand for logs produced from a given tree, that timber species in the U.S. PNW and British Columbia are very similar, and that U.S. log prices are market-determined. Moreover, we stress that while the petitioner claims that the derived demand methodology is no longer viable, the petitioner has not presented a viable alternative methodology in this review.

In pre-preliminary comments, the petitioner suggested that the derived demand approach was flawed because the respondents' reported logging costs were overstated.[320] However, following the issuance of the *Lumber V AR4 Prelim*, we verified that the logging costs Canfor and West Fraser reported were consistent with their books and records.[321] Those logging costs were also consistent with broader trends with respect to logging costs in British Columbia as a whole, which we also examined and verified.[322] Similarly, there is no evidence on the record that would lead us to conclude that U.S. PNW log prices are not market-determined, and the petitioner has not presented a tier-three benchmark that is not a U.S. PNW log price. Thus, we find that, based on the evidence and arguments present on the record of this review, a derived-demand U.S. PNW log benchmark represents the best available approach for calculating the benefit provided under the GBC's provision of stumpage.

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[315] *Id.* at 49.
[316] *See, e.g.*, *Lumber V AR4 Prelim* PDM at 34.
[317] *See* Petitioner Case Brief at 7.
[318] *See, e.g.*, *HRS from Korea* IDM at Comment 1.
[319] *See Lumber IV AR1 Final* IDM at 16.
[320] *See* Petitioner Benchmark Submission and Pre-Prelim Comments at 8-16.
[321] *See* West Fraser Verification Report at 6-11; *see also* Canfor Verification Report at 6-10.
[322] *See* GBC Verification Report at 3-5.

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Moreover, we note that the presence of negative line-item benchmarks is not new in this proceeding, as noted in the petitioner's comments,[323] and could potentially be the result of a variety of factors, including increased costs in British Columbia, changes in the U.S. PNW log market, or changes in the relationship between the U.S. PNW and British Columbia interior log markets. However, we acknowledge that, in some instances, there has been an increase in negative line-item benchmarks over the past several segments of this proceeding in conducting the benefit calculation of BC stumpage using the tier-three WDNR benchmark. Thus, in the next review, we invite parties to submit additional potential benchmarks that have not been submitted in prior segments of this proceeding. As noted above, we also intend in future proceedings to further probe the concerns Commerce has identified with this issue and the extent to which they continue to allow for an appropriate benchmark comparison.

The GBC separately argues in its rebuttal brief that Commerce can find British Columbia's stumpage system to be consistent with market principles based on a comparison of GBC stumpage revenue earned to forestry costs incurred during the POR.[324] However, as we are finding that there is an appropriate benchmark price on the record of this review, we find that the we do not need to address this claim, particularly given that the GBC fails to provide more than a cursory comparison of top-line revenue and costs.

E. New Brunswick Stumpage Issues

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

GNB and JDIL's Comments[325]

- 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.
- New evidence related to historical softwood volumes supports the GNB's contention that the period between 2007-2013 was a distressed market period and addresses Commerce's prior concerns that it lacked such information.[326]
- Updated evidence demonstrates significant price differences between mill and contractor prices and establishes that private woodlots harvested above sustainable levels in the POR.[327]
- With the market recovery in 2014, the three major sources of softwood supply (*i.e.*, Crown, private woodlot and industrial freehold) all increased; however, the volume from private woodlots increased 40 percent between 2014 and 2021 compared to an increase of only 5 to 7 percent for Crown and industrial freehold volumes. This increase in volume from private

[323] *See* AR4 BC Stumpage and LER Memorandum at 1-2 and Attachment at worksheets 'West Fraser Summary' and 'Canfor Summary.'
[324] *See* GBC Case Brief Volume 3 at 11-13.
[325] *See* GNB Case Brief Volume 6 at 4-53; *see also* JDIL Case Brief at 5-22.
[326] *Id.* at 5 (citing GNB Benchmark Comments at Exhibit NB-AR4-BENCH-STUMP-3).
[327] *Id.* at 5-6 (citing GNB Response to Petitioner's Comments on IQR Responses at Exhibit NB-AR4-RPC-2).

woodlots since 2014 is evidence that Crown royalties were not depressing private stumpage prices and acting as a barrier to entry.[328]

- If Commerce's theory of oligopsony were viable, private woodlots would not have increased their share of the overall market between 2014 and 2021.
- During the POR, there was net demand for standing timber from private woodlots; there is a negligible "overhang" and much of it is due to specific events (pandemic-related disruptions, mills closed, damaged by fire, or not operating, *etc*.); a vibrant market with a sizeable private softwood sector; 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, mills paid more than independent contractors for private stumpage, and the prices mills have paid have risen in recent years.
- The *2015 Auditor General Report* and *2020 Auditor General Report* concluded that private-origin stumpage prices are market-determined and are a more reliable source than the *2008 Auditor General Report* and *2012 Private Forest Task Force Report* 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 market since the time the report was written. More recent data sources such as the *2020 Auditor General Report*, the 2021 FMV Study, Auditor General reports, the study produced by Professor Brian Kelly, and a report from the economist Dr. David Reishus should be used by Commerce.
- New Brunswick mills were not the dominant consumers of private stumpage during the POR. In its most recent private stumpage survey covering January through December 2021, the New Brunswick Forest Products Commission found that "mill-purchased stumpage represents 15 percent of the total private woodlot volume, with independent contractors purchasing around 85 percent of private woodlot stumpage."[329]
- 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.

Petitioner's Comments[330]

- In the *Lumber V AR4 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.
- The GNB market memorandum,[331] *2008 Auditor General Report*, 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 the *2012 Private Forest Task Force Report*

[328] *Id.* at 23 (citing GNB Benchmark Comments at Exhibit NB-AR4-BENCH-STUMP-3, Table "Softwood Source Volume")
[329] *See* GNB Case Brief Volume 6 at 49 (citing GNB Benchmark Comments at Exhibit NB-AR4-BENCH-STUMP-2 (2021 FMV Study) at 4-5); *see also* JDIL Case Brief at 15 (citing GNB Benchmark Comments at Exhibit NB-AR4-BENCH-STUMP-2 at 3).
[330] *See* Petitioner Rebuttal Brief at 97-115.
[331] *Id.* at 98-99 (citing New Brunswick Preliminary Market Memorandum at Tables 2.1 and 3).

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 15.04 percent in New Brunswick, which is more than double the overhang during the previous POR and represents a significant amount of available Crown stumpage whenever the need arises and decreases mills' reliance on private stumpage.
- The GNB characterizes this overhang as immaterial with an updated declaration from the DNRED and "additional record support"; however, regardless of whether allocation of unused volume is successful or not, the fact that mills can be awarded such re-allocations that decrease their reliance on private stumpage remains unchanged.[332]
- The same is true for the 2021 FMV Study, which "determine{s} provincial average stumpage values as it pertains to private woodlots in New Brunswick" but does not analyze broader market forces to determine if the underlying transactions took place in a free and open market. An average of private stumpage transaction prices cannot be used to determine if the private stumpage market is distorted; such a comparison is circular. Therefore, the resulting prices have no relevance to the market distortion issue because those prices are themselves a product of that market distortion.[333]
- The GNB argues that the New Brunswick stumpage market has changed significantly such that only reports, studies and declarations from the current market period from 2014 to present are relevant to assessing whether the market is distorted.
- The GNB cites to data showing that "the largest increase in {softwood supply} volume was from private woodlots, which increased by 40% between 2014 and 2021"; however, record evidence pertaining to both the POR and the immediately preceding years make clear that even though private woodlots are no longer at their nadir, the fundamental market distortion identified by Commerce remains fully in effect.[334]
- The GNB's data demonstrate that Crown lands remain the dominant supply source regardless of any gains in private woodlot volumes, which is evident in the fact that the share of private timber has been smaller than the share of industrial freeholds and has been significantly smaller than the share of Crown stumpage.
- The 40 percent increase in harvest from private woodlots between 2014 and 2021 came at the direct expense of imported fiber, not Crown and First Nation softwood.[335]
- While private woodlot volumes for 2021 remained four percent lower than their 2005 (*i.e.*, pre-"distress") levels, the Crown and First Nation volumes increased by over 15 percent in the same period.[336]
- New evidence provided by the petitioner confirms that New Brunswick's private market remained distorted during the POR:

[332] *Id.* at 100-101 (citing GNB Case Brief Volume 6 at 31-33 and JDIL Case Brief at 19-22).
[333] *Id.* at 103 (citing GNB Benchmark Submission Exhibit NB-AR4-BENCH-STUMP-2 at 2.)
[334] *Id.* at 105 (citing GNB Case Brief Volume VI at 23, GNB Benchmark Submission at Exhibit NB-AR4-BENCH-STUMP-3, Table "Softwood Source Volume," and JDIL Case Brief at 12-13).
[335] *Id.* (citing GNB Benchmark Submission at Exhibit NB-AR4-BENCH-STUMP-3, Table "Softwood Source Volume").
[336] *Id.* (citing GNB Benchmark Submission at Exhibit NB-AR4-BENCH-STUMP-3, Table "Softwood Source Volume").

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- A statement from the president of the New Brunswick Federation of Woodlot Owners that private woodlot owners' market share remained substantially below historic levels of 30 percent while the share of Crown wood was over 50 percent;[337]
- A July 2021 report indicating that the GNB's royalty system "gives sawmills an incentive to keep prices low to woodlot owners," and that private woodlot owners find it "impossible to get a fair price" when competing with "a single dominant buyer";[338]
- A statement from the general manager of the Southern New Brunswick Forest Products Marketing Board explaining that "{b}ecause the price paid to private woodlot owners determines Crown royalties, sawmills engage in practices that deflate the private market";[339] and
- A statement from a political leader describing the GNB's royalty timber policy as "encourage{ing} a depressed marketplace, and sawmills want to keep it that way… while reaping millions more in profit."[340]

- The GNB and JDIL argue that mills paid more on average than independent contractors, demonstrating a lack of distortion; however, Commerce rebutted this argument in the *Lumber AR3 Final*.[341]
- The GNB's comparison of the prices paid by mills and independent contractors serves no empirical purpose; rather, it shows that both mills and independent contractors purchase wood products from private sources, and independent contractors subsequently sell those products to those same mills. What is important is the record evidence showing that this overlap and concentration of demand prevents private stumpage prices from being independent of Crown stumpage prices.
- The GNB raises a number of complaints about Commerce's analysis of the *2020 Auditor General Report*; however, Commerce has already considered and rejected these arguments in the prior review.[342]
- The GNB argues that there is "net demand" for softwood saw material in New Brunswick; however, Commerce has considered and rejected these same arguments in the previous administrative review.[343]
- Commerce should dismiss the GNB's argument that private stumpage prices cannot be depressed when the private stumpage market is operating at the sustainable AAC because the sustainable AAC is a recommendation from the *2012 Private Forest Task Force Report* issued nine years prior to the POR. It is an arbitrary threshold that cannot be used to measure the success of private woodlot owners and does not address whether prices are fair market value.
- The distance between mills is not evidence of strong competition, as the GNB argues, because, as Commerce explained in the *Lumber V AR3 Final*, measuring distance between mills alone does not account for who owns the mills or from where they tend to source wood, and there is minimal support for finding a correlation between distance and competition.[344]

[337] *Id.* (citing Petitioner IQR Comments at Exhibit Vol. I-97 at 2 and Exhibit Vol. I-100).
[338] *Id.* (citing Petitioner IQR Comments at Exhibit Vol. I-94 at 3 and Exhibit Vol. I-107 at 9 and 11).
[339] *Id.* (citing Petitioner IQR Comments at Exhibit Vol. I-94 at 3).
[340] *Id.* (citing Petitioner IQR Comments at Exhibit Vol. I-94 at 4).
[341] *Id.* at 109-110 (citing *Lumber V AR3 Final* IDM at Comment 14).
[342] *Id*. at 103-104 (citing GOC Case Brief at Volume 6 at 13-16, PDM at 18-19, and *Lumber V AR3 Final* IDM at Comment 14).
[343] *Id*. at 111 (citing *Lumber V AR3 Final* IDM at Comment 14).
[344] *Id.* at 112-113 (citing *Lumber V AR3 Final* IDM at Comment 14).

- The GNB raises a new argument that information regarding "the location and identity of mills that constituted the largest consumers within the maps" is on the record, and that this information "shows that multiple large and medium-sized competing mill groups with different ownership are within 70 kilometers of nearly all land in New Brunswick." However, this simply highlights the location of various mills without discussing relevant market dynamics.[345]
- The GNB continues to insist that various reports and declarations submitted on the record, including the Kelly Report and a report from Dr. David Reishus, prove that there is no distortion in the province's private stumpage market; however, Commerce has addressed these reports in prior reviews and need not revisit its well-reasoned determination to disregard the findings in those reports here.
- 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.[346]
- 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 AR4 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. 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. Additionally, Commerce found Crown lands accounted for the majority of the softwood harvest volume 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. Finally, we found that an "overhang" existed between the volume of Crown-origin standing timber allocated and the volume harvested.[347]

For purposes of these final results and for the same reasons discussed in *Lumber V AR4 Prelim*, 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 information on the record that causes us to come to a different conclusion from our finding in *Lumber V AR4 Prelim*[348] or *Lumber V AR3 Final*[349] regarding the private stumpage market in New Brunswick.

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[345] *Id.* at 113 (citing GNB Case Brief Volume VI at 37).
[346] *Id.* at 113-114 (citing GNB Case Brief Volume VI at 41, and GNB IQR Response at Volume II, Exhibit NB-AR4-STUMP-21).
[347] *See Lumber V AR4 Prelim* PDM at 16-19.
[348] *Id*.
[349] *See Lumber V AR3 Final* IDM at Comment 14.

In its case brief, the GNB argues that: (1) the *2020 Auditor General Report* supports the use of private woodlot stumpage prices as representing fair value; (2) the *2015 Auditor General Report* is consistent with the *2020 Auditor General Report* and does not support Commerce's position; (3) 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*; (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) overhang is not material and does not demonstrate that private woodlots are a supplemental source of supply; (9) distance to multiple mills demonstrates competition for private woodlots in New Brunswick; (10) non-crown sources working on market principles made up over half of the New Brunswick market during the POR; (11) there is substantial additional evidence on the record showing that the private stumpage market is not distorted; and (12) the *Lumber V AR4 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 AR4 Prelim*. 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 such that mills are not able to leverage artificially low stumpage prices from private woodlots. 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 prices from its private standing timber purchases 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 *2008 Auditor General Report*, *2012 Private Forest Task Force Report*, *2015 Auditor General Report*, and *2020 Auditor General Report*.

First, we address the argument by the GNB that more "authoritative reports" are on the record of this administrative review.[350] More specifically, the GNB initially argues that the *2008 Auditor General Report* and *2012 Private Forest Task Force Report*, which Commerce has relied upon, are no longer relevant to the POR.[351]

[350] *See* GNB Case Brief Volume VI at 38-40.
[351] *Id.* at 21-22.

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Consistent with the prior review, we find information in the *2008 Auditor General Report*, *2012 Private Forest Task Force Report*, *2015 Auditor General Report*, and *2020 Auditor General Report* indicates that the New Brunswick standing timber market is distorted.[352] 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 the *Lumber V* proceeding.[353] Further, the *2020 Auditor General Report* confirms the conclusions in these reports, continues to provide reliable analyses of facts pertaining to private stumpage prices in the province, was conducted by individuals who were familiar with the stumpage market in New Brunswick, and was authored in the ordinary course of business.[354] Neither the GNB nor JDIL have provided or pointed to any unique information that would cause us to reconsider the reliability of these reports. Further, 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 the New Brunswick market cannot serve as a reliable market determined price.

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

> the 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

> the royalty system provides an incentive for processing facilities to keep prices paid to private landowners low.[355]

In addition, 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

[352] *See Lumber V AR4 Prelim* PDM at 17-19; *see also* GNB IQR Response at NB-AR4-STUMP-15, STUMP-16, STUMP-17, and STUMP-23.
[353] *See Lumber V Final* IDM at Comment 28 (citing the *2008 Auditor General Report*, *2012 Private Forest Task Force Report*, and *2015 Auditor General Report*); *see also SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 23.
[354] 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 Preliminary Market Memorandum at Attachment, worksheet "Survey Data Pivot"), which is consistent with the findings in all four reports.
[355] *See* GNB IQR Response at NB-AR4-STUMP-15.

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> of the total harvest are set administratively. Thus, it is difficult to establish fair market value.[356]

Further, the *2015 Auditor General Report* which indicates that the GNB has "potentially conflicting interests" and that:

> {s}ince the most significant source of departmental revenue is Crown timber royalties, any increase in Crown timber supports {Commerce's} efforts to balance budgets.[357]

Finally, we find that the *2020 Auditor General Report* confirms our previous 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.[358]
- In 2019, only four companies, including JDIL, held nine of the ten Crown timber licenses issued by the Province.[359]
- 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)[360]

The GNB argues that due to changes in the private stumpage market, the *2008 Auditor General Report* and *2012 Private Forest Task Force Report* Commerce relied on are no longer relevant.[361] Here, 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."[362] 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.[363] 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 2019-2021 volume.[364] The GNB's subsequent argument is twofold: (1) the current

[356] *Id*. at NB-AR4-STUMP-17.
[357] *Id*. at NB-AR4-STUMP-16.
[358] *Id.* at Exhibit NB-AR4-BENCH-STUMP-23 at 23 (internal p. 181) and Exhibit 4.1.
[359] *Id.* at 24 (internal p. 182 and Exhibit 4.2).
[360] *Id.* at 32 (internal p. 190).
[361] *See* GNB Case Brief Volume VI at 38-40.
[362] *Id.* at 21 (citing GNB IQR Response at Exhibit NB-AR4-STUMP-24).
[363] *Id.* at 7 and 22 (citing GNB IQR Response at Exhibit NB-AR4-STUMP-24 at Attachment A).
[364] *Id.* at 21-22 (the private harvest volume was 754,471 m3 in 2012, which is 56.5 percent of the private harvest volume of 1,334,460 m3 in 2021).

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.

In the previous review, Commerce noted that the data presented by itself in Dr. Floyd's exhibit was not meaningful as it did not indicate to what extent a change in private harvest volume compares to the total volume change in the province during this time.[365] In response, the GNB states in its case brief that data detailed in the *2015 Auditor General Report* contradicts Commerce's argument and is "consistent and mutually reinforcing" with the data provided by Dr. Floyd.[366] The GNB highlights several data points in the *2015 Auditor General Report* , most notably Exhibit 4.2, which shows trend lines for the historic consumption of private woodlot, industrial freehold, Crown, and imported volumes from 1992 to 2013 of softwood and hardwood lumber.[367] Further, based on the upward trendlines which show that private woodlot consumption has increased since 2014 in the Floyd declaration, the GNB argues that the *2008 Auditor General Report* and the *2012 Private Forest Task Force Report* are no longer relevant sources.

While taking into consideration the data the GNB cites, Commerce continues to disagree that because the harvest volume of private-origin timber has increased since the time the *2008 Auditor General Report* and *2012 Private Forest Task Force Report* were written that they are no longer relevant. First, the NBFPC data Dr. Floyd cites still does not demonstrate to what extent an increase in private harvest volume since 2014 compares to the total volume change in the province during the POR. Second, while the GNB argues that data in the *2015 Auditor General Report* affirms the findings listed by Dr. Floyd, we disagree that the historic consumption data of softwood and hardwood included in the *2015 Auditor General Report* is "consistent and mutually reinforcing" of the NBFPC's softwood lumber private harvest volume data. Beyond this, the GNB has not provided sufficient information regarding how the private woodlot market has substantially changed (*i.e.*, significant increase/decrease in freehold land production) since the issuance of the *2008 Auditor General Report* and *2012 Private Forest Task Force Report*. Therefore, Commerce continues 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, in addition to relying on the *2015 Auditor General Report* and *2020 Auditor General Report*.

In addition, the GNB questions the relevance of the statement in the *2015 Auditor General Report* in supporting Commerce's hypothesis of market distortion.[368] Once again, Commerce's conclusion that in-province private stumpage prices are distorted is fundamentally a determination that the prices are "significantly distorted as a result of the government's

[365] *See Lumber V AR3 Final* IDM at 80.
[366] *See* GNB Case Brief Volume VI at 52.
[367] *Id.* at 20 (citing GNB IQR Response at Exhibit NB-AR4-STUMP-16).
[368] *Id.* at 17-21.

involvement in the market."[369] Commerce does not base its determination of market distortion and government involvement in the market on this statement alone; however, the fact that the largest source of revenue for the Department of Natural Resources in New Brunswick stems from Crown timber royalties, which the *2015 Auditor General Report* describes as a potential conflict of interest, is indicative of the government's incentive to be highly involved in the market. As the report goes on to say, "{t}his may put the Department in a conflict situation given it is also to 'encourage' private forest land management as the 'primary source of supply.'"[370]

Regarding the *2020 Auditor General Report*, 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."[371] 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. As stated previously, we find that the *2020 Auditor General Report* confirms our previous 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 GNB contests Commerce's findings and states that "{w}hether or not there have been changes in the proportions of forest ownership is not relevant to the issues before {Commerce}."[372] We disagree. The fact that there has been very little change of forest ownership and Crown-origin standing timber continues to constitute 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. As stated elsewhere, 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."[373]

In addition, the GNB states that the number of licensees is unimportant as multiple other parties harvest on each Crown license. More specifically, the GNB states, "{Commerce} claims for support the Auditor General's statement that in 2019, only four company groups acted as Crown licensees.[374] But the Auditor General went on to state that '{t}here are currently 27 sublicensees in the Province' and '32 sawmills, six pulp mills and paper mills, five pellet mills and two board mills currently operating in the Province.'"[375] We are unpersuaded by this argument. We base our conclusion that the New Brunswick private stumpage market is distorted on a number of

[369] *See CVD Preamble*, 63 FR at 65377.
[370] *See* GNB IQR Response at Exhibit NB-AR4-STUMP-16 at p. 197.
[371] *Id.* at 11 (citing Exhibit NB-AR4-STUMP-23 at p. 173).
[372] *See* GNB Case Brief Volume VI at 14.
[373] *See CVD Preamble*, 63 FR at 65377.
[374] *See* GNB Case Brief Volume VI at 14.
[375] *See* GNB IQR Response at Exhibit NB-AR4-BENCH-STUMP-23 at p. 182-183 and Exhibit 4.2 and 4.3).

factors, one of which includes the finding that mills are the dominant consumers of stumpage in New Brunswick and that consumption of both Crown-origin standing timber and private standing timber is concentrated among a small number of corporations. While it is true that there are sublicensees within the province, that does not change the fact that only four companies possess the four main licenses issued by the province, which equates to 98 percent of the land area, and therefore possess considerable influence in an oligopsonistic market.[376]

Finally, the GNB claims that that there are sufficient purchasers and end users to allow private woodlot stumpage sales to "represent a fair value transaction."[377] JDIL also argues that based on the findings of the *2020 Auditor General Report*, private transactions represent the "fair value" of transactions and contends that Commerce did not address these findings in the *Lumber V AR3 Final* or *Lumber V AR4 Prelim*.[378] As explained in the *Lumber V AR3 Final*, 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.[379] Since the private woodlot owner chooses to sell timber, the Auditor General concluded that this can represent a fair value transaction in this market.[380] 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 Auditor General Report* 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 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.

Furthermore, the *2020 Auditor General Report* states, "it is these stumpage sales transactions {private woodlot}, completed through the private wood stumpage market, that the Department considers fair market value and uses to calculate Crown timber royalty rates."[381] The report, however, also indicates that while the GNB has attempted some clarity regarding fair market value, this term has not been clearly defined in legislation, regulation, or policy. As the report itself states, "the Act does not define 'fair market value' and the Department has no policy regarding fair market value that we could review. Thus, we believe it is important for the Department to address this obvious gap in the regulatory framework."[382]

While the *2020 Auditor General 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

[376] *See* GNB IQR Response at Exhibit NB-AR4-BENCH-STUMP-23 at p. 182.
[377] *See* GNB Case Brief Volume VI at 15-16 (citing GNB IQR Response at Exhibit NB-AR4-BENCH-STUMP-23).
[378] *Id.* at 11; *see also* JDIL Case Brief at 10-14.
[379] *See Lumber V AR3 Final* IDM at 82.
[380] *See* GNB IQR Response at Exhibit NB-AR4-BENCH-STUMP-23 at p. 198.
[381] *Id.* at p. 197.
[382] *Id.*

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this requirement.[383] Further, the overall response rate of the contractors to the Commission's request was low, approximately 20-30 percent.[384] The Auditor General 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.[385] Therefore, we continue to find that the *2020 Auditor General Report* affirms the GNB's dominance as the supplier of stumpage coupled with oligopsonistic conditions in the province during the POR where a limited number of mills were the dominant consumers of stumpage.

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

In addition to the *2015 Auditor General Report*, *2020 Auditor General Report*, Kelly Report, and a report from Dr. David Reishus, the GNB argues that the FMV studies are more reliable sources of private woodlot stumpage price information.[386] We disagree with the GNB that we should rely upon the FMV studies' findings over the information in *2008 Auditor General Report*, *2012 Private Forest Task Force Report*, *2015 Auditor General Report*, and *2020 Auditor General Report*. As described above, we continue to find the private stumpage market to be distorted, and therefore, we cannot use private prices in New Brunswick as a tier-one benchmark. Thus, we continue to find that the FMV studies do not provide an appropriate source for price comparison purposes.

As an initial matter, Commerce acknowledges that its previous concerns regarding the exclusions of these transactions in the 2018-2019 and 2020 FMV studies are no longer pertinent. However, as stated before, 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. As the petitioner notes, the average private stumpage values in the 2021 FMV Study have no relevance to the market distortion issue because those prices are themselves a product of that market distortion.[387] As described above, we continue to find the stumpage market in New Brunswick to be distorted; thus, Commerce need not determine whether it was reasonable for the NBFPC to set the survey parameters by lump-sum transactions or include owner-operator transactions.

Next, the GNB argues that Commerce should not hold the 2021 FMV Study to a higher standard than the 2017-2018 Private Market Survey for Nova Scotia.[388] However, as explained in this comment, Commerce finds that these private prices in New Brunswick are not independent of the crown stumpage prices charged by the GNB, and thus, the prices in the 2021 FMV Study reflect prices in a distorted market. As discussed above, the existence of the GNB as the dominant supplier of stumpage, and the mills as the dominant consumers of stumpage in New Brunswick results in an oligopsony in the province. This results in private stumpage prices in New Brunswick that are responsive to the price-setting behavior by the Crown and the mills.

[383] *Id.* at p. 194.
[384] *Id.*
[385] *Id.* at p. 197.
[386] *See* GNB Case Brief Volume VI at 12.
[387] *See* Petitioner Rebuttal Brief at 103.
[388] *See* GNB Case Brief Volume VI at 25-26 (citing GNS Stumpage IQR Response at Exhibit NS-6B).

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Thus, Commerce is not holding the 2021 FMV Study to a different standard than the Nova Scotia study. Rather Commerce has reached a determination that the 2021 FMV Study reflected prices from a distorted market.

The GNB also references the economist Dr. David Reishus in this review.[389] The GNB states that Dr. Reishus found that New Brunswick is a net importer of softwood roundwood. In addition, the GNB cites from Dr. Reishus' findings that there are exports of softwood roundwood logs to neighboring jurisdictions, showing demand for softwood harvested from private land.[390] However, the GNB notes Dr. Reishus' analysis focuses on the import and export of softwood roundwood *logs*, not on private stumpage markets.[391] Thus, the findings of the report fail to address the issue of concern in this review.

With respect to statements referencing the report from Professor Brian Kelly (the Kelly Report) in the *2020 Auditor General Report* , in the underlying investigation, Commerce found 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.[392] Moreover, in recognizing the Kelly Report's conclusions about New Brunswick's private stumpage market, the *2020 Auditor General Report* stated that its review of the Kelly Report was limited.[393] The *2020 Auditor General Report* also lacks any analysis as to how the Auditor General came to its conclusion regarding the Kelly Report.

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

The GNB and JDIL also claim the data from the 2021 FMV Study indicate that mills paid more on average for private-origin, SPF sawlogs and studwood than independent contractors, and that this fact undercuts Commerce's conclusion that sawmills take advantage of oligopsonistic conditions to keep standing timber prices low. Commerce is not persuaded, however, that these prices are as authoritative as the GNB portrays them to be. First, while the FMV studies indicate a modest price difference between the prices paid by mills and independent contractors for private-origin sawlogs (C$23.85/$m^3$ for mills versus C$18.62/$m^3$ for contractors), the prices paid for private-origin studwood, which accounts for a large majority of the sawable, private-origin standing timber harvested in Nova Scotia, are very similar (C$18.32/$m^3$ for mills versus C$15.92/$m^3$ for contractors).[394] More importantly though, any comparison of the prices sawmills and independent contractors pay for private-origin standing timber does not address the extent to which those prices are independent of the prices charged for Crown-origin standing timber.

[389] *Id.* at 39 (citing Canadian Parties Response to Petitioner's Comments to IQR Response at Exhibit GOC-RPR-AR4-4).
[390] *Id.* (citing Canadian Parties Response to Petitioner's Comments to IQR Response at Exhibit GOC-RPR-AR4-4at 42, para. 90).
[391] *Id*.
[392] *See Lumber V Final* IDM at 82-83.
[393] *See* GNB IQR Response at Exhibit NB-AR4-BENCH-STUMP-23 at 196.
[394] *See* GNB Case Brief Volume VI at 26 (citing GNB Stumpage Benchmark Comments at Exhibit NB-AR4-BENCH-STUMP-2, Supplementary Analyses & Observations at 4, Table 4).

In addition, we disagree with the GNB and JDIL's 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.[395] Citing the FMV studies, both the GNB and JDIL argue that mills account for a small portion of private-origin standing timber purchases in 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 2021 FMV Study, the GNB and JDIL note that independent contractors account for 73 to 84 percent of private woodlot stumpage purchases in New Brunswick and mills account for the remaining share.[396] When citing these numbers from the *2020 Auditor General Report*, 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."[397] 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.

Further, regardless of the volume of private-origin standing timber harvested by non-sawmill-owning, independent contractors, these independent contractors are also 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. In addition, as the consumption data show in the *2020 Auditor General Report*, 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.[398]

Commerce Appropriately Evaluated Distortion in the New Brunswick Stumpage Market

Consistent with our findings in the *Lumber V Final*,[399] *Lumber V AR1 Final*,[400] *Lumber V AR2* Final,[401] and *Lumber AR3* Final,[402] 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; the mills being the dominant consumers of stumpage in New Brunswick; the GNB accounting for a majority of the softwood harvest volume during the POR; and consumption of

[395] *Id.* at 43 (citing GNB Stumpage Benchmark Comments at Exhibit NB-AR4-BENCH-STUMP-2 (2021 FMV Study and GNB IQR Response at Vol. II at Exhibit-AR4-STUMP-29, Table 11); *see also* JDIL Case Brief at 15-16.
[396] *See* JDIL Case Brief at 15 (citing the GNB IQR Response at Exhibit NB-AR4-STUMP-2); *see also* GNB Case Brief Volume VI at 43 (citing GNB Stumpage Benchmark Comments at Exhibit NB-AR4-BENCH-STUMP-2 at 4 and GNB IQR Response, Vol. II at Exhibit-AR4-STUMP-29, Table 11).
[397] *See* GNB IQR Response at Exhibit NB-AR4-STUMP-2 at 189.
[398] *See, e.g.*, New Brunswick Market Memorandum.
[399] *See Lumber V Final* IDM at Comment 28.
[400] *See Lumber V AR1 Final* IDM at Comment 17.
[401] *See Lumber V AR2 Final* IDM at Comment 14.
[402] *See Lumber V AR3 Final* IDM at Comment 14.

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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.[403] To support its argument, the GNB provides a declaration from the Acting Director of the Forest Operations and Development Branch for the DNRED, declarations from other mills clarifying that any unused allocation by these companies was not readily available supply and could not have been harvested, and a table of private woodlot harvest volume and mills' sources of softwood roundwood volumes from 2005 to 2021.[404] We find the conclusions contained in this supporting documentation unpersuasive.

In a declaration by the Acting Director of the Forest Operations and Development Branch at DNRED he states, "Licensees and sub-licensees are not permitted to over-harvest by more than 10 percent in a single operating year."[405] In addition, he adds, "but this does not mean that licensees and sub-licensees have discretionary additional Crown volume available – that would be a misunderstanding of New Brunswick law and market realities."[406] 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.[407]

The GNB also argues that mills deliberately overharvesting in a given year to lower the need for private woodlot stumpage is not a viable strategy and in fact increases mills' reliance on third-party private sources.[408] Further, even when using Commerce's calculations, JDIL contends that New Brunswick sawmills' consumption of softwood fiber was still much greater than the total volume of their Crown allocation. Moreover, JDIL adds that the mills' total consumption of private-origin softwood timber dwarfed the volume of Crown overhang calculated by Commerce.[409] We similarly continue to disagree with the GNB and JDIL that an insignificant

[403] *See* GNB Case Brief Volume VI at 5-6 (citing GNB Stumpage Benchmark Comments at Exhibit NB-AR4-BENCH-STUMP-3 and GNB Response to Petitioner's Comments on IQR Responses at Exhibit NB-AR4-RPC-2); *see also* JDIL Case Brief at 19-22.
[404] *See* GNB Case Brief Volume VI at 31-32 (citing GNB IQR Response at Exhibits NB-AR4-STUMP-26, NB-AR4-STUMP-36, Exhibit NB-AR4-STUMP-38, and Exhibit NB-AR4-STUMP-39; and GNB Benchmark Comments at Exhibit NB-AR4-BENCH-STUMP-3).
[405] *See* GNB Stumpage Benchmark Comments at Exhibit NB-AR4-BENCH-STUMP-1 at 2.
[406] *Id.*
[407] *See* GNB IQR Response at Exhibit NB-AR4-STUMP-1 at Table 1; *see also* New Brunswick Preliminary Market Memorandum.
[408] *See* GNB Case Brief Volume VI at 35.
[409] *See* JDIL Case Brief at 21-22 (citing GNB IQR Response, Vol. II at Exhibit NB-AR4-STUMP-1, Tables 1 and 2 and GNB Preliminary Market Memorandum at Table 1.1).

portion of Crown allocations were unharvested during the POR as the total overhang in the province in FY 2020-2021 was 15.04 percent.[410]

Relatedly, during the POR and in previous reviews, the Crown's share of the standing timber harvest in New Brunswick continued to be approximately 50 percent during the POR.[411] The GNB 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.[412] As explained in the *Lumber V AR4 Prelim*, additional factors such as the small number of mills that dominate standing timber consumption, the fact that Crown-origin standing timber constitutes approximately half the supply in the province, and the existence of an overhang of allocated Crown-origin standing timber volume, all contributed to our finding that New Brunswick's private-origin standing timber market was distorted. Thus, Commerce did not apply a *per se* rule, however, in the *Lumber V AR4 Prelim*. Rather, Commerce based its affirmative distortion finding on multiple factors.

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.[413] To illustrate this, the GNB notes that the private woodlot softwood stumpage harvest was over 100 percent of long-term sustainable levels during the 2020-2021 and 2021-2022 harvest years.[414] Further, JDIL cites 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 softwood timber in New Brunswick.[415]

We continue to 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. More specifically, 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.[416] Neither the GNB nor JDIL have provided any information that changes the concentration of consumption of Crown and private timber among a 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.[417] Further, in the

[410] *See* New Brunswick Prelim Market Memorandum, worksheet "Table 1.1 Pivot."
[411] *See, e.g.*, New Brunswick Prelim Market Memorandum.
[412] *See* GNB Case Brief Volume VI at 50-51.
[413] *Id.* at 11, 19, and 21 (citing GNB IQR Response at Exhibit NB-AR4-STUMP-11 and Exhibit NB-AR4-STUMP-17 at 38).
[414] *Id.* at 9, 19, 21, and 30 (citing GNB IQR Response at Exhibit NB-AR4-STUMP-11 and Exhibit NB-AR4-STUMP-17 at 38, and GNB Response to Petitioner's Comments on IQR Responses at Exhibit NB-AR4-RPC-2).
[415] *See* JDIL Case Brief at 5-7.
[416] *See* New Brunswick Preliminary Market Memorandum at Attachment, worksheets "Survey Data Pivot" and "7. DisaggregatedSurveyData."
[417] *Id.*

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.[418]

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.

Next, the GNB continues to argue 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.[419] Citing the same data in the previous review 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.[420] 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.[421] Thus, due to the higher level of proximity of mills and sawmills, the GNB argues that "the private stumpage market in New Brunswick provides more competitive conditions than Nova Scotia."[422]

We continue to 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. 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.[423] 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, "{i}n a competitive market like New Brunswick, the wood basket of one mill can overlap with one or multiple other mills."[424] 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

[418] *See* GNB IQR Response at Exhibit NB-AR4-STUMP-33.
[419] *See* GNB Case Brief Volume VI at 36-38.
[420] *Id.* at 36 (citing GNB IQR Response Exhibit NB-AR4-STUMP-32, Appendix 2).
[421] *Id.* at 37 (citing GNB IQR Response at NB-AR4-STUMP-32, Appendix 2).
[422] *Id.* at 36.
[423] *See* New Brunswick Preliminary Market Memorandum at Attachment, worksheets "Survey Data Pivot" and "7. DisaggregatedSurveyData." The exact percentages are proprietary.
[424] *See* GNB Case Brief Volume VI at 36 (citing GNB IQR Response at Exhibit NB-AR4-STUMP-32, Appendix 2 at 2, para. 8).

Nova Scotia based on the concentration of mills and sawmills in New Brunswick and Nova Scotia.

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

The GNB states that it has presented several new 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 in New Brunswick."[425] The GNB argues that the reports and studies it has submitted to the record, such as the *2015 Auditor General Report*, *2020 Auditor General Report*, the FMV studies, the Kelly Report, and the report by Dr. David Reishus are more applicable to the current period and thus are more relevant for this administrative review. In addition, the GNB submitted a declaration from independent contract harvesters, timberland operators, and sawmill owners in New Brunswick describing the nature of the private stumpage market and the lack of practical relevance of Crown stumpage to the private stumpage market.[426] The GNB argues that these declarations contradict Commerce's findings in the *Lumber V AR4 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. While the GNB submitted an updated FMV Study for the 2021 calendar year from the independent NBFPC, which shows that mills that purchased stumpage directly from private woodlot owners actually paid higher prices than independent contractors, for the reasons stated above, 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.[427]

Further, the GNB argues that the *Lumber V AR4 Prelim* does not articulate a viable theory of market distortion.[428] 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

[425] *See* GNB Case Brief Volume VI at 39.
[426] *Id.* at 40-42 (citing GNB IQR Response at Exhibits NB-AR4-STUMP-21, NB-AR4-STUMP-34, NB-AR4-STUMP-35, NB-AR4-STUMP-36, NB-AR4-STUMP-38, and NB-AR4-STUMP-39).
[427] *See* GNB Stumpage Benchmark Comments at Exhibit NB-AR4-BENCH-STUMP-2.
[428] *Id.* at 47-52.

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 relation to the GNB's argument that the number of competing buyers is a prevailing market condition, the GNB does not provide new information that refutes 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 {Commerce} to arbitrarily guess at what constitutes too many or too few competitors in a free and private market."[429] 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."[430] 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. The GNB would argue that we must 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 AR4 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.[431]

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 the preliminary market memorandum regarding the New Brunswick market, and as stated earlier, Crown lands accounted for approximately half of the softwood timber harvest volume in the province.[432] While the GNB 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, we disagree.[433] In

[429] *Id.* at 50.
[430] *Id.*
[431] *See Lumber V AR4 Prelim* PDM at 16-19.
[432] *See* New Brunswick Preliminary Market Memorandum at Attachment, worksheet "3. AggregateDataBySource."
[433] *See* GNB Case Brief Volume VI at 47-50.

addition to Commerce's finding regarding the Crown's share of the standing timber market, 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 all contributed to our finding that New Brunswick's private-origin standing timber market was distorted and thus should not be used as tier-one benchmark. 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."[434]

Comment 15: Whether Commerce Should Use JDIL's Own Purchases of Sawlogs in Nova Scotia or the 2017-2018 Private Market Survey as a Benchmark for New Brunswick Crown Stumpage

Petitioner's Comments[435]

- The record and the regulations indicate that Commerce should use sawlog prices contained in the 2017-2018 Private Market Survey as a benchmark for JDIL's New Brunswick stumpage purchases rather than JDIL's private Nova Scotia purchases of sawlogs as a benchmark for the company's New Brunswick Crown sawlog purchases.
- Commerce has previously determined that the trees in Nova Scotia are comparable to trees in New Brunswick, and therefore, any benchmark from Nova Scotia would have products similar enough to be a proper benchmark.[436]
- The record shows that the 2017-2018 Private Market Survey contains species of sawlog timber more similar to JDIL's New Brunswick sawlog purchases than the company's Nova Scotia sawlog purchases.[437]
- The Nova Scotia Private Survey is also preferable based on the large quantity of sawlogs and the large number of transactions contained in the survey.
- Commerce has explained that "other factors affecting comparability" for the selection of tier-one benchmarks include the expectation that such prices would "reflect more closely the commercial environment of the purchaser under investigation."[438]
- JDIL typically consumes the New Brunswick stumpage that it purchases in its own mills, whereas JDIL typically sells the sawlogs it purchases in Nova Scotia to unaffiliated mills rather than processing it in the company's own mills.
- The result is two very different commercial environments – in one, JDIL acts as a buyer of its own inputs, and in the other, the company acts similarly to an independent contractor, buying and selling inputs to other parties – and different factors go into the price-setting decisions in each type of stumpage transaction.
- The 2017-2018 Private Market Survey, on the other hand, contains transactions that reflect a variety of commercial environments, including ones where companies purchase stumpage for use in their own operations.[439]

[434] *See CVD Preamble*, 63 FR at 65377.
[435] *See* Petitioner Case Brief at 42-49.
[436] *Id.* at 42 (citing *Lumber V AR3 Final* IDM at Comments 26-28).
[437] *Id.* at 42-43 (citing JDIL November 14, 2022 Stumpage SQR at Exhibit STUMP-21; GNS Stumpage IQR at Exhibit NS-5B; *Lumber V AR4 Prelim* PDM at 22; and JDIL Stumpage IQR at Exhibit STUMP-02.c).
[438] *Id.* at 47 (citing *Lumber V AR4 Prelim* PDM at 14).
[439] *Id.* at 48 (citing GNS Stumpage IQR Response at Exhibit NS-6B at 2).

GOC's Rebuttal Brief[440]

- In the *Lumber V AR4 Prelim*, Commerce found that JDIL's Nova Scotia transactions are preferable to the 2017-2018 Private Market Survey because, among other reasons, the company's Nova Scotia purchases are "contemporaneous with the POR" unlike the transactions in the 2017-2018 Private Market Survey, which occurred in 2017 and early 2018.[441]
- The petitioner argues that JDIL's purchases of standing timber in Nova Scotia cannot serve as a benchmark for JDIL's purchases of Crown standing timber in New Brunswick because JDIL does not always itself process the harvested Nova Scotia logs but instead sells the logs to unaffiliated third parties.
- The petitioner does not provide any evidence that this type of transaction distinguishes JDIL's transactions from those underlying the Nova Scotia Survey or that such transactions would differ in any material way.
- Like some of JDIL's standing timber purchases in Nova Scotia, the 2017-2018 Private Market Survey also includes transactions that were reported by purchasers that did not process the logs after harvest, but instead sold the logs to a third-party.
- The same kinds of transactions that the petitioner has flagged in JDIL's benchmark would also exist in the 2017-2018 Private Market Survey as the record establishes that the survey was not limited to purchasers acting as sawmills.
- The petitioner fails to support any meaningful commercial distinction between the purchase of standing timber for the purpose of selling logs versus for one's own sawmill operation.
- The petitioner provides no support for its claim that when JDIL purchases standing timber and sells the harvested logs to another party, the stumpage transactions are unreliable because JDIL "is incentivized to pay as little as possible" to increase its profit without explaining why mills that purchase standing timber for their own sawmill operations would not also be incentivized to pay as little as possible for the standing timber.[442] This is the incentive behind all transactions conducted by profit-seeking businesses.
- Commerce has already found that these types of transactions are not distinct, and the petitioner has not provided any rationale that would overturn that finding.[443]

JDIL's Rebuttal Comments[444]

- JDIL's purchases of private stumpage in Nova Scotia are similar to its purchases of Crown stumpage in New Brunswick based on geographic proximity and the species accounting for nearly all the volume of the company's stumpage purchases (*i.e.*, SPF).
- The petitioner ignores geographic proximity. In contrast to the transactions in the 2017-2018 Private Market Survey, which include prices from 20 different purchasers across the entire province, JDIL's purchases for its Truro sawmill in Nova Scotia are more proximate to the region where JDIL purchased Crown stumpage in New Brunswick.[445]

[440] *See* GOC Rebuttal Brief Volume I at 24-26.
[441] *Id.* at 25 (citing *Lumber V AR4 Prelim* PDM at 33).
[442] *Id.* at 26 (citing Petitioner Case Brief at 47).
[443] *Id.* (citing *Lumber V AR3 Final* IDM at 48).
[444] *See* JDIL Rebuttal Brief 2-8.
[445] *Id*. at 3 (citing JDIL Stumpage IQR Response at Exhibit NS-6B at 4 and Exhibit STUMP-02.c).

- JDIL's purchases of stumpage from Nova Scotian woodlot owners are more comparable to its purchases of Crown stumpage in New Brunswick than are third party purchases of stumpage in other regions of Nova Scotia.
- Contrary to petitioner's claim that the 2017-2018 Private Market Survey provides a more accurate comparison based on species, the record shows that the species mix of JDIL's own purchases of private stumpage in Nova Scotia are more comparable to its purchases of Crown stumpage in New Brunswick.[446]
- The difference in the total quantity of JDIL's Crown stumpage purchases in New Brunswick compared to the total quantity of its private stumpage purchases in Nova Scotia does not warrant rejecting the latter as a tier-one benchmark as the difference in aggregate purchase volumes simply reflects the fact that JDIL operates multiple sawmills in New Brunswick versus one in Nova Scotia and the fact that the 2017-2018 Private Market Survey compiles transactions from 20 different purchasers.[447]
- Contrary to the petitioner's argument, consideration of purchase quantity supports use of JDIL's purchases of private-origin stumpage in Nova Scotia as the benchmark because the transaction quantities are more comparable to those of its Crown stumpage purchases in New Brunswick (*i.e.*, transaction quantities provide a more meaningful basis for comparison than aggregate purchase volumes).[448]
- Regarding "commercial environment" as a factor in the benchmark selection, the petitioner claims that JDIL acts as an "independent contractor" for its purchases of private-origin sawlog timber in Nova Scotia, but as a sawmill operator for its purchases of Crown sawlog timber.
- This claim is misleading and unsupported because the petitioner's analysis includes only sawlog timber, whereas both sawlogs and studwood are used to produce lumber, and a significant share of JDIL's purchases of sawlog and studwood timber in Nova Scotia were delivered to its own sawmill in Nova Scotia, which means JDIL is clearly a sawmill owner/lumber producer in Nova Scotia, negating the petitioner's purported distinction based on "commercial environment."
- The petitioner also claims that because JDIL sells sawlogs to unaffiliated mills rather than consuming them, the company "is incentivized to pay as little as possible {for sawlogs} to ensure that it can at least make a small profit off of these otherwise unneeded logs" without offering any evidence that stumpage prices differ depending on whether the purchaser is a harvester versus a mill.[449]
- The petitioner takes the untenable position that purchases by third parties offer a more reliable benchmark than JDIL, which goes against Commerce's common practice of using a respondent's own purchases of the good in question from private parties as "tier-one" benchmarks under 19 CFR 351.511(a)(2)(i) in order to satisfy the requirement of "prevailing market conditions."
- An individual company's private transactions are most likely to reflect the prevailing market conditions for the same company's purchases of the same good from the government.

[446] *Id.* at 4 (citing Stumpage Response at Exhibits STUMP-02.a and STUMP-02.c).
[447] *Id.* at 5 (citing GNS Stumpage IQR Response at Exhibit NS-6B at 4).
[448] *Id.* at 6 (citing GNS Stumpage IQR Response at Exhibit NS-5B).
[449] *Id.* at 7-8 (citing Petitioner Case Brief at 48).

GNB's Rebuttal Comments[450]

- In addition to JDIL's own purchases of Nova Scotia private sawlogs, the record also contains another tier-one benchmark – the FMV Study – which would also be a more appropriate benchmark than the 2017-2018 Private Market Survey.
- In addressing "comparability," the petitioner makes assertions about the economic behavior of mills and functioning of markets in New Brunswick and Nova Scotia that have no support in the record and are contradicted by widely-accepted economic theory.
- The market sets prices for stumpage in New Brunswick and Nova Scotia, not mills.
- If a mill wishes to purchase private stumpage, it must (a) pay enough that a private woodlot owner chooses to sell; and (b) offer more in price and other terms than competing independent contractors and mills.
- It is irrelevant whether JDIL or any other mill is purchasing for its own consumption or for resale – the market remains the same.
- The *2020 Auditor General Report* found that transactions between "two independent parties, the private land owner and the buyer" are market transaction and that "{s}ince the private woodlot owner chooses to sell timber, we believe this can represent a fair value transaction in this market."[451]
- The *2015 Auditor General Report* similarly found that "private woodlot owners are not required to sell their timber, and have in the past decided not to harvest and wait for stronger prices," and that this observation of the behavior of woodlot owners corresponds to the economic theory of "Bertrand competition," which posits that a purchaser has an incentive to bid slightly higher than its rivals as long as it profits from the purchased input.[452]
- The petitioner's claim that JDIL does not have an incentive to offer a competitive price for logs in Nova Scotia because it does not process sawlogs in that province is non-sensical; rather, JDIL is a profit-seeking firm that is incentivized to pay as little as possible to ensure that it makes a profit off of otherwise unneeded logs.[453]
- The petitioner's purported commercial distinction between whether a sawmill purchases stumpage for its own operation or for sale of the logs is not only irrelevant, but also mischaracterizes JDIL's role in both New Brunswick and Nova Scotia, which is that of a sawmill.

Commerce's Position: In the *Lumber V AR4 Prelim* and prior reviews, we used JDIL's purchases of private-origin sawlogs in Nova Scotia as the benchmark to determine whether JDIL purchased Crown-origin standing timber in New Brunswick for LTAR.[454] The petitioner argues that Commerce should instead use the 2017-2018 Private Market Survey as a benchmark for JDIL's Crown-origin New Brunswick stumpage purchases because of differences between the

[450] *See* GNB Rebuttal Brief Volume IV 10-13.
[451] *Id.* at 11-12 (citing GNB IQR Questionnaire Response, Vol. II at Exhibit NB-AR4-STUMP-23 at 198, para. 4.86).
[452] *Id.* at 12 (citing GNB IQR Questionnaire Response, Vol. II at Exhibit NB-AR4-STUMP-16 at 196, para. 4.81 and Exhibit NB-AR4-STUMP-22 at 15).
[453] *Id.* (citing Petitioner Case Brief at 48).
[454] *See Lumber V AR4 Prelim* PDM at 25; *see also Lumber V AR3 Prelim* PDM at 30, unchanged in *Lumber V AR3 Final*; *Lumber V AR2 Prelim* PDM at 28, unchanged in *Lumber V AR2 Final*; *Lumber V AR1 Prelim* PDM at 25-26, unchanged in *Lumber V AR1 Final*; and *Lumber V INV Prelim* PDM at 53, unchanged in *Lumber V INV Final*).

transactions in the 2017-2018 Private Market Survey and JDIL's own transactions in Nova Scotia in terms of species, overall volume, and commercial environments.

Consistent with the prior reviews, we continue to find that JDIL's own purchases of private-origin sawlogs in Nova Scotia are the most comparable to its purchases of New Brunswick Crown-origin standing timber in terms of species, time frame, transaction sizes and other market conditions.

In selecting a tier one benchmark, we consider the factors under 19 CFR 351.511(a)(2)(i): (1) product similarity; (2) quantities sold, and (3) other factors affecting comparability. Nova Scotia is contiguous with New Brunswick, and we continue to find that standing timber in Nova Scotia is comparable, in terms of size, species and harvesting conditions, to standing timber in New Brunswick.[455] This is also true for the specific experience of JDIL, which purchased Nova Scotia standing timber in the region near its Truro sawmill, which is located close to its operations in New Brunswick.[456]

Regarding the petitioner's focus on the differences in the overall volume of the 2017-2018 Private Market Survey and JDIL's own purchases of private-origin Nova Scotia standing timber, we find that JDIL's Nova Scotia purchases are sufficiently large in terms of the number of transactions to form a representative sample of private prices during the POR. Further, we find that the individual transaction quantities of JDIL's own purchases of Nova Scotia private- origin standing timber are similar to its transaction quantities of New Brunswick Crown-origin standing timber.

Regarding the different commercial environments between JDIL's New Brunswick purchases and its Nova Scotia purchases, we find the petitioner's arguments to be unavailing. Record evidence indicates that JDIL buys and consumes sawlog and studwood timber in its own sawmills in both Nova Scotia and New Brunswick.[457] As stated before, following 19 CFR 351.511(a)(2), JDIL's purchases in New Brunswick are comparable to JDIL's own purchases in Nova Scotia because we are comparing standing timber to standing timber. JDIL's purchases in Nova Scotia are the most suitable benchmark on the record, because they are prices of actual private transactions between private parties within a country.

Accordingly, consistent with 19 CFR 351.511(a)(2)(i), we continue to use JDIL's own purchases of private-origin standing timber in Nova Scotia to measure the adequacy of remuneration for the company's purchases of Crown-origin standing timber in New Brunswick.

[455] *See Lumber V AR3 Final* IDM at Comments 26 and 27.
[456] *See* JDIL Stumpage IQR Response at 14-15 and Exhibit STUMP-02.c; *see also* GNS IQR Response at Exhibit NS-9 at 14.
[457] *Id.* at 1, 14-15, 23, and Exhibit STUMP-02.c.

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Comment 16: 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[458]

- Commerce must make appropriate adjustments to the product-based Nova Scotia benchmark when comparing it to the tree-length Crown rates used in New Brunswick.
- The GNB's DNRED calculates a single treelength rate by determining Crown stumpage rates for products (sawlog, studwood, pulp and roundwood biomass), and considering what percentage of a tree is expected to be constituted by each product.
- The GNB has submitted a declaration from Acting Director of the Forest Operations and Development Branch of the DNRED further discussing the process for determining and applying treelength rates. This declaration addresses the proper comparison of product and treelength rates for Commerce to consider and clarifies that the "lower cost of pulp in New Brunswick would cause the treelength rate to be lower than sawlog rates, for example. An apples-to-apples comparison would require a comparison of treelength to treelength rates, or product to product rates."[459]
- 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.*, sawlog, studwood, pulpwood). As a result, prices for product-specific stumpage for sawlogs and studwood generally are higher than the treelength rate for a comparable stand and cannot be reasonably compared.
- 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.[460]
- The GNB has provided the following information to assist Commerce with carrying out this benchmark adjustment on the basis for the two ratios used in treelength calculations: (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.
- The GNB verification report from *Lumber V* investigation shows that the underlying basis for the treelength ratios was examined at length with the DNRED.[461]
- JDIL has also provided detailed information that allows Commerce to recognize and carry out this benchmark adjustment.

[458] *See* GNB Case Brief Volume VI at 53-55.
[459] *Id*. at 54 (citing GNB IQR Response at Exhibit NB-AR4-STUMP-037).
[460] *Id.* (citing *Lumber V Final* IDM at 85).
[461] *Id*. at 55 (citing GNB IQR Response, Vol. II at Exhibit NB-AR4-STUMP-037, Appendix A and B).

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JDIL's Comments[462]

- 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.
- At a treelength price, the purchaser pays the same unit price for primary parts of a tree (*e.g.*, the pulpwood, studwood log, and sawlog). At a product rate, the purchaser pays a unit price for a specific portion of the tree.[463]
- 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 differences between the government price and the benchmark price, when substantiated by record evidence.[464]
- JDIL has provided worksheets demonstrating how to convert its private-origin standing timber purchases from Nova Scotia from product rates to treelength rates.[465] 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 addresses Commerce's concerns in prior reviews, specifically that JDIL's proposed calculation for converting SPF benchmarks from Product Rates to Treelength Rates (1) was based on the utilization ratios used for License 7 (*i.e.*, the Sawlog-Studwood and Saw Material-Pulpwood ratios) instead of data for private-origin logs in Nova Scotia; and (2) relied "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" (*i.e.*, the Sawlog-Studwood ratio).[466]
- JDIL's method of using information from License #7 is a reasonable because of the proximity between the License #7 area and private woodlot owners in New Brunswick and Nova Scotia.[467]
- In the *Lumber V AR4 Prelim*, Commerce also recognized that standing timber harvested by JDIL in New Brunswick and Nova Scotia is comparable.[468] Consequently, there is no reason for Commerce to reject the use of the License #7 SPF treelength-rate calculation.
- Commerce dismissed JDIL's proposed use of the License #7 SPF treelength-rate calculation because, regardless of proximity to Nova Scotia, it found that that private standing timber prices in New Brunswick are distorted and not suitable for use as tier-one benchmarks.[469]

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[462] *See* JDIL Case Brief at 22-35.
[463] *Id.* at 23 (citing JDIL Benchmark Submission at Exhibit BM-01 at para. 2; and JDIL Stumpage IQR Response at Exhibit STUMP-01 at 11-12).
[464] *Id.* at 25 (citing *HRS from India* IDM at Comment 12).
[465] *Id.* (citing JDIL Benchmark Submission at Exhibits BM-02 and BM-03).
[466] *Id.* at 26-27 (citing *Lumber V AR4 Prelim* PDM at 253-255).
[467] *Id.* at 27 (citing JDIL Benchmark Submission at Exhibit BM-01).
[468] *Id.* at 27-28 (citing *Lumber V AR4 Prelim* PDM at 24 and 33).
[469] *Id.* at 28 (citing *Lumber V AR4 Prelim* PDM at 254).

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- However, the License #7 calculation is based on ratios of the volumes – not prices – of sawlog to studwood and saw material to pulpwood material within the average SPF tree in New Brunswick, therefore, any concerns about market distortion are irrelevant.
- Use of the License #7 SPF treelength-rate calculation is also consistent with section 771(5)(E)(iv) of the Act for Crown stumpage provide by the GNB. In contrast, use of Nova Scotia data to calculate treelength rates would create treelength rates reflecting market conditions unique to Nova Scotia – contrary to section 771(5)(E)(iv) of the Act's requirement to adjust prices to ensure an apples-to-apples comparison reflecting prevailing conditions in the market where the government good is provided (here, New Brunswick).
- If Commerce continues to reject the License 7 calculation, JDIL has submitted an alternative calculation methodology using data from the company's purchases of SPF stumpage from Nova Scotian private woodlot owners during the POR.[470]
- 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."[471]
- A declaration from JDIL's Director of Wood Procurement and Measurement for the Woodlands Division explains that the "{u}se of an average ratio is also accurate because stumpage is purchased by harvest block, not by the tree," and, therefore, Commerce's prior focus on the ratio of sawlog to studwood "within a single treelength" is impractical and unrealistic as it would require measuring every tree.[472]
- To support the fact that JDIL only purchased private-origin standing timber in Nova Scotia at product rates, it provided all its 2021 contracts with private woodlot owners in Nova Scotia, along with harvest machine data printouts to corroborate these purchases.[473] The stumpage rates provided in these contracts show separately defined rates for sawlogs, studwood, or pulpwood stumpage, confirming that the stumpage was sold at product rates and not treelength rates.
- Contrary to Commerce's argument in the *Lumber V AR3 Final*, the fact that documents such as transportation certificates, load slips, and tally entries refer to "products" fails to demonstrate that JDIL purchased private-origin SPF stumpage at treelength rates in Nova Scotia during the POR.[474] These documents necessarily refer to products (*i.e.*, sawlogs, studwood, or pulpwood) because they refer to harvested logs delivered to the mill – not stumpage.
- Commerce interpretation of a statement in a declaration from a Nova Scotian sawmill (*i.e.*, "whether the felled tree is classified as a sawlog or studwood log, or pulpwood) as evidence that "the terms sawlog, studwood, and pulpwood" are used "to refer to whole, 'felled trees'" in Nova Scotia is unreasonable given the extensive record evidence demonstrating otherwise.[475]

[470] *Id*. at 29-30 (citing JDIL Benchmark Submission at Exhibits BM-01, BM-02B, and BM-03).
[471] *Id.* at 30 (citing JDIL Benchmark Submission at Exhibit BM-01 at para. 7 and 9).
[472] *Id.* (citing JDIL Benchmark Submission at Exhibit BM-01 at para. 9 and 11; and GNB IQR Response, Vol. II at Exhibit NB-AR4-STUMP-9).
[473] *Id.* at 31 and 34-35 (citing JDIL Benchmark Submission at Exhibit BM-01 at para. 15 and Attachments G and H).
[474] *Id.* at 31-32 (citing *Lumber V AR3 Final* IDM at 254).
[475] *Id*. at 32 (citing *Lumber V AR3 Final* IDM at 255).

- The Nova Scotia Scaling Manual "recognizes that a felled tree can yield multiple 'primary wood products' – such as sawlogs, studwood, and pulpwood – each of which commands different stumpage rates," an important fact that Commerce observed during the verification of the GNS in the *Lumber V* investigation.[476]
- JDIL has demonstrated that (1) treelength stumpage rates are distinct from product stumpage rates; and (2) whereas JDIL purchased the large majority of its Crown SPF allocations at treelength rates, the company purchased private SPF stumpage at product rates. The failure to account for such differences distorts JDIL's benefit calculation. Thus, Commerce should convert the SPF benchmarks (at product rates) into treelength rates to ensure an appropriate comparison with JDIL's purchase of SPF stumpage from the GNB at treelength rates.

Petitioner's Rebuttal Comments[477]

- The Canadian Parties repeat arguments regarding adjusting the Nova Scotia benchmark "to ensure a valid comparison" with JDIL's "purchase of SPF stumpage from the GNB's treelength rates," which Commerce has consistently rejected.[478]
- An adjustment is unwarranted and would be contrary to Commerce's practice because, as JDIL explained, "{l}icensees and sub-licensees, subject to NBDNR's approval, have the option to purchase Crown stumpage at Product Rates or Treelength Rates."[479]
- Product rates render lower pulpwood prices while treelength rates render lower sawlog and studwood prices, and this "treelength" pricing strategy is simply another tool for the GNB to subsidize its licensees' purchases of more valuable stumpage while still purporting to "get{} full stumpage value for the tree."[480]
- The GNB's pricing strategy is not a "prevailing market condition" that Commerce must adjust for because it is not based on free market principles.
- Attempting to account for this price-setting strategy would create a "circular" analysis because "the benchmark price would reflect the very market distortion which the comparison is designed to detect."[481]
- Commerce's regulations do not "contemplate that Commerce should take into account how a government sets the price of the good" under a tier-one benchmark analysis, such as the Nova Scotia stumpage benchmark Commerce is using here.[482]
- Further, the ratios provided by JDIL would not be reasonable to use. Commerce has previously examined this and determined that the New Brunswick License #7 treelength ratios are not based on data for private-origin stumpage in Nova Scotia, and the ratios are largely reflective of harvesting trends in New Brunswick rather than the ratio of different grades within a given tree.[483]

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[476] *Id.* at 33-34 (citing JDIL Benchmark Submission at Exhibit BM-01 at para. 3 and Attachment A at 3, 13, 15, 18, 35, 60, 68; and GNS Stumpage IQR Response at Exhibit NS-8 at 4 and 8).
[477] *See* Petitioner Rebuttal Brief at 71-75.
[478] *Id.* at 71-72 (citing JDIL Case Brief at 23; GNB Case Brief Volume VI at 53-55; *Lumber V AR3 Final* IDM at Comment 41; *Lumber V AR2 Final* IDM at Comment 37; and *Lumber V AR1 Final* IDM at Comment 39).
[479] *Id.* at 72 (citing JDIL Stumpage IQR Response at Exhibit STUMP-01 at 13).
[480] *Id.* at 72-73 (citing JDIL Stumpage IQR at Exhibit STUMP-01 at 14).
[481] *Id.* at 73 (citing *Lumber V INV* IDM at 51).
[482] *Id.* (citing *Lumber V AR3* IDM at 253).
[483] *Id.* at 74 (citing *Lumber V AR3* IDM at 253).

- 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.[484]
- JDIL's proposed Nova Scotia ratio is based on the company's purchases of private stumpage in Nova Scotia and cannot be representative of the ratio of studwood to sawlog in a single treelength, as with the New Brunswick ratio. Further, JDIL's harvesting ratios in Nova Scotia cannot even be expected to reflect the reality of harvesting in the province because the company processes its Nova Scotia sawlogs in New Brunswick; thus, the company's harvesting patterns in Nova Scotia are a result of very specific operational concerns.[485]
- None of the issues with JDIL's ratios are ultimately relevant because treelength pricing is not a prevailing market condition in New Brunswick that must be accounted for in a benchmark, rather, it is a policy decision by the GNB to justify receiving lower remuneration from licensees for higher value fiber. As such, treelength pricing is part of the subsidy being examined and a treelength adjustment should not be applied to the stumpage benchmark.

Commerce's Position: In the *Lumber V AR4 Prelim* and prior reviews, 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 in New Brunswick for LTAR. The GNB and JDIL argue that Commerce must adjust JDIL's stumpage benchmark downward because JDIL's stumpage benchmark in Nova Scotia reflects product-based stumpage prices, whereas JDIL's purchases of Crown-origin standing timber in New Brunswick reflect treelength-based prices. Though JDIL and the GNB have provided additional evidence to the record of the instant review concerning this issue, consistent with the prior reviews, we continue to disagree that such an adjustment is warranted.[486]

The GNB and JDIL are asking Commerce to make an adjustment based on how the GNB calculates its standing timber rates on a per-cubic meter basis. While the GNB and JDIL argue that the GNB uses a treelength method to set its standing timber rates, while private sellers in Nova Scotia set stumpage rates predominantly on a product-specific basis, both methods arrive at a per-cubic meter price. However, as 19 CFR 351.511(a)(2)(i) clearly states:

> {t}he Secretary will normally seek to measure the adequacy of remuneration by comparing the government price for the good or service resulting from actual transactions in the country in questions … . In choosing such transactions or sales, the Secretary will consider product similarity; quantities, sold, imported, or auctioned; and other factors affecting comparability.

In both Nova Scotia and New Brunswick, the good JDIL purchased is standing timber. We disagree with the GNB's and JDIL's arguments that the pricing methods that the GNB and private sellers in Nova Scotia employ to arrive at a per-cubic meter price for standing timber require an adjustment in order to achieve an apples-to-apples comparison of standing timber. As

[484] *Id.* (citing JDIL Benchmark Submission at Exhibit BM-01 at para. 9).
[485] *Id*. at 74-75 (citing Petitioner Case Brief at 44 and fn. 165; and JDIL November 14, 2022 Stumpage SQR at 4 ("{JDIL}'s Truro sawmill located in Nova Scotia processes studwood only.")).
[486] *See Lumber V AR1 Final Results* IDM at Comment 39; *see also Lumber V AR2 Final Results* IDM at Comment 37; and *Lumber V AR3 Final Results* IDM at Comment 41.

described elsewhere in this memorandum, JDIL's private purchases of stumpage in Nova Scotia are a comparable and suitable tier-one benchmark for purchases in Nova Scotia.[487] Therefore, Commerce complies with 19 CFR 351.511(a)(2)(i) by comparing the price of standing timber in Nova Scotia with the price of standing timber in New Brunswick. More importantly, when measuring the possible benefit conferred under a LTAR program, 19 CFR 351.511(a)(2)(i) does not contemplate that Commerce should take into account how a government sets the price of the good. Tier-one benchmarks and tier-two benchmarks under 19 CFR 351.511(a)(2)(i) and (ii) are distinguishable from tier-three benchmarks under 19 CFR 351.511(a)(2)(iii) because it is only under tier-three that Commerce may assess how a government sets the price of a good.[488]

Further, Commerce echoes the petitioner's concern that JDIL's choice to purchase stumpage in New Brunswick at treelength prices versus product prices potentially masks subsidization of the higher-value sawlog and studwood portions of the tree with the less valuable pulplog portion of the tree by averaging the various product prices into one price.

F. British Columbia Stumpage Benchmark Issues

Comment 17: Whether Commerce Should Use Log Prices from F2M as a Benchmark for BC Stumpage for LTAR

Petitioner's Comments[489]

- If Commerce chooses not to use the 2017-2018 Private Market Survey as a BC stumpage benchmark, actual transaction prices from F2M would be a more appropriate benchmark than the WDNR offer prices used by Commerce. The F2M prices are reliable and representative and satisfy Commerce's preference for actual transactions.
- Commerce's regulations make clear that actual transactions are preferred as benchmarks, and Commerce has made clear that transaction and offer prices are not on equal footing, a position that has been upheld by the CIT. The WDNR's Chief Check Cruiser has confirmed that the WDNR survey prices are for informational value only, and there may be substantial differences between the offer prices and the final prices paid. The GBC's own evidence confirms this disparity, as do several declarations added to the record by the petitioner, and log price data from IFG show significant differences between the actual and offer prices.
- F2M's prices are reliable, having been generated in the ordinary course of business from a database with over 40 million transactions collected from purchasers. As F2M has explained, the data is "true to market," not including any survey data, but rather only including transactions and subject to stringent data validity and consistency checks and quality controls. Starting in August 2020, F2M made minor changes to the Market Guides' presentation of information to preserve accuracy and confidentially. F2M has also explained the process by which it created the species-specific price tables that aggregate MBF and tonnage prices using the same underlying data as the Market Guides.
- While Commerce has previously expressed concern with lacking access to the raw transaction data underlying the Market Guides, the WDNR survey prices are also not supported by raw

[487] *See* Comment 27, 29, 30, and 31.
[488] *See CVD Preamble*, 63 FR at 65378.
[489] *See* Petitioner Case Brief at 18-28.

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data underlying the averages. Further, the WDNR prices only include a range of contributors and are accompanied by a disclaimer that WDNR does not accept responsibility for errors and omissions, while F2M guarantees the accuracy of its data.

GBC's Rebuttal Comments[490]

- Commerce has in each proceeding of *Lumber V* chosen to use WNDR log prices over data from F2M due to the numerous and significant deficiencies with F2M data. The flaws that Commerce found with the F2M data continue to exist, and new deficiencies have arisen in this review that render them even more unsuitable for use as a benchmark. Furthermore, the petitioner and Sierra Pacific offer no new evidence or argument on behalf of the F2M data, which in and of itself is grounds to reject the use of F2M data.
- While the petitioner emphasizes that Commerce must accord "preferred status" to the F2M data due to that data being made up of actual transaction prices, this ignores Commerce's extensive analysis in prior proceedings as to why the F2M datasets were not viable benchmarks, even though they were made up of actual transaction prices. In these prior segments of this proceeding, F2M data was found to have been prepared for the purposes of litigation, not be publicly available, and to be unverifiable.
- The petitioner attempts to defend the F2M data by highlighting points such as the millions of wood fiber transactions included in F2M data and F2M's reporting and quality standards. However, these points are misleading and fail to address the underlying flaws with the data. The wood fiber transactions figure refers to transactions collected across all markets and species and is not related to the benchmark. As in prior proceedings, the record does not actually make clear which data sources were used to compile the benchmark, while it is clear that the data were prepared for litigation.
- Further, the F2M data on the record of this review is less reliable than that provided by the petitioner from the investigation through the second administrative review. Midway through 2020, F2M stopped reporting the number of contributors. While the petitioner tries to downplay this change as "slight," the lack of information on contributors makes it impossible for Commerce to determine whether the data are complete, representative, or reliable. The petitioner has failed to provide any substantiation as to why this change does not make F2M data less reliable.
- A comparison to other log price data sources on the record of this review confirms the unreliability of F2M data. F2M data also fall short in representativeness, as the facts that led Commerce to conclude that the lack of clarity over the inclusion of small-diameter logs in the F2M data was an important distinction between F2M and WDNR data are still present in this review. The lack of smaller diameter logs leads to an upward bias in F2M prices relative to other log price data sources. As small-diameter logs make up a large share of the logs used by the mandatory respondents to produce lumber, their omission in the F2M data is a major comparability concern.
- The F2M prices on the record are also flawed because they are from 2020, while the WDNR offer prices cover the current POR. Commerce noted this in the *Lumber V AR4 Prelim*, but the petitioner only addressed this with a single sentence suggesting that Commerce could use an unspecified inflationary index, regardless of any connection to log prices.

[490] *See* GBC Rebuttal Brief Volume III at 21-34.

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- While the WDNR data do not have species-specific utility grade pricing, that has little relevance because utility prices are generally not species-based. The F2M data also are not superior to the WDNR in this area.

Commerce's Position: In the *Lumber V AR3 Final*, Commerce declined to use F2M prices from 2020 due to concerns over the extent to which smaller diameter logs used to produce lumber were (or were not) included in the F2M Market Guide price averages and the unverifiability of the F2M Price Tables prepared specifically for the *Lumber* proceeding.[491] Due to the business proprietary nature of many details of this issue, these concerns were further explained and substantiated in the separate AR3 BC Stumpage and LER Memorandum.[492] In the current review, the petitioner has submitted the same F2M data as in AR3.[493] The petitioner does not merely make the same arguments that were rejected in prior reviews or advocate for analogous F2M data covering the current POR, but rather makes the same arguments regarding the same 2020 F2M data that Commerce rejected in the prior review. We continue to find, consistent with the previous review, that the 2020 F2M Market Guides and Price Tables are unsuitable as benchmarks.

As we found in prior reviews, the record continues to show that smaller logs are used by sawmills in the U.S. PNW lumber market.[494] As in the prior review,[495] U.S. PNW mill price sheets and WDNR delivered log sales show that these smaller diameter logs have a lower value than all other size categories.[496] Further, log usage data from the respondents show that, as in the prior review,[497] the BC respondents continue to process significant volumes of smaller logs.[498] Thus, evidence on the record of this current review underscores the significance of the concerns over the potential lack of smaller diameter logs in the Market Guides, given their lower value and usage in the U.S. PNW to produce lumber.

Regarding the presence of smaller diameter logs in the Market Guides, in the *Lumber V AR1 Final*, Commerce declined to use the Market Guides as a benchmark because, in part, the record of that review indicated the Market Guides excluded smaller, less valuable logs used to produce softwood lumber.[499] In the *Lumber V AR2 Final*, Commerce considered the Market Guides along with a clarification from F2M that the petitioner argued demonstrated that the Market Guides did, in fact, include prices for smaller diameter logs.[500] However, Commerce found that the WDNR prices continued to be a preferable benchmark, explaining that F2M's clarification did not resolve concerns over the inclusion of smaller diameter logs in the Market Guides.[501] In

[491] *See Lumber V AR3 Final* IDM at Comment 20.
[492] *See* AR3 BC Stumpage and LER Memorandum at 2-4.
[493] *See* Petitioner Pre-Preliminary Benchmark Comments at Exhibits 1a through 1c.
[494] *See* GBC Benchmark Rebuttal Submission at Exhibit BC-AR4-BMR-1 at Attachment A.
[495] *See Lumber V AR3 Final* IDM at 119.
[496] *See* GBC Benchmark Rebuttal Submission at Exhibit BC-AR4-BMR-1 at Attachment D.
[497] *See Lumber V AR3 Final* IDM at 119.
[498] *See* West Fraser Stumpage IQR Response at Exhibit WF-AR4-BCST-19; *see also* Canfor Stumpage IQR Response at Exhibit-STUMP-B-3.
[499] See *Lumber V AR1 Final* IDM at 85.
[500] *See Lumber V AR2 Final* IDM at 105-106.
[501] *Id.* at 112; *see also* AR2 BC Stumpage and LER Memorandum at 2-3.

the *Lumber V AR3 Final*, Commerce once again found the lack of clarity over the inclusion of smaller diameter logs in the Market Guides to be a major defect with those prices.[502]

Regarding the Price Tables, Commerce has consistently found that they are strongly disfavored as a source because they were created for the purposes of the *Lumber V* proceeding and are not accompanied by the underlying data or search parameters used to construct the tables, and thus, are unverifiable.[503] Commerce also noted in the *Lumber V AR3 Final* that the ton to MBF conversion factor used for the Price Tables "may not be appropriate,"[504] while noting that the significance of this possible flaw was unclear. The record of this review does not contain any additional evidence that addresses these concerns regarding the Pricing Table, and we thus continue to conclude they are not a viable source to use in this review.

As the petitioner is presenting the exact same Market Guides and Price Tables that Commerce considered in the *Lumber V AR3 Final*, Commerce's analyses of those data sources in the prior review continue to apply.[505] In those analyses, Commerce explained that even though Commerce has a preference for transaction prices over offer prices, that preference can be overcome if such transaction prices suffer from significant defects, and also that the volume of transactions that makes up F2M's wood fiber database and F2M's assertions regarding its quality controls are of limited significance in evaluating the suitability of F2M prices as a CVD benchmark.

In contrast, the WDNR prices that Commerce found preferable in the prior review are present on the current record with POR-contemporaneous data,[506] and thus, are even more preferable for measuring the value of stumpage during the current POR, in contrast to the F2M prices, which are for 2020. The WDNR offer prices also continue to include chip-and-saw logs,[507] which Commerce cited in the prior review as evidence that smaller logs were included in the WDNR data.[508] In the prior review, Commerce also responded to the argument the petitioner repeats in the current review that WDNR does not take responsibility for errors and omissions in its data.[509] Thus, we find that the WDNR prices continue to be the most appropriate tier-three U.S. PNW log benchmark in this current review, as the F2M prices continue to suffer from the significant defects that has led to Commerce to repeatedly reject them as an appropriate benchmark.

Comment 18: Whether Commerce Should Use/Selection of a Beetle-Killed Benchmark Price

Petitioner's Comments[510]

- Commerce correctly selected a benchmark for beetle-killed timber derived from IFG log purchases. However, the decision to apply a separate benchmark for beetle-killed logs is itself

[502] *See Lumber V AR3 Final* IDM at Comment 20.
[503] *Id.* at 117 (citing *Lumber V AR1 Final* IDM at 84 and *Lumber V AR2 Final* IDM at 111).
[504] *Id.* at 121 (citing AR3 BC Stumpage and LER Memorandum at 4).
[505] *See Lumber V AR3 Final* IDM at 117-120; *see also* AR3 BC Stumpage and LER Memorandum at 2-4.
[506] *See* GBC Stumpage IQR Response at Exhibit BC-AR4-S-182.
[507] *Id.*
[508] *See Lumber V AR3 Final* IDM at 120-121.
[509] *Id.* at 119.
[510] *See* Petitioner Case Brief at 28-32.

erroneous. Any benchmark for beetle-killed timber must be representative of BC demand conditions, reflect the relationship between beetle-killed logs and the lumber produced from those logs, and not overstate value loss from mill processing costs or lower lumber recovery.
- Pricing data from *Random Lengths* and certain entirely proprietary information on the record show that beetle-killed logs retain value.
- Estimates of value loss due to beetle-kill such as the Joint-Montana Study are of limited use in approximating value loss in the BC interior market, particularly given that the respondents have invested in capital upgrades related to beetle-killed log processing.
- Comparing log purchasing patterns between British Columbia and the U.S. PNW makes clear that it is not appropriate to use U.S. sawmill demand to derive a benchmark for beetle-killed logs in British Columbia. The respondents only purchase beetle-killed logs that are high enough quality to produce lumber, and in some cases, those logs can produce valuable lumber products. Further, the market value of beetle-killed logs they purchase is derived from the particular demand-mix associated with the lumber products the respondents produce. The discount for beetle-killed logs in the U.S. market does not reflect Canadian market conditions.

GBC's Comments[511]
- In the *Lumber V AR4 Prelim*, Commerce appropriately compared the respondents' purchases of beetle-killed timber in British Columbia to a separate benchmark. However, Commerce was wrong to use IFG transaction prices, rather than the offer prices added to the record by the GBC, as the basis for the beetle-killed benchmark.
- Commerce explained that transaction prices are preferred to offer prices, but also noted that offer prices can be used if they represent the best information or if there is concern with the transaction prices, which are conditions that are met here. The GBC has provided an extensive (largely business proprietary) explanation of the flaws in the IFG transaction prices. The GBC's offer prices were obtained from an individual who collects them in the ordinary course of business and are supported by the correspondence through which the prices were obtained.

GBC's Rebuttal Comments[512]
- All the arguments in the petitioner's case brief regarding the use of a beetle-killed benchmark have been previously rejected by Commerce. There is no basis for Commerce to change its prior decisions.
- The petitioner argues that a separate beetle-killed benchmark is inappropriate because U.S. PNW and British Columbia sawmills differ in the extent to which they use beetle-killed logs, an argument Commerce rejected in the *Lumber V AR3 Final*.[513]
- Likewise, the petitioner's argument that beetle-killed logs retain value, undermining the validity of the benchmark was addressed and rejected by Commerce in the *Lumber V AR3 Final*.[514]

[511] *See* GBC Case Brief Volume V at 6-10.
[512] *See* GBC Rebuttal Brief Volume III at 34-36.
[513] *Id.* at 34-35 (citing *Lumber V AR3 Final* IDM at 126).
[514] *Id.* at 35 (citing *Lumber V AR3 Final* IDM at 125).

- Finally, Commerce has also rejected the petitioner's argument that the Joint Montana Study is of limited utility in determining beetle-killed value loss due to capital upgrades for processing beetle-killed logs made by respondents.[515]

Petitioner's Rebuttal Comments[516]

- If Commerce continues to apply a beetle-killed benchmark, it should rely on the actual transaction prices for blue-stained logs provided by the petitioner. These prices provide a more accurate and reliable reflection of market behavior than the offer prices for which the GBC advocates.
- Commerce has a clear preference for transaction prices over offer prices, explaining in *PET Resin from Oman* that "completed and actual transaction prices are a preferable benchmark."[517] As in the prior review, the petitioner has provided actual transaction prices for blue-stained logs purchased by IFG in 2021, thus allowing Commerce to calculate a weighted-average benchmark based on data from the largest U.S. PNW interior softwood lumber producer. IFG's data were also verifiable, as they were cumulated through the same methodology that Commerce approved of in the prior review.
- The offer prices provided by the GBC suffer from similar flaws that led Commerce to reject them in the *Lumber V AR3 Final*. In particular, while the GBC has provided correspondence with the outside consultant who provided the offer sheets, this outside consultant's collection methodology is unverifiable. The offer sheets he provided seemed to stem not from any attempt to collect comprehensive and representative prices, but rather from whatever offer sheets he might have on hand. The 2021 prices he provided lack any IFG prices for three of that company's six mills and also provided less information on Bennett Lumber's pricing than prior GBC submissions. Thus, the issues with clarity are compounded by representativeness issues as well.
- The IFG data was sourced using the same query that Commerce accepted as reliable in the *Lumber V AR3 Final*. There is no basis for arguing that the 2020 prices are more valid than the 2021 prices. Further, the GBC's arguments in fact underscore that the use of IFG's offer prices to value beetle-killed logs as an independent product does not reflect reality and that valuation is not determined by factors reflected in the offer sheet.
- The GBC is seeking a benchmark that reflects its decision to discount beetle-killed logs, but Commerce's task is not to value inputs in line with a government's pricing policy or what inputs might be worth in the abstract. Rather, Commerce's task is to identify actual market-determined prices. Commerce should continue to use market-determined values if it deems a separate beetle-kill benchmark to be necessary.

Commerce's Position: In the prior review, Commerce compared West Fraser and Canfor's purchases of beetle-killed timber in British Columbia to a benchmark derived from actual log purchase data from IFG.[518] In the *Lumber V AR4 Prelim*, we continued to compare purchases of beetle-killed timber to a separate benchmark, and used actual log purchase data from IFG to derive the benchmark.[519] The GBC argues that we should use offer prices from U.S. PNW

[515] *Id.* (citing *Lumber V AR3 Final* IDM at 125-126).
[516] *See* Petitioner Rebuttal Brief at 117-125.
[517] *Id.* at 117 (citing *PET Resin from Oman* IDM at 15).
[518] *See Lumber V AR3 Final* IDM at Comment 21.
[519] *See Lumber V AR4 Prelim* PDM at 27-28.

sawmills as the benchmark, while the petitioner argues that we should not use a beetle-killed benchmark at all. We disagree with these claims and for the final results, we continue to compare West Fraser and Canfor's purchases of beetle-killed timber to IFG purchase data, which represent actual transactions.

In the *Lumber V AR1 Final*, Commerce explained in detail why it was appropriate to incorporate a beetle-killed benchmark into the BC stumpage calculation.[520] In the *Lumber V AR2 Final*, after thoroughly examining new evidence on the valuation of beetle-killed timber added to the record by the petitioner, Commerce nonetheless concluded that the totality of the record still supported application of a beetle-killed benchmark.[521] In this review, the petitioner relies on largely the same evidence and arguments that Commerce considered, and found unpersuasive, in the *Lumber V AR2 Final* and *Lumber V AR3 Final*.[522] We continue to find it appropriate to incorporate a beetle-killed stumpage benchmark into the BC stumpage calculation in this review.

As in the prior review, the petitioner notes lumber pricing data shows price differences between low- and regular-quality lumber that are not consistent with the price differences between beetle-killed and green timber.[523] However, Commerce has previously noted that lumber price differentials reflect only a portion of the value loss associated with beetle-killed timber. The program Commerce is examining is standing *timber* for LTAR and beetle-killed timber value loss also occurs during the manufacturing and processing stage (*i.e.*, higher processing costs, lower lumber recovery rates, *etc.*), prior to the timber's transformation into finished lumber.[524] The Joint Montana Study that is on the record of the current review continues to contain evidence supporting these findings.[525] As such, the lumber price differentials highlighted by the petitioner continue to have limited significance.

The petitioner also argues that the beetle-kill benchmark fails to account for the quality of lumber that can be produced from beetle-killed logs and that this is a flaw under a derived demand benchmark, given that the quality of the final products directly impacts timber value.[526] This is similar to the argument made by the petitioner in the prior review that the beetle-killed benchmark used in that segment failed to account for the range of grades present in beetle-killed logs.[527]

However, while we do not dispute that beetle-killed logs can be used to produce a range of different lumber finished products, as we noted in the prior review, the legal requirements governing Commerce's selection of benchmarks do not require perfection. The petitioner also does not offer any evidence that the use of beetle-killed timber to produce multiple grades of lumber is not also present in the U.S. PNW such that there is an any inconsistency between the two sides of the benchmark.

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[520] *See Lumber V AR1 Final* IDM at Comment 21.
[521] *See Lumber V AR2 Final* IDM at Comment 22; *see also* AR2 BC Stumpage and LER Memorandum at 4-6.
[522] *See Lumber V AR2 Final* IDM at Comment 22; *see also Lumber V AR2 Final* IDM at Comment 21.
[523] *See* Petitioner Case Brief at 30-31; *see also Lumber V AR3 Final* IDM at 124-125.
[524] *See Lumber V AR3 Final* IDM 124-125.
[525] *See* GBC Stumpage IQR Response at Exhibit BC-AR4-S-1183.
[526] *See* Petitioner Case Brief at 30-31.
[527] *See Lumber V AR3 Final* IDM at 125.

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Relatedly, the petitioner argues that the quality level of beetle-killed timber harvested by respondents undermines the justification for use of the beetle-killed benchmark. However, for reasons that were discussed in detail in the AR3 BC Stumpage and LER Memorandum as they were based on proprietary data, we do not find this argument to be convincing.[528]

The petitioner also cites to an entirely proprietary document submitted by West Fraser that contains information relevant to the potential income as well as manufacturing and processing costs associated with beetle-killed timber. We previously evaluated an analogous document, as well as other documents and arguments on manufacturing and processing costs associated with beetle-killed timber and ultimately found them not be persuasive.[529] The petitioner presents no new logic as to why this decision was incorrect.

The petitioner emphasizes that the U.S. PNW and BC interior differ significantly with respect to the market for beetle-killed timber and thus that a U.S. PNW beetle-killed benchmark is not reflective of the prevailing market conditions in British Columbia.[530] This argument was also made by the petitioner in the prior review, along with the claim that U.S. PNW beetle-killed prices are unrepresentative because BC respondents have invested in capital upgrades to process beetle-killed logs.[531] Regarding capital investments, we noted in the prior review that:

> {t}o 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.[532]

In this review, the petitioner draws on the log purchase data from IFG as alternative support for this claim.[533] The petitioner's reference to the IFG log purchase data does not significantly change our assessment of this representativeness issue raised by the petitioner. Regardless of the specific percentage of beetle-killed logs consumed by U.S. PNW sawmills, the record still contains evidence from the Joint Montana Study that there are significant value reductions, losses in yield, and increased manufacturing costs associated with the MPB epidemic.[534] These value reductions lead us to conclude that it is a significant prevailing market condition in British Columbia. The record also continues to contain evidence that the WDNR prices do not include beetle-killed logs.[535] Ultimately, we have valuation information that we find reliable of beetle-killed logs provided by U.S. PNW mills that are reasonably reflective of the U.S. PNW interior lumber market, a market we have found comparable to the BC interior timber market.[536]

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[528] *See* AR3 BC Stumpage and LER Memorandum at 4-5.
[529] *See Lumber V AR2 Final* IDM. at 121-122; *see also* AR2 BC Stumpage and LER Memorandum at 6.
[530] *See* Petitioner Case Brief at 28-29.
[531] *See Lumber V AR3 Final* IDM at 125-126.
[532] *Id*.
[533] *See* Petitioner Case Brief at 29.
[534] *See* GBC IQR Response at Exhibit BC-AR4-S-183.
[535] *Id.* at Exhibit BC-AR4S-194.
[536] *See Lumber V Final* IDM at Comment 21.

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As Commerce has emphasized, benchmarks do not require perfection. While it is unclear whether the U.S. PNW producers operate under the exact same demand conditions as the BC respondents with respect to beetle-killed logs, ultimately the record remains largely consistent with respect to the presence and impact of the MPB epidemic, and we have a reliable benchmark on the record. Thus, for the final results, we continue to apply a beetle-killed benchmark.

The GBC argues that Commerce should use log offer sheets procured by Jendro and Hart via a forestry consultant, rather than IFG log purchase data to derive the beetle-killed benchmark. The GBC emphasizes that the offer sheets do not suffer from the flaw they allege exists with the petitioner's IFG prices.[537] However, as we explained in the *Lumber V AR3 Final*, the IFG purchase data has significant advantages in that it allows for weight averaging by mill, is derived from actual transaction prices, and is verifiable.[538] Further, both the offer prices proffered by the GBC and the IFG prices put forth by the petitioner have similar levels of market coverage. We also reiterate that the IFG prices represent actual transaction prices.

In this review, the GBC raises a new claim regarding the representativeness of the IFG transaction prices. These concerns are almost entirely business proprietary, so they are discussed in the separate analysis memorandum issued concurrently with these results.[539] While we acknowledge the GBC's arguments on this matter and the potential concerns that this claim raises, we find that the totality of the evidence, even taking into account the claim raised and discussed in the accompanying memo,[540] still supports use of the IFG transaction prices. We will continue to examine the issue of beetle-kill benchmark representativeness, to the extent that such benchmarks are added to the record, in future segments of this proceeding.

Comment 19: Whether Commerce's Selection of a Log Volume Conversion Factor Was Appropriate

Petitioner's Comments[541]

- Commerce should abandon its 5.93 conversion factor given that the record contains another more-widely used industry standard conversion factor. However, if it does not, the Fonseca Adjustment that Commerce applies to the 5.93 conversion factor because of differences between the USFS Cubic and BC Metric scales continues to be improper.
- That it is *possible* to make the Fonseca Adjustment with diameter-specific data does not mean that it is correct to do so. Commerce has not solicited, and the respondents have not provided, the equally important data on log characteristics including length, taper, and defect. The record confirms that these factors can lead to substantial differences in measurement even when procedures appear similar.
- Commerce justified this failure to account for non-length log characteristics by pointing to record evidence regarding volume measurement procedures of the USFS Cubic and BC Metric sales. However, this record evidence primarily consists of written descriptions from the

[537] *See* GBC Case Brief Volume V at 9-10.
[538] *See Lumber V AR4 Prelim* PDM at 27-28.
[539] *See* AR4 BC Stumpage and LER Memorandum at 2-3.
[540] *Id.*
[541] *See* Petitioner Case Brief at 32-26.

Fonseca Publication, descriptions that are not a substitute for respondent's actual experience and data, which are not on the record. Commerce should decline to make any adjustment.

GBC's Rebuttal Comments[542]

- The petitioner's claims that the Fonseca Adjustment is flawed because it does not account for certain log characteristics are wrong and have been rejected by Commerce.
- The petitioner wrongly argues that Commerce has not incorporated log length into the Fonseca Adjustment when, in fact, the respondents provided and Commerce used log length data in the *Lumber V AR3 Final*, as well as in the *Lumber V AR4 Prelim*.
- With regard to the petitioner's argument that the Fonseca Adjustment is flawed because it does not account for taper and defect, Commerce explained in the *Lumber V AR3 Final* that taper was measured very similarly between the U.S. Cubic and BC Metric scales and that not accounting for taper was conservative due to the US cubic scale including more defect deductions.[543]
- The petitioner's argument that Commerce should have relied on the respondents' "actual experiences," [544] rather than information from the Fonseca Publication is identical to the one considered and rejected by Commerce in the *Lumber V AR3 Final*.

Commerce's Position: In the *Lumber V AR3 Final*, Commerce considered MBF to cubic meter conversion factors placed on the record of that review, including the 5.93 conversion factor derived from a 2002 USFS study and the "standard" conversion factor of 4.53 used by some U.S. government agencies and lumber industry publications. This comparison led to the conclusion that:

> {t}he 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.[545]

We find that this conclusion is still true for the record of this review. Thus, we still disagree with the petitioner's claim that we should rely on the purported "standard" conversion factor used by other U.S. government agencies.

The petitioner's case brief contains one sentence advocating for the 4.53 conversion factor as "a more widely-used industry standard conversion factor."[546] In the *Lumber V AR1 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

[542] *See* GBC Rebuttal Brief Volume III at 36-37.
[543] *Id.* at 37 (citing *Lumber V AR3 Final* IDM at 131-132).
[544] *Id.* (citing Petitioner Case Brief at 35-36).
[545] *See Lumber V AR3 Final* IDM at 129.
[546] *See* Petitioner Case Brief at 32.

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.[547] As in prior reviews, we do not find the petitioner's argument provides a reason for us to alter the framework of seeking a scale-specific and unbiased conversion factor that we laid out in the *Lumber V AR1 Final*.

In prior segments of this proceeding, Commerce adjusted the 2002 USFS study conversion factor using the "Fonseca Adjustment."[548] This adjustment accounts for certain differences in net log volume measurement between the U.S. Cubic Scale and the BC Metric Scale. To apply this adjustment, in the *Lumber V AR4 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.[549]

The petitioner argues that, if Commerce does rely on the 2002 USFS study for a conversion factor, Commerce should not apply the Fonseca Adjustment.[550] 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 presents a similar argument to that made and rejected by Commerce in the prior reviews. In those segments, the petitioner argued that the Fonseca Adjustment is flawed because it only accounts for length and diameter while ignoring other factors that affect volume measurement ratios, in particular taper and defect.[551] For this review, the petitioner argues that Commerce is wrong to apply the adjustment only based on diameter-data, while not accounting for length, taper, or defect. The petitioner argues that such variables can have a significant effect on conversions between different measurement systems and thus, in the absence of data on these variables, the Fonseca Adjustment is incomplete.

With respect to length, there is information available on the record that allows us to incorporate log length into the Fonseca Adjustment.[552] As such, for these final results, we have altered the calculation of conversion factors for both West Fraser and Canfor by using conversion factors disaggregated by length, rather than only applying the "All-Lengths" category from the Fonseca Publication.

With regard to the other two factors mentioned by the petitioner, Commerce undertook a detailed examination in the *Lumber V AR2 Final* on the significance of taper and defect, primarily based

[547] *See Lumber V AR1 Final* at Comment 22.
[548] *See Lumber V AR1 Prelim* PDM at 31-32; *see also Lumber V AR1 Final* IDM at Comment 22; *Lumber V AR2 Prelim* PDM at 34-35; *Lumber V AR2* IDM at Comment 23; *Lumber V AR3 Prelim* at 37-38; and *Lumber V AR3 Final* IDM at Comment 22.
[549] *See Lumber V AR4 Prelim* PDM at 31-32.
[550] *See* Petitioner Case Brief 32-36.
[551] *See Lumber V AR3 Final* IDM at Comment 22.
[552] *See* West Fraser Stumpage IQR Response at Exhibit WF-AR4-BCST-19; *see also* Canfor Stumpage IQR Response at Exhibit STUMP-B-03.

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on a review of the Fonseca Publication.[553] This showed that taper was measured in very similar ways in the BC Metric and US cubic scales and that not including defect in the adjustment was *conservative*, because the US cubic scale includes more deductions for defect.[554] The petitioner does not directly address these findings, but instead, as in the prior review, suggests that they are irrelevant because "Fonseca's comparison of these different procedures is not a substitute for data rooted in the respondents' actual experiences and indicative of pertinent factors that affect the conversion factor."[555]

However, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[556] They certainly do not require that conversion factors from independent sources be rejected simply because they might not exactly reflect a respondent's own experience, when such conversion factors otherwise constitute the best available information. While the petitioner argues in a footnote that Commerce "has repeatedly looked to, and preferred, the actual experiences of the respondents to reach its findings," the instances referred to are examples of where Commerce disregarded the arguments of expert reports commissioned for the *Lumber V* proceeding on the subjects of log export restraints and the British Columbia timber auction system in favor of actual record evidence.[557] This is clearly distinct from relying on a third-party source not prepared for or published in the context of this proceeding.

The petitioner includes further argument in a footnote that the explanation that Commerce will use data, even if it is not respondent-specific, to calculate the conversion factor, is "underdeveloped," because Commerce does rely on certain respondent-specific data to calculate the conversion factor.[558] However, we do not find that using some respondent-specific and some non-respondent-specific data is inconsistent with our intent to, as noted above, use the best data available on the record. This is particularly true in light of the analysis that Commerce undertook in the *Lumber V AR2 Final*, which shows that there is minimal need to adjust for taper and not adjusting for defect is a conservative approach.[559]

Furthermore, we emphasize once again, as noted in the *Lumber V AR3 Final*, "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."[560] 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 continue to apply the Fonseca Adjustment to the 2002 USFS study conversion factor for these final results.

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[553] *See Lumber V AR2 Final* IDM at 129-130.
[554] *Id.*
[555] *See* Petitioner Case Brief at 35-36.
[556] *See, e.g., HRS from India* IDM at Comment 12: "There is no requirement that the benchmark used in {Commerce'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."
[557] *See* Petitioner Case Brief at 37 (citing *Lumber V AR2 Final* IDM at 67 and 250).
[558] *Id.* at 36 at n. 136.
[559] *See Lumber V AR2 Final* IDM at 129-130.
[560] *See Lumber V AR3 Final* IDM at 132.

G. Nova Scotia Stumpage Benchmark Issues

Comment 20: Whether Commerce Should Adjust the Method Used to Index the Nova Scotia Benchmark

Petitioner's Comments[561]

- In the *Lumber V AR4 Prelim*, Commerce acknowledged the need to index the NS 2017-2018 Private Market Survey prices to the POR; however, instead of adjusting the NS 2017-2018 Private Market Survey prices to reflect the market conditions in 2021, Commerce applied an index factor developed based on lumber prices in March 2019 to February 2020, nearly two years before the POR.
- Commerce is using the same index factor that it applied in *Lumber V AR3* even though market conditions have changed between the PORs of the previous review and the current review .
- Given that Nova Scotia's Crown stumpage prices do not impact private stumpage prices in the province, Commerce's decision to rely on the GNS's method for indexing Crown stumpage prices to index private stumpage prices is unreasonable.
- According to Statistics Canada, prices of raw materials in Canada rose by an average of 33 percent between 2020 and 2021, and the prices of "logs, pulpwood, natural rubber and other forestry products" increased in 2021 by nearly 24 percent.[562]
- Statistics Canada's price indices also show that prices of raw materials in Canada in 2021 were 29.5 percent higher than 2017 and 19 percent higher than in 2018. The same data source shows that prices of "logs, pulpwood, natural rubber and other forestry products" also increased in 2021 by 25.5 percent from 2017 and 17.5 percent from 2018.[563]
- The GOC's assertion that price inflation between 2020 and 2021 was solely due to increases in transportation costs is contradicted by record evidence and should be dismissed.
- For the final results, Commerce should apply an index factor to the NS 2017-2018 Private Market Survey based on either Statistics Canada's monthly price index for raw materials in general or its price index for "logs, pulpwood, natural rubber and other forestry products."[564]
- Commerce regularly uses all-commodities indices to adjust prices to ensure contemporaneity,[565] and the CAFC has upheld Commerce's decision to use an all-commodities index in lieu of a product-specific index when adjusting non-contemporaneous prices.[566]

[561] *See* Petitioner Case Brief at 49-59.
[562] *Id*. at 54 (citing Petitioner Comment on GNS Stumpage IQR at Attachment 1 and Exhibit 1).
[563] *Id.* (citing Petitioner Comment on GNS Stumpage IQR at Attachment 1; and Petitioner Pre-Preliminary Benchmark Comments at Exhibit 14A).
[564] *Id.* (citing Petitioner Pre-Preliminary Benchmark Comments at Exhibit 14A).
[565] *Id.* at 57-58 (citing *Shrimp from Ecuador* IDM at 8-9; and *Solar Cells China 2019* IDM at Comment 9).
[566] *Id.* at 58 (citing *Qingdao Sea-Line Trading* Co., 766 F.3d 1378, 1386-87 (the CAFC held that it was reasonable for Commerce to reject a garlic-specific inflation index due to lack of sufficient evidence showing that it would yield a more accurate result, and that Commerce reasonably concluded that the all-commodities index published by the IMF was the best available information on the record)).

GOA's Comments[567]

- Commerce applied a Nova Scotia benchmark that reflects price data that are several years old even though an Alberta benchmark price based on POR transactions is available.
- Commerce's reliance on a benchmark that is not contemporaneous with the POR is inconsistent with its prior practice, in which it views contemporaneous data as an important prevailing market condition when selecting a benchmark.[568]

GOC's Rebuttal Comments[569]

- Commerce has considered the NS 2017-2018 Private Market Survey to be a tier-one benchmark and to qualify as tier-one, a benchmark must be, among other things, "a market-determined price for the good … resulting from actual transactions."
- Commerce should dismiss the petitioner's arguments to "inflate" the Nova Scotia benchmark in such a way that it is further divorced from market-determined prices for standing timber.
- In the *Lumber V AR4 Prelim*, Commerce followed the GNS's approach to index the prices in the Nova Scotia 2017-2018 Private Market Survey, which is an indexing method that not only the GNS considers to be reliable, but that also more accurately reflects the fluctuations for market-determined standing timber prices than any proposed alternatives.
- The petitioner cites to price increases for groups of products that are not standing timber (*e.g.*, coal, fresh pineapples, and uncut diamonds) and to a narrower index of forestry products that includes many products unrelated to softwood standing timber (*e.g.*, natural rubber, hardwood pulpwood, and rough untreated poles) and does not address any of the independent price data on standing timber on the record that contradicts these price trends.
- The fact that prices may have increased for products other than standing timber does not directly contradict the basis for Commerce's chosen index.
- The petitioner's proposed raw material indexes include products produced outside of Canada and account for "all charges purchasers incur to bring a commodity to the establishment gate."[570]
- Using the petitioner's proposed index would be unreasonable because it is based, in part, on prices for products that are downstream from Crown standing timber, which the petitioner has argued is subsidized and distorted by provincial government involvement.

  The cases that that the petitioner cites to involving all commodities indexes are inapposite as they involve different fact patterns. In both *Shrimp from Ecuador* and *Solar Cells China 2019* Commerce only considered an all-commodities index, while *Qingdao Sea-Line Trading Co.* did not involve indexing a benchmark but rather involved indexing surrogate value in an antidumping context, and Commerce rejected a more specific index because it was based on unverifiable data.

West Fraser's Rebuttal Comments[571]

- The GNS correctly recognized that a lumber-based index that relied on 2021 data was not appropriate for setting 2021 Crown stumpage rates.

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[567] *See* GOA Case Brief Volume IV.A at 64-65.
[568] *Id.* (citing *Toscelik Profil* at 4; *CRS from Russia* IDM at Comment 7; and *SC Paper from Canada Final* at Comment 9).
[569] *See* GOC Rebuttal Brief Volume I at 27-32.
[570] *Id.* at 30 (citing Petitioner Pre-Preliminary Benchmark Comments at Exhibit 14B).
[571] *See* West Fraser Rebuttal Brief at 24-30.

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- The record shows that the GNS's approach reasonably tracks the movement of market-determined standing timber prices, consistent with Commerce's practice to use an indexing methodology that "reflects as closely as possible the private prices in Nova Scotia during the POR."[572]
- The petitioner contends that Commerce's indexing methodology does not reflect market conditions during the POR because "prices of raw materials in Canada rose by an average of 33 percent between 2020 and 2021"; however, the fact that prices may have increased for products other than standing timber does not directly contradict the basis for Commerce's chosen index.[573]
- The record shows that private stumpage prices during the POR did not experience a similar price increase that was seen in overall raw materials, and the petitioner's proposed indexes do not track market-determined standing timber prices.

Petitioner's Rebuttal Comments[574]

- Commerce's consistent practice, which has been affirmed by the CAFC,[575] is to index non-contemporaneous benchmark prices to the POR.
- For example, in *Shrimp from Ecuador*, Commerce used Mexican farm-gate prices in 2006 as a "tier three" benchmark for export restraints on raw and unprocessed shrimp, and Commerce then inflated the prices to reflect 2011 prices using a consumer price index published by the IMF.[576]
- In *Solar Cells China 2019*, Commerce also used an index published by the IMF to inflate benchmark prices to the POR.[577]
- The petitioner agrees with the GOA that contemporaneity is an important factor in choosing a benchmark, and further agrees with Commerce that applying an indexing factor can cure the non-contemporaneity concerns; however, in the *Lumber V AR4 Prelim*, Commerce relied on an index factor based on lumber prices in March 2019 to February 2020, which fails to make the NS 2017-2018 Private Market Survey contemporaneous with the POR.
- Commerce should revise its indexing methodology and apply an index factor developed based on contemporaneous data, such as monthly price indices published by Statistics Canada.

Commerce's Position: As an initial matter, consistent with the underlying investigation and our regulations concerning the adequacy of remuneration, we are continuing to use private stumpage prices in Nova Scotia as a tier-one benchmark.[578] The 2017-2018 Private Market Survey reflect thousands of actual purchases of private-origin standing timber in Nova Scotia during FY 2017-2018, and therefore, those prices fall squarely within the description of tier-one prices under 19 CFR 351.511(a)(2)(i). Because the private prices in the 2017-2018 Private Market Survey reflect a time period that precedes the POR, we have indexed the prices to the POR.

[572] *Id.* at 27 (citing *Lumber V AR3 Final* IDM at Comment 30).
[573] *Id.* (citing Petitioner Case Brief at 54).
[574] *See* Petitioner Rebuttal Brief at 41-44.
[575] *Id*. at 42-43 (citing *Qingdao Sea-Line Trading Co.*).
[576] *Id*. at 42 (citing *Shrimp from Ecuador* IDM at 8-9).
[577] *Id*. at 42-43 (citing *Solar Cells China 2019* IDM at Comment 9).
[578] *See* 19 CFR 351.511; *see also Lumber V Final* IDM at Comment 42.

What to use as an LTAR benchmark is the result of the record of a case. Because Commerce frequently encounters situations in which the available benchmark information does not reflect the period of the investigation or review, as is the case here, Commerce has an established practice of indexing LTAR benchmarks, which it regularly employs.[579] Thus, we agree with both the Canadian parties and with the petitioner that an important characteristic of a price benchmark is that it is contemporaneous with the POR.

While there are multiple price indexes available on the record, including a monthly price index for a range of commodities as well as a narrower index of forestry products, we seek to select an index methodology that reflects as closely as possible the private prices in Nova Scotia during the POR. To set Crown stumpage prices during the period April 1, 2021, through March 31, 2022, the GNS applied an index factor, which was based on a lumber-based index for the twelve-month period ending March 31, 2020, to the prices in the 2017-2018 Private Market Survey.[580] Given that forestry experts in the GNS used the factor in the ordinary course of business to index standing timber from FY 2017-2018 to the POR,[581] and as explained in the prior review, we find that applying the same index factor used by the GNS allows us to best determine the market price of standing timber in Nova Scotia during the POR.[582] We also note that Commerce has a practice of relying on neutral publications from authorities to measure subsidies (*e.g.*, Commerce uses the IRS information to determine AUL periods).[583]

Comment 21: 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[584]

- The GNS designated the individual transactions reported by 2017-2018 Private Market Survey respondents as BPI under 19 CFR 351.105(c)(11).
- Commerce bracketed the monthly and annual average transaction prices of SPF studwood and SFP sawlogs in the Nova Scotia benchmark. Commerce then used the annual average prices to benchmark the respondents' Crown-origin standing timber purchases in Alberta even though they do not qualify as BPI under any provision of 19 CFR 351.105(c).
- The GNS appears to have consented to Commerce disclosing the unindexed SPF benchmarks. In a prior review, the GNS explained that it consented to public disclosure of the SPF benchmarks, even as it continued to request that Commerce bracket any "benchmark for any product other than SPF studwood and sawlogs."[585]

[579] *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.
[580] *See* GNS Stumpage IQR Response at Exhibit NS-7A at 7-9 and 19.
[581] *See* GNS Stumpage IQR Response at 4.
[582] *See Lumber V AR3 Final* IDM at Comment 30.
[583] *See Lumber V AR4 Prelim* PDM at 7, where Commerce relied on the IRS's Class Life Asset Depreciation Range System table as the basis for AUL in this review.
[584] *See* GOC Case Brief Volume I at 90-92.
[585] *Id.* at 91 (citing *Lumber AR2 Final* IDM at Comment 45).

- Commerce construed the GNS's consent as not applying to the SPF sawlog- and studwood-specific benchmarks, but it is unclear why given the language in the GNS's consent and what the GNS described as "the large number of individual transactions and unique prices across all the months for SPF studwood and sawlogs."[586]
- In fact, Commerce itself seemed to understand this, reiterating that the GNS consented to disclosing the "monthly benchmark SPF standing timber prices for sawlogs and studwood" and only considered "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" to be proprietary.[587]
- Therefore, to the extent that Commerce erroneously determines to rely on average stumpage prices from Nova Scotia as a benchmark, it must disclose the average sawable timber prices for softwood species that fall within Nova Scotia's SPF basket.

Petitioner's Rebuttal Comments[588]

- Commerce has explained that it must continue to treat the benchmark prices as proprietary so long as it employs a proprietary index.[589]
- The disclosure of the index data would necessarily reveal the GNS' indexing methodology, which the GNS has not consented to making public; therefore, Commerce should continue to grant the GNS's request for proprietary treatment of that information.
- As explained in the petitioner's comments regarding Comment 20, there are non-proprietary indices on the record that would render more accurate benchmark prices for this review.

GNS's Rebuttal Comments[590]

- Any public disclosure of survey prices would have the effect of revealing stumpage prices paid by individual parties within the Province. This disclosure would harm Nova Scotia stakeholders and the Nova Scotia Government.
- The GNS conducts periodic surveys of private-origin standing timber that it uses to set Crown-origin standing timber prices. The surveys rely on voluntary responses. To secure broad enough participation to obtain sufficient transactions to represent the private stumpage market, the GNS contracts with a third party to conduct the survey so that prices are not disclosed directly to the government.
- The third-party vendor assures survey participants that their data will be protected from disclosure.
- The GNS has never seen unredacted, individual transactions that comprise the 2017-2018 Private Market Survey or observed its contents, nor has the GNS obtained any report other than the period-wide weighted-average prices for each product and species reported.
- Revealing confidential information would result in a situation where the GNS would never again be able to contract with a third party to obtain the commercial transaction data necessary to set stumpages prices, and the voluntary survey respondents would no longer trust the GNS to protect their proprietary information.

[586] *Id.* at 91 (citing GOC Stumpage IQR Response, Vol. III, Exhibit GOC-AR4-STUMP-69 at 2).
[587] *Id.* at 91 (citing *Lumber AR2 Final* IDM at Comment 45).
[588] *See* Petitioner Rebuttal Brief at 79-80.
[589] *Id.* at 80 (citing *Lumber V AR3 Final* IDM at Comment 248-249).
[590] *See* GNS Rebuttal Brief at 16-20.

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- Such a situation would cause substantial harm to the GNS under 19 CFR 351.105(c)(11).
- The provision under 19 CFR 351.105(c)(5) protects disclosure of "prices of individual sales," which is precisely what is included in the database.
- Thus, individual transactions should continue to be treated as BPI.
- While the Canadian Parties argue that the average prices must be disclosed, what can be observed from the survey is that, in many instances, there were too few respondents to publicly report annual average transactions, let alone monthly transaction prices.
- The private stumpage prices for certain products and species had to be suppressed because there were insufficient transactions to make the averages public on a yearly basis.[591] So too could there be insufficient transactions in the monthly dataset to make monthly averages public.
- Put another way, if there are too few unique transactions for a given data set, the average would effectively reveal the individual transaction(s) that would otherwise be entitled to suppression from the public record.
- What is clear from the monthly averages prices derived from the 2017-2018 Private Market Survey is that for many months and species combinations, the public release of an average price would effectively reveal the individual transaction prices because the number of transactions at unique prices is too small to generate an average that masks the individual transaction prices.

Commerce's Position: The Nova Scotia benchmark is comprised of prices contained in the 2017-2018 Private Market Survey, which is same survey on which Commerce relied to calculate the Nova Scotia benchmark in prior reviews. In a prior review, the GNS consented 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.[592] Consistent with prior reviews, we have utilized the same redaction approach.[593]

As it was the prior review, 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).[594] 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 continue to 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.[595] Therefore, for these reasons and consistent with the prior review, we find the GNS's request that Commerce should redact the sales information for these transactions and their corresponding monthly weighted-average prices to be reasonable.[596]

[591] *Id.* at 18 (citing GNS Stumpage IQR at Exhibit NS-6B at 8).
[592] *See Lumber V AR3 Final* IDM at Comment 40.
[593] *Id.*; *see also* Final Nova Scotia Benchmark Calculation Memorandum.
[594] *See* Final Nova Scotia Benchmark Calculation Memorandum.
[595] *Id.*; *see also* GNS Rebuttal Brief at 16-18.
[596] *See Lumber V AR3 Final* IDM at Comment 44.

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As explained elsewhere in this memorandum, we are using the same lumber-based indexing factor the GNS used to index the prices in the 2017-2018 Private Market Survey for purposes of setting Crown-origin standing timber prices in Nova Scotia, effective April 1, 2020.[597] The GNS's indexing factor is proprietary.[598] Thus, while 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, it has requested proprietary treatment of the index used to index the survey prices to 2021 prices. Thus, consistent with the prior review, we find the 2021 SPF sawlogs and studwood indexed prices must also be redacted.[599] 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 portions of the anonymized 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 2021 SPF prices would be divulged if the 2021 SPF prices were disclosed.

Comment 22: Whether Private Standing Timber Prices in Nova Scotia Are Available in Alberta

GOC's Comments[600]

- Adequacy of remuneration must be determined in relation to the prevailing market conditions for the good being provided in the country of provision.
- The relevant prevailing market conditions outlined in the Act include price, quality, availability, marketability, transportation, and other conditions of sale, all of which vary between the regions subject to the investigation.
- Accordingly, adequacy of remuneration for a regional government provided good in an intrinsically local market must be assessed against a benchmark reflecting the prevailing market conditions for the good within that region.
- Section 771(5)(E)(iv) of the Act states that "prevailing market conditions" and "for the good being … provided," are obligatory criteria in the test that Commerce must apply in choosing a benchmark to determine whether a benefit is conferred.
- The phrase "prevailing market conditions" must be given its plain meaning. The ordinary meaning of the word "prevailing" is to "predominate" or be predominant. The term "market" means "the area of economic activity in which buyers and sellers come together and the forces of supply and demand affect prices."
- "Prevailing market conditions," therefore, refer to the conditions that predominate in an area of economic activity where supply and demand interact to determine market prices for the good that is being provided.
- Record evidence in this case conclusively demonstrates that standing timber markets are inherently local and that market conditions vary significantly between the regional markets for standing timber in Canada.

[597] *See* Final Nova Scotia Benchmark Calculation Memorandum.
[598] *See* GNS November 30, 2022 Stumpage SQR Response at 1.
[599] *See Lumber V AR3 Final* IDM at Comment 44.
[600] *See* GOC Case Brief Volume I at 10-19 and 21-27.

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- Thus, the prevailing market conditions that must be accounted for to determine and measure adequacy of remuneration are those that prevail for the good "being provided."
- In this case, the government goods that are being provided are the different types of provincial Crown standing timber; timber that is literally rooted in the ground in each of the relevant provinces or regions.
- This fact requires assessment of adequacy of remuneration that involves looking at the market where the different mixes of trees are provided and located. Regional markets differ considerably in terms of hauling, equipment, labor costs, fuel prices, etc.
- Thus, Crown-origin standing timber from Alberta requires an Alberta-based benchmark.
- Using a Nova Scotia benchmark to measure adequacy of remuneration does not reflect the market conditions in these provinces.
- A benchmark that is merely in-country (or one that is out-of-country) but does not reflect prevailing conditions for an *in situ* good such as standing timber in the regional market in which it is provided, will measure a price differential caused by differences in prevailing regional market conditions rather than by any alleged subsidy.
- In the *SC Paper from Canada Final*, Commerce recognized that tier-one benchmarks that reflect most closely the prevailing market conditions of the purchaser under investigation are preferable to determine and measure the adequacy of remuneration.
- In that case, Commerce rejected electricity data from Alberta as a benchmark to measure the adequacy of remuneration in Nova Scotia because the Alberta benchmark did not reflect the prevailing market conditions in Nova Scotia, as it was not available, marketable, or transportable to Nova Scotia.[601]
- Regarding Commerce's decision in the *SC Paper from Canada Final*, a NAFTA panel noted that, "based on the requirements for establishing a tier-one benchmark, {Commerce} concluded that prices from Alberta are not suitable as a tier-one benchmark because electricity from Alberta, in effect and reality, is not available in Nova Scotia."[602]
- The WTO similarly found that where prevailing market conditions for the government-provided good are limited to a particularly geographic area (*e.g.*, a specific region within the country of provision), the benchmark price must reflect the prevailing market conditions in that region.[603]

Petitioner's Rebuttal Comments[604]

- Commerce has consistently rejected the Canadian Parties' arguments concerning whether standing timber in Nova Scotia is "available" to purchasers in Alberta under 19 CFR 351.511(a)(2)(i).[605]
- The prevailing market conditions language relied upon by the Canadian Parties in their briefs cannot be read in isolation. The statute requires Commerce to consider prevailing market conditions of the country under investigation:

[601] *Id*. at 15 (citing *SC Paper from Canada Final* IDM at Comment 25).
[602] *Id*. (citing *Supercalendered Paper from Canada NAFTA Panel Decision* at 38).
[603] *Id*. at 15-16 (citing *DS 533 Panel Report* at para. 7.30).
[604] *See* Petitioner Rebuttal Brief at 9-16.
[605] *Id*. at 20 (citing, *e.g.*, *Lumber V AR3 Prelim* PDM at 21, *Lumber V AR2 Final* IDM at Comment 39, and *Lumber V AR1 Final* IDM at Comment 25).

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> the 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.[606]

- Here, the country subject to review is Canada. Because Nova Scotia is a political subdivision of Canada, Commerce properly concluded in its preliminary analysis that private timber sales in Nova Scotia are timber sales "in Canada," and therefore would be the best, or "tier one," benchmark for determining the extent of subsidization by the GOA and the GNB to the respondents, consistent with U.S. law.
- Commerce's regulations under 19 CFR 351.511(a)(2)(i) plainly explain that the "tier-one benchmark" discussed by the Canadian Parties requires "actual transactions in the country in question."
- There is no doubt that "{t}he 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 review."[607] Thus, even without a review of the record evidence, the Canadian Parties' arguments fail as a matter of U.S. law.
- Commerce has previously explained that the facts of the *SC Paper from Canada Final* are distinct from those of the *Lumber V* proceeding.[608]
- Nova Scotia standing timber is available to any willing buyer regardless of its physical residency in the province. This is in stark contrast to the stumpage subsidy programs run by the GOA, which impose strict limitations on the ability of purchasers to process stumpage outside of the province (*i.e.*, log export restrictions).
- In 2020, "out of province" sales of roundwood continued to be an important market for Nova Scotia private landowners.[609]
- Further, during the POR, JDIL, which is based in New Brunswick, regularly purchased standing timber in Nova Scotia, a buying pattern that contradicts the Canadian Parties' claims that standing timber in one province is not available to buyers in other provinces and further demonstrates how the facts of the instant review are distinct from those Commerce examined in the *SC Paper from Canada Final*.

Sierra Pacific's Rebuttal Comments[610]

- Commerce has found in previous reviews that section 771(5)(E)(iv) of the Act provides that Commerce assesses the adequacy of remuneration "in relation to the prevailing market conditions for the good … being provided … in the country which is subject to investigation or review."[611]
- Thus, stumpage prices for private-origin standing timber in Nova Scotia may serve as a tier-one benchmark because they are prices in the country that is subject to the investigation.

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[606] *Id*. at 12 (citing section 771(5)(E)(iv) of the Act).
[607] *Id*. at 13-14 (citing *Lumber V AR1 Final* IDM at Comment 25).
[608] *Id*. at 14 (citing *Lumber V AR1 Final* IDM at Comment 25 that, in turn, references *SC Paper from Canada Final* IDM at Comment 25).
[609] *Id*. at 15 (citing GNS Stumpage IQR Response at Exhibit NS-9 at 23).
[610] *See* Sierra Pacific Rebuttal Brief at 7-10.
[611] *Id*. at 8 (citing, *e.g.*, *Lumber V AR1 Final* IDM at Comment 25).

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- Nothing in the statute or Commerce's regulations requires that a benchmark price resulting from a transaction in the country at issue be "available to" the respondents in a particular region of the same country.
- Rather, 19 CFR 351.511(a(2)(i) merely 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." There is no intra-country or intra-province availability qualification in either the statute or 19 CFR 351.511(a)(2)(i).
- Commerce has previously rejected the Canadian Parties' arguments concerning the *SC Paper from Canada Final*.[612] Commerce's finding in the *SC Paper from Canada Final* were specific to the facts of that investigation and based on factors not relevant to the instant review, including that the out-of-province price for electricity was not based on actual transactions but rather was a constructed benchmark. The Canadian Parties ignore this aspect of Commerce's decision in the *SC Paper from Canada Final*.
- In contrast, the prices in the 2017-2018 Private Market Survey reflect actual transactions, and it is possible for standing timber to be sold across provincial borders, as Commerce has previously found.[613]
- Commerce's prior findings and evidence on the record demonstrates that standing timber in Nova Scotia is available to sawmills in other provinces.
- The statute and 19 CFR 351.511(a)(2)(i) direct Commerce to first consider whether there are useable market-determined prices resulting from actual transactions in the country in question. There is no requirement in the statute or regulations that Commerce limit its selection of a tier-one benchmark to prices from the same region or province as the good being provided for less than adequate remuneration.
- Thus, the Canadian Parties are wrong to argue that standing timber is an intrinsically local good that is not available outside of the area or province where the sale of Crown-origin standing timber occurs.

Commerce's Position: We find that the Canadian Parties have not raised any arguments that warrant a change in Commerce's finding from the prior review[614] 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). 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 possession of a foreign country … ." Commerce has previously found the inclusion of "political subdivision" within the definition of the term "country" ensures that

[612] *Id*. at 9 (citing, *e.g.*, *Lumber V AR1 Final* IDM at Comment 25; and *Groundwood Paper from Canada* IDM at Comment 16).
[613] *Id*. at 9 (citing, *e.g.*, *Lumber V AR4 Prelim* PDM at 33 (noting that New Brunswick-based JDIL had purchased standing timber in Nova Scotia); and *Groundwood Paper from Canada* IDM at Comment 16, which references Commerce's finding in the *Lumber V Final* IDM that a respondent's New Brunswick-based sawmill purchased standing timber in Nova Scotia, while another respondent's Québec-based sawmills purchased standing timber in Ontario).
[614] *See, e.g.*, *Lumber V AR3 Final* IDM at Comment 25.

Commerce may investigate subsidies granted by sub-federal level government entities and ensures that those governments qualify as interested parties under the statute.[615] 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. Therefore, 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 the *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 review. 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.[616] Electricity transmitted over long distances also suffers from line losses which greatly inflate the electricity's price.[617] 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.[618] 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, they were constructed based on existing tariffs in Alberta as if Port Hawkesbury operated in that province.[619]

The Nova Scotia stumpage data in this proceeding, unlike the hypothetical Alberta benchmark in the *SC Paper from Canada Final*, 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

[615] *Id.*
[616] *See SC Paper from Canada Final* IDM at 41 – 42 and Comment 12.
[617] *Id.* at 41 – 42 and Comment 12.
[618] *Id.* at 41 – 42 and Comment 12.
[619] *Id.* at 41 – 42 and Comment 12.

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purchase stumpage across provincial boards or regions. Indeed, evidence on the record indicates that New Brunswick-based JDIL purchased standing timber in Nova Scotia.[620]

Stumpage, akin to land, is both rooted in the ground, and an end user is free to purchase the good across provincial or regional borders. In the *CWP from Turkey 2010 Review*, Commerce used industrial land prices across Turkey as benchmarks to calculate the benefit conferred by a land for LTAR program.[621]

Furthermore, as discussed elsewhere in this memorandum, the Canadian parties' reliance on the decision in *Supercalendered Paper from Canada 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.[622] 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.[623] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[624]

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.

Comment 23: Whether to Revise the Conversion Factor Used in the Calculation of the Nova Scotia Benchmark

GOC's Comments[625]

- Nova Scotia sawmills normally purchase standing timber based on weight (*i.e.*, dollars per ton) of each type of product (*e.g.*, sawlog, studwood, pulplog) they harvest.[626]
- However, the 2017-2018 Private Market Survey instructed respondents to report their transactions on a volume basis (*i.e.*, dollars per cubic meter) by applying a fixed ratio, or conversion factor, to convert the weight of the timber they purchased into a figure purporting

[620] *See* JDIL Final Calculation Memorandum, where the calculations for JDIL's stumpage benefit indicate that it purchased standing timber from Nova Scotia.
[621] *See CWP from Turkey 2010 Review* IDM at Comment 4.
[622] *See Corus Staal v. U.S. (2005)*, 395 F. 3d 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F. 3d 1375; and *NSK v. U.S.*, 510 F. 3d 1379-80.
[623] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[624] *See* SAA at 659.
[625] *See* GOC Case Brief Volume I at 63-73 and 87.
[626] *Id*. at 64 (citing GNS Stumpage IQR Response at 16; and Miller Report at 4).

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to represent the volume of that timber, specifically a conversion factor that effectuates an assumption that each ton of logs contains 1.167 cubic meters of wood volume.

- This conversion factor understates the volume of wood actually contained in a given mass of logs, and thus overstates the price per-cubic-meter actually paid by purchasers of standing timber in Nova Scotia.
- Evidence on the record confirms that the 1.167 conversion factor was developed at a single scaling site in Nova Scotia—specifically, the Scott Paper site.
- No evidence supports the conclusion that the site itself was representative of scaling sites (or the timber that passed through them) throughout Nova Scotia.
- Commerce previously 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.[627]
- Although Commerce has attempted to reframe its dismissal of the BC Dual Scale Study as purely based on its perceived bias, Commerce also clearly articulated a methodological standard that the GNS's conversion factor does not meet.[628]
- Per the standard employed in the investigation concerning the Dual-Scale Study, Commerce should determine here that there is no basis to conclude the 1.167 conversion factor reflects observations reflective of all of Nova Scotia.[629]
- Evidence does not establish that the 1.167 conversion factor is based on actual measurements of the number of cubic meters per ton of logs.
- Instead, the evidence shows that values 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. Instead, the values in certain of the columns can only have been derived by applying a fixed conversion factor to values in other columns.[630]
- It is erroneous to assume there is a fixed relationship between stacked timber volume loads and timber piece volume loads.[631]
- The prices in the 2017-2018 Private Market Survey benchmarks are based on prices reported for only sawlogs and studwood; the 1.167 conversion factor was derived from a range of different products—sawlogs, studwood, pulpwood, and fuelwood—which have different characteristics that affect their weight-to-volume ratios.[632]
- Weight-to-volume measurements vary based on timber size. Other provinces that require accurate and precise conversion factors, like New Brunswick, develop product-specific conversion factors.

[627] *Id*. at 66 (citing *Lumber V Final* IDM at Comment 19).
[628] *Id*. (citing *Lumber V AR3 Final* IDM at Comment 29).
[629] *Id.* (citing *Lumber V Final* IDM at Comment 19).
[630] *Id*. at 67 (citing GOA Comments on GNS IQR Response at Exhibit PR-NSR-AR4-23 at 1–16 at 1-16).
[631] *Id*. (citing GBC IQR Stumpage Response at Volume I, Exhibit BC-AR4-S-204 at 79).
[632] *Id*. at (citing GNS Stumpage IQR Response at Exhibit NS-16 at 9).

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- From the GNS's point of view, applying a standard conversion factor for all products may be "understandable and operationally more practical for the purposes of revenue collection" but "as a measure of the wood consumed by a mill, a mandated factor {like the GNS's} will almost never be accurate."[633]
- 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.
- 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.[634]
- Commerce erred in the prior administrative review when it asserted that timber in Nova Scotia continues to be sold on a tree-length basis, which is further confirmed by the GNS's response to Commerce's verification questionnaire.[635]
- Therefore, even if the 1.167 conversion factor "is accurate for the sizes and species (and season)" of the harvested timber as a whole, a tree-length conversion "will not be accurate if applied to only a subset of products" from that timber.[636]
- The evidence is clear that conversion factors must be adjusted over time to account for changes in the forest and the timber scaling method.[637]
- The GNS developed the 1.167 conversion factor in 1994, and it claims 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.[638]
- The 1.167 conversion factor was derived prior to the 2001 enactment of the Scalers Act and Scaling Regulations.[639]
- 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.
- A WTO Panel agreed that Commerce "did not explain why a conversion factor the accuracy of which was examined in 2005 would remain suitable for use after 2007, when a new log scaling system was adopted by Nova Scotia."[640]

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[633] *Id*. at 68 (citing GOC IQR Stumpage Response at Volume III, Exhibit GOC-AR4-STUMP-125 at 1).
[634] *Id*. (citing Miller Report at 4; GOC IQR Stumpage Response at Exhibit GOC-AR4-STUMP-37 at 10; and GNS Stumpage IQR Response at Exhibit NS-8 at 4).
[635] *Id*. at 69 (citing GOC IQR Stumpage Response at Volume III, GOC-AR4-STUMP-65 at Attachments 1-3 at part B).
[636] *Id*. (citing Miller Report at 4).
[637] *Id*. at 69-70 (citing GBC Stumpage IQR Response, Volume I, Exhibit BC-AR4-S-204 at 75).
[638] *Id.*at 70 (citing Asker Report, Exhibit GOC-AR4-STUMP-35 at 6; GNS Stumpage IQR Response at 9, and GOC IQR Response, Volume 3, Exhibit GOC-AR4-STUMP-85 at 9 and 11).
[639] *Id*. (citing GNS Stumpage IQR Response at Exhibit NS-12 at 4 and Exhibit NS-13).
[640] *Id*. at 71 (citing *DS 533 Panel Report* at para. At 7.421).

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- The GNS's continued use of the conversion factor is not adequate to justify Commerce's use of that conversion factor in this review.
- There is no evidence on the record, however, that indicates that purchasers rely on the 1.167 conversion factor when purchasing Crown timber.
- Moreover, the 1.167 conversion factor's other uses do not require a high level of precision, let alone the level of precision required of Commerce when calculating its benchmark.
- Whether the GNS uses the 1.167 conversion factor to calculate its Crown stumpage prices is irrelevant because standing timber transactions in Nova Scotia are conducted in tons, not cubic meters.
- That means that whatever amount of cubic meters the GNS calculates does not affect the value that purchasers assign standing timber because they measure the wood fiber they purchase in tons, not cubic meters.
- Therefore, the GNS's use of its conversion factor to calculate the average price for its survey report is not indicative of its accuracy for Commerce's purposes.
- The only other apparent uses of cubic meters in the ordinary course of the GNS's business appears to be in connection with the reporting of harvest volumes and in assessing silviculture obligations for Registered Buyers, such as the C$3/$m^3$ silviculture fee.
- No Registered Buyers, in fact, pay that fee, as they opt to conduct their own silviculture activities to satisfy their regulatory obligations; thus, there is no need for the GNS to use a conversion factor that precisely quantifies the volumes of stumpage that are purchased by weight.
- The GNS's approach to conversion factors contrasts with other provinces that maintain updated and accurate conversion factors, like Alberta and New Brunswick.
- These rigorous approaches further highlight how unsuitable the 1.167 conversion factor is for Commerce's purposes.
- Should Commerce continue to use the prices in the 2017-2018 Private Market Survey as a tier-one benchmark, then to more accurately calculate the transaction volumes in Nova Scotia, Commerce should rely on conversion factors that match its seasonal, product-specific Nova Scotia benchmarks by accounting for seasonality, log type, species, and other dynamic factors, like New Brunswick's.

GOA's Comments[641]

- The conversion factor that Commerce relied on to convert weight-based benchmark transactions into cubic meters is not used by private parties in Nova Scotia, who make sales and set prices on a per metric ton basis.
- The appropriate weight-to-volume conversion factor to convert Nova Scotia's weight-based transactions to cubic meter for comparison to Alberta's stumpage purchases is the Alberta weight-to-volume conversion factor.
- The Nova Scotia conversion factor was created over 25 years ago on the basis of scaling data from a single pulp mill in Nova Scotia and has not been updated since, even though the GNS has mandated new scaling methodologies in the years since, specifically to improve accuracy.
- Forest and standing timber characteristics change over time. Thus, such factors must be considered when calculating an accurate conversion ratio for a given population of logs.

[641] *See* GOA Case Brief Volume IV.A at 10-12 and 82-90.

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- There is no evidence the conversion 1.167 factor relied on by Commerce is ever used in Nova Scotia to make conversions for private commercial transactions, and no evidence to suggest that the GNS actually uses the conversion factor in the normal course of business to set or calculate stumpage charges.
- If in the final results Commerce continues to use Nova Scotia prices as a benchmark for Alberta, Commerce must apply the same conversion factor used in Alberta for the 2017-2018 Private Market Survey transaction prices to convert the transactions from weight into volume to ensure a fair "apples-to-apples" comparison with the Alberta respondents' transactions.
- If Commerce does not use Alberta's conversion factor, then it should use the conversion factor utilized by the GNB.

West Fraser's Comments[642]

- Commerce must also account for the substantial differences in the factors used to convert the weight of logs into cubic meters in Alberta versus Nova Scotia.
- The GNS's fixed conversion factor of 1.167 does not accurately reflect prevailing market conditions for Alberta standing timber.
- The GOA bills for standing timber by cubic meters. Thus, the operation of Alberta's system depends on accurately converting log weight in kilograms to volume in cubic meters.
- Alberta calculates weight conversion factors based on continuous mass scaling of sample loads from each weight scale—thus ensuring that the conversion factors reflect current conditions with respect to species and density of the harvest.
- In this way, Alberta ensures that it can provide an accurate determination of the volume of Alberta standing timber on which the stumpage prices are based.
- For 2021, the average annual conversion ratio calculated by Alberta was 757.0 kg/m^3.[643]
- In contrast, the GNS's conversion factor has been a static 857 kg/m^3 since the early 1990s.
- The GNS has not needed to update its conversion factor because it has no need to. Unlike Alberta, standing timber in Nova Scotia is generally billed on the basis of weight rather than volume as in Alberta.
- Commerce's continued use of Nova Scotia's outdated and inaccurate conversion factor unfairly overstates the unit price of Nova Scotia standing timber, and thus, overstates the benefit calculated for Crown-origin standing timber harvested in Alberta.
- If Commerce continues to use Nova Scotia as a benchmark for Alberta standing timber, Commerce should compare apples-to-apples by applying the accurate Alberta conversion factor of 757.0 kg/m^3 to the Nova Scotia weight-based pricing survey data.

GNS's Rebuttal Comments[644]

- 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.
- 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.

[642] *See* West Fraser Case Brief at 66-68.
[643] *Id.* at 67 (citing GOA Stumpage IQR at ABII-67).
[644] *See* GNS Rebuttal Brief at 2-9.

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- From there, any party could use any conversion factor to derive unit prices on a C$/m^3 basis. Even seasonal factors could be applied to convert tons to cubic meters. Canadian Parties acknowledge this fact. Thus, the conversion factor simply does not affect the underlying prices reported in the survey.
- The Canadian Parties' claims that the GNS's conversion factor is outdated and inaccurate are baseless.
- The GNS uses the 1.167 conversion factor to direct Registered Buyers to calculate the volume of primary forest products they have acquired under the Registration and Statistical Returns Regulations and for use in establishing the amount of silviculture they are obligated to conduct (or pay for) pursuant to the Forest Sustainability Regulations.
- These obligations are calculated based on the volume of primary forest products acquired.
- As many primary forest products are acquired based on weight, the conversion factors promulgated through the regulations serve to standardize reporting.
- Nova Scotia's annual Registry of Buyers Report includes such standardized reported volume. Having established a standardized approach to reporting on a cubic meter basis and setting Crown stumpage on the same basis, the GNS instructed Deloitte to use the same conversion factors to generate per-cubic-meter weighted-average prices in the 2017-2018 Private Market Survey so that Crown stumpage prices could be set at fair market value.
- The 1.167 conversion factor therefore impacts how much timber is harvested and disposed of in Nova Scotia as reported in official government reports, the silviculture amounts due, and the Crown stumpage prices charged by the GNS.
- There is thus a clear incentive or need to precisely quantify the volumes of stumpage that are purchased by weight.
- Nova Scotia's 1.167 conversion factor is accurate and reliable.
- Kevin Hudson, the Manager, Scaling & Forest Regulation Administration with the Registry of Buyers at the Nova Scotia Department of Lands and Forestry who served between April 1, 2001, and March 31, 2019, has explained that the conversion factor was first developed between 1989 and 1994 using the standardized methodology outlined in the CSA's Scaling Roundwood Standard CAN3-0302.1-M86.[645]
- Whether the initial conversion factor was based on data collected only from one site does not detract from the evidence contained in the Canadian Government Parties' own Freedom of Information Request to the GNS — *i.e.*, that the data collected between 2001 and 2009 confirm the conversion factor was accurate across multiple sites.[646]
- Mr. Hudson has explained that the data collected over this extensive period and from these numerous sites yielded a statistically insignificant difference from the then preexisting 1.167 conversion factor.
- The Canadian Parties do not credit Mr. Hudson's signed declaration and point to a statement from the Supervisor of Scaling made at the time of the adoption of the conversion factor in 2000 that the factors should be reviewed every three years and adjustments made where necessary to claim that the GNS itself has recognized that conversion factors must be updated to reflect changing Nova Scotia forest conditions.

[645] *Id*. at 5 (citing Petitioner Comments on IQR Responses at Exhibit Volume I-43 at Exhibit 2 paragraph 3).
[646] *Id*. at 6 (citing GOA Comments on GNS IQR Response at Exhibit PR-NSR-AR4-21).

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- Notwithstanding that such a review was actually undertaken, Mr. Hudson's declaration explains that each Province has its own notions of the appropriate conversion factor to be used based on the "attributes of the wood being harvested in that province."[647]
- Mr. Hudson cited to species, species mix, and moisture content in the wood as factors that play a role in any weight-to-volume conversion factor.[648]
- Mr. Hudson further explained that, insofar as these attributes play a role in establishing a weight-to-volume conversion factor, species type, species mix, and relative moisture content were all variables in the samples measured over an eight year period from 2001 to 2009 and the results of that study determined "an almost identical conversion factor" to the one established in 1994.[649]
- Thus, when the GNS reviewed the factor as the Supervisor of Scaling recommended, the results required no changes because the conversion factor remained accurate and reliable.
- The Canadian Parties also claim that the Scaling Manual was updated in 2007, which would have changed how the volume of a log in cubic meters is measured.
- The 2007 update to the Scaling Manual occurred during the same period as Mr. Hudson conducted his evaluation of the standard conversion factor (i.e., from 2001 through 2009; not 2005 as claimed by the Canadian Parties).
- Thus, it is reasonable to conclude that any differences were given due consideration.
- In any event, the current Manager of Scaling and Forest Regulation Administration 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."[650]
- If a party wishes to use another conversion factor with the anonymized database, that can be readily accomplished without the need to impugn the integrity of Nova Scotia's domestic forestry policy.

Petitioner's Rebuttal Comments[651]

- The Canadian Parties repeat the same arguments that Commerce rejected in the prior review.[652]
- In the prior review, Commerce found that, contrary to the Canadian Parties' assertion, the GNS followed CSA scaling guidelines when "developing, re-examining, and confirming the continued applicability of the 1.167 conversion factor" and in the investigation, Commerce examined the process the GNS underwent to develop the conversion factor and found it was "reliable and accurate."[653]
- The information the Canadian Parties obtained via their Freedom of Information Request regarding the development of the 1.167 conversion factor further confirms the reliability of the sampling methodologies used to develop the 1.167 conversion factor. [654]
- Given that the Canadian Parties raise no new argument or facts, Commerce should continue to reject their arguments and continue to find that the 1.167 conversion factor, that was used in

[647] *Id*. at 8 (citing Petitioner Comments on IQR Responses at Exhibit Volume I-43 at Exhibit 2 paragraph 4).
[648] *Id*. (citing Petitioner Comments on IQR Responses at Exhibit Volume I-43 at Exhibit 2 paragraph 4).
[649] *Id*. at 8 (citing Petitioner Comments on IQR Responses at Exhibit Volume I-43 at Exhibit 2 paragraph 5).
[650] *Id*. at 9 (citing Petitioner Comments on IQR Responses at Exhibit Volume I-43 at Exhibit 3 paragraph 4).
[651] *See* Petitioner's Rebuttal Brief at 34-37 and 64-65.
[652] *Id*. at 35 (citing *Lumber V AR3 Final* IDM at Comment 29).
[653] *Id*. (citing *Lumber V AR3 Final* IDM at 173 and 176; and *Lumber V INV* IDM at Comment 41).
[654] *Id*. at 35 (citing *Lumber V AR3 Final* IDM at 176).

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compiling the standing timber prices in the 2017-2018 Private Market Survey, is reliable and accurate.

- The Canadian Parties propose replacing the conversion factor used in the ordinary course of business in Nova Scotia with a conversion factor used in Alberta or in New Brunswick.
- Such a change is unreasonable given that Commerce has consistently determined that Nova Scotia is comparable "in terms of tree size, species, and overall forest conditions" to Alberta, factors which all "play an important role in deriving conversion factors."[655]
- Replying to the Canadian Parties' claims that the 1.167 conversion factor is outdated, the GNS's Chief Scaler explained that the conversion factor "directly impacts the integrity of our forestry policy measures," giving the GNS "a strong incentive to modify the factor" if it did not believe it to be "precise and reliable."[656]

Sierra Pacific's Comments[657]

- Commerce has previously considered and rejected the Canadian Parties' arguments that various expert reports – including the Miller Report and the Asker Report – demonstrate that Nova Scotia stumpage prices are not comparable to prices in Alberta, due to the former's differing growing conditions and log classification system; pulp mill consumption; unique geography (resulting in lower hauling costs) and low labor costs.
- Commerce has previously found that these reports, which were prepared for the express purpose of submission in the original investigation, suffer from numerous flaws and fail to adequately quantify or substantiate the extent of the purported differences or their impact on private stumpage prices in Nova Scotia.[658]
- Commerce's statute and regulations do not require perfection in construction of a benchmark.[659]

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.[660] 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 factor 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.

[655] *Id.*at 64-65 (citing *Lumber V AR3* IDM at 178).
[656] *Id.* at 36 (citing Petitioner Comments on IQR Responses at Exhibit Volume I-43 at Exhibit 2 at paragraph 9).
[657] *See* Sierra Pacific Case Brief at 14-15.
[658] *Id.* at 14 (citing *Lumber V AR3 Final* IDM at Comment 29; *Lumber V AR2 Final* IDM at Comments 41 and 42; *Lumber V AR1 Final* IDM at Comments 30 and 33; and *Groundwood Paper from Canada* IDM at Comment 24).
[659] *Id.* (citing *HRS from India* IDM at Comment 12).
[660] *See Lumber V AR3 Final* IDM at Comment 29.

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The GNS began the process to develop a standard conversion rate in 1989.[661] From 1989 to 1994, the GNS surveyed delivered SPF timber to derive a tons to cubic meter conversion factor.[662] When developing the 1.167 conversion factor, the GNS followed the CSA Scaling Roundwood Standard CAN3-0202.1-M86, which is a nation-wide standard.[663] 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.[664]

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 silviculture obligations pursuant to the Forest Sustainability Regulations.[665] 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.[666] During the investigation, Commerce verifiers examined the process and information that went into the GNS's development and continued evaluation of the conversion factor.[667] In the prior review, Commerce determined that the GNS's conversion factor was reliable and accurate.[668] 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 2020-2021.[669]

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.[670] 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.[671] 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.[672]

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[661] *See* GNS Stumpage IQR Response at 16.
[662] *Id*.
[663] *Id*. at 16; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[664] *See* GNS Stumpage IQR Response at 16-17; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[665] *See* GNS Stumpage IQR Response at 16 and Exhibits NS-14 and 16; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[666] *See Lumber V AR3 Final* IDM at Comment 29.
[667] *See Lumber V Final* IDM at Comment 41.
[668] *See Lumber V AR3 Final* IDM at Comment 29.
[669] *See* GNS Stumpage IQR Response at 3-5; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 1, paragraph 8.
[670] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[671] *Id*. at Exhibit 2.
[672] *See* GNS Stumpage IQR Response at 16-17; *see also* Petitioner Comments on IQR Responses, Volume I-43 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.

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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.[673] Moreover, as discussed in the prior review[674] 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 2020-2021.[675] 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 standing timber into cubic meters,[676] 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 continue to 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 as well as information in the GNS verification questionnaire response 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 Miller Report provides no documentation to support that contention.[677] Further, the claim made in the 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:

> {f}or each load that leaves the woodlot, the harvester (sometimes but not always us) will pay the woodlot owner for the types of trees harvested. At the same time, the woodlot owner will attempt to maximize his or her revenue on a per-load basis. 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.[678]

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[673] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[674] *See Lumber V AR3 Final* IDM at Comment 29.
[675] *See* GNS Stumpage IQR Response at 3-5; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 1, paragraph 8.
[676] *See* GNS Stumpage IQR Response at Exhibit NS-8 at 9, 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.
[677] *See* Miller Report at 4.
[678] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 4 at paragraph 5.

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As noted in the prior review, the GNS Registry of Buyers for 2019 indicates that Harry Freeman & 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,[679] 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 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).[680] Further, purchase documentation of survey respondents, that Commerce verifiers reviewed at the GNS verification in the investigation, confirmed that the prices in the 2015-2016 Private Market *Survey* reflected prices for standing timber (*e.g.*, "pure stumpage").[681] The 2017-2018 Private Market Survey similarly instructed respondents to report prices paid for "pure stumpage."[682] 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.

The Canadian Parties argue that in prior reviews, Commerce applied rigorous statistical sampling requirements when determining not to rely on the conversion factor data contained in the Dual Scale Study yet refrained from applying those same statistical sampling requirements when it determined to rely on the 1.167 conversion, which was derived from data from a single source, the Scott Paper mill. However, in determining in the first review not to rely on the Dual-Scale Study, Commerce noted several reasons that did not involve the number of observations or data sources: (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."[683]

The Canadian Parties further claim that while the four aforementioned reasons were part of Commerce's decision in prior reviews to dismiss the Dual-Scale Study, Commerce also clearly articulated a methodological standard, specifically the need for large sample and varied sample size, that the GNS's conversion factor does not meet.[684] We disagree with this characterization of Commerce's decision not to rely on the Dual-Scale Study. As indicated in the first administrative review, Commerce's primary concern with the Dual-Scale Study was that it was commissioned by a party, the GBC, with an interest in a desired outcome and, moreover, the study's use of scale sites self-selected by the GBC.[685] In fact, Commerce's explanation for

[679] *See Lumber V AR3 Final* IDM at Comment 29.
[680] *Id.*; *see also* GNS Stumpage IQR Response at Exhibit NS-8 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.
[681] *See* GNS Stumpage IQR Response at Exhibit NS-8 at 8.
[682] *Id.* at Exhibit NS-17 at 1, which contains the instructions provided to respondents to the 2017-2018 Private Market Survey.
[683] *See Lumber AR1 Final* IDM at Comment 22.
[684] *See* GOC Case Brief Volume I at 66.
[685] *See Lumber V AR1 Final* IDM at Comment 22.

continuing not to rely on the Dual-Study in the second review does not even mention the number of the scale sites. Rather, in the second review, Commerce continued to focus on how the self-selection of scaling sites by the GBC, an interested party with a stake in the outcome of the review, led Commerce to continue to conclude that the study was not a valid source of conversion factors.[686] Concerning the Dual-Scale Study, Commerce reached the same conclusion in the instant review.[687]

In contrast, the GNS conducted its conversion factor analysis involving the Scott Paper Mill in 1994, which is well in advance of the filing date of the *Lumber V Initiation*.[688] 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:

> {b}etween 2001 and 2009, {the Nova Scotia} 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.[689]

Also, in developing, re-examining, and confirming the continued applicability of the 1.167 conversion factor, the GNS followed CSA scaling guidelines.[690] 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.[691] 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 factor's 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 conversion factor's development that was collected as part of the Freedom of Information

[686] *See Lumber AR3 Final* IDM at Comment 22.
[687] *See Lumber V AR4 Prelim* PDM at 31-32.
[688] *See Lumber V Initiation*, 81 FR at 93897.
[689] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[690] *See* GNS Stumpage IQR Response at 16-17.
[691] *Id*. at 16.

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Request, states, "Samples shall be selected in an unbiased manner that conforms to the logistics of the wood arriving at the mill site."[692]

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;[693] (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;[694] and (3) used the prices in the 2017-2018 Private Market Survey to set Crown-origin standing timber prices in FY 2019-2021.[695] 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 has an incentive to develop and maintain a reliable conversion factor.

We disagree with the 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.[696] 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 1.167 conversion factor adhered to 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.[697] 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 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

[692] *See* GOA Comments on GNS IQR Response at Exhibit PR-NSR-AR4-21.
[693] *See* GNS Stumpage IQR Response at 16; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[694] *See* GNS Stumpage IQR Response at Exhibit 6B.
[695] *Id.*at 3; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibits 1 and 4.
[696] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[697] *See* GNS Stumpage IQR Response at 17; *see also* Petitioner Comments on IQR Responses, Volume I-43 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.

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."[698]

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.[699] 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 Alberta in terms of tree size, species, and overall forest conditions, all of which play an important role in deriving conversion factors.[700] 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 to 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.

Furthermore, the Canadian parties' reliance on WTO proceedings are unavailing. As discussed elsewhere in this memorandum, 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.[701] Congress was very clear in the URAA and its

[698] *See* Petitioner Comments on IQR Responses, Exhibit Volume I-43 at Exhibit 3.
[699] *See, e.g.*, *HRS from India* IDM at Comment 12.
[700] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[701] *See Corus Staal v. U.S. (2005)*, 395 F. 3d 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F. 3d 1375; and *NSK v. U.S.*, 510 F. 3d 1379-80.

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.[702] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[703]

Comment 24: Whether to Compare Government Transaction-Specific Prices to an Average Benchmark Price or Offset the LTAR Benefit Using Negative Benefits

GOC's Comments[704]

- Commerce compared each respondent's individual transactions, reflecting purchases through Crown stumpage programs, to a monthly or annual average of transactions in other jurisdictions.
- In instances where the average benchmark price over a given time period exceeded prices for individual transactions at any particular point within that period, Commerce added the differences between the individual transaction price and the average.
- In instances where the individual transactions exceeded the average, however, Commerce ignored the difference. It then treated the lopsided sum as the countervailable benefit conferred by the stumpage programs at issue.
- Commerce's methodology is unlawful and unreasonable for three reasons.
- First, by disregarding the instances in which an individual transaction price exceeded the average benchmark price, the methodology violates the statutory requirement to calculate a single benefit from a program for the provision of goods, which necessarily entails considering everything the respondent paid and everything the respondent received in return under that program.
- The statute's plain terms require Commerce to calculate a singular "benefit" for the provision of the plural "goods," and Commerce's regulation is consistent with the statute.[705]
- Instead of calculating a single benefit, 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.
- In doing so, Commerce failed 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.
- In prior reviews, Commerce has justified its approach by finding that the Canadian Parties' proposed calculation method does not adhere to the offsets enumerated under section 771(6) of the Act. However, Commerce's finding on this point misreads the statute and the issue at hand.
- Accounting for transactions that exceed the benchmark has nothing to do with adjusting the gross subsidy amount to arrive at a net subsidy amount. Rather, accounting for what was paid

[702] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[703] *See* SAA at 659.
[704] *See* GOC Case Brief Volume I at 101-111.
[705] *Id.* at 102-103 (citing sections 771(5)(E)(iv) and 771(5)(E)(i)-(iii) of the Act; and 19 CFR 351.511(a)(1)).

in exchange for what was received under the relevant government program is part of the calculation of the gross countervailable subsidy itself.

- Section 771(6) of the Act makes clear that Commerce is first to calculate a gross countervailable subsidy from which it may then deduct certain types of offsets to arrive at a net countervailable subsidy. In this context, the offsets are the costs the recipient incurs before or after the purchase of the good, and payments for the good itself are not offsets.
- The total value paid in exchange for the total amount of goods received is the necessary starting point in Commerce's LTAR benefit calculation. Thus, Commerce is required to account for the payments that were priced higher than the benchmark as part of the gross benefit calculation.
- A NAFTA panel agreed with the arguments the Canadian Parties make here, and thus, directed Commerce to recalculate its subsidy benefit calculation.[706]
- Second, comparing individual transactions to an average benchmark violates the applicable regulation, which requires a symmetrical comparison.
- The LTAR regulation and the statute refer to a government "price" and a benchmark "price" in the singular, which therefore requires symmetry in the comparison.
- However, in conflict with the statute and the regulations, Commerce's methodology treats the government price as plural and the benchmark price as singular.
- Third, Commerce's methodology results in a distortive comparison that violates the statutory mandate to assess adequacy of remuneration in relation to the prevailing market conditions for the good being provided.
- If Commerce compared the Nova Scotia benchmark it calculated from the 2017-2018 Private Market Survey to the individual transactions in the 2017-2018 Private Market Survey, it would generate a positive benefit. This outcome demonstrates the distortive result of Commerce's asymmetrical methodology.
- If Commerce continues to use monthly or annual average prices as benchmarks, then it must also calculate monthly or annual averages of the examined transactions. This approach would reflect average market conditions on either side of the comparison and resolve the asymmetry that arises when Commerce compares individual transactions to a benchmark derived by averaging multiple transactions.

GNB's Comments[707]

- Commerce should use an average-to-average comparison that compares monthly average Crown stumpage rates to monthly average benchmarks, taking into account species and product.
- Further, Commerce should not zero out negative benefits, which calculates a much larger benefit calculation than the numbers actually indicate.

JDIL's Comments[708]

- Commerce's preliminary calculation method was distortive because it resulted in asymmetric comparisons, contrary to the statutory requirement to take "prevailing market conditions" into account.

[706] *Id.* at 106 (citing *Lumber IV NAFTA June 7, 2004 Panel Decision On Remand Determination* at 18).
[707] *See* GNB Case Brief Volume VI at 55-56.
[708] *See* JDIL Case Brief at 36-38.

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- As applied to JDIL, Commerce's "transaction-to-average" methodology is distortive because it fails to account for individual Crown transactions that were discounted based on difficult harvesting conditions.
- In certain instances, the GNB offered certain operational adjustments on JDIL's purchases of Crown-origin standing timber to account for higher costs associated with difficult terrain or certain harvest treatments.
- Through the use of a "transaction-to-average" methodology, Commerce compared individual Crown transactions that were properly discounted due to difficult harvesting conditions with average benchmark values reflecting all harvesting conditions.
- Such an approach is inconsistent with the statute that requires Commerce to conduct its LTAR benefit comparison in relation to prevailing market conditions.
- Commerce appears to assume that its transaction-to-average comparison might not be distortive, because the stumpage purchases included in the monthly average benchmark might all match the harvesting conditions associated with the individual Crown transactions to which the benchmark is compared.
- However, JDIL reported thousands of purchases of Crown stumpage during the POR, some with operational adjustments for difficult harvesting conditions and some without.
- Consequently, it is difficult to imagine that the monthly benchmark will always reflect the same harvesting conditions as the individual Crown transaction used in the comparison.
- Further, Commerce's decision to "zero out" the LTAR comparisons where the price JDIL paid for Crown-origin standing timber exceeded the benchmark further distorts the benefit calculation.
- To prevent this distortion, and account for prevailing market conditions in accordance with the Act, Commerce should use an average-to-average comparison (comparing monthly average Crown stumpage rates to monthly average benchmarks, by species and product) without zeroing negative benefits.

Petitioner's Rebuttal Comments[709]

- Commerce addressed the same arguments from the Canadian Parties in the investigation and the prior administrative reviews and rejected them.[710]
- Specifically, concerning the Canadian Parties' "negative benefit" argument, Commerce has found that "a positive benefit from certain transactions cannot be masked or otherwise offset by 'negative benefits' from other transactions."[711]
- Section 771(6) of the Act provides for just three types of offsets to a subsidy benefit amount. The "negative benefits" described by the Canadian Parties are not enumerated in the statute.
- The Canadian Parties argue that Commerce is required under the statute to account for the amount of transactions priced higher than the benchmark as part of its calculation of the gross countervailable subsidy, not as part of its net countervailable subsidy calculation, which occurs later and involves the enumerated offsets.

[709] *See* Petitioner Rebuttal Brief at 75-79.
[710] *Id*. at 75-76 (citing *Lumber V Final* IDM at Comment 15; *Lumber V AR1 Final* IDM at Comment 11; *Lumber V AR2 Final* IDM at Comment 9; and *Lumber V AR3 Final* IDM at Comment 38).
[711] *Id*. at 76 (citing *Lumber V AR3 Final* IDM at Comment 38).

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- However, there is no statutory provision for this argument, because no such provision exists. Commerce only has a statutory requirement to act based on the texts of the statute, and not on the wishes of the Canadian Parties.
- Commerce must also reject the Canadian Parties' arguments on symmetry. Commerce's current methodology complies with 19 CFR 351.511(a)(2)(i) in that every individual transaction is compared to a market-determined price.
- Commerce's approach is consistent with its practice and with the *CVD Preamble*.[712]
- Under Commerce's LTAR benefit analysis, it does not reduce that benefit amount by considering instances where the respondents willingly paid more to the government than the fair market price, and, for the same reason, the agency will not adopt a methodology that allows such so-called "negative benefits" to dilute the benefit amount.
- Because the Canadian Parties fail to provide any basis for Commerce to depart from its prior reasoning and practice, Commerce should dismiss the respondents' arguments and maintain the agency's benefit calculation methodology in the final results.

Sierra Pacific's Rebuttal Comments[713]

- Contrary to the Canadian Parties' argument, the use of the singular "benefit" in the statute does not mandate that Commerce compare an average of transaction prices to the average benchmark prices (or individual transactions to individual benchmark prices).
- If Congress had intended for Commerce to be required to calculate benefit on such a basis, it could easily have incorporated such a requirement, but it did not.
- As Commerce has explained in prior segments of this proceeding, the respondents' preferred approach would result in positive benefits from certain transactions being masked by negative benefits from other transactions, resulting in an impermissible "offset" not provided for under section 771(6) of the Act.[714]
- The Canadian Parties cite no legal authority to support their claim that Commerce's LTAR benefit calculation must account for "negative benefits."
- The *CVD Preamble* instructs Commerce to do the opposite: "if 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."[715]
- The Canadian Parties claim that the use of the term "price" in 19 CFR 351.511(a)(2)(i) requires Commerce to conduct an average-to-average price comparison. However, the use of both "price" and "prices" throughout 19 CFR 351.511(a)(2) makes clear that the singular use of "price" in 19 CFR 351.511(a)(2)(i) does not compel a transaction-specific or average-to-average comparison in the calculation of a benefit for goods provided for less than adequate remuneration.
- The Canadian Parties also argue that Commerce's price comparison method fails to account for the fact that price differences on individual transactions can result from differences in harvesting conditions rather than from a government authority's pricing policies. However, the respondents fail to identify any specific distortions resulting from Commerce's use of

[712] *Id*. at 78 (citing *Stainless Steel Sinks from China INV* IDM at 11-12; and *CVD Preamble*, 63 FR at 65361).
[713] *See* Sierra Pacific Rebuttal Brief at 18-22.
[714] *Id*. at 19 (citing *Lumber V AR1 Final* IDM at Comment 11; and *Lumber V Final* IDM at Comment 45).
[715] *Id*. at 20 (citing *CVD Preamble*, 63 FR at 65361).

transaction-specific prices in the *Lumber V AR3 Prelim*, instead putting forward a hypothetical example that purports to show distortions based on differences in harvesting conditions.
- The Canadian Parties claim that an average-to-average comparison or accounting for negative benefits would lessen or eliminate such distortions. However, nothing in Commerce's regulations requires the use of average prices in the benefit calculation, and a positive benefit from certain transactions cannot be masked or "offset" by negative benefits from other transactions.

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 for LTAR benefit analysis is, essentially, the same zeroing argument they have repeatedly made in the prior reviews. Consistent with prior reviews, we reject this argument.[716] As we stated in the investigation:

> {i}n 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.[717]

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 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.[718] Congress and the courts have confirmed that the statute permits only these specific offsets.[719] 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:

> if 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

[716] *See Lumber V AR3 Final* IDM at Comment 38.
[717] *See Lumber V Final* IDM at Comment 15.
[718] *See* section 771(6) of the Act; *see also Lumber V Final* IDM at Comment 15; *Lumber IV AR2 Final* IDM at Comment 9; and *Lumber V AR3 Final* IDM at Comment 38.
[719] *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. U.S.* 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").

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> beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit is concerned.[720]

Thus, per Congress, the statute, Commerce's regulations, and the holdings of the Court, if Commerce determines that a province has sold timber for LTAR, a benefit exists and the inquiry ends, and Commerce will not "reduce" the amount of that benefit by offsetting for purported "negative" benefits. Therefore, we disagree with Canadian Parties' claims that Commerce has misinterpreted section 771(6) of the Act and that the use of "price" in 19 CFR 351.511(a)(2)(i) compels Commerce to conduct an average-to-average comparison.

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.[721] 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."[722] 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."[723]

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}."[724] Thus, the Canadian Parties' suggestion that Commerce average each respondents' stumpage purchases by month and compare the result to a benchmark composed of 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 the 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

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[720] *See CVD Preamble*, 63 FR at 65361.
[721] *See Lumber V Fina*l 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; *Stainless Sinks from China INV* IDM at Comment 21; and *Solar Cells from China 2016* IDM at Comment 8.
[722] *See Stainless Steel Sinks from China INV* IDM at 11-12.
[723] *Id*.
[724] *Id*. at 21.

average benchmark prices was not possible, Commerce developed methodologies that best adhered to Commerce's preference.[725] JDIL reported that certain purchases of Crown standing timber in New Brunswick contained "operational adjustments" to account for higher costs associated with difficult terrain or certain harvest treatments.[726] These operational adjustments merely reduce the price of timber that would otherwise be unprofitable to harvest. The private stumpage transactions in the Nova Scotia benchmark are similarly based on a buyer and seller coming to agreement on a price that takes into account the cost of any difficult-to-harvest timber. The operational adjustments in the GNB's pricing of Crown stumpage simply means that the price JDIL paid for Crown stumpage were correlated with the cost of harvesting the standing timber, and we do not find that these operational adjustments prevent us from using JDIL's transaction-specific prices in the benefit analysis.

Additionally, as discussed elsewhere in this memorandum, the GOC's reliance on the decisions in the *Lumber IV NAFTA June 7, 2004 Panel Decision On Remand Determination* is unavailing, as the record evidence in this review stands on its own.

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 AR4 Prelim*. Therefore, we find that there is insufficient evidence to support a change in the calculation methodology to rely on average prices for the final results.

Comment 25: Whether the Nova Scotia Benchmark is Comparable or Should Be Adjusted to Account for Log Product Characteristics

GOC's Comments[727]

- 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 Alberta.
- Overall, Commerce compared the most valuable 64 percent of Nova Scotia's standing timber harvest to 96 percent of Alberta's harvest. Because Commerce compared a higher-value subset of Nova Scotia's harvest to lower-value proportions of Alberta's harvest, Commerce impermissibly measured differences in the quality and value of products, rather than benefit.
- These mismatched comparisons stem from differences in the way Alberta classifies logs and other market conditions relative to Nova Scotia's pulp market and timber inventory.
- If standing timber characteristics are comparable across provinces, as would be required for an accurate benchmark comparison, then there would be no basis for comparing prices for high-

[725] For example, based on how JDIL reported its purchases of Crown-origin standing timber, we used a monthly benchmark price. For the BC respondents, we relied on a timbermark-based approach and further disaggregated the stumpage calculations by species 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.
[726] *See* JDIL Case Brief at 37.
[727] *See* GOC Case Brief Volume I at 49-55 and 81-83.

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value proportions of standing timber in Nova Scotia to mixed-value proportions of standing timber in other provinces.

- In Nova Scotia, harvested softwood timber is typically classified as one of three primary forest products: pulpwood, studwood, or sawlogs. Contrary to Commerce's assertion in previous reviews, these products are merchandized based on a cut-to-length or CTL basis.[728]
- 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," while any harvested logs processed at pulp mills (*i.e.*, mills that produce pulp or paper) are deemed "pulpwood."
- In general, harvested timber in Nova Scotia is separated according to different uses to achieve the highest value possible. Therefore, in Nova Scotia, lower-quality sawable timber is directed to pulp mills while a higher-quality proportion of standing timber is directed to sawmills.
- Sawlog and studwood account for about 64 percent of the Nova Scotia Standing timber harvest. This is a relatively small proportion when compared to the proportion of the harvest that is directed to sawmills in other provinces. Despite Nova Scotia's relatively small sawmill proportion, Commerce still only used those high-quality, valuable sawlog and studwood prices as the benchmark for the other provinces.
- Similarly, Alberta does not classify logs based on destination. Instead, Alberta classifies harvested timber according to objective physical characteristics and does not charge different rates for Crown standing timber based on the purchaser or intended use for that timber.
- 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.
- That means that Commerce implicitly concluded that low-quality and low-price pulpwood in Nova Scotia is comparable to nothing in Alberta, while high quality and high price sawable fiber in Nova Scotia is comparable to almost all of Alberta's softwood harvest.[729]
- Commerce cannot continue to make these unbalanced comparisons between provincial product classifications that do not correspond to each other.
- Commerce must cease its reliance on the Nova Scotia benchmark or revise its LTAR benefit calculation to properly account for differences in production classifications.

GOA's Comments[730]

- The stumpage system in Alberta classifies timber based on log size rather than ultimate use. As such, in Alberta, coniferous logs, whether they are used by a dimension sawmill, a stud mill, a pulp mill, or a paper mill, are subject to the same log product classification system.
- Under Alberta's product classification system, softwood logs that will be used to make lumber, pulp, or other roundwood products are classified at the time of scaling as Code 01, Code 06, or Code 99, based on size.
- The principal softwood logs are classified under Code 01, which applies to sawlogs, studwood, and pulp logs, that are considered normal size logs. Code 01 logs accounted for 65.7 percent of Alberta's 2021 softwood harvest.

[728] *Id.* at 49-55 (citing Miller Report at 2; and GNS Stumpage IQR Response at Exhibit NS-8 at 4, which contains the GNS Verification Report from the investigation).
[729] *Id.* at 55 at Figure 5.
[730] *See* GOA Case Brief Volume IV.A at 68-82.

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- Small logs with a gross volume-to-length ratio of equal to or less than 0.024 m^3/m are classified under Code 06. These logs accounted for 26.5 percent of Alberta's 2020 softwood harvest.
- The smallest logs that fall below the harvest utilization standard are classified under Code 99. These logs accounted for 3.6 percent of Alberta's 2020 softwood harvest.
- In contrast, Nova Scotia product classification categories are based entirely on the *use* of the final log product, after it is trimmed and cut-to-length, rather than the size of the harvested logs. The main product categories in Nova Scotia are "sawlogs," "studwood," and "pulpwood." Sawlogs and studwood are classified to produce lumber, while pulplogs are classified to be pulped at pulp mills.
- 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.
- Approximately 96 percent of the Alberta coniferous Crown timber harvest in 2021 was coded 01, 06, or 99, while an insignificant volume of the Crown timber harvest went directly to pulp mills. A significantly smaller percentage of the Nova Scotia timber harvest went to sawmills, and a relatively larger share of the harvest went to pulp mills.[731]
- This information demonstrates that lumber mills in Nova Scotia are purchasing less of the private woodlot standing timber harvest in comparison to the purchase of Crown standing timber by Alberta's sawmills.
- Significant differences in market structure mean that stumpage purchases by Alberta lumber mills include all portions of the harvested timber, from the largest, most valuable logs to the smallest and least valuable.
- Commerce improperly fit Alberta's standing timber purchases to Nova Scotia market conditions, despite evidence indicating that Alberta lumber mills include a different mix of log products than those reflected in the sawlog and studwood log transactions captured in the 2017-2018 Nova Scotia Private Stumpage Survey.
- Commerce has provided no analysis at all to support its decision to match Alberta Respondents' Code 01 log purchases only to sawlog purchases in Nova Scotia. Similarly, it provided no reasoning or findings to support its decision not to use pulpwood log prices in *any* of its Alberta benchmarks.

[731] *Id*. at 72-73 (citing proprietary information in GNS Stumpage IQR Response at Exhibit NS-2).

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- Commerce offered no explanation or findings to support its decision to rely on Nova Scotia studwood transactions as a benchmark for Alberta purchases of undersized 06 and 99 logs.
- Absent a reasoned explanation supported by record evidence, Commerce's product comparisons are arbitrary.
- In its discussion of the alleged distortions in Alberta's stumpage market, Commerce stated that the "GOA continues to sell significant volumes of timber at administratively-set prices not responsive to market forces" and cited the GOA's 2021 Provincial Crown Harvest Volume by Product Type Code.[732]
- Any such argument or related justification is wholly misplaced. Under no imaginable theory does the fact that certain of Alberta's stumpage prices are "administratively set" or "not responsive to market forces" dictate the appropriate benchmark price.
- The relevant factors for determining the best Nova Scotia product category to use for benchmarking Alberta stumpage prices are the size and quality of the logs, not whether the Alberta prices are "administratively set."
- Commerce ignored the differences in market structure and product codes. Indeed, despite finding the forests and standing timber in the Nova Scotia and Alberta to be comparable, Commerce arbitrarily limited the transactions it considered for benchmarking.
- As a result, Commerce relied on prices for a small percentage of Nova Scotia transactions to benchmark purchases corresponding to the Code 01 log transactions representing more than 65 percent of Alberta's harvest.
- 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 timber.
- 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.
- As noted, more than two-thirds of the Crown-origin coniferous harvest is classified as Code 01, while a significantly smaller percentage of Nova Scotia's harvest is classified as sawlogs.
- If Commerce's fundamental assumption of comparable forests and markets in the two provinces is correct, it cannot also be true that roughly 66 percent of Alberta's harvest is sawlogs, while only a smaller percentage of Nova Scotia's harvest is sawlogs.
- 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 30.1 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

[732] *Id*. at 76 (citing *Lumber V AR4 Prelim* PDM at 15-16).

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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 does, 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.
- Thus, Commerce should compare the respondents' purchases of Crown-origin Code 06 and 99 standing timber to pulplog prices in Nova Scotia.

West Fraser's Comments[733]
- Commerce assumes that Nova Scotia standing timber may serve as the benchmark to measure the adequacy of remuneration of the GOA's provision of Crown-origin standing timber because the Nova Scotia and Alberta forests are broadly comparable. This assumption crumbles when Commerce misapprehends and misapplies the material differences in how standing timber is merchandized and sold in Nova Scotia and Alberta.
- Commerce used the most valuable portion of the Nova Scotia harvest, sawlogs, which accounts for a relatively small share of the overall private-origin harvest as the benchmark price for Code 01 logs that account for the significant majority of Alberta's Crown harvest.
- Meanwhile, Commerce wholly disregarded the least valuable portion of the Nova Scotia harvest sold to pulp mills for purposes of its benchmark.
- Commerce's skewed comparison overstates the LTAR benefit calculated for West Fraser.
- 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 m^3/m are classified as code 01 and accounted for 65.7 percent of the Alberta harvest in 2021.
- Marginal, small-size logs with a volume-to-length ratio less than 0.024 m^3/m are classified as code 06 and accounted for 26.5 percent of the 2021 harvest.
- Finally, logs that fall below the minimum utilization standard in Alberta are classified as code 99 and made up only 3.6 percent of the 2021 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 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 AR4 Prelim*, Commerce essentially mapped Nova Scotia's use-based classification system onto the size-based Alberta system for classifying standing timber.

[733] *See* West Fraser Case Brief 61-66.

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- 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 respondents' purchases of code 06 and 99 logs to prices of pulpwood logs in Nova Scotia.

Petitioner's Rebuttal Comments[734]

- The GOC and GOA argue that product classification differences mean 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 meritless.
- The record is clear that, contrary to the GOA's assertions, Nova Scotia does not differ from Alberta in classifying timber by destination (*e.g.*, timber destined for pulp mills or sawmills).
- The GOA's Scaling Standards of Alberta 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."[735]
- Information from the GOA indicates that "99.01% of the volume of Crown softwood timber for which timber dues were billed to Alberta tenure holders between January 1, and December 31, 2021, was used to make softwood lumber and lumber coproducts."[736] The survey also shows that the mandatory respondents used almost the entirety of the volume of billed Crown-origin softwood timber for their sawmills.[737] Thus, the respondents' purchases of Alberta stumpage in this review were almost entirely used to make softwood lumber. 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 benchmark appropriately uses only sawlogs and studwood, the types of timber also used by the mandatory respondents in their sawmills. The purported different market structures for timber usage raised by the GOC and GOA focus on the quality and utility of timber that did *not* enter Nova Scotia sawmills, which Commerce has previously made clear is not relevant to its analysis.[738]

[734] *See* Petitioner Rebuttal Brief at 25-29 and 61-63.
[735] *Id.* at 26 (citing GOA Stumpage IQR Response at Exhibit AB-AR4-S-18 at 28).
[736] *Id.* at 27 (citing GOA Stumpage IQR Response at Exhibit AB-AR4-S-25).
[737] *Id.* (citing GOA Stumpage IQR Response at Exhibit AB-AR4-S-25).
[738] *Id.* at 28-29 (citing *Lumber V AR3 Final* IDM at 195.

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- Similarly, how Nova Scotia sawmills differ in machinery and technology from Alberta sawmills is not relevant, but rather, as Commerce has explained, "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."[739] Commerce's benchmark methodology appropriate considers these factors and thus is supported by substantial evidence.
- Commerce should not implement the proposal of the Canadian Parties to compare the respondents' purchases of code 01 Crown-origin standing timber to a benchmark comprised of weighted-average studwood and sawlog prices contained in the 2017-2018 Private Market Survey.
- Consistent with its amply-explained practice,[740] 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 06 and 99 were destined for sawmills.
- As Commerce explained in the prior review, Alberta's code 01 logs must be "spruce/pine logs that are green and healthy (GR) and may be used to make sawlog products{,}"[741] making them reasonably comparable to sawlog grade Nova Scotia standing timber.
- In the Nova Scotia Registry of Buyers for CY 2020, 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.,"[742] 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.[743]

Sierra Pacific's Comments[744]

- Commerce has previously considered and rejected the Canadian Parties' arguments that various expert reports – including the Miller Report and the Asker Report – demonstrate that Nova Scotia stumpage prices are not comparable to prices in Alberta, due to the former's differing growing conditions and log classification system; pulp mill consumption; unique geography (resulting in lower hauling costs); and low labor costs.
- Commerce has previously found that these reports, which were prepared for the express purpose of submission in the original investigation, suffer from numerous flaws and fail to adequately quantify or substantiate the extent of the purported differences or their impact on private stumpage prices in Nova Scotia.[745]
- Commerce's statute and regulations do not require perfection in construction of a benchmark.[746]

[739] *Id.* at 29 (citing *Lumber V AR3 Final* IDM at 193).
[740] *Id*. at 62 (citing *Lumber V AR3 Final* IDM at 197).
[741] *Id.* at 62 (citing *Lumber V AR3 Final* IDM at 197).
[742] *Id*. at 63 (citing GNS Stumpage IQR Response at Exhibit NS-9, Appendix I).
[743] *Id*. at 63 (citing *Lumber V Final* IDM at Comment 40).
[744] *See* Sierra Pacific Case Brief at 14-15.
[745] *Id.* at 14 (citing *Lumber V AR3 Final* IDM at Comment 29; *Lumber V AR2 Final* IDM at Comments 41 and 42; *Lumber V AR1 Final* IDM at Comments 30 and 33; and *Groundwood Paper from Canada* IDM at Comment 24).
[746] *Id.* (citing *HRS from India* IDM at Comment 12).

Commerce's Position: The Canadian Parties raised the same arguments in the prior review regarding timber classification and comparisons, which we continue to reject.[747] 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 Alberta. Consistent with the prior review,[748] 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 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 that the respondents purchased during the POR.[749]

As an initial matter, we disagree with the Canadian Parties that Nova Scotia is different from Alberta in terms of classifying standing timber based on its use or destination. The GOA's Scaling Standards of Alberta state, "{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."[750]

However, regardless of how Nova Scotia and Alberta classify their standing timber, we disagree with the 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 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.[751] Accordingly, we have utilized a benchmark that is similarly comprised of prices charged for sawable standing timber in Nova Scotia.[752] 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,[753] 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.[754]

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 Alberta relative to the overall share of sawable standing timber grades in Nova Scotia should lead Commerce to compare the

[747] *See Lumber V AR3 Final* IDM at Comment 35.
[748] *Id.* at Comment 40.
[749] We use the term "sawable" to refer to timber that is suitable for use by sawmills to make lumber products.
[750] *See* GOA Stumpage IQR Response at Exhibit AB-AR4-S-18 at 28.
[751] *See* Initial Questionnaire at Questionnaire for Producers/Exporters of Subject Merchandise at Table 1
[752] *See, e.g.*, Canfor Preliminary Calculation Memorandum; *see also* GNS Stumpage IQR Response at Exhibits 5B, 6B, and 17.
[753] *See Lumber V AR3 Final* IDM at Comment 35.
[754] *See* GNS Stumpage IQR Response at Exhibit 6B and Exhibit 9 at Appendix 1, which contains the definitions 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.

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 Scotia (*e.g.*, sawlogs and studwood) or in Alberta (*e.g.*, grades 06 or 99) 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.[755] 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.[756] 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.[757]

The GOA's Scaling Standards of Alberta indicates that Crown-origin standing timber graded as 01 refers to "spruce/pine logs that are green and healthy ('GR') and may be used to make sawlog products."[758] 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 Standards of Alberta also indicates that the codes for Crown-origin standing timber graded as 06 and 99 are for small-stem and undersized logs.[759] 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.[760] 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 smaller than Nova Scotia sawlog timber.

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 pulp mills. 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 comparing grades of standing timber in the stumpage LTAR benefit analysis does not hinge on

[755] *Id*. at Exhibit NS-6B and Exhibit NS-9 at Appendix 1.
[756] *Id*. at Exhibit NS-8.
[757] *See Lumber V AR3 Final* IDM at 195.
[758] *See* GOA Stumpage IQR Response at 186.
[759] *Id*. at Exhibit AB-AR4-S-18 at 17.
[760] *See* Canfor and West Fraser Preliminary Calculation Memoranda, which indicate the volume and value of Crown-origin standing timber purchased by their respective sawmills.

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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 timber benchmark that is most comparable to those purchases.[761] Thus, for Alberta, we obtained the volume and value of Crown-origin standing timber delivered to the sawmills of Canfor and West Fraser.[762] 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 pulp mills. 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 above in Comment 23, a declaration from one of Nova Scotia's largest timber harvesters indicates that buyers and sellers of stumpage determine prices for "felled" trees:

> {c}oncluding 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.[763]

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).[764] 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").[765] Additionally, Commerce explained in the *Lumber V AR3 Final* that the verification questionnaire issued in that review similarly indicates that the data collected as part of the 2017-2018 Private Market Survey reflected prices for standing timber.[766] 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.

[761] *See* Initial Questionnaire at Questionnaire for Producers/Exporters of Subject Merchandise at Table 1, which instructs Respondents to report Crown-origin standing timber purchased by sawmills.
[762] *See* Canfor and West Fraser Preliminary Calculation Memoranda.
[763] *See* Petitioner Comments on IQR Responses, Vol. I-43 at Exhibit 4 at paragraph 5.
[764] *See Lumber V AR3 Final* IDM at Comment 35; *see also* GNS Stumpage IQR at Exhibits NS-8 and NS-17.
[765] *See* GNS Stumpage IQR at Exhibit NS-8 at 8.
[766] *See Lumber V AR3 Final* IDM at 198-199.

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Comment 26: Whether the Nova Scotia Benchmark Adequately Accounts for Regional and County-Level Differences

GOC's Comments[767]

- In conducting the 2017-18 Nova Scotia Private Stumpage Survey, the GNS's contractor, Deloitte, employed a county-specific multiplier based on the Registry of Buyers Report to control for regional price disparities. However, the GNS refrained from providing Commerce with county-specific data, which means Commerce cannot replicate Deloitte's regional weighting methodology.
- Because Commerce cannot replicate the regional reweighting methodology that the GNS considers essential to the Survey's accuracy, Commerce should not rely on the unweighted Survey data to construct its benchmark.

Petitioner's Rebuttal Comments[768]

- GOC's unsupported argument is repeated from the previous administrative review; Canadian Parties offer no new argument or evidence for Commerce to change its previous findings.
- In the prior reviews, Commerce has continually found that unweighted prices from the 2017-18 Nova Scotia Private Stumpage Survey reflect actual harvest levels in Nova Scotia's regions such that use of unweighted data is reasonable.[769]

GNS' Rebuttal Comments[770]

- The regional reweighting conducted by Deloitte and the GNS are irrelevant because the GNS provided transaction-level data at the regional level. Commerce can reweigh the stumpage prices as it sees fit.
- The GNS instructed external counsel to provide anonymized data in the same form and manner as was verified by Commerce in the investigation. These data include the month of the transaction, wood type, product category, species category, amount paid, volume, and the region of harvest. Thus, the data are on the record and provide a sufficient level of detail to understand how Deloitte calculated the final stumpage survey prices.
- No information is missing from the record to cast doubt upon the veracity of the 2017-18 Nova Scotia Private Stumpage Survey.

Commerce's Position: Commerce notes at the outset that it has already addressed this issue in the previous administrative review[771] and that the record in this instant review contains no new record evidence or novel affirmative arguments that would lead Commerce to reconsider its position.

As Commerce previously explained, the 2017-2018 Private Market Survey reflects purchases of private-origin standing timber for each of Nova Scotia's regions and counties.[772] Using the survey data Deloitte:

[767] *See* GOC Case Brief Volume I at 74.
[768] *See* Petitioner Rebuttal Brief at 37-38.
[769] *Id.* (citing *Lumber V AR3 Final* IDM at Comment 39).
[770] *See* GNS Rebuttal Brief at 14-15.
[771] *See Lumber V AR3 Final* IDM at Comment 39.
[772] *See* GNS January 12, 2023 Stumpage SQR Response at Attachment 1 at 7.

> … 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. A county-specific multiplier was generated for both hardwood and softwood species by dividing the amount of the hardwood or softwood harvested in that county, as reported by the Registry of Buyers Report for that county, by the amount of hardwood or softwood reported in the survey database for that county. Once the survey data are scaled, the adjusted volumes and values were weight-averaged to report the regional weighted-average prices. After applying regional reweighting, Deloitte next calculated a provincial weighted average stumpage price based on the total volume (m3) harvested for each product category and species."[773]

The provincial weighted-average prices described above are the annual prices listed in the Report on Prices of Standing Timber for the period April 1, 2017, to March 31, 2018,[774] that the GNS, in turn, used as the basis for setting the prices of Crown-origin standing timber in Nova Scotia for fiscal year 2020-2021.[775]

The GNS has explained that it is unable to disclose the county associated with each anonymized respondent in the survey data because it could have revealed the identities of the survey respondents, which, in turn, would have violated confidentiality agreements in place with the survey respondents.[776]

As a result, similar to the previous administrative reviews, the county-level data required to approximate Deloitte's weighting methodology are not on the record. Further, we continue to 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, 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:

> {o}n 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.[777]

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

[773] *See* GNS Stumpage IQR Response at Exhibit NS-6B at 7.
[774] *Id.* at Exhibit NS-6B at 8.
[775] *Id*. at 4-5.
[776] *See* GNS January 12, 2023 Stumpage SQR Response at Attachment 1 at 5-6.
[777] *See* GNS Stumpage IQR Response at Exhibit NS-6B at 6.

tracks" the regional private land harvest reported in the Registry of Buyers Report, we continue to 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.[778] Furthermore, because the unweighted prices in the 2017-2018 Private Market Survey largely reflect actual harvest levels in Nova Scotia's regions for 2017 and because we find that private-origin standing timber harvested in Nova Scotia is comparable to the Crown-origin standing timber sold in Alberta, we disagree with the GOC's arguments that Commerce should refrain from using the survey prices as a tier-one benchmark.

Comment 27: Whether Nova Scotia Is Comparable to Alberta in Terms of Haulage Costs and Whether to Otherwise Adjust the Nova Scotia Benchmark to Account for Such Differences

GOC's Comments[779]

- 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.
- The material differences in transportation costs render prices in Nova Scotia further unsuitable for use as a tier-one benchmark under Commerce's regulations.
- For example, Nova Scotia's dense infrastructure allows mills and landowners to avoid additional road building costs because they are never far from a public road.[780]
- The IFS Report confirms, quantitatively, that relatively low hauling costs are a condition of the Nova Scotia market that does not prevail in Alberta.
- The IFS Report conducted its analysis using publicly accessible disturbance mapping from satellite imagery, Nova Scotia forest inventory data, land ownership, detailed road network maps, GIS, a linear programming model, and information based on the current formula used by sawmills to derive the haul cost used to pay log truck contractors. All the data underlying the IFS analysis are on the record.[781]
- In general terms, the IFS's analysis assigned timber harvested in Nova Scotia to nearby mills and then measured how far the logs would be hauled. IFS then calculated the haul cost using industry standard formulas used by truck drivers, forest managers, investors, and provincial governments.[782]
- The IFS Report indicates that the average haul cost for Nova Scotia's softwood sawmills during the POR was $11.13/m^3, which is significantly lower than the average for each of the respondents.[783]
- By adjusting the benchmarks to account for the respondents' transportation cost disadvantage in relation to Nova Scotia mills, as indicated in the GOC's case brief, Commerce can better account for the inter-provincial differences in prevailing market conditions.

[778] *See, e.g., Lumber V AR2 Final* IDM at Comment 38; *see also Lumber V AR Final* IDM at Comment 39.
[779] *See* GOC Case Brief Volume I at 60-63 and 88-90.
[780] *Id*. at 62 (citing Miller Report at Appendix 1 at 14).
[781] *Id*. at 89 (citing IFS Report at 8, 21, and 35).
[782] *Id*. at 90 (citing GOA Comments on GNS' IQR Response at Exhibit PR-NSR-AR4-2 (IFS Nova Scotia Report) at iii).
[783] *Id*. at 62 and 90 (citing GOC Stumpage Benchmark Comments at Exhibit GOC-ADEQ-AR4-2 (IFS Alberta Report) at iv).

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- If Commerce continues to measure the adequacy of remuneration using prices from the 2017-2018 Private Market Survey, then it must adjust the Nova Scotia benchmark prices to account for differences in hauling that exist between Nova Scotia and Alberta.
- As the WTO panel observed, "in light of the evidence that was before the USDOC showing differences between transportation costs in Nova Scotia and the other provinces and the correlation between transportation costs and stumpage prices, the USDOC ought to have considered the impact of transportation on the suitability of the Nova Scotia benchmark more closely than it did."[784]

GOA's Comments[785]

- There are significant differences in public road infrastructure in Alberta and Nova Scotia, leading to higher harvesting costs in Alberta. In addition, longer distances from forest to mill in Alberta raise haul costs and lower timber values. Indeed, the record establishes that average haul costs in Alberta are approximately 35 percent higher in Alberta than in Nova Scotia.
- The cost to ship a truckload of lumber from Nova Scotia to its closest major U.S. market is 43 percent less than the cost to ship the same lumber from Alberta[786] to its closest major U.S. market.[787]
- These higher harvest, haul, and transportation costs result in lower stumpage values for Alberta timber. Because of these differences in harvesting and transportation costs, Nova Scotia stumpage prices do not provide an accurate comparison to Alberta stumpage prices.
- Should Commerce continue in the final results to apply a Nova Scotia benchmark, it must adjust the benchmark upward to account for these undisputed, quantified cost differences to ensure a fair comparison.

West Fraser's Comments[788]

- The record shows that log transportation costs—specifically for wages—are higher in Alberta than Nova Scotia. Those differences directly affect the value of standing timber in Alberta relative to Nova Scotia. That is because stumpage is a residual value—so lumber producers like West Fraser consider harvest and haul costs in deciding whether standing timber is economically attractive to harvest.
- Evidence in the MNP Cross Border Report and further discussed in the brief submitted by the GOA and the ASLTC demonstrates that average wages for transportation in Alberta are substantially higher than in Nova Scotia. Indeed, average wages in the forestry, sawmilling, and transportation industries in Alberta in 2021 were 24 percent higher than the same labor costs in Nova Scotia.[789]
- Accordingly, Commerce should make appropriate adjustments in the *Final Results* to account for these quantifiable differences in "prevailing market conditions" between Alberta and Nova Scotia.

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[784] *Id*. at 62 (citing *DS 533 Panel Report* at para. 7.38).
[785] *See* GOA Case Brief Volume IV.A at 60-61, 66, and 90-91.
[786] *Id*. at 90 (citing GOA Stumpage IQR Response at Exhibit AB-AR4-S-23).
[787] *Id*. at 61 (citing GOA Stumpage IQR Response at Exhibit AB-AR4-S-107 (MNP Cross Border Report) and GOA Comments on GNS' IQR Response at Exhibit PR-NSR-AR4-2.
[788] *See* West Fraser Case Brief at 69-70.
[789] *Id.* at 69 (citing GOA Stumpage IQR Response at Exhibit AB-AR4-S-107 (MNP Cross Border Report) at 45).

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Petitioner's Rebuttal Comments[790]

- In the prior review, Commerce rejected the Canadian Parties' claims that higher haulage costs preclude the use of Nova Scotia standing timber prices as a benchmark for measuring the adequacy of remuneration of Crown-origin standing timber sold in Alberta as well as their argument that Commerce should adjust the Nova Scotia benchmark upward to account for such haulage cost differences.[791] Commerce should continue to reject such arguments in the instant review.
- As in prior reviews, Canadian Parties rely heavily in the IFS Report, which was commissioned for purposes of the *Lumber V* proceeding to calculate average haulage costs for Nova Scotia's softwood sawmills.
- Information from the GNS demonstrates the IFS Report is speculative and misleading.
- Fundamental to the IFS Report's calculation of an average haul cost is the following "assumption":

> The log truck hauling cost rate per tonne is based on the shortest one-way distance travelled from the cut block to the sawmill. Manufacturers of SPF lumber (buyers) select logs from locations and harvesting sites (sellers) in a manner that minimizes their delivery cost, in order to maximize their profit.[792]

- 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 cut blocks 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.[793]
- As explained in the GNS declaration, the author of the IFS Report "failed to contact the Nova Scotia Department of Lands and Forestry," and chose instead to create a scenario based entirely on an incorrect assumption.[794] Such failures demonstrate IFS's unfamiliarity with Nova Scotia forestry.
- Haulage costs are not factors that affect the comparability of a stumpage-to-stumpage comparison. In the investigation, Commerce explained that:

> {a}ctivities such as scaling and hauling logs to the mill are costs incurred after harvesting standing timber, and after the purchase/sale of stumpage. Because we determine that the Nova Scotia benchmark is a stumpage price that does not reflect post-harvest activities, a proper stumpage-to-stumpage comparison must logically exclude the cost of such activities from the calculation.[795]

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[790] *See* Petitioner Rebuttal Brief at 30-34 and 65-67.
[791] *Id*. at 67 (citing *Lumber V AR3 Final* IDM at Comment 33; and *Lumber V AR2 Final* IDM at 233-234).
[792] *Id*. at 65 (citing IFS Report at Section 5.0).
[793] *Id*. at 66 (citing Petitioner Comments on IQR Responses, Exhibit Volume I-43, Exhibit 3, paragraph 6).
[794] *Id*. (citing Petitioner Comments on IQR Responses, Exhibit Volume I-43, Exhibit 3, paragraph 6).
[795] *Id*. at 66-67 (citing *Lumber V Final* IDM at Comment 43).

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- Accordingly, Commerce has limited its standing timber price comparison to "pure" stumpage-to-stumpage comparisons:

> {w}e 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.[796]

- The IFS report submitted for this review is an updated version of the report submitted during the second administrative review with the only updates being a rephrasing of certain assumptions that Commerce previously found to be flawed.[797]
- The declaration from the GNS official demonstrates that because the Canadian Parties lack an understanding of how private stumpage markets function without government distortion, the hauling costs that they have calculated are simply inaccurate.
- As such, Commerce has rightly chosen to rely on the testimony of a GNS official and expert on Nova Scotia's forestry rather than the IFS Report in the first and second administrative reviews and should do so again for the final results.
- Another Canadian Party consultant has explained that hauling and harvesting costs are largely beyond the control of sellers and purchasers of stumpage:

> {e}ven 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).[798]

- The statement from the Marshall Report demonstrates that it is the provision of stumpage for LTAR that drives mill profitability in the provinces under review, rather than any contrived differences in hauling and harvesting costs.
- Record evidence shows that, contrary to the Canadian Parties' assertion, hauling costs in Nova Scotia are in fact higher than in Alberta.
- Specifically, the MNP Cross Border Report submitted by the GOA found that for Alberta's 2021 harvest, the average hauling cost was 15.91 C$/$m^3$, and "the average distance from the cut block to the mill in Alberta for calendar year 2020 was 109 kilometers with some logs harvested as far as 475 kilometers."[799]
- Information in the FP Innovations Report indicates that the harvest and haulage costs for Nova Scotia sawmills were higher than the costs listed in the MNP Cross Border Report. Specifically, the FP Innovations Report indicates that hauling costs in Nova Scotia were 24.57

[796] *Id.* at 67 (citing *Lumber V AR3 Final* IDM at Comment 33).
[797] *Id.* at 30.
[798] *Id.* at 32 (citing Marshall Report at 9).
[799] *Id.* (citing GOA Stumpage IQR Response at Exhibit AB-AR4-S-23, Volume II at 43).

C$/m^3, and the average transport distance to sawmills was 146 km with a maximum distance of 550 km.[800]

- 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 in partnership with the GOC, the Atlantic Canada Opportunities Agency, and the "hub partners."
- 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 chain and to modify many of the key variables within the harvesting and transportation operations.
- For the final results, Commerce should continue to find that the standing timber prices in the 2017-2018 Private Market Survey are comparable to prices charged for Crown-origin standing timber in Alberta and continue to refrain from making the Canadian Parties' requested haulage benchmark adjustments.

Sierra Pacific's Comments[801]

- Commerce has previously considered and rejected the Canadian Parties' arguments that various expert reports – including the Miller Report and the Asker Report – demonstrate that Nova Scotia stumpage prices are not comparable to prices in Alberta, due to the former's differing growing conditions and log classification system; pulp mill consumption; unique geography (resulting in lower hauling costs) and low labor costs.
- Commerce has previously found that these reports, which were prepared for the express purpose of submission in the original investigation, suffer from numerous flaws and fail to adequately quantify or substantiate the extent of the purported differences or their impact on private stumpage prices in Nova Scotia.[802]
- Commerce's statute and regulations do not require perfection in construction of a benchmark.[803]

Commerce's Position: The Canadian Parties largely raised the same arguments as in the prior administrative review. We found the arguments unpersuasive then and continue to do so here.[804] 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 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.[805] Consistent with the prior review, we find log haulage costs are not part of stumpage

[800] *Id.* at 32-33 (citing GNS Stumpage IQR Response at 21, Exhibit NS-18 (FP Innovations Report) at 3 and 38-39).
[801] *See* Sierra Pacific Case Brief at 14-15.
[802] *Id.* at 14 (citing *Lumber V AR3 Final* IDM at Comment 29; *Lumber V AR2 Final* IDM at Comments 41 and 42; *Lumber V AR1 Final* IDM at Comments 30 and 33; and *Groundwood Paper from Canada* IDM at Comment 24).
[803] *Id.* (citing *HRS from India* IDM at Comment 12).
[804] *See Lumber V AR3 Final* IDM at Comment 33.
[805] *See* GNS Stumpage IQR Response at NS-8 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

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prices but are, instead, related costs.[806] Consequently, including such costs would introduce an external factor unrelated to the stumpage price, and, pursuant to section 771(5)(E)(iv) of the Act, we find that a proper stumpage-to-stumpage comparison must exclude costs that are not part of the stumpage price. Accordingly, we have excluded all the related expenses that are not the stumpage price paid. Likewise, the administrative costs considered by the Canadian Parties are 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 unsuitable for use as a tier-one benchmark to measure the adequacy of remuneration of Crown-origin standing timber in 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 review,[807] in reaching its conclusions concerning haulage costs in Nova Scotia, the IFS Report assumes:

> {i}nformation 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.[808]

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

reflected standing timber prices, and NS-17 at 1, in which the questionnaire to the 2017-2018 Private Market Survey instructs respondents to report "only the pure stumpage price."

[806] *See, e.g., Lumber V AR3 Final* IDM at Comment 33.

[807] *Id.* at Comment 33.

[808] *See* IFS Report at Section 5.0 entitled, "Assumptions."

> harvested and the access road. It is, therefore, incorrect to assume any allocation of woodlots in economic order.[809]

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 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.[810]

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.[811] 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.[812] However, there is information on haulage distances in Nova Scotia. The FP Innovations Report determined that 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.[813] Thus, information on the record indicates that average haul distances in Nova Scotia exceed the distances in Alberta, as reported by the MNP Cross Border Report. Further, while we continue to find that the indirect method the MNP Cross Border Report uses is not the proper way to determine whether haulage costs of private-origin standing timber in Nova Scotia are comparable to that of Crown-origin standing timber in Alberta, applying the "trucking formula" from HC Haynes, as utilized by the MNP Cross Border Report, to the 146 km haul distance from the FP Innovations Report, results in an average haul cost of C$/$m^3$ 17.22, which is greater than the C$/$m^3$ 15.91.[814]

The Canadian Parties argue that the FP Innovations Report cannot be relied upon because it was not intended to estimate haulage costs and because it was a model that reflected haulage costs in Eastern Canada and not exclusively for Nova Scotia. However, the information for haul distance in the FP Innovations Report is specific to Nova Scotia and reflects haul distances for 39

[809] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 3, paragraph 6, which contains the affidavit of Heidi Jane Higgins, Manager of Scaling and Forest Regulation Administration, Department of Land and Forestry.
[810] *See* MNP Cross Border Report, Volume II at paragraph 5.2.1, Table II-22 and footnote 142.
[811] *Id.* at paragraph 5.2.1.
[812] *See* MNP Cross Border Report, Volume II at paragraph 5.2.1.
[813] *See* FP Innovations Report at 3 and 38.
[814] *See* MNP Cross Border Report, Volume II at paragraph 5.2.1 at footnote 139, which contains the HC Haynes "trucking formula."

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sawmills in Nova Scotia from all three regions of the province.[815] Therefore, we have continued to rely upon the average haul information in the FP Innovations Report.

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 Alberta. We note that the Marshall Report states the following as it regards the factors that impact standing timber prices:

> {e}ven 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).[816]

Lastly, as noted elsewhere in this memorandum, 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.[817] 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.[818]

Comment 28: Whether to Adjust the Nova Scotia Benchmark to Account for Beetle-Killed- and Fire-Killed Timber Harvested in Alberta

GOA's Comments[819]

- Record evidence shows that, during the POR, a widespread MPB infestation and major wildfires in Alberta severely damaged timber stands in the province, leading to a lower value for a significant amount of timber purchased by respondents. The Nova Scotia benchmark price does not include prices for beetle- or fire-killed logs in Nova Scotia, so Commerce must adjust the benchmark to account for this difference in market conditions.
- 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 prior reviews with respect to the MPB infestation in British Columbia, 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.[820]

[815] *See* FP Innovations Report at Figures 15 and 16.
[816] *See* Marshall Report at 9.
[817] *See Corus Staal v. U.S. (2005)*, 395 F. 3d 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F. 3d 1375; and *NSK v. U.S.*, 510 F. 3d 1379-80.
[818] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[819] *See* GOA Case Brief Volume IV.A 91-94.
[820] *Id.* at 92 (citing Canfor Stumpage IQR Response at Exhibit STUMP A-2).

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- 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. Specifically, for purposes of comparison to respondents' 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, in line with the value reduction mentioned above.
- The timber dues rate for fire-killed timber established by the TMR is C$0.95/$m^3$ because such timber is much less valuable than undamaged timber.
- As record evidence shows that Nova Scotia has not been affected by forest fires in recent years, Nova Scotia stumpage prices do not include fire-killed timber, and thus, should Commerce continue to apply a Nova Scotia benchmark, it must adjust the benchmark to account for the lower value and higher cost of fire-killed timber.

Canfor's Comments[821]

- Commerce wrongly failed to adjust the Nova Scotia benchmark for Alberta's MPB-damaged timber in the *Lumber V AR4* Prelim. In the each of the administrative reviews in the *Lumber V* CVD proceeding, Commerce has 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.
- 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. The petitioner's only response to this information was to note that the GOA and lumber companies have attempted to slow the spread of MPB in Alberta.
- 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. The petitioner has not contradicted this evidence or provided information suggesting that the existing Nova Scotia benchmark contains beetle-killed stumpage prices.
- In the *Lumber V AR2 Final*, Commerce rejected Canfor's request by emphasizing that it would be inappropriate to use the U.S. PNW beetle-killed benchmark due to differences in standing

[821] *See* Canfor Case Brief at 10-16.

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timber between British Columbia and Nova Scotia. However, this point is a non sequitur, as differences between British Columbia and Nova Scotia and Nova Scotia and the U.S. PNW are not relevant. The relevant question is the relationship between Nova Scotia and Alberta. As explained above, there are clear differences in prevailing market conditions due to Alberta's MPB outbreak.

- Canfor was not arguing that Commerce must use the U.S. PNW beetle-killed benchmark to derive a factor by which to reduce the Nova Scotia benchmark, but rather simply pointing out an analogous situation to make clear that an adjustment is also required in Nova Scotia. Commerce is free to seek other possible alternative pieces of record evidence on the value loss associated with beetle-killed timber, such as those highlighted by Canfor in its IQR response. For example, the Joint Montana Study would provide an appropriate adjustment factor.

Petitioner's Rebuttal Comments[822]

- Commerce correctly rejected the request for beetle-kill and fire-kill adjustments in the prior review and the same reasons cited there continue to be valid.
- The GOA fails to cite any evidence regarding differences in value between Alberta's fire-killed timber and green timber in Nova Scotia. Simply stating that fire-killed timber is less valuable is insufficient to warrant an adjustment, particularly given that Commerce has previously found that allegedly higher harvesting costs for fire-killed timber are not relevant in a pure stumpage comparison. Given that the GOA does not provide evidence in support of an adjustment or even make clear what adjustment it is requesting, Commerce should reject these arguments.
- Canfor and the GOA fail to demonstrate how U.S. PNW benchmarks (the source of the 75 percent value reduction) and the Joint Montana Study (the source of the purported 90 percent value reduction) are relevant to standing timber prices in Alberta. Commerce has repeatedly rejected these adjustment values and should continue to do so in this review.[823]
- The U.S. PNW offer prices are out of date, not from Alberta, based on log prices, and not relied upon by Commerce in British Columbia. The Joint Montana Study includes costs related to harvesting, hauling, and manufacturing MPB-infested timber, which as noted above with regard to fire-killed timber, are not relevant for a pure stumpage benchmark comparison.
- Further, provincial forest management mandates have blunted the impact of the MPB in Alberta, 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 inset damage has occurred, which makes the beetle-killed timber in Alberta differ little in value from Nova Scotia green timber. As a Canfor forest planning document noted, "strategies have also enabled utilization of many stands before they were heavily infested, thereby maintaining maximum timber values."[824]
- Thus, there is no basis to assume, as Canfor does, that the damage caused by the MPB in British Columbia is analogous to the situation in Alberta.[825]
- 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.

[822] *See* Petitioner Rebuttal Brief at 67-71.
[823] *Id*. at 69 (citing *Lumber V AR2 Final* IDM at Comment 35; and *Lumber V AR3 Final* IDM at Comment 32).
[824] *Id.* at 70 (citing Petitioner Comments on IQR Responses at Exhibit Volume I-85).
[825] *Id*. at 71 (citing Canfor Case Brief at 16).

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- Canfor declares that Commerce can "seek other alternatives" if it does not agree with applying the BC price differential to the Nova Scotia benchmark.[826] However, the onus is on Canfor to build an adequate record in support of its claim, as Commerce will not make any adjustment requested, but rather only one shown to be accurate.

Commerce's Position: We disagree with Canfor and the GOA 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. As Commerce has previously explained:

> (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"; (2) "timber species in British Columbia were generally larger and produced more valuable lumber than timber species harvested in Nova Scotia"; and (3) "that Nova Scotia—not the U.S. PNW—is the appropriate benchmark source for measuring the adequacy of remuneration for the provision of stumpage in Alberta."[827]

We find that Canfor and the GOA 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. Canfor claims that Commerce has misunderstood the issue and that the difference between timber in British Columbia and Nova Scotia are irrelevant and that the relevant difference is between Alberta and Nova Scotia. We disagree with the irrelevance of this relationship, as Canfor and the GOA are themselves requesting that Commerce make an adjustment to the Nova Scotia benchmark on the grounds that a similar adjustment has been made for valuing timber in British Columbia.[828] The beetle-killed benchmark Commerce does apply uses prices for U.S. PNW logs to assess the remuneration received for BC standing timber. Neither the U.S. PNW, nor British Columbia, has timber comparable to Nova Scotia and Alberta.

We continue to 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 V AR3 Final*, Commerce compared Canfor and West Fraser's purchases of beetle-killed timber to a benchmark derived from prices paid for blue-stained logs by U.S. PNW interior lumber producer IFG. 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.[829] Rather, Commerce's beetle-killed benchmark was based on actual market values for beetle-killed logs in a region with comparable standing timber to British Columbia, not the result of a percentage adjustment to the benchmark.

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[826] *Id.* at 71 (citing Canfor Case Brief at 15-16).
[827] *See Lumber V AR2 Final* IDM at Comment 32 (citations omitted).
[828] *See* GOA Case Brief Volume IV.A at 92 ("{Commerce}should apply this adjustment, consistent with its adjustment for beetle-killed timber in British Columbia").
[829] *See Lumber V AR3 Final* IDM at Comment 21.

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The AR3 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.[830] However, as noted by the AR3 Cross-Border Report, while the Joint Montana Study discusses all four items, it provided a quantitative analysis for only items one and four.[831] 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, as we found in the *Lumber V AR3 Final*, the prices in the 2017-2018 Private Market Survey are 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 harvesting and manufacturing costs are not part of stumpage prices but are, instead, related costs.[833] Consequently, including such costs would introduce an external factor unrelated to the 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 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 stumpage price paid. We note that this is a distinct situation from British Columbia, where Commerce uses a tier-three log benchmark to assess the adequacy of remuneration for British Columbia 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 distances in Nova Scotia (as reflected in the FP Innovations Report) are comparable to haulage distances in Alberta (as reflected in the MNP Cross Border Report submitted by Canadian Parties). 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.

With regard to the GOA's argument on fire-damaged timber, the fire-damaged timber in Alberta that was acquired by respondents during the POR was graded as 01, which, as explained in Comment 25, 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

[830] *See* AR4 Cross-Border Report at 17-18.
[831] *Id*. at 17-18.
[832] *See Lumber V AR3 Final* IDM at Comment 32.
[833] *Id.* at Comments 33 and 35.

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during the POR, thereby indicating the grade 01 timber was sawn into lumber.[834] 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 AR4 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 priced higher than green timber the GOA grades as 06 and 99.[835] 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. Our approach in this regard is consistent with our approach in the prior review.[836]

Comment 29: Whether Nova Scotia's Forest Is Comparable to Alberta's Forest

GOC's Comments[837]

- Physical differences distinguish Nova Scotia's timber, and those differences stem from Nova Scotia's climate, which is distinct from Alberta's climate.
- Nova Scotia sits within a forest region (the Acadian forest region) that is different from the forest regions of Alberta, Ontario, and Québec (primarily the Boreal forest regions).[838]
- Nova Scotia has a "cool, moist maritime climate and moderate temperatures" and mean annual precipitation from 1,000 mm to 1,600 mm near the coast.[839]
- These relatively high temperatures and precipitation amounts result in longer growing seasons, ranging from 160 to 200 days, and shorter growth periods (*i.e.*, merchantable timber in Nova Scotia regenerates in approximately 45–75 years while timber in Alberta takes 83–168 years).
- Alberta's short growing seasons, low precipitation, and cold winters limit tree growth, while Nova Scotia's long growing seasons, annual precipitation of more than twice that in Alberta, and warm summers and temperate winters facilitate tree growth.
- Due to the favorable growing conditions, Nova Scotia trees grow to a given diameter faster than Alberta trees, resulting in greater expense to harvest Alberta trees and lower stumpage value of Alberta trees.
- Nova Scotia's superior growing conditions result in higher-priced standing timber because harvesters can more efficiently harvest dense stands that are located across favorable terrain. Additionally, Nova Scotia's growing conditions result in higher-priced standing timber because they produce a forest with more valuable tree species and larger trees.
- These conditions combine to produce large, healthy trees that grow in concentrated areas, which allows for Nova Scotia's harvesters to be more efficient and produce more valuable timber products (*i.e.*, logs) than their counterparts in other provinces.

[834] *See* Canfor and West Fraser Final Calculation Memoranda.
[835] *See, e.g.*, Canfor IQR Response at Exhibit Stump-A-1; *see also* Canfor Preliminary Calculation Memorandum at "Calcs from Table1.BPI."
[836] *See Lumber V AR3 Final* IDM at Comment 35.
[837] *See* GOC Case Brief Volume I at 27-48, 56-60.
[838] *Id.* at 32-33 and Figure 2 (citing GOC Stumpage IQR Response, Vol. III, Exhibit GOC-AR4-STUMP-71 at 2-4, Exhibit GOC-AR4-STUMP-75 at 3-4, Exhibit GOC-AR4-STUMP-85 at 4, and Miller Report, App. 1 at 22 fig. 19).
[839] *Id.* at 33-34 and Table 1 (citing GOC Stumpage IQR Response, Vol. III, Exhibit GOC-AR4-STUMP-76 at 11).

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GOA's Comments[840]

- Ample evidence on the record, including independent reference materials, documents the significant differences in climate, geography, and geology between Alberta and Nova Scotia. These differences impact not only tree species but also the rates of tree growth and tree size in the two provinces, which in turn directly affect timber values.[841]
- Alberta's short growing seasons, low precipitation, and cold winters limit tree growth, while Nova Scotia's long growing seasons, annual precipitation of more than twice that in Alberta, and warm summers and temperate winters facilitate tree growth. Due to the favorable growing conditions, Nova Scotia trees grow to a given diameter faster than slower-growing Alberta trees, resulting in greater expense to harvest Alberta trees and lower stumpage value of Alberta trees.
- Because of these numerous differences in forest conditions, Nova Scotia timber does not accurately reflect the prevailing market conditions in Alberta.

Sierra Pacific's Comments[842]

- Commerce has previously considered and rejected the Canadian Parties' arguments that various expert reports – including the Miller Report and the Asker Report – demonstrate that Nova Scotia stumpage prices are not comparable to prices in Alberta, due to the former's differing growing conditions and log classification system; pulp mill consumption; unique geography (resulting in lower hauling costs); and low labor costs.
- Commerce has previously found that these reports, which were prepared for the express purpose of submission in the original investigation, suffer from numerous flaws and fail to adequately quantify or substantiate the extent of the purported differences or their impact on private stumpage prices in Nova Scotia.[843]
- Commerce's statute and regulations do not require perfection in construction of a benchmark.[844]

Sierra Pacific's Rebuttal Comments[845]

- Commerce has previously addressed and rejected the Canadian respondents' arguments that there are significant differences in market and growing conditions among the eastern Canadian provinces relating to geographical, ecological, and species variations.[846]
- Although Commerce typically considers factors affecting comparability in selecting a tier-one benchmark under 19 CFR 351.511(a)(2)(i), nothing in the Act or Commerce's regulations requires perfect comparability in the construction of benchmarks[847]

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[840] *See* GOA Case Brief Volume IV.A at 51-53 and 60-61.
[841] *Id*. at 52-53 (citing, *e.g.*, MNP Cross Border Report at Volume I at 7-17, Volume II at 1-26 and 41-50, and Volume III at 1-19; and the Brattle Report).
[842] *See* Sierra Pacific Case Brief at 14-15.
[843] *Id.* at 14 (citing *Lumber V AR3 Final* IDM at Comment 29; *Lumber V AR2 Final* IDM at Comments 41 and 42; *Lumber V AR1 Final* IDM at Comments 30 and 33; and *Groundwood Paper from Canada* IDM at Comment 24).
[844] *Id.* (citing *HRS from India* IDM at Comment 12).
[845] *See* Sierra Pacific Rebuttal Brief at 10-13.
[846] *Id*. at 11 (citing *Lumber V AR3 Final* IDM at Comments 27 and 28; *Lumber V AR2 Final* IDM at Comments 35 and 41).
[847] *Id*. at 12 (citing *HRS from India* IDM at Comment 12).

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- As Commerce has previously found, standing timber in Nova Scotia and Alberta is harvested from similar forests and covers the same core species group (spruce, pine, and fir, or "SPF").[848]
- The variations in the relative concentration of SPF species across the provinces and the purported differences in quality among species are not significant enough to render standing timber in Nova Scotia incomparable to standing timber in Alberta.[849]
- Commerce has also previously found that, despite the geographical and ecological differences which the Canadian Parties argue result in larger, more valuable trees in Nova Scotia – such as Nova Scotia having Acadian forests with longer, wetter growing seasons and denser forests with better proximity to mills – SPF trees across Alberta have similar average DBH and are therefore comparable in size.[850]
- Commerce has also dismissed the various expert reports cited by the Canadian Parties to argue that differences in forest conditions render standing timber in Nova Scotia incomparable to Crown-origin standing timber in Alberta.
- As Commerce has previously found, these reports, which were prepared for the express purpose of submission in the original investigation, suffer from numerous flaws and fail to adequately quantify or substantiate the extent of the purported differences or their impact on private stumpage prices in Nova Scotia.[851]

Commerce's Position: Consistent with the *Lumber V AR3 Final*,[852] 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 large areas of Alberta) that render private-origin standing timber prices in Nova Scotia incomparable to Crown-origin standing timber prices in 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 Alberta.[853] 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 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.[854] 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 MNP Cross Border Report) 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.

[848] *Id*. (citing *Lumber V Final* IDM at Comment 40).
[849] *Id.* at 12-13 (citing *Lumber V Final AR3* IDM at Comment 27).
[850] *Id*. at 13 (citing, *e.g.*, *Lumber V AR3 Prelim* PDM at 27-29, unchanged in *Lumber V AR3 Final*; *Lumber AR2 Final* IDM at Comment 40; and *Lumber AR1 Final* IDM at Comment 26).
[851] *Id*. at 14 (citing, *e.g.*, *Lumber AR3 Final* IDM at Comment 29; *Lumber AR2 Final* IDM at Comments 41 and 42, *Lumber AR1 Final* IDM at Comments 30 and 33; and *Groundwood Paper from Canada* IDM at Comment 24).
[852] *See Lumber V AR3 Final* IDM at Comment 28.
[853] *See* Comments 30 and 31.
[854] *See* Comments 27, 30, and 31.

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Comment 30: Whether the Tree Size in Nova Scotia, as Measured by Diameter, Is Comparable to Tree Size in Alberta

GOC's Comments[855]

- Commerce preliminarily concluded that Crown-origin standing timber size in Alberta is comparable to the timber size of private-origin standing timber in Nova Scotia, but it did so based on mismatched comparisons that did not address the relevant question: whether the standing timber purchased in the transactions underlying the Nova Scotia benchmarks was of comparable size to the Crown-origin standing timber purchased by respondents.
- 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, so although comparing DBH may provide some indication of timber comparability, other physical characteristics, including height, straightness, taper, age, bark thickness, and branchiness, also influence a tree's value.
- Ultimately, sawmills process logs, not trees, so the size and quality of logs that can be harvested from a tree have a significant influence on the value of the tree on the stump. Therefore, a comparison of the average DBH across provinces provides only incomplete evidence at best.
- 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 private-origin sawlogs and studwood from which it derived its benchmarks.
- Commerce concluded that timber in Alberta is of comparable size to timber in Nova Scotia by comparing the DBH of harvested timber in Alberta to the DBH of harvested timber in Nova Scotia's neighbor, New Brunswick.[856]
- 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), and it is not clear what species New Brunswick's DBH figure covers.
- 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 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 Alberta.[857]
- The fact that a small portion of Québec was included in the region analyzed by the USDA does not change the fact that Nova Scotia's climate fuels superior tree growth that is not present in the majority of Québec, Ontario, and Alberta.
- 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.[858] Thus, the larger small-end diameter of logs in Nova Scotia compared to the small-end diameter in Alberta results in significant prices differences. These price differences are present in the stumpage prices included in the 2017-2018 Private Market Survey Commerce used as its LTAR benchmark.

[855] *See* GOC Case Brief Volume I at 41-48.
[856] *Id*. at 43-44 (citing *Lumber V AR4 Prelim* PDM at 23-24).
[857] *Id*. at 45 (citing GOC IQR Stumpage Response, Volume III at GOC-AR4-STUMP-97 at 5).
[858] *Id*. at 45-46, Figure 3 (citing Petitioner Comments on IQR Responses at Exhibit Volume I-52 at 13).

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- Nova Scotia timber has larger DBH measurements because its SPF species benefit from the province's temperate climate, which allows trees to grow tall and wide. Trees in Alberta do not benefit from the same favorable species mix and climate as Nova Scotia, which is important because trees attain larger sizes (and therefore higher prices) when they grow in moderate climates with higher precipitation rates, like Nova Scotia's.

GOA's Comments[859]

- Commerce preliminarily determined that private standing timber harvested in Nova Scotia is comparable, in terms of size, to Crown-origin standing timber harvested in Alberta without any actual record evidence of that comparability.
- The GOA provided DBH information for Crown-origin standing timber harvested in Alberta. The GNS failed to provide similar DBH information for private-origin standing timber in Nova Scotia.
- The necessary information to conduct an actual comparison of the DBH of harvested timber in Alberta and Nova Scotia is therefore not on the record.
- Commerce inappropriately used harvest information from New Brunswick to contend that private-origin standing timber harvested in Nova Scotia is comparable to Crown-origin standing timber harvested in Alberta.
- Such a proxy analysis does not provide evidence as to the comparability of the standing timber included in the 2017-2018 Private Market Survey.
- The CAFC and the CIT have held that Commerce may not engage in "speculation" or "mere assumptions" to make its determinations.[860]
- Commerce must reconsider its inappropriate use of proxy DBH data and identify actual record evidence to support its conclusion that standing timber harvested in Alberta and Nova Scotia are comparable in size.
- If Commerce finds no evidence to support such a conclusion, then Commerce must determine that its preliminary DBH analysis lacked factual support.
- Commerce improperly dismissed forest inventory data provided by the GOA.
- The information from the GOA provide QMD-based measurements on sample plots of standing trees in Alberta, not harvested timber, that allow Commerce to conduct an "apples-to-apples" comparison of the forest inventory in Nova Scotia and Alberta.[861]
- This comparison demonstrates that tree size in Alberta is significantly smaller than Nova Scotia.[862]
- These data directly contradict Commerce's finding that Nova Scotia standing trees are comparable in size to Alberta standing trees.

[859] *See* GOA Case Brief Volume 4.A at 57-60.
[860] *Id*.at 59 (citing *LMI v. U.S.*, 912 F.2d 455, 460; *Jinan Yipin Corp.*, 526 F. Supp. 2d. at 1375; and *Yangzhou Bestpak*, 716 F.3d 1370, 1378; and *Novosteel*, 284 F.3d 1261).
[861] *Id*. (citing GNS Stumpage IQR Response at 9; and GOA Stumpage IQR Response at Exhibit AB-AR4-S-123).
[862] *Id*. The QMD of the Alberta forest inventory is 9.4 cm. The QMD of softwood timber in Nova Scotia's inventory is proprietary information. *See* GNS Stumpage IQR Response at 9.

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Petitioner's Rebuttal Comments[863]

- The Canadian Parties argue that Commerce failed to engage with their evidence of the growing conditions of stumpage throughout Canada, but such statements are not true and nothing more than dissatisfaction with Commerce's analysis of the evidence.
- Far from ignoring their evidence, Commerce has thoroughly considered the issues raised by the Canadian Parties regarding the comparability of Nova Scotia's private stumpage extensively in previous administrative reviews and the investigation.[864] The Canadian Parties have presented no new evidence in this review that would result in a different analysis from these comments.
- Canadian parties fault Commerce for purportedly comparing merchantable, standing timber in Nova Scotia's private forest to harvested, Crown-origin standing timber in Alberta. However, these arguments are meritless.
- The GOA reported the DBH data for harvested softwood timber, while the GNS reported the DBH data for merchantable softwood timber, and Commerce found that these two datasets do not provide for a direct comparison, so it used the DBH data for harvested softwood timber in New Brunswick as a proxy for Nova Scotia given that these two provinces are "contiguous."[865]
- The GOA argues that this comparison is based on "speculation" or "mere assumptions," yet it failed to provide any evidence showing how this methodology is unreasonable.
- Neither JDIL nor the GNB challenged Commerce's size comparability finding with respect to New Brunswick and Nova Scotia.
- In fact, Commerce observed that "{JDIL} incorporates standing timber from both provinces into its sawmill operations."[866]
- However, as the GOA itself acknowledged, "QMD is not used for scaling purposes or to measure harvested timber" and "it has no effect on stumpage rate calculations in the province."[867]
- Further, unlike DBH, information from the GOA indicates that QMD measurements are not used for scaling purposes or to measure harvested timber and have no effect on stumpage rate calculations in the province.

Sierra Pacific Rebuttal Comments[868]

- The Canadian Parties criticize Commerce's DBH analysis for failing to match the sizes of timber used in the benchmark analysis, arguing that Commerce relied on "a subset of Nova Scotia's timber (sawlogs and studwood) to a range of timber products … in Alberta"; however, nothing in the Act or Commerce's regulations requires perfect comparability in the construction of benchmarks.[869]

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[863] *See* Petitioner Rebuttal Brief at 16 and 23-24.
[864] *Id.* 18 (citing *Lumber V AR3 Final* IDM at Comments 26-27, 31, and 36; *Lumber V AR2 Final* IDM at Comments 35-36, and 40-42; *Lumber V AR1 Final* IDM at Comments 25-31; and *Lumber V INV* IDM at Comment 40).
[865] *Id.* at 24 (citing *Lumber V AR4 Prelim* PDM at 24).
[866] *Id.* at 24 (citing *Lumber V AR4 Prelim* PDM at 24).
[867] *Id.* at 24-25 (citing GOA Stumpage IQR Response at ABII-39).
[868] *See* Sierra Pacific Rebuttal Brief at 13-14.
[869] *Id*. at 13-14 (citing GOC Case Brief Volume I at 43; and *HRS from India* IDM at Comment 12 ("There is no requirement that the benchmark used in Commerce's LTAR analysis be identical to the good sold by the foreign government. See section 771(5)I(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.”))

- Commerce reasonably relied on the DBH information reported by the provincial governments, who fail to point to any evidence that undermines Commerce's findings that private-origin standing timber in Nova Scotia is "comparable" in size to Crown-origin standing timber in New Brunswick and Alberta.
- Commerce found that the DBH of standing timber in Nova Scotia "equal to or smaller than the DBH of Crown-Origin standing timber in New Brunswick and Alberta" and thus represents a "conservative benchmark."[870]

Commerce's Position: We disagree with the GOC's and the GOA's claims that Commerce's preliminary DBH-based size comparison analysis is flawed. Consistent with the prior review,[871] we have continued to rely on the DBH comparison utilized in the *Lumber V AR4 Prelim*.

DBH is a "commonly utilized metric" in the forestry sector, and therefore, it is reasonable to make it a key aspect of our comparison analysis.[872] 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, 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 placed on the record uniform measurement data for the provinces at issue as it regards such additional physical characteristics as straightness, taper, age, bark thickness, and branchiness.

The GOA argues that its QMD-based forest inventory data permit an "apples-to-apples" comparison of Alberta and Nova Scotia forest inventory data (*i.e.*, data for sample plots of standing trees, not harvested timber). However, 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.[873] Record evidence indicates 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).[874] 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."[875]

As explained in the *Lumber V AR4 Prelim*, information in the MNP Cross Border Report, updated for 2022 information, indicates that the average DBH of harvested softwood timber in Alberta was 21.6 cm in 2021.[876] Thus, while the 21.6 DBH for harvested softwood timber in Alberta is in the range of the DBH the GNS reported for merchantable timber,[877] we acknowledged in the *Lumber V AR4 Prelim* that a DBH based on harvest volumes is not on the

[870] *Id.* at 13 (citing *Lumber V AR4 Prelim* PDM at 23-25).
[871] *See Lumber V AR3 Final* IDM at Comment 26.
[872] *See* Marshall Report at 11.
[873] *See Lumber V AR3 Final* IDM at Comment 26.
[874] *See* GOA Stumpage IQR Response at ABII-39 and Exhibit AB-AR4-S-123.
[875] *Id*.
[876] *See Lumber V AR4 Prelim* PDM at 24 (citing MNP Cross Border Report at 54).
[877] The values that the GNS reported for QMD at breast height for all softwood species and for SPF is proprietary. *See* GNS Stumpage IQR Response at 9.

same basis as a DBH reflecting merchantable inventory.[878] 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 have relied on the facts available on the record, as provided under section 776(a) of the Act, to inform our DBH comparison analysis. Specifically, we have used the DBH of standing timber harvested in New Brunswick as well as from private woodlots in New Brunswick as a proxy for the DBH of private standing timber harvested in Nova Scotia.[879]

The GOC and the GOA argue that the use of the DBH data from New Brunswick fails to compare the relevant jurisdictions (Nova Scotia and Alberta), is speculative, and relies on mere assumptions in a manner that the Court has deemed inappropriate.[880] We disagree. Our decision to use the DBH of harvested SPF trees in New Brunswick as a proxy for the DBH of SPF trees in Nova Scotia is reasonable and supported by evidence on the record. New Brunswick is contiguous with Nova Scotia, and the two Provinces are encompassed by the same Acadian forest. Also, information on the record of the current review indicates that JDIL incorporates standing timber from both provinces into its sawmill operations.[881] Therefore, we continue to find that standing timber in Nova Scotia is comparable, in terms of size, to standing timber in New Brunswick, and thus, that it was reasonable to use harvest DBH data of SPF timber from New Brunswick as a proxy for the DBH of harvested SPF timber in Nova Scotia.

In this review, the GOC and GOA argue that the DBH data the GNS provided, which reflects the average DBH of merchantable, softwood/SPF standing timber in Nova Scotia's private forest, does not reflect the size of the harvested standing timber that comprise the 2017-2018 Private Market Survey. They further argue that the GNS failed to provide, and Commerce failed to seek the necessary size data, specifically DBH information for the sawlog and studwood grade standing timber that comprise the 2017-2018 Private Market Survey, needed for Commerce to properly assess whether the timber reflected in the 2017-2018 Private Market Survey is comparable to the Crown-origin standing timber harvested by the respondent firms in Alberta. We disagree. DBH information for sawlogs and studwood grade standing timber was not one of the data points that Deloitte collected as part of the 2017-2018 Private Market Survey, therefore this information is not available.[882] In addition, as noted elsewhere in this memorandum, the legal requirements governing Commerce's selection of LTAR benchmarks do not require perfection.[883]

We continue to disagree with the GOC's 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

[878] *See Lumber V AR4 Prelim* PDM at 24.
[879] *Id.*
[880] *See* GOA Case Brief Volume IV.A at 59 (citing 59 (citing *LMI v. U.S.*, 912 F.2d 455, 460; *Jinan Yipin Corp.*, 526 F. Supp. 2d. at 1375; *Yangzhou Bestpak*, 716 F.3d 1370, 1378; and *Novosteel*, 284 F.3d 1261).
[881] *See* JDIL Stumpage IQR Response at Exhibit 02.C at Table 3.
[882] *See* GNS IQR Response at Exhibits 5B and 6B.
[883] *See* Comments 13, 18, 19, and 31; *see also HRS from India* IDM at Comment 12 ("There is no requirement that the benchmark used in {Commerce'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.").

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."[884] 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 Alberta.[885] However, information in the table indicates that the "Maritime" region includes "Canadian Provinces and parts of Québec east of the Saint Lawrence River and states north of Massachusetts." Thus, the 2005 USDA study includes areas that are hundreds of miles south of the Canadian border and even farther south from Nova Scotia. Further, the log size differences between Nova Scotia and Alberta that are, according to the GOC, demonstrated by the table in the 2005 USDA Report, are not reflected in the DBH data for harvested timber in Alberta and New Brunswick (which indicate DBH measurements of 21.6 cm and 22 cm, respectively).[886] 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 21.6 cm for harvested timber in Alberta.[887]

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 Alberta.

Comment 31: Whether SPF Species in Nova Scotia Are Comparable to SPF Species in Alberta

GOC's Comments[888]

- Given that species within the SPF group have different values and that Nova Scotia's unique species mix and utilization practice differ from those in Alberta, Commerce cannot rely on benchmarks derived from purchases of standing timber in Nova Scotia.
- 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. The "different species that are used to make SPF lumber are valued differently" on the stump even though they may ultimately produce the same end-product.[889]
- For example, mills in Nova Scotia pay more for red spruce, predominant in Nova Scotia, while some refuse to accept species predominant in Alberta, like white spruce, which tends to be

[884] *See* GOC Stumpage IQR Response at GOC-AR4-STUMP-97 at 5.
[885] *See* GOC Case Brief Volume I at 45 (citing GOC IQR Stumpage Response at GOC-AR4-STUMP-97 at 5).
[886] *See* GOA Stumpage IQR Response at Exhibit AB-AR4-S-23 (MNP Cross Border Report) at 54; *see also* GNB Stumpage IQR Response at 32.
[887] *See* GOA Stumpage IQR Response at GOC-AR4-STUMP-9 at 30.
[888] *See* GOC Case Brief Volume I at 36-48 and 83-87.
[889] *Id*. at 37 (citing GOC Stumpage IQR Response at Exhibit GOC-AR4-STUMP-36 (Miller Report at Appendix 2, p. 3; and *DS 533 Panel Report* at para. 7.354: "the fact that SPF lumber is treated interchangeably does not *ipso facto* mean all forms of SPF timber have the same value…").

weaker and less dense. Nova Scotia's standing timber has an overall higher quality and value than the species in Alberta.

- Commerce has not fully addressed the species-specific evidence when determining that private-origin standing timber in Nova Scotia is comparable to the Crown-origin standing timber in Alberta. Accounting for value differences between species is important because the predominant tree species used in Nova Scotia to produce softwood lumber (*e.g.*, red spruce) differs significantly from the predominant species in Alberta (lodgepole pine) that are used to produce softwood lumber.
- In support of its finding that species are consistent across provinces, Commerce noted that the various species of spruce, pine, and fir (as well as larch and tamarack in some provinces) were "the dominant species that grow in the provinces that are east of British Columbia."[890] As support, Commerce referenced that the various SPF species accounted for 100 percent of the softwood Crown-origin standing timber harvested in Alberta.[891] Commerce also noted "that SPF species represent the majority of the companies' respective Crown timber harvest."[892] However, these facts do not support a conclusion that standing timber sold in Nova Scotia is of the same quality as or comparable to the species of standing timber purchased by respondents in Alberta.
- The issue is not that a significant proportion of timber in each province can be used to produce SPF lumber; it is that the species in those proportions are different and have different qualities and values. The species of trees purchased as standing timber in Nova Scotia differ from the species of trees available and harvested in Alberta.
- For example, pine and fir are not considered high-quality and cannot be used to produce the highest-value products in Nova Scotia; therefore, pine and fir transactions from Alberta should not be compared to those high-value Nova Scotia products.[893]
- Because Nova Scotia sawmills recognize the limited value of pine and fir, they almost exclusively rely on spruce for their sawlog supply, and this is a market condition that is unique to Nova Scotia and does not prevail in Alberta.[894]
- To adjust for this difference in prevailing market conditions, Commerce should compare the remuneration provided for fir and pine in Alberta to only non-sawlog prices in Nova Scotia (*i.e.*, studwood and pulpwood prices).
- The purportedly market-determined prices for standing timber in Nova Scotia from which Commerce derived its benchmarks were thus prices for different goods than the government-provided standing timber to which Commerce preliminarily applied that benchmark. Comparing prices paid for different goods with inherently different values provides no useful information about adequacy of remuneration.

[890] *Id.* at 40 (citing *Lumber V AR4 Prelim* PDM at 23).
[891] *Id.* (citing *Lumber V AR4 Prelim* PDM at 23).
[892] *Id.* (citing *Lumber V AR4 Prelim* PDM at 23).
[893] *Id.* at 84 (citing JDIL November 14, 2022 Stumpage SQR at Exhibit NS-1 at 14; and Miller Report, App. 2 at 8).
[894] *Id.* (citing GOC Stumpage IQR Response at Exhibit GOC-AR4-STUMP-95 (p. 3)).

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GOA's Comments[895]

- Commerce's finding of comparability between the species mix in Alberta and Nova Scotia is grounded in mischaracterization of the disparate species that are included within the SPF basket category as possessing common characteristics and value.
- In Canada, the term SPF (spruce-pine-fir) is "one of several different terms used to identify manufactured lumber that has the structural properties specified for use in building construction."[896] The significant size, density, and value differences between and among the individual species used to produce SPF lumber, including tree quality, growth rates, and productivity, result in different values.[897]
- For example, white spruce, which makes up one-third of Alberta's harvest, retains limbs to maturity, making it costlier to harvest and log and, thus, a relatively low value species for lumber production. While red spruce, which makes up more than one-third of Nova Scotia's forest, produces more volume per hectare than any other species due to its size and taper; the inherent quality of the wood makes red spruce a high-value species.
- Commerce fails to address that different species dominate the harvests in Alberta and Nova Scotia—species of different average size, taper, productivity, and value. Lodgepole pine, the predominant tree species in Alberta (accounting for 50.1 percent of Alberta's 2021 harvest) does not grow in Nova Scotia, while red spruce, the predominant species in Nova Scotia (accounting for 35 percent of Nova Scotia's forest) does not grow in Alberta. Red spruce is particularly valued for lumber production. The higher value species in Nova Scotia as compared to Alberta impact the value of timber to mills and, thus, impact stumpage prices.
- While the output lumber from different species of SPF may be mostly interchangeable once processed by a sawmill, that latter interchangeability provides no evidence as to the comparability of the value of different species of SPF as standing trees being sold for harvest.
- It is the significant differences among the trees that are part of the SPF mix that matter, not the equivalent value of the SPF lumber eventually produced.

Petitioner's Rebuttal Comments[898]

- Commerce has consistently found that the timber in Nova Scotia is sufficiently similar to that in Alberta, such that the Nova Scotia timber prices can be used as a benchmark for Crown-origin timber in Alberta.[899]
- The CIT and the Federal Circuit have 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."[900] The CIT also held that Commerce's LTAR regulation does not require that the benchmark be "identical" to a respondent's purchases of the good in question, only that the selected benchmark be comparable.[901]

[895] *See* GOA Case Brief Volume IV.A at 53-56.
[896] *Id*. at 54 (citing GOA Stumpage IQR Response at Exhibit AB-AR4-S-23 (Cross-Border Analysis, Volume II at 17)).
[897] *Id*. at 54 (citing, *e.g.*, GOA Stumpage IQR Response at 17-21).
[898] *See* Petitioner Rebuttal Brief at 17-23 and 60-61.
[899] *Id*. at 17 (citing, *e.g.*, *Lumber V AR3 Final* IDM at Comment 26, 27, 31, and 36).
[900] *Id*. at 17-18 (citing *RZBC Shareholding v. U.S.*, Slip Op. 2016-64 at 21).
[901] *Id*. at 17 (citing *Archer Daniels v. U.S.*, 968 F. Supp. 2d at 1279).

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- Besides repeating that the SPF sub-species are different in Nova Scotia and Alberta, the GOC and GOA provide scant support on how the qualities and values of these sub-species differ for the purposes of lumber production.[902]
- The GOA's treatment of Crown-origin SPF stumpage shows that it perceives no differences in SPF sub-species. Like Nova Scotia, the GOA sells stumpage in a bundled or "basket" price for SPF species categories. Schedule 1 of Alberta's Timber Management Regulation indicates that the GOA does not distinguish between SPF sub-species when setting the Crown stumpage rates. Instead, it treats all "roundwood" (with the exception of balsam fir, alpine fir, and larch) the same and assigns one single basket price for any roundwood harvest within the specified harvest volume.[903]
- Although the GOA sets a different, lower rate for balsam fir, the prevalence of balsam fir in Nova Scotia demonstrates that the benchmark is conservative, *i.e.*, the benchmark consists of a large portion of lower value standing timber to measure the government price for higher value standing timber in Alberta.
- The GOC's argument that Commerce should compare the remuneration provided for fir and pine in Alberta to only non-sawlog prices in Nova Scotia (*i.e.*, studwood and pulpwood prices)[904] is devoid of merit. The Canadian Parties have failed to provide supporting evidence regarding how SPF sub-species differ for lumber production. The GOA does not treat spruce and pine differently in setting Crown stumpage rates.[905]
- The ITC has found that "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 U.S. for homebuilding, renovation and remodeling."[906]

Sierra Pacific Rebuttal Comments[907]

- Commerce has found that there are no significant differences in market and growing conditions in Alberta relating to geographical, ecological, and species variations.[908]
- The Canadian Parties are incorrect to suggest that standing timber in Nova Scotia must be "of the same quality" as standing time in other provinces to be used as a benchmark or that Commerce must account for the value-determinative differences between the SPF species.
- Standing timber in Nova Scotia and Alberta is harvested from similar forests and covers the same core species group (spruce, pine, and fir, or "SPF").[909]
- The variations in the relative concentration of SPF species across the provinces and the purported differences in quality among species are not significant enough to render standing timber in Nova Scotia incomparable to standing timber in Alberta.

[902] *Id*. at 19 (citing GOC Case Brief Volume I at 37, and GOA Case Brief Volume IV.A at 56).
[903] *Id*. at 21-22 (citing GOA Stumpage IQR Response at Exhibits AB-AR4-15 and S-17a).
[904] *Id*. at 60 (citing GOC Case Brief Volume I at 84-85).
[905] *Id*. (citing GOA Stumpage IQR Response at Exhibit AB-AR4-S-15 (Schedule 1).
[906] *Id*. at 61 (citing *ITC Final Determination* at 38).
[907] *See* Sierra Pacific Rebuttal Brief at 11-13.
[908] *Id*. at 11 (citing *Lumber V AR3 Final* IDM at Comments 27 and 28; and *Lumber V AR2 Final* IDM at Comments 35 and 41).
[909] *Id*. at 12 (citing, *e.g.*, *Lumber V Final* IDM at Comment 40).

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- The GOC has recognized that SPF lumber has "sufficiently common characteristics to be treated interchangeably in the lumber market," as reflected in the manner in which the eastern provincial governments set their stumpage prices.[910]
- The purported physical differences among species in the SPF category are not reflected in how the provincial governments set prices for Crown-origin standing timber.[911]

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.[912] Consistent with the *Lumber IV* proceeding and previous segments of this proceeding, Commerce preliminarily determined in the current review that tree size and species composition are key factors determining the market value of standing timber.[913] In this review, the Canadian Parties again argue that various species differ between the provinces to such an extent that the prices in the 2017-2018 Private Market 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 Alberta and Nova Scotia is harvested from the same core species group—SPF. Accordingly, we find that the transactions for private-origin standing timber in Nova Scotia are comparable to the Crown-origin standing timber in Alberta in terms of species comparability.

While the Canadian Parties point out what they claim are distinct characteristic differences between the various species that comprise the SPF category in forests west of Nova Scotia, consistent with the prior review, we continue to find that the coniferous species that comprise the SPF category in Alberta have "sufficiently common characteristics to be treated interchangeably in the lumber market."[914] 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.

Sawmills in Alberta and Nova Scotia process SPF species into the same product, dimensional lumber. SPF was the dominant coniferous species harvested by sawmills in Alberta and Nova Scotia. During the POR, the SPF species' share of the softwood Crown-origin standing timber harvest volume was 100 percent for Alberta.[915] The GNS indicated that SPF species are "by far the predominant group of trees harvested in Nova Scotia" during the POR.[916] Further, data supplied by Canfor and West Fraser indicate that SPF species represent the majority of the

[910] *Id*. at 12-13 (citing *Lumber V Final* IDM at Comment 40).
[911] *Id*. (citing *Lumber V AR3 Final* IDM at Comment 27).
[912] *See, e.g., HRS from India* IDM at Comment 12 ("There is no requirement that the benchmark used in {Commerce'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."); *see also RZBC Shareholding vs. U.S.*, Slip Op. 2016-64 at 21; and *Archer Daniels v. U.S.*, 968 F. Supp. 2d at 1279.
[913] *See Lumber V AR4 Prelim* PDM at 23-25 (citing *Lumber AR3 Final* IDM at Comments 26 and 27).
[914] *See, e.g., Lumber V AR3 Final* IDM at Comment 27.
[915] *See* GOA Stumpage IQR Response at Exhibits AB-AR4-S-7 and AB-AR2-S-11.
[916] *See* GNS Stumpage IQR Response at 8.

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companies' respective Crown timber harvest.[917] Additionally, as discussed in Comment 30, we continue to find that despite variances among the species that comprise the SPF categories in Alberta and Nova Scotia, 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 Alberta.

Comment 32: Reliability of Nova Scotia Private-Origin Standing Timber Benchmark

GOC's Comments[918]

- The "two primary objectives" of verification are to verify that "relevant data was not omitted from the response" and to verify "the accuracy of information submitted in the response."[919]
- Here, despite a request to do so, Commerce refused to verify the factual information underlying its benchmarks, even though it conducted in-person verification of other factual information.[920]
- Commerce elected not to verify the 2017-2018 Private Market Survey even though it appears to contain errors similar to those in the 2015-2016 Private Market Survey.
- Commerce cannot rely on the 2017-2018 Private Market Private Survey because the benchmarks are based on data that are only partially on the record, and the data that are available suggest the surveyed prices are inflated and inaccurate.
- In the investigation, Commerce correctly rejected a proposed log price benchmark for use in the GBC's provision of standing timber for LTAR program because "the data and search parameters underlying the prices reported … {were} not on the record … and {were} otherwise unverifiable."[921]
- The 2017-2018 Private Market Survey similarly lacks the underlying data and survey parameters, such as the identities of the Registered Buyers who participated in the survey, the identities of the sellers of standing timber, the extent to which additional fees were included in the price, and whether the purchase timber was used for purposes other than sawmilling.
- Commerce cannot rely on incomplete data which it could not and did not even attempt to verify.
- In the investigation, Commerce discovered significant errors in the 2015-2016 Private Market Survey during the on-site verification of the GNS. These errors likely were perpetuated in the 2017-2018 Private Market Survey.
- In the investigation, Commerce found instances in which such extraneous, non-stumpage charges were included in the prices contained in the 2015-2016 Private Market Survey.[922]

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[917] *See* Canfor Final Calculation Memorandum; *see also* West Fraser Final Calculation Memorandum. The memoranda which identify the species of Crown-origin standing timber was acquired by the companies during the POR.
[918] *See* GOC Case Brief Volume I at 74-79.
[919] *Id.* at 74 (citing Enforcement and Compliance Antidumping Manual, Chapter 15 at 3 (2015); and GNS Stumpage IQR Response at Exhibit NS-8 at 7-8.)
[920] *Id.* at 74-74 (citing GOA Request for Verification).
[921] *Id.* at 75 (citing *Lumber V Final* IDM at 61-62).
[922] *Id.* at 76-77 (citing GOC Stumpage IQR Response at Exhibit GOC-AR4-STUMP-61, NS-VE-1 at 2 and at Attachment 3, page 4, footnote 3).

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- The 2017-2018 Private Market Survey used a methodology that was nearly identical to the 2015-2016 Private Market Survey. Thus, it is unsurprising that the inclusion of non-stumpage costs persisted.
- Even though Commerce only examined three transactions from the 2017-2018 Private Market Survey as part of its verification questionnaire, evidence indicates that extraneous costs continue to be included in the survey prices.[923]
- The 2017-2018 Private Market survey continued to rely on product definitions from the Registry of Buyers report, which defines products based on intended use. However, it remains unclear when or how intended use is determined, because one tree stem can produce multiple products.[924]
- The WTO determined that the errors in the 2015-2016 Private Market Survey would have led an impartial investigating authority to find that the survey results were not reliable.[925] Commerce should reach the same conclusion concerning the 2017-2018 Private Market Survey.

GNS's Rebuttal Comments[926]

- Record evidence demonstrates that the GNS used the 2017-2018 private stumpage survey to set Crown stumpage prices in the Province.
- For example, the GNS has explained that the survey results of the 2017-2018 Private Market Survey "formed the basis for the Government of Nova Scotia to set its Crown stumpage rates,"[927] and thus, that the prices in the survey became the prices used for Crown-origin standing timber prices.
- There is no ambiguity on this point. The GNS used the prices in the 2017-2018 Private Market Survey to set the price of Crown-origin standing timber.
- Declarations from the Executive Director of the Renewable Resources Division at the Nova Scotia Department of Lands and Forestry and the co-owner of a Nova Scotia sawmill reflect this fact.[928]
- 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 2015-2016 Private Market Survey has been superseded by the 2017-2018 Private Market Survey. The 2017-2018 survey was completed in the Fall of 2018 and included private stumpage transactions for hardwood and softwood timber for the period April 1, 2017, through March 31, 2018.
- The 2017-2018 Private Market Survey covered a period that occurs after Nova Scotia's softwood lumber products were generally excluded from the *Order*. Thus, the survey could not have been prepared for purposes of the *Order*.

[923] *Id*. at 77-78 (citing GOC Stumpage IQR Response, Vol. III, Exhibit GOC-AR4-STUMP-65).
[924] *Id*. at 78 (citing GNS Stumpage IQR Response at 19-20 and Exhibit NS-8 at 4 and 8).
[925] *Id.* (citing *DS 533 Panel Report*, para. 7.428).
[926] *See* GNS Rebuttal Brief 9-14.
[927] *Id*. at 10 (citing GNS Stumpage IQR Response at 3).
[928] *Id.* (citing Petitioner Comments on IQR Responses, Volume I-43 at Exhibits 1 and 4).

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- 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.
- The 2017-2018 Private Market Survey was the focus of a verification questionnaire in the previous review, and Commerce reviewed source documents regarding certain transactions in the survey.
- Canadian Parties fail to point to any record evidence that the database underlying the 2017-2018 Private Market Survey includes prices that are inclusive of non-stumpage costs.
- Further, the instructions in the 2017-2018 Private Market Survey expressly instructed respondents not to report non-stumpage costs.[929]
- The 2017-2018 Private Market Survey utilized product definitions in the GNS's Registry of Buyer's Report. These well-established definitions are used regularly by the GNS and by industry throughout Nova Scotia.[930]
- A declaration from the co-owner of Harry Freeman & Sons Ltd explains that buyers and sellers of standing timber come to an agreement as to the classification of the felled tree using the definitions from the Registry of Buyers.[931]
- The GNS' verification questionnaire response in the last review further demonstrates that the buyer and seller determine what product is being bought and sold.[932]

Petitioner's Rebuttal Brief[933]

- The Canadian Parties raise concerns about the reliability of the 2015-2016 Private Market Survey, which was not used by Commerce as a stumpage benchmark in this review, and speculate that the issues in the 2015-2016 Private Market Survey are present in the 2017-2018 Private Market Survey.
- In the *Lumber V* investigation, Deloitte provided Commerce access to the unredacted and disaggregated survey results of the 2015-2016 Private Market Survey, and Commerce determined that the redacted and disaggregated version of the survey the GNS placed on the record was "reliable and suitable for benchmark purposes."[934]
- In this review, the GNS provided the 2017-2018 Private Market Survey in the same redacted and disaggregated manner and, given that both surveys were conducted in a similar manner by the same company and have been submitted in the same format, there is no reason to suggest that Commerce would come to a different conclusion about the reliability of the 2017-2018 Private Market Survey.
- The Canadian Parties point to a single transaction in the 2017-2018 Private Market Survey to claim it is not reliable. Specifically, they claim the identity of the buyer involved in a single survey observation demonstrates that non-stumpage costs were included in the prices respondents reported to the 2017-2018 Private Market Survey.[935]

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[929] *Id*. at 13 (citing GNS Stumpage IQR Response at Exhibit NS-17).
[930] *Id*. (citing GNS Stumpage IQR Response at 20 and Exhibit NS-6B at 4-7).
[931] *Id*. at 13 (citing Petitioner Comments on IQR Responses, Volume I-43 at Exhibits 4 and 5).
[932] *Id.* at 13-14 (citing GOC Stumpage IQR Response at Exhibit GOC-AR4-STUMP-65 at Attachments 1-A and 1-B).
[933] *See* Petitioner Rebuttal Brief at 38-41.
[934] *Id.* at 41 (citing *Lumber V AR3 Final* IDM at 206; and *Lumber V INV* Final IDM at Comment 41).
[935] *Id*. at 38-39 (citing GOC Case Brief Volume I at 76-79; and GOC Stumpage IQR Response at Exhibit GOC-AR4-STUMP-65 at 2 and Attachment 1).

- The Canadian Parties provide no support for this assertion. Moreover, the sales contract and other source documentation for the transaction in question contradicts the Canadian Parties' claims.[936]
- Indeed, Commerce found the Canadian Parties' argument to be speculative and unsupported in the previous review, and nothing warrants a change in this review.[937]
- The Canadian Parties claim the corrections Commerce noted in the 2015-2016 Private Market Survey demonstrates its unreliability and that those flaws were perpetuated in the 2017-2018 Market Survey. Yet, all but one of the examples the Canadian Parties provide to support their assertion relate to so-called flaws in the 2015-2016 Private Market Survey, which, of course, is not the benchmark data on which Commerce has relied in the instant review.
- The Canadian Parties claim that the 2017-2018 Private Market Survey is not reliable because the GNS did not reveal the identities of the survey respondents. Commerce rejected this same line of argument in the prior reviews and should do so again.
- The Canadian Parties' argument that "additional errors could pervade the survey responses because of the vague product definitions provided to respondents" has also been rejected by Commerce in the prior review.[938]
- A declaration from the co-owner of Harry Freeman & Sons Ltd indicates that buyers and sellers of standing timber rely on the definitions from the Registry of Buyers when classifying felled trees.[939]
- In the investigation, Commerce explained that verifiers examined unredacted survey responses from the 2015-2016 Private Market Survey and found them to be accurate.[940]
- In the third review, Commerce reached the same conclusion concerning the 2017-2018 Private Market Survey and found that because the 2017-2018 Private Market Survey utilized many of the same key data collection methodologies from the predecessor survey, the survey methodology of the 2017-2018 Private Market Survey was also accurate and reliable.[941] Commerce should continue to find the 2017-2018 Private Market Survey reliable in the instant review.

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.[942] 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 the 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

[936] *Id.* (citing GOC Stumpage IQR Response at Exhibit GOC-AR4-STUMP-65 at 2 and Attachment 1).
[937] *Id.* at 39 (citing *Lumber V AR3 Prelim* PDM at 206-207, unchanged in *Lumber V AR4 Final*).
[938] *Id.* at 39-40 (citing *Lumber V AR3 Final* IDM at 208).
[939] *Id.* at 40 (citing Petitioner Comments on IQR Responses, Volume I-43 at Exhibits 4 and 5).
[940] *Id.* at 40-41 (citing *Lumber V INV Final* IDM at Comment 41).
[941] *Id.* at 41 (citing *Lumber V AR3 Final* IDM at 206).
[942] *See Lumber V AR3 Final* IDM at Comment 32.

benchmark. As explained in the prior reviews,[943] 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; and (3) 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, the Canadian Parties claim 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.[944] The GNS has an established history of conducting periodic stumpage surveys to evaluate whether it should update Crown stumpage rates.[945] 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 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.[946] The record indicates that in February 2016, the GNS then commenced a procurement process to find a vendor to develop a new stumpage survey.[947] 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,[948] the evidence on the record demonstrates that the GNS commissioned the study well before the *Lumber V* proceeding even began. Therefore, we continue to find that 2015-2016 Private Market Survey was not conducted for purposes of lumber proceeding and that the survey and any updated versions of the study are reliable.

We continue to find information on the record of the current review 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 2021. 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."[949] The Canadian Parties nonetheless claim the GNS did not, in fact, rely 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:

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[943] *See Lumber V AR1 Final* IDM at Comment 29; *see also Lumber V AR2 Final* IDM at Comment 44; and *Lumber V AR3 Final* IDM at Comment 32.
[944] *See Lumber V AR3 Final* IDM at Comment 32.
[945] *See* Petitioner Comments on IQR Responses, Volume 1-43 at Exhibit 1; *see also* GNS Stumpage IQR Response at 1.
[946] *See Lumber AR3 Final* IDM at Comment 32; *see also* Petitioner Comments on IQR Responses, Volume 1-43 at Exhibit 1 and Attachments 1-2.
[947] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 1 and Attachments 1, 3.
[948] *See* GNS Stumpage IQR Response at Exhibit NS-6B at 9.
[949] *Id*. at 3.

> {a}ccordingly, 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 … .[950]

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 during the POR, a period that post-dates Nova Scotia's exclusion from the *Order*, constitute additional proof that the GNS 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 the 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.[951] The disaggregated survey results redacted the identities of the purchasers of the private-origin standing timber.[952] At verification, Deloitte provided Commerce officials with access to the unredacted and disaggregated survey results.[953] 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.[954] 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,

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[950] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 1 at 2.
[951] *See Lumber V Final* IDM at Comments 40 and 41; *see also* GNS Stumpage IQR Response at Exhibit 5A.
[952] *See* GNS Stumpage IQR Response at Exhibit 5A.
[953] *See Lumber V Final* IDM at Comment 41 ("Further, other than the survey respondents whose source documents {Commerce} examined at verification, the identities of the survey respondents are not on the record.").
[954] *Id.*

anonymized version of the results of the 2017- 2018 Private Market Survey.[955] 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. In the prior review, verification of the GNS and other provincial governments and respondent companies was mandatory and, due to the risks associated with the COVID-19 pandemic, Commerce exercised its discretion to conduct a verification of the questionnaire responses submitted by Canadian Parties by means of a verification questionnaire. Commerce requested information from the GNS, such as source documents for specific sales transactions in the 2017-2018 Private Market Survey.[956] The information in the GNS's verification response traced to transactions contained in the disaggregated version of the 2017-2018 Private Market Survey, which we find demonstrates the reliability of the survey results.[957]

In the prior review, Commerce verified the 2017-2018 Private Market Survey through a questionnaire.[958] The Courts have consistently maintained that Commerce has significant discretion in its verification procedures and what Commerce considers to be a sufficient verification. As the CIT explained in *Schafer*:

> {Commerce} has considerable latitude in picking and choosing which items it will examine in detail." In fact, "Commerce enjoys 'wide latitude' in its verification procedures." The Court defers to the agency's sensibility as to the depth of the inquiry needed. In 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. To "conclude otherwise would leave every verification effort vulnerable to successive subsequent attacks, no matter how credible the evidence and no matter how burdensome on the agency further inquiry would be.[959]

We disagree with the Canadian Parties that the identity of one of the buyers included in the GNS verification questionnaire response demonstrates that additional non-stumpage costs were included in the 2017-2018 Private Market Survey. As we explained in the previous review, we find the claim that the information from the survey respondent in question contains extraneous non-stumpage dues based only on the survey respondent's name to be speculative and unsupported.[960] In addition, the proprietary sales contract and other source documentation for the transaction in question contains no references to such extraneous, non-stumpage dues and, in

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[955] *See* GNS Stumpage IQR Response at Exhibit 5B.
[956] *See* GOC Stumpage IQR Response at Exhibit GOC-AR4-STUMP-65.
[957] *Id.*
[958] *See Lumber V AR3 Final* IDM at 7. Commerce is not obligated by statute to verify the GNS in this review. *See* 782(i)(3)(B) of the Act, requiring Commerce to conduct verification in an administrative review if "no verification was made … during the 2 immediately preceding reviews … ."
[959] *See Schafer*, 131 F. Supp. 2d at 106 (quoting *PMC Specialties Group, Inc. v. United States*¸ 20 CIT 1130, 1134 (CIT 1996); and *Pohang Iron and Steel Co. v. United States*, 23 CIT 778, 1999 WL 970743 (CIT 1999) at *16) (citations omitted)).
[960] *See Lumber V AR3 Final* IDM at Comment 32.

fact, contradicts such a claim.[961] Further, record information demonstrates that the 2017-2018 Private Market Survey instructed survey respondents to report "pure stumpage prices" and utilize product definitions from the GNS's Registry of Buyers.[962] Therefore, we continue to disagree with the Canadian Parties' claims that the 2017-2018 Private Market Survey was unverifiable or otherwise contained extraneous non-stumpage costs.

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, 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.[963] 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:

> {s}ince 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.[964]

As to the product definitions themselves, in the prior review we have previously explained:

> {t}he 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).[965]

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[961] *See* GOC Stumpage IQR Response at Exhibit GOC-AR4-STUMP-65.
[962] *See* GNS Stumpage IQR Response at 6-7 and Exhibit NS-17.
[963] *Id*. at Exhibit NS-17.
[964] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 4.
[965] *See Lumber V AR1 Final* IDM at Comment 29; *see also Lumber V AR2 Final* IDM at Comment 44; and *Lumber V AR3 Final* IDM at Comment 32.

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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:

> {c}oncluding 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.[966]

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."[967]

Additionally, as in the prior review,[968] 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.[969] 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.[970] 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.

[966] *See* Petitioner Comments on IQR Responses, Volume I-43, which contains the affidavit of Richard Freeman, co-owner of Harry Freeman & Son.
[967] *See Lumber V Final* IDM at Comment 41; *see also Lumber V AR1 Final* IDM at Comment 29; and *Lumber V AR3 Final* IDM at Comment 32.
[968] *See Lumber V AR3 Final* IDM at Comment 32.
[969] *See* GNS Stumpage IQR Response at Exhibit NS-1.
[970] *See Lumber V AR2 Final* IDM at Comment 44.

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Consistent with the prior review,[971] we continue to disagree with the Canadian Parties' argument that the standing timber prices in the 2017-2018 Private Market Survey are not suitable for use because they are not contemporaneous with the 2021 POR. As indicated elsewhere in this memorandum, based on the limited benchmarks we have on the record, we find the prices in the 2017-2018 Private Market Survey are the only usable 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 Alberta. Further, we have indexed the prices to the POR. *See* Comment 20. Thus, the indexed prices derived from the survey prices for private-origin standing timber in Nova Scotia corresponding to FY 2017-2018 constitute the best available tier-one benchmark price. As discussed elsewhere in this memorandum, this is consistent with Commerce's practice when facing a situation when the record contains limited benchmarks.[972] Thus, we reject the Canadian Parties' 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.

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.[973] 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.[974] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[975]

H. Log Export Restraint Issues

Comment 33: Whether Commerce Should Find Restrictions on Log Exports in Alberta and New Brunswick to Be Countervailable Subsidies

Petitioner's Comments[976]

- In *Lumber V AR4 Prelim*, Commerce did not make a finding on the countervailability of log export restraints imposed by the GOA and GNB.[977] Commerce has found these LERs not countervailable due to a lack of causal nexus between the LER and a benefit obtained by respondents. This is an impermissible interpretation of the Act, but, even if such a standard is held to be required, the record contains evidence demonstrating such a causal nexus.

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[971] *See Lumber V AR3 Final* IDM at Comment 32.
[972] *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.
[973] *See Corus Staal BV v. U.S. (2005)*, 395 F. 3d 1347-49, accord *Corus Staal BV v. U.S. (2007)*, 502 F. 3d 1375; and *NSK Ltd. v. U.S.*, 510 F. 3d 1379-80.
[974] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[975] *See* SAA at 659.
[976] *See* Petitioner Case Brief at 59-79.
[977] *Id.* at 59 (citing *Lumber V AR3 Prelim*).

- To the extent that Commerce chooses to require evidence of a causal nexus between the LERs and the benefit, the insistence that only "long-term price trend data" or "economic analysis" may establish such a nexus is unreasonable. Because the record contains evidence in the form of U.S. log export prices and domestic log purchases in the four provinces at issue showing that the LER directly led to the benefit to the respondents, long-term price trend data or economic analysis are not necessary.
- With regard to financial contribution, 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 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 two 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 are reasonably available in Canada.
- When using U.S. log export prices to calculate a benefit for these LER programs, 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.

GOC's Rebuttal Comments[978]

- In the three prior administrative reviews, Commerce found that the alleged LERs in Alberta and New Brunswick were not countervailable. The petitioner has not provided any basis to change Commerce's approach to the LERs. Further, evidence added to the record in support of these allegations was untimely filed and should be rejected by Commerce.
- The LERs do not fall within any of the types of direct financial contribution enumerated in the Act. They also do not provide an indirect financial contribution. "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. Additionally, the financial contribution for entrustment or direction must be "normally vested in the government." These LERs do not meet these requirements.
- In the three prior reviews, Commerce found that that there was no evidence showing that the alleged LERs affected the price of Crown-origin logs in the provinces at issue, thus showing that there was no linkage between the LERs and the provision of logs by private parties.

[978] *See* GOC Rebuttal Brief Volume 1 at 2-22.

- 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. This section includes the language "a benefit is thereby conferred," a clear indication of linkage or causality. This requirement for linkage is laid out in both the *CVD Preamble* and the SAA, as was recognized by the Federal Circuit in *AK Steel*, and has been upheld in more recent CIT decisions.[979]
- The simple price comparisons that the petitioner alleges meet the linkage standard first articulated in *Leather from Argentina* in fact come nowhere close to doing so.[980] In the various cases cited to by Commerce in the *Lumber V AR3 Final*, the courts upheld Commerce's clear and consistent practice of requiring causal price relationships to find a subsidy, not merely price divergences between two different markets. As explained by Dr. Reishus, higher export prices are a standard outcome of markets with no meaningful restrictions.[981] 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.
- Even if Commerce incorrectly reversed its finding that these LERs do not have an impact, the alleged LERs still do not provide a financial contribution according to the standards Commerce has established to assess entrustment or direction. None of the provincial governments affirmatively caused private parties to provide a good for LTAR. Nothing in the laws of each of the two provinces require log owners to provide logs to particular buyers, or buyers in particular markets, or for LTAR.
- In *DRAMs from Korea*, Commerce established a two-part test to determine whether "affirmative action" had occurred: 1) whether the government has a policy to support the industry or company; and 2) whether the record shows a pattern of government practices in pursuit of the policy by which government entrusts or directs private entities to provide a financial contribution benefiting the industry or company.[982]
- Commerce has recently applied the *DRAMs from Korea* standard in cases such as *Wind Towers from Indonesia* and *Rebar from Turkey 2017 Final Results* to find that the government did not exercise control over particular market participants, and the participants were not required to sell the goods for LTAR.[983] In *PRCBs from Vietnam*, Commerce found that, although a private entity received a low-cost input, there was no evidence that the private entity was required to pass along savings and thus no entrustment or direction.[984] The common element to these decisions is that Commerce did not find entrustment or direction when the government did not exercise control over particular market participants. As Commerce itself has noted, entrustment or direction cannot be "merely a by-product of government regulation," based on "encouragement," or even "broad control. The WTO Appellate Body in considering *DRAMS from Korea* likewise held that not all government actions amount to entrustment or direction and that "mere policy pronouncements" would not meet the standard.

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[979] *Id.* at 5 (citing SAA at 926; *CVD Preamble*, 63 FR at 65361; *AK Steel* at 1376; *TMK IPSCO* at 1340; and *Beijing Tianhai* at 1351).
[980] *See* GOC Rebuttal Brief Volume 1 at 8 (citing *Leather from Argentina*, 55 FR at 40213-40214).
[981] *Id.* at 11-12 (citing Reishus Report at 8).
[982] *See DRAMs from Korea* IDM at 47.
[983] *See* GOC Rebuttal Brief Volume I (citing *Wind Towers from Indonesia Final* IDM at 25-30; and *Rebar from Turkey 2017* IDM at 15-16).
[984] *See PRCBs from Vietnam* IDM at 23-24.

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- Furthermore, the "government function" requirement is clearly not satisfied as none of the provincial governments at issue normally, regularly, or routinely sell logs.
- Separate from the non-countervailability of the LERs, the U.S. log export benchmark proposed by the petitioner is a grossly inaccurate measure of the price of sawlogs used for lumber production in the U.S. and Canada.

GNB's Rebuttal Comments[985]

- Commerce has previously found that New Brunswick operates a simple log export process with a consistent record of approvals.[986] The petitioner's case brief, as in the prior review, attempts to string together various quotes and statements to create a GNB "policy" to keep Crown wood within New Brunswick to benefit local processors. However, the brief fails to go beyond citing policy pronouncements and completely lacks reference to an actual "pattern of practices." The record shows consistent approval of Crown wood export requests dating back to 2002 and no evidence of export refusals during the POR.
- New Brunswick's system of Crown licensees, sub-licensees, and permits does not entrust or direct Crown logs to mills. Likewise, the petitioner's argument that the GNB's system of tracking Crown wood directs that wood to certain users ignores that the DNRED has a fiduciary obligation to track and receive payment for Crown stumpage and thus that the GNB tracks the quantity and destination of Crown wood is entirely logical.
- There is also no evidence of unmet export demand, as New Brunswick is a net softwood saw log importer, and mills in New Brunswick require non-Crown wood to operate. The *AR4* Reishus Report shows that *even if* export restraint policies existed in New Brunswick, they would likely not affect in-province wood volume or prices.[987]
- In sum, there is no plausible mechanism by which New Brunswick's log export policies confer a benefit, as Commerce has previously found. Commerce should reject the petitioner's use of cherry-picked U.S. log export prices as "evidence" that the LER has affected prices in New Brunswick.
- Further, the record lacks information on the alleged LERs, as Commerce did not request information on this issue in the questionnaires it issued to the GNB and JDIL. Thus, there is not even sufficient evidence to support the petitioner's (incorrect) arguments.

GOA's Rebuttal Comments[988]

- Commerce has consistently and correctly found that the GOA does not provide a financial contribution through the entrustment or direction of private entities to sell Crown-origin logs within Alberta. These determinations were based on the factual finding that Alberta's purported LER is in fact an administrative process by which harvesters can easily obtain flexible authorizations and certain tenure agreements do not constitute an overall policy of keeping Crown-origin logs within Alberta.
- While the record of each review stands on its own, there is nothing on the record of this review that justifies departing from Commerce's past findings.

[985] *See* GNB Rebuttal Brief Volume 4 at 2-10.
[986] *See* Lumber V AR1 Post-Preliminary LER Determination at 13-14.
[987] *See* GNB Rebuttal Brief Volume 3 at 8 (citing AR3 Reishus Report).
[988] *See* GOA Rebuttal Brief Volume 2 at 12-20.

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- The AR4 Reishus Report explains that for an LER to have any effect, the ability of log suppliers to export must be actually constrained, and there must be some unmet export demand in the absence of the restraint. Neither of these apply to Alberta. As discussed above, Alberta simply maintains an administrative export authorization process, while analysis in the Brattle Report confirms that Alberta has not enacted policies to increase the log supply in the province above the level that would be observed in a private market.
- With regard to export demand, transporting logs over large distances is expensive, and as such, exports are mostly only requested for logs harvested close to a border. The only foreign country to which Alberta logs could feasibly be exported is the United States, but the long-haul distances and high transportation costs make those exports uneconomical, especially relative to the closer proximity of mills within Canada.
- Taken together, there is no evidence that Alberta's log export authorization requirement affects log output or availability within Alberta or that the GOA entrusts or directs the provision of logs.

JDIL's Rebuttal Comments[989]

- Commerce's analysis of the alleged New Brunswick LER was consistent with the Act. Contrary to the petitioner's claims, the Act does require evidence of a causal connection between the government action and the alleged benefit to find a subsidy in the case of indirect subsidy allegations such as LERs. Section 771(5)(B) of the Act uses the phrasing "a benefit is thereby conferred{,}" thus indicating a clear relationship between the government action and the benefit. For export subsidies, the SAA makes clear that Commerce's analysis would continue to follow the pre-URAA practice, where making a determination of countervailability required evidence that the restraints lead to a discernible lowering of input costs. In the prior administrative reviews, Commerce analyzed under section 771(5)(B) of the Act whether the alleged LER affected the price of softwood logs, an *input* for subject merchandise.
- The petitioner's "tier-two" U.S. log export benchmark contains no evidence of necessary causal relationship between the government action and the benefit provided by the alleged subsidy. To the contrary, the record shows that the sections of the CLFA that allow log exports only if permitted by the MNR does not meaningfully impact exports. Owing to in-province demand for logs and the location of Crown lands, there have no requests to export Crown softwood logs in the past five years. In *Leather from Argentina*, cited in the SAA as a demonstrative example of where Commerce found an export restraint countervailable, Commerce looked at U.S. and Argentina hide prices over 28 years, comparing prices during periods when an Argentinian hide export embargo was in place and when it was not. The petitioner's basic price comparison does not even come to support for causality, as Commerce has correctly found.
- The excerpts from the GNB IQR cited by the petitioner fall far short of establishing that the GNB has a policy to keep logs within New Brunswick for the benefit of local producers. The petitioner misconstrues DNRED's process for evaluating log export requests and misattributes a legislative select committee report that discusses using wood fiber to benefit local communities to the entire New Brunswick Legislative Assembly. The report itself does not mention exports, and in fact, includes principles that are consistent with receiving full remuneration for Crown timber.

[989] *See* JDIL Rebuttal Brief at 9-20.

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- The petitioner's proposed tier-two benchmark has multiple flaws. JDIL has purchased softwood logs from private timberlands in New Brunswick, Nova Scotia, PEI, Québec, and Maine. These would serve as a suitable benchmark given that Commerce has made no finding that New Brunswick's log market is distorted. As logs and stumpage are distinct products, Commerce's incorrect finding that the New Brunswick stumpage market is distorted does not necessarily lead the New Brunswick log market to be distorted.
- Finally, even if Commerce did find the New Brunswick log market distorted, JDIL purchased private-origin softwood logs from Nova Scotia sellers for use at its Truro, Nova Scotia sawmill. These purchases are tier-one prices for logs and are delivered prices, such that any freight adjustment would be distortive.

Commerce's Position: We continue to find that the alleged LERs in Alberta and New Brunswick 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.

As stated in the *Lumber V AR3 Final*,[990] 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*[991] and *Leather from Argentina*[992] (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.[993]

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 in 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.[994] Some parties have placed economic analysis on the record in this review,[995] and we

[990] *See Lumber V AR3 Final* IDM at Comment 43.
[991] *See Lumber III Final*, 57 FR at 22604-22610.
[992] *See Leather from Argentina*, 55 FR at 40213-40214.
[993] *See* SAA at 926.
[994] *See CFS from Indonesia* IDM at 25-35; *see also 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.
[995] *See* GOC/GBC LER IQR Response at Exhibits LEP-1 and LEP-42; *see also* Marshall Report at 76-79.

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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.[996] Accordingly, consistent with that comprehensive analysis, we have conducted a thorough analysis of the record of this 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 or New Brunswick. 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 Alberta or New Brunswick 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 and New Brunswick are not countervailable.

As these programs are not countervailable, other issues raised by interested parties in their briefs are moot.

Comment 34: Whether the LER in British Columbia Results in a Financial Contribution

GOC/GBC's Comments[997]

- 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 BC LER does not fit any the categories outlined under section 771(5)(D) of the Act.
- The BC 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 BC LER does not fall within the provision for indirect bestowal of a financial contribution under section 771(5)(B)(iii) of the Act. Market effect cannot be the basis of a financial contribution determination. 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. A private party's response to a regulation cannot form the basis for a financial contribution finding. Rather, Commerce must show that the

[996] *See HRS from Thailand Initiation*, 65 FR at 77584; *see also OCTG from China INV* 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 INV* 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).
[997] *See* GOC/GBC Case Brief Volume III at 8-22.

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government has taken affirmative measures to entrust or direct a private body to provide goods for LTAR.

- The BC 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 established in *DRAMS from Korea* that requires both a policy to support an industry or company and a pattern of government practices in pursuit of the policy.[998]
- Commerce's finding that "official government action compels suppliers of BC logs to supply to BC customers."[999] is incorrect. This misstates the operation of the LER and applies the wrong legal standard.
- It is factually incorrect to speak of the LER "compelling" log sales to domestic purchasers, because the surplus test almost always leads to an export authorization and is only one of multiple mechanisms for export approval. During FY 2020-2021, roughly 97.1 percent of applications for authorization to export did not receive valid offers and thus were essentially approved for export. This contradicts the notion that the GOC and GBC "compel" logs to be sold domestically.
- There is nothing in the surplus test that entrusts or directs log suppliers in British Columbia to provide logs to domestic buyers. That an offer for logs is placed does not mean that those 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 BC interior, log harvesters can apply for permits to export standing timber. Additionally, in FY 2020-2021 there were OICs under which over 1.57 million m^3 of logs were subject to blanket export authorization, but log exporters only used a portion of that authorization.
- Entrustment or direction from "direct legislation" must entail a mandate to provide goods for LTAR, not merely to provide goods. A NAFTA panel overturned an entrustment or direction finding by Commerce in the *SC Paper from Canada Final* because the legislation cited by Commerce did not contain specific direction to provide electricity at a discounted rate.[1000]
- In *Steel FEBs from Germany*, Commerce found entrustment or direction based on direct legislation over a legal mandate where private entities "were entrusted or directed to not collect revenue in the form of {a} surcharge that would otherwise be due."[1001] By contrast, there is no such direction of BC log sellers to provide a below-cost input.
- The BC LER also does not meet the *DRAMs from Korea* two-part test for entrustment or direction that considers: (1) whether the government has a policy to support the industry or company concerned; and (2) whether record evidence shows a pattern of governmental practices in pursuit of that policy, by which the government entrusts or directs private entities to provide a financial contribution that benefits the industry or company.[1002]
- Commerce has applied this test in recent cases such as *Wind Towers from Indonesia* and *Rebar from Turkey 2017 Final*.[1003] In both of these cases, Commerce evaluated whether a government entity entrusted or directed a private entity to provide goods for LTAR, concluded they had not, and thus, that there was no financial contribution. In *PRCBs from Vietnam*, Commerce found that, although a private entity received a low-cost input, the entity was not

[998] *Id.* at 9 (citing *DRAMS from Korea* IDM at 47).
[999] *Id.* at 12 (citing *Lumber V AR3 Final* IDM at 278).
[1000] *Id.* at 14-15 (citing *Supercalendered Paper from Canada NAFTA Panel Decision*).
[1001] *Id.* at 16 (citing *Steel FEBs from Germany* IDM at 23).
[1002] *Id.* at 16 (citing *DRAMs from Korea* IDM at 47).
[1003] *Id.* at 17 (citing *Wind Towers from Indonesia* IDM at 25-30; and *Rebar from Turkey 2017 Final* IDM at 16).

required to pass along savings from that input to subject merchandise producers, and thus, there was no entrustment or direction.[1004] The common element of these decisions is that when the government did not exercise control over particular market participants or the quantities and values of goods in the market, Commerce did not find entrustment or direction. The same lack of government control over market participants, quantities of goods, or prices that market participants would charge applies here, as was correctly found by the WTO panel reviewing Commerce's finding on the LER process in the *Lumber V Final*.[1005]

- 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, for example in examining the alleged LERs in Alberta, Ontario, New Brunswick, and Québec in the prior review.[1006]
- Commerce did not establish 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."[1007] Commerce's only argument on this point is that the GBC has a long history of forest management, and export restraints have been in place for a long time.[1008] 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. Further, longevity is a measure of time, not a reference to whether something is typical or not.

Petitioner's Rebuttal Comments[1009]

- The GOC/GBC's arguments rely on the 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."[1010]
- In *Hynix Semiconductor v. U.S.*, 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.[1011] The CIT 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

[1004] *Id.* (citing *PRCBs from Vietnam* IDM at 23-24).
[1005] *Id.* at 17-18 (citing *DS 533 Panel Report*, para. 7.607).
[1006] *Id.* at 19-20 (citing *Lumber V AR3 Final* IDM at 272).
[1007] *Id.* at 21 (citing section 771(5)(B)(iii) of the Act).
[1008] *Id.* at 21-22 (citing *Lumber V AR3 Final* IDM at 280-281).
[1009] *See* Petitioner Rebuttal Brief at 125-139
[1010] *Id.* at 127 (citing *CVD Preamble*, 63 FR at 65349).
[1011] *Id.* at 128 (citing *Hynix Semiconductor v. U.S.* at 1345).

approach proposed by Hynix would "significantly limit Commerce's valuable case-by-case discretion."[1012]

- 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.[1013]
- 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 GOC/GBC may disagree with this approach, but the CIT has found it a reasonable exercise of Commerce's discretion.[1014]
- 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 BC mill operators before export; the GBC 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 BC 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 BC 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.[1015]
- Additionally, a GOC memorandum on the record of this review confirms that the LER was intended to benefit domestic processors at the expense of exporters and harvesters. The memorandum notes that Mosaic, the party requesting authorization for log exports, claims that its exports are necessary to offset losses on domestic sales. However, the memorandum nonetheless recommended that the export requests be denied in order to protect supply at a preferred price for domestic producers.[1016]
- The GBC/GOC 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

[1012] *Id.* at 128-129 (citing *Hynix Semiconductor v. U.S.* at 1345-1346).
[1013] *Id.* at 129 (citing SAA at 925-926).
[1014] *Id.* at 129-130 (citing *Hynix Semiconductor v. U.S.* at 1346).
[1015] *Id.* at 131-132.
[1016] *Id.* at 133-135 (citing Petitioner Comments on IQR Responses at Exhibit Vol. I-117, Document #1).

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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.
- Commerce provided a reasonable explanation of why the LER satisfies the "government function" requirement under section 771(5)(B)(iii) of the Act.[1017] The GBC repeats arguments that Commerce previously responded to and fails to explain why Commerce's findings were unreasonable.
- The GBC/GOC argues that the LER has no impact on the BC log market and BC interior, where Canfor and West Fraser operate. Neither of these points bear on financial contribution. Commerce has previously found that section 771(5)(B) of the Act requires only that a private entity by 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.[1018]

Commerce's Position: In the *Lumber V AR4 Prelim*, when we calculated a benefit for this program, and the benefit for both respondents was not measurable.[1019] For these final results, we have not changed our BC LER calculations for Canfor, while for West Fraser the revised calculations still lead to no measurable benefit.[1020] Thus, whether the British Columbia LER conferred a financial contribution during the POR is moot.

Comment 35: Whether the LER Has an Impact in British Columbia

GOC/GBC LER Comments[1021]
- Commerce has not 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 vast majority of log exports come from, only around 1 percent of logs advertised were found not to be surplus. In 2020, log exports as a share of the harvest were significantly 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. In the Southern Interior, it can be seen that certain exporters choose to not export significant percentages of volumes authorized for export. In the PME, exporters obtained permits for a portion of the volume authorized under blanket OICs. These un-exported logs available for export show that there is no remaining unmet demand for exports and that the LER does not materially increase the supply of logs within British Columbia. Commerce has never addressed the significance of this issue, but 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

[1017] *Id.* at 138-139 (citing *Lumber V AR1 Final* IDM at 220 and *Lumber V AR2 Final* IDM at 245).
[1018] *Id.* at 139 (citing *Certain Wheat from Canada* IDM at 19).
[1019] *See* West Fraser Preliminary Calculation Memorandum at Attachment II at worksheet 'Subsidy Rate'; *see also* Canfor Preliminary Calculation Memorandum at Attachment II at worksheet 'Subsidy Rate'.
[1020] *See* West Fraser Final Calculation Memorandum at Attachment II at worksheet 'Subsidy Rate'.
[1021] *See* GOC/GBC Case Brief Volume 3 at 22-37.

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in the absence of blocking. Further, the threat of blocking is clearly not significant given the small number of logs that are prevented from being exported by the LER.

- The AR4 Reishus Report thoroughly reviewed the relevant evidence and found that "the applicable log export policies do not artificially increase the supply of logs within British Columbia thereby depressing BC log prices."[1022] Commerce's contrary finding is not based on any evidence.
- Declarations on the record of this review from West Fraser and Canfor explain in detail how the PME and BC interior are distinct markets from both product and geographic standpoints, such that log exports from the BC interior are not viable, regardless of the existence of the LER. The *AR4* Schuetz Report explains that U.S. mills are locationally advantaged relative to BC producers for only 0.06 percent of the BC interior harvest area.
- Commerce cited to various submissions by the petitioner that are largely pleadings in legal disputes or unsupported assertions and thus of little value, and in addition, mostly predate the current POR by at least several years. Further, all but one of these documents relate to exports from the Coast. The pleadings in Mosaic's lawsuit against the GOC repeatedly refer to "Coastal B.C." and explain that this region is distinct from "inland B.C.," *i.e.*, the region where the mandatory respondents in this proceeding operate.
- The purportedly blocked exports described in an affidavit by a BC interior log exporter had no relevant impact on the log market or supply in the BC interior for several reasons. First, the data supporting the affidavit relates to export authorization requests and sales for species that are not significant for either the BC interior harvest, or for West Fraser and Canfor's lumber production.
- Additionally, blocking largely 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 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.

Petitioner's Rebuttal Comments[1023]

- Judicial filings by BC log exporter Mosaic show how the LER is meant to benefit British Columbia sawmills, and in fact, directly benefits those sawmills through lower log prices. In 2019, GOC officials recommended rejecting log export requests made by Mosaic to protect the access of British Columbia processors to Mosaic's logs, at prices below what Mosaic would be able to achieve on international markets.
- The GOC/GBC 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 affidavit from a BC interior log seller clearly refutes the theoretical claims of expert reports commissioned by the GOC/GBC.

[1022] *Id.* at 27 (citing AR4 Reishus Report at 70).
[1023] *See* Petitioner Rebuttal Brief at 133-135 and 139-140.

- Further, the entire argument of no "impact" is flawed because Commerce has stated that entrustment or direction does not require that a government entrust or direct the private party to provide a *benefit*, but rather only to provide a *financial contribution*.

Commerce's Position: In the *Lumber V AR4 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.[1024] We preliminarily determined that these factors increased the supply of logs available to domestic users and, in turn, suppressed prices in British Columbia.[1025] This is consistent with our findings in the *Lumber V AR3 Final* and *Lumber V AR2 Final*, where we found that the BC LER was a countervailable subsidy that provided a benefit we calculated in accordance with section 771(5)(E)(iv) of the Act.[1026] 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 AR4 Prelim*, the GOC/GBC repeats its 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. 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.[1027] In both instances, once logs have been declared surplus, the seller cannot re-apply to export those same logs.[1028]

Logs harvested in British Columbia fall under either federal or provincial jurisdiction. Exports of logs under provincial jurisdiction are regulated under the *Forest Act*.[1029] Exports of logs under federal jurisdiction are regulated under Federal Notice to Exporters No. 102.[1030] 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 mechanism of both is a surplus test that allows domestic processors to block log exports.[1031]

In the *Lumber V AR3 Final*, Commerce highlighted evidence on the actual operation of the LER from 2020 judicial filings by Mosaic, a BC-based timberland owner and log exporter.[1032] Mosaic

[1024] *See Lumber V AR4 Prelim* PDM at 19-20.
[1025] *Id.*
[1026] *See Lumber V AR3 Final* IDM at Comment 45; *see also Lumber V AR2 Final* IDM at Comment 49.
[1027] *See* GBC IQR Response at Exhibit BC-AR4-S-20; *see also* GOC/GBC LER Response at 26-29 and 49-53.
[1028] *See* GOC/GBC LER Response at 18-21 and 26-29.
[1029] *Id.* at 16-17.
[1030] *Id.* at 15-16.
[1031] *See* GOC/GBC LER Response at 14-32.
[1032] *See Lumber V AR3 Final* IDM at Comment 45.

provided a detailed explanation as to how the LER enabled "blocking" as well as the related practice of "blockmailing." As we explained in the *Lumber V Final*:

> {u}nder 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.[1033]

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."[1034] The Mosaic filings contained clear evidence that the LER was meant to benefit domestic processors and did, in practice, benefit those processors by preventing exporters from selling logs on the international market at higher prices.[1035] These filings have been added to the record of this review.[1036] As explained in detail in prior reviews, Mosaic's legal filings document both price divergences between BC domestic log prices and export log prices, and the impact of the LER's "surplus test" in negotiations with domestic processors.[1037]

The GBC and GOC offered only a limited discussion of those filings in the prior review, arguing that certain documents therein confirm the distinction between the BC coast and interior that the GBC had repeatedly emphasized.[1038] In this review, the GOC/GBC likewise offer only minimal comment on the substantive information contained in the Mosaic filings and repeat that they emphasize the distinction between coast and interior, while also arguing that these filings were prepared for litigation and thus have limited value.[1039]

We disagree in multiple regards with the GOC/GBC's claims that the Mosaic filings are of limited probative value. First, the filings contain extensive documentary evidence, some of which dates back to years before the litigation commenced.[1040] Furthermore, separate from any of the evidence contained in the filings, that a BC log seller filed a lawsuit requesting that the federal LER be overturned severely undermines the GOC/GBC's sweeping claims of non-effect such as "the LEP process does not impede the ability of market conditions to determine the buyers of logs originating in British Columbia, whether those buyers are domestic or foreign" and "the Governments of Canada and British Columbia do not 'restrain' the export of logs from British Columbia."[1041] These claims by the GOC/GBC are also significantly undermined by a press release issued by a group of wood processors demanding that the GOC/GBC not grant Mosaic "unrestricted exports."[1042] As we explained in the prior review, this press release contains assertions by supporters of the LER that underscore the conclusion that the LER is

[1033] *See Lumber V Final* IDM at Comment 44.
[1034] *See Lumber V AR1 Final Results* at Comment 46.
[1035] *See Lumber V AR3 Final* IDM at 286-288.
[1036] *See* Petitioner Comments on IQR Reponses at Exhibits Vol. I 111 through 117.
[1037] *See Lumber V AR3 Final* IDM at 286-288.
[1038] *Id.* at 288.
[1039] *See* GOC/GBC Case Brief Volume 3 at 31-32.
[1040] *See, e.g.*, Petitioner Comments on IQR Reponses at Exhibits Vol. I-84 at Exhibits 5 through 27.
[1041] *See* GOC/GBC LER Response at 1 and 3.
[1042] *See* Petitioner Comments on IQR Reponses at Exhibits Vol. I-118.

designed to restrain log exports from British Columbia and increase the supply of logs available to domestic processors.[1043]

In prior reviews, following an examination of the evidence contained in the Mosaic filings, in conjunction with other record evidence on the LER, we found that:

> {t}his 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" or there is "no evidence of the operation of a 'blocking system' in British Columbia that allegedly restrains exports and suppresses log prices." 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.[1044]

As in the prior reviews, the GBC and GOC seek to minimize certain facts on the LER's operation by emphasizing the existence of unused export authorizations (*i.e.*, applications to export that were authorized, but then not acted on by the applicant). Drawing on the logic of the AR4 Reishus Report,[1045] the GOC/GBC argue that 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 exported were not exported during the POR, there would not be higher export volumes in the absence of the LER.[1046] The GOC/GBC repeat verbatim their claim that Commerce "has never addressed the significance of unused export authorizations," which is flatly incorrect. In the *Lumber V AR3 Final*, Commerce directly examined the GOC and GBC's argument regarding "unused export authorization" and concluded that was based on a falsely narrow conception of how the LER operates:

> 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." 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

[1043] *See Lumber V AR3 Final* IDM at 287.
[1044] *Id.* at 286.
[1045] *See* AR4 Reishus Report 94-96.
[1046] *See* GOC/GBC Case Brief Volume III at 24-26.

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> 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.[1047]

Additionally, business proprietary evidence on the record of this review and described in the AR4 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.[1048] Thus, we continue to find that the GOC/GBC's arguments on this point repeat syllogisms to "prove" that the LER cannot have an effect, while ignoring the actual record evidence that it does have an effect.

The GOC/GBC argue that the Mosaic filings underscore the difference between the BC coast and interior regions and that Mosaic itself operates in the BC coast,[1049] citing documents that are primarily either carbon copies or only slightly modified versions of documents that Commerce has previously evaluated and addressed. These documents include updated Schuetz and Reishus Reports, which we address below. Canfor and West Fraser also both submitted statements from senior company officials containing assertions that log exports from the BC interior are not viable.[1050]

Canfor's Ross Lennox claims that Canfor's closest sawmill to the PME is over 300 km by truck from the nearest port and also that PME[1051] logs differ significantly from interior logs such that it is not economical for Canfor mills to process PME logs without incurring significant costs.[1052] 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 and also notes that due to a severe fiber shortage, Canfor is not interested in exporting logs regardless.[1053]

The Henderson Declaration 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"[1054] 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.[1055]

[1047] *See Lumber V AR3 Final* IDM at 287.
[1048] *See* AR4 BC Stumpage and LER Memorandum at 3-4.
[1049] *See* GOC/GBC Case Brief Volume 3 at 31-32.
[1050] *See* Lennox Affidavit; *see also* Henderson Declaration.
[1051] 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 4-10.
[1052] *See* Lennox Affidavit at 5-7.
[1053] *Id.* at 8-9.
[1054] *See* Henderson Declaration at 31.
[1055] *Id.* at 39.

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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.[1056] However, in the *Lumber V AR3 Final*, we noted that both respondents had mills located near timbermarks with volumes permitted for export.[1057] 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, as explained in the AR3 BC Stumpage and LER Memorandum.[1058] Finally, given that record evidence demonstrates that there were in fact exports from the interior,[1059] we find that these statements merely dispute the significance of the LER rather than proving that it cannot have any effect.

Moreover, the record also contains documents discussing the impact of the LER on BC interior.[1060] As in the prior review, the record contains an affidavit from a BC interior log seller explaining how it is directly prevented from exporting by the LER.[1061] According to the seller:

> When I sell logs for export to the United States, I generally achieve much higher prices than the offer prices from B.C. processing mills. This is because these B.C. mills have the ability to block the export if they want to. When a proposed export sale is blocked, and an export permit is denied, I can only sell the logs to a B.C. 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 B.C., I am forced to subsidize B.C. producers of lumber and other wood products by selling them logs at a price lower than I could have received in export markets. Based on my experience, this practice also happens with logs harvested from the B.C. coast.[1062]

The specific details of the export permit applications and price comparisons provided by the seller are proprietary and are further discussed in the AR4 BC Stumpage and LER Memorandum.[1063] However, the affidavit also contains further non-BPI discussions of the LER and its impact on the BC interior. The exporter notes that the export regime forced the exporter to restrict exports of cedar, which is a species blocked aggressively and that has a high price differential between the United States and Canada.[1064]

Drawing from the *AR4* Reishus LER Rebuttal, the GOC/GBC identify aspects of the affidavit that they allege make it an insufficient basis on which to find that the LER impacted the BC interior: the affidavit being based on a limited data set, the reported sales are not representative of the interior harvest in species or location, the authorized exports exceeded volumes reported

[1056] *See* Henderson Declaration at 36-37; Lennox Affidavit at 7.
[1057] *See Lumber V AR3 Final* IDM at Comment 45.
[1058] *See* AR3 BC Stumpage and LER Memorandum at 6-7.
[1059] *See* GOC/GBC LER Response at 12-13.
[1060] *See* Petitioner Comments on IQR Responses at Exhibits Vol. I-122 through 125.
[1061] *Id.* at Exhibit Vol. I-126.
[1062] *Id.* at Exhibit Vol. I-126 paragraph 13.
[1063] *See* AR4 BC Stumpage and LER Memorandum at 3-4.
[1064] *See* Petitioner Comments on IQR Responses at Exhibits Vol. I-126 at paragraph 9.

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as exported, and the timber in question made up a minimal share of the BC interior harvest.[1065] We do not find these claims persuasive.

The GOC/GBC argue that the surplus test is less significant in the interior because interior log sellers may offer up standing timber for export, 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.[1066] This is supported by the experience of BC log sellers - one interior log seller explains how pervasive blocking leads to sellers not even offering up species desired by domestic mills for export.[1067] This in turn calls into question the GOC/GBC's argument that the relatively small volume at issue makes the seller's affidavit irrelevant. Given how extensive of an effect blocking can have, it is not unreasonable to assume that potential sellers will be discouraged and simply choose not to advertise logs for export. Similarly, the behavior of advertising more for export than was actually harvested takes place in the context of a system where the log seller does not know whether or not they will be able to consummate their log sales.

With regard to unused export authorizations, 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 enabling sawmills to receive logs from sellers in return for agreeing to not "block" exports by the sellers.[1068] This behavior is not captured in export authorization data.

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 AR4 Schuetz Report, which the GOC/GBC accuses Commerce of ignoring, finds that only a minimal share of BC interior cutblock area is locationally advantaged for U.S. sawmills,[1069] which the GOC/GBC cite as evidence that the LER has no effect.[1070]

However, Commerce did not ignore this report. In fact, Commerce acknowledged this report in *Lumber AR3 Final*, but also noted, as we do here, that the BC interior log seller referenced previously 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.[1071] 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

[1065] *See* GOC/GBC Case Brief Volume 3 at 32-36 (citing AR4 Reishus LER Rebuttal at 2-7).
[1066] *See* Petitioner Comments on IQR Responses at Exhibit Vol I-127 at 6.
[1067] *Id.* at Exhibit Vol. I-126 at paragraphs 9 through 11.
[1068] *Id.* at Exhibits Vol. I-126 at paragraphs 7 and 11.
[1069] *See* AR4 Schuetz Report at Table 4.
[1070] *See* GOC/GBC Case Brief Volume 5 at 36-37 (citing AR4 Schuetz Report).
[1071] *See* Petitioner Comments on IQR Responses at Exhibit vol. I-126.

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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.[1072]

Likewise, the AR4 Reishus Report, which the GOC/GBC case brief cites extensively as an authoritative explanation of BC's LER, contains only a cursory discussion of blocking with sweeping assertions such as that widespread blocking is "inconsistent with the pattern of advertisements and bids."[1073] However, the Mosaic filings contain a detailed demonstration of how dealing with the threat of blocking and the derivative practice of blockmailing play a major role in the normal business operations of one of BC's largest log exporters.[1074] The AR4 Reishus Report simply ignores this extensive evidence, and claims that it is irrelevant based on data points such as that many logs automatically eligible for harvest under OICs are nonetheless not exported, which purportedly "shows that the LEP process (and purported blocking) is not the constraining factor on the volume of log exports."[1075] This statement, however, is an unsupported generalization—the lack of export demand for certain logs under OICs shows only that there is limited export demand for those specific logs and does not prove that the same is true for every other log in British Columbia.

The AR4 Reishus Report also claims that in the BC interior, the limited volume of export permit applications and the high number of unused authorizations prove that blocking does not have an impact on the BC log supply.[1076] However, this claim ignores the documented effects of blocking and blockmailing on log seller behavior,[1077] including effects that are not directly reflected in export data.

We also find, as we did in the *Lumber V AR3 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.[1078] 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.

[1072] *See SC Paper from Canada – Expedited Review – Final Results* IDM at 47.
[1073] *See AR4* Reishus Report at 70.
[1074] *See* Petitioner Comments on IQR Responses at Exhibit Vol. I-112.
[1075] *See* AR4 Reishus Report at 70-71.
[1076] *Id.* at 82-83.
[1077] *See* Petitioner Comments on IQR Responses at Exhibits Vol. I-96 and 112.
[1078] *See* GOC/GBC LER IQR at 41 and 47.

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I. Purchase of Goods for MTAR Issues

Comment 36: Whether Benefits Under the BC Hydro EPA Program Are Tied to West Fraser's Overall Production

GBC's Comments[1079]

- When a company *sells* electricity to a government, those sales are by definition tied to the sale of the electricity. Pursuant to 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. There is one exception—where a subsidy is tied to production of an input product, Commerce will attribute the subsidy to both the input and downstream products produced by a company.[1080] However, this exception does not apply here.
- Record evidence shows that, at the time of bestowal, BC Hydro tied its EPA payments to West Fraser's *sales of electricity* to BC Hydro.[1081] The amounts paid had nothing to do with West Fraser's production/sale of softwood lumber or with use of an input in such production/sale.
- Commerce neither addressed this evidence in the *Lumber V AR4 Prelim* or *Lumber V AR3 Final*, nor did Commerce identify any evidence that ties the electricity payments at the time of bestowal to the production or sale of subject merchandise.
- West Fraser could not use the same electricity that it sold to BC Hydro as an input in its production of softwood lumber as title to the electricity transferred to BC Hydro. West Fraser separately obtained electricity from the grid to produce subject merchandise. Thus, there is no basis to find that the subsidy at issue is tied to the production of an input product.
- Commerce has objected to these "tying" arguments claiming that such arguments would lead to electricity benefits escaping the remedies of the CVD law. However, the policy consequences that Commerce identifies do not change the attribution regulation or the program facts.
- Commerce's position also mischaracterizes the EPAs as providing generic "electricity subsidies," ignoring the distinction between West Fraser's *sale* of incremental green, wholesale firm electricity under the EPAs and West Fraser's *purchase* of different electricity under BC Hydro's regulated tariff schedule. Where a respondent sells electricity to the government, those sales are by definition tied to the "sale of a particular product," namely the specific type of electricity provided pursuant to the EPAs.
- Commerce's claim 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"[1082] 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 sells the electricity.

[1079] *See* GBC Case Brief Volume V at 18-23.
[1080] *Id*. at 18 (citing 19 CFR 351.525(b)(5)(ii)).
[1081] *Id*. at 19 (citing GBC Non-Stumpage IQR Response Volume II at Exhibit BC-AR4-BCH-34).
[1082] *Id*. at 22 (citing *Lumber V AR3 Final* IDM at Comment 48).

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Petitioner's Rebuttal Comments[1083]

- The GBC raised the same arguments in the prior segments of this proceeding, which Commerce rejected. Commerce should do so again as there is no new information or argument to warrant reconsideration of its determination concerning the countervailability of the EPA program.
- The GBC's insistence that Commerce must attribute the electricity subsidy based on its *sale* rather than production means that Commerce must apply both 19 CFR 351.525(b)(4) (subsidies tied to a particular market) and 19 CFR 351.525(b)(5) (subsidies tied to a particular product). The result is that the subsidy would only be attributed to domestic sales, as a governmental purchase could never benefit exports which are, by definition, purchased by parties who are not the domestic authority. Such an application of the regulations would be impermissible because it would effectively negate the language of the statute with respect to the provision of a good, because such a purchase would never be countervailable.
- Commerce has a developed practice with respect to "tying" subsidies such that subsidies on inputs will be countervailed whenever that input may be used to produce the subject merchandise, regardless of whether that input is actually used to do so.[1084] Further, Commerce does not tie subsidies to particular facilities or entities within a firm and does not trace subsidized inputs to the downstream products for which they are actually used.[1085]
- For subsidies involving electricity, Commerce has consistently determined that such programs are attributable to a company's overall operations.[1086]
- 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 company. No party has argued that electricity is not an input to the production of softwood lumber.

Sierra Pacific's Rebuttal Comments[1087]

- Commerce should again reject arguments that BC Hydro's purchases of electricity are tied to electricity or the production or sale of non-subject merchandise.
- Section 701(a) of the Act requires Commerce to countervail subsidies that are provided "directly or indirectly" to the production of subject merchandise. Electricity is required to operate softwood lumber production facilities, and revenue earned from electricity sales benefits the respondent's overall operations, including subject and non-subject merchandise.[1088]

Commerce's Position: In prior segments of this proceeding as well as *Groundwood Paper from Canada*, Commerce addressed the same arguments raised by the GBC regarding the attribution of benefits provided under the BC Hydro EPA program.[1089] 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

[1083] *See* Petitioner Rebuttal Brief at 237-242.
[1084] *Id*. at 238 (citing *IPA from Israel*, 63 FR at 13630-31).
[1085] *Id*. at 238 (citing *CVD Preamble*, 63 FR at 65403).
[1086] *Id*. at 238 (citing, *e.g.*, *Lumber V AR3 Final* IDM at Comment 48).
[1087] *See* Sierra Pacific Rebuttal Brief at 27.
[1088] *Id*. at 27 (citing *Lumber V Final* IDM at Comment 49).
[1089] *See Lumber V Final* IDM at Comment 49; *see also Lumber V AR1 Final* IDM at Comment 6; *Lumber V AR2 Final* IDM at Comments 51 and 52; *Lumber V AR3 Final* IDM at Comments 47 and 48; and *Groundwood Paper from Canada Final* IDM at Comment 41.

misunderstanding of the CVD law.[1090] The GBC has not presented any new evidence or arguments in the instant review to warrant a change in Commerce's finding that the benefits from the BC Hydro EPA program are appropriately attributed to West Fraser's total sales.

If, as the GBC continues to argue, a subsidy provided to the sale of electricity is tied to the electricity, then electricity subsidies would escape the remedies provided under the CVD law. Under the premise of their argument, Commerce would be unable to countervail programs such as electricity subsidies, water subsidies, and land subsidies, because the benefits from the programs would only benefit electricity, water, or land. This argument is at odds with 30 years of case precedent with respect to electricity alone.[1091] Within this proceeding, Commerce has consistently attributed the benefits from electricity subsidies to all products.[1092] Furthermore, the attribution of MTAR benefits over sales of all products is consistent with case precedent. For example, in *CRS from Korea*, the benefit conferred from the purchase of electricity for MTAR was attributed over the respondents' total sales.[1093]

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.[1094] 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 the company. No party to this administrative review has contested the finding that electricity is consumed in the production of softwood lumber. As the GBC noted, West Fraser obtains electricity from the grid to power its facilities to produce subject merchandise[1095] and that electricity is not distinguished between electricity supply sources (*e.g.*, electricity generated from biomass vs. hydro, wind, or

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[1090] *Id.*

[1091] *See, e.g., Flowers from Mexico*, 49 FR at 15009; *see also Textile Mill Products and Apparel from Singapore*, 50 FR at 9842; *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; *Wire Rod from Trinidad and Tobago*, 62 FR at 55006; *Wire Rod from Venezuela*, 62 FR at 55021; *CTL 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 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.

[1092] *See, e.g., Lumber V AR3 Prelim* PDM at 48 (BC Hydro Power Smart: Energy Manager), 50 (New Brunswick's LIREPP), 51 (IESO Demand Response), 52 (IESO IEI), 60-62 (Hydro-Québec's Special L Rate for Industrial Customers Affected by Spruce Budworm, Hydro-Québec's IEO, Hydro-Québec's EDL), and 79-82 (BC Hydro EPAs, GOO Purchase of Electricity for MTAR under CHP III PPA, GOQ Purchase of Electricity for MTAR under PAE 2011-01), unchanged in the *Lumber V AR3 Final*.

[1093] *See CRS from Korea* IDM at 37. The final determination was based upon AFA; *see also Groundwood Paper from Canada Final* IDM at Comment 41; and *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).

[1094] *See CVD Preamble*, 63 FR at 65400.

[1095] *See* GBC Case Brief Volume V at 20.

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natural gas) or between generation source ownership (*e.g.*, BC Hydro vs. IPP).[1096] Therefore, the fact that title to the electricity sold by West Fraser under the EPAs transferred to BC Hydro is irrelevant and has no bearing on whether the electricity benefits are tied or untied subsidies.

To the extent that West Fraser receives more revenue than it otherwise would have earned from the sale of electricity to BC Hydro, Commerce will attribute that benefit to West Fraser's total sales as directed 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 GBC, Commerce would effectively negate the language of the statute with respect to the provision of a subsidy.

Under Commerce's regulations, there is an exception 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.[1097] 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 GBC) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy (here, the purchase of electricity for MTAR under the EPA program). This analysis has been previously upheld by the CIT.[1098]

Under the EPA program, BC Hydro's aim is to secure long-term electricity supply with long-term price certainty from IPPs to meet customer electricity demand.[1099] The GBC argues that, under the program, BC Hydro tied its payments to West Fraser's sales of electricity to BC Hydro and point to the fact that "BC Hydro pays West Fraser to deliver this electricity to BC Hydro's transmission and distribution systems."[1100] Contrary to the parties' argument, however, neither the Bioenergy Phase 2 Call request for proposals nor the EPAs indicate that BC Hydro's purchase of electricity was tied to West Fraser's sales of electricity, or any other good. Notably, the lack of any language or criteria in that documentation tying the benefits of the program to the participant's sale of electricity indicate that the BC Hydro EPA program provides untied subsidies and, thus, are appropriately attributed to West Fraser's total sales.[1101] Moreover, as case precedent demonstrates (*see supra*), Commerce has never found the benefits under an electricity subsidy program to be tied to any particular product.

[1096] *See* GBC Non-Stumpage IQR Response Volume II at 50.
[1097] *See CVD Preamble*, 63 FR at 65403.
[1098] *See, e.g., Essar Steel Ltd. v. U.S.* 678 F. 3d at 1296.
[1099] *See* GBC Non-Stumpage IQR Response Volume II at 49.
[1100] *See* GBC Case Brief Volume V at 19 (citing the EPAs (section 3.1) submitted in the GBC Non-Stumpage IQR Response Volume II at Exhibit BC-AR4-BCH-34).
[1101] *See* GBC Non-Stumpage IQR Response Volume II at Exhibits BC-AR4-BCH-34; BCH-58; and BCH-83.

For all the above stated reasons, there is no justification for a change to Commerce's finding that the benefits from a company's sale of electricity to the government are appropriately attributed to the sale of all products of the company.

Comment 37: Whether Commerce Properly Calculated the Benefit Conferred Under the BC Hydro EPAs

GBC's Comments[1102]

- Commerce is to determine the adequacy of remuneration in relation to prevailing market conditions (*i.e.*, price, quality, availability, marketability, transportation, and other conditions of purchase or sale) for the goods being purchased in the country under investigation. However, nowhere in its preliminary finding did Commerce justify the comparison of prices for different electricity goods that are produced and sold in different markets to calculate the benefit.
- Commerce cannot rely on the prices West Fraser paid to BC Hydro for retail regulated non-firm energy as a benchmark to determine whether West Fraser's sales under the EPAs conferred a benefit because BC Hydro's tariff rates are not market-determined and do not reflect prices for the same product in the same market as the incremental green, wholesale firm electricity sold by West Fraser under the EPAs to BC Hydro.[1103]
- The Rosenzweig Report concludes that a comparison of the purchase price in the EPAs to any benchmarks would assume an element of interchangeability between different markets that is not accurate in the context of electricity.[1104] BCUC's retail regulated tariff rate schedules are determined by applying standard ratemaking principles (*i.e.*, rates based on average, depreciated costs of electricity generations from all technologies) annually, whereas the EPA prices are set by open, competitive bidding (*i.e.*, Bioenergy Phase 2 Call) pursuant to agreement. Further, "firm" and "non-firm" energy are distinct products because firm energy, sold wholesale, is not interruptible, but non-firm energy, sold retail, is interruptible.
- Despite the differences of electricity, Commerce continues to erroneously find that "electricity is electricity" and compares different products sold in distinct markets which are not fungible.
- Given that the price at which West Fraser sold electricity to BC Hydro is market-based, the EPAs provided no benefit to West Fraser, and Commerce does not need a benchmark.
- Should Commerce find that its benefit analysis requires a benchmark, then it has three options: (1) average incremental green, wholesale firm energy prices from other calls for power in British Columbia (*e.g.*, Bioenergy Phase 1 and Clean Power Calls); (2) prices for incremental green, wholesale firm energy sold under the California Bioenergy Marketing Adjustment Tariff program; and (3) pricing data for incremental green, wholesale firm energy from a bilateral contract between Pacific Gas & Electric Company and DTE Stockton, LLC.[1105]
- In the *Lumber V AR3 Final*, Commerce declined to consider these alternative benchmarks stating that it is not necessary to determine a benchmark using an LTAR tiered approach when

[1102] *See* GBC Case Brief Volume V at 23-37.
[1103] *Id*. at 27-32 (citing GBC Non-Stumpage IQR Response Volume II at II-45 to II-52 and Exhibits BC-AR4-BCH-34 and BCH-48).
[1104] *Id*. at 30 (citing GBC Non-Stumpage IQR Response Volume II at Exhibit BC-AR4-BCH-48 (p. 13-18)).
[1105] *Id*. at 33-37 (citing GBC Non-Stumpage IQR Response Volume II at II-50 to II-58 and Exhibits BC-AR4-BCH-34, BCH-48, and BCH-58; and West Fraser Electricity Benchmark Comments at Exhibits WF-AR4-NFI-7 and NFI-11.

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applying the benefit-to-the recipient standard.[1106] However, Congress directed Commerce to consider such benchmarks in its benefit analysis[1107] and, therefore, Commerce cannot ignore the prevailing market conditions for incremental green, wholesale firm electricity no matter the analytic framework it believes appropriate under 19 CFR 351.503(b).

West Fraser Comments[1108]

- The electricity "good" that West Fraser provides to BC Hydro pursuant to the EPAs is fundamentally different than the electricity "good" that West Fraser purchases from BC Hydro.
- Commerce's reductionist "electricity is electricity" approach does not comply with its statutory responsibility to determine adequacy of remuneration in relation to prevailing market conditions for the good being provided.[1109]
- While the characteristics of the electricity may be the same as a matter of certain physical traits, other attributes of electricity involve the prevailing market conditions that are fundamental to the pricing of the electricity that West Fraser sold to BC Hydro.
- Additional circumstances confirm that the "good" that West Fraser sold to BC Hydro is not the same as the "good" that West Fraser purchased from BC Hydro. First, the incremental green, wholesale firm electricity that West Fraser sold to BC Hydro includes elements of independent economic value[1110] which are not part of BC Hydro's retail electricity sold to West Fraser. Second, there is no evidence that the same electricity—incremental green, wholesale firm energy—is traded back and forth between West Fraser and BC Hydro (*i.e.*, that the GBC is both selling a good to, and purchasing that good back from West Fraser) in one, singular transaction. Rather, West Fraser's sales to BC Hydro and its purchases from BC Hydro are separate transactions in which one does not depend on the other.
- Commerce needs to apply a benchmark based on the type of electricity that West Fraser sold to BC Hydro pursuant to the EPAs (*i.e.*, incremental green, wholesale firm energy), and not rely on the retail prices that BC Hydro charged West Fraser for a different type of electricity under a "benefit-to-the-recipient" approach.
- Similar to the *Lumber V AR3 Final*, there are market-determined benchmark data on the record that Commerce should consider as tier-two ("available to purchasers" in British Columbia) electricity benchmarks, within the meaning of 19 CFR 351.511(a)(2)(ii), for the final—California Bioenergy Marketing Adjustment Tariff and pricing data from a bilateral contract between Pacific Gas & Electric Company and DTE Stockton, LLC.[1111]
- Each alternative is a market-based benchmark for similarly sourced incremental green, wholesale firm energy (including the elements of independent economic value) that is comparable to the energy that West Fraser sells to BC Hydro under the EPAs, and provides a better measure of whether the payments that West Fraser received from BC Hydro under the EPAs were for MTAR than the bundled electricity rates that BC Hydro charged West Fraser.

[1106] *Id*. at 37 (citing *Lumber V AR3 Final* IDM at Comment 46).
[1107] *Id*. (citing section 771(5)(E) of the Act).
[1108] *See* West Fraser Case Brief at 13-33.
[1109] *Id*. at 17 (citing section 771(5)(E)(iv) of the Act).
[1110] The elements of independent economic value are business proprietary information. *See* West Fraser Case Brief at 21-26; *see also* GBC Case Brief Volume V at 14, 15, 17, 23, 28, and 31.
[1111] *See* West Fraser Electricity Benchmark Comments at Exhibits WF-AR4-NFI-1 to NFI-4, NFI-7, NFI-11, and NFI-31 through NFI-34.

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Petitioner Rebuttal Comments[1112]

- The respondents' arguments, which Commerce considered and rejected in prior segments of this proceeding, originate from one basic dispute—the definition of the good that was purchased by the GBC. However, there is no evidence demonstrating that the electricity purchased by BC Hydro is any different from the electricity that BC Hydro sold to West Fraser. Further, neither the parties nor the Rosenzweig Report provide any explanation as to how biomass-generated electricity, as a good, bears any unique physical or qualitative characteristics such that it is a different product from electricity generated from other sources.[1113]
- Whether BC Hydro's purchase of electricity from West Fraser is a separate transaction from its sale of electricity to West Fraser does not alter the fact that BC Hydro is both *selling electricity to and purchasing electricity from* West Fraser.
- The GBC itself stated that BC Hydro does not trace the source of individual units of electricity and that energy supplied to the BC Hydro system by IPPs is treated the same as energy supplied to the system by BC Hydro-owned generation resources.[1114]
- Given that the record shows the GBC buys and sells a single good— electricity—Commerce properly determined that the relevant conditions of purchase and sale in this instance are: (1) West Fraser purchased, consumed, and sold the same good; and (2) the GBC was acting on both sides of the transaction for the same good.
- Arguments that Commerce must account for costs in its benefit analysis relate to the supply side considerations of the specific types of electrical generation for which the GBC chooses to pay and incentivize. The statute, however, makes clear that Commerce only needs to take into consideration certain enumerated, narrowly defined "costs" when calculating benefits.[1115] West Fraser's alleged "costs" incurred for receiving the subsidy under the EPA program do not fall into any of the enumerated categories.
- Whether the GBC's procurement process is market-based and the existence of different pricing models in which sales and purchases of electricity are set are immaterial under the benefit-to-the-recipient standard which examines the difference between the price at which a government provided the good and the price at which the government purchased the same good. Commerce thus properly determined that, under section 771(5)(E) of the Act, the benefit conferred under the program is the difference between the price at which the GBC provided electricity and the price at which the GBC purchased electricity.
- The parties repeat the same argument from the *Lumber V AR3 Final* that Commerce should use the average firm energy prices from the EPAs pursuant to BC Hydro's Bioenergy Phase I and Clean Power Calls as a benchmark. However, Commerce has not narrowed the subsidy under investigation to only those EPAs pursuant to BC Hydro's "Bioenergy Phase Calls." The subsidy in question is BC Hydro's EPAs, regardless of the call process. Thus, prices set in other EPAs are not appropriate as a benchmark because they also involve the GBC's purchase of electricity and do not capture the price differential at which the government buys and sells the same good.

[1112] *See* Petitioner Rebuttal Brief at 242-251.
[1113] *Id*. at 245 (citing GBC Non-Stumpage IQR Response Volume II at Exhibit BC-AR4-BCH-48).
[1114] *Id*. at 246-247 (citing GBC Non-Stumpage IQR Response Volume II at 40 and 55).
[1115] *Id*. at 248 (citing section 771(6) of the Act).

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- The other energy transactions are also not appropriate benchmarks because such transactions in California do not provide a valid comparison for identifying benefits that West Fraser received from the GBC. Commerce should continue to measure the benefit to West Fraser 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—*i.e.*, the benefit-to-the-recipient standard.

Sierra Pacific Rebuttal Comments[1116]

- In prior segments, Commerce considered and rejected similar arguments regarding the appropriate benchmark for government purchases of electricity for MTAR. As previously explained, Commerce has chosen not to promulgate regulations concerning purchase of goods for MTAR.[1117]
- Because the scenario where the government is both the sole purchaser and seller of the good in question is unique, Commerce follows the principle outlined in 19 CFR 351.503(b), namely that a benefit exists where a firm pays less for its inputs than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn.
- When applying the benefit-to-the-recipient standard, Commerce is not required to undertake the same benchmarking analysis set forth in 19 CFR 351.511(a)(2) for the provision of goods or services for LTAR. Thus, Commerce did not err in failing to account for prevailing market conditions in analyzing BC Hydro's purchase of electricity from West Fraser.

Commerce's Position: Commerce previously addressed these same arguments raised by the GBC and West Fraser in the prior administrative reviews.[1118] Specifically, in the *Lumber V AR1 Final*, we explained the interpretive framework applied in conducting a benefit analysis where the government is both the purchaser and provider of a good.[1119] There are no new arguments on the record of this review to cause Commerce to reconsider its conclusion that it is appropriate and reasonable to analyze the benefit conferred from the sale of electricity by a company to the 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 BC Hydro's purchase of electricity for MTAR program in these final results and apply as the benchmark BC Hydro's tariff schedule rates paid by West Fraser to determine the benefit under the BC Hydro EPA program in this administrative review.

During the POR, West Fraser sold electricity to BC Hydro under two EPAs and also purchased electricity from BC Hydro for its facilities. We find that an electricity tariff benchmark which allows us to compare the prices that the utility charged West Fraser for electricity to the rates that the utility paid West Fraser when purchasing electricity under the EPAs best reflects the "benefit-to-the-recipient" standard that is set forth under section 771(5)(E) of the Act and the SAA,[1120] and conforms with the benefit language codified within 19 CFR 351.503(b).

[1116] *See* Sierra Pacific Rebuttal Brief at 27-29.
[1117] *Id.* at 28 (citing, *e.g.*, *Lumber V AR1 Final* IDM at Comment 7).
[1118] *See Lumber V AR1 Final* IDM at Comment 50; *see also Lumber V AR2 Final* IDM at Comment 50; and *Lumber V AR3 Final* IDM at Comment 46.
[1119] *See Lumber V AR1 Final* IDM at Comment 7.
[1120] *See* SAA at 927.

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The respondents assert that the prices at which BC Hydro, a government utility, purchases electricity under the EPAs are consistent with "market principles" and, thus, the EPAs provided no benefit to West Fraser. The respondents also argue that if Commerce finds that its benefit analysis requires a benchmark, then it must choose a benchmark price for the same type of electricity sold under the EPAs (*i.e.*, incremental green, wholesale firm energy) and not rely on the BCUC's retail regulated tariff schedule rates which are not market-determined and do not reflect prices for the same good and market as the incremental green, wholesale firm electricity sold by West Fraser under the EPAs to BC Hydro. The respondents state that there are three alternative benchmark pricing data on the record for Commerce's consideration under 19 CFR 351.511(a)(2). Specifically, the respondents claim that a more appropriate benchmark would be winning bids from other clean power calls under which BC Hydro purchases energy from IPPs pursuant to long-term EPAs. Alternatively, the respondents state that Commerce can rely on pricing for incremental green, wholesale firm energy sold under the California Bioenergy Marketing Adjustment Tariff program or pursuant to a bilateral contract between Pacific Gas & Electric Company and DTE Stockton, LLC.

As an initial matter, we continue to reject the argument that West Fraser's sales of electricity to BC Hydro under the EPAs are necessarily adequate such that no benchmark analysis is needed because they result from a competitive and open bidding process. As the GBC recognizes, under its clean energy policies, BC Hydro seeks to specifically acquire clean and renewable energy from sources within British Columbia to meet the power demand of customers.[1121] The GBC reported that the EPAs at issue in this proceeding were part of the government's attempt to fulfill that policy objective. The GBC stated that the EPAs "were each entered into during a time in which BC Hydro had identified a need for new resources to bridge the predicted energy supply shortfall."[1122] As of April 1, 2022, BC Hydro had 127 EPAs.[1123] Because the GBC's clean energy 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 the respondents' argument that "incremental 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.

Commerce's analysis of the appropriate benchmark to apply to measure the benefit under the EPA program is based upon 19 CFR 351.503(b), and not a tiered analysis set forth in 19 CFR 351.511 for the government provision of a good or service. Commerce has previously determined not to apply the framework laid out in section 351.511(a)(2) of Commerce's regulations given the unique facts of the transaction under examination in this review. BC Hydro's presence on "both sides" of the electricity transaction with West Fraser 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

[1121] *See* GBC Non-Stumpage IQR Response Volume II at 44-49.
[1122] *Id.* at 48.
[1123] *Id.*

procurement program at the time of the *CVD Preamble*,[1124] 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.[1125] 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.[1126] 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.[1127]

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 unique 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.[1128] During the POR, West Fraser purchased electricity from BC Hydro at the retail regulated tariff rate schedules and sold electricity to BC Hydro under the EPA Program at a contractually-set price.[1129] The benefit to West Fraser is the difference between these two prices. We thus 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 retail regulated tariff schedule rates, which West Fraser paid to BC Hydro for electricity. Consequently, it is not necessary for us to consider the respondents' alternative benchmarks and determine a benchmark using an LTAR "tiered" approach as 19 CFR 351.511(a)(2) is not applicable in this circumstance.

Further, any costs incurred to generate electricity sold under the EPA program is irrelevant to our analysis. The benefit-to-the recipient 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.

Additionally, we continue to disagree with the GBC and West Fraser that Commerce is comparing "different" goods in its benchmark analysis, *i.e.*, comparing retail regulated non-firm energy to incremental green, wholesale firm energy. There is no evidence that electricity is differentiated based upon how it is sourced or sold. In fact, record evidence shows that BC Hydro makes no distinction between sources of electricity generated. The GBC reported that:

[1124] *See CVD Preamble*, 63 FR at 65379.
[1125] *Id.*
[1126] *Id.*
[1127] *Id.*
[1128] *See Lumber V AR1 Final* IDM at Comment 7.
[1129] *See* West Fraser Non-Stumpage IQR Response Volume II at 133-142 and all referenced exhibits therein.

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> BC Hydro does not trace the source of individual units of electricity–*i.e.*, electrons to the individual points of consumption. BC Hydro continuously balances electricity supply and demand for the system as a whole. Thus, the electricity produced from biomass cogeneration facilities that is supplied to BC Hydro is not traced to particular customers that purchase electricity from BC Hydro.[1130]

The GBC also reported that BC Hydro does not distinguish electricity prices to consumers based on the fuel source of electricity. Specifically, the GBC stated that:

> The energy supplied to the BC Hydro system by IPPs is treated the same as energy supplied to the system by BC Hydro-owned generation resources. A customer's load simply draws energy from the BC Hydro system, and BC Hydro charges the customer for the energy consumed at the applicable BCUC-approved rate. BC Hydro's electricity sales do not distinguish between electricity supply sources (*e.g.*, electricity generated from biomass vs. hydro, wind, or natural gas) nor do its electricity sales distinguish between generation resource ownership (*e.g.*, BC Hydro vs. IPP). In selling electricity to a customer, BC Hydro does not allocate a specific generation resource to any specific customer.[1131]

The GBC's statements are corroborated by the tariff rate schedules which indicate that there is no distinction between types of electricity.[1132] Within the retail tariff rate schedules, there is no disclosure as to the source from which the electricity, sold by BC Hydro, is generated. This evidence indicates that electricity is electricity regardless of the source from which it was generated. Similar to prior reviews, 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. We thus continue to find no basis to the argument that the incremental green, wholesale firm electricity that West Fraser sells to BC Hydro is somehow different than the retail non-firm electricity that BC Hydro sells to West Fraser. Electricity, regardless of its fuel source or market, is electricity. As such, we find no merit to the arguments that the electricity prices paid by West Fraser cannot be used as a benchmark for the EPA program.

The respondents continue to claim that the Rosenzweig Report disproves Commerce's description of the fungibility of electricity. We remain steadfast that their claim is unconvincing. 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.[1133] 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.

[1130] *See* GBC Non-Stumpage IQR Response Volume II at 40.
[1131] *Id.* at 55.
[1132] *Id.* at Exhibits BC-AR4-BCH-32 and BCH-33.
[1133] *See* Rosenzweig Report at 13-18.

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For all the aforementioned reasons, 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). The appropriate benchmark to calculate the benefit that West Fraser received from the sale of electricity to BC Hydro is the price that West Fraser paid to BC Hydro for electricity and use of this benchmark is fully consistent with section 771(E) of the Act. As such, Commerce properly calculated the benefit conferred under the BC Hydro EPA program.

J. Grant Program Issues

Federal

Comment 38: Whether the Green Jobs Program Is Countervailable

GOC's Comments[1134]

- In the *Lumber V AR4 Prelim*, Commerce neither explained nor cited the record for what it meant by "cleantech" industries and how this alleged grouping of industries applies to the Green Jobs program and meets the statutory requirement for a finding of *de jure* specificity.[1135]
- There is no information on the record indicating that the authority or the legislation pursuant to which the authority operates expressly limits access to the Green Jobs program to an enterprise or industry.
- The Green Jobs program does not relieve any firm of an obligation that it normally would incur, and thus, does not confer a benefit under 19 CFR 351.513(a).
- The fifty-percent wage match offered through the Green Jobs program does not relieve companies of obligations they would normally incur. The program does not provide funding for wages or training for existing employees or for jobs that would otherwise be staffed in the ordinary course of the company's business. The program's funding supports training unemployed and disadvantaged youth to help prepare them for employment in the workforce, as opposed to training existing employees.[1136]
- The program is similar to the Funds for Job Creation program found non-countervailable in the *Lumber IV Final*.[1137] The Funds for Job Creation program was created to help train unemployed individuals and to foster their integration into regular employment. Additionally, in the *Lumber IV AR1 Final*, Commerce found the GOC's Human Resources & Skills Development Worker Assistance Programs to be non-countervailable because lumber producers did not have an obligation to retrain unemployed workers.[1138]

[1134] *See* GOC Case Brief Volume II at 98-102.
[1135] *Id*. at 99 (citing *Lumber V AR4 Prelim* PDM at 36-37).
[1136] *Id*. at 100 (citing GOC Non-Stumpage IQR Response Volume I at 61).
[1137] *Id.* at 101 (citing *Lumber IV Final* IDM at 151).
[1138] *Id*. at 101-102 (citing *Lumber IV AR1 Final* IDM at 30).

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Petitioner's Rebuttal Comments[1139]

- In its argument that Commerce's benefit analysis is inconsistent with 19 CFR 351(a), the GOC overlooks the fact that even though there were no obligations to hire any workers under the Green Jobs program, Canfor did hire workers under the program.[1140]
- Were it not for the wage-matching funding provided by the GOC under the program, the companies would be solely responsible for paying the entirety of the workers' wages.
- The program is a prime example of the benefit that exists pursuant to 19 CFR 351.513(a); the obligation is not the hiring of these workers, but the obligation to pay their employees' wages.
- The comparison to the Funds for Job Creation program in the *Lumber IV Final* is misleading. The Funds for Job Creation offers charitable training to prepare unemployed individuals for potential job opportunities in the forest products industry,[1141] while the Green Jobs program provides wage-matching funds for actual employees in the green jobs sector.
- Commerce previously found programs similar to the Green Jobs Program to be countervailable, such as the New Brunswick Workforce Expansion Program, the Canada-New Brunswick Job Grant Program, and the Atlantic Job Creation Tax Credit Program.[1142]

Commerce's Position: Regarding the GOC's specificity arguments, Commerce made an error in the *Lumber V AR4 Prelim* write-up relating to the specificity of this program. In the *Lumber V AR3* Post-Prelim Memorandum, Commerce preliminarily determined that the Green Jobs program was *de jure* specific because the program was limited, by law, to certain enterprises or industries because eligibility is restricted to the forestry sector.[1143] This specificity determination was not raised by parties in their briefs and, therefore, remained unchanged in the *Lumber V AR3 Final*. In the *Lumber V AR4 Prelim*, Commerce stated that there was no new record evidence or argumentation relating to the Green Jobs program on the record of the instant review that would lead Commerce to reconsider its specificity determination from *Lumber V AR3*, but inadvertently then stated that the Green Jobs program was specific because eligibility was limited, by law, to companies operating in the "cleantech" sector.[1144] This was a mistake; the *Lumber V AR4 Prelim* should have restated Commerce's finding from *Lumber V AR3* that the record continues to establish that eligibility for the Green Jobs program is limited, by law, to the forestry sector.[1145] Accordingly, we determine for these final results that the Green Jobs program is *de jure* specific under section 771(5A)(D)(i) of the Act because it is limited, by law, to the forestry sector. Therefore, the parties' augments and comments regarding specificity and the 'cleantech' sector are moot.

With regard to benefit, the GOC raised the same arguments in the *Lumber V AR3 Final*.[1146] We found the GOC's arguments unpersuasive then, and do so again here. We, thus, continue to

[1139] *See* Petitioner Rebuttal Brief at 145-149.
[1140] *Id*. at 147 (citing GOC Non-Stumpage IQR Response Volume I at 66).
[1141] *Id*. at 148 (citing *Lumber IV Final* IDM at 151).
[1142] *Id*. at 149 (citing *Lumber V Final* IDM at Comments 56 and 62; and *Lumber V AR1 Final* IDM at Comment 70).
[1143] *See Lumber V AR3* Post-Prelim Memorandum at 7.
[1144] *See Lumber V AR4 Prelim* PDM at 36.
[1145] *See Lumber V AR3* Post-Prelim Memorandum at 7; *see* GOC Non-Stumpage IQR Response at Exhibit GOC-AR4-ESDC-GreenJobs-3; and Canfor Non-Stumpage IQR Response at Exhibit B-5 at 1.
[1146] *See Lumber V AR3 Final* IDM at Comment 55.

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disagree with the GOC that the wage-matching funds under the Green Jobs program do not confer a benefit to Canfor.

To support its claim that the Green Jobs program does not provide a benefit, the GOC relies on 19 CFR 351.513(a), which states that, "{i}n the case of a program that provides assistance to workers, a benefit exists to the extent that the assistance relieves a firm of an obligation that it normally would incur."[1147] However, the GOC conflates two aspects of the program: (1) the program developed by PLT Canada that facilitates the creation of "green" positions, and the hiring coordination with participating companies; and (2) the obligation that every firm has of paying the wages of the workers who are hired.

Canfor voluntarily hired young individuals with the express purpose of providing work experience and developing their skills on the job.[1148] Canfor incurred payroll costs in the form of the remaining 50 percent of wages not covered by the program.[1149] Regardless of the objectives set forth by PLT Canada, the underlying facts remain the same; Canfor participated in a program in which it hired young individuals for short-term employment, and half of the workers' wages were reimbursed by the GOC. In the absence of the funding that accompanies the worker placement and hiring, Canfor would be responsible for the other half of the hired workers' wages.

We also disagree that programs considered in *Lumber IV* support the GOC's position. The Funds for Job Creation program, found not countervailable in the *Lumber IV Final*, reimbursed the costs of training unemployed individuals.[1150] That is, the trainees were not employees of the company receiving the reimbursement, and the company had no obligation to provide training to non-employees. Here, under the Green Jobs program, Canfor hired individuals who met the criteria for the program, thus creating an obligation to pay the wages of such individuals. Similarly, regarding the GOC's Human Resources & Skills Development Worker Assistance program in the *Lumber IV AR1 Final*, Commerce determined that sawmills in Canada are not obligated, through law or contract, to provide retraining assistance to individuals who are unemployed.[1151] Rather than bolstering the GOC's argument, these two examples further support our view that Canfor *does* have an obligation to pay workers it hires, and that the wage subsidies represent a benefit to Canfor. During the time period in which the individuals were engaged in gaining work experience and on-the-job training at Canfor, they were paid wages; *i.e.*, such individuals were not unemployed.

We agree with the petitioner that the obligation lies in the responsibility of an employer to pay its employees' wages, and the benefit exists to Canfor in the form of wage subsidy reimbursements. Commerce has countervailed several programs in previous segments of this proceeding that

[1147] *See* 19 CFR 351.513(a).
[1148] *See* GOC Non-Stumpage IQR Response Volume I at 61and 66; *see also* Canfor Non-Stumpage IQR Response at Exhibit B-5 (p. 1-2).
[1149] *See* GOC Non-Stumpage IQR Response Volume I at Exhibit GOC-AR4-ESDC-GreenJobs-3 "Project Learning Tree Canada 2020 Green Jobs Funding Information," (p. 1 and 4).
[1150] *See Lumber IV Final* IDM at 151.
[1151] *See Lumber IV AR1 Final* IDM at 135.

provided subsidies for training employees, such as the Canada-Alberta Job Grant,[1152] and the BC ETG / Canada-BC Job Grant.[1153] Accordingly, we continue to find that funding under the Green Jobs program confers a benefit under 19 CFR 351.513(a) and section 771(5)(E) of the Act. Accordingly, Commerce continues to find that the Green Jobs program is countervailable.

Alberta

Comment 39: Whether the AESO Load Shedding Program Is Countervailable

GOA's Comments[1154]

- The load-shedding activities performed by West Fraser are a service provided to AESO, and the statute excludes the purchase of a service by a government entity from the definition of "financial contribution" and "benefit."[1155] The SCM Agreement also omits the purchase of services from the definition of a subsidy.[1156]
- The *CVD Preamble* explains 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."[1157] Further, the CAFC has confirmed that "the purchase of a service" is not contemplated in the statute as being a subsidy.[1158]
- The LSSi program compensates participants for load shedding services to the government, *i.e.*, disconnecting from Alberta's electrical system immediately upon the detection of a dip in system frequency to prevent a system failure. In the *Lumber V AR2 Prelim*, Commerce acknowledged that LSSi providers were offering a service, noting that the LSSi involved the "provision of load shedding" to AESO.[1159] Despite that finding describing an exchange of money for the provision of a service, Commerce found the program to be a "direct transfer of funds" and treated the payment as a grant.[1160] Commerce then repeated its error in the *Lumber V AR3 Final* and *Lumber V AR4 Prelim*.[1161]
- 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" amounting to a grant had been made.[1162] The court further stated that to be a grant, the transfer of funds to a respondent must be "gift-like."[1163]

[1152] *See Lumber V AR2 Final* IDM at Comment 61.
[1153] *See Lumber V AR1 Final* IDM at Comment 58.
[1154] *See* GOA Case Brief Volume IV.B at 4-16. Within its case brief, West Fraser incorporates by reference the arguments made in the GOA's case brief that this program is not countervailable. *See* West Fraser Case Brief at 74.
[1155] *Id*. at 5-6 (citing sections 771(5)(D)(iv) and 771(5)(E) of the Act).
[1156] *Id*. at 6-7 (citing SCM Agreement at Article 1.1(iii) ("a government provides goods or services other than general infrastructure, or purchases goods.")).
[1157] *Id*. at 6-7 (citing *CVD Preamble*, 63 FR at 65355).
[1158] *Id*. at 7 (citing *Eurodif v. U.S.*, 411 F.3d at 1365 ("the plain language of Section 1677(5) does not allow for the purchase of services by a government entity from another entity to be considered a subsidy.")).
[1159] *Id*. at 10-11 (citing *Lumber V AR2 Prelim* PDM at 45-46).
[1160] *Id*. at 11 (citing *Lumber V AR2 Final* IDM at Comment 59).
[1161] *Id*. (citing *Lumber V AR3 Final* IDM at Comment 59; *see also Lumber V AR4 Prelim* PDM at 37-38).
[1162] *Id*. at 12 (citing *Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d at 1381).
[1163] *Id*. (citing *Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d at 1383).

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- The U.S. government itself 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."[1164]
- The record shows that AESO received a service of value from West Fraser. Therefore, the LSSi payments to West Fraser cannot be characterized as a "gift-like" transfer of funds.
- Commerce's finding that the LSSi program is *de facto* specific is not supported. The record shows that the number of companies selected as providers is commensurate with the number of companies that participated in the bidding process, and that these firms encompass an array of industries.
- Any market participant that meets the criteria outlined by AESO may bid to provide load shedding to AESO.[1165] The largest load shedding providers included a range of industries, and payments for load shedding were not exclusive to the forestry industry.[1166]
- Commerce erred in determining that the "benefit" was equal to the full payment AESO made to West Fraser. Treating the entire amount of payment as a benefit ignored obligations that West Fraser undertook as an LSSi provider, the costs of fulfilling those obligations, and the value of services to AESO.
- If the program is construed to provide a financial contribution, then it must be understood as involving AESO's purchase of something of value to it. Thus, Commerce would need to determine whether AESO paid MTAR in order to find a benefit.

Petitioner's Rebuttal Comments[1167]

- Commerce previously considered and rejected the GOA's arguments that electricity curtailment programs are services and that payments received by participants are for providing a service to the grid operator.[1168]
- Commerce has found that electricity is a good, not a service, and a government's attempts to incentivize firms to reduce electricity consumption through payments is countervailable.[1169]
- In its description of the LSSi program, the GOA states that it provides incentives, as participants are compensated for taking part whether AESO utilizes a load shedding agreement or not.[1170]
- Under section 771(5)(D)(i) of the Act, the direct transfer of funds from a government to a company constitutes a financial contribution. Nowhere in the statute is Commerce compelled to consider the real or potential benefits obtained by a government by having companies participate in a subsidy program, and Commerce has acknowledged this fact in prior reviews.[1171]

[1164] *Id.* at 12-13 (citing United States November 30, 2018 First Submission, US – Softwood Lumber V at para. 619).
[1165] *Id.* at 14 (citing GOA October 12, 2022 Non-Stumpage SQR Response at 12 and Exhibit AB-AR4-AESO-15).
[1166] *Id.* (citing GOA October 12, 2022 Non-Stumpage SQR Response at Exhibits AB-AR4-AESO-24 and AESO-26).
[1167] *See* Petitioner Rebuttal Brief at 183-187.
[1168] *Id.* at 185 (citing *Lumber V AR3 Final* IDM at Comment 4).
[1169] *Id.* (citing, *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 2014* IDM at Comment 5 (stating "Cebi Enerji produces and sells a good (*i.e.*, electricity)").
[1170] *Id.* at 186 (citing GOA October 12, 2022 Non-Stumpage SQR Response at 4).
[1171] *Id.* at 186-197 (citing *Lumber V AR2 Final* IDM at Comment 89).

- The fact is AESO paid West Fraser for its participation in the LSSi program. That amount constitutes a direct transfer of funds from the GOA to West Fraser and is countervailable under the law. The LSSi program should not be found to constitute payments in return for services rendered.

Commerce's Position: The arguments presented by the GOA are the same as those raised in prior administrative reviews and rejected by Commerce.[1172] We thus continue to find that AESO's payments to West Fraser for load shedding constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act. 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 purchase of a service, and thus, not countervailable. The GOA's reliance on this point is misplaced concerning the load shedding payments at issue. In *Government of Sri Lanka v. U.S.*, a foreign producer provided an interest-free loan to the government.[1173] Here, AESO made payments to West Fraser for disconnecting from the electrical system when called upon to avoid a load imbalance in the system. Thus, we disagree that the load shedding at issue equates to the performance of a service by a company for the government-owned utility. As explained below, we continue to find that electricity curtailment programs are grants, and thus, constitute a financial contribution.

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.*, the curbing of electricity usage), and therefore, do not constitute a "gift-like transfer"[1174] (*i.e.*, a grant) that would result in the provision of a financial contribution. Commerce previously rejected this argument, most recently, in the *Lumber V AR3 Final*.[1175] There is no legal basis for the argument that grants are limited to "gifts" bestowed without consideration. 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… ." Pursuant to 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) sets 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.[1176] The GOA references a statement regarding grants that the United States made in a WTO panel submission.[1177] However, statements made to a WTO panel that is reviewing a Commerce determination for accordance with the SCM Agreement do not change U.S. law. As explained above, the Act and Commerce's regulations do not limit grants to "gifts" bestowed without consideration.

[1172] *See, e.g., Lumber V AR3 Final* IDM at Comment 58, 59, 60, and 61.
[1173] *See Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d at 1380-1381.
[1174] *See* GOA Case Brief Volume IV.B at 12 (citing *Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d at 1383).
[1175] *See Lumber V AR3 Final* IDM at Comment 4.
[1176] *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.").
[1177] *See* GOA Case Brief Volume IV.B at 12-13 (citing United States November 30, 2018 First Submission, US – Softwood Lumber V at para. 619).

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Commerce has determined that electricity curtailment programs constitute the provision of a grant, and no new arguments have been presented in this review to cause Commerce to reconsider its finding.[1178] Similar to the previous cases, information on the record of this review indicates that LSSi's purpose is to incentivize companies to immediately disconnect from the electrical system at certain times when the system frequency dips.[1179] Payments made under this program benefit West Fraser in the manner of a recurring grant. We disagree with the GOA's assertion that the program equates to the performance of a service by the company for the government-owned utility. Commerce has consistently determined that electricity is a good and not a service.[1180]

Consistent with Commerce's practice with regard to electricity curtailment programs and the program information, we find no reason to deviate from our preliminary finding that West Fraser received incentive payments for curtailing its energy usage under the LSSi program. Therefore, any payments AESO made to companies, like West Fraser, that engaged in the curbing of electricity usage according to AESO requirements were a direct transfer of funds that constitute a financial contribution in accordance with section 771(5)(D)(i) of the Act and, as such, are grants.

Moreover, Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1181] Under this framework, any grant payments are, in fact, a benefit to the recipient. Therefore, an adequacy of remuneration analysis, as argued by the GOA, is not appropriate to determine the benefit under the LSSi program. We thus continue to find that the LSSi payments confer a benefit in the amount of the payments received by West Fraser, pursuant to 19 CFR 351.504(a).

The GOA argues that the entire amount of AESO's payments to West Fraser should not be treated as the benefit because there were costs that West Fraser undertook as an LSSi provider. 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, and financial contribution, ultimately conferred to West Fraser. We addressed this issue in the *Lumber V AR2 Final*, where we explained "…the fact that companies may incur costs when interrupting energy usage does not impact the benefit calculation."[1182] Further, the statute supports this position, providing 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.[1183] 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.

[1178] *See, e.g., Groundwood Paper from Canada* IDM at Comment 66; *see also Carbon and Alloy Steel Wire Rod from Italy* IDM at Comment 2; *Silicon Metal from Australia* IDM at Comment 2; and *Lumber V AR3 Final* IDM at Comment 4.
[1179] *See* GOA October 12, 2022 Non-Stumpage SQR Response at 2-5 and 22-23.
[1180] *See Lumber V AR2 Final* IDM at Comment 3.
[1181] *See* 19 CFR 351.503(c).
[1182] *See Lumber V AR2 Final* IDM at Comment 4.
[1183] *See* section 771(6) of the Act.

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Lastly, we disagree with the GOA's arguments that the LSSi program is not specific. We preliminarily found the program to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the number of firms that receive payments for load shedding in Alberta is limited.[1184] Under section 771(5A)(D)(iii)(I) of the Act, a subsidy is specific if the actual recipients, whether on an enterprise or industry basis, are limited in number. The GOA's argument regarding the array of industries represented among the approved companies is not relevant because our finding is not based on the number of industries being limited or excluded from participation. Commerce looks at the economy as a whole in determining whether or not the number of enterprises or industries receiving a subsidy is, in fact, limited.[1185] Commerce's analysis in this administrative review is fully consistent with Commerce's current practice, regulations, and the language of the SAA. The GOA reported that only seven companies were recipients of funding under the LSSi during the POR.[1186] Thus, the number of actual recipients is limited on an enterprise basis. As such, we continue to find that payments to West Fraser under the load shedding program are *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

British Columbia

Comment 40: Whether the Purchase of Carbon Offsets from Canfor Is Countervailable

GBC's Comments[1187]

- 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 AR3 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.

Canfor's Comments[1188]

- 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.

[1184] *See Lumber V AR4 Prelim* PDM at 37.
[1185] *See* SAA at 930.
[1186] *See* GOA October 12, 2022 Non-Stumpage SQR Response at 23 and Exhibit AB-AR4-AESO-25.
[1187] *See* GBC Case Brief Volume V at 45 – 52.
[1188] *See* Canfor Case Brief at 29 – 35.

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- 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 V AR3 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."[1189] 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[1190]

- 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. To qualify for carbon offset projects, the GBC requires applicants to demonstrate that carbon offset sales will help overcome financial, technological, or other barriers to implementing a project. This indicates that revenue from the sale of carbon offsets factor in a firm's decision on whether to implement clean energy projects. The program is similar to the load curtailment programs Commerce has treated as grants in previous cases.[1191]
- 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 arguments raised by the GBC and Canfor are the same as those raised in the prior administrative review.[1192] 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,[1193] the payment received by Canfor from the GBC 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

[1189] *See Lumber V AR3 Final* IDM at Comment 62.
[1190] *See* Petitioner Rebuttal Brief at 196 – 199.
[1191] *Id*. at 198 – 199 (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).
[1192] *See Lumber V AR3 Final* IDM at Comment 62.
[1193] *See Groundwood Paper from Canada Final* IDM at 223.

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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.[1194] 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 be construed as an offset to the subsidy provided to reduce the costs of installing the equipment.[1195]

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.[1196] 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.

[1194] *See CVD Preamble*, 63 FR at 65361.
[1195] *Id.*
[1196] *See* GBC Non-Stumpage IQR Response, Volume III at 1-2.

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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 benefited Canfor's overall operations, and the GBC payments defrayed the total costs incurred.[1197] 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 41: Whether British Columbia's Coloured Fuel Program Is Countervailable

GBC's[1198] *and West Fraser's*[1199] *Comments*

- 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 limits 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.[1200] 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.[1201]
- 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 conditions" for implementation of the program.[1202] 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."[1203] Thus, Commerce should find that the lower tax rates for coloured fuel program is not *de jure* specific in the final results.

[1197] *See* Canfor Non-Stumpage IQR Response at Exhibit B-15.
[1198] *See* GBC Case Brief Volume V at 60-69.
[1199] *See* West Fraser Case Brief at 74.
[1200] *See* GBC Case Brief Volume V at 63 *(*citing *PPG Indus., Inc. v. U.S*, 978 F.2d at 1240).
[1201] *Id.* at 63 (citing GBC IQR Response at Exhibit BC-AR4-GAS-1 (Motor Fuel Tax Act)).
[1202] *Id.* at 65 (citing SAA at 930).
[1203] *Id.* at 64 (citing GBC Non-Stumpage IQR Response at Exhibit BC-AR4-GAS-1 and BC-AR4-GAS-5).

- 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.
- 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 coloured fuel.

Petitioner's Rebuttal Comments[1204]

- Commerce correctly found in the *Lumber V AR3 Final* that this program is countervailable. No new information or argument was presented to warrant reconsideration that the program constitutes a financial contribution, confers a benefit, and is *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."[1205] However, Commerce made clear in the *Lumber V AR3 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 reduction as the GBC states on the record.[1206] 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.[1207]
- Commerce correctly determined that the eligibility criteria does not meet the definition of "objective criteria" under both sections 771(5A)(D)(i) and 771(5A)(D)(ii) of the Act.[1208]
- 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: The arguments raised by the GBC are the same as those raised in the prior administrative review.[1209] Consistent with the prior review, we continue to find that the BC Coloured Fuel program is *de jure* specific under section 771(5A)(D)(i) of the Act and provides a financial contribution, as defined in section 771(5)(D)(ii) of the Act, that confers a benefit.

In the investigation and prior reviews, we found that this program was specific under section 771(5A)(D)(i) of the Act, because it is "expressly limited to enterprises or industries engaged in certain activities," and 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."[1210]

[1204] *See* Petitioner Rebuttal Brief at 209 – 212.
[1205] *Id.* at 207 (citing GBC Case Brief Volume V at 68).
[1206] *Id.* at 210 (citing GBC Case Brief Volume V at 62 – 65).
[1207] *Id.* at 210 (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 Oman* IDM at Comment 2).
[1208] *Id.* at 210 (citing *Lumber V Final* IDM at Comment 74; *see also Lumber V AR1 Final* IDM at Comment 97; *Lumber V AR2 Final* IDM at Comment 102, and *Lumber V AR3* Final IDM at Comment 94).
[1209] *See Lumber V AR3 Final* IDM at Comment 94.
[1210] *See Lumber V Final* IDM Comment 74; *see also Lumber V AR1 Final IDM* at Comment 97; and *Lumber V AR2 Final* IDM at Comment 102.

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We find that the arguments made by the GBC on specificity under section 771(5A)(D)(i) of the Act were considered and rejected by Commerce in the *Lumber V AR3 Final* and, as such, do not provide grounds for reconsideration.[1211] With regard to *de jure* specificity under section 771(5A)(D)(i) of the Act, we found in the *Lumber V AR3 Final* that:

> {u}nder 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{.}[1212]

We note no additions or new factual information on the record of this review that would lead to a change in this finding for the program. The controlling statutes and eligibility criteria for the program have not changed since the prior review.[1213]

For financial contribution, Commerce found the following in the *Lumber V AR3 Final*:

> {v}ehicles 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 {*sic*}.[1214]

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 forgoes 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.

[1211] *See Lumber V AR3 Final* IDM at Comment 94.
[1212] *Id.*
[1213] *See* GBC Non-Stumpage IQR Response at VII-9 and Exhibit BC-AR4-GAS-1 (*Motor Fuel Tax Act*).
[1214] *See Lumber V AR3 Final* IDM at Comment 94.

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New Brunswick

Comment 42: Whether Commerce Should Continue to Find the Silviculture and License Management Programs Countervailable

GNB's Comments[1215]

- Each of the specific silviculture and license management activities performed under FMAs are services. In addition, the *2015 Auditor General Report* described silviculture and license management as "services."[1216] The purchase of services by a government is not countervailable under U.S. law as a financial contribution or benefit.
- The FMA contains the basic elements of a contract as recognized under both U.S. and Canadian law – it is a binding written agreement between two parties with obligations for performance (silviculture and license management services) and consideration (reimbursement and compensation).[1217]
- 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."[1218]
- 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[1219]

- 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.
- 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.
- In the *Lumber V AR3 Final*, Commerce maintained that it was "illogical" to assume JDIL would spend more than was reimbursed if there were not some underlying value in

[1215] *See* GNB Case Brief Volume 6 at 79-98.
[1216] *Id.* at 84 (citing JDIL June 29, 2022 Non-Stumpage Questionnaire Response at Exhibit SILV-03).
[1217] *Id.* at 84-85 (citing *Henke v. U.S. Dept. of Commerce*, 83 F.3d 1445, 1450 (D.C. Cir. 1996)).
[1218] *Id.* at 90-91 (citing GNB IQR Response at Exhibit NB-AR4-SVC-7 at 3).
[1219] *See* JDIL Case Brief at 39-50.

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performing these services.[1220] However, there is no basis to conclude that JDIL would have been willing to incur significant expenses during the POR to provide forest management services for the GNB's timberlands without any compensation.

- JDIL's willingness to bear a small portion of its costs for performing the services without reimbursement does not justify treating the entire amounts of reimbursement/compensation as countervailable or as a grant.

Petitioner's Rebuttal Comments[1221]

- The arguments presented by the GNB and JDIL were previously considered and rejected by Commerce.[1222] 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 AR4 Prelim*, Commerce found the reimbursement of both silviculture and license management expenses to be countervailable grants.[1223] 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.[1224] The GNB and JDIL argue these payments represent a purchase, by the GNB, of services provided by JDIL, and that the purchase of services is not countervailable.[1225] We disagree with these arguments.

JDIL is the Licensee on Crown timber licenses #6 and #7 (collectively referred to as License #7). JDIL, or another JDIL cross-owned company, has been a long-term leaseholder of the Crown lands from which it sources part of its input supply.[1226] At present, JDIL is under an FMA with the province. Under the CLFA,[1227] JDIL is obligated to perform, and be reimbursed for, basic silviculture and forest management obligations. Specifically, paragraph 38(2) of the CLFA states:

> {t}he 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

[1220] *Id.* at 49 (citing *Lumber V AR3 Final* IDM at 338).
[1221] *See* Petitioner Rebuttal Brief at 226-229.
[1222] *Id*. at 226 (citing *Lumber V AR3 Final* IDM at Comment 63, *Lumber V AR2 Final* IDM at Comment 66, and *Lumber V AR1 Final* IDM at Comment 69).
[1223] *See Lumber V AR4 Prelim* PDM at 40.
[1224] *Id*.
[1225] *See* JDIL Case Brief at 39-50; *see also* GNB Case Brief Volume 6 at 79-98.
[1226] *See* JDIL Stumpage IQR Response at 1-3; *see also* JDIL's IQR Non-Stumpage Response at Exhibit SILV-04.
[1227] *See also* JDIL's IQR Non-Stumpage Response at Exhibit SILV-02.

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> other expenses of forest management in accordance with the regulations.[1228]

In accordance with the CLFA, JDIL's FMA defines basic silviculture and further specifies JDIL's requirement for both basic silviculture and licensee silviculture.[1229] 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.[1230] Licensee silviculture is defined as silvicultural treatments carried out at the expense of the licensee.[1231] 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 reviews, Commerce found that reimbursement for basic silviculture and forest management activities provide countervailable subsidies because the GNB relieved JDIL of expenses incurred through a direct transfer of funds.[1232] The FMA goes on to stipulate that JDIL "shall carry out basic silviculture,"[1233] "the Minister will fund the basic silvicultural program,"[1234] and JDIL's "obligations…will correspond to the level of basic silviculture funding provided by the Minister."[1235] 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 the DNR."[1236]

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.[1237] 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 2021 as support for its claim that JDIL would *not* conduct the silviculture and license management activities it currently undertakes.[1238] However, Commerce finds the

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[1228] *Id* at 39.
[1229] *Id*. at Exhibit SILV-04.
[1230] *Id*.
[1231] *Id*.
[1232] *See Lumber V Final* IDM at Comment 61; *see also Lumber V AR1 Final* IDM at Comment 69; *Lumber V AR2 Final* IDM at Comment 66; and *Lumber V AR3 Final* IDM at Comment 63.
[1233] *See* JDIL Non-Stumpage IQR Response at Exhibit SILV-04.
[1234] *Id*.
[1235] *Id*.
[1236] *Id*. at Exhibit LMF-05 at 22.
[1237] *See* JDIL Non-Stumpage Response IQR at Exhibit SILV-04 at 26. 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."
[1238] *See* GNB Case Brief Volume 6 at 87-88.

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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."[1239] However, this reasoning is contradicted by JDIL's case brief. In JDIL's submission, JDIL argues that the GNB's reimbursement of silviculture and license management fees does not confer a benefit because "the GNB's payments failed to cover fully {JDIL's} expenses."[1240]

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. As a result, 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.

JDIL counters Commerce's conclusion that JDIL would not expend more than required unless such expenditures provided value to the company by arguing that it is reasonable for the company to assume compensation for the work it performed. In addition, JDIL asserts that its willingness to bear a portion of the costs for performing the services without reimbursement does not justify treating the entire amounts of reimbursement as countervailable or as a grant. As explained above, the value to JDIL for performing silviculture and license management activities is that it ensures the continued availability of inputs and operation of its supply chain, regardless of whether it receives full reimbursement from the GNB. The respondents, moreover, have provided no new information regarding why the entirety of these payments by the government do not provide a benefit under the CVD law to JDIL.

In sum, as record evidence makes clear, 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. Thus, 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 43: Whether Commerce Should Find LIREPP Countervailable

GNB's Comments[1241]

- LIREPP is a program that involves a private company generating renewable electricity that is purchased by NB Power at an agreed rate, and NB Power also sells certain amounts of electricity from the grid to the same companies that generate and sell the renewable energy under LIREPP.

[1239] *Id*. at 88 (citing GNB IQR Stumpage Response at Exhibit NB-AR4-SVC-7 at 3).
[1240] *See* JDIL Case Brief at 47-48.
[1241] *See* GNB Case Brief Volume VI at 56-65.

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- The *Lumber V AR4 Prelim* incorporates Commerce's findings from the *Lumber V AR3 Final* and erroneously state that there is no new information warranting reconsideration of the countervailability of this program.[1242]
- There is new information related to eligibility requirements under the LIREPP program.
- During the POR, the LIREPP Regulations were amended to specifically state that participation in LIREPP as an "eligible facility" is limited to facilities that engage primarily in the pulp and paper industry sector; thus, there is no longer any ambiguity that the LIREPP program is not countervailable because the electricity credits that JDIL's Lake Utopia division received were tied to the production of pulp and paper.[1243]
- In the *Lumber V AR3 Final*, Commerce found that because the "LIREPP program is available to any large industrial enterprise that owns and operates an eligible facility that generates eligible electricity," the benefits could not be said to be tied to non-subject products.[1244]
- The amendment to the LIREPP Regulations directly addresses Commerce's prior objections and specifically limits the "eligibility" criteria to companies in the pulp and paper sector.
- A subsidy is tied "when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy."[1245] At the time of bestowal, NB Power knew that the specific purpose of the contract was to bring the costs of electricity of the Lake Utopia Paper Division and IPL in line with the average cost of electricity for pulp and paper mills across Canada.
- The "intended use" for pulp and paper was known to NB Power and "acknowledged prior to or concurrent with the bestowal of the subsidy" given the focus of the Target Reduction Percentage on electricity prices in other parts of Canada for pulp and paper manufacturers.[1246]
- In the underlying investigation and reviews, Commerce misconstrued the LIREPP program when it claimed that the Net LIREPP credit is used to "reduce the participating Irving Companies' monthly electricity bills."[1247]
- Rather, the compensation for the purchase of a good is paid/settled as a convenience to all parties via the means of an accounting offset reflected on the electricity bill.
- A WTO panel reviewed Commerce's determination in the investigation of this proceeding and ruled against key portions of Commerce's proposed findings in the current review.[1248] The WTO panel found that Commerce erred when characterizing the LIREPP as a financial contribution to JDIL in the form of revenue forgone rather than a purchase of a good; therefore, Commerce should reassess its earlier rulings.
- Under the LIREEP program, companies sell electricity from renewable sources to New Brunswick Power, and those sales cannot properly be treated as revenue forgone.
- Commerce's regulations explicitly require an MTAR benefit analysis for the purchase of goods such as electricity.

[1242] *Id.* at 57 (citing *Lumber V AR4 Prelim* PDM at 39-40).
[1243] *Id.* at 57-58 (citing GNS Stumpage IQR Response, Volume I, Exhibit NB-AR4-LIREPP-1 at 2 and 11).
[1244] *Id.* at 58 (citing *Lumber V AR3 Final* IDM at 342).
[1245] *Id.* at 59 (citing *1988 CVD Preamble*, 63 FR at 65402).
[1246] *Id.* at 61 (citing *1988 CVD Preamble*, 63 FR at 65402).
[1247] *Id.* at 62 (citing *Lumber V Final* IDM at 213, *Lumber V AR1 Final* IDM at 369, *Lumber V AR2 Final* IDM at 298, and *Lumber V AR3 Final* IDM at 341).
[1248] *Id.* at 62-63 (citing *DS 533 Panel Report* at paras. 7.703, 7.704, and 7.11.3.6).

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JDIL's Comments[1249]

- 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.
- To make the connection between the LIREPP program and the pulp and paper industry even clearer, the GNB amended the LIREPP Regulation during the POR "to state that participation in LIREPP as an 'eligible facility' is limited to facilities that engage primarily in pulp and paper industry activities."[1250]
- In the *Lumber V AR3 Final*, Commerce incorrectly found that LIREPP was untied based on its finding that the terms of the LIREPP agreement do not link Net LIREPP credits to any specific products.[1251]
- Given that JDIL's receipt of the Net LIREPP credit is tied to its production of paper products, LIREPP should not be countervailed in this proceeding involving softwood lumber.
- Regarding financial contribution, NB Power did not forgo revenue because the credit represents money that NB Power owes the JDIL companies for renewable electricity purchased under LIREPP. Consequently, the financial contribution is the purchase of goods.
- Through the Net LIREPP credits, NB Power paid JDIL for its provision of renewable energy; therefore, any financial contribution would have to be the government's purchase of goods.

Petitioner's Rebuttal Comments[1252]

- The GNB and JDIL argue that Commerce "failed to account for important new information related to eligibility requirements under the LIREPP program"; however, the new information at issue does not contradict Commerce's prior countervailability finding, and other arguments raised have been rejected by Commerce in prior reviews.[1253]
- Under 19 CFR 351.525(b)(3), Commerce will "attribute a domestic subsidy to all products sold by a firm, including products that are exported" and, specifically, "{i}f a subsidy is tied to the production of an input product, then {Commerce} will attribute the subsidy to both the input and downstream products produced by a corporation."[1254]
- Commerce has not adopted a particular definition of the word "tied," but has explained that "an 'untied' subsidy {is} a subsidy that is tied to sales of all products produced by a firm," and that it will identify a tie "on a case-by-case basis" "based on the stated purpose of the subsidy or the purpose {Commerce} evince{s} from record evidence at the time of bestowal."[1255]
- Inputs will be countervailed whenever that input may be used to produce the subject merchandise, regardless of whether that input is actually used to do so.[1256]

[1249] *See* JDIL Case Brief at 51-56.
[1250] *Id.* at 53-54 (citing GNB IQR Response, Volume I at Exhibit NB-AR4-LIREPP-1 at 2 and footnote 4).
[1251] *Id.* at 54 (citing *Lumber V AR3 Final* IDM at 341-342).
[1252] *See* Petitioner Rebuttal Case Brief at 216-226.
[1253] *Id.* at 216 (citing GNB Case Brief Volume VI at 57 and JDIL Case Brief at 50).
[1254] *Id.* at 216-217 (citing 19 CFR 351.525(b)(3), (b)(5), and (b)(5)(ii).
[1255] *Id.* at 217 (citing *CVD Preamble*, 63 FR at 65400 and 65402-65403).
[1256] *Id.* at 219 (citing *IPA from Israel*, 63 FR at 13630-13631).

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- For example, in *Lumber IV*, Commerce declined to distinguish between subsidized log inputs for mills producing the subject merchandise and subsidized log inputs for mills producing non-subject merchandise because all of those inputs could have been used in the production of subject merchandise.[1257]
- Similarly, in *IPA from Israel*, Commerce declined to tie grants for the production of inputs to specific downstream products because there was no evidence that the grants "were intended to affect only the inputs that received the subsidy, and only the end products that incorporated these inputs only during the {period of review}."[1258]
- The GNB and JDIL emphasize a change in LIREPP's eligibility requirements that limits participation "to facilities that engage primarily in pulp and paper"; however, Commerce has long recognized that LIREPP "is a multifaceted program" that benefits the JDIL corporate entity rather than specific plants or factories, and it should continue to do so notwithstanding the GNB's apparent efforts to circumvent Commerce's analysis with a technical change to eligibility requirements.[1259]
- JDIL's Lake Utopia Paper Division is an operating division of JDIL, *i.e.*, not a separate or cross-owned entity; therefore, Commerce attributed the benefit to JDIL's overall operations.[1260]
- The updated eligibility regulations for consumer companies such as JDIL's Lake Utopia Paper Division require that the facility in question "engages primarily in pulp and paper industry activities"; however, this language does not limit eligibility exclusively to pulp and paper production, and "it does not change the fact that {Lake Utopia Paper Division} is part of the {JDIL} corporate group."[1261]
- Just as importantly, "the terms of the LIREPP agreements signed between the participating {JDIL} companies and NB Power … 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."[1262]
- Commerce remains "extremely sensitive to potential circumvention of the countervailing duty law" and will "examine all tying claims closely" to determine whether "subsidies allegedly 'tied' to non-subject merchandise or markets are actually meant to benefit the overall operations of the company."[1263]
- Here, there is no indication that the purpose of LIREPP as previously summarized by Commerce has changed; indeed, the GNB has conceded that the program continues to be "designed to bring large industrial enterprises' net electricity costs in line with the average cost of electricity in provinces where those companies' Canadian competitors are located."[1264]

[1257] *Id.* (citing *Lumber IV Expedited Review Final* IDM at 21-22).
[1258] *Id.* at 219-220 (citing *IPA from Israel*, 63 FR at 13631).
[1259] *Id.* at 219-220 (citing *Lumber V AR3 Final* IDM at 341-342).
[1260] *Id.* at 222 (citing JDIL Non-Stumpage IQR Response at 3 and JDIL Preliminary Calculations Memorandum at 7 and Attachment 2, worksheet "LIREPP").
[1261] *Id.* (citing GNB IQR Response, Volume I, Exhibit NB-AR4-LIREPP-2 and *Lumber V AR3 Final* IDM at Comment 64).
[1262] *Id.* at 223 (citing *Lumber V AR3 Final* IDM at Comment 64; and GNB IQR Response, Volume I at Exhibit NBAR4-LIREPP-5).
[1263] *Id.* (citing *CVD Preamble*, 63 FR at 65400).
[1264] *Id.* at 224 (citing *Lumber V AR3 Final* IDM at Comment 64).

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- There does not appear to be any difference in how JDIL received the benefit from this program as compared to prior PORs; indeed, it does not appear that JDIL had to sign any new contracts to reflect the new eligibility requirements at all.[1265]
- Commerce is well within its discretion to find that LIREPP remains countervailable notwithstanding the GNB's attempt to evade the discipline of U.S. countervailing duty laws. Similar to prior reviews, the program is still intended to provide credits for industries' electricity bill for the renewable energy they generated; and JDIL continues to qualify for benefits based on the activities of an operational division that generated credits for the entity as a whole, including its sawmills.
- The GNB and JDIL also object to Commerce's treatment of LIREPP as the purchase of the good renewable energy,[1266] and a cite to a WTO panel decision should not result in Commerce reconsidering its previous determinations.[1267]
- Commerce considered and rejected this argument in the third administrative review, and it should do so again here.[1268]
- Although the benefit received by JDIL relates to the purchase of renewable energy, the program itself is based on administratively-set credits that Commerce was correct in determining represent revenue which would otherwise be due, in the absence of the program, to NB Power.
- As explained by Commerce, WTO Panel decisions hold no power to compel Commerce to reconsider its analysis.[1269]

Commerce's Position: JDIL reported receiving energy bill credits under this program in 2021.[1270] In addition, the GNB and JDIL reported that the eligibility conditions of the LIREPP program were amended on April 1, 2021 to limit participation to facilities that engage primarily in the pulp and paper industry sector.[1271]

Commerce has considered this new information; however, after a complete review of the record evidence and consistent with the previous administrative review, we continue to disagree with the Canadian parties' contention that this program is tied to the production of non-subject merchandise. Accordingly, Commerce continues to find that 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.

As an initial matter, Commerce's tying analysis is necessarily done on a case-by-case basis, and as noted in the *CVD Preamble* to Commerce's regulations, the "tying rules are an attempt at a simple, rational set of guidelines for reasonably attributing the benefit from a subsidy based on

[1265] *Id.* at 224 (citing JDIL Non-Stumpage IQR Response at Exhibit LIREPP-01 at 9 ("After an Eligible Large Industrial Enterprise has concluded the initial LIREPP Agreement, its ongoing participation in LIREPP is not contingent upon further government authorization or approval. The Irving Eligible Large Industrial Enterprise's participation in LIREPP is recurring in nature."); GNB IQR Response, Volume I, Exhibit NB-AR4-LIREPP-5).
[1266] *Id.* (citing GNB Case Brief at Volume VI 61-63; JDIL Case Brief at 55-56).
[1267] *Id.* at 225 (citing GOC Case Brief Volume VI at 61-63).
[1268] *Id.* at 224 (citing *Lumber V AR3 Final* IDM at Comment 64).
[1269] *Id.* at 225-226 (citing *Large Residential Washers from Mexico* IDM at Comment 1, *Welded SSP from Korea* IDM at Comment 4; and *OCTG from Korea* IDM at Comment 2).
[1270] *See* JDIL Non-Stumpage IQR Response at Exhibit LIREPP-13.
[1271] *See* GNB IQR Response at Exhibit LIREPP-1 at 2 and Exhibit NBAR4-LIREPP-2.

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the stated purpose of the subsidy or the purpose we evince from record evidence at the time of bestowal."[1272] Moreover, the *CVD Preamble* also notes that Commerce "intend{s} to examine all tying claims closely to ensure that the attribution rules are not manipulated to reduce countervailing duties."[1273] After reviewing the totality of record evidence, including new evidence submitted in the instant review, we disagree that such evidence indicates the purpose of the LIREPP program is to only benefit pulp and paper products, rather than the overall operations of JDIL. Specifically, we have examined the amendment to the law associated with the LIREPP program (Regulation 2015-60 (O.C. 2015-263)), which went into effect on April 1, 2021. The amended language states that the LIREPP program is available to "eligible facilities," which are defined as "{a} facility {that} engages primarily in pulp and paper industry activities."[1274] While the revised eligibility criteria limits credits to entities that are "primarily" dedicated to pulp and paper, we disagree with the GNB and JDIL that the amended language renders sawmills no longer eligible to use the LIREPP program. The revised eligibility criteria does not preclude entities that produce pulp and paper along with a bevy of other merchandise from using the LIREPP program as long as the entity is "primarily" engaged in pulp and paper industry activities.[1275]

Furthermore, the GNB itself reported that the LIREPP purchases allow NB Power to increase the proportion of renewable energy in its overall portfolio to meet New Brunswick's environmental and sustainability goals.[1276] NB Power's Annual Report states that "NB Power purchases electricity from renewable sources, such as biomass and river hydro, from qualifying large industrial customers who have renewable electricity generating facilities located in New Brunswick… {and} the Large Industrial Renewable Energy Purchase Program allows NB Power to purchase renewable energy generated by its largest customers at a set rate."[1277] We note that such responses and documentation do not indicate that the purpose of the LIREPP program is to benefit any particular set of products, but rather NB Power is simply purchasing renewable energy from its largest customers.

Many of the GNB's and JDIL's other arguments for why this program is tied to pulp and paper products have been addressed, and rejected, in the previous administrative review. We continue to disagree with the GNB that Commerce should tie the subsidies JDIL received under the LIREPP program to JDIL's pulp and paper sales because the pulp and paper industry is the only one that has qualified for benefits since the program's inception. Commerce has consistently attributed the benefits from electricity subsidies to all products.[1278] 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

[1272] *See CVD Preamble*, 63 FR at 65403.
[1273] *Id.*, 63 FR at 65403.
[1274] *See* GNB IQR Response at 16 (citing Regulation 2015-60 (O.C. 2015-263) at Part 3, Section 23).
[1275] *See* GNB IQR Response at Exhibit LIREPP-2 at 16; *see also Lumber V AR3 Final* IDM at Comment 64.
[1276] *See* GNB IQR Response at Exhibit LIREPP-1 at 1.
[1277] *Id.* at Exhibit LIREPP-1 at 2 and Exhibit NBAR4-LIREPP-4 at 116.
[1278] *See Lumber V Final* IDM at Comment 49.

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> 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.[1279]

As noted above, such a standard and practice has not been met with respect to this program. 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 and the GNB'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 above, the recently amended eligibility criteria provided by the GNB indicate that the LIREPP program is available to any large industrial enterprise that engages primarily in pulp and paper industry activities and that owns and operates an eligible facility that generates eligible electricity.[1280] In addition, we disagree with JDIL's argument that Commerce conflates eligibility for LIREPP with whether it is tied to non-subject merchandise. Eligibility is only one criterion which Commerce highlights as it demonstrates that the 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 stated previously.

Further, 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.[1281] 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 its affiliates – including its Lake Utopia Paper Division – as one corporate entity.[1282] Neither the statute nor Commerce's regulations "provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm."[1283] Further, Commerce does not tie subsidies on a plant or factory specific basis.[1284]

Lastly, we 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

[1279] *See CVD Preamble*, 63 FR at 65402-65403.
[1280] *See Lumber V Final* IDM at Comment 77; *see also* GNB Non-Stumpage IQR Response at Exhibit NB-AR4-LIREPP-1.
[1281] *See* JDIL Company Affiliation Response at Exhibit 2; *see also* GNB IQR Response at Exhibit NB-AR4-LIREPP-1 at 4.
[1282] *See* JDIL Non-Stumpage IQR Response at 3 and Exhibits JDIL-01, JDIL-03, and JDIL-04; *see also* JDIL Company Affiliation Response at Exhibit 2.
[1283] *See Lumber V AR3 Final* IDM at Comment 64; *see also CFS from China* IDM at Comment 8.
[1284] *See, e.g.*, *Lumber V AR3 Final* IDM at Comment 64; and *Lumber V AR2 Final* IDM at Comment 67.

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ability to meet the program's requirements for producing eligible renewable energy, not because the company produces any specific products.[1285] The amendment to the LIREPP eligibility criteria to entities that "engage{} primarily in pulp and paper industry activities" does not change this finding, as this updated eligibility criteria does not preclude any entities that primarily produce pulp and paper along with other products from participating in the program.

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.[1286] 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.

We also continue to find that the 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.

JDIL and the GNB also argue that NB Power did not forgo 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. 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.[1287]

We continue to find that the LIREPP program is properly analyzed as a revenue forgone 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).

As detailed in the prior review,[1288] 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.[1289] Commerce has previously noted that, GNB officials from NB Power, a Crown corporation, and from the NB Department, DERD, have indicated that one of the reasons

[1285] *See Lumber V Final* IDM at Comment 77.
[1286] *See Lumber V Final* IDM at Comment 77; *see also* GNB Non-Stumpage IQR Response at Exhibit NB-AR4-LIREPP-5.
[1287] *See* GNB Case Brief Volume VI at 64 (citing GNB IQR Response, Volume I at Exhibit-NB-AR4-LIREPP-6).
[1288] *See Lumber V AR3 Final* IDM at Comment 64.
[1289] *See* JDIL Non-Stumpage IQR Response at Exhibit LIREPP-3.

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that the LIREPP program was implemented was for industries to get credit applied to their electricity bill for the renewable energy they generated.[1290]

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.[1291] 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.

Under the Electricity Act, the rate was set at C$95/MWh for January 1 to March 31, 2021 and C$106.91/MWh for April 1, 2021 to March 31, 2022.[1292] 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 or C$106.91/MWh rates that were in effect during the POR. Thus, even if the rate varied from the fixed rates of C$95/MWh and C$106.91/MWh, 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 revenue forgone in 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, rather than as a MTAR program.

Based on the reasons above, we continue to find that 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.[1293]

[1290] *See Lumber V AR3 Final* IDM at Comment 64.
[1291] *See* JDIL Non-Stumpage IQR Response at Exhibit LIREPP-1 at 9-15.
[1292] *Id.* at Exhibit LIREPP-1 at 1, 6, and 14-5 and Exhibit LIREPP-02 at sections 1-3.
[1293] *Id.*

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K. Tax and Other Revenue Forgone Program Issues

Federal

Comment 44: Whether the ACCA for Class 53 Assets Program Is Specific[1294]

GOC's Comments[1295]

- Commerce cannot find *de jure* specificity on the mere fact that activities are excluded from the definition of "manufacturing or processing"; the law requires more.
- Commerce confuses the distinction between industry-based restrictions and activity-based restrictions. The ACCA, however, does not restrict which enterprises or industries are eligible to use the program. Rather, it provides that equipment used in certain activities will not qualify as manufacturing or processing equipment for purposes of eligibility.
- The CVD law requires that a measure be limited to particular industries or enterprises to be *de jure* specific. Eligibility criteria describing which assets can be depreciated under the tax deduction, but which do not limit the enterprises or industries that can claim the deduction, do not render the ACCA *de jure* specific.
- The Federal Circuit's reasoning in *PPG Industries vs. U.S.*, embodied in the URAA, provides that a subsidy is not *de jure* specific where the program "establishes objective criteria or conditions governing the eligibility," eligibility is automatic, the criteria or conditions for eligibility are "strictly followed," and the criteria or conditions are "clearly set forth."[1296] All of which applies to the ACCA.
- 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.[1297] Commerce has wrongly claimed that this Russian tax measure did not stipulate eligibility requirements.[1298] The Russian tax deduction is, however, much more restrictive than the ACCA, since only enterprises engaged in natural resource exploration are able to claim the deduction. Whereas, under the ACCA, any enterprise or industry is eligible to claim the deduction.
- In *NOES 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.[1299] Commerce has attempted to distinguish this case by claiming that the program at issue was not expressly limited to any industry,[1300] but the same is true of the ACCA.
- Commerce has cited *Nails from Oman* and *CWP from the UAE* in support of its *de jure* specificity finding for the ACCA, but those cases are not comparable.[1301] The activity-based restrictions in those cases eliminated enterprises or industries from being eligible, not activities.

[1294] We previously titled this program "ACCA for Class 29 and Class 53 Assets." *See, e.g., Lumber V AR4 Prelim* PDM at 42. Because calendar year 2015 was the last year for the ACCA for Class 29 program, we have changed the program title to "ACCA for Class 53 Assets." *See* GOC Non-Stumpage IQR Response Volume II at 1-2.
[1295] *See* GOC Case Brief Volume II at 4-37.
[1296] *Id*. at 11 (citing *PPG Industries v. U.S.*, 978 F. 2d 1232).
[1297] *Id*. at 12 (citing *CRS from Russia* IDM at 19-21).
[1298] *Id.* at 13 (citing *Lumber V AR3 Final* IDM at Comment 86).
[1299] *Id*. at 14 (citing *NOES from Taiwan* IDM at 21).
[1300] *Id.* at 14 (citing *Lumber V AR3 Final* IDM at Comment 86).
[1301] *Id*. at 16-17 (citing *Nails from Oman* IDM at 12 and *CWP from the UAE* IDM at 17).

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- Commerce correctly found SR&ED credits not to 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. Commerce also found the 10 percent Class 1 CCA not to be *de jure* specific, even though the definition of what is excluded from manufacturing or processing is the same for both the ACCA and Class 1 CCA. Identical eligibility criteria demand consistency. Additionally, Commerce declined to initiate on the CEWS, COVID-19 relief program, stating that a subsidy available to the entire manufacturing sector cannot be specific.[1302]
- 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.
- To find *de jure* specificity, there must be a limitation of access "to a sufficiently small number of enterprises, industries or groups thereof,"[1303] such that availability of a program is limited to discrete industries or enterprises in a country's economy.
- The ACCA is available to companies in almost all industries. In numerous cases, Commerce has found programs to not be *de jure* specific despite clear limitations on the number or type of industries that could use the programs. For example, in the first review of *Citric Acid from China*, Commerce found the provision of steam coal was not *de jure* specific where the coal was provided to six major industrial categories.[1304]
- If Commerce correctly finds the ACCA not *de jure* specific, it should also find the program to not be *de facto* specific, given that at least 23,560 enterprises used the program in tax year 2021, representing industries in almost every NAICS category across the Canadian economy.[1305] Sawmills made up only 2.9 percent of the program's users; thus, softwood lumber producers are not disproportionate or predominant users of the ACCA.[1306] The ACCA also has objective qualification criteria.

GOQ's Comments[1307]

- The Québec Class 53 Assets program should be analyzed separately from the federal program as the programs are not integrally linked.[1308]
- The statute does not tie a *de jure* specificity finding to limitations on the activities conducted by enterprises or industries. Court decisions and Commerce's practice establish that a program cannot be found *de jure* specific because beneficiaries must meet eligibility criteria.[1309]
- Commerce mistakes the ACCA's objective activity criteria as targeting specific industries or companies, but manufacturing and processing equipment is not an industry or a group thereof.

[1302] *Id*. at 35 (citing *Lumber V AR3* NSA Memorandum at 5-6).
[1303] *Id*. at 26 (citing *U.S. – Upland Cotton* at para. 7.1142).
[1304] *Id*. at 30 (citing *Citric Acid from China First Review Final* IDM at Comment 6).
[1305] *Id*. at 33-34 (citing GOC Non-Stumpage IQR Response Volume II at Exhibits GOC-AR4-CRA-Class53-4 and Class53-10).
[1306] *Id*. at 37 (citing GOC Non-Stumpage IQR Response Volume II at Exhibits GOC-AR4-CRA-Class53-10).
[1307] *See* GOQ Case Brief Volume VII at 36-40.
[1308] Within its specificity arguments, the GOQ also asserts that alleged financial contributions of the federal and Québec ACCA for Class 53 Assets program should not be combined because the programs are not integrally linked. *Id*. at 37 and 40.
[1309] *Id*. at 37 (citing *Asociación de Exportadores e Industriales de Aceitunas de Mesa v. U.S.*, 429 F. Supp. 3d 1334).

- The tax deduction is available on purchases of manufacturing and processing equipment regardless of where that equipment is used or the user's industry. The specific equipment classes encompass a wide variety of equipment used in many industries.
- The program is used by thousands of companies across a wide range of industries, including, but not limited to, agriculture, logging, mining, construction, transportation, retail trade, finance and insurance, and food and beverage industries.[1310] Further, no industry, including the softwood lumber industry, accounts for a disproportionate share of the program's benefits.

Petitioner's Rebuttal Comments[1311]

- The Canadian Parties reiterated the same arguments from the prior administrative reviews that the ACCA 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. Such arguments remain without merit.
- The exclusion of certain activities renders a program *de jure* specific because such an exclusion prohibits enterprises and industries solely engaged in those activities from participating in the program.
- The GOC argues that, even if the program is defined as excluding certain industries, the exclusion is limited, and the program is still widely available and not *de jure* specific. This argument amounts to a request to test for a "sufficiently small" group of recipients of a subsidy, which has been rejected by Commerce and is contrary to the SAA.
- Neither the statute, SAA, nor determinations cited by the GOC support the notion that there must be universal availability to avoid a *de jure* specificity finding.
- Because the ACCA's eligibility criteria expressly limits the program's availability and excludes a range of activities (and, consequently, certain industries and enterprises) from receiving benefits, Commerce properly found the ACCA to be *de jure* specific.
- The GOC's comparisons of Commerce's finding on the ACCA to findings in various other cases have already been thoroughly analyzed and rejected by Commerce in the prior administrative reviews.
- The GOC's comparison of Commerce's *de jure* finding for the ACCA to CEWS (which Commerce determined not to investigate) and the SR&ED and CCA Class 1 (both of which Commerce found not *de jure* specific) is unavailing. The ACCA explicitly excludes certain activities from the definition of manufacturing and processing. The law itself makes the program *de jure* specific.
- The GOQ's arguments should also again be rejected. Commerce previously determined to treat the Québec Class 53 program as part of the federal program.[1312]

Commerce's Position: As in the prior administrative review, the GOC and GOQ raise the same specificity arguments regarding the ACCA for Class 53 Assets program.[1313] We again find the GOC's and GOQ's arguments to be unpersuasive based on the record evidence.

In this review, the GOC again stated that section 1104(9) of the Canadian ITR provides that, for the purpose of the ACCA, "manufacturing or processing" does not include: "farming, fishing, or

[1310] *Id*. at 39-40 (citing GOQ Non-Stumpage IQR Response at Exhibit QC-CCA-8).
[1311] *See* Petitioner Rebuttal Brief at 149-158.
[1312] *Id*. at 158 (citing *Lumber V AR3 Final* IDM at Comment 87).
[1313] *See Lumber V AR3 Final* IDM at Comment 86.

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logging; construction; operating an oil or gas well; extracting minerals from a natural resource; certain first stage primary metal production activities; producing or processing electricity or steam for sale; processing natural gas as part of the business of a public utility selling or distributing natural gas; processing heavy crude oil to a stage not beyond the crude stage; or field processing."[1314] As such, the ITR continues to explicitly exclude particular enterprises and industries from eligibility for the ACCA for Class 53 Assets. We, thus, continue to find the ACCA for Class 53 Assets program to be *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 deduction program is expressly limited to certain enterprises or industries.

In its case brief, the GOC again cites to numerous specificity analyses of programs undertaken in other CVD proceedings to support its argument that the ACCA is not *de jure* specific.[1315] However, across multiple CVD proceedings involving Canada, we have consistently found the ACCA 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 enterprises and industries and have repeatedly explained why the GOC's references to other cases are unavailing.[1316]

For example, the GOC again claims that the ACCA is similar to a tax program that Commerce examined in *CRS from Russia*. However, in that investigation, we found a tax deduction program was not *de jure* specific because any company could claim the deduction if it performed certain activities[1317] and, in particular, we found the Tax Deduction for Exploration Expenses was not *de jure* specific because the applicable law's "articles do not stipulate the eligibility requirements or any limitation on eligibility."[1318] The GOC again cited *NOES from Taiwan*, where Commerce found a program to be not *de jure* specific where only companies with highly innovative R&D activities were eligible for a tax credit.[1319] Unlike the facts for the ACCA, in *NOES from Taiwan*, we found that the tax credit 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."[1320]

The GOC argues that the ITR excludes activities and not enterprises or industries and, therefore, the ACCA is not specific under section 771(5A)(D)(i) of the Act.[1321] The GOC contends that the excluded activities do not change the fact that eligibility for the ACCA does not exclude any specific enterprises or industries and that all enterprises and industries are eligible to claim the deduction for the non-excluded activities that they perform. The GOC further argues that a program available to all enterprises and industries is not rendered specific merely because some

[1314] *See* GOC Non-Stumpage IQR Response Volume II at 11 (footnote 27).
[1315] *See* GOC Case Brief Volume II at 30-35.
[1316] *See Lumber V AR3 Final* IDM at Comment 86; *see also Lumber V AR2 Final* IDM at Comment 97; *Lumber V AR1 Final* IDM at Comment 92; *Lumber V Final* IDM at Comment 68; *Groundwood Paper from Canada* IDM at Comment 52; *Wind Towers from Canada* IDM at Comment 2; and *SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 32.
[1317] *See* GOC Case Brief Volume II at 12-14 and 32.
[1318] *See CRS from Russia* IDM at Comment 20.
[1319] *See* GOC Case Brief Volume II at 14-15 and 32.
[1320] *See NOES from Taiwan* IDM at 21.
[1321] *See* GOC Case Brief Volume II at 15-16.

enterprises and industries may not claim the benefit for all of the activities that they undertake due to the program eligibility criteria. However, as noted 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 the ACCA. Therefore, access to the subsidy is expressly limited to non-excluded enterprises and industries. As such, we continue to find unpersuasive the GOC's argument that the program is not specific because it is limited to "activities" rather than "enterprise or industries." Further, we note that in *Magnesium from Israel*, Commerce made no distinction between activity and industry for purposes of determining specificity, and we do not do so now.[1322]

To further support its argument, the GOC again argues Commerce's decisions in *CWP from the UAE* and *Nails from Oman*, to which Commerce cited in the *Lumber V AR3 Final*, are distinguishable from the ACCA.[1323] For the same reasons discussed in the *Lumber AR3 Final*,[1324] we continue to 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 for the ACCA. 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.[1325] 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. Commerce further explained that section 771(5A)(D)(i) of the Act directs Commerce to consider "limitations" of availability to the program. 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.[1326] The ACCA for Class 53 Assets program is likewise expressly restricted to non-excluded enterprises and industries.

The GOC further 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.[1327] The GOC adds that a program cannot be *de jure* specific when it is widely available, and that wide availability does not mean or require universal availability.[1328] We, however, continue to disagree that the exclusion at issue is "very limited" or that the ACCA 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, to name a few, from the definition of "manufacturing or processing." Although the

[1322] *See Magnesium from Israel* IDM at Comment 2.
[1323] *See* GOC Case Brief Volume II at 16-17.
[1324] *See Lumber V AR3 Final* IDM at Comment 86.
[1325] *See CWP from the UAE* IDM at Comment 1.
[1326] *See Nails from Oman* IDM at Comment 1.
[1327] *See* GOC Case Brief Volume II at 24.
[1328] *Id*. at 25-26.

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."[1329] The GOC also contends that, during the POR, companies listed in the excluded "industries" claimed the ACCA for covered manufacturing and processing activities that they performed.[1330] We continue to find this argument unpersuasive because companies in industries that are engaged *exclusively* in the excluded activities under Class 53 are not eligible for the ACCA program, based on the tax law, as discussed above.

To bolster its specificity arguments, the GOC again references numerous cases, claiming that, in each case, Commerce did not find *de jure* specificity where a program was widely available.[1331] We disagree that these cases support a different result here; we do not find that the ACCA is widely available for the reasons discussed above, and the fact patterns in the cited cases are distinguishable from that of the ACCA for Class 53 Assets program. For example, in *Laminated Hardwood Trailer Flooring from Canada*, Commerce found the Decentralized Fund for Job Creation Program of the Société Québecoise de Developpement de la Main-d'Oeuvre to be not *de jure* specific.[1332] However, Commerce also found assistance under the 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.[1333] Here, the ACCA contains numerous additional eligibility restrictions. Similarly, in *Live Swine from Canada*, Commerce found the Transitional Assistance/Risk Management Funding program to not be *de jure* specific because it was available to most of the agricultural sector with the exception of producers of processed agricultural products.[1334] 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 ACCA 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."[1335] 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 program.

Also, in *Citric Acid from China First Review Final*, 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, heat 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 processers, nuclear fuel processors, smelters and pressers of ferrous and non-ferrous metal, and manufacturers of textiles, medicine, chemicals, transport equipment, among many others."[1336] However, again this steam

[1329] *See* SAA at 930.
[1330] *See* GOC Case Brief Volume II at 29.
[1331] *Id.* at 30-33.
[1332] *See Laminated Hardwood Trailer Flooring from Canada*, 61 FR at 59084.
[1333] *Id.*
[1334] *See Live Swine from Canada Final* IDM at 27.
[1335] *See Fresh Cut Flowers from the Netherlands*, 52 FR at 3301 and 3306.
[1336] *See Citric Acid from China First Review Final* IDM at Comment 6.

coal program is not comparable to the ACCA which 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 *CTL Steel Plate from Korea Final*, Commerce found the Voluntary Curtailment Adjustment to not be *de jure* specific because "there were a large number of volunteers from across a wide range of industries."[1337] In addition, in *CTL Steel Plate from Korea Prelim*, Commerce found that this electricity program to not 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."[1338] However, again, the facts of this Korean electricity program are not comparable to the ACCA program, which 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." Furthermore, in the *CTL Steel Plate from Korea Final*, we note that Commerce found tax benefits under technology for manpower development expenses were not specific as the program was provided to all manufacturing and mining industries.[1339] On the contrary, here, 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.

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.[1340] 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."[1341] That is, the ITR favors enterprises or industries that are engaged in qualifying manufacturing and processing activities, over enterprises or industries that are not.

The GOC also again argues that Commerce should find the ACCA not *de jure* specific consistent with the Class 1 CCA, SR&ED, and CEWS. However, we continue to find that those subsidy programs are distinguishable from the ACCA. First, the GOC claims that the ACCA's exclusion of certain activities from the definition of "manufacturing or processing" is mirrored in the eligibility criteria for the Class 1 CCA, which Commerce has not found to be *de jure* specific. While the relevant regulations for Class 1 CCA involve eligibility for one category of building based on that building's use in "manufacturing or processing," the definition of which contains the same exclusions as the ACCA, the Class 1 CCA also provides depreciation above the standard four percent rate for "non-residential buildings."[1342] The Class 1 CCA program thus has broader eligibility criteria than the ACCA, which again as noted above is limited by law to a subset of manufacturing enterprises.

[1337] *See CTL Steel Plate from Korea Final*, 64 FR at 73193.
[1338] *See CTL Steel Plate from Korea Prelim*, 64 FR at 40456.
[1339] *See CTL Steel Plate from Korea Final*, 64 FR at 73191-92.
[1340] *See* GOC Case Brief Volume II at 6-7.
[1341] *See* section 771(5A)(D)(ii) of the Act.
[1342] *See* GOC Non-Stumpage IQR Response Volume II at 85-86.

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For similar reasons, we find no parallel between the SR&ED and the ACCA. The GOC argues that the SR&ED "excluded activities"[1343] are no more limitations on eligibility than are the activities that are excluded from the definition of manufacturing and processing under the ACCA. However, as discussed above, companies in industries that are engaged exclusively in the excluded activities under Class 53 are not eligible for the ACCA based on the tax law. With respect to the CEWS, we determined not to initiate on the program because it was "a very broad program provided to assist the Canadian economy in general" and, save for the exclusion of public sector entities, to be "generally available to all enterprises."[1344] In contrast, as discussed above, the ACCA is not available to the entire manufacturing sector, but rather excludes certain described activities, thereby restricting by law access to the program to a subset of manufacturing enterprises.

Additionally, in support of its specificity arguments, the GOC cites to *U.S. – Upland Cotton*, which was a dispute at the WTO.[1345] 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.[1346] 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.[1347] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[1348]

Thus, for all the above reasons, we continue to determine that the ACCA for Class 53 Assets program 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 GOC's and GOQ's arguments regarding *de facto* specificity.

Lastly, the GOQ asserts within its specificity arguments that federal and provincial ACCA programs should be analyzed separately as the programs are not integrally linked, and thus, financial contributions should not be combined. We continue to find this argument unpersuasive. The record demonstrates that the federal and provincial tax systems divide assets into the same classes, which are then assigned the same depreciation rates, eligibility requirements, and methods of depreciation.[1349] Consequently, because the federal and provincial tax systems are harmonized, we are treating the federal and provincial ACCA for Class 53 Assets

[1343] The GOC states that the SR&ED includes certain defined activities (such as basic research or applied research), but also excludes others, such as market research; routine testing of materials; research in social sciences; prospecting, exploring, or drilling for, or producing, minerals, petroleum, or natural gas; or the commercial production of a new or improved material, device, or product. *See* GOC Case Brief Volume II at 17-18.
[1344] *See Lumber V AR3* NSA Memorandum at 5-6.
[1345] *See* GOC Case Brief Volume II at 24-26.
[1346] *See Corus Staal v. U.S.*, 395 F. 3d 1347-49, accord *Corus Staal v. U.S.*, 502 F. 3d 1375; and *NSK v. U.S.*, 510 F. 3d 1379-80.
[1347] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[1348] *See* SAA at 659.
[1349] *See* GOC Non-Stumpage IQR Response Volume II at 16-47 and all referenced exhibits therein; *see also* GOQ Non-Stumpage IQR Response at Exhibit QC-CCA-A and all referenced exhibits therein.

program as one program. This approach is consistent with Commerce's finding for the program in the prior administrative reviews.[1350]

Comment 45: Whether the AJCTC Is Specific

GOC's Comments[1351]

- Commerce erred in finding that the Apprenticeship Job Creation Tax Credit is *de jure* specific because it limits eligibility to certain trades, rather than industries. This tax credit is available to any enterprise, regardless of industry, that hires an apprentice in any of the listed skilled job types, known as "Red Seal Trades."
- Even if the Red Seal Trades are considered industries, the AJCTC would still not be limited to a "group" of industries. Since a finding of non-specificity can be made even if less than all industries are eligible, there must be a point at which the number and diversity of industries that are eligible for a program is great enough the program is not *de jure* specific.
- The CIT rejected Commerce's specificity finding for a tax credit available to any enterprise that hires disabled persons in *Changzhou Trina Solar Energy v. U.S. (2016)*, and the AJCTC is intended to have a similarly broad benefit throughout society.[1352]

Petitioner's Rebuttal Comments[1353]

- Because the AJCTC is limited to apprentices in prescribed trades, it follows that only the enterprises or industries engaged in these trades utilize this subsidy.
- The GOC's argument amounts to a request that Commerce test for a "sufficiently small" group of recipients of a subsidy. However, as explained in the SAA, Commerce does not attempt to provide a numerical threshold for determining a sufficiently small number, and can only make this determination on a case-by-case basis. Commerce should continue to find the program to be *de jure* specific in the final results.

Commerce's Position: The AJCTC allows employers to claim a tax credit of 10 percent of wages for qualifying apprentices in the first two years of the apprentice's employment, up to a maximum of C$2,000 per apprentice per year.[1354] In the *Lumber V AR1 Final*, we found the program to be *de jure* specific because a qualifying apprentice is defined as someone working in a prescribed trade.[1355] To qualify for a tax credit under the program, an employer must employ an apprentice working in one of the 56 identified Red Seal Trades.[1356] Thus, this program is *de jure* specific under section 771(5A)(D)(i) of the Act, because eligibility for the program is expressly limited to certain industries.

The GOC argues that because the program is limited by skilled "trades," it is therefore not limited by industry or enterprise as required under section 771(5A)(D)(i) of the Act. The GOC

[1350] *See Lumber V AR1 Final* IDM at Comment 93; *see also Lumber V AR2 Final* IDM at Comment 98; and *Lumber V AR3 Final* IDM at Comment 87.
[1351] *See* GOC Case Brief Volume II at 38 – 43.
[1352] *Id*. at 42, citing *Changzhou Trina Solar Energy v. U.S. (2016)* at 1349 – 1350.
[1353] *See* Petitioner Rebuttal Brief at 159 – 161.
[1354] *See* GOC Non-Stumpage IQR Response, Volume II at GOC-II-48 and Exhibit GOC-AR4-CRA-AJCTC-1.
[1355] *See Lumber V AR1 Final* IDM at Comment 94.
[1356] *See* GOC Non-Stumpage IQR Response, Volume II at GOC-II-48 and Exhibit GOC-AR4-CRA-AJCTC-1.

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states that Red Seal Trades are types of jobs, and thus, the program is open to all industries and is only limited by activity. However, we do not distinguish, and neither the statute nor the regulations require us to distinguish, between an enterprise or industry and an activity performed by that enterprise or industry for purposes of evaluating *de jure* specificity. In practice, we have found programs to be *de jure* specific where eligibility was limited to enterprises or industries engaged in certain activities or projects.[1357] As we previously found in the *Lumber V AR1 Final*, the AJCTC continues to be expressly limited to enterprises or industries that are engaged in one of the limited "Red Seal Trades."

The GOC also argues that the AJCTC is not limited to a "group" of industries as required by section 771(5A)(D) of the Act because the eligible industries are "widely disparate."[1358] Again, we are not moved to alter our prior determination. Under section 771(5A)(D)(i) of the Act, access to assistance need only be limited to an enterprise or industry, or groups thereof; the heterogenous or homogeneous nature of the industries included or excluded is immaterial to our analysis.[1359] The GOC made similar arguments in a prior review, and we continue to find such arguments unconvincing.[1360]

The GOC states that "… a program providing a tax credit to any enterprise or industry that hires apprentices in a *wide* variety of trades is precisely the kind of program that is intended to have broad benefit throughout society and should, therefore, not be countervailable" (emphasis added).[1361] The GOC then cites to *Changzhou Trina Solar Energy v. U.S. (2016)*, in which the CIT rejected Commerce's finding of specificity for a tax credit available to any enterprise that hired persons with disabilities.[1362] However, this tax credit is not comparable to the AJCTC, because a tax credit available to any enterprise that hires workers with disabilities is not analogous to the AJCTC, which specifically prescribes that only certain trades and activities are eligible for the program.

Therefore, we continue to find this program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, the program expressly limits eligibility to certain activities, which by extension limits it to certain industries.

Comment 46: Whether the CCA for Class 1 Assets Is Countervailable

GOC's Comments[1363]

- Commerce has not contested StatCan's empirical findings that align depreciation schedules for manufacturing buildings with their actual depreciation rates, but nevertheless finds that the difference between the 10 percent and four percent rates is a financial contribution that confers

[1357] *See, e.g.*, *CWP from the UAE* IDM at 17; *see also Nails from Oman* IDM at 12.
[1358] *See* GOC Case Brief Volume II at 41.
[1359] *See* 19 CFR 351.502(b) (stating that in determining whether a subsidy is provided to a "group" for purposes of section 771(5A)(D) of the Act, Commerce is not required to consider whether there are "shared characteristics" within the group of eligible enterprises or industries).
[1360] *See Lumber V AR1 Final* IDM at Comment 94.
[1361] *See* GOC Case Brief Volume II at 42.
[1362] *Id*. at 42 (citing *Changzhou Trina Solar Energy v. U.S. (2016)* at 1349 – 1350).
[1363] *See* GOC Case Brief Volume II at 65-85.

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a countervailable benefit, *i.e.*, any depreciation rate greater than the lowest Class 1 rate of four percent is accelerated.

- The CCA for Class 1 Assets does not provide a benefit. The 10 percent depreciation rate for manufacturing buildings is not an accelerated rate above the normal rate of four percent for buildings. The 10 percent rate reflects the actual shorter useful life of manufacturing assets.
- Commerce ignores the record regarding the depreciation of different types of buildings in Class 1 and instead relies on the finding that the three types[1364] are in the same CCA class to find a benefit. This approach misunderstands the definition of depreciation and that buildings used for manufacturing are different types of assets than residential or non-residential buildings.
- Commerce focuses on the fact that, to receive the 10 percent deduction for manufacturing buildings, taxpayers must meet certain requirements (*i.e.*, 90 percent of the building floor space is used for manufacturing). By doing so, Commerce conflates the statutory requirements of specificity and benefit. The benefit analysis should look at how the depreciation deduction reduces taxes paid by the company. Because manufacturing buildings depreciate at a faster rate than residential buildings, no benefit is conferred from the higher depreciation rate.
- For purposes of applying 19 CFR 351.509(a)(1), the supposed benefit conferred by the 10 percent deduction is no different from any other standard depreciation deduction that would not provide a countervailable benefit.
- Under section 771(5)(D)(ii) of the Act, Commerce can only find that a tax program provides a financial contribution when a government authority forgoes revenue that is "otherwise due." Where a depreciation deduction does not exceed the rate at which an asset actually depreciates, the deduction cannot be considered revenue forgone that is "otherwise due."
- Commerce has yet to undertake an analysis of the meaning of forgoing of revenue that is otherwise due. Failure to address this issue is in violation of its obligations under the law.[1365]
- U.S. CVD law does not require a country to 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 be, the "otherwise due" standard can only be taken to refer to the norms of the country. As such, only deviations from norms should be treated as a financial contribution. The prevailing norm in Canada is to allow depreciation deductions based on the rate at which the assets depreciate in value. The 10 percent deduction is, thus, a norm and not a deviation.
- In defending the U.S. Foreign Sales Corporation rules at the WTO, the United States explained that "revenue that is otherwise due is forgone or not collected" should be assessed under the normative benchmark that is the Member's prevailing domestic standard."[1366]
- Commerce should decline to follow *Government of Québec v. U.S.*, where the CIT concluded that the CCA for Class 1 Assets conferred a benefit to the respondent and constituted a financial contribution because the court's decision (a) has been appealed to the Federal Circuit;

[1364] *Id*. at 66 and 71. The building types are (1) Residential Buildings (four percent depreciation rate); (2) Non-Residential Buildings—90 percent of floor space is used for manufacturing or processing (10 percent depreciation rate); and (3) Non-Residential Buildings—90 percent of floor space is used for non-residential purpose such as retail establishments (six percent depreciation rate). *See* GOC Non-Stumpage IQR Response Volume II at Exhibit GOC-AR4-CRA-CLASS1-15 (p. 405)).

[1365] *Id*. at 78 (citing, *e.g.*, *DHS v. Regents of Univ. of Cal.*, 140 S. Ct. at 1913 (finding that when an agency reaches a decision without considering an important aspect of the problem, that decision is arbitrary and capricious)).

[1366] *Id*. at 82 (citing *DS 108 Panel Report* at 66).

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(b) was premised on a faulty *Chevron* analysis; and (c) failed to engage with the substance of the GOC's arguments which are similar to those raised here.[1367]

- A specificity analysis that relies on the percentage of tax filers approach to find *de facto* specificity, without considering relevant factors such as the number of tax filers that do not pay taxes, is unlawful.
- A program used by tens of thousands of companies across many industries cannot be considered "limited" in number. Moreover, in 2020, the taxpayers producing subject and non-subject wood products comprised only 0.3 percent of the number of users.[1368] Producers of softwood lumber cannot be considered predominant or disproportionate users of the program. Further, the CRA does not exercise discretion in determining eligibility. If a taxpayer meets the objective criteria for the Class 1 CCA, then it qualifies automatically.[1369]

GOQ's Comments[1370]

- The provincial tax program should be analyzed separately from the federal program because the programs are not integrally linked. Alleged financial contributions should not be combined.
- Commerce found the Federal CCA for Class 1 Assets to not be *de jure* specific, but ignored that when reaching the *de facto* prong to find the program to be "limited in number." However, by acknowledging that claiming the CCA is conditioned upon manufacturing, processing, or computer-related activities, Commerce recognized that only a subset of eligible enterprises in Canada could benefit from the CCA for Class 1 Assets. However, Commerce ignored this subset when making its "limited number" determination for its *de facto* analysis as it compared recipients to all companies in Canada, regardless of whether they had fulfilled or could fulfill the program's eligibility requirements.
- Commerce failed to make an explicit *de jure* or *de facto* specificity finding for the Québec program.
- In Québec, 6,785 different companies, across a diverse set of industries, benefited from the tax program in 2021.[1371] No industry received a disproportionate share of the deduction and enterprises that received the deduction were not limited.

JDIL's Comments[1372]

- The GOC does not provide a financial contribution by forgoing tax revenue through the Class 1 CCA. The depreciation designations were created in response to StatCan's study finding that manufacturing and commercial buildings have shorter useful lives than residential buildings.
- The Class 1a and 1b CCAs do not accelerate depreciation or result in an unwarranted tax deduction, and were created to avoid unjustifiable collection of tax revenue prematurely for manufacturing and commercial buildings.
- The 10 percent depreciation rate for Class 1a assets and the six percent depreciation rate for Class 1b assets reflect the shorter useful lives of the assets, rather than any preferential

[1367] *Id*. at 69 and 77 (citing *Government of Québec v. U.S.*, 567 F. Supp. 3d at 1293-96).
[1368] *Id*. at 69 (citing GOC Non-Stumpage IQR Response Volume II at Exhibit GOC-AR4-CRA-CLASS1-11).
[1369] *Id*. (citing GOC Non-Stumpage IQR Response Volume II at 97).
[1370] *See* GOQ Case Brief Volume VII at 33-36.
[1371] *Id*. at 35 (citing GOQ Non-Stumpage IQR Response at Exhibit QC-CCAB-13).
[1372] *See* JDIL Case Brief at 56-59.

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treatment for the types of buildings. The Class 1a and Class 1b CCAs do not confer a benefit because they merely align the CCAs with the useful lives of the underlying assets.

Petitioner's Rebuttal Comments[1373]

- The CIT affirmed Commerce's financial contribution and benefit determinations for the CCA for Class 1 Assets program in *Government of Québec v. U.S.*[1374]
- Commerce is able to evaluate the record concerning the GOC's tax system to determine for itself whether revenue forgone is otherwise due within the meaning of the statute. Moreover, the CIT found that "Commerce reasonably interpreted the statute and regulation to require comparison to the otherwise applicable tax treatment—provided by the 4% rate applicable if taxpayers did not elect the additional depreciation."[1375]
- A detailed account of the Canadian tax depreciation system and assertions that the reduction was not a special preference are insufficient to disturb Commerce's benefit determination. Under 19 CFR 351.509(a)(1), it is clear that the benefit is the amount of difference between the tax the company paid and the tax the company would have paid absent the tax reduction.
- Regarding specificity, the relevant question is whether the actual recipients are limited in number as compared to the population at issue. Such an analysis is how Commerce determines whether a subsidy is truly broadly available and widely used through the economy. Record evidence show that the CCA for Class 1 Assets program is *de facto* specific in accordance with section 771(5A)(D)(iii)(I) of the Act.[1376]
- The Québec tax provision should not be analyzed separately from the federal tax provision. Commerce has found that the federal and provincial provisions are harmonized.

Commerce's Position: As an initial matter, the GOC, GOQ, and the petitioner commented on the litigation concerning Commerce's final affirmative determination in the CVD investigation of utility wind towers from Canada. In *Government of Québec v. U.S.*, the GOC and GOQ made similar arguments, as here, regarding the CCA for Class 1 assets.[1377] The GOC and GOQ asserted that the additional depreciation for buildings used in manufacturing did not provide a financial contribution because the additional depreciation reflected the actual higher depreciation rate of the buildings.[1378] Yet, the CIT did not find such arguments persuasive, holding that the CCA for Class 1 Assets provides a financial contribution because it provides additional depreciation above what would apply in the absence of the program, regardless of the empirical bases on which the depreciation deduction rates are based.[1379] As such, the CIT found that Commerce acted reasonably and in accordance with the law when finding that the additional depreciation rate for Class 1 assets constituted a financial contribution and benefit equal to the difference between the rate assessed and the rate applicable if the additional depreciation were not claimed.[1380]

[1373] *See* Petitioner Rebuttal Brief at 164-169.
[1374] *Id*. at 165-166 (citing *Government of Québec v. U.S.*, 567 F. Supp. 3d at 1295).
[1375] *Id*. at 166 (citing *Government of Québec v. U.S.*, 567 F. Supp. 3d at 1295).
[1376] *Id*. at 168-169 (citing GOC Non-Stumpage IQR Response Volume II at 103-104 and Exhibit GOC-AR4-CRA-CLASS1-10).
[1377] *See Government of Québec v. U.S.*, 567 F. Supp. 3d at 1293-96.
[1378] *Id*.
[1379] *Id*.
[1380] *Id*.

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Moreover, setting aside the CIT's holding in *Government of Québec v. U.S.*, Commerce has consistently rejected in prior segments of the proceeding the same CCA for Class 1 Assets arguments of the GOC, GOQ, and JDIL.[1381] Thus, as the respondent parties have not presented any new arguments with regard to the program, we continue to find that, by forgoing revenue otherwise due, the CCA for Class 1 Assets program provides a financial contribution that confers a benefit and is *de facto* specific based on the record information as discussed below.

As in the prior reviews, the GOC's arguments regarding financial contribution revolve around the interpretation of the language "foregoing {*sic*} or not collecting revenue that is otherwise due" in section 771(5)(D)(ii) of the Act. The GOC argues that the Act does not define "otherwise due," and there is no U.S. standard for what a country's tax system should be, thus meaning that the language logically refers to deviations from the norms of the country at issue.[1382] The GOC then explains that applying different tax depreciation rates to different classes of depreciable property is the norm of Canada's tax system, leading to its conclusion that the additional CCA for Class 1 Assets is not forgoing revenue otherwise due and in turn does not provide a financial contribution.[1383]

However, notwithstanding the GOC's arguments concerning the norms of a country's tax system, the fact remains, as explained in the *Lumber V AR3 Final*, that under the program, the GOC allows additional CCAs for different classes of property.[1384] Under the CCA for Class 1 buildings, the standard CCA rate is four percent while an additional six percent deduction is provided if at least 90 percent of the floor space of the eligible non-residential building is used for manufacturing or processing of goods for sale or lease. An additional two percent deduction over the four percent is available when at least 90 percent of the floor space of the eligible non-residential buildings is used for retail establishments. Thus, under the program, qualifying firms pay less in taxes than they otherwise would, which falls squarely within a financial contribution that constitutes the forgoing of revenue that is otherwise due as described under section 771(5)(D)(ii) of the Act. Additionally, we note that in *Government of Québec v. U.S.*, the CIT stated that "{t}he statute's 'foregoing {*sic*} or not collecting revenue that is otherwise due' language does not provide an exception for programs which attempt to reflect (successfully or not) the economic reality of deprecation."[1385]

In support of its arguments that only deviations from the norms of a country's tax system can be considered forgoing revenue that is otherwise due, the GOC cites 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.[1386] Congress was very clear in the URAA

[1381] *See Lumber V AR1 Final* IDM at Comment 93, 95, and 96; *see also Lumber V AR2 Final* IDM at Comment 98, 99, and 100; and *Lumber V AR3 Final* IDM at Comment 88 and 89.
[1382] *See* GOC Case Brief Volume II at 78-84.
[1383] *Id.* at 84-85.
[1384] *See* GOC Non-Stumpage IQR Response Volume II at 85-86.
[1385] *See Government of Québec v. U.S.*, 567 F. Supp. 3d at 1295.
[1386] *See Corus Staal v. U.S.*, 395 F. 3d 1347-49, accord *Corus Staal v. U.S.*, 502 F. 3d 1375; and *NSK v. U.S.*, 510 F. 3d 1379-80.

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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.[1387] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[1388]

The GOQ asserts that provincial and federal depreciation for Class 1 Assets should be analyzed separately as the programs are not integrally linked, and thus, financial contributions should not be combined. We continue to find this argument unpersuasive. The record demonstrates that the provincial and federal tax systems divide assets into the same classes, which are then assigned the same depreciation rates, eligibility requirements, and methods of depreciation over the useful life of the asset, in particular non-residential buildings.[1389] Consequently, because the federal and provincial tax systems are harmonized, we are treating the federal and provincial CCA for Class 1 Assets as one program. This approach is consistent with Commerce's treatment of the program in prior administrative reviews.[1390]

As to the benefit conferred by the depreciation for Class 1 buildings, the GOC and JDIL raise the same arguments from prior reviews,[1391] which we again reject. Thus, we continue to find that the CCA for Class 1 Assets 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).

Under the Canadian ITR, there are CCA rates for different classes of property, including Class 1 buildings, under the tax system.[1392] The standard or base CCA for Class 1 buildings is four percent, but taxpayers can claim a higher rate of depreciation for certain types of non-residential buildings.[1393] An additional six percent depreciation is allowed when at least 90 percent of an eligible building's floor space is used for manufacturing or processing and the building was acquired after March 18, 2007.[1394] Similarly, an additional two percent depreciation is provided for eligible buildings acquired after March 2007, when at least 90 percent of the floor space is used for non-residential use.[1395] To receive an additional deduction of two or six percent, taxpayers file a Schedule 8 (and Form CO-130.A for Québec) with their income tax returns.[1396] Under 19 CFR 351.509(a)(1) "{i}n the case of a program that provides a full or partial

[1387] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[1388] *See* SAA at 659.
[1389] *See* GOC Non-Stumpage IQR Response Volume II at 85-113 and all referenced exhibits therein; *see also* GOQ Non-Stumpage IQR Response at Exhibit QC-CCAB-A and all referenced exhibits therein; and JDIL Non-Stumpage IQR Response at Exhibits CCA1-01 to CCA1-07.
[1390] *See Lumber V AR1 Final* IDM at Comment 93; *see also Lumber V AR2 Final* IDM at Comment 98.
[1391] *See Lumber V AR1 Final* IDM at Comment 96; *see also Lumber V AR2 Final* IDM at Comment 99; and *Lumber V AR3 Final* IDM at Comment 88.
[1392] *See* GOC Non-Stumpage IQR Response Volume II at 16.
[1393] *See* GOC Non-Stumpage IQR Response Volume II at 85-86; *see also* GOQ Non-Stumpage IQR Response at Exhibit QC-CCAB-A (p. 1).
[1394] *Id.*
[1395] *Id.*
[1396] *See* GOC Non-Stumpage IQR Response Volume II at 91 and Exhibit GOC-AR4-CRA-CLASS1-3; *see also* GOQ Non-Stumpage IQR Response at Exhibit QC-CCAB-A (p. 3) and Exhibit QC-CCAB-6; and JDIL Non-Stumpage IQR Response at CCA 1-3.

exemption or remission of a direct tax (*e.g.*, an income tax), or reduction in the base used to 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*."[1397]

Thus, in the absence of the additional CCA for Class 1 Assets, the respondents would have paid more taxes as the basic rate applicable is four percent for Class 1 assets. Because the respondents were able to pay less tax than 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 (four percent) and the deduction calculated using the total depreciation rate, including the additional CCA rate, (either six or 10 percent) that the respondents claimed in their income tax returns filed with the tax authorities during the POR. As such, we continue to find, as we did in the *Lumber V AR3 Final*,[1398] that the four percent CCA under Class 1 is the appropriate reference for determining the amount of revenue forgone by the government's financial contribution as defined in section 771(5)(D)(ii) of the Act. Additionally, we note that in *Government of Québec v. U.S.*, the CIT upheld Commerce's determination on this matter.[1399]

Additionally, we have addressed the respondent parties' arguments regarding the CCA for Class 1 Assets specificity in prior administrative reviews.[1400] We found the arguments unconvincing then, and continue to do so in this review.

As stated in the SAA, the specificity test is intended 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.[1401] 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."[1402] 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.[1403] 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.[1404] Thus, we followed the guidance of the SAA and our practice in determining whether the CCA for Class 1 Assets program is *de facto* specific. For further discussion of Commerce's specificity analysis, *see* Comment 2.

As discussed in the *Lumber V AR4 Prelim*, the GOC reported that 30,160 companies claimed the additional deduction under the CCA for Class 1 Assets program in the POR (for tax year 2020),

[1397] *See also CVD Preamble*, 63 FR at 65375 {emphasis added}.
[1398] *See Lumber V AR3 Final* IDM at Comment 88.
[1399] *See Government of Québec v. U.S.*, 567 F. Supp. 3d at 1295-96.
[1400] *See Lumber V AR1 Final* IDM at Comment 95; *see also Lumber V AR2 Final* IDM at Comment 100; and *Lumber V AR3 Final* IDM at Comment 89.
[1401] *See* SAA at 929.
[1402] *Id.*
[1403] *See* SAA at 931.
[1404] *See CRS from Korea* IDM at Comment 13; *see also Lumber V Final* IDM at Comment 62.

out of approximately 2.3 million corporate tax filers in Canada.[1405] Because we are treating the CCA for Class 1 Assets as one program (and not as separate federal and provincial tax programs), we relied on the Canada-wide tax data provided by the GOC, which encompasses all provinces. Our analysis of the data indicates that the actual recipients of the program, relative to total corporate tax filers, are limited in number on an enterprise basis, as just 1.31 percent of Canadian corporate tax filers claimed the additional CCA for Class 1 Assets in the POR. As such, we continue to find that the CCA for Class 1 Assets program is not widely used throughout the Canadian economy. Accordingly, we determine 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 program are limited in number on an enterprise basis. Further, the breadth of industries that benefited from the program does not alter this finding, which is consistent with Commerce's specificity determinations in the prior reviews.[1406]

Comment 47: Whether the Federal and Provincial SR&ED Tax Credits Are Specific

GOC's[1407] *and GBC's*[1408] *Comments*

- 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 AR1 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.*,[1409] 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.*,[1410] 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.*,[1411] 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, 21,550 enterprises from a broad range of industries used the SR&ED tax credit in 2021.
- Commerce claimed in the *Lumber V AR3 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

[1405] *See Lumber V AR4 Prelim* PDM at 44; *see also* GOC Non-Stumpage IQR Response Volume II at 103 and Exhibit GOC-AR4-CRA-CLASS1-10.
[1406] *See Lumber V AR1 Final* IDM at Comment 95; *see also Lumber V AR2 Final* IDM at Comment 100; and *Lumber V AR3 Final* IDM at Comment 89.
[1407] *See* GOC Case Brief Volume II at 43 – 65.
[1408] *See* GBC Case Brief Volume V at 37 – 41.
[1409] *See Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d at 1319.
[1410] *See Bethlehem Steel Corp v. U.S.*, 140 F. Supp. 2d at 1368 – 1370.
[1411] *See AK Steel Corp. v. U.S.*, 192 F. 3d at 1385.

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number test in section 771(5A)(D)(iii)(I) of the Act.[1412] 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 cases raised by the GOC, 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."[1413] 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. While the GOC agrees that specificity must be evaluated based on case-specific facts, Commerce has ignored *all* the facts here except for the numerator and denominator of its percentage calculations.
- Commerce's attempt in the *Lumber V AR2 Final* to rely on the SAA in support of its *de facto* specificity analysis was deficient. As the SAA explains, the specificity test is used to ensure that "truly broadly available and widely used" measures are not countervailed, while at the same time not meant to be a loophole by which narrowly targeted subsidies could avoid the CVD law.[1414] The 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."[1415]
- 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.[1416] 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,

[1412] *See* GOC Case Brief Volume II at 49 – 50 (citing *Lumber V AR3 Final* IDM at 393 – 396).
[1413] *Id.* (citing *Lumber V AR3 Final* IDM at 396).
[1414] *See* SAA at 930.
[1415] *Id.* at 930.
[1416] *See* GOC Case Brief Volume II at 47 (citing *Changzhou Trina Solar Energy v. U.S. (2018)*, 352 F.Supp.3d at 1331).

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regardless of how widely available and how broadly used, and would amount to the kind of result rejected by the court in *Carlisle Tire & Rubber v. U.S.* and by Congress in the SAA.[1417]

- 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.[1418]
- 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, as more than half of tax filers had no tax liability to offset. 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.[1419]
- 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.
- In the *Lumber V AR3 Final*, Commerce asserted that it did not need to assess the number of users in the context of the goods-producing sector or consider any number other than the total number of tax filers.[1420] However, Commerce did not provide any reasoned explanation as to *why* this approach is appropriate and thus failed to give the issue fair consideration.
- In short, a program with tens of thousands of corporate users cannot be considered *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.
- Although Commerce did not reach this issue, softwood lumber producers are not predominant or disproportionate users of the SR&ED 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.

Joint Canadian Parties' Comments[1421]

- Commerce incorrectly found a number of programs to be specific. The proper test for specificity is widespread availability and use, not universal availability and use.
- A program is only *de jure* specific if it is limited in a meaningful manner and only *de facto* specific where use is not widespread. However, Commerce has overstepped these standards by *de facto* specificity for programs both widely available and used by a broad cross-section of industries.

[1417] *See* GOC Case Brief Volume II at 55 (citing SAA at 929; and *Carlisle Tire & Rubber v. U.S.*, 564 F. Supp. at 838).
[1418] *Id.* at 55 – 56 (citing *Lumber V AR3 Final* IDM at 394).
[1419] *Id.* at 57 – 59.
[1420] *Id.* at 64 (citing *Lumber V AR3 Final* IDM at 395).
[1421] *See* GOC Case Brief Volume I at 112 – 119.

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- The SAA explains that the specificity test is meant to serve as a rule of reason to prevent subsidies with widespread availability and usage from being countervailed. This aligns with the use of the words "limit" and "limited" in the Act. Commerce's interpretation of the Act and SAA acknowledges that a program can be limited to a single sector (agriculture) and still not be specific.
- Commerce's *de facto* specificity analysis must be made on a case-by-case basis, guided by the relevant facts, and cannot be reduced to a mathematical formula.

Petitioner's Rebuttal Comments[1422]
- Commerce has considered and rejected the arguments advanced by the respondents on multiple occasions. As a result, in the final results, Commerce should continue to find the federal and provincial SR&ED programs to be countervailable.
- Commerce's preliminary finding that the federal SR&ED program is *de facto* specific should not be reconsidered absent "new facts or evidence of changed circumstances."[1423]

Commerce's Position: In the *Lumber V AR3 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.[1424] 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*.[1425] In the *Lumber V AR3 Final*, Commerce again found that the SR&ED programs were *de facto* specific and responded to the Canadian Parties' arguments that the *Lumber V AR2 Final*'s finding on this issue was incorrect.[1426] In this review, the Canadian Parties make substantively the same arguments as in the prior proceedings, and we continue to find their arguments unconvincing.

As Commerce explained in the *Lumber V AR3 Final*,[1427] 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.[1428] 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."[1429] 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.[1430] 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

[1422] *See* Petitioner Rebuttal Brief at 169 – 174 and 214 – 215.
[1423] *See Magnola v. U.S.*, 508 F.3d at 1358.
[1424] *See Lumber V AR3 Final* IDM at Comment 85.
[1425] *See Groundwood Paper from Canada Final* IDM at Comment 61.
[1426] *See Lumber V AR3 Final* IDM at Comment 85.
[1427] *Id.*
[1428] *See* SAA at 930 (referencing *Carlisle Tire and Rubber v. U.S.*).
[1429] *Id.*
[1430] *Id.* at 931.

question to determine whether the number of enterprises using a subsidy is actually large or small.[1431] 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."[1432] 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 21,550 users of the Federal SR&ED program is "large" and that the users represent almost all industries in Canada."[1433] The GBC likewise argues that the program has many users representing diverse industries in its provincial economy.[1434] 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 AR4 Prelim*, Commerce considered whether the recipients of the Federal and British Columbia programs were limited in number on an industry or enterprise basis. For each program, we found that the usage data provided by the respective government showed that the actual users of the program were limited relative to either the number of enterprises or corporate tax filers.[1435]

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.[1436] 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 R&D (and, therefore, hypothetically could have benefited from the program).[1437] Both arguments emphasize that the Federal SR&ED's users are not "limited" when compared against a much smaller denominator.

[1431] *See CRS from Korea* IDM at Comment 13.
[1432] *See* 19 CFR 351.502(a).
[1433] *See* GOC Case Brief Volume II at 52.
[1434] *See, e.g.*, GBC Case Brief Volume V at 39.
[1435] *See Lumber V AR4 Prelim* PDM at 46 (Federal), and 51 – 52 (British Columbia).
[1436] *See* GOC Case Brief Volume II at 62.
[1437] *Id.* at 58.

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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.[1438] Commerce's analysis in this administrative review, as well as its analysis in prior segments of this proceeding 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. The cases cited by the GOC – *AK Steel Corp. v. U.S.* and *CTL Steel Plate from Korea Final* (litigated in *Bethlehem Steel v. U.S.*) involved *de facto* specificity findings based on predominant or disproportionate use, pursuant to 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 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. 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.[1439] Because we found these programs *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act, arguments regarding predominant or disproportionate use of the tax credits are irrelevant to Commerce's analysis of the programs. Therefore, we find that the references to *AK Steel Corp. v. U.S.* and *Bethlehem Steel v. U.S.*, 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*.[1440] 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 Federal Circuit has acknowledged that Commerce is afforded significant latitude and is not subject to rigid rules when determining if a particular program is specific under section 771(5A) of the Act.[1441]

The GOC additionally cites to three 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:

[1438] *See* SAA at 930.

[1439] *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).

[1440] *See Lumber V Final* IDM at Comment 64.

[1441] *See Royal Thai Gov't v. U.S. 2006*, 436 F. 3d 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)}.").

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OCTG from Turkey,[1442] *CRS from Russia*,[1443] and *Compressors from Singapore*.[1444] However, as stated above, the Federal Circuit has stated, Commerce is afforded latitude and not subject to rigid rules when determining specificity.[1445] 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 Federal Circuit stated, specificity "must be determined on a case-by-case basis taking into account all facts and circumstances of a particular case."[1446] Because the facts of *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 d*e facto* specific, in accordance with the Act, regulations and the SAA. As Commerce has explained above, and in prior decisions,[1447] this program is specific because the number of users was limited.

Comment 48: Whether the FLTC and PLTC Are Countervailable

GOC's,[1448] *GBC's*,[1449] *Canfor's*,[1450] *and West Fraser's*[1451] *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.
- 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.[1452]
- 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.

[1442] *See OCTG from Turkey* (affirmed in *Borusan v. U.S.*, Supp. 61 F. 3d at 1342-43).
[1443] *See CRS from Russia* IDM at 117.
[1444] *See Compressors from Singapore*, 61 FR at 10316.
[1445] *See Royal Thai Gov't v. U.S. 2006*, 436 F. 3d 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)}.").
[1446] *See AK Steel v. U.S.*, 192 F. 3d at 1385; *see also Royal Thai Gov't v. U.S. 2006*, 436 F. 3d 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.").
[1447] *See Lumber V AR3 Final* IDM at Comment 85; *see also Lumber V AR1 Final* IDM at Comment 89; *Lumber V AR2 Final* IDM at Comment 94; *Lumber V Final* IDM at Comment 64; and *Groundwood Paper from Canada Final* IDM at Comment 61.
[1448] *See* GOC Case Brief Volume II at 85-98.
[1449] *See* GBC Case Brief Volume V at 41-45.
[1450] *See* Canfor Case Brief at 18-28.
[1451] *See* West Fraser Case Brief at 75.
[1452] *See* Canfor Case Brief at 18.

- 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. Similarly, Commerce should consider the program in its entirety, as a mechanism for transferring funds from the federal to the provincial government.[1453]
- The FLTC, PLTC, and BC logging tax must be evaluated as a whole, and Commerce should consider the multiple elements and actors brought together for an overarching governmental objective.[1454] 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 AR2 Final*, Commerce rejected this net benefit calculation on the grounds that the logging tax does not constitute an application fee or deposit.[1455] Commerce did not provide a sufficient explanation for its interpretation of the statute in either proceeding, and failed to follow the maxim of statutory interpretation that every word of a statute should be given effect."[1456]

Petitioner's Rebuttal Comments[1457]

- 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*,[1458] 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.

[1453] *See* GBC Case Brief Volume V at 42.
[1454] *See* GOC Case Brief Volume II at 91 (citing *DRAMs from Korea* IDM at 48; and *Hynix Semiconductor v. U.S.*, 391 F. Supp. 2d at 1345).
[1455] *See* section 771(6)(A) of the Act.
[1456] *See* GOC Case Brief Volume II at 98, citing *Glaxo Wellcome Inc. v. U.S.*, 126 F. Supp 2d at 591 ("Statutes must be interpreted, if possible, to give each word some operative effect.") (citing *Walters v. Metropolitan Educ. Enterprises, Inc.*, 519 U.S. at 209); *see also United States v. Gold Mountain Coffee, Ltd.*, 601 F. Supp. at 215 ("An interpretation of a statute that causes any part of it to be meaningless is strongly disfavored, every effort {must be} made to give full force and effect to all of the language contained therein.").
[1457] *See* Petitioner Rebuttal Brief at 175-183.
[1458] In *Inland Steel v. U.S.*, the CIT affirmed Commerce's determination in *Steel Products from France.*

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- 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.[1459] 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.
- 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.[1460]

Commerce's Position: The Canadian Parties raised these same arguments in a prior review.[1461] 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."[1462] 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."[1463] Thus, it is evident that the FLTC constitutes a financial contribution in the form of revenue forgone, 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 forgone, 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

[1459] *See* Petitioner Rebuttal Brief at 181 (citing *Hynix Semiconductor v. U.S.*, 391 F. Supp. at 1346).
[1460] *Id.* at 183 (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.")).
[1461] *See Lumber V AR2 Final* IDM at Comment 101.
[1462] *See* GOC Non-Stumpage IQR Response, Volume II at 140.
[1463] *Id.* at Exhibit GOC-AR4-CRA-FLTC-1 (p. 2710) (Federal Budget – April 10, 1962).

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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 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.[1464] 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.

[1464] *See Welded Line Pipe from Turkey* IDM at 23-24; *see also PET Film from India* IDM at 11 and 13.

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.[1465]

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 to section 771(5)(C) of the Act.[1466] 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 V AR2 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).[1467] 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.[1468] 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*[1469] (the determination at issue in *Government of Sri Lanka v. U.S.*) and *Inland Steel v. U.S.* 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,

[1465] *See* GOC Case Brief Volume II at 95 (citing the *CVD Preamble*, 63 FR at 65361; *see also* 19 CFR 351.503(c)).
[1466] *Id.*
[1467] *See, e.g.*, *Lumber V AR2 Final* IDM at Comment 101 (citing *CVD Preamble*, 63 FR at 65375-76, 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).
[1468] *See CVD Preamble*, 63 FR at 65361.
[1469] *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.

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merely because government money passed through them. In *Inland Steel v. U.S.*, 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.[1470] 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.

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.[1471] 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 forgoes 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 forgo 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).

[1470] *See Inland Steel v. U.S.*, 967 F. Supp. at 1367-68.

[1471] *See* Canfor Non-Stumpage IQR Response at Exhibit 17 (Canfor's 2020 Federal Tax Return (filed in 2021) at 8, line 640 and 34, line 651); and West Fraser Non-Stumpage IQR Response at Exhibit WF-AR4-GEN-15 (West Fraser's 2020 Federal Tax Return (filed in 2021) at lines 640 and 651).

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Alberta

Comment 49: Whether the TEFU Program Is Countervailable

GOA's Comments[1472]

- The record shows that the TEFU, a partial tax exemption, is generally available to consumers for the purchase of marked fuel that is not used to power vehicles operating on roadways.[1473] The program's eligibility requirements do not consider the industry or enterprise in which the applicant operates, let alone "expressly" restrict or favor applicants by industry or enterprise.[1474]
- Because the TEFU is available and used by a diverse group of users,[1475] and the use-based eligibility criteria do not limit availability or favor one industry or enterprise over another, the program is not *de jure* specific pursuant to section 771(5A)(D)(i) of the Act.
- In *Pasta from Italy*, Commerce found a research program, which provided a tax credit or contribution to costs for certain research activities, was not specific as a matter of law because it was not limited to any particular enterprise or industry, despite being open only to users engaged in certain enumerated activities.[1476] The situation in *Pasta from Italy* is indistinguishable from the TEFU, and Commerce should arrive at the same non-specific finding here.
- Further, the eligibility criteria that govern the TEFU are in no way restrictive on the basis of industry or enterprise, are neutral, and do not favor any particular enterprise or industry over another.[1477] The criteria satisfy section 771(5A)(D)(ii)(I)-(III) of the Act, as they are automatic, strictly followed, and established in legislation. As such, the TEFU is not specific as a matter of law under section 771(5A)(D)(ii) of the Act.
- An authority provides a financial contribution through a tax program if the government is forgoing or not collecting revenue that is *otherwise* due (*see* section 771(5)(D)(ii) of the Act). If the government would not otherwise collect the revenue, then there is no financial contribution. Here, the GOA is not forgoing any tax revenue that would otherwise be collected. Instead, the program institutes a reduced tax rate for activities that, prior to the program, were not subject to a fuel tax at all.[1478]

Petitioner's Rebuttal Comments[1479]

- The GOA has not presented any new evidence to warrant reconsideration of TEFU's countervailability. All of the GOA's arguments have been rejected by Commerce in earlier segments of this proceeding.[1480]

[1472] *See* GOA Case Brief Volume IV.B at 21-27.
[1473] *Id*. at 23 (citing GOA Non-Stumpage IQR Response Volume I, Appendix H at ABI-H-1 and Exhibit AB-AR4-TEFU-4).
[1474] *Id*. at 24 (citing GOA Non-Stumpage IQR Response Volume I, Appendix H at ABI-H-9 to H-11 and Exhibit AB-AR4-TEFU-6).
[1475] *Id*. at 24 (citing GOA Non-Stumpage IQR Response Volume I, Appendix H at ABI-H-1 and Exhibit AB-AR4-TEFU-6 (p. 1)).
[1476] *Id*. at 25 (citing *Pasta from Italy* IDM at 17; *see also Non-Oriented Electrical Steel from Taiwan* IDM at 21).
[1477] *Id*. at 26 (citing GOA Non-Stumpage IQR Response Volume I, Appendix H at ABI-H-9 to H-11).
[1478] *Id*. at 27 (citing GOA Non-Stumpage IQR Response Volume I, Appendix H at ABI-H-2 and ABI-H-20).
[1479] *See* Petitioner Rebuttal Brief at 192-195.
[1480] *Id*. at 192 (citing, *e.g.*, *Lumber V AR3 Final* IDM at Comment 91).

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- As the GOA reported, the limited purpose for which one may receive a certificate to purchase marked fuel include use of stationary equipment and purposes not utilizing public roads, including "heating, cooling, operation of farm equipment, off-road equipment or unlicensed vehicles."[1481] As there has been no change to these limitations, Commerce was correct to rely on its prior determinations in the *Lumber V AR4 Prelim*.
- Similarly, there is no new evidence on the record to refute Commerce's prior finding that the TEFU's eligibility criteria do not meet the statutory definition of "objective criteria."[1482]
- The *Fuel Tax Act* is clear that fuel covered by the TEFU is tax-exempt, and thus, in the absence of the TEFU provisions, non-motive fuel would be taxed at the standard fuel tax rate.[1483] As such, the TEFU provides a financial contribution to the recipient in the form of revenue forgone by the GOA.

Commerce's Position: As there are no new arguments or information on the record of this administrative review with regard to the TEFU program, consistent with the *Lumber V AR3 Final*, Commerce continues to find that the TEFU is *de jure* specific under section 771(5A)(D)(i) of the Act and provides a financial contribution as defined in section 771(5)(D)(ii) of the Act that confers a benefit.

In the investigation and prior reviews, we found the TEFU to be *de jure* specific under section 771(5A)(D)(i) of the Act, as it is "expressly limited to enterprises or industries engaged in certain activities," and that 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."[1484] In the instant review, the GOA again contests our finding, repeating that a TEFU applicant can select a marked fuel use from among "twenty three diverse operations types, including a catch-all, 'other' 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."[1485] However, the GOA's argument does not undermine the fact that the law expressly limits the program to enterprises or industries engaged in certain activities.

Most recently, in the *Lumber V AR3 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."[1486] Rather, though the GOA cites potentially diverse uses, these uses are narrowly tailored "discrete segments" of the economy, as described in the SAA. As such, we continue to find the GOA's argument unpersuasive. We also find that the other arguments made by the GOA on specificity

[1481] *Id*. at 194 (citing GOA Non-Stumpage IQR Response Volume I, Appendix H at ABI-H-1).
[1482] *Id*. (citing Lumber V AR3 Final IDM at Comment 91).
[1483] *Id*. (GOA Non-Stumpage IQR Response Volume I, Appendix H at Exhibit AB-AR4-TEFU-3).
[1484] *See Lumber V Final* IDM at Comment 73; *see also Lumber V AR1 Final IDM* at Comment 97; *Lumber V AR2 Final* IDM at Comment 102; and *Lumber V AR3 Final* IDM at Comment 91.
[1485] *See* GOA Case Brief Volume IV.B at 24.
[1486] *See Lumber V AR3 Final* IDM at Comment 91.

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under section 771(5A)(D)(i) of the Act were considered and rejected by Commerce in the *Lumber V AR3 Final* and, as such, do not provide grounds for reconsideration here.[1487]

With regard to *de jure* specificity under section 771(5A)(D)(ii) of the Act, we found in the *Lumber V AR3 Final* that:

> the 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.[1488]

We note no additions or new factual information on the record of this review that would lead to a change in this finding. The controlling statutes and eligibility criteria for the TEFU have not changed since the prior review.[1489] Likewise, the arguments raised by the GOA in its case brief as to why the program is not *de jure* specific under section 771(5A)(D)(ii) of the Act were previously discussed in the *Lumber V AR3 Final* and found unpersuasive.[1490]

Similarly, given that the nature and operation of the TEFU has not changed since the underlying investigation, our finding that the program provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act remains unchanged. Consistent with the *Lumber V Final*:

> {w}e 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 forgoing tax revenue that would otherwise be due.[1491]

Arguments that the program does not fall under the statutory definition of "forgoing 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, and 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.[1492]

Therefore, for the above mentioned reasons, we continue to find the TEFU to be a countervailable program.

[1487] *Id.*
[1488] *Id.*
[1489] *See* GOA Non-Stumpage IQR Response Volume I, Appendix H at ABI-H-9 to H-10 and Exhibits AB-AR4-TEFU-3, TEFU-4, TEFU-5, TEFU-7, TEFU-8, TEFU-11.
[1490] *See Lumber V AR3 Final* IDM at Comment 91.
[1491] *See Lumber V Final* IDM at Comment 73.
[1492] *See* GOA Non-Stumpage IQR Response Volume I, Appendix H at ABI-H-1 and Exhibit AB-AR4-TEFU-3.

Comment 50: Whether the Property Tax EOA Is Countervailable

GOA's Comments[1493]

- Alberta's property tax system, which includes allowances for economic obsolescence, does not provide a financial contribution, nor it is *de jure* specific.
- During the POR, West Fraser received property tax abatement benefits, in the form of reduced property taxes, for three of its Alberta production facilities, and Canfor received an economic obsolescence allowance for an Alberta sawmill.[1494]
- Depreciation based on economic obsolescence is a part of standard property assessment procedures to ensure that functional and economic obsolescence are taken into account in the valuation of industrial property in Alberta.[1495] Accurately valuing property is not a financial contribution. The allowance did not involve the forgoing or non-collection of revenue otherwise due under section 771(5)(D)(ii) of the Act.
- Economic obsolescence depreciation is a widely used property value assessment technique, and thus, is not specific. Nothing in Alberta's laws or regulations limit an assessor's consideration of economic obsolescence factors by enterprise or industry.[1496]

Petitioner's Rebuttal Comments[1497]

- The GOA's description of the program indicates that the EOA is designed to assess the value of a property under consideration, then identify areas of "obsolescence" which assessors may take into account to lower the assessed tax value of a given property.[1498] The obsolescence allowances then result in a revised assessment of the property's value and a reduced tax bill.[1499]
- Under the EOA, West Fraser's tax bill was reduced during the POR. The tax savings represent a financial contribution in the form of revenue forgone under the statute.
- The GOA's specificity argument is irrelevant as it relates to a *de jure* specificity finding under section 771(5A)(D)(i) of the Act. Commerce, however, found regional specificity under section 771(5A)(D)(iv) of the Act because participation in the program is limited to those enterprises with properties located within a municipality,[1500] and properties located outside said municipalities are unable to benefit from the EOA.

Commerce's Position: Commerce found the EOA program countervailable in prior administrative reviews, most recently, in the *Lumber V AR3 Final*.[1501] We find that the GOA has not submitted any new arguments regarding the program, and thus, we have not reconsidered our countervailable finding for the EOA program.

[1493] *See* GOA Case Brief Volume IV.B at 19-21.
[1494] *Id*. at 20 (citing GOA Non-Stumpage IQR Response Volume I, Appendix F at ABI-F-6 and F-7).
[1495] *Id*. at 19 (citing GOA Non-Stumpage IQR Response Volume I, Appendix F at ABI-F-1 and F-2).
[1496] *Id*. at 21 (citing GOA Non-Stumpage IQR Response Volume I, Appendix F at ABI-F-1 to F-3).
[1497] *See* Petitioner Rebuttal Brief at 187-189.
[1498] *Id*. at 188 (citing GOA Non-Stumpage IQR Response Volume I, Appendix F at ABI-F-1 and F-2).
[1499] *Id*. (citing GOA Non-Stumpage IQR Response Volume I, Appendix F at ABI-F-2 and Exhibit AB-AR4-MPT-11).
[1500] *Id*. at 189 (citing GOA Non-Stumpage IQR Response Volume I, Appendix F at ABI-F-3 and F-4).
[1501] *See Lumber V AR3 Final* IDM at Comment 92.

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During the POR, Canfor and West Fraser received economic obsolescence allowances that reduced their taxes owed.[1502] The GOA argues that any reduction in the companies' tax liability under the EOA represents an accurate valuation of their property and assets under the law, and thus, does not confer a benefit. However, Commerce has explained that simply because tax savings are set forth in provincial law and regulations does not necessarily indicate that such tax savings do not confer a benefit.[1503]

The financial support provided under the EOA program is administered by municipal governments in Alberta.[1504] This additional depreciation, or economic obsolescence, is applied by assessors in each municipality in Alberta.[1505] Municipal assessors make value determinations based on a complete assessment of the property, including depreciation associated with economic obsolescence stemming from such factors as global competition, lower market prices, or low utilization.[1506] When factoring in such tax abatements, facilities ultimately have reduced property tax liability and pay less tax to the municipal governments in Alberta than they would in the absence of the tax abatements.

Based on this information and the nature of the EOA program, and consistent with the *Lumber V AR3 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. 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.[1507]

Comment 51: Whether Tax Savings Under Alberta's Schedule D Are Countervailable

GOA's Comments[1508]

- 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.[1509] 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.

[1502] *See* Canfor Non-Stumpage IQR Response at 34; *see also* West Fraser Non-Stumpage IQR Response Volume II at 76-77.
[1503] *See Lumber V AR2 Final* IDM at Comment 104; *see also Lumber V AR3 Final* IDM at 92.
[1504] *See* GOA Non-Stumpage IQR Response Volume I, Appendix F at ABI-F-2 and F-3.
[1505] *Id*. at ABI-F-2 through F-5 and Exhibit AB-AR4-MPT-7.
[1506] *Id*. at ABI-F-6, F-10, and F-11.
[1507] *Id*. at ABI-F-4, F-5, F-9, and F-10.
[1508] *See* GOA Case Brief Volume IV.B at 16 – 19.
[1509] *Id*. at 18 (citing GOA Non-Stumpage IQR Response at 108 and Exhibit AB-AR4-MPT-5).

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Canfor's Comments[1510]

- Commerce stated that interested parties have not submitted any new information or argumentation that warrants reconsideration of the prior determination in the *Lumber V AR3 Final*.[1511] However, Canfor provides additional arguments to demonstrate that Schedule D depreciation does not represent revenue forgone, and that there is no benefit conferred to Canfor.
- 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."[1512] Canfor does not maintain that this fact 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.
- 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.
- 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."[1513]
- Section 351.509(a)(1) of Commerce's regulations 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."[1514] 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's Comments[1515]

- Commerce should continue to find the application of Schedule D depreciation to Canfor's facility to be countervailable.
- The GOA's and Canfor's emphasis on the fact that the depreciation factor was calculated in accordance with the rules set out in the Alberta standard property assessment procedures does not mean that it does not represent a financial contribution.
- Schedule D depreciation provides Canfor with a lower property tax obligation than it would have otherwise owed in the absence of the program.

[1510] *See* Canfor Case Brief at 35 – 43.
[1511] *Id.* at 36 (citing *Lumber V AR4 Prelim* PDM at 48).
[1512] *Id*. at 36 (citing *Lumber V AR3 Final* IDM at Comment 90).
[1513] *Id*. at 39 (citing GOA Non-Stumpage IQR Response at Exhibit AB-AR4-MPT-6).
[1514] *Id*. at 39 (citing 19 CFR 351.509(a)(1)).
[1515] *See* Petitioner Rebuttal Brief at 189 – 192.

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Commerce's Position: The arguments raised by the GOA and Canfor are the same as those raised in the prior administrative review.[1516] Canfor notes that it has included additional arguments new to this review; however, Commerce acknowledged and responded to the same arguments in the *Lumber V AR3 Final*.[1517] 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 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 V AR3 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.[1518] 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).[1519] Under 19 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 forgoes revenue that would otherwise be due.

We also continue to find that the Schedule D tax depreciation program is *de jure* specific under section 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.[1520]

British Columbia

Comment 52: Whether the CleanBC CIIP and CIF Subprograms Are Countervailable

GBC's Comments[1521]

- Companies that are subject to CleanBC not only pay an additional carbon tax, but also have to take on investments to reduce emissions. The CIIP and CIF subprograms should be considered as a whole, not individually, to capture the burdens the program placed on companies.

[1516] *See Lumber V AR3 Final* IDM at Comment 90.
[1517] *Id.*
[1518] *Id.*
[1519] *Id.*
[1520] 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 V AR3 Final* IDM at Comment 90.
[1521] *See* GBC Case Brief Volume V at 53-59.

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- Commerce considers "what goes into a company."[1522] In doing so, Commerce must take into account evidence that "fairly detracts" from the weight of its determination.[1523] When examined in totality, the CIIP and CIF do not provide a benefit.
- CleanBC distributes incentive payments, funded solely by the incremental additional carbon tax paid by large industrial emitters to eligible CIIP recipients first, with the remainder of funds reserved for the CIF.
- Commerce has determined that the CIIP qualifies as a financial contribution in the form of revenue forgone. However, the CIIP does not qualify as revenue forgone because it is a self-funding program with the funds provided by industrial emitters themselves. The GBC imposed an additional incremental increase on the carbon tax of C$10 to C$15 per ton on covered industrial operations in 2021.[1524] That increase funded the subprograms. During the POR, West Fraser received less than what it paid into the program.[1525]
- The CleanBC subprograms are also not *de jure* specific. CleanBC covers all large industrial operations with high GHG emissions that report their emissions under the GGIRCA, which has objective criteria to identify the large industrial operations and implements neutral program rules that do not favor one class or kind of industry over another.[1526]
- The CIIP and CIF are available for any entity covered by CleanBC, which includes a wide range of large industrial emitters.

Petitioner's Rebuttal Comments[1527]

- The GBC again raises similar complaints regarding the countervailable findings for the CIIP and CIF. Their arguments remain unconvincing and should be rejected.
- The GBC's citation to the *Government of Sri Lanka v. U.S.* is misplaced as the case involved a foreign producer providing an interest-free loan to the government.[1528] Under the CIIP, the GBC provides an incremental tax refund to West Fraser, which is a benefit.
- The additional burdens detailed by the GBC are of no importance to Commerce's benefit analysis, which is only concerned with the extent that the tax paid by a firm as a result of the program is less than the tax that the firm would have paid in the absence of the program.
- The record shows that the CIIP dispenses payments to industry participants to incentivize cleaner industrial operations by reducing carbon tax costs for facilities.[1529]
- The reduction in the companies' carbon tax costs constitutes a financial contribution in the form of revenue forgone because the GBC refunds a portion of its collection of the additional carbon tax paid by the companies that meet certain emission benchmarks.
- The CIIP is not neutral, but limited in that it excludes certain types of facilities (*e.g.*, natural gas distribution, sewage treatment, electric bulk power transmission and control to name a few).[1530] Not only does record evidence invalidate the GBC's misuse of section

[1522] *Id*. at 55 (citing *Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d at 1380).
[1523] *Id*. (citing *CS Wind Vietnam v. U.S.*, 832 F.3d at 1373).
[1524] *Id*. at 59 (citing GBC Non-Stumpage IQR Response Volume IV at 1).
[1525] *Id*. (citing GBC Non-Stumpage IQR Response Volume IV at 7-8).
[1526] *Id*. at 57 (citing GBC Non-Stumpage IQR Response, Volume IV (CIIP) at 1-2 and 8, and Volume V (CIF) at 1-2 and 11-12).
[1527] *See* Petitioner Rebuttal Brief at 199-206.
[1528] *Id*. at 204 (citing *Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d at 1373).
[1529] *Id*. at 203 (citing GBC Non-Stumpage IQR Response Volume IV at 2).
[1530] *Id*. at 205 (citing GBC Non-Stumpage IQR Response Volume IV at 8, 13).

771(5A)(D)(ii) of the Act, but it also satisfies section 771(5A)(D)(i) of the Act, which provides that a subsidy is specific as a matter of law where the authority providing the subsidy expressly limits access to the subsidy to an enterprise or industry.

- The CIF provides a financial contribution in the form of a grant with the benefit equal to the amount of the grant received. The CIF encourages qualifying industrial operations in British Columbia to reduce GHG emissions by funding emission reduction projects through a shared-cost style program.[1531] In the absence of the payments under the CIF, West Fraser would have been solely responsible for the entire cost of its emissions-reduction project for which it received a payment in the POR.[1532]
- The CIF is also *de jure* specific. The GBC acknowledges that only large industrial operations are eligible recipients, but claims that is too broadly applicable to be *de jure* specific.[1533] However, the record shows that West Fraser was eligible to receive reimbursement funds from the CIF because it "operates a primary reporting operation as defined by" the GGIRCA.[1534] By virtue of this limitation to large industrial emitters, certain industries or enterprises are excluded from receiving funds under the CIF.

Commerce's Position: The GBC again raises the same arguments regarding the countervailability of CleanBC's CIIP and CIF subprograms as in prior reviews. We found the GBC's arguments unpersuasive in the *Lumber V AR3 Final*,[1535] and continue to do so here for the same reasons as discussed below.

The GBC argues that Commerce must evaluate the CleanBC Program as a whole, which imposes taxes and establishes emissions requirements in addition to distributing financial benefits to regulated companies. When considered in its totality, the GBC contends, there is no benefit because of the burdens and requirements that the program places on companies. The GBC also argues that CleanBC is a "self-funding" program that uses funds from the industries that ultimately receive the tax refunds or payments. The GBC adds, without evidence, that West Fraser received less than what it paid into the CIIP. However, as we explained in the *Lumber V AR3 Final*, Commerce is only concerned with "what goes into the company," *i.e.*, the benefit it receives[1536] from tax refunds under CIIP and incentive payment reimbursements under the CIF, and not with the initial collection of the taxes or the source of the revenue generally.

The GBC raised the carbon tax rate from C$30 to C$35 per ton in 2018, and announced a plan to increase the tax rate by an additional C$5 per ton annually until 2021.[1537] Thus, for the 2021 POR, the additional carbon tax used to fund CleanBC, *i.e.*, the CIIP and CIF subprograms, was C$10 per ton from January 1 to March 31, 2021, and $15 per ton from April 1 to December 31,

[1531] *Id.* at 200 (citing GBC Non-Stumpage IQR Response Volume V at 2).
[1532] *Id.* at 200-201 (citing GBC Non-Stumpage IQR Response Volume V at 7).
[1533] *Id.* at 201 (citing GBC Case Brief Volume V at 54 and 57).
[1534] *Id.* (citing GBC Non-Stumpage IQR Response Volume V at 14).
[1535] *See Lumber V AR3 Final* IDM at Comment 95.
[1536] *Id.*; *see also CVD Preamble*, 63 FR at 65361, where Commerce explained it does not consider the overall "effect" a government program has on a firm's behavior in determining whether a subsidy exists, the determination of whether a benefit is conferred is separate and distinct from an examination of the "effect" of a subsidy, and that in analyzing whether a benefit exists, Commerce examines "what goes into a company" and not what the company does with the subsidy.
[1537] *See* GBC Non-Stumpage IQR Response Volume IV (CIIP) at 1 and Volume V (CIF) at 1.

2021.[1538] The GBC noted that the CIIP and CIF are funded by the incremental carbon tax paid by large industry above the C$30 per ton.[1539] The GBC's argument that it does not contribute any funds to CleanBC, essentially making it "self-funded," ignores the fact that the GBC *itself* imposed a specific tax on carbon in the first place. Then, the GBC implemented a mechanism to refund a portion of the additional carbon tax levied on companies that meet certain emissions benchmarks and to reimburse costs for emissions-reduction projects.[1540] Under the GOC's logic, nearly any financial contribution from a government to a company is "self-funded" simply because the funds are raised by imposing taxes. Such circular reasoning is illogical.

We also continue to disagree with the GBC's argument regarding the benefit conferred under the CIIP. By its design, the CIIP returns, via refunds, to subject companies the incremental carbon tax paid above the C$35 tax base. In the absence of the CIIP, West Fraser would not have received a benefit, in the form of a tax refund, during the 2021 POR of the incremental carbon tax it paid in 2020.[1541] Similarly, we also continue to find that a benefit was conferred by the CIF. Under the CIF, companies can receive reimbursements of up to 50 percent or C$2 million of eligible project expenses.[1542] During the POR, West Fraser received a CIF payment.[1543] In the absence of that payment, West Fraser would have been responsible for the entire cost of its emissions reduction project. Based on the record evidence, we continue to find that the CIIP and CIF confer a benefit under section 771(5)(E) of the Act, and that the payments under CIIP and CIF constitute a financial contribution under sections 771(5)(D)(ii) and 771(5)(D)(i) of the Act, respectively.

Further, the GBC's arguments regarding the *de jure* specificity of the CIIP and CIF remain unconvincing. Simply because the industrial operations that are subject to the increased incremental carbon tax and emissions reductions are the same industrial operations that are eligible to receive benefits under the CIIP and the CIF does not negate the *de jure* specificity finding. The GBC reported that CleanBC, including its subprograms, is limited to large industrial operations with high GHG emissions that report their emissions under the GGIRCA and that the CIIP excludes certain types of facilities, including 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.[1544] On the basis of this evidence, we continue to find that the CIIP and CIF are *de jure* specific under section 771(5A)(D)(i) of the Act because the subprograms expressly limit access to the subsidy to an enterprise or industry, or groups thereof.

[1538] *Id.*
[1539] *Id.*
[1540] *Id.* at 2-4 and Volume V (CIF) at 1-4.
[1541] *See* West Fraser Non-Stumpage IQR Response Volume II at 92-93; *see also* GBC Non-Stumpage IQR Response Volume IV at 8.
[1542] *See* GBC Non-Stumpage IQR Response Volume V at 3.
[1543] *See* West Fraser Non-Stumpage IQR Response Volume II at 97-98; *see also* GBC Non-Stumpage IQR Response Volume V at 7.
[1544] *See* GBC Non-Stumpage IQR Response Volume IV (CIIP) at 1-2, 8 and 13 and Volume V (CIF) at 1-2 and 11-12.

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Comment 53: Whether the IPTC Is Countervailable

GBC's Comments[1545]

- 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 forgo 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 10,000 Class 4 properties existed in British Columbia in 2021.[1546] The record demonstrates further that 17 categories of properties are classified as Class 4.[1547] 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. During the POR, 18 industries paid the school tax, and the lumber industry comprised less than 13 percent of the school tax paid in 2021.[1548]
- 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.[1549]

Petitioner's Rebuttal Comments[1550]

- According to section 771(5)(D(ii) of the Act, a financial contribution includes "foregoing {*sic*} 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.[1551] 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.
- Commerce need only find the existence of "one or more" factors in determining *de facto* specificity.[1552] 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.

[1545] *See* GBC Case Brief Volume V at 69 – 74.
[1546] *Id.* at 73 (citing GBC Non-Stumpage IQR Response, Volume VI at 11 – 12).
[1547] *Id.* (citing GBC Non-Stumpage IQR Response, Volume VI at 14).
[1548] *Id.* (citing GBC Non-Stumpage IQR Response, Volume VI at Exhibit BC-AR4-SCH-6).
[1549] *Id.* at 74 (citing GBC Non-Stumpage IQR Response, Volume VI at 8).
[1550] *See* Petitioner Rebuttal Brief at 212 – 214.
[1551] *Id.* at 213 (citing GBC Non-Stumpage IQR Response, Volume VI at 1).
[1552] *Id.* at 214 (citing section 771 (5A)(D)(iii)).

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Commerce's Position: The arguments raised by the GBC are the same as those raised in the *Lumber V AR2 Final*.[1553] Commerce found the IPTC program countervailable in the *Lumber V AR2 Final*, 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).[1554] The GBC's argument that the statutory provisions for Class 4 tax rates do not constitute revenue forgone 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 forgone. As noted in a prior review, certain industries are eligible to be classified 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.[1555] The GBC's argument that the tax rates are set through multiple provisions of a law and therefore not revenue forgone 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.[1556] 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.[1557] The Canadian Parties object to the means by which Commerce determined that the program is specific under section 771(5A)(D)(iii)(I) of the Act. As stated in the SAA, the purpose of 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.[1558] 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."[1559] 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.[1560]

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.[1561] Thus, we followed the guidance of the SAA and our practice in determining whether the IPTC program is *de facto* specific.

[1553] *See Lumber V AR2 Final* IDM at Comment 106.
[1554] *Id*.
[1555] *See* GBC Non-Stumpage IQR Response, Volume VI at 2.
[1556] *See* Non-Stumpage IQR Response, Volume VI at 70 – 71 and Exhibit BC-AR4-SCH-1 (British Columbia's *School Act*).
[1557] *See* GBC Non-Stumpage IQR Response, Volume VI at 12.
[1558] *See* SAA at 929.
[1559] *Id*.
[1560] *Id*. at 931.
[1561] *See CRS from Korea* IDM at Comment 13; *see also Lumber V Final* IDM at Comment 62.

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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 impact this finding.

New Brunswick

Comment 54: 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[1562]

- 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 forgoing tax revenue because revenue from such uses was never due.
- Implementing a statutory policy to tax fuel used in vehicles on public highways 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 {*sic*} or not collecting revenue" under section 771(5)(D)(ii) of the Act.[1563]
- 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.

JDIL's Comments[1564]

- The gas and fuel tax exemption and refund program is not a financial contribution because there is no revenue forgone pursuant to section 771(5)(D)(ii) of the Act. Further, the program is not *de jure* specific because the application is not limited by law to any particular industries.

Petitioner's Rebuttal Comments[1565]

- 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 forgoing tax revenue that would otherwise be due in the amount of the exempt or refunded tax rate.
- It is irrelevant that the GNB "chose to tax fuel that consumers use on public highways, and not to tax other fuel uses"; rather, the Gasoline and Fuel Tax Program includes specific carve-outs that privileges particular activities and professions over others by providing them with tax exemptions and refunds not available to those enterprises which do not qualify for such exemptions.

[1562] *See* GNB Case Brief Volume VI at 99 to 103.
[1563] *Id.* at 102.
[1564] *See* JDIL Case Brief at 71 to 72.
[1565] *See* Petitioner Rebuttal Brief at 229 to 231.

- The GNB, therefore, does not collect revenue it otherwise would in the amount of the exempt or refunded tax rate, and Commerce's finding of *de jure* specificity under section 771(5A)(D)(i) of the Act is supported by record evidence and should be maintained in the final results.

Commerce's Position: Consistent with prior reviews, Commerce found this program countervailable in the *Lumber V AR4 Prelim* because no interested parties had submitted new information or argument that warranted a reconsideration of Commerce's prior determination in the underlying investigation.[1566] 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}."[1567] Additionally, the GNB argues that the program is specific to *behavior* and not to an "industry, enterprise, or group thereof."[1568] The petitioner claims that these arguments have no merit and should not prompt Commerce to change its findings from the *Lumber V AR4 Prelim*. 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 the tax.[1569] Similar to the previous administrative reviews, 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.[1570] However, as in the underlying investigation, Commerce finds this argument and information unavailing.[1571] 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.[1572] 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 in a manner that constitutes a financial contribution and is *de jure* specific under sections 771(5)(D)(ii) and 771(5A)(D)(i) of the Act. Thus, Commerce continues to find that this program is countervailable.

[1566] *See Lumber V AR4 Prelim Results* PDM at 52-53; *see also Lumber V AR3* PDM at Comment 99; and *Lumber V AR1 Final* IDM at Comment 107.
[1567] *See* GNB Case Brief Volume VI at 101.
[1568] *Id*. at 102.
[1569] *See Lumber V Final* IDM at Comment 75.
[1570] *See* GNB Case Brief Volume VI at 100 (citing GNB Non-Stumpage IQR Response at Exhibit NB-AR4-GFT-4).
[1571] *See Lumber V Final* IDM at Comment 75.
[1572] *See* GNB Non-Stumpage IQR Response at Exhibit NB-AR2-GFT-2 which shows that aquaculturists, farmers, fishers, silviculturists, producers of electricity for sale, persons consuming fuel in the preparation of food, lighting and heating of premises or heating of domestic hot water, wood producers, forest workers, manufacturers, mining or quarrying operators, and registered vessels operators are exempted from paying the sales tax on gasoline or motive fuel or are entitled to receive refunds of taxes paid. All other consumers of gasoline and motive fuel in New Brunswick are required to pay these taxes and are not entitled to receive a refund of taxes paid.

Comment 55: Whether Commerce Correctly Calculated the Benefit JDIL Received from the Atlantic Investment Tax Credit

JDIL's Comments[1573]

- In the *Lumber V AR4 Prelim*, Commerce determined that the AITC program conferred "a benefit equal to the amount of the tax savings pursuant to 19 CFR 351.509(a)(l)," however, in calculating the benefit, Commerce failed to correctly apply this regulation as it did not account for both the gain and loss in tax savings arising from this program.[1574]
- When AITCs are applied against taxes payable, they reduce the capital cost (depreciable value) of the "qualified property."[1575] The reduction in the depreciable value of the assets results in a lower CCA, and, thus, lower tax savings in subsequent tax years.
- Under 19 CFR 351.509(a)(1), a benefit for a tax credit "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"; therefore, Commerce must take into account not only the value of the tax credit but also any additional taxes paid during the POR "as a result of" the tax credit program.
- Because 19 CFR 351.509(a)(1) provides the specific instructions for calculating the benefit, 19 CFR 351.503(e) does not apply. Further, there are no "tax consequences of the benefit" to consider, because the "benefit" is already calculated pursuant to 19 CFR 351.509(a)(1).
- In addition, because the AITC benefit must be calculated in accordance with the plain language of 19 CFR 351.509(a)(1), and this calculation precedes any consideration of the "net countervailable subsidy" under section 771(6) of the Act, the statutory offset provision is not relevant. JDIL acknowledges that the CIT recently disagreed with the plain language interpretation of 19 CFR 351.509(a)(1), and instead agreed with arguments similar to the petitioner in *Government of Québec v. U.S.*; however, this litigation is not yet final and conclusive because it is currently on appeal before the CAFC.

Petitioner's Rebuttal Comments[1576]

- In the *Lumber V AR4 Prelim*, Commerce calculated JDIL's benefit for the AITC program to include the total deduction from JDIL's tax liability during the POR in accordance with 19 CFR 351.509(a)(1), and JDIL argues that this total amount must be reduced to "account for both the gain and loss in tax savings arising from the AITC program."[1577]
- JDIL argues that its use of the AITC reduces the company's capital cost allowance deduction and, consequently, reduces JDIL's tax savings in subsequent years.
- Commerce correctly recognized in the *Lumber V AR3 Final* that section 771(6) of the Act permits "only three narrow offsets to a respondent's gross benefit: (1) the deduction of application fees, deposits or similar payments to qualify for or receive a subsidy, (2) accounting for losses due to deferred receipt of the subsidy, if the deferral is mandated by the Government, and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy."[1578]

[1573] *See* JDIL Case Brief at 59-62.
[1574] *Id.* at 59 (citing *Lumber V AR4 Prelim* PDM at 44).
[1575] *Id.* at 60 (citing JDIL Non-Stumpage IQR Response at Exhibit AITC-01 at 1).
[1576] *See* Petitioner Rebuttal Brief at 161-164.
[1577] *Id.* at 161-162 (citing JDIL Case Brief at 59).
[1578] *Id.* at 162 (citing *Lumber V AR3 Final* IDM at Comment 96).

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- The adjustment requested by JDIL does not fall into any of these categories and, at best, the adjustment represents a tax consequence of the AITC.
- Commerce's regulations and practice are clear that such consequences are not to be considered in calculating the amount of the benefit.[1579]
- The reduction that JDIL seeks is specifically precluded by 19 CFR 351.503(e), which provides that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit."
- The *CVD Preamble* also makes clear that "the impact of the benefit under one subsidy program should not be considered in calculating the benefit under a separate subsidy program."[1580]
- The CIT recently rejecting identical arguments to those that JDIL raises here in *Government of Québec v. U.S.*, involving the countervailing duty investigation on wind towers from Canada.

Commerce's Position: We agree with the petitioner. In the *Lumber V AR4 Prelim* Commerce did not consider the increase in taxes resulting from AITCs claimed in prior years when calculating the benefit JDIL received. As we explained in the *Lumber V Final*,[1581] Commerce does not consider the tax consequences of a benefit in accordance with 19 CFR 351.503(e). Therefore, for the final results, Commerce is continuing to include only the total credits JDIL received under the AITC in the period of review.

Section 771(6) of the Act permits Commerce to calculate the net countervailable subsidy to a respondent by allowing for only three narrow offsets to a respondent's gross benefit: (1) the deduction of application fees, deposits or similar payments to qualify for or receive a subsidy, (2) accounting for losses due to deferred receipt of the subsidy, if the deferral is mandated by the Government, and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy. The offset that JDIL argues for – to account for diminished tax savings as a result of the reduced depreciable value of certain assets – is not one of the three enumerated offsets that are permitted by the statute. As a result, we have not included this offset in our updated our benefit calculations.

Because 19 CFR 351.509(a)(1) provides the specific instructions for calculating the benefit, JDIL argues that 19 CFR 351.503(e) should not apply to Commerce's benefit calculations pursuant to 19 CFR 351.503(a) which states that "{i}n the case of a government program for which a specific rule for the measurement of a benefit is contained in this subpart E, the Secretary will measure the extent to which a financial contribution (or income or price support) confers a benefit as provided in that rule."[1582] We disagree. The *CVD Preamble* indicates that 19 CFR 351.503(e) involves the treatment of taxes on subsidies in general.[1583] The *CVD Preamble* gives an example of, if a receipt of a grant increases the amount of income tax paid by a firm, we do not reduce the amount of the benefit from the grant to reflect the higher taxes, despite the fact that 19 CFR 351.504 provides the specific instructions for calculating benefit for

[1579] *Id.* (citing 19 CFR 351.503(e), *SC Paper from Canada – Expedited Review – Final Results* IDM at 124, and *IPSCO* v. *U.S.* (holding that "{u}nrealized tax advantages of alternative financing are not one of the allowable offsets" that may be deducted from a subsidy amount)).
[1580] *Id.* at 162-163 (citing *CVD Preamble*, 63 FR at 65362).
[1581] *See Lumber V Final* IDM at Comment 72.
[1582] *See* JDIL Case Brief at 61-62.
[1583] *See CVD Preamble*, 63 FR at 65362.

grant. Similarly, while 19 CFR 351.509 provides specific instructions for calculating the benefit for a tax program, 19 CFR 351.503(e) also applies when calculating a benefit for a tax program.

In addition, JDIL argues that the offset provision under section 771(6) of the Act is not implicated here as the benefit must be calculated in accordance with the plain language of 19 CFR 351.509(a)(1).[1584] Commerce previously evaluated similar arguments in the *Lumber V Final* and found these arguments unpersuasive.[1585] In the *Lumber V Final*, Commerce included the full amount of the credit claimed by JDIL for this program based on the benefit calculations outlined in 19 CFR 351.509(a)(1). In addition, Commerce has previously noted that it does not consider the tax consequences of a benefit consistent with 19 CFR 351.503(e) and that the offset JDIL requested is not one of the three enumerated offsets that are permitted under section 771(6) of the Act.[1586] Thus, we are unpersuaded by the argument that section 771(6) of the Act and 19 CFR 351.503(e) do not apply in circumstances where benefit calculations are performed in accordance with 19 CFR 351.509(a)(1). Accordingly, we have updated the benefit calculations to reflect the full amount of the tax credit applied against JDIL's taxes due in the POR.

Comment 56: Whether the New Brunswick R&D Tax Credit Is Specific

GNB's Comments[1587]

- In the *Lumber V AR4 Prelim*, Commerce correctly found that the R&D Tax Credit program is not *de jure* specific, but it incorrectly found the program to be *de facto* specific on the basis that "actual recipients of this program {are} limited in number."[1588]
- Commerce simply compared the number of companies participating in this program to the total number of companies operating in New Brunswick and found that actual recipients are limited in number, without taking into account all relevant circumstances, such as the range of industries in the economy represented by participating users.[1589]
- Commerce's narrow focus on the number of participating companies relative to the total number of companies operating in New Brunswick failed to meet the standard in the SAA, namely that the "specificity test was intended to function as a rule of reason and to avoid the imposition of countervailing duties in situations where, because of the widespread availability and use of a subsidy, the benefit of the subsidy is spread throughout an economy."[1590]
- There is no evidence that the program is limited to any enterprise or industry in law or in fact, and JDIL is simply one of many companies in many industries using the program in New Brunswick and similar programs across Canada.

Petitioner's Rebuttal Comments[1591]

- The GNB argues that Commerce's comparison of the number of program participants to the overall number of companies operating in the province was overly simplistic and not supported

[1584] *See* JDIL Case Brief at 62.
[1585] *See Lumber V Final* IDM at Comments 71 and 72.
[1586] *Id.*
[1587] *See* GNB Case Brief Volume VI at 103-104.
[1588] *Id.* at 103 (citing *Lumber V AR4 Prelim* IDM at 53-54).
[1589] *Id.* (citing *Royal Thai Gov't v. U.S.*, 341 F. Supp. 2d 1315, 1319).
[1590] *Id.* (citing SAA at 930).
[1591] *See* Petitioner Rebuttal Brief at 235-237.

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by the SAA, and should be replaced by an analysis of the nebulous "relevant circumstances" surrounding participation in the program, "such as the range of industries in the economy represented by participating users."[1592]

- Commerce's *de facto* specificity analysis is well-established and is a reasonable interpretation of the statute.
- Commerce maintains broad discretion when applying the statutory criteria required in evaluating *de facto* specificity, and neither the Act, nor the SAA, nor precedent dictate what methodology Commerce must employ.
- In fact, the SAA recognizes the reasonability of finding a small number of program participants an acceptable basis for a *de facto* specificity finding:

> the weight accorded to particular {*de facto* specificity analysis} factors will vary from case to case. For example, where the number of enterprises or industries using a subsidy is not large, the first factor alone would justify a finding of specificity.[1593]

- Section 771(5A)(D)(iii)(I) of the Act states that a subsidy may be found specific where "the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.
- According to the GNB's data, the number of companies that used the program in tax year 2020 was a small fraction of the 15,190 companies that filed tax returns in the province in 2021.[1594]
- By comparing the number of companies benefiting from the R&D Tax Credit to the number of companies present in the province during the POR, Commerce has met its statutory obligations and it should reject the GNB's attempt to introduce additional requirements into its countervailability analysis which are not required of it by law.

Commerce's Position: We agree with the petitioner. 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 in the economy in question.[1595] Given the nature of this tax program—a tax credit for research consortium fees paid to promote R&D in New Brunswick—we find that it is reasonable to compare the actual number of companies that received the tax credit, to the total number of companies that filed an income tax return in New Brunswick for the same year, to determine whether the actual recipients of the subsidy, on an enterprise or industry basis, are limited in number under section 771(5A)(D)(iii)(I) of the Act.

The GNB reported the total number of corporations that claimed the R&D tax credit in their income tax returns filed during 2020 as well as prior years.[1596] We relied on the program usage data and tax filer data that the GNB submitted on the record to conduct the specificity analysis.[1597] The data indicate that this tax program is not widely used throughout the provincial

[1592] *Id.* at 235-236 (citing GNB Case Brief Volume VI at 103).
[1593] *Id.* at 236 (citing SAA at 931).
[1594] *Id.* (citing GNB IQR Response, Volume I, Exhibit NB-AR4-RDTC-1 at 13).
[1595] *See* SAA at 931.
[1596] *See* GNB IQR Response, Volume I, Exhibit NB-AR4-RDTC-1 at 13.
[1597] *See Lumber V AR4 Prelim* PDM at 53-54.

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economy, but rather is used by a limited number of companies.[1598] We, thus, 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.

We disagree with the argument that the program is used by a diverse range of industries and, therefore, is not *de facto* specific. While the R&D tax credit is available to any companies that conduct scientific research and experimental development, regardless of the company's size, industry sector, or location within the province, the record shows that the number of companies that received the tax credits is limited in number. The specificity test is designed to avoid the imposition of countervailing duties where a subsidy is broadly available *and used* widely throughout an economy.[1599] It is not, however, 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.[1600]

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.[1601] 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 and do not address parties' arguments regarding the other specificity factors.

Comment 57: Whether Commerce Should Find New Brunswick's Property Tax Incentives for Private Forest Producers Program Countervailable

GNB's Comments[1602]

- The New Brunswick Assessment Act's 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.

[1598] *See* GNB R&D Tax Credit Specificity Memorandum; *see also* GNB IQR Response, Volume I, Exhibit NB-AR4-RDTC-1 at 13. The program usage data are proprietary information.
[1599] *See* SAA at 930.
[1600] *Id.*
[1601] *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).
[1602] *See* GNB Case Brief Volume 6 at 65-79.

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- Commerce's finding in the *Lumber V AR3 Final* 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.[1603]
- Commerce's finding that the $100 per hectare assessment rate is limited to "enterprises involving the production of wood and wood-related merchandise" is incorrect.[1604] Commerce does not point to any language of the Assessment Act that suggests the assessment rate is expressly limited to any enterprises, or to the wood products industry.
- 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 a large number of individuals and families, as well as companies in a wide range of business sectors.[1605]
- Commerce found that "eligibility for this tax program is expressly limited to owners of freehold timberland" and that "this tax benefit is limited by law to owners of freehold timberland," which is a tautology and does not support a finding of specificity.[1606]
- A finding of *de jure* specificity under section 771(5A)(D)(i) of the Act requires Commerce to identify a provision of law that "expressly" limits the availability of Sections 16 and 17 to an "enterprise or industry." In this case, that would require that the Assessment Act specify the $100 per hectare rate apply only to "lumber mills" or "forest products companies" or "JDIL." But the Assessment Act does the opposite. It applies to a type of property, no matter what industry or enterprise, or individual with no business at all, holds the land.[1607]
- The record contains a new declaration from the Director of Property Valuation for SNB, which clarifies that the term *bona fide* use as timberland does not in any way limit the $100 per hectare assessment rate to wood producing or wood-related industries and, in fact, the assessment rate can be available to parcels that are impossible to harvest.[1608]
- The declaration also demonstrates that that Sections 16 and 17 of the Assessment Act do not forgo any revenue.
- New Brunswick, like all jurisdictions, has the sovereign right to establish property assessment and taxation policies. Commerce's initial conclusion in the *Lumber V AR4 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.

[1603] *Id.* at 68 and 70 (citing *Lumber V AR3 Final* IDM at 433 and GNB IQR Response, Vol. I at Exhibit NB-AR4-SNB-13 at 2, para. 5; and Vol. II at STUMP-26).
[1604] *Id.* at 68 (citing *Lumber V AR3 Final* IDM at 433).
[1605] The exact number of individuals and families that are eligible to receive the assessment rates is proprietary. *Id.* at 69 (citing GNB IQR Response Vol. I, at Exhibit NB-AR4-SNB-1 at SNB-16, Exhibit NB-AR4-SNB-13 at 2, para. 9, and Exhibit NB-AR4-SNB-9).
[1606] *Id*. (citing *Lumber AR3 Final* IDM at 431-433).
[1607] *Id.* at 69-70 (citing section 771(5A)(D)(i) of the Act; and *Sociacion De Exportadores E Industriales De Aceintunas De Mesa v. United States*, 523 F. Supp. 3d 1393, 1403-04 (CIT 2021)).
[1608] *Id*. at 70 (citing GNB IQR Response at Vol. I at Exhibit NB-AR4-SNB-13 at 2, paragraphs 5 and 6).

- There is no basis for Commerce to continue to find that assessments under Section 15 relate to "ordinary" property while assessments under Section 16 and 17 relating to freehold timberland and farm woodlots which cover over 76 percent of the private land in the Province relate to property which is "unique" or an exception.

JDIL's Comments[1609]

- JDIL agrees with the GNB's argument that the assessment of property taxes of freehold timberlands under the Assessment Act is neither *de jure* nor *de facto* specific because it is not limited to the forestry industry and does not constitute a financial contribution because the Assessment Act establishes a baseline taxation policy such that there is no revenue forgone.

Petitioner's Rebuttal Comments[1610]

- The Assessment Act did not change since the *Lumber V AR2 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 AR3 Prelim*.
- Commerce found the property tax incentives *de jure* specific because "eligibility for the tax program is expressly limited to owners of freehold timberland"; thus, the program is only available to a subset of timberland owners owning "timberland to be used to grow trees used in the production of wood products including lumber."[1611]
- The GNB's disputes this by claiming that this is a misinterpretation of the valuation methodology, which rather "applies to a type of property, no matter what industry or enterprise, or individual with no business at all, holds the land," an argument that relies on the declaration from the Director of Property Valuation for the GNB, who explains that "bona fide" timberland "broadly refers to forested land in New Brunswick and does not distinguish among types of land with trees, nor have any bearing on the commercial or noncommercial use of that land."[1612]
- Commerce has previously dismissed these arguments and has found this program countervailable.
- The tax incentives program under the NBAA is specific because it benefits only owners of freehold timberland.[1613]
- This creates a standard taxation regime for "real property" and separates out particular types of property for special consideration, which entails that it is *de jure* specific as it privileges certain types of property above others by "expressly limit{ing} access to the subsidy" to owners of those properties meeting the requirements to receive such exceptional tax status.[1614] The limitation to properties of ten hectares or greater additionally limits beneficiaries to only those timberland holders possessing parcels surpassing this lower-limit requirement.

[1609] *See* JDIL Case Brief at 71.
[1610] *See* Petitioner Rebuttal Case Brief at 231-235.
[1611] *Id.* at 232 (citing *Lumber V AR3 Final* IDM at 432).
[1612] *Id.* (citing GNB Case Brief Volume VI at 70; and GNB Stumpage IQR, Vol. I, Exhibit NB-AR4-SNB-13, paragraphs 5 and 6).
[1613] According to the NBAA, "all real property shall be assessed at its real and true value" but for those exceptions provided for in "sections 15.1, 15.11, 15.3, 15.4, 15.5, 15.6, 15.7, 16, 17, and 17.1." *Id.* at 233 (citing GNB IQR Response at Vol. I, Exhibit NB-AR4-SNB-7, section 15).
[1614] *Id.* (citing section 771(5A)(D)(i)).

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- Freehold timberlands, defined as a type of real property, are exempted from the general assessment policy described under section 15 of the NBAA. As such, the GNB forgoes 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.

Commerce's Position: In the *Lumber V AR4 Prelim*, consistent with the previous reviews,[1615] we found the GNB's statutory property assessment rules regarding freehold timberland to be countervailable.[1616] 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.[1617] Further, we found the program provided a financial contribution in the form of government revenue forgone 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.[1618] 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."[1619] 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.[1620]

In the *Lumber V AR4 Prelim*, we stated that we found nothing to change our position from our finding in the prior review.[1621] The GNB again references numerous statements regarding ownership and uses of timberland properties on the record of this review.[1622] For example, the GNB states that: (1) 68 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;[1623] (2) companies owned only 25 percent of the properties subject to the C$100 per hectare assessment rate;[1624] (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;[1625] and (4) the remaining 25 percent of properties that are developed are administered under Section 15 of the Assessment Act.[1626] On this basis, the GNB concludes that the majority of properties receiving the C$100

[1615] *See Lumber V AR1 Final Results* at Comment 103; *see also Lumber V AR2 Final Results* at Comment 109; and *Lumber V AR3 Final Results* at Comment 98.
[1616] *See Lumber V AR4 Prelim Results* PDM at 53.
[1617] *Id.*
[1618] *Id.*
[1619] *See* GNB IQR Response at Exhibit NB-AR4-SNB-7 at sections 16(2) and (3) of the Assessment Act.
[1620] *Id.*
[1621] *See Lumber V AR4 Prelim Results* PDM at 53.
[1622] *See* GNB Case Brief Volume 6 at 65-79.
[1623] *Id.* at 67 (citing GNB IQR Response at Exhibit NB-AR4-SNB-9).
[1624] *Id.*
[1625] *Id.*
[1626] *Id.*

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per hectare assessment value are not owned for purposes of the sale of timber in the production of wood and wood-related merchandise as they are owned by individuals.

However, this information is irrelevant for Commerce's *de jure* analysis under section 771(5A)(D)(i) of the Act. Commerce's findings in this review and the prior reviews were made on a *de jure* basis, 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.

The GNB also argues that this program is not *de jure* specific because 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."[1627]

Further, the GNB argues that the SAA stipulates that assistance generally available and widely distributed is not an actionable subsidy.[1628] As such, the GNB asserts that this program should not be considered specific under section 771(5A)(D)(i) of the Act. We disagree, as 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, and is therefore specific. Further, in the previous reviews, 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.[1629]

The GNB argues that Commerce's finding is without merit as it is not based on specific language from the Assessment Act.[1630] Based on declarations by Matthew Johnson, the GNB argues that Commerce misinterpreted the usage of the term '*bona-fide*' and the significance of 10 hectares or more being required in order to be classified as freehold timberland. The *bona-fide* use of timberland within the Assessment Act broadly refers to forested land in New Brunswick and does not distinguish among types of land with trees, nor have any bearing on the commercial or non-commercial use of that land, according to Matthew Johnson. In addition, he states that the SNB routinely assesses property in New Brunswick at the C$100 per hectare rate where the harvest of trees is practically or legally prohibited as the most common owners of property of 10 hectares or more in *bona-fide* use as freehold timberland are individuals and families who have nothing to do with the forest products industry.

We find these arguments by the GNB, including the affidavit from Matthew Johnson, unpersuasive, and we continue to find that record evidence indicates that this program is *de jure* specific. Consistent with the previous reviews, we continue to find that the Assessment Act

[1627] *See* GNB Case Brief Volume VI at 71 (citing GNB IQR Response at Exhibit NB-AR4-SNB-13 at 2, para. 7).
[1628] *Id.* at 74 (citing SAA at 913).
[1629] *See Lumber V AR1 Final* IDM at Comment 103; *see also Lumber V AR2 Final* IDM at Comment 109; and *Lumber V AR3 Final Results* at Comment 98.
[1630] *See* GNB Case Brief Volume VI at 68 (citing *Lumber V AR3 Final* IDM at 432).

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expressly restricts access to the subsidy to a limited number of landholders.[1631] As stated previously, facts regarding ownership and uses of timberland properties in the province are not relevant to our *de jure* specificity analysis. In addition, contrary to the GNB's argument, Commerce's finding under section 771(5A)(D)(i) of the Act is based on language from the Assessment Act, which makes clear that this tax benefit is limited by law to owners of freehold timberland and is therefore *de jure* specific. 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(5) 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).[1632] 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. 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.[1633] As such, we find that this subsidy is expressly limited to a specific type of 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.[1634] 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 forgone.[1635]

The GNB made similar arguments in the previous reviews,[1636] 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 real property shall be assessed at its real

[1631] *See Lumber V AR1 Final* IDM at Comment 103; *see also Lumber V AR2 Final* IDM at Comment 109; and *Lumber V AR3 Final Results* at Comment 98.
[1632] *See* GNB IQR Response at Exhibit NB-AR4-SNB-7 at 47-49.
[1633] *See, e.g.*, JDIL Non-Stumpage IQR Response at Exhibit NBPT-02 at 2 and Exhibit NBPT-03 (*The Minister of Municipal Affairs v. Robertson*, N.B.R. (2d) 60, 62 (1968), (defining timberland as "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.")).
[1634] *See* GNB Case Brief Volume VI at 75-79.
[1635] *Id.* at 77-78.
[1636] *See Lumber V AR1 Final* IDM at Comment 103; *see also Lumber V AR2 Final* IDM at Comment 109; and *Lumber V AR3 Final Results* at Comment 98.

and true value as of January 1 of the year for which the assessment is made" (emphasis added).[1637] 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)[1638] 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 forgoing revenue and thus providing a financial contribution.

Québec

Comment 58: Whether the Research Consortium Tax Credit Is *De Facto* Specific

GOQ's Comments[1639]

- A taxpayer that operates a business in Québec and pays eligible fees to a qualified research consortium of which it is a member so that R&D activities related to its field can be conducted can claim a tax credit for the fees.[1640] The tax credit is not limited to any company or industry and is available to any company that meets the program criteria.
- Not all corporate tax filers could possibly meet the objective eligibility criteria. Commerce thus must consider its *de jure* specificity finding that this tax credit is "not limited, by law, to certain enterprises or industries," when reviewing the record as part of its *de facto* analysis.
- Historically, a number of different companies across a diverse set of industries (including, *e.g.*, mining, manufacturing, wholesale trade, food, educational, and government) claimed the tax credit.[1641] The number of claims associated with the tax credit are indicative of the companies eligible, based on objective criteria; all corporate tax filers cannot be the comparison pool.
- Statistics demonstrate that this program was granted to a majority of the companies that claimed the credit.[1642] Therefore, Commerce's finding that the tax credit is *de facto* specific because a limited number of companies received the credit is not supported by record facts which show that a number of different companies across a diverse set of industries used the tax credit. Additionally, of the companies that were eligible to receive the tax credit, nearly all claims were granted.

Commerce's Position: The GOQ again raises the same arguments regarding the specificity of the Research Consortium Tax Credit, which Commerce has repeatedly rejected, most recently in

[1637] *See* GNB IQR Response at Exhibit NB-AR4-SNB-7.
[1638] *Id.*
[1639] *See* GOQ Case Brief Volume VII at 30-33.
[1640] *Id.* at 31 (citing GOQ Non-Stumpage IQR Response at Exhibits QC-C16-A (p. 8) and C16-16 (p. 21)).
[1641] *Id.* at 32 (citing GOQ Non-Stumpage IQR Response at Exhibits QC-C16-20 and C16-21 (p. 6)).
[1642] *Id.* at 33 (citing GOQ Non-Stumpage IQR Response at Exhibit QC-C16-21).

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the *Lumber V AR3 Final*.[1643] We continue to find the GOQ's arguments on this matter unpersuasive in this review.

As discussed in Comment 2, we disagree with the GOQ that Commerce must consider its *de jure* specificity finding that the Research Consortium Tax Credit is "not limited, by law, to certain enterprises or industries" as part of its *de facto* analysis.[1644] The GOQ continues to misconstrue the SAA and statute with respect to how Commerce should conduct its specificity analysis. Under the Act, a finding of *de facto* specificity is separate and distinct from *de jure* specificity. The *de jure* analysis does not inform the *de facto* analysis (given the different statutory requirements for each), nor does a *de facto* specificity determination build upon the program's eligibility requirements or access as described by relevant laws and regulations governing the programs —*i.e*., the criteria and conditions identified in the *de jure* prong of the specificity test at section 771(5A)(D)(i) and (ii) of the Act.

Under the *de facto* analysis at section 771(5A)(D)(iii)(I) of the Act, Commerce analyzes whether the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number for the investigated program. Moreover, under the specificity test as set forth in the SAA, Commerce is required to determine whether the subsidy program is "widely used throughout an economy."[1645] Accordingly, the potential recipients of a subsidy based on criteria or conditions governing the eligibility of the subsidy is irrelevant under a *de facto* specificity analysis.

The SAA further 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.[1646] 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 or industry 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.[1647]

Thus, we have followed the guidance of the SAA and our practice in determining whether the Research Consortium Tax Credit is *de facto* specific. Given the nature of this tax program—a tax credit for research consortium fees paid to promote R&D in Québec—we find that it is reasonable to compare the actual number of companies that received the tax credit to the total number of companies that filed an income tax return in Québec for the same year, to determine whether the actual recipients of the subsidy, on an enterprise or industry basis, are limited in number under section 771(5A)(D)(iii)(I) of the Act.

The GOQ reported the total number of companies that claimed the tax credit in their income tax returns filed during 2021, the POR, as well as prior years.[1648] We relied on the program usage

[1643] *See Lumber V AR3 Final* IDM at Comment 102.
[1644] *Id.* at Comment 2.
[1645] *See* SAA at 929.
[1646] *Id.* at 931.
[1647] *See CRS from Korea* IDM at Comment 13.
[1648] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-C16-20.

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data and tax filer data that the GOQ submitted on the record to conduct the specificity analysis.[1649] The data indicate that this tax program is not widely used throughout the provincial economy, but rather is used by a limited number of companies.[1650] We, thus, continue to 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.

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 perhaps 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* throughout an economy.[1651] 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.[1652]

Comment 59: Whether the Federal CCA for Class 1 Assets and the ACCA for Class 29 and Class 53 Contain a Ministerial Error

GOQ's Comments[1653]

- Commerce's preliminary calculations for JDIL calculate non-measurable rates for the Québec programs in worksheets "Class 53-BPI and "Class 1a and 1b-BPI," but the total benefit calculations in the worksheet "Tax Programs-BPI" incorrectly state the tax differences figures from the Québec programs rather than the rates.
- While mathematically these errors did not change the rates for the Federal CCA for Class 1 Assets and the ACCA for Class 29 and Class 53 Assets, the errors should still be corrected to avoid the possibility of inflating the rates for these programs should the federal figures or the sales denominator change.

Petitioner's Rebuttal Comments[1654]

- Consistent with its treatment of these programs in prior segments, Commerce treated tax benefits received under the federal and provincial Class 1 tax provisions as a single program and did the same for the Class 29 and Class 52 federal and provincial tax provisions.[1655]
- These determinations were methodological in nature, and thus do not constitute a ministerial error.

[1649] *See Lumber V AR4 Prelim* PDM at 54-55; *see also* Research Consortium Tax Credit Specificity Memorandum.
[1650] *See* Research Consortium Tax Credit Specificity Memorandum. The program usage and tax filer data are proprietary information.
[1651] *See* SAA at 930.
[1652] *Id.*
[1653] *See* GOC Case Brief Volume 7 at 41-41.
[1654] *See* Petitioner Rebuttal Brief at 174-75.
[1655] *Id.* at 174 (citing *Lumber V AR4 Prelim* PDM at 42-45; JDIL Preliminary Calculation Memorandum at 3-4, *Lumber V AR3 Final* IDM at Comment 87, *Lumber V AR2 Final* IDM at Comment 87 ("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. We find the Canadian Parties have not presented any evidence or arguments to warrant reconsideration of our prior finding.")); *see also Lumber V AR1 Final* IDM at Comment 93.

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- The GOQ has presented no new evidence demonstrating that any change in Commerce's treatment of these programs is warranted.

Commerce's Position: In the prior review, Commerce treated tax benefits received under the federal and provincial Class 53 ACCA program as a single program, and the tax benefits received under the Class 1 ACCA program as a single program.[1656] 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 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, and the Class 1 ACCA programs provide taxpayers with an additional deduction for a certain Class 1 assets (*i.e.*, an "eligible non-residential building").[1657]

The GOQ's Class 1 and Class 53 programs have been harmonized with those of the GOC such that each program has the same eligibility criteria, applies the same depreciation rules to the same assets in each jurisdiction, and acts in harmony with each other.[1658] As such, we find that the GOQ's federal Class 1 program and the GOQ's federal Class 53 program are each a single program.

L. Company-Specific Issues

Canfor

Comment 60: Whether Commerce Should Correct a Ministerial Error in the British Columbia Stumpage Calculations for Canfor

Canfor's Comments[1659]

- Commerce inadvertently excluded the "purchase cost" column from the BC stumpage for LTAR benefit calculation. This column was included in Canfor's BC stumpage Tables 2 and 5, but was removed when Commerce combined Tables 1, 2, and 5. Commerce has consistently included this column in the past and should rectify this error for the Final Results calculations.

No interested party submitted rebuttal comments.

Commerce's Position: We agree with Canfor that we erroneously excluded the "purchase cost" column in our calculations for the *Lumber V AR4 Prelim* when aggregating tables 1, 2 and 5 into

[1656] *See Lumber V AR3 Final* IDM at Comment 87; *see also Lumber V AR2 Final* IDM at Comment 98.
[1657] *See Lumber V AR3 Final* IDM at Comments 87 and 88; *see also* GOC Non-Stumpage QNR Response, Volume 2 at 85-86.
[1658] *See* GOC Non-Stumpage IQR Response, Volume 1 at 98-99, Volume 2 at 2-3, and 16-47 and Exhibits GOC-AR4-CRA-CLASS53-1, GOC-AR4-CRA-CLASS53-2, and GOC-AR4-CRA-CLASS53-3; *see also* GOQ Non-Stumpage IQR Response at Exhibits QC-CCA-2, QC-CCA-3 and QC-CCA-4.
[1659] *See* Canfor Case Brief at 6-7.

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a single worksheet. We have updated Canfor's BC stumpage for LTAR benefit calculations to rectify this error.[1660]

Comment 61: Whether Commerce Should Correct a Ministerial Error in the Federal and British Columbia SR&ED Tax Credit Programs

Canfor's Comments[1661]

- In the *Lumber AR4 Prelim*, Commerce calculated Canfor's benefit for the Federal and BC SR&ED tax credits incorrectly. The Federal program benefit was calculated correctly, but was assigned to the provincial BC program. For the BC program benefit, which was incorrectly labeled as the Federal SR&ED program benefit, Commerce used the total qualified expenditures as the benefit, instead of the tax credit received. Commerce should correct the benefit amounts for these two programs for the final results.

No interested party submitted rebuttal comments.

Commerce's Position: We agree with Canfor that we erroneously calculated the Federal and BC SR&ED tax credit benefits. We have corrected the benefit amounts in Canfor's calculations.[1662]

West Fraser

Comment 62: Whether Commerce Correctly Calculated West Fraser's Benefit Under the ACCA for Class 53 Assets Program

West Fraser's Comments[1663]

- Commerce departed from its practice and preliminarily calculated the benefit under the ACCA for Class 53 assets on a single-year, rather than on a multi-year basis, and thus overstated the value of the allowance during the POR.
- In the prior review, West Fraser explained that the multi-year approach is necessary to properly reflect the historical undepreciated capital cost balance used to calculate the benefit received. Because accelerated depreciation results in higher amounts of depreciation earlier, the undepreciated capital cost balance for a given year will be lower for that class of assets than if typical depreciation rates are applied.
- The approach taken in the *Lumber V AR4 Prelim* had the effect of understating the benchmark capital cost allowance amount by applying the typical depreciation rate of 30 percent to the opening UCC balance resulting from accelerated depreciation. Instead, Commerce should have applied the typical depreciation rate of 30 percent to the opening UCC balance had typical depreciation been applied in previous years.
- Thus, to calculate the benchmark capital cost allowance—*i.e.*, what West Fraser's capital cost allowance for Class 53 assets during the POR would have been without accelerated

[1660] *See* Canfor Final Calculation Memorandum at Attachment 1 at Worksheet 'Tables 1,2,5.BPI.'
[1661] *See* Canfor Case Brief at 7 – 9.
[1662] *See* Canfor Final Calculation Memorandum at 2 and Attachment 2 (Canfor Non-Stumpage Calculations).
[1663] *See* West Fraser Case Brief at 70-73.

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depreciation—it is necessary to use a multi-year methodology to determine the corresponding opening undepreciated capital cost balance.

Commerce's Position: In the underlying investigation, Commerce found the ACCA for Class 29 Assets program to be countervailable.[1664] Any taxpayer that acquired Class 29 assets (*i.e.*, machinery and equipment used in specified manufacturing and processing operations), after March 18, 2007 and before 2016, could claim accelerated depreciation for the assets.[1665] Under the allowance, Class 29 assets were fully depreciated at an accelerated rate over three years, and the amount of depreciation was claimed as a deduction to reduce the taxpayer's taxable income.[1666] If a taxpayer did not claim accelerated depreciation for the assets under Class 29, it would claim depreciation under the standard CCA for Class 43 assets (nonaccelerated depreciation).[1667]

Because a manufacturing asset could be classified as either Class 29 or Class 43, at the option of the taxpayer, in the *Lumber V Final*, we determined the tax benefit by comparing the value of Class 29 depreciation to the value of the depreciation had the asset been classified as Class 43.[1668] Specifically, we developed a format for calculating the benefit from the accelerated depreciation of Class 29 on a straight-line basis over a three-year period and applied the standard depreciation rate under Class 43 as the benchmark. Class 43 assets are depreciated on a declining-balance basis, but under this benefit methodology, the standard depreciation rate was applied on a straight-line basis over a three-year period to mirror the depreciation methodology for Class 29.

The ACCA for Class 29 Assets program was replaced by the ACCA for Class 53 Assets program in 2016. In this review, the GOC again stated that "Machinery and equipment that are acquired by a taxpayer, after 2015 and before 2026, and that are primarily for use in Canada for the manufacturing or processing of goods for sale or lease can be depreciated under Class 53 of Schedule II to the ITR, on a declining balance basis at an accelerated CCA rate of 50 percent, subject to the 'half-year rule.' Before 2015, the deduction was on a three-year straight-line basis under Class 29."[1669] Similar to Class 29, assets used for specified manufacturing and processing activities under Class 53 would otherwise be included in Class 43, under which they would qualify for the standard CCA rate of 30 percent calculated on a declining-balance basis.[1670] A taxpayer that has acquired eligible machinery and equipment in a tax year files a Schedule 8 with its income tax return for that year stating the cost of the machinery and equipment and showing the CCA applicable on those acquisitions to claim a deduction to reduce taxable income.[1671]

[1664] *See Lumber V Final* IDM at 13-14 and Comment 66, 67, 68, and 69; *see also SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 32.
[1665] *See Lumber V Final* IDM at Comment 67 and 68.
[1666] *Id*. at Comment 67 and 68.
[1667] *Id*. at Comment 67.
[1668] *Id*.
[1669] *See* GOC Non-Stumpage IQR Response Volume II at 16. The ACCA for Class 29 Assets program was also subject to the "half-year rule," under which a taxpayer can only use half the amount of CCA that would otherwise be available in the first year the property is available for use. *Id*. at 1-2 and 16.
[1670] *Id*. at 18.
[1671] *Id*. at 21 and 24.

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Because Class 29 was applicable to manufacturing and processing assets acquired between 2007 and year-end 2015, and provided straight-line depreciation over a three-year period,[1672] an accelerated CCA for Class 29 assets could not be claimed by companies in their 2020 income tax returns filed with authorities during the 2021 POR. In fact, West Fraser reported the CCA that it and its responding cross-owned affiliates claimed for manufacturing and processing equipment assets was under Class 53 during tax year 2020 for which income tax returns were filed during 2021.[1673] The methodology for calculating the benefit from the accelerated depreciation of Class 29 assets on a straight-line basis over a three-year period (*i.e.*, Table 4.1)[1674] was developed in the investigation for Class 29, and not Class 53 assets. As there were no claims under Class 29 in the income tax returns filed during the POR, we did not apply such a methodology to West Fraser's preliminary calculations.

West Fraser argues that the benefit methodology—*i.e.*, a single-year rather than a multi-year basis—that Commerce applied in the *Lumber V AR4 Prelim* to calculate its benefit under the ACCA for Class 53 Assets program is an unjustified departure from the methodology applied in prior administrative reviews and overstates the value of the company's allowance during the POR. We disagree with West Fraser that a multi-year approach is the correct format to calculate the benefit under the program. Because the ACCA for Class 53 assets provides depreciation on a declining-balance basis, we do not find West Fraser's argument for a multi-year computation to be persuasive.

As noted above, the ACCA for Class 53 Assets program operates on a declining-balance basis and not a straight-line, three-year basis like Class 29. Therefore, a multi-year benefit methodology is not the appropriate format for determining the benefit for depreciation of Class 53 assets. Under a declining balance depreciation methodology, the relevant factors for determining the amount of depreciation to be calculated in the fiscal year are the undepreciated capital cost balance at the beginning of the tax period, cost of acquisitions during the tax period, proceeds of dispositions during the tax period, and the amount subject to the half-year rule during the tax period, in order to determine the value of assets subject to depreciation in the fiscal year at the applicable depreciation rate. The undepreciated value of acquisitions from prior years is contained within the amount of undepreciated capital cost at the beginning of the tax year.[1675] All of these factors are reported in a company's Schedule 8 which is contained within its income tax return.[1676]

The multi-year benefit methodology of Table 4.1 was developed for, and applicable to, Class 29 assets that were depreciated on a straight-line basis over a three-year period. Thus, the multi-year format outlined in Table 4.1 is improper for determining the benefit from accelerated depreciation for Class 53 assets which have an ACCA rate based on a different methodology, *i.e.*, a declining-balance basis. In *Lumber V AR2*, we began to apply a single-year methodology to

[1672] *See* GOC Non-Stumpage IQR Response Volume II at 16 and 18.
[1673] *See* West Fraser Non-Stumpage IQR Response Volume II at 51 and 53-54.
[1674] *See* Initial Questionnaire at Non-Stumpage Usage Template, Table 4.1 for ACCA for Class 29 and Class 53 Assets.
[1675] *See* GOC Non-Stumpage IQR Response Volume II at Exhibit GOC-AR4-CRA-Class53-3 (Schedule 8 (column 2)).
[1676] *Id.*

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determine Canfor's benefit under the ACCA for Class 53 Assets program.[1677] Here, in *Lumber V AR4*, we applied the same, single-year methodology to determine West Fraser's and Canfor's benefit under the Class 53 asset program.[1678] Within the calculations, because, absent Class 53, the manufacturing assets would have been classified as Class 43 on a 30 percent declining-balance basis, we continued to apply Class 43 as the benchmark allowance rate to determine the tax benefit under the ACCA for Class 54 Assets program.

For the above reasons, we do not find a multi-year benefit format, as argued by West Fraser, to be the appropriate approach to calculate the benefit under the ACCA for Class 53 Assets program, under which assets are depreciated on a declining-balance basis. As such, we are not modifying West Fraser's benefit calculation for the program in these final results.

Comment 63: Whether to Revise West Fraser's Sales Denominators

West Fraser's Comments[1679]

- West Fraser submitted verification minor corrections containing revised figures for both total sales and total sales of subject merchandise.[1680] West Fraser also submitted minor revisions to BC Stumpage Table 2.[1681] Commerce should incorporate these revised sales totals into its calculations for the final results.

No interested party submitted rebuttal comments.

Commerce's Position: We agree that the updated values provided in West Fraser's verification minor corrections are the appropriate total sales and subject merchandise values for West Fraser, as well as the correct values for BC stumpage Table 2. We used these values in the Post-Preliminary Analysis calculations[1682] and have also used these updated sales figures to calculate *ad valorem* subsidy rates, as well as to determine measurability and whether to expense non-recurring subsidies.[1683]

[1677] *See* Canfor's *Lumber V AR2* Class 53 Final Calculation (public version).
[1678] *See* West Fraser Preliminary Calculation Memorandum at Excel sheet "ACCA for Class 53 Assets," unchanged in West Fraser Final Calculation Memorandum; *see also* Canfor Preliminary Calculation Memorandum at Excel sheet "Canfor Corporation Tax Programs—Capital Cost Allowances," unchanged in Canfor Final Calculation Memorandum.
[1679] *See* West Fraser Case Brief at 8-9.
[1680] *See* West Fraser Verification Exhibits at Exhibits WF-VE-01 and WF-AR4-GEN-18 (ver.); *see also* West Fraser Verification Report at 2-3.
[1681] *See* West Fraser Verification Exhibits at Exhibits WF-VE-01 and WF-AR4-BCST-2 (ver.); *see also* West Fraser Verification Report at 3.
[1682] *See* West Fraser Post-Prelim Calculation Memorandum at Attachment at tabs 'BCSTables1, 2, 5.BPI' and 'Sales.BPI,'
[1683] *See* West Fraser Final Calculation Memorandum.

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Comment 64: Whether to Revise West Fraser's BC Stumpage and LER Calculations

West Fraser's Comments[1684]

- In the *Lumber V AR4 Prelim*, Commerce's BC stumpage and LER calculations contained a formula error that led to beetle-killed volumes effectively being double-counted. Commerce should correct this error for the final results.

No interested party submitted rebuttal comments.

Commerce's Position: We agree with West Fraser that the preliminary BC stumpage calculations erroneously double-counted beetle-killed volumes. We have revised the calculations to correct this error.[1685]

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

7/26/2023

X

Signed by: ABDELALI ELOUARADIA

Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

[1684] *See* West Fraser Case Brief at 9-13.

[1685] *See* West Fraser Final Calculation Memorandum at Attachment 1 at Tabs 'BCS Tables 1, 2, 5Calc.BPI,' 'BCS Table 6 Calc.BPI,' and '2021 BCLER Calc.BPI.'

Appendix I - Document Citation Table for Final Results: Lumber CVD Fourth Administrative Review

Acronym/Abbreviation	Complete Name
2008 Auditor General Report	Report of the Auditor General of New Brunswick - 2008, submitted at Exhibit NB-AR4-STUMP-15 of the GNB IQR Response
2012 Private Forest Task Force Report	New Approaches for Private Woodlots: Reframing the Forest Policy Debate (Private Forest Task Force Report by Donald W. Floyd, Robert Ritchie, and Tony Rotherham), submitted at Exhibit NB-AR4-STUMP-17 of the GNB IQR Response
2015 Auditor General Report	Report of the Auditor General of New Brunswick - 2015, submitted at Exhibit NB-AR4-STUMP-16 of the GNB IQR Response
2015-2016 Private Market Survey	"Report on prices for Standing Timber from Nova Scotia Private Woodlots for the Period, April 1, 2015 through March 31, 2016, submitted at Exhibit NS-5A (raw survey data) and Exhibit NS-6A (report) of the GNS Stumpage IQR
2017-2018 Private Market Survey	"Report on prices for Standing Timber from Nova Scotia Private Woodlots for the Period, April 1, 2017 through March 31, 2018, submitted at Exhibit NS-5B (raw survey data) and Exhibit NS-6B (report) of the GNS Stumpage IQR
2020 Auditor General Report	Report of the Auditor General of New Brunswick - 2020, submitted at Exhibit NB-AR4-STUMP-23 of the GNB IQR Response
2021 FMV Study	New Brunswick Private Woodlot Stumpage Values: Stumpage Study Results January 2021 to December 2021 (Report by the New Brunswick Forest Products Commission), submitted at Exhibit NB-AR4-BENCH-STUMP-2 of the GNB Stumpage Benchmark Comments
AAC	Annual Allowable Cut
AAF	Alberta Agricultural and Forestry
ACCA	Accelerated Capital Cost Allowance
AD	Antidumping Duty
AESO	Alberta Electric System Operator
AFA	Adverse Facts Available
AHA	Available Harvest Area
AITC	Atlantic Investment Tax Credit
AJCTC	Apprenticeship Job Creation Tax Credit
Alberta Parties	Government of Alberta and the Alberta Softwood Lumber Trade Council
AR	Administrative Review
AR2 Athey Report	"British Columbia's Market-Based Pricing System for Timber" by Susan Athey, dated August 2020 (See GBC Stumpage IQR Response at Exhibit BC-AR4-S-136).
AR3 Cross-Border Report	"Use of U.S. Prices as Benchmarks For B.C. Stumpage In the Third Administrative Review," dated June 14, 2021 (See GBC Stumpage IQR Response at Exhibit BC-AR4-S-178).
AR2 BC Stumpage and LER Memorandum	Memorandum, "BC Stumpage and LER Memorandum for the Final Results of CVD Administrative Review; 2019," submitted as Exhibit 11 of Petitioner Pre-Preliminary Benchmark Comments
AR3 BC Stumpage and LER Memorandum	Memorandum, "Softwood Lumber from Canada: BC Stumpage and LER Memorandum for the Final Results of CVD Administrative Review; 2020," submitted as Exhibit BC-AR4-BMR-3 of GBC Benchmark Rebuttal Comments
AR4 Reishus LER Rebuttal	"Response to Selected Petitioner's Comments on Initial Questionnaire Response" by David Reishus, submitted as Exhibit GOC-RPR-AR4-5 of Canadian Parties Response to Petitioner's Comments to IQR Response
AR4 Reishus Report	"Economic Analysis of British Columbia Log Export Permitting Process, Stumpage and Log Markets" Expert Witness Statement on Behalf of the Government of British Columbia and the Government of Canada by David Reishus, Ph.D., submitted as Exhibit LEP-1 of GOC/GBC LER Response
AR4 Schuetz Report	"Review of Softwood Sawlog Haul Distances and Cycle Times to Sawmills in British Columbia, Alberta and the U.S. States of Idaho, Montana and Washington" by Robert Schuetz, submitted as Exhibit LEP-42 of GOC/GBC LER Response

Acronym/Abbreviation	Complete Name
Asker Report	"Economic Analysis of Factors Affecting Cross Jurisdictional Stumpage Price Comparisons" (Expert Report by John Asker, PhD) submitted at Exhibit GOC-AR4-STUMP-35 of the GOC IQR Response
AUL	Average Useful Life
AWS	Annual Work Schedule
BC	British Columbia
BCAA	British Columbia Assessment Authority
BCTS	British Columbia Timber Sales
BCUC	British Columbia Utilities Commission
Best Quality	Best Quality Cedar Products Ltd.
Blue Ridge	Blue Ridge Lumber Inc.
BPI	Business Proprietary Information
Brattle Report	"Assessment of an Internal Benchmark for Alberta Crown Timber (July 15, 2019)," subbmitted as Exhibit Vol. II AB-AR4-S-24 of Alberta Stumpage IQR Response
C$	Canadian Dollar
CAFC	U.S. Court of Appeals for the Federal Circuit
Canadian Parties	Government of Canada and the Provinces of Alberta, British Columbia, New Brunswick, Ontario, and Québec, as well as Canfor Corporation, J.D. Irving, Limited, Resolute FP Canada Inc., West Fraser Mills Ltd., Alberta Softwood Lumber Trade Council, the British Columbia Lumber Trade Council, the Conseil de l'industrie forestière du Québec, and Ontario Forest Industries Association (collectively, the "Canadian Parties")
Canfor	Canfor Corporation, Canfor Wood Products Marketing Ltd., and Canadian Forest Products, Ltd.
Carrier	Carrier Forest Products Ltd. and Carrier Lumber Ltd.
CBP	U.S. Customs and Border Protection
CCA	Capital Cost Allowance
CES	Custom Energy Solutions
CEWS	Canada Emergency Wage Subsidy
CLFA	Crown Land and Forests Act
CFP	Canadian Forest Products, Ltd.
CFR	Code of Federal Regulations
Chaleur et al.	Chaleur Forest Products Inc., Chaleur Forest Products LP, Delco Forest Products Ltd., Devon Lumber Co. Ltd., H.J. Crabbe & Sons Ltd., Langevin Forest Products Inc., Marwood Ltd., North American Forest Products Ltd., and Twin Rivers Paper Co. Inc.
CHP III	Combined Heat and Power III
CIB	Climate Investment Branch
CIF	CleanBC Industry Fund
CIFQ	Conseil de l'industrie forestière du Québec
CIIP	CleanBC Industrial Incentive Program
CIT	U.S. Court of International Trade
Commerce	U.S. Department of Commerce
CLFA	Crown Land and Forests Act
CRA	Canada Revenue Agency
CSA	Canadian Standards Association
CVD	Countervailing Duty
CWPM	Canfor Wood Products Marketing Ltd.
CY	Calendar Year
DBH	Diameter at Breast Height
DERD	Department of Energy and Resource Development
DLF	Department of Lands and Forestry
DNR	The Minister of Natural Resources
DNRED	Department of Natural Resources and Energy Development

Acronym/Abbreviation	Complete Name
Dual-Scale Study	"Jendro & Hart AR1 B.C. Interior 2018 Dual-Scale Study Update," subbmitted as Exhibit BCAR4-S-179 of GBC Stumpage IQR Response
EDL	Electricity Discount Program Applicable to Consumers Billed at Rate L
eFAR	Electronic Facility Annual Return
EIPA	Export and Import Permits Act
EOA	Economic Obsolescence Allowance
EPA	Electricity Purchase Agreement
ETG	Employer Training Grant
EWP	Eastern White Pine
F2M	Forest2Market
Federal Circuit	U.S. Court of Appeals for the Federal Circuit
FLTC	Federal Logging Tax Credit
FMA	Forest Management Agreement
FMM	Forest Management Manual
FMP	Forest Management Plans
Fonseca Publication	"The Measurement of Roundwood: Methodologies and Conversion Ratios," by Matthew Fonseca (See GBC Stumpage IQR at Exhibit BC-AR4-S-204).
FP Innovations Report	"Modelling of the Forest Products Supply Chain in Nova Scotia" (Expert Report by Jonathan Lethbridge, Dave Lepage, and Samir Haddad) submitted at Exhibit NS-18 of the GNS Stumpage IQR Response
FRIAA	Forest Resource Improvement Association of Alberta
FRL	Forest Resource License
FSPF	Forest Sector Prosperity Fund
FTC	Foreign Trade Commission
FY	Fiscal Year
G&A	General and Administrative
GATT	General Agreement on Tariffs and Trade
GBC	Government of British Columbia
GGIRCA	Greenhouse Gas Industrial Reporting and Control Act
GHG	Greenhouse Gases
GIS	Geographic Information System
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
GOS	Government of Saskatchewan
GWh	Gigawatt Hours
Henderson Declaration	"Declaration of D'Arcy Henderson," submitted as Exhibit WF-AR4-BCST-10 of West Fraser Stumpage IQR Response
HHI	Herfindahl–Hirschman Index
HTSUS	Harmonized Tariff Schedule of the United States
Hy Mark	Hy Mark Wood Products Inc.
ICBC	Insurance Corporation of British Columbia
IDM	Issues and Decision Memorandum
IEI	Industrial Electricity Incentive
IEO	Interruptible Electricity Option
IESO	Independent Electricity System Operator
IFG	Idaho Forest Group

Acronym/Abbreviation	Complete Name
IFS Report	"Review of Softwood Sawlog Haul Costs Delivered to Sawmills in Nova Scotia in 2021" (Expert Report by Robert Schuetz) submitted at Exhibit PR-NSR-AR4-2 of the GOA Comments on GNS' IQR Response
IMF	International Monetary Fund
IPL	Irving Paper Limited
IPP	Irving Pulp & Paper, Limited
IPPs	Independent Power Producers
IPTC	Industrial Property Tax Credit
IQR	Initial Questionnaire Response
Irving Tissue	Irving Consumer Products Limited
Interfor	Interfor Corporation
ITR	Income Tax Regulations
JDIL	J.D. Irving Limited
Joint Montana Study	"Impacts of the Mountain Pine Beetle on Sawmill Operations, Costs and Product Values in Montana," by Dan Loeffler and Nathaniel Anderson (See GBC Stumpage IQR Response at Exhibit BC-AR4-S-183).
Kalt Report	"Economic Analysis of Remuneration for Canadian Crown Timber," submitted as Exhibit GOC-AR4-STUMP-34 of GOC Stumpage IQR Response
	New Brunswick Private Woodlot Stumpage Values: Stumpage Study Results January 2021 to December 2021 (Report by the New Brunswick Forest Products Commission), submitted at Exhibit NB-AR4-BENCH-STUMP-2 of the GNB Stumpage Benchmark Comments
Kelly Report	An Analysis of the New Brunswick Private Woodlot Survey and the New Brunswick Private Timber Market" (Expert Report by Dr. Brian Kelly) submitted at Exhibit NB-AR4-STUMP-22 of the GNB IQR Response
Langevin	Langevin Forest Products Inc.
Leather from Argentina	*Leather from Argentina* , 55 FR 40212 (October 2, 1990)
Lennox Affidavit	"Affidavit of Ross Lennox Regarding the Annual Allowable Cut, CFP's Participation in BCTS Auctions, and Log Exports," submitted at Exhibit STUMP B-13 of Canfor Stumpage IQR Response
LER	Log Export Restraint
LIREPP	Large Industrial Renewable Energy Purchase Program
LSSi	Load Shedding Services for Imports
LTAR	Less than Adequate Remuneration
Manning	Manning Forest Products Ltd.
Marshall Report	"In the Matter of: Certain Softwood Lumber Products from Canada" (Report by Robert C. Marshall, PhD) submitted at Exhibit Vol. I-42 of the Petitioner Comments on IQR Responses
MBF	Thousand Board Feet
Miller Report	"Characteristics of Nova Scotia's Wood Fibre Market" (Report by MNP LLP) submitted at Exhibit GOC-AR4-STUMP-36, Appendix 1, of the GOC IQR Response, updated in "2nd Update and Supplemental Report to Characteristics of Nova Scotia's Wood Fibre Market" (Expert Report by Earle Miller, RPF) submitted at Exhibit GOC-AR4-STUMP-36 of the GOC IQR Response
MNP Cross Border Report	"MNP's Cross-Border Analysis of Alberta Stumpage and Log Prices Volume I-V (2022)" (Expert Report by Earle Miller, RPF) submitted at Exhibit AB-AR4-S-23 of the GOA Stumpage IQR Response
MNRF	Ministry of Natural Resources and Forestry
MPB	Mountain Pine Beetle
MPS	Market Pricing System
MTAR	More Than Adequate Remuneration
MTR	Monthly Timber Return
NAICS	North American Industry Classification System

Acronym/Abbreviation	Complete Name
NBAA	New Brunswick Assessment Act
NBFPC	New Brunswick Forest Products Commission
NBRD	New Brunswick Research & Development Tax Credit
NS	Nova Scotia
NSA	New Subsidy Allegation
NSAQR	New Subsidy Allegation Questionnaire
NSDNR	Nova Scotia Department of Natural Resources
OIC	Order-in-Council
Olympic	Olympic Industries, Inc. and Olympic Industries ULC
PAE 2011-01	Purchase Power Program 2011-01
PDM	Preliminary Decision Memorandum
PEI	Prince Edward Island
Petitioner	Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (aka, COALITION)
PLT	Project Learning Tree
PLTC	Provincial Logging Tax Credit
PME	Pacific Maritime Ecozone
PNW	Pacific Northwest
POI	Period of Investigation
POR	Period of Review
PPA	Purchsase Power Agreement
PPI	Producer Price Index
QMD	Quadratic-Mean Diameter
QNR	Questionnaire
QR	Questionnaire Response
R&D	Research and Development
Rosenzweig Report	*An Analysis of Certain Economic Issues Relating to BC Hydro's Electricity Purchase Agreements* , (Expert Report for the Province of British Columbia), by Dr. Michael Rosenzweig, submitted at Exhibit BC-AR4-BC-48 of the GBC's Non-Stumpage IQR Response Volume II.
SAA	Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994)
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SDTC	Sustainable Development Technology Canada
SFL	Sustainable Forest License
Sierra Pacific	Sierra Pacific Industries, including its subsidiary Seneca Sawmill Company
SNB	Service New Brunswick
SPF	Spruce Pine Fir
SPFL	Spruce-Pine-Fir-Larch
SR&ED	Scientific Research and Experimental Development
StatCan	Statistics Canada
Sundre	Sundre Forest Products Inc.
Sunpine	Sunpine Inc.
TDA	Timber Damage Assessment
TEAC	Timber Export Advisory Committee
TEFU	Tax Exempt Fuel Use
The Act	Tariff Act of 1930, as amended
TMR	Timber Management Regulation
TSG	Timber Supply Guarantee
TSA	Timber Supply Area
TSL	Timber Sale License
URAA	Uruguay Round Agreements Act

Acronym/Abbreviation	Complete Name
USFS	United States Forest Service
USMCA	United States–Mexico–Canada Agreement
WDNR	Washington Department of Natural Resources
West Fraser	West Fraser Mills Ltd.
Weston Forest Products	Weston Forest Products Inc.
WF Alberta	West Forest Alberta Holdings Ltd.
WF Timber	West Fraser Timber Co.
WTO	World Trade Organization

Appendix II - Court and Case Citation Table for Final Results: Lumber CVD Fourth Administrative Review

This Section is Sorted by Short Citation

Short Citation	Administrative Case Determinations
Acciai Speciali Terni	*Acciai Speciali Terni S.p.A. v. United States* , 26 CIT 148 (2002)
Agro Dutch v. U.S.	*Agro Dutch Indus., Ltd. v. United States* , 508 F.3d 1024 (Fed. Cir. 2007)
AK Steel Corp. v. U.S.	*AK Steel Corp. v. United States* , 192 F.3d 1367 (Fed. Cir. 1999)
Aluminum Extrusions from China First AR	*Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011* , 79 FR 106 (January 2, 2014)
Aluminum Foil from Oman IDM	*Certain Aluminum Foil from the Sultanate of Oman: Final Affirmative Countervailing Duty Determination*, 86 FR 52888 (September 23, 2021)
Aluminum Sheet from Bahrain IDM	*Common Alloy Aluminum Sheet from Bahrain: Final Affirmative Countervailing Duty Determination* , 86 FR 13333 (March 8, 2021)
Archer Daniels v. U.S	*Archer Daniels Midland Co. v. United States* , 968 F. Supp. 2d 1269, 1279 (CIT 2014)
Asociación de Exportadores e Industriales de Aceitunas de Mesa v. U.S.	*Asociación de Exportadores e Industriales de Aceitunas de Mesa v. United States* , 429 F. Supp. 3d 1325 (CIT 2020), appeal docketed, No. 2023-1162 (Fed. Cir. November 18, 2022)
Ball Bearings from Thailand	*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* , 54 FR 19130 (May 3, 1989)
Beijing Tianhai	*Beijing Tianhai Industry Co. v. United States* , 52 F. Supp. 3d 1351 (CIT 2015)
Bethlehem Steel Corp v. U.S.	*Bethlehem Steel Corp. v. United States* , 140 F. Supp. 2d 1354 (CIT 2001)
Bethlehem Steel v. U.S.	*Bethlehem Steel Corp. v. United States* , 155 F. Supp. 2d. 7071 (CIT 2001) (order amending language in earlier judgment)
Biodiesel from Argentina	*Biodiesel From the Republic of Argentina: Final Affirmative Countervailing Duty Determination* , 82 FR 53477 (November 16, 2017)
Biodiesel from Indonesia	*Biodiesel From the Republic of Indonesia: Final Affirmative Countervailing Duty Determination* , 82 FR 53471 (November 16, 2017)
Borusan v. U.S.	*Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States* , 61 F. Supp. 3d 1306 (CIT 2015)
Carbon and Alloy Steel Wire Rod from Italy	*Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Final Affirmative Determination* , 83 FR 13242 (March 28, 2018)
Carlisle Tire & Rubber v. U.S.	*Carlisle Tire & Rubber Co. v United States* , 564 F. Supp. 834 (CIT 1983)
Certain Steel Products from Korea	*Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea* , 58 FR 37338 (July 9, 1993)
Certain Wheat from Canada	*Final Affirmative Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada* , 68 FR 52747 (September 5, 2003)
CFS from China	*Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination* , 72 FR 60645 (October 25, 2007)
CFS from Indonesia	*Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination* , 72 FR 60642 (Oct. 25, 2007)
Changzhou Trina Solar Energy v. U.S. (2016)	*Changzhou Trina Solar Energy Co., Ltd. v. United States* , 195 F. Supp. 3d 1334 (CIT 2016)
Changzhou Trina Solar Energy v. U.S. (2018)	*Changzhou Trina Solar Energy Co. Ltd. v. United States* , 352 F. Supp. 3d 1316 (CIT 2018)
Changzhou Trina Solar Energy v. U.S. (2019)	*Changzhou Trina Solar Energy Co. v. United States* , Slip Op. No. 17-00198, 2019 (CIT 2019)
Chevron	*Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.* , 467 U.S. 837 (1984)
Chlorinated Isocyanurates from China	*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 (June 15, 2017)
Circular Welded Carbon-Quality Steel Pipe from Oman	*Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Final Affirmative Countervailing Duty Determination* , 77 FR 64473 (October 22, 2012)
Citric Acid from China	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review* , 77 FR 72323 (December 5, 2012)
Citric Acid from China First Review Final	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review* , 76 FR 77206 (December 12, 2011)
Compressors from Singapore	*Certain Refrigeration Compressors from the Republic of Singapore; Final Results of Countervailing Duty Administrative Review* , 61 FR 10315 (March 13, 1996)
Corus Staal v. U.S. (2005)	*Corus Staal BV v. United States* , 395 F. 3d 1343 (Fed. Cir. 2005)
Corus Staal v. U.S. (2007)	*Corus Staal BV v. United States* , 502 F. 3d 1370 (Fed. Cir. 2007)
CRS from Brazil	*Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination* , 81 FR 49940 (July 20, 2016)
CRS from Korea	*Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination* , 81 FR 49946 (July 29, 2016)

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Short Citation	Administrative Case Determinations
CRS from Russia	*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)
CS Wind Vietnam v. U.S.	*CS Wind Vietnam Co. v. United States* , 832 F.3d 1367, 1373 (Fed. Cir. 2016)
CTL Steel Plate from Indonesia	*Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia* , 64 FR 73155 (December 29, 1999)
CTL Steel Plate from Korea Final	*Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea* , 64 FR 73176 (December 29, 1999)
CTL Steel Plate from Korea Prelim	*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-toLength Carbon-Quality Steel Plate from the Republic of Korea* , 64 FR 40445 (July 26, 1999)
Cut-to-Length Plate from Korea	*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)
CVD Preamble	*Countervailing Duties; Final Rule* , 63 FR 65348 (November 25, 1998)
CWP from Turkey 2010 Review	*Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review* , 77 FR 46713 (August 6, 2012)
CWP from the UAE	*Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Affirmative Countervailing Duty Determination* , 77 FR 64465 (October 22, 2012)
DHS v. Regents of Univ. of Cal.	*Department of Homeland Security v. Regents of Univ. of Cal.* , 140 S. Ct. 1891 (2020)
DS 108 Panel Report	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 January 29, 2002), Annex A-2, First Written Submission of the United States (February 7, 2011)
DS 353 Appellate Report (2019)	Appellate Body Report, United States – *Measures Affecting Trade in Large Civil Aircraft (Second Complaint)* (Recourse to Article 21.5 of the DSU by the European Union), WTO Doc. WT/DS353/AB/RW (March 28, 2019)
DS 353 Panel Report (2017)	Panel Report, United States – *Measures Affecting Trade in Large Civil Aircraft (Second Complaint)* (Recourse to Article 21.5 of the DSU by the European Union), WTO Doc. WT/DS353/RW (June 9, 2017)
DS 353 Appellate Report (2012)	Appellate Body Report, United States – *Measures Affecting Trade in Large Civil Aircraft (Second Complaint),* WTO Doc. WT/DS353/AB/R (March 12, 2012)
DS 533 Panel Report	Panel Report, United States – Countervailing Measures on Softwood Lumber from Canada, WT/DS533/R, dated August 24, 2020
DRAMS from Korea	*Dynamic Random Access Memory Semiconductors from the Republic of Korea* , 68 FR 37122 (June 23, 2003)
Essar Steel Ltd. v. U.S.	*Essar Steel Ltd. v. United States* , 678 F. 3d 1268 (Fed. Cir. 2012)
Eurodif v. U.S.	*Eurodif S.A. v. United States* , 411 F.3d 1355 (Fed. Cir. 2005)
Extruded Rubber Thread from Malaysia	*Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread from Malaysia* , 57 FR 38472 (August 25, 1992)
Flowers from Mexico	*Certain Fresh Cut Flowers from Mexico; Final Negative Countervailing Duty Determination* , 49 FR 15007 (April 16, 1984)
Fresh Cut Flowers from the Netherlands	*Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers from the Netherlands* , 52 FR 3301 (February 3, 1987)
Geneva Steel	*Geneva Steel v. United States* , 914 F. Supp. 563 (CIT 1996)
Glaxo Wellcome Inc. v. U.S.	*Glaxo Wellcome Inc. v. United States* , 126 F. Supp. 2d 581 (CIT 2000)
GPX Tire Corp	*GPX Int'l Tire Corp. v. United States,* 33 CIT 1368 (2009)
Government of Québec v. U.S.	*Government of Québec v. United States* , 567 F. Supp. 3d 1273 (CIT 2022)
Government of Sri Lanka v. U.S.	*Government of Sri Lanka v. U.S.* , 308 F. Supp. 3d 1372 (CIT 2018)
Groundwood Paper from Canada	*Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination* , 83 FR 39414 (August 9, 2018)
HRS from Brazil	*Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Final Affirmative Determination, and Final Determination of Critical Circumstances, in Part* , 81 FR 53416 (March 24, 2016)
HRS from Korea	*Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2020* , 88 FR 29889 (May 9, 2023)
HRS from Thailand	*Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand* , 66 FR 50410 (October 3, 2001)
HRS from Thailand Initiation	*Notice of Initiation of Countervailing Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand* , 65 FR 77580 (December 12, 2000)
HRS from India	*Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review* , 74 FR 20923 (May 6, 2009)
Hynix Semiconductor v. U.S.	*Hynix Semiconductor Inc. v. United States,* 391 F. Supp. 2d 1337 (CIT 2005)
Hyundai Steel v. U.S.	*Hyundai Steel Co. v. United States* , 615 F. Supp. 3d 1351, 1354-55 (CIT 2023)
Inland Steel v. U.S.	*Inland Steel Industries, Inc., et al., v. U.S* ., 967 F. Supp 1338 (CIT 1997)
IPA from Israel	*Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review* , 63 FR 13626 (March 20, 1998)
IPSCO v. U.S.	*IPSCO, Inc. v. United States* , 12 CIT 359, 367 (CIT 1988)

Short Citation	Administrative Case Determinations
ITC Final Determination	*Softwood Lumber Products from Canada* , Inv. Nos. 701-TA-566 and 731-TA-1342 (Final), USITC Pub. 4749 at 38 (December 2017)
Jinan Yipin Corp.	*Jinan Yipin Corp. v. United States* , 526 F. Supp. 2d 1347 (CIT 2007)
Kajaria Iron Castings v. U.S.	*Kajaria Iron Castings Pvt. Ltd. v. United States* , 156 F.3d 1163 (Fed. Cir. 1998)
Kitchen Racks from China	*Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination* , 74 FR 37012 (July 27, 2009)
Laminated Hardwood Trailer Flooring from Canada	*Preliminary Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring from Canada* , 61 FR 59079 (November 20, 1996)
Large Residential Washers from Mexico	*Large Residential Washers from Mexico: Final Results of Antidumping Duty Administrative Review; 2015-2016* , 82 FR 32169 (July 12, 2017)
LEU from France	*Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France* , 66 FR 65901 (December 21, 2001)
Light Truck Tires from China AR 14-15 IDM	*Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014-2015* , 83 FR 11694 (March 16, 2018)
Live Swine from Canada	*Final Negative Countervailing Duty Determination: Live Swine from Canada* , 70 FR 12186 (March 11, 2005)
LMI v. U.S.	*LMI-La Metalli Indus., S.p.A. v. United States* , 912 F.2d 455 (Fed. Cir. 1990)
Lumber II	*Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination,* 51 FR 37453 (October 22, 1986)
Lumber III Final	*Certain Softwood Lumber Products from Canada* , 57 FR 22570 at 22621 (May 28, 1992)
Lumber IV Final	*Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada* , 67 FR 15545 (April 2, 2002)
Lumber IV NAFTA June 7, 2004 Panel Decision On Remand Dete	*Certain Softwood Lumber Products from Canada* , USA-CDA-2002-1904-03, Panel Decision on Remand Determination (June 7, 2004)
Lumber IV Expedited Review Final	*Final Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada* , 67 FR 67388 (November 5, 2002)
Lumber IV AR1 Final	*Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products from Canada* , 69 FR 75917 (December 20, 2004)
Lumber V Final	*Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances* , 82 FR 51814 (November 8, 2017)
Lumber V Initiation	*Certain Softwood Lumber Products from Canada: Initiation of Less-Than-Fair-Value Investigation* , 81 FR 93892 (December 15, 2016)
Lumber V Prelim	*Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination* , 82 FR 19657 (April 28, 2017)
Lumber V AR1 Final	*Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review; 2017–2018* , 85 FR 77163 (December 1, 2020)
Lumber V AR1 Prelim	*Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2017–2018* , 85 FR 7273 (February 7, 2020)
Lumber V AR2 Final	*Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review, 2019* , 86 FR 68467 (December 2, 2021)
Lumber V AR2 Prelim	*Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review, 2019* , 86 FR 28556 (May 27, 2021)
Lumber V AR3 Final	*Certain Softwood Lumber Products from Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review, 2020* , 87 FR 48455 (August 9, 2022)
Lumber V AR3 Post-Prelim Memorandum	Memorandum, "Decision Memorandum for the Post-Preliminary Results of Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2020," dated June 10, 2022
Lumber V AR3 NSA Memorandum	Memorandum, "Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada: Analysis of New Subsidy Allegations," dated February 24, 2022
Lumber V AR3 Prelim	*Certain Softwood Lumber Products from Canada: Preliminary Results, Partial Rescission, and Preliminary Intent To Rescind, in Part, the Countervailing Duty Administrative Review, 2020* , 87 FR 6500 (February 4, 2022)
Lumber V AR3 Final	*Certain Softwood Lumber Products from Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review, 2020* , 87 FR 48455 (August 9, 2022)
Lumber V AR4 Prelim	*Certain Softwood Lumber Products from Canada: Preliminary Results, Partial Rescission, and Preliminary Intent to Rescind, in Part, the Countervailing Duty Administrative Review; 2021* , 88 FR 5302 (January 27, 2023)

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Lumber V AR4 Post-Prelim Memorandum	Memorandum, "Post-Preliminary Results of Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021," dated May 17, 2023
MacLean-Fogg	*MacLean-Fogg Co. v. United States* , 753 F.3d 1237 (Fed. Cir. 2014)
Magnesium from Canada	*Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada* , 57 FR 30946 (July 13, 1992)
Magnesium from Israel	*Magnesium from Israel: Final Affirmative Countervailing Duty Determination* , 84 FR 65785 (November 29, 2019)
Magnola v. U.S.	*Magnola Metallurgy, Inc. v. United States* , 508 F.3d 1349 (Fed. Cir. 2007)
Maverick Tube	*Maverick Tube* , 273 F. Supp. 3d at 1306 (CIT 2017)
Melamine from Trinidad and Tobago	*Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination* , 80 FR 68849 (November 6, 2015)
Murray v. Charming Betsy	*Murray v. Charming Betsy* , 6 U.S. (2 Cranch) 64, 118 (1804)
Nails from Oman	*Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination* , 80 FR 28958 (May 20, 2015)
NSK v. U.S.	*NSK Ltd. v. United States* , 510 F. 3d 1375 (Fed. Cir. 2007)
NOES from Taiwan	*Antidumping or Countervailing Duty Investigations, Orders, or Reviews: Non-Oriented Electrical Steel from Taiwan* , 79 FR 61602 (October 14, 2014)
Novosteel	*Novosteel SA v. United States* , 284 F.3d 1261 (Fed. Cir. 2002)
Nucor Corp.	*Nucor Corp. v. United States* , 927 F.3d 1243 (Fed. Cir. 2019)
Nucor Corp., Slip Op.	*Nucor Corp. v. United States* , No. 22-00070, Slip Op. 2023-64 (CIT April 28, 2023)
OCTG from Argentina	*Oil Country Tubular Goods from Argentina; Preliminary Results of Countervailing Duty Administrative Review* , 62 FR 32307 (June 13, 1997)
OCTG from China INV	*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)
OCTG from China 2011	*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)
OCTG from Korea	*Certain Oil Country Tubular Good from the Republic of Korea: Final Results of Antidumping Administrative Review; 2014-2015* , 82 FR 18205 (April 17, 2017)
OCTG from Turkey	*Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination* , 79 FR 41964 (July 18, 2014)
Off-the-Road Tires from Sri Lanka	*Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination* , 82 FR 2949 (January 10, 2017)
Off-the-Road Tires from Sri Lanka Order	*Certain New Pneumatic Off-the-Road Tires from India and Sri Lanka: Countervailing Duty Order* , 82 FR 12556 (March 6, 2017)
Order	*Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* , 83 FR 347 (January 3, 2018)
Pasta from Italy	*Certain Pasta from Italy: Final Results of the Eleventh (2006) Countervailing Duty Administrative Review* , 74 FR 5922 (February 3, 2009)
PET Film from India	*Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review* , 73 FR 7708 (February 11, 2008)
PET Resin from Oman	*Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Final Negative Countervailing Duty Determination* , 81 FR 13321 (March 14, 2016)
Phosphate Fertilizers from Russia	*Countervailing Duty Investigation of Phosphate Fertilizers from the Russian Federation: Final Affirmative Countervailing Duty Determination* , 86 Fed. Reg. 9,479 (February 16, 2021)
PPG Industries v. U.S.	*PPG Industries, Inc. v. United States* , 978 F.2d 1232 (Fed. Cir. 1992)
PRCBs from Vietnam	*Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination,* 75 FR 16428 (April 2, 2010)
Preamble	*Antidumping and Countervailing Duties* , 62 FR 27296 (May 19, 1997)
Qingdao Sea-Line Trading Co.	*Qingdao Sea-Line Trading Co., v. United States* , 766 F.3d 1378 (Fed. Cir. 2014)
Rebar from Turkey 2014	*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)
Rebar from Turkey 2017 Final	*Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2017,* 85 FR 42353 (July 14, 2020)
Royal Thai Gov't v. U.S.	*Royal Thai Government v. United States* , 341 F. Supp. 2d 1315 (CIT 2004)
Royal Thai Gov't v. U.S. 2006	*Royal Thai Government v. United States,* 436 F.3d 1330 (Fed. Cir. 2006)
Royal Thai Gov't v. U.S. 2007	*Royal Thai Government v. United States* , 502 F. Supp. 2d 1334 (CIT 2007)
RZBC Shareholding v. U.S.	*RZBC Grp. Shareholding Co. v. United States* , Slip Op. 2016-64, Ct. No. 15-22 (CIT 2016)
SAA	Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994)
Schafer	*FAG Kugelfischer Georg Schafer AG v. United States* , 131 F. Supp. 2d 104 (CIT 2001)

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SC Paper from Canada Final	*Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination* , 80 FR 63535 (October 20, 2015)
SC Paper from Canada Prelim	*Supercalendered Paper from Canada: Preliminary Affirmative Countervailing Duty Determination* , 80 FR 45951 (August 3, 2015)
SC Paper from Canada – Expedited Review – Final Results	*Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review* , 82 FR 18896 (April 24, 2017)
SC Paper from Canada - Expedited Review - Prelim Results	*Supercalendered Paper from Canada: Preliminary Results of Countervailing Duty Expedited Review* , 81 FR 85520 (November 28, 2016)
Shrimp from Ecuador	*Certain Fresh Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination* , 78 FR 50389 (August 19, 2013)
Silicon Metal from Australia	*Silicon Metal from Australia: Final Affirmative Countervailing Duty Determination* , 83 FR 9834 (March 8, 2018)
SKF USA	*SKF USA Inc. v. United States* , 263 F.3d 1369 (Fed. Cir. 2001)
Solar Cells from China 2016	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2016* , 84 FR 45125 (August 28, 2019)
Solar Cells China 2019	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2019* , 87 FR 40491 (July 7, 2022)
Stainless Steel Sinks from China INV	*Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination* , 78 FR 13017 (February 26, 2013)
Steel FEBs from Germany	*Forged Steel Fluid End Blocks from the Federal Republic of Germany: Final Affirmative Countervailing Duty Determination* , 85 FR 80011 (December 11, 2020)
Steel Pipes and Tubes from Turkey	*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)
Steel Products from France	*Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France* , 58 FR 37304 (July 9, 1993)
Steel Wheels from China	*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)
Steel Wire Nails from New Zealand	*Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails from New Zealand* , 52 FR 37196 (October 5, 1987)
Supercalendered Paper from Canada NAFTA Panel Decision	*Supercalendered Paper from Canada* , USA-CDA-205-1904-01, Panel Decision and Order (April 13, 2017)
Textile Mill Products and Apparel from Singapore	*Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Singapore* , 50 FR 9840 (March 12, 1985)
Timken v. U.S.	*Timken Co. v. United States* , 354 F.3d 1334 (Fed. Cir. 2004)
TMK IPSCO	*TMK IPSCO v. United States* , 179 F. Supp. 3d 1328 (CIT 2016)
Toscelik Profil	*Toscelik Profil ve Sac Endustrisi A.S. v. United States* , 37 ITRD 1177 (CIT 2015)
United States November 30, 2018 First Submission, US – Softwood Lumber V	First Written Submission of the United States, United States-Countervailing Duty Measures on Softwood Lumber from Canada, WT/DS/533 (November 30, 2018)
U.S. – Upland Cotton	Panel Report, United States – Subsidies on Upland Cotton, WT/DS267/R (adopted March 21, 2005)
U.S. v. Gold Mountain Coffee, Ltd.	*United States v. Gold Mountain Coffee, Ltd.* , 601 F. Supp. 212 (CIT 1984)
Usinor v. U.S.	*Usinor v. United States* , 342 F. Supp. 2d 1267 (CIT 2004)
Violet Pigment 23 from China IDM	*Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China* , 69 FR 67304 (November 17, 2004)
Walters v. Metropolitan Educ. Enterprises, Inc.	*Walters v. Metropolitan Educ. Enterprises, Inc.* , 519 U.S. 202 (1997)
Welded SSP from Korea	*Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015* , 82 FR 22970 (May 19, 2017)
Welded Line Pipe from Korea	*Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination* , 80 FR 61365 (October 13, 2015)
Welded Line Pipe from Turkey	*Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination* , 80 FR 61371 (October 13, 2015)
Wind Towers from Canada	*Utility Scale Wind Towers from Canada: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances* , 85 FR 40245 (July 6, 2020)
Wind Towers from Indonesia	*Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 85 FR 40241 (July 6, 2020)
Wire Rod from Saudi Arabia	*Notice of Final Countervailing Duty Determination: Carbon Steel Wire Rod from Saudi Arabia* , 51 FR 4206 (February 3, 1986)
Wire Rod from Trinidad and Tobago	*Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago* , 62 FR 55003 (October 22, 1997)
Wire Rod from Venezuela	*Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela* , 62 FR 55014 (October 22, 1997)
Wood Mouldings from China	*Wood Mouldings and Millwork Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination* , 86 FR 67 (January 4, 2021)

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Yangzhou Bestpak	*Yangzhou Bestpak Gifts & Crafts* , 716 F.3d 1370 (Fed. Cir. 2013)

Appendix III - Document Citation Table for Final Results: Lumber CVD Fourth Administrative Review

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To
1/3/2022	Commerce	*Opportunity Notice*	*Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List* , 87 FR 75 (January 3, 2022)	Interested Parties
1/23/2022	Commerce	Canfor Preliminary Calculation Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021—Preliminary Results Calculations for Canfor Corporation and its cross-owned affiliates," dated January 23, 2023	Canfor
1/28/2022	Petitioner	Petitioner Review Request	Petitioner's Letter, "Certain Softwood Lumber from Canada: Request for Administrative Review," dated January 28, 2022	Interested Parties
3/9/2022	Commerce	*Initiation Notice*	*Initiation of Antidumping and Countervailing Duty Administrative Reviews* , 87 FR 13252 (March 9, 2022)	Interested Parties
3/24/2022	Commerce	CBP Data Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Release of U.S. Customs and Border Protection Query," dated March 24, 2022	Interested Parties
3/31/2022	Petitioner	Petitioner Comments on CBP Data	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on CBP Data and Respondent Selection," dated March 31, 2022	Commerce
4/5/2022	Langevin	Langevin Rebuttal Comments to Petitioner's CBP Data Comments	Langevin's Letter, "Certain Softwood Lumber Products from Canada: Langevin's Rebuttal to Petitioner's Comments on CBP Data and Respondent Selection," dated April 5, 2022	Petitioner
4/6/2022	Best Quality	Best Quality Notice of No Sales	Best Quality's Letter, "Notice of No Sales," dated April 6, 2022	Commerce
4/6/2022	Hy Mark	Hy Mark Notice of No Sales	Hy Mark's Letter, "Notice of No Sales," dated April 6, 2022	Commerce
4/6/2022	Hy Mark	Hy Mark Withdrawal of Review Request	Hy Mark's Letter, "Hy Mark Wood Products Inc. Withdrawal of Review Request," dated April 6, 2022	Commerce
4/8/2022	CIFQ	CIFQ Notice of No Sales	CIFQ's Letter, "Softwood Lumber from Canada: Notice of No Sales," dated April 8, 2022	Commerce
4/12/2022	Commerce	*Corrected Initiation Notice*	*Initiation of Antidumping and Countervailing Duty Administrative Reviews* , 87 FR 21619 (April 12, 2022)	Interested Parties
4/25/2022	Commerce	Notice of Intent to Rescind	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021: Notice of Intent to Rescind Review, In Part," April 25, 2022	Interested Parties
4/26/2022	Commerce	Respondent Selection Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Respondent Selection," dated April 26, 2022	Interested Parties
4/28/2022	Commerce	Initial Questionnaire	Commerce's Letter, "Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Initial Questionnaire for Fourth Administrative Review," dated April 28, 2022	Interested Parties
4/28/2022	Commerce	Economic Diversification Memorandum	Memorandum, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Economic Diversification Memorandum," dated April 28, 2022	Interested Parties
5/5/2022	Petitioner	Petitioner Request for Respondent Selection Reconsideration	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Request for Reconsideration of Respondent Selection," dated May 5, 2022	Commerce
5/9/2022	Petitioner	Petitioner Comments on Notice of Intent to Rescind	Petitioner's Letter, "Certain Softwood Lumber from Canada: Petitioner's Comments on Notice of Intent to Rescind Review," dated May 9, 2022	Commerce

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5/9/2022	CIFQ	CIFQ Comments on Notice of Intent to Rescind	CIFQ's Letter, "Softwood Lumber from Canada: Comment on Notice of Intent to Rescind Review," dated May 9, 2022	Commerce
5/12/2022	JDIL	JDIL Company Affiliation Response	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Affiliated Companies Response," dated May 12, 2022	JDIL
5/12/2022	West Fraser	West Fraser Company Affiliation Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Response To Section III, Part I Of The Department's April 28, 2022 Questionnaire Concerning Affiliated And Cross-Owned Companies," dated May 12, 2022	West Fraser
5/16/2022	Langevin	Langevin Rebuttal Comments to Petitioner's Comments on Notice of Intent to Rescind	Langevin's Letter, "Certain Softwood Lumber Products from Canada: Langevin's Rebuttal to Petitioner's Comments on Notice of Intent to Rescind Review," dated June 7, 2022	Petitioner
6/7/2022	Petitioner	Petitioner Withdrawal of Review Request	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Withdrawal of Request for Administrative Review," dated June 7, 2022	Petitioner
6/27/2022	GBC	GBC Non-Stumpage IQR Response	GBC's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Initial Questionnaire Response (Volumes II through XIV)," dated June 27, 2022	GBC
6/27/2022	GNB	GNB IQR Response	GNB's Letter, "Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of New Brunswick," dated June 27, 2022	GNB
6/27/2022	GNS	GNS IQR Response regarding JDIL	GNS' Letter, "Certain Softwood Lumber Products 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 June 27, 2022	JDIL
6/27/2022	GOA	GOA Non-Stumpage IQR Response	GOA's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Alberta to the Department's April 28, 2022 Initial Questionnaire, Volume 1: Response to Questionnaire Part 1: Non-Stumpage Programs," dated June 27, 2022	GOA
6/27/2022	GOQ	GOQ Non-Stumpage IQR Response	GOQ's Letter, "Certain Softwood Lumber Products from Canada: The Government of Québec's Response to the Department's April 28, 2022 Initial Questionnaire: Non-Stumpage," dated June 27, 2022	GOQ
6/28/2022	GOC	GOC Non-Stumpage IQR Response	GOC's Letter, "Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of Canada: Non-Stumpage," dated June 28, 2022	GOC
6/29/2022	Canfor	Canfor Non-Stumpage IQR Response	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Non-Stumpage Initial Questionnaire Response," dated June 29, 2022	Canfor
6/29/2022	JDIL	JDIL Non-Stumpage IQR Response	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to Part 1 (NonStumpage Programs) of Section III of the Questionnaire for Producers / Exporters," dated June 29, 2022	JDIL
6/29/2022	West Fraser	West Fraser	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to April 28, 2022 Non-Stumpage Initial Countervailing Duty Questionnaire," dated June 29, 2022	West Fraser
6/29/2022	GOA	GOA Stumpage Reference Materials	GOA's Letter, "Certain Softwood Lumber Products from Canada: The Government of Alberta's Response to the Department's April 28, 2022 Initial Questionnaire - Volume III: Public Stumpage Reference Materials," dated June 29, 2022	GOA

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6/30/2022	GOC/GBC	GOC/GBC LEP Data Files	GOC/GBC's Letter, "Certain Softwood Lumber Products from Canada: Submission of Data Files to Accompany the Joint Government of Canada and Government of British Columbia Initial Response to the Department's Log Export Permitting Process Questionnaire," dated June 30, 2022	GOC/GBC
6/30/2022	GBC	GBC Stumpage IQR Response	GBC's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Initial Questionnaire Response (Volume I)," dated June 30, 2022	GBC
6/30/2022	GNS	GNS Stumpage IQR Response	GNS' Letter, "Softwood Lumber from Canada: Response of the Government of Nova Scotia to the Department's Initial Stumpage Questionnaire," dated June 30, 2022	GNS
6/30/2022	GOA	GOA Stumpage IQR Response	GOA's Letter, "Certain Softwood Lumber Products from Canada: The Government of Alberta's Response to the Department's April 28, 2022 Initial Questionnaire - Volume II, Stumpage Response," dated June 30, 2022	GOA
6/30/2022	Canfor	Canfor Stumpage IQR Response	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Stumpage Initial Questionnaire Response," dated June 30, 2022	Canfor
6/30/2022	JDIL	JDIL Stumpage IQR Response	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to Part 2 (Stumpage) of Section III of the Questionnaire for Producers/Exporters," dated June 30, 2022	JDIL
6/30/2022	GOA	GOA IQR Response Stumpage Exhibits	GOA's Letter, "Certain Softwood Lumber Products from Canada: The Government of Alberta's Response to the Department's April 28, 2022 Initial Questionnaire - Volume IV: Proprietary Stumpage Exhibits Provided by Consultants MNP," dated June 30, 2022	GOA
7/1/2022	GOC/GBC	GOC/GBC LEP IQR Response	GOC/GBC's Letter, "Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of Canada and Government of British Columbia: Log Export Permitting Process," dated July 1, 2022	GOC/GBC
7/1/2022	GOC	GOC Stumpage IQR Response	GOC's Letter, "Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of Canada: Stumpage," dated July 1, 2022	GOC
7/6/2022	West Fraser	West Fraser Stumpage IQR Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada: Initial Questionnaire Response of the Government of Canada: Stumpage," dated July 6, 2022	West Fraser
7/22/2022	GOA	GOA Resubmitted Parts of Volumes II and IV of Stumpage IQR Response	GOA's Letter, "Certain Softwood Lumber Products from Canada: Resubmission of Certain Portions of The Government of Alberta's Response to the Department's April 28, 2022 Initial Questionnaire," July 22, 2022	GOA
8/1/2022	Petitioner	NSA Submission	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's New Subsidy Allegations," dated August 1, 2022	Canadian Parties
8/5/2022	Petitioner	Petitioner Comments on IQR Responses	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on Initial Questionnaire Responses," dated August 5, 2022	Canadian Parties
8/5/2022	GOA	GOA Comments on GNS' IQR Response	GOA's Letter, "Certain Softwood Lumber Products from Canada: Comments from the Government of Alberta on the Government of Nova Scotia's Initial Questionnaire Response," dated August 5, 2022	GNS
8/12/2022	JDIL	JDIL Request for Voluntary Respondent Treatment	JDIL's Letter, "Certain Softwood Lumber Products from Canada: J.D. Irving, Limited's Application for Voluntary-Respondent Treatment," dated August 12, 2022	JDIL
8/17/2022	Petitioner	Petitioner Response to JDIL Request for Voluntary Respondent Treatment	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Response to J.D. Irving, Limited's Application for Voluntary Respondent Treatment," dated August 17, 2022	JDIL

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8/19/2022	Commerce	Voluntary Respondent Selection Letter	Commerce's Letter, "2021 Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Selection of J.D. Irving, Limited as a Voluntary Respondent, dated August 19, 2022	JDIL
8/23/2022	Canadian Parties	Canadian Parties Response to NSA Submission	Canadian Parties' Letter, "Countervailing Duty Administrative Review of Certain Softwood Lumber Products from Canada: Response to Petitioner's New Subsidy Allegations," dated August 23, 2022	Petitioner
8/24/2022	GNB	GNB Response to Petitioner's Comments on IQR Responses	GNB's Letter, "Certain Softwood Lumber Products from Canada: Response to Petitioner's Comments on Initial Questionnaire Responses," dated August 24, 2022	Petitioner
8/24/2022	GBC	GBC Response to Petitioner's Comments on IQR Responses	GBC's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Response to Petitioner's Comments on Initial Questionnaire Responses," dated August 24, 2022	Petitioner
8/24/2022	West Fraser	West Fraser Response to Petitioner's Comments on IQR Responses	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to Petitioner's Comments on Initial Countervailing Duty Questionnaire," dated August 24, 2022	Petitioner
8/24/2022	JDIL	JDIL Response to Petitioner's Comments on IQR Responses	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Factual Submission in Response to Petitioner's Comments on Initial Questionnaire Responses," dated August 24, 2022	Petitioner
8/25/2022	GOA	GOA Response to Petitioner's Comments on IQR Responses	GOA's Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Alberta to Petitioner's Comments on the Initial Questionnaire Responses," dated August 25, 2022	Petitioner
8/25/2022	Canadian Parties	Canadian Parties Response to Petitioner's Comments to IQR Response	Canadian Parties' Letter, "Certain Softwood Lumber Products from Canada: Reply of the Canadian Parties to Petitioner's Comments on the Initial Questionnaire Responses," dated August 25, 2022	Petitioner
8/29/2022	Commerce	Deferred NSA Questionnaire for GBC/GOA	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Deferred New Subsidy Allegations Questionnaire for the GOA and GBC," dated August 29, 2022	GBC/GOA
8/29/2022	Commerce	Deferred NSA Questionnaire for Canfor	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Deferred New Subsidy Allegations Questionnaire for Canfor Corporation," dated August 29, 2022	Canfor
8/29/2022	Commerce	Deferred NSA Questionnaire for West Fraser	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Deferred New Subsidy Allegations Questionnaire for West Fraser Mills Ltd.," dated August 29, 2022	West Fraser
9/1/2022	Petitioner	Petitioner Comments on Canadian Parties' Response to NSAs	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Comments on the Canadian Parties' Response to New Subsidy Allegations," dated September 6, 2022	Canadian Parties
9/6/2022	Petitioner	Petitioner Additional Comments on IQR Responses	Petitioner's Letters, "Certain Softwood Lumber Products from Canada: Additional Comments on Initial Questionnaire Responses," dated September 6, 2022	Canadian Parties
9/12/2022	Commerce	Postponement of Preliminary Results	Memorandum, "Certain Softwood Lumber Products from Canada: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review, 2021," dated September 12, 2022	Interested Parties
9/19/2022	GOA	GOA Response to Petitioner's Additional Comments on IQR Responses	GOA's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Response to Petitioner's Additional Comments on Initial Questionnaire Responses," dated September 19, 2022	Petitioner

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9/21/2022	Commerce	GOQ Non-Stumpage SQR	Commerce's Letter, "Fourth Administrative Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire for the GOQ," dated September 21, 2022	GOQ
9/27/2022	Commerce	NSA SQR	Commerce's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Supplemental Questionnaire regarding New Subsidy Allegations," dated September 27, 2022	Petitioner
10/4/2022	Commerce	West Fraser October 4, 2022 Non-Stumpage SQR	Commerce's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire for West Fraser," dated October 4, 2022	West Fraser
10/5/2022	Commerce	GOA October 5, 2022 Non-Stumpage SQR	Commerce's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for the GOA," dated October 5, 2022	GOA
10/11/2022	West Fraser	West Fraser October 11, 2022 Non-Stumpage SQR Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to Non-Stumpage Supplemental Questionnaire," dated October 11, 2022	West Fraser
10/11/2022	Petitioner	Petitioner October 11, 2022 NSA SQR Response	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Supplemental Questionnaire Response Regarding New Subsidy Allegations," dated October 11, 2022	Canadian Parties
10/12/2022	Commerce	West Fraser October 12, 2022 Non-Stumpage SQR	Commerce's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire for West Fraser," dated October 12, 2022	West Fraser
10/12/2022	GOA	GOA October 12, 2022 Non-Stumpage SQR Response	GOA's Letter, "Certain Softwood Lumber Products from Canada: Government of Alberta's Response to the Department's October 5, 2022 Non-Stumpage Supplemental Questionnaire," dated October 12, 2022	GOA
10/12/2022	GOA	GOA Request for Verification	GOA's Letter, "Certain Softwood Lumber Products from Canada: Request for On-Site Verification of the Government of Nova Scotia," dated December 22, 2022	GOA
10/17/2022	Petitioner	Petitioner Comments on GNS IQR	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Deficiency Comments on Government of Nova Scotia Initial Questionnaire Response," dated October 17, 2022	GNS
10/19/2022	West Fraser	West Fraser October 19, 2022 Non-Stumpage SQR Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to October 12, 2022 Non-Stumpage Supplemental Questionnaire," dated October 19, 2022	West Fraser
10/24/2022	Commerce	West Fraser October 24, 2022 Non-Stumpage SQR	Commerce's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire for West Fraser," dated October 24, 2022	West Fraser
10/26/2022	West Fraser	West Fraser October 26, 2022 Non-Stumpage SQR Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to October 24, 2022 Non-Stumpage Supplemental Questionnaire," dated October 26, 2022	West Fraser
10/28/2022	GOC	GOC Response to Petitioner's NSA SQR Response	GOC's Letter, "Countervailing Duty Administrative Review of Certain Softwood Lumber Products from Canada: Response to Petitioner's Supplemental New Subsidy Allegations," dated October 28, 2022	Petitioner
11/1/2022	Commerce	NSA Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: New Subsidy Allegations," dated November 1, 2022	Interested Parties

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11/2/2022	Commerce	NSA Questionnaire	Commerce's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: New Subsidy Allegations Questionnaire," dated November 2, 2022	GOC
11/2/2022	West Fraser	West Fraser November 2, 2022 Stumpage SQR Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to November 2, 2022 Stumpage Supplemental Questionnaire," dated November 2, 2022	West Fraser
11/8/2022	JDIL	JDIL November 8, 2022 Stumpage SQR	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to Stumpage Supplemental Questionnaire," dated November 8, 2022	JDIL
11/14/2022	JDIL	JDIL November 14, 2022 Stumpage SQR	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to Second Stumpage Supplemental Questionnaire," dated November 14, 2022	JDIL
11/14/2022	JDIL	JDIL November 16, 2022 Stumpage SQR	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to Second Stumpage Supplemental Questionnaire," dated November 14, 2022	JDIL
11/16/2022	Petitioner	Petitioner Benchmark Submission and Pre-Prelim Comments	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Benchmark Submission and Pre-Preliminary Comments," dated November 16, 2022	Interested Parties
11/16/2022	West Fraser	West Fraser November 16, 2022 NSA Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to New Subsidy Allegations Questionnaire," dated November 16, 2022	West Fraser
11/16/2022	JDIL	JDIL November 16, 2022 NSA Response	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to New Subsidy Allegations Questionnaire," dated November 16, 2022	JDIL
11/18/2022	Commerce	GOA November 18, 2022 Stumpage SQR	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: GOA Supplemental Questionnaire," dated November 18, 2022	GOA
11/18/2022	Commerce	GNS November 18, 2022 Stumpage SQR	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for the GNS," dated November 18, 2022	GNS
11/21/2022	Commerce	Canfor November 21, 2022 Stumpage SQR	Commerce's Letter, "Softwood Lumber from Canada: Canfor Alberta Stumpage Supplemental Questionnaire," dated November 21, 2022	Canfor
11/21/2022	Commerce	West Fraser November 21, 2022 Stumpage SQR	Commerce's Letter, "Softwood Lumber from Canada: West Fraser Alberta Stumpage Supplemental Questionnaire," dated November 21, 2022	West Fraser
11/21/2022	GBC	GBC November 21, 2022 Stumpage SQR Response	GBC's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Response to Cutting Rights Supplemental Questionnaire," dated November 21, 2022	GBC
11/22/2022	West Fraser	West Fraser November 22, 2022 Cutting Rights SQR Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to November 4, 2022 Cutting Rights Supplemental Countervailing Duty Questionnaire," dated November 22, 2022	West Fraser
11/22/2022	GBC	GBC November 22, 2022 NSA SQR Response	GBC's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Response to New Subsidy Allegations Questionnaire," dated November 22, 2022	GBC
11/22/2022	GNB	GNB November 22, 2022 NSA SQR Response	GNB's Letter, "Certain Softwood Lumber Products from Canada: Response to New Subsidy Allegations Questionnaire," November 22, 2022	GNB
11/22/2022	GOC	GOC November 22, 2022 NSA SQR Response	GOC's Letter, "Certain Softwood Lumber Products from Canada: Questionnaire Response of the Government of Canada: New Subsidy Allegations," dated November 22, 2022	GOC

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11/30/2022	Commerce	GOC November 30, 2022 NSA SQR	Commerce's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: New Subsidy Allegations Supplemental Questionnaire," dated November 30, 2022	GOC
11/30/2022	GNS	GNS November 30, 2022 Stumpage SQR Response	GNS' Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Nova Scotia to Commerce's First Supplemental Questionnaire," dated November 30, 2022	GNS
11/30/2022	GOA	GOA November 30, 2022 Stumpage SQR Response	GOA's Letter, "Certain Softwood Lumber Products from Canada: Government of Alberta's Response to the Department's November 18, 2022 Stumpage Supplemental Questionnaire," dated November 30, 2022	GOA
12/1/2022	Commerce	JDIL December 1, 2022 Non-Stumpage SQR	Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Non-Stumpage Supplemental Questionnaire," dated December 1, 2022	JDIL
12/1/2022	Commerce	Canfor December 1, 2022 Stumpage SQR	Commerce's Letter, "Softwood Lumber from Canada: Canfor Cost Reporting Supplemental Questionnaire," dated December 1, 2022	Canfor
12/1/2022	Commerce	West Fraser December 1, 2022 Stumpage SQR	Commerce's Letter, "Softwood Lumber from Canada: West Fraser Cost Reporting Supplemental Questionnaire," dated December 1, 2022	West Fraser
12/1/2022	Commerce	GBC December 1, 2022 Stumpage SQR	Commerce's Letter, "Softwood Lumber from Canada: GBC Stumpage Cost Reporting Supplemental Questionnaire," dated December 1, 2022	GBC
12/5/2022	Canfor	Canfor Rebuttal to Petitioner's Benchmark Submission and Pre-Prelim Comments	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Response to the COALITION's Benchmark Submission and Pre-Preliminary Comments, " dated December 5, 2022	Petitioner
12/5/2022	West Fraser	West Fraser Rebuttal to Petitioner's Benchmark Submission and Pre-Prelim Comments	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to November 15, 2022 Benchmark Submission and Pre-Preliminary Comments Filed By The Committee Overseeing Action For Lumber Internationals Or Negotiations," dated December 5, 2022	Petitioner
12/6/2022	GBC/BCLTC	GBC/BCLTC Rebuttal to Petitioner's Benchmark Submission and Pre-Prelim Comments	GBC/BCLTC's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Rebuttal to Petitioner's Benchmark Submission and Pre-Preliminary Comments dated November 15, 2022," dated December 6, 2022	Petitioner
12/7/2022	GOC	GOC December 7, 2022 NSA SQR Response	GOC's Letter, "Certain Softwood Lumber Products from Canada: Supplemental Questionnaire Response of the Government of Canada: New Subsidy Allegations," dated December 7, 2022	GOC
12/8/2022	West Fraser	West Fraser December 8, 2022 Stumpage SQR Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to November 21, 2022 Alberta Stumpage Supplemental Countervailing Duty Questionnaire," dated December 8, 2022	West Fraser
12/8/2022	Canfor	Canfor December 8, 2022 Stumpage SQR Response	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Alberta Stumpage Supplemental Questionnaire Response ," dated December 8, 2022	Canfor
12/12/2022	Commerce	West Fraser December 12, 2022 NSA SQR	Commerce's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: New Subsidy Allegations Supplemental Questionnaire for West Fraser," dated December 12, 2022	West Fraser
12/16/2022	GNS	GNS December 16, 2022 Stumpage SQR Response	GNS' Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Nova Scotia to Commerce's Second Supplemental Questionnaire," dated December 16, 2022	GNS

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12/19/2022	Petitioner	Petitioner Rebuttal Factual Information-Alberta Stumpage	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Rebuttal Factual Information Regarding Alberta Stumpage," dated December 19, 2022	Canfor, West Fraser
12/19/2022	West Fraser	West Fraser December 19, 2022 NSA SQR Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to December 12, 2022 New Subsidy Allegations Supplemental Countervailing Duty Questionnaire," dated December 19, 2022	West Fraser
12/22/2022	JDIL	JDIL Benchmark Submission	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Benchmark Submission," dated December 22, 2022	JDIL
12/27/2022	Petitioner	Petitioner Pre-Preliminary Benchmark Comments	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Benchmark Submission," dated December 27, 2022	Petitioner
12/27/2022	GOC	GOC Stumpage Benchmark Comments	GOC's, Letter, "Certain Softwood Lumber from Canada: Submission of Factual Information to Measure the Adequacy of Remuneration," dated December 27, 2022	GOC
12/27/2022	West Fraser	West Fraser Electricity Benchmark Comments	West Fraser's, Letter, "Submission of Factual Evidence Potentially Relevant to Measurement of Adequacy of Remuneration," dated December 27, 2022	West Fraser
12/27/2022	GNB	GNB Stumpage Benchmark Comments	GNB's, Letter, "Certain Softwood Lumber Products from Canada: Submission of Factual Information," dated December 27, 2022	GNB
12/28/2022	Petitioner	Petitioner December 28, 2022 Pre-Prelim Comments	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Pre-Preliminary Comments," dated December 28, 2022	Petitioner
1/3/2023	GBC	GBC Non-Stumpage SQR Response	GBC's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Response to Non-Stumpage Supplemental Questionnaire," dated January 3, 2022	GBC
1/6/2023	GOA	GOA January 6, 2023 Pre-Prelim Comments	GOA's Letter, "Certain Softwood Lumber Products from Canada: Pre-Preliminary Comments Concerning Alberta Programs," dated January 6, 2023.	GOA
1/6/2023	GBC	GBC Benchmark Rebuttal Comments	GBC's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's Submission to Rebut, Clarify, or Correct Information in Petitioner's December 27, 2022 Benchmark Submission ," dated January 6, 2022	GBC
1/9/2023	JDIL	JDIL January 9, 2023 Pre-Prelim Comments	JDIL's Letter, "Certain Softwood Lumber Products from Canada: Response to Petitioner's Pre-Preliminary-Results Comments," dated January 9, 2023.	JDIL
1/10/2023	Canfor	Canfor Freight Costs Supplemental Response	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Freight Costs Supplemental Questionnaire Response," dated January 10, 2023.	Canfor
1/10/2023	West Fraser	West Fraser Freight Costs Supplemental Response	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to January 5, 2023 Freight Costs Supplemental Countervailing Duty Questionnaire," dated January 10, 2022	West Fraser
1/11/2023	Canfor	Canfor January 11, 2023 Pre-Prelim Comments	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's Response to the COALITION's Pre-Preliminary Comments," dated January 11, 2023	Canfor
1/12/2023	West Fraser	West Fraser January 12, 2023 Pre-Prelim Comments	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: West Fraser Mills Ltd.'s Pre-Preliminary Comments," dated January 12, 2023	West Fraser
1/12/2023	GBC	GBC January 12, 2023 Pre-Prelim Comments	GBC's Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Government of British Columbia's and the British Columbia Lumber Trade Council's PrePreliminary Results Comments," dated January 12, 2022	GBC

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To
1/12/2023	GNS	GNS January 12, 2023 Stumpage SQR Response	GNS' Letter, "Certain Softwood Lumber Products from Canada: Response of the Government of Nova Scotia to Commerce's Supplemental Questionnaire," dated January 12, 2023	GNS
1/23/2023	Commerce	Research Consortium Tax Credit Specificity Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021—Specificity Analysis of Québec's Research Consortium Tax Credit," dated January 23, 2023	GOQ
1/23/2023	Commerce	JDIL Preliminary Calculation Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021—Preliminary Results Calculations for JDIL and its cross-owned affiliates," dated January 23, 2023	JDIL
1/23/2023	Commerce	West Fraser Preliminary Calculation Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021—Preliminary Results Calculations for West Fraser Mills, Ltd. and its cross-owned affiliates," dated January 23, 2023	West Fraser
1/23/2023	Commerce	Preliminary Calculation of Non-Selected Rate	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021: Non-Selected Rate for the Preliminary Results, " dated January 23, 2023	Interested Parties
1/23/2023	Commerce	Nova Scotia Preliminary Benchmark Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021: Nova Scotia Benchmark Calculation Memorandum for the Preliminary Results," dated January 23, 2023	Interested Parties
1/23/2023	Commerce	New Brunswick Preliminary Market Memorandum	Memorandum, "New Brunswick Preliminary Market Memorandum," dated January 23, 2023	Interested Parties
1/24/2023	Commerce	Canfor Cutting Rights SQ	Commerce's Letter, "Softwood Lumber from Canada: Canfor Cutting Rights Supplemental Questionnaire," dated January 24, 2023	Canfor
1/24/2023	Commerce	West Fraser Cutting Rights SQ	Commerce's Letter, "Softwood Lumber from Canada: West Fraser Deferred NSA Supplemental Questionnaire," dated January 24, 2023	West Fraser
1/27/2023	Commerce	*Lumber V AR4 Prelim*	*Certain Softwood Lumber Products from Canada: Preliminary Results, Partial Rescission, and Preliminary Intent to Rescind, in Part, the Countervailing Duty Administrative Review; 2021* , 88 FR 5302 (January 27, 2023) and accompanying PDM	Commerce
2/1/2023	Commerce	GOA Verification Outline	Commerce's Letter, "Verification of GOA Questionnaire Responses submitted in the 2021 Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada," dated February 1, 2023	GOA
2/3/2023	Canfor	Canfor Cutting Rights SQR	Canfor's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Canfor's 2nd Cutting Rights Supplemental Questionnaire Response," dated February 3, 2023	Canfor
2/3/2023	West Fraser	West Fraser Cutting Rights SQR	West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to January 24, 2023 Deferred NSA Supplemental Countervailing Duty Questionnaire," dated February 3, 2023	West Fraser
2/7/2023	Commerce	GBC Verification Outline	Verification of GBC Questionnaire Responses submitted in the 2021 Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada	GBC
2/8/2023	Commerce	Canfor Verification Outline	Commerce's Letter, "Countervailing Duty Administrative review of Certain Softwood Lumber Products from Canada; Verification of Canfor's Questionnaire Responses	Canfor
2/10/2023	Commerce	West Fraser Verification Outline	Countervailing Duty Administrative review of Certain Softwood Lumber Products from Canada; Verification of West Fraser's Questionnaire Responses	West Fraser

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To
2/21/2023	GOA	GOA Verification Exhibits	GOA's Letter, "Certain Softwood Lumber Products from Canada: The Government of Alberta's Verification Exhibits," dated February 21, 2023	GOA
2/24/2023	Petitioner	Petitioner Hearing Request	Petitioner's Letter, "Petitioner's Hearing Request," dated February 24, 2023	Petitioner
2/27/2023	Sierra Pacific	Sierra Pacific Request to Participate in Hearing	Sierra Pacific's Letter, "Request to Participate at Hearing," dated February 27, 2023	Sierra Pacific
2/27/2023	Canadian Parties	Canadian Parties Hearing Request	Canadian Parties' Letter, "Request for Hearing," dated February 27, 2023	Canadian Parties
4/25/2023	Carrier	Carrier Letter In Lieu of Case Brief	Carrier's Letter, "Letter in Lieu of Case Brief for First Tranche," dated April 25, 2023	Carrier
4/25/2023	Chaleur et al.	Chaleur et al. Letter in Lieu of Case Brief	Chaleur et al.'s Letter, "Letter in Lieu of Case Brief," dated April 25, 2023	Chaleur et al.
4/25/2023	Olympic	Olympic Letter In Lieu of Case Brief	Olympic's Letter, "Letter in Lieu of Case Brief for First Tranche," dated April 25, 2023	Olympic
4/25/2023	Petitioner	Petitioner Case Brief	Petitioner's Letter, "Case Brief," dated April 25, 2023	Petitioner
4/25/2023	Sierra Pacific	Sierra Pacific Case Brief	Sierra Pacific's Letter, "Case Brief," dated April 25, 2023	Sierra Pacific
4/25/2023	Canfor	Canfor Case Brief	Canfor's Letter, "Case Brief--First Tranche," dated April 25, 2023	Canfor
4/25/2023	JDIL	JDIL Case Brief	JDIL's Letter, "Case Brief," dated April 25, 2023	JDIL
4/25/2023	West Fraser	West Fraser Case Brief	West Fraser's Letter, "Case Brief," dated April 25, 2023	West Fraser
4/25/2023	GOC	GOC Case Brief Volume I	GOC's Letter, "Canadian Parties' Joint Case Brief--Volume I: General Issues," dated April 25, 2023	GOC
4/25/2023	GOC	GOC Case Brief Volume II	GOC's Letter, "Case Brief of the Government of Canada--Volume II," dated April 25, 2023	GOC
4/25/2023	GOC/GBC	GOC/GBC Case Brief Volume III	GOC/GBC's Letter, "Case Brief of the Government of Canada and Government of British Columbia --Volume III: Log Export Permitting Process," dated April 25, 2023	GOC/GBC
4/25/2023	GOA/ASLTC	GOA Case Brief Volume IV.A	GOA/ASLTC's Letter, "Case Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council--Volume IV.A: Stumpage," dated April 25, 2023	GOA/ASLTC
4/25/2023	GOA/ASLTC	GOA Case Brief Volume IV.B	GOA/ASLTC's Letter, "Case Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council--Volume IV.B – Non-Stumpage: " dated April 25, 2023	GOA/ASLTC
4/25/2023	GBC/BCLTC	GBC Case Brief Volume V	GBC/BCLTC's Letter, "Case Brief of the Government of British Columbia and the British Columbia Lumber Trade Council--Volume V," dated April 25, 2023	GBC/BCLTC
4/25/2023	GNB	GNB Case Brief Volume VI	GNB's Letter, "Case Brief of the Government of New Brunswick--Volume VI," dated April 25, 2023	GNB
4/25/2023	GOQ	GOQ Case Brief Volume VII	GOQ's Letter, "Case Brief of the Government of Québec--Volume VII," dated April 25, 2023	GOQ
5/4/2023	Commerce	Extension of Final Results	Memorandum, "Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated May 4, 2023	Interested Parties
5/16/2023	Carrier	Carrier Letter In Lieu of Rebuttal Brief	Carrier's Letter, "Letter in Lieu of Rebuttal Case Brief for First Tranche," dated May 16, 2023	Carrier
5/16/2023	Olympic	Olympic Letter In Lieu of Rebuttal Brief	Olympic's Letter, "Letter in Lieu of Rebuttal Case Brief for First Tranche," dated May 16, 2023	Olympic
5/16/2023	Petitioner	Petitioner Rebuttal Brief	Petitioner's Letter, "Rebuttal Brief," dated May 16, 2023	Petitioner
5/16/2023	Sierra Pacific	Sierra Pacific Rebuttal Brief	Sierra Pacific's Letter, "Rebuttal Brief," dated May 16, 2023	Sierra Pacific
5/16/2023	Canfor	Canfor Rebuttal Brief	Canfor's Letter, "Rebuttal Brief--First Tranche," dated May 16,2023	Canfor
5/16/2023	JDIL	JDIL Rebuttal Brief	JDIL's Letter, "Rebuttal Brief," dated May 16, 2023	JDIL
5/16/2023	West Fraser	West Fraser Rebuttal Brief	West Fraser's Letter, "Rebuttal Brief," dated May 16, 2023	West Fraser
5/16/2023	GNS	GNS Rebuttal Brief	GNS' Letter, "Rebuttal Brief," dated May 16, 2023	GNS
5/16/2023	GOC	GOC Rebuttal Brief Volume I	GOC's Letter, "Canadian Parties' Joint Rebuttal Brief--Volume I: Common Issues," dated May 16, 2023	GOC

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To
5/16/2023	GOA/ASLTC	GOA Rebuttal Brief Volume II	GOA/ASLTC's Letter, "Rebuttal Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council--Volume II," dated May 16, 2023	GOA/ASLTC
5/16/2023	GBC/BCLTC	GBC Rebuttal Brief Volume III	GBC/BCLTC's Letter, "Rebuttal Brief of the Government of British Columbia and the British Columbia Lumber Trade Council--Volume III," dated May 16, 2023	GBC/BCLTC
5/16/2023	GNB	GNB Rebuttal Brief Volume IV	GNB's Letter, "Rebuttal Brief of the Government of New Brunswick--Volume IV," dated May 16, 2023	GNB
5/17/2023	Commerce	*Lumber V AR4* Post-Prelim Memorandum	Memorandum, "Post-Preliminary Results of Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021," dated May 17, 2023	Interested Parties
7/6/2023	Commerce	Hearing Transcript	Hearing Transcript, "Public Hearing in the Matter of the Fourth Administrative Review of the Countervailing Duty Order on Softwood Lumber from Canada," dated June 29, 2023	Interested Parties
7/26/2023	Commerce	Canfor's Lumber V AR2 Class 53 Final Calculation (public version)	Memorandum, "Placing on the Record Canfor's ACCA for Class 53 Assets Program Final Calculation (public version) in *Lumber V AR2*," dated July 26, 2023	Canfor
7/26/2023	Commerce	Non-Selected Final Rate Memorandum	Memorandum, "Non-Selected Rate for the Final Results," dated July 26, 2023	Interested Parties
7/26/2023	Commerce	Canfor Final Calculation Memorandum	Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021: Final Results Calculations for Canfor Corporation and its cross-owned affiliates	Canfor
4/11/2023	Commerce	West Fraser Verification Report	Memorandum, "Verification of the Questionnaire Responses of West Fraser Mills Ltd.," dated April 11, 2023	West Fraser
4/4/2023	Commerce	GOA Verification Report	Memorandum, "Verification of the Questionnaire Responses of the Government of Alberta," dated April 4, 2023	GOA
4/4/2023	Commerce	GBC Verification Report	Memorandum, "Verification of the Questionnaire Responses of the Government of British Columbia," dated April 4, 2023	GBC
4/5/2023	Commerce	Canfor Verification Report	Memorandum, "Verification of the Questionnaire Responses of Canfor Corporation," dated April 5, 2023	Canfor
5/25/2023	Petitioner	Petitioner May 25, 2023 Case Brief	Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Petitioner's Second Tranche Case Brief," dated May 25, 2023	Petitioner
6/7/2023	Canadian Parties	Canadian Parties June 7, 2023 Rebuttal Brief	Canadian Parties' Letter, "Fourth Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Canadian Parties Second Tranche Rebuttal Brief," dated June 7, 2023	Canadian Parties
7/26/2023	Commerce	GNB R&D Tax Credit Specificity Memorandum	Memorandum, "Specificity Analysis of New Brunswick R&D Tax Credit," dated July 26, 2023	GNB/JDIL