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

C-122-858
Administrative Review
POR: 01/01/2022 – 12/31/2022
Public Document
E&C/OIII: Team

August 12, 2024

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

FROM: Scot Fullerton
Acting 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; 2022

I. SUMMARY

Commerce is conducting an administrative review of the *Order* on softwood lumber from Canada covering the POR January 1, 2022, through December 31, 2022. We determine that countervailable subsidies are being provided to producers and exporters of softwood lumber from Canada, as provided in section 751 of the Act. After analyzing the comments raised by the interested parties in their case and rebuttal briefs, we made certain changes to *Lumber V AR5 Prelim*, which are fully discussed in this memorandum. Below is a complete list of the issues for which we received comments from interested parties.

A. General Issues

Comment 1: Whether Commerce Should Have Deferred the NSAs
Comment 2: Whether Respondent Selection Was Proper
Comment 3: Whether Commerce Should Consider Climate Change Goals
Comment 4: Whether Commerce's Specificity Analysis Is Consistent with the Law

B. General Stumpage Issues

Comment 5: Whether Stumpage Is an Untied Subsidy
Comment 6: Whether to Compare Government Transaction-Specific Prices to an Average Benchmark Price or Offset the LTAR Benefit Using Negative Benefits

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C. Alberta Stumpage Issues

Comment 7: Whether the Alberta Stumpage Market Is Distorted
Comment 8: Whether Private Standing Timber Prices in Nova Scotia Are Available in Alberta
Comment 9: Whether the Tree Size in Nova Scotia, as Measured by Diameter, Is Comparable to Tree Size in Alberta
Comment 10: Whether SPF Species in Nova Scotia Are Comparable to SPF Species in Alberta
Comment 11: Whether the Nova Scotia Benchmark Is Comparable or Should Be Adjusted to Account for Log Product Characteristics
Comment 12: Whether Nova Scotia's Forest Is Comparable to Alberta's Forest
Comment 13: Whether TDA Survey Prices Are an Appropriate Benchmark for Alberta Crown Origin Stumpage
Comment 14: Whether Commerce Should Annualize Alberta Stumpage Purchase and Benchmark Prices
Comment 15: Whether to Adjust the Nova Scotia Benchmark to Account for Beetle-Damaged and Fire-Damaged Timber Harvested in Alberta
Comment 16: 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
Comment 17: Whether Commerce Should Make Adjustments to Stumpage Rates Paid by the Respondents to Account for "Total Remuneration" in Alberta and New Brunswick

D. British Columbia Stumpage Issues

Comment 18: Whether Commerce Should Continue to Use WDOR Data for a BC Stumpage Benchmark
Comment 19: Whether Commerce Should Make Adjustments to the WDOR Data
Comment 20: Whether to Change Commerce's Calculations Relating to Third Party Tenures
Comment 21: Whether to Account for BC's "Stand-as-a-Whole" Stumpage Pricing
Comment 22: Whether Commerce's Selection of a Log Volume Conversion Factor Was Appropriate

E. New Brunswick Stumpage Issues

Comment 23: Whether the Private Stumpage Market in New Brunswick Is Distorted and Should Be Used as Tier-One Benchmarks
Comment 24: Whether Commerce Should Use JDIL's Own Purchases of Sawlogs in Nova Scotia or the *2021-2022 Private Market Survey* as a Benchmark for New Brunswick Crown Stumpage
Comment 25: 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

F. Nova Scotia Stumpage Benchmark Issues

Comment 26: Whether to Revise the Conversion Factor Used in the Calculation of the Nova Scotia Benchmark
Comment 27: Whether Commerce Should Index the Nova Scotia Benchmark
Comment 28: Whether Commerce Should Publicly Disclose the Anonymized Data that Comprise the *2021-2022 Private Market Survey*
Comment 29: Whether the Nova Scotia Benchmark Adequately Accounts for Regional and County-Level Differences
Comment 30: Reliability of Nova Scotia Private-Origin Standing Timber Benchmark

G. Log Export Restraint Issues

Comment 31: Whether the LER in BC Results in a Financial Contribution
Comment 32: Whether the LER Has an Impact in British Columbia

H. Purchase of Goods for MTAR Issues

Comment 33: Whether Benefits Under the BC Hydro EPA Program Are Tied to Overall Production
Comment 34: Whether Commerce Properly Calculated the Benefit Conferred Under the BC Hydro EPAs

I. Grant Program Issues

Federal

Comment 35: Whether the SDTC Is Countervailable
Comment 36: Whether the Forest Machines Connectivity Master Project Is *De Facto* Specific

Comment 37: Whether the Green Jobs Program Is Countervailable

Alberta

Comment 38: Whether the AESO Load Shedding Program Is Countervailable
Comment 39: Whether the TIER Program Is Countervailable

British Columbia

Comment 40: Whether BC's Coloured Fuel Program Is Countervailable

New Brunswick

Comment 41: Whether Commerce Should Continue to Find the Silviculture and License Management Programs Countervailable

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J. Tax and Other Revenue Forgone Programs Issues

Federal

Comment 42: Whether the ACCA for Class 53 Assets Program Is Specific
Comment 43: Whether Commerce Is Applying the Correct Benchmark for the ACCA for Class 53 Assets Program
Comment 44: Whether the Benefit Methodology for the ACCA Class 53 Assets Program Is Correct
Comment 45: Whether the CCA for Class 1 Assets Program Is Countervailable
Comment 46: Whether the Federal and Provincial R&D Tax Credits Are Specific
Comment 47: Whether Attribution of the R&D Tax Credits Is Correct
Comment 48: Whether the FLTC and PLTC Are Countervailable

Alberta

Comment 49: Whether the TEFU 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's CIIP Is Countervailable

New Brunswick

Comment 53: Whether the GMFT Program Provides a Financial Contribution in the Form of Revenue Forgone or Can Be Found Specific
Comment 54: Whether Commerce Should Revise the GMFT Benefit Calculation
Comment 55: Whether Commerce Should Find New Brunswick's Property Tax Incentives for Private Forest Producers Program Countervailable
Comment 56: Whether Commerce Should Find LIREPP Countervailable

K. Company-Specific Issues

Comment 57: Whether Commerce Correctly Calculated the Benefit JDIL Received from the AITC, SR&ED, and NBRD Programs
Comment 58: Whether Commerce Should Correct an Error in Tolko's BC Coloured Fuel Calculation
Comment 59: Whether Commerce Should Correct Errors in West Fraser's BC Stumpage Calculation

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II. BACKGROUND

The selected mandatory respondents in this administrative review are Canfor and West Fraser.[1] Commerce also accepted JDIL and Tolko as voluntary respondents.[2] On February 6, 2024, Commerce published the *Lumber V AR5 Prelim*.[3] Below is a summary of the events that occurred after the publication of *Lumber V AR5 Prelim*.

On March 7, 2024, Commerce received timely requests to hold a hearing from the petitioner and the Canadian Parties.[4] Between February 26 and March 14, 2024, various interested parties submitted letters in lieu of case briefs.[5] On March 14, 2024, various interested parties submitted timely filed case briefs on issues related to *Lumber V AR5 Prelim*.[6] On April 5, 2024, various interested parties submitted timely filed rebuttal briefs on those issues contained in the case briefs.[7]

On June 6, 2024, Commerce held a public hearing.[8] On April 25, 2024, Commerce extended the deadline for the final results of this administrative review to 178 days after the publication date of the *Preliminary Results*, until August 2, 2024, which was tolled by seven days to August 9, 2024.[9] On August 7, 2024, Commerce extended the deadline for the final results by the full extension of 180 days, after the publication date of the *Preliminary Results*. The deadline for the final results is now August 12, 2024.[10]

III. 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.

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[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 Memorandum.
[3] *See Lumber V AR5 Prelim*.
[4] *See* Petitioner Hearing Request; *see also* Canadian Parties Hearing Request.
[5] *See* Appendix III (Case-Related Documents) attached to this memorandum for a listing of letters in lieu of case briefs.
[6] *Id*. for a listing of case briefs received.
[7] *Id*.
[8] *See* Hearing Transcript.
[9] *See* Extension of Final Results; *see also* Tolling Memorandum.
[10] *See* Second Extension of Final Results.

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

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

The following items are excluded from the scope of this *Order*:

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

Softwood lumber product imports are generally entered under Chapter 44 of the HTSUS. This chapter of the HTSUS covers "Wood and articles of wood." Softwood lumber products that are subject to this *Order* are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44: 4406.11.00.00; 4406.91.00.00; 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66;

4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4407.11.00.01; 4407.11.00.02; 4407.11.00.42; 4407.11.00.43; 4407.11.00.44; 4407.11.00.45; 4407.11.00.46; 4407.11.00.47; 4407.11.00.48; 4407.11.00.49; 4407.11.00.52; 4407.11.00.53; 4407.12.00.01; 4407.12.00.02; 4407.12.00.17; 4407.12.00.18; 4407.12.00.19; 4407.12.00.20; 4407.12.00.58; 4407.12.00.59; 4407.13.00.00; 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.[11]

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

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

IV. 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 *Lumber V AR5 Prelim*. For a description of the allocation period and the methodology used for these final results, *see Lumber V AR5 Prelim*.[13]

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

[12] *See Order*, 83 FR at 349.

[13] *See Lumber V AR5 Prelim* PDM at 8.

B. Attribution of Subsidies

Interested parties raised issues in their case briefs regarding the attribution of subsidies. *See* Comment 5, 33, 35, 47, and 56. For a description of the methodology used for these final results, *see Lumber V AR5 Prelim*.[14]

C. Denominators

JDIL raised issues in its case brief regarding the denominator we used to calculate its countervailable subsidy rate for the provision of stumpage for LTAR program described below. *See* Comment 5. For information on the denominators used in these final results, *see Lumber V AR5 Prelim*[15] and the Final Calculation Memoranda.[16]

V. 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.[17] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[18]

Canfor: 0.45 percent *ad valorem*
Tolko: 0.95 percent *ad valorem*
West Fraser: 1.55 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.[19] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program with respect to West Fraser from *Lumber V AR5 Prelim*.[20]

Canfor: 3.14 percent *ad valorem*
Tolko: 5.92 percent *ad valorem*
West Fraser: 3.36 percent *ad valorem*

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[14] *Id.* at 8-13.
[15] *Id.* at 13.
[16] *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; Tolko Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.
[17] *See* Comments 7 through 17, *infra*.
[18] *See Lumber V AR5 Prelim* PDM at 39.
[19] *See* Comments 18, 19, 20, 21, 22, and 59, *infra*.
[20] *See Lumber V AR5 Prelim* PDM at 37-39.

Provision of Stumpage for LTAR – New Brunswick

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[21] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[22]

JDIL: 0.59 percent *ad valorem*

2. Grant Programs

Federal Grant Programs

Green Jobs Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[23] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[24]

Canfor: 0.01 percent *ad valorem*
Tolko: 0.01 percent *ad valorem*
West Fraser: Not Measurable

SDTC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[25] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[26]

West Fraser: 0.01 percent *ad valorem*

Forest Machine Connectivity Master Project

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 *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[28]

Canfor: 0.02 percent *ad valorem*

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[21] *See* Comments 23, 24, and 25, *infra*.
[22] *See Lumber V AR5 Prelim* PDM at 36-37.
[23] *See* Comment 37, *infra*.
[24] *See Lumber V AR5 Prelim* PDM at 40-41.
[25] *See* Comment 35, *infra*.
[26] *See Lumber V AR5 Prelim* PDM at 41.
[27] *See* Comment 36, *infra*.
[28] *See Lumber V AR5 Prelim* PDM at 41-43.

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Alberta Grant Programs

LSSi

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 *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[30]

West Fraser: 0.05 percent *ad valorem*

Incentives Under Alberta's TIER Regulation – Emissions Performance Credits and Emissions Offset Credits

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed *infra*.[31] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[32]

Tolko: 0.04 percent *ad valorem*

British Columbia Grant Programs

Carbon Offsets

No interested party submitted comments regarding this program. Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[33]

Canfor: 0.01 percent *ad valorem*

BC Hydro Power Smart: Incentives

No interested party submitted comments regarding this program. Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[34]

Canfor: 0.01 percent *ad valorem*
Tolko: 0.01 percent *ad valorem*

BC Hydro Power Smart: Energy Manager

No interested party submitted comments regarding this program. Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[35]

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[29] *See* Comment 38, *infra*.
[30] *See Lumber V AR5 Prelim* PDM 43-44.
[31] *See* Comment 39, *infra*.
[32] *See Lumber V AR5 Prelim* PDM 44-45.
[33] *Id.* at 45-46.
[34] *See Lumber V AR5 Prelim* PDM at 46.
[35] *Id.* at 46-47.

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Canfor: Not Measurable
Tolko: Not Measurable
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.[36] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[37]

JDIL: 0.08 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.[38] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[39]

JDIL: 0.27 percent *ad valorem*

New Brunswick Provision of Silviculture Grants

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[40] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[41]

JDIL: 0.25 percent *ad valorem*

Nova Scotia Grant Program

Nova Scotia Provision of Silviculture Grants

No interested party submitted comments regarding this program. Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[42]

JDIL: 0.01 percent *ad valorem*

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[36] *See* Comment 56, *infra*.
[37] *See Lumber V AR5 Prelim* PDM at 47-48.
[38] *See* Comment 41, *infra*.
[39] *See Lumber V AR5 Prelim* PDM at 48.
[40] *See* Comment 41, *infra*.
[41] *See Lumber V AR5 Prelim* PDM at 48-49.
[42] *Id.* at 49.

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3. Tax and Other Revenue Forgone Programs

Federal Tax Programs

ACCA for Class 53 Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[43] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[44]

Canfor: 0.42 percent *ad valorem*
JDIL: 1.58 percent *ad valorem*
Tolko: 0.34 percent *ad valorem*
West Fraser: 0.20 percent *ad valorem*

Atlantic Investment Tax Credit

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 *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[46]

JDIL: 0.77 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.[47] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[48]

Canfor: 0.01 percent *ad valorem*
JDIL: 0.07 percent *ad valorem*
Tolko: 0.02 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.[49] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[50]

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[43] *See* Comment 42, 43, and 44, *infra*.
[44] *See Lumber V AR5 Prelim* PDM at 50-51.
[45] *See* Comment 57, *infra*.
[46] *See Lumber V AR5 Prelim* PDM at 51-52.
[47] *See* Comment 45, *infra*.
[48] *See Lumber V AR5 Prelim* PDM at 52-53.
[49] *See* Comment 48, *infra*.
[50] *See Lumber V AR5 Prelim* PDM at 53.

Canfor: 1.32 percent *ad valorem*
Tolko: 1.19 percent *ad valorem*
West Fraser: 0.83 percent *ad valorem*

SR&ED Tax Credit– GOC

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[51] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[52]

Canfor: 0.01 percent *ad valorem*
JDIL: 0.03 percent *ad valorem*
Tolko: 0.28 percent *ad valorem*
West Fraser: 0.06 percent *ad valorem*

Alberta Tax Programs

TEFU

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 *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[54]

Canfor: Not Measurable
Tolko: Not Measurable
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.[55] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[56]

Canfor: Not Measurable
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.[57] Commerce has not modified its calculation of the *ad valorem*

[51] *See* Comment 46, 47, and 57, *infra*.
[52] *See Lumber V AR5 Prelim* PDM at 53-54.
[53] *See* Comment 49, *infra*.
[54] *See Lumber V AR5 Prelim* PDM at 54-55.
[55] *See* Comment 50, *infra*.
[56] *See Lumber V AR5 Prelim* PDM at 55-56.
[57] *See* Comment 51, *infra*.

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subsidy rate for this program from *Lumber V AR5 Prelim*.[58]

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.[59] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[60]

Canfor: 0.01 percent *ad valorem*
Tolko: 0.03 percent *ad valorem*
West Fraser: 0.04 percent *ad valorem*

IPTC / School Tax Credit

No interested party submitted comments regarding this program. Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[61]

Canfor: 0.01 percent *ad valorem*
Tolko: Not Measurable
West Fraser: Not Measurable

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.[62] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[63]

Canfor: 0.04 percent *ad valorem*
Tolko: 0.02 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.[64] Commerce has not modified its calculation of the *ad valorem*

[58] *See Lumber V AR5 Prelim* PDM at 56.
[59] *See* Comment 52, *infra*.
[60] *See Lumber V AR5 Prelim* PDM at 56-57.
[61] *Id.* at 57-58.
[62] *See* Comment 40 and 58, *infra*.
[63] *See Lumber V AR5 Prelim* PDM at 58-59.
[64] *See* Comment 48, *infra*.

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subsidy rate for this program from *Lumber V AR5 Prelim*.[65]

Canfor: 0.66 percent *ad valorem*
Tolko: 0.60 percent *ad valorem*
West Fraser: 0.41 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.[66] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[67]

Canfor: 0.01 percent *ad valorem*
Tolko: 0.10 percent *ad valorem*
West Fraser: 0.02 percent *ad valorem*

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.[68] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[69]

JDIL: 0.02 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.[70] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[71]

JDIL: 0.18 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.[72] Commerce has not modified its calculation of the *ad valorem*

[65] *See Lumber V AR5 Prelim* PDM at 59.
[66] *See* Comment 46 and 47, *infra*.
[67] *See Lumber V AR5 Prelim* PDM at 59-60.
[68] *See* Comment 53 and 54, *infra*.
[69] *See Lumber V AR5 Prelim* PDM at 60-61.
[70] *See* Comment 55, *infra*.
[71] *See Lumber V AR5 Prelim* PDM at 61.
[72] *See* Comment 46, 47 and 57, *infra*.

subsidy rate for this program from *Lumber V AR5 Prelim*.[73]

JDIL: 0.03 percent *ad valorem*

Saskatchewan Tax Program

Saskatchewan R&D Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[74] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[75]

Tolko: 0.04 percent *ad valorem*

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.[76] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from *Lumber V AR5 Prelim*.[77]

Tolko: 0.06 percent *ad valorem*
West Fraser: 0.26 percent *ad valorem*

B. Program Determined to Be Not Countervailable

BC Hydro Refund Payment for Bridge Construction

Interested parties did not comment on this program. Commerce has not modified its preliminary determination that this program is not a countervailable subsidy. *See Lumber V AR5 Prelim*.[78]

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

The respondents reported receiving benefits under various programs. We did not receive any comments on these programs from the interested parties.

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

[73] *See Lumber V AR5 Prelim* PDM at 62.
[74] *See* Comment 46 and 47, *infra*.
[75] *See Lumber V AR5 Prelim* PDM at 62-63.
[76] *See* Comment 33 and 34, *infra*.
[77] *See Lumber V AR5 Prelim* PDM at 63-64.
[78] *Id.* at 65.

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Lumber V AR5 Prelim.[79] Consistent with the prior segments of this proceedings, 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.[80]

D. Programs Determined Not to Be Used During the POR

Each respondent reported non-use of programs under examination. For a list of the subsidy programs not used by each respondent, *see* the Final Calculation Memoranda.[81]

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

VI. 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, Tolko, 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, Tolko, and West Fraser for the POR.[82] We received no comments from interested parties on the methodology to calculate the non-selected rate.

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[79] *Id.* at 8-13.

[80] *See* Canfor Final Calculation Memorandum; *see also* JDIL Final Calculation Memorandum; Tolko Final Calculation Memorandum; and West Fraser Final Calculation Memorandum.

[81] *Id.*

[82] *See* Non-Selected Final Rate Memorandum. Consistent with *MacLean-Fogg*, we included the net subsidy rate calculated for JDIL and Tolko, the voluntary respondents in this review, in the non-selected rate calculation.

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VII. ANALYSIS OF COMMENTS

A. General Issues

Comment 1: Whether Commerce Should Have Deferred the NSAs

Petitioner Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Case Brief at 35-43.

> In the *Preliminary Results*, {Commerce} explained that it had insufficient time and resources to make a decision regarding whether to initiate on {the petitioner's} {NSAs}, which involve "novel" and "extremely complex" issues. However, the record establishes that {Commerce} had over six months to evaluate the NSAs, which were straightforward and similar to previously countervailed subsidy programs. Further, during this time, the agency allocated additional time and resources to selecting and investigating two voluntary respondents on the basis that it would not be an undue burden. The *Preliminary Results* fail to address these inconsistent explanations, especially in light of {the petitioner's} repeated requests for initiation and the significant time in which {Commerce} had to initiate and complete its investigation. Given that sufficient time remains to initiate on and investigate these NSAs prior to the final results of this review, {Commerce} should issue a post-preliminary decision memorandum to address these NSAs. Alternatively, if {Commerce} continues to find that it lacks the time and resources to investigate the NSAs, then the agency must provide a more detailed and cogent explanation in the final results regarding its deferral of the NSAs to the subsequent administrative review.

Sierra Pacific Case Brief

The following is a verbatim summary of the argument submitted by Sierra Pacific (internal citations omitted). For further details, *see* Sierra Pacific Case Brief at 6-7.

> {Commerce} should have initiated on the {NSAs} the {petitioner} alleged because {Commerce} had sufficient time to investigate the allegations and did not need to defer investigation to the next administrative review.

Canadian Parties Joint Rebuttal Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Rebuttal Brief Vol. I at 3-6.

> {The petitioner's} {NSAs} contain flaws, and {Commerce} has broad discretion to assess its own limited resources and determine whether it can investigate additional NSAs on top of the dozens of other programs it is already reviewing.

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GOA Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GOA. For further details, *see* GOA Rebuttal Brief Vol. II at 10-13.

> {Commerce} provided a reasonable explanation for its determination not to initiate investigations of programs named in {the petitioner's} {NSAs}. {Commerce} has discretion to determine whether there is sufficient time to conduct full investigations of {NSAs} within the statutory timeframe allotted for administrative reviews. Moreover, {the petitioner} has not met its burden of properly substantiating its claims of the {NSAs} administered by the GOA, including the Carbon Capture, Utilization and Storage Program, and the Alberta at Work Initiative. Record evidence shows that neither program was in use during the POR, and {the petitioner} provides no argument or evidence to the contrary. Accordingly, despite {the petitioner's} argument that {Commerce} still has time to initiate new investigations, {Commerce} has no basis for initiating an investigation into these programs at this stage of the administrative review process.

Tolko Rebuttal Brief

The following is a verbatim summary of the argument submitted by Tolko. For further details, *see* Tolko Rebuttal Brief at 5-9.

> {Commerce} properly deferred its consideration of {the petitioner's} {NSAs} in the *Preliminary Results*. While {the petitioner} claims that {Commerce's} stated reasons for deferral lack merit, {Commerce} is better suited to determine whether it has sufficient resources and time to consider {the petitioner's} {NSAs}. {Commerce} explained that as the {NSAs} involve four new programs that are "novel and complex," given the limited resources and time, {Commerce} is deferring its decision to initiate in this administrative review. {Commerce's} decision to defer is well within its authority and should be sustained in the final results.

Commerce's Position: We disagree with the petitioner that Commerce's decision to defer consideration of whether to initiate on the NSAs to the next administrative review was "unreasonable and deficient."[83] To the contrary, Commerce's decision was both reasonable and consistent with the regulations.

Section 775 of the Act provides, in relevant part, that if, during the course of a CVD proceeding, Commerce discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a CVD petition, then Commerce shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding. Section 351.311(b) of Commerce's regulations further clarifies that "{i}f during a countervailing duty investigation or a countervailing duty administrative review the Secretary discovers a practice that appears to be a countervailable subsidy…the Secretary will examine the practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains

[83] *See* Petitioner Case Brief at 36.

before the scheduled date for the final determination or final results of review." Furthermore, under 19 CFR 351.311(c)(2), Commerce may "defer consideration of the newly discovered practice, subsidy, or subsidy program until a subsequent administrative review" if it "concludes that insufficient time remains before the scheduled date for the final determination." Thus, Commerce has the authority to defer consideration of NSAs, and Commerce's decision to defer depends on the number and complexity of the newly alleged subsidy programs and how much time and resources Commerce has to consider the allegations.

Although 19 CFR 351.301(c)(2)(iv)(B) states that a countervailable subsidy allegation made by the petitioner is due no later than 20 days after all responses to the initial questionnaire are submitted, both the regulations and prior precedent provide that Commerce has discretion to assess its resources and determine whether sufficient time remains in a proceeding to investigate newly alleged subsidies. As the Federal Circuit has explained, Commerce "enjoy{s} broad discretion in allocating investigative and enforcement resources."[84] This broad discretion extends to Commerce's assessment of whether to investigate new subsidy programs, even if the NSAs are timely filed.[85] Commerce has previously deferred the investigation of extraordinarily complex NSAs when faced with limitations on time and other resources in the proceeding.[86]

Further, we disagree with the petitioner that the NSAs are "straightforward and similar to other subsidy programs previously examined," and thus, a deferral is not supported by record evidence.[87] We note that the petitioner's NSA submission totals 1,860 pages within which there are over 50 exhibits.[88] One of the NSAs alleges that the GOC controls a non-profit R&D organization, and another NSA alleges a carbon capture program in Alberta.[89] Contrary to the petitioner's assertions, such types of programs are not "simple" grant programs,[90] but rather are novel and complex allegations that require considerable analysis. An examination of the voluminous information filed by the petitioner requires significant time and resources to determine whether, for each individual program alleged, "the elements necessary for the imposition of a duty," (*i.e.*, financial contribution, specificity, and benefit) as set forth by section 701(a) of the Act, are met. Further, the four alleged subsidies involve a respondent (Tolko) and a province (Saskatchewan) that have not been examined by Commerce since the *Lumber V Investigation*.[91]

The petitioner additionally asserts there is a disparity between Commerce's time and resources for selecting two voluntary respondents and its time and resources for examining the NSAs in this review.[92] We disagree with the petitioner. Commerce did not apply unequal treatment when

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[84] *See Torrington Co. v. U.S.*, 68 F. 3d 1351.
[85] *See TMK IPSCO*, 179 F. Supp. 3d 1336-38 (fn.10).
[86] *See*, *e.g.*, *Lumber V Final* IDM at Comment 7; *see also OCTG from China* IDM at Comment 28; and *Shrimp from China* IDM at Comment 11. In those investigations, Commerce determined that, because there was insufficient time before the final determinations, it could not investigate certain complex and timely-filed NSAs, given its limited time and resources, and deferred such examination until the first review.
[87] *See* Petitioner Case Brief at 37-38.
[88] *See* NSA Submission.
[89] *Id*. at "FPInnovations" (pgs. 3-11) and "Alberta Carbon Capture, Utilization, and Storage Program" (pgs. 12-16).
[90] *See* Petitioner Case Brief at 37.
[91] The petitioner alleged five NSAs. However, Commerce was already investigating one of the alleged subsidies (Saskatchewan R&D Tax Credit) as the program was self-reported by Tolko in its IQR.
[92] *See* Petitioner Case Brief at 41-42.

considering voluntary respondent selection and the NSAs. Simply put, Commerce had limited time and resources available to devote to this administrative review and considered filings as they were submitted on the record.

Commerce's process for selecting a voluntary respondent also preceded the process for examining the petitioner's NSAs. Under section 782(a) of the Act, Commerce must determine whether it could select voluntary respondents in the review when requests are filed. Both JDIL and Tolko requested voluntary respondent treatment and timely filed initial questionnaires responses on May 16, June 22, and June 29, 2023.[93] After receipt of the last portion of the responses on June 29, 2023, we began to assess Commerce's resources to determine whether voluntary respondents could be selected in the review, as discussed below at Comment 2.

Conversely, the petitioner filed its NSA Submission on August 2, 2023. At that time, Commerce could not redirect its resources dedicated to the requests for voluntary respondent treatment to instead consider the NSAs. On September 22, 2023, pursuant to section 782(a) of the Act and 19 CFR 351.204(d), we determined that selecting JDIL and Tolko as voluntary respondents would not impose an undue burden upon Commerce or inhibit its ability to timely complete the 2022 administrative review.[94]

Subsequently, with regard to the NSA Submission, in the *Preliminary Results* published on January 31, 2024, we decided to defer consideration of whether to initiate on the four alleged subsidies to the next administrative review given the complex nature of the allegations and Commerce's resource constraints which existed at that time. As explained in the *Preliminary Results*,[95] we concluded that a sufficiently complete investigative record of the programs alleged (*i.e.*, to analyze four NSAs, decide whether to initiate, then to collect and analyze the necessary information from the federal/provincial governments and respondents to determine whether the programs are countervailable) could not be developed given the constraints on the agency's resources, which were already devoted to examining the over 30 subsidy programs within the review and four company respondents and their cross-owned companies.

Because Commerce's resources are dynamic, only the agency can assess the availability and limitations on its time and staffing at any given time during a proceeding.[96] As such, for these final results, we continue to find that Commerce lacked both the time and resources to investigate the NSAs and meet its statutory deadlines in this administrative review. We thus continue to defer an examination of the NSAs until the 2023 administrative review, pursuant to 19 CFR 351.311(c)(2).

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[93] *See* Respondent Selection Memorandum at Requests for Voluntary Respondent Treatment; *see also* JDIL Affiliation Response; JDIL Non-Stumpage IQR Response; JDIL Stumpage IQR Response; Tolko Affiliation Response; Tolko Non-Stumpage IQR Response; and Tolko Stumpage IQR Response.
[94] *See* Voluntary Respondent Selection Memorandum.
[95] *See Lumber V AR5 Prelim* PDM at 7-8.
[96] *See Jiangsu Zhongji Lamination Materials*, 405 F. Supp. 3d 1342 (stating "{t}he regulations also permit the deferral of the examination of a program that appears to be countervailable if insufficient time remains. 19 C.F.R. § 351.311(c)").

Lastly, the Canadian Parties, GOA, and Tolko argue that the NSAs do not satisfy the standard for initiation. Because, as discussed above, Commerce did not analyze the NSAs in this review, we need not respond to comments on whether the NSAs were properly alleged and substantiated in these final results. We will determine whether the alleged subsidies are adequate for initiation in the 2023 administrative review.

Comment 2: Whether Respondent Selection Was Proper

Petitioner Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Case Brief at 43-49.

> In this review, {Commerce} first selected Canfor and West Fraser as mandatory respondents and subsequently determined it appropriate to select Tolko and {JDIL} as voluntary respondents for individual review. These decisions are arbitrary and capricious and otherwise contrary to law and should be corrected in the final results. In selecting Canfor and West Fraser as the only mandatory respondents, {Commerce's} examination of subsidies is restricted to Alberta and British Columbia – only two of the four major lumber producing provinces in Canada. Because extensive subsidization has been found in Ontario and Québec in past reviews, {Commerce's} respondent selection decision omitted examination of the full range of known and previously countervailed subsidies. As such, {Commerce} failed to fulfill its responsibility to calculate the subsidy rates as accurately as possible. Further, {Commerce's} decision to choose two voluntary respondents five months after citing workload and resource constraints in limiting the review to two mandatory respondents is also arbitrary and capricious, as the agency provided no explanation as to how its workload and resources had changed within the five-month period such that it is now able to review twice the number of respondents.

GNB Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GNB. For further details, *see* GNB Rebuttal Brief Vol. IV at 5-6.

> {The petitioner} also argues that the selection of respondents in this fifth administrative review is arbitrary and capricious, but {Commerce's} choice of {JDIL} as a voluntary respondent was in accordance with the requirements of section 782 of the {Act}. Further, {JDIL} submitted its original request to be a voluntary respondent ahead of respondents proposed by the {p}etitioner. The {p}etitioner's arguments are unavailing.

JDIL Rebuttal Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Rebuttal Brief at 12-14.

> {Commerce} properly exercised its discretion to review {JDIL} as a voluntary respondent. {Commerce} followed its past practice and selected voluntary respondents based on two conditions: (1) whether the potential voluntary respondent met the filing deadlines for all requests for information, and (2) the order in which {Commerce} received the voluntary respondent requests. Because {JDIL} met all filing deadlines and was the second party to request voluntary respondent treatment (not including mandatory respondents), {Commerce} properly selected {JDIL} as a voluntary respondent.

Commerce's Position: We disagree with the petitioner that Commerce's decision to select two mandatory respondents and two voluntary respondents in this review was arbitrary and capricious.

As an initial matter, ideally Commerce would examine all exporters/producers for which an administrative review was initiated. However, here, a review of 312 companies was requested.[97] 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/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 complex subsidy programs.[98] 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

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[97] *See Initiation Notice*, 88 FR at 15652-56; *see also* Respondent Selection Memorandum at 3.
[98] *See* Respondent Selection Memorandum at 3.

which the *Order* is assigned, was also handling numerous concurrent AD and CVD proceedings.[99]

Given the complexity 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 respondents on April 19, 2023.[100] Based on the agency constraints at the time of respondent selection, we concluded that Commerce had the necessary resources to individually examine two mandatory respondents (Canfor and West Fraser) in this administrative review. Commerce also noted that it would further consider whether to examine voluntary respondents in accordance with section 782(a) of the Act and determine: 1) whether the voluntary respondent met the filing deadlines for all request for information; 2) whether examining the voluntary respondents would be unduly burdensome; and 3) that voluntary respondents will be selected based on the order in which the requests were received (in this case, in chronological order: Tolko, Canfor, JDIL, Resolute, and West Fraser).[101]

As in prior reviews, the petitioner is mistaken that geography is a factor that Commerce must consider for purposes of respondent selection.[102] There is no statutory obligation for Commerce to select a sufficient number of mandatory respondents to ensure coverage of subsidization across Canada's four major lumber producing provinces (Alberta, British Columbia, Ontario, and Québec). As stated in the *Lumber V Investigation* Respondent Selection Memorandum, Commerce is not obligated to consider geographic coverage in selecting respondents for individual examination.[103] 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."[104] 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."[105] Subsequently in *Lumber V AR2*, *Lumber V AR3*, and *Lumber V AR4*, Commerce did not move from that position.[106] 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 that must be considered when selecting mandatory respondents.

Subsequent to respondent selection, JDIL and Tolko filed voluntary initial questionnaire responses in the review. At that time, Commerce had to determine whether the companies timely submitted requests for information, and whether the agency had sufficient time and resources to

[99] *Id.* (fn.12).
[100] *See* Respondent Selection Memorandum.
[101] *Id.* at 14-15.
[102] *See*, *e.g.*, *Lumber V AR4 Final* IDM at Comment 1.
[103] *See Lumber V Investigation* Respondent Selection Memorandum at 14 (contained within Petitioner Comments on CBP Data and Respondent Selection at Exhibit 12).
[104] *Id*.
[105] *See Lumber V AR1* Respondent Selection Memorandum at 8 (contained within Interfor/EACOM Rebuttal Comments on CBP Data and Respondent Selection at Exhibit 9).
[106] *See Lumber V AR2* Respondent Selection Memorandum; *see also Lumber V AR3* Respondent Selection Memorandum; and *Lumber V AR4* Respondent Selection Memorandum contained within Interfor/EACOM Rebuttal Comments on CBP Data and Respondent Selection at Exhibit 9.

examine the information submitted by the companies without it being unduly burdensome and inhibit the timely completion of the administrative review.[107]

Because Commerce determined that JDIL and Tolko timely filed voluntary initial questionnaire responses in compliance with the requirements under section 782(a) of the Act and 19 CFR 351.204(d),[108] we again evaluated the factors considered when selecting respondents (as noted above) because deadlines, workload, and staffing resources are dynamic. Thus, we again had to determine whether sufficient time and resources were available to select voluntary respondent(s) in the review. Based on that reassessment, on September 22, 2023, Commerce concluded that sufficient resources were available to take two voluntary respondents in this review.[109] Because Commerce selects voluntary respondents based on the order in which the requests for such treatment were received, Commerce selected Tolko and JDIL as voluntary respondents as Tolko was the first and JDIL was the second party to timely file requests for voluntary respondent treatment (that had not already been selected as a mandatory respondent).[110]

As such, contrary to the petitioner's arguments, Commerce's decision to select two mandatory respondents and two voluntary respondents for this administrative review was neither arbitrary nor capricious. The decision to select Canfor, JDIL, Tolko, and West Fraser as respondents 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 within an administrative review. Further, we disagree with the petitioner that Commerce did not provide a justification as to how it was able to select more than two mandatory respondents in prior reviews but unable to do so here, and did not provide an explanation for how its workload and resources changed to later allow the selection of two voluntary respondents in this review.[111]

In both the Respondent Selection Memorandum and the Voluntary Respondent Selection Memorandum, Commerce outlined the factors taken into consideration when determining the number of mandatory respondents to be selected and whether there can be voluntary respondents within the review. Commerce's decision on the number of mandatory respondents to examine and whether a company(s) can be selected as a voluntary respondent is specific to each administrative review based on the workload and resources available at the time of each review. Whether Commerce was able to select four mandatory respondents in a prior review has no bearing here as Commerce must determine, review by review, the number of exporters/producers that can be reasonably selected for individual examination. Further, in making its determination, there is no statutory or regulatory requirement to enumerate the extent of Commerce's case workload and staffing resource constraints, and any changes to those factors, when conducting its mandatory or voluntary respondent selection analysis. Additionally, nowhere in Commerce's respondent decision-making process (as outlined above) is there consideration of preserving resources in order to review one exporter/producer over another, as claimed by the petitioner.[112]

[107] *See* Respondent Selection Memorandum at 11-12.
[108] *See* JDIL Affiliation Response; *see also* JDIL Non-Stumpage IQR Response; JDIL Stumpage IQR Response; Tolko Affiliation Response; Tolko Non-Stumpage IQR Response; and Tolko Stumpage IQR Response.
[109] *See* Voluntary Respondent Selection Memorandum.
[110] *See* Respondent Selection Memorandum at 15.
[111] *See* Petitioner Case Brief at 47-49.
[112] *Id.* at 49.

In this administrative review, we find that Commerce selected an appropriate number of respondents in light of the resource constraints faced by the agency and in accordance with section 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 subsidies provided by the Canadian federal government and two provincial governments (Alberta and British Columbia). While it is correct that Commerce did not examine subsidies provided in Ontario and Québec, within this review, Commerce also examined subsidies provided by the federal government and *five* provincial governments (Alberta, British Columbia, New Brunswick, Nova Scotia, and Saskatchewan).[113] We, thus, find that the examination of four respondents in this review (two mandatory respondents and two voluntary respondents) allowed Commerce to sufficiently and accurately capture the subsidization provided to softwood lumber exporters/producers in Canada during calendar year 2022. With that information, Commerce was able to determine subsidy rates "as accurately as possible,"[114] for both the individually-examined respondents and the non-selected companies subject to this review.

Comment 3: Whether Commerce Should Consider Climate Change Goals

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties. For further details, *see* Canadian Parties Joint Case Brief Vol. I at 118-119.

> In the *Preliminary Results*, {Commerce} incorrectly countervailed a number of programs that address climate change issues in that they involve sustainability, energy efficiency, and {GHG} emission reductions. {Commerce} should revisit these programs for the final as finding these programs countervailable in the final results would violate the applicable {CVD} statute and regulations and be at odds with the Administration's aim of addressing climate change in the United States and abroad through trade policy.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 2-4.

> In the final results, {Commerce} should continue to dismiss the Canadian Parties' arguments concerning the incorporation of climate change mitigation efforts in {Commerce's} countervailability analyses of certain subsidy programs. The Canadian Parties contest {Commerce's} determinations regarding the countervailability of certain non-stumpage subsidy programs, arguing that the purpose of these programs is to serve Canada's climate change policy objectives.

[113] *See* "Analysis of Programs," section of this memorandum, *supra*.
[114] *See Borusan v. U.S.*, 61 F. Supp. 3d at 1337.

> The Canadian Parties claim that these findings contravene both the relevant {CVD} statutes and regulations and are at odds with the U.S. Executive Branch's policy to tackle climate change internationally via trade policy. Moreover, the Canadian Parties misdirect their focus on the "whole-of-government" approach to climate change, despite lacking any legal foundation for such emphasis.
>
> In past administrative reviews, {Commerce} has consistently rejected the Canadian Parties' arguments about considering Canada's social or environmental policies in its countervailability analyses. {Commerce} maintains that its role in countervailing determinations is to impartially apply CVD law to all subsidy programs at issue, without consideration for a program's primary purpose or indirect impacts. Additionally, {Commerce} has explained that any benefits these programs might offer to governments or the public, or their potential effects, are irrelevant to the benefits conferred by the respondents. Definitively, {Commerce} deemed that the Canadian government's climate objectives are irrelevant to its assessment of the programs at issue and fall outside of its regulatory scope. Nothing in this review warrants a change in {Commerce's} position. As such, {Commerce} should continue to strictly adhere to the statutory guidelines when determining the countervailability in the final results.

Commerce's Position: Similar arguments to those presented here were previously considered, and rejected, by Commerce in prior administrative reviews, most recently in *Lumber V AR4 Final*.[115]

We continue to disagree with the Canadian Parties that Commerce should reconsider its countervailability findings for subsidy programs that fulfill the Canadian government's climate change and environmental policy goals. Any advantages to the GOC, provincial governments, or the general public as a result of such subsidy programs that reduce GHG emissions, or the effect the subsidies may have on protecting the environment, is not relevant to the benefits that the respondents received under the examined programs. Pursuant to 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 a subsidy program.[116] Whether the GOC or provincial governments were able to realize energy efficiencies or advance their climate change initiatives through the subsidy programs at issue is immaterial to Commerce's analysis.

As such, the Canadian Parties' arguments that Commerce must consider objectives with respect to climate change in all matters of international trade is misplaced in the context of this administrative 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.

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[115] *See Lumber V AR4 Final* IDM at Comment 3.
[116] *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").

Within its arguments, the Canadian Parties identified certain programs which they claim Commerce incorrectly countervailed because they address climate change issues.[117] We address the remaining arguments regarding the countervailability of each of those programs below. *See* Comment 38 for the LSSi, Comment 39 for the TIER, Comments 33 and 34 for the BC Hydro EPAs, Comment 52 for the CIIP, and Comment 56 for the LIREPP.

Comment 4: Whether Commerce's Specificity Analysis Is Consistent with the Law

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 112-118.

> In the *Preliminary Results*, {Commerce} erroneously found that a number of federal and provincial programs were *de jure* or *de facto* specific. When assessing *de jure* specificity, {Commerce} ignored the proper standard, which asks whether a program is widely available, and incorrectly considered whether a program is universally or nearly universally available. {Commerce} has also improperly focused on the fact that certain activities that enterprises might engage in were not eligible for a program, instead of following the statutory directive to evaluate whether a program expressly limits eligibility to an industry or enterprise. In assessing *de facto* specificity, {Commerce} improperly focused solely on the number of enterprises that used a measure, as a percentage of either all tax filers (for tax measures) or all corporations (for non-tax measures), ignoring record evidence of widespread use of the measure across broad industry groups in the economy. In so doing, {Commerce} failed to properly apply the standards for evaluating specificity established by the plain language of the statute, the {SAA} accompanying the {URAA}, and controlling legal authority from the {Federal Circuit} and {CIT}.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 4-9.

> The Canadian Parties make a general claim that {Commerce} improperly interpreted the statute in finding certain federal and provincial programs *de jure* or *de facto* specific. To the contrary, {Commerce} applied appropriate standards for *de jure* and *de facto* specificity and relied on record evidence that support its specificity determinations for each countervailed subsidy program. With respect to *de facto* specificity, neither the statute, the {SAA}, nor precedent dictate the exact methodology {Commerce} must employ in its analysis. The SAA provides guidance that {Commerce} could consider the number of industries in the economy

[117] *See* Canadian Parties Joint Case Brief Vol. I at 118 (citing *Lumber V AR5 Prelim* PDM at 43-45, 47-48, 56-57, and 63-64).

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> in question to determine whether the number of industries using a subsidy is small or large. In accordance with this guidance, {Commerce} found that Canada is economically diverse at the national and regional levels. Therefore, while certain programs may have been used by a wide array of enterprises or industries, {Commerce's} determinations that the actual recipients were limited in number are reasonable in light of the extent of economic diversification within Canada.
>
> Additionally, each of {Commerce's} *de jure* specificity determinations rely on record evidence that includes clearly delineated eligibility criteria which expressly discriminate against categories of industries or enterprises engaged in disfavored activities. These discriminatory criteria meet the requirements of the statute. The Canadian Parties' citation to *Carlisle* and the SAA do not support their claim that {Commerce's} *de jure* specificity findings are improper. *Carlisle* dealt with generally available benefits, but the programs found to be *de jure* specific in this review are not generally or widely available, and do exclude a wide range of enterprises and industries. In the final results, {Commerce} should thus dismiss the Canadian Parties' general complaints about its specificity determinations.

Commerce's Position: Since the investigation, the Canadian Parties have raised similar arguments that Commerce has improperly found federal and provincial subsidy programs to be specific within the meaning of section 771(5A)(D) of the Act. As in earlier segments of this proceeding, we disagree with the contention that Commerce's interpretation of the specificity test imposes a requirement of "universal" availability and use of a program, rather than widespread availability and use of a program.

As explained in prior segments,[118] 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. Therefore, we once again reject the Canadian Parties' arguments that Commerce should reverse its specificity findings for certain grant and tax programs.

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.[119] 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."[120] 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.[121] In its specificity analysis, Commerce is guided by both the statute and SAA. Because the facts of

[118] *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; and *Lumber V AR4 Final* IDM at Comment 2, 41, 44, 45, 46, 47, 49, 54, 56, and 57.
[119] *See* SAA at 929.
[120] *Id.*
[121] *Id.* at 931.

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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.[122]

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 in the law, 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 Canadian Parties that Commerce incorrectly interprets the specificity test to require "universal" availability and use of a measure 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 Canadian Parties' arguments, is not tantamount to a requirement that a subsidy be universally available and used in order to be non-specific.

Access and eligibility as described by relevant laws and regulations governing the subsidy programs are factors in the analysis of *de jure* specificity under section 771(5A)(D)(i) of the Act. Subsidy programs that have clearly delineated eligibility criteria which expressly exclude categories of industries or enterprises engaged in disfavored activities are *de jure* specific. The Canadian Parties' reference to *Carlisle*[123] to support their argument that certain programs under review are not specific is unpersuasive. However, as the petitioner notes, *Carlisle* supports the position that benefits such as public highways, bridges, and tax credits available to all industries and sectors, are not specific.[124] In other words, those benefits are general and have widespread availability. However, here, the programs found to be *de jure* specific are not generally or widely available and exclude enterprises and industries from being eligible for the subsidies.

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. Thus, in its analysis 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.[125] Our *de facto* specificity methodology—based on comparing the number of users of a program to the total number of companies operating in the relevant jurisdiction during the POR, or the total number of corporate tax filers in the relevant jurisdiction during the POR—has been relied upon since the investigation.[126] Accordingly, for each of the programs under review found to be specific as a matter of fact, Commerce properly applied the statute's *de facto* specificity

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[122] *See Royal Thai Gov't v. U.S. (2004)*, 341 F. Supp. 2d at 1335–1336.
[123] *See* Canadian Parties Joint Case Brief Vol. I at 114 (citing *Carlisle*, 564 F. Supp. at 834).
[124] *See* Petitioner Rebuttal Brief at 9 (citing *Carlisle*, 564 F. Supp. at 835) (emphasis added).
[125] *See CRS from Korea* IDM at Comment 13.
[126] *See Lumber V Final* IDM at Comments 62 and 64.

provision by finding that, in the context of the economies at issue, there are a limited number of users and thus, the programs are not "widely used."

As such, for the programs identified in the Canadian Parties' case brief,[127] Commerce made its specificity determinations on a case-by-case basis taking into account all the facts and circumstances of each subsidy program, including the law, regulations, usage data, and diversification of economic activities within the relevant jurisdiction.[128] As discussed in detail at Comment 35, 36, 38, 39, 40, 42, 45, 46, 49, 50, 51, 52, 53, 55, and 56 below, we find that the subsidy programs are not broadly available and widely used throughout the federal or provincial economy. Thus, we continue to find the grant and tax 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.

B. <u>General Stumpage Issues</u>

Comment 5: Whether Stumpage Is an Untied Subsidy

JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Case Brief at 74-82.

> Pursuant to {19 CFR 351.525(b)(6)(iv)}, all countervailable benefits received by {JDIL} should have been attributed not only to {JDIL's} sales, but also to sales of downstream forestry products made by "cross-owned" companies that received paper inputs from {JDIL}. Contrary to the plain language of its regulation, {Commerce} interpreted the use of "input" as limited to inputs for the production of subject merchandise (or derived downstream products). A sample calculation included in this brief demonstrates how {Commerce's} interpretation of {19 CFR 351.525(b)(6)(iv)} results in the over-collection of CVD duties, an outcome {Commerce} has recognized must be avoided.

Petitioner Rebuttal Brief[129]

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 26-30.

> {JDIL} repeats its arguments made in prior administrative reviews without providing new factual information. {Commerce's} practice is consistent with the regulations. Although {19 CFR 351.525(b)(3)} outlines a general rule whereby

[127] *See* Canadian Parties Joint Case Brief Vol. I at 113 (fn. 339 and 340 listing the following programs—for *de jure* specificity: ACCA for Class 53 Assets, SDTC, TEFU, Lower Tax Rates for Coloured Fuel, New Brunswick Property Tax Incentives for Private Forest, and GNB Gasoline & Fuel Tax Exemptions and Refund Program; and for *de facto* specificity: SR&ED Tax Credit, CCA for Class 1 Assets, Forest Machine Connectivity Master Project (Global Innovations Cluster Program), R&D Tax Credit (GNB), and R&D Tax Credit (GOS)).
[128] *See* Economic Diversification Memorandum.
[129] *See* Petitioner Rebuttal Brief at 26-30.

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> domestic subsidies are attributed to "all products sold by a firm," {19 CFR 351.525(b)(5)(i)} provides a more nuanced approach which explains that, if a subsidy is "tied to the production or sale of a particular product, {Commerce} will attribute the subsidy only to that product." {Commerce's} methodology focuses exclusively on the subsidy applied on timber (or logs) entering sawmills, attributing the subsidy to the final products produced in sawmills. In effect, it ties the subsidy on logs that are used in mills producing a particular product to the products produced in those mills. This practice is both reasonable and consistent with the regulations, as the Canadian provinces are aware that the standing timber that they supply for lumber manufacture to lumber producers will be used to produce lumber and various sawmill products. Accordingly, {JDIL's} arguments are without merit, and {Commerce} should continue its consistent practice from the investigation and past softwood lumber proceedings.

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.[130] 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 *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.[131]

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

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

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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.

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.[132] In *Lumber V AR5 Prelim*, we attributed the benefit from subsidies that JDIL received to its total sales, because JDIL is the sole subject merchandise producer.[133] 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."[134] 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* AR5, *Lumber V* AR4, 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).[135] 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.[136] 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

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[132] *See Lumber V AR4 Final* IDM at Comment 4; *see also Lumber V AR3 Final* IDM at Comment 9; *Lumber V AR2 Final* IDM at Comment 8; and *Lumber V AR1 Final* IDM at Comment 114.
[133] *See Lumber V AR5 Prelim* PDM at 10-11, 36-37, 47-49, 51-52, 54, and 60-62.
[134] *Id.* at 30.
[135] *See Lumber V AR5 Prelim* PDM at 10-11, 36-37; *see also Lumber V AR4 Prelim* PDM at 10 and 33-34, unchanged in *Lumber V AR4 Final*; *Lumber V AR3 Prelim* PDM at 10 and 33-34, unchanged in *Lumber V AR3 Final*; and *Lumber V AR2 Prelim* PDM at 31 and 36, unchanged in *Lumber V AR2 Final.*
[136] 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.

merchandise, softwood lumber. As discussed above and consistent with the prior review,[137] 19 CFR 351.525(b)(6)(iv) is inapplicable here, given that we attributed the benefit from subsidies that JDIL received to its total sales, because JDIL is the sole subject merchandise producer. JDIL is not an input supplier in this case.

JDIL cites prior Commerce decisions to argue that IPP, IPL, and Irving Tissue should be included in JDIL's sales denominator.[138] 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 6: Whether to Compare Government Transaction-Specific Prices to an Average Benchmark Price or Offset the LTAR Benefit Using Negative Benefits

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 101-112 and Vol. VI at 62-63.

> In calculating the benefit allegedly conferred by Alberta's, British Columbia's, and New Brunswick's stumpage programs, {Commerce} preliminarily applied a methodology that skewed the comparison between respondents' purchase prices and {Commerce's} benchmark prices. In calculating the benefit received from these programs, {Commerce} preliminarily accounted for only those comparisons in which the average benchmark exceeded respondents' transaction price. {Commerce} ignored comparisons in which the respondents' transaction price exceeded the average benchmark price. {Commerce} then treated the lopsided sum as the countervailable benefit conferred by the programs at issue.
>
> {Commerce's} methodology is unlawful and unreasonable. It results in a benefit finding and calculation that impermissibly departs from the statutory and regulatory requirements that {Commerce} calculate a single benefit for a program in which the government provides a good, that {Commerce} conduct symmetrical benefit comparisons, and that {Commerce} assess the adequacy of remuneration in relation to prevailing market conditions. In fact, {Commerce's} approach would result in a finding of benefit even if {Commerce} used a respondent's own transactions as the benchmark for those same transactions. If {Commerce's} intent is to assess the benefit that respondents received, rather than to arbitrarily measure one side of the normal temporal and geographic price variations that exist in every market, {Commerce} must revisit this methodology.

[137] *See Lumber V AR4 Final* IDM at Comment 4.
[138] *See* JDIL Case Brief at 76-77 (citing *Welded Line Pipe from Türkiye* IDM at 43; and *IPA from Israel*, 63 FR at 13633).

> {Commerce} should not (a) compare individual Crown transaction values to average monthly benchmark values and (b) "zero" out calculations where the Crown price exceeded the monthly average benchmark.

JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Case Brief at 37-40.

> {T}he preliminary benefit calculation – comparing individual Crown transactions to monthly average benchmarks and disregarding higher-priced Crown transactions – fails to account for "prevailing market conditions" for Crown stumpage and creates benefits where none exist.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 30-35.

> The Canadian Parties' proposed methodology overlooks {Commerce's} consistent rationale and findings in the prior administrative reviews. As {Commerce} stated, the agency's "preference is to compare the prices of individual transactions with the government to monthly average benchmark prices, where possible." {Commerce} explicitly chooses not to adopt a methodology that involves averaging prices in calculating benefits, because doing so "improperly offset{s} the subsidy benefit from individual purchase prices below the benchmark price." Given the lack of new factual information, {Commerce} should dismiss the Canadian Parties' arguments.

Sierra Pacific Rebuttal Brief

The following is a verbatim summary of the argument submitted by Sierra Pacific (internal citations omitted). For further details, *see* Sierra Pacific Rebuttal Brief at 19-24.

> {Commerce} should reject the Canadian Parties' arguments challenging {Commerce's} calculation of benefit for stumpage programs. The Canadian Parties argue that {Commerce's} methodology for calculating benefit is unlawful and unreasonable, inter alia, because {Commerce} did not account for stumpage prices that exceeded the benchmark prices. As {Commerce} has found in prior segments of this proceeding, the Canadian Parties' proffered methodology for calculating benefit would result in impermissibly "offsetting" the positive benefit from certain transactions with the "negative" benefit from other transactions. Contrary to the Canadian respondents' arguments, the Act's use of the singular "benefit" does not constrain {Commerce's} ability to calculate benefit by comparing individual transactions to an average benchmark. Further, neither the Act nor {Commerce's} regulations require "symmetry" between the "government

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> price" and the "market-determined price" in a benefit calculation. The Canadian Parties also fail to demonstrate that {Commerce's} methodology for calculating benefit is so distortive as to render it incompatible with the requirement to take account of "prevailing market conditions" in section 771(5)(E)(iv) of the Act.

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.[139] 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.[140]

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.[141] Congress and the courts have confirmed that the statute permits only these specific offsets.[142] 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 beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit is concerned.[143]

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[139] *See Lumber V AR4 Final* IDM at Comment 24.
[140] *See Lumber V Final* IDM at Comment 15.
[141] *See* section 771(6) of the Act; *see also Lumber V Final* IDM at Comment 15; *Lumber IV AR2 Final* IDM at Comment 9; *Lumber V AR3 Final* IDM at Comment 38; and *Lumber V AR4 Final* IDM at Comment 24.
[142] *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").
[143] *See CVD Preamble*, 63 FR at 65361.

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.[144] 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."[145] 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."[146]

We applied adverse facts available (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}."[147] 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 *2021-2022 Private Market Survey*.

In this review, in making our determination regarding what comparison methodology is most appropriate, Commerce considered the specific stumpage and log data collected and reported by the respective provincial governments and the level of detail of such data within the context of the provincial stumpage regimes. Where a comparison of individual transactions to monthly average benchmark prices was not possible, Commerce developed methodologies that best adhered to Commerce's preference.[148] JDIL reported that certain purchases of Crown standing

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[144] *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.
[145] *See Stainless Steel Sinks from China INV* IDM at 11-12.
[146] *Id*.
[147] *Id*. at 21.
[148] 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

timber in New Brunswick contained "Operational Adjustments" to account for higher costs associated with difficult terrain or certain harvest treatments.[149] 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 *Lumber V AR5 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.

C. <u>Alberta Stumpage Issues</u>

Comment 7: Whether the Alberta Stumpage Market Is Distorted

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief at Vol. IV.A at 39-48.

> As a threshold matter, {Commerce's} preliminary finding as to the Alberta stumpage market has no bearing on the use of the {TDA} survey data's log prices as a tier-one benchmark…In its Final Results, {Commerce} should rely on the robust price data for private-to-private arm's-length log transactions to derive a proper benchmark for Alberta Crown stumpage prices.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 157-162.

> {T}he prices for private standing timber in Alberta are not market-determined because of the distortion of prices for Crown timber.

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.

[149] *See* JDIL Case Brief at 38.

Commerce's Position: The GOA, relying primarily on arguments that Commerce has addressed and rejected in prior reviews,[150] claims that the factors Commerce cited in *Lumber V AR5 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 *Lumber V AR4 Final Results*, "Commerce relies on the overall and cumulative effect of multiple distorting elements"[151] 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.[152] Moreover, the same companies are active in both the Crown stumpage and private stumpage markets. Specifically, the 10 largest corporations accounted for approximately 87.4 percent of the harvested Crown-origin standing timber volume.[153] Furthermore, a significant share of private-origin harvest, the exact amount of which is BPI, was received by tenure holding mills in Alberta.[154] Comparing these data against other record evidence demonstrates that a significant percentage of the private origin timber harvest in Alberta was accounted for by the ten largest harvesters of Crown-origin timber.[155]

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.[156] 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.[157]

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

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[150] *See Lumber V AR4 Final* IDM at Comment 9; *see also Lumber V AR3 Final* IDM at Comment 10; and *Lumber V AR2* IDM at Comment 11.
[151] *See Lumber V AR4 Final* IDM at 54.
[152] *See* GOA Stumpage IQR Response at Exhibit AB-AR5-S-3.
[153] *See* GOA Market Memorandum at Attachment 3, worksheet "Attach 3 Top 10 Market Share."
[154] *Id.* at Attachment 2, worksheet "Attachment 2 Crown Private."
[155] *Id.*
[156] *Id.*
[157] *See Lumber V AR5 Prelim* PDM at 17-18.

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."[158] 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.

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.[159] The GOA argues that this overhang has no impact due to the impracticality of harvesting certain stands of lumber, environmental considerations related to the harvesting of certain stands, and ongoing negotiations with First Nations over certain stands. 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 or ten years.[160] 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"[161] 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.[162] 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."[163] 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.[164] The section of the Kalt Report cited by the GOA concludes that "the stumpage rates on these {government}

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[158] *See* Brattle Report at 42.
[159] *See* GOA Market Memorandum at Worksheet "Attachment 1 Overhang."
[160] *See* GOA Stumpage IQR at 75-76.
[161] *See* GOA Case Brief Vol. IV.A at 40.
[162] *See* Brattle Report at 33-37.
[163] *Id.* at 4.
[164] *See* Kalt Report at 35-36.

stands would not set, depress and/or distort the market-determined stumpage rate for stand 3,"[165] 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.[166]

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.[167] 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.

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[165] *Id.* at 36.
[166] *Id.* at 36.
[167] *See* GOA Case Brief Vol. IV.A at 46-48.

Comment 8: Whether Private Standing Timber Prices in Nova Scotia Are Available in Alberta

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 11-27.

> Standing timber, by its nature, is immovable and not transportable. None of the respondents who purchase Crown standing timber in Alberta operate in Nova Scotia and none have access to Nova Scotia standing timber. {Commerce} should adhere to the logic of its prior decisions, and the only reasonable interpretation of the relevant legal authorities, by concluding that the price for a good that is unavailable to a respondent cannot serve as a tier-one benchmark for assessing the adequacy of remuneration for that respondent's purchases of the government-provided good.

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.A at 60-62.

> In this review, {Commerce} relied on prices for 2021-2022 transactions as reported by Nova Scotia buyers of standing timber from private woodlots in Nova Scotia as a benchmark for Alberta stumpage prices. Record evidence establishes that those transactions do not provide an appropriate tier-one benchmark for prices paid for standing Crown timber in Alberta under the statute or {Commerce's} regulation governing the provision of goods for less than adequate remuneration, as Nova Scotia private standing timber is not "available, marketable, or transportable" in or to Alberta.

West Fraser Case Brief

West Fraser adopts and incorporates by reference the arguments included in the case brief filed on behalf of the Government of Alberta and the Alberta Softwood Lumber Trade Council. For further details, *see* West Fraser Case Brief at 13-14.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 83-91.

> The Canadian Parties argue that private stumpage prices in Nova Scotia are not a suitable benchmark to measure the adequacy of remuneration for the provision of stumpage by the GOA. Specifically, the parties claim that (1) Nova Scotia

> stumpage is not reflective of prevailing market conditions in Alberta and (2) standing timber in Nova Scotia is not "available" to purchasers in Alberta.
>
> There is no new evidence on the record of this review that would prompt {Commerce} to reconsider private stumpage prices from Nova Scotia as the proper benchmark. Under {Commerce's} regulations, a tier-one benchmark requires the agency 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." Accordingly, prevailing market conditions are assessed for the good or service being provided for the good being purchased in the country which is subject to the investigation or review." {Commerce's} first priority in assessing a tier-one benchmark is to compare prices stemming from actual transactions within the country in question. There is also no question that prices from private timber sales in Nova Scotia, as a province in Canada, the country under review, provides the most ideal benchmark for subsidies provided by the GOA. Additionally, the private stumpage market in Nova Scotia is available to any willing buyer as there are no restrictions or requirements in place regarding a buyer's physical residency.
>
> Thus, {Commerce} should continue to find that stumpage prices for private-origin standing timber in Nova Scotia are available in accordance with the regulations and the statute and may serve as a proper tier-one benchmark.

Sierra Pacific Rebuttal Brief

The following is a verbatim summary of the argument submitted by Sierra Pacific (internal citations omitted). For further details, *see* Sierra Pacific Rebuttal Brief at 5-11.

> {Commerce's} determination that Nova Scotia private stumpage prices are a suitable tier-one benchmark for stumpage in Alberta is reasonable and supported by substantial evidence. The Canadian Parties' contrary arguments are without merit.

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[168] that stumpage prices for private-origin standing timber in Nova Scotia constitute prices that are available in 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 Commerce may investigate subsidies granted by sub-federal level government entities and

[168] *See, e.g.*, *Lumber V AR4 Final* IDM at Comment 22.

ensures that those governments qualify as interested parties under the statute.[169] 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.[170] Electricity transmitted over long distances also suffers from line losses which greatly inflate the electricity's price.[171] 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.[172] 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.[173]

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 purchase stumpage across provincial boards or regions. Indeed, evidence on the record indicates that New Brunswick-based JDIL purchased standing timber in Nova Scotia.[174]

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[169] *Id.*
[170] *See SC Paper from Canada Final* IDM at 41 – 42 and Comment 12.
[171] *Id.* at 41 – 42 and Comment 12.
[172] *Id.* at 41 – 42 and Comment 12.
[173] *Id.* at 41 – 42 and Comment 12.
[174] *See* JDIL Final Calculation Memorandum, where the calculations for JDIL's stumpage benefit indicate that it purchased standing timber from Nova Scotia.

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 Türkiye 2010 Review*, Commerce used industrial land prices across Türkiye as benchmarks to calculate the benefit conferred by a land for LTAR program.[175]

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.[176] 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.[177] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[178]

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 Alberta and that the prices for Nova Scotia timber, as contained in the *2021-2022 Private Market Survey*, constitute a reliable data source to serve as a tier-one benchmark.

Comment 9: Whether the Tree Size in Nova Scotia, as Measured by Diameter, Is Comparable to Tree Size in Alberta

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 28-29 and 42-45.

> Although {Commerce} should reject the use of Nova Scotia private standing timber prices as benchmarks for Alberta Crown standing timber, in the event that {Commerce} continues to use Nova Scotia benchmarks, it must at the very least take steps to account for the various factors that affect the comparability of provincial markets and adjust the benchmarks to control for the significant differences in prevailing market conditions between provinces. {Commerce} has extensive evidence on the record of this review that permits, and indeed requires,

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[175] *See CWP from Türkiye 2010 Review* IDM at Comment 4.
[176] *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.
[177] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[178] *See* SAA at 659.

> adjustments to the Nova Scotia benchmarks to address many of these differences. {Commerce} has information that allows it to adjust the Nova Scotia benchmarks to account for quantifiable differences in products, species, conversion factors, and hauling costs.

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.A at 57-60.

> {A}s demonstrated in detail in both the Canadian Parties' joint case brief and this Alberta-specific case brief, significant differences in both prevailing market conditions and timber comparability between Alberta and Nova Scotia disqualify Nova Scotia as a tier-one benchmark for Alberta Crown timber. These include differences in species mix, tree size, conversion factors, harvesting costs, hauling costs, and finished lumber shipping costs, as well as differences in the market structure in the two provinces.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 98-100.

> In the *Preliminary Results*, {Commerce} stated that "{c}onsistent with the prior review, we find that the size of private-origin standing timber in Nova Scotia, as measure by {diameter at breast height (DBH)}, is comparable to the Crown-origin standing timber in Alberta and New Brunswick." The GOA contests this methodology, claiming that {Commerce's} reliance on New Brunswick DBH data as a proxy fails to provide a valid comparison between Nova Scotia and Alberta. In the fourth administrative review, {Commerce} explained that its "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" because "New Brunswick is contiguous with Nova Scotia, and the two Provinces are encompassed by the same Acadian forest." {Commerce} further explained that "information on the record of the current review indicates that JDIL incorporates standing timber from both provinces into its sawmill operations."
>
> Further, the GOA argues that {Commerce} failed to consider the quadratic mean diameter (QMD) data as more suitable measure for comparing tree size between the two provinces. The record shows that the methodology behind QMD data collection is not relevant for purposes of {Commerce's} analysis. As such, {Commerce} should remain consistent in its findings and find that the size of timber in Nova Scotia and Alberta is comparable in the final results.

Sierra Pacific Rebuttal Comments

The following is a verbatim summary of the argument submitted by Sierra Pacific (internal citations omitted). For further details, *see* Sierra Pacific Rebuttal Brief at 14-15.

> {Commerce's} determination that Nova Scotia private stumpage prices are a suitable tier-one benchmark for stumpage in Alberta is reasonable and supported by substantial evidence. The Canadian Parties' contrary arguments are without merit.

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,[179] we have continued to rely on the DBH comparison utilized in *Lumber V AR5 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.[180] 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.[181] 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.[182] 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).[183] As a result, we find that the GOA's QMD-based forest inventory data is not a reliable source to compare the size of standing trees in Alberta and Nova Scotia.

As explained in *Lumber V AR5 Prelim*, information in the MNP Cross Border Report indicates that the average DBH of harvested softwood timber in Alberta was 21.7 cm in 2022.[184] Thus, while the 21.7 cm DBH for harvested softwood timber in Alberta is in the range of the DBH the

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[179] *See Lumber V AR4 Final* IDM at Comment 30.
[180] *See* Marshall Report at 11.
[181] *See* Comment 10, *infra*, *see also* GOA Stumpage IQR Response at Exhibits AB-AR5-S-7 and AR5-S-11; GNS Stumpage IQR Response at 7; and GNB IQR Response at Exhibit NB-AR5-STUMP-1 at Table 6, Exhibit NB-AR5-STUMP-18, and Exhibit NB-AR5-STUMP-19.
[182] *See Lumber V AR4 Final* IDM at Comment 30.
[183] *See* GOA Stumpage IQR Response at ABII-41 and Exhibit AB-AR5-S-123.
[184] *See Lumber V AR5 Prelim* PDM at 24 (citing MNP Cross Border Report at Volume II at 20).

GNS reported for merchantable timber,[185] we acknowledged in *Lumber V AR5 Prelim* that a DBH based on harvest volumes is not on the same basis as a DBH reflecting merchantable inventory.[186] 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.[187]

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.[188] 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.[189] 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 *2021-2022 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 *2021-2022 Private Market Survey*, needed for Commerce to properly assess whether the timber reflected in the *2021-2022 Private Market Survey* is comparable to the Crown-origin standing timber harvested by the respondent firms in Alberta. We disagree. The DBH information that the GNS reported comes from the NSDNRR's forest inventory monitoring system, which is based on DBH measurements of random samples of mature stands across the province over a five-year period.[190] DBH information for sawlogs and studwood grade standing timber was not one of the data points that Deloitte collected as part of the *2021-2022 Private Market Survey*.[191] While DBH information for the standing timber in the *2021-2022 Private Market Survey* is not available, the record demonstrates that the survey contains a large number of private transactions across the three geographic regions of Nova Scotia (*i.e.*, Western, Eastern, Central) and, therefore, we find no evidence that the size of the

[185] 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.
[186] *See Lumber V AR5 Prelim* PDM at 24-25.
[187] *Id.*
[188] *See* GOA Case Brief Vol. IV.A at 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).
[189] *See* JDIL Stumpage IQR Response at Exhibit 02.C at Table 3.
[190] *See* GNS IQR Response at 8.
[191] *Id.* at Exhibits 5 and 6.

harvested standing timber in the survey varies significantly from the NSDNRR's DBH data for the province as a whole. In addition, as noted elsewhere in this memorandum, the legal requirements governing Commerce's selection of LTAR benchmarks do not require perfection."[192]

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 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."[193] 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.[194] 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 21.7 cm and 22 cm, respectively).[195] 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 21.7 cm for harvested timber in Alberta.[196]

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 10: Whether SPF Species in Nova Scotia Are Comparable to SPF Species in Alberta

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 37-50 and 83-86.

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[192] *See* Comments 10, 18, 19, 22, and 27, *infra*; *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.").
[193] *See* GOC Stumpage IQR Response at GOC-AR5-STUMP-74 at 5.
[194] *See* GOC Case Brief Vol. I at 46-47 (citing GOC IQR Stumpage Response at GOC-AR5-STUMP-97 at 5).
[195] *See* MNP Cross Border Report at IV-6; *see also* GNB IQR Response at STUMP-32.
[196] *See* Asker Report at 67.

> Extensive record evidence demonstrates significant differences in the timber characteristics and market conditions underlying private stumpage transactions in Nova Scotia as compared to those underlying the respondents' purchases of Crown stumpage in Alberta. Nova Scotia's market conditions for standing timber, as well as the standing timber itself, differ from those in Alberta with respect to {c}limate, soil, and other growing conditions reflective of Nova Scotia's unique Acadian forest region and Atlantic Maritime ecozone, as well as the province's unique geography, which result in a different mix of species and larger, more valuable standing timber than the standing timber in other provinces. The effect of these differences is compounded by the different utilization standards and product classifications that are a condition of the Nova Scotia market.
>
> Although {Commerce} should reject the use of Nova Scotia private standing timber prices as benchmarks for Alberta Crown standing timber, in the event that {Commerce} continues to use Nova Scotia benchmarks, it must at the very least take steps to account for the various factors that affect the comparability of provincial markets and adjust the benchmarks to control for the significant differences in prevailing market conditions between provinces. {Commerce} has extensive evidence on the record of this review that permits, and indeed requires, adjustments to the Nova Scotia benchmarks to address many of these differences. {Commerce} has information that allows it to adjust the Nova Scotia benchmarks to account for quantifiable differences in products, species, conversion factors, and hauling costs.

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.A at 48-55.

> {A}s demonstrated in detail in both the Canadian Parties' joint case brief and this Alberta-specific case brief, significant differences in both prevailing market conditions and timber comparability between Alberta and Nova Scotia disqualify Nova Scotia as a tier-one benchmark for Alberta Crown timber. These include differences in species mix, tree size, conversion factors, harvesting costs, hauling costs, and finished lumber shipping costs, as well as differences in the market structure in the two provinces.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 91-108 and 118-120.

> The Canadian Parties contest {Commerce's} findings that standing timber in Nova Scotia and Alberta are comparable because SPF species are the dominant species in both provinces. Despite the Canadian Parties' assertions that the SPF species basket contains sub-species that significantly vary between the two provinces,

> {Commerce} has consistently rejected these arguments. {Commerce} found that "the coniferous species that comprise the SPF category in Alberta have 'sufficiently common characteristics to be treated interchangeably in the lumber market'" and the "purported physical differences among species in the SPF category" offered by the Canadian Parties "are not reflected in the {sic} how provincial governments price Crown-origin standing timber." The Canadian Parties' recycled arguments suggest that standing timber in Nova Scotia is larger, wider, more valuable, etc. However, these arguments are unsupported by the record. In fact, record evidence shows that the GOA itself does not distinguish between SPF sub-species because it sells government-owned stumpage in a bundle. As such, Canadian Parties' arguments are not new nor persuasive and should be rejected in the final results.

Sierra Pacific Rebuttal Comments

The following is a verbatim summary of the argument submitted by Sierra Pacific (internal citations omitted). For further details, *see* Sierra Pacific Rebuttal Brief at 13-15.

> {Commerce's} determination that Nova Scotia private stumpage prices are a suitable tier-one benchmark for stumpage in Alberta is reasonable and supported by substantial evidence. The Canadian Parties' contrary arguments are without merit.

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.[197] 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.[198] In this review, the Canadian Parties again argue that various species differ between the provinces to such an extent that the prices in the *2021-2022 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

[197] *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.
[198] *See Lumber V AR5 Prelim* PDM at 23-26 (citing *Lumber V AR4 Final* IDM at Comments 25, 29, 30 and 31).

in the lumber market."[199] We also continue to find that these purported physical differences among species in the SPF category are not reflected in 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.[200] The GNS indicated that SPF species are "by far the predominant group of trees harvested in Nova Scotia" during the POR.[201] Further, data supplied by Canfor, Tolko and West Fraser indicate that SPF species represent the majority of the companies' respective Crown timber harvest.[202] Additionally, as discussed in Comment 9, 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.

As to the Canadian and Alberta Parties' argument that, should we continue to use the Nova Scotia benchmark, adjustments must be made, we address these arguments below in Comments 9, 11, 15, 16, 17 and 25.

Comment 11: Whether the Nova Scotia Benchmark is Comparable or Should Be Adjusted to Account for Log Product Characteristics

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 51-57 and 81-83.

> Extensive record evidence demonstrates significant differences in the timber characteristics and market conditions underlying private stumpage transactions in Nova Scotia as compared to those underlying the respondents' purchases of Crown stumpage in Alberta. Nova Scotia's market conditions for standing timber, as well as the standing timber itself, differ from those in Alberta with respect to:… {t}he harvested timber products (*i.e.*, logs) in Nova Scotia are distinct from those in Alberta because they are classified and priced differently, which means the respective products in each province do not resemble each other in value, quality, or quantity. Moreover, in Nova Scotia, pulp producers directly purchase a significant share of standing timber, and thus consume lower-quality logs that are

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[199] *See, e.g., Lumber V AR4 Final* IDM at Comment 31.
[200] *See* GOA Stumpage IQR Response at Exhibits AB-AR5-S-7 and AR5-S-11.
[201] *See* GNS Stumpage IQR Response at 7.
[202] *See* Canfor Final Calculation Memorandum; *see also* Tolko Final Calculation Memorandum; and West Fraser Final Calculation Memorandum. The memoranda identify the species of Crown-origin standing timber that Canfor, Tolko, and West Fraser purchased during the POR.

> purchased by sawmills in Alberta. This dynamic also creates competition between pulp and lumber producers in Nova Scotia, which is not a characteristic of the market for standing timber in Alberta. These distinctions result in significant differences in the quality and value of products between provinces, which make those products non-comparable.

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.A at 78-86.

> In comparing Nova Scotia private woodlot benchmark stumpage prices with Alberta Crown stumpage prices, {Commerce} erred in comparing Alberta's prices for a broad category of normal-sized logs to prices paid only for the small portion of Nova Scotia's private woodlot harvest that were classified as "sawlogs". It likewise erred in comparing Alberta Crown stumpage prices for undersized logs to Nova Scotia prices for larger logs, classified as studwood, while entirely excluding from its price comparison prices paid by pulp mills in Nova Scotia for logs harvested from private woodlots. Evidence presented in this review demonstrates that these comparisons are fundamentally flawed. They also contradict {Commerce's} own finding that standing timber on private woodlots in Nova Scotia is comparable to Alberta's Crown standing timber.
>
> {Commerce} compared the main Alberta coniferous timber product, Product Code "01," which is a classification for normal-sized logs used by sawmills, studmills, and pulpmills alike, and which accounted for the substantial majority (66.4%) of the Alberta harvest in 2022, to the prices paid only for the highest-value "sawlogs" product in Nova Scotia. {Commerce's} flawed product matching results in a comparison of prices for a broad mix of logs in Alberta to transactions involving only a narrow range of the largest and best quality logs harvested from private woodlots in Nova Scotia.
>
> {Commerce's} comparisons also are flawed with respect to the remaining product categories in Alberta. {Commerce} erroneously compared remuneration for both Alberta Code "06" (marginal, small size logs), and Code "99" (even smaller size logs, below the harvest utilization standard), to private woodlot prices for Nova Scotia "studwood" – its mid-tier product.
>
> Despite evidence that market conditions in Alberta result in lumber mills purchasing all of the log products on which stumpage prices are based (including the smallest and lowest quality log products) {Commerce} excluded from the benchmark the prices paid for the smallest sized, lowest quality, and lowest priced logs, which most closely corresponds to Alberta's Code 06 and Code 99 logs. If it continues to rely on a Nova Scotia benchmark in its Final Results, {Commerce} must, at a minimum: (1) compare stumpage prices for Alberta's smallest size logs (Codes "06" and "99") to prices for pulpwood in Nova Scotia; and (2) compare

> stumpage prices for normal sized (Code "01") logs in Alberta, representing approximately 66% of the Alberta harvest in 2022, to combined prices for sawlogs and studwood in Nova Scotia.

Tolko Case Brief

The following is a verbatim summary of the argument submitted by Tolko (internal citations omitted). For further details, *see* Tolko Case Brief at 12-13.

> {T}o the extent {Commerce} continues to use a Nova Scotia benchmark, {Commerce} should revise its methodology to more accurately compare Alberta grade "06" and "99" logs to a comparable benchmark.

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser (internal citations omitted). For further details, *see* West Fraser Case Brief at 14-16.

> {I}f {Commerce} nonetheless continues to use Nova Scotia data as a benchmark for Crown timber harvested in Alberta, make necessary adjustments to ensure an apples-to-apples comparison across the full range of timber harvested in Nova Scotia and Alberta.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 100-04 and 120-24.

> {Commerce} should reject the Canadian Parties' arguments regarding comparability of product classification and segmentation methodologies between Alberta and Nova Scotia. All of these arguments have previously been considered by {Commerce} and rejected. The Canadian Parties' arguments regarding timber code classification in Alberta relying on size, not end-use, is contradicted by their own evidence. Additionally, their argument that Nova Scotian pulpwood should be included in any benchmark calculation is without merit as its inclusion would result in a benchmark for timber whose value is derived from lumber as an end-product being valued using timber which is never used to produce lumber. Likewise, the Canadian Parties' argument that pulpwood should be included in the benchmark because a log used to produce lumber in Alberta may not be used to produce lumber in Nova Scotia ignores the purpose of {Commerce's} reasonable comparison methodology, which is to compare the value of timber used to produce lumber in Alberta to the value of timber used to produce lumber in Nova Scotia. Finally, the overall proportion of logs used to produce lumber in Alberta should have no influence over the proportion of timber used to calculate the benchmark value in Nova Scotia, as {Commerce} has made clear that the overall share of

certain grades is not relevant to their comparison, rather it is the prices and categories in question that are relevant.

Sierra Pacific Rebuttal Comments

The following is a verbatim summary of the argument submitted by Sierra Pacific (internal citations omitted). For further details, *see* Sierra Pacific Rebuttal Brief at 15-16.

> {Commerce's} determination that Nova Scotia private stumpage prices are a suitable tier-one benchmark for stumpage in Alberta is reasonable and supported by substantial evidence. The Canadian Parties' contrary arguments are without merit. The Canadian Parties argue that differences in "prevailing market conditions" render Nova Scotia private stumpage prices not comparable to stumpage in Alberta. However, {Commerce} has previously addressed and rejected very similar arguments in prior segments of this proceeding, as well as in administrative reviews of the previous countervailing duty order on softwood lumber from Canada, and there is no record evidence that compels a different conclusion in this review. Section 771(5)(E)(iv) of the Act requires {Commerce} to take into consideration prevailing market conditions in the country as a whole, not just those at a provincial or local level; it does not mandate use of "in region" tier-one benchmarks; and it does not require perfect comparability in the construction of subsidy benchmarks. Moreover, the factors identified by the Canadian Parties do not render timber grown in Nova Scotia so incomparable to timber grown in Alberta that Nova Scotia prices cannot serve as a tier-one benchmark for Alberta stumpage.

Commerce's Position: The Canadian Parties raised the same arguments in the prior review regarding timber classification and comparisons, which we continue to reject.[203] 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,[204] 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 *2021-2022 Private Market Survey*, to certain sawable Crown-origin standing timber grades in Alberta that the respondents purchased during the POR.[205]

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."[206] The *2021-2022*

[203] *See Lumber V AR4 Final* IDM at Comment 25.
[204] *Id.* at Comment 40.
[205] We use the term "sawable" to refer to timber that is suitable for use by sawmills to make lumber products.
[206] *See* GOA Stumpage IQR Response at Exhibit AB-AR4-S-18 at 28.

Private Market Survey followed the NSDNRR's product definitions, in which softwood sawable timber is categorized into sawlogs (generally larger-diameter, higher quality logs used as structural lumber, flooring, and furniture) and studwood (generally logs between 9 and 30 cm in diameter that are suitable for sawing into an eight to ten-foot studs).[207]

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 reviews, 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.[208] Accordingly, we have utilized a benchmark that is similarly comprised of prices charged for sawable standing timber in Nova Scotia.[209] 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,[210] 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.[211]

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 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 in Nova Scotia. The *2021-2022 Private Market Survey* contains prices for harvested, standing timber categorized as sawlogs and studwood, which the record makes clear are sawable timber.[212] Thus, we have utilized the sawlog and studwood standing timber prices contained in the *2021-2022 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.[213] Thus, consistent with the prior

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[207] *See* GNS Stumpage IQR Response at 17.
[208] *See* Initial Questionnaire at Questionnaire for Producers/Exporters of Subject Merchandise at Table 1.
[209] *See, e.g.*, Canfor Preliminary Calculation Memorandum; *see also* GNS Stumpage IQR Response at Exhibits 5, 6, and 16.
[210] *See Lumber V AR4 Final* IDM at Comment 32.
[211] *See* GNS Stumpage IQR Response at Exhibit 6 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.
[212] *Id*. at Exhibit NS-6 and Exhibit NS-9 at Appendix 1.
[213] *Id*. at Exhibit NS-7.

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.[214]

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."[215] Based on this information, we find purchases of standing timber graded as 01 and purchased by Canfor, Tolko, and West Fraser 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.[216] The smaller-size grades are included in the volume of the sawable timber volume purchased by Canfor, Tolko, and West Fraser during the POR, as indicated by the sawmill data templates they submitted as part of their respective questionnaire responses.[217] 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, Tolko, 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 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.[218] Thus, for Alberta, we obtained the volume and value of Crown-origin standing timber delivered to the sawmills of Canfor, Tolko, and West Fraser.[219] 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

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[214] *See Lumber V AR4 Final* IDM at Comment 25.
[215] *See* GOA Stumpage IQR Response at 192.
[216] *Id*. at Exhibit AB-AR5-S-18 at 17.
[217] *See* Canfor, Tolko, and West Fraser Preliminary Calculation Memoranda, which indicate the volume and value of Crown-origin standing timber purchased by their respective sawmills.
[218] *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.
[219] *See* Canfor, Tolko, and West Fraser Preliminary Calculation Memoranda.

studwood prices contained in the *2021-2022 Private Market Survey* reflect log segments of trees and not stumpage fees charged for standing timber; and (3) the survey's prices are, thus, incomparable to the "whole-tree" price categories charged by the GOA. As explained elsewhere in Comments 26 and 30, 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.[220]

Moreover, the *2021-2022 Private Market Survey* (as well as the prior 20*17-2018 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).[221] 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").[222] Additionally, Commerce explained in *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.[223] Thus, we disagree that the *2021-2022 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.

Comment 12: Whether Nova Scotia's Forest Is Comparable to Alberta's Forest

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 28-29, 32-37, and 57-61.

> Extensive record evidence demonstrates significant differences in the timber characteristics and market conditions underlying private stumpage transactions in Nova Scotia as compared to those underlying the respondents' purchases of Crown stumpage in Alberta. Nova Scotia's market conditions for standing timber, as well as the standing timber itself, differ from those in Alberta with respect to: {c}limate, soil, and other growing conditions reflective of Nova Scotia's unique Acadian forest region and Atlantic Maritime ecozone, as well as the province's unique geography, which result in a different mix of species and larger, more valuable standing timber than the standing timber in other provinces. The effect of these

[220] *See* Petitioner Comments on IQR Responses, Vol. I-43 at Exhibit 4 at paragraph 5.
[221] *See Lumber V AR4 Final* IDM at Comment 25; *see also* GNS Stumpage IQR at Exhibits NS-7 and NS-16.
[222] *See* GNS Stumpage IQR at Exhibit NS-7 at 8.
[223] *See Lumber V AR3 Final* IDM at 198-199.

> differences is compounded by the different utilization standards and product classifications that are a condition of the Nova Scotia market.

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.A at 50-51 and 55-57.

> {A}s demonstrated in detail in both the Canadian Parties' joint case brief and this Alberta-specific case brief, significant differences in both prevailing market conditions and timber comparability between Alberta and Nova Scotia disqualify Nova Scotia as a tier-one benchmark for Alberta Crown timber. These include differences in species mix, tree size, conversion factors, harvesting costs, hauling costs, and finished lumber shipping costs, as well as differences in the market structure in the two provinces.

Sierra Pacific Rebuttal Comments

The following is a verbatim summary of the argument submitted by Sierra Pacific (internal citations omitted). For further details, *see* Sierra Pacific Rebuttal Brief at 12-15.

> {Commerce's} determination that Nova Scotia private stumpage prices are a suitable tier-one benchmark for stumpage in Alberta is reasonable and supported by substantial evidence. The Canadian Parties' contrary arguments are without merit. The Canadian Parties argue that differences in "prevailing market conditions" render Nova Scotia private stumpage prices not comparable to stumpage in Alberta. However, {Commerce} has previously addressed and rejected very similar arguments in prior segments of this proceeding, as well as in administrative reviews of the previous countervailing duty order on softwood lumber from Canada, and there is no record evidence that compels a different conclusion in this review. Section 771(5)(E)(iv) of the Act requires {Commerce} to take into consideration prevailing market conditions in the country as a whole, not just those at a provincial or local level; it does not mandate use of "in region" tier-one benchmarks; and it does not require perfect comparability in the construction of subsidy benchmarks. Moreover, the factors identified by the Canadian Parties do not render timber grown in Nova Scotia so incomparable to timber grown in Alberta that Nova Scotia prices cannot serve as a tier-one benchmark for Alberta stumpage.

Commerce's Position: Consistent with prior proceedings, and specifically *Lumber V AR4 Final*,[224] 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

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[224] *See Lumber V AR4 Final* IDM at Comment 29.

elements when assessing whether prices for private-origin standing timber in Nova Scotia are comparable to Crown-origin standing timber in Alberta.[225] 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. Since the underlying investigation, we have consistently found that while there are minor variations in the relative concentration of individual species between Nova Scotia and Alberta, the standing timber that is harvested from the Acadian forest and the Boreal forest is similar and covers the same core species group (*i.e.*, SPF).[226] As discussed in this memorandum, record information in this review continues to demonstrate 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.[227] 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.

Comment 13: Whether TDA Survey Prices Are an Appropriate Benchmark for Alberta Crown-Origin Stumpage

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief IV.A at 32-39 and 46-48.

> In this review, the Government of Alberta placed on the record survey data capturing actual market-based transactions from which {Commerce} can readily derive a tier-one benchmark for the stumpage price paid by Alberta Respondents for Alberta Crown standing timber. The survey, which is conducted in the normal course of business by private parties for the precise purpose of valuing standing timber in Alberta, contains price data for arm's-length log sales between such private parties operating within Alberta's large and robust log market. To derive such a benchmark for Alberta Crown stumpage prices, {Commerce} need only deduct certain costs from the survey's log prices to arrive at the implied value of Alberta stumpage.
>
> Unlike other benchmark information on the record, including the Nova Scotia private woodlot price data, the transaction prices in the survey data reflect the prevailing market conditions in Alberta that impact the value of standing timber there. Specifically, the survey data reflect the sizes and species of timber actually harvested in Alberta. In addition, the transactions captured are measured using the same scaling system, conversion factors, and measurement units as the Alberta harvest profile, ensuring accurate comparisons between prices. Nevertheless,

[225] *See* Comments 9 and 10, *supra*.
[226] *See Lumber V INV Final* IDM at Comment 40.
[227] *See* Comments 9 and 10, *supra*.

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> {Commerce's} preliminary finding improperly failed to consider Alberta's proposed benchmark based on these log prices due to its unfounded -- and irrelevant -- conclusion that Alberta's stumpage market is distorted.
>
> As a threshold matter, {Commerce's} preliminary finding as to the Alberta stumpage market has no bearing on the use of the survey data's log prices as a tier-one benchmark. The GOA did not place the survey data on the record to propose that {Commerce} use the small number of private stumpage prices contained in the survey as the basis for an Alberta benchmark. Rather, the GOA did so because {Commerce} should utilize the survey's log transaction prices to derive a market-determined stumpage price.
>
> In its Final Results, {Commerce} should rely on the robust price data for private-to-private arm's-length log transactions to derive a proper benchmark for Alberta Crown stumpage prices. As noted above, {Commerce} need only deduct harvest, loading, and haul costs, plus imputed profit from the weighted-average survey log prices to arrive at the implied value of Alberta stumpage. As detailed below, the GOA provided in its questionnaire response all of the necessary data for {Commerce} to make these calculation, which provide the only proposed benchmark that reflects prevailing market conditions in Alberta, as the statute and regulations require.

Tolko Case Brief

The following is a verbatim summary of the argument submitted by Tolko (internal citations omitted). For further details, *see* Tolko Case Brief at 11-12.

> {Commerce} should also revise its Alberta stumpage methodology and calculations in the Final Results for the reasons stated in the GOA and ASLTC brief, which Tolko adopts and incorporates here by reference. Most importantly, {Commerce} should revise its Alberta stumpage calculations to use an in-province benchmark based on the {TDA} Survey.

West Fraser Case Brief

West Fraser adopts and incorporates by reference the arguments included in the case brief filed on behalf of the GOA and the Alberta Softwood Lumber Trade Council. For further details, *see* West Fraser Case Brief at 14.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 93-97.

> The Canadian Parties raised nearly identical arguments in this review as they did in the fourth administrative review which {Commerce} rejected. {Commerce} should continue to reject the Canadian Parties' arguments.
>
> First, a tier-one benchmark must be an in-country, market-determined price "for the good or service . . . in question." The Canadian Parties argue that the log purchase transactions contained in the TDA Survey data are the most appropriate tier-one benchmark on the record to measure the benefits conferred through the GOA's provision of stumpage. However, stumpage is the good in question, and logs are not stumpage. Accordingly, log prices cannot serve as a tier-one benchmark for the provision of stumpage.
>
> Second, the private standing timber prices contained in the TDA survey are not suitable as a tier-one benchmark for two reasons. First, the volume of standing timber examined represents just 1.145 percent of private transactions and 0.105 percent of the total harvested timber in Alberta during the POR. Such a small sample does not constitute a broad market average and cannot be used to benchmark the Alberta stumpage system. Second, the prices for private standing timber in Alberta are not market-determined because of the distortion of prices for Crown timber.
>
> Third, the TDA survey log prices are inadequate to serve as a tier-three benchmark. {Commerce} made clear that log prices are a tier-three benchmark for measuring the adequacy of remuneration for stumpage because they concern a different good.

Commerce's Position: The GOA and West Fraser repeat arguments from prior segments of this proceeding and argue that Commerce should adopt an Alberta log benchmark calculated based on a residual value methodology using log prices from the TDA survey.[228] However, TDA prices cannot be used for Alberta stumpage because, under the benchmark hierarchy established by 19 CFR 351.511(a)(2), our first preference for determining the adequacy of remuneration is to compare the government price to a market-determined price "for the good or service resulting from actual transactions in the country in question." The good at issue in this review is stumpage. The TDA survey prices that the GOA and West Fraser propose using as a benchmark are, by their own recognition, primarily for a different product, *i.e.*, harvested logs, that is downstream from standing timber. As such, the TDA prices are not a tier-one benchmark "for the good or service." Furthermore, the small amount of standing timber prices contained in the TDA survey are distorted, as discussed in Comment 7, 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 26 through 30, 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).

[228] *See* GOA Case Brief Vol. IV.A at 32-39 and West Fraser Case Brief at 14; *see also Lumber V AR4 Final* IDM at Comment 10; *Lumber V AR3 Final* IDM at Comment 11; *Lumber V AR2 Final* IDM at Comment 12; *Lumber V AR1 Final* IDM at Comment 13; and *Lumber V INV Final* IDM at Comment 16.

Comment 14: Whether Commerce Should Annualize Alberta Stumpage Purchase and Benchmark Prices

Petitioner Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Case Brief at 18-24.

> {Commerce} should conduct a month-to-month comparison of Alberta stumpage prices and benchmark prices in the final results rather than an annual average comparison. Though this annualized methodology has been {Commerce's} practice since the investigation, the record of this review warrants a change in practice. Specifically, because the 2022 POR saw highly volatile stumpage rates in Alberta, ranging from $2.21 to $146.10 per m3, averaging out the full year's stumpage prices for a given species/grade combination offsets the respondents' low stumpage payments with their high ones. {Commerce's} practice is clear that it will not include negative benefits in a subsidy rate calculation: "{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." Yet, Attachments 1-3 to Petitioner's case brief demonstrate that negative benefits are included in {Commerce's} preliminary calculations. Accordingly, {Commerce's} methodology here is inconsistent with its past practice and the statute, and must be corrected in the final results. Moreover, {Commerce's} reasoning for using the annualized methodology is not a sufficient basis in this review for departing from its practice. Because the Alberta timber year runs from May through April, an annual average of stumpage prices will include adjustments attributable to 2021 purchases and will omit adjustments for 2022 purchases that occurred in first quarter 2023 billing. Accordingly, an annualized methodology is not sufficiently more accurate than a monthly comparison to warrant the inclusion of negative benefits in this review. {Commerce} should therefore compare the respondents' purchases of Alberta stumpage by grade and species on a monthly basis with the relevant monthly average prices contained in the {*2021-2022 Private Market Survey*} for the final results.

Canadian Parties Joint Rebuttal Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Rebuttal Brief Vol. I at 6-9.

> {The petitioner} argues that {Commerce} should apply monthly Nova Scotia benchmarks to purchases of Alberta Crown standing timber. However, to the extent that {Commerce} seeks to rely on Nova Scotia prices as a tier-one benchmark—*i.e.*, "a market-determined price for the good . . . resulting from actual transactions"—the record contains no evidence of any purchaser or seller of standing timber relying on monthly prices derived from the {*2021-2022 Private*

> *Market Survey*}. Instead, the {GNS}, which is the only entity that uses the {*2021-2022 Private Market Survey*} in the ordinary course of its business, relies on the annual—not monthly—prices derived from the Survey. {Commerce} has consistently sought to ground its reliance on its Nova Scotia benchmarks on the fact that the GNS relies on them and has thus adhered to the GNS's methodological choices. Relying on monthly Nova Scotia prices that the GNS does not itself rely on would further untether {Commerce's} Nova Scotia benchmarks from reality.

GOA Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* Canadian Parties Joint Rebuttal Brief Vol. II at 3-10.

> Since the underlying investigation, {Commerce} has consistently conducted its LTAR analysis of respondents' Alberta Crown stumpage purchases on an annualized basis. In each prior segment of this proceeding, {Commerce} compared respondents' annual average purchase prices for their Alberta Crown stumpage purchases to the annual average Nova Scotia benchmark price. {Commerce's} annualized methodology accounts for both the rolling, cumulative adjustments recorded in the {GOA's} billing system that apply retroactively as loads of logs are sampled and scaled and reflects the use of the benchmark prices by the {GNS} to calculate its own annual average stumpage price. Pursuant to the GOA's mass scaling program, new sample scale data result in updates to weight-to-volume conversion ratios and changes to the distribution of harvest volume across species, condition, and product code combinations for the given month and all prior applicable volume over the course of a timber year. As a result, both negative and positive adjustments related to changes to prior period volumes are reflected on each monthly stumpage invoice. Accordingly, any given monthly (or quarterly) invoice will not capture the actual species-specific volumes and values purchased in that month (or quarter).
>
> The record of this review demonstrates that GOA's timber billing system has not changed from that in prior segments and continues to operate with rolling, cumulative adjustments to update weight-to-volume ratios and species and update condition and product code distributions applied to prior months or quarters. Thus, in its *Preliminary Results* (as in each of the prior segments), {Commerce} has correctly concluded that aggregating the respondents' POR purchases on an annual basis 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.
>
> Contrary to {the petitioner's} argument, there is no reasonable basis for {Commerce} to change its methodology, nor do certain "conditions" present during the POR justify a departure from the agency's consistent past practice. {Commerce's} annualized methodology continues to be the best approach, as a monthly comparison would introduce the distortions and inaccuracies {Commerce}

> has sought to avoid. Further, because the Nova Scotia benchmark on which {Commerce} relies is used only for annual stumpage price setting, it is only appropriate for a comparison to Alberta's annual average stumpage price. Thus, to the extent that {Commerce} continues to use a Nova Scotia benchmark in its LTAR benefit analysis for the respondents' purchases of Alberta Crown-origin standing timber, it should continue to use annualized purchase data for this analysis.

Commerce's Position: We continue to find, as in prior proceedings, that it is appropriate to compare Canfor, Tolko, and West Fraser's aggregated POR purchases of Alberta Crown timber to an annualized benchmark price. 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 *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.[229]

While Commerce went on to state that it would continue to examine the GOA's invoicing system,[230] no adjustments to the annualized approach were made in *Lumber V Final*. Commerce then applied this approached in four successive administrative reviews.[231] In this review, the petitioner argues 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.[232] 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.[233] 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

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[229] *See Lumber V Prelim* PDM at 56-57, unchanged in *Lumber V Final*.
[230] *Id.*
[231] *See Lumber V AR1 Prelim* PDM at 36, unchanged in *Lumber V AR1 Final*; *see also Lumber V AR2 Prelim* PDM at 40, unchanged in *Lumber V AR2 Final*; *Lumber V AR3 Prelim* PDM at 44 (unchanged in *Lumber V AR3 Final*); and *Lumber V AR4 Prelim* PDM at 30-31 and 35, unchanged in *Lumber V AR4 Final*.
[232] *See* Petitioner Case Brief at 18-24.
[233] *Id.* at 19-20.

the greater specificity Commerce usually prefers.[234] Specifically, the petitioner explains that the POR is CY 2022, while the GOA's timber years span May to April. Thus, the petitioner notes, GOA invoices from January through April 2022 will contain adjustments pertaining to CY 2021, while GOA invoices for May through December 2022 are not finalized until the issuance of April 2023 invoices.

We do not find this argument persuasive. While the petitioner is 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 the prior 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.[235] 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 positive benefits being offset by "negative benefits" from other transactions, thus creating "an unlawful distortion of the benefit analysis."[236] 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 *Lumber V Prelim.*[237] Rather, the petitioner's underlying complaint is that the sheer magnitude of the price fluctuations during the POR distorts the annualized comparison.[238]

However, the petitioner fails 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.

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[234] *Id.*
[235] *See Lumber V AR4 Final* IDM at Comment 8.
[236] *Id.* at 24.
[237] *See Lumber V AR1 Prelim* PDM at 36, unchanged in *Lumber V AR1 Final*; *see also Lumber V AR2 Prelim* PDM at 40, unchanged in *Lumber V AR2 Final*; *Lumber V AR3 Prelim* PDM at 44 (unchanged in *Lumber V AR3 Final*); and *Lumber V AR4 Prelim* PDM at 30-31 and 35, unchanged in *Lumber V AR4 Final*.
[238] *See* Petitioner Case Brief at 21-23.

Comment 15: Whether to Adjust the Nova Scotia Benchmark to Account for Beetle-Damaged and Fire-Damaged Timber Harvested in Alberta

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.A at 88-91.

> {Commerce} must also adjust the Nova Scotia benchmark to account for higher costs and lower value of beetle-killed and fire-killed logs, which are reported in the Alberta Respondents' purchases but do not affect and are not reflected in the Nova Scotia benchmark prices.

Canfor Case Brief

The following is a verbatim summary of the argument submitted by Canfor (internal citations omitted). For further details, *see* Canfor Case Brief at 11-17.

> {T}o the extent {Commerce} continues to use Nova Scotia prices as the stumpage benchmark for Alberta, it must make certain adjustments to get a true apples-to-apples comparison. The various adjustments that need to be made our discussed extensively in the GOA and ASLTC case brief and are incorporated herein by reference. However, Canfor discusses two of the needed adjustments here.
>
> The first of these adjustments relates to {MPB} infested timber in Alberta. In the Preliminary Results, {Commerce} compared Canfor's purchases of beetle-killed wood in Alberta to an unadjusted Nova Scotia benchmark for sawlogs/studwood. Yet record evidence demonstrates that there is an MPB infestation in Alberta, which does not exist in Nova Scotia. Timber infested with the MPB is lower value than sawlogs/studwood. {Commerce} must account for this prevailing market condition by adjusting the Nova Scotia benchmark when comparing beetle-killed timber in Alberta to the Nova Scotia stumpage price.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 128-133.

> {Commerce} has repeatedly rejected the Alberta Parties' arguments with respect to adjusting the Nova Scotia benchmark for purchases of beetle-killed and fire-killed timber. The respondents have never supported their contentions regarding value differences for either condition as compared to Nova Scotia timber, and {Commerce's} analysis in prior reviews remains applicable here. Specifically, the GOA has not quantified or otherwise explained why fire-killed timber cannot be represented by pricing for sawlogs and studwood if the respondents' purchases of fire-killed timber are graded pursuant to a similar range of quality and

> characteristics. Instead, the record continues to support {Commerce's} prior analysis concerning pricing. Similarly, the Alberta Parties continue to rely on inapplicable record information concerning the valuation of beetle-killed timber in British Columbia to justify a downward adjustment of the Nova Scotia benchmark by 75 to 90 percent. {Commerce} has repeatedly explained why studies and pricing from BC and the U.S. PNW are irrelevant for evaluating purported price distinctions between Alberta and Nova Scotia. Nothing on the record contravenes that analysis, and the respondents have failed to provide any new information that requires reconsideration of {Commerce's} prior conclusions.

Commerce's Position: We disagree with Canfor and the GOA that Commerce must reduce the Nova Scotia benchmark prices downward by 75 to 90 percent to account for the lower value and higher costs associated with harvesting MPB-damaged timber and fire-damaged timber harvested in Alberta.

As explained in Comment 11, we find that the fire-damaged timber that was acquired by respondents in Alberta during the POR was graded as 01, and thus corresponds to sawlog grade timber. Record information indicates that the fire-damaged timber graded as 01 was delivered to the respondents' sawmills during the POR, thereby indicating that grade 01 timber was sawn into lumber.[239] 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 *2021-2022 Private Market Survey*. In *Lumber V AR5 Prelim*, we compared respondents' purchases of fire-killed, Crown-origin timber in Alberta to the sawlog prices in the *2021-2022 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.[240] 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, which is consistent with our approach in the prior review.[241] Moreover, we find that the record does not contain any additional adequate information indicating that an adjustment for fire-damaged timber is necessary.

Similarly, with regard to Canfor's and the GOA's arguments that Commerce should apply a downward adjustment to the Nova Scotia benchmark to account for the reduced value of MPB-damaged timber in Alberta, we note that MPB-damaged timber that meets the size criteria for sawlogs is coded as grade 01.[242] As such, because the MPB-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, which is consistent with our approach in the prior review.[243] In addition, we find that the record does not

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[239] *See* Canfor and West Fraser Final Calculation Memoranda.
[240] *See, e.g.*, Canfor IQR Response at Exhibit Stump-A-1; *see also* Canfor Preliminary Calculation Memorandum at Attachment II, worksheet "Table 1_Calc."
[241] *See Lumber V AR4 Final* IDM at Comment 28.
[242] *See* GOA Stumpage IQR Response at Exhibit AB-AR5-S-15 (TMR Section 81(1)-(6)); *see also* Canfor Stumpage IQR Response at S-5.
[243] *See Lumber V AR4 Final* IDM at Comment 28.

contain sufficient information for us to analyze whether an adjustment for MPB-damaged timber is appropriate.

Comment 16: 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

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 28-29, 61-64, and 87-91.

> Although {Commerce} should reject the use of Nova Scotia private standing timber prices as benchmarks for Alberta Crown standing timber, in the event that {Commerce} continues to use Nova Scotia benchmarks, it must at the very least take steps to account for the various factors that affect the comparability of provincial markets and adjust the benchmarks to control for the significant differences in prevailing market conditions between provinces. {Commerce} has extensive evidence on the record of this review that permits, and indeed requires, adjustments to the Nova Scotia benchmarks to address many of these differences. {Commerce} has information that allows it to adjust the Nova Scotia benchmarks to account for quantifiable differences in products, species, conversion factors, and hauling costs.

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.A at 86-88.

> {A}s demonstrated in detail in both the Canadian Parties' joint case brief and this Alberta-specific case brief, significant differences in both prevailing market conditions and timber comparability between Alberta and Nova Scotia disqualify Nova Scotia as a tier-one benchmark for Alberta Crown timber. These include differences in species mix, tree size, conversion factors, harvesting costs, hauling costs, and finished lumber shipping costs, as well as differences in the market structure in the two provinces.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 124-127.

> {Commerce} should reject the Canadian Parties' arguments refuting the comparability of timber markets with regard to hauling and transport costs in Alberta and Nova Scotia. {Commerce} has repeatedly rejected the same arguments

> and evidence presented by the Canadian Parties in prior reviews, and they have placed no evidence on the record in this review which would compel {Commerce} to revisit its practice. The evidence relied upon by the Canadian Parties suffers from serious flaws and should be rejected. {Commerce} should additionally reject the Canadian Parties' argument citing a WTO decision regarding these costs, as this decision has no legal force under U.S. law.

Sierra Pacific Rebuttal Comments

The following is a verbatim summary of the argument submitted by Sierra Pacific (internal citations omitted). For further details, *see* Sierra Pacific Rebuttal Brief at 15-19.

> {Commerce's} determination that Nova Scotia private stumpage prices are a suitable tier-one benchmark for stumpage in Alberta is reasonable and supported by substantial evidence. The Canadian Parties' contrary arguments are without merit. The Canadian Parties argue that differences in "prevailing market conditions" render Nova Scotia private stumpage prices not comparable to stumpage in Alberta. However, {Commerce} has previously addressed and rejected very similar arguments in prior segments of this proceeding, as well as in administrative reviews of the previous countervailing duty order on softwood lumber from Canada, and there is no record evidence that compels a different conclusion in this review. Section 771(5)(E)(iv) of the Act requires {Commerce} to take into consideration prevailing market conditions in the country as a whole, not just those at a provincial or local level; it does not mandate use of "in region" tier-one benchmarks; and it does not require perfect comparability in the construction of subsidy benchmarks. Moreover, the factors identified by the Canadian Parties do not render timber grown in Nova Scotia so incomparable to timber grown in Alberta that Nova Scotia prices cannot serve as a tier-one benchmark for Alberta stumpage.

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.[244] 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 *2021-2022 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.[245] Consistent with the prior review, we find log haulage costs are not part of stumpage prices but are, instead, related costs.[246] 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

[244] *See Lumber V AR4 Final* IDM at Comment 27.
[245] *See* GNS Stumpage IQR Response at NS-7 at 6, which contains the GNS verification report from the investigation in which Commerce verifiers confirmed that the prices in the *2015-2016 Private Market Survey* only reflected standing timber prices. The 2021-2022 Private Market Survey was conducted in a similar manner.
[246] *See, e.g.*, *Lumber V AR4 Final* IDM at Comment 27.

the stumpage price. Accordingly, we have excluded all the related expenses that are not the stumpage price paid. Likewise, we similarly find that 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 *2021-2022 Private Market Survey*. 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.[247] As the IFS report contains business proprietary information, *see* the Nova Scotia Benchmark Final Memorandum for further discussion.

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.[248]

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.[249] 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.[250] 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.[251] 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.[252]

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[247] *Id.* at Comment 27.
[248] *See* MNP Cross Border Report, Volume II at paragraph 5.2.1, Table II-22 and footnote 145.
[249] *Id.* at paragraph 5.2.1.
[250] *See* MNP Cross Border Report, Volume II at paragraph 5.2.1.
[251] *See* FP Innovations Report at 3 and 38.
[252] *See* MNP Cross Border Report, Volume II at paragraph 5.2.1 at footnote 141, which contains the HC Haynes "trucking formula."

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 sawmills in Nova Scotia from all three regions of the province.[253] 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).[254]

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.[255] 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.[256]

Comment 17: Whether Commerce Should Make Adjustments to Stumpage Rates Paid by the Respondents to Account for "Total Remuneration" in Alberta and New Brunswick

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 93-112.

> When {Commerce} calculates the benefits allegedly conferred by a program, it is required to account for the entire compensation provided in exchange for the good. In preliminarily assessing the adequacy of remuneration for Alberta's stumpage program, {Commerce} limited its focus to per-unit dues that respondents provided in exchange for Crown standing timber and ignored most of the other required dues,

[253] *See* FP Innovations Report at Figures 15 and 16.
[254] *See* Marshall Report at 9.
[255] *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.
[256] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

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> fees, and obligations. Because {Commerce} ignored those other elements of remuneration provided, it failed to account for the entire compensation provided in exchange for Crown standing timber.

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.A at 11-31.

> In the *Preliminary Results*, {Commerce}significantly understated the stumpage price charged by the GOA by failing to properly account for all remuneration (both cash and in-kind) required by Alberta and provided by Canfor, West Fraser, and Tolko for harvesting standing timber on Crown land. The cash portion of Alberta's stumpage price includes GOA-mandated timber dues, which consist of two components: Crown Timber Dues and {FRIAA} Dues. When the Alberta Respondents harvest Crown timber, they must pay both components. The in-kind remuneration includes the cost of providing in-kind goods and services mandated by the {GOA}, including reforestation and road building and maintenance. The {GOA} imposes all of these cash and in-kind payments as a condition of harvesting Alberta Crown standing timber; together, they comprise the remuneration the Alberta Respondents provided to the {GOA} in exchange for that timber.
>
> {Commerce} continues to erroneously exclude certain cash payments and the in-kind remuneration that the Respondents are required to provide in exchange for Crown standing timber. In addition to the cash portion, GOA imposes in-kind obligations like reforestation, silviculture, road-building and maintenance, and forest planning. As {the GOA} explained in its IQR, if it had incurred the costs for these activities that it instead shifts to private parties including the Alberta Respondents, then the timber dues component of its stumpage charges would have been significantly higher as the {GOA} would have sought to recover those costs.
>
> {Commerce} cannot avoid accounting for in-kind remuneration by attributing it to the Alberta Respondents' "long-term tenure rights." Instead, it must properly account for all remuneration the Alberta Respondents provided in exchange for the Crown timber harvested. The distinction {Commerce} has sought to draw between stumpage and "long term tenure rights" is arbitrary. The Alberta Respondents receive no goods or services from their tenure holdings other than the standing timber they harvest. {Commerce} has acknowledged this reality repeatedly, including in the *Preliminary Results*. Neither the evidence on the record in this review nor {Commerce's} own analysis provide justification for excluding from the benefit calculation the in-kind remuneration the Alberta Respondents provide to the {GOA} for that standing timber.

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Tolko Case Brief

The following is a verbatim summary of the argument submitted by Tolko (internal citations omitted). For further details, *see* Tolko Case Brief at 12.

> {Commerce} should also revise its Alberta stumpage methodology and calculations in the Final Results for the reasons stated in the GOA and ASLTC brief, which Tolko adopts and incorporates here by reference. {S}hould {Commerce} continue to use a Nova Scotia benchmark, {Commerce} must make certain revisions to its calculations, including accounting for all costs incurred by the mandatory respondents.

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser (internal citations omitted). For further details, *see* West Fraser Case Brief at 11-13.

> West Fraser adopts and incorporates by reference the arguments included in the case brief filed on behalf of the {GOA} and the {ASLTC}. {There are} several specific methodological errors relating to {Commerce's} benefit calculations for standing timber in Alberta in the *Preliminary Results* that should be adjusted for the *Final Results*. Specifically, {Commerce} should account for the full remuneration paid by West Fraser to the {GOA} for the right to access standing timber.

Canfor Case Brief

The following is a verbatim summary of the argument submitted by Canfor (internal citations omitted). For further details, *see* Canfor Case Brief at 17-18.

> {T}o the extent {Commerce} continues to use Nova Scotia prices as the stumpage benchmark for Alberta, it must make certain adjustments to get a true apples-to-apples comparison. The various adjustments that need to be made {are} discussed extensively in the GOA and ASLTC case brief and are incorporated herein by reference … {Commerce} should account for certain costs incurred by Canfor as part of its tenure obligations in Alberta by including them in the stumpage price. More specifically, {Commerce} must add to the Alberta stumpage price the reforestation costs, holding and protection charges, road construction costs, and other tenure obligation costs that are part of the prevailing market conditions in Alberta and are incurred by Canfor as a condition of accessing crown timber. These costs are part of the full remuneration paid for stumpage in Alberta but were excluded from the Alberta stumpage price by {Commerce} even though they are included in the Nova Scotia stumpage price.

Tolko Case Brief

The following is a verbatim summary of the argument submitted by Tolko (internal citations omitted). For further details, *see* Tolko Case Brief at 10-11.

> … should {Commerce} continue to use a Nova Scotia benchmark, {Commerce} must make certain revisions to its calculations, including accounting for all costs incurred by the mandatory respondents.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 134-146.

> The GOC, GOA, West Fraser, Canfor, and Tolko argue that {Commerce} should include various "in-kind" costs and holding and protection charges in the agency's calculation of the full remuneration the respondents paid for standing timber in Alberta. In the *Preliminary Results*, {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. This 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. The record supports this finding. First, "in-kind" costs are tied to the companies' tenure agreements and compensating for long-term input supply security, which {Commerce} has previously determined, and the respondents recognize in their financial statements, has value. The record demonstrates that unlike Crown stumpage dues which are charged on the same fixed per-m^3 basis regardless of the harvester, forest stewardship responsibilities and costs vary based on the duration of the tenure held. Additionally, contrary to the GOA's assertions, Crown stumpage rates do not directly take into account "in-kind" costs. Rather, the GOA's cost surveys are an element of the "cost base price for timber dues" that determines the upper limit of the lumber price range for the base stumpage price for the following year. This methodology shows that rather than trying to establish a stumpage price that subtracts the costs incurred from the forestry stewardship obligations that the GOA might otherwise have to undertake, the GOA's Crown rate setting methodology is more concerned with making sure that Alberta's lumber companies do not have to sell lumber at a price that is significantly below costs. Second, with regards to holding and protection charges, the rate payable fluctuates based on the type of tenure held, none of which are based on volume of timber harvest, indicating that these charges are related to the tenures themselves, not the purchasing of standing timber. Finally, the record continues to demonstrate that neither "in-kind" costs nor holding and protection charges are billed on the same invoice as stumpage or otherwise incorporated into the stumpage price. Accordingly, {Commerce} should continue {to} reject the Canadian Parties'

> arguments that these costs should be added to the stumpage price paid in Alberta for Crown stumpage.

Sierra Pacific Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Sierra Pacific Rebuttal Brief at 16-19.

> {Commerce's} determination that Nova Scotia private stumpage prices are a suitable tier-one benchmark for stumpage in Alberta is reasonable and supported by substantial evidence. The Canadian Parties' contrary arguments are without merit.

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.[257] As noted elsewhere in this memorandum, we find the private prices in the *2021-2022 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.[258] Further, we have determined, as discussed in other parts of this memorandum, that prices in Nova Scotia are a proper tier-one benchmark.[259] 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.[260] Canfor cites seven 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 "Nova Scotia stumpage prices may include costs associated with silviculture, road maintenance, and fire protection."[261] 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.*,

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[257] *See Lumber V AR1 Final* IDM at Comment 43; *see also Lumber V AR2 Final* IDM at Comment 46; *Lumber V AR3 Final* IDM at Comment 42; and *Lumber V AR4 Final* IDM at Comment 7.
[258] *See* GNS Stumpage IQR Response at Exhibit NS-7 at 6, which contains the GNS Verification Report from the investigation indicating that the 2015-2016 Private Market Survey reflected "pure" stumpage prices for standing timber; *see also* JDIL Stumpage IQR Response at Exhibit STUMP-02.c at Table 3.
[259] *See* Comments 9, 10, 11, 12, and 16, *supra*, and Comment and 30, *infra*.
[260] *See* JDIL Stumpage IQR Response at Exhibit STUMP-03; *see also* West Fraser Stumpage IQR Response at Exhibit WF-AR5-ALBST-6; and Canfor Stumpage IQR Response at STUMP-A-4.
[261] *See* Canfor Case Brief at 17 (citing Canfor Stumpage IQR Response at Exhibit STUMP-A-7).

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.[262]

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.[263] The GOA argues that the "obligation to reforest or to pay for reforestation applies not only to harvesters operating under longer-term FMAs or Timber Quotas, such as the Alberta Respondents, but also to holders of short-term timber dispositions of {five years or less}."[264] However, record evidence demonstrates that these in-kind costs are not uniform across the types and lengths of tenure in Alberta. The MNP Cross Border Report found that in-kind stumpage costs "vary in extent depending on the type of harvesting tenure"[265] While FMA holders and Quota holders are responsible for reforestation activities at their own cost, Commercial Timber Permit, which are harvesting permits that last, on average, three years or less, are required only to remit a reforestation levy to FRIAA rather than performing silviculture themselves.[266] Regardless of the type of tenure, reforestation obligations for Crown tenure holders in Alberta are billed and paid separately from stumpage. 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.[267] As discussed above, the costs associated with long-term tenure rights under an FMA are separate from the stumpage costs charged or, in the case of reforestation levies remitted to FRIAA, are charged on the same invoice as stumpage prices and are part of the total stumpage price charged, rather than incorporated into the stumpage price.[268] In addition, 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 *2021-2022 Private Stumpage Survey*. Consequently, Commerce cannot adjust for such costs without distorting the benchmark. However, consistent with prior reviews,[269] we have determined to include the FRIAA dues that Canfor, Tolko, 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.[270]

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[262] *See Lumber V AR4 Final* IDM at Comment 7.
[263] *Id.*; *see also Lumber V AR1 Final* IDM at Comment 43; *Lumber V AR2 Final* IDM at Comment 46; and *Lumber V AR3 Final* IDM at Comment 7.
[264] *See* GOA Case Brief Vol. IV.A at 22.
[265] *See* MNP Cross Border Report at 103 (internal p. 69).
[266] *See* GOA Stumpage IQR Response at 134-135.
[267] *See Lumber V AR4 Final* IDM at Comment 7.
[268] *See* JDIL Stumpage IQR Response at Exhibit STUMP-03; *see also* West Fraser Stumpage IQR Response at Exhibit WF-AR5-ALBST-6; and Canfor Stumpage IQR Response at STUMP-A-4.
[269] *See Lumber V AR3 Final* IDM at Comment 12.
[270] *See, e.g.*, Tolko Stumpage IQR Response at Exhibit AS-5; West Fraser Stumpage IQR Response at Exhibit WF-AR5-ALBST-6; and Canfor Stumpage IQR Response at STUMP-A-4.

The Canadian Parties argue that it is not appropriate to justify our approach in *Lumber V AR5 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 *Lumber V AR5 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 *Lumber V AR5 Prelim* is consistent with how we conducted the benefit analysis in the underlying investigation as well as the first, second, third, and fourth reviews. In this way, we have treated the respondents in *Lumber V* proceeding consistently.

Lastly, the Canadian Parties cite the *DS 533 Panel Report* as support for its argument that Commerce must consider "all kinds of payments … to properly determine the adequacy of remuneration."[271] 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.[272] 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.[273] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[274]

D. British Columbia Stumpage Issues

Comment 18: Whether Commerce Should Continue to Use WDOR Data for a BC Stumpage Benchmark

[271] *See* GOC Case Brief Vol. I at 97-98 (citing *DS 533 Panel Report* at para. 7.440).
[272] *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.
[273] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[274] *See* SAA at 659.

GBC Case Brief

The following is a verbatim summary of the argument submitted by the GBC (internal citations omitted). For further details, *see* GBC Case Brief Vol. V at 7-25.

> The BC Parties explain why {Commerce} should not use tax values published by WDOR as a benchmark for calculating the alleged stumpage benefit to the BC respondents' operations in British Columbia. Specifically, {Commerce}'s use of U.S. tax values as a benchmark conflicts with decades of prior practice, including express findings by {Commerce} in the *Lumber I*, *Lumber IV*, and the *Lumber V* proceedings that U.S. stumpage values are an unusable benchmark because standing timber is not a good commonly traded across borders, and because using U.S. stumpage values would require difficult and complex adjustments to those values. Indeed, {Commerce} previously determined that the use of a U.S. stumpage benchmark would be "arbitrary and capricious," but it does not offer any explanation in the *Preliminary Results* as to why its earlier conclusion should not apply to the use of a U.S. stumpage benchmark now.
>
> The alleged shortcomings in the Washington Department of Natural Resources…log offer prices cited by {Commerce} do not justify a departure from its prior practice in the current review. Moreover, the record does not provide a basis for {Commerce} to rely on WDOR tax values in its adequacy of remuneration analysis, given that the data provided by {the petitioner} are incomplete and unreliable for this purpose. Finally, {Commerce} ignored the need to make the types of "complex adjustments" that {Commerce} has previously recognized would be required for U.S. stumpage values to be an appropriate benchmark. {Commerce} likewise ignored the adjustments to BC stumpage prices required to ensure that {Commerce} captures the "ultimate price" paid to harvest Crown timber in British Columbia.

Canfor Case Brief

The following is a verbatim summary of the argument submitted by Canfor (internal citations omitted). For further details, *see* Canfor Case Brief at 5-7.

> {Commerce's} abrupt abandonment of its well-established and consistently followed practice of using U.S. logs as the benchmark for determining if stumpage is being provided in British Columbia…for less than adequate remuneration…, in favor of a U.S. stumpage benchmark, is unlawful. {Commerce} originally adopted a U.S. log benchmark precisely because U.S. stumpage is not available to BC respondents and, even if it were, {Commerce} has recognized previously that extensive and complicated adjustments would need to be made to assure accurate comparisons. The existence of so-called "negative" benchmarks that {Commerce} relies upon as justification for this abrupt change is a red herring. There is not a negative benchmark problem, but rather {Commerce's} established methodology results in negative benefits. This is simply a function of the stumpage payments

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> and the high costs incurred in British Columbia during the POR and does not call into question the validity of the benchmark itself. This argument is fully explained in the case brief being filed by the GBC and BCLTC and is adopted and incorporated by reference.

Tolko Case Brief

The following is a verbatim summary of the argument submitted by Tolko (internal citations omitted). For further details, see Tolko Case Brief at 4-5.

> {Commerce} erred in using WDOR data as the benchmark in the BC stumpage benefit calculations. As discussed in this case brief and the case brief submitted by GBC and BCLTC, WDOR data is flawed in multiple respects, and Tolko refers to and incorporates by reference the arguments set forth in the GBC and BCLTC brief on this issue. In addition, {Commerce's} reliance on the WDOR data is particularly flawed with respect to the valuation of cedar, as the so called "negative benchmark" issue associated with the WDNR data does not apply to cedar. Moreover, the WDOR cedar benchmark valuation is aberrational or otherwise flawed, and, at a minimum requires adjustment should {Commerce} continue to use the WDOR data.

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser (internal citations omitted). For further details, *see* West Fraser Case Brief at 6 and 9-11.

> The BC Parties' case brief explains why {Commerce} should revise its preliminary methodology for assessing whether West Fraser received stumpage from the Government of British Columbia…for less than adequate remuneration…. In particular, {Commerce's} Preliminary Results erred in departing from its long-established benchmark for BC stumpage based on Washington Department of National Resources…log prices in favor of a novel benchmark based on Washington Department of Revenue…tables used to value stumpage for tax purposes. As {Commerce's} Preliminary Results concede, however, the two circumstances that {Commerce} has relied upon for decades in rejecting such cross-border comparisons—that is, that "standing timber is not a good that is commonly traded across borders" and "the difficulty and complexity of cross-border stumpage comparisons"—continue to be the case.
>
> In its *Preliminary Results* {Commerce} justified its radical departure from its consistent past practice based on what it characterized as "negative benchmarks in 2021 and 2022 {that} coincide with a period of elevated lumber prices and high operating profits {of} lumber producers." However, as detailed in the BC Parties' case brief and summarized below, (1) {Commerce} mischaracterizes what are in reality negative benefits as "negative benchmarks," and (2) {Commerce} has no

> legal or logical basis to consider lumber producers' pricing or profits in its LTAR analysis.
>
> If {Commerce} continues to use the WDOR value tables generally (as it should not), {Commerce} should not use these for the LTAR calculations for West Fraser's stumpage payments for cedar, since (1) {Commerce's} "negative benchmark" rationale does not apply to these cedar payments, and (2) the WDOR stumpage amounts for cedar are plainly distorted since these amounts are significantly higher than the WDNR log values.

Canadian Producers/Exporters and U.S. Importers Stumpage Case Briefs[275]

The following is a verbatim summary of the argument submitted by Canadian Producers/Exporters and U.S. Importers (internal citations omitted). For further details, *see* the various Canadian Producers/Exporters and U.S. Importers Case Briefs at 3-8.

> In its preliminary determination in *Lumber V AR5*, {Commerce} has abandoned its longstanding, consistent practice to utilize U.S. PNW log prices as the most appropriate benchmark for British Columbia stumpage, and instead has utilized U.S. stumpage data placed on the record by {the petitioner}. The selected benchmark for British Columbia does not meet the regulatory requirements for a tier-three benchmark for the following reasons:
>
> 1. {Commerce} has previously rejected use of U.S. stumpage prices as a benchmark for BC stumpage on the grounds that its use would require complex adjustments. {Commerce} has failed to explain why this issue that precluded use of U.S. stumpages prices in the past is not a barrier to their use in this proceeding, and in particular has failed to address whether specific required adjustments identified by parties to this proceeding have been made.
>
> 2. {Commerce's} observations that the co-incidence of negative benchmarks with a period of high profits "appears illogical" and "suggests" that the WDNR benchmark is not consistent with market principles are not a sufficient or reasonable basis to reject the WDNR benchmark that it has used in all previous reviews.
>
> 3. {Commerce} has failed to consider whether observed negative benchmarks may result from factors that render those benchmarks appropriate and consistent with market principles even during period of high profits, including potential causes {Commerce} itself has previously raised.
>
> Accordingly, WDNR log prices remain the most appropriate tier-three benchmark for British Columbia.

[275] There were multiple parties that filed identical case briefs, *see* Attachment III for detail relating to these identical filings.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 35-46 and 77-80.[276]

> {Commerce} should continue to use the U.S. stumpage data published by the Washington State {DOR} as the benchmark for BC stumpage. The Canadian Parties' reliance on {Commerce's} prior findings in *Lumber I* and *Lumber IV* are misplaced, because "{e}ach proceeding stands on its own."
>
> {Commerce} is obligated to choose the best available information on the record, and its decision to select the DOR U.S. stumpage data over the WDNR U.S. log data is reasonable. First, benchmarks based on stumpage prices represent a more straightforward comparison than those based on a different good. Second, {Commerce} reasonably observed that the negative benchmarks presented under its "derived demand methodology" using the WDNR log data signal that such a methodology is no longer producing estimated prices for standing timber that is consistent with market principles. The rationale underpinning {Commerce's} previous hesitancy in using U.S. stumpage prices is either no longer applicable or never fully developed. The agency is not required to repeat prior mistakes. The Canadian Parties additionally speculate that the DOR data are not reliable. However, these attacks are not substantiated by any record evidence and should be rejected. Additionally, {Commerce} should reject the Canadian Parties' contention that the DOR data must be invalidated because the record does not contain information for certain adjustments they deem necessary. However, "'the burden of creating an adequate record lies with interested parties and not with {the Department}.'" The Canadian Parties failed to fulfill their burden to submit such information, despite given multiple opportunities.
>
> In its preliminary decision memorandum, {Commerce} concluded that based on the "nature and prevalence" of negative benchmarks resulting from the WDNR data, the derived-demand methodology as a whole was "not accurately assessing the relationship between the government price and market principles." This conclusion applies to purchases with negative benchmarks and positive ones (including cedar), because all of these benchmarks were derived using the derived-demand methodology. Because the record demonstrates that the methodology is no longer functioning as anticipated, all resulting benchmarks must be replaced, whether or not they are above zero. In other words, just because a benchmark is above zero does not mean it represents a price that is consistent with market principles. Moreover, the record explains why the cedar stumpage price from DOR is higher than the average WDNR log offer price. First, the WDNR data represent offer prices, which, as the CIT has held, "may be just the starting point in a negotiation that could result in a significantly different final price." Indeed, Dave Richards, the Chief Check Cruiser at the WDNR stated that "{t}here can be a substantial difference between the survey price and what is actually paid by the

[276] This executive summary exceeds 450 words because we have addressed more than one "issue" in this comment.

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> sawmill," and that most timber sales at WDNR auctions "sell for significantly higher" than the minimum bid determined by the offer price sheets. Further, the average offer prices stated in the WDNR tables incorporate very low bids which would likely not result in sales. As Alan Harper of IFG explained, "a particular sawmill may indicate that it is less interested in one or more types of log by offering a lower price for that log. This will indicate to the seller that it should seek other opportunities to sell logs of that type to mills that are interested in that type." Accordingly, this comparison is not a sufficient basis to render actual transaction prices contained in the DOR data unusable. {Commerce} should reject Tolko and West Fraser's alternative benchmarks and continue to use the DOR benchmark in the final results.

Sierra Pacific Rebuttal Brief

The following is a verbatim summary of the argument submitted by Sierra Pacific (internal citations omitted). For further details, see Sierra Pacific Rebuttal Brief at 24-27.

> …{Commerce}properly selected Washington {DOR} stumpage values as a tier-three benchmark for BC stumpage. Contrary to the {GBC} and other British Columbia…respondents' arguments, {Commerce's} selection of the Washington DOR stumpage values was not an unreasoned departure from prior practice. {Commerce} provided a logical explanation for its decision. The evidence shows that continued use of U.S. log prices as a tier-three benchmark for BC stumpage would yield an illogical result of negative benchmarks, despite high U.S. log prices, because of the BC respondents' high "all-in costs" of logging.

Commerce's Position: We disagree with the Canadian respondents that the WDOR tax stumpage valuations should not serve as the benchmark for the British Columbia Provision of Stumpage for LTAR program for these final results. As Commerce described in the *Preliminary Results*, the record indicates that Commerce's previous methodology of deriving estimated stumpage benchmarks starting with tier-three log benchmark prices is not generating benchmark prices that are consistent with market principles during this POR.[277] Since Commerce's methodology is not generating valid stumpage benchmark prices from the log benchmarks on the record, the only viable benchmark data on the record for Commerce to perform a stumpage LTAR comparison in British Columbia are the WDOR tax valuations.

The provision of stumpage provides a benefit within the meaning of section 771(5)(E)(iv) of the Act to the extent that the provincial government sold standing timber for less than adequate remuneration when measured against an appropriate benchmark for stumpage. Under 19 CFR 351.511(a)(2), Commerce sets forth the basis for identifying benchmarks to determine whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) a market-determined price from actual transactions within the country under investigation (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) assessment of whether the government price is consistent with market principles (tier three). This hierarchy reflects a

[277] See *Preliminary Results* PDM at 26-28.

logical preference for achieving the objectives of the statute. In addition, as provided in 19 CFR 351.511(a)(2)(i), we take into consideration product similarity, quantity sold, imported, or auctioned, and other factors affecting comparability.

The most direct means of determining whether the government received adequate remuneration is a comparison with private transactions for a comparable good or service in the investigated country (*i.e.*, using a tier-one benchmark). We base this on an observed market price for a good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country or outside the country (the latter transaction would be in the form of an import). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation. This is because such prices generally would be expected to reflect more closely the commercial environment of the purchaser under investigation.[278]

As Commerce explained at the *Preliminary Results*, there are no valid tier-one benchmarks for British Columbia on the record for this POR,[279] and we continue to find that U.S. stumpage prices cannot serve as a benchmark under tier two of Commerce's hierarchy because standing timber is not a good that is commonly traded across borders.[280] We did not receive arguments regarding these preliminary determinations in the parties' briefing. Accordingly, following our established hierarchy under 19 CFR 351.511(a)(2)(iii), and consistent with the investigation and prior reviews, we continue to find it appropriate to determine the adequacy of remuneration of the GBC's administered stumpage program utilizing a tier-three benchmark (*i.e.*, a benchmark that is consistent with market principles under 19 CFR 351.511(a)(2)(iii)).[281] The record for this POR contains three data sources that could potentially serve as a tier-three benchmark under Commerce's hierarchy: WDNR log offer prices from the POR, Forest2Market log prices from 2020, (both of these sources would need to be used under a derived demand methodology), and WDOR stumpage prices from the POR.

In the prior administrative review, Commerce acknowledged that the presence of, and increase in, "negative benchmark observations" raised concerns as to whether Commerce's long-used derived-demand log benchmark methodology allowed for an appropriate benchmark comparison.[282] At the *Preliminary Results*, Commerce preliminarily determined that "the nature and prevalence of the negative benchmark observations…lead us to conclude that the WDNR derived-demand benchmark as applied to the record of recent reviews is not accurately assessing the relationship between the government price and market principles."[283] Further, we noted that "…the stumpage benchmarks generated by derived demand are not themselves market prices for standing timber, but rather a best estimate of market prices… {w}hen that best estimate leads to results that appear inconsistent with market principles… we find that it is appropriate to

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[278] *See CVD Preamble*, 63 FR at 65377.
[279] *See Preliminary Results* PDM at 20-22 and 26.
[280] *Id.* at 26.
[281] *See Lumber V Final* IDM at Comment 21; *see also Lumber V AR1 Prelim* PDM at 26, unchanged in *Lumber V AR1 Final* IDM at Comment 15; *Lumber V AR2 Prelim* PDM at 29, unchanged in *Lumber V AR2 Final* IDM; and *Lumber V AR3 Prelim* PDM at 31, unchanged in *Lumber V AR3 Final* IDM.
[282] *See Lumber V AR4 Final* IDM at Comment 13.
[283] *See Preliminary Results* PDM at 27.

reconsider our use of it in this segment of the proceeding."[284] Accordingly, we preliminarily determined that the WDOR stumpage tax assessment values were the best tier three benchmark available on the record.[285]

The GBC argues that Commerce should revert to its derived demand methodology using WDNR log prices as the benchmark. The GBC contends that Commerce's preliminary analysis relating to negative benchmarks is based on negative benefits and not negative benchmarks because the WDNR log prices are positive before Commerce adjusts the benchmark to account for the respondents' costs. We do not agree with the GBC's interpretation of Commerce's derived demand methodology. As Commerce originally explained in *Lumber IV AR1 Final,* the result of our derived demand methodology is a "derived market stumpage price":

> It is generally accepted that the market value of timber is derivative of the value of the downstream products. The species of a tree largely determines the downstream products that can be produced from a tree; the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is in turn derived from the demand for the type of lumber produced from these logs.
>
> As a result of the similarity of species between the timber harvested in the U.S. Pacific Northwest and in B.C…., we have selected U.S. Pacific Northwest log prices as the most appropriate benchmark on the record to evaluate whether Crown timber in BC is priced consistent with market principles…{w}e adjusted the benchmark to reflect prevailing market conditions in BC. In summary, the harvesting costs reported by harvesters of Crown and private timber in BC were deducted from market-determined log prices from the U.S. Pacific Northwest to calculate a "derived market stumpage price" to compare with Crown stumpage.[286]

We echoed this interpretation of the derived demand methodology in the *Lumber IV AR2 Final*[287] and, again, at the start of this proceeding, in *Lumber V Final*.[288] As applied throughout this proceeding, Commerce has derived estimated market stumpage benchmark prices by taking U.S. PNW log prices, a downstream good, and then removing certain costs that the Canadian respondents incur in getting standing timber to the mill gate, to estimate a stumpage price for the good in question. The result of this calculation is a derived estimated market stumpage benchmark price, not a benefit. The benefit is only calculated when there is a comparison of that derived stumpage benchmark price to the respondents' purchases of stumpage from the GBC. Commerce's concern is with the number of negative estimated stumpage benchmark prices that it has derived in the POR, before the calculation of a benefit even takes place.

During the POR, Commerce's derived demand stumpage benchmark calculation using WDNR log prices resulted in negative derived benchmark prices for a significant portion of its

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[284] *Id.* at 27-28.
[285] *Id.* at 28.
[286] *See Lumber IV AR1 Final* IDM at 16.
[287] *See Lumber IV AR2 Final* IDM at 12-13.
[288] *See Lumber V Final* IDM at Comment 21.

calculations for each of the BC respondents.[289] Our analysis at the *Preliminary Results* demonstrated that derived demand calculations using the F2M data were also generating a significant number of negative benchmarks for the POR covering calendar year 2020 (the last time the F2M prices were current with the POR of an administrative review).[290] Such negative benchmark prices are inherently illogical, suggesting essentially that the standing timber has no value, or that in some instances a seller would even pay a purchaser to take the standing timber. This implication of the presence of such negative benchmarks is at odds with reality and market principles.

The GBC also notes that Commerce itself has acknowledged that negative benchmarks could be a result of rising costs incurred by the Canadian companies. In *Lumber V AR4 Final*, Commerce responded to an argument from the petitioner that Commerce's derived demand calculation was flawed (and resulting in negative benchmark prices) because the respondents' logging costs were overstated by pointing to the completed verification of the respondents' costs in that review and the broader trends relating to rising logging costs in British Columbia.[291] We went on to state that "the presence of negative line-item benchmarks is not new in this proceeding…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."[292]

We acknowledge here that the inherent nature of Commerce's derived demand methodology could result in certain instances where some derived stumpage prices are aberrational. For example, the starting log benchmark price we have used throughout this proceeding has been a yearly species-specific average price for the interior of Washington state, which we then reduce by the respondents' costs in British Columbia to derive an estimated market stumpage price. Since Commerce's methodology throughout this proceeding has been to calculate a potential benefit for the respondents' stumpage purchases at a species and timbermark-specific level, Commerce has been deriving species-and timbermark specific benchmarks using the respondents' timbermark-specific costs, where available. It is possible that timbermarks where the respondents' costs were aberrational may result in some instances where our derived estimated benchmark price was negative. While this situation is not ideal, due to certain limitations in the data regarding the log benchmark (we have been unable to incorporate any kind of grade-level pricing when deriving our stumpage benchmark because it is not possible to compare the grading system in the WDNR reports to the grading system used in British Columbia) and the variation in the respondents' timbermark-specific costs, some amount of aberrational results is possible. However, the record demonstrates that the sheer number of negative derived benchmarks could not simply be the result of an occasional, or isolated, occurrence of aberrational costs in certain instances. Rather, these negative observations occur in a significant portion of instances during this POR.[293] While there could be a variety of theoretical reasons that this is happening, fundamentally, a methodology for deriving estimated stumpage benchmark prices that results in negative benchmark prices in a significant portion of

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[289] *See* BC Stumpage Analysis Memo.
[290] *Id.*
[291] *See Lumber V AR4 Final* IDM at 66.
[292] *Id.* at 67.
[293] *See* BC Stumpage Analysis Memo.

instances is no longer a methodology generating benchmarks in accordance with market principles. In past reviews, we have not had an alternative to the derived demand methodology due to the benchmarks on the record. As we explained in the previous review, while we acknowledged the rising number of negative derived benchmark prices, the record in that review did not contain a suitable alternative benchmark, so a derived demand stumpage benchmark still represented the best approach available.[294] That is not the case in this instant review, as we have an alternative U.S. PNW stumpage benchmark available.

Furthermore, we note that Commerce's calculations of the negative benchmarks using the derived demand methodology throughout the proceeding and during this POR, in fact, represent a conservative estimate of instances where our methodology was resulting in derived benchmark prices that are not in line with market principles. The percentages we calculated only included instances where the derived benchmark value was below zero (*i.e.*, based on the prevalence of negative benchmarks it is likely that even derived benchmark prices that are above zero are not consistent with market principles), and we also did not incorporate the lower mountain pine beetle benchmark log prices into our analysis. This means that the percentage of derived stumpage prices that are illogical from a market principles perspective is undoubtedly even higher than the percentages Commerce presented at the *Preliminary Results*. Even using Commerce's conservative analysis, the significant portion of derived stumpage benchmark prices was less than zero during the POR. There is no indication on the record that the significant portion of standing timber in British Colombia or in the U.S. PNW is worthless, which is what a negative derived benchmark price implies. Put simply, the derived demand methodology is not deriving estimated stumpage prices that are consistent with market principles, as required under 19 CFR 351.511(a)(2)(iii). For this reason, we continue to find that neither log benchmark source is a viable starting point for deriving a tier-three stumpage benchmark during the POR.

In the *Preliminary Results*, Commerce referenced the respondents' profitability during the POR and the high price of lumber as a rationale to support why negative benchmark prices were illogical. The Canadian parties argue that Commerce's reliance on lumber prices and the respondent's profitability is erroneous as a matter of law. Specifically, the GBC argues that the *CVD Preamble* includes a "prohibition against considering the effects of subsidies."[295] The respondents' focus on these statements is misplaced. Fundamentally, negative benchmark prices remain illogical whether or not the respondents were profitable during the POR. We do, however, disagree with the respondents' contention that high lumber prices are irrelevant. As discussed above, Commerce's derived demand methodology, originally espoused in *Lumber IV*, states that the value of timber is derivative of the downstream products, including that "the demand for logs is in turn derived from the demand for the type of lumber produced from those logs." Theoretically, high lumber prices would likewise indicate that stumpage prices should not be negative. However, it is not necessary for Commerce to defend whether the theory behind this methodology remained true during the POR because, whether lumber prices were high or not, the key point is that a negative benchmark remains illogical. There is not a single piece of evidence on this record that suggests that the value of standing timber in British Columbia during the POR was below zero. There is no record evidence of private parties offering to **pay** mills to harvest their standing timber because it is worthless, but that is essentially what a negative

[294] *See Lumber V AR4 Final* IDM at 66.
[295] *See* GBC Case Brief Vol. V at 13.

derived benchmark value indicates – the standing timber is so worthless that a party cannot sell it, but in fact would need to pay someone to harvest it. This is not reflective of market principles. Thus, based on this record, Commerce cannot use the log data to derive a stumpage benchmark price that would meet the requirements of 19 CFR 351.511(a)(2)(iii).

The GBC argues that Commerce should explain why the concerns it has historically raised about U.S. stumpage benchmarks (in this case the WDOR tax values) are less meaningful in Commerce's estimation than the concerns that Commerce has about the derived stumpage benchmark prices.[296] The GBC makes several arguments as to why, historically, Commerce has found U.S. stumpage values to be unusable as a benchmark for the provision of stumpage for LTAR program in British Columbia.

First, the GBC states that Commerce has not previously used a U.S. stumpage benchmark because "standing timber is not a good commonly traded across borders."[297] However, the Canadian parties ignore the context in which Commerce has previously stated that it could not use U.S. stumpage benchmarks to compare to stumpage in British Columbia. Specifically, Commerce has explained that in the *Lumber IV* prior proceeding a NAFTA panel determined that standing timber is not a good that is commonly traded across borders under "the *tier-two* regulatory hierarchy under 19 CFR 351.511(a)(2)."[298] There, Commerce determined that a U.S. stumpage value could not be a "a world market price {*i.e.*, a tier-two benchmark}. . . that. . . would be available to the purchasers in the country in question" because standing timber is not traded across borders.[299] Indeed, here, Commerce is not suggesting that the U.S. stumpage values be used as a tier-two benchmark. Instead, Commerce is using the U.S. stumpage values as a tier-three benchmark, and thus is measuring the adequacy of remuneration by assessing whether the government price is consistent with market principles. Moreover, Commerce has not stated that a U.S. stumpage benchmark might never be used to value stumpage in British Columbia, albeit not under tier-two of the benchmark hierarchy.

Second, the GBC states that Commerce has previously acknowledged challenges that may be inherent in stumpage value comparisons, including the need for difficult and complex adjustments to those values. In Comment 19, we address such arguments regarding adjustments to the WDOR stumpage benchmark.

Notwithstanding these historical arguments and potential complexities in conducting a cross-border stumpage comparison, Commerce underscores that in this review, the WDOR data is the only remaining viable tier-three benchmark on the record. Because the WDOR tax values (which are prices for stumpage, the good in question) are the only viable tier-three benchmark on the record of this administrative review, it is not possible to weigh the deficiencies of the WDOR tax values against the other benchmarks because the other tier-three benchmarks do not reflect market principles and thus are not valid tier-three stumpage benchmark prices, as explained in detail above. The illogical results of the derived demand methodology render the WDNR benchmarks unusable for benchmark purposes in this segment of the proceeding. We reject the

[296] *Id.* at 11.
[297] *Id.* at 8.
[298] *See Lumber V Prelim* PDM at 48 (emphasis added).
[299] *See* 19 CFR 351.511(a)(2)(ii).

Canadian Parties' premise that the WDOR and WDNR benchmarks must be compared in such a manner given that we have determined the WDNR benchmark is unusable and produces inherently illogical results.

The GBC also contends that WDOR tax valuations are not valid market prices because Commerce had previously determined in the corresponding antidumping proceeding of *Lumber IV* that the value assigned to donated merchandise for tax purposes was not a valid sale price.[300] Antidumping proceedings and the associated analysis of what should be included in the calculation of normal value has no bearing on our analysis of whether a benchmark fulfills the requirements of the CVD regulations under 19 CFR 351.511(a)(2)(iii). While the WDOR does not precisely define how purchase data translates to their valuations, the record is clear that the valuations themselves are based on mandatory reporting of private stumpage purchases over 200 MBF.[301] Thus, the WDOR data represent a valid market price. As we have explained throughout this proceeding, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[302] If other **viable** tier-three benchmarks were present, Commerce would weigh the various usable benchmarks on the record. However, as discussed above, the WDOR tax valuations are the only viable tier-three benchmark on the record of this administrative review.

Tolko and West Fraser argue that even if Commerce uses the WDOR benchmark for the final results, that it should derive a stumpage benchmark using the WDNR log prices for cedar because the derived cedar prices are not negative. West Fraser also contends the WDOR cedar benchmark stumpage prices are unreasonable because the WDOR stumpage price is higher than the WDNR log price on the record. We disagree with these arguments. The record is clear that Commerce's derived demand **methodology** is not deriving valid stumpage benchmark prices. Just because for one particular species in these derived benchmarks are not negative does not mean that the methodology is working, or that those particular prices can be considered adequate. The record supports a finding that the derived demand methodology previously utilized is not functioning properly or resulting in market principles-based benchmark prices during the POR. No matter the reason for this, the record supports finding that the methodology is not viable during the POR. Accordingly, it does not make sense to derive any stumpage benchmark price from a log price using the derived demand methodology during this POR where a viable alternative benchmark exists. There is no evidence on the record that the WDOR cedar price is abnormally high. However, the record is clear that the derived demand methodology using log prices is not generating market prices during this POR.

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[300] *See* GBC Case Brief Vol. V at 15.

[301] *See* Petitioner BC Stumpage Benchmark Submission at Exhibit 5.

[302] *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."

Comment 19: Whether Commerce Should Make Adjustments to the WDOR Data

Petitioner Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Case Brief at 4-6.

> {Commerce} should discontinue the slope adjustment when calculating the benchmark to measure the adequacy of remuneration of the Government of British Columbia's…provision of Crown stumpage. The slope adjustment incorrectly assumes that the U.S. Pacific Northwest…and British Columbia have significantly different prevailing market conditions with respect to slope. This assumption is not supported by substantial evidence. On the contrary, record evidence indicates that "the forests of the U.S. PNW and British Columbia are contiguous, extend across the geopolitical border, and that the same species and growing conditions prevail in the U.S. PNW and British Columbia." As such, the effect slope may have on stumpage prices have already been captured in the Washington Department of Revenue's…stumpage valuations, which are based on actual transaction prices. No further adjustment is necessary or required. The DOR's decision to apply a slope adjustment relates to the agency's policy consideration for tax collection purposes and has no bearing on {Commerce's} benefit analysis here.

GBC Case Brief

The following is a verbatim summary of the argument submitted by the GBC (internal citations omitted). For further details, *see* GBC Case Brief Vol. V at 26-34 and 40-45.

> {T}he BC Parties explain that {Commerce} must at the very least make several adjustments to BC stumpage prices and the WDOR tax values if it continues to rely on such data as the stumpage benchmark in the final results. First, {Commerce} should adjust BC stumpage prices upwards, reflecting costs borne by BC harvesters of Crown timber, to account for the prevailing market conditions in British Columbia and the full remuneration paid for Crown timber. Second, {Commerce] should make a beetle-kill adjustment to the benchmark to account for the significant volumes of beetle-kill timber harvested by the BC respondents…{Commerce} erred by using {the petitioner's} IFG transaction prices as the basis for its benchmark for beetle-killed logs, rather than the offer prices provided by the BC Parties. For the reasons explained below, the record reveals numerous and significant deficiencies in the IFG transaction prices, such that the offer prices provided by the BC Parties are the best available benchmarks on the record for beetle-killed logs.

Canfor Case Brief

The following is a verbatim summary of the argument submitted by Canfor (internal citations omitted). For further details, *see* Canfor Case Brief at 8-10.

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> {I}f {Commerce} erroneously continues to use a U.S. stumpage benchmark it must make various adjustments to make it an apples-to-apples comparison with BC stumpage prices. This includes making an adjustment for beetle kill timber in BC, as well as adjusting for various costs incurred to access and harvest Crown timber in British Columbia. This argument is fully explained in the case brief being filed by the GBC and BCLTC and is adopted and incorporated by reference.

Tolko Case Brief

The following is a verbatim summary of the argument submitted by Tolko (internal citations omitted). For further details, *see* Tolko Case Brief at 5-9.

> {Commerce} should modify its calculations to appropriately account for all relevant costs, including Tolko's reported "3rd Party Costs."

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser (internal citations omitted). For further details, *see* West Fraser Case Brief at 6-9 and 11-13.

> In its *Preliminary Results* based on the WDOR value tables {Commerce} failed to make—and in many cases, concededly cannot make—adjustments that are expressly provided for in these tables or are necessary to account for prevailing market conditions in British Columbia.
>
> In particular, {Commerce} failed to make required adjustments for (1) the full remuneration West Fraser paid to GBC to acquire stumpage, (2) the significant volume of beetle-kill timber in British Columbia, (3) the WDOR's volume-per-acre adjustment, {and} (4) the WDOR's slope and other adjustments…These deficiencies should prompt {Commerce} to reject its use of the WDOR data in its LTAR analysis in the Final Results, or at the least to make what adjustments it can, as developed below…Finally, the {Commerce} erred in relying on {the petitioner's} IFG transaction prices for its beetle-kill benchmark.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 47-58.[303]

> {Commerce} should also reject the Canadian Parties' arguments that {Commerce} can use results from the Dual-Scale Study as the basis for a chipwood adjustment. {Commerce} has rejected the BC Dual-Scale Study as a reliable source of information for determining conversion factors and for quantifying the percentage of utility grade logs present in BC interior harvests overall and in BC respondents'

[303] This executive summary exceeds 450 words because we have addressed more than one "issue" in this comment.

harvest specifically. The Canadian Parties did not submit an updated Dual-Scale Study in this review that would warrant a different finding.

{Commerce} should reject West Fraser's logging method adjustment arguments for reasons that are proprietary and also because the company has failed to provide the necessary information for {Commerce} to make the requested adjustments.

Contrary to the Canadian Parties' assertions, {Commerce} does not need to make additional adjustments to the DOR Stumpage Values to account for the prevailing market conditions in BC or to account for the "full remuneration" the BC respondents paid for Crown timber. An argument of cost adjustments to account for "prevailing market conditions" assumes that there is a significant variation in market conditions surrounding the purchase of stumpage between the U.S. Pacific Northwest…and BC Interior. The record is devoid of evidence that supports this assumption. On the contrary, {Commerce} has found since the investigation that "the forests of the U.S. PNW and British Columbia are contiguous, extend across the geopolitical border, and that the same species and growing conditions prevail in the U.S. PNW and British Columbia." Record evidence also shows that many categories of costs for which the Canadian Parties request {Commerce} to adjust are also incurred by U.S. companies operating in the U.S. PNW. Further, even if {Commerce} were to determine that certain costs that relate to the stumpage price are not present in the benchmark sales, there is no evidence that in a free market, these costs bear a one-to-one relationship with the stumpage price. Canadian Parties have not proposed a reasonable adjustment, supported by record evidence, regarding how a reasonable adjustment that reflects the market reality can be made.

{Commerce} also should not adjust for any costs that are not part of the stumpage price paid. Until the *Preliminary Results*, Commerce had not used a pure stumpage benchmark in calculating benefit conferred under BC stumpage. However, the agency has experience doing so in the eastern provinces where it relies on Nova Scotia private stumpage prices as the benchmark. There, {Commerce} has consistently found that the benchmark prices 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." As such, the agency finds that "a proper stumpage-to-stumpage comparison must exclude the cost of such related expenses {that are not the stumpage price paid} from the calculation." The agency's preliminary decision to apply the same practice in the BC context is reasonable and supported by record evidence.

{Commerce} should reject the respondents' arguments regarding the valuation of beetle-killed timber. First, in contrast to offer price data collected by the Washington Department of Natural Resources, there is no evidence that DOR data excludes transactions for beetle-killed timber. Second, {Commerce}'s existing determination that the mountain pine beetle epidemic in British Columbia constitutes a market condition for which any benchmark must account does not require a separate benchmark for that condition *per se*. Instead, {Commerce} has

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> reasonably accounted for that condition by relying on a benchmark that includes transactions for beetle-killed timber. Moreover, benchmarks do not require perfection, and {Commerce} need not account for purported differences in purchasing behavior that stem from the GBC's own policy choices. Third, application of a separate benchmark to the respondents' purchases of beetle-killed timber will double count any loss in value attributable to beetle damage, as the DOR benchmark applied to the respondents' "green" purchases already includes pricing for that condition. Finally, there is no evidentiary or legal basis for finding that offer prices on the record of this review are more representative of the market value for beetle-killed timber than actual transaction prices from the same U.S. PNW market.
>
> To the extent that {Commerce} relies on a beetle-killed benchmark for any portion of the respondents' purchases, its determination that actual transaction prices are superior to offer prices remains reasonable and well-supported by record evidence. Transaction prices from U.S. PNW producer Idaho Forest Group…provide the same advantages as in prior reviews in that they are verifiable, "cover a broad geographic range," and represent actual transactions for blue-stained logs during the {POR}. By contrast, the collection methodology for the offer prices submitted by the GBC remains totally unverifiable and "do not provide clear evidence that blue-stained logs were actually delivered under {the} agreements during the POR." In addition, the respondents' theories regarding the representativeness of IFG's transaction data remain speculative, and there is no legal or factual basis for finding that offer prices from the same U.S. PNW market in which IFG operates are more accurate of market pricing than IFG's actual market transactions.

GBC Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GBC (internal citations omitted). For further details, *see* GBC Rebuttal Brief Vol. III at 5-9 and 40-45.

> {T}he BC Parties address Petitioner's argument that {Commerce} should discontinue the slope adjustment it made when using a benchmark based on WDOR tax values. According to {the petitioner}, there is no need to make this adjustment because the tax values already reflect the effect slope may have had on prices. There is absolutely no evidence on the record to support {the petitioner's} assertion. In fact, as the BC Parties explained in their Case Brief, one of the most significant problems with {Commerce}'s use of the WDOR tax values as the stumpage benchmark is that it is unclear what exactly these tax values represent. This is because {the petitioner} failed to provide {Commerce} with any information regarding the types of market conditions and transactions that are the basis for the WDOR tax values. In the absence of actual evidence, {the petitioner} relies on pure speculation in its Case Brief when it asserts that the WDOR tax values already reflect any effect of slope on stumpage prices and that {Commerce} should therefore jettison the slope adjustment from the *Preliminary Results*.

> {The petitioner} also claims that {Commerce} should ignore the slope adjustment accounted for in the WDOR tax framework because "the DOR uses the stumpage values for a different purpose {than Commerce's LTAR benefit analysis} and allows tax adjustments based on policy considerations for that {tax-related} purpose," adding that "{t}he fact that the DOR offers certain discounts of the stumpage price for tax collection purposes does not obligate {Commerce} to do so for the benefit analysis." However, that reasoning applies to the WDOR tax valuation tables in general. As {the petitioner} acknowledges, these WDOR values are created and used for tax collection purposes, and are not market prices. This admission directly supports the explanations in the BC Parties Case Brief regarding why {Commerce} should not use the WDOR tax values as a benchmark for its BC stumpage-LTAR analysis. As developed below, however, if {Commerce} continues to use the WDOR tax values as its stumpage benchmark in the final results, it must also apply the slope adjustment in accordance with the WDOR tax framework.
>
> {The petitioner} also argues that {Commerce} should abandon the separate beetle-killed benchmark adopted in the Preliminary Results, which would also constitute a departure from {Commerce}'s consistent practice in the prior four administrative reviews. As detailed below, {the petitioner's} arguments on this point are not supported by the record, and in fact are fundamentally at odds with the record evidence confirming the significant value reductions for beetle-killed logs. Accordingly, {Commerce} should continue to reject {the petitioner's} arguments.

Commerce's Position: As discussed in the comment above, we are continuing to use the WDOR stumpage benchmark as the primary benchmark for calculating the benefit under the British Columbia Provision of Stumpage for LTAR program for these final results. The parties have made various arguments relating to adjustments that Commerce should or should not make to the WDOR benchmark values. At the *Preliminary Results*, Commerce utilized both the species-specific base and small log values in the WDOR tables and also applied a slope discount (which is one value adjustment indicated in the WDOR benchmark). We did not make any further value adjustments to the benchmark in the *Preliminary Results*. We address below the arguments that the parties have made relating to adjustments that Commerce should or should not make to the WDOR benchmark values.

The GBC argues that Commerce should not use the WDOR stumpage benchmark because Commerce did not "request and obtain the appropriate data" to make the adjustments called for in the WDOR benchmark.[304] Specifically, the GBC argues that the slope data that Commerce requested from the GBC (*i.e.*, the average slope of each timbermark) was not the correct slope information needed to identify which timbermark should qualify for a slope adjustment. The GBC also argues that Commerce did not request data relating to cable logging on slopes under 40 percent and area data relating to a volume per acre adjustment and that there is no data on the record with which to make these adjustments. Commerce disagrees with the premise of the GBC's arguments in that it is Commerce's responsibility to build out the record. As a general principle, the burden of creating an adequate record lies with interested parties and not with

[304] *See* GBC Case Brief Vol. V at 22.

Commerce.[305] As explained below, Commerce did solicit benchmark information in this instance given the unique and critical facts of this case – *i.e.,* the presence of a significant number of negative benchmarks that called into question whether the WDNR log prices could serve as a market determined tier-three benchmark under 19 CFR 351.511(a)(2)(iii). However, the GBC failed to build a record with respect to the slope data they now claim is vital for making an appropriate benchmark adjustment.

All parties in this review have been on notice that Commerce had concerns with the previously-used log benchmark and derived demand methodology. In *Lumber V AR4 Prelim*, we noted that we "recognize the complications associated with the presence of such negative benchmark observations under the derived demand methodology and whether a methodology that results in negative stumpage benchmark observations is consistent with a tier-three 'market principles' benchmark under 19 CFR 351.511(a)(2)(iii)."[306] In *Lumber V AR4 Final*, Commerce again noted 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…" and "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."[307] Accordingly, shortly after *Lumber V AR4 Final*, in this review Commerce issued a request for information and comments relating to the benchmark used for this program due to the presence of negative benchmarks. We explained that while there was a later deadline for submitting factual information in this review, "given the complexity of this issue, we are soliciting benchmark information and comments on Commerce's methodology early in this proceeding so that we may more fully evaluate any evidence and arguments submitted by parties and, if necessary, issue requests for additional information to further develop the record."[308] As part of its submission, the petitioner placed the WDOR stumpage values on the record on September 15, 2023 – this was the first time this benchmark has been on the record throughout this proceeding. In December 2023, Commerce issued a pair of supplemental questions to the GBC seeking slope and harvesting data for each timbermark. The final deadline for parties to submit unsolicited new factual information in this review was December 29, 2023. Between September 15, 2023, and December 29, 2023, the GBC did not provide any information, other than the information specifically solicited by Commerce, that would allow Commerce to make the valuation adjustments listed in the WDOR stumpage benchmark that it now claims are vital. The record is clear that Commerce expressed serious misgivings about the existing derived demand methodology prior to and during this review, that Commerce urged parties to build the record relating to any alternative benchmarks that could be used for this program, and, even though it is not our responsibility to do so, Commerce itself even attempted to collect additional information that it thought may be needed in the benefit calculation for this program. However, despite the GBC's contention that these adjustments are essential to the calculation, at no point did the GBC or any other Canadian party provide information that would assist Commerce in making its requested adjustments. Nor did any of the Canadian parties comment on the appropriateness of the information that Commerce requested either prior to the new factual information deadline or as rebuttal comments to those

[305] *See QVD Food v. U.S.*, 1324.
[306] *See Lumber V AR4 Prelim* PDM at 32-33.
[307] *See Lumber V AR4 Final* IDM at Comment 13.
[308] *See* BC Stumpage Request for Information.

supplemental responses. It is the responsibility of the parties to build the record and Commerce can only make its determination based on the information that the parties have provided on this record. Notably, other than pointing out what they believe to be deficiencies in the record, the GBC in fact agrees that Commerce should be making a slope adjustment but fail to provide input on how Commerce should make a slope adjustment with the record information that is before Commerce.

The petitioner contends that Commerce should not make a slope adjustment for the final, arguing that the fact that the WDOR offers certain discounts of the stumpage price for tax collection purposes does not obligate Commerce to do the same in its benefit analysis.[309] The petitioner also claims that Commerce's decision to "adjust the DOR stumpage values for slope BC respondents experienced in BC assumes that there is a significant variation in the terrain between U.S. PNW and BC Interior that is not captured by the DOR stumpage data."[310] We disagree with the petitioner. The WDOR has deemed it necessary to "make allowances for various harvest conditions" to its stumpage value table.[311] While it is not explicitly stated in the WDOR documentation on the record, Commerce's reasoned conclusion is that the WDOR has deemed this adjustment necessary as a broad average price across Eastern Washington does not properly account for the impact that these specific harvesting conditions, including the slope of the harvest area, have on the stumpage value of a particular stand. It should also be noted that the GBC's Estimated Winning Bid formula that the GBC uses to administratively set timbermark-specific stumpage prices includes a variable that reduces the Estimated Winning Bid calculation in instances where the timbermark has an average slope above a certain amount (*i.e.*, the administratively set prices in BC contain an internal adjustment that reduces the stumpage price that the respondents pay based on the MPS's slope adjustment variable).[312] As discussed further below, a tier-three benchmark analysis is significantly different than a tier-one benchmark comparison, and in this instance, the record likely does not contain all information as to the underlying data, methodology, and internal assumptions of the tier-three benchmark. While the legal requirements governing Commerce's selection of benchmarks do not require perfection, we are attempting to calculate a benchmark as accurately as possible using the record that the parties have built in this segment. In this review, Commerce has slope data for the timbermarks in British Columbia that, despite the GBC's claims are not the right data to make an adjustment because they underestimate the number of timbermarks that should receive an adjustment, still allow us to make a reasonably accurate adjustment. Therefore, we will continue to make the slope adjustment for the final results using the slope data that we have on the record. In future administrative reviews, if we continue to use the WDOR benchmark, we urge parties to place on the record the information that they think will best allow us to make the adjustment most accurately.

As for the other value adjustments in the WDOR benchmark, Commerce does not have any usable information on the record that would allow it to make those adjustments, even assuming, *arguendo*, that we agreed the adjustments were warranted in the first place. The GBC argues that Commerce could use the BC Dual Scale Study to determine a reasonable estimate of the

[309] *See* Petitioner Case Brief at 5
[310] *Id.* at 6.
[311] *See* Petitioner BC Stumpage Benchmark Submission at Exhibit 1 at 4.
[312] *See* GBC Stumpage IQR Response at Exhibit S-165.

chipwood proportion of the respondents' harvest to make the chipwood adjustment.[313] However, as Commerce explained in the *Preliminary Results*, Commerce has rejected the BC Dual Scale study in previous reviews because the Dual-Scale Study was specifically commissioned for the proceeding and there was no record evidence that the study used a statistically valid sampling methodology when choosing the scaling sites.[314] Since there is no new information on the record of this review, we continue to find there is no basis to reconsider our previous findings as to the use of the Dual Scale Study in this segment of the proceeding. If in a future administrative review, the parties provide information that would allow Commerce to make additional value adjustments outlined in the WDOR benchmark, we will consider the data and associated arguments.

The GBC and each of the B.C respondent companies argue that Commerce must make adjustments to the benefit calculation to reflect costs borne by BC harvesters of Crown timber, to account for the prevailing market conditions in British Columbia and the full remuneration paid for Crown timber.[315] The GBC argues that Commerce has previously supported this in previous Lumber proceedings. However, the record in those proceedings is different than the record in the instant one. The GBC point to *Lumber III Final* where Commerce determined that the benefit is "the difference in price (price includes stumpage plus the cost of all obligations) between administratively set stumpage and the competitive benchmark."[316] The benchmark we used in the *Lumber III Final* was a BC auction stumpage price. That is a tier-one benchmark where Commerce had different information regarding what was included in the auction price, could ask the GBC for further detail in relation to the benchmark in supplementals, and would have been able to verify information relating to those auction prices.

The GBC also highlights Commerce's determination in the *Lumber IV AR1 Prelim* where Commerce used a NB/NS private stumpage benchmark to perform its benefit analysis for the preliminary results before reversing course at the final results, stating that using a stumpage benchmark was not possible in that proceeding. As we explained in the *Lumber IV AR1 Prelim*, adjustments that we made at the time were based on complete information of what was included in each price:

> Based on information in the New Brunswick and Nova Scotia reports, we determined that there are certain obligatory costs associated with Crown tenures that are above or beyond those incurred by the private Maritime stumpage harvesters that comprise our benchmark (*e.g.*, certain planning and primary road building activities). For these preliminary results, we have granted certain adjustments to provincial stumpage prices for those activities that evidence on the record indicates: (1) Were not incurred by Maritime private stumpage holders; and (2) were legally obligated costs associated with the tenure in the comparison province.[317]

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[313] *See* GBC Case Brief Vol. V at 24-25.
[314] *See Preliminary Results* PDM at 33.
[315] *See, e.g.,* GBC Case Brief Vol. V at 27.
[316] *See Lumber III Final* at 22595.
[317] *See Lumber IV AR1 Prelim* at 33220.

Here, we do not have the same level of evidence regarding which activities may or may not already be reflected in the WDOR benchmark in the same way that we did with the Maritime benchmark in *Lumber IV*.

Similarly, throughout *Lumber V* proceeding, Commerce has made determinations as to which adjustments should or should not be made in relation to a tier-one stumpage benchmark in the calculations for Alberta, New Brunswick, Ontario and Québec based on complete information regarding what costs are included in both the provincial stumpage prices and in the tier-one Nova Scotia stumpage benchmark price.[318] Commerce has asked significant supplemental questions about that benchmark and verified that it is a "pure" stumpage price.[319] As discussed further below, the record in this review does not contain as much detail on what is included in the WDOR benchmark.

The circumstances here are different than those cited above. We are using a tier-three stumpage price based on stumpage prices in the U.S. PNW. The WDOR is not an interested party in this review; therefore, the task of gathering additional information or verifying such a data source is far more complicated. As a result, what costs are and are not included in the WDOR stumpage prices is less clear than with other benchmarks that have been used in this proceeding. It would not be appropriate for Commerce to blindly accept numerous adjustments proposed by parties if the record is not clear that the data sources being used actually require such adjustments.

It should also be noted that each proceeding and case record stands on its own. Any conclusions that Commerce made in relation to British Columbia in previous lumber proceedings are not binding on the instant proceeding as neither the benchmarks nor the administratively set price in BC from prior segments are the same in the instant one. British Columbia changed its stumpage system following the *Lumber IV* proceeding, with the current MPS system going into place in the interior in 2006.[320] Any previous determinations as to what should be included in our benefit analysis in relation to the administratively set price or as part of a tenure obligation are not relevant to this proceeding as we are operating under a completely new system in British Columbia in *Lumber V* and comparing those government prices to a new benchmark in this review.

The record is clear that the GBC's BCTS auction prices and its administratively set stumpage prices either do not include costs associated with long-term tenure rights (BCTS auctions) or have been adjusted to remove those tenure obligations as part of the administratively set price in British Columbia (prices set through the MPS).[321] As the record demonstrates, the MPS equation, during the POR, consisted of two parts: the regression based Estimated Winning Bid formula that is then reduced by the Tenure Obligation Adjustments (TOA) calculation.[322] These TOAs are designed to account for obligations that licensees are required to perform as part of the conditions of their tenure and that are not required of BCTS TSL holders.[323] This means that all

[318] *See*, *e.g.*, *Lumber V Final* IDM at Comment 43; *see also Lumber V AR1 Final* IDM at 206.
[319] *See Lumber V AR4 Final* IDM at 45.
[320] *See Lumber V Prelim* PDM at 34-39.
[321] *See* GBC Stumpage IQR Response at I-118 and I-122.
[322] *Id.* at I-122 and Exhibit S-1.
[323] *Id.* at I-118.

stumpage rates for government-owned stumpage in British Columbia are ultimately set at prices that do not include costs associated with long term tenure obligations (*i.e.*, this is the GBC's attempt to calculate prices that would mimic only the expenses that would be included in a market price). The WDOR stumpage prices are comprised of private sales that represent market prices in eastern Washington state.[324]

The GBC argues that Commerce must adjust for the respondents' harvesting and hauling costs as transportation is a prevailing market condition under Commerce's statute. However, these arguments ignore the fact that we are comparing government stumpage prices to a stumpage benchmark – *i.e.*, prices for standing timber. Furthermore, as the GBC concedes, there is no information on the record of this review that demonstrates that hauling costs in British Columbia represent a prevailing market condition unique to British Columbia when compared to eastern Washington state.[325] And, even if such information was on this record, and Commerce agreed that an adjustment was warranted, Commerce still does not have the ability to determine what an appropriate adjustment to the price would be. While the record contains the respondents' costs for hauling goods to the scale or mill, there is no record evidence as to what the costs are in eastern Washington state. Even if those costs were on the record, there is no evidence that if hauling costs in BC for a specific timbermark were $10 more than the average in eastern Washington state that $10 would be an appropriate adjustment to the benchmark because there is no information on the record that hauling costs have a one-to-one impact as to the stumpage price of a stand. Crucially, the Canadian parties' arguments ignore how this benchmark differs from the log price-derived stumpage benchmark. Unlike the derived demand methodology where Commerce was attempting to remove the respondents' costs to derive a stumpage price from a log price, our benchmark in this review is already a stumpage price.

The GBC also argues that Commerce should make adjustments for the "respondents' silviculture, forest management, and other relevant costs that BC tenure holder must incur to access and harvest Crown timber." Although the parties rely on section 771(5)(E) of the Act, that section 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. Additionally, as noted above, the record is unclear as to what costs are definitively included in the WDOR stumpage prices. However, we do note that the record contains limited evidence that U.S. producers may have incurred similar costs to those obligated of the respondents in British Columbia.[326] Again, the record contains no evidence of whether the U.S. producers' costs are similar to those of the Canadian respondents, which makes calculating an adjustment impossible based on the information available to Commerce on this record, even if assuming, *arguendo*, we agreed that an adjustment was warranted.

Parties also made arguments regarding whether the use of a beetle-kill benchmark is appropriate for these final results. Since *Lumber V AR1*, Commerce has determined that presence of the beetle-killed infestation in British Columbia is a prevailing market condition and that the use of a separate beetle-killed benchmark was appropriate when utilizing log benchmark prices under the

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[324] *See* Petitioner BC Stumpage Benchmark Submission at Exhibit 5.
[325] *See* GBC Case Brief Vol. V at 28.
[326] *See* Petitioner Benchmark Submission at Exhibits 2b & 2c.

derived demand benchmark.[327] At the *Preliminary Results*, we preliminarily determined that the facts that led us to find a separate benchmark for beetle-killed logs appropriate in the prior reviews are still present on the record of this review and we used a separate beetle-killed benchmark when performing our benefit calculation for the respondents' third-party stumpage purchases where we used the WDNR log prices as the benchmark price.[328] We affirm that finding for these final results. However, we preliminarily declined to use a separate beetle-kill benchmark for purchases that were compared to the WDOR stumpage benchmark, but urged parties to comment on whether such an adjustment was appropriate and how Commerce should calculate such an adjustment if we made one for these final results.[329]

When determining whether an adjustment of this kind is warranted, there are numerous considerations at play. At a minimum, two such factors that Commerce considers are: 1) whether sufficient evidence indicates that a prevailing market condition exists; and 2) whether data on the record allow Commerce to make such an adjustment in a reasonably accurate manner. In *Lumber V Final*, Commerce declined to incorporate prices for beetle-killed logs in the benchmark analysis, stating that "we do not find that the available record evidence permits us to do so reliably in this investigation."[330] Commerce went on to state that "parties have not provided evidence that the U.S. PNW log prices published by the WDNR do not already include blue stained log prices…{a}s such, including these prices risks overstating blue stained log prices in our benchmark."[331] Conversely, in *Lumber V AR1*, Commerce determined that it was appropriate to incorporate a beetle-killed price into our benchmark calculations because we "determined that new record evidence indicated that the WDNR survey did not include beetle-killed prices" and "that the record contained usable beetle-killed pricing in the form of a more robust collection of mill price offer sheets, which were accompanied by documentation supporting the methodology used to collect the price offers."[332]

As has been discussed elsewhere in these final results, Commerce is utilizing a different benchmark and approach for calculating the benefit under the Provision of Stumpage for LTAR program in British Columbia, relying for the first time in this proceeding on *stumpage values* from the U.S. PNW as a tier-three benchmark to compare to the respondents' stumpage purchases in British Columbia. Parties submitted arguments regarding whether the WDOR benchmark itself already includes beetle-killed standing timber. The petitioner argues that because beetle-killed trees exist in the U.S. PNW, as evidenced by the beetle-killed log benchmarks, the WDOR benchmark prices already incorporate beetle-killed standing timber in the prices. The GBC argues that even if the WDOR prices did include beetle-killed timber, the record indicates that the percentage of beetle-killed timber in those prices would be so miniscule that it would have no impact on the price. For these final results, we find that the record is not sufficiently clear that the WDOR stumpage values do not already include beetle-killed standing

[327] *See Lumber V AR1 Prelim* PDM at 27; *see also Lumber V AR1 Final* IDM at Comment 21; *Lumber V AR2 Prelim* PDM at 30-31; *Lumber V AR2 Final* IDM at Comment 22; *Lumber V AR3 Prelim* PDM at 32-34; *Lumber V AR3 Final* IDM at Comment 21; *Lumber V AR4 Prelim* PDM at 27-28; and *Lumber V AR4 Final* IDM at Comment 18.
[328] *See Preliminary Results* PDM at 29.
[329] *Id.* at 35.
[330] *See Lumber V Final* IDM at Comment 25.
[331] *Id.*
[332] *See Lumber V AR1 Final* IDM at Comment 21.

timber to some extent. As a result, similar to our concerns highlighted in *Lumber V Final*, including such additional beetle-killed prices here risks overstating the level of beetle-killed standing timber in our benchmark.

Furthermore, despite requesting at the *Preliminary Results* that the parties suggest how Commerce should calculate a beetle-killed adjustment for the final results, there was not a single argument outlining how Commerce should calculate a beetle-killed stumpage benchmark for these final results beyond arguments over which beetle-killed *log* benchmark was appropriate (largely in relation to the third-party stumpage purchases where we used the WDNR log benchmark at *the Preliminary Results*). As an initial point, it should be noted that the record does not contain benchmark prices for beetle-killed *standing timber*, which is the relevant good under examination. Rather, any method for calculating a beetle-killed stumpage benchmark would require utilizing beetle-killed log prices in some manner. No parties have provided arguments or record information suggesting how Commerce could use beetle-killed log prices for such a purpose.

As a result, Commerce has determined not to incorporate beetle-killed prices in the stumpage calculations using the WDOR benchmark prices for these final results.

Comment 20: Whether to Change Commerce's Calculations Relating to Third Party Tenures

Petitioner Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Case Brief at 7-12.

> {Commerce} should use {F2M} prices in its benchmark for BC Crown stumpage purchases from third-party tenures. Although {Commerce} stated concern that the F2M Market Guides were unclear as to whether they included small diameter logs, the agency has not cited or offered any analysis of log size specific to the respondents' third-party stumpage purchases. Consequently, there is no indication whether or to what extent these third-party stumpage purchases included small logs that would render {Commerce's} concerns with respect to F2M's data relevant. Additionally, the F2M data contain actual purchase prices, while the {WDNR} data used in the *Preliminary Results* represent offer prices. {Commerce} has clearly stated, with the {CIT's} backing, that it will not place offer prices and actual transaction data on "equal footing." The fact that the WDNR log prices are more contemporaneous than the F2M data should not override this principle. Finally, the record demonstrates that the F2M data are reliable, with the company enforcing strict standards and methodologies, while the WDNR data explicitly states that the agency "cannot accept responsibility for errors or omissions."
>
> {Commerce} should abandon its use of a separate benchmark for beetle-killed timber in its BC benefit calculation for purchases on third-party tenures. While {Commerce} has correctly determined that transaction price information from IFG

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continues to be a more accurate means of valuing beetle-killed logs than the offer prices proposed by the GBC, substantial record evidence demonstrates that such a benchmark is neither necessary nor appropriate. Specifically, the record of this review demonstrates that log condition is one of many factors that affect the price that sawmills are willing to pay for a given log and, critically, that other factors may have more bearing on the final price. Accordingly, {Commerce} should abandon its preliminary finding that a separate benchmark for beetle-killed is "appropriate."

Sierra Pacific Case Brief

The following is a verbatim summary of the argument submitted by Sierra Pacific. For further details, *see* Sierra Pacific Case Brief at 2-5.

> {Commerce} correctly selected {WDOR} Stumpage Values to measure the adequacy of renumeration for certain stumpage purchases under the British Columbia Stumpage for Less Than Adequate Remuneration…program. {Commerce} erred, however, in selecting the {WDNR} data to measure the adequacy of renumeration for other stumpage purchases, specifically Crown stumpage purchases that respondents made from third-party tenures. In lieu of the WDNR data, {Commerce} should have used the DOR Stumpage Values or, in the alternative, selected the {F2M} log price data as a tier three benchmark for the third-party BC crown stumpage purchases. For the final results, {Commerce} should select the DOR Stumpage Values or the F2M Market Guide report data as the benchmark to measure the adequacy of remuneration for the third-party stumpage purchases.

Tolko Case Brief

The following is a verbatim summary of the argument submitted by Tolko. For further details, *see* Tolko Case Brief at 10-11.

> {Commerce} should modify its calculations to appropriately account for all relevant costs, including Tolko's reported "3rd Party Costs."

GBC Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GBC (internal citations omitted). For further details, *see* GBC Rebuttal Brief Vol. III at 10-18.

> The B.C. Parties address {the petitioner's] and Sierra Pacific's arguments that it should modify the *Preliminary Results* with respect to the B.C. respondents' third-party tenure stumpage purchases by (1) using a benchmark other than the WDNR log offer prices, and (2) rejecting a separate beetle-killed benchmark.
>
> As it has consistently done before, {Commerce} should continue to rely on the WDNR log offer prices as a benchmark for Crown stumpage purchased by B.C.

respondents from third-party tenure holders. Sierra Pacific contends that {Commerce} should use the WDOR tax values as the benchmark, despite their numerous flaws and the fact that the use of such data conflicts with decades of (Commerce} practice. For its part, {the petitioner] argues that {Commerce} should use purported log price data from 2020 published by F2M, an argument that Sierra Pacific joins. In so doing, {the petitioner} and Sierra Pacific simply reanimate the same unsupported arguments that {Commerce} expressly rejected in the third administrative review…and the fourth administrative review…, when {Commerce} declined to rely on the very same (and now even more stale) F2M data. Indeed, {the petitioner} and Sierra Pacific fail to meaningfully address {Commerce's} evidence-supported reasons for its rejection of the very same F2M data in AR3 and AR4 (and its rejection of older F2M data since the investigation). Because {the petitioner} and Sierra Pacific do not offer any new evidence or argument that would justify reversal of {Commerce's} long-held position as to the F2M data, {Commerce} should continue to rely on the WDNR log offer price data as the benchmark for Crown stumpage purchases from third-party tenure holders in the final results.

{The petitioner} also argues that {Commerce} should abandon the separate beetle-killed benchmark adopted in the *Preliminary Results*, which would also constitute a departure from {Commerce's} consistent practice in the prior four administrative reviews. As detailed below, {the petitioner's} arguments on this point are not supported by the record, and in fact are fundamentally at odds with the record evidence confirming the significant value reductions for beetle-killed logs. Accordingly, {Commerce} should continue to reject {the petitioner's} arguments.

Commerce's Position: In the *Preliminary Results*, Commerce determined that it was appropriate to use the WDNR log benchmark to calculate the benefit for the respondents' purchases where they did not submit stumpage to the GBC and, therefore, do not know the stumpage price for that timber.[333] This benefit calculation does not involve Commerce's derived demand benchmark methodology as we are not deriving an estimated stumpage price from the WDNR log benchmark. Below we address the arguments made by parties in relation to the selection of the appropriate benchmark for these third-party purchases and whether we should continue to utilize a separate beetle-kill benchmark for the benefit calculation for these final results.

Sierra Pacific argues that Commerce should utilize the WDOR stumpage benchmark prices for the third-party purchases by backing out the additional costs included in the respondents' third-party stumpage purchases. Sierra Pacific has not explained how exactly Commerce should identify which specific costs are built into the respondents' purchase prices or where Commerce should identify the amount of the costs specific to the purchases. The respondents' purchase tables are clear that these third-party purchases where the respondents do not pay the stumpage fee to the GBC are made from multiple different tenure holders. There is no indication on the record that the price that the respondents pay each tenure holder encompasses the same costs. While the record does include the costs that the respondents incurred in getting that timber to the

[333] *See Preliminary Results* PDM at 28-30.

mill, without reviewing each contract between the respondent and the third-party mill, it would not be possible to determine whether the respondent and the tenure holder split costs on certain activities. For example, if a respondent and a tenure holder shared the cost of on block road construction, Commerce would be unable to determine the tenure holder's cost for their portion in order to remove that cost from the price that the respondent paid. It is not clear that the information on the record would allow Commerce to reduce the purchase price back to a stumpage price without resulting in significant inaccuracies in calculating a stumpage purchase price. On the other hand, as noted above, Commerce has the price that the respondent paid to the tenure holder, and it has the costs that the respondent incurred in getting the timber to the mill in order to construct a log price in a reasonably accurate manner.

The petitioner (and Sierra Pacific) argue that Commerce should use F2M data instead of the WDNR log benchmark for the final results. The petitioner contends that since third-party transactions only represent a subset of the respondents' stumpage purchases and Commerce has not cited to any analysis of the respondents' third-party purchases, there is no indication on the record that this subset of purchases includes small logs. Accordingly, the petitioner urges Commerce to put aside its previous findings that the record is unclear as to whether the F2M data includes pricing for smaller diameter logs. We disagree with the petitioner's argument. The petitioner has pointed to no information on the record that would indicate that the profile of logs included in the respondents' third-party purchases somehow differs from the rest of the respondents' stumpage purchases or any other information that indicates that these third-party purchases would not include small diameter logs. The F2M data on the record of this review is the exact same F2M data from 2020 that was on the record of the previous two administrative reviews. There is no new information on the record of this review or novel arguments made by the parties that would lead Commerce to reconsider its findings in *Lumber V AR3 Final* and *Lumber V AR4 Final* that the WDNR data is preferable to the F2M data from 2020.[334] If anything, the fact that the WDNR data is contemporaneous with this POR, while the F2M data is from 2020 further supports using the WDNR data in this review.

At the *Preliminary Results*, Commerce used a separate beetle-killed log benchmark price for the benefit calculation of the respondents' third-party purchases where they did not pay the stumpage price to the GBC.[335] As discussed in Comment 19, Commerce continues to find that the presence of beetle-killed timber in British Columbia is a prevailing market condition during the POR. However, unlike in the discussion relating to WDOR benchmark adjustments, where we are comparing a stumpage benchmark to the respondents' stumpage purchases, in the case of these third-party purchases, we are using a log benchmark without the need to utilize the derived demand methodology. The petitioner argues that Commerce should not use this separate beetle-kill benchmark for the final results because the record indicates (1) that log condition is one of many factors that affect the price that sawmills are willing to pay for a log; and (2) certain information that the respondents have placed on the record undercuts Commerce's long held position that a beetle-killed benchmark is necessary. Commerce addresses the latter in a separate BPI memorandum, as the arguments and the associated analysis contain BPI information.[336] However, we find the petitioner's arguments to be unpersuasive.

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[334] *See Lumber V AR3 Final* IDM at 117-120; *see also Lumber V AR4 Final* IDM at Comment 17.
[335] *See Preliminary Results* PDM at 29-30.
[336] *See* BC Stumpage Final Memorandum.

As for the argument that there are factors other than log condition that impact price and, that some of those factors may even be more important than log condition, we disagree with the petitioner that this should cause Commerce to abandon a separate beetle-killed benchmark. Commerce fully acknowledges that there are many factors that go into determining the price of stumpage or logs. However, the benchmarks on the record are consistent with market principles, which means that mills would take all factors into consideration when setting offer prices or agreeing to a purchase price for beetle-killed logs. As discussed in the BPI memorandum, the record still indicates that there are value reductions associated with the beetle-killed infestation. Accordingly, we continue to find it to be appropriate to use a separate beetle-killed log benchmark in these final results for the respondents' third-party purchases of stumpage where we are utilizing the WDNR log benchmark.

The GBC argues that Commerce should revise its selection of a beetle-killed log benchmark for the final results. The GBC's arguments and our analysis contains BPI information; *see* the accompanying BPI memorandum for more detail. Commerce continues to find that the IFG transaction prices are the preferred benchmark for these final results. However, we will continue to examine this issue, and will seek additional information in the next administrative review.

Finally, Tolko argues that Commerce should include payments to third parties that carried out various activities related to purchases from tenures held by other parties than Tolko. Tolko's argument is unclear as to which purchases it is referencing. Per Commerce's instructions, there were three tables where Tolko reported purchases related to tenures that Tolko did not hold itself (Tables 2, 5, and 6). Tolko's reported stumpage purchases in Tables 2 and 5 are being compared to the WDOR stumpage benchmark and, as described in Comment 19, Commerce does not find that it is appropriate to include these costs in the benefit calculation where we are utilizing the WDOR stumpage benchmark. Tolko's purchases in Table 6 are the purchases described above in this position, *i.e.*, timber purchases where Tolko does not pay stumpage to the GBC and, therefore, does not know the stumpage price. At the *Preliminary Results*, Commerce compared the value Tolko reported in the "3rd Party Costs" field to the WDNR and beetle-killed benchmarks, as appropriate.[337] Accordingly, Commerce finds that there are not additional third-party costs that Commerce should incorporate into its final results.

Comment 21: Whether to Account for BC's "Stand-as-a-Whole" Stumpage Pricing

GBC Case Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Case Brief Vol. V at 35-40.

> {T}he BC Parties explain that {Commerce} must at the very least make several adjustments to BC stumpage prices and the WDOR tax values if it continues to rely on such data as the stumpage benchmark in the final results. … Third, {Commerce} should account for the {GBC}'s stand-as-a-whole pricing.

West Fraser Case Brief

[337] *See* Tolko Preliminary Calculation Memorandum at Attachment IV.

The following is a verbatim summary of the argument submitted by West Fraser. For further details, *see* West Fraser Case Brief at 8-9.

> Further, in its *Preliminary Results* based on the WDOR value tables {Commerce} failed to make—and in many cases, concededly cannot make—adjustments that are expressly provided for in these tables or are necessary to account for prevailing market conditions in British Columbia. In particular, {Commerce} failed to make required adjustments for … (5) the stand-as-a-whole pricing upon which BC stumpage calculations are based. These deficiencies should prompt {Commerce} to reject its use of the WDOR data in its LTAR analysis in the Final Results, or at the least to make what adjustments it can, as developed below.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 81-83.

> In the *Preliminary Results*, {Commerce} made a species-specific comparison between U.S. PNW stumpage prices and BC Crown stumpage prices to determine the benefit conferred under the BC stumpage program. The Canadian Parties argue that {Commerce} should instead use an "all-species" benchmark to account for the GBC's "stand-as-a-whole" price-setting strategy, which they assert is a prevailing market condition under section 771(5)(E) of the Act. However, the record demonstrates that regardless of how the GBC chooses stumpage prices, it invoices and charges harvesters on a species- and grade-specific basis. As {Commerce} has previously explained, "{r}ather than the GBC's internal calculations, {the agency is} concerned with the prices paid by the respondents compared to the value of the good." Additionally, under the tier-three benchmark framework, {Commerce} is tasked with determining "whether the government price is consistent with market principles." It cannot do so if its benchmark "reflect{s} the very market distortion which the comparison is designed to detect," which is, in part, the government's price-setting strategy. Accordingly, were {Commerce} to use a single all-species benchmark, it would be unable to discern whether the prices paid by the respondents constitute adequate remuneration in a fair market setting. Finally, because the GBC sets prices for certain grades of stumpage separately from the "stand-as-a-whole" pricing, each species on the stand will be invoiced on the whole at a different average price, based on the relative share of the grades harvested within each species. Accordingly, an all-species to all-species comparison would not capture these price differences and would allow instances of negative benefits to offset those with positive benefits. The statute is clear, and {Commerce} has maintained, that these offsets are impermissible. In sum, {Commerce}'s regulations, substantial record evidence, and {Commerce}'s past practice require {Commerce} to conduct a species-specific comparison of the benchmark price to the Crown stumpage price in BC for the final results.

Commerce's Position: The arguments raised by the GBC are the same as those raised in prior administrative reviews.[338] We found these arguments unpersuasive then, and do so again here. Thus, the GBC's and West Fraser's arguments have not led us to reconsider requests for an "all species" benchmark to account for the GBC's "Stand-as-a-Whole" pricing.

As discussed in *Lumber V AR5 Prelim*, Commerce found that the record did not permit us to measure the adequacy of remuneration for the provision of BC stumpage under a tier-one or tier-two analysis.[339] Thus, we used a tier-three analysis, pursuant to 19 CFR 351.511(a)(2)(iii), in which we measured the adequacy of remuneration by assessing whether the government price is consistent with market principles.[340] As such, to calculate a benefit for stumpage purchases in British Columbia, Commerce used species-specific benchmarks and compared them to the respondents' purchases of Crown-origin standing timber aggregated by timbermark and species. While our choice of benchmark and methodology changed in this review from prior segments, as discussed elsewhere in these final results, this general approach of utilizing species-specific benchmarks was consistent with Commerce's methodology in prior segments of this proceeding.[341] For purposes of these final results, we continue to find that the methodology used in *Lumber V AR5 Prelim* to be appropriate, and thus, we continue to aggregate the standing timber by timbermark and species in British Columbia for purposes of making a comparison with species-specific Washington state benchmarks for these final results.

The GBC argues that stand-as-whole pricing is a prevailing market condition in British Columbia, specifically a "condition of sale" that differs between British Columbia stumpage sales and the U.S. PNW benchmark.[342] To account for this difference, the GBC proposes that Commerce rely on a weighted-average "all species" benchmark weighted based on the quality and species of timber harvested by respondents during the POR, which is then compared to the overall amount paid by the respondents for BC crown timber.[343] The West Fraser case brief similarly argues for the use of a weighted-average "all species" benchmark.[344] Commerce rejected this approach in *Lumbar V AR3 Final* and *Lumber V AR2 Final*, finding that a weighted-average all species benchmark would not accurately assess the adequacy of remuneration, given that the species of a tree is an integral part of that tree's value.[345] We continue to find that, given the importance of species for the value of a tree, a weighted-average benchmark would not accurately assess the adequacy of remuneration for stumpage.

The GBC criticizes Commerce's *Lumber V AR1 Final* finding for refusing to account for this BC market condition.[346] However, we disagree with the GBC that Commerce's prior analysis was incorrect. While the GBC argues that Commerce must set aside a transaction-specific analysis

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[338] *See Lumber V AR3 Final* IDM at Comment 24; *see also Lumber V AR2 Final* IDM at Comment 26.
[339] *See Preliminary Results* PDM at 20-22.
[340] *Id*. at 26-30.
[341] *See Lumber V AR4 Final* IDM at Comment 19; *see also Lumber V AR3 Final* IDM at Comment 24; and *Lumber V AR2 Final* IDM at Comment 26.
[342] *See* GBC Case Brief Vol. V at 35-37.
[343] *Id*. at 37-39.
[344] *See* West Fraser Case Brief at 8-9.
[345] *See Lumber V AR3 Final* IDM at Comment 24; *see also Lumber V AR2 Final* IDM at Comment 26.
[346] *See* GBC Case Brief Vol. V at 39-40.

and apply a single all-species price to the entirety of the respondent's purchases, we disagree with the GBC's characterization of certain aspects of its pricing. The GBC claims that:

> while the total price paid for the stand accurately reflects the relative volume and value of the individual species within that stand based on the timber cruise, the per-unit stumpage fees for the separate species that appear on the Province's invoices are purely a statistical construct, derived by dividing the total value in a stand by the total volume in that same stand and applying that same per-unit stumpage fee for each of the species in the stand. These constructed "species-specific" values are manifestly not an accurate reflection of the actual value that the Government of British Columbia would charge if it sold standing timber on a species-specific rather than stand-as-a-whole basis, nor does the record permit any basis for accurately estimating such species-specific stumpage values.[347]

Notably, while the GBC refers to these species-specific values as "constructed," those values are the actual amount that respondents are invoiced per unit of timber in the stand.[348] While the GBC asserts that it "would not" charge these prices if it sold timber by the species, that is not the focus of our inquiry. Further, while the GBC claims to be requesting that Commerce address the "conditions of sale," what the GBC is in fact requesting is for Commerce to make an adjustment based on the internal considerations used by the GBC, rather than the actual invoiced value per unit, by species, contained in GBC invoices. Rather than the GBC's internal calculations, we are concerned with the prices paid by the respondents compared to the value of the good.

With regard to the GBC's request to use an average-to-average methodology, Commerce has consistently found that this comparison between the price paid and value is most accurately made through a transaction-specific analysis, *see* Comment 6 above for further discussion. In utilizing a timbermark-based approach and further disaggregating by species, Commerce is conducting the calculation on the basis that is as close to a transaction-specific analysis as possible.

Finally, as in prior reviews, the GBC cites a NAFTA panel decision from *Lumber IV* to support its contention that Commerce must account for "stand as a whole" pricing as a prevailing market condition in British Columbia.[349] However, we do not agree with the conclusions of that *Lumber IV* panel decision and, as that decision is not binding on Commerce in this segment of the softwood lumber CVD proceeding, we are not reaching the same conclusions as that NAFTA panel in these final results.

Comment 22: Whether Commerce's Selection of a Log Volume Conversion Factor Was Appropriate

Petitioner Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Case Brief at 12-18.

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[347] *Id*. at 37 (citing GBC Stumpage IQR Response at 126-127).
[348] *See* GBC Stumpage IQR Response at 5-6.
[349] *See* GBC Case Brief Vol. V at 38-39 (citing *Lumber IV Second NAFTA Remand Determination* at 11-12).

> For the final results, {Commerce} should reconsider its reliance on a {USD/MBF} to {USD/m^3} conversion factor from a 2002 {USFS} study, and instead select an impartial standard conversion factor that is used by other U.S. agencies and third-party organizations. Importantly, the standard conversion factor is used by other agencies, such as the {USDA}, in tracking logs from the U.S. PNW – the same source used in the benchmark. Thus, if {Commerce} is striving for "precision" in its conversion factor, its focus should be on identifying a conversion factor that is related to the source of the benchmark. Further, {Commerce} should adhere to its practice of selecting information used "in the ordinary course of business" in identifying the appropriate conversion factor.
>
> {Commerce} should discontinue its application of an adjustment to the conversion factor based on an analysis provided by Matthew Fonseca …As in prior reviews, {Commerce}'s application of the Fonseca Adjustment has failed to incorporate data reflecting the full range of vital log characteristics that affect the conversion factor, including but not limited to, taper and defect. Moreover, {Commerce}'s acceptance of diameter data selectively provided by the respondents creates an unrepresentative adjustment to the conversion factor. Given {Commerce}'s reliance on other respondent-specific information in its conversion calculations, the agency's position that it need not achieve perfection with respect to this particular issue is, at best, undeveloped. Accordingly, if {Commerce} continues to use a 5.93 m^3/MBF conversion factor in the final results, {Commerce} should not further distort this by applying the Fonseca Adjustment.

GBC Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GBC (internal citations omitted). For further details, *see* GBC Rebuttal Brief Vol. III at 24-28.

> {T}he B.C. Parties address {the petitioner's} request that {Commerce} modify its conversion methodology. {The petitioner} continues to advocate for the use of a 4.53 m^3/MBF conversion factor, ignoring record evidence that use of this factor would be incorrect and outdated. Since *Lumber IV*, {Commerce} has time and time again rejected the use of this proposed conversion factor, repeatedly finding it "not viable." {The petitioner} provides no new information or argument addressing {Commerce}'s repeated concerns about using this conversion factor. Indeed, {the petitioner's} argument that the conversion factor should be from the U.S. {PNW}, overlooks the fact that the conversion factor used by {Commerce} does stem from the U.S. PNW. As a result, {Commerce} should continue to reject the use of this conversion factor.
>
> {The petitioner} further repeats its argument from past reviews that {Commerce} should not apply the Fonseca Adjustment to produce B.C. Metric-to-Scribner Short Log scale conversion factors for each species because the adjustment does not account for certain characteristics such as taper or defect. {The petitioner} makes

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> no effort to address {Commerce}'s prior explanation for why not accounting for log taper or defect does not render the Fonseca Adjustment flawed. For these reasons, {Commerce} should continue to apply the Fonseca Adjustment in the final results.

Commerce's Position: In prior segments of this proceeding, Commerce considered MBF to cubic meter conversion factors placed on the record of the 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.[350]

We find that this conclusion is still true for the record of this review. Thus, we again 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 advocates for a 4.53 conversion factor used by other U.S. government agencies, particularly the USDA.[351] The petitioner asserts that the USDA uses this standard to evaluate trade flows, and thus Commerce's precision requirement is satisfied.[352] We disagree and continue to find the petitioner's arguments unpersuasive.

In *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 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.[353] As in prior reviews,[354] 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 *Lumber V AR1 Final*.

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[350] *See Lumber V AR4 Final* IDM at Comment 19; *see also Lumber V AR3 Final* IDM at Comment 22.
[351] *See* Petitioner Case Brief at 13-15.
[352] *Id*.
[353] *See Lumber V AR1 Final* IDM at Comment 22.
[354] *See, e.g.*, *Lumber V AR4 Final* IDM at Comment 19; *see also Lumber V AR3 Final* IDM at Comment 22.

In prior segments of this proceeding, Commerce adjusted the 2002 USFS study conversion factor using the "Fonseca Adjustment."[355] 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 *Lumber V AR5 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.[356]

The petitioner argues that, if Commerce does rely on the 2002 USFS study for a conversion factor, Commerce should not apply the Fonseca Adjustment.[357] 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 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.[358] For this review, the petitioner again argues that Commerce is wrong to not account for certain log characteristics such as 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 regard to log characteristics such as taper and defect mentioned by the petitioner, Commerce undertook a detailed examination in *Lumber V AR2 Final* on the significance of taper and defect, primarily based on a review of the Fonseca Publication.[359] 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.[360] The petitioner does not directly address these findings, but instead, as in the prior review, suggests that they are irrelevant because, "the Fonseca Adjustment is not a substitute for data rooted in the respondents' actual experiences and fails to address pertinent characteristics that affect the conversion factor."[361]

However, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[362] 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

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[355] *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 Final* IDM at Comment 23; *Lumber V AR3 Prelim* PDM at 37-38; *Lumber V AR3 Final* IDM at Comment 22; *Lumber V AR4 Prelim* PDM at 31-32; and *Lumber V AR4 Final* IDM at Comment 19.
[356] *See Lumber V AR5 Prelim* PDM at 32-34.
[357] *See* Petitioner Case Brief at 15-18.
[358] *See Lumber V AR4 Final* IDM at Comment 19; *see also Lumber V AR3 Final* IDM at Comment 22.
[359] *See Lumber V AR2 Final* IDM at Comment 23.
[360] *Id*.
[361] *See* Petitioner Case Brief at 18.
[362] *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."

conversion factors otherwise constitute the best available information. While the petitioner argues that Commerce "has repeatedly looked to, and preferred, the actual experiences of the respondents to reach its various findings in this proceeding with respect to other issues," the instances referred to are examples of where Commerce disregarded the arguments of expert reports commissioned for *Lumber V* proceeding on the subjects of log export restraints and the British Columbia timber auction system in favor of actual record evidence.[363] 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 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.[364] 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 *Lumber V AR2 Final*, which shows that there is minimal need to adjust for taper and not adjusting for defect is a conservative approach.[365]

Furthermore, we emphasize once again, as noted in *Lumber V AR4 Final* and *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."[366] 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.

E. New Brunswick Stumpage Issues

Comment 23: Whether the Private Stumpage Market in New Brunswick Is Distorted and Should Be Used as Tier-One Benchmarks

GNB Case Brief

The following is a verbatim summary of the argument submitted by the GNB (internal citations omitted). For further details, *see* GNB Case Brief VI at 11-60.

> {U}pdated evidence requires {Commerce} to reconsider its finding of market distortion in New Brunswick and use private woodlot stumpage as a tier-one benchmark for Crown stumpage. Updated information precludes {Commerce} from finding a Crown supply "overhang" because the largest five mills, collectively, had no unused Crown allocation. The updated 2022 study of the Forest

[363] *See* Petitioner Case Brief at 17-18 (citing *Lumber V AR2 Final* IDM at 67 and 250).
[364] *See* Petitioner Case Brief at 18.
[365] *See Lumber V AR2 Final* IDM at Comment 23.
[366] *Id.* at Comment 19; *see also Lumber V AR3 Final* IDM at Comment 22.

> Products Commission provides private stumpage price data and shows there was no price suppression by New Brunswick mills. The New Brunswick study is more robust than the {*2021-2022 Private Market Survey*} relied on by {Commerce}. Updated evidence also shows that New Brunswick mills had net demand and required private woodlot supply to operate. Distance-to-mill and various other evidence contradicts the finding of market distortion.
>
> The *2020 Auditor General Report* concludes private woodlot prices in New Brunswick can represent the fair value of private woodlot transactions. {Commerce} relies on outdated reports from 2008 and 2012 and (errantly) the *2015 Auditor General Report*. But the *2015 Auditor General Report* contradicts {Commerce's} position, and the Declaration of Donald Floyd and Report of Professor Brian Kelly demonstrate that the New Brunswick market from 2007 to 2013 was distressed, making reports from that period not relevant to the current market. The POR reflects the market of the *Lumber IV* period, which was found to be undistorted.

JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Case Brief at 5-22.

> The GNB did not provide Crown stumpage to {JDIL} for less than adequate remuneration. {Commerce} should find based on the current record evidence that private stumpage prices in New Brunswick are market-determined and therefore are appropriate "tier-one" benchmarks under 19 CFR 351.511(a)(2). {Commerce} should apply the correct legal standard in making this determination, focusing on "significant distortion" as a result of government involvement, rather than the effect of private market forces. Moreover, {Commerce} should rely on evidence that is relevant to the POR instead of outdated reports. In particular, New Brunswick's Auditor General recently found that private stumpage transactions in the Province reflect market values and should be used to set Crown stumpage rates in accordance with the {CLFA}.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 165-185.

> {Commerce's} preliminary determination that private stumpage prices in New Brunswick are not a suitable tier-one benchmark is supported by substantial record evidence and should be maintained in the final results. The New Brunswick Parties have not cited any new evidence or presented any new argumentation that require {Commerce} to revisit its prior findings on this issue, and {Commerce} should continue to find those arguments unavailing.

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> Consistent with {Commerce's} findings in prior reviews, substantial record evidence continues to demonstrate that the GNB was the dominant supplier of standing timber, accounting for "approximately half" of logs harvested during the POR. The record also shows that a handful of mills remain the dominant consumers of stumpage in New Brunswick, and that a supply "overhang" existed that allows tenure-holding companies to use private stumpage as a supplemental source of fiber. As confirmed by numerous studies and anecdotal data within the province, these conditions create an oligopsonistic effect in the province that distorts private stumpage prices and precludes their use as a tier-one benchmark.
>
> The New Brunswick Parties' arguments on this matter have been rejected repeatedly in prior reviews, and record evidence for this POR continues to support {Commerce's} findings. For example, {Commerce} has considered its reliance on prior studies and its overhang analysis in prior reviews, and the analyses presented there remain applicable to the record developed for the POR. Similarly, {Commerce} has reviewed the New Brunswick Parties' purported evidence of non-distortion in prior reviews, and can make the same findings based on the current record.
>
> Finally, although the New Brunswick Parties have argued that in-province benchmarks demonstrate that there is no distortion, this argument is circular and cannot be sustained in light of substantial record evidence that various conditions do, in fact, distort the New Brunswick stumpage market.

Commerce's Position: In *Lumber V AR5 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.[367]

For purposes of these final results and for the same reasons discussed in *Lumber V AR5 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 AR5 Prelim*[368] or *Lumber V AR4 Final*[369] regarding the private stumpage market in New Brunswick.

[367] *See Lumber V AR5 Prelim* PDM at 18-20.
[368] *Id*.
[369] *See Lumber V AR4 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) there is substantial additional evidence on the record showing that the private stumpage market is not distorted; and (11) the *Lumber V AR5 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 *Lumber V AR5 Prelim*. First, JDIL argues that Commerce did not apply the correct legal standard in evaluating whether private prices in New Brunswick are distorted. Additionally, 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.

<u>Commerce Appropriately Relied on the *2008 Auditor General Report*, *2012 Private Forest Task Force Report*, *2015 Auditor General Report,* and *2020 Auditor General Report*.</u>

First, we address the argument by the GNB that more "authoritative reports" are on the record of this administrative review.[370] 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.[371]

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*

[370] *See* GNB Case Brief Vol. VI at 45-47.
[371] *Id.* at 28-31.

Report indicates that the New Brunswick standing timber market is distorted.[372] 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.[373] 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.[374] 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.[375]

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 of the total harvest are set administratively. Thus, it is difficult to establish fair market value.[376]

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[372] *See Lumber V AR5 Prelim* PDM at 18-20; *see also* GNB IQR Response at Exhibits NB-AR5-STUMP-15, NB-AR5-STUMP-16, NB-AR5-STUMP-17, and NB-AR5-STUMP-23.
[373] *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.
[374] 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 "Table 7 Pivot"), which is consistent with the findings in all four reports.
[375] *See* GNB IQR Response at Exhibit NB-AR5-STUMP-15.
[376] *Id*. at Exhibit NB-AR5-STUMP-17.

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 the Department's efforts to balance budgets.[377]

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.[378]

- In 2019, only four companies, including JDIL, held nine of the ten Crown timber licenses issued by the Province.[379]

- In 2018-2019, private woodlot timber was sold to:

    - Crown timber licensees and sub-licensees (76 percent of harvest volume);
    - Other in-Province processors (7 percent of harvest volume); or
    - Exported out of Province (17 percent of harvest volume)[380]

The 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.[381] 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."[382] 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, the range of private woodlot harvest volumes between 2005 to 2018, and the fact that the five largest mill groups in New Brunswick collectively had no unused allocation.[383] 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 significantly lower than it was during the POR. The private timber harvest volume increased by 40 percent between 2014 and 2022 while Crown and industrial freehold timber harvest volumes increased by approximately five to seven percent over the same period.[384] The GNB's subsequent argument is twofold: (1) the current POR reflects a rebound in the sources of softwood lumber supply and private harvest volume and is, therefore, more comparable to the market percentages of the *Lumber IV* period, when

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[377] *Id*. at Exhibit NB-AR5-STUMP-16.
[378] *Id.* at Exhibit NB-AR5-STUMP-23 at 23 (internal p. 181) and Exhibit 4.1.
[379] *Id.* at 24 (internal p. 182 and Exhibit 4.2).
[380] *Id.* at 32 (internal p. 190).
[381] *See* GNB Case Brief Vol. VI at 3, 13-15, and 24-28.
[382] *Id.* at 14 (citing GNB IQR Response at Exhibit NB-AR5-STUMP-24).
[383] *Id.* at 12 and 14 (citing GNB IQR Response at Exhibit NB-AR5-STUMP-24 at Attachment A).
[384] *Id.* at 30-31 (citing GNB IQR Response at Exhibit NB-AR5-STUMP-39, Table "Softwood Source Volume").

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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.[385] 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.[386] 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.[387] 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.[388] 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 involvement in the market."[389] Commerce does not base its determination of market distortion and government involvement in the market on this statement alone; however, the fact that the

[385] *See Lumber V AR4 Final* IDM at 75.
[386] *See* GNB Case Brief Vol. VI at 58.
[387] *Id.* at 27 (citing GNB IQR Response at Exhibit NB-AR5-STUMP-16).
[388] *Id.* at 24-31.
[389] *See CVD Preamble*, 63 FR at 65377.

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.'"[390]

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."[391] 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}."[392] 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."[393]

In addition, the GNB states that the number of licensees is unimportant as multiple other parties harvest on each Crown license.[394] 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.[395] 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.'"[396] We are unpersuaded by this argument. We base our conclusion that the New Brunswick private stumpage market is distorted on a number of factors, one of which includes the finding that mills are the dominant consumers of stumpage in

[390] *See* GNB IQR Response at Exhibit NB-AR5-STUMP-16 at 39 (internal p. 197).
[391] *Id.* at 18 (citing Exhibit NB-AR5-STUMP-23 at 35 (internal p. 173).
[392] *See* GNB Case Brief Vol. VI at 21.
[393] *See CVD Preamble*, 63 FR at 65377.
[394] *See* GNB Case Brief Vol. VI at 21
[395] *Id*.
[396] *See* GNB IQR Response at Exhibit NB-AR5-BENCH-STUMP-23 at 34-35 (internal pgs. 182-183) (Exhibit 4.2 and 4.3).

New Brunswick and that consumption of both Crown-origin standing timber and private standing timber is concentrated among a small number of corporations.

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."[397] 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 *Lumber V AR4 Final* or *Lumber V AR5 Prelim*.[398] As explained in *Lumber V AR4 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.[399] Since the private woodlot owner chooses to sell timber, the Auditor General concluded that this can represent a fair value transaction in this market.[400] 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."[401] 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."[402]

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 this requirement.[403] Further, the overall response rate of the contractors to the Commission's request was low, approximately 20-30 percent.[404] 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

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[397] *See* GNB Case Brief Vol. VI at 19-20 (citing GNB IQR Response at Exhibit NB-AR5-STUMP-23).
[398] *Id.* at 23; *see also* JDIL Case Brief at 13.
[399] *See Lumber V AR4 Final* IDM at 77.
[400] *See* GNB IQR Response at Exhibit NB-AR5-STUMP-23 at p. 198.
[401] *Id.* at p. 197.
[402] *Id.*
[403] *Id.* at p. 194.
[404] *Id.*

GNB from the annual stumpage studies since 2014-2015.[405] 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.[406] 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 2022 FMV Study have no relevance to the market distortion issue because those prices are themselves a product of that market distortion.[407] 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 2022 FMV Study to a higher standard than the *2021-2022 Private Market Survey* for Nova Scotia.[408] 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 2022 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. Thus, Commerce is not holding the 2022 FMV Study to a different standard than the Nova Scotia study. Rather Commerce has reached a determination that the 2022 FMV Study reflected prices from a distorted market.

[405] *Id.* at p. 197.
[406] *See* GNB Case Brief Vol. VI at 18-20 and 31-33.
[407] *See* Petitioner Rebuttal Brief at 171.
[408] *See* GNB Case Brief Vol. VI at 32-33 (citing GNS Stumpage IQR Response at Exhibit NS-6).

The GNB also references the economist Dr. David Reishus in this review.[409] 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.[410] However, the GNB notes Dr. Reishus' analysis focuses on the import and export of softwood roundwood *logs*, not on private stumpage markets.[411] 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.[412] 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.[413] The *2020 Auditor General Report* also lacks any analysis as to how the Auditor General came to its conclusion regarding the Kelly Report.

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

The GNB and JDIL also claim the data from the 2022 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\$24.76/m^3 for mills versus C\$19.71/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\$20.14/m^3 for mills versus C\$15.96/m^3 for contractors).[414] 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.

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.[415] Citing the FMV studies, both the GNB and

[409] *Id.* at 46 (citing Canadian Parties Response to Petitioner's Comments to IQR Response at Exhibit GOC-RPR-AR5-4).
[410] *Id.* (citing Canadian Parties Response to Petitioner's Comments to IQR Response at Exhibit GOC-RPR-AR5-4 at 42, para. 90).
[411] *Id.*
[412] *See Lumber V Final* IDM at 82-83.
[413] *See* GNB IQR Response at Exhibit NB-AR5-BENCH-STUMP-23 at 196.
[414] *See* GNB Case Brief Vol. VI at 34 (citing GNB Stumpage Benchmark Comments at Exhibit NB-AR5- STUMP-2 at 4, Table 4); *see also* JDIL Case Brief at 18.
[415] *Id.* at 50-51 and 55 (citing GNB Stumpage Benchmark Comments at Exhibit NB-AR5-BENCH-STUMP-2 and GNB IQR Response at Vol. II at Exhibit-AR5-STUMP-28, Table 11); *see also* JDIL Case Brief at 17.

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 2022 FMV Study, the GNB and JDIL note that independent contractors account for 77 percent of private woodlot stumpage purchases in New Brunswick and mills account for the remaining share.[416] 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."[417] 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.[418]

<u>Commerce Appropriately Evaluated Distortion in the New Brunswick Stumpage Market</u>

As an initial matter, JDIL's claim that Commerce applied the wrong legal standard in evaluating whether private prices in New Brunswick are distorted is incorrect. JDIL claims that Commerce merely examined whether "private prices for standing timber" are "independent of the prices charged for Crown-origin standing timber;" yet, these claims do not acknowledge our distortion analysis in *Lumber V AR5 Prelim* and prior reviews.[419] In accordance with the Commerce's regulations at 19 CFR 351.511(a)(2)(i), our distortion analysis includes determining whether in-country prices are "market-determined" or whether they are instead "significantly distorted as a result of the government's involvement in the stumpage market."[420] Consistent with our findings in prior segments of this proceeding,[421] here we base our conclusion that the New Brunswick private stumpage market is distorted on a number of factors including: the GNB being the

[416] *See* JDIL Case Brief at 17 (citing the GNB IQR Response at Exhibit NB-AR5-STUMP-2); *see also* GNB Case Brief Vol. VI at 55 (citing GNB IQR Response, Vol. II at Exhibit-AR5-STUMP-2 at 4-5).
[417] *See* GNB IQR Response at Exhibit NB-AR5-STUMP-23 at 189.
[418] *See, e.g.*, New Brunswick Market Memorandum.
[419] *See* JDIL Case Brief at 6-7.
[420] *See CVD Preamble*, 63 Fed. Reg. at 65377.
[421] *See Lumber V AR4 Final* IDM at Comment 14; *see also Lumber V AR3 Final* IDM at Comment 14; *Lumber V AR2 Final* IDM at Comment 14; *Lumber V AR1 Final* IDM at Comment 17; and *Lumber V Final* IDM at Comment 28.

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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 both Crown-origin standing timber and private standing timber being concentrated among a small number of corporations.

Moreover, 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; (2) there were significant price differences between mill and contractor prices which indicates that private woodlots harvested above sustainable levels during the POR;[422] and (3) the nominal overhang calculated by Commerce is almost eliminated when the volume of unharvested Crown timber that was not available or harvestable during the POR is removed from the calculation.[423] 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 or was not harvested due to other disruptions to the mills' operations, and a table of private woodlot harvest volume and mills' sources of softwood roundwood volumes from 2005 to 2022.[424] We find the conclusions contained in this supporting documentation unpersuasive.

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.[425] 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.[426] We similarly continue to disagree with the GNB and JDIL that an insignificant portion of Crown allocations were unharvested during the POR as the total overhang in the province in FY 2021-2022 was 4.27 percent.[427]

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.[428] 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.[429] As explained in *Lumber V AR5 Prelim*, additional factors

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[422] *See* GNB Case Brief Vol. VI at 38-41 (citing GNB IQR Response at Exhibit NB-AR5-STUMP-25 at Attachment A, Exhibit NB-AR5-STUMP-38).
[423] *See* GNB Case Brief Vol. VI at 39-40 (citing GNB IQR Response at Exhibit NB-AR5-STUMP-25); *see also* JDIL Case Brief at 5-6.
[424] *See* GNB Case Brief Vol. VI at 39-40 (citing GNB IQR Response at Exhibits NB-AR5-STUMP-25, NB-AR5-STUMP-31, NB-AR5-STUMP-35, NB-AR5-STUMP-37, Exhibit NB-AR5-STUMP-38, and Exhibit NB-AR5-STUMP-39).
[425] *See* GNB Case Brief Vol. VI at 42.
[426] *See* JDIL Case Brief at 23 (citing GNB IQR Response, Vol. II at Exhibit NB-AR5-STUMP-1, Table 3 and New Brunswick Preliminary Market Memorandum, worksheet "Table 1 Pivot").
[427] *See* New Brunswick Preliminary Market Memorandum, worksheet "Table 1 Pivot."
[428] *See, e.g.*, New Brunswick Preliminary Market Memorandum, worksheet "3. AggregateDataBySource."
[429] *See* GNB Case Brief Vol. VI at 54-57.

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 *Lumber V AR5 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.[430] 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.[431] Further, JDIL cites 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.[432]

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.[433] 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.[434] Further, in the case of JDIL, New Brunswick's largest consumer of standing timber and logs, its ability to purchase imported logs through non-arm's length transactions (*i.e.*, logs it imports from its own land holdings in Maine) adds to the market power it can exert in the province and, thus, contributes to the oligopsonistic conditions that exist in the province.[435]

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,

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[430] *Id.* at 13, 16, 28, and 37 (citing GNB Response to Petitioner's Comments on IQR Responses at Exhibit NB-AR5-RPC-2 and GNB IQR Response at Exhibit NB-AR5-STUMP-11 and Exhibit NB-AR5-STUMP-17 at 38).
[431] *Id.* at 37 (citing GNB IQR Response at Exhibit NB-AR5-STUMP-11 and Exhibit NB-AR5-STUMP-17 at 38 and GNB Response to Petitioner's Comments on IQR Responses at Exhibit NB-AR5-RPC-2).
[432] *See* JDIL Case Brief at 7-9.
[433] *See* New Brunswick Preliminary Market Memorandum at Attachment, worksheets "Table 7 Pivot" and "7. DisaggregatedSurveyData."
[434] *Id.*
[435] *See* GNB IQR Response at Exhibit NB-AR5-STUMP-32.

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.[436] Citing the same data in the previous review from the New Brunswick Department of Natural Resources and Energy Development for softwood mills active in FY 2021-2022, 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.[437] 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, 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.[438] 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."[439]

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.[440] 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."[441] As a result, Commerce finds no sufficient basis to conclude, based on the record evidence, that New Brunswick faces more competitive conditions on average than Nova Scotia based on the concentration of mills and sawmills in New Brunswick and Nova Scotia.

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

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."[442] The GNB argues that the reports and studies it has submitted to the

[436] *See* GNB Case Brief Vol. VI at 44-45.
[437] *Id*. at 44 (citing GNB IQR Response Exhibit NB-AR5-STUMP-31, Appendix 2).
[438] *Id*.
[439] *Id*.
[440] *See* New Brunswick Preliminary Market Memorandum at Attachment, worksheets ""Table 7 Pivot" and "7. DisaggregatedSurveyData." The exact percentages are proprietary.
[441] *See* GNB Case Brief Vol. VI at 44 (citing GNB IQR Response at Exhibit NB-AR5-STUMP-31, Appendix 2 at 2, para. 8).
[442] *See* GNB Case Brief Vol. VI at 46.

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.[443] In addition, the GNB submitted a declaration from the DNRED, independent contract harvesters, 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.[444] The GNB argues that these declarations contradict Commerce's findings in *Lumber V AR5 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 2022 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.[445]

Further, the GNB argues that *Lumber V AR5 Prelim* does not articulate a viable theory of market distortion.[446] Specifically, the GNB argues that: (1) Commerce's finding is flawed, as the number of competing buyers is a prevailing market condition, and the remaining Crown share issue has been ruled by Commerce itself not to *per se* give rise to distortion; and (2) Commerce does not provide any example of how mills can actually impact private stumpage prices.

In 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."[447] Further, the GNB argues that prevailing market conditions vary as, "{s}ome markets are made of two competitors.

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[443] *See, e.g.*, GNB Case Brief Vol. VI at 13-16.
[444] *Id.* at 40-42, and 47 (citing GNB IQR Response at Exhibits NB-AR5-STUMP-21, NB-AR5-STUMP-25, NB-AR5-STUMP-31, NB-AR5-STUMP-34, NB-AR5-STUMP-35, NB-AR5-STUMP-37, and NB-AR5-STUMP-38).
[445] *See* GNB Stumpage IQR Response at Exhibit NB-AR5-STUMP-2.
[446] *Id.* at 54-59.
[447] *Id.* at 57.

Other markets have a large number of small competitors."[448] 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 *Lumber V AR5 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.[449]

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.[450] 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.[451] In 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."[452]

[448] *Id.* at 56.
[449] *See Lumber V AR5 Prelim* PDM at 18-20.
[450] *See* New Brunswick Preliminary Market Memorandum at Attachment, worksheet "3. AggregateDataBySource."
[451] *See* GNB Case Brief Vol. VI at 54-57.
[452] *See CVD Preamble*, 63 FR at 65377.

Comment 24: Whether Commerce Should Use JDIL's Own Purchases of Sawlogs in Nova Scotia or the *2021-2022 Private Market Survey* as a Benchmark for New Brunswick Crown Stumpage

Petitioner Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Case Brief at 24-30.

> {Commerce} should use the {*2021-2022 Private Market Survey*} as the benchmark for {JDIL's} purchases of New Brunswick Crown stumpage in the final results rather than the company's purchases of Nova Scotia private timber. {Commerce's} regulations at 19 CFR 351.511(a)(2)(i) require that the agency choose a benchmark based on factors such as product similarity, quantities sold, and other factors affecting comparability. On each of these elements, the {*2021-2022 Private Market Survey*} is superior to {JDIL's} Nova Scotia purchases when compared to its New Brunswick purchases. Specifically, the {*2021-2022 Private Market Survey*} contains stumpage purchases of more similar species to {JDIL's} New Brunswick Crown purchases than does the company's Nova Scotia purchases. Further, the quantities of stumpage contained in each data set render the {*2021-2022 Private Market Survey*} a more appropriate benchmark of the two sources. Finally, record evidence demonstrates that {the} commercial environment in which {JDIL} operated in New Brunswick is more similar to that captured in the {*2021-2022 Private Market Survey*}. Even if {Commerce} finds that both datasets are comparable to {JDIL's} New Brunswick Crown stumpage purchases, the agency has not explained why the mere fact that the current benchmark is {JDIL's} own data means that it is more comparable to its transactions in New Brunswick than the {*2021-2022 Private Market Survey*} given these factors. In sum, the record demonstrates that the {*2021-2022 Private Market Survey*} is the most appropriate benchmark for {JDIL's} Crown stumpage purchases, and {Commerce} should revise its benchmark selection accordingly in the final results.

GNB Case Brief

The following is a verbatim summary of the argument submitted by the GNB (internal citations omitted). For further details, *see* GNB Case Brief at Vol. VI at 59-60.

> If {Commerce} correctly determines in the Final Results that, as further demonstrated by new evidence on the record, the New Brunswick market is not distorted, {Commerce} should use tier-one benchmarks in New Brunswick to measure adequacy of remuneration. {JDIL's} in-province private stumpage purchases and the FMV study data provide {Commerce} with suitable tier-one benchmarks. Crown stumpage rates are higher than private softwood stumpage prices.

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GNB Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GOC (internal citations omitted). For further details, *see* GNB Rebuttal Brief at VI at 9-11.

> {The petitioner} argues that {JDIL's} purchases of standing timber in Nova Scotia cannot serve as a benchmark because {JDIL} does not always process the logs after harvesting the standing timber. However, these types of transactions are also pervasive in {the petitioner's} proposed alternative, the {*2021-2022 Private Market Survey*}, and they do not materially differ from transactions in which the buyer processes its own standing timber.

GNB Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GNB (internal citations omitted). For further details, *see* GNB Rebuttal Brief at VI at 1-4.

> With regard to the benchmark for Crown stumpage programs, the GNB objects to {the petitioner's} request to rely on the {*2021-2022 Private Market Survey*} as a new benchmark for New Brunswick. {The petitioner} errs in asserting that {Commerce's} only other option available for a tier-one benchmark for {JDIL} is the {*2021-2022 Private Market Survey*}, as the record presents multiple tier-one benchmarks in New Brunswick. Further, {the petitioner} makes several assertions regarding the New Brunswick and Nova Scotia markets and mill behavior that have no support in the record and are contradicted by authoritative reports and economic studies. Finally, the {*2021-2022 Private Market Survey*} suffers from defects that make it inappropriate for use as a tier-one benchmark.

JDIL Rebuttal Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Rebuttal Brief at 2-10.

> {Commerce} correctly declined to use the {*2021-2022 Private Market Survey*} as the benchmark for {JDIL's} purchases of Crown stumpage in New Brunswick in determining whether Crown stumpage was sold for less than adequate remuneration. {Commerce's} decision is consistent with its benchmark selection for {JDIL} in all prior segments of this proceeding. In advocating for a different benchmark, {the petitioner} relies on distorted and misleading representations of the record to support its arguments with respect to product similarity, quantities sold, and "commercial environment."

Commerce's Position: In *Lumber V AR5 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.[453] The petitioner argues that Commerce should instead use the *2021-2022 Private Market Survey* as a benchmark for JDIL's Crown-origin New Brunswick stumpage purchases because of differences between the transactions in the *2021-2022 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.[454] 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.[455]

Regarding the petitioner's focus on the differences in the overall volume of the *2021-2022 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.[456] 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.[457]

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.[458] 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.

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[453] *See Lumber V AR5 Prelim* PDM at 36-37; *see also Lumber V AR4 Prelim* PDM at 25, unchanged in *Lumber V AR4 Final*; *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 Final*.
[454] *See Lumber V AR4 Final* IDM at Comments 30 and 31.
[455] *See* JDIL Stumpage IQR Response at Exhibit STUMP-02.c; *see also* GNS IQR Response at Exhibit NS-9 at 14.
[456] *See* JDIL Stumpage IQR Response at Exhibit STUMP-02.c.
[457] *Id.*
[458] *Id.,* at 1-3, 14-15, and Exhibits STUMP-02.a, STUMP-02.c, STUMP-03, and STUMP-15.

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.

Comment 25: 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 Case Brief

The following is a verbatim summary of the argument submitted by the GNB (internal citations omitted). For further details, *see* GNB Case Brief Vol. VI at 60-62.

> {Commerce} should properly calculate any benefit and differentiate between treelength and "product" pricing for stumpage.

JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Case Brief at 24-37.

> SPF benchmarks (purchased at "Product Rates") must be converted to "Treelength Rates" to ensure valid comparisons with Crown SPF stumpage purchased at Treelength Rates, as required by Section 771(5)(E)(iv) of the Act. This comparison properly considers "prevailing market conditions" based on differences in stumpage purchased at Treelength and Product Rates. {JDIL} and the GNB have submitted information to specifically address the concerns raised {Commerce} in the prior administrative review.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 146-149.

> {JDIL} and the GNB argue that {Commerce} erred in declining to adjust the Nova Scotia benchmark "to ensure a valid comparison" with {JDIL's} "purchase of SPF stumpage from the GNB at Treelength Rates." This argument has been raised and rejected in each administrative review of this proceeding and continues to be without record support. First, the record shows that the GNB's treelength pricing strategy is merely a tool of its subsidization. As {JDIL} explained, "{l}icensees and sub-licensees, subject to NBDNR's approval, had the option to purchase Crown stumpage at Product Rates or Treelength Rates." There are different price advantages depending on which type of rate a license holder chooses. Specifically, paying a product rate is more beneficial for purchases of pulpwood, while paying a treelength rate is preferential when purchasing sawlogs and studwood, the main inputs for lumber. Accordingly, because a harvester can essentially choose its own

> price, it is clear that the "treelength" pricing strategy is simply another tool for the GNB to further subsidize its licensees' purchases of more valuable stumpage while still purporting to "get{} full stumpage value for the tree." Accordingly, this is not a "prevailing market condition" that {Commerce} must adjust for because it is not based on free market principles. Rather, treelength pricing is part of the stumpage subsidy. 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." Moreover, even if an adjustment was necessary, the ratios provided by {JDIL} are not reasonable. As {Commerce} has determined in previous reviews, the New Brunswick License 7 treelength ratios are not based on data for private-origin stumpage in Nova Scotia, and the ratios are reflective of harvesting trends in New Brunswick rather than the ratio of different grades within a given tree. These facts have not changed in this review. Additionally, the Nova Scotia ratio supplied by {JDIL} in this review is based on the company's purchases of private stumpage in Nova Scotia during the POR. Because this ratio is based on proportions of harvest by {JDIL}, it cannot be representative of the ratio in a given tree, as with the New Brunswick ratio. The record also demonstrates that the ratio is not representative of overall harvesting in Nova Scotia either. Nonetheless, because the GNB's treelength pricing strategy is not a prevailing market condition, but is instead part of the subsidy being examined, {Commerce} should not apply a treelength adjustment to the benchmark in the final results.

Commerce's Position: In *Lumber V AR5 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.[459]

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,

[459] *See* JDIL Case Brief at 36 (citing JDIL Benchmark Submission at Exhibit BM-01); *see also Lumber V AR1 Final Results* IDM at Comment 39; *Lumber V AR2 Final Results* IDM at Comment 37; *Lumber V AR3 Final Results* IDM at Comment 41; and *Lumber V AR4 Final Results* IDM at Comment 16.

> 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 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.[460] 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.[461]

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. Nova Scotia Stumpage Benchmark Issues

Comment 26: Whether to Revise the Conversion Factor Used in the Calculation of the Nova Scotia Benchmark

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 64-75 and 87.

> Evidence on the record of this review, including evidence that was unavailable during the prior proceedings, establishes that {Commerce's} Nova Scotia benchmarks suffer from errors, deficiencies, and ambiguities that render them unusable for measuring the adequacy of remuneration. One critical error was {Commerce's} use of a flawed conversion factor to translate prices reported on a per-tonne basis into prices expressed on a per-cubic-meter basis. {Commerce}compounded that error when it relied on results that did not accurately account for the regional price disparities within Nova Scotia.
>
> Beyond the errors that {Commerce} introduced, the 2021–22 Nova Scotia Private Stumpage Survey contains errors, including ones similar to the unreliable 2015-16

[460] *See* Comments 23 and 24, *supra*.
[461] *See CVD Preamble*, 63 FR at 65378.

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> and 2017-18 Nova Scotia Private Stumpage Surveys. {Commerce} cannot reasonably rely on flawed benchmark data to evaluate Crown stumpage prices in a different province.

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.A at 62-69.

> {Commerce} erred in relying on the *2021-2022 Nova Scotia Private Stumpage Survey* transaction data as such data relied on an inaccurate weight-to-volume conversion factor, rendering the volumes and per-unit prices distorted and unreliable as a benchmark for Alberta stumpage. The conversion factor that the survey participants used to convert weight-based transactions into cubic meters is not ordinarily used by private parties in Nova Scotia, who make sales and set prices on a per metric tonne 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. Short of making such an adjustment, {Commerce} cannot rely on the Nova Scotia transaction prices to serve as a benchmark.
>
> The record evidence in this review confirms that the Nova Scotia conversion factor on which the private market survey participants relied is not an accurate measure of the cubic meter per tonne of logs reflected in the *2021-2022 Nova Scotia Private Stumpage Survey* data. 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 Government of Nova Scotia has mandated new scaling methodologies in the years since, specifically to improve accuracy. There is no evidence to suggest that the Government of Nova Scotia actually uses the conversion factor in the normal course of business to set or calculate stumpage charges. Indeed, when mills in Nova Scotia purchase standing timber from private land, they typically pay the landowner based on the weight (*i.e.*, dollars per tonne) of each type of product (*e.g.*, sawlog, studwood, pulpwood) that they harvest. Yet, private market survey participants were instructed to report their transactions on a volume basis by applying the fixed, outdated conversion factor.
>
> {Commerce} cannot rely on such data to derive a benchmark for Alberta stumpage. To accurately capture prices in Nova Scotia, {Commerce} must rely on a conversion factor that accounts for seasonality, log type, species, and the other dynamic factors that affect conversion factors (as Alberta's conversion factor does). Thus, if {Commerce} insists on using the Nova Scotia survey data in the Final Results, it would need to apply Alberta's conversation {sic} factor to the underlying weight-based transactions captured in the private market survey. If it does not, {Commerce} will again underestimate the volumes reported in the Nova Scotia Private Stumpage Survey and overestimate its benchmark prices.

GNS Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GNS (internal citations omitted). For further details, *see* GNS Rebuttal Brief at 2-9.

> {T}the facts on the administrative record confirm the integrity of Nova Scotia's forestry practices, including the use of its private stumpage survey to set Crown stumpage rates in Nova Scotia and a regulatory standard weight-to-volume conversion factor in furtherance of domestic forestry policy.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 113-118.

> {Commerce} has consistently found the GNS's 1.167 conversion factor to be reliable. Nevertheless, the Canadian Parties continue to repeat arguments from previous administrative reviews discussing how the 1.167 conversion factor is flawed. Specifically, the Canadian Parties express methodological concerns over the creation and later reassessment of the conversion factor and argue that the manner in which the GNS uses the factor does not require the same "level of precision required of {Commerce} when calculating its benchmark." {Commerce} has consistently found, "in developing, reexamining, and confirming the continued applicability of the 1.167 conversion factor, the GNS followed the {Canadian Standards Association (CSA)} scaling guidelines." Additionally, in the investigation, {Commerce} itself verified "the process and information that went into the GNS's development and continued evaluation of the conversion factor …{and} determined that the GNS's conversion factor was reliable and accurate." Also, Certain Freedom of Information Request documents obtained by the Canadian Parties regarding the development and assessment of the 1.167 conversion factor further confirm the reliability of the sampling methodologies. Lastly, the record continues to be clear that the GNS uses the 1.167 conversion factor in the ordinary course of business, and therefore has a strong incentive to ensure its continued reliability. Therefore, {Commerce} should continue to reject these repeated arguments for the final results.

Sierra Pacific Rebuttal Brief

The following is a verbatim summary of the argument submitted by Sierra Pacific (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 14-16.

> {Commerce} has previously found that the volumetric conversion factor underlying the Nova Scotia benchmark prices is reliable and accurate, as the GNS has used it in the ordinary course of business for over twenty years for some of the most important aspects of its forestry policy.

Commerce's Position: The Canadian Parties raise many of the same critiques of the conversion factor that Deloitte used to generate per-cubic-meter weighted-average prices in the *2021-2022 Private Market Survey*, which Commerce rejected in the investigation and in prior reviews.[462] We continue to reject these arguments and find the conversion factor used in the *2021-2022 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.

The GNS began the process to develop a standard conversion rate in 1989.[463] From 1989 to 1994, the GNS surveyed delivered SPF timber to derive a tons to cubic meter conversion factor.[464] 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.[465] 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.[466]

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.[467] 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 *2017-2018 Private Market Survey*.[468] During the investigation, Commerce verifiers examined the process and information that went into the GNS's development and continued evaluation of the conversion factor.[469] In the prior review, Commerce determined that the GNS's conversion factor was reliable and accurate.[470] Record evidence shows that the GNS continued to use the same conversion factor in the *2021-2022*

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[462] *See Lumber V AR4 Final* IDM at Comment 23; *see also Lumber V AR3 Final* IDM at Comment 29; and *Lumber V Final* IDM at Comment 41.
[463] *See* GNS Stumpage IQR Response at 15.
[464] *Id*.
[465] *Id*.; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[466] *See* GNS Stumpage IQR Response at 15-16; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[467] *See* GNS Stumpage IQR Response at 15 and Exhibits NS-13 and 15; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[468] *See Lumber V AR4 Final* IDM at Comment 23.
[469] *See Lumber V Final* IDM at Comment 41.
[470] *See Lumber V AR4 Final* IDM at Comment 23.

Private Market Survey, and that these prices were used by the GNS to set the prices charged for Crown-origin standing timber.[471]

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.[472] 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.[473] Further, from 2001 to 2009, the GNS conducted multi-year samples of SPF species, that adhered to CSA standards, to confirm the accuracy of the 1.167 conversion factor.[474]

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.[475] Moreover, record evidence indicates the GNS used the conversion factor at issue to set the prices charged for Crown-origin standing timber during the POR.[476] 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.[477]

We continue to disagree with the Canadian Parties' claim that the GNS's use of a 1.167 conversion factor in the *2021-2022 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 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.[478] Further, the claim made in the Miller Report that stumpage prices in Nova Scotia do not reflect a felled tree, are not

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[471] *See* GNS Stumpage IQR Response at 3; *see also* JDIL Benchmark Submission at Exhibit BM-01, Attachment B at 8.
[472] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[473] *Id*. at Exhibit 2.
[474] *See* GNS Stumpage IQR Response at 15-16; *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.
[475] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[476] *See* GNS Stumpage IQR Response at 1; *see also* GNS Stumpage SQR Response at 1-4; and Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 1, paragraph 8.
[477] *See* GNS Stumpage IQR Response at Exhibit NS-7 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.
[478] *See* Miller Report at 4.

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.[479]

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,[480] 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 *2021-2022 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).[481] 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").[482] We found in prior reviews that the prices in the *2017-2018 Private Market Survey* also reflected prices for pure stumpage.[483] Information regarding the instructions that Deloitte provided to participants in the *2021-2022 Private Market Survey* contains proprietary information. For further discussion, *see* Nova Scotia Benchmark Final Memorandum.

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

[479] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 4 at paragraph 5.
[480] *See Lumber V AR4 Final* IDM at Comment 23.
[481] *Id.*; *see also* GNS Stumpage IQR Response at Exhibit NS-7 at 6, which contains the GNS Verification Report from the investigation indicating that the 2015-2016 Private Market Survey reflected "pure" stumpage prices for standing timber.
[482] *See* GNS Stumpage IQR Response at Exhibit NS-7 at 8.
[483] *See Lumber V AR4 Final* IDM at Comments 5, 23, 27, and 32; *see also Lumber V AR3 Final* IDM at Comments 29 and 31.

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."[484]

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.[485] 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.[486] In fact, Commerce's explanation for 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.[487] Concerning the Dual-Scale Study, Commerce reached the same conclusion in the instant review.[488]

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 *Lumber V Initiation*.[489] 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.[490]

Also, in developing, re-examining, and confirming the continued applicability of the 1.167 conversion factor, the GNS followed CSA scaling guidelines.[491] 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.[492] Therefore, unlike the Dual Scale Study,

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[484] *See Lumber V AR1 Final* IDM at Comment 22.
[485] *See* GOC Case Brief Vol. I at 66.
[486] *See Lumber V AR1 Final* IDM at Comment 22.
[487] *See Lumber V AR3 Final* IDM at Comment 22.
[488] *See Lumber V AR5 Prelim* PDM at 33.
[489] *See Lumber V Initiation*, 81 FR at 93897.
[490] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[491] *See* GNS Stumpage IQR Response at 15-16.
[492] *Id*. at 15.

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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 Request, states, "Samples shall be selected in an unbiased manner that conforms to the logistics of the wood arriving at the mill site."[493]

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;[494] and (2) used the prices in the *2021-2022 Private Market Survey* to set Crown-origin standing timber prices in 2023.[495] 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 *2021-2022 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.[496] 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.[497] Thus, the

[493] *See* GOA Comments on GNS IQR Response at Exhibit PR-NSR-AR5-25 at 9.
[494] *See* GNS Stumpage IQR Response at 15; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[495] *Id.*at 1; *see also* Petitioner Comments on IQR Responses, Volume I-43 at Exhibits 1 and 4.
[496] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[497] *See* GNS Stumpage IQR Response at 15-16; *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.

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 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."[498]

We also disagree with the GOA's argument that Commerce should adjust the conversion factor used in the *2021-2022 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.[499] 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.[500] 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 *2021-2022 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; (5) the GNS used the prices in the *2017-2018 Private Market Survey* (which are a partial function of the 1.167 conversion factor) to set standing timber prices for Crown-origin standing timber during the POR;[501] and (6) the GNS used the prices in the *2021-2022 Private Market Survey* (which are also a partial function of the 1.167 conversion factor) to set standing timber prices to set Crown-origin standing timber prices in 2023.[502] Further, as discussed above, record evidence demonstrates that sawmill operators in

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[498] *See* Petitioner Comments on IQR Responses, Exhibit Volume I-43 at Exhibit 3.
[499] *See, e.g.*, *HRS from India* IDM at Comment 12.
[500] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 2.
[501] *See* GNS Stumpage SQR Response at 1-4.
[502] *See* GNS Stumpage IQR Response at 1.

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.[503] 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.[504] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[505]

Comment 27: Whether Commerce Should Index the Nova Scotia Benchmark

Petitioner Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Case Brief at 31-33.

> In the *Preliminary Results*, {Commerce} correctly relied on the {*2021-2022 Private Market Survey*} as a source for benchmark prices to measure the adequacy of remuneration for the provision of Crown stumpage in Alberta. However, the {*2021-2022 Private Market Survey*} did not contain contemporaneous stumpage prices for the months of October through December 2022. In prior segments of this proceeding, {Commerce} has consistently followed the same methodology the GNS used for setting Crown stumpage in the province to determine the "market price of standing timber in Nova Scotia during the POR." The record contains the necessary information for {Commerce} to do the same for the months of October through December 2022. {Commerce} should do so in the final results in setting the benchmark price for the POR.

Canadian Parties Joint Rebuttal Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Rebuttal Brief Vol. I at 12-14.

> {The petitioner} argues that {Commerce} should compare October-December 2022 Crown standing timber sales in Alberta to indexed prices from the {*2017-2018*

[503] *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.
[504] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[505] *See* SAA at 659.

> *Private Market Survey*}, even though {the petitioner} argues {Commerce} should otherwise rely on the more contemporaneous prices in the {*2021-2022 Private Market Survey*}. It would be unreasonable for {Commerce} to reject more contemporaneous prices both because the GNS adopted the {*2021-2022 Private Market Survey*} prices once they became available and because {Commerce}has an established, logical practice of preferring more contemporaneous benchmarks. This is particularly true because the index that {the petitioner} advocates {Commerce}use is novel and the data and methodology underlying it are not on the record.

Commerce's Position: As we explained in the prior review, an important characteristic of a price benchmark is that it is contemporaneous with the POR.[506] In *Lumber V AR3* and *Lumber V AR4*, we determined that the *2017-2018 Private Market Survey* was the most appropriate stumpage benchmark to measure the adequacy of remuneration for stumpage purchases in Alberta. However, the *2017-2018 Private Market Survey* contained private stumpage price data from a time period (*i.e.*, April 2017 to March 2018) that fell at least 19 months prior to *Lumber V AR3* POR (*i.e.*, January 1 to December 31, 2020) and 33 months prior to *Lumber V AR4* POR (*i.e.*, January 1 to December 31, 2021). As we explained in *Lumber V AR3 Final*, the GNS used the *2017-2018 Private Market Survey* to set Crown stumpage rates for the April 1, 2020 to March 31, 2021 harvest year by inflating the survey prices using a lumber-based index factor.[507] In *Lumber V AR3* and *Lumber V AR4*, we applied the same lumber-based index factor used by the GNS to inflate the *2017-2018 Private Market Survey* price data to create a benchmark for transactions that occurred in 2020 and 2021.

However, in the instant review, we are utilizing private stumpage prices from October 1, 2021, through September 30, 2022, as a benchmark for a POR that covers January 1 through December 31, 2022. We disagree with the petitioner that the survey prices from the first three months of the *2021-2022 Private Market Survey* (*i.e.*, the prices from October 1, 2021, through December 31, 2021,) are not reflective of prices in the POR.

The petitioner argues that to generate benchmark prices for the months of October through December 2022, Commerce should use price data from October through December 2017 contained in the *2017-2018 Private Market Survey* and index these prices to a period five years later. We find that this method of filling in benchmark data for the last three months of the POR is unnecessary as the record contains contemporaneous benchmark data in the *2021-2022 Private Market Survey*. The *2021-2022 Private Market Survey* covers the period October 1, 2021 through September 30, 2022, which overlaps with nine of the 12 months in the POR. Here, we are presented with two benchmarks, one price survey from a time period that precedes the POR by four to five years, and one price survey from a time period that overlaps with nine of the 12 months in the POR.

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 and to make certain adjustments to a

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[506] *See Lumber V AR4 Final* IDM at Comment 20.
[507] *See Lumber V AR3 Final* IDM at Comment 30.

benchmark such that it most closely matches the time period and the good at issue. While the data in the *2021-2022 Private Market Survey* does not overlap *entirely* with the POR, we find that the prices in the *2021-2022 Private Market Survey* are more contemporaneous with the POR than the prices in *2017-2018 Private Market Survey*. In addition, we find that the price data from October 1, 2021, to December 31, 2021, immediately precede the POR and thus are sufficiently contemporaneous and do not require indexing in this instance. There is no record evidence that the situation in Canada is such that government administered prices were indexed for periods less than one year; therefore, we do not find it necessary to inflate the October 1 to December 31, 2021 price data in *2021-2022 Private Market Survey* to the POR.

Comment 28: Whether Commerce Should Publicly Disclose the Anonymized Data that Comprise the *2021-2022 Private Market Survey*

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief at Vol. I at 91-92.

> {Commerce} must allow each respondent to review the benchmarks that {Commerce} uses to determine that respondent's rate because none of the Nova Scotia benchmarks used by the {Commerce} fall under any of {Commerce's} definitions for business proprietary information. Disclosing the benchmarks is consistent with {Commerce's} regulations, its practice, and basic principles of due process.

GNS Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GNS (internal citations omitted). For further details, *see* GNS Rebuttal Brief at 14-18.

> {The GNS} submits that its survey data are entitled to business proprietary treatment and that the {GNS} and individual stakeholders within Nova Scotia will be harmed if certain data are publicly disclosed.

Commerce's Position: The Nova Scotia benchmark is comprised of prices of softwood sawlogs and softwood studwood in the *2021-2022 Private Market Survey*, which is based on a survey conducted by Deloitte of private stumpage transactions in Nova Scotia.[508] 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 *2021-2022 Private Market Survey* database.[509] Similarly, in prior reviews the GNS consented to the public release of only the monthly benchmark of SPF standing timber prices for sawlogs and studwood derived from

[508] *See* GNS Stumpage IQR at Exhibits NS-5 and Exhibits NS-6.
[509] *See* Nova Scotia Preliminary Benchmark Memorandum at Attachment.

individual transactions in the *2017-2018 Private Market Survey* database.[510] Consistent with prior reviews, we have utilized the same redaction approach.[511]

The private stumpage prices in *2021-2022 Private Market Survey* contain prices for five softwood species groups, and for certain months and species groups there are only a small number of individual transactions in the survey.[512] The GNS explained that releasing monthly averages of each softwood species group would effectively reveal the individual transaction prices because the number of transactions is too small to generate an average that masks the individual transaction price, and revealing this information could curtail voluntary cooperation from purchasers of stumpage in future surveys.[513]

The remaining datapoints in the *2021-2022 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).[514] The monthly averages for non-sawable timber and hardwood species are not relevant to Commerce's LTAR price comparison and to our selection of a benchmark, which is limited to sawable, softwood species. Therefore, we continue to find it prudent to continue to also 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 *2021-2022 Private Market Survey* dataset are such that their disclosure could lead to the disclosure of individual prices and survey respondents.[515] 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.[516]

Comment 29: Whether the Nova Scotia Benchmark Adequately Accounts for Regional and County-Level Differences

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 75.

> Evidence on the record of this review, including evidence that was unavailable during the prior proceedings, establishes that {Commerce's} Nova Scotia benchmarks suffer from errors, deficiencies, and ambiguities that render them unusable for measuring the adequacy of remuneration. One critical error was {Commerce's} use of a flawed conversion factor to translate prices reported on a

[510] *See Lumber V AR4 Final* IDM at Comment 21; *see also Lumber V AR3 Final* IDM at Comment 40.
[511] *Id.*; *see also* Final Nova Scotia Benchmark Calculation Memorandum.
[512] *See* GNS Stumpage IQR at Exhibit NS-5.
[513] *See* GNS Rebuttal Brief at 17; *see also Lumber V AR4 Final* IDM at Comment 21; and *Lumber V AR3 Final* IDM at Comment 40
[514] *See* Final Nova Scotia Benchmark Calculation Memorandum.
[515] *Id.*; *see also* GNS Rebuttal Brief at 16-18.
[516] *See Lumber V AR4 Final* IDM at Comment 21; *see also Lumber V AR3 Final* IDM at Comment 40.

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per-tonne basis into prices expressed on a per-cubic-meter basis. {Commerce} compounded that error when it relied on results that did not accurately account for the regional price disparities within Nova Scotia.

Beyond the errors that {Commerce} introduced, the {*2021-2022 Private Market Survey*} contains errors, including ones similar to the unreliable {*2015-2016 Private Market Survey*} and {the *2017-2018 Private Market Survey*}. {Commerce} cannot reasonably rely on flawed benchmark data to evaluate Crown stumpage prices in a different province.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 116-17.

The Canadian Parties argue that {Commerce} cannot rely on the {*2021-2022 Private Market Survey*} because the agency does not possess the ability to "replicate the regional reweighting methodology." This unsupported argument is repeated from previous administrative reviews. {Commerce} has continually found that it is not required to reweigh the data based on region, stating that "the unweighted prices in the *2017-2018 Private Market Survey* largely reflect actual harvest levels in Nova Scotia's regions for 2017," such that use of the unweighted data is reasonable, especially given the absence of Deloitte's methodology from the record. This remains true with regard to this review and the updated {*2021-2022 Private Market Survey*}. In the *Preliminary Results*, {Commerce} found the private stumpage prices in the {*2021-2022 Private Market Survey*} and the disaggregated unit prices the report was based, contain a sizable number of observations, reflect prices throughout the province, and constitute a reliable data source that is "sufficiently representative" of the private stumpage market in Nova Scotia. Accordingly, {Commerce} should find that reweighing the {*2021-2022 Private Market Survey*} is unnecessary.

GNS Rebuttal Comments

The following is a verbatim summary of the argument submitted by Sierra Pacific (internal citations omitted). For further details, *see* GNS Rebuttal Brief at 12-14.

The Canadian Parties claim that "Deloitte applied a county-specific multiplier based on the Registry of Buyers Report to control for regional price disparities" and that "the GNS did not provide {Commerce} with county-specific data, which means {Commerce} cannot replicate Deloitte's methodology." They also claim that they survey data "are only partially on the record" and "missing Survey

> information" such that "{Commerce} cannot rely on incomplete and unrepresentative data."
>
> With respect to the regional reweighting conducted by Deloitte and the Government of Nova Scotia, this is irrelevant as the {GNS} provided transaction-level data at the region level. As a result, Commerce or any other party under the APO can reweigh the stumpage prices however they see fit.

Commerce's Position: Commerce notes at the outset that it has already addressed this issue in the previous administrative review[517] and that the record in this instant review regarding the updated *2021-2022 Private Market Survey* contains no new record evidence or novel affirmative arguments that would lead Commerce to reconsider its position.

The *2021-2022 Private Market Survey* reflects purchases of private-origin standing timber for each of Nova Scotia's regions and counties.[518] The GNS used the provincial weighted-average prices in the *2021-2022 Private Market Survey* as the basis for setting the prices of Crown-origin standing timber in Nova Scotia in 2023.[519] The GNS has previously 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.[520]

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.[521] 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.

Thus, because we lack the data needed to recreate Deloitte's weighting methodology and because the unweighted prices in the *2021-2022 Private Market Survey* largely reflect data on harvest levels in Nova Scotia's regions, we find it is better to use the unweighted, raw data from the *2021-2022 Private Market Survey* as the basis of the Nova Scotia benchmark for purposes of these final results.[522]

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[517] *See Lumber V AR4 Final* IDM at Comment 26.
[518] *See* GNS Stumpage IQR Response at 1-4 and Exhibit NS-6.
[519] *Id*. Certain information regarding the survey methodology and the information in the *2021-2022 Private Market Survey* are business proprietary. *See* Nova Scotia Benchmark Final Memorandum.
[520] *See Lumber V AR4 Final* IDM at Comment 26.
[521] *See*, *e.g.*, *Lumber V AR4 Final* IDM at Comment 26; *see also Lumber V AR3 Final* IDM at Comment 39; and *Lumber V AR2 Final* IDM at Comment 38.
[522] *See*, *e.g.*, *Lumber V AR2 Final* IDM at Comment 38; *see also Lumber V AR Final* IDM at Comment 39.

Comment 30: Reliability of Nova Scotia Private-Origin Standing Timber Benchmark

Canadian Parties Joint Case Brief

The following is a verbatim summary of the argument submitted by the Canadian Parties (internal citations omitted). For further details, *see* Canadian Parties Joint Case Brief Vol. I at 75-79.

> Evidence on the record of this review, including evidence that was unavailable during the prior proceedings, establishes that {Commerce's} Nova Scotia benchmarks suffer from errors, deficiencies, and ambiguities that render them unusable for measuring the adequacy of remuneration. One critical error was {Commerce's} use of a flawed conversion factor to translate prices reported on a per-tonne basis into prices expressed on a per-cubic-meter basis. {Commerce} compounded that error when it relied on results that did not accurately account for the regional price disparities within Nova Scotia.
>
> Beyond the errors that {Commerce} introduced, the {*2021-2022 Private Market Survey*} contains errors, including ones similar to the unreliable {*2015-2016 Private Market Survey*} and {*2017-2018 Private Market Survey*}. {Commerce} cannot reasonably rely on flawed benchmark data to evaluate Crown stumpage prices in a different province.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 109-113.

> The Canadian Parties remain concerned in this review about the reliability of the *2015-2016 Private Market Survey* and the *2017-2018 Private Market Survey*, datasets which are not used by {Commerce} in any of its stumpage benchmarks in this review. The Canadian Parties argue that because the {*2015-2016 Private Market Survey* } and {the *2017-2018 Private Market Survey*} may have contained non-stumpage costs in some data points, and because the {*2021-2022 Private Market Survey*} is similar, the {*2021-2022 Private Market Survey*} likely also contains non-stumpage costs. {Commerce} found the Canadian Parties' argument to be speculative and unsupported in the previous review, and proprietary evidence demonstrates that nothing warrants a change in that finding now. In the *Preliminary Results*, {Commerce} determined that the {*2021-2022 Private Market Survey*} constitutes a reliable data source that is sufficiently representative of the private stumpage market in Nova Scotia because the {*2021-2022 Private Market Survey*} was commissioned by the GNS in the ordinary course of business, and the disaggregated unit prices on which the report was based, contain a sizable number of observations, reflect prices throughout the province, and reflect private stumpage prices for a variety of species and log types. Therefore, {Commerce} should continue to find that the {*2021-2022 Private Market Survey*} is reliable.

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GNS Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* GNS Rebuttal Brief at 9-12.

> The {GNS} has long priced its Crown timber at fair market value using periodic private stumpage surveys of purchasers of hardwood and softwood products within {Nova Scotia}. During years in which a private stumpage survey has not been conducted, the {GNS} adjusts Crown stumpage rates using available market indices to update the private stumpage prices reflected in survey results. As discussed {in the GNS Rebuttal Brief}, the facts on the administrative record confirm the integrity of Nova Scotia's forestry practices.

Commerce's Position: The Canadian Parties raise concerns regarding the reliability of the data in the *2021-2022 Private Market Survey* which are similar to arguments that the Canadian Parties raised in prior reviews regarding the *2015-2016 Private Market Survey* and the *2017-2018 Private Market Survey*. We rejected these arguments in prior reviews, and we continue to find that these same arguments regarding the reliability of the *2021-2022 Private Market Survey* and whether it may serve as a tier-one benchmark when determining whether the provincial government at issue sold Crown-origin standing timber for LTAR also do not hold.[523]

The Canadian Parties continue to argue that the *2015-2016 Private Market Survey* and the *2017-2018 Private Market Survey* were unreliable and that the *2021-2022 Private Market Survey* suffers from the same flaws, and thus, that Commerce cannot rely on prices from the *2021-2022 Private Market Survey* as the source of its tier-one benchmark. As explained in *Lumber V AR5 Prelim* and in prior reviews, we find: (1) the *2015-2016 Private Market Survey* and the *2017-2018 Private Market Survey* to be reliable; (2) the *2021-2022 Private Market Survey* utilized many of the same key data collection methodologies as the 2015-2016 and the 2017-2018 surveys; and (3) there is no evidence in this review that calls into question the reliability of the 2021-2022 survey.[524] Thus, we find the results of the *2021-2022 Private Market Survey* are also reliable.

We 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* and the *2021-2022 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*.[525] The

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[523] *See Lumber V AR1 Final* IDM at Comment 29; *see also Lumber V AR2 Final* IDM at Comment 44; *Lumber V AR3 Final* IDM at Comment 32; *see also Lumber V AR4 Final* IDM at Comment 32.
[524] *See Lumber V AR1 Final* IDM at Comment 29; *see also Lumber V AR2 Final* IDM at Comment 44; *Lumber V AR3 Final* IDM at Comment 32; *Lumber V AR4 Final* IDM at Comment 32; and *Lumber V AR5 Prelim* PDM at 23-26.
[525] *See Lumber V Final* IDM at Comments 40 and 41.

disaggregated survey results redacted the identities of the purchasers of the private-origin standing timber.[526] At verification, Deloitte provided Commerce officials with access to the unredacted and disaggregated survey results.[527] As explained in *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.[528] 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 provided a disaggregated, anonymized version of the results of the *2021-2022 Private Market Survey*.[529] Therefore, we find that the GNS has adequately disclosed the underlying data of the *2021-2022 Private Market Survey*.

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* and, therefore, non-stumpage costs may also be present in the *2021-2022 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.[530] 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 fact, contradicts such a claim.[531] As we explained in the previous review, record information demonstrated 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.[532] Therefore, we continue to disagree with the Canadian Parties' claims that the private stumpage surveys conducted by Deloitte contain extraneous non-stumpage costs.

Our discussion of this issue contains business proprietary information; therefore, *see* the Nova Scotia Benchmark Final Memorandum for further discussion.

As to the product definitions themselves, the product definitions used in the *2021-2022 Private Market Survey* are the same as those used in the *2017-2018 Private Market Survey.* In the prior review we 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

[526] *See* GNS Stumpage IQR Response at Exhibit 5.
[527] *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.").
[528] *Id.*
[529] *See* GNS Stumpage IQR Response at Exhibit 5.
[530] *See Lumber V AR4 Final* IDM at Comment 32.
[531] *See* GOC Stumpage IQR Response at Exhibit GOC-AR5-STUMP-42.
[532] *See Lumber V AR4 Final* IDM at Comment 32.

> 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 Private Market Survey*} instructed survey respondents to report the prices they paid for "stumpage," (*i.e.*, the price paid for a standing tree).[533]

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.[534]

The information discussed above demonstrates that the parameters of the *2017-2018 Private Market Survey* and the *2021-2022 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 *2021-2022 Private Market Survey* overcome the unsubstantiated speculation to the contrary from the Canadian Parties.

Lastly, the Canadian Parties contend that Commerce should find the *2021-2022 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.[535] 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.[536] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[537]

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[533] *Id*.
[534] *See* Petitioner Comments on IQR Responses, Volume I-43 at Exhibit 4, which contains the affidavit of Richard Freeman, co-owner of Harry Freeman & Son.
[535] *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.
[536] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[537] *See* SAA at 659.

G. Log Export Restraint Issues

Comment 31: Whether the LER in BC Results in a Financial Contribution

GBC Case Brief

The following is a verbatim summary of the argument submitted by the GBC (internal citations omitted). For further details, *see* GBC Case Brief Vol. V at 7-22.

> {T}he law and facts do not permit a finding that the LEP process provides a countervailable subsidy. The definition of "financial contribution" set forth in Sections 771(5)(D) and 771(5)(B)(iii) of {the Act}, does not encompass the export permitting process at issue in this review. Neither Canada nor British Columbia entrusts or directs the provision of goods through the administration of the LEP process, as this process does not require owners of logs to sell their logs to particular purchasers, or at particular prices. Nor does the process entail any function normally vested in the government, as required by Section 771(5)(B)(iii) of the {Act}.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 185 to 197.

> The GOC and GBC … challenge {Commerce's} countervailability finding in regard to the BC {LER}. The BC Parties argue that "there was no reason for {Commerce} to have undertaken these calculations at all" because this process does not constitute a financial contribution…Despite the BC Parties' arguments, {Commerce} was correct in finding the BC LER countervailable and undertaking the calculations to determine the benefit conferred. {Commerce} has consistently found that the BC LER constitutes a financial contribution within the meaning of sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act. The record continues to support this finding. Specifically, evidence demonstrates that the GOC and GBC maintain and enforce laws and regulations to restrict the export of logs with explicit policy objectives to support the forestry industry in each province, and these policy objectives were realized through causing the provision of logs to the lumber industry by the log suppliers in each province in question. As such, the BC LER satisfies the "entrustment or direction" standard under sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act.

Commerce's Position: In the *Preliminary Results*, when we calculated a benefit for this program, the benefit for all three respondents was not measurable.[538] For these final results, we

[538] *See* West Fraser Preliminary Calculation Memorandum at Attachment IV, worksheet "Subsidy Rate"; *see also* Canfor Preliminary Calculation Memorandum at Attachment IV, worksheet "Subsidy Rate Calc"; and Tolko Preliminary Calculation Memorandum at Attachment IV, worksheet "Subsidy Rate."

have not changed our BC LER calculations for any of the respondents. Thus, whether the British Columbia LER conferred a financial contribution during the POR is moot.

Comment 32: Whether the LER Has an Impact in British Columbia

GBC Case Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Case Brief Vol. III at 22-36.

> {Commerce} should reverse its implied preliminary finding, carried forward from the previous administrative review, that the LEP process "impacts" the log markets in the B.C. inland Interior from which the mandatory respondents supply their sawmills … Canada and British Columbia provide a brief overview of the salient facts of record demonstrating that the LEP process is fundamentally irrelevant to the operations of the B.C. Respondents. The LEP process provides multiple pathways for the export of logs from British Columbia, but factors of geography and log transportation economics explain why the overwhelming majority of these exports originate from the {PME}, along the B.C. Coast, and not from the areas of the inland Interior where the mandatory respondents operate and acquire the logs for their operations.
>
> {T}he record evidence shows that log prices in British Columbia are not affected by the operation of the LEP process either in the PME or those portions of the inland Interior where the mandatory respondents operate. The record evidence contradicting {Commerce's} implied preliminary finding includes the fact that log producers substantially under-utilized existing export authorizations, which demonstrates that export demand was satisfied. Therefore, the LEP process does not increase the supply of logs in British Columbia or affect the market prices of those logs—and thus cannot "impact" the prices paid by the mandatory respondents for their logs. Absent such an impact there is no basis for finding that the LEP process is countervailable.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 198-199.

> {T}he BC Parties argue that the BC LER does not have "impacts" on the British Columbia log market … . {T}he BC Parties' complaints concerning the "impact" analysis have no merit. Section 771(5)(B) of the Act "makes clear the government need only entrust or direct the private entity to make a financial contribution. The statute does not impose the further requirement that the government entrust or direct the private entity to provide a benefit." While the arguments presented in the GOC and GBC's case brief are ultimately moot because no benefit was conferred during

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> the POR, {Commerce} was correct in finding that the BC LER constitutes a countervailable subsidy.

Commerce's Position: As noted in the comment above, Commerce preliminarily calculated non-measurable subsidy rates for the BC LER program for all respondents and, as a result, did not address the BC LER program in the *Preliminary Results*. In these final results, we continue to calculate a non-measurable benefit for the BC LER for all respondents. Any arguments relating to the countervailability of the LER program itself, including whether it provides a financial contribution, are thus moot for purposes of these final results.

The GBC appears to raise arguments relating to a portion of Commerce's preliminary analysis for the BC Provision of Stumpage for LTAR program that the BC LER increases the supply of logs available to domestic users and, in turn, suppresses log prices in British Columbia."[539] However, neither the GBC nor any other Canadian party has challenged Commerce's overall preliminary determination that the B.C. market is distorted -- there is not a single word about Commerce's B.C. market distortion finding in any of the Canadian parties' affirmative case briefs, except perhaps for the arguments above relating to this one conclusion about the LER. However, the LER was not the only factor that Commerce cited in finding that the B.C. market was distorted during the POR. Thus, to the extent that the GBC's case brief arguments regarding the impact of the LER are intended to challenge Commerce's determination that the B.C. market is distorted, they would be incomplete and insufficient to reverse Commerce's determination in these final results that the B.C. market is distorted. Nevertheless, in the interest of fully responding to arguments relating to Commerce's preliminary conclusions in the *Preliminary Results*, we address the GBC's arguments about the LER's impact below.

As noted above, Commerce preliminarily determined that prices in British Columbia were significantly distorted, in part, because the LER restrictions of exports of logs from the province increased the supply of logs available to domestic users, which, in turn, suppressed prices in British Columbia. Specifically, in the *Preliminary Results*, we stated (internal citations omitted):

> As in the prior review, 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. Record evidence also shows the direct impact of the export restraints on log sellers in the BC Interior, where West Fraser, Tolko, and Canfor's mills are located.
>
> No information on the record warrants a change to the determination that these log export restraints increase the supply of logs available to domestic users and, in turn, suppress log prices in British Columbia.
>
> …
>
> In the prior review, Commerce also determined that log prices in British Columbia were not an appropriate tier-one benchmark, in part because export restraints imposed by the GBC distort the log market in British Columbia. Commerce continues to preliminarily find that the export restraints imposed by the GBC

[539] *See Preliminary Results* PDM at 21.

> continue to operate in the province for this POR. Thus, we continue to preliminarily determine that log prices in British Columbia cannot serve as a tier-one benchmark.[540]

In its arguments, GBC claims that the LER is fundamentally irrelevant to the respondents in this review due to geographic constraints. The GBC also argues the record does not support a finding that the LER increases the supply of logs because the LER offers multiple pathways for export, 99 percent of all applications for export under federal and provincial jurisdiction were approved, the percentage of B.C. coastal harvest that was exported was higher than in the U.S. PNW coast, and the record evidence relating to blocking is overstated. While the data specific to the POR has been updated in various reports and in the GBC's arguments, these arguments are largely the same arguments that Commerce has previously addressed in previous reviews.

As in the previous reviews, logs harvested in British Columbia fall under either federal or provincial jurisdiction. Exports of logs under provincial jurisdiction are regulated under the Forest Act.[541] Exports of logs under federal jurisdiction are regulated under Federal Notice to Exporters No. 102.[542] 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.[543]

As Commerce has previously explained, the record contains evidence that the existence of the LER results in "blocking" and "blockmailing."[544] We have the same evidence relating to blocking/blockmailing in this review that we found persuasive in *Lumber V AR4*.[545] The GBC again attempts to minimize this evidence by highlighting the existence of unused export authorizations, but Commerce has previously addressed this line of argumentation in the past finding that the GBC's arguments rely on a "falsely narrow conception of how the LER operates."[546] There is no information on the record of this review that leads Commerce to revise our previous finding.

Similar to *Lumber V AR4 Final*, the GBC has placed on the record in this review updated Schuetz and Reishus reports and statements from of each of the responding parties about the lack of impact that the LER has on the respondents' operations in the interior.[547] Just as Commerce explained in the previous review, the conclusions of these reports and the affidavits from the respondents are undercut by information in this proceeding that shows that the respondents' had mills located near timbermarks with volumes permitted for export,[548] and there continue to be exports from the interior (from both the PME and the "inland Interior")

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[540] *See Preliminary Results* PDM at 21-22.
[541] *See* GBC LEP IQR Response at 16.
[542] *Id.* at 15.
[543] *Id.* at 18 and 25.
[544] *See*, *e.g.*, *Lumber V AR4 Final* IDM at 197-199.
[545] *See* Petitioner Comments on IQR Responses at Exhibits I-111 through I-117.
[546] *See Lumber V AR4 Final* IDM at 199 (citing *Lumber V AR3 Final* IDM at 287).
[547] *See* GBC Case Brief Vol. III at 27-36.
[548] *See, e.g.*, *Lumber V AR4 Final* IDM at 201; *see also* GBC IQR at LEP-12.

during the POR.[549] We, again, find that these GBC proffered reports and statements merely dispute the significance of the LER rather than proving that there is no impact.

The record in this review again contains various documents discussing the impact of the LER on the BC interior, including an affidavit from a BC interior log seller explaining how it is directly prevented from exporting by the LER.[550] This exporter details how the LER 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.[551] Similar to the previous review, the GBC's response and reports proffer that the exporter's affidavit is lacking and, for the same reasons as in the previous review, we find these arguments unpersuasive.

The GBC argues 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. David Haley, a professor of Forestry at the University of British Columbia, "{t}he 'surplus' criteria, by its very nature facilitates the troublesome practice of 'blocking.'…This practice is said to be particularly pervasive in the Interior."[552] Importantly, Dr. Haley continues that when logs are advertised for export as standing timber, frivolous bids bear no consequence and are hard to detect.[553] Dr. Haley's analysis 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.[554] This in turn calls into question the 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.[555] This behavior is not captured in export authorization data.

As noted above, this issue is moot for these final results with respect to the countervailability of the LER as a program, and constitutes only one element of Commerce's determination that the B.C. market is distorted. However, we continue to conclude that there are no new arguments or evidence proffered by the GBC in this review that would lead Commerce to revise its finding from the previous review that the LER impacts the B.C. log market, including in the interior of the province.

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[549] *See* GBC LEP IQR Response at LEP-12.
[550] *See* Petitioner Comments on IQR Responses at Exhibit I-126.
[551] *Id.*
[552] *Id.* at Exhibit I-127 at 6.
[553] *Id.*
[554] *Id.* at Exhibit I-126 at paragraphs 9-11.
[555] *Id.* at paragraphs 7 and 11.

H. Purchase of Goods for MTAR Issues

Comment 33: Whether Benefits Under the BC Hydro EPA Program Are Tied to Overall Production

GBC Case Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Case Brief Vol. V at 56-61.

> In Section VI.A, the {BC} Parties demonstrate that the EPAs between BC Hydro and two respondents (West Fraser and Tolko) cannot qualify as countervailable subsidies. Specifically, any alleged benefit resulting from the EPAs is tied to the respondents' sales of electricity to BC Hydro, not to their production or sale of subject merchandise, and the electricity purchased by BC Hydro from the respondents cannot be used by the respondents as an input into their production of softwood lumber.

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser. For further details, *see* West Fraser Case Brief at 16.

> In the *Preliminary Results*, {Commerce} erred in determining that West Fraser received a countervailable benefit based on its sale of electricity to BC Hydro pursuant to two EPAs. As detailed in the case brief filed by the {BC} Parties, West Fraser's sales of this electricity were plainly tied to West Fraser's sales of electricity, and {Commerce} erred in the *Preliminary Results* decision attributing these West Fraser sales to West Fraser's sales of subject softwood lumber.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 200-206.

> In the *Preliminary Results*, {Commerce} correctly found that the BC Hydro's {EPAs} to be countervailable and appropriately calculated benefits conferred by the respondents as outlined in sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act. As such, {Commerce} should not amend its findings or benefit calculation methodology in the final results.
>
> The BC Parties claim that benefits from the EPAs relate solely to electricity production, not softwood lumber production, and as such, should not have been attributed to the production of subject merchandise. However, under sections 351.525(a) and (b)(5)(ii) of {Commerce's} regulations, {Commerce's} attribution of electricity to the respondent's overall production is rooted in the principle that subsidies on inputs used to produce subject merchandise should be countervailed,

> irrespective of their direct use in production. Additionally, the BC Parties challenge that {Commerce's} methodology, contending that it diverges from attribution regulations under 19 {CFR} 351.525(b)(5)(ii) and hinges on a narrow interpretation that fails to capture the essence of government procurement subsidies. {Commerce's} regulations and practices, emphasizing a predictable and workable framework for tying subsidies, rebut the GBC's hyper-technical approach, affirming the need to attribute subsidies to overall company operations when inputs, in this case electricity, could support production.

Sierra Pacific Rebuttal Brief

The following is a verbatim summary of the argument submitted by Sierra Pacific. For further details, *see* Sierra Pacific Rebuttal Brief at 32-33.

> {Commerce} properly countervailed purchases of electricity made by the provincial governments for {MTAR}. Contrary to the respondents' arguments, these subsidy programs are not tied either to electricity.

Commerce's Position: We continue to disagree with the arguments made by the GBC and West Fraser regarding the attribution of benefits provided under the BC Hydro EPA program. As we explained in prior segments of this proceeding and *Groundwood Paper from Canada*, the argument that benefits from an electricity subsidy program are tied exclusively to electricity or to less than a company's overall production reflects a misunderstanding of the CVD law.[556] No party has presented any new evidence or arguments in the instant review to warrant a change in Commerce's finding that the benefits from BC Hydro EPAs are appropriately attributed to the total sales of Tolko and West Fraser.

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.[557] Within this proceeding, Commerce has

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[556] *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; *Lumber V AR4 Final* IDM at Comment 36; and *Groundwood Paper from Canada Final* IDM at Comment 41.

[557] *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.

consistently attributed the benefits from electricity subsidies to all products.[558] 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.[559]

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.[560] 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. Tolko and West Fraser obtain electricity from the grid to power their facilities to produce subject merchandise[561] and, according to the GBC, that electricity is not distinguished between electricity supply sources (*e.g.*, electricity generated from biomass vs. hydro, wind, or natural gas) or between generation resource ownership (*e.g.*, BC Hydro vs. IPP).[562] As Commerce has consistently explained in this proceeding, electricity is electricity.[563] Further, the fact that the title to the electricity sold by Tolko and West Fraser under the EPAs is transferred to BC Hydro is irrelevant and has no bearing on whether the electricity benefits are tied or untied subsidies.[564]

To the extent that Tolko and West Fraser receive more revenue than they otherwise would have earned from the sale of electricity to BC Hydro, Commerce will attribute that benefit to Tolko's and West Fraser's total sales, respectively, 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—and electricity is a good[565]—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

[558] *See, e.g., Lumber V AR4 Prelim* PDM at 37-38 (LSSi), 39-40 (LIREPP), and 55-56 (BC Hydro EPAs), unchanged in *Lumber V AR4 Final*; *see also 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 *Lumber V AR3 Final*.
[559] *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).
[560] *See CVD Preamble*, 63 FR at 65400.
[561] *See* Tolko Non-Stumpage IQR Response at 29 and Exhibit BCH-4; *see also* West Fraser Non-Stumpage IQR Response Volume II at 129-130 and Exhibits WF-AR5- EPA-15.
[562] *See* GBC Non-Stumpage IQR Response Volume II at 58.
[563] *See*, *e.g.*, *Lumber V AR1 Final* IDM at Comment 50; *see also Lumber V AR4 Final* IDM at Comment 37.
[564] *See* GBC Case Brief Vol. V at 58 (citing GBC Non-Stumpage IQR Response Volume II at Exhibits BCH-38 (Section 6.5 in each EPA) and BCH-37 (Section 5.5)).
[565] *See Lumber V Final* IDM at Comment 48; *see also Lumber V AR1 Final* IDM at Comment 5; and *Lumber V AR2 Final* IDM at Comment 3.

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.[566] 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.[567]

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.[568] The GBC argues that, under the program, BC Hydro tied its payments to sales of electricity to BC Hydro and point to the fact that "BC Hydro pays West Fraser and Tolko to deliver this electricity to BC Hydro's transmission and distribution systems."[569] However, contrary to the GBC's claims, none of the program documents indicate that BC Hydro's purchases of electricity from Tolko and West Fraser were tied to sales of electricity, or any other good. For the Biomass Energy Program under which Tolko's EPA was issued,[570] we examined the official orders for the program and Tolko's agreement with BC Hydro in place during the POR.[571] For the Bioenergy Phase 2 under which West Fraser's EPAs were issued,[572] we examined the Bioenergy Phase 2 Call request for proposals and the agreements in place with BC Hydro during the POR.[573] Notably, the lack of any language or criteria in that documentation tying the benefits of the program to the participant's sales of electricity indicate that the BC Hydro EPA program provides untied subsidies and, thus, are appropriately attributed to total sales.

Comment 34: Whether Commerce Properly Calculated the Benefit Conferred Under the BC Hydro EPAs

GBC Case Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Case Brief Vol. V at 61-76.

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566 *See CVD Preamble*, 63 FR at 65403.
567 *See*, *e.g.*, *Essar Steel Ltd*. *v. U.S.* 678 F. 3d at 1296.
568 *See* GBC Non-Stumpage IQR Response Volume II at 50 and Exhibit BCH-57.
569 *See* GBC Case Brief Vol. V at 56-57 (citing GBC Non-Stumpage IQR Response Volume II at Exhibits BCH-38 (Section 3.1 in each EPA) and BCH-37 (Section 5.1)).
570 *See* GBC Non-Stumpage IQR Response Volume II at 55-56.
571 *Id*. at Exhibits BCH-37, 59, and 60.
572 *Id*. at 55 and 57-58.
573 *Id*. at Exhibits BCH-38 and BCH-65.

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> … {Commerce} should reverse its finding that BC Hydro paid the respondents MTAR for their purchases of incremental green (*i.e.*, biomass-based), wholesale firm energy under the EPAs. {Commerce} improperly measured the benefit to the respondents by comparing the prices of manifestly different goods: *i.e.*, the retail regulated electricity that BC Hydro sold to the respondents, and the incremental green, wholesale firm energy that the respondents sold to BC Hydro. {Commerce's} methodology thus does not consider prevailing market conditions as required under {the Act}.

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser. For further details, *see* West Fraser Case Brief at 16-36.

> As detailed below, even assuming (incorrectly) that these West Fraser sales are tied to its sales of softwood lumber, this *Preliminary Results* improperly relied upon data on the prices at which West Fraser purchased electricity from BC Hydro on a retail basis based upon rates administratively set to assess whether the incremental green (biomass-based), wholesale firm energy that West Fraser sold to BC Hydro pursuant to the EPAs was sold for "more than adequate remuneration." That is, {Commerce's} *Preliminary Results* wholly ignored the numerous differences—in market, price-setting method, source of energy, term, and the presence or absence of additional valuable benefits—that fundamentally distinguish the "good" that West Fraser purchases from BC Hydro from the "good" that West Fraser sells to BC Hydro pursuant to the EPAs. Further, as detailed below, there is no reason for {Commerce} to rely upon the prices at which West Fraser purchased this fundamentally different "good." That is, West Fraser placed on the record of this review manifestly more appropriate benchmarks for assessing whether West Fraser received any possible countervailable benefit from the payments it received pursuant to the EPAs with BC Hydro.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 206-216.

> In the *Preliminary Results*, {Commerce} correctly found that the BC Hydro's {EPAs} to be countervailable and appropriately calculated benefits conferred by the respondents as outlined in sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act. As such, {Commerce} should not amend its findings or benefit calculation methodology in the final results.
>
> … the BC Parties insist {Commerce} consider alternative benchmarks for comparing EPA prices because the current benchmarks do not reflect prevailing market conditions. However, {Commerce} should maintain its approach of

prioritizing direct comparisons between government purchase and sale prices to companies as it aligns with statutory requirements and past practices.

Sierra Pacific Rebuttal Brief

The following is a verbatim summary of the argument submitted by Sierra Pacific. For further details, *see* Sierra Pacific Rebuttal Brief at 34-36.

> {Commerce} lawfully applied a "benefit to the recipient" standard and was not required to take into account the purported "prevailing market conditions" identified by the respondents.

Commerce's Position: The GBC and West Fraser again raise the same benefit arguments for the BC Hydro EPA program that Commerce has previously found unpersuasive, most recently in *Lumber V AR4 Final*.[574] As outlined below, we have made no changes to the benefit calculation under the BC Hydro EPA program for these final results.

In *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.[575] 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 its government based on the benefit-to-the-recipient standard set forth in 19 CFR 351.503(b). Thus, for all the reasons discussed below, we continue to apply the benefit-to-the-recipient standard to 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 Tolko and West Fraser to determine the benefit under the EPA program in this administrative review.
During the POR, both Tolko and West Fraser sold electricity to BC Hydro, a government utility, under EPAs and also purchased electricity from BC Hydro for their facilities.[576] We find that an electricity tariff benchmark which allows us to compare the prices that the utility charged Tolko and West Fraser for electricity to the rates that the utility paid Tolko and West Fraser, respectively, 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,[577] and conforms with the benefit language codified within 19 CFR 351.503(b).

The GBC and West Fraser assert that the prices at which BC Hydro purchases electricity under the EPAs are market-based and, thus, no benchmark analysis is needed because the EPAs provide no benefit.[578] 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 (biomass-based), wholesale firm energy) and not rely on the BCUC's retail regulated tariff schedule rates which are not market-determined, but

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[574] *See Lumber V AR1 Final* IDM at Comment 50; *see also Lumber V AR2 Final* IDM at Comment 50; *Lumber V AR3 Final* IDM at Comment 46; and *Lumber V AR4 Final* IDM at Comment 37.
[575] *See Lumber V AR1 Final* IDM at Comment 7.
[576] *See* Tolko Non-Stumpage IQR Response at 25, 28-29, and Exhibits BCH-2 and BCH-4; *see also* West Fraser Non-Stumpage IQR Response Volume II at 126, 129-130, and Exhibits WF-AR5-EPA-12 and EPA-15.
[577] *See* SAA at 927.
[578] *See* GBC Case Brief Vol. V at 72-74; *see also* West Fraser Case Brief at 22 and 29.

administratively-set, and do not reflect the prevailing market conditions, as required under section 771(5)(E) of the Act, for incremental green, wholesale firm electricity.[579] The respondents state that there are alternative benchmark pricing data on the record for Commerce's consideration. Specifically, the GBC claims that an appropriate benchmark would be the average firm energy prices resulting from other calls for power in British Columbia related to incremental green, wholesale firm energy (*i.e.*, the Bioenergy Phase 1 and Clean Power Calls).[580] Alternatively, the GBC and West Fraser state that Commerce can rely on pricing for incremental green, wholesale firm energy sold under the California Bioenergy Marketing Adjustment Tariff program (a feed-in tariff program) or pursuant to a bilateral contract between Pacific Gas & Electric Company and DTE Stockton, LLC for long-term, wholesale firm bio-mass energy.[581]

First, we continue to reject the argument that 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.[582] As the GBC recognizes, under its clean energy policies, BC Hydro seeks to acquire clean and renewable energy from sources within British Columbia to meet the power demand of customers.[583] 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 "West Fraser EPAs at issue in this proceeding 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."[584] With regard to Tolko's EPA, the GBC stated that it "is a renewal agreement that was entered into as a transition measure to align with longer-term provincial climate objectives."[585] As of April 1, 2023, BC Hydro had 126 EPAs in place.[586] Because the GBC's clean energy policy framework limits the sources from which BC Hydro can source electricity,[587] 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 benchmark to determine whether a benefit was conferred. We also 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.

Second, 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 outlined at 19 CFR 351.511(a)(2) given the unique facts of the transaction at issue.[588] BC Hydro's presence on "both sides" of the electricity transaction

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[579] *See* GBC Case Brief Vol. V at 63-71; *see also* West Fraser Case Brief at 17 and 22-24.
[580] *See* GBC Case Brief Vol. V at 74.
[581] *Id*. at 75 (citing West Fraser Factual Evidence to Measure Adequacy of Remuneration for BC Hydro EPAs); *see also* West Fraser Case Brief at 19 and 31-36 (citing West Fraser Factual Evidence to Measure Adequacy of Remuneration for BC Hydro EPAs).
[582] *See* GBC Case Brief Vol. V at 71-74.
[583] *See* GBC Non-Stumpage IQR Response Volume II at 46-48 and Exhibit BCH-17.
[584] *Id*. at 49.
[585] *Id*.
[586] *Id*.
[587] *Id*. at 48 and Exhibit BCH-2 (*Clean Energy Ac*t at section 2(c)) "at least 93 percent of the electricity generated in British Columbia is to be from clean or renewable resources."
[588] *See Lumber V AR1 Final* IDM at Comment 7.

with Tolko and 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 procurement program at the time of the *CVD Preamble*,[589] where the government is only a purchaser of a good from a respondent.

As discussed in the *CVD Preamble*, Commerce has not codified a regulation which expressly provides instruction on how to analyze a government's purchase of goods for MTAR.[590] 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.[591] We further 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.[592]

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 forth 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.[593] Further, whether BC Hydro's purchases of electricity from Tolko and West Fraser are separate transactions from its sales of electricity to Tolko and West Fraser does not alter the fact that BC Hydro is both selling and purchasing electricity to and from Tolko and West Fraser.

During the POR, both Tolko and West Fraser purchased electricity from BC Hydro at the retail regulated tariff rate schedules and sold electricity to BC Hydro under the EPAs at a contractually-set price.[594] The difference between these two prices is the benefit conferred to Tolko and West Fraser. We thus continue to find that the appropriate benchmark to calculate the benefit that Tolko and West Fraser received from the sale of electricity to BC Hydro is the retail regulated tariff schedule rates, which Tolko and West Fraser paid to BC Hydro for electricity during the POR. Consequently, it is not necessary for us to consider the respondents' alternative benchmarks[595] and determine a benchmark using an LTAR "tiered" approach as 19 CFR 351.511(a)(2) is not applicable in this circumstance.

Further, costs incurred to generate electricity as well as any aspects associated with the electricity produced and sold by IPPs under their EPAs are irrelevant to our analysis as they do

[589] *See CVD Preamble*, 63 FR at 65379.
[590] *Id.*
[591] *Id.*
[592] *Id.*
[593] *See Lumber V AR1 Final* IDM at Comment 7.
[594] *See* Tolko Non-Stumpage IQR Response at 25, 28-29, and Exhibits BCH-2 and BCH-4; *see also* West Fraser Non-Stumpage IQR Response Volume II at 126, 129-130, and Exhibits WF-AR5-EPA-12 and EPA-15.
[595] *See* GBC Case Brief Vol. V at 71-72 and 74-76; *see also* West Fraser Case Brief at 19 and 31-36 (citing West Fraser Factual Evidence to Measure Adequacy of Remuneration for BC Hydro EPAs).

not change the physical makeup of the electricity sold.[596] 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 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:

> 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.[597]

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.[598]

The GBC's statements are corroborated by the tariff rate schedules which indicate that there is no distinction between types of electricity.[599] 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 Tolko and West Fraser sell to BC Hydro is somehow different than the retail non-firm electricity that BC Hydro sells to Tolko and West Fraser. Electricity, regardless of its fuel source or market, is electricity.[600] As such, we find no merit to

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[596] *See* West Fraser Case Brief at 24-31. The aspects associated with the sale of electricity under the EPAs are proprietary information and are defined on pages 24 and 25 of West Fraser's case brief.
[597] *See* GBC Non-Stumpage IQR Response Volume II at 41.
[598] *Id.* at 58.
[599] *Id*. at Exhibits BCH-35 and BCH-36.
[600] *See*, *e.g.*, *Lumber V AR1 Final* IDM at Comment 50; *see also Lumber V AR4 Final* IDM at Comment 37.

the arguments that the electricity prices paid by Tolko and by West Fraser cannot be used as a benchmark for the EPA program.

Additionally, the GBC continues to claim that the Rosenzweig Report disproves Commerce's description of the fungibility of electricity.[601] We, however, remain steadfast that this 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.[602] 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 in question, *i.e.*, electricity is electricity. Additionally, contrary to West Fraser's assertions,[603] we have not stated that the electricity which BC Hydro purchases from West Fraser is the *exact same electricity* that BC Hydro sells to West Fraser. Rather, as noted, electricity is fungible, and BC Hydro is buying and selling the same good. The GBC itself explained that BC Hydro does not trace the source of individual units of electricity to the individual points of consumption.[604] "Thus, the electricity produced from biomass generation facilities that is supplied to BC Hydro is not traced to particular customers that purchase electricity from BC Hydro."[605] As such, the electricity purchased by BC Hydro under EPAs is treated the same as energy supplied to the system by BC-Hydro generation resources.

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 Tolko and West Fraser received from their sales of electricity to BC Hydro is the price that Tolko and West Fraser, respectively, 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.

I. Grant Program Issues

Federal

Comment 35: Whether the SDTC Is Countervailable

GOC Case Brief

The following is a verbatim summary of the argument submitted by the GOC. For further details, *see* GOC Case Brief Vol. II at 121-127.

> {Commerce's} findings that SDTC assistance provides a countervailable benefit with respect to softwood lumber, and is *de jure* specific, are in error.

[601] *See* GBC Case Brief Vol. V at 68-71 (citing GBC Non-Stumpage IQR Response Volume II at Exhibit BCH-53 (Rosenzweig Report) at 13-18).
[602] *Id.*
[603] *See* West Fraser Case Brief at 29.
[604] *See* GBC Non-Stumpage IQR Response Volume II at 41.
[605] *Id.*

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> As the record clearly demonstrates, SDTC assistance is tied to products other than softwood lumber and, therefore, did not and could not have provided a countervailable benefit in a proceeding involving softwood lumber. The bestowal documentation clearly shows that SDTC assistance was tied to the production of non-subject merchandise. And while there is a theoretical possibility that the lignin produced by West Fraser's lignin extraction facility could be used for a variety of purposes, there is no link to products or operations that could benefit the production of softwood lumber. {Commerce's} finding that production of lignin was tied to the production of subject merchandise is based on pure speculation.
>
> {Commerce's} finding that this assistance is *de jure* specific because eligible recipients are purportedly part of an undefined "cleantech" industry sector was also in error. {Commerce} does not provide any explanation of what comprises the purported "cleantech" industry, and the record contains no evidence that the program is specific to any enterprise or industry.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 17-18 and 220-222.

> {Commerce} should reject the Canadian Parties' arguments about attribution. First, {Commerce} should continue to find the SDTC countervailable in the final results because it is not tied to non-subject merchandise. The Canadian Parties claim that the funds from the SDTC can only be used for the production of lignin as an adhesive. However, the SDTC program documents, which are business proprietary, outline a wide range of eligible activities that companies may conduct to qualify for the program. Accordingly, {Commerce} should find that the SDTC is attributable and countervailable.
>
> In past reviews, {Commerce} has found that the SDTC is *de jure* specific because eligibility under the STDC is expressly limited to projects that "address issues related to climate change, air quality, or clean water and soil," which {Commerce} found limits the program to companies operating in the "cleantech" industry. Eligibility criteria {have} not changed during this POR. {Commerce} does not allow a distinction "between activity and industry," because permitting otherwise would create a potential loophole in {the} CVD law. The CIT has affirmed this practice. Accordingly, {Commerce} should continue to find that the SDTC is *de jure* specific because eligibility is limited to the aforementioned activities and industries. In the event {Commerce} does not find the program to be *de jure* specific, it should find that it is *de facto* specific in accordance with {section 771(5A)(D)(iii) of the Act} because the actual recipients of the grant are limited in number.

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Commerce's Position: As an initial matter, we note that the eligibility criteria for the SDTC and the bestowal documents for West Fraser's project remain unchanged since Commerce first examined this program in *Lumber V AR1*. The GOC again raises arguments about the SDTC which Commerce rejected in prior reviews. Given that the evidence regarding the SDTC remains the same, we continue to find that the SDTC is an untied subsidy, attributable to all of West Fraser's sales, and *de jure* specific, consistent with Commerce's findings in *Lumber V AR1* and *Lumber V AR3*.[606]

West Fraser reported that, in November 2015, it entered into the SDTC Contribution Agreement, and received funding for a project to demonstrate the practicality of extracting lignin at its Hinton Pulp Mill using the LignoForce lignin recovery process.[607] The GOC argues that SDTC funding is tied to products other than softwood lumber and, thus, should not be countervailed in a proceeding involving softwood lumber.[608]

Under 19 CFR 351.525(b)(5)(i), "if a subsidy is tied to the production or sale of a particular product," Commerce "will attribute the subsidy only to that product." To determine whether a subsidy is "tied," Commerce's focus is on "the purpose of the subsidy based on information available at the time of bestowal" (that is, when the terms for the provision are set), and not on how a firm has *actually* used the subsidy.[609] Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents, *e.g.*, the application, contract, or approval, explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.[610] The record indicates no such evidence of tying.

Contrary to the GOC's assertions, the bestowal documents do not demonstrate that the SDTC assistance was tied to only non-subject merchandise (*i.e.*, use of the extracted lignin to develop adhesives used in manufacturing plywood).[611] Notably, though the GOC states that "while the bestowal documents explain that lignin could be used for a variety of purposes,[612] the GOC claims the only purpose for which SDTC assistance was intended was the production of glues and resins, which have no relation to the production of subject merchandise."[613]

However, the relevant program documents, which are business proprietary, outline activities that the company could carry out with the assistance provided under the SDTC.[614] West Fraser in its IQR notes that "a reference at page 38 of the 65-page SDTC Contribution Agreement to the

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[606] *See Lumber V AR1 Prelim* PDM at 39-41, unchanged in *Lumber V AR1 Final* IDM at Comment 59; *see also Lumber V AR3 Final* IDM at Comments 53 and 54.
[607] *See* West Fraser August 31, 2023 Non-Stumpage SQR Response at 4-5.
[608] *See* GOC Case Brief Vol. II at 121.
[609] *See CVD Preamble*, 63 FR at 65403.
[610] *Id.*, 63 FR at 65402.
[611] *See* GOC Case Brief Vol. II at 123-124 (citing GOC Non-Stumpage IQR Response Volume I at Exhibit GOC-AR5-SDTC-7 (p. 7)).
[612] *Id.* at 124 (citing West Fraser August 31, 2023 Non-Stumpage SQR Response at Exhibits WF-AR5-SDTC-1 (pgs. 2-3) and SDTC-4 (p. 33)).
[613] *Id.* (citing GOC Non-Stumpage IQR Response Volume I at Exhibit GOC-AR5-SDTC-7 (p. 6)).
[614] *See* West Fraser August 31, 2023 Non-Stumpage SQR Response at Exhibit WF-AR5-SDTC-4 (pgs. 33, 35, and 38).

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possible use of lignin being 'sold as a fuel or as an extender.'"[615] The SDTC Contribution Agreement, thus, indicates that, at the point of bestowal, the funds provided to West Fraser were not limited just to the production of lignin as an adhesive, as argued by the GOC.[616]

Additionally, while the GOC asserts that Commerce's finding that the lignin can be burned as a biofuel is speculative,[617] record evidence shows otherwise. As discussed in *Lumber V AR1*, funds provided under the SDTC program are for the production of lignin, which can be used as biofuel.[618] On the basis of the evidence, we continue to find the assistance that West Fraser received under the SDTC is untied and attributable to all of West Fraser's sales.

Regarding specificity, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law under section 771(5A)(D)(i) of the Act. The grants that are provided under the SDTC, a state-established foundation, are expressly limited by the 2001 *Canada Foundation for Sustainable Development Technology Act* to recipients that can develop and demonstrate new technologies to promote sustainable development, including technologies to address issues related to climate change and the quality of air, water, and soil.[619] This evidence shows that the GOC has established, by law, a discrete group of enterprises—organizations that have the capability to both design and implement projects in the field of clean technology—that can receive assistance from the SDTC in the form of grants. The GOC's arguments that the "cleantech" industry may not have a precise definition,[620] does not alter this limitation. Therefore, we continue to find the SDTC program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

In support of its argument that the SDTC is not *de jure* specific because it is not limited to "expressly identified enterprises or industries" the GOC cites *BGH Edelstahl II*, *BGH Edelstahl III*, *Hyundai Steel, Hyundai Steel II*, *Risen Energy I, and Risen Energy II.*[621] However, the *BGH Edelstahl* cases and *Hyundai Steel* cases are on remand and, thus, not a final and conclusive decision, and remain subject to appeal at the Federal Circuit.[622] The GOC's reliance on the *Risen Energy* cases is also unavailing because the program at issue was entirely different than the program at issue here.[623] The SAA makes clear that Commerce's *de jure* specificity analysis is fact intensive and case-specific. Thus, the GOC's reliance on these cases fail to demonstrate that Commerce's *de jure* analysis here is contrary to law.

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[615] *Id*. at 5, fn. 3.
[616] *See* GOC Case Brief Vol. II at 123-124.
[617] *Id*. at 124-126.
[618] *See Lumber V AR1 Prelim* PDM at 41.
[619] *See* GOC Non-Stumpage IQR Response at 85 and Exhibit GOC-AR5-SDTC-1 (*Canada Foundation for Sustainable Development Technology Act*).
[620] *See* GOC Case Brief Vol. II at 126-127.
[621] *Id*. at 127 (citing *BGH Edelstahl II*, 639 F. Supp. 3d at 1240 and 1243-44; and *BGH Edelstahl III*, 663 F. Supp. 3d at 1381-82 and 1384; *Hyundai Steel*, 659 F. Supp. 3d at 1330-31 and 1342-43; *Risen Energy I*, 658 F. Supp. 3d at 1372-73; and *Risen Energy II*, Slip Op. 2024-25); *see also Hyundai Steel II*, Slip Op. 2024-55).
[622] *See BGH Edelstahl III*, 663 F. Supp. 3d at 1384-85; and *Hyundai Steel II*, Slip Op. 2024-55.
[623] *See Risen Energy I*, 658 F. Supp 3d at 1372 (explaining that the Article 26(2) tax subsidy program at issue related to an "{i}ncome tax preference for dividends, bonuses and other equity investment income between eligible resident companies" and that Commerce did not "identify an adequately specific enterprise or industry."); *see also* Risen Energy Final Results of Redetermination, available at https://access.trade.gov/resources/remands/23-148.pdf, at 7 (analyzing the same Article 26(2) tax subsidy program); and *Risen Energy II*, Slip Op. 2024-25.

Our specificity finding here is consistent with Commerce's practice where Commerce has found, a subsidy can be *de jure* specific pursuant to section 771(5A)(D)(i) of the Act where an authority expressly limits access to a "group" of enterprises or industries which the authority, itself, defines, but which does not necessarily comprise "specifically named" enterprises or industries (*e.g.*, Companies A, B, and C or the steel and automotive industries). Furthermore, Commerce has previously found subsidy programs to be *de jure* specific because the government in question identified qualifying recipients on the basis of characteristics of relevant industries, *e.g.*, targeting enterprises or industries that perform certain types of activities. Here, for grants under the SDTC, the GOC targets organizations that can both develop and demonstrate clean technology innovations related to climate change, air quality, clean water, or clean soil.[624] As such, on the basis of the evidence, we continue to find that the SDTC is *de jure* specific under section 771(5A)(D)(i) of the Act. Because we find the SDTC to be *de jure* specific, we need not consider whether the program is *de facto* specific.[625]

Comment 36: Whether the Forest Machines Connectivity Master Project Is *De Facto* Specific

GOC Case Brief

The following is a verbatim summary of the argument submitted by the GOC. For further details, *see* GOC Case Brief Vol. II at 127-130.

> {Commerce's} finding that the Forest Machine Connectivity Project is *de facto* specific is in error. First, {Commerce's} "percentage" methodology for finding a program *de facto* specificity is not in accordance with the law. Jurisprudence demonstrates that {Commerce's} percentage approach is unlawful. Rather, {Commerce} must take into account all relevant circumstances, such as the nature and widespread distribution of the industries taking advantage of the Forest Machine Connectivity Project, compared to the diversity of the industries in the Canadian economy, and the number of users compared to the number of eligible users. {Commerce's} percentage methodology is also inconsistent with the requirement that {Commerce} not use a rigid mathematical formula in determining *de facto* specificity. {Commerce's} claims to the contrary in past segments of this proceeding misconstrue the legal authority.
>
> Second, even if this "percentage" methodology were lawful, {Commerce} failed to take into account important factors affecting its calculation. {Commerce} underestimated the numerator by excluding the number of different companies that used the Forest Machine Connectivity Project over a number of years. Further, {Commerce's} approach is unlawful because it does not take into account that the countervailing duty law only applies to the goods producing sectors of the Canadian economy. An objective assessment of the economic significance, size, and

[624] *See* GOC Non-Stumpage IQR Response Volume I at 73-74 and 85.
[625] However, we note that in 2015, the year in which West Fraser's SDTC Contribution Agreement was signed, only 27 companies were approved for assistance. During 2015, the GOC reported there were 1,029,184 companies operating/established in Canada. *See* GOC Non-Stumpage IQR Response at 92 and Exhibit GOC-AR5-SDTC-10.

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> diversity of the industries and enterprises using the Forest Machine Connectivity Project assets shows that it had widespread use, and thus, cannot be *de facto* specific.
>
> Further, by looking only at the number of corporations participating in the underlying program (the Global Innovations Clusters) during the POR, {Commerce} failed to take into consideration that the program was relatively new, and thus, the number of participants during the POR was not reflective of the true breadth of the program. These issues are addressed in Section VIII.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 222-225.

> In the *Preliminary Results*, {Commerce} determined that the Forest Machine Connectivity Master Project is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act "because the actual recipients are limited in number." The GOC's contention regarding {Commerce's} percentage methodology is predicated on a misstatement of the CIT's holding in *Mosaic*. {Commerce's} specificity analysis is consistent with the *Mosaic* holding. Further, record evidence shows that the actual recipients are limited in number regardless of whether {Commerce} used the number of program recipients during the POR or during the unspecified timeframe as requested by the GOC.

Commerce's Position: The GOC argues that the benefit under this program is not *de facto* specific because Commerce only considered the number of participants during the 2022 POR, which was a more "limited" number than the total number of recipients since the program's inception. The GOC stated that "{a}s of December 2022, all five clusters had supported more than 500 projects worth $2.37 billion, involving more than 2,465 partners."[626] As the petitioner noted, the GOC did not specify the time period, and simply stated that there were 2,465 recipients as of the end of the 2022 POR. However, for this administrative review, we are examining subsidies provided to the respondents during the calendar year 2022, and we do not agree with the GOC that companies that received funds prior to the POR should necessarily be included in the specificity analysis. Commerce typically compares the number of actual users during the year of receipt to the universe of potential users during the same period. This is consistent with Commerce's approach for several programs found countervailable in prior segments of this proceeding.[627] Therefore, we find the GOC's arguments that we should change the methodology used for the *Preliminary Results* to be unavailing, and we continue to rely on the number of recipients for all clusters during the 2022 POR (*i.e.*, 494 recipients) for the *de facto* specificity analysis. The data referenced clearly demonstrate that there were a limited

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[626] *See* GOC Case Brief at 23; *see also* GOC January 17, 2024 Non-Stumpage SQR Response at 23.
[627] *See Lumber V AR4 Final* IDM at Comments 39, 47, 48, 53, 56, and 57 for the following programs: LSSi, SR&ED Tax Credit – GOC, SR&ED Tax Credit – GBC, New Brunswick Research & Development Tax Credit, the IPTC / School Tax Credit, and Incentives Under Alberta's TIER Regulation – Emissions Performance Credits and Emissions Offset Credits.

number of users of this program in comparison to the number of enterprises in the Canadian economy, and thus we continue to find this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

With respect to the GOC's argument that "{Commerce} must take into account all relevant circumstances, such as the nature and widespread distribution of the industries taking advantage of the Forest Machine Connectivity Project, compared to the diversity of the industries in the Canadian economy, and the number of users compared to the number of eligible users,"[628] we disagree. As we stated above in Comment 4, the SAA explains that 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.[629] 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."[630] 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.[631]

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. Thus, in its analysis 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.[632] Our *de facto* specificity methodology for this program—based on comparing the number of users of the program to the total number of companies operating in Canada during the POR—has been relied upon since the investigation.[633] Accordingly, we properly applied the statute's *de facto* specificity provision by finding that the Forest Machine Connectivity Project is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.

The GOC's argument that "{Commerce's} approach is unlawful because it does not take into account that the countervailing duty law only applies to the goods producing sectors of the Canadian economy,"[634] emphasizes that the program users are not "limited" when compared against a much smaller denominator. However, Commerce looks at the economy as a whole in determining whether or not the number of industries or enterprises receiving a subsidy is, in fact, limited.[635] Therefore, Commerce's approach to analyzing the Forest Machine Connectivity Project program is 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.

Finally, with respect to the GOC's argument that we should take into account that the program is "relatively new," the SAA states that "where a new subsidy program is recently introduced, it is

[628] *See* GOC Case Brief Vol. II at 8.
[629] *See* SAA at 929.
[630] *Id.*
[631] *Id.* at 931.
[632] *See CRS from Korea* IDM at Comment 13.
[633] *See Lumber V Final* IDM at Comments 62 and 64.
[634] *See* GOC Case Brief Vol. II at 9.
[635] *See* SAA at 930.

unreasonable to expect that use of the subsidy program will spread throughout the economy in question instantaneously."[636] However, because the program first awarded projects in 2019,[637] and awarded projects through the 2022 POR, we disagree that the program is "recently introduced." Additionally, we note that the SAA states that, "on the other hand, the Administration does not intend this criterion to be used to excuse *de facto* specificity."[638]

Comment 37: Whether the Green Jobs Program Is Countervailable

GOC Case Brief

The following is a verbatim summary of the argument submitted by the GOC. For further details, *see* GOC Case Brief Vol. II at 117-120.

> {Commerce's} finding that the Green Jobs Program provides a countervailable benefit is not supported by the facts or the law. In finding that the program conferred a benefit, {Commerce} misapplied its regulation at 19 CFR 351.513(a), according to which worker-related subsidies only provide a countervailable benefit if they relieve a firm of an obligation that it would otherwise normally incur. That is not the case here. {Commerce} has recognized a distinction between programs that support training for current employees and those that support training for unemployed workers. This program is the in the latter category, and {Commerce} has recognized that such programs do not confer a benefit within the meaning of 19 CFR 351.513.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 216-220.

> Record evidence demonstrates that were it not for the wage-matching funding provided by the GOC under this subsidy program, the financial burden of paying the full wages of these workers would fall entirely on the companies. Thus, the obligation at issue here is not the hiring of these workers, but the obligation of companies to pay their workers' wages in full. {Commerce} has previously found programs similar to the Green Jobs Program to be countervailable subsidies, such as the New Brunswick Workforce Expansion Program, the Canada-New Brunswick Job Grant Program, and the Atlantic Job Creation Tax Credit Program. {Commerce} should thus continue to find that the Green Jobs Program confers a benefit to Canfor and Tolko equal to the amount of the grant received.

Commerce's Position: The arguments raised by the GOC with respect to whether this program confers a benefit are the same as those raised in prior administrative reviews.[639] We found the

[636] *Id.* at 931-32.
[637] *See* GOC January 17, 2024 Non-Stumpage SQR Response at Exhibit GOC-AR5-SUPP2-12.
[638] *See* SAA at 932.
[639] *See Lumber V AR4 Final* IDM at Comment 38; *see also Lumber V AR3 Final* IDM at Comment 55.

GOC's arguments unpersuasive then, and do so again here. We, thus, continue to disagree with the GOC that the wage-matching funds under the Green Jobs program do not confer a benefit to Canfor and Tolko.

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."[640] 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 and Tolko voluntarily hired young individuals with the express purpose of providing work experience and developing their skills on the job.[641] Canfor and Tolko incurred payroll costs in the form of the remaining 50 percent of wages not covered by the program.[642] Regardless of the objectives set forth by PLT Canada, the underlying facts remain the same; Canfor and Tolko participated in a program in which they 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 and Tolko 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.[643] 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 and Tolko 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.[644] Rather than bolstering the GOC's argument, these two examples further support our view that Canfor and Tolko *do* have an obligation to pay workers they hire, and that the wage subsidies represent a benefit to Canfor and Tolko. During the time period in which the individuals were engaged in gaining work experience and on-the-job training at Canfor and Tolko, 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 and Tolko in the form of wage subsidy reimbursements. Commerce has countervailed several programs in previous segments of this

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[640] *See* 19 CFR 351.513(a).
[641] *See* GOC Non-Stumpage IQR Response Volume I at 38 and 44; *see also* Canfor Non-Stumpage IQR Response at Exhibit B-3 (pgs. 1-2); and Tolko Non-Stumpage IQR Response at Exhibit Green Jobs Program Exhibit A (pgs. 1-2).
[642] *See* GOC Non-Stumpage IQR Response Volume I at Exhibit GOC-AR5-ESDCGreenJobs-8 "Project Learning Tree Canada 2022 Green Jobs Funding Information," (pgs. 1 and 5).
[643] *See Lumber IV Final* IDM at 151.
[644] *See Lumber IV AR1 Final* IDM at 135.

proceeding that provided subsidies for training employees, such as the Canada-Alberta Job Grant,[645] and the BC ETG / Canada-BC Job Grant.[646] 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 38: Whether the AESO Load Shedding Program Is Countervailable

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA. For further details, *see* GOA Case Brief Vol. IV.B at 23-35.

> {Commerce} erred in preliminarily finding that payments that Alberta's independent grid operator, AESO, made to West Fraser for West Fraser's "provision of load shedding" services constituted a countervailable subsidy. First, AESO's payments to West Fraser for its load shedding services to AESO do not constitute a countervailable subsidy under {the Act}, or under the United States's international obligations. To be countervailable, a subsidy must be a "financial contribution." Unlike other provisions of the same section, the purchase of services is not countervailable. Here, the transactions at issue involved AESO's purchase of very important load shedding services from West Fraser, which prevent load imbalance from creating an uncontrolled failure of the electrical system. There is no exchange of goods. Therefore, this is not a "grant," but rather a necessary service arrangement in order to fulfill Alberta's electric grid obligations.
>
> Second, even if the program did provide the required financial contribution (which it did not), in assessing any "benefit" West Fraser received from the program, {Commerce's} preliminary results failed to take into account the value of the load shedding services that West Fraser provided to AESO in exchange for the payments received from AESO. U.S. courts have made clear that only a "gift-like" monetary exchange constitutes a countervailable grant. {Commerce} has provided no evidence that the contractual relationship at issue is "gift-like." To the contrary, record evidence demonstrates that the LSSi providers are chosen in a competitive and arms-length manner.

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser. For further details, *see* West Fraser Case Brief at 41.

[645] *See Lumber V AR2 Final* IDM at Comment 61.
[646] *See Lumber V AR1 Final* IDM at Comment 58.

> In the *Preliminary Results*, {Commerce} erred in finding that payments West Fraser received from {AESO} pursuant to this program (which compensated West Fraser for agreeing to put in place measures voluntarily to curtail its electricity usage when necessary to avoid a broader curtailment affecting the utility's customers) were a countervailable "financial contribution" and that the program is *de facto* specific. West Fraser incorporates by reference the arguments made in the {GOA's} case brief that this program is not countervailable.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 225-229.

> {Commerce} has consistently found that electricity is a good, not a service, and a government's attempts to "incentivize" firms to reduce consumption of that good through payments is countervailable. {Commerce} has also consistently found with regard to other load curtailment programs, such as Hydro Québec's IEO and Ontario's IESO Demand Response programs, that the provision of payments as "incentives" to participate in load curtailment schemes amounts to a transfer of funds under U.S. law. Importantly, the statute does not obligate {Commerce} 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 with regard to various other countervailed programs in prior reviews. Hence, {Commerce} should reject the GOA's attempts to relitigate the closed question of LSSi's countervailability and maintain its determination in the final results.

Commerce's Position: As an initial matter, Commerce has consistently determined that electricity is a good and not a service,[647] and has previously determined that electricity curtailment programs are properly treated as grants.[648] As discussed below, neither the GOA nor West Fraser has raised any new arguments in this review that warrant a reconsideration of Commerce's finding regarding the countervailability of the LSSi.[649]

We continue to disagree with the GOA that AESO's payments to West Fraser do not provide a financial contribution because the government purchased a service.[650] Under the LSSi program, AESO, a government authority,[651] made payments to West Fraser for disconnecting from the electrical system when called upon to avoid a load imbalance in the system.[652] Regardless of the

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[647] *See*, *e.g.*, *Lumber V AR1 Final* IDM at Comment 5.
[648] *Id.* at Comment 8; *see also Groundwood Paper from Canada* IDM at Comment 66; *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.
[649] *See Lumber V AR2 Final* IDM at Comments 58, 59, and 60; *see also Lumber V AR3 Final* IDM at Comments 59, 60, and 61; and *Lumber V AR4 Final* IDM at Comment 39.
[650] *See* GOA Case Brief Vol. IV.B at 23-26.
[651] *See Lumber V AR2 Prelim* PDM at 45-46, unchanged in *Lumber V AR2 Final*.
[652] *See* GOA Non-Stumpage IQR Response at Appendix H at 1-4, 7-8, and 10; *see also* West Fraser Non-Stumpage IQR Response Volume II at 15-17.

GOA's arguments, it is clear from the record that the purpose and operation of the LSSi is to incentivize companies to reduce their power consumption by taking their operations offline during times of high demand.[653] Thus, we disagree that the load shedding at issue equates to the performance of a service by a company for AESO. 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 and that the payments are properly treated as grants.
We also disagree with the GOA's argument that the AESO payments are in exchange for something of value (*i.e.*, the curbing of electricity usage), and, therefore, do not constitute a "gift-like transfer"[654] (*i.e.*, a grant) that would result in the provision of a financial contribution. As Commerce has explained in prior reviews,[655] 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.[656]

In its arguments, the GOA references a statement regarding grants that the United States made in a WTO panel submission.[657] However, statements made to a WTO panel that is reviewing whether a Commerce determination is in 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.

Additionally, we continue to disagree with the GOA that the benefit under the LSSi is not equal to the full payment made to West Fraser because the company undertook obligations as an LSSi provider to render services to AESO in exchange for payment.[658] Commerce need not consider any costs or obligations 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 first addressed this issue in *Lumber V AR2 Final*, where we explained "…the fact that companies may incur costs when interrupting energy usage does not impact the benefit calculation."[659] Also, 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

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[653] *See* GOA Non-Stumpage IQR Response Appendix H and all referenced exhibits therein; *see also* West Fraser Non-Stumpage IQR Response Volume II at 15-20 and all referenced exhibits therein.
[654] *See* GOA Case Brief Vol. IV.B at 31.
[655] *See Lumber V AR4 Final* IDM at Comment 39.
[656] *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.").
[657] *See* GOA Case Brief Vol. IV.B at 31-32 (citing U.S. November 30, 2018 First Submission, U.S. – Softwood Lumber V at para. 619).
[658] *Id.* at 33-35.
[659] *See Lumber V AR2 Final* IDM at Comment 60.

export charges levied specifically to offset the countervailable subsidy received.[660] 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 these final results.

Furthermore, Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[661] Under this framework, any grant payments are, in fact, a benefit to the recipient in the amount of the payments, pursuant to 19 CFR 351.504(a). Therefore, an adequacy of remuneration analysis, as argued by the GOA,[662] is not appropriate to determine the benefit under the LSSi program.

Lastly, we disagree with the GOA's arguments that the LSSi program is not specific because (1) the number of firms selected as LSSi providers is commensurate with the number of companies that participated in the bidding process and (2) that these firms encompass an array of industries.[663] 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.[664] 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 range of industries represented among the companies that received payments[665] 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—and not at a program's bidding process—to determine whether or not the number of enterprises or industries receiving a subsidy is, in fact, limited.[666] 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 a small number of companies, in comparison to the total number of companies operating or established in Alberta, was approved for the program during the POR.[667] Thus, the number of actual recipients is limited on an enterprise basis. As such, we continue to find that the LSSi program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Comment 39: Whether the TIER Program Is Countervailable

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.B at 7-23.

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[660] *See* section 771(6) of the Act.
[661] *See* 19 CFR 351.503(c).
[662] *See* GOA Case Brief Vol. IV.B at 35.
[663] *Id*. at 32-33.
[664] *See Lumber V AR5 Prelim* PDM at 43-44.
[665] *See* GOA Case Brief Vol. IV.B at 33 (citing GOA Non-Stumpage IQR Response at Exhibits AB-AR5-AESO-24 and AESO-26).
[666] *See* SAA at 930.
[667] *See* GOA Non-Stumpage IQR Response at Appendix H at 22 and Exhibit AB-AR5-AESO-25. The number of companies is proprietary information.

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{Commerce} erred in its preliminary determination that the emission offsets credits (EOCs) and emissions performance credits (EPCs) earned by Tolko and subsequently sold to a private third party during the POR resulted in a countervailable subsidy. Tolko earned EPCs because its {GHG} emissions at its facility were below target emissions levels. It earned EOCs by undertaking completion of a voluntary emissions reducing project that was not required by law or regulation.

First, there was no financial contribution by a government "authority." The statute is clear that for a countervailable subsidy to exist, a government entity must provide a "financial contribution" to the recipient. {Commerce's} preliminary determination considered the private transaction a "direct transfer of funds" despite uncontroverted evidence that the GOA did not provide any funds to Tolko.

Second, {Commerce's} preliminary finding that emission credits are *de facto* specific is unsupported by substantial evidence. The record demonstrates that emission offsets can be earned by any facility in Alberta so long as the emissions-reducing project(s) adheres to strict protocols, is not otherwise required by law, and results in GHG emissions reduction within Alberta. EPCs can similarly be earned by any facility exceeding its emissions reduction target under TIER. EPCs and EOCs were earned by a diverse array of industries across Alberta's economy, and were not specific to any industry or industries. The number of companies that generated EPCs and EOCs during the POR is reasonable and not proof of a specific subsidy. With regard to {EPCs}, any industry subject to emissions caps under TIER, may earn credits by emitting less GHG than its emissions target/cap (like widely recognized cap and trade programs implemented globally, including in the United States, Alberta facilities exceeding their cap must either pay penalties or acquire tradable credits in the market from other facilities).

Third, {Commerce's} preliminary determination to countervail the private sale of emission credits is contrary to the Biden Administration's stated policy goals to mitigate global climate change. The goal of Alberta's TIER regulation, which {Commerce} recognized was "enacted on January 1, 2020, under the Emissions Management and Climate Resilience Act," is to reduce GHG emissions in Alberta. Countervailing this program is directly at odds with the U.S. policy goals of "tackling the climate crisis at home and abroad." If not corrected in its Final Results, {Commerce's} erroneous preliminary results may have a chilling effect on use of market-based mechanisms to address the looming threat of global climate change. {Commerce} must correct its error in the Final Results.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 229-236.

> The GOA's verification and serialization of the offsets are intended to incentivize companies to reduce their emissions below their facility-specific benchmarks by guaranteeing the realization of the offsets' monetary value, and thus are a necessary action that does confer monetary value. Absent the artificial mechanism created by the GOA under the Technology Innovation and Emissions Reduction (TIER) Regulations, Tolko would not have received payments for its "voluntary engagement in a project to reduce GHG emissions," and indeed, Tolko would not have even had emissions offsets to sell for cash in the first place. Accordingly, {Commerce} should continue to find that the emissions offsets provided by the GOA under this program constitute a financial contribution, in accordance with section 771(5)(D)(i) of the Act.
>
> The GOA's contentions to {Commerce's} *de facto* specificity finding are predicating on a misunderstanding of the statute, which provides several ways for the agency to find a subsidy specific as a matter of fact. Record evidence shows that users of the program are limited in number on an enterprise basis, and such evidence is sufficient to demonstrate *de facto* specificity. {Commerce} should reject the GOA's arguments to the contrary in the final results.
>
> In the final results, {Commerce} should dismiss the Alberta Parties' claims that {Commerce} should factor TIER's climate change mitigation goals in its countervailability analysis. The Alberta Parties' advocacy for a whole-of-government approach to programs that address climate change mitigation merely seeks to reopen previously settled arguments. The Alberta Parties emphasis on the TIER program's purpose in addressing global climate change has been deemed irrelevant to {Commerce's} application of U.S. countervailing duty law. {Commerce} has consistently maintained that the underlying social policies of a program do not influence the countervailability analysis under existing statutory and regulatory frameworks. Further, {Commerce} has clarified that it does not consider any benefits the government might gain from a program, nor does it account for potential benefits to other parties, like the general public. Therefore, the Alberta Parties' efforts to widen {Commerce's} scope by introducing factors beyond the purview of U.S. countervailing duty law are misplaced.

Commerce's Position: Previously in *Lumber V AR3 Final*, we addressed the GOA's financial contribution and specificity arguments regarding the TIER program.[668] We found the GOA's arguments unpersuasive then and continue to do so in this review.

Under the TIER, once a facility has earned and verified EPCs and EOCs from the GOA, it may sell the emissions credits to another facility at a negotiated price.[669] As the GOA explained, an EPC or EOC-earning facility receives monetary value for its emissions-reducing initiatives when it sells the credits to a private party for a market-determined price.[670] Tolko reported that it

[668] *See Lumber V AR3 Final* IDM at Comment 57.
[669] *See* GOA Case Brief Vol. IV.B at 11; *see also* GOA Non-Stumpage IQR Response at Appendix G (pgs. 3, 5 and 11-12).
[670] *See* GOA Case Brief Vol. IV.B at 11.

earned and sold emissions credits to a third party under this program during the POR, and received monetary value in exchange.[671]

The GOA argues that it did not provide a "direct transfer of funds" to Tolko through the EPCs and EOCs that the company earned and sold in the POR.[672] The GOA asserts that it "only approves and assigns a serial number to the earned EPC or offset(s)."[673] We disagree. The GOA designed and implemented the system under which entities can earn, use, and sell emissions credits.[674] As a result, in designing this system and undertaking the process of verifying, approving, and issuing (*i.e.*, serializing) the EPCs and EOCs earned by facilities, the offsets granted by the GOA amounts to a fiscal allowance or certificate that has monetary value at the time of bestowal.[675] The GOA reported that once serialization is complete, the emissions credits can be sold on the Alberta Carbon Registry or Alberta Emissions Offset Registry,[676] further signifying that the EPCs and EOCs, when conferred, have some degree of value.

Whether a facility ultimately chooses to utilize the EPCs and EOCs by selling them is the company's (in this case, Tolko's) prerogative. The record evidence indicates that Tolko was incentivized to reduce its GHG emissions for which it received monetary compensation through the sale of EPCs and EOCs.[677] We thus continue to find that, under the TIER program, the GOA provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act.

The GOA also claims that the TIER program is not *de facto* specific, stating that emissions offsets were earned "by a diverse array of industries across Alberta's economy, and that the forestry industry was not the predominate user."[678] However, such arguments are irrelevant to Commerce's analysis of the program. 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.[679] Here, our determination of *de facto* specificity is based on the limited number of enterprises that generated emissions offsets during the POR in comparison to the total number of companies operating or established in Alberta.[680] The GOA reported that a small number of facilities generated EPCs and EOCs in

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[671] *See* Tolko Non-Stumpage IQR Response at Exhibit TIER (Exhibit A, pgs. 1-4 and all referenced exhibits therein) and Table 3 (Grants Template).
[672] *See* GOA Case Brief Vol. IV.B at 11-15.
[673] *Id.* at 13 (citing GOA Non-Stumpage IQR Response at Appendix G (p. 2)).
[674] *See* GOA Non-Stumpage IQR Response at Appendix G and all referenced exhibits therein.
[675] *Id.* at Appendix G (pgs. 1-3, 5-6, 10-12, 16, and 27-28).
[676] *Id*. at Appendix G (pgs. 3 and 11-12).
[677] *See* Tolko Non-Stumpage IQR Response at Exhibit TIER (Exhibit A, pgs. 1-4 and all referenced exhibits therein) and Table 3 (Grants Template).
[678] *See* GOA Case Brief Vol. IV.B at 20 (citing GOA Non-Stumpage IQR Response at Exhibit AB-AR5-TIER-13).
[679] *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).
[680] The GOA reported the total number of Alberta-incorporated companies during the POR and three preceding years. *See* GOA Non-Stumpage IQR Response at Appendix G (p. 20).

each year 2018 through 2021.[681] Because the number of facilities that earned emissions offsets is limited in number, we continue to find that the sale of emissions offsets under the TIER program are *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. As such, we need not evaluate the other specificity factors under section 771(5A)(D)(iii) of the Act.

Lastly, for the reasons explained in Comment 3, Commerce need not consider the GOA's climate change policies when determining the countervailability of the TIER program. Whether the GOA was able to reduce GHG emissions is not a factor that the statute and Commerce's regulations authorize it to take into account within its subsidies examination.[682] Here, the focus of Commerce's analysis is the direct transfer of funds that the GOA made to Tolko, within the meaning of section 771(5)(D)(i) of the Act, which conferred a benefit to the company, pursuant to 19 CFR 351.504(a), and was specific under section 771(5A)(D)(iii)(I) of the Act. As such, the GOA's statements that Commerce's countervailability finding for the TIER program conflicts with the Administration's climate change mandate are misplaced in the context of this administrative review.[683] 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.

British Columbia

Comment 40: Whether BC's Coloured Fuel Program Is Countervailable

GBC Case Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Case Brief Vol. V at 92-102.

> …{Commerce} improperly found that the lower tax rate for coloured fuel in British Columbia is *de jure* specific, because the lower tax rate is widely available to any enterprise or industry that engages in identified off-highway activities. The *Motor Fuel Tax Act* defines only approved activities, not approved enterprises or industries, and establishes objective criteria or conditions that are automatic and strictly followed. Moreover, {Commerce} cannot find that the program is *de facto* specific, because no evidence on the record indicates that only a limited number of enterprises or industries uses the subprogram.

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser. For further details, *see* West Fraser Case Brief at 41-42.

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[681] *Id.* at Appendix G (pgs. 19-20). The annual data are proprietary. Regarding 2022, the GOA reported that because compliance reports for 2022 were not yet complete as of the time of its response, the GOA did not have information regarding any EPCs or emissions offsets generated in 2022.
[682] *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."
[683] *See* GOA Case Brief Vol. IV.B at 21-23.

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> West Fraser incorporates by reference the arguments of the Governments of Canada, British Columbia, and Alberta with respect to … the programs for Lower Tax Rates for Coloured Fuel in British Columbia … .

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 295-301.

> In past reviews, {Commerce} has found that the BC Coloured Fuel program is *de jure* specific and should continue to do so in this review. There is no new information on the record that would warrant {Commerce's} reconsideration. Use of the BC Coloured Fuel program is expressly limited to users who are purchasing fuel for a prescribed list of approved activities (including hauling logs and lumber). Based on the program's express limitation on eligible activities, {Commerce} reasonably found the program *de jure* specific. This is consistent with {Commerce's} past practice that does not allow a distinction "between activity and industry," because permitting otherwise would create a potential loophole in CVD law. The CIT has affirmed this practice. Accordingly, {Commerce} should continue to find that the BC Coloured Fuel program is *de jure* specific.
>
> In accordance with sections 771(5)(D)(ii) and 771(5)(E), {Commerce} should uphold its preliminary determination that the {BC Coloured Fuel program} confers a benefit to respondents in the final results. The BC Coloured Fuel program distinguishes between "clear" fuel and "coloured" fuel, applying lower tax rates to the latter for specific authorized uses. The GBC asserts that the Coloured Fuel program does not confer a benefit to specific industries because it simply offsets different governmental costs for road maintenance. However, this argument does not align with {Commerce's} countervailability criteria when determining whether a program confers a benefit, as a benefit is conferred where taxes paid by the respondents are less than the taxes the present would have paid in absence of the program. {Commerce} has further emphasized that the social policy rationale guiding the program does not influence its analysis within the relevant statutory and regulatory provisions governing the program and the broader context of CVD law.
>
> Further, the clear tax advantage for users of colored fuel for specific off-highway activities establishes a financial contribution through revenue foregone as per section 771(5)(D)(ii) of the Act. Moreover, given the Coloured Fuel program's explicit tax distinctions and the requirements for users of coloured fuel for unauthorized purposes to pay the tax difference, the program is unambiguously countervailable. With no new information provided by the GBC or respondents, {Commerce} should reaffirm its countervailability findings in the final results.

Commerce's Position: The arguments raised by the GBC are the same as those raised in prior administrative reviews.[684] Consistent with prior reviews, 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."[685]

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 *Lumber V AR4 Final* and, as such, do not provide grounds for reconsideration.[686] With regard to *de jur*e specificity under section 771(5A)(D)(i) of the Act, we found in *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{.}[687]

The GBC asserts that, in prior reviews, Commerce conflated limitations on "approved activities" with express limitations on certain industries or enterprises.[688] However, Commerce disagrees with this assertion and continues to find that the GBC has not demonstrated broad segments of the economy are engaged in these limited activities. 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.[689]

Additionally, in support of its argument that the BC Coloured Fuel program is not *de jure* specific because it is not limited to "expressly identified enterprises or industries" the GBC cites *BGH Edelstahl II*, *BGH Edelstahl III*, *Hyundai Steel*, and *Hyundai Steel Co.*[690] However, the *BGH Edelstahl* cases, *Hyundai Steel* cases, and *Hyundai Steel Co*. are on remand and, thus, not yet final and conclusive as the CIT's rulings are subject to appeal at the Federal Circuit.[691]

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[684] *See Lumber V AR4 Final* IDM at Comment 41; *see also Lumber V AR3 Final* IDM at Comment 94.
[685] *See Lumber V Final* IDM Comment 74; *see also Lumber V AR1 Final* IDM at Comment 97; *Lumber V AR2 Final IDM* at Comment 102; and *Lumber V AR4 Final* IDM at Comment 41.
[686] *See Lumber V AR4 Final* IDM at Comment 41.
[687] *See Lumber V AR3 Final* IDM at Comment 94.
[688] *See* GBC Case Brief Vol. V at 97.
[689] *See* GBC Non-Stumpage IQR Response at IX-3 and Exhibit GAS-1 (*Motor Fuel Tax Act*).
[690] *See* GBC Case Brief Vol. V. at 96 (citing *BGH Edelstahl II*, 639 F. Supp. 3d 1237; *BGH Edelstahl III*, 663 F. Supp. 3d at 1381; *Hyundai Steel*, 659 F. Supp. 3d 1327; and *Hyundai Steel Co.*, Slip Op. 23-182).
[691] *See BGH Edelstahl III*, 663 F. Supp. 3d at 1384-85; *Hyundai Steel II*, Slip Op. 2024-55; and *Hyundai Steel Co.*, Slip Op. 23-182.

Further, our specificity finding is consistent with Commerce's practice where Commerce has found a subsidy can be *de jure* specific pursuant to section 771(5A)(D)(i) of the Act where an authority[692] expressly limits access to a "group" of enterprises or industries which the authority, itself, defines, but which does not necessarily comprise "specifically named" enterprises or industries (*e.g*., Companies A, B, and C or the steel and automotive industries).[693] Furthermore, Commerce has previously found subsidy programs to be *de jure* specific because the government in question identified qualifying recipients on the basis of characteristics of relevant industries, *e.g*., targeting enterprises or industries that perform certain types of activities.[694]

For financial contribution, Commerce found the following in *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*}.[695]

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.

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[692] Consistent with section 771(5A)(D)(i) of the Act, references to "authority" and "authorities" in this section also refer to legislation pursuant to which the authorities operate.
[693] *See, e.g*., *Lumber V AR3 Final* IDM at Comment 103.
[694] *See, e.g*., *Silicon Metal from Australia* IDM at Comment 3 ("With respect to the RET program, the criteria used by the {Government of Australia} are not neutral because the criteria favor enterprises or industries that conduct 'emission-intensive' activities and are 'trade-exposed' over industries or enterprises that do not conduct such activities and are not trade exposed which thus constitutes an explicit limitation on access to the subsidy. Therefore, we continue to find that the issuance of RET exemption certificates is *de jure* specific under section 771(5A)(D)(i) of the Act.").
[695] *See Lumber V AR3 Final* IDM at Comment 94.

New Brunswick

Comment 41: Whether Commerce Should Continue to Find the Silviculture and License Management Programs Countervailable

GNB Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* GNB Case Brief at Vol. VI at 90-109.

> During the POR, {JDIL} performed silviculture and license management services on Crown land under a government contract, for which it received remuneration by the GNB. {Commerce} has declared these payments to be a "grant" and found them to be countervailable in the *Preliminary Results*, referencing the findings in the {*Lumber V* AR4 *Final*}.
>
> {Commerce's} position is contrary to U.S. law. Section 771 (5)(D) of the Act requires an assessment of whether a government purchase is for a service or a good. A government purchase of services is not a countervailable financial contribution under U.S. law, while the purchase of goods is countervailable, but requires an assessment of whether the good was purchased for MTAR under {section 771(5)(E)(iv) of the Act}. The purchase of services or goods {is} not a "grant", and {Commerce} may not disregard the services actually performed and look only at the half of the exchange that involves payment to {JDIL}, and {Commerce's} arguments for why it should be permitted to disregard the Tariff Act are not supported by record evidence.
>
> {Commerce} should consider that a WTO Panel reviewing these same arguments rejected the U.S. attempt to treat remuneration of silviculture and license management services as a grant. Although WTO Panel decisions are not binding precedent, they can offer persuasive guidance for {Commerce}.
>
> {Commerce} should determine whether the silviculture and license management activities are services under section 771 (5)(D) of the Act. If they are services, then the programs are not countervailable under the Tariff Act. If they are goods, then {Commerce} would have to explain why that is the case and conduct an MTAR analysis.

JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Case Brief at 40-51.

> The GNB's purchase of silviculture and license management services is not countervailable. {JDIL} performed forest management services (*i.e.*, license management and silviculture) for the GNB on Crown land, and, in exchange, the

> GNB (*i.e.*, landowner) compensated {JDIL} for its provision of such services. The GNB's payments to {JDIL} were not grants, but instead a purchase of services – an action that is not a "financial contribution" under U.S. CVD law. In addition, 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 license management and silviculture operations on Crown land.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 239-242.

> {Commerce's} *Preliminary Results* properly found the NB silviculture and license management fees to constitute a financial contribution that benefits {JDIL}. The Canadian Parties and {JDIL} are dissatisfied with this result because they believe the payments at issue were for services – and thus not countervailable – and did not confer a benefit since they did not cover the entirety of {JDIL's} costs. The record does not support these parties' claims. In fact, the record evidence shows that the GNB provides a direct transfer of funds to {JDIL} that reduces costs which the company would otherwise have to pay in the normal course of business. Further, whether the payments received from the GNB did not fully cover {JDIL's} expenses is immaterial, as neither the statute nor {Commerce's} regulations require that a benefit cover the entirety of the company's costs. Lastly, the parties' argument that {Commerce} should reconsider its treatment of these programs as grants in light of a WTO panel report essentially amounts to a request that the agency treat WTO conclusions as U.S. law, which is neither lawful nor proper.

Commerce's Position: In *Lumber V AR5 Prelim*, Commerce found the reimbursement of both silviculture and license management expenses to be countervailable grants.[696] 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.[697] 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.[698] We disagree with these arguments and continue to find that the payments constitute a countervailable grant.

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.[699] At present, JDIL is under an FMA with the province. Under the CLFA,[700] JDIL is obligated to perform, and be reimbursed for, basic

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[696] *See Lumber V AR5 Prelim* PDM at 48-49.
[697] *Id*.
[698] *See* JDIL Case Brief at 40-51; *see also* GNB Case Brief Vol. VI at 90-109.
[699] *See* JDIL Stumpage IQR Response at 1-3 and Exhibit STUMP-04; *see also* JDIL's IQR Non-Stumpage Response at Exhibit SILV-04.
[700] *See also* JDIL's IQR Non-Stumpage Response at Exhibit SILV-02.

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 other expenses of forest management in accordance with the regulations.[701]

In accordance with the CLFA, JDIL's FMA defines basic silviculture and further specifies JDIL's requirement for both basic silviculture and licensee silviculture.[702] 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.[703] Licensee silviculture is defined as silvicultural treatments carried out at the expense of the licensee.[704] 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.[705] The FMA goes on to stipulate that JDIL "shall carry out basic silviculture,"[706] "the Minister will fund the basic silvicultural program,"[707] and JDIL's "obligations … will correspond to the level of basic silviculture funding provided by the Minister."[708] 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."[709]

We continue to find these programs are countervailable. First, the silviculture activities that JDIL performs as a licensee involve the renewal and maintenance of forestry land, *i.e.*, the management of JDIL's input and supply chain, and JDIL would continue to perform these

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[701] *Id.* at 39.
[702] *Id*. at Exhibit SILV-04.
[703] *Id*.
[704] *Id*.
[705] *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; *Lumber V AR3 Final* IDM at Comment 63; and *Lumber V AR4 Final* IDM at Comment 42.
[706] *See* JDIL Non-Stumpage IQR Response at Exhibit SILV-04.
[707] *Id*.
[708] *Id*.
[709] *Id*. at Exhibit LMF-05 at 22.

activities if it were the owner of the forestry land (rather than a licensee), and in the absence of reimbursements. As such, we find that the GNB's reimbursement of the silviculture activities that JDIL performed are a grant.

The GNB attempts to make a distinction between licensees, who are required to perform silviculture and license management services on Crown land under the terms of the licensee's FMA, and sublicensees, who are not required to perform silviculture activities or license management services. The Asker Report explains that "low silviculture investment results in low reforestation levels, which decreases the supply of harvestable trees;" thus, a licensee that has secured long-term access to timber has an incentive to invest in a secure, renewable supply of timber from that tenure land.[710] Indeed, JDIL books the value of crown timber allocations on its balance sheet and amortizes the cost of these allocations over the 25-year period of its licenses. The entity that benefits from a long-term supply of timber, whether it is the GNB in the case of Kent License 5, where there is currently no licensee, or the long-term Crown timber licenses that JDIL records as an intangible asset on its balance sheet, has an incentive to manage the value of the timber land by performing silviculture.

Despite the GNB's assertion that a sub-licensee does not incur silviculture and license management costs, the fact remains that the licensees (JDIL in the case of License #7 and the GNB in the case of Kent License 5) are ultimately the entities concerned with investing in silviculture to ensure a sustainable and secure long-term supply of timber. Indeed, the manner in which the payments were provided, as reimbursements for obligatory expenses incurred, indicates that the payments were provided to alleviate the financial burden of JDIL.

Second, 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.[711] 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 2022 as support for its claim that JDIL would *not* conduct the silviculture and license management activities it currently undertakes.[712] However, Commerce finds the reasoning presented in this declaration unavailing. First, the declaration states that "Licensees would not continue to implement these services if not compensated by the GNB. These activities involve significant costs to Licensees and are for the benefit of the GNB and public."[713] However, this reasoning is contradicted by JDIL's case brief. In JDIL's submission, JDIL

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[710] *See* Asker Report, Attachment 15 at 11.
[711] *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."
[712] *See* GNB Case Brief Vol. VI at 100-09.
[713] *Id*. at 101 (citing GNB IQR Stumpage Response at Exhibit NB-AR5-SVC-7 at 3-4).

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."[714]

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. Accordingly, we disagree with the argument that the payments constitute the purchase of a good requiring an MTAR analysis.

J. <u>Tax Program Issues</u>

Federal

Comment 42: Whether the ACCA for Class 53 Assets Program Is Specific

GOC Case Brief

The following is a verbatim summary of the argument submitted by the GOC. For further details, *see* GOC Case Brief Vol. II at 9-51.

> {Commerce's} finding that the ACCA for Class 53 assets is *de jure* specific is not supported by law or substantial evidence. {Commerce's} *de jure* specificity finding is based solely on the eligibility criteria for the program, but the eligibility criteria alone do not provide a basis for a *de jure* specificity finding. That the ACCA for

[714] *See* JDIL Case Brief at 49.

> Class 53 assets sets out activity-based eligibility criteria does not, in any way, limit the program to specific enterprises or industries. Rather than grapple with the jurisprudence and facts, {Commerce} embraced an erroneous interpretation of the statutory terms "enterprises" and "industries" in {the Act} and misconstrued the language of the Canadian legislation implementing the program. {Commerce} must, at the very least, recognize that its *de jure* specificity finding is incompatible with its findings that other federal Canadian tax programs are not *de jure* specific. Moreover, {Commerce's} *de jure* specificity finding cannot stand because the eligibility criteria are neutral and objective.
>
> Finally, {Commerce's} finding is inconsistent with recent jurisprudence, which holds that a program can be *de jure* specific only if the program on its face expressly identifies specifically named enterprises or industries. The ACCA for Class 53 assets has no such express limitation.
>
> Even accepting *arguendo* that the activity-based restrictions of the ACCA are equivalent to industry-based exclusions, the program cannot be *de jure* specific because it is widely available. {Commerce's} *de jure* specificity finding implicitly requires that a program be universally available to avoid a *de jure* specificity finding. Such a requirement is inconsistent with the statute. If a program is widely available, such as the ACCA, it cannot be *de jure* specific. As the record evidence demonstrates, the ACCA is indeed widely available throughout the Canadian economy.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 242-252.

> In the *Preliminary Results*, the agency found that no new information on the record "warrants reconsideration of {Commerce's} prior determination" in the fourth administrative review. In the IDM of the prior review, {Commerce} found that the ACCA's operative legislation "continues to explicitly exclude particular enterprises and industries from eligibility" for the program. In the cases cited by the GOC, the CIT required more reasoning from {Commerce} to support its *de jure* specificity findings and explain how and why the subsidy program in question is restrictive or limits access to certain industries or enterprises. {Commerce} has already satisfied this standard in prior determinations, explaining that the ACCA program serves to benefit industries and enterprises engaged in manufacturing and processing, and by excluding specifically named activities, certain industries and enterprises are prohibited from gaining access to the subsidy. Given the substantial evidence on the record, {Commerce}should continue to find that the ACCA for Class 53 Assets program is *de jure* specific in the final results. Should {Commerce}find that the ACCA program is not *de jure* specific, record evidence supports a finding for *de facto* specificity in accordance with {section 771(5A)(D)(iii) of the Act}.

Commerce's Position: As in the prior administrative reviews, the GOC raises the same specificity arguments regarding the ACCA for Class 53 Assets program, asserting that Commerce cannot base a finding of *de jure* specificity on the fact that a number of non-manufacturing activities are excluded from the definition of "manufacturing or processing."[715] Because there was no change to the law regarding the eligibility criteria for the program during the POR, we continue to find the GOC's arguments to be unpersuasive based on the record evidence.

In this review, the GOC again reported that subsection 1104(9) of the Canadian ITR provides that, for the purpose of the ACCA, "manufacturing or processing" does not include "farming, fishing, construction, logging, and extraction of natural gas, oil, and minerals."[716] As such, the ITR continues to explicitly exclude particular enterprises and industries from eligibility for the ACCA for Class 53 Assets program. We, thus, continue to find the 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 numerous specificity analyses of programs undertaken in other CVD proceedings to support its argument that the ACCA is not *de jure* specific.[717] 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.[718]

For example, the GOC again claims that the ACCA is similar to a tax program that Commerce examined in *CRS from Russia*.[719] 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 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."[720] 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.[721] 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."[722]

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[715] *See, most recently, Lumber V AR4 Final* IDM at Comment 44.
[716] *See* GOC Non-Stumpage IQR Response Volume II 27 and Exhibit GOC-AR5-CRA-CLASS53-2.
[717] *See* GOC Case Brief Vol. II at 20-23, 24-25, and 44-48.
[718] *See Lumber V AR4 Final* IDM at Comment 44; *see also Lumber V AR3 Final* IDM at Comment 86; *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.
[719] *See* GOC Case Brief Vol. II at 20-21 and 46.
[720] *See CRS from Russia* IDM at Comment 20.
[721] *See* GOC Case Brief Vol. II at 21-23 and 46.
[722] *See NOES from Taiwan* IDM at 21.

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.[723] 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 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.[724]

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 *Lumber V AR4 Final*, are distinguishable from the ACCA.[725] For the same reasons discussed in *Lumber V AR4 Final*,[726] 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.[727] 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.[728] The ACCA for Class 53 Assets program is likewise expressly restricted to non-excluded enterprises and industries.

Additionally, the GOC continues to argue 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.[729] The GOC adds that a program cannot be *de jure* specific when it is widely available,

[723] *See* GOC Case Brief Vol. II at 13-34.
[724] *See Magnesium from Israel* IDM at Comment 2.
[725] *See* GOC Case Brief Vol. II at 24-25.
[726] *See Lumber V AR4 Final* IDM at Comment 44.
[727] *See CWP from the UAE* IDM at Comment 1.
[728] *See Nails from Oman* IDM at Comment 1.
[729] *See* GOC Case Brief Vol. II at 18-23.

and that wide availability does not mean or require universal availability.[730] 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 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."[731] 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.[732] 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.[733] 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 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.[734] 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.[735] 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.[736] 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."[737] 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"

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[730] *Id*. at 34-51.
[731] *See* SAA at 930.
[732] *See* GOC Case Brief Vol. II at 23-24.
[733] *Id.* at 44-47.
[734] *See Laminated Hardwood Trailer Flooring from Canada*, 61 FR at 59084.
[735] *Id.*
[736] *See Live Swine from Canada Final* IDM at 27.
[737] *See Fresh Cut Flowers from the Netherlands*, 52 FR at 3301 and 3306.

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 alone 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."[738] However, again this steam 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."[739] 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."[740] 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.[741] 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.[742] 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."[743] 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 continues to argue that Commerce should find the ACCA not *de jure* specific consistent with the Class 1 CCA, SR&ED, and CEWS programs.[744] However, we continue to find those tax programs to be 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.[745] While the relevant regulations for Class 1 CCA involve eligibility for one

[738] *See Citric Acid from China First Review Final* IDM at Comment 6.
[739] *See CTL Steel Plate from Korea Final*, 64 FR at 73193.
[740] *See CTL Steel Plate from Korea Prelim*, 64 FR at 40456.
[741] *See CTL Steel Plate from Korea Final*, 64 FR at 73191-92.
[742] *See* GOC Case Brief Vol. II at 27-34.
[743] *See* section 771(5A)(D)(ii) of the Act.
[744] *See* GOC Case Brief Vol. II at 25-27 (fn.66) and 49.
[745] *See Lumber V AR4 Final* IDM at Comment 46.

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."[746] 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.

For similar reasons, we find no parallel between the SR&ED and the ACCA. The GOC argues that the SR&ED "excluded activities"[747] 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, as discussed in *Lumber V AR4 Final*, 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."[748] 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.

In support of its argument that the Class 53 Assets program is not *de jure* specific the GOC cites *BGH Edelstahl II*, *BGH Edelstahl III*, *Hyundai Steel, Hyundai Steel II*, *Risen Energy I, and Risen Energy II.*[749] However, the *BGH Edelstahl* cases and *Hyundai Steel* cases are on remand and, thus, not a final and conclusive decision, and remain subject to appeal at the Federal Circuit.[750] The GOC's reliance on the *Risen Energy* cases is also unavailing because the program at issue was entirely different than the program at issue here.[751] The SAA makes clear that Commerce's *de jure* specificity analysis is fact intensive and case-specific.[752] Thus, the GOC's reliance on these cases fail to demonstrate that Commerce's *de jure* analysis here is contrary to law.

Additionally, the GOC cites *U.S. – Upland Cotton*, which was a dispute at the WTO.[753] 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"

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[746] *See* GOC Non-Stumpage IQR Response Volume II at 85-86.
[747] 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, devices, products, or processes; 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, or the commercial use of a new or improved process. *See* GOC Case Brief Vol. II at 25-26.
[748] *See Lumber V AR4 Final* IDM at Comment 44.
[749] *See* GOC Case Brief Vol. II at 127 (citing *BGH Edelstahl II*, 639 F. Supp. 3d at 1240 and 1243-44; and *BGH Edelstahl III*, 663 F. Supp. 3d at 1381-82 and 1384; *Hyundai Steel*, 659 F. Supp. 3d at 1330-31 and 1342-43; *Risen Energy I*, 658 F. Supp. 3d at 1372-73; and *Risen Energy II*, Slip Op. 2024-25); *see also Hyundai Steel II*, Slip Op. 2024-55.
[750] *See BGH Edelstahl III*, 663 F. Supp. 3d at 1384-85; and *Hyundai Steel II*, Slip Op. 2024-55.
[751] *See Risen Energy I*, 658 F. Supp. 3d at 1372 (explaining that the Article 26(2) tax subsidy program at issue related to an "{i}ncome tax preference for dividends, bonuses and other equity investment income between eligible resident companies" and that Commerce did not "identify an adequately specific enterprise or industry."); *see also* Risen Energy Final Results of Redetermination, available at https://access.trade.gov/resources/remands/23-148.pdf, at 7 (analyzing the same Article 26(2) tax subsidy program); and *Risen Energy II,* Slip Op. 2024-25.
[752] *See* SAA at 930.
[753] *See* GOC Case Brief Vol. II at 38-39.

established in the URAA.[754] 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.[755] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[756]

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.

Comment 43: Whether Commerce Is Applying the Correct Benchmark for the ACCA for Class 53 Assets Program

GOC Case Brief

The following is a verbatim summary of the argument submitted by the GOC. For further details, *see* GOC Case Brief Vol. II at 51-55.

> {Commerce} calculated the benefit from the Class 53 ACCA in part by comparing the Class 53 rate under the Accelerated Investment Incentive program with the normal, non-Accelerated Investment Incentive rate applicable to Class 43 assets. Instead, under the so-called "tiering" methodology codified at 19 {CFR} 351.503(d), {Commerce} should have calculated the benefit by comparing the AII rate for Class 53 to the 45 percent AII rate applicable to Class 43 assets.

Canfor Case Brief

The following is a verbatim summary of the argument submitted by Canfor. For further details, *see* Canfor Case Brief at 29-30.

> {Commerce} erred in the *Preliminary Results* by treating the ACCA for Class 53 Assets program as a countervailable subsidy. This argument is set forth in the GOC's case brief, which is adopted and incorporated by reference. Canfor has also provided instructions for how to implement revisions to its benefit calculations from this program if {Commerce} agrees with the GOC's arguments.

JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL. For further details, *see* JDIL Case Brief at 57-64.

> {Commerce} should revise the benefit calculation for the {ACCA} for Class 53 assets. In the final results, {Commerce} should { } incorporate the Accelerated

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[754] *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.
[755] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[756] *See* SAA at 659.

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> Investment Incentive (AII) into its benchmark calculation, to ensure that {Commerce} complies with the plain language of its regulation on calculating the benefit for a tax program.

Tolko Case Brief

The following is a verbatim summary of the argument submitted by Tolko. For further details, *see* Tolko Case Brief at 15-16.

> {Commerce} should determine that the federal {ACCA} for Class 53 Assets does not confer a countervailable benefit. If {Commerce} continues to determine that the ACCA for Class 53 Assets confers a countervailable benefit, {Commerce} should recalculate the benefit consistent with the arguments raised by the {GOC}.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 252-256.

> {The}{Canadian parties} argue that because the respondents were able to claim additional depreciation on top of the rate set forth under Class 53 (pursuant to the Accelerated Investment Incentive (AII) provision), {Commerce} should likewise increase the benchmark rate. They argue that "the so-called 'tiering' methodology codified at 19 {CFR} 351.503(d)" requires that {Commerce} do so. Indeed, {Commerce's} methodology is already consistent with its regulations as it has used the relevant non-specific level (*i.e.*, Class 43) as the benchmark for Class 53 deductions. {Commerce} should reject the GOC and program participants' arguments in the final results.

Commerce Position: The Canadian parties argue that because the companies were able to claim the AII for Class 53 assets, Commerce should increase the normal Class 43 depreciation rate, which is the benchmark rate, to reflect the AII-related amount. They claim that the "tiering" methodology at 19 CFR 351.503(d) requires Commerce to do so. We disagree.

The GOC stated that machinery and equipment acquired by a taxpayer after 2015, and before 2026, used 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.[757] As in prior reviews, the GOC reported that "Class 53 assets used for manufacturing and processing would otherwise have been included in Class 43, under which they would qualify for a CCA rate of 30 percent calculated on a declining-balance basis."[758]

The GOC added that, under subsection 1100(2) of the ITR, there is a temporary enhanced first-year allowance—the AII—which applies to assets in most CCA classes acquired after November

[757] *See* GOC Non-Stumpage IQR Response Volume II at 16.
[758] *Id*. at 18.

20, 2018, that become available for use before 2028.[759] The GOC explained that with the AII, a form of accelerated depreciation, property in Class 53 receive a 100 percent allowance rate and property in Class 43 receive a 150 percent allowance rate for the first year the asset is available for use.[760]

However, we disagree with the respondent parties' arguments that 19 CFR 351.503(d) is applicable here. Rather, 19 CFR 351.509(a), which addresses the benefit for tax subsidies is the relevant regulation under which Commerce determined the benefit under this program. Moreover, the cases cited by the Canadian Parties as support for their "tiering" argument precede 19 CFR 351.509(a), which was promulgated for the purpose of calculating the benefit received from tax-related subsidies.[761]

Pursuant to 19 CFR 351.509(a)(1), 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. Here, under the ITR, absent the ACCA for Class 53 assets, each company would have classified its machinery and equipment under Class 43 and would have been eligible for the standard 30 percent depreciation rate. Thus, fundamentally, the tax benefit for this program is determined by measuring the value of Class 53 accelerated depreciation compared to what the value of depreciation of the same assets would have been if those assets were deducted under Class 43 at standard depreciation.

While the respondent parties note that assets depreciated under Class 43 appear to be eligible for the AII,[762] this is not germane to the issue at hand. Section 351.503(d) of Commerce's regulations applies to the situation in which "a government program provides varying levels of financial contributions…." Respondent parties are effectively pointing to the existence of a different incentive program in arguing that Commerce can only countervail some *additional* amount of benefit. That is incorrect, and a flawed reading of Commerce's regulations. Rather, the fundamental benefit provided under a tax program is the difference between what the company paid under the program and what it would have paid in the absence of the program. In the absence of the accelerated depreciation under Class 53, the companies would have had to depreciate under the standard base rate for Class 43. As a result, this difference in depreciation rates is the benefit. Furthermore, we cannot presume that the company respondents would have opted for the enhanced first-year allowance provided under the AII to depreciate their machinery and equipment under Class 43. Because the CCA is a permissive deduction, the GOC explained that:

> … taxpayers are not required to use the AII rate, and are free to instead use the standard non-AII rate or take no depreciation deduction at all for a particular asset. A taxpayer's reporting of total capital cost allowance (CCA) claimed by asset class may, therefore, include a mix of AII and regular depreciation for assets in each class.[763]

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[759] *Id*. at 16-17.
[760] *See* GOC November 2, 2023 Non-Stumpage SQR Response at 3-5 and 17.
[761] *See* GOC Case Brief Vol. II at 54-55; *see also CVD Preamble*, 63 FR 65375 (stating "{s}ection 351.509 deals with subsidy programs that provide a benefit in the form of relief from direct taxes.").
[762] *Id*. at 3-5 and 17.
[763] *Id*. at 1.

Accordingly, the standard base rate for Class 43—a CCA rate of 30 percent—is the appropriate benchmark to apply to determine whether a benefit was provided by accelerated depreciation for the capital cost of machinery and equipment under the ACCA for Class 53 Assets program.

Comment 44: Whether the Benefit Methodology for the ACCA Class 53 Assets Program Is Correct

JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL. For further details, *see* JDIL Case Brief at 57-64.

> {Commerce} should revise the benefit calculation for the {ACCA} for Class 53 assets. In all previous proceedings, {Commerce} calculated the benefit for the {ACCA} under Class 53 (as well as its predecessor under Class 29) for {JDIL} based on a multi-year calculation. {Commerce's} "single-year" approach overstates the benefit calculated for {JDIL} and is contrary to the plain language of {Commerce's} statute and regulations. In the final results, {Commerce} should { } adjust the starting point of the benchmark calculation to reflect the multi-year nature of depreciation.

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser. For further details, *see* West Fraser Case Brief at 37-40.

> In calculating the purported "benefit" from West Fraser's use of the {ACCA} in the first three administrative reviews, {Commerce} appropriately used a multi-year methodology that accounted for the historical Undepreciated Capital Cost (UCC) balance for the applicable assets. In the *Preliminary Results* of this fourth administrative review, however, {Commerce} deviated from this consistent practice and used a single-year methodology that significantly overstated West Fraser's purported benefit from the use of the program. In the final results, {Commerce} should correct this error and apply an appropriate multi-year methodology.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 252-256.

> In the *Preliminary Results*, {Commerce} found that the ACCA for Class 53 Assets program confers a benefit under section 771(5)(E) of the Act. West Fraser and {JDIL} argue that {Commerce} should have used a multi-year methodology for the calculation of benefit, instead of a single-year methodology. The ACCA for Class

> 53 Assets program replaced the ACCA for Class 29 Assets program in 2016. Under Class 53, machinery and equipment can be depreciated "on a declining balance basis." In comparison, under Class 29, this depreciation was on a "three-year straight-line basis." These two depreciation schedules require two different benefit calculation methodologies. Accordingly, a multi-year methodology is unnecessary and improper for determining the benefit of a Class 53 program that depreciates on a declining balance basis.

Commerce Position: In *Lumber V AR4 Final*, we discussed why Commerce found the single-year methodology proper for the calculation of the benefit under the ACCA for Class 53 Assets program.[764] Specifically, we explained that the ACCA for Class 53 Assets operates on a declining-balance depreciation basis, and thus, 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. We noted that the undepreciated value of acquisitions from prior years is contained within the amount of undepreciated capital cost at the beginning of the tax year, which is reported in a company's CCA Schedule 8 of the annual income tax return. Further, we noted that in *Lumber V AR2*, the single-year methodology, which Canfor presented to Commerce, was applied to determine Canfor's benefit under the ACCA for Class 53 Assets program. In the instant review, all four respondents claimed Class 53 accelerated depreciation from taxable income on their 2021 tax returns filed in 2022. However, only two respondents—JDIL and West Fraser—argue against the single-year methodology, claiming that to calculate the benchmark CCA for Class 43 (what the CCA for Class 53 assets would have been without accelerated depreciation), it is necessary to use a multi-year methodology to determine the corresponding opening UCC balance for Class 43.

Under the Canadian ITR, all depreciable capital assets are subject to a CCA which is a depreciation deduction from taxable income before tax liability is calculated.[765] Under 19 CFR 351.509(a)(l), a benefit for a tax deduction "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." Here, if the accelerated CCA for Class 53 assets was unavailable (50 percent rate), the respondents would have claimed the standard CCA for Class 43 (30 percent rate).[766]

As discussed in the *CVD Preamble*, with respect to accelerated depreciation allowances, Commerce considered adopting a methodology "that accounts for both the early tax savings and the later tax increases by calculating the net present value of the expected tax savings at the onset of the accelerated depreciation period."[767] All comments received on the matter objected to the proposed change in methodology. Commerce therefore decided to continue the current methodology for calculating the tax benefits from accelerated depreciation programs on a year-

[764] *See Lumber V AR4 Final* IDM at Comment 62.
[765] *See* GOC Non-Stumpage IQR Response Volume II at 16-18.
[766] *Id*.
[767] *See CVD Preamble*, 63 FR at 65375-76.

by-year basis.[768] However, after reviewing parties' comments, we acknowledge JDIL and West Fraser's arguments that, under accelerated depreciation, an asset is depreciated faster in the initial years, such that it has a lower undepreciated cost in later years. The starting value of the opening UCC for Class 53 is therefore lower than that under Class 43. As such, we note that by using the lower opening UCC balance for Class 53 (accelerated depreciation) as the basis for the Class 43 benchmark calculation (standard depreciation) a lower CCA benchmark may be computed, and thus, could potentially inflate the benefit received under the Class 53 program. However, the opening UCC balance for Class 53 is the only documented opening UCC balance on the record at Schedule 8 of the companies' income tax returns.

In their questionnaire responses, JDIL and West Fraser submitted multi-year calculations that take into account an opening UCC balance for Class 43, a derived figure, to calculate the benefit under the ACCA for Class 53.[769] However, Commerce has identified certain concerns and flaws with this suggested methodology and benefit computation. Most importantly, we do not have on the record the CCA Schedule 8 from prior tax years to validate the values contained within the CCA Class 43 benchmark calculation. For example, JDIL stated that it "began reporting CCAs on its tax returns for Class 53 assets in each taxation year from 2016 to 2021."[770] However, JDIL's derived CCA under Class 43 reflects information for only the 2020 and 2021 tax years,[771] giving rise to the question of the depreciation status of assets purchased prior to 2020, and whether the universe of all qualifying assets was included in the calculation. To conduct a multi-year methodology, as advocated by JDIL and West Fraser, more information would be needed, such as, *inter alia*, an itemized list of the assets being depreciated to include the year the asset was purchased, the useful life of the asset, the Class 53 depreciation schedule for the asset, the Class 43 depreciation schedule for the asset, and Schedule 8 worksheets for the relevant prior tax years. All of that information would inform the relevant UCC value for a given year to perform such a calculation in an accurate manner.

Consequently, given the lack of information necessary to consider performing an alternative methodology pursuant to parties' arguments, we are not modifying JDIL's and West Fraser's benefit calculations for the ACCA for Class 53 Assets program in these final results. In the ongoing 2023 administrative review, Commerce may consider a different methodology to more accurately perform the CCA Class 43 benchmark calculation. However, detailed information on the machinery and equipment assets being depreciated under the ACCA for Class 53 Assets program, in the manner indicated above, would be necessary in our consideration of such alternative methodologies.

[768] *Id.* at 65376.
[769] *See* West Fraser Non-Stumpage IQR Response Volume II at Exhibit WF-AR5-ACCA-1; *see also* JDIL Non-Stumpage IQR Response at Exhibit CCA-04.
[770] *See* JDIL Non-Stumpage IQR Response at Exhibit CCA-01 (p. 4).
[771] *Id.* at Exhibit CCA-04.

Comment 45: Whether the CCA for Class 1 Assets Program Is Countervailable

GOC Case Brief

The following is a verbatim summary of the argument submitted by the GOC. For further details, *see* GOC Case Brief Vol. II at 81-103.[772]

> As with the SR&ED tax credit, {Commerce} found that the CCA for Class 1 assets is *de facto* specific by comparing the number of taxpayers that used these measures with the total number of business tax filers in Canada. First, {Commerce's} "percentage" methodology for finding a program *de facto* specificity is not in accordance with the law. Jurisprudence demonstrates that {Commerce's} percentage approach is unlawful. Rather, {Commerce} must take into account all relevant circumstances, such as the nature and widespread distribution of the industries taking advantage of the CCA for Class 1 assets, compared to the diversity of the industries in the Canadian economy, and the number of users compared to the number of eligible users. {Commerce's} percentage methodology is also inconsistent with the requirement that {Commerce} not use a rigid mathematical formula in determining *de facto* specificity. {Commerce's} claims to the contrary in past segments of this proceeding misconstrue the legal authority. Second, even if this "percentage" methodology were lawful, {Commerce} failed to take into account important factors affecting its calculation. {Commerce} underestimated the numerator by excluding the number of different companies that used the CCA for Class 1 assets over a number of years. {Commerce} overestimated the denominator by including entities that paid no taxes and are otherwise ineligible. Instead, {Commerce} should have used information provided by Canada in calculating the denominator. Further, {Commerce's} approach is unlawful because it does not take into account that the countervailing duty law only applies to the goods-producing sectors of the Canadian economy. An objective assessment of the economic significance, size, and diversity of the industries and enterprises using the CCA for Class 1 assets shows that it had widespread use, and thus, cannot be *de facto* specific.
>
> {Commerce} erred in finding that the 10 percent CCA depreciation rate for Class 1 buildings used in manufacturing confers a countervailable benefit and provides a financial contribution. In fact, the 10 percent rate simply reflects the actual rate of depreciation for such assets, as determined in an empirical study undertaken by Statistics Canada (StatCan) before the rate was introduced, and so confers no countervailable benefit. {Commerce} inappropriately treated different subclasses of assets in Class 1 as if they are the same kind of assets, despite extensive evidence to the contrary. {Commerce} also incorrectly focused on the mechanism by which a taxpayer claims the CCA for Class 1 assets as relevant to whether the program confers a benefit. The two issues are unrelated, and in any event, all depreciation deductions are claimed using the same mechanism. {Commerce} also

[772] This executive summary exceeds 450 words because we have addressed more than one "issue" in this comment.

misunderstood the nature of the program at issue and misapplied 19 {CFR} 351.509 in finding a benefit.

Further, if there were a benefit, {Commerce} erred in calculating that benefit by, in part, comparing the Class 1 rate under the AII program with the non-accelerated rate applicable to Class 1 assets. Instead, under the so-called "tiering" methodology codified at 19 {CFR} 351.503(d), {Commerce} should have used the AII rate for Class 1 assets as the benchmark. Last, in the context of Canada's tax system, which allows taxpayers to claim deductions for the depreciation of assets based on an asset's anticipated useful life, the Class 1 rate does not constitute a financial contribution as revenue foregone {*sic*} that is otherwise due. In finding that there was a financial contribution, {Commerce} also ignored the statutory language "otherwise due." {Commerce} must take Canada's take regime as {Commerce} finds it, and only deviations from the norms of that tax regime may amount to a financial contribution. The record evidence demonstrates that the CCA for Class 1 assets is not such a deviation.

JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Case Brief at 64-68.

The CCAs claimed for Class 1a and 1b assets on {JDIL's} year-2021 income tax return, filed during the POR, reflect the shorter useful lives of the underlying assets, manufacturing facilities and commercial buildings. The government does not forgo revenue or confer a benefit by administering a tax depreciation schedule that accurately reflects the useful lives of the underlying assets. If, however, {Commerce} continues to countervail this program, it must account for the {All} in order to calculate the tax {JDIL} would have paid in the absence of the program, as required by 19 {CFR} 351.509(a)(l).

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 256-263.

In the *Preliminary Results*, {Commerce} found the Additional Capital Cost Allowance (CCA) for Class 1 Assets program countervailable, consistent with prior reviews. The GOC and {JDIL} argue that the CCA for Class 1 Assets program does not confer a financial contribution because there is no revenue foregone {*sic*} that was "otherwise due" and that the benefit finding for the program is in error. Evidence on the record plainly demonstrates that (1) buildings classified under Class 1 are usually depreciated at the CCA rate of four percent, but (2) those Class 1 buildings with at least 90 percent of the floor space used for the manufacturing or processing of goods for sale or lease may apply for an additional six percent deduction, or (3) an additional two percent can be claimed "if the 90 percent test is

> not met." {Commerce} previously stated, "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" as described in the statute. Further, the regulation is clear that in this case, the 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." The GOC and {JDIL} also argue that because the respondents were able to claim additional depreciation in on top of the rate set forth under Class 1a and 1b (pursuant to the AII provision), {Commerce} should likewise increase the benchmark rate according to 19 {CFR}351.503(d). However, {Commerce's} methodology is already consistent with its regulations as it has used the relevant non-specific level (*i.e.*, Class 1) as the benchmark for Class 1a and 1b deductions. The fact that the AII was implemented does not change the base level of depreciation for the property at issue, which is 4 percent under Class 1. {Commerce} should reject these arguments in the final results.
>
> {Commerce} correctly determined that the CCA for Class 1 Assets program is *de facto* specific in its *Preliminary Results*. The GOC argues that the CCA program is not *de facto* specific as the total users are not limited. However, the record evidence shows that the actual users of the CCA were limited in number on an enterprise basis. {Commerce} should continue to reject the GOC's arguments to the contrary in the final results.

Commerce's Position: Commerce found the CCA for Class 1 Assets program countervailable in prior administrative reviews, most recently, in *Lumber V AR4 Final*.[773] With the exception of the proper benchmark to apply to determine the benefit, the GOC and JDIL have not submitted any new arguments regarding the program. We find that no arguments have been presented by the parties to warrant reconsideration of Commerce's finding that the CCA for Class 1 Assets program is a countervailable subsidy or Commerce's methodology for calculating the benefit under the program. We thus 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 an initial matter, the GOC and the petitioner commented on the CCA for Class 1 Assets litigation concerning Commerce's final affirmative determination in the CVD investigation of utility wind towers from Canada.[774] In *Government of Québec v. U.S.*, the GOC made similar arguments, as here, regarding the CCA for Class 1 Assets program.[775] The GOC 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.[776] Yet, the CIT did not find such arguments persuasive, holding that the CCA for Class 1 Assets provides a financial contribution because it permits additional depreciation above what would apply in the absence of the program, regardless of the empirical bases on which the

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[773] *See Lumber V AR4 Final* IDM at Comment 46; *see also Lumber V AR1 Final* IDM at Comment 93, 95, and 96; *Lumber V AR2 Final* IDM at Comment 98, 99, and 100; and *Lumber V AR3 Final* IDM at Comment 88 and 89.
[774] *See* GOC Case Brief Vol. II at 85 (fn. 272) and 95 (fn. 299); *see also* Petitioner Rebuttal Case Brief at 256.
[775] *See Government of Québec v. U.S.*, 567 F. Supp. 3d at 1293-96.
[776] *Id*.

depreciation deduction rates are based.[777] 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.[778] The Federal Circuit in *Gov't of Québec v. U.S.* upheld the CIT's decision and held that "Commerce based its determination on how the Canadian tax regulations explicitly structured the additional depreciation allowance, applying the explicit definitions of 'benefit' and 'financial contribution' provided in the governing statute and regulations."[779]

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.[780] 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.[781]

However, notwithstanding the GOC's arguments concerning the norms of a country's tax system, the fact remains that under the program, the GOC allows additional CCAs for different classes of property.[782] Under the CCA for Class 1 buildings, the standard (residential building) CCA rate is four percent to which an additional six percent CCA may be deducted (for a total CCA rate of 10 percent) if at least 90 percent of the floor space of an eligible non-residential building is used for manufacturing or processing of goods for sale or lease. If an eligible non-residential building does not qualify for the additional six percent CCA, it may still qualify for an additional two percent CCA (for a total CCA rate of six percent) to the extent the floor space of this building is at least 90 percent used for non-residential use in Canada. 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. 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."[783] The Federal Circuit also found that "the governing statutory and regulatory provisions do not require Commerce to base its determination on whether a program at issue accurately aligns with the economic reality of building depreciation."[784]

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[777] *Id.*
[778] *Id.*
[779] *See Gov't of Québec v. U.S.*, 105 F. 4th at 1372.
[780] *See* GOC Case Brief Vol. II at 96-102.
[781] *Id.* at 102-03.
[782] *See* GOC Non-Stumpage IQR Response Volume II at 85-88.
[783] *See Government of Québec v. U.S.*, 567 F. Supp. 3d at 1295.
[784] *See Gov't of Québec v. U.S.*, 105 F. 4th at 1372.

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Further, in making its arguments on "foregoing {*sic*} of revenue that is otherwise due," the GOC cites *Hyundai Steel*, where the CIT stated that "Commerce's construction of the statute in this case might fare better if the statute provided for a financial contribution in the form of revenue forgone without further qualification, but by adding the phrase 'that is otherwise due,' Congress added a constraint for which Commerce must account."[785] We note that the *Hyundai Steel* litigation remains ongoing and, thus, is not final and conclusive as CIT rulings are subject to appeal at the Federal Circuit.[786]

Additionally, in support of its arguments that only deviations from the norms of a country's tax system can be considered as forgoing revenue that is otherwise due, the GOC cites the *DS 108 Panel Report*, which was a dispute at the WTO.[787] 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.[788] 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.[789] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[790]

As to the benefit conferred under the program, Class 1 buildings are usually depreciated at the CCA rate of four percent, but those used for manufacturing may receive an additional six percent deduction.[791] Under 19 CFR 351.509(a)(1) "{i}n the case of a program that provides a full or partial exemption or remission of a direct tax (*e.g.*, an income tax), or reduction in the base used to 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*."[792] 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.

The GOC and JDIL argue that Commerce should include the effect of the AII in its calculations of the tax savings derived from utilizing the CCA for Class 1 Assets.[793] They assert that because companies were able to claim extra depreciation on top of the additional CCA set forth under

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[785] *See* GOC Case Brief Vol. II at 96-97 (citing *Hyundai Steel*, 659 F. Supp. 3d at 1336).
[786] *See Hyundai Steel II*, Slip Op. 2024-55.
[787] *Id.* at 100-02 (citing *DS 108 Panel Report* at para. 61-66).
[788] *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.
[789] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[790] *See* SAA at 659.
[791] *See* GOC Non-Stumpage IQR Response Volume II at 85-86.
[792] *See also CVD Preamble*, 63 FR at 65375 {emphasis added}.
[793] *See* GOC Case Brief Vol. II at 93-95; *see also* JDIL Case Brief at 67-68.

Class 1, Commerce should increase the benchmark rate (*i.e.*, four percent CCA rate).[794] As with the ACCA for Class 53 Assets (*see* Comment 43), the GOC argues that Commerce should apply its "tiering" methodology under 19 CFR 351.503(d) to calculate the benefit.[795] Specifically, here, the GOC states that Commerce should calculate the benefit by comparing the AII rate for Class 1 manufacturing buildings to the six percent AII rate applicable to Class 1 residential buildings. We disagree. As noted above, the respondent parties have misconstrued the regulations applicable to the calculation of the benefit under this program. The applicable regulation for determining the benefit under the CCA for Class 1 Assets program is 19 CFR 351.509(a), which addresses the benefit for tax subsidies. Moreover, the cases cited by the Canadian Parties as support for its "tiering" argument precede 19 CFR 351.509(a), which was promulgated for the purpose of calculating the benefit received from tax-related subsidies. The fact that a different incentive appears to have been available does not change the fundamental fact that, absent the CCA for Class 1 Assets program, the companies would have been subject to the base level of depreciation for the property at issue, which is four percent under Class 1. As such, we continue to find 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 have addressed the GOC's arguments regarding the specificity of the CCA for Class 1 Assets[796] in prior administrative reviews.[797] We found their *de facto* specificity 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.[798] 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."[799] 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.[800] 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.[801] 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 4.

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[794] *See* GOC November 2, 2023 Non-Stumpage SQR Response at 3. The GOC reported that the effective AII rate for most classes is generally calculated by applying the prescribed CCA rate for a class to 1.5 times the net addition to the class for the year.
[795] *See* GOC Case Brief Vol. II at 94 (citing 19 CFR 351.503(d)).
[796] *See* GOC Case Brief Vol. II at 84-85.
[797] *See Lumber V AR1 Final* IDM at Comment 95; *see also Lumber V AR2 Final* IDM at Comment 100; *Lumber V AR3 Final* IDM at Comment 89; and *Lumber V AR4 Final* IDM at Comment 46.
[798] *See* SAA at 929.
[799] *Id.*
[800] *See* SAA at 931.
[801] *See CRS from Korea* IDM at Comment 13; *see also Lumber V Final* IDM at Comment 62.

The GOC reported that, out of approximately 2.3 million corporate tax filers in Canada for tax year 2021, 31,220 companies claimed and were allowed the additional Class 1 CCA of six percent, and 5,200 companies claimed and were allowed the additional Class 1 CCA of 10 percent.[802] Because we treat the CCA for Class 1 Assets as one program (and not as separate federal and provincial tax programs),[803] 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 assistance under the program, relative to total corporate tax filers, are limited in number on an enterprise basis, as just 1.53 percent of Canadian corporate tax filers claimed the additional CCA for Class 1 Assets in their 2021 income tax returns filed with the tax authorities in the POR. Further, Commerce's percentage methodology for the CCA for Class 1 Assets is proper as it compares the actual users of the program to the total universe of potential users (*i.e.*, corporate tax filers in Canada), which are the relevant factors to consider when determining whether recipients of the program are limited in number on an enterprise basis.

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.[804]

Comment 46: Whether the Federal and Provincial R&D Tax Credits Are Specific

GOC Case Brief

The following is a verbatim summary of the argument submitted by the GOC. For further details, *see* GOC Case Brief Vol. II at 55-81.

> {Commerce} found that the SR&ED tax credit is *de facto* specific by comparing the number of taxpayers that used these measures with the total number of business tax filers in Canada. This finding is factually and legally erroneous.
>
> First, {Commerce's} "percentage" methodology for finding a program *de facto* specificity is not in accordance with the law. In other proceedings, {Commerce} has found that the SR&ED tax credit is not *de facto* specific. {Commerce} has never explained its finding in this proceeding that the SR&ED tax credit is *de facto* specific in light of contrary findings in those cases. Moreover, jurisprudence demonstrates that {Commerce's} percentage approach is unlawful. Instead, {Commerce} must take into account all relevant circumstances, such as the nature and widespread distribution of the industries taking advantage of the SR&ED tax credit compared to the diversity of the industries in the Canadian economy, and the

[802] *See* GOC Non-Stumpage IQR Response Volume II at 104 and Exhibits GOC-AR5-CRA-CLASS1-8 and CLASS1-10.
[803] *See*, *e.g.*, *Lumber V AR2 Final* IDM at Comment 98.
[804] *See Lumber V AR1 Final* IDM at Comment 95; *see also Lumber V AR2 Final* IDM at Comment 100; *Lumber V AR3 Final* IDM at Comment 89; and *Lumber V AR4 Final* IDM at Comment 46.

> number of users compared to the number of eligible users. {Commerce's} percentage methodology is also inconsistent with the requirement that {Commerce} not use a rigid mathematical formula in determining *de facto* specificity. {Commerce's} claims to the contrary in past segments of this proceeding misconstrue the legal authority.
>
> Second, even if this "percentage" methodology were lawful, {Commerce} failed to take into account important factors affecting its calculation. {Commerce} underestimated the numerator by excluding the number of different companies that used the SR&ED tax credit over a number of years. {Commerce} overestimated the denominator by including entities that do not engage in {R&D} or paid no taxes. Instead, {Commerce} should have used information provided by Canada in calculating the denominator, which excluded companies that inappropriately inflated the denominator used by {Commerce}. Further, {Commerce's} approach is unlawful because it does not take into account that the {CVD} law only applies to the goods-producing sectors of the Canadian economy. An objective assessment of the economic significance, size, and diversity of the industries and enterprises using the SR&ED tax credit shows that it had widespread use, and thus, cannot be *de facto* specific.

GBC Case Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Case Brief Vol. V at 76-81.

> {Commerce} improperly found that the {BC} SR&ED Tax Credit is *de facto* specific because the credit is available to all taxable enterprises in the Province that carry on SR&ED activities and actual recipients are not limited in number on an enterprise basis. In fact, the record shows that companies in a wide variety of industries participated in the program during the POR.

GNB Case Brief

The following is a verbatim summary of the argument submitted by the GNB (internal citations omitted). For further details, *see* GNB Case Brief Vol. VI at 114-115.

> In its *Preliminary {Results}*, {Commerce} accurately determined that the R&D Tax Credit is not *de jure* specific. However, it inaccurately concluded that the program is *de facto* specific, citing the limited number of actual recipients as the basis for this finding.
>
> {Commerce's} analysis of the R&D Tax Credit program's *de facto* specificity was flawed as it solely compared the number of participating companies to the total number of companies in New Brunswick, overlooking the "rule of reason" standard enshrined in the SAA. A proper analysis for *de facto* specificity must look at the

> number of enterprises using a program, considering all relevant circumstances, such as the range of industries in the economy represented by participating users.
>
> The R&D Tax Credit applies to eligible {R&D} expenditures across all sectors and industries in New Brunswick, without favoring any particular enterprise or industry. {JDIL} is just one of many companies utilizing the program, which is like other programs across Canada. Therefore, the R&D Tax Credit program is not specific under {section 771(5A) of the Act}, and its implementation in New Brunswick is not countervailable. The GNB also incorporates by reference the arguments by the {GOC} with regard to the federal counterpart of the R&D Tax Credit.

GOS Case Brief

The following is a verbatim summary of the argument submitted by the GOS (internal citations omitted). For further details, *see* GOS Case Brief Vol. VII at 6-11.

> {Commerce} erred in preliminarily finding that the R&D Tax Credit was *de facto* specific. While the precise number of companies claiming the credit is confidential, such a large number cannot be considered "limited" on any record, and certainly not on the record here, given both the large number and wide diversity of users from many different industries and sectors. Moreover, a formulaic comparison of the actual number of users to the total number of corporate tax filers is an unlawful method of analyzing *de facto* specificity. The {CIT} has recently described this precise methodology as "produc{ing} an absurd result" finding "much wrong with {Commerce's} conclusion."

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser (internal citation omitted). For further details, *see* West Fraser Case Brief at 41.

> In the *Preliminary Results*, {Commerce} erred in finding that the Federal and BC {SR&ED} Tax Credits (which are used by tens of thousands of enterprises across almost every part of the Canadian economy) are *de facto* specific. West Fraser incorporates by reference the arguments made in the {GOC's} and BC Parties' case briefs that this credit is not countervailable.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 263-71, 301-03, and 316-21.[805]

[805] This executive summary exceeds 450 words because we have addressed more than one "issue" in this comment.

In the *Preliminary Results*, and consistent with the final results of the fourth administrative review, {Commerce} continued to find the tax credits provided under the federal {SR&ED} program to be countervailable. However, the GOC, Tolko, and West Fraser argue that {Commerce's} determinations were flawed because the program is not limited in number and {Commerce's} methodology is unsupported by law. These arguments are largely repeated from prior reviews and have continually been rejected by {Commerce}. The record demonstrates that the federal SR&ED program is *de facto* specific within the meaning of {section 771(5A)(D)(iii)(I) of the Act} because the number of users on an enterprise or industry basis are limited in number. This finding is in accordance with the law and is not disturbed by the CIT's decision in *Mosaic Co. v. {U.S.}* because the denominator in {Commerce's} percentage analysis reflects the "universe or composition of the group of potential recipients." Record evidence supports that all corporate taxpayers cover the universe of potential recipients of this subsidy. Accordingly, {Commerce} should continue to find this program specific in the final results.

{Commerce} was correct in its *de facto* specificity analysis of the BC SR&ED. {Commerce} found the BC SR&ED program to be *de facto* specific because "the actual recipients, relative to the total corporate/business tax filers in British Columbia, are limited in number on an enterprise basis." {Commerce's} finding is in accordance with the law and is not disturbed by the CIT's decision in *Mosaic Co. v. {U.S.}* because the denominator in {Commerce's} percentage analysis reflects the "universe or composition of the group of potential recipients." The GBC further argues that the program does not satisfy the other statutory factors that also allow {Commerce} to find *de facto* specificity. However, the statute is clear that {Commerce} only needs to find that one of these factors exists for its affirmative specificity finding. As such, the GBC's arguments in this regard are meritless and should be dismissed in the final results.

In the *Preliminary Results*, {Commerce} found the New Brunswick {R&D} Tax Credit *de facto* specific under section 771(5)(D)(iii)(I) of the Act because the actual recipients of the program are limited in number. The GNB argues that {Commerce's} *de facto* specificity analysis is "flawed" and fails to consider "relevant circumstances" such as "the range of industries in the economy represented by participating users." However, 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. {Commerce}should reject the GNB's attempt to introduce additional requirements into its specificity analysis which are not required by law, and maintain its *de facto* specificity finding in the final results.

In the *Preliminary Results*, {Commerce} found the {Saskatchewan R&D Tax Credit} *de facto* specific under section 771(5)(D)(iii)(I) of the Act because the actual recipients of the program are limited in number on an enterprise basis. Contrary to the {GOS'} claims, {Commerce's} analysis is consistent with the

> CIT's finding in *Mosaic Co. v. {U.S.}*. The *Mosaic* court stated that the denominator used in {Commerce's} analysis should reflect the "universe or composition of the group of potential recipients." Record evidence shows that this program is indeed available to *any* corporate taxpayer in Saskatchewan. As such, {Commerce} reasonably used the number of total corporate tax filers, who were all "potential recipients" of the program, as its denominator in the subsidy analysis. The {GOS} and Tolko further contest that the record does not support a *de facto* specificity finding based on the other factors of the statute. However, under the statute, {Commerce} is not required to consider these other factors as the statute only requires one factor to be present for an affirmative specificity finding. Accordingly, {Commerce's} *de facto* specificity finding is supported by record evidence and should be maintained in the final results.

Sierra Pacific Rebuttal Brief

The following is a verbatim summary of the argument submitted by Sierra Pacific. For further details, *see* Sierra Pacific Rebuttal Brief at 27-32.

> {Commerce's} *de facto* specificity findings for the federal and provincial tax { } programs at issue in this review are supported by substantial evidence on the record and otherwise in accordance with law. {Commerce} lawfully 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. Contrary to respondents' arguments, 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.

Commerce's Position: With the exception of the Saskatchewan R&D Tax Credit program, Commerce found, in prior segments of this proceeding, the federal and provincial R&D tax credit programs to be *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.[806] Here, as in the prior segments, the Canadian Parties argue that the large number and wide diversity of companies from different industries and sectors claiming the R&D tax credits cannot be considered limited. We disagree. As discussed below, we find that the Canadian Parties have not presented any new arguments that warrant a change to Commerce's preliminary findings that the following R&D tax credit programs are *de facto* specific: SR&ED Tax Credit—GOC, SR&ED Tax Credit—GBC, New Brunswick R&D Tax Credit, and Saskatchewan R&D Tax Credit.[807]

According to the SAA, 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

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[806] *See Lumber V Final* IDM at Comment 64; *see also Lumber V AR1 Final* IDM at Comment 89; *Lumber V AR2 Final* IDM at Comment 94; *Lumber V AR3 Final* IDM at Comment 85; and *Lumber V AR4 Final* IDM at Comments 47 and 56.
[807] *See Lumber V AR5 Prelim* PDM at 53-54, 59-60, and 62-63.

economy.[808] 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."[809] 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.[810] 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.[811] Thus, we have followed the instructions of the SAA and our practice in determining whether the R&D tax credit programs are *de facto* specific, and continue to disagree that Commerce is required to analyze only the absolute number of users under section 771(5A)(D)(iii)(I) of the Act, as argued by the GOC.[812]

The *de facto* specificity methodology that Commerce utilized for the R&D tax credits— comparing the number of users to the total number of eligible entities (*i.e.*, corporate/business taxpayers)— has been relied upon since the investigation.[813] Contrary to arguments made by the Canadian Parties, this methodology is not tantamount to a requirement that a subsidy be universally available and used in order to be non-specific.[814]

Further, the SAA provides 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 the widespread availability and use of a subsidy, the benefit of the subsidy is spread throughout an economy."[815] Therefore, to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, and in accordance with the purpose of the specificity test as expressed in the SAA, the recipients of the subsidy must be "limited in number." Here, Commerce examined the usage data for the R&D tax credit programs provided by the federal and provincial governments. We considered whether the recipients of each federal and provincial R&D tax credit program were limited in number on an enterprise basis in comparison to the total number of eligible entities in each jurisdiction.[816] For each program, we found that the usage data showed that the actual recipients of the tax credits were "limited in number."[817] The usage data indicate that such programs cannot be construed to be "widely used" throughout the relevant economies.

In making their arguments, the Canadian Parties cite *Mosaic Co. v. U.S.*,[818] asserting the CIT held that Commerce may not find a tax program to be *de facto* specific by comparing the number

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[808] *See* SAA at 930 (referencing *Carlisle Tire and Rubber v. U.S.*).
[809] *Id.*
[810] *Id.* at 931.
[811] *See CRS from Korea* IDM at Comment 13.
[812] *See* GOC Case Brief Vol. II at 62.
[813] *See Lumber V Final* IDM at Comments 62 and 64.
[814] *See* Canadian Parties Joint Case Brief Vol. I at 112-118.
[815] *See* SAA at 929-30.
[816] *See Lumber V AR5 Prelim* PDM at 53-54 (Federal), 59-60 (British Columbia), 62 (New Brunswick), and 62-63 (Saskatchewan).
[817] *Id.*; *see also* R&D Tax Credits Specificity Memorandum. Information provided by the GNB and GOS is proprietary.
[818] *See Mosaic Co. v. U.S.*, 659 F. Supp. 3d at 1314-17.

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of recipients who use a tax program to the total number of tax filers.[819] First, we note that this litigation is ongoing; thus, the decision relied on by the Canadian Parties is not final and conclusive and remains subject to appeal at the Federal Circuit.[820] Second, the Canadian Parties have mischaracterized the CIT's ruling on this issue. The CIT did not wholesale reject Commerce's percentage methodology for assessing *de facto* specificity, but rather found that, with respect to the individual program at issue in *Mosaic Co.* v. *U.S.*, Commerce's analysis was flawed because it did not consider whether the denominator used reflected the "universe or composition of the group of potential recipients."[821] However, this factor is not present here, and Commerce's analysis of the R&D tax credit programs in this review is fully consistent with the Court's holding. The denominator used in Commerce's specificity analysis for each R&D tax credit program reflects the universe of potential recipients for each program. That is, since all corporate/business taxpayers in Canada (for the federal SR&ED) or in the relevant province (for the provincial R&D tax credit programs) comprise the universe of potential recipients of the subsidy,[822] Commerce correctly used the total number of corporate/business tax filers in the relevant jurisdiction as the denominator. Commerce's decision here is consistent with the holding in *Gov't of Québec v. U.S*, where the Federal Circuit upheld Commerce's determination that a Québec on-the-job training tax credit was *de facto* specific in accordance with section 771(5A)(D)(iii)(I) of the Act.[823] In *Gov't of Québec v. U.S.*, the Federal Circuit held that "Commerce did not err in using the total corporate tax filers as a comparator in assessing whether the credit recipients are limited in number" after finding that "{b}oth corporations and individuals engaging in business activities can avail themselves of this program and claim the tax credit."[824]

Furthermore, the fact that usage of the R&D tax credit programs was spread across many and diverse industries is immaterial to Commerce's analysis. 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."

Further, section 771(5A)(D)(iii)(I) of the Act, which provides the first factor in the *de facto* specificity test, 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

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[819] *See* GOC Case Brief Vol. II at 59-61 and 71; *see also* GBC Case Brief Vol. V at 77-80; GNB Case Brief Vol. VI at 115; and GOS Case Brief Vol. VII at 8.
[820] *See Mosaic Final Results of Redetermination*, available at https://access.trade.gov/resources/remands/23-134.pdf.
[821] *See Mosaic Co. v. U.S.*, 659 F. Supp. 3d 1315.
[822] *See* GOC Non-Stumpage IQR Response Volume II at 158-159 and 165; *see also* GBC Non-Stumpage IQR Response Volume XIII at 1 and 5-6; GNB IQR Response at Exhibit NB-AR5-RDTC-1 (pgs. 1 and 7); and GOS IQR Response at Appendix A (pgs. 1-2 and 8).
[823] *See Gov't of Québec v. U.S.*, 105 F.4th 1359, 1374.
[824] *Id.*

analysis."[825] Because we made a specificity finding under section 771(5A)(D)(iii)(I) of the Act for the R&D tax credit programs, we are not obligated to examine other factors under the Act.[826]

Thus, we find that the Canadian Parties misconstrue the law with respect to the analysis of *de facto* specificity. Under the sequence of analysis in the statute, where a program is not *de jure* specific under section 771(5A)(D)(i) of the Act, Commerce examines whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act. The *de jure* analysis does not inform the *de facto* analysis, given that the statute prescribes different requirements for each analysis.[827] 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 whether the subsidy program is "widely used throughout an economy."[828] 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.

Further, the GOC asserts that because the CVD law applies only to physical commodities, the specificity analysis should be carried out within the goods-producing sectors of the economy, given the small share of an economy such production accounts for in a mature economy like the United States or Canada.[829] The GOC also argues that Commerce was wrong in comparing the number of users of the tax credit programs with the total number of corporate tax 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).[830] Both arguments emphasize that the tax credit users are not "limited" when compared against a much smaller denominator. However, Commerce looks at the economy as a whole in determining whether or not the number of industries or enterprises receiving a subsidy is, in fact, limited.[831] Commerce's analysis in this administrative review, as well as its analysis in prior segments of this proceeding

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[825] *See* 19 CFR 351.502(a).
[826] *See Gov't of Québec v. U.S.*, 105 F.4th 1374 (stating, in citing 19 CFR 351.502(a), "Commerce examines the factors enumerated in {section 771(5A)(D)(iii) of the Act} sequentially. If a single factor warrants a finding of specificity, {Commerce} will not undertake further analysis." (Internal citations omitted)).
[827] *Id.* (stating, in citing 771(5A)(D)(ii)-(iii), "the statute does not make a de jure analysis a prerequisite inquiry for a de facto analysis. Rather, the statutory language is clear that specificity can be *either* de jure *or* de facto. The de jure specificity inquiry is separate from the de facto inquiry and the two are based on different factors." (internal citations omitted)).
[828] *See* SAA at 929.
[829] *See* GOC Case Brief Vol. II at 77-81.
[830] *Id.* at 73-74.
[831] *See* SAA at 930.

and *Groundwood Paper from Canada*, is 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.[832]

We also continue to disagree with the GOC that our specificity analysis for the federal SR&ED program is inconsistent with prior Commerce analyses in cases where we found no *de facto* specificity for programs with fewer users. The cases cited by the GOC—*AK Steel Corp. v. U.S.* and *CTL Steel Plate from Korea Final* (litigated in *Bethlehem Steel I*)[833]—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 the tax credit programs under review here, 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.[834] 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 R&D 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 I*, which addressed disproportionality and predominant use, are not applicable to our analysis of the R&D Tax Credit programs, where we found that the actual recipients are limited in number, in accordance with section 771(5A)(D)(iii)(I) of the Act.

The GOC additionally cites three cases where Commerce found *de facto* specificity to argue that Commerce's precedent for finding *de facto* specificity based on a limited number of enterprises has involved much smaller numbers than in the instant proceeding: *OCTG from Türkiye*, *CRS from Russia*, and *Compressors from Singapore*.[835] Importantly, the Federal Circuit has stated that Commerce is afforded latitude and not subject to rigid rules when determining specificity.[836] Moreover, 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."[837] Because the facts of *OCTG from Türkiye*, *CRS from Russia*, and *Compressors from Singapore* were specific to those particular proceedings, Commerce's determinations in those cases are not applicable and do not dictate a particular finding in this review.

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[832] *See Lumber V Final* IDM at Comment 64; *see also Lumber V AR1 Final* IDM at Comment 89; *Lumber V AR2 Final* IDM at Comment 94; *Lumber V AR3 Final* IDM at Comment 85; *Lumber V AR4 Final* IDM at Comments 47 and 56; and *Groundwood Paper from Canada Final* IDM at Comment 61.
[833] *See* GOC Case Brief Vol. II at 64-65.
[834] *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).
[835] *See* GOC Case Brief Vol. II at 65 (*citing OCTG from Türkiye* (affirmed in *Borusan v. U.S.*, Supp. 61 F. 3d at 1342-43); *CRS from Russia* IDM at 117; and *Compressors from Singapore*, 61 FR at 10316).
[836] *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 I.*, 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)}.").
[837] *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."); *see also Gov't of Québec v. U.S.*, 105 F. 4th 1359, 1374.

With respect to *Royal Thai Gov't v. U.S. (2004)* and *Royal Thai Gov't v. U.S. (2006)*, also cited by the Canadian Parties,[838] Commerce addressed the unique and distinguishing facts of that case in *Lumber V Final*.[839] The parties have made no additional arguments in this case from those in the underlying investigation to have us reconsider our analysis of the facts in *Royal Thai Gov't v. U.S. (2004)* and *Royal Thai Gov't v. U.S. (2006)*. As noted above, Commerce is not subject to rigid rules when determining if a particular program is specific under section 771(5A) of the Act.[840]

Thus, for all the reasons outlined above, Commerce properly determined that the recipients of the federal and provincial R&D tax credits in Canada were limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. Consequently, Commerce is maintaining its *de facto* specificity findings for the Federal SR&ED Tax Credit, SR&ED Tax Credit-GBC, New Brunswick R&D Tax Credit, and Saskatchewan R&D Tax Credit programs in these final results.

Comment 47: Whether Attribution of the R&D Tax Credits Is Correct

GOS Case Brief

The following is a verbatim summary of the argument submitted by the GOS (internal citations omitted). For further details, *see* GOS Case Brief Vol. VII at 3-5.

> {Commerce} recognized that no respondents in this review produced subject merchandise in Saskatchewan. The only respondent with any operations in Saskatchewan, Tolko, produces {OSB} from hardwood at the Meadow Lake OSB Mill in Saskatchewan. OSB mills are physically incapable of producing softwood lumber. Saskatchewan would not have granted a tax credit if Tolko had not carried out qualifying research in the province at the Meadow Lake OSB mill. The Saskatchewan R&D Tax Credit was tied at the time of bestowal to non-subject merchandise (OSB) and the law requires that any alleged subsidy provided by the R&D Tax Credit must be "attributed" to Tolko's production of OSB, not to its production or sale of subject merchandise.
>
> Despite the record evidence that this provincial credit was issued solely in connection with the activities of the Meadow Lake OSB Mill in Saskatchewan, {Commerce's} preliminary analysis erroneously found the Saskatchewan R&D Tax Credit provided a countervailable subsidy. This analysis erred, first, in attribution. Any benefits should have been attributed to Meadow Lake OSB Mill's production of OSB, as the law requires and in accordance with {Commerce} regulations. Any benefit cannot be tied or attributed to the production of subject merchandise, but can only be attributed to the merchandise produced within the

[838] *See* GOC Case Brief Vol. II at 64; *see also* GOS Case Brief Vol. VII at 10.
[839] *See Lumber V Final* IDM at Comment 64.
[840] *See Royal Thai Gov't v. U.S. (2004)*, 341 F. Supp. 2d 1319: *see also 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 I*, 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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> jurisdiction of the granting authority, that is, OSB produced in the province of Saskatchewan.

Tolko Case Brief

The following is a verbatim summary of the argument submitted by Tolko. For further details, *see* Tolko Case Brief at 13-15.

> {Commerce} should revise its {SR&ED} tax credit calculations to attribute any benefit to the merchandise related to the specific research projects.

Petitioner Rebuttal Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 24-26.

> {Commerce} should continue to find the Saskatchewan {R&D} Tax Credit countervailable in the final results because {Commerce} does not tie subsidies to particular facilities or entities within a firm: "{o}nce a firm receives the funds, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that {Commerce} evince{s}." In other words, the {Saskatchewan R&D Tax Credit} benefits the Tolko corporate entity rather than just specific plants or factories.

Commerce's Position: We rejected similar attribution arguments in the underlying investigation with regard to the R&D tax credits.[841] We find the tying arguments made here by the GOS and Tolko also to be unpersuasive.

First, in making its arguments, the GOS cites 19 CFR 351.525(b)(7) and the *CVD Preamble*, which states that under 19 CFR 351.525(b)(7) "{Commerce} normally will attribute subsidies to sales of merchandise produced within the jurisdiction of the granting authority."[842] The GOS states that Tolko has production facilities in multiple Canadian provinces, but within Saskatchewan, Tolko produces only OSB. As such, the GOS asserts that Commerce should attribute the Saskatchewan R&D Tax Credit to the product produced by Tolko in Saskatchewan at its OSB mill. Thus, the GOS appears to be characterizing Tolko as a multinational company for purposes of determining attribution of the Saskatchewan R&D Tax Credit. We find the GOS' argument to be unavailing. Section 351.525(b)(7) of Commerce's regulations, which addresses the attribution of subsidies received by multinational companies, states in full: "If the firm that received the subsidy has production facilities in two or more countries, {Commerce} will attribute the subsidy to products produced by the firm within the country of the government that granted the subsidy." The *CVD Preamble* distinguishes between domestic and foreign/international production of a multinational company and does not explicitly contemplate that the meaning of "country" under 19 CFR 351.525(b)(7) encompasses sub-regional

[841] *See Lumber V Final* IDM at Comment 65.
[842] *See* GOS Case Brief Vol. II at 4-5 (citing *CVD Preamble*, 63 FR at 65403).

authorities, such as provinces.[843] Thus, 19 CFR 351.525(b)(7) pertains to multinational firms in which the "firm that received a subsidy has production facilities in two or more countries," not provinces. Saskatchewan is not a country, but a Canadian province.[844] As such, the multinational firm provision at 19 CFR 351.525(b)(7) is inapplicable in this instance.

Second, the GOS and Tolko claim that, in the case of R&D tax credits, both at the provincial and federal level, the projects that give rise to the tax credits relate to specific activities or projects, which are tied to the production and sale of particular products. The GOS states that Tolko's tax return had to show that activities were carried out at its OSB mill in Saskatchewan, to qualify for the Saskatchewan R&D tax credits.[845] Similarly, Tolko states that its R&D projects are detailed within its income tax return, describing the nature of the project, the merchandise at issue, and the province where the project occurred.[846]

Under 19 CFR 351.525(b)(5)(i), "if a subsidy is tied to the production or sale of a particular product," Commerce "will attribute the subsidy only to that product." To determine whether a subsidy is "tied," Commerce's focus is on "the purpose of the subsidy based on information available at the time of bestowal" (that is, when the terms for the provision are set), and not on how a firm has actually used the subsidy.[847] Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents—*e.g.*, the application, contract or approval—explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.[848]

As the GOS and Tolko reported, the bestowal of the R&D tax credits is not determined through a government agency's review/approval of an application submitted by a corporate taxpayer.[849] Instead, the taxpayer simply claims the tax credits within its income tax return, which is subject to audit. In making their arguments, the GOS and Tolko cite a list of eligible R&D expenditures in the company's 2021income tax return, filed during the POR, claiming that certain of the R&D tax credits were earned for projects related to non-subject merchandise.[850] However, we find that this information does not evince a clear link or purpose to benefit certain products, or a concurrent government acknowledgement of certain tax credits being contingent upon R&D being conducted for certain merchandise, to the exclusion of subject merchandise. Nor has the GOS or Tolko cited any evidence that the R&D tax credits can only be claimed for non-subject merchandise. Rather, these tax credits can be claimed on expenditures for scientific research and

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[843] *See CVD Preamble,* 63 FR at 65403-04.
[844] *Id*. at 1 (where the GOS states "Saskatchewan, a province of Canada").
[845] *See* GOS Case Brief Vol. II at 3 (citing Tolko Non-Stumpage IQR Response at Exhibit GEN-9-A).
[846] *See* Tolko Case Brief at 13-14 (citing Tolko Non-Stumpage IQR Response at Exhibit GEN-9-A).
[847] *See CVD Preamble,* 63 FR at 65403.
[848] *Id.* at 65402.
[849] *See* GOS IQR Response at 7-8; *see also* Tolko Non-Stumpage IQR Response at Exhibit ICMTAX-11 (federal SR&ED), page 1; Exhibit ICMTAX-12 (BC SR&ED), page 1; and Exhibit ICMTAX-14 (Saskatchewan R&D Tax Credit), page 1.
[850] *See* GOS IQR Response at 3 (citing Tolko Non-Stumpage IQR Response at Exhibit GEN-9-A); *see also* Tolko Case Brief at 13-14 (citing Tolko Non-Stumpage IQR Response at Exhibit GEN-9-A).

experimental development that will lead to new, improved, or technologically advanced products or processes.[851]

Further, both the GOS and Tolko argue "fungibility" for why Commerce should attribute the R&D tax credits to only the products related to the specific research projects.[852] They assert that absent the R&D expenditures there would be no tax credits, and thus, the tax credits can only benefit the products related to the R&D projects. We disagree. As demonstrated in Tolko's income tax return,[853] the R&D tax credits benefit Tolko as a whole by reducing the company's overall tax burden. Additionally, Commerce does not tie subsidies to particular facilities within a firm because, "{o}nce a firm receives the funds, it does not matter whether the firmed used the government funds, or some of its own funds that were freed up as a result of the subsidy."[854] Thus, there is no basis to find that the benefits from the tax credits are tied to any particular merchandise or mill at the point of bestowal. As such, for these final results, we continue to find the benefits received under the R&D Tax Credit programs to be untied subsidies that are attributable to all products sold by Tolko, as provided under 19 CFR 351.525(b)(3).

Comment 48: Whether the FLTC and PLTC Are Countervailable

GOC Case Brief

The following is a verbatim summary of the argument submitted by the GOC. For further details, *see* GOC Case Brief Vol. II at 103-117.

> {Commerce} erred by looking at the FLTC tax credit, the British Columbia provincial logging tax credit (PLTC), and the British Columbia logging income tax as three unrelated measures. {Commerce's} regulations at 19 CFR 351.509 require {Commerce} to consider the benefit conferred by a "program"—not the components of a program. The FLTC, PLTC, and British Columbia logging income tax are components of one program, and {Commerce} should have treated them as such. In other cases, {Commerce} has found components of a single program not to confer a benefit. When the three measures are, properly, viewed as parts of a single program, there is no benefit to the respondent companies that claimed the FLTC and the PLTC.
>
> Moreover, {Commerce} erred by refusing to consider the combined impact of the FLTC and PLTC. {Commerce} cannot rely on section 771(5)(C) of {the Act} to avoid considering the effects of the program because that statutory provision only excuses {Commerce} from considering the effects on the price of an output, or a firm's performance, price, or any other effect contemplated by the SAA or 19 CFR 351.503(c). The effects at issue here are those on the taxpayer's tax liability and the governments' tax revenues.

[851] *See* GOC Non-Stumpage IQR Response Volume II at 165; *see also* GBC Non-Stumpage IQR Response Volume XIII at 1; and GOS IQR Response at 1.
[852] *See* GOS Case Brief Vol. II at 5; *see also* Tolko Case Brief at 14.
[853] *See* Tolko Non-Stumpage IQR Response at Exhibit GEN-9-A.
[854] *See CVD Preamble*, 63 FR 65403.

> Finally, accepting *arguendo* that the FLTC conferred a benefit with the meaning of section 771(5)(E) of {the Act}, that benefit is zero. The respondent companies' payment of the logging tax in this case is exactly the type of payment that should be subtracted from a benefit calculation. Thus, {Commerce} should subtract the provincial logging tax from any alleged benefit conferred by the FLTC and PLTC, resulting in a net benefit of zero.

GBC Case Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Case Brief Vol. V at 81-85.

> … the BC Parties detail how {Commerce} improperly failed to consider the logging tax framework—including the BC logging tax and the federal and BC logging tax credits—in its entirety in {Commerce's} evaluation of the countervailability of this alleged program. Because the logging tax framework as a whole has a tax-neutral impact, {Commerce} should determine in the final results that the BC Logging Tax Credit provides no benefit to recipients.

Canfor Case Brief

The following is a verbatim summary of the argument submitted by Canfor. For further details, *see* Canfor Case Brief at 18-29.

> {Commerce} erred in the *Preliminary Results* by finding that the {FLTC} and {PLTC} provided Canfor with countervailable benefits. {Commerce's} error lies in the fact that it treated these tax credits separately and did not view them in their entirety, which resulted in {Commerce} finding a benefit to Canfor that does not exist. When the logging income tax, FLTC, and PLTC are viewed in their entirety, it is plain they result in no net tax benefit to Canfor but instead simply place Canfor in the same position as other taxpayers outside the forestry sector and avoid double taxation. Canfor merely serves as the conduit for the transfer of tax revenue from the Federal Government to the BC Provincial Government and thus Canfor receives no benefit. Furthermore, even if wrongly considered to be countervailable {Commerce} erred in not treating the payment of the logging income tax as a "similar payment" required in order to qualify for the FLTC and PLTC under section 771(6)(A) of {the Act}. When the logging income tax payment is properly treated as an offset, it is clear that Canfor received no benefit from the FLTC and PLTC.

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser. For further details, *see* West Fraser Case Brief at 42.

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> West Fraser incorporates by reference the arguments of the Governments of Canada, British Columbia, and Alberta with respect to … the Federal and BC Logging Tax Credit.

Tolko Case Brief

The following is a verbatim summary of the argument submitted by Tolko. For further details, *see* Tolko Case Brief at 15.

> In the Final Results, {Commerce} should determine that the federal and BC logging tax credits confer no benefit. As discussed in the case briefs submitted by the GOC and the GBC and BCLTC, the net result of the logging tax and the corresponding tax credit against BC and federal income tax is overall tax neutrality. Thus, {Commerce} should determine that the BC and federal logging tax credits do not confer a benefit to Tolko.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 271-279.

> {Commerce} should maintain its finding in the *Preliminary Results* that the {FLTC} and the {PLTC} are countervailable subsidies and confer a benefit under sections 771(5)(D) and 771(5)(E) of the Act. The Canadian Parties argue that the FLTC and PLTC do not confer a benefit, as they are intended to offset the GBC's provincial logging tax and thus achieve tax neutrality for respondent companies operating in British Columbia. However, this argument is without merit, as countervailing measures are meant to evaluate the benefit conferred by such programs based on the difference between the tax a company actually paid with the subsidy program and the tax the company would have paid absent the tax program. {Commerce's} consistent findings, in alignment with statutory and regulatory frameworks, underscores that the benefit calculation should not be impacted by the Canadian Parties' broader tax neutrality argument.
>
> Additionally, the Canadian Parties' argument that {Commerce} should analyze the FLTC and PLTC in conjunction with the GBC's provincial logging tax as a singular program does not align with {Commerce's} methodology, which examines each program based on its individual impact on each respondent's tax liabilities. Moreover, the Canadian Parties' claim that the combined effect of the logging tax and the FLTC and PLTC does not result in a financial contribution contradicts {Commerce's} established practice and the Act's clear provisions. Tax credits are countervailable because they lessen the tax burden on respondent companies, making them a financial contribution. {Commerce's} established method of analysis should continue to guide its evaluation of the FLTC and PLTC.

Commerce's Position: The Canadian Parties raised these same arguments in prior reviews.[855] The GOC asserts that in *Lumber V AR4 Final*, Commerce misinterpreted the FLTC and PLTC by viewing aspects of these programs separately.[856] However, Commerce disagrees with this assertion and continues to find that there are two distinct government actions. The GOC's, GBC's, Canfor's, Tolko'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."[857] 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."[858] 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 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, Tolko, 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

[855] *See Lumber V AR2 Final* IDM at Comment 101; *see also Lumber V AR4 Final* IDM at Comment 48.
[856] *See* GOC Case Brief Vol. II at 108.
[857] *See* GOC Non-Stumpage IQR Response, Volume II at 141.
[858] *Id*. at Exhibit GOC-AR5-CRA-FLTC-1 (p. 2710) (Federal Budget – April 10, 1962).

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.[859] Commerce does not interpret 771(6)(A) of the Act to mean we can offset taxes on which a potential subsidy benefit could be based.

The GOC argues that Commerce must consider the program in its entirety, as there has been no benefit to the logging companies. Through the imposition of the BC logging tax, and the simultaneous crediting of the total amount of that tax by the BC and federal governments, the GOC contends there has been no net impact on the tax liability of the logging companies. Rather, according to the GOC, the only impact is that the GBC received an increase in revenue for two thirds of the logging taxes that have been effectively financed by the federal government. The GOC claims that this is not the situation described in the *CVD Preamble*, where Commerce explained that it will not consider the "effects" of a subsidy on a firm's behavior.[860]

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.[861] 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

[859] *See Welded Line Pipe from Türkiye* IDM at 23-24; *see also PET Film from India* IDM at 11 and 13.
[860] *See* GOC Case Brief Vol. II at 114 (citing the *CVD Preamble*, 63 FR at 65361; *see also* 19 CFR 351.503(c)).
[861] *Id*.

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 *Lumber V AR2 Final* with respect to the ACCA (*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).[862] 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.[863] 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*[864] (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, 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.[865] 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

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[862] *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).
[863] *See CVD Preamble*, 63 FR at 65361.
[864] *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.
[865] *See Inland Steel v. U.S.*, 967 F. Supp. at 1367-68.

difference between the tax a company actually paid under the subsidy program and the tax the company would have paid absent the tax programs.

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.[866] 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 programs constitute a financial contribution that benefit the respondents under sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a).

Alberta

Comment 49: Whether the TEFU Is Countervailable

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.B at 40-47.

> {Commerce} erred in finding countervailable the {TEFU} program, which partially exempts certain marked fuel from Alberta's fuel tax. The record makes clear that TEFU is not specific as a matter of law or fact. The program is not *de jure* specific pursuant to {section 771(5A)(D)(i) of the Act}, as neither the governing authority nor the relevant legislation limits access to the TEFU program by enterprise or industry. Rather, TEFU applies broadly to a wide range of fuel-using activities, provided that they do not involve the use of power vehicles operating on roadways. The record furthermore supports this point. A broad range of industries in Alberta (ranging from ski-resorts to waste-management) take advantage of the TEFU program. Under these circumstances, the conclusion that the program is specific in fact is unsupported by substantial evidence.

[866] *See* Canfor Non-Stumpage IQR Response at Exhibit 18 (CFP's 2021 Federal and BC Income Tax Returns (filed in 2022) at lines 640 and 651); *see also* Tolko Non-Stumpage IQR Response at Exhibit GEN-9-A (Tolko Industries Ltd. 2021 Tax Return at lines 640 and 651); and West Fraser Non-Stumpage IQR Response at Exhibit WF-AR5-GEN-8 (WFM tax return filed in 2022 at lines 640 and 651).

> Nor is this program specific pursuant to {section 771(5A)(D)(ii) of the Act}. As noted, the eligibility criteria governing the TEFU program are objective and mandatory, with requirements set forth in statute. As long as an individual or company meets the requirements of the law, they are entitled to the reduced tax level (and, as noted, a variety of industries have taken advantage of this program). {Commerce} fails to rebut this point, or provide any evidence that the TEFU program has been managed in a discriminatory manner.
>
> In addition, the {GOA} does not confer a financial contribution through the TEFU program, as the government is not foregoing {*sic*} 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 fuel tax at all. For each of these reasons, TEFU is not a countervailable tax program and {Commerce's} determination to the contrary is unsupported by substantial evidence and not in accordance with law.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 279-284.[867]

> In the *Preliminary Results*, {Commerce} continued to find Alberta's {TEFU} program countervailable, and calculated a 0.01 percent *ad valorem* subsidy rate for West Fraser. {Commerce's} finding is consistent with its conclusions in the underlying investigation, first, second, third, and fourth administrative reviews. The GOA argues that there is no revenue foregone {*sic*} that was otherwise due because fuel used for the applications eligible for the program was "not originally taxed when the Alberta fuel tax was re-issued in 1987 and only recently has been taxed at a lower rate than other fuel in Alberta." Additionally, the GOA points out that because the TEFU is designed to keep participants from paying fuel tax on non-motive fuel in the first place, it cannot be considered a financial contribution, as the GOA is not "foregoing {*sic*} any tax revenue that would otherwise be collected." However, {Commerce's} analysis is not whether the current tax rate for this fuel is higher than it used to be. Whether the GOA used to subsidize the purchase of fuel for certain activities at a higher level is immaterial to the question of whether the current tax break is a subsidy. The relevant comparison here is between the current tax rate for this carve-out of activities and the current standard tax rate. 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. This plainly constitutes a financial contribution in the form of revenue foregone {*sic*}. {Commerce} should continue to reject these recycled arguments and maintain its finding regarding the countervailability of this program for the final results.

[867] This executive summary exceeds 450 words because we have addressed more than one "issue" in this comment.

> In past reviews, {Commerce} has found that the TEFU is *de jure* specific and should continue to do so in this review. {Commerce} has previously found that the program "expressly limits access to the tax exemption to enterprises or industries that use marked fuel for one of {a} limited {set of} prescribed purposes," and only fuel purchasers buying marked fuel for the "specific purposes or uses set forth in section 8(3) of the Fuel Tax Regulation are eligible for a fuel tax exemption certificate to purchase marked fuel." As the GOA itself notes, the limited purposes 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." There is no evidence on the record suggesting a change to these limitations. Accordingly, {Commerce} should continue to find that the TEFU is *de jure* specific. In the event {Commerce} does not find the program to be *de jure* specific, it should find that it is *de facto* specific in accordance with {section 771(5A)(D)(iii) of the Act} because the actual recipients of the grant are limited in number.

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 *Lumber V AR4 Final*,[868] 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.

The GOA's TEFU program provides a partial fuel tax exemption of marked fuel to eligible companies and municipalities when fuel is used in unlicensed vehicles, machinery, and equipment for qualifying off-road activities.[869] 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."[870] 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."[871] 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.[872]

As we have previously explained, 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

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[868] *See Lumber V AR4 Final* IDM at Comment 49.
[869] *See* GOA Non-Stumpage IQR Response at Appendix K at 1.
[870] *Id.*; *see also Lumber V Final* IDM at Comment 73; *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.
[871] *See* GOA Case Brief Vol. IV.B at 43.
[872] *See* GOA Non-Stumpage IQR Response at Appendix K at 7-8, 10-11, and Exhibits AB-AR5-TEFU-3 (*Fuel Tax Act*) and TEFU-4 (*Fuel Tax Regulation*).

segments of an economy could escape the purview of the CVD law."[873] 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.

Further, contrary to the cases cited by the GOA,[874] Commerce's specificity finding for the TEFU is consistent with our past practice. For example, in *Steel Pipe from Oman*, Commerce found that a particular subsidy program "expressly limit{ed} access … to certain enterprises or industries" when the "{t}he GCC Industrial Rules specifically exclude{d}" certain enterprises or industries, such as those that mined or extracted raw materials but did not convert them into semi-finished or finished products.[875] Furthermore, 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.[876] Thus, Commerce may make a finding of *de jure* specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.

With regard to the GOA's arguments on *de jure* specificity under section 771(5A)(D)(ii) of the Act, we found in *Lumber V AR4 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.[877]

We note no 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.[878] 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 prior segments, most recently *Lumber V AR4 Final*, and found unpersuasive.[879] Further, we find the GOA's reference to *Hyundai*.[880] is off point as that case did not concern specificity but whether there was a benefit to the recipient. Finally, because Commerce finds the TEFU to be *de jure* specific, we need not consider whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.[881]

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[873] *See, e.g., Lumber V AR4 Final* IDM at Comment 49.
[874] *See* GOA Case Brief Vol. IV.B at 43-45 (citing *Hyundai*, 658 F. Supp. 3d 1336; *Pasta from Italy Final* IDM at 17; and *NOES from Taiwan Final* IDM at 21).
[875] *See Steel Pipe from Oman* IDM at Comment 2; *see also Nails from Oman* IDM at Comment 1.
[876] *See Magnesium from Israel* IDM at Comment 2.
[877] *See Lumber V AR4 Final* IDM at Comment 49.
[878] *See* GOA Non-Stumpage IQR Response at Appendix K at 1-21 and Exhibits AB-AR5-TEFU-3, TEFU-4, TEFU-5, TEFU-7, TEFU-8, and TEFU-11.
[879] *See Lumber V AR3 Final* IDM at Comment 91.
[880] *See* GOA Case Brief Vol. IV.B at 43 (citing *Hyundai*, 658 F. Supp. 3d 1331).
[881] However, we note that the GOA reported that a small number of companies, in comparison to the total number of companies operating or established in Alberta, was approved for the program during the POR. *See* GOA Non-Stumpage IQR Response at Appendix K at 13-14 and Exhibit AB-AR5-TEFU-9. The number of companies is proprietary information.

Additionally, 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 *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.[882]

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.[883] As such, we also continue to find that the TEFU provides a benefit to the recipient equal to the amount of additional taxes the recipient would have paid in the absence of the program, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).

Comment 50: Whether the Property Tax EOA Is Countervailable

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.B at 38-40.

> {Commerce} erred in countervailing the property { } valuations accounting for economic obsolescence depreciation. {It does not} provide a financial contribution. The object of {the program} is to provide a consistent and measured valuation of property, particularly when catastrophic events or economic conditions have lowered property values. In other words, {this is} standard property valuation practices necessary to evaluate the value of property for tax assessment purposes. Because the property is correctly valued, the governmental authority is therefore collecting the full tax amount owed; it has not foregone {*sic*} revenue "that is otherwise due" as required by {section 771(5)(D)(ii) of the Act}. Even if {Commerce} were to consider {the program a} financial contribution, {it} would not be specific and therefore not countervailable. {Commerce's} conclusion that {this program is} specific is not supported by substantial evidence and is contrary to law.

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[882] *See Lumber V Final* IDM at Comment 73.
[883] *See* GOA Non-Stumpage IQR Response at Appendix K at 2 and Exhibits AB-AR4-TEFU-3 (*Alberta Fuel Tax and Fuel Tax Regulation*), TEFU-4 (*Alberta Fuel Tax Regulation*), and TEFU-11 (*Fuel Tax Act Special Notices*).

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 284-287.

> In the *Preliminary Results*, consistent with prior reviews, {Commerce} found Alberta's Property Tax – {EOA} program countervailable, and calculated a subsidy rate of 0.01 percent *ad valorem* for West Fraser during the POR. The GOA disputes {Commerce's} finding, arguing that the EOA does not provide a financial contribution because its tax assessment system is designed to accurately value property within the province for property tax purposes, and asset depreciation is a standard part of any tax regime. {Commerce} has previously rejected this line of argument. The description of the program provided by the GOA makes clear 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. Accordingly, this EOA rule provides a carve-out to the GOA's standard property valuation assessment which lowers the tax liability of the property owner. The fact that the carve-out is prescribed in law does not negate that this constitutes a financial contribution in the form of revenue foregone {*sic*} within the meaning of section 771(5)(D)(ii) of the Act. {Commerce} should reject the GOA's arguments and maintain its current determination in the final results.
>
> In the *Preliminary Results*, {Commerce} found Alberta's Property Tax EOA is regionally specific under section 771(5A)(D)(iv) of the Act. This finding is consistent with previous administrative reviews. The GOA argues that this program is not specific since economic obsolescence depreciation is a "widely used property value assessment technique" and there is nothing in the Alberta laws or regulations that limit an assessor's consideration of economic obsolescence factors by "enterprise or industry." However, this argument is irrelevant as it relates specifically to a *de jure* specificity finding under section 771(5A)(D)(i) of the Act, and {Commerce's} countervailability finding regarding the EOA is not predicated on a *de jure* specificity finding, but rather on a finding of regional specificity under section 771(5A)(D)(iv) of the Act. As participation in the program is limited to those enterprises with properties located within a municipality, and properties located outside said municipalities are unable to benefit from the EOA, it is regionally specific. Therefore, the GOA's argument here is an attempt to refute a finding which was both unnecessary and does not exist. {Commerce} should reject the GOA's arguments {and} continue to find Alberta's property tax EOA regionally specific in the final results.

Commerce's Position: Commerce found the EOA program countervailable in prior administrative reviews, most recently, in *Lumber V AR4 Final*.[884] We find that the GOA has not submitted any new arguments regarding this program, and thus, we have not reconsidered our countervailable finding for the EOA.

[884] *See Lumber V AR4 Final* IDM at Comment 50.

During the POR, Canfor and West Fraser received economic obsolescence allowances that reduced their property taxes owed.[885] The GOA argues that depreciation for economic obsolescence is an accepted methodology for assessing the value of a property.[886] Thus, the GOA asserts that any reduction in the companies' tax liability under the EOA is a part of a standard property assessment procedure and represents an accurate valuation of their property and assets under the law, and thus, does not provide a financial contribution. 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 provide a financial contribution.

The financial support conferred under the EOA program is administered by municipal governments in Alberta.[887] This additional depreciation, or economic obsolescence, is applied by assessors in each municipality within Alberta.[888] Municipal assessors, working with property owners, 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.[889] 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 *Lumber V AR4 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,[890] we continue to find that the program is regionally specific under section 771(5A)(D)(iv) of the Act.

Comment 51: Whether Tax Savings Under Alberta's Schedule D Are Countervailable

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA Case Brief Vol. IV.B at 36-40.

> {Commerce} erred in countervailing the property valuations with Schedule D depreciation and valuations accounting for economic obsolescence depreciation. Neither provide a financial contribution. The object of these programs is to provide a consistent and measured valuation of property, particularly when catastrophic

[885] *See* Canfor Non-Stumpage IQR Response at 33; *see also* West Fraser Non-Stumpage IQR Response Volume II at 79.
[886] *See* GOA Case Brief Vol. IV.B at 38.
[887] *See* GOA Non-Stumpage IQR Response at Appendix I at 2-3 and Exhibits AB-AR5-MPT-1 (*Municipal Government Act*) and MPT-12 (*Matters Relating to Assessment and Taxation Regulation*).
[888] *Id*. at Appendix I at 2-5 and Exhibit AB-AR5-MPT-7.
[889] *Id*. at Appendix I at 5-7, 10-11, and 13.
[890] *Id*. at Appendix I at 7-10 and 13-14.

> events or economic conditions have lowered property values. In other words, these are standard property valuation practices necessary to evaluate the value of property for tax assessment purposes. Because the property is correctly valued, the governmental authority is therefore collecting the full tax amount owed; it has not foregone revenue "that is otherwise due" as required by {section 771(5)(D)(ii) of the Act}. {Commerce} has not provided evidence that Schedule D is an inappropriate method of measuring the effect of depreciation. It simply asserts that this program is countervailable.
>
> Even if {Commerce} were to consider these programs financial contributions, they would not be specific and therefore not countervailable. {Commerce's} conclusion that these programs are specific is not supported by substantial evidence and is contrary to law.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 288-290.

> In the *Preliminary Results*, {Commerce} found the Schedule D depreciation program to be countervailable, and calculated a subsidy rate of 0.01 percent *ad valorem* for Canfor during the POR. This finding is consistent with {Commerce's} previous determinations in past administrative reviews. The GOA disputes {Commerce's} finding that Schedule D constitutes a financial contribution, arguing that Schedule D is not a "program" meant to reduce tax obligations and thus forgo revenue otherwise due, but rather is a set of guidelines used by GOA tax assessors to correct the assessed value of business assets for tax purposes. The GOA argues that Schedule D depreciation is "simply part of Alberta's standard property assessment procedures" to "ensure that property is accurately valued for tax purposes." Essentially, the GOA is suggesting that if a tax reduction is prescribed in law and for some policy rationale, it cannot constitute a financial contribution, but this has been consistently rejected by {Commerce}. But for this Schedule D provision, Canfor's Grande Prairie equipment would have been taxed at a higher rate than it actually was during the POR. Accordingly, this constitutes a financial contribution in the form of revenue foregone in accordance with {section 771(5)(D)(ii) of the Act}. {Commerce}should uphold its determination in the final results.

Commerce's Position: The arguments raised by the GOA are the same as those raised in the prior administrative review.[891] The GOA argues that any benefit prescribed in law cannot confer a benefit because under Schedule D, Canfor pays the rate prescribed by law. In *Lumber V AR4 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.[892] The additional depreciation under

[891] *See Lumber V AR4 Final* IDM at Comment 51.
[892] *Id*.

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).[893] 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.[894]

British Columbia

Comment 52: Whether the CleanBC's CIIP Is Countervailable

GBC Case Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Case Brief Vol. V at 85-92.

> {Commerce} erred in countervailing CleanBC's subprogram CIIP for three reasons. First, the CleanBC Program as a whole does not provide a benefit; instead, it imposes burdens on the subject companies covered by CleanBC. When considered wholistically, CIIP clearly does not confer a benefit. Second, CIIP is not *de jure* specific because it is available to any entity covered by CleanBC, which includes a wide range of large industrial emitters. Finally, CIIP payments do not provide a financial contribution to recipients because the payments do not qualify as revenue foregone {*sic*}. Instead, CIIP is a self-funding program in which the funds are provided by industries themselves.

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[893] *Id*.

[894] 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 prior reviews, 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 AR4 Final* IDM at Comment 51; *see also Lumber V AR3 Final* IDM at Comment 90.

West Fraser Case Brief

The following is a verbatim summary of the argument submitted by West Fraser (internal citations omitted). For further details, *see* West Fraser Case Brief at 42.

> In the *Preliminary Results*, {Commerce} erred in finding that the {CIIP} (which requires participants both to pay an additional carbon tax and to invest to reduce admissions) is *de jure* specific. West Fraser incorporates by reference the arguments made in the BC Parties' case brief that payments under the program are not countervailable.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 290-295.

> {Commerce} correctly determined that the {CIIP} is countervailable in the *Preliminary Results*. Given that the Canadian Parties have put no new evidence on the record, {Commerce} should maintain these findings and the specified *ad valorem* rates for the respondent companies in the final results.
>
> Despite challenges from the GBC, the CIIP provides a financial contribution to the respondents. The GBC argues that the CIIP is self-funded through the industrial facilities' carbon tax payments such that it does not constitute a government-provided financial contribution. However, this argument was previously rejected by {Commerce}, reasoning that the GBC's imposition of a carbon tax and subsequent refunds to respondent companies meeting certain emissions benchmarks constitutes a financial contribution regardless of the self-funding nature of the tax. In addition, evidence from this review supports that the CIIP, by providing payments to incentivize lower carbon tax liabilities and support emissions reductions projects, results in a financial contribution through revenue forgone as described in section 771(5)(D)(ii) of the Act.
>
> The GBC also argues that the CIIP does not confer a benefit to the respondents due to the overall burdens imposed by the broader CleanBC program. The GBC cites case law as evidence; however, this comparison is inapposite given the fundamental differences in context between the case and the CIIP. The former involved a loan to the government, while the latter pertains to a tax refund mechanism for respondent companies. {Commerce's} benefit analysis properly hinges on whether respondents pay less tax under the program than they would in absence of the program, rendering the GBC's emphasis on additional obligations and conditions as irrelevant. Because the CIIP involves reimbursing companies for a portion of carbon taxes paid, {Commerce} has previously maintained its position that the CIIP confers a benefit to respondents in this review. This aligns with {Commerce's} established methodologies for benefit calculations and thus, {Commerce} should uphold its preliminary findings in the final results.

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> In past reviews, {Commerce} has found that the CIIP is *de jure* specific and should continue to do so in this review. Eligibility criteria expressly "exclude{} 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" from being eligible for a refund. Because of these express eligibility limitations, the CIIP is *de jure* specific. Should {Commerce} not find CIIP to be *de jure* specific, it should find that it is *de facto* specific in accordance with {section 771(5)(D)(iii) of the Act} because the actual recipients of the grant are limited in number.

Commerce's Position: The GBC and West Fraser raise the same arguments regarding the countervailability of the CleanBC Program for Industry's CIIP sub-program as in prior reviews.[895] We found the parties' arguments unpersuasive most recently in *Lumber V AR4 Final*,[896] and continue to do so here.

The GBC argues that Commerce must evaluate the CleanBC Program for Industry as a whole, which directs a portion of the revenue that the GBC receives from its carbon tax into incentives to reduce GHG emissions. Citing *Government of Sri Lanka v. U.S.*, the GBC states that in conducting its benefit analysis, Commerce must consider programs in their entirety, and may not selectively analyze an alleged benefit in isolation.[897] When considered in its totality, the GBC contends, there is no benefit because of the burdens and requirements (*i.e.*, an additional tax or a requirement to make investments to achieve emissions reductions) that the program places on companies covered under the GGIRCA. Further, the GBC argues that CleanBC is a "self-funding" program that uses funds from the industries that ultimately receive the refunds. The GBC asserts, without supporting evidence, that Canfor, Tolko, and West Fraser received less than what they paid into the CIIP the prior year.[898]

Consistent with the court's opinion in *Government of Sri Lanka v. U.S.*, in conducting the benefit analysis of the CIIP, Commerce is only concerned with "what goes into the company," *i.e.*, the benefit it receives[899] from refunds under the CIIP, and not with the initial collection of the taxes or the source of the revenue generally. Because Canfor, Tolko, and West Fraser received payments under the CIIP during the POR, a benefit was received by each company.

The GBC reported that it 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.[900] The GBC

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[895] The other CleanBC sub-program is the CIF. Tolko was the only respondent to use the CIF in the POR and the program did not provide a measurable benefit. *See* GBC Non-Stumpage IQR Response Volume V (CIF) at 5; *see also* Tolko Final Calculation Memorandum.
[896] *See Lumber V AR4 Final* IDM at Comment 52.
[897] *See* GBC Case Brief Vol. V at 87 (citing *Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d at 1380).
[898] *Id*. at 92 (citing GBC Non-Stumpage IQR Response Volume VII (CIIP) at 58).
[899] *See Government of Sri Lanka v. U.S.*, 308 F. Supp. 3d at 1380; *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; and *Lumber V AR4 Final* IDM at Comment 52.
[900] *See* GBC Non-Stumpage IQR Response Volume VII (CIIP) at 1.

explained that, starting from 2019, the CleanBC Program for Industry was funded by this incremental, additional portion of the carbon tax over the initial C$30 per ton.[901] Thus, for the 2022 POR, the additional carbon tax used to fund the CIIP was C$15 per ton from January 1 to March 31, 2022, and $20 per ton from April 1 to December 31, 2022.[902] 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.[903] 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.

Based on how the CIIP operates, we continue to reject the GBC's argument regarding the benefit conferred under the program. By its design, the CIIP returns, via refunds, to subject companies, based on emissions performance, the incremental carbon tax paid above the initial C$30 tax base.[904] In the absence of the CIIP, Canfor, Tolko, and West Fraser would not have received a benefit, in the form of a refund, during the 2022 POR of the incremental carbon tax they paid in 2021.[905] Based on the record evidence, we continue to find that the CIIP confers a benefit under section 771(5)(E) of the Act, and that the payments under the CIIP constitute a financial contribution under section 771(5)(D)(ii) of the Act as taxes previously paid by the companies are refunded to them by the government, which equates to revenue forgone by the GBC.

Further, as in the prior reviews, the GBC and West Fraser continue to disagree with Commerce's *de jure* specificity finding for the CIIP. Here, in arguing that the CIIP is not *de jure* specific, the GBC cites *Hyundai Steel Co.*, where the CIT found there is an "inherent disconnect between a reference to '*types* of businesses' … and a '*specific* enterprise or industry,' or 'a *given* enterprise or industry' as referred to in the Act."[906] The GBC asserts that CleanBC (including the CIIP) covers a particular "type" of business—all large industrial operations with high GHG emissions that report their emissions under GGIRCA—and not a "specific enterprise or industry,"[907] and it is therefore too broadly applicable to be *de jure* specific. The GBC further argues that, under the Act, a domestic program is not *de jure* specific if the relevant legislation "establishes objective criteria or conditions" that are "automatic" and "clearly set forth in the relevant statute, regulation, or other official document."[908] The GBC adds that CIT has explained that the mere "existence of criteria—that limits access—alone is insufficient to render a subsidy specific as a matter of law if the criteria is horizontal in application and economic in nature."[909] The GBC claims that the GGIRCA establishes objective criteria that are strictly followed and neutral.

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[901] *Id*.
[902] *Id*.
[903] *Id.* at 2-4.
[904] *Id*. at 25.
[905] *Id*. at 7-8; *see also* West Fraser Non-Stumpage IQR Response Volume II at 90-92.
[906] *See* GBC Case Brief Vol. V at 89 (citing *Hyundai Steel Co.*, Slip Op. 23-182 at 18-19 {emphasis in original}).
[907] *Id*. (citing GBC Non-Stumpage IQR Response Volume VII (CIIP) at 1).
[908] *Id*. at 90 (citing section 771(5A)(D)(ii) of the Act).
[909] *Id*. (citing *BGH Edelstahl III*, 663 F. Supp. 3d at 1381).

As an initial matter, we note that, for many of the cases cited by the GBC in support of its specificity arguments,[910] the litigation before the CIT is on remand and, thus, not final and conclusive as the CIT's rulings are subject to appeal at the Federal Circuit.[911] The GBC's reliance on the *Risen Energy* cases is also unavailing because the program at issue was entirely different than the program at issue here.[912] The SAA makes clear that Commerce's *de jure* specificity analysis is fact intensive and case-specific.[913] Thus, the GBC's reliance on these cases fail to demonstrate that Commerce's *de jure* analysis here is contrary to law.

Further, we find no basis to revisit Commerce's *de jure* specificity finding for the CIIP based on the arguments put forth by the GBC. Unlike the examples of neutral criteria in the SAA (*i.e.*, the number of employees or size of the enterprise),[914] the criteria for the CIIP favor certain industries and enterprises. The GBC itself states that CleanBC, including the CIIP, "specifically targets" large industrial operations with high GHG emissions that report their emissions under the GGIRCA, "such as pulp and paper mills, natural gas operations, refineries, large mines" 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."[915] By specifically identifying particular industries for subsidization, and excluding others, the criteria or conditions for the CIIP are not neutral and favor certain industries over others.

Additionally, as Commerce has found, a subsidy can be *de jure* specific pursuant to section 771(5A)(D)(i) of the Act where an authority[916] expressly limits access to a "group" of enterprises or industries which the authority, itself, defines, but which does not necessarily comprise "specifically named" enterprises or industries (*e.g.*, Companies A, B, and C or the steel and automotive industries).[917] Furthermore, Commerce has previously found subsidy programs to be *de jure* specific because the government in question identified qualifying recipients on the basis of characteristics of relevant industries, *e.g.*, targeting enterprises or industries that perform certain types of activities.[918] Here, for carbon tax refunds under the CIIP, the GBC targets large

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[910] *Id*. at 89-90 (citing *Hyundai Steel Co.*, Slip Op. 23-182; *Risen Energy I*, 658 F. Supp. 3d; *Hyundai Steel*, 659 F. Supp. 3d; *BGH Edelstahl II*, 639 F. Supp. 3d; and *BGH Edelstahl III*, 663 F. Supp. 3d).
[911] *See BGH Edelstahl III*, 663 F. Supp. 3d at 1384-85; and *Hyundai Steel II*, Slip Op. 2024-55.
[912] *See Risen Energy I*, 658 F. Supp. 3d at 1372 (explaining that the Article 26(2) tax subsidy program at issue related to an "{i}ncome tax preference for dividends, bonuses and other equity investment income between eligible resident companies" and that Commerce did not "identify an adequately specific enterprise or industry."); *see also* Risen Energy Final Results of Redetermination, available at https://access.trade.gov/resources/remands/23-148.pdf, at 7 (analyzing the same Article 26(2) tax subsidy program); and *Risen Energy II,* Slip Op. 2024-25.
[913] *See* SAA at 930.
[914] *Id*. ("… the objective criteria or conditions must be neutral, must not favor certain enterprises over others, and must be economic in nature and horizontal in application, such as the number of employees or the size of the enterprise.").
[915] *See* GBC Non-Stumpage IQR Response Volume VII (CIIP) at 1-2, 8-9, and 13; *see also* GBC Case Brief Vol. V at 85.
[916] Consistent with section 771(5A)(D)(i) of the Act, references to "authority" and "authorities" in this section also refer to legislation pursuant to which the authorities operate.
[917] *See, e.g.*, *Lumber V AR3 Final* IDM at Comment 103.
[918] *See, e.g.*, *Silicon Metal from Australia* IDM at Comment 3 ("With respect to the RET program, the criteria used by the {Government of Australia} are not neutral because the criteria favor enterprises or industries that conduct 'emission-intensive' activities and are 'trade-exposed' over industries or enterprises that do not conduct such

industrial operations with high GHG emissions which are in compliance with the GGIRCA and meet two emissions-intensity benchmarks (an eligibility threshold and a performance-based benchmark).[919]

Consequently, on the basis of the record evidence, we continue to find that the CIIP is *de jure* specific under section 771(5A)(D)(i) of the Act because the program expressly limits access to the subsidy to an enterprise or industry, or groups thereof. Because Commerce finds the CIIP to be *de jure* specific, we need not consider whether the CIIP is *de facto* specific under section 771(5A)(D)(iii) of the Act.[920]

New Brunswick

Comment 53: Whether the GMFT Program Provides a Financial Contribution in the Form of Revenue Forgone or Can Be Found Specific

GNB Case Brief

The following is a verbatim summary of the argument submitted by the GNB (internal citations omitted). For further details, *see* GNB Case Brief at Vol. VI at 109 to 114.

> In the *Preliminary Results*, {Commerce} incorrectly found that the {GMFT} in New Brunswick is *de jure* specific and constitutes a financial contribution under {section 771 (5)(D)(ii) of the Act} due to foregone revenue.
>
> The GMFT imposes a standard tax on gasoline and motive fuel when used for vehicles on public highways in New Brunswick. It exempts from GMFT taxation or allows refunds for uses by a variety of industries that do not involve driving on public highways. The GMFT does not present a financial contribution for revenue foregone. This exemption policy traces back to 1926, and demonstrates a clear intent to tax fuel used on public highways while exempting other uses. Revenue from untaxed activities cannot be considered foregone if it was never due in the first place.
>
> Further, the GMFT is not *de jure* specific because the exemptions are based on behavior (driving on public highways) rather than specific enterprises or industries. The GMFT policies, which apply uniformly across various industries and activities, are horizontal in nature, not favoring any enterprise or industry. The policies are objective, automatic, and uniformly implemented, thus do not meet the threshold of specificity under {section 771 (5A)(D)(ii) of the Act}.

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activities and are not trade exposed which thus constitutes an explicit limitation on access to the subsidy. Therefore, we continue to find that the issuance of RET exemption certificates is *de jure* specific under section 771(5A)(D)(i) of the Act.).

[919] *See* GBC Non-Stumpage IQR Response Volume VII (CIIP) at 1-2, 8-9 and 24-25.

[920] However, we note that the GBC reported that only 70 companies were approved for assistance under the CIIP in 2022 out of a total of 172,005 companies operating or established in British Columbia. *See* GBC Non-Stumpage IQR Response Volume VII (CIIP) at 17-18.

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JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Case Brief at 83.

> {JDIL} also agrees with and incorporates by reference the GNB's arguments on … the New Brunswick {GMFT} program.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 303-08.

> {Commerce} determined in the *Preliminary Results* that the New Brunswick {GMFT} constitutes a financial contribution in the form of foregone revenue that is otherwise due under {section 771 (5)(D)(ii) of the Act}. The GNB and {JDIL} argue that {Commerce} erred in finding financial contribution in the form of revenue foregone because revenue was not due in the first place and therefore, cannot be forgone. Specifically, the GNB and {JDIL} argue that the program was set up to "tax fuel when used on public highways, and exempt taxation of fuel otherwise." However, the GNB's policy consideration is not relevant to {Commerce's} countervailability analysis. The record shows that the GNB's *Gasoline and Motive Fuel Tax Act* provides a standard regime for taxation of gasoline and motive fuel, then provides for exemption or refund from this tax regime for particular professions and activities. Barring these specific carve-outs, consumers purchasing gas and motive fuel for these particular activities and professions would be purchasing at the otherwise standard tax rate. The GNB, therefore, does not collect revenue it otherwise would in the amount of the exempt or refunded tax rate. As such, {Commerce's} preliminary determination that the GMFT constitutes a financial contribution in the form of revenue foregone is reasonable and well supported by substantial evidence.

Commerce's Position: Consistent with prior reviews, Commerce found this program countervailable in *Lumber V AR5 Prelim*[921] because no interested parties had submitted new information or argument that warranted a reconsideration of Commerce's prior determinations on this program.[922] 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}."[923] Additionally, the GNB argues that the program is specific to *behavior* and not to an "industry, enterprise, or group thereof."[924] The petitioner claims that these arguments have no merit and should not prompt Commerce to change its findings from *Lumber V AR5 Prelim Results*. Commerce agrees with the petitioner and continues to find this program countervailable.

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[921] *See Lumber V AR5 Prelim* PDM at 60-61.
[922] *See Lumber V AR4* IDM at Comment 54; *see also Lumber V AR1 Final* IDM at Comment 107.
[923] *See* GNB Case Brief Vol. VI at 112.
[924] *Id*. at 113.

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.[925] 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.[926] The GNB argues that this program does not result in revenue foregone since the activity that the 1926 GMFT Act intended to tax is public road use, and off-road or non-road activity was not intended to be taxed.[927] However, the GMFT Act applies a generally applicable tax on an activity within New Brunswick, and then exempts (or refunds to) a certain class of consumer from paying those revenues that are otherwise due. Therefore, we find that the GMFT program is a financial contribution in the form of revenue forgone, pursuant to section 771(5)(D)(ii) of the Act, because the GNB refrains from collecting revenue that would otherwise be due.[928] The reasoning or "policy goals" proffered by the GNB do not change this fundamental fact.

Regarding specificity, in this review, GNB cites a recent CIT decision in *BGH Edelstahl II* in which the court found that a subsidy cannot be specific as a matter of law if the "the existence of criteria—that limits access—alone is insufficient to render a subsidy specific as a matter of law if the criteria are horizontal in application and economic in nature."[929]

First, we note that *BGH Edelstahl II*, and the subsequent decision in *BGH Edelstahl III*, are currently on remand and thus, not a final and conclusive decision and remains subject to appeal at the Federal Circuit.[930] Additionally, the GMFT Act specifically "provides for point-of-sale tax exemptions on motive fuel and refunds of tax on both gasoline and motive fuel" for the following 12 classes of consumers: 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.[931] The GMFT Act sets out further criteria on who qualifies as each class of consumer. For example, to qualify as a wood producer, the applicant must meet one or more criteria regarding a minimum quantity of wood harvested, a minimum gross annual income from a in a wood harvesting operation, or a minimum investment in a wood harvesting operation[932]

Therefore, as in the underlying investigation, Commerce finds this argument and information unavailing.[933] 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

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[925] *See Lumber V Final* IDM at Comment 75.
[926] *See* GNB Case Brief Vol. VI at 110 (citing GNB IQR Response at Exhibit NB-AR5-GFT-4).
[927] *See* GNB IQR at Exhibit NB-AR5-GFT-1 at 6-7.
[928] *Id.* at 7.
[929] *See* GNB Case Brief Vol. VI at 113 (citing *BGH Edelstahl II* at 1382).
[930] *See BGH Edelstahl II*, 639 F. Supp. 3d at 1244; *see also BGH Edelstahl III*, 663 F. Supp. 3d at 1384-85.
[931] *See* GNB IQR at Exhibit NB-AR5-GFT-1 at 1-3; *see also* JDIL Non-Stumpage IQR at Exhibit GFT NB-03.
[932] *See* GNB IQR at Exhibit NB-AR5-GFT-3.
[933] *See Lumber V Final* IDM at Comment 75.

reasoning behind why some groups may or may not be exempted.[934] 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 in the form of revenue forgone under section 771(5)(D)(ii) of the Act and is *de jure* specific under section 771(5A)(D)(i) of the Act. Thus, Commerce continues to find that this program is countervailable.

Comment 54: Whether Commerce Should Revise the GMFT Benefit Calculation

Petitioner Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Case Brief at 33-34.

> {Commerce} should revise its benefit calculation for the {GNB's GMFT} program in the final results. First, {Commerce} should utilize the GNB's reporting of {JDIL's} diesel tax exemptions. {JDIL} and the GNB reported different amounts received under this program, and no clarification or reconciliation was provided by either party for the discrepancies. The GNB keeps detailed records of {JDIL's} qualifying purchases and is the party that actually forwent the revenue, which in this case supports the likelihood that the GNB would have an interest in retaining accurate accounting of {JDIL's} tax exemptions during the POR. Second, {Commerce} should include {JDIL's} propane tax exemptions in its benefit calculation using the benefit amounts reported by the GNB. {JDIL} reported that it received these tax exemptions under the {GMFT} program during the POR but failed to report the benefit amount in its Initial Questionnaire Response, instead incorporating by reference the exemption amounts reported by the GNB. Accordingly, these tax exemptions should be included in the benefit calculation for the GNB's {GMFT} program in the final results.

JDIL Rebuttal Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Rebuttal Brief at 11.

> {Commerce} should continue to use {JDIL's} reported data for its diesel exemptions under the {GMFT} program. {JDIL} provided {Commerce} with detailed calculations of the relevant tax exemptions, and {the petitioner} has not provided any substantive reason to reject {JDIL's} reported information.

[934] *See* GNB IQR Response at Exhibit NB-AR4-GFT-1 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.

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Commerce's Position: JDIL reported that it received tax exemptions and refunds for purchases of diesel under the GMFT program during the POR. In the *Preliminary Results*, we used the value reported by JDIL to calculate an *ad valorem* subsidy rate of 0.02 percent.[935] The GNB, however, reported a different value for the tax exemptions and refunds for diesel that JDIL received under the GMFT during the POR.[936] Where possible, Commerce will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable.[937] In this instance, for the purposes of the final results, we are using the value of tax exemptions and refunds for diesel purchases that JDIL reported in the benefit calculation.

In addition, JDIL reported receiving exemptions of taxes on propane under paragraphs 6(6)(i.1), 6(6)(i.j), and (6.2)(1.1) of the *New Brunswick Gasoline and Motive Fuel Tax Act*; however, JDIL explained that the company does not record the tax exemptions on propane purchases because it purchases the propane from an affiliated company exclusive of fuel and carbon taxes.[938] The GNB, however, does record the value of the fuel tax exemptions that JDIL received on purchases of tax-exempt propane through an affiliated company under the GMFT during the POR, and in its initial questionnaire response, JDIL incorporated by reference the amounts of tax exemptions on propane purchases that the GNB reported.[939] For the purposes of the final results, we are revising the benefit calculation for the GMFT to include the tax exemptions for purchases of propane using the benefit information reported by the GNB. While JDIL is aware that the propane fuel it purchased from an affiliate during the POR was exempt from taxes, the only useable and verifiable information on the value of the tax exemptions embedded in JDIL's propane purchases was provided by the GNB. Therefore, for the purposes of the final results, we are incorporating the benefit information from the GNB on the value of the exemptions of taxes on propane JDIL purchased during the POR. As a result, we calculated an *ad valorem* subsidy rate of 0.02 percent for the GMFT for JDIL. For further discussion of the revision to the benefit calculation for this program, *see* JDIL Final Calculation Memorandum.

Comment 55: Whether Commerce Should Find New Brunswick's Property Tax Incentives for Private Forest Producers Program Countervailable

GNB Case Brief

The following is a verbatim summary of the argument submitted by the GNB (internal citations omitted). For further details, *see* GNB Case Brief at Vol. VI at 73-90.

> As a matter of law under the Tariff Act, {Commerce} may not countervail the Assessment Act as being *de jure* specific, nor do the property tax assessment policies constitute a financial contribution under {section 771 (5) of the Act}.

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[935] *See Lumber V AR5 Prelim* PDM at 60-61; *see also* JDIL Preliminary Calculation Memorandum at 4-5 and Attachment 2, worksheet "GNB Gas & Fuel BPI."
[936] *See* at GNB IQR Response at Exhibit NB-AR5-GFT-1 at 10.
[937] *See Solar Cells from China 2015* IDM at 6-7.
[938] *See* JDIL Non-Stumpage IQR Response at Exhibit GFT NB-01 at 2; *see also* JDIL Affiliation Response at Exhibit 2 at 5.
[939] *See* JDIL Non-Stumpage IQR Response at Exhibit GFT NB-01 at 2.

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In the {*Lumber V AR4 Final*}, {Commerce} incorrectly found that the $100 per hectare assessment rate is limited to “enterprises involving the production of wood and wood-related merchandise”. CIT rulings issued after the {*Lumber V AR4 Final*} state that where a program limits access to certain enterprises that meet objective and economic criteria, the program is not limited to specifically named enterprises or industries under {section 771(5A)(D)(i) of the Act} and is not specific as a matter of law under {section 771 (5A)(D)(ii) of the Act}. Further, {Commerce} does not, and could not, find *de facto* specificity.

The $100 assessment applies to undeveloped, forested land of 10 hectares or more, for any end use, irrespective of the industry or enterprise of the entity owning the land, and applies where there is individual ownership with no business use. Evidence shows that the $100-per-hectare rate also applies to marshland and land that is steep or rocky, *i.e.*, terrain not practical for harvest.

Other evidence submitted by the GNB provides detailed statistics about the application of the Assessment Act and shows, among other points, that individual owners accounted for 74.86 percent of the properties subject to the $100 statutory assessment rate, while businesses accounted for only 25.14 percent.

In addition, the Assessment Act does not provide a financial contribution. New Brunswick has the sovereign right to establish property assessment and taxation policies, and the GNB does not forego or fail to collect revenue otherwise due within the meaning of {section 771(5)(D)(ii) of the Act}. Detailed evidence, together with the Declaration from Matthew Johnson, the Director of Property Valuation for the implementing agency, explain that Sections 16 and 17 of the Assessment Act are separate and affirmative assessment policies under the Assessment Act. {Commerce’s} finding that these sections are somehow a departure from another part of the Assessment Act, Section 15, is baseless and contrary to evidence on the record. The Tariff Act does not allow {Commerce} to invent a financial contribution out of thin air by creatively interpreting a foreign law that it is not qualified to construe, in the face of record evidence that uniformly demonstrates the opposite interpretation is correct.

JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Case Brief at 82-83.

{JDIL} also agrees with and incorporates by reference the GNB’s arguments on New Brunswick property tax assessment for freehold timberland.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 308-316.

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> The Canadian Parties and {JDIL} criticize {Commerce's} treatment of this program as revenue foregone on the basis that (1) the GNB has the sovereign right to create its own tax structure and policy, and (2) {Commerce's} analysis misinterprets the relevant statute. Regardless of GNB's "sovereign rights," the record fully supports {Commerce's} preliminary findings with respect to this program under U.S. law. First, the underlying policy rationale for this tax subsidy has no bearing on {Commerce's} subsidy analysis. {Commerce's} countervailability analysis for this program does not dispute the GNB's authority to set its own tax policy – it simply examines whether the assessment rates are a countervailable subsidy. The record evidence shows that the answer to this inquiry is yes. Specifically, this program enables a reduction in taxes otherwise owed through a reduced assessment rate for freehold timberlands (*i.e.*, revenue foregone) compared to the standard assessment rate. In other words, the GNB carves out a preferential rate for freehold timberland, as a type of "real property," to the exclusion of other types of real property. {Commerce's} interpretation of the {NBAA} as providing a financial contribution in the form of revenue foregone is thus both reasonable and proper.
>
> In the prior administrative review, {Commerce} found that the property tax incentive program under the NBAA is *de jure* specific because the benefits of the program are "expressly limited to owners of freehold timberland." The NBAA sets out how real property in New Brunswick is assessed and "specifically stipulates certain types of land to be unique and not subject to this standard assessment." In the *Preliminary Results*, {Commerce} stated that there is no new evidence on the record and continued to find that the program is specific as a matter of law.
>
> The GNB and {JDIL} argue that {Commerce's} preliminary findings demonstrate the agency's continued misinterpretation of the NBAA. However, the provisions of the NBAA clearly identify freehold timberland as property that must be treated differently than standard property. In fact, section 17.1, in particular, explains that "{f}reehold timberland other than farm woodlots shall be assessed at one hundred dollars per hectare." {Commerce} should continue to reject the GNB and {JDIL's} arguments and find that there is substantial evidence on the record to support the agency's finding for *de jure* specificity.

Commerce's Position: In *Lumber V AR5 Prelim*, consistent with the previous reviews,[940] we found the GNB's statutory property assessment rules regarding freehold timberland to be countervailable.[941] 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.[942] 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

[940] *See Lumber V AR1 Final Results* at Comment 103; *see also Lumber V AR2 Final Results* at Comment 109; *Lumber V AR3 Final Results* at Comment 98; and *Lumber V AR4 Final Results* at Comment 57.
[941] *See Lumber V AR5 Prelim Results* PDM at 61.
[942] *Id.*

program.[943] 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."[944] 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.[945]

In *Lumber V AR5 Prelim*, we stated that we found nothing to change our position from our finding in the prior review.[946] The GNB again references numerous statements regarding ownership and uses of timberland properties on the record of this review.[947] For example, the GNB states that: (1) 69.6 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;[948] (2) companies owned only 25.1 percent of the properties subject to the C$100 per hectare assessment rate;[949] (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;[950] and (4) the remaining 25 percent of properties that are developed are administered under Section 15 of the Assessment Act.[951] On this basis, the GNB concludes that the majority of properties receiving the C$100 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."[952]

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[943] *Id.*
[944] *See* GNB IQR Response at Exhibit NB-AR5-SNB-7 at sections 16(2) and (3) of the Assessment Act.
[945] *Id.*
[946] *See Lumber V AR5 Prelim* PDM at 61.
[947] *See* GNB Case Brief Vol. VI at 73-90.
[948] *Id.* at 76 (citing GNB IQR Response at Exhibit NB-AR5-SNB-9).
[949] *Id.*
[950] *Id.*
[951] *Id.*
[952] *See* GNB Case Brief Vol. VI at 81 (citing GNB IQR Response at Exhibit NB-AR5-SNB-13 at 2, para. 7).

In addition, the GNB argues that the SAA stipulates that assistance generally available and widely distributed is not an actionable subsidy.[953] 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 the production of wood and wood-related merchandise because of the type of land at issue.[954]

The GNB argues that Commerce's finding is without merit as it is not based on specific language from the Assessment Act.[955] 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 expressly restricts access to the subsidy to a limited number of landholders.[956] 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).[957] 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

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[953] *Id.* at 84-85 (citing SAA at 913).
[954] *See Lumber V AR1 Final* IDM at Comment 103; *see also Lumber V AR2 Final* IDM at Comment 109; *Lumber V AR3 Final Results* at Comment 98; and *Lumber V AR4 Final Results* at Comment 57.
[955] *See* GNB Case Brief Vol. VI at 88 (citing *Lumber V AR3 Final* IDM at 291).
[956] *See Lumber V AR1 Final* IDM at Comment 103; *see also Lumber V AR2 Final* IDM at Comment 109; *Lumber V AR3 Final Results* at Comment 98; and *Lumber V AR4 Final Results* at Comment 57.
[957] *See* GNB IQR Response at Exhibit NB-AR5-SNB-7 at 47-49.

including lumber.[958] 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 cites the CIT's finding in *BGH Edelstahl II* that "the existence of criteria—that limits access—alone is insufficient to render a subsidy specific as a matter of law if the criteria is horizontal in application and economic in nature," and that "{c}riteria based on size or the number of employees could exclude entire categories of enterprises and industries, but such criteria would not render the subsidy *de jure* specific because it is horizontal (operating throughout the economy), and is economic in nature." The GNB argues that the Assessment Act policies are objective, neutral, uniform and "horizontal in application and economic in nature."[959] However, the *BGH Edelstahl* cases are on remand and, thus, not a final and conclusive decision, and remain subject to appeal at the Federal Circuit.[960]

Additionally, *Edelstahl II and Edelstahl III* addressed a different program than is at issue here. As explained above, the record evidence demonstrates that the Assessment Act is expressly limited to certain enterprises and is not horizontal in application or economic in nature. Specifically, the property tax incentive program is designed to benefit owners of freehold timberland. Section 15 of the NBAA states that "real property shall be assessed at its real and true value" with the exception of particular types of property, such as freehold timberland.[961] Under section 17.1 of the Assessment Act, freehold timberland is assessed and valued differently than standard real property: "{f}reehold timberland other than farm woodlots shall be assessed at one hundred dollars per hectare."[962] Therefore, we continue to find that the Assessment Act limit the beneficiaries of the property tax incentive program to owners of freehold timber, and thus the program is *de jure* 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.[963] 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,

[958] *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.")).
[959] *See* GNB Case Brief Vol. VI at 74.
[960] *See BGH Edelstahl III*, 663 F. Supp. 3d at 1384-85.
[961] *See* GNB IQR Response at Exhibit NB-AR5-SNB-7 at 31-50.
[962] *Id.* at 49-50.
[963] *See* GNB Case Brief Vol. VI at 86-90.

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.[964]

The GNB made similar arguments in the previous reviews,[965] 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 and true value as of January 1 of the year for which the assessment is made" (emphasis added).[966] 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)[967] 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.

Comment 56: Whether Commerce Should Find LIREPP Countervailable

GNB Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* GNB Case Brief at Vol. VI at 63-73.

> {Commerce} erred in finding that the LIREPP program results in a financial contribution in the form of revenue forgone and that the amount of the LIREPP credits constituted a benefit conferred {JDIL's} Lake Utopia Division.
>
> Beginning on April 1, 2021, eligibility for the LIREPP program was explicitly limited to facilities that engage in the pulp and paper industries, a limitation that continued during the POR. LIREPP credits cannot be attributed to softwood lumber.
>
> {Commerce} continues to misconstrue the plain language of the LIREPP regulations limiting eligibility to facilities in the pulp and paper industry. {Commerce} lacks authority to supplant this language with its own speculative interpretation.

[964] *Id.* at 86.
[965] *See Lumber V AR1 Final* IDM at Comment 103; *see also Lumber V AR2 Final* IDM at Comment 109; *Lumber V AR3 Final Results* at Comment 98; and *Lumber V AR4 Final Results* at Comment 57.
[966] *See* GNB IQR Response at Exhibit NB-AR5-SNB-7.
[967] *Id.*

> The record also makes clear that, 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 Division and Irving Pulp and Paper in line with the average cost of electricity for pulp and paper mills across Canada.
>
> Importantly, LIREPP is not a revenue forgone program. Rather, it allows NB Power to purchase renewable energy generated by pulp and paper companies and sell certain amounts of electricity from the grid to the same companies. The payment for these purchases by NB Power from the LIREPP participants is calculated and reflected as a credit on the participating company's bill against its overall electricity charges. It is an accounting offset, and those credits cannot properly be treated as revenue foregone. A WTO panel examining the same issue agreed that {Commerce} incorrectly characterized LIREPP as resulting in revenue foregone.
>
> {Commerce's} regulations explicitly require an MTAR benefit analysis for the purchase of goods such as electricity. The GNB has placed updated information on the record that includes the average price paid by NB Power in New Brunswick for comparable electricity during the POR, which must be addressed in the final results.

JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Case Brief at 51-57.

> GNB's LIREPP did not confer a countervailable benefit during the {POR}. First, {JDIL's} participation in LIREPP was "tied" to its production and sale of nonsubject merchandise, corrugated medium (a paper product). The eligibility to participate in LIREPP is also specifically limited to facilities that are engaged in the pulp and paper industry, further demonstrating that LIREPP is tied to non-subject merchandise. Second, the only possible financial contribution under this program is the purchase of goods (renewable energy) – not revenue forgone.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 18-24 and 237-239.

> {Commerce} should reject the Canadian Parties' arguments about attribution… {Commerce} should continue to find the LIREPP countervailable in the final results because benefits bestowed under the LIREPP remain countervailable as a subsidy to {JDIL's} overall operations, including the production of lumber. Further, the LIREPP "is a multifaceted program" that benefits the {JDIL} corporate entity rather than specific plants or factories. {Commerce} should continue to recognize it as such notwithstanding the GNB's apparent efforts to circumvent {Commerce's} analysis with a technical change to the eligibility requirements.

Commerce's Position: JDIL reported receiving energy bill credits under this program in 2022.[968] 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.[969]

Commerce has considered this 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 the stated purpose of the subsidy or the purpose we evince from record evidence at the time of bestowal."[970] 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."[971] After reviewing the totality of record evidence, including that the eligibility criteria was amended on April 1, 2021, 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. In the previous administrative review, we 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.[972] 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."[973] While the revised eligibility criteria limits credits to entities that are "primarily" dedicated to pulp and paper, consistent with the prior administrative review, we continue to disagree with the GNB and JDIL that the amended language renders sawmills no longer eligible to use the LIREPP program. The revised eligibility criteria do 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.[974]

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.[975] 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

[968] *See* JDIL Non-Stumpage IQR Response at Exhibit LIREPP-1 at 5-6 and Exhibit LIREPP-13.
[969] *See* GNB IQR Response at Exhibit LIREPP-1 at 2 and GNB IQR Response at Exhibit NB-AR5-LIREPP-3.
[970] *See CVD Preamble*, 63 FR at 65403.
[971] *Id.*, 63 FR at 65403.
[972] *See Lumber V AR4 Final* IDM at Comment 43.
[973] *See* GNB IQR Response at Exhibit NB-AR5-LIREPP-1 at 11 (citing Regulation 2015-60 (O.C. 2015-263) at Part 3, Section 23).
[974] *See* GNB IQR Response at Exhibit LIREPP-2 at 16; *see also Lumber V AR4 Final* IDM at Comment 43.
[975] *See* GNB IQR Response at Exhibit LIREPP-1 at 1.

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."[976] 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 *Lumber V AR4* and *Lumber V AR3*.[977] 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.[978] Furthermore, the GNB's argument inaccurately characterizes Commerce's practice of analyzing whether benefits are tied to a firm's particular market or sales. Under its practice, Commerce finds:

> … a subsidy is tied to particular products or operations only if the bestowal documents, *e.g.*, the application, contract or approval, explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.[979]

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.[980] 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

[976] *Id.* at Exhibit LIREPP-1 at 2 and Exhibit NBAR5-LIREPP-4 at 117.
[977] *See Lumber V AR4 Final* IDM at Comment 43; *and Lumber V AR3 Final* IDM at Comment 64.
[978] *See Lumber V Final* IDM at Comment 49.
[979] *See CVD Preamble,* 63 FR at 65402-03.
[980] *See Lumber V Final* IDM at Comment 77; *see also* GNB IQR Response at Exhibit NB-AR5-LIREPP-1.

group.[981] 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.[982] Neither the statute nor Commerce's regulations "provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm."[983] Further, Commerce does not tie subsidies on a plant or factory specific basis.[984]

Lastly, we disagree with JDIL's argument that because the GNB determines the *amount* of Net LIREPP credits issued to JDIL based, in part, on the electricity rates in effect for the pulp and paper facility operated by its Lake Utopia Paper Division, the LIREPP credits the facility received during the POR are tied to non-subject paper products. As noted in the investigation, Lake Utopia Paper Division was eligible to participate in the LIREPP program because of its ability to meet the program's requirements for producing eligible renewable energy, not because the company produces any specific products.[985] 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.[986] 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

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[981] *See* JDIL Company Affiliation Response at Exhibit 2; *see also* GNB IQR Response at Exhibit NB-AR5-LIREPP-1 at 4.
[982] *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.
[983] *See Lumber V AR4 Final* IDM at Comment 43; *see also CFS from China* IDM at Comment 8.
[984] *See, e.g.*, *Lumber V AR4 Final* IDM at Comment 43; *Lumber V AR3 Final* IDM at Comment 64; and *Lumber V AR2 Final* IDM at Comment 67.
[985] *See Lumber V Final* IDM at Comment 77.
[986] *Id.*; *see also* GNB IQR Response at Exhibit NB-AR5-LIREPP-5.

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.[987]

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,[988] 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.[989] 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 that the LIREPP program was implemented was for industries to get credit applied to their electricity bill for the renewable energy they generated.[990]

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.[991] 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$106.91/MWh for April 1, 2021 to March 31, 2022 and C$110.54/MWh for April 1, 2022 to March 31, 2023.[992] 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$106.91/MWh or C$110.54/MWh rates that were in effect during the POR. Thus, even if the rate varied from the fixed rates of C$110.54/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

[987] *See* GNB Case Brief Vol. VI at 4 (citing GNB IQR Response, Volume I at Exhibit-NB-AR5-LIREPP-6).
[988] *See Lumber V AR4 Final* IDM at Comment 43.
[989] *See* JDIL Non-Stumpage IQR Response at Exhibit LIREPP-1 at 1; Exhibit LIREPP-2 at section 3(1) of the Electricity from Renewable Resources Regulations-Electricity Act, Regulation 2015-60; and Exhibit LIREPP-3.
[990] *See Lumber V AR3 Final* IDM at Comment 64.
[991] *See* JDIL Non-Stumpage IQR Response at Exhibit LIREPP-1 at 9-15.
[992] *Id.* at Exhibit LIREPP-1 at 13.

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.[993]

K. Company-Specific Issues

JDIL

Comment 57: Whether Commerce Correctly Calculated the Benefit JDIL Received from the AITC, SR&ED, and NBRD Programs

JDIL Case Brief

The following is a verbatim summary of the argument submitted by JDIL (internal citations omitted). For further details, *see* JDIL Case Brief at 68-74.

> {Commerce} should apply the plain language of 19 CFR 351.509(a)(1) and adjust its benefit calculation for the AITC and {the SR&ED and the NBRD programs}. {Commerce's} tax benefit regulation unambiguously requires the agency to consider both gains and losses in tax savings as a result of a direct tax program in order to calculate the benefit. Contrary to the plain language of its regulation, {Commerce} did not take into account the additional taxes owed as a result of the AITC program in calculating the benefit.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 9-12.

> In the *Preliminary Results*, {Commerce} correctly calculated the benefit conferred by {JDIL} for the Atlantic Investment Tax Credit, the federal Scientific Research and Experimental Development Tax Credit, and the New Brunswick Research and Development Tax Credit and should continue to use the same benefit calculations in the final results. {JDIL} argues that {Commerce's} methodology in calculating benefits for the three tax credit programs should account for both the immediate tax credits received and the subsequent tax increases due to reduced deductions over time. {JDIL} insists that this approach would more accurately reflect the net benefits received from the three programs.
>
> Nevertheless, as properly determined in past administrative reviews, only specific types of tax offsets are permissible under section 771(6) of the Act, none of which include the tax implications {JDIL} seeks to incorporate. {Commerce's}

[993] *Id.*

> regulations, specifically 19 CFR 351.503(e), explicitly exclude the consideration of tax implications in benefit calculations. As per {Commerce's} longstanding practice of excluding tax implications from its analyses, {Commerce} should maintain its method of benefit calculations for the three aforementioned tax programs for which {JDIL} was a participant.

Commerce's Position: We agree with the petitioner. In *Lumber V AR5 Prelim* Commerce did not consider the increase in taxes resulting from AITCs claimed in prior years when calculating the benefit JDIL received under the AITC program. In addition, when calculating the benefit JDIL received under the SR&ED program, Commerce did not consider any additional taxes that JDIL paid as a result of an increase in JDIL's taxable income from using the SR&ED program. Similarly, Commerce did not consider the effect on JDIL's taxable income as a result of claiming NBRD tax credits. As we explained in *Lumber V Final*,[994] 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, SR&ED, and NBRD 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 offsets that JDIL argues for – to account for diminished tax savings as a result of the reduced depreciable value of certain assets in the case of the AITC program, the reduction in taxable income as a result of using the SR&ED federal income tax credits, or the reduction in tax savings as a result of claiming NBRD tax credits in a given tax-year – are not one of the three enumerated offsets that are permitted by the statute. As a result, we have not included any such offset in our benefit calculations for the AITC, SR&ED, and NBRD programs.

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."[995] We disagree. The *CVD Preamble* indicates that 19 CFR 351.503(e) involves the treatment of taxes on subsidies in general.[996] 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 a benefit for grants. 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.

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[994] *See Lumber V Final* IDM at Comment 72.
[995] *See* JDIL Case Brief at 73.
[996] *See CVD Preamble*, 63 FR at 65362.

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).[997] Commerce previously evaluated similar arguments in *Lumber V Final* and found these arguments unpersuasive.[998] In *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.[999] 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 continue to include the full amount of the tax credit applied against JDIL's taxes due in the POR in the benefit calculations for the AITC, SR&ED, and NBRD programs.

Tolko

Comment 58: Whether Commerce Should Correct an Error in Tolko's BC Coloured Fuel Calculation

Petitioner Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Case Brief at 2-4.

> {Commerce} should correct its proprietary subsidy calculation for {Tolko's} exemption under the Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification for the final results. While the subsidy rate was correctly calculated in the *Preliminary Results* and included in the overall rate published in the *Federal Register* Notice, {Commerce} made an error when calculating the benefit received by Tolko for this program in the proprietary subsidy benefit calculation worksheet. {Commerce} should correct this error for the final results.

Tolko Rebuttal Brief

The following is a verbatim summary of the argument submitted by Tolko. For further details, *see* Tolko Rebuttal Brief at 9-10.

> With respect to an inconsequential error Petitioner identified in Tolko's BC Coloured Fuel calculations, as Petitioner acknowledges, any such error had no impact on {Commerce's} calculations. Accordingly, no revisions to the calculations are necessary, notwithstanding any revisions to the presentation and labeling in the calculation worksheet {Commerce} may identify as necessary.

[997] *See* JDIL Case Brief at 74.
[998] *See Lumber V Final* IDM at Comments 71 and 72.
[999] *Id*.

Commerce's Position: Although we correctly calculated a 0.02 percent subsidy rate for the Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification program, and included that rate in Tolko's total preliminary countervailable subsidy rate,[1000] we did inadvertently make a typographical and cell linking error with regard to the program's benefit in Tolko's preliminary calculations.[1001] For these final results, we have corrected the errors in Tolko's BC Coloured Fuel calculation.[1002] The corrections do not change the subsidy rate calculated for the program.

West Fraser

Comment 59: Whether Commerce Should Correct Errors in West Fraser's BC Stumpage Calculation

Petitioner Case Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Case Brief at 2.

> {Commerce} should correct certain ministerial errors in {West Fraser's} {BC} stumpage benefit calculation. Without correction of these formula errors, West Fraser's benefit amount and subsidy rate are an incorrect representation of the company's actual subsidization during the {POR}.

No other interested party commented on this issue.

Commerce's Position: We agree with the petitioner that we made inadvertent errors in West Fraser's benefit calculation at the *Preliminary Results* by leaving certain benchmark values blank. *See* West Fraser Final Calculation Memorandum for more detail.

[1000] *See Lumber V AR5 Prelim* PDM at 58-59; *see also Lumber V AR5 Prelim*, 89 FR at 8149.
[1001] *See* Tolko Preliminary Calculation Memorandum at Attachments I and III (Excel tabs "Fuel Tax Calcs," "Tax," and "Summary Sheet").
[1002] *See* Tolko Final Calculation Memorandum at Attachments I and III (Excel tabs "Fuel Tax Calcs," "Tax," and "Summary Sheet").

VIII. 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

8/12/2024

X

Signed by: RYAN MAJERUS

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

Appendix I - Document Citation Table for the Final Results: Lumber CVD Fifth Administrative Review

Acronym/Abbreviation	Complete Name
10104704 Manitoba	10104704 Manitoba Ltd. O/A Woodstock Forest Products
2015-2016 Private Market Survey	A survey conducted by Deloitte covering private stumpage transactions in Nova Scotia between April 1, 2015 and March 31, 2016
2017-2018 Private Market Survey	A survey conducted by Deloitte covering private stumpage transactions in Nova Scotia between January 1, 2017 and December 31, 2018
2021-2022 Private Market Survey	Report on Prices for Standing Timber Sales from Nova Scotia Private Woodlots for the Period October 1, 2021 through September 30, 2022 submitted in Exhibit NS-5 and NS-6 of GNS Stumpage IQR
AAC	Annual Allowable Cut
AAF	Alberta Agricultural and Forestry
ACCA	Accelerated Capital Cost Allowance
ACOA	Atlantic Canada Opportunities Agency
AD	Antidumping Duty
AESO	Alberta Electric System Operator
AFA	Adverse Facts Available
AHA	Available Harvest Area
AIF	Atlantic Innovation Fund
AII	Accelerated Investment Incentive
AITC	Atlantic Investment Tax Credit
AJCTC	Apprenticeship Job Creation Tax Credit
Alberta Parties	Government of Alberta, Alberta Softwood Lumber Trade Council, Canfor Corporation, West Fraser Mills Ltd. and Tolko Marketing and Sales Ltd. and Tolko Industries Ltd.
AR	Administrative Review
AR2 Athey Report	Submitted as GBC Stumpage IQR Response Exhibit S-152 at Attachment 9
Asker Report	Submitted as GOC Stumpage IQR Response Exhibit GOC-AR5-STUMP-10
ASLTC	Alberta Softwood Lumber Trade Council
AUL	Average Useful Life
BC	British Columbia
BC Coloured Fuel program	British Columbia Lower Tax Rate for Coloured Fuel program
BCAA	British Columbia Assessment Authority
BCTS	British Columbia Timber Sales
BCUC	British Columbia Utilities Commission
Blue Ridge	Blue Ridge Lumber Inc.
BPI	Business Proprietary Information
Brattle Report	"Assessment of an Internal Benchmark for Alberta Crown Timber (July 15, 2019)," submitted as Volume II Exhibit AB-AR5-S-24a of Alberta Stumpage IQR Response"
C$	Canadian Dollar
CAFC	U.S. Court of Appeals for the Federal Circuit
Canadian Parties	Government of Canada, the Provinces of Alberta, British Columbia, New Brunswick, Ontario, Québec, and Saskatchewan, as well as Canfor Corporation, Resolute FP Canada Inc., Tolko Marketing and Sales Ltd. and Tolko Industries Ltd., West Fraser Mills Ltd., Alberta Softwood Lumber Trade Council, British Columbia Lumber Trade Council, Conseil de l'Industrie Forestière du Québec, and Ontario Forest Industries Association
Canfor	Canfor Corporation, Canfor Wood Products Marketing Ltd. (CWPM), 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	Canadian Emergency Wage Subsidy
CFP	Canadian Forest Products, Ltd.
CFR	Code of Federal Regulations
CHP III	Combined Heat and Power III
CIB	Climate Investment Branch

Acronym/Abbreviation	Complete Name
CIF	CleanBC Industry Fund
CIFQ	Conseil de l'industrie forestière du Québec
CIIP	CleanBC Industrial Incentive Program
CIT	U.S. Court of International Trade
CLFA	Crown Land and Forests Act
Commerce	U.S. Department of Commerce
CRA	Canada Revenue Agency
CSA	Canadian Standards Association
CVD	Countervailing Duty
CY	Calendar Year
D&G	Les Produits Forestiers D&G Ltee
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
Dual-Scale Study	Submitted as GBC Stumpage IQR Response Exhibit S-201 Appendix B
EACOM	EACOM Timber Corporation
eFAR	Electronic Facility Annual Return
EIPA	Export and Import Permits Act
EOA	Economic Obsolescence Allowance
EOC	Emission Offset Credits
EPA	Electricity Purchase Agreement
EPC	Emission Performance Credits
ERP	Enterprise Resource Planning
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
FP Innovations Report	GNS Stumpage IQR Response at Exhibit NS-17
Fonseca Publication / Fonseca Adjustment	"The Measurement of Roundwood: Methodologies and Conversion Ratios," by Matthew Fonseca (See GBC Stumpage IQR at Exhibit BC-AR4-S-204).
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
GMFT	Gasoline and Motive Fuel Tax
GNB	Government of New Brunswick
GNS	Government of Nova Scotia
GOA	Government of Alberta
GOC	Government of Canada
GOO	Government of Ontario

Acronym/Abbreviation	Complete Name
GOQ	Government of Québec
GOS	Government of Saskatchewan
GWh	Gigawatt Hours
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
IMF	International Monetary Fund
Interfor	Interfor Corporation and Interfor Sales & Marketing Ltd.
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
ITR	Income Tax Regulations
JDIL	J.D. Irving Limited
Kalt Report	"Economic Analysis of Remuneration for Canadian Crown Timber," submitted as Exhibit GOC-AR5-STUMP-9 of GOC Stumpage IQR Response
Lemay	Scierie Alexandre Lemay & Fils Inc.
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	Expert Report of Robert C. Marshall, Ph.D., submitted at Exhibit Vol. I-42 of the Petitioner Comments on IQR Responses
MBF	Thousand Board Feet
MLI	Marcel Lauzon Inc.
MNP Cross Border Report	GOA Stumpage IQR Response at Exhibit AB-AR5-S-23
MNRF	Ministry of Natural Resources and Forestry
MPB	Mountain Pine Beetle
MPS	Market Pricing System
MPS Performance Report	Submitted as GBC Stumpage IQR Response Exhibit S-152.
MTAR	More Than Adequate Remuneration
MTR	Monthly Timber Return
MWh	Megawatt-hour
NAFP	North American Forest Products Ltd.
NAICS	North American Industry Classification System
NBAA	New Brunswick Assessment Act
NBFPC	New Brunswick Forest Products Commission
NBRD	New Brunswick Research & Development Tax Credit
NorSask Forest Products	NorSask Forest Products Limited Partnership
NS	Nova Scotia
NSA	New Subsidy Allegation
NSAQR	New Subsidy Allegation Questionnaire
NSDNRR	Nova Scotia Department of Natural Resources and Renewables
OIC	Order-in-Council
Olympic	Olympic Industries, Inc. and Olympic Industries ULC

Acronym/Abbreviation	Complete Name
OSB	Oriented Strand Board
PAE 2011-01	Purchase Power Program 2011-01
Pat Power	Pat Power Forest Products Corporation
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	Purchase Power Agreement
PPI	Producer Price Index
Private Forest Task Force Report – 2012	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-AR5-STUMP-17 of the GNB IQR Response
QMD	Quadratic-Mean Diameter
R&D	Research and Development
Report of the Auditor General of New Brunswick – 2008	Report of the Auditor General of New Brunswick - 2008, submitted at Exhibit NB-AR5-STUMP-15 of the GNB IQR Response
Report of the Auditor General of New Brunswick – 2015	Report of the Auditor General of New Brunswick - 2015, submitted at Exhibit NB-AR5-STUMP-16 of the GNB IQR Response
Report of the Auditor General of New Brunswick – 2020	Report of the Auditor General of New Brunswick - 2020, submitted at Exhibit NB-AR5-STUMP-23 of the GNB IQR Response
RET	Renewable Energy Target
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 BCH-53 of the GBC 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
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
TIER	Technology Innovation and Emissions Reduction
TIL	Tolko Industries Ltd.
TMR	Timber Management Regulation
TMS	Tolko Marketing and Sales Ltd.
Tolko	Tolko Marketing and Sales Ltd. (TMS) and Tolko Industries Ltd. (TIL)
TSA	Timber Supply Area
TSG	Timber Supply Guarantee
TSL	Timber Sale License
UCC	Undepreciated Capital Cost

Acronym/Abbreviation	Complete Name
URAA	Uruguay Round Agreements Act
USD	U.S. dollar
USDA	U.S. Department of Agriculture
USFS	United States Forest Service
USMCA	United States–Mexico–Canada Agreement
WDOR	Washington State Department of Revenue
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 the Final Results: Lumber CVD Fifth Administrative Review

This Section is Sorted by Short Citation

Short Citation	Administrative Case Determinations
AK Steel Corp. v. U.S.	*AK Steel Corp. v. United States* , 192 F.3d 1367 (Fed. Cir. 1999)
Allegheny Ludlum I	*Allegheny Ludlum Corp. v. United States* , 112 F. Supp. 2d 1141, 1150 (CIT 2000)
Allegheny Ludlum II	*Allegheny Ludlum Corp. v. United States* , 25 CIT 816, 817 (2001)
Aluminum Foil from Oman	*Certain Aluminum Foil From the Sultanate of Oman: Final Affirmative Countervailing Duty Determination* , 86 FR 52888 (September 23, 2021)
Aluminum Sheet from Bahrain	*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)
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)
Bethlehem Steel I	*Bethlehem Steel Corp. v. United States* , 140 F. Supp. 2d 1354 (CIT 2001)
Bethlehem Steel II	*Bethlehem Steel Corp. v. United States* , 162 F. Supp. 2d 639 (CIT 2001)
BGH Edelstahl II	*BGH Edelstahl Siegen GmbH v. United States* , 639 F. Supp. 3d 1237 (CIT 2023)
BGH Edelstahl III	*BGH Edelstahl Siegen GmbH v. United States* , 663 F. Supp. 3d 1378 (CIT 2023)
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	*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)
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 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)
COALITION v. U.S. (Slip Op. 23-163)	*Committee Overseeing Action for Lumber International Trade Investigations or Negotiations v. United States, et. al.* , Consol. Ct. No. 19-00122 (Slip Op. 23-163)
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 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)
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)
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)

Short Citation	Administrative Case Determinations
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-to-Length 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 Türkiye 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)
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 533 Panel Report	Panel Report, *United States – Countervailing Measures on Softwood Lumber from Canada* , WT/DS533/R, dated August 24, 2020
Essar Steel Ltd. v. U.S.	*Essar Steel Ltd. v. United States* , 678 F. 3d 1268 (Fed. Cir. 2012)
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)
FEBs India	*Forged Steel Fluid End Blocks from India: Final Affirmative Countervailing Duty Determination* , 85 FR 79999 (December 11, 2020)
FFC	*Fabrique De Fer De Charleroi v. United States* , 166 F. Supp. 2d 593 (CIT 2001)
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)
Government of Québec v. U.S.	*Government of Québec v. United States* , 567 F. Supp. 3d 1273 (CIT 2022)
Gov't of Québec v. U.S.	*Government of Quebec v. United States,* 105 F.4th 1359, 1374 (Fed. Cir. 2024).
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 or *Groundwood Paper from Canada Final*	*Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination* , 83 FR 39414 (August 9, 2018)
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)
Hyundai Steel	*Hyundai Steel Co. v. United States* , 659 F. Supp. 3d 1327 (CIT 2023)
Hyundai Steel II	*Hyundai Steel Co. v. United States* , Slip Op. 2024-55 (CIT May 2, 2024)
Hyundai Steel Co.	*Hyundai Steel Co. v. United States* , Nos. 22-00029, 22-00032, Slip Op. 23-182 (CIT 2023)
Hyundai	*Hyundai Steel Co. v. United States* , 658 F. Supp. 3d 1331 (CIT 2023)
Inland Steel v. U.S.	*Inland Steel Industries, Inc., et al., v. U.S* . , 967 F. Supp 1338 (CIT 1997)
Initiation Notice	*Initiation of Antidumping and Countervailing Duty Administrative Reviews* , 88 FR 15642 (March 14, 2023)

Short Citation	Administrative Case Determinations
IPA from Israel	*Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review* , 63 FR 13626 (March 20, 1998)
Jiangsu Zhongji Lamination Materials	*Jiangsu Zhongji Lamination Materials Co. v. United States* , 405 F. Supp. 3d 1317 (CIT 2019)
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)
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	*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 III Final	*Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada* , 57 FR 22570 (May 28, 1992).
Lumber IV Final or *Lumber IV*	*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 Second NAFTA Remand Determination	*Second Remand Determination: In the Matter of Certain Softwood Lumber Products from Canada* , USA-CDA-2002-1904-03 (July 30, 2004)
Lumber IV AR1 Prelim	*Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada* , 69 FR 33204 (June 14, 2004).
Lumber IV AR1 Final or *Lumber IV AR1*	*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 IV AR2 Final or Lumber IV AR2	*Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada* , 70 FR 73448 (December 12, 2005)
Lumber V AR1 Final or *Lumber V AR1*	*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 or *Lumber V AR2*	*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 or *Lumber V AR3*	*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 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 AR4 Final or *Lumber V AR4*	*Certain Softwood Lumber Products from Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review; 2021* , 88 FR 50103 (August 1, 2023)
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
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)
Lumber V AR5 Prelim or *Preliminary Results*	*Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2022* , 89 FR 8147 (February 6, 2024)

Short Citation	Administrative Case Determinations
Lumber V Final or *Lumber V Investigation*	*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 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)
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)
Melamine from Trinidad and Tobago	*Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination* , 80 FR 68849 (November 6, 2015)
Mosaic Co. v. U.S.	*Mosaic Co. v. United States* , 659 F. Supp. 3d 1285 (CIT 2023)
Mosaic Final Results of Redetermination	*Final Results of Redetermination Pursuant to Court Remand, Mosaic Co. v. United States* , Consol. Court No. 21-00116, Slip Op. 23-134, dated January 12, 2024
Nails from Oman	*Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination,* 80 FR 28958 (May 20, 2015)
NOES from Taiwan	*Non-Oriented Electrical Steel from Taiwan: Final Affirmative Countervailing Duty Determination* , 78 FR 61602 (October 14, 2014)
Novosteel	*Novosteel SA v. United States* , 284 F.3d 1261 (Fed. Cir. 2002)
NSK v. U.S.	*NSK Ltd. v. United States* , 510 F. 3d 1375 (Fed. Cir. 2007)
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	*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 Türkiye	*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)
Opportunity Notice	*Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List* , 88 FR 45 (January 3, 2023)
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 Final	*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)
QVD Food v. U.S.	*QVD Food Co., Ltd. v. United States* , 658 F.3d 1318 (Fed. Cir. 2011).
Reinstatement of Exclusion from the Order	*Certain Softwood Lumber Products from Canada: Notice of Reinstatement of Exclusion from the Countervailing Duty Order* , 88 FR 85225 (December 7, 2023)
Risen Energy I	*Risen Energy Co. v. United States* , 658 F. Supp. 3d 1364 (CIT 2023)
Risen Energy II	*Risen Energy Co. v. United States,* Slip Op. 2024-25 (CIT February 29, 2024)

Short Citation	Administrative Case Determinations
Risen Energy Final Results of Redetermination	*Final Results of Redetermination Pursuant to Court Remand, Risen Energy Co., Ltd. v. United States* , 658 F. Supp. 3d 1364 (2023), dated January 9, 2024
Royal Thai Gov't v. U.S (2004)	*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)
RZBC Shareholding vs. 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)
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)
Shrimp from China	*Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination* , 78 FR 50391 (August 19, 2013)
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)
Solar Cells from China 2015	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015* , 83 FR 34828 (July 23, 2018)
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)
Stainless 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 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)
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)
TMK IPSCO	*TMK IPSCO v. United States* , 179 F. Supp. 3d 1336 (CIT 2016)
Torrington Co. v. U.S.	*Torrington Co. v. United States,* 68 F. 3d 1347 (Fed. Cir. 1995)
U.S. 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)
Violet Pigment 23 from China	*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)

Appendix III - Document Citation Table for the Final Results: Lumber CVD Fifth Administrative Review

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To
1/3/2023	Commerce	*Opportunity Notice*	*Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List* , 88 FR 45 (January 3, 2023)	Interested Parties
1/31/2023	Petitioner	Petitioner Review Request	Petitioner's Letter, "Request for Administrative Review," dated January 31, 2023	Interested Parties
3/14/2023	Commerce	CBP Data Memorandum	Memorandum, "Release of U.S. Customs and Border Protection Query," dated March 14, 2023	Interested Parties
3/14/2023	Commerce	*Initiation Notice*	*Initiation of Antidumping and Countervailing Duty Administrative Reviews* , 88 FR 15642 (March 14, 2023)	Interested Parties
3/28/2023	Petitioner	Petitioner Comments on CBP Data and Respondent Selection	Petitioner's Letter, "Comments on CBP Data and Respondent Selection," dated March 28, 2023	Interested Parties
4/4/2023	Pat Power	Pat Power No Sales Letter	Pat Power's Letter, "Notice of No Sales," dated April 4, 2023	Pat Power
4/5/2023	Interfor/EACOM	Interfor/EACOM Rebuttal Comments on CBP Data and Respondent Selection	Interfor/EACOM's Letter, "Rebuttal Comments on CBP Data and Respondent Selection," dated April 5, 2023	Interested Parties
4/19/2023	Commerce	Respondent Selection Memorandum	Memorandum, "Respondent Selection," dated April 19, 2023	Interested Parties
5/2/2023	Commerce	Economic Diversification Memorandum	Memorandum, "Economic Diversification Memorandum," dated May 2, 2023	Interested Parties
5/2/2023	Commerce	Initial Questionnaire	Commerce's Letter, " Initial Questionnaire for Fifth Administrative Review," dated May 2, 2023	Interested Parties
5/15/2023	Commerce	Response to Canfor’s Reporting Difficulty Letter	Letter, "Reporting Exemption and Unaffiliated Producers Questionnaire for Canfor," dated May 15, 2023	Canfor
5/16/2023	JDIL	JDIL Affiliation Response	JDIL's Letter, "Affilated Companies Response," dated May 16, 2023	JDIL
5/16/2023	Tolko	Tolko Affiliation Response	Tolko's Letter, "Affiliated Party Submission," dated May 16, 2023	Tolko
5/16/2023	West Fraser	West Fraser Affiliation Response	West Fraser's Letter, "West Fraser Mills Ltd.’s Response To Section III, Part I of the Department’s May 2, 2023 Questionnaire Concerning Affiliated And Cross-Owned Companies," dated May 16, 2023	West Fraser
5/22/2023	Canfor	Canfor Unaffiliated Producers Response	Canfor's Letter, "Canfor’s Unaffiliated Producers Questionnaire Response," dated May 22, 2023	Canfor
5/23/2023	Canfor	Canfor Affiliation Response	Canfor's Letter, "Canfor’s Affiliated Companies Response," dated May 23, 2023	Canfor
5/30/2023	Commerce	Notice of Intent to Rescind	Memorandum, "Notice of Intent to Rescind Review, In Part," dated May 30, 2023	Interested Parties
6/12/2023	Petitioner	Petitioner Withdrawal of Review Request	Petitioner's Letter, "Withdrawal of Request for Administrative Review," dated June 12, 2023	Interested Parties
6/13/2023	10104704 Manitoba	10104704 Manitoba Rescission Comments	10104704 Manitoba's Letter, "Notice of Intent to Rescind Review, in Part," dated June 13, 2023	10104704 Manitoba
6/13/2023	NorSask Forest Products	NorSask Forest Products Rescission Comments	NorSask Forest Products' Letter, "Notice of Intent to Rescind," dated June 13, 2023	NorSask Forest Products
6/20/2023	GNS	GNS IQR Response Regarding JDIL	GNS' Letter, "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 20, 2023	JDIL
6/21/2023	GOA	GOA Stumpage Reference Materials	GOA's Letter, "The Government of Alberta’s Response to the Department’s May 2, 2023 Initial Questionnaire - Volume III: Public Stumpage Reference Materials," dated June 21, 2023	GOA
6/22/2023	Canfor	Canfor Non-Stumpage IQR Response	Canfor's Letter, "Canfor’s Non-Stumpage Initial Questionnaire Response," dated June 22, 2023	Canfor
6/22/2023	GBC	GBC Non-Stumpage IQR Response	GBC's Letter, "Government of British Columbia’s Initial Questionnaire Response (Volumes II through XIV)," dated June 22, 2023	GBC
6/22/2023	GNB	GNB IQR Response	GNB's Letter, "Initial Questionnaire Response of the Government of New Brunswick," dated June 22, 2023	GNB
6/22/2023	GOA	GOA Non-Stumpage IQR Response	GOA's Letter, "Response of the Government of Alberta to the Department’s May 2, 2023 Initial Questionnaire, Volume 1: Response to Questionnaire Part 1: Non-Stumpage Programs," dated June 22, 2023	GOA
6/22/2023	GOQ	GOQ Non-Stumpage IQR Response	GOQ's Letter, "The Government of Québec’s Response to the Department’s April 28, 2023 Initial Questionnaire: Non-Stumpage," dated June 22, 2023	GOQ
6/22/2023	GOS	GOS IQR Response	GSK's Letter, "Initial Questionnaire Response of the Government of Saskatchewan," dated June 22, 2023	Tolko
6/22/2023	JDIL	JDIL Non-Stumpage IQR Response	JDIL's Letter, "Response to Part 1 (Non-Stumpage Programs) of Section III of the Questionnaire for Producers/Exporters," dated June 22, 2023	JDIL
6/22/2023	Tolko	Tolko Non-Stumpage IQR Response	Tolko's Letter, "Response to Part 1, Section III of the Department’s May 2, 2023, Initial Questionnaire," dated June 22, 2023	Tolko
6/23/2023	GOC	GOC Non-Stumpage IQR Response	GOC's Letter, "Initial Questionnaire Response of the Government of Canada: Non-Stumpage," dated June 23, 2023	GOC
6/23/2023	West Fraser	West Fraser Non-Stumpage IQR Response	West Fraser's Letter, "Response to May 2, 2023 Non-Stumpage Initial Countervailing Duty Questionnaire," dated June 23, 2023	West Fraser
6/29/2023	Canfor	Canfor Stumpage IQR Response	Canfor's Letter, "Canfor’s Stumpage Initial Questionnaire Response," dated June 29, 2023	Canfor
6/29/2023	GBC	GBC Stumpage IQR Response	GBC's Letter, "Government of British Columbia’s Initial Questionnaire Response (Volume I)," dated June 29, 2023	GBC
6/29/2023	GNS	GNS Stumpage IQR Response	GNS' Letter, "Response of the Government of Nova Scotia to the Department’s Initial Stumpage Questionnaire," dated June 29, 2023	GNS

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To
6/29/2023	GOA	GOA IQR Response Stumpage Exhibits	GOA's Letter, "The Government of Alberta's Response to the Department's May 2, 2023 Initial Questionnaire - Volume IV: Proprietary Stumpage Exhibits Provided by Consultants MNP," dated June 29, 2023	GOA
6/29/2023	GOA	GOA Stumpage IQR Response	GOA's Letter, "The Government of Alberta's Response to the Department's May 2, 2023 Initial Questionnaire - Volume II, Stumpage Response," dated June 29, 2023	GOA
6/29/2023	GOC/GBC	GBC LEP Data Files	GOC/GBC's Letter, "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 29, 2023	GOC/GBC
6/29/2023	JDIL	JDIL Stumpage IQR Response	JDIL's Letter, "Response to Part 2 (Stumpage) of Section III of the Questionnaire for Producers/Exporters," dated June 29, 2023	JDIL
6/29/2023	Tolko	Tolko Stumpage IQR Response	Tolko's Letter, "Response to Part 2, Section III of the Department's May 2, 2023, Initial Questionnaire," dated June 29, 2023	Tolko
6/30/2023	GOC	GOC Stumpage IQR Response	GOC's Letter, "Initial Questionnaire Response of the Government of Canada: Stumpage," dated June 30, 2023	GOC
6/30/2023	GOC/GBC	GBC LEP IQR Response	GOC/GBC's Letter, "Initial Questionnaire Response of the Government of Canada and Government of British Columbia: Log Export Permitting Process," dated June 30, 2023	GOC/GBC
6/30/2023	West Fraser	West Fraser Stumpage IQR Response	West Fraser's Letter, "Response to May 2, 2023 Stumpage Initial Questionnaire Response," dated June 30, 2023	West Fraser
7/28/2023	GOA	GOA July 28, 2023 Comments on GNS IQR Response	GOA's Letter, "Comments from the Government of Alberta on the Government of Nova Scotia's Initial Questionnaire Response," dated July 28, 2023	GNS
7/28/2023	Petitioner	Petitioner Comments on IQR Responses	Petitioner's Letter, "Comments on Initial Questionnaire Responses," dated July 28, 2023	Canadian Parties
8/2/2023	Petitioner	NSA Submission	Petitioner's Letter, "Petitioner's New Subsidy Allegations," dated August 2, 2023	Canadian Parties
8/11/2023	GNB	GNB Response to Petitioner's Comments on IQR Responses	GNB's Letter, "Response to Petitioner's Comments on Initial Questionnaire Responses," dated August 11, 2023	GNB
8/16/2023	Commerce	BC Stumpage Request for Information	Commerce's Letter, "Request for Factual Information and Comments on British Columbia Stumpage Benchmarks," dated August 16, 2023.	
8/17/2023	Commerce	West Fraser August 17, 2023 Non-Stumpage SQR	Commerce's Letter, "Supplemental Questionnaire for West Fraser (Non-Stumpage)," dated August 17, 2023	West Fraser
8/31/2023	West Fraser	West Fraser August 31, 2023 Non-Stumpage SQR Response	West Fraser's Letter, "Response to August 17, 2023 Non-Stumpage Programs Supplemental Countervailing Duty Questionnaire," dated August 31, 2023	West Fraser
9/15/2023	Petitioner	Petitioner BC Stumpage Benchmark Submission	Petitioner's Letter, "Petitioner's Response to Request for Factual Information and Comments on British Columbia Stumpage Benchmark," dated September 15, 2023	Interested Parties
9/22/2023	Commerce	Postponement of Preliminary Results	Memorandum, "Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review, 2022," dated September 22, 2023	Interested Parties
9/22/2023	Commerce	Voluntary Respondent Selection Memorandum	Memorandum, "Voluntary Respondent," dated September 22, 2023	JDIL, Tolko
10/10/2023	Commerce	GOC October 10, 2023 Non-Stumpage SQR	Commerce's Letter, "Supplemental Questionnaire for the GOC (Non-Stumpage)," dated October 10, 2023	GOC
10/18/2023	GNS	GNS Stumpage SQR Response	GNS' Letter, "Response of the Government of Nova Scotia to Commerce's First Supplemental Questionnaire," dated October 18, 2023	GNS
10/27/2023	GOA	GOA October 27, 2023 Comments Regarding the GNS' Bracketing of BPI	GOA's Letter, "Request for the Department to Require the Government of Nova Scotia to Resubmit its October 18, 2023 First Supplemental Questionnaire Response with Revised Bracketing and Request to Extend the Deadline for Factual Information Submitted in Response," dated October 27, 2023	GNS
10/31/2023	GNS	GNS October 31, 2023 Rebuttal Regarding the GNS' Bracketing of BPI	GNS' Letter, "Response of the Government of Nova Scotia to the Request that Commerce Decline to Afford the Government of Nova Scotia with Legitimate Protection of Business Proprietary Information," dated October 31, 2023	GNS
11/2/2023	GOC	GOC November 2, 2023 Non-Stumpage SQR Response	GOC's Letter, "Supplemental Questionnaire Response of the Government of Canada," dated November 2, 2023	GOC
11/8/2023	Canfor	Canfor Stumpage Supplemental Response	Canfor's Letter, "Canfor First Stumpage Supplemental Response," dated November 8, 2023	Canfor
11/22/2023	JDIL	JDIL November 22, 2023 Stumpage SQR Response	JDIL's Letter, "Supplemental Questionnaire Response," dated November 22, 2023	JDIL
12/19/2023	GBC	GBC Slope QR Response	GBC's Letter, "Resubmission of the Government of British Columbia's Stumpage Supplemental Questionnaire Response," dated December 19, 2023	BC Parties
12/29/2023	Petitioner	Petitioner Benchmark Submission	Petitioner's Letter, "Benchmark Submission," dated January 3, 2024	Interested Parties
12/29/2023	JDIL	JDIL Benchmark Submission	JDIL's Letter, "Benchmark Submission," dated December 29, 2023	JDIL
1/3/2024	Petitioner	Petitioner Pre-Prelim Comments	Petitioner's Letter, "Petitioner's Pre-Preliminary Results Comments," dated January 3, 2024	Interested Parties
1/3/2024	West Fraser	West Fraser Factual Evidence to Measure Adequacy of Remuneration for BC Hydro EPAs	West Fraser's Letter, "Submission of Factual Evidence Potentially Relevant to Measurement of Adequacy of Remuneration," dated January 3, 2024	Commerce
1/8/2024	Canfor	Canfor Non-Stumpage SQR	Canfor's Letter, "Canfor's Non-Stumpage Supplemental Questionnaire Response," dated January 8, 2024	Canfor

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To
1/9/2024	GOA	Alberta Parties Pre-Prelim Comments	Alberta Parties' Letter, "Pre-Preliminary Comments Concerning Alberta Programs," dated January 9, 2024	Commerce
1/10/2024	GBC	GBC Third-Party Tenure Slope QR Response	GBC's Letter, "Government of British Columbia's Response to the Non-Directly Held Tenures Slope Supplemental Questionnaire," dated January 10, 2024	BC Parties
1/12/2024	GBC	GBC Non-Stumpage SQR	GBC's Letter, "Government of British Columbia's Response to the Non-Stumpage Supplemental Questionnaire," dated January 12, 2024	GBC
1/12/2024	West Fraser	West Fraser Pre-Prelim Comments	West Fraser's Letter, "Pre-Preliminary Comments," dated January 12, 2024	Commerce
1/17/2024	GOC	GOC January 17, 2024 Non-Stumpage SQR Response	GOC's Letter, "Second Supplemental Questionnaire Response of the Government of Canada," dated January 17, 2024	GOC
1/19/2024	Commerce	Canfor January 19, 2024 Stumpage SQR	Commerce's Letter, "Canfor General Ledger Adjustments Supplemental," dated January 19, 2024	Canfor
1/19/2024	Commerce	JDIL January 19, 2024 Stumpage SQR	Commerce's Letter, "2nd Supplemental Questionnaire for J.D. Irving, Limted," dated January 19, 2024	JDIL
1/25/2024	JDIL	JDIL January 25, 2024 Stumpage SQR Response	JDIL's Letter, "Second Supplemental Questionnaire Response," dated January 25, 2024	JDIL
1/25/2024	Commerce	Tolko January 25, 2024 Non-Stumpage SQR	Commerce's Letter, "Tolko Coloured Fuel Supplemental," dated January 25,2024	Tolko
1/30/2024	Tolko	Tolko January 30, 2024 Non-Stumpage SQR Response	Tolko's Letter, "Response to the Department's January 25, 2024 Coloured Fuel Supplemental Questionnaire," dated January 30, 2024	Tolko
1/31/2024	Commerce	BC Stumpage Analysis Memo	Memorandum, "Negative Benchmark and Tenure Access Calculations for British Columbia Stumpage," dated January 31, 2024	BC Parties
1/31/2024	Commerce	Canfor Preliminary Calculation Memorandum	Memorandum, "Preliminary Results Calculations for Tolko Industries Ltd. and its cross-owned affiliates," dated January 31, 2024	Canfor
1/31/2024	Commerce	GOA Market Memorandum	Memorandum, "Alberta Stumpage Market Distortion," dated January 31, 2024	Alberta Parties
1/31/2024	Commerce	JDIL Preliminary Calculation Memorandum	Memorandum, "Preliminary Results Calculations for J.D. Irving, Ltd.," dated January 31, 2024	JDIL
1/31/2024	Commerce	New Brunswick Preliminary Market Memorandum	Memorandum, "New Brunswick Preliminary Market Memorandum," dated January 31, 2024	Interested Parties
1/31/2024	Commerce	Nova Scotia Preliminary Benchmark Memorandum	Memorandum, "Nova Scotia Benchmark Calculation Memorandum for the Preliminary Results," dated January 31, 2024	Interested Parties
1/31/2024	Commerce	Preliminary Calculation of Non-Selected Rate	Memorandum, "Non-Selected Rate for the Preliminary Results," dated January 31, 2024	Interested Parties
1/31/2024	Commerce	Tolko Preliminary Calculation Memorandum	Memorandum, "Preliminary Results Calculations for Tolko Industries Ltd. and its cross-owned affiliates," dated January 31, 2024	Tolko
1/31/2024	Commerce	West Fraser Preliminary Calculation Memorandum	Memorandum, "Preliminary Results Calculations for West Fraser Mills, Ltd. and its cross-owned affiliates," dated January 31, 2024	West Fraser
2/5/2024	Commerce	Draft Customs Instructions	Memorandum, "Draft Customs Instructions," dated February 5, 2024	Interested Parties

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To
2/26/2024	Canadian Producers/Exporters and U.S. Importers	Canadian Producers/Exporters and U.S. Importers Letters in Lieu of Case and Rebuttal Briefs	Antrim Cedar Corporation Ltd.'s Letter, "Letter in Lieu of Case Brief," dated February 26, 2024; River City Remanufacturing Inc.'s Letter, "Letter in Lieu of Case Brief," dated February 26, 2024; 5214875 Manitoba Ltd.'s Letter, "Letter in Lieu of Case Brief," dated February 27, 2024; Magnum Forest Products, Ltd.'s Letter, "Letter in Lieu of Case Brief," dated February 27, 2024; Materiaux Blanchet Inc.'s Letter, "Letter in Lieu of Case Brief," dated February 27, 2024; Mobilier Rustique's Letter, "Letter in Lieu of Case Brief," dated February 27, 2024; 10104704 Manitoba Ltd O/A Woodstock Forest Products' Letter, "Letter in Lieu of Case Brief," dated February 28, 2024; Fraserwood Industries Ltd.'s Letter, "Letter in Lieu of Case Brief," dated February 28, 2024; Phoenix Forest Products Inc.'s Letter, "Letter in Lieu of Case Brief," dated February 29, 2024; R.A. Green Lumber Ltd.'s Letter, "Letter in Lieu of Case Brief," dated February 28, 2024; Canasia Forest Industries Ltd.'s Letter, "Letter in Lieu of Case Brief," dated March 1, 2024; 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.'s Letter, "Letter in Lieu of Case Brief," dated March 1, 2024; 1074712 BC Ltd.'s Letter, "Letter in Lieu of Case Brief," dated March 4, 2024; Cowichan Lumber Ltd.'s Letter, "Letter in Lieu of Case Brief," dated March 4, 2024; Sundher Timber Products Inc.'s Letter, "Letter in Lieu of Case Brief," dated March 4, 2024; Babine Forest Products Limited, Decker Lake Forest Products Ltd., Fort St. James Forest Products Limited Partnership, and Hampton Tree Farms, LLC dba Hampton Lumber Sales Canada's Letter, "Letter in Lieu of Case Brief," dated March 5, 2024; Hampton Tree Farms, LLC dba Hampton Lumber Sales' Letter, "Letter in Lieu of Case Brief," dated March 5, 2024; Peak Industries Ltd.'s Letter, "Letter in Lieu of Case Brief," dated March 5, 2024; Specialiste Du Bardeau De Cedre Inc.'s Letter, "Letter in Lieu of Case Brief," dated March 5, 2024; Trans-Pacific Trading Ltd.'s Letter, "Letter in Lieu of Case Brief," dated March 5, 2024; Aspen Planers Ltd.'s Letter, "Letter in Lieu of Case Brief," dated March 6, 2024; Canadian Bavarian Mill Work & Lumber Ltd., "Letter in Lieu of Case Brief," dated March 6, 2024; DH Manufacturing Inc.'s Letter, "Letter in Lieu of Case Brief," dated March 6, 2024; Downie Timber Ltd.'s "Letter in Lieu of Case Brief," dated March 6, 2024; Gorman Bros. Lumber Ltd.'s Letter, "Letter in Lieu of Case Brief," dated March 6, 2024; The Wood Source Inc.'s Letter, "Letter in Lieu of Case Brief," dated March 6, 2024; AJ Forest Products Ltd. and E.R. Probyn Export Ltd.'s Letter, "Letter in Lieu of Case Brief," dated March 7, 2024; GreenFirst Forest Products' Letter, "Letter in Lieu of Case Brief," dated March 7, 2024; Rayonier A.M. Canada GP's Letter, "Letter in Lieu of Case Brief," dated March 7, 2024; Scierie Alexandre Lemay & Fils Inc.'s Letter, "Letter in Lieu of Case Brief," dated March 7, 2024; CHAP Alliance Inc.'s Letter, "Letter in Lieu of Case Brief," dated March 13, 2024; Carrier Forest Products Ltd. and Carrier Lumber Ltd.'s Letter, "Letter in Lieu of Case Brief," dated March 14, 2024; CS Manufacturing Inc.'s Letter, "Letter in Lieu of Case Brief," dated March 14, 2024; Interfor Corporation, Interfor Sales & Marketing Ltd., EACOM Timber Corporation, Chaleur Forest Products Inc. and Chaleur Forest Products LP's Letter, "Letter in Lieu of Case Brief," dated March 14, 2024; Olympic Industries, Inc. and Olympic Industries ULC's Letter, "Letter in Lieu of Case Brief," dated March 14, 2024; Carrier Forest Products Ltd. and Carrier Lumber Ltd.'s Letter, "Letter in Lieu of Rebuttal Case Brief," dated April 5, 2024; Fontaine Inc.'s Letter, "Letter in Lieu of Rebuttal Brief," dated April 5, 2024; and Olympic Industries, Inc. and Olympic Industries ULC's Letter, "Letter in Lieu of Rebuttal Case Brief," dated April 5, 2024	Interested Parties
3/7/2024	Petitioner	Petitioner Hearing Request	Petitioner's Letter, "Hearing Request," dated March 7, 2024	Petitioner
3/7/2024	Canadian Parties	Canadian Parties Hearing Request	Canadian Parties' Letter, "Hearing Request," dated March 7, 2024	Canadian Parties

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To
3/13/2024	Canadian Producers/Exporters and U.S. Importers	Canadian Producers/Exporters and U.S. Importers Stumpage Case Briefs	BC Producers/Exporters' Letter, "Case Brief," dated March 13, 2024; 0752615 B.C Ltd., Fraserview Remanufacturing Inc., dba Fraserview Cedar Products' Letter, "Case Brief," dated March 13, 2024; BPWood Ltd.'s Letter, "Case Brief," dated March 13, 2024; Brink Forest Products Ltd. and Vanderhoof Specialty Wood Products Ltd.'s Letter, "Case Brief," dated March 13, 2024; Kalesnikoff Lumber Co. Ltd.'s Letter, "Case Brief," dated March 13, 2024; NorSask Forest Products Inc. and Norsask Forest Products Limited Partnership's Letter, "Case Brief," dated March 13, 2024; Pacific Western Wood Works Ltd.'s Letter, "Case Brief," dated March 13, 2024; Independent Wood Processors Association of British Columbia's Letter, "Case Brief," dated March 13, 2024; Ontario Producers/Exporters' Letter, "Case Brief," dated March 13, 2024; Carter Forest Products Inc., Fraser Specialty Products Ltd., and Lonestar Lumber Inc.'s Letter, "Case Brief," dated March 13, 2024; Central Cedar Ltd.'s Letter, "Case Brief," dated March 13, 2024; Dakeryn Industries Ltd.'s Letter, "Case Brief," dated March 13, 2024; East Fraser Fiber Co. Ltd. and Parallel Wood Products Ltd.'s Letter, "Case Brief," dated March 13, 2024; Leslie Forest Products Ltd.'s Letter, "Case Brief," dated March 13, 2024; Porcupine Wood Products Ltd.'s Letter, "Case Brief," dated March 13, 2024; Power Wood Corp.'s Letter, "Case Brief," dated March 13, 2024; Precision Cedar Products Corp.'s Letter, "Case Brief," dated March 13, 2024; Taan Forest Limited Partnership, aka Taan Forest Products' Letter, "Case Brief," dated March 13, 2024; Columbia River Shake & Shingle Ltd./Teal Cedar Products Ltd., dba the Teal Jones Group's Letter, "Case Brief," dated March 13, 2024; Multicedre ltee's Letter, "Case Brief," dated March 13, 2024; Rielly Industrial Lumber Inc.'s Letter, "Case Brief," dated March 13, 2024; Sawarne Lumber Co. Ltd.'s Letter, "Case Brief," dated March 13, 2024; Shakertown Corp.'s Letter, "Case Brief," dated March 13, 2024; South Beach Trading Inc. and Tyee Timber Products Ltd.'s Letter, "Case Brief," dated March 13, 2024; Surrey Cedar Ltd.'s Letter, "Case Brief," dated March 13, 2024; Universal Lumber Sales Ltd.'s Letter, "Case Brief," dated March 13, 2024; W.I. Woodtone Industries Inc. and Woodtone Specialties Inc.'s Letter, "Case Brief," dated March 13, 2024; Vancouver Specialty Cedar Products Ltd.'s Letter, "Case Brief," dated March 13, 2024; Metrie, Inc., Patrick Lumber Company, Sapphire Lumber Company, and Silvaris Corporation's Letter, "Case Brief," dated March 13, 2024; Pioneer Pallet & Lumber Ltd.'s Letter, "Case Brief," dated March 13, 2024; Westminster Industries Ltd.'s Letter, "Case Brief," dated March 13, 2024	Interested Parties
3/14/2024	Petitioner	Petitioner Case Brief	Petitioner's Letter, "Case Brief," dated March 14, 2024	Petitioner
3/14/2024	Sierra Pacific	Sierra Pacific Case Brief	Sierra Pacific's Letter, "Case Brief," dated March 14, 2024	Sierra Pacific
3/14/2024	GOC	Canadian Parties Joint Case Brief Vol. I	GOC's Letter, "Joint Case Brief of the Canadian Parties, Volume I (General Issues)" dated March 14, 2024	Canadian Parties
3/14/2024	GOC	GOC Case Brief Vol. II	GOC's Letter, "Case Brief of the Government of Canada, Volume II (Federal Programs)," dated March 14, 2024	GOC
3/14/2024	GBC	GBC Case Brief Vol. III	GOC/GBC's Letter, "Case Brief of the Government of Canada and Government of British Columbia, Volume III (Log Export Permitting Process," dated March 14, 2024	GOC/GBC
3/14/2024	GOA	GOA Case Brief Vol. IV.A	GOA's Letter, "Case Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council, Volume IV.A (Stumpage), dated March 14, 2024	GOA
3/14/2024	GOA	GOA Case Brief Vol. IV.B	GOA's Letter, "Case Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council, Volume IV.B (Non-Stumpage), dated March 14, 2024	GOA
3/14/2024	GBC	GBC Case Brief Vol. V	GBC's Letter, "Case Brief of the Government of British Columbia and the British Columbia Lumber Trade Council, Volume V," dated March 14, 2024	GBC
3/14/2024	GNB	GNB Case Brief Vol. VI	GNB's Letter, "Case Brief of the Government of New Brunswick," dated March 14, 2024	GNB
3/14/2024	GOS	GOS Case Brief Vol. VII	GOS's Letter, "Case Brief of the Government of Saskatchewan," dated March 14, 2024	GOS
3/14/2024	Canfor	Canfor Case Brief	Canfor's Letter, "Case Brief," dated March 14, 2024	Canfor
3/14/2024	JDIL	JDIL Case Brief	JDIL's Letter, "Case Brief, dated March 14, 2024	JDIL
3/14/2024	Tolko	Tolko Case Brief	Tolko's Letter, "Case Brief," dated March 14, 2024	Tolko
3/14/2024	West Fraser	West Fraser Case Brief	West Fraser's Letter, "Case Brief," dated March 14, 2024	West Fraser
4/5/2024	Petitioner	Petitioner Rebuttal Brief	Petitioner's Letter, "Rebuttal Brief," dated April 5, 2024	Petitioner
4/5/2024	Sierra Pacific	Sierra Pacific Rebuttal Brief	Sierra Pacific's Letter, "Rebuttal Brief," dated April 5, 2024	Sierra Pacific
4/5/2024	GOC	Canadian Parties Joint Rebuttal Brief Vol. I	GOC's Letter, "Canadian Parties Common Issues Rebuttal Brief, Volume 1," dated April 5, 2024	Canadian Parties
4/5/2024	GOA	GOA Rebuttal Brief Vol. II	GOA's Letter, "Rebuttal Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council, Volume II," dated April 5, 2024	GOA
4/5/2024	GBC	GBC Rebuttal Brief Vol. III	GBC's Letter, "Rebuttal Brief of the Government of British Columbia and the British Columbia Lumber Trade Council, Volume III," dated April 5, 2024	GBC
4/5/2024	GNB	GNB Rebuttal Brief Vol. IV	GNB's Letter, "Rebuttal Brief of the Government of New Brunswick," dated April 5, 2024	GNB
4/5/2024	GNS	GNS Rebuttal Brief	GNS' Letter, "Rebuttal Brief," dated April 5, 2024	GNS

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To
4/5/2024	Canfor	Canfor Rebuttal Brief	Canfor's Letter, "Rebuttal Brief," dated April 5,2024	Canfor
4/5/2024	JDIL	JDIL Rebuttal Brief	JDIL's Letter, "Rebuttal Brief," dated April 5, 2024	JDIL
4/5/2024	Tolko	Tolko Rebuttal Brief	Tolko's Letter, "Rebuttal Brief," dated April 5,2024	Tolko
4/5/2024	West Fraser	West Fraser Rebuttal Brief	West Fraser's Letter, "Rebuttal Brief," dated April 5, 2024	West Fraser
4/5/2024	Fontaine	Fontaine Inc. Letter in Lieu of Rebuttal Brief	Fontaine Inc.'s Letter, "Letter in Lieu of Rebuttal Brief, " dated April 5, 2024	Fontaine
4/5/2024	Carrier	Carrier Letter in Lieu of Rebuttal Brief	Carrier Forest Products Ltd. and Carrier Lumber Ltd.'s Letter, "Letter in Lieu of Rebuttal Brief," dated April 5, 2024	Carrier
4/5/2024	Olympic	Olympic Letter in Lieu of Rebuttal Brief	Olympic Industries, Inc. and Olympic Industries ULC's Letter, "Letter in Lieu of Rebuttal Brief," dated April 5, 2024	Olympic
4/25/2024	Commerce	Extension of Final Results	Memorandum, "Extension of Deadline for Final Results of Countervailing Duty Administrative Review, 2022," dated April 25, 2024	Interested Parties
6/13/2024	Commerce	Hearing Transcript	Hearing Transcript, “Public Hearing in the Matter of the Fifth Administrative Review of the Countervailing Duty Order on Softwood Lumber from Canada," dated June 6, 2024	Interested Parties
7/22/2024	Commerce	Tolling Memorandum	Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024	Interested Parties
8/7/2024	Commerce	Second Extension of Final Results	Memorandum, "Second Extension of Deadline for Final Results of Countervailing Duty Administrative Review, 2022," dated August 7, 2024	Interested Parties
8/12/2024	Commerce	Nova Scotia Benchmark Final Memorandum	Memorandum, "Nova Scotia Benchmark," dated August 12, 2024	Interested Parties
8/12/2024	Commerce	BC Stumpage Final Memorandum	Memorandum, "BC Stumpage Final Analysis Memorandum," dated August 12, 2024	Interested Parties
8/12/2024	Commerce	R&D Tax Credits Specificity Memorandum	Memorandum, "Specificity Analysis of Research & Development Tax Credit Programs," dated August 12, 2024	Interested Parties
8/12/2024	Commerce	Canfor Final Calculation Memorandum	Memorandum, "Final Results Calculations for Canfor Corporation and its cross-owned affiliates," dated August 12, 2024	Canfor
8/12/2024	Commerce	JDIL Final Calculation Memorandum	Memorandum, "Final Results Calculations for J.D. Irving, Ltd.," dated August 12, 2024	JDIL
8/12/2024	Commerce	Tolko Final Calculation Memorandum	Memorandum, "Final Results Calculations for Tolko Industries Ltd. and its cross-owned affiliates," dated August 12, 2024	Tolko
8/12/2024	Commerce	West Fraser Final Calculation Memorandum	Memorandum, "Final Results Calculations for West Fraser Mills, Ltd. and its cross-owned affiliates," dated August 12, 2024	West Fraser
8/12/2024	Commerce	Non-Selected Final Rate Memorandum	Memorandum, "Non-Selected Rate for the Final Results," dated August 12, 2024	Interested Parties