Barcode: 4960856-02 C-122-858 REV - Admin Review 1/1/24 - 12/31/24

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

C-122-858
Administrative Review
POR: 01/01/2024 – 12/31/2024
Public Document
E&C/OIII: Team

October 13, 2026

MEMORANDUM TO: Scot Fullerton
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Erin Begnal
Director, Office III
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2024

I. SUMMARY

Commerce is conducting an administrative review of the order on softwood lumber from Canada covering the January 1, 2024, through December 31, 2024 POR. 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 *Preliminary Results*, 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 To Accept JDIL As a Voluntary Respondent
Comment 2: Whether Commerce's Specificity Analysis for Certain Programs Is Consistent With the Law
Comment 3: Whether Grant Programs Must Account for Reciprocal Value
Comment 4: Whether Commerce Properly Treated Federal and Provincial Asset Depreciation Provisions as One Program

B. General Stumpage Issues

Comment 5: Whether Commerce's Amendments to its Regulations Regarding Government-Run Auctions Was Lawful

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C. Alberta Stumpage Issues

Comment 6: Whether the Alberta Stumpage Market Is Distorted
Comment 7: Whether TDA Survey Prices Are an Appropriate Benchmark for Alberta Crown-Origin Stumpage
Comment 8: Whether To Adjust the Nova Scotia Benchmark to Account for Fire-Damaged Timber Harvested in Alberta

D. British Columbia Stumpage Issues

Comment 9: Whether To Change Commerce's Calculations Relating to Third Party Tenures
Comment 10: Whether To Continue to Use WDOR Valuations or Make Adjustments for Respondents' Costs
Comment 11: Whether To Revise the Application of the WDOR Stumpage Value Table Adjustments and Use the Second Half 2025 Tables
Comment 12: Whether To Apply a Separate Beetle-Killed Benchmark In Conjunction with the WDOR Valuations
Comment 13: Whether Commerce's Selection of a Log Volume Conversion Factor Was Appropriate
Comment 14: Whether To Account for BC's "Stand-as-a-Whole" Stumpage Pricing

E. Ontario Stumpage Issues

Comment 15: Whether Ontario's Private Stumpage Market Is Distorted and Whether Ontario's Private Prices Are an Appropriate Benchmark

F. Québec Stumpage Issues

Comment 16: Whether Québec's Stumpage Market Is Distorted
Comment 17: Whether To Adjust the Nova Scotia Benchmark to Account for Spruce Budworm-Infested Timber

G. Nova Scotia Stumpage Benchmark Issues

Comment 18: Whether Alberta, Ontario, and Québec are the "Country in Question" and Commerce Must Use an In-Province Stumpage Benchmark
Comment 19: Whether Private Standing Timber Prices in Nova Scotia Are Available in the Provinces at Issue
Comment 20: Whether Nova Scotia's Forest Is Comparable to the Forests of Alberta, Ontario, and Québec
Comment 21: Whether SPF Species in Nova Scotia Are Comparable to SPF Species in Alberta, Ontario, and Québec
Comment 22: Whether the Tree Size in Nova Scotia, as Measured by Diameter, Is Comparable to Tree Size in Alberta, Ontario, and Québec
Comment 23: Whether To Make Adjustments to Stumpage Rates Paid by the Respondents to Account for "Total Remuneration" in Alberta, Ontario, and Québec

Comment 24: Whether Nova Scotia Is Comparable to Québec, Ontario, and Alberta in Terms of Haulage Costs and Whether To Otherwise Adjust the Nova Scotia Benchmark to Account for Such Differences
Comment 25: Whether the Nova Scotia Benchmark Is Comparable or Should Be Adjusted to Account for Log Grade or Log Product Characteristics
Comment 26: Whether To Revise the Conversion Factor Used in the Calculation of the Nova Scotia Benchmark
Comment 27: Whether To Revise the Indexing Method Employed in the Derivation of the Nova Scotia Benchmark
Comment 28: Reliability of Nova Scotia Private-Origin Standing Timber Benchmark
Comment 29: Whether To Publicly Disclose the Anonymized Data that Comprise the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*

H. Log Export Restraint Issues

Comment 30: Whether the LER Is Countervailable

I. Purchase of Goods for MTAR Program Issues

British Columbia

Comment 31: Whether Benefits Under the BC Hydro EPA Program Are Tied to Overall Production
Comment 32: Whether Commerce Properly Calculated the Benefit Conferred Under the BC Hydro EPAs

Québec

Comment 33: Whether Commerce Properly Calculated the Benefits Under the Power Purchase Agreement: CTS
Comment 34: Whether the Electricity Purchase Agreements Are Tied to Non-Subject Merchandise
Comment 35: Whether Commerce Properly Countervailed PAE 2011-01
Comment 36: Whether To Adjust the L Rate Benchmark for PAE 2011-01

J. Grant Program Issues

Alberta

Comment 37: Whether the AESO Load Shedding Program Is Countervailable

British Columbia

Comment 38: Whether the FUFP Program Is Countervailable

Ontario

Comment 39: Whether the FSIIP Is *De Jure* Specific

Comment 40: Whether the OFRFP Is Countervailable
Comment 41: Whether the Ministry of Transportation of Ontario Roads Maintenance Program Is Countervailable
Comment 42: Whether the GOO's Silviculture Reimbursements Are Countervailable

Québec

Comment 43: Whether Agreements with Consumers to Reduce Energy Consumption and GHG Are Grants
Comment 44: Whether the ÉcoPerformance Program Is Countervailable
Comment 45: Whether Hydro-Québec's ESP Is Countervailable
Comment 46: Whether Énergir L.P. Is an Authority
Comment 47: Whether the Énergir L.P. Feasibility Study and Implementation Program Is Tied to Non-Subject Merchandise
Comment 48: Whether the Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances Is Countervailable
Comment 49: Whether the MASTE Program Is Countervailable
Comment 50: Whether the MCRP and MCCRP Are Countervailable
Comment 51: Whether FDRCMO and MFOR Are Non-Recurring Subsidies
Comment 52: Whether the FDRCMO Is Countervailable
Comment 53: Whether the MFOR Is Countervailable
Comment 54: Whether the PCIP and PIAF Are Countervailable
Comment 55: Whether PDB Is Countervailable
Comment 56: Whether the PEEOL Program Is Countervailable
Comment 57: Whether the PIB Is Countervailable
Comment 58: Whether Commerce Properly Countervailed Hydro-Québec's EDL Program
Comment 59: Whether the Plant Closure under the Power Purchase Agreement: Centrale Thermique PF Résolu de Senneterre Program Is Countervailable
Comment 60: Whether the Rail Service Interruption Program Is Countervailable
Comment 61: Whether the IEO Program Is Countervailable
Comment 62: Whether the DRO Program Is Countervailable

K. Tax and Other Revenue Forgone Program Issues

Federal

Comment 63: Whether the ACCA Class 53 Assets Program Is Specific
Comment 64: Whether To Recalculate the ACCA Class 53 Benefit
Comment 65: Whether the CCA for Class 43.2 Assets Program Is *De Facto* Specific
Comment 66: Whether the CCA for Class 1 Assets Program Is Countervailable
Comment 67: Whether the Federal and Provincial SR&ED Credits Are Specific

Alberta

Comment 68: Whether the TEFU Is Specific

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

British Columbia

Comment 69: Whether the CIF, CIIP, and BC OBPS Programs Are Countervailable
Comment 70: Whether the BC Coloured Fuel Program Is Countervailable
Comment 71: Whether To Countervail the GBC's Non-Collection of Penalties for Unauthorized Timber Harvesting Violations

Ontario

Comment 72: Whether the Ontario Coloured Fuel Tax Exemption Is *De Jure* Specific
Comment 73: Whether the IESO IEI Is Specific
Comment 74: Whether To Reconsider If the GOO Forgave Debt Owed by Resolute

Québec

Comment 75: Whether the Québec Lower Tax Rates on Coloured Fuel Is Specific
Comment 76: Whether the Refund of Fuel Tax Paid on Fuel Used for Stationary Purposes Is Specific

L. Company-Specific Issues

Resolute

Comment 77: Whether To Recalculate Resolute's Denominator for Certain Transferred Subsidies
Comment 78: Whether Commerce Applied the Correct Denominator In Resolute's Stumpage Calculations

II. BACKGROUND

The selected mandatory respondents in this administrative review are Resolute and West Fraser.[1] On April 14, 2026, Commerce published the *Preliminary Results*.[2] Below is a summary of the events that occurred after the publication of the *Preliminary Results*.

Between April 16 and June 11, 2026, we issued supplemental questionnaires to the GOO, the GOQ, and Resolute,[3] and received timely responses on between April 22 and June 15, 2026.[4] On June 29, 2026, Commerce issued its Post-Preliminary Analysis Memorandum.[5]

[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 Preliminary Results*.
[3] *See* Resolute April 16, 2026 Non-Stumpage Supplemental Questionnaire; *see also* GOQ April 16, 2026 Non-Stumpage Supplemental Questionnaire; Resolute May 20, 2026 Stumpage Supplemental Questionnaire; Resolute June 4, 2026 Non-Stumpage Supplemental Questionnaire; and GOO June 11, 2026 Non-Stumpage Supplemental Questionnaire.
[4] *See* Resolute April 22, 2026 Non-Stumpage SQR Response; *see also* GOQ May 7, 2026 Non-Stumpage SQR Response; Resolute May 27, 2026 Stumpage SQR Response; Resolute June 12, 2026 Non-Stumpage SQR Response; and GOO June 15, 2026 Non-Stumpage SQR Response.
[5] *See* Post-Preliminary Analysis Memorandum.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

On May 5, 2026, Commerce received timely requests to hold a hearing from the petitioner and the Canadian Parties.[6] Between April 30, and July 20, 2026, various interested parties submitted letters in lieu of case briefs.[7] On July 20, 2026, various interested parties submitted timely filed case briefs on issues related to the *Preliminary Results*.[8] On July 23, 2026, Commerce accepted a correction to the GOQ Case Brief Vol. VII(b).[9] On August 5, 2026, various interested parties submitted timely filed rebuttal briefs on those case issues contained in the case briefs.[10]

On August 6, 2026, we extended the deadline for the final results until October 5, 2026.[11] On September 24, 2026, we extended the deadline for the final results by the maximum of 180 days after the date of publication of the *Preliminary Results*, until October 13, 2026.[12]

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.
- 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

[6] *See* Petitioner Hearing Request; *see also* Canadian Parties Hearing Request.
[7] *See* Appendix III (Case-Related Documents) attached to this memorandum for a listing of letters in lieu of case briefs received.
[8] *Id*., for a listing of the case briefs received.
[9] *See* GOQ Case Brief Erratum.
[10] *See* Appendix III (Case-Related Documents) attached to this memorandum for a listing of the rebuttal briefs received.
[11] *See* Final Extension.
[12] *See* Additional Final Extension.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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.[13]

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.[14]

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 the *Preliminary Results*. For a description of the allocation period and the methodology used for these final results, *see* the *Preliminary Results*.[15]

B. Attribution of Subsidies

Interested parties raised issues in their case briefs regarding the attribution of subsidies. *See* Comments 77 and 78. For a description of the methodology used for these final results, *see* the *Preliminary Results*[16] and the Final Calculation Memoranda.[17]

C. Benchmark and Discount Rates

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the benchmark interest rates used to calculate the benefit for certain subsidy programs. For information on the long-term interest rate and discount rate benchmarks used in these final results, *see* the *Preliminary Results.*[18]

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[13] 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.
[14] *See Order*, 83 FR at 349.
[15] *See Preliminary Results* PDM at 5-6.
[16] *Id*. at 6-10.
[17] *See* Resolute Final Calculation Memorandum; *see also* West Fraser Final Calculation Memorandum.
[18] *Id*. at 10.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

D. Denominators

Interested parties raised issues in their case briefs regarding the denominators we used to calculate the countervailable subsidy rates for the subsidy programs described below. *See* Comments 77 and 78. For information on the denominators used in these final results, *see* the *Preliminary Results*[19] and the Final Calculation Memoranda.[20]

V. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Provision of Stumpage for LTAR

Purchases of Crown-Origin Standing Timber in Alberta

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[21] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[22]

West Fraser: 7.78 percent *ad valorem*

Purchases of Crown-Origin Standing Timber in British Columbia

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[23] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[24]

West Fraser: 6.61 percent *ad valorem*

Purchases of Crown-Origin Standing Timber in Ontario

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

Resolute: 2.17 percent *ad valorem*

[19] *See Preliminary Results* PDM at 10.
[20] *See* Resolute Final Calculation Memorandum; *see also* West Fraser Final Calculation Memorandum.
[21] *See* Comments 6 through 8 and 18 through 29, *infra*.
[22] *See Preliminary Results* PDM at 46-47.
[23] *See* Comments 9 through 14, *infra*.
[24] *See Preliminary Results* PDM at 45-46.
[25] *See* Comments 15 and 18 through 29, *infra*.
[26] *See Preliminary Results* PDM at 47.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Purchases of Crown-Origin Standing Timber in Québec

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[27] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[28]

Resolute: 3.93 percent *ad valorem*

2. Grant Programs

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 the *Preliminary Results*.[30]

West Fraser: 0.01 percent *ad valorem*

British Columbia Grant Programs

BC Hydro Power Smart: Energy Manager

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Results* regarding this program.[31]

West Fraser: 0.01 percent *ad valorem*

BC Hydro Power Smart: Incentives

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Results* regarding this program.[32]

West Fraser: 0.02 percent *ad valorem*

[27] *See* Comments 5 and 16 through 29, *infra*.
[28] *See Preliminary Results* PDM at 47-48.
[29] *See* Comment 37, *infra*.
[30] *See Preliminary Results* PDM at 49-50.
[31] *See Preliminary Results* PDM at 51-52.
[32] *See Preliminary Results* PDM at 50-51.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

CIF

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

West Fraser: 0.01 percent *ad valorem*

FUFP

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

West Fraser: 0.11 percent *ad valorem*

Ontario Grant Programs

FSIIP

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

Resolute: 0.08 percent *ad valorem*

GOO Silviculture Reimbursements

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[39] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the Post-Preliminary Analysis Memorandum.[40]

Resolute: 0.05 percent *ad valorem*

[33] *See* Comment 69, *infra*.
[34] *See Preliminary Results* PDM at 52-53.
[35] *See* Comment 38, *infra*.
[36] *See Preliminary Results* PDM at 53-54.
[37] *See* Comment 39, *infra*.
[38] *See Preliminary Results* PDM at 56-57.
[39] *See* Comment 42, *infra*.
[40] *See* Post-Preliminary Analysis Memorandum at 3.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

IESO IEI

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

Resolute: 0.02 percent *ad valorem*

OFRFP

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 the *Preliminary Results*.[44]

Resolute: 0.44 percent *ad valorem*

Québec Grant Programs

ÉcoPerformance

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[45] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[46]

Resolute: 0.17 percent *ad valorem*

Énergir Feasibility Study and Implementation

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[47] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program from the Post-Preliminary Analysis Memorandum.[48]

Resolute: 0.02 percent *ad valorem*

[41] *See* Comments 2 and 73, *infra*.
[42] *See Preliminary Results* PDM at 54-55.
[43] *See* Comment 44, *infra*.
[44] *See Preliminary Results* PDM at 55-56.
[45] *See* Comments 43, 44, and 77, *infra*.
[46] *See Preliminary Results* PDM at 59-61.
[47] *See* Comments 46 and 47, *infra*.
[48] *See* Post-Preliminary Analysis Memorandum at 4-7.

FDRCMO

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 the *Preliminary Results*.[50]

Resolute: 0.03 percent *ad valorem*

Hydro-Québec's DRO

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 the *Preliminary Results*.[52]

Resolute: 0.03 percent *ad valorem*

Hydro-Québec's EDL

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 the *Preliminary Results*.[54]

Resolute: 0.71 percent *ad valorem*

Hydro-Québec's ESP

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 the *Preliminary Results*.[56]

Resolute: 0.05 percent *ad valorem*

[49] *See* Comments 51 and 52, *infra*.
[50] *See Preliminary Results* PDM at 71-72.
[51] *See* Comments 61 through 62, *infra*.
[52] *See Preliminary Results* PDM at 62-64.
[53] *See* Comment 58, *infra*.
[54] *See Preliminary Results* PDM at 61-62.
[55] *See* Comment 45, *infra*.
[56] *See Preliminary Results* PDM at 72-73.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Hydro-Québec's IEO

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* subsidy rate for this program from the *Preliminary Results*.[58]

Resolute: 0.12 percent *ad valorem*

Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances

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

Resolute: 0.69 percent *ad valorem*

MASTE

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[61] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[62]

Resolute: 0.02 percent *ad valorem*

MCCRP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[63] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the Post-Preliminary Analysis Memorandum.[64]

Resolute: 0.44 percent *ad valorem*

[57] *See* Comments 61 through 62, *infra*.
[58] *See Preliminary Results* PDM at 62.
[59] *See* Comment 48, *infra*.
[60] *See Preliminary Results* PDM at 70.
[61] *See* Comment 49, *infra*.
[62] *See Preliminary Results* PDM at 73-74.
[63] *See* Comment 50, *infra*.
[64] *See* Post-Preliminary Analysis Memorandum at 7-8.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

MCRP

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

Resolute: 0.06 percent *ad valorem*

MFOR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[67] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[68]

Resolute: 0.01 percent *ad valorem*

PCIP

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

Resolute: 0.03 percent *ad valorem*

PDB

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[71] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[72]

Resolute: 0.04 percent *ad valorem*

[65] *See* Comment 50, *infra*.
[66] *See Preliminary Results* PDM at 64-65.
[67] *See* Comments 51 and 53, *infra*.
[68] *See Preliminary Results* PDM at 65-66.
[69] *See* Comment 54, *infra*.
[70] *See Preliminary Results* PDM at 66-67.
[71] *See* Comment 55, *infra*.
[72] *See Preliminary Results* PDM at 67-68.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

PEEOL

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

Resolute: 0.01 percent *ad valorem*

PIAF

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[75] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[76]

Resolute: 0.07 percent *ad valorem*

PIB

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

Resolute: 0.03 percent *ad valorem*

Plant Closure under the Power Purchase Agreement: Centrale Thermique PF Résolu de Senneterre

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[79] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[80]

Resolute: 0.05 percent *ad valorem*

[73] *See* Comment 56, *infra*.
[74] *See Preliminary Results* PDM at 74-76.
[75] *See* Comment 54, *infra*.
[76] *See Preliminary Results* PDM at 68-69.
[77] *See* Comment 57, *infra*.
[78] *See Preliminary Results* PDM at 69.
[79] *See* Comment 59, *infra*.
[80] *See Preliminary Results* PDM at 57-58.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Rail Service Interruption Payment from STO

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

Resolute: 0.01 percent *ad valorem*

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.[83] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program from the Post-Preliminary Analysis Memorandum.[84]

Resolute: 0.01 percent *ad valorem*
West Fraser: 0.20 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.[85] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program from the Post-Preliminary Analysis Memorandum.[86]

Resolute: 0.02 percent *ad valorem*
West Fraser: 0.02 percent *ad valorem*

CCA for Class 43.2 Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[87] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program from the Post-Preliminary Analysis Memorandum.[88]

Resolute: 0.01 percent *ad valorem*

[81] *See* Comment 60, *infra*.
[82] *See Preliminary Results* PDM at 58-59.
[83] *See* Comments 63, 64, and 77, *infra*.
[84] *See* Post-Preliminary Analysis Memorandum. at 9-10.
[85] *See* Comment 66, *infra*.
[86] *See* Post-Preliminary Analysis Memorandum at 10-12.
[87] *See* Comments 65 and 77, *infra*.
[88] *See* Post-Preliminary Analysis Memorandum at 12-13.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Scientific Research and Experimental Development Tax Credit: Federal

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[89] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[90]

Resolute: 0.49 percent *ad valorem*

Alberta Tax Program

TEFU

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[91] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[92]

West Fraser: 0.02 percent *ad valorem*

British Columbia Tax Programs

BC OBPS

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[93] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[94]

West Fraser: 0.36 percent *ad valorem*

CIIP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[95] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[96]

West Fraser: 0.12 percent *ad valorem*

[89] *See* Comments 2 and 67, *infra*.
[90] *See Preliminary Results* PDM at 77-78.
[91] *See* Comment 68, *infra*.
[92] *See Preliminary Results* PDM at 78.
[93] *See* Comment 69, *infra*.
[94] *See Preliminary Results* PDM at 80-82.
[95] *See* Comment 69, *infra*.
[96] *See Preliminary Results* PDM at 79-80.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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.[97] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[98]

West Fraser: 0.03 percent *ad valorem*

Ontario Tax Programs

Ontario Coloured Fuel Tax Exemption

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[99] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[100]

Resolute: 0.02 percent *ad valorem*

Scientific Research and Experimental Development Tax Credit: Ontario

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[101] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[102]

Resolute: 0.02 percent *ad valorem*

Québec Tax Programs

Québec Lower Tax Rates for Coloured Fuel

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[103] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[104]

Resolute: 0.02 percent *ad valorem*

[97] *See* Comment 70, *infra*.
[98] *See Preliminary Results* PDM at 78-79.
[99] *See* Comments 2 and 72, *infra*.
[100] *See Preliminary Results* PDM at 83.
[101] *See* Comments 2 and 67, *infra*.
[102] *See Preliminary Results* PDM at 82.
[103] *See* Comments 2 and 75, *infra*.
[104] *See Preliminary Results* PDM at 85.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[105] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[106]

Resolute: 0.01 percent *ad valorem*

Scientific Research and Experimental Development Tax Credit: Québec

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[107] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[108]

Resolute: 0.01 percent *ad valorem*

4. Purchase of Goods for MTAR

British Columbia

BC Hydro EPAs

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[109] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[110]

West Fraser: 0.51 percent *ad valorem*

Québec

Power Purchase Agreement: CTS

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[111] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[112]

Resolute: 0.03 percent *ad valorem*

[105] *See* Comments 2 and 76, *infra*.
[106] *See Preliminary Results* PDM at 83-84.
[107] *See* Comments 2 and 67, *infra*.
[108] *See Preliminary Results* PDM at 84-85.
[109] *See* Comments 31 and 32, *infra*.
[110] *See Preliminary Results* PDM at 86-87.
[111] *See* Comments 33 and 34, *infra*.
[112] *See Preliminary Results* PDM at 87-88.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Purchase of Electricity for MTAR under PAE 2011-01

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[113] Commerce has modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[114]
[115]

Resolute: 2.41 percent *ad valorem*

5. Debt Forgiveness

Ontario

GOO Debt Forgiveness for Resolute (Fort Frances Mill)

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[116] Commerce has not modified its calculation of the *ad valorem* subsidy rate for this program from the *Preliminary Results*.[117]

Resolute: 0.09 percent *ad valorem*

B. Programs Determined to Be Not Countervailable

Investissement Québec Loan

Interested parties did not comment on this program. Commerce has not modified its preliminary determination that this program is not a countervailable subsidy. *See* the *Preliminary Results*.[118]

Ministry of Transportation of Ontario Roads Maintenance

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below.[119] Commerce has not modified its preliminary determination that this program is not a countervailable subsidy. *See* the Post-Preliminary Analysis Memorandum.[120]

[113] *See* Comments 34, 35, 36, and 77, *infra*.
[114] *See Preliminary Results* PDM at 89-90.
[115] *See Preliminary Results* PDM at 89-90.
[116] *See* Comment 74, *infra*.
[117] *See Preliminary Results* PDM at 90-91.
[118] *Id*. at 91-92.
[119] *See* Comment 41, *infra*.
[120] *See* Post-Preliminary Analysis Memorandum at 13-14.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Rexforêt Silviculture Works: Spruce Budworm Salvage

Interested parties did not comment on this program. Commerce has not modified its preliminary determination that this program is not a countervailable subsidy. *See* the Post-Preliminary Analysis Memorandum.[121]

C. Programs Determined Not to Confer 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 the *Preliminary Results* PDM.[122] 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.[123]

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.[124]

We received comments from interested parties on the Unauthorized Harvesting Program which the GBC and West Fraser reported as not used in the POR.

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

[121] *Id*. at 14-15.
[122] *Id.* at 6-10.
[123] *See* Resolute Final Calculation Memorandum; *see also* West Fraser Final Calculation Memorandum.
[124] *Id*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 Resolute and West Fraser received countervailable subsidies that are above *de minimis*.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the non-selected rate by weight-averaging the subsidy rates of Resolute and West Fraser using their proprietary sales values because doing so risks disclosure of proprietary information. Rather, we calculated the non-selected rate by weight-averaging the subsidy rates calculated for Resolute and West Fraser using each company's publicly-ranged U.S. sales value for the subject merchandise during the POR.[125] On that basis, for each company for which a review was requested and not rescinded, and which were not individually examined or found to be cross-owned with an individually-examined respondent, we are applying a subsidy rate of 14.11 percent *ad valorem* for 2024, consistent with section 705(c)(5) of the Act.[126]

VII. DISCUSSION OF THE ISSUES

A. General Issues

Comment 1: Whether To Accept JDIL As a Voluntary Respondent

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 2-14.

> Commerce should accept {JDIL} as a voluntary respondent in the 2024 administrative review and calculate an individual subsidy rate for the company. First, Commerce's denial of {JDIL's} voluntary-respondent application is arbitrary in light of its prior examinations of {JDIL} as a voluntary respondent in the CVD proceeding. Its denial memorandum recycles generic descriptions of what CVD reviews entail and cites Office III's aggregate caseload, without identifying any significant feature of the 2024 review that distinguishes it from the prior segments of this proceeding in which Commerce accepted {JDIL} as a voluntary respondent. Commerce examined {JDIL} alongside as many as four mandatory respondents in earlier segments; it is examining only two in the 2024 review. Nor did Commerce identify any material changes in {JDIL's} corporate structure, program participation, or reporting practices that would make review of the company unduly

[125] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's proprietary U.S. sale values for the subject merchandise; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale value for the subject merchandise. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g.*, *Ball Bearings from France, Germany, Italy, Japan, and the United Kingdom Final Results*.

[126] *See* Non-Selected Final Rate Memorandum.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

burdensome. Commerce's unexplained departure from its prior treatment of {JDIL} is arbitrary and capricious.

Second, Commerce's denial of {JDIL's} voluntary-respondent application is inconsistent with the statute. Commerce failed to meet the statutory requirements for rejecting a voluntary respondent because (1) it ignored the "not so large" and "inhibit the timely completion of the . . . review" provisions and (2) made conclusory findings with respect to the "unduly burdensome" factors of the statute.

Third, Commerce's denial of {JDIL's} voluntary-respondent application is irreconcilable with its obligation to calculate CVD rates as accurately as possible. {JDIL's} individual subsidy rate ranged from 1.72% to 3.88% across all prior segments, consistently below the non-selected companies' rate. This fact demonstrates that denying {JDIL} voluntary respondent status would produce a materially inaccurate result, contrary to Commerce's statutory duty to calculate countervailable subsidy rates as accurately as possible. Alternatively, if Commerce declines to accept {JDIL} as a voluntary respondent, we respectfully urge Commerce to follow its normal practice of calculating the subsidy rate applicable to companies not selected for individual review according to the methodology set forth in {section 705(c)(5)(A) of the Act}.

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 2-6.

The GNB respectfully objects to {Commerce's} rejection of {JDIL's} voluntary respondent status after having individually reviewed the company as a voluntary respondent in the investigation and most prior reviews in *Lumber V*. In addition to supporting the arguments made by {JDIL} in its July 20, 2026 case brief, the GNB asks {Commerce} to consider that (1) {Commerce} is aware from past reviews that {JDIL} would likely have a substantially lower subsidy rate on individual review than the non-selected company rate, (2) without {JDIL} as a respondent, {Commerce's} review would effectively exclude New Brunswick, and thus fail to take into account the unique market conditions in that part of Canada; (3) excluding {JDIL} would be expected to skew the non-selected company rate upwards, and (4) any workload concerns are negated by {Commerce's} prior review of {JDIL} as a voluntary respondent in the investigation and multiple subsequent reviews.

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 389-398.

{Commerce} lawfully declined to accept {JDIL} as a voluntary respondent and should continue to find that "selecting an additional company for individual

examination would be unduly burdensome and inhibit the timely completion of this administrative review."

With its passage of the {TPEA} in 2015, Congress expressed and codified its explicit intent that {Commerce} have broad discretion in determining whether to accept or deny voluntary respondents. As part of that legislation, Congress listed certain factors that inform whether accepting a voluntary respondent would be unduly burdensome. {Commerce's} determination to deny JDIL voluntary respondent status conforms to that statutory standard.

The respondents offer no legal basis for changing that determination. First, {Commerce} does not have a "practice" of accepting JDIL as a voluntary respondent, and even if it did, the circumstances identified in the instant review are sufficient for denying JDIL that treatment here. Second, JDIL improperly disregards the statutory structure that permits {Commerce} to evaluate both the complexity involved with individually examining two mandatory respondents and the burden associated with accepting additional respondents.

Third, when offering their own evaluation of the burden created by individually examining JDIL, JDIL and the GNB either ignore the broad grant of discretion by Congress to {Commerce} or presuppose that individual examination will be no more burdensome than the fifth administrative review.

Fourth, the New Brunswick parties suggest that JDIL's history of obtaining a lower {CVD} rate than other individually examined companies "compels" its acceptance as a voluntary respondent. Neither party cites any actual legal authority for this contention beyond {Commerce's} general obligation to calculate rates accurately. However, {section 705(c)(5)(A) of the Act} instructs {Commerce} to calculate an "all-others" rate by weight-averaging the countervailable subsidy rates for all individually investigated exporters and producers. A calculation in accordance with that statute is "accurate," and it does not become less accurate simply because one of the companies who receives the all-others rate has a history of lower rates in prior review periods.

Finally, the GNB submits that "the peculiarities of this case" require {Commerce} to individually examine JDIL because {Commerce's} review will otherwise omit New Brunswick, and because failing to include JDIL's rate in the all-others rate will "arbitrarily and materially skew" that rate. However, no party has challenged {Commerce's} determination to limit the number of mandatory respondents, no party has challenged {Commerce's} selection of those mandatory respondents (even though they are not located in New Brunswick), and nothing in {section 782 of the Act} requires {Commerce} to consider the effect of accepting or rejecting a voluntary respondent on the all-others rate.

Commerce's Position: Commerce lawfully declined to accept JDIL as a voluntary respondent in this administrative review. We, therefore, are not reconsidering Commerce's rejection of

JDIL's request for voluntary status in this review. Commerce's decision to not select JDIL as a voluntary respondent was not arbitrary, inconsistent with the statute, nor contrary to its duty to calculate accurate rates.

In this administrative review, Commerce limited the number of exporters/producers to be examined consistent with section 777A(e)(2)(A) of the Act.[127] Given workload and resource constraints, Commerce found it reasonable to select only two mandatory respondents and selected Resolute and West Fraser because the companies accounted for the largest value of subject merchandise exported to the United States during the POR.[128] When Commerce limits the number of exporters/producers examined in an administrative review, pursuant to section 777A(e)(2) of the Act, section 782(a)(1) of the Act directs Commerce to establish an individual countervailable subsidy rate for any exporter/producer not initially selected for individual examination that voluntarily submits the information requested from mandatory respondents, if: (A) the information is submitted by the due date specified for exporters/producers initially selected for examination, and (B) the number of exporters/producers subject to the administrative review is not so large that any additional individual examination of such exporters/producers would be unduly burdensome and inhibit the timely completion of the administrative review.

Further, pursuant to section 782(a)(2) of the Act, in determining whether it would be unduly burdensome to examine a voluntary respondent, Commerce may consider: (A) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; (B) any prior experience of Commerce in the same or similar proceeding; (C) the total number of investigations or reviews being conducted by Commerce; and (D) such other factors relating to the timely completion of those investigations and reviews as Commerce considers appropriate.

JDIL timely submitted to Commerce its affiliation response on May 6, 2025, and its IQR response on June 9, 2025.[129] Because JDIL's responses were filed in accordance with the deadlines and other criteria set forth in section 782(a) of the Act and 19 CFR 351.204(d), we evaluated the circumstances of the administrative review and available resources to determine whether an individual examination of JDIL would be unduly burdensome and inhibit the timely completion of the review.[130]

As an initial matter, we note that JDIL, in arguing that Commerce has improperly interpreted the phrase "unduly burdensome," cites CIT decisions that were issued prior to the passage of the TPEA, and thus, are not relevant to the issue at hand.[131] In 2015, Congress passed section 506 of the TPEA and codified the factors that Commerce may consider in determining if individual examination of an additional company would be unduly burdensome (at section 782(a)(2) of the

[127] *See* Respondent Selection Memorandum at 6-8.
[128] *Id*. at 3-4 and 7-8.
[129] *See* JDIL Affiliation Response; *see also* JDIL IQR Response. The GNB also timely submitted a response covering JDIL's subsidy usage during the review period. *See* GNB IQR Response.
[130] *See* Voluntary Respondent Memorandum.
[131] *See* JDIL Case Brief at 3-4 (citing *Grobest II*, 853 F.Supp.2d at 1364; and *Ad Hoc Shrimp Trade Action Comm. v. U.S.*, 925 F.Supp.2d 1371-72).

Act). Since then, the CIT has recognized that the TPEA "expanded considerably the discretion Commerce could exercise in denying a qualifying voluntary respondent request."[132]

As discussed in the Voluntary Respondent Memorandum, we evaluated the statutory criteria at section 782(a)(2) of the Act with regard to JDIL's voluntary treatment request.[133] As discussed therein, we found that the information and data presented in this review, by the mandatory respondents and the responding governments, were complex and time intensive, pursuant to section 782(a)(2)(A) of the Act.[134] We explained that conducting a CVD review requires an extensive analysis of the questionnaire responses of each company examined, including the company's corporate structure, financial records, and participation in individual subsidy programs. 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. Moreover, Commerce must analyze information submitted by the government during the course of the review, further limiting Commerce's available resources.

At the time JDIL's voluntary treatment request was considered, we anticipated expending a significant effort analyzing questionnaire responses and issuing supplemental questionnaires to the mandatory respondents and the governments in this review to obtain appropriate and complete data for calculating accurate countervailable subsidy rates for the mandatory respondents.[135] Importantly, as noted in Voluntary Respondent Memorandum, the complexity of this review was elevated by Commerce examining, for the first time since the 2020 POR, Resolute as well as its responding cross-owned companies and their usage of federal and provincial subsidies during 2024 and prior years of the AUL.[136] Additionally, concurrently with the review of JDIL's voluntary status request, we were evaluating 11 newly alleged subsidy programs administered by the federal government and provincial governments in Alberta, British Columbia, Ontario, and Québec, which required additional resources to fully analyze and investigate.[137]

JDIL asserts that the selection of two mandatory respondents is not "so large" as to make a review of it unduly burdensome.[138] JDIL's contention, however, ignores the fact that Commerce's review is not simply limited to the mandatory respondent and its corporate structure, financial records, and subsidy usage, but includes a review of other companies as well, in particular cross-owned companies with a reporting requirement pursuant to 19 CFR 351.525(b)(6)(ii)-(vi). Specifically, within this review, in addition to West Fraser and Resolute, we examined six cross-owned companies of West Fraser and 11 cross-owned companies of Resolute.[139] As noted above, Commerce also must solicit and analyze subsidy usage information

[132] *See Jiangsu Senmao Bamboo v. U.S.*, 322 F.Supp.3d 1336.
[133] *See* Voluntary Respondent Memorandum.
[134] *Id*. at 2-4.
[135] *Id*. at 3-4.
[136] *Id.*
[137] *See* NSA Submission.
[138] *See* JDIL Case Brief at 8.
[139] *See Lumber V AR7 Prelim* PDM at 7-10.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

for the mandatory respondents and their cross-owned companies from all levels of the government. Here, we analyzed subsidy information submitted by the federal government and five provincial governments.[140] Therefore, it is without justification for JDIL to assert that the selection of two mandatory respondents "is demonstrably not 'large.'"[141]

Contrary to the GNB's and JDIL's arguments, Commerce's familiarity with JDIL in a prior review does not ease the burden on Commerce to thoroughly analyze the company and its subsidy usage here.[142] A company's subsidy usage and financial circumstances are not static but change review to review. Further, Commerce need not identify any material changes in JDIL's "corporate structure, program participation, or reporting practices" to determine whether a review of the company would be unduly burdensome.[143] When considering the statutory criterion in section 782(a)(2)(B) of the Act, we noted that during the 2022 POR, the most recent review where JDIL was selected as a voluntary respondent, Commerce had to devote additional resources to that review in order to analyze JDIL's IQR response, which exceeded 5,000 pages and 40 datafiles, and issued two supplemental questionnaires soliciting additional information and clarification of information already provided.[144] Based on that experience, we found it reasonable to conclude that there would be similar complexities with JDIL as a respondent in this instant review, and thus, acceptance of JDIL as a voluntary respondent would adversely impact Commerce's conduct of this review.

Regarding the statutory criteria in sections 782(a)(2)(C) and (D) of the Act, Commerce took into account its workload and limited resources in determining whether it could individually examine a voluntary respondent without doing so being unduly burdensome and inhibiting the timely completion of this administrative review. As noted above, conducting a review of a voluntary respondent involves extensive resources to analyze questionnaire responses from the voluntary respondent and its responding cross-owned companies, as well as the GOC and provincial governments and issue any necessary supplemental questionnaires. As discussed in the Voluntary Respondent Memorandum, at the time of consideration of JDIL's voluntary treatment request, Office III was conducting numerous concurrent AD and CVD proceedings, all of which presented a significant workload, and the deadlines in the cases coincided and/or overlapped with deadlines in this CVD review.[145] Because of the significant workload within Office III, as well as throughout E&C, there were no additional resources available to devote to a voluntary respondent within this review.[146]

In its case brief, JDIL asserts that Commerce presented its workload "figures in a vacuum, without comparison to its caseload" in the prior segments of this proceeding.[147] First, Commerce does not need a "baseline"[148] to determine whether its current caseload and deadlines are demanding, such that there are no resources available to accept a voluntary respondent. Second,

[140] *See* Appendix III - Document Citation Table for the Final Results.
[141] *See* JDIL Case Brief at 8.
[142] *See* GNB Case Brief at 5-6; *see also* JDIL Case Brief at 10-12,
[143] *See* JDIL Case Brief at 1 and 6.
[144] *See* Voluntary Respondent Memorandum at 3 (citing *Lumber V AR5 Final* IDM at Appendix III).
[145] *Id*. at 4.
[146] *Id*.
[147] *See* JDIL Case Brief at 12.
[148] *Id*.

Commerce's workload and available resources are dynamic. Thus, there are instances, like this review, where Commerce can take on only two mandatory respondents; whereas, at other times, such as the underlying investigation, Commerce has the capacity to examine more than two respondents.[149] Circumstances and resources change and Commerce best knows its internal workload, available resources, and thus, the maximum number of respondents that is practicable for the agency to examine in each segment of a proceeding. Commerce sufficiently explained the constraints in place with Office III's caseload, deadlines, and resources when analyzing the selection of respondents in both the Respondent Selection Memorandum and Voluntary Respondent Memorandum.[150]

Thus, as outlined above, and further detailed in the Voluntary Respondent Memorandum, Commerce's decision to not select JDIL as a voluntary respondent for this review was not arbitrary, capricious, or an abuse of discretion as claimed by the GNB and JDIL.[151] The decision to not select JDIL was fully compliant with the statute which directed Commerce to evaluate certain criteria to determine whether an examination of JDIL would be unduly burdensome and inhibit the timely completion of this review. After evaluating all factors, we concluded that an individual examination of JDIL would be unduly burdensome and would inhibit completion of this review, pursuant to section 782(a)(1)(B) of the Act.[152] Contrary to the GNB's and JDIL' arguments, the statutory criteria, as outline above, do not direct Commerce to consider, when deciding whether to select a voluntary respondent, the subsidy rate calculated for a company in a prior segment or what the company's subsidy rate could be if selected for the current review or how a voluntary respondent's subsidy rate can affect the calculation of the all others or non-selected company rate.[153] The fact that JDIL's calculated subsidy rate, in the segments of this proceeding where it was selected as a voluntary respondent, was less than the calculated all others rate or non-selected company rate[154] is not relevant to Commerce's determination as to whether it could individually examine a voluntary respondent without it being unduly burdensome and inhibiting the timely completion of this administrative review, under section 782(a)(2)(A) of the Act.

Additionally, we disagree with JDIL's argument that denying it voluntary respondent status would produce an inaccurate result for the non-selected company rate.[155] A calculation in accordance with the statute is "accurate," and it does not become less so because a company which receives the non-selected rate (here, JDIL) may have a history of lower rates in prior segments. In calculating subsidy rates, Commerce is guided by the statute. As such, for these final results, Commerce has accurately calculated subsidy rates for the individually examined respondents, pursuant to sections 777A(e)(2)(A)(ii) and 705(c)(5) of the Act, and has accurately calculated a subsidy rate for the non-selected companies pursuant to section 705(c)(5) of the Act.

[149] In the *Investigation*, Commerce examined five companies: four mandatories and one voluntary. *See Lumber V Final*, 82 FR at 51816-17.
[150] *See* Respondent Selection Memorandum at 3-4; *see also* Voluntary Respondent Memorandum at 3-4.
[151] *See* GNB Case Brief at 2-5; and JDIL Case Brief at 5-13.
[152] *See* Voluntary Respondent Memorandum at 4.
[153] *See* GNB Case Brief at 3-4; *see also* JDIL Case Brief at 13-14.
[154] *See* JDIL Case Brief at 13-14.
[155] *Id*. at 13.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Furthermore, we note that neither JDIL nor the GNB raised similar concerns in *Lumber V AR6*, where JDIL did not request voluntary respondent treatment.[156]

Further, the fact that JDIL was selected as a voluntary respondent in prior segments of this proceeding is immaterial to Commerce's decision on whether to accept the company as a voluntary respondent in this instant review. As the Federal Circuit articulated, "each administrative review is a separate exercise of Commerce's authority that allows for different conclusions based on different facts in the record."[157] Thus, for each administrative review of this *Order*, Commerce must consider the criteria of section 782(a)(2) of the Act to determine whether an examination of a voluntary respondent would be unduly burdensome and inhibit the timely completion of a review. It is disingenuous for JDIL to state that Commerce's decision to not select the company as a voluntary respondent in this review "is inconsistent with its *prior practice* of accepting {JDIL} as voluntary respondent in all segments in which the company pursued such treatment."[158] Rather, Commerce has a practice of complying with section 782(a) of the Act when selecting respondents.

Lastly, we disagree with the GNB's argument that JDIL should be selected as a voluntary respondent in order to take into account the market conditions within New Brunswick.[159] In support of their argument, the GNB cites to the *Lumber V AR1* and *Lumber V AR2* respondent selection memoranda, asserting that Commerce maintained that "geographic coverage and concerns over the 'wide variance in the level of subsidization between provinces' is a relevant consideration."[160] The GNB, however, takes out of context Commerce's statement within the memoranda. Reference to "wide variance in the level of subsidization between provinces" was made by Commerce to rebut the petitioner's argument for a sample-based methodology for respondent selection in *Lumber V AR1* and *Lumber V AR2*. In those reviews, Commerce stated that, after selecting the largest exporters/producers of subject merchandise under section 777A(e)(2)(A)(ii) of the Act, it would be examining the provision of subsidies in the four largest lumber-producing provinces.[161] Commerce, thus, was rebutting the petitioner's argument for sampling by noting "there is a wide variance in the level of subsidization between provinces" in which the selected exporters/producers are located.[162] Importantly, within these memoranda, Commerce made clear that it "is not required to achieve a specific geographic coverage when selecting respondents for individual examination."[163] Therefore, there is no basis to the GNB's argument that Commerce should select JDIL as a respondent in order to include the market conditions of New Brunswick within the review.

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[156] *See Lumber V AR6 Prelim*; unchanged in *Lumber V AR6 Final*.
[157] *See Qingdao v. U.S.*, 766 F.3d 1387.
[158] *See* JDIL Case Brief at 5 (emphasis added).
[159] *See* GNB Case Brief at 4-5.
[160] *Id*. at 4 (citing *Lumber V AR1* Respondent Selection Memorandum at 6; and *Lumber V AR2* Respondent Selection Memorandum at 7).
[161] *See Lumber V AR1* Respondent Selection Memorandum at 6; and *Lumber V AR2* Respondent Selection Memorandum at 7
[162] *See Lumber V AR1* Respondent Selection Memorandum at 6; and *Lumber V AR2* Respondent Selection Memorandum at 7
[163] *See Lumber V AR1* Respondent Selection Memorandum at 8; and *Lumber V AR2* Respondent Selection Memorandum at 8.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

For the aforementioned reasons, we are not accepting JDIL as a voluntary respondent in this administrative review. Therefore, for these final results, in compliance with the statute, we will assign to JDIL the rate determined for those companies not selected for individual examination in this review which is based on the subsidy rates calculated for Resolute and West Fraser, pursuant to section 705(c)(5)(A) of the Act.[164]

Comment 2: Whether Commerce's Specificity Analysis for Certain Programs 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 142-146.

> 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} and controlling legal authority from the {Federal Circuit} and the U.S. Court of International Trade.

GOO Case Brief

The following is a verbatim summary of the argument submitted by the GOO. For further details, *see* GOO Case Brief Vol. VI at 18-23.

> Commerce erred by…finding the Ontario SR&ED, the {Ontario Coloured Fuel Tax Exemption}, and the IEI to be specific.

[164] *See* Final Calculation of Non-Selected Rate.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 147-149 and 150-152.

> {Commerce} should find that the Federal SR&ED, {Ontario SR&ED}, {Québec SR&ED}, {Refund of Fuel Tax Paid on Fuel Used for Certain Purposes and Stationary Purposes}, {Ontario Coloured Fuel Tax Exemption}, and Québec Lower Tax Rates for Coloured Fuel programs are not countervailable because they are generally available tax measures that do not satisfy the specificity requirements of section 771(5A) of the Act.
>
> Because {Refund of Fuel Tax Paid on Fuel Used for Certain Purposes and Stationary Purposes} refunds are taxable under Canadian tax law, Resolute does not retain the full value of the refund. Accordingly, any alleged benefit should be reduced to reflect the after-tax amount actually retained by Resolute rather than the gross refund amount.
>
> {Commerce} found Ontario's IEI *de jure* specific in the *Preliminary Results* because program recipients are limited to customers who undertake activity under certain 2012 NAICS sector codes. {Commerce}'s findings are divorced from the underlying facts of the program. Rather than being restricted to a single industry or enterprise, the IEI was open to a broad array of "energy-consuming consumers" in diverse sectors of Ontario's economy. During the POR, sawmills received a small share of the overall funding distributed under the program. IEI does not favor a particular industry and no company is a disproportionate participant.

Petitioner Rebuttal Brief

The following is a verbatim summary of the arguments submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 176-185, 205-208, and 353-357.

> *Federal SR&ED*
>
> In the *Preliminary Results*, {Commerce} continued to find the Federal SR&ED program is countervailable and confers a benefit equal to the amount of tax savings pursuant to 19 C.F.R. § 351.509(a)(1). Resolute argues that {Commerce} should not treat the SR&ED tax credits as a countervailable benefit because the credits were earned by a predecessor entity before its restructuring. This argument misconstrues {Commerce}'s analysis, as the relevant inquiry is not when the credits were accrued, but when the benefit was received. Thus, because Resolute claimed the tax credits during the POR, it received the benefit during the POR, regardless of when the underlying credits were accrued. Second, Resolute contends that {Commerce} should calculate the benefit based on the purported "after-tax" value of the tax credit, rather than the full amount of credit received. However,

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

{Commerce}'s regulations clearly state that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit." Instead, "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." Accordingly, {Commerce} should reject Resolute's argument and continue to countervail the full amount of the benefit received. The Canadian Parties also contend that the program is not limited in number, {Commerce}'s percentage methodology is inconsistent with the statute, {Commerce} improperly relied on only one of the *de facto* specificity factors, and the denominator should be limited to a narrower group of recipients. However, the record demonstrates that the Federal SR&ED tax credit is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the subsidy are limited in number. {Commerce}'s enterprise-based comparison methodology is consistent with the statute, the SAA, {Commerce}'s regulations, and judicial precedent. Moreover, where {Commerce} finds that recipients are limited in number, neither the Act nor the SAA requires it to conduct further analysis into the other *de facto* specificity factors. Finally, {Commerce} should not limit the denominator to exclude "enterprises that were not in goods-producing sectors," as the statute requires {Commerce} to compare the number of actual recipients to the "universe or composition of the group of potential recipients," and nothing in the Canadian Income Tax Act expressly excludes entire categories of taxpayers from eligibility.

Ontario SR&ED

In the *Preliminary Results*, {Commerce} determined that Ontario's SR&ED program confers a benefit within the meaning of section 771(5)(E) of the Act. Resolute contends that {Commerce} should calculate the benefit based on the purported "after-tax" value of the refund, rather than the full amount of the tax savings received. However, {Commerce}'s regulations clearly state that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit." Instead, "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." Accordingly, {Commerce} should reject Resolute's argument and continue to countervail the full amount of the benefit received. {Commerce} properly found the Ontario SR&ED tax credit to be *de facto* specific in the *Preliminary Results* because the actual recipients of the subsidy are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. The Canadian Parties maintain that the program is broadly available and broadly used throughout Ontario's economy and contend that {Commerce}'s analysis is inconsistent with the CIT's decision in *Mosaic*. The record demonstrates otherwise. Consistent with its longstanding practice, {Commerce}compared the number of companies claiming the Ontario SR&ED tax credit to the universe of corporate taxpayers in Ontario and reasonably concluded that only a small percentage of potential recipients received benefits during the POR. That analysis is fully consistent with *Mosaic* because the denominator reflects the universe of potential recipients. No new facts or legal authority warrant a departure from the

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

{Commerce}'s prior determinations. Accordingly, {Commerce} should continue to find the Ontario SR&ED *de facto* specific in the final results.

Ontario Coloured Fuel Tax Exemption

{Commerce} correctly determined that Ontario's Coloured Fuel Tax Exemption is *de jure* specific because the governing legislation expressly limits eligibility to prescribed commercial and industrial uses of coloured fuel. The Canadian Parties contend that the program is not limited to any particular enterprise or industry. However, Ontario's legislation expressly limited the tax exemption to specified commercial and industrial uses, including operating forestry, mining, construction, and farming equipment, generating electricity, and other enumerated business uses. Consistent with {Commerce}'s treatment of analogous coloured fuel programs, {Commerce} should continue to find the Ontario Coloured Fuel Tax Exemption *de jure* specific in the final results.

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

In the *Preliminary Results*, {Commerce} determined that the Refund of Fuel Tax Paid on Fuel for Certain Purposes and Stationary Purposes confers a benefit within the meaning of section 771(5)(E) of the Act. Resolute nevertheless contends that {Commerce} should calculate the benefit based on the purported "after-tax" value of the refund, rather than the full amount of the tax savings received. However, {Commerce}'s regulations clearly state that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit." Instead, "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." Accordingly, {Commerce} should reject Resolute's argument and continue to countervail the full amount of the benefit received. {Commerce} correctly determined that the {Refund of Fuel Tax Paid on Fuel for Certain Purposes and Stationary Purposes} is *de jure* specific because the governing legislation expressly limits benefits to prescribed fuel uses and, in particular, to farm, forest, and mining operations. The Canadian Parties argue that the refund is generally available to qualifying fuel users and does not expressly favor any enterprise or industry. To the contrary, the {Refund of Fuel Tax Paid on Fuel for Certain Purposes and Stationary Purposes} was established to reduce production costs and improve the competitiveness of specified industries, and the eligibility requirements expressly restrict benefits to defined commercial activities and industries. The Canadian Parties identify no new facts or legal authority that undermine {Commerce}'s prior determinations, which {Commerce} has consistently reaffirmed in prior administrative reviews. Alternatively, contrary to the Canadian Parties arguments, the record independently demonstrates that the program is *de facto* specific because only a small percent of Québec corporations claimed the deduction during the POR. Accordingly, {Commerce} should continue

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

to find the {Refund of Fuel Tax Paid on Fuel for Certain Purposes and Stationary Purposes} program *de jure* specific in the final results.

Québec SR&ED

In the *Preliminary Results*, {Commerce} determined that Québec's SR&ED program confers a benefit within the meaning of section 771(5)(E) of the Act. Resolute contends that {Commerce} should calculate the benefit based on the purported "after-tax" value of the refund, rather than the full amount of the tax savings received. However, {Commerce}'s regulations clearly state that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit." Instead, "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." Accordingly, {Commerce} should reject Resolute's argument and continue to countervail the full amount of the benefit received. {Commerce} correctly found the Québec SR&ED tax credit to be *de facto* specific because the actual recipients of the subsidy are limited in number. The Canadian Parties argue that the tax credit is broadly available, widely used, and utilized by a diverse range of industries throughout Québec's economy. This is not supported by the record. Consistent with its longstanding practice, {Commerce} compared the number of companies receiving the tax credit to the universe of corporate taxpayers in Québec and reasonably concluded that only a very small percentage of potential recipients benefited from the program during the POR. The diversity of industries receiving benefits does not undermine {Commerce}'s enterprise-based analysis, which the courts have upheld. Accordingly, {Commerce} should continue to find the Québec SR&ED tax credit *de facto* specific in the final results.

Québec Lower Tax Rates for Coloured Fuel

{Commerce} correctly determined that Québec's Lower Tax Rates on Coloured Fuel program is *de jure* specific because the Fuel Tax Act expressly limits the reduced tax rate to narrowly defined authorized uses of coloured fuel while excluding the vast majority of propulsion-engine applications. The Canadian Parties again argue that activity-based eligibility cannot establish *de jure* specificity and that the program's objective criteria make the program broadly available. Those arguments merely repeat challenges {Commerce} has consistently rejected with respect to comparable coloured fuel programs. The statute expressly defines the class of eligible fuel users, identifies only limited exceptions for certain propulsion-engine applications, and thereby limits access to a discrete group of enterprises and industries. Accordingly, {Commerce} should continue to find the Québec Lower Tax Rates on Coloured Fuel program *de jure* specific in the final results.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

IEI

In the *Preliminary Results*, {Commerce} correctly found Ontario's IEI program to be *de jure* specific because eligibility is expressly limited by law to enterprises operating within specified NAICS sector codes. The Canadian Parties argue that the IEI is not *de jure* specific because the eligible recipients span several industries and limiting eligibility to energy-consuming customers is insufficient to support a specificity finding. However, the plain language of the statute provides that a subsidy is *de jure* specific where the governing authority expressly limits access to particular enterprises or industries, and the IEI does so by restricting eligibility to a discrete group of industries identified by specific NAICS classifications. {Commerce} has consistently found this program *de jure* specific in prior segments of this proceeding, as well as in *Uncoated Groundwood Paper from Canada*, concluding that the governing legislation establishes a limited group of enterprises eligible to receive benefits under the program. The Canadian Parties have identified no new facts or arguments warranting a departure from these prior determinations. Thus, {Commerce} should continue to find the IEI program *de jure* specific in the final results

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 continue to disagree with the contention that Commerce applies a test of "universal" or "near universal" availability when analyzing *de jure* specificity. We similarly disagree with the Canadian Parties' contention that when analyzing *de facto* specificity under section 771(5A)(D)(iii)(I) of the Act, Commerce must consider whether a program is limited in number on an enterprise- *and* industry-basis. Where Commerce finds a program is *de facto* specific on the basis that the users are limited in number on an enterprise-basis, Commerce need not also analyze whether the program is limited in number on an industry-basis.[165]

As explained in prior segments,[166] 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 regarding 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.

In this AR, the GOO contends that in the wake of the *Loper Bright* decision,[167] Commerce's interpretation of the statute when making specificity determinations will be reviewed under

[165] *See Gov't of Québec* at 1291 (finding that CIT precedent involving a *de facto* specificity finding of limited in number on an industry-basis is not relevant in inquiries regarding a finding of limited in number on an enterprise-basis).
[166] *See, e.g., Lumber V Final* IDM at Comment 8, 62, 64, 68, and 70; and *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; and *Lumber V AR5 Final* IDM at Comment 35, 36, 38, 39, 40, 42, 45, 46, 49, 50, 51, 52, 53, 55, and 56; and *Lumber V AR6 Final* IDM at Comment 1, 29, 33, and 37.
[167] *See Loper Bright*, 603 U.S. 369, 400 (2024).

independent judicial judgement, not deference,[168] and that "Commerce must exercise its specificity analysis in accordance with the best reading of the plain statutory text."[169] Further, the GOO cites *Kaptan Demir v. United States* to argue that activity-based eligibility requirements when determining *de jure* specificity—applicable to any actor engaging in a defined type of transaction or conduct—cannot substitute for an express limitation on enterprises or industries.[170] Post-*Loper Bright*, the GOO states, Commerce must defer to judicial judgement and reverse any activity-based *de jure* specificity findings. The petitioner, however, notes that the Canadian Parties' reliance on *Kaptan Demir v. United States* to assert the unlawfulness of the activity-based eligibility factor "is misplaced."[171] They note that the CIT vacated Commerce's *de jure* specificity finding because Commerce failed to demonstrate how the Turkish law limited access to the subsidy, rather than an issue with the activity-based methodology itself. We concur with the COALITION that the ruling in *Kaptan Demir v. United States* was specific to the facts in that case and does not necessitate a reversal in Commerce's practice regarding activity-based *de jure* specificity findings.

Additionally, we disagree with the Canadian Parties' assertions that Commerce ignored the proper standard of specificity in our analyses of *de jure* specificity. The Canadian Parties contend that Commerce "appears to be incorrectly interpreting the specificity test to require universal availability and use of a program, rather than the widespread availability and use intended by Congress in the Tariff Act."[172] This is a mischaracterization of Commerce's longstanding practice. With regard to *de jure* specificity, the SAA explains that the statute "does not attempt to provide a precise mathematical formula for determining when the number of enterprises or industries eligible for a subsidy is sufficiently small so as to properly be considered specific."[173] This determination can only be made "on a case-by-case basis."[174] 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 sections 771(5A)(D)(i) and (ii) 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."[175] We discuss this in further detail on a program-specific basis at comments 67, 72, 73, 75, and 76, *infra*.

Moreover, we disagree with the Canadian Parties' assertions that Commerce ignored the proper standard of specificity in our analyses of *de facto* specificity. The SAA states that the specificity test is an initial screening mechanism to winnow out only those foreign subsidies that are truly broadly available and widely used throughout an economy.[176] The specificity test is not,

[168] *See* GOO Case Brief Vol. VI at 18-20.
[169] *Id*.
[170] *See Kaptan Demir v. United States*.
[171] *See* Petitioner Rebuttal Brief at 346.
[172] *See* Canadian Parties Joint Case Brief Vol. I at 143.
[173] *See* SAA at 930.
[174] *Id.*
[175] *Id*. at 11-15 (citing *Usinor v. United States*, 342 F.Supp.2d 1267 at n.13; DS 353 Panel Report 2017 at para. 8.618; DS 353 Appellate Report 2019 at para. 5.216; and DS 353 Appellate Report 2012 at para. 887).
[176] *See* SAA at 930 (referencing *Carlisle*).

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 {CVD} law."[177] 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.[178] Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise or industry basis are limited in number, Commerce reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.[179] With regard to *de facto* specificity, the Federal Circuit has held that the statute grants Commerce "the necessary latitude afforded it in choosing the appropriate approach."[180] This analysis is inherently fact-intensive and case-specific.[181]

Thus, we have followed the instructions of the SAA and our practice in determining whether the programs at issue are *de facto* specific and disagree with the Canadian Parties' argument that we are required to analyze only a subset of companies based on eligibility requirements described at section 771(5A)(D)(ii) of the Act (and therefore hypothetically could have benefited from the program). Furthermore, section 771(5A)(D)(iii)(I) of the Act, which provides the first factor in the *de facto* specificity test under the statute, does not require Commerce to examine whether the government took actions to limit, through eligibility criteria, the number of recipients of the subsidy programs.

Likewise, Commerce disagrees with the Canadian Parties' assertion that Commerce improperly ignored record evidence of widespread use of certain programs across broad industry groups in the economy.[182] Commerce may find that a program is *de facto* specific where "one or more of the {enumerated} factors exist."[183] "If a single factor warrants a finding of specificity, the Secretary will not undertake further analysis."[184] Where Commerce finds that the number of recipients of a program are limited in number on an enterprise-basis, Commerce need not then analyze the usage of the program on an industry-basis.[185]

Commerce looks at the economy as a whole in determining whether or not the number of enterprises or industries receiving a subsidy is, in fact, limited.[186] Commerce's analysis in this administrative review, as well as its analysis in prior segments of this proceeding is fully consistent with Commerce's current practice, regulations, and the language of the SAA.

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[177] *Id.*
[178] *Id.* at 931.
[179] *See CRS from Korea* IDM at Comment 13.
[180] *See Gov't of Quebec v. U.S.* at 1374.
[181] *Id.*
[182] *See* Canadian Parties Joint Case Brief Vol. I at 142-146.
[183] *See* section 771(5A)(D)(iii).
[184] *See* 19 CFR 351.502(a).
[185] *See Gov't of Québec* at 1291 (finding that CIT precedent involving a *de facto* specificity finding of limited in number on an industry-basis is not relevant in inquiries regarding a finding of limited in number on an enterprise-basis).
[186] *See* SAA at 930.

Comment 3: Whether Grant Programs Must Account for Reciprocal Value

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 89-95 and 126-129.

> {Commerce}, in the *Preliminary Results*, has presumed that government payments associated with "non-stumpage programs" necessarily are grants and, therefore, fully countervailable subsidies, without considering whether the payments were made in exchange for valuable consideration paid by Resolute. {Commerce} has continued to focus only on "what goes into the company," regardless of value given or paid in exchange. The CIT repeatedly has defined a "grant" as a gift-like transfer of funds, to be distinguished from a non-countervailable government payment in a reciprocal exchange for something of value such as a government purchase of services. For {Commerce} to find a countervailable subsidy it must first find whether a financial contribution has been provided under the four statutory criteria in {section 771(5)(D) of the Act}. It must then examine the nature of that financial contribution, before determining whether a countervailable benefit was conferred. The *Preliminary Results* here persistently fail these two tests.
>
> {Commerce} has characterized the Québec PCIP, PIAF, PDB and {Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbance} programs, as well as the Québec and Ontario road programs, as grants that "confe{r} a benefit equal to the amount of the grant received …," and "designed to reduce costs" for harvesters. The record evidence is to the contrary. The provincial governments were paying for something of value that was a net cost to Resolute, not a net benefit.

GOQ Case Brief

The GOQ did not provide the requested public executive summary regarding this argument. For further details, *see* GOQ Case Brief at 19-23.

Petitioner Rebuttal Brief

The petitioner did not provide the requested public executive summary regarding this argument. For further details, *see* Petitioner Rebuttal Brief at 168-175.

Commerce's Position: We disagree with Resolute and the GOQ's arguments that Commerce erred in failing to account for reciprocal value when assessing the countervailability of grant programs. Specifically, Resolute contends that Commerce has declared a number of government payments as grants, "without considering whether the payments were made in exchange for valuable consideration paid by Resolute."[187] Resolute asserts that Commerce must account for Resolute's cost of participation in programs and that no countervailable benefit exists where

[187] *See* Resolute Case Brief at 89.

programs do not reduce Resolute's costs. Commerce previously considered these arguments in the *Lumber V AR3 Final*.[188]

As explained in the *Lumber V AR3 Final*, we disagree that, consistent with the *Government of Sri Lanka v. U.S.*, Commerce must define the term "benefit" as a "gift without consideration" or that it is appropriate to consider the context in which a grant is provided. A grant is not limited to a transfer of money without consideration, nor must a grant only be a gift. Pursuant to the regulations, Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations.[189] Section 771(5)(D)(i) of the Act includes the word "grant" in its definition of a "financial contribution," stating that it is "the direct transfer of funds, such as grants… ." According to 19 CFR 351.504(a), "a benefit exists in the amount of a grant." Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[190] Under this framework, any grant payments are, in fact, a benefit to the recipient.

We also reject Resolute's arguments that certain countervailable grants should not be countervailed because the financial transfers it received were payments for services, which are not countervailable.[191] We found this argument unconvincing in the *Lumber V AR3 Final*,[192] and we continue to do so here. In the *Lumber V AR3 Final*, we disagreed with Resolute that Resolute's harvesting activities under the PCIP constituted a service, and, thus, the associated payments were not countervailable because the exchange of partial cutting for partial reimbursement was a reciprocal obligation. As a TSG holder, Resolute was legally required to perform partial cuts on certain harvest stands. Under the PCIP, the GOQ provided a grant to Resolute for harvesting on lands where such partial cutting of harvest stands was required.[193] The partial cutting was performed in the furtherance of Resolute's harvesting activities within its normal course of business, and not to render a service to the GOQ or general public. The same logic applies here. As such, we concur with the petitioner: payments for legal obligations do not constitute the purchase of a service, because "the recipient is legally bound to perform the compensated activity in the absence of payment."[194] Further, "where compensated behavior is one that the company would engage in through the normal course of business, that behavior cannot constitute a service to the government."[195]

We additionally disagree with Resolute's reliance on *Hyundai Steel Co. v. U.S.*[196] to assert that Commerce must consider the costs incurred relating to the program.[197] As a preliminary matter, the individual CIT decision is not binding and remains subject to appeal. Substantively though, in relying on *Hyundai Steel Co. v. U.S.*, Resolute conflates the threshold question of whether a

[188] *See Lumber V AR3 Final* IDM at Comment 4.
[189] *See* 19 CFR 351.503(a).
[190] *See* 19 CFR 351.503(c).
[191] *See* Resolute Case Brief at 91.
[192] *See Lumber V AR3 Final* IDM at Comment 70.
[193] *See* Resolute Non-Stumpage IQR at 27 and Exhibit RESNS-PIAF-APP.
[194] *See* Petitioner Rebuttal Brief at 171-172.
[195] *Id*.
[196] *See Hyundai Steel Co. v. U.S.*.
[197] *See* Resolute Case Brief at 93.

government transfer constitutes a "grant" with the separate question of how Commerce measures the benefit once a transfer has properly been classified as a grant. *Hyundai Steel Co. v. U.S.* is distinguishable because it involved an expressly reciprocal transaction, not application of the grant rule under 19 CFR 351.504(a). Commerce characterized the Government of Korea's assignment of port-fee collection rights as a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act.[198] The underlying agreement was reciprocal where Hyundai constructed and transferred port facilities to the government and, {i}n return for its investment, received long-term port-usage and fee-collection rights.[199] The *Hyundai Steel 2024*[200] decision further supports this distinction. There, the Court rejected Hyundai Steel's reliance on *Government of Sri Lanka* because Hyundai received the additional emissions allowances "at no cost and without any exchange for consideration."[201] The Court also rejected Hyundai's argument that Commerce was required to consider the broader context and burdens associated with the emissions program in determining whether the additional allowances conferred a benefit.[202] Thus, the *Hyundai Steel* decisions distinguish between consideration exchanged for the government contribution and costs or burdens arising from participation in the government program. Only the former weighs on whether the transaction is genuinely reciprocal rather than grant-like. This interpretation is also consistent with the Federal Circuit's decision in *AK Steel Corp. v. U.S.*[203] There, the Federal Circuit held that where a benefit was conferred via the waiving of harbor fees, that benefit should be measured without regard to costs the government would have normally assumed in harbor construction.[204] As the Federal Circuit affirmed, if the government had built facilities, instead of ceded construction to the respondent, Commerce would have "countervailed the construction funding as a specific infrastructure benefit{.}"[205]

Lastly, Resolute and the GOQ argue that Commerce must rely on WTO decisions to perform its analyses. We disagree. 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.[206] Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel or Appellate Body dispute settlement reports limit automatically Commerce's discretion in applying the statute in an AD or CVD proceeding.[207] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[208]

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[198] *See Hyundai Steel Co. v. U.S.* at 1334–36.
[199] *Id.* at 1334.
[200] *See Hyundai Steel 2024*.
[201] *Id.* at 1405.
[202] *Id.*
[203] *See AK Steel Corp. v. U.S.*
[204] *Id.* at 1382.
[205] *Id.*
[206] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[207] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[208] *See* SAA at 659.

Comment 4: Whether Commerce Properly Treated Federal and Provincial Asset Depreciation Provisions as One Program

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 108-109.

> In the {Post-Preliminary Analysis Memorandum}, {Commerce} improperly treated the federal and Québec analogs for each of the following tax programs together {as} single programs: CCA for Class 1 Assets, CCA for Class 43.2 Assets, and ACCA for Class 53 Assets. {Commerce's} only explanation for combining the federal and provincial programs was "because the federal and Québec allowances… apply the same depreciation rules to the same assets in each jurisdiction, we are treating the federal and Québec {program} as the same program." Although the federal and provincial programs may be analogous, the federal and Québec programs are six distinct programs and must not be treated as just three combined programs. The programs are separately administered, and Québec authorizes and sets the terms of its own programs. Indeed, whether to use the ACCA is discretionary for the taxpayer, and consequently the amount of the deduction claimed for Québec tax purposes may differ from the amount claimed for federal tax purposes. {Commerce} should therefore recalculate the benefit for Resolute, treating each program separately.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute. For further details, *see* Resolute Case Brief at 140-143.

> The ACCA for Class 53 assets, CCA for Class 43.2 assets, CCA for Class 1a and Class 1b assets are not integrally linked. They are distinct tax depreciation programs under different statutory provisions, administered by different tax authorities and should be treated separately.

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 323-324.

> In the {*Lumber V AR7* Post-Prelim Memorandum}, {Commerce} correctly treated the Federal and Québec versions of the following tax programs as single programs: CCA for Class 1 Assets, CCA for Class 43.2 Assets, and ACCA for Class 53 Assets. This methodology is consistent with {Commerce's} past practice. Nevertheless, the Canadian Parties contend that these tax programs are not "integrally linked" and argue that {Commerce} should disaggregate the federal and provincial CCA programs to calculate separate subsidy rates for each. However, record evidence

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> rebuts this argument. Specifically, the GOQ's *Information Bulletin* described the "harmonization" of the Québec capital cost allowance programs with the federal programs. Moreover, {Commerce} previously found that "Québec{'s} ACCAs are harmonized with the federal governments" and these allowances "apply the same depreciation rules to the same assets in each jurisdiction." Accordingly, {Commerce} has both the authority and expertise to treat these programs as it has consistently done in the past. It should therefore reject the Canadian Parties' repeated request to separate these programs and continue its previously established methodology in the final results.

Commerce Position: We disagree with the GOQ and Resolute that the federal and Québec asset depreciation programs should be disaggregated, and a separate subsidy rate calculated for each. The evidence on the record demonstrates that Québec harmonizes its capital cost allowance programs with the federal capital cost allowance programs.[209] Therefore, Commerce's decision to treat the federal and Québec versions of the CCA for Class 1 Assets, CCA for Class 43.2 Assets, and ACCA for Class 53 Assets as single programs is appropriate and consistent with Commerce's practice in prior segments of this proceeding.[210]

The GOQ's information bulletin "Fiscal Measures Announced in the Update on Québec's Economic and Financial Situation and Other Measure," dated December 3, 2018, at section 2.1 addressing CCAs, states the following:

> The changes to the Québec tax system will be adopted only following the adoption of any federal regulation implementing the regulatory proposals retained, taking into account technical amendments that may be made prior to adoption. More specifically, these changes will apply on the same dates as those retained for the purposes of the federal measures *with which they are harmonized*.[211]

Within that document, the GOQ affirms "the harmonization of Québec's tax system with federal tax regulations announced in this information bulletin."[212] Further, program information reported to Commerce by the parties demonstrates that that federal and Québec CCA for Class 1 Assets, CCA for Class 43.2 Assets, and ACCA for Class 53 Assets apply the same depreciation rules and rates to the same assets in each jurisdiction. On the record, the following is reported for the federal and Québec CCA programs: under the Class 1 Assets program, a non-residential building may qualify for an additional CCA allowance (over the four percent base) of two or six percent;[213] under Class 43.2 Assets program, equipment that meets enhanced energy efficiency thresholds can be depreciated at a rate of 50 percent per year versus the standard rate of 30 percent;[214] and under the ACCA for Class 53 Assets, machinery and equipment used for the

[209] *See* Petitioner Comments on Sec. III IQR Responses at Exhibit NS-1.
[210] *See Lumber V AR1 Final* IDM at Comment 93; *see also Lumber V AR2 Final* IDM at Comment 98; and *Lumber V AR3 Final* IDM at Comment 87.
[211] *See* Petitioner Comments on Sec. III IQR Responses at Exhibit NS-1 (Section 2.1, p. 9) (emphasis added).
[212] *Id*. at Exhibit NS-1 (p. 13, fn. 20).
[213] *See* GOC Non-Stumpage IQR Response Volume II at 74-76; *see also* Resolute Non-Stumpage IQR Response at Exhibits RES-NS-TAX-FED-2 (p. 1-2) and RES-NS-TAX-QC-3 (p. 1).
[214] *See* GOC Non-Stumpage IQR Response Volume II at 105-106; *see also* Resolute Non-Stumpage IQR Response at Exhibits RES-NS-TAX-FED-3 (p. 1-2) and RES-NS-TAX-QC-4 (p. 1).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

manufacturing or processing of goods for sale or lease can be depreciated at an accelerated CCA rate of 50 percent over the standard depreciation rate of 30 percent.[215]

While we agree with the GOQ and Resolute that a company located in Québec files a provincial income tax return that is separate from its federal income tax return and a company on its provincial tax return can choose to claim and use CCAs at different times and different amounts than it does on its federal return,[216] the basic intent of each CCA program, to provide depreciation for a group of assets, remains the same between the Québec and federal tax programs.

Resolute asserts that the federal and provincial Class 1, Class 43.2, Class 53 assets programs are "distinct tax depreciation programs established under different statutory provisions, promulgated at different times, administered by different tax authorities, and available under separate federal and provincial tax regimes."[217] However, the evidence, as discussed above, clearly demonstrates that the GOQ harmonized the Québec capital cost allowance programs with the parallel federal programs. Harmonization is defined as "the act of making systems or laws the same or similar in different companies, countries, etc. so that they can work together more easily."[218] Accordingly and as demonstrated by the record, the harmonization of the Québec Class 1, Class 43.2, Class 53 assets programs with the federal Class 1, Class 43.2, Class 53 assets programs resulted in the tax programs applying the same depreciation rules and rates to the same type of assets in each jurisdiction.[219]

As in prior reviews, we continue to disagree that the analysis Commerce employed in *NOES from Taiwan* to determine whether to treat two subsidies as separate programs should lead Commerce to treat the CCA tax programs at issue here as separate programs.[220] In *NOES from Taiwan*, Commerce determined to treat the two investment incentive schemes (*i.e.*, discount lease rate and provision of land) as separate programs because they were enacted under different legislation, had different eligibility criteria, provided different benefits, and were administered by different Taiwanese government entities.[221] As noted above, the CCA programs of the GOQ have been harmonized with those of the GOC, and thus, the federal and provincial CCA programs apply the same eligibility criteria, allowance rates, and the same type of benefit.[222]

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[215] *See* GOC Non-Stumpage IQR Response Volume II at 1-3; *see also* Resolute Non-Stumpage IQR Response at Exhibits RES-NS-TAX-FED-1 (p. 1-2) and RES-NS-TAX-QC-2 (p. 2).
[216] *See* GOQ Case Brief Vol. VII(b) at 108; *see also* Resolute Case Brief at 141.
[217] *See* Resolute Case Brief at 141.
[218] *See* Cambridge Dictionary, "harmonization," available at https://dictionary.cambridge.org/dictionary/english/harmonization (last accessed September 15, 2026).
[219] *See* GOC Non-Stumpage IQR Response Volume II at 1-3, 74-76, 105-106; *see also* Resolute Non-Stumpage IQR Response at Exhibits RES-NS-TAX-FED-1 (p. 1-2), RES-NS-TAX-FED-2 (p. 1-2), RES-NS-TAX-FED-3 (p. 1-2), RES-NS-TAX-QC-2 (p. 2), RES-NS-TAX-QC-3 (p. 1), and RES-NS-TAX-QC-4 (p. 1); additionally Exhibits RES-NS-GEN-4-A9, GEN-4-B, GEN-4-C, GEN-4-D5, and GEN-4-E for Schedule 8 in the federal income tax returns and Schedule CO-130.A-T in the Québec income tax returns.
[220] *See* Resolute Case Brief at 142 (citing *NOES from Taiwan* IDM at Comment 7).
[221] *See NOES from Taiwan* IDM at Comment 7.
[222] *See* GOC Non-Stumpage IQR Response Volume II at 1-35, 74-104, and 105-126 (and all exhibits contained within the referenced pages); *see also* Resolute Non-Stumpage IQR Response at Exhibits RES-NS-TAX-FED-1, RES-NS-TAX-FED-2, RES-NS-TAX-FED-3, RES-NS-TAX-QC-2, RES-NS-TAX-QC-3, and RES-NS-TAX-QC-4 (and all exhibits contained within the referenced exhibits).

Thus, we find the facts of this review are distinct from those Commerce considered in *NOES from Taiwan*.

Regarding Resolute's argument that the Class 1a and Class 1b CCAs, under the federal and provincial Class 1 for Assets, should be further separated into two programs, we disagree. The two provisions (1a and 1b) both provide increased depreciation over standard Class 1 assets to the same type of asset—non-residential buildings.[223]

Resolute also notes that Commerce does not aggregate the federal and provincial SR&ED tax credits which serve similar policy objectives.[224] Unlike the CCAs at issue here, the federal and provincial SR&ED tax credits are not in agreement, and thus, should not be aggregated. The federal SR&ED has a basic tax credit rate of 15 percent, increasing to 35 percent for small and medium-sized companies.[225] Whereas, for example, the Québec SR&ED provides a tax credit of 14 percent for large corporations and 30 percent for small and medium-sized companies,[226] and the Ontario SR&ED tax credit rate is 3.5 percent.[227]

Additionally, in making its arguments, Resolute asserts that, for benefit calculation purposes, Commerce considers that each program conferring a benefit must be counted on its own, not added up together with other programs, unless the programs are "integrally linked."[228] We find Resolute's argument moot. First, the integral linkage provision to which Resolute refers, *i.e.*, 19 CFR 351.502(d), was used to evaluate specificity of a subsidy program rather than to determine the benefit conferred under the program. Second, as discussed in the *AB25 Preamble*, effective January 15, 2025, Commerce deleted the provision because it was a discretionary practice with no underlying statutory mandate under section 771(5A)(D) of the Act and rarely invoked.[229]

For the aforementioned reasons, and consistent with Commerce's practice in prior reviews,[230] we are not disaggregating the federal and Québec CCA tax programs, and thus, are not calculating a separate federal and Québec subsidy rate for each program in these final results.

[223] *See* GOC Non-Stumpage IQR Response Volume II at 74-75; *see also* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-TAX-QC-3 (p. 1).
[224] *See* Resolute Case Brief at 142.
[225] *See* GOC Non-Stumpage IQR Response Volume II at 139.
[226] *Id.* at Exhibit QC-C02-A (p. 1).
[227] *Id.* at ON-ORDTC-1.
[228] *See* Resolute Case Brief at 140 (citing *CVD Preamble*, 63 FR at 65357).
[229] *See AB25 Preamble*, 89 FR at 101694 and 101722-23.
[230] *See Lumber V AR1 Final* IDM at Comment 93; *see also Lumber V AR2 Final* IDM at Comment 98; and *Lumber V AR3 Final* IDM at Comment 87.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

B. General Stumpage Issues

Comment 5: Whether Commerce's Amendments to its Regulations Regarding Government-Run Auctions Was Lawful

Canadian Parties Joint Case Brief

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

> Commerce's amendments to its regulations to move government-run auctions from tier-one to tier-three for purposes of determining the adequacy of remuneration when a government provides a good, and adding restrictions to the use of government-run auctions under tier-three, are inconsistent with the statute and not reasonable. The statute requires Commerce to determine whether a government provision of a good was for less than adequate remuneration based on the prevailing market conditions. Here, that means determining whether Québec's sales of stumpage (the price for standing timber on public land) were for less than adequate remuneration based on the prevailing market conditions in Québec. Timber auctions conducted in Québec by the {BMMB} are open to all real-world bidders, are competitive, and yield market-determined prices. Even if a tier-three analysis was appropriate, for the same reasons, Québec's public timber auctions result in a "government price {that} is consistent with market principles..."

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 145-147.

> The Canadian Parties argue that {Commerce}'s "change to {19 CFR 351.511(a)(2)} reclassifying government-run auctions from a tier-one to a tier-three benchmark analysis with further restrictions is both a facial and as-applied unlawful expansion of agency powers because it contradicts the statute and is unreasonable." Given {Commerce}'s explanations for the regulatory change, including its discussion of the statutory changes enacted by Congress in the URAA and its discussion of government auction prices in Quebec specifically, there was nothing at all arbitrary or unreasonable about {Commerce}'s 2024 amendment of its regulations, nor is there any basis to suggest that the amended regulations are inconsistent with the statute. {19 CFR 351.511(a)(2)} is a valid regulation and there is no basis for {Commerce} to depart from it in the final results.
>
> Because "private stumpage prices in Nova Scotia are a viable tier-one benchmark under 19 CFR 351.511(a)(2)(i)," {Commerce} was correct to reject the Quebec Parties' proposal that {Commerce} use Quebec auction prices as a benchmark, and there was no need for {Commerce} to analyze the viability of those auction prices as a tier-three benchmark.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce's Position: The GOQ is correct that Commerce, as part of its amended regulations, categorized government-run auctions specifically as a tier three benchmark under the CVD benchmark hierarchy.[231] However, we disagree that the amended regulation is contrary to law. Under section 771(5)(E)(iv) of the Act, a benefit exists where "goods or services are provided for less than adequate remuneration{.}" Commerce is directed to determine the adequacy of remuneration "in relation to the prevailing market conditions for the good or service being provided{.}"[232] The GOQ argues that this statutory directive means Commerce must consider government run auctions as a prevailing market condition.[233] The GOQ further argues that Commerce acted "arbitrarily" and did not demonstrate that the changes to the regulation were "reasonable."[234] However, the GOQ ignores that government auction prices are not market prices reflecting transactions between two private parties, but rather a price between the government and a private party. As Commerce described in promulgating the final rule:

> All the benchmark prices that Commerce may use under § 351.511(a)(2)(i) and (ii), other than government auction prices, are prices that are derived from transactions between private, commercial parties. The use of a government auction price to determine whether the government price of a good or service confers a countervailable benefit uses one government price to measure the subsidy benefit of another government price. The use of this type of government price as a benchmark is a type of benchmark that would have been used under the preferentiality methodology that was rejected by Congress in the URAA.

Commerce further described the old preferentiality standard and why it no longer applied. As Commerce stated:

> Before the enactment of the URAA, under the Trade Agreements Act of 1979, the government provision of a good or service would constitute a countervailable subsidy if the government provided that good or service at "preferential rates."[235] Under the analysis of whether the government provision of a good or service was provided at a preferential rate, Commerce would compare the price charged by the government for that good or service to the companies that were subject to a CVD investigation to the price that the government received from other users of that good or service.[236] The parameter of Commerce's analysis was not based upon market prices (*i.e.*, transaction prices of that good or service between private parties), but was, instead, based upon the prices that the government charged and received for that good or service from different parties within its jurisdiction…

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[231] *See Regulations Enhancing the Administration of AD/CVD Laws – Proposed*, 89 FR at 57312-13; *Regulations Enhancing the Administration of AD/CVD Laws – Final*, 89 FR at 101730-34; *see also* 19 CFR 351.511(a)(2).
[232] *See* section 771(5)(E) of the Act.
[233] *See* GOQ Case Brief Vol. VII(b) at 6-7.
[234] *Id.* at 7-9.
[235] *See* section 771(5)(B)(ii) of the Trade Agreements Act of 1979.
[236] *See, e.g.*, *Preamble to Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366, 23366 and 23381 (May 31, 1989) (*1989 Proposed Regulations*, 54 FR at 23366 and 23381).

> The URAA, enacted in December 1994, changed the standard for determining the standard for determining whether the provision of a government good or service provided a countervailable benefit from one based on preferentiality…to a standard based upon private, commercial market prices.[237]

Commerce additionally explained that, in promulgating the old regulation under which government auctions could serve as a tier-one benchmark, Commerce suffered from a "lack of experience."[238] Thus, Commerce reasonably explained how it had determined that using a government price to measure the adequacy of another government price was not appropriate under the statute, and how it was amending the regulation to account for the statutory change.

The GOQ argues that, pursuant to *Loper Bright*, a reviewing Court will exercise its independent judgement and determine the best reading of the statute rather than deferring to Commerce's interpretation.[239] However, the GOQ seeks to constrain Commerce's ability to measure the adequacy of remuneration under the statute and seems not to understand the effect of *Loper Bright* with respect to Commerce's authority in AD and CVD cases. The Supreme Court "did not throw out the administrative discretion baby with the *Chevron* deference bathwater."[240] While true that courts must exercise independent judgement in determining the best reading of a statute, "{t}he best reading of a statute . . . 'may well be that the agency is authorized to exercise a degree of discretion.'"[241] Additioally, as the Supreme Court clarified, "when an agency exercises discretion granted by a statute, judicial review is typically conducted under the Administrative Procedure Act's deferential arbitrary-and-capricious standard."[242]

The *en banc* decision by the Federal Circuit in *Lesko* is illustrative. In *Lesko*, the Court observed that, while the statute at issue was "silent to as to the formalities required to officially order or approve overtime," the statute was "not silent about *who* Congress intended to fill in those details."[243] Because Congress had directed the Office of Personnel Management (OPM) to "prescribe regulations subject to the approval of the President*, necessary for the administration of this subchapter*," the Court held that Congress "had expressly delegated rulemaking authority to OPM to prescribe regulations necessary for administering the{} statute."[244] As the Court explained, "Congress's silence on this issue, in combination with its delegation of authority to OPM to prescribe regulations necessary for administering the {} statute, clears the path for OPM to fill up the details of the authorization process."[245]

Here, the CVD statute is silent as to the treatment of government-run auctions in determining the adequacy of remuneration, stating only in broad terms that Commerce must consider "prevailing

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[237] *See Regulations Enhancing the Administration of AD/CVD Laws – Final*, 89 FR at 101731.
[238] *Id.* The Federal Circuit has previously held that Commerce's growing experience is sufficient explanation for a change in Commerce's practice. *See Stupp Corp. v. United States*, 5 F.4th 1341, 1355 (Fed. Cir. 2021).
[239] *See* GOQ Case Brief at 5.
[240] *See BYD (H.K.)*, 785 F.Supp.3d at 1377.
[241] *See Lesko*, 161 F.4th at 1358 (citing *Loper Bright*, 603 U.S. at 394-95).
[242] *See Seven County*, 605 U.S. at 179-80.
[243] *See Lesko*, 161 F.4th at 1359 (emphasis in original).
[244] *Id.* (quoting 5 U.S.C. § 5548(a)) (emphasis in original) (quotation marks omitted).
[245] *Id.* at 1360.

market conditions for the good.[246] Further, similar to *Lesko*, Congress was not silent about who it intended to effectuate the statute. In enacting the URAA, Congress delegated to Commerce the authority to adopt "such regulations {} as may be necessary to ensure that any provision of {the URAA}, or amendment made by {the URAA}, that takes effect on the date any of the Uruguay Round Agreements enters into force with respect to the United States is appropriately implemented on such date."[247] Moreover, the SAA provides that, "{i}n practice, the Administration will endeavor to amend or issue the regulations . . . {19 U.S.C. § 3513(a)(2)} provides the authority for such new or amended regulations to be issued{.}"[248]

Indeed, the Federal Circuit has recently confirmed that the Act authorizes Commerce to "fill up the details" of a statutory scheme.[249] In doing so, the Court emphasized Commerce's "broad delegated authority" to effectuate the statutory scheme, particularly when the language in the relevant statute is silent.[250] Here, Commerce used its congressionally delegated authority and filled in the details of the statutory scheme by explaining in the final rule preamble why, under the URAA, a government run auction should not act as a tier one benchmark under Commerce's hierarchy.

Moreover, Commerce has "broad discretion in executing the law" in line with the "general standards" set by Congress.[251] Indeed, Commerce's discretion to develop methodologies within its delegated authority to carry out general statutory directives is distinct from *Chevron* deference:

> This court has recognized that the {AD} statute "reveals tremendous deference to the expertise of the Secretary of Commerce in administering the [AD} law." {AD} and {CVD} determinations involve complex economic and accounting decisions of a technical nature, for which agencies possess far greater expertise than courts. This deference is both greater than and distinct from that accorded the agency in interpreting the statutes it administers, because it is based on Commerce's technical expertise in identifying, selecting and applying methodologies to implement the dictates set forth in the governing statute, as opposed to interpreting the meaning of the statute itself where ambiguous.[252]

Therefore, general statutory terms implicitly delegate authority to Commerce and give Commerce flexibility.[253] Thus, we disagree that section 771(5)(E) of the Act restrictively requires Commerce to consider government-run auctions as a tier-one, rather than tier-three,

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[246] *See* section 771(5)(E) of the Act.
[247] *See* 19 U.S.C. § 3513(a)(2).
[248] *See* SAA at 677.
[249] *See Archroma*, 185 F.4th at 1348.
[250] *Id.*
[251] *See Smith-Corona*, 713 F.2d at 1571 (decided prior to *Chevron*).
[252] *See Fujitsu*, 88 F.3d at 1039 (internal citations omitted, applying this distinct deference separately from and concurrently with *Chevron* deference in force); *accord Nexteel*, 28 F.4th at 1239 ("Commerce has selected a methodology consistent with the statutory language, which we afford greater deference than under the *Chevron* framework") (citing *Fujitsu*, 88 F.3d at 1039); *see also Borusan 2021*, 5 F.4th 1374-75).
[253] *See Bio-Lab*, 776 F.Supp.3d at 1329.

benchmark or that Commerce exceeded its authority in moving government-run auctions from tier one to tier three of Commerce's benchmark hierarchy.

C. Alberta Stumpage Issues

Comment 6: Whether the Alberta Stumpage Market Is Distorted

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 42-44.

> The record evidence does not establish that provincial stumpage markets are distorted. The law is clear that {Commerce} may not rely on the government's role as the predominant supplier of a good as the principal basis for finding distortion in the market for that good. Although {Commerce}, in the *Preliminary Results*, purports not to rely solely on government predominance as the basis for its findings of market distortion, {Commerce} continues to focus incorrectly on the government's role as the predominant supplier to support the conclusions that the provincial markets are distorted. In addition to government predominance, {Commerce} listed additional factors which it claimed resulted in distortion, such as market concentration, log export permitting processes, and supply overhang. As with government predominance, {Commerce} failed to establish that these factors result in price distortion.
>
> {Commerce} has an obligation to examine and engage with evidence on the record, including the evidence demonstrating that the timber markets in Alberta, Ontario, and Québec are not distorted. Had {Commerce} engaged with the substance of the expert reports and other evidence submitted by the Canadian Parties, it could not have concluded that the Alberta, Ontario, and Québec stumpage markets are distorted as a result of the government's involvement in the market.
>
> The statute requires that adequacy of remuneration must be determined in relation to the prevailing market conditions for the good being provided in the country which is subject to investigation or review. {Commerce's} regulations set out a hierarchy of benchmarks that implement this statutory mandate. They direct that the assessment of adequacy of remuneration be relative to the "country in question" and account for "factors affecting comparability," which include prevailing market conditions. The first, and preferred, of these benchmarks is "a market-determined price for the good or service resulting from actual transactions in the country in question." Compliance with the statute and the preferred benchmark, therefore, requires that the benchmark used must reflect prevailing market conditions in the country in which the good is being provided. Here, standing timber markets are inherently local and the right to harvest standing timber is provided by provincial governments in provincial markets. Accordingly, the country in question in each

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> of these instances is the province. Alberta, Ontario, and Québec provided provincial benchmarks that reflected the prevailing market conditions in each of these provinces. Under the statute and regulations, these in-province benchmarks should have been used by {Commerce}. They were not.

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 35-53.

> {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 TDA 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 has placed the TDA survey data on the record because {Commerce} should utilize the survey's log transaction prices to derive a market-determined 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 121-133.

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

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 4-12.

> {Commerce} properly rejected in-region stumpage prices as potential tier-one benchmarks for measuring the adequacy of remuneration for the stumpage programs in Alberta,{BC}, and New Brunswick. Contrary to the Canadian Parties' arguments, the language in section 771(5)(E)(iv) of {the Act}, that a benchmark must reflect "prevailing market conditions," does not require selection of an "in-province" benchmark for stumpage. Further, {Commerce}'s rejection of the potential tier-one benchmarks for stumpage in Alberta, BC, and New Brunswick is supported by record evidence showing that these provincial stumpage markets are distorted. Contrary to the Canadian Parties' arguments, having found the provincial markets to be distorted by substantial government interference, {Commerce} is not required to provide an "analysis of whether and how" the government interference "distorted actual transaction prices."

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce's Position: The GOA, relying primarily on arguments that Commerce has addressed and rejected in prior reviews,[254] claims that the factors Commerce cited in *Lumber V AR7 Prelim* as contributing to the Alberta stumpage market's distortion do not individually distort that market and, as a result, Commerce should consider TDA log prices as an in-province benchmark. Commerce reiterates, as discussed in Comment 7, that even if Commerce was to determine that the province of Alberta was not distorted, it still would not select TDA log prices, as a stumpage benchmark constructed from log prices would be a tier-three benchmark under Commerce's hierarchy, while the record contains, and Commerce used, a viable tier-one stumpage benchmark for the benefit calculation of this program. Since there is a viable tier-one benchmark on the record, Commerce does not need to proceed down its hierarchy to consider potential tier-two or tier-three benchmarks on the record of this review.

The GOA's arguments regarding Commerce's preliminary distortion finding, however, do not engage with how the combination of multiple factors leads to the Alberta stumpage market's distortion. As in *Lumber V AR6 Final Results*, "Commerce relies on the overall and cumulative effect of multiple distorting elements"[255] 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 accounts for nearly all of the standing timber harvest, which heavily weighs in favor of a finding of significant distortion.[256] Moreover, the same companies are active in both the Crown stumpage and private stumpage markets. Specifically, the 10 largest corporations accounted for approximately 92.3 percent of the harvested Crown-origin standing timber volume.[257] Furthermore, a significant share of private-origin harvest, the exact amount of which is BPI, was received by tenure holding mills in Alberta.[258] 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.[259]

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.[260] 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,

[254] *See Lumber V AR6 Final* IDM at Comment 4; *see also Lumber V AR5 Final* IDM at Comment 7; *Lumber V AR4 Final* IDM at Comment 9; *Lumber V AR3 Final* IDM at Comment 10; and *Lumber V AR2* IDM at Comment 11.
[255] *See Lumber V AR6 Final* IDM at 26.
[256] *See* GOA Stumpage IQR Response at Exhibit AB-AR7-S-3.
[257] *See* GOA Market Memorandum at Attachment 3, worksheet "Attch 3 Top10 Market Share.BPI."
[258] *Id.* at Attachment 2, worksheet "Attch 2 Crown Private.BPI."
[259] *Id.*
[260] *Id.*

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.[261]

The Canadian Parties argue that the HHI is the preferred economic model used by the U.S. Department of Justice and the Federal Trade Commission in assessing market concentration. Regarding the HHI and concentration metrics, we continue to find that this is not an antitrust case. We are not seeking to identify violations of competition law by sellers, but, rather, we are analyzing whether prices for private-origin standing timber in Alberta, which account for five percent of Alberta's overall standing timber market, are independent of the prices charged for Crown-origin standing timber, which account for over 94 percent of the province's overall market.[262] 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."[263] 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.[264] 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.[265] 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 Alberta stumpage market is not distorted by Crown ownership of standing timber"[266] 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.[267] This is also true of the Brattle Report in general, with the report stating in the introduction that, "resource economics

[261] *See Lumber V AR7 Prelim* PDM at 14-15.
[262] Federal-origin standing timber accounts for the remaining one percent of the province's softwood timber harvest in 2024. *See* GOA Stumpage IQR Response at Exhibit AB-AR7-S-7.
[263] *See* Brattle Report at 42.
[264] *See* GOA Market Memorandum at worksheet "Attch 1 Overhang.PUB."
[265] *See* GOA Stumpage IQR Response at 75-80.
[266] *See* GOA Case Brief Vol. IV.A at 44.
[267] *See* Brattle Report at 33-37.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

dictates that prices in the relevant market—the log market—are not suppressed as a result of Provincial stumpage."[268] 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.[269] The section of the Kalt Report cited by the GOA concludes that "the stumpage rates on these {government} stands would not set, depress and/or distort the market-determined stumpage rate for stand 3,"[270] 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.[271]

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.[272] 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.

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[268] *Id.* at 4.
[269] *See* Kalt Report at 35-36.
[270] *Id.* at 36.
[271] *Id.* at 36.
[272] *See* GOA Case Brief Vol. IV.A at 48-50.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Thus, we continue to 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.

Even assuming, *arguendo*, we agreed that the Alberta stumpage market was not distorted—which we do not—there is no viable tier-one Alberta stumpage benchmark available on the record of the instant review. The TDA survey does include data for private stumpage transactions;[273] however, Commerce finds that this stumpage survey data is not a valid benchmark. Notably, the GOA does not support the use of the TDA stumpage transactions as a benchmark.[274] In its initial questionnaire response, the GOA states:

> Although the survey also captures prices for the few private transactions for timber on the stump (*i.e*{.}, stumpage), the volumes are small, and Alberta is not advocating for use of those transactions as a stumpage price benchmark. Rather, Alberta contends that {Commerce} should use the delivered-to-mill log pricing data, from which it can derive the implied value of standing timber in Alberta.[275]

The individual TDA survey responses are available on the record of this review.[276] The individual responses are proprietary in nature, and we analyze them in in the Alberta Stumpage Final BPI Memorandum.[277] As we discuss in the Alberta Stumpage Final BPI Memorandum, we find that the TDA stumpage transactions are not a valid benchmark.[278]

We address the arguments related to whether Commerce should use the TDA log prices as a benchmark below in Comment 7.[279] However, as noted at the start of this position, this distortion finding has no bearing on our decision to not use TDA log prices as a benchmark in this administrative review because log prices are a tier-three benchmark, and in accordance with 19 CFR 351.511(a)(2)(i), we continue to utilize a valid tier-one stumpage price as the benchmark for the final results.

[273] *See* GOA Stumpage IQR Response at Exhibit AB-AR7-S-42.
[274] *Id*. at 4-5.
[275] *Id*.
[276] *Id*. at Exhibit AB-AR7-S-115.
[277] *Id*.; *see also* Alberta Stumpage Final BPI Memorandum.
[278] *See* Alberta Stumpage Final BPI Memorandum.
[279] *See* Comment 7, *infra*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 7: 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 at Vol. IV.A at 34-42.

> In this review, the GOA placed on the record survey data capturing actual arms-length transactions from which {Commerce} can readily derive a tier-one benchmark for the stumpage price paid by West Fraser 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 private standing timber in Alberta, contains price data for arm's-length log sales between private parties operating within Alberta's large and robust log market. To derive 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 survey 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 {TDA} 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, {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 TDA 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 has placed the TDA survey data on the record 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 described 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 calculations. This information provides the only proposed benchmark on the record that reflects prevailing market conditions in Alberta, as the statute and regulations require.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 15-16.

> {T}he tier 1 benchmark reference to "actual transactions" in Alberta does describe the {TDA} transactions in Alberta, which, as detailed in the Alberta Parties' case brief and summarized below, involves a survey conducted in the ordinary course of business by private parties for the express purpose of valuing standing timber in Alberta, primarily based on log prices resulting from arm's length sales between private parties.

Petitioner Rebuttal 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 121-136.

> The Canadian Parties raised arguments in this review that are nearly identical to arguments {Commerce} rejected in the fourth, fifth, and sixth administrative reviews. {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 0.013 percent of private transactions and 0.0013 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. There is no need for {Commerce} to resort to a tier-three benchmark for Alberta stumpage; however, even if there were, {Commerce} has long recognized that the TDA data are not useable due to their inclusion of salvage log transactions and due

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> to the distortive impact of Crown stumpage on the market. The record of this review continues to support those findings.

Commerce's Position: Consistent with our findings in *Lumber V Final* and prior segments,[280] we disagree with the GOA and West Fraser's arguments that Commerce should adopt an Alberta log benchmark calculated based on a residual value methodology using log prices from the TDA survey.[281] TDA survey 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.[282] As such, the TDA prices are not a tier-one benchmark "for the good or service" we are analyzing here. At best, were Commerce to consider TDA prices for use as a benchmark, the TDA prices would be a tier-three benchmark by our hierarchy. 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).

Arguments about whether an out-of-province benchmark are permissible are addressed in Comment 19.[283]

Comment 8: Whether To Adjust the Nova Scotia Benchmark to Account for 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 at Vol. IV.A at 115-117.

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

[280] *See Lumber V AR6 Final* IDM at Comment 3; *see also Lumber V AR5 Final* IDM at Comment 13; *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 Final* IDM at Comment 16.
[281] *See* GOA Case Brief at Vol. IV.A at 34-42 (citing GOA Stumpage IQR Response at ABII-3–4 and Exhibits AB-AR7-S-41, AB-AR7-S-42, AB-AR7-S-95, AB-AR7-S-112, and AB-AR7-S-115); *see also* West Fraser Case Brief at 15-16.
[282] *See* GOA Case Brief Vol. IV.A at 34-38; *see also* West Fraser Case Brief at 15-16.
[283] *See* Comment 19, *infra*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 18-31.

> {I}f {Commerce} were to rely on the Nova Scotia benchmark data (which again it should not), {Commerce} must reduce the Nova Scotia benchmark to account for the significant volume of fire-killed timber in Alberta that resulted from the extensive wildfires that occurred particularly in 2023. The record evidence in this review shows that fire-killed timber volumes are not reflected in the Nova Scotia benchmark and that fire-killed timber is significantly less valuable than green timber. {Commerce} should thus adjust the Nova Scotia benchmark using the transaction data for sales of fire salvage timber and green timber from the U.S. {BLM} that West Fraser included in the record of this review (the first review in which such data has been included in the record).

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 103-107.

> West Fraser and the Alberta Parties renew arguments that {Commerce} must adjust the Nova Scotia benchmark to account for "market conditions" in Alberta – specifically, the harvest of fire-killed timber. As the Alberta Parties' arguments are largely recycled from previous administrative reviews, {Commerce's} analysis from those prior reviews remains applicable to the facts of this seventh administrative review, and the agency should again reject the Alberta Parties' claims.
>
> The GOA argues that {Commerce} should "adjust{} the Nova Scotia benchmark price down to reflect the lower value and higher costs associated with harvesting fire-killed timber." However, the GOA's criticism of the benchmark fails to cite any actual evidence that there are actual differences in value between fire-killed timber in Alberta and timber in Nova Scotia that are not already accounted for with existing grade distinctions for sawable timber. Rather, the GOA merely provides two citations which do not support its claim.
>
> In addition, {Commerce} has previously found that regardless of whether harvesting costs for fire-killed timber are higher than for green timber, it does not warrant an adjustment because the agency conducts a "pure" stumpage-to-stumpage comparison such that "related costs" must be excluded from the analysis. Neither the GOA nor West Fraser have provided evidence to compel the Department to deviate from its prior determinations. As such, {Commerce} should reject the Canadian Parties' arguments on this matter.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce's Position: We disagree with West Fraser and the GOA that Commerce must reduce the Nova Scotia benchmark prices downward by 45 to 61 percent, based on a comparison of BLM data regarding green timber prices to fire salvage timber prices in Oregon, to account for the lower value and higher costs associated with harvesting fire-damaged timber in Alberta.

As explained in Comment 8, we find that the fire-damaged timber that was acquired by West Fraser in Alberta during the POR was graded as 01, and thus corresponds to sawlog grade timber in Nova Scotia. Record information indicates that the fire-damaged timber graded as 01 was delivered to West Fraser's sawmills during the POR, thereby indicating that grade 01 timber was sawn into lumber.[284] 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.[285] 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.[286]

West Fraser cites to information on the record of this review from the BLM regarding timber prices in Oregon, which indicates that fire salvage timber prices in Oregon are 45 to 61 percent lower than green timber prices.[287] Accordingly, West Fraser argues that Commerce should adjust the Nova Scotia benchmark downward to account for the reduced value of fire-killed timber in Alberta.[288] The green timber and fire salvage prices that West Fraser cites to are from the Roseburg District in western Oregon, however, and we have consistently found that the forests east of British Columbia (*i.e.*, Alberta) are not comparable to the forests of British Columbia and the U.S. PNW (*i.e.*, Oregon).[289] As a result, we find that comparison of green timber and fire salvage timber prices in Oregon does not reveal any information about the comparative value of green timber and fire-killed timber in Alberta.

West Fraser also argues that harvesting and processing fire-killed timber in sawmills involves "increased costs" as compared to harvesting green timber.[290] However, as explained in Comment 20, these additional harvesting and processing costs are not part of the stumpage prices in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*. As we explained below in Comment 23, the prices in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* contain only the cost of stumpage. As such, to ensure a comparison that consists solely of the price of stumpage, we are not adjusting for any additional costs associated with harvesting or processing fire-killed timber in Alberta.

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[284] *See* West Fraser Final Calculation Memorandum.
[285] *See, e.g.,* West Fraser Stumpage IQR Response at Exhibit WF-AR7-ALBST-1; *see also* West Fraser Preliminary Calculation Memorandum at Attachment 3, worksheet "Table 1 Calc.BPI."
[286] *See Lumber V AR6 Final* IDM at Comment 8.
[287] *See* West Fraser Case Brief at 25-29 and Appendixes 1 and 2.
[288] *Id.* at 4 and 23-32.
[289] *See, e.g., Lumber V INV Prelim* PDM at 44-50, unchanged in *#65V Final*; *Lumber V AR1 Prelim* PDM at 22-27, unchanged in *Lumber V AR1 Final*; *Lumber V AR2 Prelim* PDM at 23-30, unchanged in *Lumber V AR2 Final*; *Lumber V AR3 Prelim* PDM at 27-34, unchanged in *Lumber V AR3 Final*; *Lumber V AR4 Prelim* PDM at 21-26, unchanged in *Lumber V AR4 Final*; *Lumber V AR5 Prelim* PDM at 22-30, unchanged in *Lumber V AR5 Final*; and *Lumber V AR6 Prelim* PDM at 17-27, unchanged in *Lumber V AR6 Final*.
[290] *See* West Fraser Case Brief at 20-21 and 31.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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* and the *2023 Private Market Survey*. In the *Lumber V AR7 Prelim*, we compared West Fraser's purchases of fire-killed, Crown-origin timber in Alberta to the sawlog prices in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*, and consistent with prior reviews, we are continuing to use these Nova Scotia sawlog prices as the benchmark for West Fraser's Alberta Crown-origin stumpage purchases these final results.[291]

D. British Columbia Stumpage Issues

Comment 9: Whether To Change Commerce's Calculations Relating to Third Party Tenures

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 10.

> …{Commerce} erred in relying on Petitioner's IFG transaction prices for its beetle-kill benchmark.

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 4-7.

> …However, as discussed in Section III, {Commerce} erred in using {WDNR} data to derive U.S. log price benchmarks to measure the adequacy of renumeration for other stumpage purchases, specifically Crown stumpage purchases made by respondents from third-party tenures. Instead, {Commerce} should have used the {F2M} log price data as a tier three benchmark for the third-party BC crown stumpage purchases.

GBC Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Rebuttal Brief at 17-24.

> In Section III, the B.C. Parties address Sierra Pacific's arguments that for the third-party B.C. stumpage purchase benchmark, {Commerce} should use log prices derived from the WDOR tax values or, in the alternative, purported 2020 log price data published by {F2M}. In accordance with its consistent prior determinations since the Investigation, {Commerce} should continue to rely on WDNR log offer

[291] *See, e.g.*, *Lumber V AR6 Final* IDM at Comment 8; *Lumber V AR5 Final* IDM at Comment 15; and *Lumber V AR4 Final* IDM at Comment 28.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

prices as the benchmark for West Fraser's purchases of Crown stumpage from third-party tenure holders, and reject the use of WDOR tax values or F2M data for this purpose, for several reasons.

First, {Commerce} correctly rejected the WDOR tax values as an inappropriate benchmark for third-party B.C. stumpage purchases. Sierra Pacific offers no new information or arguments to address {Commerce}'s unresolved concerns regarding the usage of WDOR tax values for this purpose. {Commerce} therefore has no basis to depart from its preliminary decision or longstanding practice in the final results.

That said, if {Commerce} accepts the log prices derived from the WDOR tax values as the third-party B.C. stumpage purchase benchmark, there is no logical basis for {Commerce} to limit that benchmark to a subset of West Fraser's stumpage purchases. That is, in this case, {Commerce} should apply the log-price benchmark to all of West Fraser's stumpage purchases, instead of applying the constructed stumpage benchmark reported in the WDOR tax value tables.

Second, {Commerce} has correctly rejected the F2M data in this and previous reviews as an inappropriate benchmark for third-party B.C. stumpage purchases. Sierra Pacific continues to reiterate the same unsupported arguments that {Commerce} expressly rejected in {AR3}, {AR4}, {AR5}, and {AR6}, in which {Commerce} declined to rely on the very same—and increasingly stale—F2M data. Sierra Pacific yet again fails to address {Commerce}'s evidence-supported reasons for its rejection of the same F2M data in the AR3 to AR6 reviews, and its reasons for rejecting older F2M data since the Investigation. Because Sierra Pacific does not offer any new evidence or arguments that would justify reversal of {Commerce}'s long-held position as to the F2M data, {Commerce} should continue, as it has in the underlying investigation and past reviews, to reject Sierra Pacific's proposed methodologies for measuring the adequacy of remuneration for third-party B.C. stumpage purchases.

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 33-37.

West Fraser presents one paragraph of wholly unsupported argument requesting that {Commerce} revise its beetle-killed benchmark used for the transactions included in West Fraser's stumpage Table 6. It is well established that "a party must articulate its argument; 'issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.'" Accordingly, {Commerce} should dismiss West Fraser's argument in this regard.

{Commerce} should also dismiss West Fraser's argument on the merit. IFG's data also remain verifiable, as they were "cumulated through" the same "methodology

> that allow{ed} Commerce to verify the completeness of the overall log purchase data set from which the blue-stained prices are taken" in prior reviews. The IFG data also represent actual transaction prices, for which {Commerce} has a well-established preference over offer prices. The GBC's contention regarding the reliability of the IFG data is based purely on conjecture. Accordingly, {Commerce} should continue to rely on the IFG data as the benchmark for West Fraser's beetle-killed purchases reported in Table 6 of the stumpage transactions.

Commerce's Position: As in the prior review,[292] we continue to have concerns with using the WDOR stumpage valuations as a log benchmark for third-party tenures. Commerce determined that it was appropriate to use the WDNR log benchmarks in the *Preliminary Results* to calculate the benefit for West Fraser's purchases where they did not submit stumpage payments to the GBC and, therefore, do not know the stumpage price for that timber.[293] 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.

Sierra Pacific argues that Commerce should utilize the underlying log prices from the WDOR stumpage valuations for the third-party purchases.[294] As noted below in Comments 10 and 11[295] and explained in the *Preliminary Results*,[296] information placed on the record of this administrative review demonstrates the specific adjustments which the WDOR makes to generate the stumpage valuations from observed log prices and confirms that no adjustment was made to account for the passage of time.[297] However, as described below we continue to have concerns with using the WDOR stumpage valuations as a log benchmark.

As an initial matter, Commerce has not expressed concerns with the reliability of the WDNR survey data as a *log* benchmark. In *Lumber V AR5 Final*, Commerce determined that the WDNR survey data was not generating a reliable benchmark for *stumpage* prices; however, Commerce continued to find that the WDNR survey data was a preferable log benchmark.[298] In *Lumber V AR6 Final*, Commerce continued to find the WDNR data preferable as a log benchmark.[299] By contrast, Commerce continues to have concerns with deconstructing the WDOR stumpage valuations to the underlying log prices.

Commerce does have a preference for transaction prices, but for the reasons described below, we find that the deficiencies relating to the WDOR stumpage valuations being used as a log benchmark outweigh this preference. While the WDOR data is based on observed log transactions, the WDOR compiles and adjusts these values to represent the price of *stumpage* on

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[292] *See Lumber V AR6 Prelim* PDM at 25-27, unchanged in *Lumber V AR6 Final* IDM at Comment 22.
[293] *See Preliminary Results* PDM at 34-36.
[294] *See* Sierra Pacific Case Brief at 5-6.
[295] *See* Comments 10 and 11, *infra*.
[296] *See Preliminary Results* PDM at 30-34.
[297] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-194; *see also* BC Parties Stumpage Benchmark Rebuttal at 7-11, 40-42, and Exhibit BR-3.
[298] See *Lumber V AR5 Final* IDM at Comment 20.
[299] *See Lumber V AR6 Final* IDM at Comment 22.

a half-year basis.[300] Notably, the WDOR does not publish the underlying log transactions that it uses in constructing the stumpage valuations nor does it disclose the number of observations considered or the precise time period from which they were collected.[301] Information on the record indicates that the stumpage valuations for each half-year period contain an unspecified mix of observed log transactions from three to fifteen months prior to the effective date.[302] The WDNR survey data is reported on a monthly basis and, therefore, a log benchmark that is completely contemporaneous with the POR may be constructed.[303] Furthermore, the WDNR lists the approximate number of quotes considered for each month, reports a more granular breakdown of species, and intends to represent log prices.[304] For these reasons, we continue to find the WDNR survey data a reliable log benchmark and find that deconstructing the WDOR stumpage valuations does not result in an appropriate benchmark for West Fraser's purchases from third-party tenures.

In the alternative, Sierra Pacific argues that Commerce should use the F2M data instead of the WDNR survey data for the final results.[305] In previous reviews, Commerce has declined to use the same F2M data present on the record of this review.[306] Among other issues, one concern Commerce has noted with the F2M data is that it may not provide sufficient pricing for small logs, which West Fraser purchases in significant volumes.[307] Sierra Pacific contends that Commerce has not cited any analysis of West Fraser's third-party purchases, there is no indication on the record that this subset of purchases includes small logs.[308] Accordingly, Sierra Pacific urges Commerce to put aside its previous findings that the record is unclear as to whether the F2M data includes pricing for small diameter logs. We disagree with Sierra Pacific's argument. Sierra Pacific has pointed to no information on the record that would indicate that the profile of logs included in West Fraser's third-party purchases somehow differs from the rest of West Fraser's stumpage purchases or any other information that indicates that these third-party purchases would not include small diameter logs. As in the prior review, Sierra Pacific asserts that the petitioner has placed sufficient evidence on the record demonstrating the coverage of small logs.[309] Sierra Pacific also argues that since the F2M data represents actual transactions prices, Commerce should overlook concerns regarding the non-contemporaneous nature of the data and inflate the prices to POR values.[310] Commerce has found Sierra Pacific's arguments unpersuasive in prior reviews and continues to do so here.[311]

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[300] *See*, *e.g.*, Petitioner BC Stumpage Benchmark Submission at Exhibit 7.
[301] *See*, *e.g.*, GBC Stumpage IQR Response at Exhibit BC-AR7-S-199.
[302] *See* BC Parties Stumpage Benchmark Rebuttal at 40-42 and Exhibit BR-3.
[303] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-217.
[304] *Id*.
[305] *See* Sierra Pacific Case Brief at 5-7.
[306] *See Lumber V AR6 Final* IDM at Comment 22; *see also Lumber V AR5 Final* IDM at Comment 20; *Lumber V AR4 Final* IDM at Comment 17; and *Lumber V AR3 Final* IDM at Comment 20.
[307] *Id*.
[308] *See* Sierra Pacific Case Brief at at 6.
[309] *Id*.
[310] *Id*. at 7.
[311] *See Lumber V AR6 Final* IDM at Comment 22; *see also Lumber V AR5 Final* IDM at Comment 20; *Lumber V AR4 Final* IDM at Comment 17; and *Lumber V AR3 Final* IDM at Comment 20.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

The F2M data that is on the record of this review is the exact same F2M data from 2020 that was on the record of the previous four administrative reviews.[312] 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*, *Lumber V AR4 Final*, *Lumber V AR5 Final*, and *Lumber V AR6 Final* that the WDNR data is preferable to the F2M data from 2020, which are not contemporaneous and may not provide sufficient pricing for small diameter logs that are used to produce lumber and are processed by West Fraser in significant volumes.[313]

At the *Preliminary Results*, Commerce used a separate beetle-killed log benchmark price for the benefit calculation of West Fraser's third-party purchases where they did not pay the stumpage price to the GBC.[314] As discussed below in Comment 12, Commerce continues to find that the presence of beetle-killed timber in British Columbia is a prevailing market condition during the POR.[315] However, unlike in the discussion relation to WDOR benchmark adjustments, where we are comparing a stumpage benchmark to West Fraser's 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. Commerce continues to find it to be appropriate to use a separate beetle-killed log benchmark in these final results for West Fraser's third-party purchases of stumpage where we are utilizing the WDNR log benchmark.

West Fraser argues that Commerce should revise its selection of a beetle-killed log benchmark for the final results.[316] These are the same arguments raised in prior administrative reviews.[317] However, unlike in prior administrative reviews, neither the GBC nor West Fraser have provided an alternative beetle-killed log benchmark. In its case brief, the GBC proposes the use of the Montana Study in the context of the WDOR benchmark but does not propose an alternative methodology for West Fraser's third-party purchases.[318] We address the GBC's arguments related to the Montana Study and the WDOR benchmark below in Comment 12.[319]

Accordingly, we find that the IFG benchmark, which we have used in prior reviews,[320] is the only viable benchmark for beetle-killed logs in this review, and therefore West Fraser's arguments related to the selection of a beetle-killed benchmark for third-party purchases are moot.

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[312] *Id*.
[313] *Id*.
[314] *See Preliminary Results* PDM at 34-36, 44, and 46.
[315] *See* Comment 12, *infra*.
[316] *See* West Fraser Case Brief at 10.
[317] *See Lumber V AR6 Final* IDM at Comment 22; *see also Lumber V AR5 Final* IDM at Comment 20; *Lumber V AR4 Final* IDM at Comment 18; and *Lumber V AR3 Final* IDM at Comment 21.
[318] *See* GBC Case Brief Vol. V at 34-42.
[319] *See* Comment 12, *infra*.
[320] *See Lumber V AR6 Final* IDM at Comment 22; *see also Lumber V AR5 Final* IDM at Comment 20; *Lumber V AR4 Final* IDM at Comment 18; and *Lumber V AR3 Final* IDM at Comment 21.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 10: Whether To Continue to Use WDOR Valuations or Make Adjustments for Respondents' Costs

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 7-20.

> In Section II.A, the B.C. Parties explain that if {Commerce} uses the {WDOR} tax values benchmark, {Commerce} must add the value of tenure obligations incurred by {West Fraser} to West Fraser's cash stumpage payments before comparing these payments to the relevant WDOR tax values. {Commerce}'s preliminary finding that the adjustment is unnecessary because West Fraser's tenure obligation costs "are related to {West Fraser's} long-term tenure rights under various tenure arrangements" is irreconcilable with {Commerce}'s own prior analysis on this same topic in the *Lumber V* investigation Final Determination. Because {Commerce} has acknowledged that the value of "other consideration" is already included in {Commerce}'s benchmark (*i.e.*, the WDOR tax values), it must also be included in the total amount that West Fraser paid for Crown timber to ensure that {Commerce} is making an apples-to-apples comparison.
>
> In Section II.B, the B.C. Parties explain that a proper comparison between the WDOR tax values and B.C. stumpage values also needs to account for the difference between the "harvesting and marketing" costs that the WDOR subtracts from log prices to derive stumpage values (which reflect the least costly harvesting and marketing conditions experienced by Washington State harvesters), and those costs actually incurred by West Fraser. In its *Preliminary Results*, {Commerce} did not properly implement the B.C. Parties' requested adjustment and incorrectly found that it led to a prevalence of negative benchmarks. However, if correctly calculated, the requested adjustment does not lead to negative benchmarks and would address a critical defect in the use of WDOR tax values as benchmark prices.

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 6-8.

> The B.C. Parties case brief explains why {Commerce} should revise its preliminary methodology for assessing whether West Fraser received stumpage from the {GBC} for {LTAR}. In particular, if {Commerce} does not (as it should) revert to its long-established benchmark for BC stumpage based on the {WDNR} log prices, and instead uses a benchmark based on {WDOR} tables used to value stumpage for tax purposes, {Commerce}'s *Preliminary Results* erred in failing to make required adjustments to the WDOR data. {Commerce} acknowledged that the WDOR tables—like {Commerce}'s previously long-established benchmark based on the WDNR log prices—was a derived-stumpage benchmark. That is,

> {Commerce} recognized that the WDOR tables were "stumpage valuations from observed log prices" and were not actual stumpage transactions. However, {Commerce} failed to make the necessary adjustments—including adjustments to reflect the harvesting and marketing adjustments incorporated into the WDOR tables—to derive an accurate stumpage benchmark that accounts for differences between the prevailing market conditions in Eastern Washington and in the British Columbia Interior where West Fraser operates. {Commerce} failed to make these adjustments notwithstanding that West Fraser and other parties provided significant record evidence allowing {Commerce} to make those adjustments. In particular, as detailed below, {Commerce} failed to use the record evidence to make required adjustments in the WDOR amounts for (1) the full remuneration West Fraser paid to GBC to acquire stumpage, (2) the significant differences between the harvest and haul costs incurred by West Fraser and those costs reflected in the WDOR tables, …
>
> …In its *Preliminary Results* {Commerce} justified its decision to ignore these adjustments on the basis that applying them would "generat{e}" a "significant number of negative benchmarks." However, as detailed in the B.C. Parties case brief, (1) {Commerce} mischaracterizes what are in reality negative benefits as "negative benchmarks," and (2) {Commerce} can adjust the WDOR benchmark to reflect West Fraser's costs without resort to the derived-demand benchmark it claims results in "negative benchmarks."

Non-Selected Exporters and U.S. Importers Case Brief

The following is a verbatim summary of the argument submitted by the non-selected exporters and U.S. importers. For further details, *see* Non-Selected Exporters and U.S. Importers Case Brief at 2-10.

> In this review {Commerce} utilized a tier three benchmark to gauge whether the subject producer in British Columbia, West Fraser, received timber for less than adequate remuneration. The benchmark relied on in the {*Preliminary Results*} is a notional stumpage price for timber in certain areas of Washington State that was derived from reported log transactions. The record of this review shows that the benchmark prices include certain costs that are not present in the cost data collected from West Fraser. As a result, there is a mismatch between the basis of the benchmark and the cost data collected. {Commerce} has sufficient reliable information on the record to correct this issue and must do so in the Final Results to ensure an accurate and lawful benefit measurement.
>
> In addition, the Non-Selected Exporters and U.S. Importers adopt and incorporate by reference the arguments made by the mandatory respondents and other Canadian parties in this review.

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 2-3.

> …As discussed in Section II below, {Commerce} properly selected {WDOR} Stumpage Values to measure the adequacy of renumeration for certain stumpage purchases under the {BC Stumpage for LTAR} program…

GBC Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Rebuttal Brief at 5-7.

> In Section II.A, the B.C. Parties explain that if {Commerce} continues to use WDOR tax values as a stumpage benchmark as Sierra Pacific advocates, it must make the adjustments necessary to reflect prevailing market conditions in the B.C. Interior where West Fraser operates. The comprehensive record developed in this review supports revising {Commerce}'s prior benchmark methodology to ensure an apples-to-apples comparison. Specifically, {Commerce} must add the value of West Fraser's tenure obligation costs to its cash stumpage payments when comparing those payments to the WDOR benchmark (Section II.A.1). This adjustment is necessary to capture the full consideration paid or incurred by West Fraser in connection with its purchases of Crown timber and to ensure an accurate benchmark analysis. It should also account for the difference between the "harvesting and marketing" costs that the WDOR subtracts from log prices to derive the WDOR stumpage values and the comparable costs actually incurred by West Fraser in the B.C. Interior (Section II.A.2), or in the alternative make certain other adjustments as discussed 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 2-15 and 21-25.

> {Commerce} reasonably excluded West Fraser's tenure obligation costs in its benefit calculation for the GBC's provision of stumpage. The record demonstrates that prices reported in the WDOR stumpage value tables are pure stumpage prices. Specifically, the {RCW} states that the values in the table should be based on "gross proceeds from sales of logs adjusted to reflect only the portion of such proceeds attributable to value on the stump immediately prior to harvest." The record also demonstrates that the WDOR's Stumpage Value Tables were developed after a rigorous rule-making process to ensure that public input is considered so that the resulting stumpage values reflect fair market value. Accordingly, whether the WDOR's stumpage values include "other consideration" or not is not germane to {Commerce}'s analysis, given that the resulting value published in the WDOR

> stumpage value tables still reflect "value on the stump immediately prior to harvest." Because the benchmark price only reflects the price for stumpage and West Fraser's purchase price also includes only the price for stumpage, {Commerce}'s methodology in the *Preliminary Results* that compares the benchmark price to the respondents' stumpage purchase price without inclusion of the costs of tenure obligations is appropriate and achieves an apples-to-apples comparison.
>
> In the *Preliminary Results*, {Commerce} properly excluded West Fraser's harvesting and haul costs in the benefit calculation, and it properly relied on the WDOR's framework in determining which harvesting conditions warrants an additional adjustment to the values published in the stumpage value tables. {Commerce} accounted for the prevailing market conditions in BC by applying the harvesting adjustments allowed under the WDOR framework. The Canadian Parties failed to explain why {Commerce} must also adjust the benchmark using West Fraser's own harvest and haul costs.
> …
> Fundamentally, the Canadian Parties failed to produce sufficient evidence showing that the forestry conditions in the B.C. Interior are so drastically different from Eastern Washington that, in a market free of government involvement, companies would naturally incur higher harvest and haul costs. West Fraser may have higher harvest and haul costs due to its decision to harvest in certain conditions than the average company in the U.S. {PNW}. This information is insufficient to warrant an adjustment, because the record demonstrates that the BC companies' costs are not consistent with market principles, and accordingly, a benchmark calculation that includes non-market costs would result in a non-market stumpage price. Accordingly, {Commerce} should find, based on the relationship between the stumpage subsidy and BC costs, that the Canadian Parties' arguments for harvest and haul adjustment are without merit.

Commerce's Position: As in the two previous reviews,[321] we find that the WDOR stumpage valuations are the only viable benchmark available on the record of the instant review for calculating the benefit under the British Columbia Provision of Stumpage for LTAR program. Since the WDOR stumpage valuations are constructed to represent only the value on the stump immediately prior to harvest,[322] we find that further adjustment for tenure obligations and other respondent-specific costs are not necessary. West Fraser argues that Commerce should instead use the WDNR log benchmark to measure benefit for this program.[323] The BC Parties argue that Commerce must make adjustments to the WDOR stumpage valuations to account for additional costs incurred by West Fraser.[324] We disagree and address these arguments below.

[321] *See Lumber V AR6 Final* IDM at Comments 16 and 17; *see also Lumber V AR5 Final* IDM at Comments 18 and 19.
[322] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-197.
[323] *See* West Fraser Case Brief at 6.
[324] *See* GBC Case Brief Vol. V at 7-20; *see also* West Fraser Case Brief at 6-8; and Non-Selected Exporters and U.S. Importers Case Brief at 2-10.

In a footnote contained within their case brief, West Fraser argues that Commerce should discontinue its use of the WDOR stumpage valuations and revert to the WDNR survey data.[325] No other party has contested Commerce's decision in selecting the WDOR valuations; however, parties have raised arguments related to Commerce's development of the benchmark and whether Commerce should incorporate West Fraser's tenure obligation costs and harvest and haul costs, which we address below. As an initial matter, we disagree with West Fraser's assertion that the WDNR survey data is more reliable. As Commerce has stated in the previous review, and the *Preliminary Results* of the instant review, the fact that WDOR stumpage valuations are derived from log prices does not preclude Commerce from considering whether the WDOR stumpage valuations, as reported, can serve as a tier-three benchmark.[326] Pursuant to 19 CFR 351.511(a)(2)(iii), Commerce may consider benchmarks that are consistent with market principles when there are no viable tier-one and tier-two benchmarks available.

As the record of this review demonstrates, the WDOR stumpage valuations are created in the normal course of business by a Washington state government agency for the purposes of assessing stumpage excise tax. The WDOR's aim is to develop an accurate representation of the actual private stumpage transactions that took place during the specified time period with consideration of all market factors.[327] The record establishes that these stumpage valuations are constructed through a transparent process pursuant to the WAC and RCW, and includes participation from timber producers.[328] The record also contains evidence that private forest landowners in Washington state consider the WDOR stumpage valuations to be an accurate representation of the market price for stumpage.[329]

In addition to the WDOR stumpage valuations, the record also contains the following log prices as potential tier-three benchmark prices: WDNR log offer prices from the POR, F2M log prices from 2020, and the purported underlying log prices from the WDOR stumpage valuations.[330] As Commerce described in the *Preliminary Results*, the record indicates the derived demand methodology which Commerce used in the investigation and *AR1* through *AR4* is not generating benchmark prices that are consistent with market principles during the POR.[331] Since this methodology is not generating valid stumpage benchmark prices from the log benchmarks on the record, Commerce preliminarily determined that the only viable benchmark data on the record for Commerce to perform a stumpage LTAR comparison in British Columbia are the WDOR stumpage valuations.[332]

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[325] *See* West Fraser Case Brief at 6.
[326] *See Preliminary Results* PDM at 30-34; *see also Lumber V AR6 Final* IDM at Comment 16.
[327] *See Preliminary Results* PDM at 33 (citing Petitioner BC Stumpage Benchmark Submission at Exhibits 7-9).
[328] *Id*. (citing Petitioner BC Stumpage Benchmark Submission at Exhibits 10-27 and 33-40); *see also* GBC Stumpage IQR Response at Exhibits BC-AR7-S-196 and BC-AR7-S-197.
[329] *See Preliminary Results* PDM at 33 (citing Petitioner BC Stumpage Benchmark Submission at Exhibits 28-30).
[330] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-217; *see also* Petitioner BC Stumpage Benchmark Submission at Exhibit 45A through 45C; and *Preliminary Results* PDM at 33 (citing GBC Stumpage IQR Response at Exhibit BC-AR7-S-194).
[331] *See Preliminary Results* PDM at 30-32; *see also* BC Stumpage Analysis Memo at 1-2 and Attachment I.
[332] *See Preliminary Results* PDM at 31-34.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

In the previous review Commerce has addressed, at length, why a log benchmark, in general, is no longer viable for measuring the adequacy of renumeration with respect to stumpage.[333] In the instant review we evaluated the log benchmarks on the record using the derived demand methodology and the results indicated that a viable stumpage benchmark could not be generated from any of the log benchmarks present .[334] Consequently, the WDOR stumpage valuations, as reported, are the only viable tier-three benchmark on the record of this administrative review. Because the WDOR stumpage valuations (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 stumpage valuations 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.

Commerce has previously rejected proposed adjustments to the WDOR stumpage valuations for costs incurred by respondents – including tenure obligation costs and harvest and haul costs.[335] The GBC argues that new information on the record of this review warrants a reconsideration of Commerce's previous determination.[336] Furthermore, with respect to the proposed adjustment for tenure obligation costs, the GBC argues that Commerce misunderstood the proposed methodology for adjustment.[337] After a review of the new information present on the record of this review, we continue to find that adjusting the WDOR stumpage valuations for West Fraser's own costs is not appropriate. Furthermore, we disagree with the GBC's proposed methodology of *adding* tenure obligation costs to "the stumpage paid in cash" by West Fraser.

As an initial matter, we reject the GBC's argument that Commerce's treatment of West Fraser's costs in the calculation of benefit for the BC stumpage for LTAR program is inconsistent with Commerce's findings in the investigation and *AR1* through *AR4*. It should be noted that each proceeding and case record stands on its own, and Commerce must evaluate the evidence on the record of this instant review. Any conclusions that Commerce made in relation to British Columbia in previous lumber proceedings are not binding on the instant segment of the proceeding as the benchmarks from prior segments are not the same in the instant one. In the investigation and *AR1* through *AR4*, there was no *stumpage* benchmark to measure the adequacy of renumeration for standing timber in British Columbia on the record. Accordingly, in the investigation and *AR1* through *AR4*, Commerce relied on a *log* benchmark utilizing a derived demand methodology to generate stumpage valuations.[338] In the instant segment of the proceeding, a stumpage benchmark is available on the record, and Commerce does not find it necessary to consider log benchmarks or use the derived demand methodology which is no

[333] *See Lumber V AR6 Final* IDM at Comment 16.
[334] *See* BC Stumpage Analysis Memo at 1-2 and Attachment I.
[335] *See Lumber V AR6 Final* IDM at Comment 17.
[336] *See* GBC Case Brief Vol. V at 8-9 (citing *Preliminary Results* PDM at 32); *see also* GBC Stumpage IQR Response at Exhibit BC-AR7-S-194; and BC Parties Stumpage Benchmark Rebuttal at 7-11.
[337] *See* GBC Case Brief Vol. V at 16-19 (citing GBC Stumpage IQR Response at Exhibit BC-AR7-S-194).
[338] *See Lumber V AR4 Prelim* PDM at 26-28 and 31-35, unchanged in *Lumber V AR4 Final* IDM at Comment 13; *see also Lumber V AR3 Prelim* PDM at 31-34 and 37-41, unchanged in *Lumber V AR3 Final* IDM at Comment 20; *Lumber V AR2 Prelim* PDM at 29-31 and 33-38, unchanged in *Lumber V AR2 Final* IDM at Comment 21; *Lumber V AR1 Prelim* PDM at 26-27 and 30-34, unchanged in *Lumber V AR1 Final* at Comment 15; and *Lumber V Prelim* PDM at 46-50 and 52-55, unchanged in *Lumber V Final* IDM at Comment 21.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

longer generating valid stumpage benchmark prices.[339] As Commerce is no longer applying the derived demand methodology utilized in the investigation and *AR1* through *AR4*, it is not necessary for Commerce to deduct costs incurred by the respondent from log transactions. The benchmark that Commerce is utilizing is intended to represent, *as reported*, the value of *stumpage*, and thus does not require further adjustment to arrive at a stumpage value. Below we analyze whether it is appropriate to apply the adjustments proposed by the GBC, West Fraser, and the Non-Selected Companies to a *stumpage* price.[340]

Tenure Obligation Costs

The BC Parties argue that Commerce must make an adjustment to account for the respondents' tenure obligations, which the BC Parties assert is equivalent to "other considerations" as defined in the WAC.[341] Tenure obligations, as the GBC notes, are legal requirements that the respondents must meet to access and harvest timber on Crown land.[342] Tenure obligations include costs for forest management administration, development, road management, and silviculture.[343] Costs associated with these tenure obligations are borne by the respondents and are not included in the payments for stumpage. As the GBC explains, the stumpage rate calculated by the MPS recognizes that the tenure holder will need to incur separate costs to carry out silviculture and forest management operations.[344]

The GBC argues that Commerce is not engaging in an "apples-to-apples" comparison as the "stumpage paid in cash" by West Fraser does not include costs associated with tenure obligations while the WDOR stumpage valuations purportedly contain "other considerations," which the GBC asserts are equivalent to the tenure obligation costs.[345] We disagree. While we acknowledge that there is an email exchange on the record with Paul Stuart, the WDOR official responsible for compiling the stumpage valuation tables, which appears to indicate that a specific deduction for "other considerations" is not made in the construction of the tables,[346] there is no evidence that "other considerations" are affirmatively *included* in the original price reported to the WDOR. In the same email exchange that the GBC relies on, Paul Stuart goes on to say, "…the department has no information regarding what 'other considerations' may have occurred for wood on the east side."[347] Furthermore, the record contains a sworn affidavit from Paul Stuart, the same WDOR official whose email the GBC cites.[348] In his affidavit, Mr. Stuart states:

> …Because the goal is to determine the value of private timber, the WDOR only includes transaction data of logs originating from private timberlands in developing the stumpage value tables for areas 6 and 7. The transaction data includes the

[339] *See* BC Stumpage Analysis Memo at 1-2 and Attachment I.
[340] *See* GBC Case Brief Vol. V at 7-20; *see also* West Fraser Case Brief at 6-8; and Non-Selected Exporters and U.S. Importers Case Brief at 2-10.
[341] *Id*.
[342] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-1.
[343] *Id*.
[344] *Id*. at 105-106.
[345] *See* GBC Case Brief Vol. V at 11-12.
[346] *See* BC Parties Stumpage Benchmark Rebuttal at Exhibit BR-3.
[347] *Id*.
[348] *See* Petitioner BC Stumpage Benchmark Submission at Exhibit 7.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> volumes and purchase prices of logs and does not include other extraneous costs such as road maintenance…
>
> … Ultimately, the goal of the WDOR's stumpage value table is to develop the fair market value of stumpage (*i.e.*, tree on the stump) in consideration of all relevant market factors.[349]

There is also evidence on the record indicating that landowners and tax experts in Washington state consider the WDOR valuations to represent a pure stumpage price.[350] The record of this review contains a sworn affidavit from Mike Buffo, a tax consultant for the WFPA, a trade association representing private forest landowners in Washington state, who has experience analyzing the WDOR stumpage valuations.[351] Mr. Buffo states:

> Based on my knowledge and experience, it is my understanding that the WDOR calculates the stumpage value tables accurately, in good faith, and in consideration of all relevant market factors. Additionally, based on my knowledge and experience, and the experience of the WFPA as expressed to me, the WDOR stumpage values as published reflect the fair market value of stumpage in the given areas. It is also my understanding that the stumpage value tables reflect pure stumpage prices and do not include costs unrelated to the price of standing timber.[352]

The WDOR stumpage valuations are constructed through a transparent process that includes participation from timber producers.[353] The WDOR regularly holds public hearings and accepts comments on proposed regulations, as well as the accuracy of stumpage valuation tables prior to their publication. There is evidence on the record that participants in public hearings provided oral comments affirming that the proposed stumpage valuation tables accurately reflected the fair market price of stumpage in Eastern Washington.[354]

Furthermore, pursuant to the rules and regulations adopted by Washington state, the WDOR stumpage valuation tables are required to represent only the pure *stumpage* price. Specifically, at section 84.33.091 the RCW states:

> These stumpage values, expressed in terms of a dollar amount per thousand board feet or other unit measure, shall be determined in a manner which makes reasonable and adequate allowances for age, size, quality, costs of removal, accessibility to point of conversion, market conditions, and all other relevant factors from: …Gross proceeds from sales of logs adjusted to reflect only the portion of such proceeds attributable to value on the stump immediately prior to harvest.[355]

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[349] *Id*.
[350] *Id*. at Exhibits 28-30.
[351] *Id*. at Exhibit 28.
[352] *Id*.
[353] *Id*. at Exhibits 10-27 and 33-40.
[354] *Id*. at Exhibits 25-27.
[355] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-197.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

The totality of evidence on the record of the instant segment of the proceeding indicates that the WDOR stumpage valuations reflect the fair market price of stumpage. Based on the foregoing, we find that the WDOR stumpage valuations are a pure stumpage benchmark on the same basis as the "stumpage paid in cash" by West Fraser. Therefore, no further adjustment is necessary to conduct an apples-to-apples comparison.

Even if assuming, *arguendo*, we agreed that an adjustment for "other considerations" was warranted, we disagree with the GBC that adding West Fraser's tenure obligation costs to the price paid for stumpage would be appropriate. The record is clear that tenure obligation costs are not part of the stumpage price and are not paid to the GBC.[356] 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. Therefore, adding the tenure obligation cost to the "stumpage paid in cash" by West Fraser would distort the calculation of benefit by adding long-term costs on one side of the equation (West Fraser's purchase price), with a pure stumpage valuation, representing only the proceeds attributable to value on the stump immediately prior to harvest, on the other side of the equation (WDOR stumpage valuation). As Commerce has repeatedly found in the context of the Alberta stumpage for LTAR program, costs associated with long-term tenure rights are separate from and substantively different than the stumpage price.[357] As noted above, much like the provision of stumpage in Alberta, reforestation obligations for Crown tenure holders in British Columbia are billed and paid separately from stumpage.[358]

Furthermore, there is no evidence on the record that adding West Fraser's costs to the stumpage price paid to the GBC would result in an adjustment that is equivalent to the reduction the GBC makes to the administratively-set price to remove those tenure obligations. The Tenure Obligation Adjustments portion of the MPS equation that reduces the administratively set stumpage price in British Columbia is a complicated calculation that cannot be replicated by Commerce based on the information on this record.[359] Importantly, there is no basis on this record that supports a determination that adding West Fraser's costs on a one-to-one basis is equivalent to the TOA adjustment that the GBC calculates when setting its stumpage prices.

Harvest and Haul Costs

The BC Parties argue that Commerce must make an adjustment to account for differences in the harvest and haul costs between the BC respondents and those utilized by the WDOR to construct the stumpage valuations.[360] Furthermore, the GBC argues that Commerce misunderstood the methodology for adjusting the WDOR stumpage valuations using West Fraser's harvest and haul costs as outlined in the Hart Report.[361] The GBC explains that, following the Hart Report, Commerce should only deduct the columns in West Fraser's reporting titled "Harvesting

[356] *See*, *e.g.*, West Fraser Stumpage IQR Response at Exhibit WF-AR7-BCST-20a.
[357] *See Lumber V AR6 Final* IDM at Comment 7; *see also Lumber V AR5 Final* IDM at Comment 17; and *Lumber V AR4 Final* IDM at Comment 7.
[358] *Id.*; *see also*, *e.g.*, West Fraser Stumpage IQR Response at Exhibit WF-AR7-BCST-20a.
[359] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-165.
[360] *See* GBC Case Brief Vol. V at 13-20; *see also* West Fraser Case Brief at 8; and Non-Selected Exporters and U.S. Importers Case Brief at 4-6.
[361] *See* GBC Case Brief Vol. V at 16-19.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

(includes stand to roadside costs)" and "Roadside to Mill Costs" from the WDOR stumpage valuations, rather than all the costs contained in West Fraser's reporting. The GBC argues that, when "properly" following this methodology, negative benchmarks are not generated in meaningful numbers.[362] We acknowledge that a meaningful number of negative benchmarks are not generated when we deduct only the "Harvesting (includes stand to roadside costs)" and "Roadside to Mill Costs" from the WDOR stumpage valuations; however, we do not find this to be an appropriate methodology for measuring the adequacy of remuneration of West Fraser's stumpage purchases.

As discussed above, in the investigation and *AR1* through *AR4*, Commerce utilized a derived demand methodology where the respondents' own costs (including *all* harvest and haul costs) were deducted from a *log* benchmark. The BC Stumpage Analysis Memo referenced by the GBC and the Non-Selected Companies is not intended to evaluate whether making an additional harvest and haul adjustment to a *stumpage* benchmark is appropriate but rather was included to demonstrate that Commerce's derived demand methodology, in general, is not generating valid benchmark prices when starting with a *log* price.[363] We disagree with the Non-Selected Companies that this is an "outcome-based approach."[364] Rather, this memorandum demonstrates that when using the log prices on the record of the instant review with Commerce's derived demand methodology, Commerce is unable to generate a viable stumpage benchmark.[365] Notably, the negative benchmarks are generated *before* Commerce even begins the benefit calculation. Therefore, Commerce is unable to proceed with measuring the adequacy of remuneration of West Fraser's stumpage purchases because the derived demand methodology is not producing a valid benchmark. Furthermore, Commerce only relied on this derived demand methodology in the investigation and *AR1* through *AR4* because there was no *stumpage* benchmark available for Commerce to consider. That is not the case in the instant review. The review of this record contains a stumpage benchmark, and, thus, Commerce does not need to utilize the derived demand methodology. Furthermore, unlike the log benchmarks that Commerce previously relied on, the WDOR stumpage valuations include adjustments for harvest and haul cost, which Commerce has implemented.[366]

In a footnote contained in its case brief, West Fraser asserts that the WDOR is incentivized to minimize the costs deducted from the taxable values listed on the stumpage tables.[367] There is no evidence on the record of this review to support this assertion, and West Fraser does not cite to any source documentation to support its claim. As discussed throughout this comment, the record demonstrates that the WDOR constructs its stumpage valuations in a transparent manner, and market participants consider the WDOR stumpage valuations to be an accurate representation of the market price for stumpage.[368] Accordingly, we do not agree with West Fraser's claim that the WDOR is incentivized to minimize cost deductions. The GBC explains that the harvesting and marketing costs which the WDOR deducts for the stumpage valuations

[362] *Id*.
[363] *Id*.; *see also* Non-Selected Exporters and U.S. Importers Case Brief at 4 (both citing BC Stumpage Analysis Memo at 1-2 and Attachment I).
[364] *See* Non-Selected Exporters and U.S. Importers Case Brief at 4.
[365] *See* BC Stumpage Analysis Memo at 1-2 and Attachment I.
[366] *See* Comment 11, *infra*.
[367] *See* West Fraser Case Brief at 8.
[368] *See*, *e.g.*, Petitioner BC Stumpage Benchmark Submission at Exhibits 10-30 and 33-40.

represent Class 1 harvesting expenses in Eastern Washington, which are the least costly harvesting and marketing conditions experienced in Washington state.[369] Because of this, the GBC asserts the WDOR's harvesting and marketing costs are artificially low, and that when paired with higher harvesting costs in British Columbia due to more remote logging operations, the benefit analysis is distorted.[370] Accordingly, the GBC argues, Commerce should adjust the WDOR stumpage valuations by deducting West Fraser's own harvest and haul costs rather than using the WDOR harvesting adjustments provided with the WDOR stumpage valuation tables.[371] We disagree and address these arguments below.

As an initial matter, in previous reviews, Commerce found that there was no information on the record to demonstrate that remote logging operations in British Columbia represent a prevailing market condition unique to British Columbia when compared to Eastern Washington state.[372] The BC Parties have placed no new information on the record of this review that would lead Commerce to reconsider its findings. The Class 1 harvesting expenses listed on the WDOR stumpage valuations, which the GBC points to, are merely the baseline at which the stumpage valuation calculation begins.[373] The attached stumpage value table adjustments provide a variety of permitted adjustments to account for variations in harvesting conditions.[374] As discussed below in Comment 11, Commerce finds that these adjustments are part of the WDOR's stumpage valuations and will make them where appropriate and when there is complete information on the record.[375] Accordingly, Commerce is already considering the variations in harvesting conditions that the BC Parties claim is driving the higher harvesting and haul costs experienced by the BC respondents. As discussed at length in this comment, Commerce finds that the WDOR stumpage valuations reflect market principles and are representative of the market price for stumpage in Eastern Washington state. While the record continues to indicate that the WDOR stumpage valuations are based on survey data collecting information on log transactions and harvesting conditions,[376] the final valuation is intended to represent a price for *stumpage*. As discussed in Comment 11 below, this valuation considers variations in harvesting conditions.[377] Accordingly, Commerce is comparing the respondents' stumpage price with a stumpage benchmark and has determined that no additional adjustments are warranted.

[369] *See* GBC Case Brief Vol. V at 14 (citing BC Parties Stumpage Benchmark Rebuttal at 17-19).
[370] *Id*.
[371] *Id*. at 15-19.
[372] *See Lumber V AR6 Final* IDM at Comment 17; *see also Lumber V AR5 Final* IDM at Comment 19.
[373] *See* Petitioner BC Stumpage Benchmark Submission at Exhibits 1-4.
[374] *Id*.
[375] *See* Comment 11, *infra*.
[376] *See*, *e.g.*, GBC Stumpage IQR Response at Exhibits BC-AR7-S-198 and BC-AR7-S-203.
[377] *See* Comment 11, *infra*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 11: Whether To Revise the Application of the WDOR Stumpage Value Table Adjustments and Use the Second Half 2025 Tables

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 20-34.

> In Section II.C, the B.C. Parties explain that if {Commerce} declines to adjust the WDOR tax values to properly account for West Fraser's actual harvest and haul costs, as it should, {Commerce} must apply all adjustments authorized under the WDOR framework to all qualifying timbermarks. First, consistent with the WDOR's practice, {Commerce} should apply certain harvest adjustments to account for West Fraser's remote harvest conditions, which {Commerce} failed to address in the *Preliminary Results*. Second, {Commerce} should correct its application of the timber density adjustment by properly incorporating the WDOR Small Log benchmark and the appropriate conversion ratios for West Fraser's beetle-killed timber. These corrections will remedy the *Preliminary Results*' overstatement of the average density of West Fraser's timbermarks and ensure the proper identification of all timbermarks eligible for the timber density adjustment.
>
> In Section II.D, the B.C. Parties explain that {Commerce}'s use of an inaccurate Small Log metric inflated the stumpage benchmark in the *Preliminary Results*. Because there is no reasonable basis for {Commerce} to depart from the WDOR's Small Log benchmark, {Commerce} should apply the WDOR's Small Log benchmark in the final results.
>
> In Section II.E, the B.C. Parties demonstrate that if {Commerce} continues to use a WDOR tax value benchmark, {Commerce} must ensure that the data reflect market prices and cost conditions prevailing during the entire AR7 POR by considering the WDOR's tax tables for the first half and second half 2025 tax reporting periods.

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 4-14.

> In the *Preliminary Results*, {Commerce} applied the cable logging adjustment to West Fraser's relevant stumpage purchases. Beginning with the fifth administrative review, {Commerce} has used the {WDOR} stumpage valuations as the benchmark for measuring the provision of stumpage for LTAR in British Columbia. In addition to adopting the WDOR's stumpage valuations, {Commerce} also determined that it will follow the WDOR's adjustment methodology, as the WDOR is in the best position to understand which market conditions are accounted

for in the broad average price across Eastern Washington published in the stumpage value tables and which conditions are not.

Under the WDOR's tax reporting instructions, a -$50 per MBF adjustment "may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation." The BC Parties claim that {Commerce} should adjust for West Fraser's use of cable logging on harvest areas with a slope less than 40%. The BC Parties assert that the Workers Compensation Act, which regulates "Forestry Operation and Similar Activities," "sets limitations on the use of certain ground skidding equipment on slopes exceeding 35, 40, and 50 percent." The language of the Workers Compensation Act, however, does not contemplate cable logging, much less require it. Instead, the Workers Compensation Act sets general limits on the use of ground-based harvesting equipment on certain slopes, while permitting the use of such equipment "beyond the maximum slope operating stability limits" if "a qualified person conducts a risk assessment" and if there are proper written safe work practices in place. In other words, the Workers Compensation Act provides flexibility regarding the use of ground-skidding equipment on sloped areas. The Workers Compensation Act does not—under any circumstances—require cable logging in any harvest areas.

The BC Parties did not provide any proof that cable logging is required for certain circumstances under other laws or regulations. As such, {Commerce} should reject the BC Parties' request for the cable logging adjustment.

In the *Preliminary Results*, {Commerce} "preliminar{il}y appl{ied} the thinning adjustment following the instructions on the WDOR tables." In order for {Commerce} to apply the thinning adjustment, four elements must be met.

The first element requires that "the total volume removed is less than forty percent of the total merchantable volume of the harvest unit prior to harvest." The BC Parties have failed to put on the record any evidence corroborating the information in Exhibit BR-6 concerning West Fraser's purported thinning activities.

The second element of the thinning adjustment requires the harvester to leave "a minimum of eighty undamaged" trees per acre. The BC Parties failed to offer evidence or argumentation that this requirement has been met. The only evidence on the record to support the claim that the BC Parties left a minimum of eighty undamaged trees per acre is the statement that "'Remaining Stems/Acre' (Column I) . . . converts from hectares to acres to arrive at the remaining trees per acre—for the timbermarks listed, all show more than 80 trees per acre." Notably omitted from this statement is any discussion about the nature of the standing trees.

The third element requires that the eighty trees per acre are evenly spaced. Here, again, the BC Parties failed to produce sufficient evidence showing that West Fraser met this requirement. In this instance, the BC Parties assert that "West Fraser has identified the type of thinning used for each timber mark" and that these methods

"involve different methods of identifying and removing specific trees." However, merely describing the type of thinning used on a timbermark does not indicate that this methodology was actually used or properly executed.

The final element of the thinning adjustment requires that the eighty trees per acre must be "dominant or codominant trees . . . of a commercial species or combination thereof." The BC Parties failed to address this element entirely.

Therefore, in the final results, {Commerce} should reject the BC Parties' request for the thinning adjustment.

GBC Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Rebuttal Brief at 7-17.

As explained above, {Commerce}, for the sake of an accurate comparison, must account for the actual harvest and haul costs borne by West Fraser. In Section II.B, the B.C. Parties explain that, if {Commerce} fails to adjust the WDOR benchmark based on the actual harvest and haul costs that West Fraser paid during the POR, it must continue to apply all adjustments permitted under the WDOR's framework to ensure the most accurate comparison. This includes adjustments to account for West Fraser's use of cable logging and thinning harvest operations during the POR. Although Petitioner challenges {Commerce}'s application of these adjustments in the Preliminary Results, there is record evidence to support both adjustments. Accordingly, there is no basis for {Commerce} to depart from its preliminary treatment of these adjustments, and {Commerce} should continue to apply them 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 16-21, 25-27, and 40-43.

The Canadian Parties request {Commerce} to create new adjustment categories wholly untethered to the WDOR framework to accommodate West Fraser's harvests during the POR. The Canadian Parties argue that the relevant remote harvest conditions (*i.e.*, the use of logging camps, extended cycle times, harvests in highly remote timbermarks, and the use of lake tow) are "specific to the B.C. Interior" and thus are "atypical" conditions in Eastern Washington. However, the Canadian Parties provided no evidence to support this claim. The Canadian Parties argue that the GBC regards such harvesting conditions as higher costs and provides a downward adjustment to the Crown stumpage rate for these harvests. How the GBC decides to price its Crown stumpage under various harvesting conditions is the GBC's prerogative. But incorporating this price setting policy into the benchmark would result in a "circular" analysis because "the benchmark price

would reflect the very market distortion which the comparison is designed to detect."

The Canadian Parties argue that {Commerce}'s selected data cover certain periods that are prior to the POR (*i.e.*, April 2023 to December 2024) while leaving out three months of the POR (*i.e.*, October 2024 to December 2024). They argue that {Commerce} should use "WDOR's tax tables for the first half and second half 2025 tax reporting periods." However, the Canadian Parties' proposed data selection also cover certain periods outside of the POR.

{Commerce} has consistently stated that "benchmarks do not require perfection," and that data that "overlapped with nine of the twelve months of the . . . POR . . . were sufficiently contemporaneous." Similarly, {Commerce}'s data selection in the *Preliminary Results* also overlapped with nine of the twelve months of the POR. {Commerce}'s reliance on these data is consistent with the agency's existing practice. Accordingly, {Commerce} should maintain its benchmark data selection in the final results.

In the *Preliminary Results*, {Commerce} calculated a proportion of West Fraser's harvest that constituted "small logs" for purposes of applying a separate benchmark and calculating a timber density adjustment. Specifically, {Commerce} noted that the "breakpoint for small logs" as set by the WDOR was a seven-inch top diameter. {Commerce} estimated that this equated roughly to 8 rads or less, based on the GBC's own reporting. However, the BC Partes assert that the upper limit as defined by the WDOR is actually 7.49 inches in top diameter, or 9.5 rads. This is not supported by the record.

The WDOR's regulations define "small logs" as "{a}ll conifer logs excluding redcedar harvested in stumpage value area 6 or 7 generally measuring seven inches or less in scaling diameter." The BC Parties argue that "in the Scribner Short log rule used in Eastern Washington, a scaling diameter of seven inches includes logs with top diameters ranging from 6.5 inches to 7.49 inches." This is based on discussion from Matthew Fonseca about the log scaling procedures published by US Forest Service in the 1985 *National Forest Log Scaling Rules*. However, the GBC fails to establish that this is what the WDOR meant. The WDOR's definition provides that "{l}og diameter and length is measured in accordance with the Eastside Log Scaling Rules developed and authored by the Northwest Log Rules Advisory Group." The BC Parties did not cite to any record evidence establishing that these Eastside Log Scaling Rules follow the same procedures outlined in the *National Forest Log Scaling Rules*. In the absence of such information, {Commerce} must rely on the plain language of the WDOR's definition, which clearly establishes that small logs measure "seven inches or less" in diameter. This equates to 3.5 inches in radius, or 8.89 centimeters, *i.e.*, 8.89 rads. Accordingly, {Commerce}'s categorization of logs less than 9 rads as "small" is the best possible approximation given the format of West Fraser's log diameter reporting.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> {Commerce} should therefore reject the BC Parties' request to amend the cutoff point for small logs in the final results.
>
> As explained elsewhere in this brief, {Commerce} should reject the BC Parties' request to amend its timber density analysis calculations by way of enlarging the volume of stumpage considered to be "small." {Commerce} should also reject the BC Parties' argument that the agency should apply special conversion factors from the Dual-Scale study to beetle-killed timber as part of its application of this adjustment. {Commerce} has consistently found that separate conversion factors for beetle-killed timber were not appropriate and that both the initial and most recent Dual-Scale Study were unreliable. As noted in the *Preliminary Results*, the BC Parties have not provided an updated study for this review, nor have they provided any semblance of argumentation as to why {Commerce} should reverse course now. Accordingly, to the extent that {Commerce} maintains a timber density adjustment in the final results, it should continue to use a single conversion factor for all of the timber volume under examination.

West Fraser Rebuttal Brief

The following is a verbatim summary of the argument submitted by West Fraser. For further details, *see* West Fraser Rebuttal Brief at 1-4.

> If {Commerce} continues to use its benchmark derived from the WDOR tax value tables, it must continue to apply the adjustments provided for in those tables, including the adjustment for cable logging. Petitioner asserts two contrary arguments, neither of which has any merit.

Commerce's Position: As in the previous review, we have determined that it is appropriate for Commerce to follow the WDOR's instructions regarding various potential adjustments when calculating an appropriate benchmark for West Fraser's stumpage purchases.[378] Parties have raised various arguments related to Commerce's implementation and adjustment of the WDOR stumpage valuations. Specifically, the GBC argues that Commerce should: (1) apply additional adjustments to account for West Fraser's remote harvests, (2) revise the calculation of the timber density adjustment, (3) revise the classification of small logs, and (4) include the WDOR tables for the second half of 2025.[379] The petitioner argues that Commerce should: (1) not apply an additional slope adjustment for certain timbermarks where cable logging was used, and (2) not apply a thinning adjustment.[380] We address these specific arguments below.

On a biannual basis, the WDOR publishes tax reporting instructions which contain stumpage value tables and harvest adjustment tables for eastern and western Washington state.[381] The

[378] *See Lumber V AR6 Final* IDM at Comment 18.
[379] *See* GBC Case Brief Vol. V at 20-34.
[380] *See* Petitioner Case Brief at 4-14.
[381] *See* GBC Stumpage IQR Response at Exhibits BC-AR7-S-196 through BC-AR7-S-198, and BC-AR7-S-200; *see also* Petitioner BC Stumpage Benchmark Submission at Exhibits 1 through 6 and 8 through 10.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

WDOR divides Washington state by geographic region into nine stumpage valuation areas.[382] SVAs 6 and 7 correspond to Eastern Washington,[383] and the valuations from these SVAs serve as the basis for our stumpage benchmark.[384] For each biannual period, the stumpage value table indicates the starting valuation by species for each SVA.[385] The instructions explain that certain adjustments should be made to these starting valuations to account for varying harvesting conditions based on the criteria outlined.[386] The harvest adjustment tables list the permitted adjustments by category for each SVA.[387] Since the harvesting condition adjustments are necessary to reflect the WDOR's intent in setting the stumpage valuations, we find it appropriate to apply the adjustments to the starting valuations in determining the benchmark price to match to the respondents' purchases from a specific timbermark when the respondents have demonstrated a timbermark meets the WDOR's criteria for an adjustment. This is consistent with our practice in the prior review.[388] Under this framework, Commerce will consider whether: (1) the respondents' purchases appropriately correspond to the criteria for the WDOR adjustments, and (2) we have complete data on the record that would allow us to implement this adjustment. During the POR, the WDOR allowed for the following harvesting adjustments in Eastern Washington: 1) Slope Adjustment, 2) Timber Density Adjustment, 3) Thinning Adjustment, and 4) Remote Island Adjustment.[389] We individually analyze each of these harvesting adjustments below, as well as, arguments related to the identification of small log and adjustments for the time period of the valuations.

Slope Adjustment

The petitioner argues that the evidence on the record does not support the application of an additional slope adjustment for timbermarks where cable logging was utilized.[390] We disagree. The WDOR stumpage valuation tables provide for four classes of logging condition adjustments based on the slope and harvesting methods required for the harvest unit.[391] The tables in effect during the POR indicate that Class 1 applies when the majority of the harvest unit has less than 40 percent slope, Class 2 applies when the majority of the harvest unit has slopes between 40 percent and 60 percent Class 3 applies when the majority of the harvest unit has slopes over 60 percent and Class 4 applies when helicopter yarding is utilized.[392] Further, the WDOR's instructions state:

> A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation

[382] *See* Petitioner BC Stumpage Benchmark Submission at Exhibits 1 through 4.
[383] *Id*.
[384] *See Preliminary Results* PDM at 30-34 and 38-43 (citing Petitioner BC Stumpage Benchmark Submission at Exhibits 2 and 3).
[385] *See* Petitioner BC Stumpage Benchmark Submission at Exhibit 2 at page 13 and Exhibit 3 at page 13.
[386] *Id*. at Exhibit 2 at pages 4-9 and Exhibit 3 at pages 4-9.
[387] *Id*. at Exhibit 2 at page 11 and Exhibit 3 at page 11.
[388] *See Lumber V AR6 Final* IDM at Comment 18.
[389] *See* Petitioner BC Stumpage Benchmark Submission at Exhibits 2 through 3.
[390] *See* Petitioner Case Brief at 4-11.
[391] *See* Petitioner BC Stumpage Benchmark Submission at Exhibit 2 at page 11 and Exhibit 3 at page 11.
[392] *Id*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> of this requirement must be provided by the taxpayer to the department of revenue.[393]

The petitioner asserts that: (1) the documentation that the GBC provided does not indicate that cable logging was required in the timbermarks on which it was performed,[394] and (2) other aspects of the application of cable logging did not conform to the WDOR's regulations.[395] The details of these other aspects are proprietary in nature, and we address them in greater detail in the BC Stumpage Final BPI Memorandum.[396]

As the GBC notes,[397] West Fraser and the GBC have provided documentation of the regulations governing the types of harvesting equipment that can be used in British Columbia.[398] Part 26 of the *Workers Compensation Act* titled "Forestry Operations and Similar Activities" progressively restricts the use of certain ground-skidding equipment on slopes exceeding 35, 40, and 50 percent.[399] Specifically, at 26.16 the *Workers Compensation Act* states:

> (2) If the manufacturer's maximum slope operating stability limit for logging equipment is known, the equipment must be operated within that limit.
>
> (3) If the manufacturer's maximum slope operating stability limit for logging equipment is not known, the equipment must be operated within the following limits: (a) a rubber tired skidder must not be operated on a slope which exceeds 35%; (b) a crawler tractor, feller buncher, excavator and other similar equipment must not be operated on a slope which exceeds 40%; (c) any other forestry equipment specifically designed for use on a steep slope must not be operated on a slope which exceeds 50%.[400]

Based on the plain language reading of the WDOR's instructions, we find that the *Workers Compensation Act* places restrictions on the type of harvesting equipment that may be used based on the slope and satisfies the meaning of "a duly promulgated forest practice regulation." The petitioner has also made arguments regarding the harvesting methods utilized on specific timbermarks, which are proprietary in nature.[401] We discuss those arguments further in the BC Stumpage Final BPI Memorandum.[402] However, we do not find the petitioner's arguments to be convincing and continue to apply a Class 2 adjustment on West Fraser's Class 1 timbermarks where cable logging was utilized.

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[393] *Id*.
[394] *See* Petitioner Case Brief at 4-8.
[395] *Id*. at 8-11.
[396] *See* BC Stumpage Final BPI Memorandum.
[397] *See* GBC Rebuttal Brief at 10-12.
[398] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-100.
[399] *Id*.
[400] *Id*.
[401] *See* Petitioner Case Brief at 8-11.
[402] *See* BC Stumpage Final BPI Memorandum.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Timber Density Adjustment

The GBC argues that Commerce should not use its own conversion factors and small log breakpoint to reclassify which timbermarks are eligible for the timber density adjustment.[403] We disagree. In the previous review Commerce's questionnaire asked the GBC to report, "whether timbermarks included harvest of more (report "1") or less (report "2") than 8 thousand board feet per acre," without requesting the underlying information necessary to replicate the calculations.[404] In the final decision memorandum of the previous review we acknowledged that the GBC utilized conversion factors which had never been adopted by Commerce, but accepted the GBC's reporting because it was consistent with the aforementioned questionnaire.[405] In the instant review, we have complete information regarding West Fraser's total harvest unit volume and the total harvest unit acreage for each timbermark,[406] which enables Commerce to make its own calculations following the WDOR's methodology. We find it appropriate to utilize the same conversion factors and small log breakpoint which we have relied on in our benefit calculations. As complete information is now available on the record, we no longer find it appropriate to rely on the GBC's self-reporting, which, as noted above and discussed in the previous review,[407] continue to rely on conversion factors that have never been adopted by Commerce. Furthermore, no party has alleged that Commerce has made ministerial errors in its calculation. Therefore, Commerce continues to rely on its own calculations for the implementation of the timber density adjustment for the purposes of these final results.

Thinning Adjustment

The petitioner argues that Commerce should not apply the thinning adjustment for the final results as the GBC has purportedly not provided complete support for the WDOR's criteria in granting this adjustment.[408] We disagree. In the previous administrative review Commerce declined to apply the thinning adjustment because it was not in effect on one of the two WDOR stumpage valuation tables that Commerce utilized to construct the stumpage benchmark.[409] Commerce stated, "Commerce does not find it appropriate to make the thinning adjustment in this administrative review as Commerce constructs its BC stumpage benchmark on an annualized basis."[410] In the instant review, the thinning adjustment is present on both tables used to construct the stumpage benchmark.[411] Accordingly, Commerce is able to apply the thinning adjustment on an annualized basis and finds it appropriate to make the thinning adjustment on West Fraser's timbermarks which meet the criteria delineated in the WDOR tables. Pursuant to

[403] *See* GBC Case Brief Vol. V at 27-30.
[404] *See Lumber V AR6 Final* IDM at Comment 18.
[405] *Id*.
[406] *See* BC Parties Stumpage Benchmark Rebuttal at Exhibit BR-6.
[407] *See Lumber V AR6 Final* IDM at Comment 18.
[408] *See* Petitioner Case Brief at 11-14.
[409] *See Lumber V AR6 Final* IDM at Comment 18.
[410] *Id*.
[411] *See* Petitioner BC Stumpage Benchmark Submission at Exhibit 2 at page 11 and Exhibit 3 at page 11.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

section 458-40-610 (29) of the WAC, in Eastern Washington the following criteria must be satisfied to qualify for a thinning adjustment:

> The total timber volume removed is less than 40 percent of the total merchantable volume of the harvest unit prior to harvest; and
>
> …
>
> The harvester leaves a minimum of 80 undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.[412]

The GBC submitted harvesting data for West Fraser's timbermarks which may be eligible for this thinning adjustment.[413] This data demonstrates the percentage of merchantable timber volume which was removed prior to harvest by reporting cruise data.[414] The GBC also reported the number of trees per hectare remaining on the timbermark.[415] To satisfy the criteria related to the spacing and species of trees remaining, the GBC submitted aerial photographs of several West Fraser timbermarks where thinning operations had taken place.[416]

The petitioner argues that there is no evidence to corroborate the cruise data or remaining number of trees reported by the GBC, and therefore, Commerce should find this information to be unreliable.[417] With respect to the aerial photographs, the petitioner argues that they fail to address the identity of the species of remaining tree, and further, notes that they do not correspond to the timbermarks for which the GBC is claiming a thinning adjustment during the POR.[418]

There is no evidence on the record of the instant review which calls into question the reliability of the GBC's reporting, and we find the petitioner's arguments related to the cruise data and number of remining trees amount to speculation. With respect to the aerial photographs, we acknowledge that they do not correspond precisely with the timbermarks on which West Fraser is claiming a thinning adjustment during the POR; however, we note that they do demonstrate that the types of thinning operations undertaken by West Fraser comply with the WDOR's definition of a thinning adjustment. Furthermore, the GBC attached specific site plans for the timbermarks on which a thinning adjustment is being requested, which lists additional information related to the type of thinning operation that occurred.[419] As we have explained throughout the *Lumber V* proceeding, Commerce's benchmarks do not require perfection. The information provided by the GBC is directly responsive to the criteria outlined in the WDOR

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[412] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-196.
[413] *See* BC Parties Stumpage Benchmark Rebuttal at 31-33 and Exhibits BR-6 and BR-10.
[414] *Id*. at Exhibit BR-6. The GBC reported the net merchantable volume before thinning operations occurred, as well as the net merchantable volume that was reduced, by reporting data from a timber cruise of the timbermarks prior to and after thinning operations. As noted in the GBC Stumpage IQR Response at 114, total volume and volume per hectare are determined through timber cruise.
[415] *Id*.
[416] *Id*. at Exhibit BR-10.
[417] *See* Petitioner Case Brief at 12.
[418] *Id*. at 12-14.
[419] *See* BC Parties Stumpage Benchmark Rebuttal at Exhibit BR-10.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

stumpage tables.[420] We acknowledge the petitioner's concerns related to the lack of corroborating information and lack of aerial photographs of the specific timbermarks where the adjustment is being requested. Accordingly, in the next administrative review we intend to collect additional corroborating information, including further information on the species and spacing of trees remaining in the specific timbermarks reported. However, in the instant review, we find the information available on this record indicates that a thinning adjustment is warranted, and we continue to make a thinning adjustment for the purposes of these final results.

Additional Remote Adjustments

The GBC argues that Commerce should apply additional adjustments for West Fraser's remote harvest operations, including: (1) use of logging camps, (2) harvests which require extended cycle times, (3) highly remote timbermarks, and (4) use of lake tow.[421] We disagree. These are similar to the arguments which we rejected in the previous administrative review;[422] however, we acknowledge that the GBC has submitted additional argumentation and information on how Commerce may implement its proposed adjustments in the instant review.[423] We do not find this new evidence to be persuasive.

Both WDOR stumpage valuation tables used to construct our benchmark allow for one "remote" harvesting adjustment in Eastern Washington – the remote island adjustment.[424] The instructions accompanying the WDOR stumpage tables define a remote island as:

> an area of land which is totally surrounded by water at normal high tide and which has no bridge or causeway connecting it to the mainland.[425]

Furthermore, the GBC has submitted email correspondence with Paul Stuart, the WDOR official responsible for compiling the stumpage valuation tables, which discusses the application of the remote island adjustment in Eastern Washington. In this correspondence, Paul Stuart states:

> I was able to search for the remote island adjustment in our system, as suspected, no remote island adjustments were granted over the reporting period from 1/1/2018 to present in SVAs 6 & 7.[426]

This email correspondence indicates that the remote island adjustment is not commonly applied in Eastern Washington, and therefore, it does not support the application of this adjustment for other "remote" harvesting conditions.

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[420] *Id*. at 31-33 and Exhibits BR-6 and BR-10; *see also* GBC Stumpage IQR Response at Exhibit BC-AR7-S-196; and Petitioner BC Stumpage Benchmark Submission at Exhibits 2 and 3.
[421] *See* GBC Case Brief Vol. V at 21-27.
[422] *See Lumber V AR6 Final* IDM at Comment 18.
[423] *See* GBC Case Brief Vol. V at 21-27 (citing BC Parties Stumpage Benchmark Rebuttal at 33-39 and Exhibits BR-6 and BR-11 through BR-15; and GBC Stumpage IQR Response at Exhibit BC-AR7-S-1).
[424] *See* Petitioner BC Stumpage Benchmark Submission at Exhibit 2 at page 11 and Exhibit 3 at page 11.
[425] *Id*. at Exhibit 2 at page 5 and Exhibit 3 at page 5.
[426] *See* BC Parties Stumpage Benchmark Rebuttal at Exhibit BR-3.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Based on the framework discussed above, Commerce will only make a harvesting condition adjustment when the respondents' purchases correspond to the criteria for any of the WDOR adjustments. The only remote harvesting adjustment that appears on the WDOR stumpage valuation tables for Eastern Washington is the remote island adjustment.[427] The WDOR's instructions regarding the remote island adjustment are clear that the adjustment is only applicable to harvests from a remote island that is completely surrounded by water at high tide and has no bridge or causeway connecting it to the mainland.[428] The limited nature of this adjustment is confirmed by email correspondence with a WDOR official, which has been placed on the record of the instant review.[429] The GBC has provided no evidence of the existence of remote islands in any of the timbermarks from which West Fraser harvested during the POR. For these reasons we decline to apply the remote island adjustment for the purposes of these final results. With respect to the GBC's arguments that these harvesting conditions amount to differing prevailing market conditions and require further adjustment for harvesting cost beyond what is permitted in the WDOR stumpage valuation tables, we disagree and have addressed those arguments in Comment 10.[430]

Identification of Small Logs

As in the previous review,[431] the GBC argues that Commerce should classify all logs with a diameter of 9.5 rads or less as small logs.[432] We disagree with the GBC and find the record in the instant review does not support a 9.5 rads breakpoint for small logs. However, based on information the petitioner has cited to in its rebuttal brief,[433] we find it appropriate to revise our small log breakpoint to 9 rads for the purposes of these final results.

The WDOR stumpage valuation tables in effect during the POR list separate valuations for small logs.[434] Pursuant to section 458-40-610 (24) (e) of the WAC, small logs in Eastern Washington include:

> {a}ll conifer logs excluding redcedar harvested in stumpage value area 6 or 7 generally measuring seven inches or less in scaling diameter,
> …
> Log diameter and length is measured in accordance with the Eastside Log Scaling Rules developed and authored by the Northwest Log Rules Advisory Group, with length not to exceed 20 feet.[435]

[427] *See* Petitioner BC Stumpage Benchmark Submission at Exhibit 2 at page 11 and Exhibit 3 at page 11.
[428] *Id*. at Exhibit 2 at page 5 and Exhibit 3 at page 5.
[429] *See* BC Parties Stumpage Benchmark Rebuttal at Exhibit BR-3.
[430] *See* Comment 10, *supra*.
[431] *See Lumber V AR6 Final* IDM at Comment 18.
[432] *See* GBC Case Brief Vol. V at 30-32.
[433] *See* Petitioner Rebuttal Brief at 40-42.
[434] *See* Petitioner BC Stumpage Benchmark Submission at Exhibit 2 at page 13 and Exhibit 3 at page 13.
[435] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-196.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

In the *Preliminary Results*,[436] as in the previous review,[437] Commerce cited a footnote from an expert report stating that "{f}or the proportion of volume in logs with a top diameter less than 6.6 inches, the same procedure is applied, except all volumes up to 8 rads in diameter are included," as the basis for its 8 rads small log breakpoint.[438]

The GBC argues that, based on the Scribner Short log rule, a top scaling diameter of seven inches includes logs with top diameters measuring up to 7.49 inches.[439] The GBC asserts, without citing a conversion factor or supporting documentation, that 9.5 rads equals 7.48 inches.[440] Accordingly, the GBC argues that Commerce should select 9.5 rads, which also corresponds with the first category of the Fonseca Adjustment, as its small log breakpoint.[441]

As an initial matter, the GBC's assertion that a top scaling diameter of seven inches includes logs with top diameters measuring up to 7.49 inches comes from a portion of Matthew Fonseca's textbook discussing the log scaling procedures published by the USFS in the 1985 *National Forest Log Scaling Rules*.[442] As stated in the WAC, the WDOR stumpage valuations are scaled based on the Eastside Log Scaling Rules, which are authored by the Northwest Log Rules Advisory Group.[443] There is no evidence on the record of this review which indicates that the Eastside Log Scaling Rules follow the same top diameter rules as the 1985 *National Forest Log Scaling Rules*. Furthermore, the plain language reading of the WAC, as quoted above, is "seven inches or ***less*** in scaling diameter" (emphasis added).[444] Accordingly, for the purposes of these final results we have determined that it is appropriate to identify small logs based on a seven inch top diameter breakpoint.

At the *Preliminary Results* and in the previous review, Commerce was under the impression that further information relating to a conversion factor between inches and 'rads' was not available on the record as the GBC cited neither a conversion factor nor record evidence to support its assertion that 9.5 rads equals 7.48 inches.[445] Accordingly Commerce relied on the quote from the expert report listed above.[446] In the instant review, the petitioner explained in its rebuttal brief that a seven inch top diameter is equivalent to 8.89 rads.[447] The petitioner supported this assertion by citing another expert report which states:

> {a} 'rad' in the BC Metric Scale system of measurement is the radius of a log in centimeters. Thus a log recorded as 5 rads has a diameter measurement of 10 centimeters (2 x 5 rad= 10 centimeters).[448]

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[436] *See Preliminary Results* PDM at 40.
[437] *See Lumber V AR6 Final* IDM at Comment 18.
[438] *See* BC Parties Stumpage Benchmark Rebuttal at Exhibit BR-1.
[439] *See* GBC Case Brief Vol. V at 30-32 (citing BC Parties Stumpage Benchmark Rebuttal at 42-43).
[440] *Id*.
[441] *Id*.
[442] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-209.
[443] *Id*. at Exhibit BC-AR7-S-196.
[444] *Id*.
[445] *See Lumber V AR6 Final* IDM at Comment 18.
[446] *See* BC Parties Stumpage Benchmark Rebuttal at Exhibit BR-1.
[447] *See* Petitioner Rebuttal Brief at 41-42.
[448] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-194.

West Fraser has reported a species-specific breakdown of log condition in whole-rads increments.[449] Accordingly, Commerce must select a small log breakpoint between 8 rads (which is equivalent to 6.30 inches, following the petitioner's calculations) or 9 rads (which is equivalent to 7.09 inches, following the petitioner's calculations). We acknowledge Commerce has the option of 9.5 rads (which is equivalent to 7.48 inches, following the petitioner's calculations), as the GBC proposes, because this breakpoint corresponds to the data that West Fraser has provided for the first category of the Fonseca Adjustment.[450] However, the information for Commerce to select other non-whole number breakpoints, such as 8.5 rads, is unavailable on the record of the instant review.

Of the options available on the record of the instant review: 8 rads (*i.e.*, 6.30 inches), 9 rads (*i.e.*, 7.09 inches), and 9.5 rads (*i.e.*, 7.48 inches), Commerce finds that selecting 9 rads provides the closest match to the seven inch breakpoint indicated in the WAC. Accordingly, Commerce now selects 9 rads as the breakpoint for small logs and has revised its calculations for the purposes of these final results.[451]

Adjustments for Time

The GBC argues that Commerce should also include the WDOR stumpage valuation tables for second half 2025 in its construction of the benchmark.[452] We disagree. As we explained in the *Preliminary Results*,[453] new information present on the record of the instant review indicates that the WDOR stumpage valuations are based on transactions which were observed three to fifteen months prior to the effective date, and that no adjustment was made to account for the passage of time.[454] Specifically, the GBC has placed email correspondence with Paul Stuart, the WDOR official responsible for compiling the stumpage valuation tables, discussing potential adjustments made for time on the record. In this correspondence, Paul Stuart states that: "Yes, the values are established with data that is somewhat out of date and no changes are made to the values after they are published."[455]

The evidence present on the instant review indicates that the WDOR tables for second half 2024 are based on data collected from April 1, 2023, through March 31, 2024; first half 2025 are based on data collected October 1, 2023 through September 30, 2024; and second half 2025 are based on data collected April 1, 2024 through March 31, 2025.[456] As we acknowledged in the *Preliminary Results*, by utilizing tables from second half 2024 and first half 2025, we are constructing the benchmark based on data collected from April 1, 2023 through September 30,

[449] *See* West Fraser Stumpage IQR Response at Exhibit WF-AR7-BCST-16.
[450] *Id*.
[451] *See* West Fraser Final Calculation Memorandum at Attachment 4.
[452] *See* GBC Case Brief Vol. V at 32-34.
[453] *See Preliminary Results* PDM at 33.
[454] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-194; *see also* BC Parties Stumpage Benchmark Rebuttal at 40-42.
[455] *See* BC Parties Stumpage Benchmark Rebuttal at Exhibit BR-3.
[456] *Id*. at 40-42 and Exhibit BR-3; *see also* GBC Stumpage IQR Response at Exhibit BC-AR7-S-194; and Petitioner BC Stumpage Benchmark Submission at Exhibits 2 through 4.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

2024. We also stated our intention was to, "capture the transactions that are most contemporaneous to the POR without considering future data."[457]

The GBC argues that by excluding the second half 2025 table from our benchmark analysis, we are excluding data from October 1 through December 31, 2024, while including data from April 1 through December 31, 2023.[458] In other words, we are only covering nine of the 12 months in the POR and are including stale data for nine months preceding the POR. We acknowledge the GBC's concerns; however, if we added the second half 2025 tables to our benchmark calculation, we would be including future data from January 1 through March 31, 2025. As we have stated throughout the *Lumber V* proceeding, Commerce's benchmarks do not require perfection.[459] In constructing a benchmark for the purposes of measuring the adequacy of remuneration for the provision of BC stumpage, our intention is to create a dataset that is as contemporaneous to the POR as possible, without considering future data. We find that this is achieved by utilizing the second half 2024 and first half 2025 stumpage valuation tables.[460] Accordingly, for the purposes of these final results, we continue to use a simple average of these two tables as the basis for our benchmark calculation.

Comment 12: Whether To Apply a Separate Beetle-Killed Benchmark In Conjunction with the WDOR Valuations

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 34-42.

> Finally, in Section II.F, the B.C. Parties explain that {Commerce} must use a separate benchmark to account for the fact that a large proportion of West Fraser's harvest during the POR was beetle-killed, and the undisputed fact that prices for dead timber and logs are substantially lower than prices for green timber and logs. That the WDOR tax values may not entirely exclude beetle-killed logs does not change the fact that any beetle-killed timber reflected in the WDOR tax values is not comparable to the significant portion of beetle-killed timber reflected in West Fraser's harvest. The B.C. Parties demonstrate that despite {Commerce}'s prior claims to the contrary, there is a clear basis in the record for {Commerce} to calculate a separate beetle-killed stumpage benchmark.

[457] *See Preliminary Results* PDM at 33.
[458] *See* GBC Case Brief Vol. V at 32-34.
[459] *See*, *e.g.*, *Lumber V AR6 Final* IDM at Comment 23 and *Lumber V AR5 Final* IDM at Comment 27.
[460] *See* Petitioner BC Stumpage Benchmark Submission at Exhibits 2 and 3.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 8-9.

> …In particular, as detailed below, {Commerce} failed to use the record evidence to make required adjustments in the WDOR amounts for … (3) the significant volume of beetle-kill timber in British Columbia compared to that in the Washington area in which the WDOR values are based,…

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 27-33.

> The Canadian Parties concede that the record demonstrates the WDOR data's inclusion of insect-damaged prices. Nevertheless, they contend that an adjustment or separate benchmark is necessary because the WDOR benchmark is insufficiently representative of West Fraser's purchases. However, {Commerce} has only calculated a separate beetle-killed benchmark when parties demonstrate, with record evidence, that the selected benchmark omits such prices. In this review, {Commerce} has supported its finding that "WDOR valuations are based on log prices that do include beetle-killed logs" with substantial evidence. Accordingly, there is no reason to rely on an entirely separate benchmark.
>
> The Canadian Parties argue that beetle-killed timber must be represented within the benchmark to the same degree that it is present in West Fraser's purchases. However, the record demonstrates that the volume and proportion of beetle-killed timber harvested by West Fraser is a function of GBC policy. Absent the GBC's policy incentives to push for more beetle killed harvests, West Fraser would not have harvested the volume of beetled killed timber as it did during the POR. {Commerce} should not adopt a separate benchmark to account for the fact that the GBC's regulatory choices resulted in an outcome that a free and functioning market may not have produced.
>
> Finally, the Canadian Parties appear to suggest that{Commerce} should use the 90 percent reduction as discussed in the {Montana Study} to adjust the WDOR stumpage valuation for West Fraser's beetle killed purchases. The value reduction figure discussed in the {Montana Study} concerns beetle-killed logs, not standing timber. As such, it provides an inappropriate basis for any value adjustment for standing timber. Further, the Canadian Parties' analysis that converts available prices and datapoints on the record to compare the so called "beetle-killed timber" prices with "green timber" prices provides an unreliable result. As such, even if {Commerce} determines that an additional beetle killed adjustment is necessary, which it should not, there is no methodology for {Commerce} to adjust the WDOR benchmark to account for West Fraser's beetle-killed purchases.

Commerce's Position: The BC Parties argue that Commerce should adjust the WDOR's stumpage valuations to account for the purportedly larger volume of beetle-killed timber that West Fraser harvests in comparison to the volume harvested in Eastern Washington.[461] These are similar to the arguments raised by the BC Parties in the previous review;[462] however, rather than solely proposing that Commerce use a separate beetle-kill benchmark, the BC Parties argue that Commerce should make an adjustment to the WDOR stumpage valuations using the value reduction factors contained in the Montana Study.[463] For the same reasons that we declined to use a separate beetle-killed benchmark in the previous review,[464] we do not find it appropriate to make an additional beetle-killed adjustment or use a separate beetle-killed benchmark in this review.

The GBC concedes that the record of the instant review indicates that beetle-killed timber is not excluded from the WDOR stumpage valuations but asserts that the scale of beetle-killed timber in the interior of British Columbia and Eastern Washington state is not comparable.[465] The GBC argues that even if *some* beetled-killed timber is reflected in the WDOR stumpage valuations, the volume is not comparable to the significant proportion of BC respondents' timber harvests that are beetle-killed.[466] The GBC asserts that the greater scale of the mountain pine beetle epidemic in the BC interior results in the quality and value of BC respondents' logs to be lower than those included in the WDOR stumpage valuations.[467] The BC Parties argue that the significant proportion of beetle-killed timber in the BC interior amounts to a difference in prevailing market conditions for which Commerce must adjust its benchmark.[468]

Since *Lumber V AR1*, Commerce has determined that the 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 from the WDNR under the derived demand benchmark.[469] In 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.[470] We affirm that finding for these final results and discuss issues related to the selection of a beetle-killed benchmark for these third-party stumpage purchases at Comment 9.[471] However, as in the two

[461] *See* GBC Case Brief Vol. V at 34-42; *see also* West Fraser Case Brief at 8-9.
[462] *See Lumber V AR6 Final* IDM at Comment 17.
[463] *See* GBC Case Brief Vol. V at 38-39.
[464] *See Lumber V AR6 Final* IDM at Comment 17.
[465] *See* GBC Case Brief Vol. V at 34-37 (citing Petitioner BC Stumpage Benchmark Submission at Exhibit 7).
[466] *Id*. at 35-38.
[467] *Id*.
[468] *Id*.; *see also* West Fraser Case Brief at 8-9.
[469] *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; *Lumber V AR4 Final* IDM at Comment 18; *Lumber V AR5 Prelim* PDM at 29-30 and 35; *Lumber V AR5 Final* IDM at Comments 19 and 20; *Lumber V AR6 Prelim* PDM at 26-27 and 32-33; and *Lumber V AR6 Final* IDM at Comments 17 and 22.
[470] *See Preliminary Results* PDM at 35-36, 44, and 46.
[471] *See* Comment 9, *supra*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

prior reviews,[472] we preliminarily declined to use a separate beetle-kill benchmark, or make an additional adjustment to the stumpage valuation tables, for purchases that were compared to the WDOR stumpage benchmark.[473]

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 allows 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."[474] 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."[475] 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."[476]

As discussed above in Comment 10, Commerce is using the WDOR stumpage valuations as the benchmark for the British Columbia Provision of Stumpage for LTAR program.[477] As in the prior review,[478] the record in this review is clear that the WDOR stumpage valuations are constructed from log transactions that *include* beetle-killed logs.[479] As a result, an additional adjustment for beetle-killed timber is not necessary. Furthermore, as noted above in Comment 9,[480] the underlying log prices from which the WDOR stumpage valuations are created are not on the record of this review.[481] Accordingly, we do not know the proportion of beetle-killed log transactions that were included in the construction of the WDOR stumpage valuations. We find that the use of value reduction factors contained in the Montana Study would reasonably result in some double-counting of beetle-killed transactions and risks overstating the level of beetle-killed standing timber in our benchmark. Therefore, similar to our determination in *Lumber V Final*,[482] we do not have the appropriate record information to reliably make an adjustment for beetle-killed transactions in this review. As a result, Commerce has determined not to make an additional beetle-killed adjustment in the stumpage calculations using the WDOR stumpage valuations for these final results.

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[472] *See Lumber V AR6 Final* IDM at Comment 17; *see also Lumber V AR5 Final* IDM at Comment 19.
[473] *See Preliminary Results* PDM at 41.
[474] *See Lumber V Final* IDM at Comment 25.
[475] *Id*.
[476] *See Lumber V AR1 Final* IDM at Comment 21.
[477] *See* Comment 10, *supra*.
[478] *See Lumber V AR6 Final* IDM at Comment 17.
[479] *See Preliminary Results* PDM at 41 (citing Petitioner BC Stumpage Benchmark Submission at Exhibit 7).
[480] *See* Comment 9, *supra*.
[481] *See*, *e.g.*, GBC Stumpage IQR Response at Exhibit BC-AR7-S-199.
[482] *See Lumber V Final* IDM at Comment 25.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Even if, *arguendo*, we agreed that an additional beetle-killed adjustment was necessary for stumpage purchases compared to the WDOR stumpage valuations, Commerce has concerns with the methodology proposed by the GBC. The GBC proposes using a stumpage value reduction factor contained in the Montana Study which represents the difference in value between green standing timber and beetle-killed standing timber.[483] As the GBC notes, Commerce has previously examined the Montana Study in the context of determining that a prevailing market condition exists.[484] While Commerce agrees that the Montana Study supports the fact that the mountain pine beetle infestation is a prevailing market condition, Commerce does not find the Montana Study to be a viable benchmark for the valuation of beetle-killed timber. As an initial matter, Commerce has never found the Montana Study itself to be a *benchmark*. The Montana Study is intended to analyze "the relative importance of various cost and operations factors related to harvesting and processing beetle killed-timber in Montana," and does not report market prices for beetle-killed stumpage.[485] Furthermore, the survey data utilized to generate the value reduction factor is not contemporaneous with the POR and was collected from six Montana sawmills in 2015.[486] Commerce does not find the specific value reduction factor reported in the Montana Study to be representative of the current value reductions associated with processing beetle-killed timber.

To support the use of the adjustment factor from the Montana Study with the WDOR stumpage valuations, the GBC purportedly demonstrates that the difference in value between the WDOR stumpage valuations and the IFG blue stained log prices converted to stumpage is roughly comparable to the adjustment factor.[487] However, we have concerns with the methodology utilized in this comparison. The IFG blue stained log prices are intended to represent *log* transactions,[488] and are not stumpage valuations. The GBC attempts to convert the IFG log prices to stumpage valuations by using the harvesting and haul survey data contained in the WDOR's report,[489] which is unrelated to the IFG transactions that the GBC is adjusting. Furthermore, the GBC's exercise is based on certain unsubstantiated assumptions such as the proportion of, and further adjustment for, small logs, which may or may not be contained in the IFG transactions.[490] For these reasons, we do not find the GBC's comparison of the WDOR stumpage valuations to the IFG log prices to be reliable.

The record in the instant review does not contain separate benchmark valuations for beetle-killed *standing timber*, which is the relevant good under examination and is the good in the benchmark price. Rather, the methodology proposed by the GBC for calculating a beetle-killed stumpage benchmark relies on the application of a beetle-killed value reduction factor to a benchmark which already *includes* beetle-killed timber. Commerce finds that this value reduction factor is not a benchmark price and relies on non-contemporaneous survey data collected in 2015. Regardless of the deficiencies associated with using the value reduction factor contained in the

[483] *See* GBC Case Brief Vol. V at 38-39 (citing GBC Stumpage IQR Response at Exhibit BC-AR7-S-219).
[484] *Id*. (citing *Lumber V AR1 Final* IDM at Comment 21).
[485] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-219.
[486] *Id*.
[487] *See* GBC Case Brief Vol. V at 40-42 (citing BC Parties Stumpage Benchmark Rebuttal at Exhibit BR-1).
[488] *See* Petitioner BC Stumpage Benchmark Submission at Exhibit 43.
[489] *See* GBC Case Brief Vol. V at 40-42 (citing BC Parties Stumpage Benchmark Rebuttal at Exhibit BR-1).
[490] *Id*.; *see also* Petitioner BC Stumpage Benchmark Submission at Exhibit 43.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Montana Study, Commerce finds this analysis to be moot as Commerce's current benchmark, the WDOR stumpage valuations, includes beetle-killed timber.

Comment 13: 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 14-21.

> {Commerce} should discontinue its application of an adjustment to the conversion factor based on an analysis provided by Matthew Fonseca (the "Fonseca Adjustment"). 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 m3 /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. For further details, *see* GBC Rebuttal Brief at 24-30.

> In Section IV.A, the B.C. Parties address {the petitioner}'s request that {Commerce} modify its conversion factor methodology. {The petitioner} continues to advocate for the use of a 4.53 m3 /MBF conversion factor, ignoring record evidence that the use of this factor would be incorrect and outdated. Since the *Lumber IV* proceedings, {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} ignores the fact that the conversion factor used by {Commerce} does in fact stem from the U.S. PNW. As a result, {Commerce} should continue to reject the use of {the petitioner}'s proposed 4.53 m3 /MBF conversion factor.
>
> In Section IV.B, the B.C. Parties address {the petitioner}'s repetition of its unsuccessful 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, on the grounds that the Fonseca Adjustment does not account for certain characteristics such as taper or defect. {The petitioner} makes 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.[491] 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.[492]

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.[493] The petitioner asserts that the USDA uses this standard to evaluate trade flows, and thus Commerce's precision requirement is satisfied.[494] 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.[495] 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. As Commerce explained in the *Lumber V AR1 Final*:

> {I}n Washington state, coastal logs are measured using the Scribner long log scale, while logs in the inland portion of the state are measured using the Scribner short log scale. Since there are different assumptions embedded in the two versions of the Scribner scale, in order to accurately convert from board feet to cubic meters,

[491] *See Lumber V AR6 Final* IDM at Comment 19; *see also Lumber V AR5 Final* IDM at Comment 22; *Lumber V AR4 Final* IDM at Comment 19; and *Lumber V AR3 Final* IDM at Comment 22.
[492] *See Lumber V AR6 Final* IDM at Comment 19; *see also Lumber V AR5 Final* IDM at Comment 22; *Lumber V AR4 Final* IDM at Comment 19; and *Lumber V AR3 Final* IDM at Comment 22.
[493] *See* Petitioner Case Brief at 14-17.
[494] *Id*.
[495] *See Lumber V AR1 Final* IDM at Comment 22.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> you need to know which version of the Scribner scale was used measure the logs in board feet.[496]

An accurate conversion requires knowing the specific log scale, assumptions, and methodology used; however, 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.[497] As in prior reviews,[498] 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*.

In prior segments of this proceeding, Commerce adjusted the 2002 USFS study conversion factor using the "Fonseca Adjustment."[499] 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 *Preliminary Results*, 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.[500]

The petitioner argues that, if Commerce does rely on the 2002 USFS study for a conversion factor, Commerce should not apply the Fonseca Adjustment.[501] 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.[502] 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.[503]

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[496] *Id*.
[497] *Id*.
[498] *See Lumber V AR6 Final* IDM at Comment 19; *see also Lumber V AR5 Final* IDM at Comment 22; *Lumber V AR4 Final* IDM at Comment 19; and *Lumber V AR3 Final* IDM at Comment 22.
[499] *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; *Lumber V AR4 Final* IDM at Comment 19; *Lumber V AR5 Prelim* PDM at 32-35; *Lumber V AR5 Final* IDM at Comment 22; *Lumber V AR6 Prelim* PDM at 29-32; and *Lumber V AR6 Final* IDM at Comment 19.
[500] *See Preliminary Results PDM* at 38-44.
[501] *See* Petitioner Case Brief at 17-21.
[502] *See Lumber V AR6 Final* IDM at Comment 19; *see also Lumber V AR5 Final* IDM at Comment 22; *Lumber V AR4 Final* IDM at Comment 19; and *Lumber V AR3 Final* IDM at Comment 22.
[503] *See* Petitioner Case Brief at 17-21.

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.[504] 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.[505] 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."[506]

However, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[507] Similarly, they do not require that conversion factors from independent sources be rejected simply because they may not exactly reflect a respondent's own experience, when such 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 the *Lumber V* proceeding on the subjects of log export restraints and the British Columbia timber auction system in favor of actual record evidence.[508] 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 "undeveloped," because Commerce does rely on certain respondent-specific data to calculate the conversion factor.[509] 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.[510]

Furthermore, we emphasize once again, as noted in *Lumber V AR6 Final*, *Lumber V AR5 Final, Lumber 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."[511] 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

[504] *See Lumber V AR2 Final* IDM at Comment 23.
[505] *Id*.
[506] *See* Petitioner Case Brief at 21.
[507] *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 an LTAR analysis."
[508] *See* Petitioner Case Brief at 17-21 (citing *Lumber V AR2 Final* IDM at 67 and 250).
[509] *Id*. at 21.
[510] *See Lumber V AR2 Final* IDM at Comment 23.
[511] *See Lumber V AR6 Final* IDM at Comment 19; *see also Lumber V AR5 Final* IDM at Comment 22.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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.

Comment 14: 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 42-46.

> In Section III, the B.C. Parties explain that {Commerce} must account for "stand-as-a-whole" pricing in British Columbia by considering the total harvest volume of each species included in each individual timbermark in West Fraser's harvest.
>
> Pursuant to British Columbia's "stand-as-a-whole" pricing model, standing timber is sold by the stand using a single price that applies to all the species in a particular stand. 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. As a result, the stand-as-a-whole stumpage prices reported by the Government of British Columbia and West Fraser to {Commerce} are not comparable to {Commerce}'s stumpage benchmarks.

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 9.

> …In particular, as detailed below, {Commerce} failed to use the record evidence to make required adjustments in the WDOR amounts for…(4) the stand-as-a-whole pricing upon which BC stumpage calculations are based…

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 38-40.

> The Canadian Parties argue that because the GBC sets one price for a stand that applies to all species within that stand, {Commerce} should develop a benchmark by "sum{ming} the results of all of its species-level benchmark comparisons" to mirror this price-setting strategy. However, the Canadian Parties' argument conflates how the GBC sets stumpage prices with how it sells stumpage. The GBC asserts that it "sells standing timber by the stand," but the record demonstrates that it actually sells standing timber on a species- and grade-specific basis.
>
> Second, the fact that the GBC does not charge different prices for different species is not a prevailing market condition in the form of a "condition of sale" that {Commerce} must account for. Rather, it is simply part of the means by which the GBC chooses to subsidize its lumber industry. 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 where there is no benefit to offset instances where there is a benefit. 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.[512] 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 the *Preliminary Results*, 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.[513] Under Commerce's revised CVD benchmark hierarchy,[514] government auction prices may now be considered a tier-three benchmark under 19 CFR 351.511(a)(2)(iii) if they are consistent with market principles. In the *Preliminary Results*, Commerce found that BCTS auction prices are not consistent with market principles pursuant to 19 CFR 351.511(a)(2)(iii)(A)-(D), and therefore cannot serve as a tier-three benchmark under 19 CFR 351.511(a)(2)(iii).[515] Thus, we used WDOR stumpage valuations to construct a benchmark

[512] *See Lumber V AR6 Final* IDM at Comment 20; *see also Lumber V AR5 Final* IDM at Comment 21; *Lumber V AR3 Final* IDM at Comment 24; and *Lumber V AR2 Final* IDM at Comment 26.
[513] *See Preliminary Results* PDM at 15 and 27-30.
[514] *See Regulations Enhancing the Administration of AD/CVD Laws - Final.*
[515] *See Preliminary Results* PDM at 28-30.

consistent with market principles under 19 CFR 351.511(a)(2)(iii), in which we measured the adequacy of remuneration.[516]

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. Commerce's general approach of utilizing species-specific benchmarks remains consistent with our methodology in prior segments of this proceeding.[517] For purposes of these final results, we continue to find that the methodology used in the *Preliminary Results* 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.[518] 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.[519] The West Fraser case brief similarly argues for the use of a weighted-average "all species" benchmark.[520] Commerce rejected this approach in *Lumber V AR6 Final*, *Lumber V AR5 Final*, *Lumber 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.[521] 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 AR6 Final* finding for declining to incorporate "GBC's internal calculations" in the stumpage benchmark, thereby refusing to account for this BC market condition.[522] However, we disagree with the GBC that Commerce's prior analysis was incorrect. While the GBC argues that Commerce must set aside a transaction-specific analysis and apply a single all-species price to the entirety of the respondent's purchases, we disagree with 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 not an accurate reflection of the value of each species. They are merely derived

[516] *Id*. at 30-34.
[517] *See Lumber V AR6 Final* IDM at Comment 20; *see also Lumber V AR5 Final* IDM at Comment 21; *Lumber V AR4 Final* IDM at Comment 19; *Lumber V AR3 Final* IDM at Comment 24; and *Lumber V AR2 Final* IDM at Comment 26.
[518] *See* GBC Case Brief Vol. V at 42-46.
[519] *Id*.
[520] *See* West Fraser Case Brief at 9.
[521] *See Lumber V AR6 Final* IDM at Comment 20; *see also Lumber V AR5 Final* IDM at Comment 21; *Lumber V AR3 Final* IDM at Comment 24; and *Lumber V AR2 Final* IDM at Comment 26.
[522] *See* GBC Case Brief Vol. V at 44-45.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> by dividing the total value in a stand by the total volume in that same stand and applying the same per-unit stumpage fee to each of the species in the stand.[523]

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.[524] 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 "condition 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 to assess the adequacy of remuneration.

Regarding the GBC's request to use an average-to-average methodology, Commerce has consistently found that Commerce's comparison between the price paid and value is most accurately made through a transaction-specific analysis. Commerce's preference is to compare the prices of individual transactions with the government to monthly average benchmark prices, where possible.[525] 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."[526] 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."[527] We applied AFA for the prices of Yingao's purchases of stainless steel coil. Meanwhile, for another respondent examined in *Stainless Steel Sinks from China INV*, we followed our practice and "compared the monthly benchmark prices to Superte's actual purchase prices for {stainless steel coil}."[528] Thus, the GBC's suggestion that Commerce employ an average-to-average methodology in the BC stumpage for LTAR benefit analysis 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 averaging methodology would distort the benefit that the respondents received from stumpage provided for LTAR.

In this review, in making our determination regarding what comparison methodology is most appropriate, Commerce considered the specific stumpage and log data collected and reported by the respective provincial governments and the level of detail of such data within the context of the provincial stumpage regimes. Where a comparison of individual transactions to monthly

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[523] *Id*. at 44.
[524] *See* GBC Stumpage IQR Response at 5-6.
[525] *See Lumber V Final* IDM at Comment 13; *see also SC Paper from Canada – Expedited Review – Final Results* IDM at Comment 25; *OCTG from China 2011* IDM at Comment 7; *Stainless Steel Sinks from China INV* IDM at Comment 21; and *Solar Cells from China 2016* IDM at Comment 8.
[526] *See Stainless Steel Sinks from China INV* IDM at 11-12.
[527] *Id*.
[528] *Id*. at 21.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

average benchmark prices was not possible, Commerce developed methodologies that best adhered to Commerce's preference. For West Fraser, we relied on a timbermark-based approach and further disaggregated the stumpage calculations by species to conduct the benefit analysis on a basis that is as close to a transaction-specific analysis as possible given the available record evidence and the GBC's rolling invoicing system.[529] 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.

E. Ontario Stumpage Issues

Comment 15: Whether Ontario's Private Stumpage Market Is Distorted and Whether Ontario's Private Prices Are an Appropriate 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 at Vol. I at 42-44.

> The record evidence does not establish that provincial stumpage markets are distorted. The law is clear that {Commerce} may not rely on the government's role as the predominant supplier of a good as the principal basis for finding distortion in the market for that good. Although {Commerce}, in the *Preliminary Results*, purports not to rely solely on government predominance as the basis for its findings of market distortion, {Commerce} continues to focus incorrectly on the government's role as the predominant supplier to support the conclusions that the provincial markets are distorted. In addition to government predominance, {Commerce} listed additional factors which it claimed resulted in distortion, such as market concentration, log export permitting processes, and supply overhang. As with government predominance, {Commerce} failed to establish that these factors result in price distortion.
>
> {Commerce} has an obligation to examine and engage with evidence on the record, including the evidence demonstrating that the timber markets in Alberta, Ontario, and Québec are not distorted. Had {Commerce} engaged with the substance of the expert reports and other evidence submitted by the Canadian Parties, it could not have concluded that the Alberta, Ontario, and Québec stumpage markets are distorted as a result of the government's involvement in the market.
>
> The statute requires that adequacy of remuneration must be determined in relation to the prevailing market conditions for the good being provided in the country which is subject to investigation or review. {Commerce's} regulations set out a hierarchy of benchmarks that implement this statutory mandate. They direct that the assessment of adequacy of remuneration be relative to the "country in question" and account for "factors affecting comparability," which include prevailing market

[529] *See* West Fraser Final Calculation Memorandum at Attachement 4.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> conditions. The first, and preferred, of these benchmarks is "a market-determined price for the good or service resulting from actual transactions in the country in question." Compliance with the statute and the preferred benchmark, therefore, requires that the benchmark used must reflect prevailing market conditions in the country in which the good is being provided. Here, standing timber markets are inherently local and the right to harvest standing timber is provided by provincial governments in provincial markets. Accordingly, the country in question in each of these instances is the province. Alberta, Ontario, and Québec provided provincial benchmarks that reflected the prevailing market conditions in each of these provinces. Under the statute and regulations, these in-province benchmarks should have been used by {Commerce}. They were not.

GOO Case Brief

The GOO did not provide the requested public executive summary regarding this argument. For further details, *see* GOO Case Brief Vol. VI at 4-9.

Petitioner Rebuttal 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 121-126 and 136-144.

> The Canadian Parties contend that {Commerce} erred by not using Ontario private timber or log prices as a tier-one benchmark. They attempt to challenge {Commerce's} findings by merely noting the presence on the record of a report by their economic expert (the Hendricks Report). However, when this report was submitted in the underlying investigation, {Commerce} offered a clear explanation of why it was insufficient to support a determination that the private market was undistorted. The Ontario Parties do not attempt to rebut {Commerce's} concerns about the Hendricks Report; indeed, they do not address {Commerce's} concerns at all.
>
> {Commerce} found that the Crown dominates Ontario's timber market. Given that the government comprises not just a substantial portion, but the vast majority of the market, it is reasonable to conclude that the market is distorted, and {Commerce} is obligated to "resort to the next alternative in the hierarchy."
>
> {Commerce} also based its determination on its findings that "the Crown-origin stumpage market is comprised of the provision of a good at government-set prices to companies that have been granted multi-year tenure rights by the GOO"; "{r}ecord evidence … supports finding that the combination of tenure holders being able to harvest at levels above AWS targets and to transfer Crown timber between mills expands the Crown timber market, reducing demand – and therefore, prices – for timber from the private market"; and "{t}he fact that a majority of private origin standing timber is sold to a small number of customers, who are dominant consumers of both private and Crown timber, demonstrates that the

> private market in Ontario is not as independent and free of influence from the Crown timber market as the Hendricks Report suggests."
>
> In sum, {Commerce} properly determined that the Ontario timber market is distorted by government involvement and that private timber prices in the province are inappropriate to serve as a first-tier benchmark. The Ontario Parties simply do not discuss any of {Commerce's} analysis and findings in their case briefs.
>
> The Ontario Parties also present arguments, in the alternative, concerning the possible use of Ontario log prices as a benchmark, but logs are not stumpage, and, accordingly, log prices cannot serve as a tier-one benchmark for the provision of stumpage. Further, private log prices would not be a usable tier-three benchmark. The option facing lumber producers in Ontario is to purchase more Crown timber from the government at a fixed price (plus its harvesting and hauling costs), or to purchase other timber or logs (plus harvesting and hauling costs, if applicable) from private sources. Thus, private log prices would be distorted for the same reasons as private timber prices.

Commerce's Position: As explained in the *Preliminary Results*, we examined the Ontario Crown stumpage market and, based on the Crown's overwhelming share of the Ontario stumpage market, the small number of firms that purchase a large share of both Crown and private timber, and the ability of tenure holders to harvest Crown timber above AWS targets and transfer timber between mills, we determined that stumpage prices for timber from private land in Ontario are distorted and are thus unusable as a benchmark.[530]

The GOO disputes our finding that the Crown's involvement in the Ontario market affects the prices of private-origin standing timber such that private stumpage prices in Ontario are not market determined.[531] In support of its arguments, the GOO cites frequently to the Hendricks AR7 Report, which has been updated for the current proceeding, and which the GOO claims provides proof that competition among sawmills in Ontario is sufficient to produce market-determined private timber prices and that private prices for softwood timber in the GOO, in the form of the prices contained in the MNP Ontario Survey, are a valid benchmark.[532] We find these criticisms of the *Lumber V AR7 Prelim* distortion analysis unconvincing.

The Hendricks AR7 Report examines the concentration of the Crown timber market in Ontario and the relative size of the private timber market compared to the Crown market, and analyzes data on private timber transactions in the MNP Ontario Survey, which is a survey of Ontario private timber prices.[533] In addition, the Hendricks AR7 Report cites evidence that private stumpage prices are driven by prices for lumber end-products, that market participants are well-informed, and that private timber owners have multiple buyers, and asserts that Ontario harvesters are price takers in softwood lumber markets, and thus, unable to affect the residual

[530] *See Preliminary Results* PDM at 15-17.
[531] *See* GOO Case Brief Vol. VI at 4-9 (citing Hendricks AR7 Report).
[532] *Id.* Vol. VI at 2-3 and 7 (citing Hendricks AR7 Report at para. 70).
[533] *See generally* Hendricks AR7 Report.

value of standing softwood timber.[534] However, the Hendricks AR7 Report notes that in the period following the Covid-19 pandemic, the average price of SPF timber delivered to sawmills from private lands was typically $1 to $2 higher than the stumpage price for Crown SPF timber delivered to sawmills.[535] While the Hendricks AR7 Report posits that this may be due to the fact that harvesting contracts for private timber may have been multi-year and negotiated in advance of the substantial increase in downstream prices for softwood lumber, it overlooks the fact that a dominant supplier, the GOO, is providing Crown timber at an administered price that is often below the price offered by private sellers.[536] In the *Lumber V Final*, we examined the version of the Hendricks Report that was filed in the underlying investigation (the Hendricks INV Report), which applied the same analysis and presented the same conclusions as the Hendricks AR7 Report, and we noted:

> the Hendricks {INV} Report ignores the fact that there is one dominant price setter, the GOO, in the Ontario timber market. The Crown supplied 96.5 percent of the market during the POI {and} set administered prices that do not fully consider market conditions.[537]

In the *Lumber V AR1 Final*, we noted that the Hendricks INV Report also failed to address the fundamental issue of a market that is dominated by a single supplier with administratively set prices:

> the framing of Hendricks {INV} Report's conclusion that "under these prevailing conditions, the price of Crown timber on one stand cannot affect the price of private timber on another" is misleading. It is not only the price of Ontario Crown timber that could impact the price of private timber but also the supply of Ontario Crown timber. A fundamental element of market pricing is that greater demand will lead to a higher price. The GOO's Crown stumpage charge, however, is not responsive to the amount of Ontario Crown stumpage demanded.[538]

Record evidence shows that during the POR, the GOO supplied the overwhelming majority of standing timber in Ontario at government-set prices to companies that have been granted multi-year tenure rights by the GOO.[539] According to information from the GOO, for FY 2024-2025, Crown-origin timber accounted for 91.92 percent of the harvest volume in Ontario.[540] In addition, Crown-origin standing timber in Ontario is supplied at an administratively-set price that does not adjust in response to demand.[541] Just as we found the Hendricks INV Report to do in the *Lumber V AR1 Final*, the Hendricks AR7 Report likewise ignores the effect of a dominant government supplier on the Ontario timber market, instead conducting a selective analysis of the Ontario standing timber market that results in a carefully worded claim that the "price" of

[534] *See* Hendricks AR7 Report at 25-32.
[535] *Id*. at 33.
[536] *Id.*
[537] *See Lumber V Final* IDM at 94.
[538] *See Lumber V AR1* IDM at Comment 18.
[539] *See* GOO Stumpage IQR Response at 71-130 and Exhibit ON-STATS-1; *see also Preliminary Results* PDM at 15-17.
[540] *See Preliminary Results* PDM at 15 (citing GOO Stumpage IQR Response at ON-STATS-1).
[541] *See* GOO Stumpage IQR Response at 72-85.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Ontario Crown timber has no effect on private timber prices.[542] As such, we find the arguments in the Hendricks AR7 Report to be unpersuasive and that the report is not a reliable source for understanding the relationship between Ontario's Crown timber supply and private timber market.

The GOO argues that despite the small share of the private stumpage market relative to the Crown stumpage market, the absolute size of the private stumpage market is large, and the MNP Ontario Survey, which covers 675,441 cubic meters of Ontario private timber purchases by eighteen harvesters, is a large and robust survey of private prices such that it can serve as a benchmark.[543] Our analysis in the *Lumber V AR7 Prelim* did not solely examine the absolute volume of Ontario's private market relative to the Crown market, but rather examined the relative size of the private market compared to the government-controlled market to determine whether the government constitutes a majority of the market. As noted above, Crown-origin timber accounted for 91.92 percent of the harvest volume in Ontario,[544] and the *CVD Preamble* provides that where a government constitutes a majority of the market, and "where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy."[545] While we have further analyzed and explained how other factors support a finding of significant distortion, we emphasize the above factor weighs heavily in Commerce's analysis consistent with the *CVD Preamble* language.

While the GOO extensively quotes the Hendricks AR7 Report on the economic conditions required for a market to be competitive and on competition within the Ontario private timber market, Commerce's distortion analysis is not intended to determine whether a market satisfies certain theoretically-established competitiveness benchmarks, but rather, whether prices are distorted by government involvement in the market. Therefore, in the *Lumber V AR7 Prelim Results*, we examined all information on the record regarding the Ontario standing timber market, including how the Crown standing timber prices are determined and the conditions applied on Crown tenure holders, in order to determine whether it is reasonable to conclude that private transactions are distorted by the government's involvement in the market.[546] Based on our analysis of Ontario Crown- and private-origin timber consumption, we concluded that the high concentration of a small number of tenure holding firms in the private timber market made that private market subject to influence by the Crown timber market.[547]

As explained in the *Lumber V AR7 Prelim*, we find that the record evidence demonstrates that Ontario's private-origin standing timber market was dominated by a small number of tenure holders and that tenure holders were able to harvest Crown timber above AWS targets and transfer timber between mills.[548] This market structure indicates that sawmills continue to consider their SFLs to be their primary source of wood, and the fact that the largest firms

[542] *See* Hendricks AR7 Report at paras. 7 and 48-53.
[543] *See* GOO Case Brief Vol. VI at 4-6.
[544] *See* GOO Stumpage IQR Response at Exhibit ON-STATS-1.
[545] *See CVD Preamble*, 63 FR at 65377.
[546] *See Lumber V AR7 Prelim* PDM at 15-17.
[547] *Id.*
[548] *Id*. at 16 (citing *See* GOO_Stumpage IQR Response at 103-104); *see also* GOO Market Memorandum at Attachment at worksheet "CrownVolumeByCompany.PUB."

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

purchase a significant share of the private softwood timber harvest indicates that private sellers of standing timber have limited pricing power. For example, during FY 2024-2025, the 10 largest firms that source from both the private and Crown forest, as ranked by total volume of softwood timber received, accounted for a significant portion of private market consumption, and the top five firms in the Crown market account for 83.36 percent of all softwood received from Ontario Crown sources.[549] We also found that, based on these facts, it is reasonable to conclude that private market prices in Ontario were distorted by government involvement in the timber market, such that are no viable standing timber prices within Ontario that could serve as a benchmark.[550]

As a result, we find that private-origin standing timber prices in Ontario, such as the prices in the MNP Ontario Survey, cannot serve as a benchmark for Ontario Crown-origin stumpage. The GOO provides several alternative benchmarks that it argues should be used to measure the adequacy of remuneration of Ontario Crown stumpage. The GOO advocates for an Ontario log benchmark calculated based on a residual value methodology.[551] However, this would be a tier-three benchmark, while Nova Scotia's private stumpage prices are a preferred tier-one benchmark.

Finally, the GOO cites the *Lumber IV NAFTA Panel Decision* and the *DS 533 Panel Report* as support for its arguments. In the dispute at the WTO, the WTO Panel rejected Commerce's finding that the Ontario stumpage market is distorted due to the Crown's majority share of the market. However, in the instant review, we are not basing our distortion analysis solely on whether the Crown provided a majority of the softwood timber supply; rather, we have analyzed the Ontario stumpage market as a whole, including the concentration of a small number of large mills that consume both Crown and private timber, and the ability of tenure holders to harvest Crown timber above AWS targets and transfer timber between mills. In addition, 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.[552] 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 automatically limit Commerce's discretion in applying the statute in an AD or CVD proceeding.[553] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[554] Moreover, the GOO's reliance on the decision in *Lumber IV NAFTA Panel Decision* is unavailing as the record evidence in this review stands on its own, and because Chapter 19 NAFTA Panels sit in the place of the Court of International Trade, whose decisions are not precedential and not binding on any case but the one before it.[555]

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[549] *See Lumber V AR7 Prelim* PDM at 17 (citing *See* GOO Market Memorandum at Attachment at worksheet "CrownVolumeByCompany.PUB.").
[550] *Id.*
[551] *See* GOO Case Brief Vol. VI at 13-15.
[552] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[553] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[554] *See* SAA at 659.
[555] *See Algoma Steel Corp.* at 243; *see also Alloy Magnesium from Canada* at 19 n. 54; and *CORE from Canada* at 78 n.254.

For the reason explained above, we continue to find that the Crown's administered stumpage rates and the Crown's overwhelming share of the market, as well as the flexible supply of Crown timber that is available to tenure holders, influences the prices for private standing timber such that private standing timber prices in Ontario are not suitable as a tier-one benchmark for measuring the adequacy of remuneration received by purchasers of Crown-origin standing timber. Finally, we note that the MNP Ontario Survey is the only tier-one benchmark of private stumpage prices in Ontario on the record of this review; however, we have determined that the stumpage market in Ontario is distorted. Since we have determined that the stumpage market in Ontario is distorted, we have not evaluated whether the MNP Ontario Survey itself generates valid benchmark prices because the market distortion alone excludes the survey from consideration as a potential tier-one benchmark.

F. Québec Stumpage Issues

Comment 16: Whether Québec's Stumpage Market Is Distorted

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 42-44.

> The record evidence does not establish that provincial stumpage markets are distorted. The law is clear that {Commerce} may not rely on the government's role as the predominant supplier of a good as the principal basis for finding distortion in the market for that good. Although {Commerce}, in the *Preliminary Results*, purports not to rely solely on government predominance as the basis for its findings of market distortion, {Commerce} continues to focus incorrectly on the government's role as the predominant supplier to support the conclusions that the provincial markets are distorted. In addition to government predominance, {Commerce} listed additional factors which it claimed resulted in distortion, such as market concentration, log export permitting processes, and supply overhang. As with government predominance, {Commerce} failed to establish that these factors result in price distortion.
>
> {Commerce} has an obligation to examine and engage with evidence on the record, including the evidence demonstrating that the timber markets in Alberta, Ontario, and Québec are not distorted. Had {Commerce} engaged with the substance of the expert reports and other evidence submitted by the Canadian Parties, it could not have concluded that the Alberta, Ontario, and Québec stumpage markets are distorted as a result of the government's involvement in the market.
>
> The statute requires that adequacy of remuneration must be determined in relation to the prevailing market conditions for the good being provided in the country which is subject to investigation or review. {Commerce's} regulations set out a

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> hierarchy of benchmarks that implement this statutory mandate. They direct that the assessment of adequacy of remuneration be relative to the "country in question" and account for "factors affecting comparability," which include prevailing market conditions. The first, and preferred, of these benchmarks is "a market-determined price for the good or service resulting from actual transactions in the country in question." Compliance with the statute and the preferred benchmark, therefore, requires that the benchmark used must reflect prevailing market conditions in the country in which the good is being provided. Here, standing timber markets are inherently local and the right to harvest standing timber is provided by provincial governments in provincial markets. Accordingly, the country in question in each of these instances is the province. Alberta, Ontario, and Québec provided provincial benchmarks that reflected the prevailing market conditions in each of these provinces. Under the statute and regulations, these in-province benchmarks should have been used by {Commerce}. They were not.

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ. For further details, *see* GOQ Case Brief at Vol. VII(a) at 9-58.

> Whether Québec-run auctions are examined under tier-one or tier-three, Québec-run auctions are the appropriate benchmark to measure adequacy of remuneration. Québec's public lands do not come close to satisfying demand, even for the largest sawmills. This chronic shortfall, coupled with substantial private supply and imports, is evidence of a well-functioning market. The continued entrance and participation of independent contractors (harvesters) in the auctions act in their own interests and there is no evidence that TSG-holders have market power in the auctions or influence the bids of independent contractors (harvesters). Finally, transfers of timber between TSG-holders do not increase mills' supply of public timber or reduce their need to compete and win at auction.

Petitioner Rebuttal 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 121-126, 144-162.

> The Canadian Parties contend that {Commerce} erred by not using prices from timber auctions conducted by the GOQ as a benchmark for the government provision of stumpage. {Commerce's} conclusion in the *Preliminary Results* is in accordance with {Commerce's} regulations, supported by substantial evidence, and consistent with {Commerce's} prior practice in the investigation and the previous administrative reviews.
>
> The Canadian Parties argue that {Commerce's} "change to 19 C.F.R. § 351.511(a)(2) reclassifying government-run auctions from a tier-one to a tier-three benchmark analysis with further restrictions is both a facial and as-applied unlawful

> expansion of agency powers because it contradicts the statute and is unreasonable." Given {Commerce's} explanations for the regulatory change, including its discussion of the statutory changes enacted by Congress in the URAA and its discussion of government auction prices in Quebec specifically, there was nothing at all arbitrary or unreasonable about {Commerce's} 2024 amendment of its regulations, nor is there any basis to suggest that the amended regulations are inconsistent with the statute. 19 {CFR} 351.511(a)(2) is a valid regulation and there is no basis for {Commerce} to depart from it in the final results.
>
> Because "private stumpage prices in Nova Scotia are a viable tier-one benchmark under 19 CFR 351.511(a)(2)(i)," {Commerce} was correct to reject the Quebec Parties' proposal that {Commerce} use Quebec auction prices as a benchmark, and there was no need for {Commerce} to analyze the viability of those auction prices as a tier-three benchmark.
>
> Even though {Commerce} generally would not assess the viability of the Québec auction prices as a tier-three benchmark under these circumstances, {Commerce} nevertheless did so in the *Preliminary Results*, in "recogni{tion} that this is the first proceeding in which Commerce is applying its revised regulations that move auction prices from a tier-one to a tier-three analysis under 19 CFR 351.511(a)(2)." After analyzing the auction prices as a potential tier-three benchmark, revised regulations that move correctly determined that the Québec auction prices would not be consistent with market principles if {Commerce} were to reach a tier-three analysis.
>
> {Commerce} based its conclusion on "updated information regarding minor changes to the pricing methods used in TSGs and the requirements for auction bidders" provided by the GOQ. These "minor changes" were insufficient to warrant any departure from the agency's conclusion in the investigation and the first three administrative reviews that Quebec's auction prices are distorted and thus inappropriate to serve as a benchmark.
>
> The arguments of the Canadian Parties are nearly identical to arguments {Commerce} found unpersuasive previously in the first three administrative reviews. Nothing has changed to warrant accepting these arguments now.

Commerce's Position: The GOQ raised similar arguments in the prior administrative reviews and the investigation. We found the arguments unpersuasive then and continue to do so here.[556] We, therefore, continue to find that Québec's stumpage market is distorted by government intervention. In addition, the GOQ argues that Commerce's amendments to its regulations to move government-run auctions from tier-one to tier-three and add restrictions to the use of government-run auctions under tier-three are inconsistent with the statute and are not reasonable.[557] We address this issue of Commerce's revised regulations regarding auctions as

[556] *See Lumber V AR3 Final* IDM at Comment 18; *see also Lumber V AR2 Final* IDM at Comment 19; *Lumber V AR1 Final* IDM at Comment 19; and *Lumber V Final* IDM at Comment 35.
[557] *See* GOQ Case Brief Vol. VII(a) at 4-9.

tier-three benchmark in Comment 5. We note that we have a suitable tier-one benchmark in the form of private stumpage prices from Nova Scotia and, therefore, we find that it is not necessary to consider the Québec government-run auctions as a tier-three benchmark under 19 CFR 351.511(a)(2)(iii). Nonetheless, the GOQ argues that regardless of whether Québec-run auctions are examined under tier-one or tier-three, the government-run auctions yield market-determined prices, are competitive, and are open to all bidders such that the GOQ's timber auctions result in a "government price {that} is consistent with market principles" and an the appropriate benchmark to measure adequacy of remuneration.[558] Given that the GOQ argues that the government auctions for standing timber in Québec yield market-determined prices and are suitable as a benchmark, we have examined Québec's stumpage market, and we continue to find that even if the GOQ's proposed benchmark were considered a possible tier-one benchmark source, we continue to find that Québec's auction prices are distorted and would not be a viable benchmark.

Specifically, we find that: (1) the Crown market is large (*i.e.*, timber from TSGs and auctions make up 72.5 percent of all timber consumed in FY 2023-24, whereas timber from private land and imports make up close 19.0 and 8.5 percent respectively);[559] (2) a small number of firms dominate both the allocated Crown timber consumption and softwood sawlog auction sale volumes;[560] (3) the SFDA allows TSG holders to transfer Crown timber to other sawmills (both affiliated and unaffiliated), which lessens their need to turn to the auction or non-Crown sources to meet their supply needs;[561] and (4) the GOQ's requirement that logs harvested in Québec be processed within Québec limits auction participation.[562]

The GOQ does not contest our finding that the share of Crown non-auction timber is large relative to other sources, but rather argues that the Marshall Report found that Crown timber auctions produced viable market-based prices free of distortion and that the TSG prices are based on those market-based auction prices.[563] The GOQ also argues that confidentiality of auction bids prevents auction participants from colluding and setting their bids based on the bids of other auction participants, and thus, rather than the bids of non-sawmills tracking the bids of sawmills, they are driven by the actual value of the auction block.[564] The GOQ cites to a conclusion in the Marshall Report that there was no statistical difference between the bids made by TSG-holding corporations and those made by other parties who did not hold TSGs in Québec's public auction bidding data.[565]

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[558] *Id.* at 4-11.
[559] *See* GOQ Stumpage IQR Response at Exhibit QC-Stump-4; *see also* Québec Market Memorandum at Attachment 1 at worksheet "AggregateConsumptionData.PUB."
[560] *See* GOQ Stumpage IQR Response at Exhibits QC-STUMP-1 and QC-STUMP-10; and Québec Market Memorandum at Attachment 1 at worksheets, "Top10CrownShare23-24.BPI," "Top10CrownShare24-25.BPI," "CrownConsumptionMills23-24.BPI," and "CrownConsumptionMills24-25.BPI."
[561] *Id.* at GOQ Stumpage IQR Response at 48-49, 79-92, and Exhibit QC-STUMP-76, *see also* Québec Market Memorandum at Attachment 1 at worksheet "WaivedVolumes23-24.BPI" and "WaivedVolumes24-25.BPI.
[562] *See Lumber V AR3 Final* IDM at Comment 18; *see also Lumber V AR2 Final* IDM at Comment 19; *Lumber V AR1 Final* IDM at Comment 19; and *Lumber V Final* IDM at Comment 35.
[563] *See* GOQ Case Brief Vol. VII(a) at 13-14 and 45-48 (citing Marshall Report at 81-82).
[564] *See* GOQ Case Brief Vol. VII(a) at 51-52.
[565] *Id.* at 24-25 (citing Marshall Report at 5 and 60-62).

We examined the Marshall Report and given that the report is reliant upon data from 2015 or earlier for all its conclusions,[566] we continue to find that the assumptions and the data underlying the Marshall Report are not reflective of the period of review.[567] In addition, we continue to hold similar concerns as we did in the first administrative review regarding the validity of the conclusions in the Marshall Report to this POR as we explained in *Lumber V AR1 Final*.[568]

Among our concerns addressed in *Lumber V AR1 Final* regarding the Marshall Report's conclusions are: (1) the report's assumption that the GOQ's policy of limiting supply guarantee distribution to 75 percent of a sawmill's residual capacity induces high auction participation without providing evidence that sawmills could maintain profitability above 75 percent of their residual capacity; (2) the report does not address the possibility that the Québec stumpage market is already depressed and that companies, rather than trying to lower prices with low bids on the auction, are simply bidding at that low level to preserve the undervaluation present in the supply guarantee market; (3) the report does not sufficiently analyze the effect of TSG prices on auction prices; (4) the report fails to fully support the claim that the volume of TSG timber supplied is sufficiently limited to ensure competitive auctions; and (5) the report draws conclusions from the way auction prices in other markets, such as used cars and metal markets, are used to set non-auction prices without considering the fact that the government has minimal involvement in the used vehicle market and in metal markets but controls the vast majority of the Québec stumpage market.[569]

The GOQ argues that Commerce's finding that TSG holding mills can simply meet 75 percent of their needs from TSGs is unsupported by record evidence, because TSG holding mills have a wide variety of timber sources, and they must therefore include timber sourced from the public auctions to fully satisfy their demands.[570] The GOQ notes that the ten largest corporate groups obtain less than 75 percent of their need from their TSGs, and therefore must source timber through auctions or logs from independent harvesters.[571]

We find these arguments to be unpersuasive. First, the fact that TSG holding sawmills supplied 54 percent of their timber needs through TSGs is significant.[572] Moreover, the GOQ continues to be the largest supplier of stumpage, with administered TSGs and government auctions, accounting respectively for 54 percent and 19 percent of Québec's overall timber market in FY 2023-24. while TSGs and government auctions accounted for 50 percent and 19 percent, respectively, in FY 2024-2025.[573] Third, 50 percent of TSG-holders purchased all their allocated Crown timber in FY 2023-24, and 45 percent purchased all their allocated Crown timber in FY

[566] *See* Marshall Report at Appendix B.
[567] *See Lumber V AR1 Final* IDM at Comment 19, where Commerce explains that "{a}lthough pre-POR data can be informative with proper context and substantiation, the Marshall Report relies on this data to rebut assumptions about specific circumstances" that are at issue concerning later time periods.
[568] *See Lumber V AR1 Final* IDM at Comment 19.
[569] *Id*.
[570] *See* GOQ Case Brief Vol. VII(a) at 12-20.
[571] *Id.* at 18-19.
[572] *See* GOQ Stumpage IQR Response at Exhibit QC-STUMP-4 (Table 5); *see also* Québec Preliminary Market Memorandum at Attachment 1 at worksheet "AggregateConsumptionData.PUB."
[573] *See* GOQ Stumpage IQR Response at Exhibit QC-STUMP-4 (Table 5); *see also* Québec Preliminary Market Memorandum at Attachment 1 at worksheet "AggregateConsumptionData.PUB."

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

2024-2025, which indicates that sawmills consider their TSGs to be a primary source of wood and not a source for their residual needs.[574] Finally, 6 percent of waived TSG volumes in FY 2023-2024 and 22 percent in FY 2024-2025 were sold by the MFFP to sawmills via one-year contracts at the TSG price, and the ability of sawmills to purchase waived volumes at the government-set price diminishes their need to source supply from the auctions.[575]

The GOQ and the Marshall Report both present arguments that because sawmills can only source 75 percent, and not 100 percent, of their residual capacity through TSGs, this limit induces these TSG holding sawmills to meet their supply needs through other sources, such as auctions, private land, and imports.[576] However, neither the GOQ nor the Marshall Report provides evidence that sawmills could maintain profitability up to 100 percent of their residual capacity. In a situation where lumber prices fall or input costs increase, it may no longer be profitable for sawmills to operate at 100 percent of their residual capacity. For example, if a sawmill could only expect to sell 70 percent of the lumber it produces at prices which would be profitable, any volume of production over that 70 percent capacity would be logically unprofitable. A 70 percent capacity is well below the 100 percent benchmark employed by the GOQ and the Marshall Report.

The GOQ argues that the volume of timber that could be supplied from public sources falls short of the quantity demanded by sawmills during the POR; therefore, Québec sawmills must turn to competitive sources of supply, such as private timber and imports of logs.[577] However, the fact that TSG holders also consume some timber from private and imported sources does not negate the fact that private timber and imports of logs make up a significantly smaller share of the timber consumed in Québec than Crown timber.

The GOQ also argues that TSG-holding mills cannot fully meet their residual fiber needs from their TSGs and thus must compete to secure TSG timber.[578] The GOQ also contests Commerce's findings in the *Lumber V AR7 Prelim* that the sawmills have an ability to "source up to 75 percent of {their} supply need at a government-set price," which contributes to the distortion of Québec standing timber market. On this point, the GOQ argues that the 75 percent harvest ceiling, in fact, refers to a theoretical maximum, and during the POR, Québec's largest wood processing groups did not meet their wood requirements through TSGs.[579] Additionally, the GOQ claims that TSG-sourced log volumes transferred under sections 92 and 93 of the SFDA are simply exchanges of volume between mills and do not change the overall volume of available TSG timber.[580]

We disagree with these assertions. First, the 75 percent harvest ceiling limit is a theoretical estimate based on five-year estimates of mill need, such that a mill still has access to fixed TSG

[574] *See* GOQ Stumpage IQR Response at Exhibit QC-STUMP-82; *see also* Québec Preliminary Market Memorandum at Attachment 1 at worksheet "AllocatedVolUsage23-24.BPI" (for FY 2023-2024) and worksheet "AllocatedVolUsage24-25.BPI" (for FY 2024-2025).
[575] *See* GOQ Stumpage IQR Response at 92-100; *see also* Québec Preliminary Market Memorandum at Attachment 1 at worksheet "WaivedVolumes."
[576] *See* GOQ Case Brief Vol. VII(a) at 16-20 and Marshall Report at 28-31.
[577] *See* GOQ Case Brief Vol. VII(a) at 13-14.
[578] *Id*. at 17-21, and 33-39.
[579] *Id.* at 16-19 (citing *Lumber V AR7 Prelim* PDM at 18).
[580] *Id.* at 33-39.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

volumes even if its actual supply need is lower for that particular year.[581] Regarding the transfer of TSG-origin timber, we continue to find that the ability to transfer timber at the TSG price under sections 92 and 93 or via contracts for "waived volumes" reduces the need for sawmills to resort to auctions and affects their bidding behavior. In particular, after examining the GOQ's data, we disagree with the GOQ's contention that the volumes transferred under this section are not significant relative to auction volumes.[582] Furthermore, while these transfers may not increase the total Crown-origin timber available to sawmills, they make the timber sourced from TSGs more flexible, as mills can transfer volumes to and from affiliated and unaffiliated sawmills in order to optimize the size and type of logs processed at each sawmill, thus allowing mills to process more TSG-origin timber than they would absent the ability to conduct transfers. This, in turn, lessens the need for tenure holders to go to non-tenure sources to secure logs that match the capabilities and needs of their sawmills.

In prior reviews, we noted a concern regarding independent harvesters (*i.e.*, non-TSG holders that purchase stumpage, harvest standing timber, and then are restricted to selling the logs to sawmills in Québec) and the fact that their auction bids are influenced by the supply and demand of administratively priced timber sold through TSGs, as the buyers of auction timber harvested by independent harvesters is largely composed of TSG-holding sawmills that consume a large share of both auction and TSG-origin timber.[583] In 2024, independent harvesters purchased approximately half of the Crown auction volume, and the GOQ reported that "independent harvesters account for most of the growth in the bidding population in Québec's auctions,"[584] and it is reasonable to assume that independent harvesters subsequently sold all of the timber they harvested to entities that own and operate a sawmill in Québec. The GOQ also reported that the vast majority of Crown auction timber consumed during FY 2023-2024 and FY 2024-2025 was processed by sawmills that hold a TSG as opposed to sawmills without a TSG.[585] According to the GOQ, there is little export demand for Québec's logs, which indicates that primary buyers of logs harvested by independent harvesters are TSG-holding sawmills in Québec.[586]

The independent harvesters are selling to TSG-holding sawmills who have a choice to purchase additional volumes of Crown timber at an administered price through a TSG or through auctions, either directly by bidding and winning an auction or indirectly from independent harvesters who have secured an auction block. Given that TSG-holding sawmills are the dominant buyer of Crown auction timber in Québec, and that independent harvesters are selling the bulk of their logs to firms that have access to timber at an administered price through a TSG, the TSG-holding sawmills are therefore not willing to pay more for logs sold by independent harvesters than they pay for TSG-origin timber.[587] After taking into account harvesting and transportation costs,

[581] *See* GOQ Stumpage IQR Response at 37, 44-45, and Exhibit QC-STUMP-46.
[582] *Id*. at Exhibits QC-STUMP-4 and QC-STUMP-69; *see also* Québec Preliminary Market Memorandum at Attachment 1 at worksheet "Article92&93Comparison."
[583] *See Lumber V AR3 Prelim* PDM at 23-24; *see also Lumber V AR3 Final* IDM at Comment 18.
[584] *See* GOQ Stumpage IQR Response at QC-S-121, Exhibit QC-STUMP-7 (showing auction blocks awarded in 2024), and Exhibit QC-STUMP-86 (identifying auction participants by business type).
[585] *Id.* at Exhibit QC-STUMP-10 at Table 12; *see also* Québec Preliminary Market Memorandum at Attachment 1 at worksheet "CrownConsumptionMills23-24.BPI" and "CrownConsumptionMills24-25.BPI."
[586] *See* GOQ Stumpage IQR Response at QC-S-16.
[587] *See Lumber V AR3 Final* IDM at Comment 18.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

independent harvesters must offer prices that are competitive with the timber that TSG-holding sawmills would pay for timber harvested via a TSG. In effect, independent harvesters are competing indirectly with TSG-origin timber and, as a result, the conditions in the market for TSG-origin timber impact the prices that independent harvesters are able to charge to the majority of their customers (*i.e.*, TSG-holding sawmills). For these reasons, it is reasonable to conclude that the bidding behavior of independent harvesters is informed by the fact that the largest buyer of Crown auction-origin logs are TSG-holding sawmills who have access to timber at an administered price.

The GOQ disputes our finding that auctions are not "truly open" because of the requirement that logs harvested on public land must be first processed in Québec by noting that there is no export demand for Québec-origin logs and that the log processing requirement does not limit any competition for timber and logs.[588] Our finding in the *Lumber V AR7 Prelim* was strictly that timber purchased at auction must be milled in Québec, and that this restriction on the use of timber results in a situation where independent harvesters must sell the bulk of the timber they purchase via auctions to TSG-holding sawmills.[589] Fundamentally, this restriction on where timber can be processed demonstrates that the market for logs sourced via auctions is not truly open.

According to the GOQ, Commerce also failed to define market power and explain how the auction market was concentrated such that TSG holders wielded market power in the auctions.[590] As noted in the investigation, we are "not seeking to identify market conditions that would be anti-competitive in violation of U.S. or Canadian antitrust laws," and as such, we are not obligated to use the HHI to evaluate the degree of market concentration.[591] More specifically, we are not attempting to determine whether the largest consumers of timber in Québec hold enough market share to wield monopolistic pricing power. Such an analysis would be illogical, given that we are not examining the sales by these companies, but rather their purchases of an input to determine whether the auction price is independent of the administratively set TSG price. The independent harvesters participating in the auction timber market are primarily selling timber that they harvest to other participants in the Québec timber market. The market power we refer to is the ability of the large TSG-holding mills to obtain timber at lower prices than they would in a fully competitive market due to the lack of options independent harvesters face when selling their timber.

Furthermore, we emphasize that the analysis of market power and concentration is not meant to suggest that any market with a similar level of concentration is distorted. Rather, the concentration of timber purchasers is in the context of an already predominant government market share and a legal requirement that cut timber be processed within Québec.

The GOQ disputes Commerce's characterization of TSG-holding mills as a single entity that source from TSGs without constraint by arguing that record evidence shows that both sawmills and independent contractors regularly bid above the equivalent stumpage value of auction

[588] *See* GOQ Case Brief Vol. VII(a) at 40.
[589] *See Lumber V AR7 Prelim* PDM at 19-20.
[590] *See* GOQ Case Brief Vol. VII(a) at 20-21.
[591] *See Lumber V Final* IDM at 51-52.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

blocks.[592] According to the GOQ, this bidding behavior shows that auction and TSG timber are not in competition and that TSG-holders have only a limited supply of TSG timber.[593]

We find these arguments to be unpersuasive. When an auction participant wins a block, it submits a deposit of approximately 10 percent and is not committed to harvesting the timber in the year of purchase.[594] Stumpage prices change yearly, while the price of timber won at auctions remains the same; so, a direct comparison between stumpage and auction prices does not address whether the two types of timber are competing. More importantly, the fact that in some cases auction bidders may bid above the equivalent stumpage value of a block does not, as the GOQ alleges, prove that auction and TSG timber are not in competition. In fact, the record shows that the existence of a large supply of administratively-priced wood in Québec has only one effect on competition – it reduces sawmills' need to procure competitively sourced timber and thus reduces, not increases, competition in Québec and the need to participate and bid in the auction market.

The GOQ cites various pro-competitive features of the auctions in Québec, such as bids being solely based on price, publication of relevant information on auction blocks, and anti-collusion measures.[595] In the *Lumber V Final*, *Lumber V AR1 Final*, *Lumber V AR2 Final*, and *Lumber V AR3 Final* however, Commerce took these factors into account, noting that "Québec's auction system displays several competitive features," but nonetheless found that the auction prices are not free of distortion.[596] Based on the totality of the evidence regarding Québec's TSG and auction systems, we continue to conclude that timber prices in Québec are distorted and, therefore, that there are no tier-one benchmarks based on sales of standing timber in Québec that are suitable for measuring the adequacy of remuneration for TSG-provided timber. We again emphasize that the Québec auction prices are not a tier-one price under our benchmark hierarchy and, therefore, are not an option available to select as a benchmark in this review regardless because there is a viable tier-one benchmark on the record of this review.

Comment 17: Whether To Adjust the Nova Scotia Benchmark to Account for Spruce Budworm-Infested Timber

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 36-40.

> The spruce budworm epidemic in Québec is another reason why the Nova Scotia private stumpage benchmark is incomparable. Should {Commerce} continue with that benchmark, {Commerce} should account for the impact of the spruce budworm infestation in Québec, lowering the value of stumpage that Resolute sawmills

[592] *See* GOQ Case Brief Vol. VII(a) at 33.
[593] *Id.*
[594] *See* GOQ Stumpage IQR Response at Exhibit QC-STUMP-11 at 21 and Exhibit QC-STUMP-28 at 41-42.
[595] *See* GOQ Case Brief Vol. VII(a) at 45-55.
[596] *See Lumber V Final* IDM at Comment 35; *see also Lumber V AR1 Final* IDM at Comment 19; *Lumber V AR2 Final* IDM at Comment 19; and *Lumber V AR3 Final* IDM at Comment 18.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> purchase in the affected Côte-Nord and Lac St-Jean regions. Such wood should not be compared to unaffected Nova Scotia private timber, but should {Commerce} persist with such comparisons it should make adjustments that account for the differences. Resolute provided record evidence of the increased costs of harvesting budworm affected wood, which {Commerce} should use to adjust the benchmark comparison.

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 111-113.

> Resolute argues that {Commerce} "failed to account for a critical market condition" in the *Preliminary Results* because {Commerce} did not adjust the Nova Scotia benchmark to account for spruce budworm-infested timber in the Côte-Nord region. However, the statute states that "{t}he adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation." As explained throughout this brief, Canada is the country subject to the investigation. Therefore, {Commerce} was correct in denying this adjustment as the spruce budworm infestation is isolated to Quebec's Côte-Nord region. Additionally, the purported devaluation of spruce-budworm timber is attributed to increases in harvesting and processing costs. These non-stumpage costs should not be adjusted for because, as {Commerce} has explained in response to other adjustment requests, "the private prices in the {*2021-22 Private Market Survey*} 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." Therefore, introducing non-stumpage costs would distort the comparison. As such, {Commerce} should maintain its decision in the final results.

Commerce's Position: Resolute previously raised these arguments in the first three administrative reviews.[597] No new argument or information has been presented in this review to cause Commerce to reconsider its determination that it is not necessary to adjust the Nova Scotia benchmark when determining whether Resolute's Côte-Nord and Lac St-Jean sawmills purchased Crown-origin standing timber for LTAR.

As Commerce explained in the investigation and in prior reviews, in instances where parties have presented a self-commissioned report, Commerce "must carefully examine the study to ensure that it is based on sound methodologies that guard against any study bias {and} evaluate whether {the} study or report placed on the record of a proceeding by an interested party is free of data and conclusions that were tailored to generate a desired result."[598] In this case, Resolute commissioned the DGR Report to support the company's request to the GOQ for preferential

[597] *See Lumber V AR1 Final* IDM at Comment 20; *see also Lumber V AR2 Final* IDM at Comment 33; and *Lumber V AR3 Final* IDM at Comment 34.
[598] *See, e.g.*, *Lumber V AR1 Final* IDM at Comment 20; *see also Lumber V AR2 Final* IDM at Comment 33.

electricity rates to mitigate costs related to the spruce budworm infestation.[599] The DGR report estimates the impact on the cost of harvesting, hauling, and processing timber in Québec's North Shore region due to spruce budworm.[600]

We have examined the DGR Report on the record of this review, and we continue to find that the underlying data in this report are reliable. First, Resolute's proposed adjustment is based on a single study that was commissioned by Resolute for the purpose of receiving financial support from the GOQ in the form of reduced electricity rates under the Côte-Nord Rate L agreement.[601] Given that it is not an independent report and was commissioned by a party to this proceeding for the purpose of receiving financial support from the GOQ, we are unable to determine whether the report is free of bias and that the report's conclusions were not tailored to generate a desired result. Second, the underlying data behind the estimates in the report regarding the cost impact of spruce budworm are not on the record of this review, so it is not possible for Commerce to evaluate the veracity of the estimates and the conclusions in the report.

Resolute also argues that the spruce budworm outbreak in this region of Québec results in "additional costs on timber harvesting and processing operations" associated with relocating logging equipment and personnel away from affected areas.[602] However, as explained in Comment 20, these harvesting costs are not part of the stumpage prices in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*. As such, to ensure a comparison that consists solely of the price of stumpage, we are not adjusting for any additional costs due to spruce budworm in one region of Québec.

Accordingly, we have not made an adjustment for spruce budworm as proposed by Resolute. We continue to conduct our stumpage benefit analysis by comparing the unadjusted annual price paid by each of Resolute's Québec sawmills to the Nova Scotia benchmark price.

G. Nova Scotia Stumpage Benchmark Issues

Comment 18: Whether Alberta, Ontario, and Québec are the "Country in Question" and Commerce Must Use an In-Province Stumpage 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 32-41.

> The statute requires that adequacy of remuneration must be determined in relation to the prevailing market conditions for the good being provided in the country which is subject to investigation or review. {Commerce}'s regulations set out a hierarchy of benchmarks that implement this statutory mandate. They direct that

[599] *See* Resolute Stumpage IQR Response at Exhibit RES-STUMP-QC-31.
[600] *Id.* at Exhibit RES-STUMP-QC-31.
[601] *Id.* at Exhibit RES-NS-LRateB-APP at 96-98.
[602] *See* Resolute Case Brief at 38.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> the assessment of adequacy of remuneration be relative to the "country in question" and account for "factors affecting comparability," which include prevailing market conditions. The first, and preferred, of these benchmarks is "a market-determined price for the good or service resulting from actual transactions in the country in question." Compliance with the statute and the preferred benchmark, therefore, requires that the benchmark used must reflect prevailing market conditions in the country in which the good is being provided. Here, standing timber markets are inherently local and the right to harvest standing timber is provided by provincial governments in provincial markets. Accordingly, the country in question in each of these instances is the province. Alberta, Ontario, and Québec provided provincial benchmarks that reflected the prevailing market conditions in each of these provinces. Under the statute and regulations, these in-province benchmarks should have been used by {Commerce}. They were not.

GOQ Case Brief

The following is a verbatim summary of the argument submitted by GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. I at 9-10.

> Commerce's amendments to its regulations to move government-run auctions from tier one to tier-three for purposes of determining the adequacy of remuneration when a government provides a good, and adding restrictions to the use of government-run auctions under tier-three, are inconsistent with the statute and not reasonable. The statute requires Commerce to determine whether a government provision of a good was for less than adequate remuneration based on the prevailing market conditions. Here, that means determining whether Québec's sales of stumpage (the price for standing timber on public land) were for less than adequate remuneration based on the prevailing market conditions in Québec. Timber auctions conducted in Québec by the *Bureau de mise en marché des bois* ("BMMB") are open to all real-world bidders, are competitive, and yield market-determined prices. Even if a tier-three analysis was appropriate, for the same reasons, Québec's public timber auctions result in a "government price{that} is consistent with market principles…"

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute. For further details, *see* Resolute Case Brief at 22-26.

> Adequacy of remuneration for government sales of a good must be determined "in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review." {Section 771(5)(E) of the Act}. The statute defines "country" as a political subdivision and the "country" as the government providing the allegedly subsidized good. Nova Scotia timber is an *in situ* resource that is not in Québec nor Ontario, nor do the prevailing market conditions for private Nova Scotia

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> stumpage reflect the prevailing market conditions for stumpage in Québec and Ontario. The Nova Scotia timber private survey represents the kind of cross-border benchmark found unlawful by the NAFTA Panel in Lumber IV.

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 12-13.

> {Commerce} has fundamentally mischaracterized the Nova Scotia information as a "tier 1" benchmark, since section 351.511(a)(2) of {Commerce's} regulations requires that such a tier 1 benchmark be based (emphasis added) on "actual transactions in the country in question," and for purposes of the Alberta stumpage LTAR calculations this "*country in question*" refers to the "political subdivision" of Alberta pursuant to the statutory "country" definition in {section 771(3) of the Act}. A tier 1 benchmark thus must involve "actual transactions in" *Alberta*, not Nova Scotia.

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 48-50.

> West Fraser argues that the private stumpage prices in Nova Scotia cannot be used as a tier-one benchmark within the meaning of the {Commerce's} regulations because the pricing data do not result from "actual transactions in the country in question." Specifically, West Fraser argues that "as applied to the issue of whether the provincial Government of Alberta has provided standing timber for LTAR, the only reasonable interpretation of the reference to the 'country in question' is that this refers to the relevant 'political subdivision,' that is, the provincial Government of Alberta." West Fraser further argues that the {TDA} data submitted by the GOA is a preferable benchmark because it involves "actual transactions in the 'country in question' of Alberta." {Commerce} has previously rejected this argument.
>
> Not only does this argument fundamentally misunderstand the plain language of the statute, but {Commerce} has previously explained that it is "not precluded from using prices for private-origin standing timber in Nova Scotia as a tier-one benchmark" for Alberta stumpage. In previous reviews, {Commerce} has explained that "{t}he province of Nova Scotia is a 'political subdivision' located within the 'country' of Canada, and Canada is the 'foreign country' that is subject to the instant CVD administrative review." Further, the TDA data that West Fraser claims is a more suitable benchmark ignores the fact that the survey prices reflect government distortion in the market, and are thus not usable as a tier-one benchmark in this review. For these reasons, {Commerce} should reject West Fraser's arguments in the final results.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce's Position: We disagree with the Canadian Parties' argument that Commerce must use a benchmark based on transactions within Alberta, Ontario, or Québec because the stumpage programs at issue are province-specific programs and that each province has unique "prevailing market conditions." The Canadian Parties note that under section 771(5)(E)(iv) of the Act, Commerce must consider factors affecting comparability, which include: (1) prevailing market conditions; (2) the good being provided; and (3) the country which is subject to the investigation or review (or country in question).[603] The Canadian Parties argue that the record in the instant review demonstrates that prevailing market conditions vary significantly between provincial markets such that in-province benchmarks should have been used.[604]

The Canadian Parties' argument is premised on the position that the term "country" as utilized in section 771(5)(E)(iv) of the Act, is best understood to mean "political subdivision," *i.e.*, individual province, within the context of the stumpage for LTAR programs.[605] Section 771(5)(E)(iv) of the Act provides that "the adequacy of remuneration shall be determined 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…" Per the Canadian Parties, "country" in this context means "political subdivision."[606] But Commerce's obligation to take into account prevailing market conditions is within the context of the "country *which is subject to the investigation or review*."[607] Here, the "country which is subject to the… review" and the "country in question" is Canada, the "foreign country." These final results are for Commerce's administrative review of the *Order* on certain softwood lumber from Canada. Canada is the "country" subject to this review, not Alberta, Ontario or Québec nor any other individual province. Commerce calculates rates for individually-examined companies and an all-others rate for other companies in the country on a Canada-wide basis. Commerce does not calculate province-specific rates nor review individual provinces. Accordingly, consistent with our findings in *Lumber V Final*,[608] we find that stumpage prices for private-origin standing timber in Nova Scotia constitute prices that are inside the "country which is subject to the investigation or review" and, therefore, may serve as a tier-one benchmark under 19 CFR 351.511(a)(2)(i).[609]

That Commerce investigates programs provided by provincial governments is not inconsistent with this interpretation.[610] Section 771(5)(B) of the Act provides, in part, that a subsidy is countervailable when "an authority…provides a financial contribution." Further, "the term 'authority' means a government of a country or any public entity within the territory of the country."[611] An examination of subsidies granted by the government of the exporting country includes subsidies granted by sub-federal governmental authorities. Thus, Commerce properly investigated subsidies provided by authorities such as the provincial governments within the

[603] *See* Canadian Parties Joint Case Brief Vol. I at 33-34.
[604] *Id*. at 34-35.
[605] *Id*. at 40-41.
[606] *Id.*
[607] *See* section 771(5)(E)(iv) of the Act (emphasis added).
[608] *See Lumber V Final* IDM at Comment 39.
[609] *Id.*; *see also Lumber IV AR1 Final* at Comment 35.
[610] *See* Canadian Parties Joint Case Brief Vol. I at 41.
[611] *See* section 771(5)(B) of the Act.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

country subject to the review. 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, which is Canada.

The Canadian Parties cite to a finding in *SC Paper from Canada Final* that an Alberta benchmark for electricity did not reflect the prevailing market conditions in Nova Scotia, as it was not available, marketable, or transportable to Nova Scotia,[612] which was affirmed by a NAFTA Panel.[613] However, *SC Paper from Canada NAFTA Panel Decision* is distinguishable from the facts of this review. First, Commerce determined that the proposed benchmark electricity data from Alberta were artificially constructed and not based on "actual transactions."[614] Here, the Nova Scotia stumpage prices upon which Commerce relied as a benchmark were actual transactions.[615] Second, in *SC Paper from Canada – Investigation,* Commerce found that there were no means of transporting the electricity generated in Alberta to Nova Scotia, in large part because access to electricity was dependent on electricity power transmission corridors.[616]

The Canadian Parties cite the *DS 533 Panel Report* as support for the argument that when prevailing market conditions are limited to a specific region within the country of provision, the benchmark must reflect that region;[617] and the *DS 412 Appellate Body Report* as further support for the argument that when there is a separate provincial market, prevailing market conditions refers to a regional market rather than out-of-province markets.[618] 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.[619] As the Federal Circuit has recognized, Congress was clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent unless and until the United States Trade Representative has determined the scope of its implementation, if any, pursuant to the statutory scheme.[620] WTO panel or Appellate Body reports do not automatically limit nor have an effect on Commerce's discretion in applying the statute in an AD or CVD proceeding.[621] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[622]

Finally, the Canadian Parties argue that under *Loper Bright*, a more rigorous review of Commerce's interpretation of "country" is mandated.[623] We disagree, finding the Canadian

[612] *See* Canadian Parties Joint Case Brief Vol. I at 38 (citing *SC Paper from Canada Final* IDM at 41-42).
[613] *Id*. at 38 (citing *SC Paper from Canada NAFTA Panel Decision* at 38).
[614] *See SC Paper from Canada Investigation* IDM at 41.
[615] *See Preliminary Results* PDM at 12, 20-24.
[616] *See SC Paper from Canada Investigation* IDM at 42.
[617] *Id*. at 39 (citing *DS 533 Panel Report* at para. 7.30).
[618] *Id*. (citing *DS 412 Appellate Body Report* at para. 5.239 n.746).
[619] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[620] *Id.*
[621] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[622] *See* SAA at 659.
[623] *See* Canadian Parties Joint Case Brief Vol. I at 40 (citing *Loper Bright*, 603 U.S. 369).

Parties' characterization of *Loper Bright* and the plain language of the statute unfounded. *Loper Bright* concerns the level of discretion courts provide to an agency—relevant here, Commerce—when reviewing Commerce's interpretation of an ambiguous statutory provision.[624] But importantly, the Supreme Court made explicit that where the statutory language is clear and unambiguous, *Loper Bright* is not implicated.[625] As explained above, Commerce's understanding of "country" as included in section 771(5)(E)(iv) of the Act as meaning "Canada" is not an interpretation of an ambiguous statutory provision, but the plain reading of the phrase "country which is subject to the investigation or review."

Even assuming Commerce's benchmark selection must take into account a specific definition of "country" within the meaning of section 771(3) of the Act, it does not follow that the agency had no discretion and was required to apply the interpretation as advocated by the Canadian Parties.[626] Although the courts must "determine the best reading of the statute and resolve the ambiguity," *Loper Bright*, 603 U.S. at 400, "{i}t will sometimes be the case that 'the best reading of a statute is that it delegates discretionary authority to an agency.'"[627] The word "country" is used approximately 200 times in sections 701 through 783 of the Act in various contexts. Rather than legislate the meaning of "country' in each instance, Congress left it to Commerce to choose the appropriate definition of country, constrained by section 771(3) of the Act, in each context in which the word "country" is used. This is illustrated in the separate, but related, statutory provision, which provides that subsidies to persons located in a "disadvantaged region within a country" are not countervailable if the disadvantaged region is defined based on neutral and objective criteria including a measurement of economic development.[628] Under sections 771(5B)(C)(ii)(I) and (II) of the Act, Commerce measures economic development by comparing the region's numbers in various metrics to those for "the country subject to investigation or review." For CVD proceedings involving a member of a customs union, the SAA explains, the term "country" in the disadvantaged regions provision "will refer either to the member state or the union as a whole *depending on the structure of the regional assistance program*."[629] The language of the SAA demonstrates Congress' intentional delegation to Commerce to discern the appropriate meaning of "country" in a given context based on the facts before the agency.[630]

We find that the Canadian Parties have not raised any arguments that warrant a change in Commerce's finding from prior segments of this proceeding that stumpage prices for private-origin standing timber in Nova Scotia constitute prices that are available in the "country which is subject to the investigation or review" and, therefore, may serve as a tier-one benchmark under 19 CFR 351.511(a)(2)(i). Thus, for these final results, we continue to use prices for private-origin standing timber in Nova Scotia as a tier-one benchmark when analyzing whether the GOA, GOO, and GOQ sold Crown-origin standing timber for LTAR during the POR.

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[624] *See generally Loper Bright*, 603 U.S. 369.
[625] *See Loper Bright*, 603 U.S. at 454 (holding that where Congress "has directly spoken to the precise question at issue," the court "must give effect to the unambiguously expressed intent of Congress").
[626] *See BYD (H.K) Co. v. United States*, 785 F.Supp.3d 1359, 1377 (CIT 2025) (*BYD*) ("In *Loper Bright*, however, the Court did not throw out the administrative discretion baby with the *Chevron* deference bathwater.").
[627] *See BYD*, 785 F.Supp.3d at 1377 (quoting *Loper Bright*, 603 U.S. at 395).
[628] *See* section 771(5B)(C) of the Act.
[629] *See* SAA at 264.
[630] *Id.*

Comment 19: Whether Private Standing Timber Prices in Nova Scotia Are Available in the Provinces at Issue

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 44-52.

> Standing timber, by its nature, is immovable and not transportable. None of the respondents who purchase Crown standing timber in Alberta, Ontario, or Québec 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 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 84-85.

> In this review, {Commerce} derived a benchmark for Alberta Crown stumpage based on two sets of Nova Scotia private stumpage survey data: one from October 1, 2021 through September 20, 2022 (the *2021-2022 Nova Scotia Private Stumpage Survey*, conducted by Deloitte LLP) and a second from July 1, 2023 through December 31, 2023 (the *2023 Private Market Survey*, conducted by U.S. trade counsel Cassidy Levy Kent…). 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…Nova Scotia private standing timber is not "available, marketable, or transportable" in or to Alberta.

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 12-14.

> {Commerce's} use of a Nova Scotia benchmark is also improper because Nova Scotia stumpage and logs are not "available" in Alberta, as statutorily required.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 43-47.

> The Canadian Parties argue that {Commerce} erred in using Nova Scotia private stumpage transactions as the benchmark for measuring the adequacy of remuneration in Alberta, Ontario, and Quebec because (1) standing timber in Nova Scotia is not "available" to purchasers in Alberta, and (2) the benchmark is not reflective of "prevailing market conditions" in Alberta.
>
> There is no new evidence on the record of this review that would support {Commerce} reconsidering its use of private stumpage prices in Nova Scotia as the proper benchmark. Under {Commerce's} regulations, the agency "normally" will use a tier-one benchmark 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." {Commerce} does this to determine the adequacy of remuneration "in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review." {Commerce's} first priority in selecting a tier-one benchmark is whether the benchmark permits comparison of prices stemming from actual transactions within the country in question.
>
> There is no question that prices from private timber sales in Nova Scotia, as a province in Canada, the country under review, provide the best 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* Petitioner Rebuttal Brief at 12-19.

> {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 every prior segment of this proceeding, as well

> as in administrative reviews of the previous {CVD} 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-province" 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 argue that stumpage is immovable and not transportable and, therefore, Commerce must use an in-province stumpage benchmark to measure the adequacy of remuneration for the stumpage for LTAR programs in Alberta, Ontario, and Québec. We find that the Canadian Parties have not raised any arguments that warrant a change in Commerce's finding from the *Lumber V AR7 Prelim*[631] and prior reviews[632] that lumber producers are free to purchase stumpage across provincial borders or regions and that stumpage prices for private-origin standing timber in Nova Scotia constitute prices that are inside the "country that is subject to the investigation" and, therefore, may serve as a tier-one benchmark under 19 CFR 351.511(a)(2)(i).[633] As we explain in Comment 18 above, while Commerce investigates financial contributions by authorities within the country subject to the review, such as provincial governments, the "country that is subject to the investigation or review" is Canada.[634] We continue to find that the record evidence supports our conclusion that standing timber is in fact available across provinces and, accordingly, that private-origin stumpage prices in Nova Scotia are an appropriate tier-one benchmark.

Regarding the Canadian Parties' reliance on the *SC Paper from Canada Final* to support their argument that standing timber in Nova Scotia is not "available" to Alberta lumber producers, 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.[635] As an initial matter, stumpage is a different type of good from electricity. In *SC Paper from Canada – Investigation*, Commerce declined to use private electricity prices in Alberta as a tier-one benchmark for the provision of electricity in Nova Scotia.[636] 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.[637] Electricity transmitted over long distances also suffers from line losses which greatly inflate the electricity's price.[638] 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*

[631] *See Lumber V AR7 Prelim* PDM at 14-20; *see also Lumber V AR3 Final* IDM at Comment 25 and *Lumber V AR6 Final* IDM at Comment 9.
[632] *See, e.g.*, *Lumber V AR3 Final* IDM at Comment 25.
[633] *See* Canadian Parties Joint Case Brief Vol. I at 33-34; *see also* West Fraser Case Brief at 13.
[634] *See* sections 771(3), (5)(B), and (5)(E)(iv) of the Act.
[635] *See* Canadian Parties Joint Case Brief Vol. I at 38.
[636] *See SC Paper from Canada Final* IDM at 41-42 and Comment 12.
[637] *Id.* at 41-42 and Comment 12.
[638] *Id*. at 41-42 and Comment 12.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

from Canada Final showed that Nova Scotia's sole inter-provincial electricity transmission connection was with New Brunswick.[639] Therefore, in the *SC Paper from Canada Final*, we did not use electricity prices from Alberta. Further, the electricity data from Alberta were not, in fact, based on actual transactions under 19 CFR 351.511(a)(2)(i). Rather, it was constructed based on existing tariffs in Alberta as if the Nova Scotia-based respondent operated in that province.[640]

The Nova Scotia stumpage data in this proceeding, unlike the hypothetical Alberta benchmark in the *SC Paper from Canada Final*, are prices from 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 the *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 or regional borders.

Though stumpage, akin to land, is rooted in the ground, like is the case with land, an end user is free to purchase stumpage across provincial or regional borders. In the *CWP from Turkey 2010 Review*, for example, Commerce used industrial land prices across Turkïye as benchmarks to calculate the benefit conferred by a land for LTAR program.[641]

We also continue to disagree that *Uncoated Paper from Indonesia* should lead Commerce to conclude that private-origin standing timber from Nova Scotia is not a good that is available to the respondents subject to this review and, thus, may not serve as a viable stumpage benchmark.[642] In *Uncoated Paper from Indonesia*, Commerce determined that prices for standing timber that originated outside of Indonesia could not serve as a stumpage benchmark because such standing timber was not available to firms inside Indonesia.[643] Thus, Commerce's decision on that particular matter did not address the viability of stumpage prices from inside the borders of Indonesia. As such, we find that that the facts of *Uncoated Paper from Indonesia* are distinct from the facts concerning the Nova Scotia-based stumpage benchmark, which is completely comprised of stumpage prices from inside Canada.

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). We continue to find this determination appropriate, as the benchmark constitutes prices from within Canada, and record evidence supports concluding that stumpage is available across provincial and regional borders. As discussed elsewhere in this memorandum, we continue to find that private-origin standing timber in Nova Scotia is comparable to the Crown-origin timber sold in the provinces at issue and that the prices for Nova Scotia timber, as contained in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*, constitute a reliable data source to serve as a tier-one benchmark.

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[639] *Id.* at 41-42 and Comment 12.
[640] *Id.* at 41-42 and Comment 12.
[641] *See CWP from Turkey 2010 Review* IDM at Comment 4.
[642] *See* Canadian Parties Joint Case Brief Vol. I at 52.
[643] *See Uncoated Paper from Indonesia* IDM at 15.

Comment 20: Whether Nova Scotia's Forest Is Comparable to the Forests of Alberta, Ontario, and Québec

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 2-3, 32-41 and 52-101.

> The statute requires that adequacy of remuneration must be determined in relation to the prevailing market conditions for the good being provided in the country which is subject to investigation or review. {Commerce's} regulations set out a hierarchy of benchmarks that implement this statutory mandate. They direct that the assessment of adequacy of remuneration be relative to the "country in question" and account for "factors affecting comparability," which include prevailing market conditions. The first, and preferred, of these benchmarks is "a market-determined price for the good or service resulting from actual transactions in the country in question." Compliance with the statute and the preferred benchmark, therefore, requires that the benchmark used must reflect prevailing market conditions in the country in which the good is being provided. Here, standing timber markets are inherently local and the right to harvest standing timber is provided by provincial governments in provincial markets. Accordingly, the country in question in each of these instances is the province. Alberta, Ontario, and Québec provided provincial benchmarks that reflected the prevailing market conditions in each of these provinces. Under the statute and regulations, these in-province benchmarks should have been used by {Commerce}. They were not.
>
> {Commerce} must assess the adequacy of remuneration in relation to the prevailing market conditions for the government-provided good in the country which is subject to review. The government-provided good in question is standing timber in Alberta, Ontario, and Québec. The market conditions for standing timber materially differ from one province to the next, and a benchmark applied to a particular province's provision of Crown standing timber in that province must, in each case, reflect the prevailing market conditions in that province. Even if {Commerce} seeks to assess the adequacy of remuneration for Crown standing timber in each province in relation to prevailing market conditions in Canada as a whole (which would be inconsistent with the statute, {Commerce's} regulations, and the United States' {WTO} commitments), {Commerce} cannot presume that any transactions occurring anywhere in Canada reflect the market conditions that prevail in any particular province in Canada. Indeed, there is no support in evidence, law, or logic for the proposition that the market conditions for standing timber in Nova Scotia, a small peninsula at the far eastern edge of Canada that accounts for less than 2% of Canada's standing timber harvest, are market conditions that prevail across Canada (the world's second-largest country, by area).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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. I at 72-83.

> …Moreover, as 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.

GOO Case Brief

The following is a verbatim summary of the argument submitted by the GOA. For further details, *see* GOO Case Brief Vol. VI at 2-4, 9-11.

> Commerce erred by {m}easuring the adequacy of remuneration for Ontario Crown stumpage using Nova Scotia private stumpage prices that do not reflect "prevailing market conditions" in Ontario, resulting in an inflated subsidy rate.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute. For further details, *see* Resolute Case Brief at 29.

> Resolute and Central Canada adopt and incorporate by reference the arguments by the Government of Canada and the Canadian Parties explaining why the private Nova Scotia timber survey does not offer a comparable benchmark for determining the adequacy of remuneration for Crown stumpage in Québec and Ontario.

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 43-47, 50-52, and 69-76.

> The Canadian Parties argue that {Commerce} erred in using Nova Scotia private stumpage transactions as the benchmark for measuring the adequacy of remuneration in Alberta, Ontario, and Quebec because (1) standing timber in Nova Scotia is not "available" to purchasers in Alberta, and (2) the benchmark is not reflective of "prevailing market conditions" in Alberta.
>
> There is no new evidence on the record of this review that would support {Commerce} reconsidering its use of private stumpage prices in Nova Scotia as the proper benchmark. Under {Commerce's} regulations, the agency "normally" will

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

use a tier-one benchmark 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." {Commerce} does this to determine the adequacy of remuneration "in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review." {Commerce's} first priority in selecting a tier-one benchmark is whether the benchmark permits comparison of prices stemming from actual transactions within the country in question.

There is no question that prices from private timber sales in Nova Scotia, as a province in Canada, the country under review, provide the best 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. For further details, *see* Sierra Pacific Rebuttal Brief at 12-19.

{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 every prior segment of this proceeding, as well as in administrative reviews of the previous {CVD} 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-province" 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.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce's Position: Consistent with prior segments,[644] we continue to disagree with the Canadian Parties that there are fundamental differences between the Acadian forest (which encompasses Nova Scotia) and the Boreal forest (which encompasses Québec, Ontario, and large areas of Alberta) that render private-origin standing timber prices in Nova Scotia incomparable to Crown-origin standing timber prices in Alberta, Québec, and Ontario. As discussed elsewhere in this decision memorandum, we find that species and DBH are the two most critical elements when assessing whether prices for private-origin standing timber in Nova Scotia are comparable to Crown-origin standing timber in Alberta, Québec, and Ontario.[645] 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 found Nova Scotia, Alberta, Québec, and Ontario, 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).[646] As discussed elsewhere in this memorandum, record information in this review continues to demonstrate that while Nova Scotia is not located in the same forest as Québec, Ontario, and Alberta, the forests are comparable in terms of species and DBH in that both forest regions (*i.e.*, the Acadian forest and the Boreal forest) are dominated by SPF-based species and the DBH of the forests' trees are in line with one another.[647]

The Canadian Parties cite to various reports in support of the premise that the different forests result in differing growing and harvesting conditions between the Acadian and Boreal forests.[648] We find this information does not implicate our finding that the forests are sufficiently similar. Our finding is based on our determination that species and DBH are the two most critical elements for assessing whether private-origin standing timber in Nova Scotia are comparable to Crown-origin standing timber in Alberta, Québec, and Ontario. As such, we are primarily concerned with differences in species mix and DBH between the two forests. We find that because any alleged differences in growing and harvesting conditions between the forests do not meaningfully impact the species mix and DBH of the trees in each forest type, they do not constitute a factor affecting comparability within the meaning of the regulation, or at the very least outweigh Commerce's assessment of the most important factors of species mix and DBH. Accordingly, we find the information cited by the Canadian Parties 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.

[644] *See Lumber V AR6 Final* IDM at Comment 28; *see also Lumber V AR5 Final* IDM at Comment 12; *Lumber V AR4 Final* IDM at Comment 29; *Lumber V AR3 Final* IDM at Comment 28; *Lumber V AR2 Final* IDM at Comment 41; *Lumber V AR1 Final* IDM at Comment 28; and *Lumber V Final* IDM at Comment 40.
[645] *See* Comments 21 and 22, *infra*.
[646] *See, e.g.*, *Lumber V Final* IDM at Comment 40.
[647] *See* Comments 21 and 22, *infra*.
[648] *See* Canadian Parties Joint Case Brief Vol. I at 52-63.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 21: Whether SPF Species in Nova Scotia Are Comparable to SPF Species in Alberta, Ontario, and Québec

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 63-92.

> 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, Ontario, and Québec.
>
> Nova Scotia's market conditions for standing timber, as well as the standing timber itself, differ from those in Alberta, Ontario, and Québec in numerous respects {including c}limate, soil, and other growing conditions in Nova Scotia are reflective of Nova Scotia's unique Acadian forest region and Atlantic Maritime ecozone, as well as the province's unique geography. These conditions result in a different mix of species and faster-growing, larger, and more valuable standing timber than the standing timber in other provinces, which are dominated by the harsher boreal forest region and ecozone.
>
> {These} differences in market conditions is well documented on the record of this review, and each provides an independently sufficient basis for {Commerce} to find that benchmarks based on Nova Scotia standing timber prices do not relate to the prevailing market conditions for standing timber in the other provinces
>
> Although {Commerce} should reject the use of Nova Scotia private standing timber prices as benchmarks for Crown standing timber in Alberta, Ontario, and Québec, 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, demonstrating the necessity of adjustments to the Nova Scotia benchmarks to address many of these differences. {Commerce} has information sufficient to perform required adjustments to the Nova Scotia benchmarks to account for quantifiable differences in products, species, conversion factors, and hauling costs.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 37-38 and 73-78.

> {S}ignificant 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's Rebuttal Brief at 52-58.

> In the *Preliminary Results*, {Commerce} found that private timber prices in Nova Scotia are a suitable tier-one benchmark based on the plain language of the statute. Consistent with its findings in prior segments, {Commerce} explained that the timber in Nova Scotia is sufficiently similar to that in Alberta, Ontario, and Quebec, such that the Nova Scotia private-origin timber prices can be used as a benchmark for Crown-origin timber in Alberta.
>
> The Canadian Parties argue that {Commerce's} preliminary findings ignore record evidence indicating substantial differences between the SPF sub-species found in Nova Scotia and those found in Alberta, Ontario, and Quebec.
>
> {Commerce} found previously 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 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, GOO, and GOQ do not distinguish between SPF sub-species because each sells government-owned stumpage in a bundle. As such, Canadian Parties' arguments are neither new nor persuasive and should be rejected in the final results.

Commerce's Position: Under 19 CFR 351.511(a)(2)(i), when choosing an in-country benchmark, Commerce considers factors affecting comparability. 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.[649] And, finding the species mix and DBH of trees in Nova Scotia to be comparable to the species mix and DBH of trees in Alberta, Ontario, Québec, we continue to find private-origin stumpage prices in Nova Scotia to be an appropriate benchmark for the Alberta, Ontario, Québec stumpage for LTAR programs. In this review, the Canadian Parties again argue that the species mix in Nova Scotia differs from the species mixes in Alberta, Ontario, Québec to such an extent that the prices in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* are not suitably comparable as a tier-one benchmark.[650] 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, Ontario, Québec, and Nova Scotia is overwhelmingly harvested from the same core species group—SPF.[651] Accordingly, we find that the transactions for private-origin standing timber in Nova Scotia are sufficiently comparable to the Crown-origin standing timber in Alberta, Ontario, and Québec in terms of species comparability to serve as a tier-one benchmark.

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,[652] consistent with the prior review, we continue to find that the coniferous species that comprise the SPF category in Alberta, Ontario, Québec have "sufficiently common characteristics to be treated interchangeably in the lumber market."[653] 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.[654]

Consistent with prior reviews,[655] record information indicates the GOA sets prices for SPF timber as a whole (a basket of three species rather than separate prices for each); similarly, stumpage is priced for a basket category of SPF in Nova Scotia.[656] Likewise, the GOO charges the same unit price for all Crown-origin standing timber that falls within the SPF species category.[657] The GOO groups black spruce, white spruce, jack pine, tamarack/larch and balsam fir into a single SPF category and treats them as interchangeable for "commercial purposes."[658] As for the GOQ, in FY 2023-2024, the GOQ calculated a price for Crown-origin standing timber

[649] *See Lumber V AR7 Prelim* PDM at 24-27 (citing *Lumber V AR6 Final* IDM at Comments 10, 12, and 13).
[650] *See* Canadian Parties Joint Case Brief Vol. I at 38-42 and 73-78; *see also* GOA Case Brief Vol. IV.A at 55-62.
[651] According to the GNS, the SPF species are "by far the predominant group of trees harvested in Nova Scotia." *See* GNS Stumpage IQR Response at 7. The SPF species' share of the softwood Crown-origin standing timber harvest volume is 95 percent for Québec, 99 percent for Ontario, and 100 percent for Alberta. *See Preliminary Results* PDM at 24 (citing GOQ Stumpage IQR Response at 6, GOO Stumpage IQR Response at Exhibit ON-STATS-1, and GOA Stumpage IQR Response at Exhibit AB-AR7-S-7).
[652] *See* Canadian Parties Joint Case Brief Vol. I at 60-68.
[653] *See, e.g., Lumber V AR6 Final* IDM at Comment 11, GNS Stumpage IQR Response at 7; GOA Stumpage IQR Response at 22; GOO at 10-11 and Exhibit ON-STATS-1; GOQ at 6-7 and Exhibit QC-Stump-12.
[654] *See, e.g.*, *Lumber V AR6 Final* IDM at Comment 11.
[655] *See Lumber V AR6 Final* IDM at Comment 11; *see also Lumber V AR5 Final* IDM at Comment 10; and *Lumber V AR4 Final* IDM at Comment 31.
[656] *See, e.g.*, GOA Stumpage IQR Response at Exhibits AB-AR7-S-17a and AB-AR7-S-17b; GNS Stumpage IQR Response at Exhibit NS-6; and GNS SQR1 at Exhibit NS-SQR1-1.
[657] *See, e.g., Lumber V AR6 Final* IDM at Comment 11.
[658] *See* GOO Stumpage IQR Response at 17-18 and Exhibit ON-TEN-33 and ON-TEN-38.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

for each species that comprised its SPF category.[659] However, the starting point for each species' prices was, nonetheless, a common SPF price to which the GOQ applied a species-specific net revenue adjustment. Thus, we find the manner in which the GOA, GOO, and GOQ set prices for Crown-origin trees that fall within the SPF species category undercuts the Canadian Parties' claims that physical differences within the SPF species category make them incomparable to Nova Scotia SPF trees on an individual or group basis. Record evidence illustrates that any such physical differences are not reflected in the manner in which provincial governments price SPF species Crown-origin standing timber.

Moreover, sawmills in Alberta, Ontario, Québec, and Nova Scotia all process SPF species into the same product, dimensional lumber. Further, SPF was the dominant coniferous species harvested by sawmills in Nova Scotia, Alberta, Ontario, and Québec during the POR. For example, during the POR, SPF species accounted for 95 percent for Québec,[660] 99.5 percent for Ontario,[661] and 98.7 percent for Alberta.[662] Data supplied by Resolute and West Fraser indicate that SPF species represent the majority of the companies' respective Crown timber harvest.[663] The harvest volumes by species in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* show that SPF is the most common species group harvested from private sources and supports the GNS' statement that the SPF category "is by far the predominant group of trees harvested in Nova Scotia."[664] Record evidence thus illustrates that SPF species constitutes the vast majority of harvest in all four provinces, which lends support for Commerce's finding that SPF is indicative of the comparability of private-origin standing timber in Nova Scotia to the species that comprise Crown-origin standing timber in Alberta, Ontario, and Québec.

We further find that lack of differentiation in the treatment of SPF species in Québec and Ontario undercuts the Canadian Parties' arguments that Commerce should adjust the Nova Scotia benchmark for SPF species downward to account for supposed differences in value that exist among spruce, pine, and fir species in Nova Scotia and the two provinces.[665]

DBH is a key, standard metric utilized by the forest industry to evaluate quality and suitability of logs for use in softwood lumber production.[666] As explained in this memorandum and consistent with the prior review,[667] we find that despite variances among the species that comprise the SPF categories in Nova Scotia, Québec, Ontario, and Alberta, tree size, as measured by DBH, remains in the same general range among the provinces. Thus, any supposed differences that exist between the SPF species baskets in Québec, Ontario, and Alberta compared to Nova Scotia are not reflected in the provinces' respective average DBH measurements for SPF species.[668]

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[659] *See* GOQ at Exhibit QC-STUMP-5.
[660] *See* GOQ IQR Stumpage Response at 6.
[661] *Id.* at Exhibits ON-STATS-1. The percentage is based on FY 2024-2025 data.
[662] *See* GOA IQR Stumpage Response at Exhibit AB-AR7-S-7.
[663] *See* Resolute Final Calculation Memorandum at Attachment 2; West Fraser Final Calculation Memorandum at Attachment 3. The memoranda identify the species of Crown-origin standing timber that Resolute and West Fraser purchased during the POR.
[664] *See* GNS Stumpage IQR Response at Exhibits NS-5a and NS-5b.
[665] *See* Canadian Parties Joint Case Brief Vol. I at 122-125.
[666] *See Lumber V AR2 Final* IDM at Comment 40; *see also* Marshall Report at 11.
[667] *See Lumber V AR2 Final* IDM at Comment 36.
[668] *See* Canadian Parties Joint Case Brief Vol. I at 70-81.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

We also disagree with the Canadian Parties' argument that Commerce should adjust its benchmark for the purported differences that exist between Nova Scotia SPF species and the SPF species that grow in Québec, Ontario, and Alberta by comparing the respondents' purchases of Crown-origin fir and pine timber to non-sawlog SPF prices in Nova Scotia (*i.e.*, studwood and pulplog prices) or exclusively to Nova Scotia pulplog prices.[669] Per the Canadian Parties, the respondent's softwood mills in Québec, Ontario, and Alberta consume a relatively greater proportion of lower value species (*i.e.*, pine and fir) and lower value timber in terms of grade and size than sawmills in Nova Scotia; therefore, the Canadian Parties contend that Commerce must adjust the benchmark. First, for the aforementioned reasons, we find no such adjustment is necessary. Secondly, Commerce has consistently rejected arguments to compare respondents' purchases of Crown-origin sawable timber (*e.g.*, sawlogs and studwood) to a benchmark comprised of non-sawable timber (*e.g.*, pulplogs that are used to make pulp). As Commerce has explained:

> {c}onsistent with the investigation, in this review, we instructed the respondent firms to report the volume and value of Crown-origin sawlogs that they purchased during the POR. Accordingly, we have used a benchmark that was similarly comprised of prices charged for standing saw timber in Nova Scotia. In this way, we ensure a comparison that consists solely of logs used by sawmills to make lumber. Thus, to include pulplogs into the Nova Scotia benchmark would create a mismatch between the respondents' reported sawable timber (exclusive of pulplogs) and a broader Nova Scotia benchmark including both sawable logs and pulplogs.[670]

The same remains true for this administrative review.

As to the Canadian Parties' argument that, should we continue to use the Nova Scotia benchmark, adjustments must be made, we address these arguments in Comments 17, 23, 26, and 27.

Comment 22: Whether the Tree Size in Nova Scotia, as Measured by Diameter, Is Comparable to Tree Size in Alberta, Ontario, and Québec

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 69-82.

> Nova Scotia's market conditions for standing timber, as well as the standing timber itself, differ from those in Alberta, Ontario, and Québec in numerous respects {including} {c}limate, soil, and other growing conditions in Nova Scotia are reflective of Nova Scotia's unique Acadian forest region and Atlantic Maritime ecozone, as well as the province's unique geography. These conditions result in a

[669] *See* Canadian Parties Joint Case Brief Vol. I at 82-92.
[670] *See Lumber V AR1 Final* IDM at Comment 31; *see also Lumber V AR2 Final* IDM at Comment 34.

> different mix of species and faster-growing, larger, and more valuable standing timber than the standing timber in other provinces, which are dominated by the harsher boreal forest region and ecozone.

GOA Case Brief

The following is a verbatim summary of the argument submitted by the GOA (internal citations omitted). For further details, *see* GOA's Case Brief Vol. IV.A. at 81-84.

> Unlike other benchmark information on the record, including the Nova Scotia private woodlot survey 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 {TDA} 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, {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.
>
> {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.

GOO Case Brief

The GOO did not provide the requested public executive summary regarding this argument. For further details, *see* GOO's Case Brief at Vol. VI. at 2-11.

Petitioner Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner's Rebuttal Brief at 58-62.

> {T}he GOA argues that {Commerce} failed to consider the {QMD} data as a more suitable measure for comparing tree size between the two provinces. The record shows that the QMD data is not reliable for purposes of {Commerce's} analysis. As such, {Commerce} should continue to find that the size of timber in Nova Scotia and Alberta is comparable in the final results.
>
> {Commerce} has consistently determined that Nova Scotia is comparable in "terms of tree size, species, and overall forest conditions" to Alberta, factors which all

> "play an important role in deriving conversion factors." These arguments are not new to this review, and the Canadian Parties present no new evidence or argumentation to warrant a change in {Commerce's} methodology 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 15-19.

> {Commerce} need not make any further adjustments to the Nova Scotia private stumpage prices that it used as a tier-one benchmark for Alberta and New Brunswick stumpage. The Canadian Parties argue that further adjustments are necessary to mitigate alleged differences in the "prevailing market conditions" between Nova Scotia and Alberta. Once again, {Commerce} has previously addressed and rejected the Canadian Parties' arguments for adjustments to the Nova Scotia private-origin stumpage prices, and the Canadian Parties fail to demonstrate that such adjustments are necessary or appropriate based on the evidence on the record of this review.

Commerce's Position: We disagree with the Canadian Parties' claims that Commerce's preliminary DBH-based size comparison analysis is flawed.[671] Consistent with prior reviews,[672] we continue to find DBH to be a useful metric for assessing benchmark comparability, and therefore continue to rely on the DBH comparison utilized in *Lumber V AR7 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.[673] 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 and Alberta, Ontario, and Québec.[674] We have also incorporated timber height into the LTAR benefit analysis as part of our grade matching methodology.[675] 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), and that this QMD data contradicts Commerce's finding, based solely on DBH data, that Nova Scotia's trees are comparable in size to Alberta's trees.[676] However, we continue to find that the QMD-based forest inventory measure reported by the

[671] *See* Canadian Parties Joint Case Brief Vol. I at 70-81.
[672] *See Lumber V AR6 Final* IDM at Comment 12; *see also Lumber V AR3 Final* IDM at Comment 26.
[673] *See* Marshall Report at 11.
[674] *See* Comment 21, *supra.*; *see also* GOA Stumpage IQR Response at Exhibits AB-AR7-S-7 GOQ IQR Stumpage Response at 6; GOO IQR Stumpage Response at Exhibits ON-STATS-1; and GNS Stumpage IQR Response at 7.
[675] *See* Resolute Preliminary Calculation Memorandum at 3 and Attachment 2; *see also* West Fraser Preliminary Calculation Memorandum at 2 and Attachment 3.
[676] *See* GOC Case Brief Vol. IV.A. at 83-84.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

GOA in response to our request for DBH information is not appropriate for use in our DBH comparison analysis.[677] Record evidence concerning the QMD-based measure of 9.4 cm for softwood standing timber in Alberta does not make clear 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).[678] Without this information, we cannot confirm that a QMD comparison between Alberta and Nova Scotia forest inventory data would compare only merchantable timber. 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 AR7 Prelim*, information in the MNP Cross Border Report indicates that the average DBH of harvested softwood timber in Alberta was 21.7 cm in 2024.[679] While the 21.7 cm DBH for harvested softwood timber in Alberta is in the range of the DBH the GNS reported for merchantable timber,[680] we acknowledged in *Lumber V AR7 Prelim* that a DBH based on harvest volumes is not on the same basis as a DBH reflecting merchantable inventory.[681] Therefore, in the absence of information regarding the DBH of harvested, private-origin standing timber in Nova Scotia that could 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 record information demonstrating that the average DBH of softwood timber harvested in New Brunswick is 22 cm as a proxy for the DBH of private standing timber harvested in Nova Scotia.[682]

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.[683] 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. In the absence of DBH data from Nova Scotia that would provide an accurate comparison to the DBH of harvested Crown-origin standing timber in Alberta, we continue to find DBH data from New Brunswick to be the most appropriate comparator available on the record. 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,

[677] *See Lumber V AR6 Final* IDM at Comment 12.
[678] *See* GOA Stumpage IQR Response at 43 and Exhibit AB-AR7-S-123.
[679] *See Lumber V AR7 Prelim* PDM at 26 (citing MNP Cross Border Report at 20).
[680] The values that the GNS reported for QMD at breast height for all softwood species and for SPF are proprietary. *See* GNS Stumpage IQR Response at 8.
[681] *See Lumber V AR7 Prelim* PDM at 25-26.
[682] *Id.* at 26 (citing GNB IQR Response at STUMP-32 and STUMP-33).
[683] *See* GOA Case Brief Vol. IV.A at 82-83 (citing *LMI v. U.S.*, 912 F.2d at 460; *Jinan Yipin Corp.*, 526 F.Supp.2d. at 1375; *Yangzhou Bestpak*, 716 F.3d at 1378; and *Novosteel*, 284 F.3d at 1276).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

does not reflect the size of the harvested standing timber that comprise the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*.[684] They further argue that the GNS failed to provide, and Commerce failed to seek, specific DBH information for the sawlog and studwood grade standing timber that comprise the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*, needed for Commerce to properly assess whether the timber reflected in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* is comparable to the Crown-origin standing timber harvested by the respondent firms in Alberta.[685] We disagree. The DBH information that the GNS does record and GNS reported in this review 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.[686] 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* or that Cassidy Levy Kent collected as part of the *2023 Private Market Survey*.[687] While DBH information for the standing timber in the *2021-2022 Private Market Survey* and the *2023 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 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.[688]

Concerning Québec, the GOC contends Commerce's DBH analysis was not conducted on an "apples-to-apples" basis because it compared a province-wide DBH measurement in Nova Scotia to an average DBH that reflected all of Québec's tariffing zones. But, the GOC fails to acknowledge that Crown-origin standing timber harvested from Québec's tariffing zones, either through TSGs or its auction system, accounted for approximately 72.5 percent of Québec-origin softwood timber processed in Québec in fiscal year 2023-2024.[689] Further, Québec's tariffing zones encompass the vast majority of land area from which standing timber was harvested in the province during the POR.[690] Thus, we find it was reasonable to compare the province-wide DBH for all softwood species in Nova Scotia and for SPF in Nova Scotia to the average DBH for SPFL standing timber for Québec's tariffing zones when determining that the DBH of standing timber in the two provinces are comparable.[691] Furthermore, Commerce demonstrated that the

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[684] *See* Canadian Parties Joint Case Brief at 73-76; *see also* GOA Case Brief Vol. IV.A at 81-83.
[685] *See* Canadian Parties Joint Case Brief at 69-76; *see also* GOA Case Brief Vol. IV.A at 81-83.
[686] *See* GNS IQR Response at 8.
[687] *Id.* at Exhibits 5a, 5b, and 6.
[688] *See* Comments 11 and 13 *supra*; *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.").
[689] *See* GOQ Stumpage IQR Response at Exhibit QC-Stump-4; *see also* Québec Market Memorandum at Attachment 1 at worksheet "AggregateConsumptionData.PUB."
[690] *See* GOQ Stumpage IQR Response at Exhibit QC-STUMP-20; *see also* Marshall Report at Figure 5.
[691] The DBH information for Nova Scotia is business proprietary. *See* GNS Stumpage IQR Response at 9. The DBH for softwood species in Québec in fiscal year 2023-2024 ranged from 15.2 cm for balsam fir to 30.1 cm for white pine, with an average of 16.2 cm for all softwood species. In fiscal year 2024-2025, the DBH for softwood species ranged from 15.2 cm for balsam fir to 29.7 cm for white pine, with an average of 16.2 cm for all softwood

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

average DBH of Crown-origin standing timber in the tariffing zones from which Resolute harvested during the POR, which we find was comparable to the province-wide DBH of standing timber in Nova Scotia.[692]

Concerning Ontario, the GOC argues that Commerce improperly assessed the comparability of the size of Crown-origin standing timber in Ontario and Nova Scotia using DBH data that has no relation to either province. We disagree. As explained in the *Lumber V AR7 Prelim*, the GOO did not provide information on the average DBH of the standing timber in Ontario.[693] Instead, the GOO provided the average diameter of logs processed in Ontario mills, based on cubic scaling methodologies, as prepared by the Ontario Forest Research Institute, which indicates that the average DBH of SPF trees in Ontario in 2020 was 14.64 cm.[694] However, the diameter information from the Ontario Forest Research Institute reflects inside bark diameters for harvested trees, whereas the DBH information from the GNS is an outside the bark calculation, and thus, we find the information in the report is not comparable to the average DBH reported by the GNS. The Canadian Parties have not rebutted our findings in this regard.

Because the GOO did not provide the average DBH information solicited in Commerce's Initial Questionnaire, pursuant to section 776(a) of the Act, in our preliminary analysis we utilized DBH data for SPFL Crown-origin standing timber in Québec as a means of estimating the DBH of Crown-origin standing timber in Ontario.[695] We calculated the average DBH of SPFL Crown-origin standing timber in the Québec tariffing zones that border Ontario and the average DBH of SPFL Crown-origin standing timber in northern tariffing zones that are contiguous to the Ontario border (*e.g.*, those tariffing zones that are to the north of Québec tariffing zone 858).[696] Based on these average DBH measurements of timber in Québec, which we find similar to the DBH of SPF private-origin standing timber in Nova Scotia, we find that it is reasonable to conclude that the DBH of SPF Crown-origin standing timber in Ontario is comparable to the DBH of SPF private-origin standing timber in Nova Scotia.

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.[697] 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."[698] 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

species. *See* GOQ Stumpage IQR Response at 22; *see also* Marshall Report Data Submission at Exhibit "DHP SPF by zone.xls."

[692] *See* DBH Analysis Memorandum at Attachment 1.

[693] *See Lumber V AR7 Prelim* PDM at 25 (citing GOO Stumpage IQR Response at 17-21).

[694] *See* GOO Stumpage IQR Response at 21 and Exhibit ON-GEN-2A.

[695] *See* GOO Stumpage IQR Response at Exhibit QC-STUMP-17; *see also Lumber V AR3* Final IDM at Comment 36.

[696] This DBH information is business proprietary. *See* DBH Analysis Memorandum at Attachment 1.

[697] *See* Canadian Parties Joint Case Brief Vol. I at 76-77 (citing GOC Stumpage IQR Response at GOC-AR7-STUMP-88).

[698] *See* GOC Stumpage IQR Response at GOC-AR7-STUMP-88 at 5.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

larger than the small-end diameter of logs in Alberta.[699] 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).[700] 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.[701] Accordingly, we continue to find that the 2005 USDA study does not alter our finding that the record supports that the DBH of trees in Nova Scotia is comparable to that of trees in Alberta, Ontario, and Québec.

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, Ontario, and Québec.

Comment 23: Whether To Make Adjustments to Stumpage Rates Paid by the Respondents to Account for "Total Remuneration" in Alberta, Ontario, and Québec

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 132-142.

> When {Commerce} calculates the benefits allegedly conferred by a program, the Tariff Act requires accounting for the entire compensation provided in exchange for the good. In preliminarily assessing the adequacy of remuneration for stumpage in each of Alberta, Ontario, and Québec, {Commerce} erroneously focused on per-unit payments that respondents provided in exchange for Crown standing timber and ignored most of the other required dues, fees, and obligations that were part of the exchange. The Tariff Act requires that {Commerce} assess the adequacy of the remuneration—not a subset of remuneration—exchanged for a government-provided good and that the assessment be in relation to the prevailing market conditions for the government provided good, including all of the conditions of purchase and sale. Because {Commerce} ignored elements of the valuable consideration exchanged for Crown standing timber, it failed to assess the adequacy of the actual remuneration provided.

[699] *See* Canadian Parties Joint Case Brief Vol. I at 76-78 (citing GOC Stumpage IQR Response at GOC-AR7-STUMP-88 at 5).
[700] *See Lumber V AR7 Prelim* PDM at 25-26 (citing MNP Cross Border Report at 20 and GNB IQR Response at STUMP-32 and STUMP-33).
[701] *See* Asker Report at 67.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 11-33.

> In the *Preliminary Results*, {Commerce} significantly understated Alberta's crown stumpage price by failing to properly account for all remuneration (both cash and in-kind) required by Alberta and provided by West Fraser 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 West Fraser harvests Crown timber, it pays both components. In addition to these two cash components of the stumpage price, GOA imposes obligations on harvesters to provide the GOA with valuable in-kind goods and services such as reforestation, silviculture, road-building and maintenance, and forest planning, in exchange for the standing timber. The costs of providing these mandated goods and services are also remuneration provided to the Province in exchange for the harvested timber. Together, the cash and in-kind payments comprise the remuneration West Fraser provided to the GOA in exchange for that timber.
>
> {Commerce} continues to erroneously exclude certain cash payments and the in-kind remuneration West Fraser is required to provide in exchange for Crown standing timber. As Alberta explained in its {IQR}, the in-kind services provided by West Fraser are valuable consideration for the Crown timber harvested by West Fraser. If the Province had incurred the costs for these activities that it instead shifts to private parties including West Fraser, then the timber dues component of its stumpage charges would have been significantly higher as the Province would have sought to recover those costs.
>
> {Commerce} cannot avoid accounting for in-kind remuneration by attributing it to West Fraser's "long-term tenure rights." Instead, it must properly account for all remuneration West Fraser provided in exchange for the Crown timber harvested. The distinction {Commerce} has sought to draw between stumpage and "long term tenure rights" is arbitrary. West Fraser receives no goods or services from its tenure holdings *other* than the standing timber it harvests. {Commerce} has acknowledged this reality repeatedly, including in the Preliminary Results. Neither the evidence on the record in this review nor {Commerce's} analysis provide justification for excluding from the benefit calculation the in-kind remuneration West Fraser provides to the GOA for that standing timber.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOA Vol. IV.A (internal citations omitted). For further details, *see* GOQ Vol. VII.A Case Brief at 62-64.

> In the event {Commerce} continues to use the Nova Scotia benchmark, it must make adjustments to include pulpwood prices as well as legally mandated stumpage costs that exist in Québec but not in Nova Scotia. There are substantial operating cost differences between Québec and Nova Scotia that influence timber prices. Road building, harvesting, log hauling, and other costs are substantially higher in Québec than Nova Scotia and have a direct impact on timber prices. TSG holders must pay an annual royalty equal to 18% of the TSG holder's prior year's total stumpage fees. If this royalty fee is not paid, TSG-holders lose their ability to harvest standing timber covered by the TSG. There is no comparable charge to harvest on private land in Nova Scotia. These adjustments will make for a more rational, though still improper, comparison to Québec public stumpage prices.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute. For further details, *see* Resolute Case Brief at 41-43.

> {Commerce} must account for all remuneration Resolute provided to Québec and Ontario for stumpage. {Commerce} should recognize TSG royalties, First Nations fees and other in-kind contributions made in Québec as remuneration for stumpage. {Commerce} also should recognize Resolute's harvest-related activities in Ontario that provided benefits to the Crown, at Resolute's own expense, as in-kind contributions constituting remuneration for stumpage.

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 11-12.

> {T}he legally-mandated costs that West Fraser incurred for silviculture, reforestation, and other services are part of the overall compensation that West Fraser pays to the Government of Alberta to access Crown timber. Because these in-kind costs are part of the total "remuneration" paid, they must be included in {Commerce's} LTAR calculations.

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 84-96.

> In the *Preliminary Results*, {Commerce} correctly found that the so-called "in-kind" costs are "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.
>
> This finding is also supported by record evidence. The record shows that the long-term tenures are valuable, and the consideration (or "in-kind" costs) required in exchange for such a valuable asset varies in accordance with the duration of the tenures. The GOA argues that "in kind" costs are part of the Crown stumpage price because without imposing such costs on to the Alberta tenure holders, the province "would otherwise have sought to recover in the form of higher stumpage dues." However, the record demonstrates that the Crown stumpage rate in Alberta only bears a tangential relation to the "in-kind" costs.
>
> Finally, {Commerce} properly found that long-term tenure agreements are a separate good from standing timber. As such, the incurrence of in-kind costs is not a "prevailing market condition" with respect to the purchase of stumpage, the record supports {Commerce's} finding that it is not. Instead, in-kind costs relate to the purchase of a separate good, i.e., long term tenure rights.
>
> Accordingly, {Commerce's} decision in the *Preliminary Results* to exclude in-kind costs in the benefit calculation for the provincial governments' provision of stumpage is reasonable and should be maintained in the final results.

Sierra Pacific Rebuttal Brief

The following is a verbatim summary of the argument submitted by the Sierra Pacific. For further details, *see* Sierra Pacific Rebuttal Brief at 23-26.

> {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 the full remuneration paid for stumpage, such as in kind costs. {Commerce} has considered and rejected this argument in prior segments of this proceeding. The Canadian Parties fail to present any new arguments or evidence that would merit a different conclusion in this review, and also fail to demonstrate that {Commerce's}

methodology for calculating benefit is incompatible with the requirement to take account of "prevailing market conditions" in section 771(5)(E)(iv) of the Act.

Commerce's Position: As in the prior reviews, 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.[702] As noted elsewhere in this memorandum, we find the private prices in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* 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.[703]

Record information regarding the *2021-2022 Private Market Survey* demonstrates that the "reported value{s in the survey} included only the transaction price for the private stumpage, excluded the payment of private silviculture fees, and excluded any non-stumpage charges that have been 'bundled' in the Survey Participants' records."[704] Survey participants were instructed to report the price and quantity for stumpage transactions exclusive of "costs for brokerage, harvesting, trucking, and applicable private silviculture fees" and that "{o}nly the pure stumpage price should be reported."[705] Record information also shows that the *2023 Private Market Survey* contains only the cost of stumpage, and the prices are exclusive of any other services or fees.[706]

Further, we have determined, as discussed in other parts of this memorandum, that prices in Nova Scotia are a proper tier-one benchmark.[707] 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 other side of the calculation, *i.e.*, from respondents' purchase prices of Crown-origin standing timber.

Accordingly, we have excluded from respondents' purchase prices all the related expenses that are not the stumpage price paid.[708] 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.[709]

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[702] *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; *Lumber V AR4 Final* IDM at Comment 7; *Lumber V AR5 Final* IDM at Comment 17; and *Lumber V AR6 Final* IDM at Comment 7.
[703] *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.
[704] *See* GOC Stumpage IQR Response at GOC-AR7-STUMP-52 at 19.
[705] *Id* at Exhibit GOC-AR7-STUMP-41 at 5.
[706] *See* GNS January 21, 2026 Stumpage SQR Response at Attachment A at 3-4.
[707] *See* Comments 10, 11, 12, 13, 14, and 15, *supra/infra*.
[708] *See Preliminary Results* PDM at 46-47; *see also* West Fraser Final Calculation Memorandum.
[709] *See* West Fraser Stumpage IQR Response at Exhibit WF-AR7-ALBST-6.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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.[710] 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 West Fraser, but also to holders of short-term timber dispositions of {five years or less}."[711] This, the GOA asserts, demonstrates that such costs should be associated with stumpage, rather than long-term tenure rights.[712] 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."[713] While FMA holders and Quota holders are responsible for reforestation activities at their own cost, those holding a 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.[714] Regardless of the type of tenure, reforestation obligations for Crown tenure holders in Alberta are billed and paid separately from stumpage.[715] 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.[716] As discussed *infra*, the costs associated with long-term tenure rights under an FMA are separate from the stumpage costs charged.[717]

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). Regarding the royalty fee, First Nations fees, and other in-kind costs that TSG holders such as Resolute incur in Québec, we find these expenses are part of Resolute's long-term tenure rights and are not part of the stumpage price as calculated from the *2021-2022 Private Stumpage Survey* or the *2023 Private Stumpage Survey*.[718] Regarding in-kind and other related expenses in Alberta, we find they are part of West Fraser's long-term tenure rights and are not part of the stumpage price as calculated from the *2021-2022 Private Stumpage Survey* or the *2023 Private Stumpage Survey*.[719] Consequently, Commerce cannot adjust for such costs without distorting the benchmark. However, consistent with prior reviews,[720] we have included the FRIAA dues that West Fraser incurred on its purchases of Crown-origin standing timber in

[710] *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 42; *Lumber V AR4 Final* IDM at Comment 7; and *Lumber V AR5 Final* IDM at Comment 17.
[711] *See* GOA Case Brief Vol. IV.A at 23.
[712] *Id.* at 23-27.
[713] *See* MNP Cross Border Report at 104 (internal p. 70).
[714] *See* GOA Stumpage IQR Response at 79-86.
[715] *Id.* at Exhibits WF-AR7-ALBST-5 and WF-AR7-ALBST-6.
[716] *See Lumber V AR6 Final* IDM at Comment 7.
[717] *See* West Fraser Stumpage IQR Response at Exhibit WF-AR7-ALBST-5.
[718] *See* GOQ Case Brief Vol. VII(a) at 62; *see also* Resolute Case Brief at 41-43.
[719] *See* GOA Case Brief Vol. IV.A at 12-33.
[720] *See Lumber V AR3 Final* IDM at Comment 12.

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.[721]

The Canadian Parties argue that it is not appropriate to justify our approach in *Lumber V AR7 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.[722] They further argue that by conducting our LTAR benefit analysis in *Lumber V* differently from the analysis in *Lumber IV*, Commerce has failed to treat similar facts and similar respondents similarly.[723] We disagree with the Canadian Parties' arguments. Concerning *SC Paper from Canada – Expedited Review – Final Results*, the mere fact that that cited case was conducted as an expedited review or involved a product that differs from the subject merchandise here 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' comparison to *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*. In *Lumber V* we have calculated company-specific subsidy rates rather than calculating country-wide subsidy rates based on the aggregate method as we did in the *Lumber IV* proceeding.[724] And, importantly, the LTAR benefit analysis in *Lumber V AR7 Prelim* is consistent with how we conducted the benefit analysis in the underlying investigation as well as the first, second, third, fourth, fifth, and sixth reviews. In this way, we have treated the respondents the *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."[725] 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.[726] As the Federal Circuit has recognized, Congress was clear in the URAA and its legislative history that WTO reports have no application to U.S. law unless and until the United States Trade Representative has determined the scope of its implementation, if

[721] *See, e.g.*, West Fraser Stumpage IQR Response at Exhibit WF-AR7-ALBST-5.
[722] *See* GOA Case Brief Vol. IV.A at 16-17.
[723] *Id*.
[724] For example, in the *Lumber IV Investigation* Commerce calculated country-wide stumpage rates based solely on responses provided by the government and did not examine company-specific transactions. While in *Lumber V* we have calculated company-specific provincial level stumpage rates based on the actual transactions of the mandatory respondents in those provinces. *See Lumber IV Prelim* at 43190 and 43210.
[725] *See* Canadian Parties Joint Case Brief Vol. I at 138 (citing *DS 533 Panel Report* at para. 7.440).
[726] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

any, pursuant to the statutory scheme.[727] WTO panel reports do not automatically limit nor have an effect on Commerce's discretion in applying the statute in an AD or CVD proceeding.[728] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[729]

Comment 24: Whether Nova Scotia Is Comparable to Québec, Ontario, and Alberta in Terms of Haulage Costs and Whether To Otherwise Adjust the Nova Scotia Benchmark to Account for Such Differences

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 126-131.

> Although {Commerce} should reject the use of Nova Scotia private standing timber prices as benchmarks for Crown standing timber in Alberta, Ontario, and Québec, 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, demonstrating the necessity of adjustments to the Nova Scotia benchmarks to address many of these differences. {Commerce} has information sufficient to perform required adjustments to 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 113-115.

> If {Commerce} continues to rely on a Nova Scotia benchmark for Alberta, it must make adjustments for the quantifiable differences between Alberta and Nova Scotia market conditions. The record establishes that, due to differences in market conditions in the two provinces, Alberta's timber harvesters incur substantially higher logging, merchandising, loading, hauling, and shipping costs than do harvesters in Nova Scotia. Because of these differences, Nova Scotia stumpage prices do not provide an accurate comparison to Alberta stumpage prices. Specifically, lower costs make Nova Scotia standing timber that much more valuable than Alberta standing timber, and -- because stumpage is a residual value -- these cost differences have a dollar-for-dollar impact on relative stumpage values. {Commerce} has extensive evidence on the record of this review that

[727] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[728] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[729] *See* SAA at 659.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> permits it to make necessary adjustments to the Nova Scotia benchmark to address these differences in prevailing market conditions. Accordingly, should {Commerce} erroneously continue to use Nova Scotia prices as a benchmark for Alberta stumpage in the Final Results, it must make adjustments for these undisputed, quantified cost differences to ensure that the comparison reflects the prevailing market conditions in Alberta, including "price, quality, availability, marketability, transportation, and other conditions of purchase or sale." Specifically, {Commerce} must adjust for differences in conversion factors, and harvest and haul costs. . .

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 103-107.

> The Canadian Parties argue that the Nova Scotia benchmark must be adjusted because "harvesting and hauling costs in Alberta are meaningfully higher than in Nova Scotia." This argument is without merit, and {Commerce} has reasonably declined to make such an adjustment for the same reasons that it has consistently rejected the Canadian Parties' arguments regarding the comparability of hauling costs between provinces in prior reviews.
>
> The basic premise of the Canadian Parties' argument is that costs related to hauling and harvesting in Nova Scotia are low and not comparable to those in Alberta, Ontario, or Quebec. The Canadian Parties rely heavily on their own IFS Report, which was generated for purposes of this litigation, for their argument. However, {Commerce} has rejected its use in previous reviews and should continue to do so in the final results.

Commerce's Position: The Canadian Parties largely raised the same arguments as in the prior administrative review regarding haulage costs in Alberta and in *Lumber V AR3* regarding haulage costs in Ontario and Québec. We found the arguments unpersuasive then and continue to do so here.[730] 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* and the *2023 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.[731] Consistent with the prior review, we find log haulage costs are not part of stumpage prices but are, instead, related costs.[732] Consequently, including such costs would introduce an external factor unrelated to the stumpage price, and,

[730] *See Lumber V AR6 Final* IDM at Comment 15; *see also Lumber V AR3 Final* IDM at Comment 33.
[731] *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* and the 2023 Private Market Survey were conducted in a similar manner; *see also* GNS September 23, 2025 Stumpage SQR Response at Exhibit NS-SQR1-1 at 7-8.
[732] *See, e.g.*, *Lumber V AR6 Final* IDM at Comment 15.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

pursuant to section 771(5)(E)(iv) of the Act, we find that a proper stumpage-to-stumpage comparison must exclude costs that are not part of the stumpage price. Accordingly, we have excluded all related expenses that are not the stumpage price paid, including log haulage costs.

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 Alberta are so great as to disqualify private-origin standing timber prices in Nova Scotia from use as a tier-one benchmark.[733] 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.[734] In particular, we do not find it appropriate to utilize the MNP Cross Border Report as demonstrating such an adjustment is appropriate because the underlying data lacks specificity to log haulage costs. 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.[735]

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.[736] 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.[737] 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, compared to an average log transport distance of 124 km in Alberta.[738] 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

[733] *Id.* at Comment 15.
[734] *See* Canadian Parties Joint Case Brief Vol. I at 126-130; *see also* GOA Case Brief Vol. IV.A at 79-80 and 113-115.
[735] *See* MNP Cross Border Report, Volume II at paragraph 5.2.1, Table II-22 and fn. 146.
[736] *Id.* at paragraph 5.2.1.
[737] *Id.*
[738] *See* FP Innovations Report at 3, 38, and 43; *see also* MNP Cross Border Report, Volume II at 46.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Report, results in an average haul cost of C$/m^3 27.52 for Nova Scotia, which is greater than the C$/m^3 24.88 for Alberta.[739]

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.[740] We disagree. 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.[741] 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).[742]

With regard to the Canadian Parties' arguments that Commerce should apply a downward adjustment to the Nova Scotia benchmark to account for the cost incurred by respondents for logging camps for their workers, we similarly decline to do so on the basis that logging camp costs are not included in respondents' Crown-origin stumpage prices, and thus adjusting for such costs on the Nova Scotia benchmark side would introduce an external factor into the comparison. In this review, consistent with the investigation and prior reviews, we instructed the respondent firms to report the volume and value of Crown-origin sawlogs that they purchased during the POR. Accordingly, we have used a benchmark that was similarly comprised of prices charged for standing saw timber in Nova Scotia. We find that any harvesting costs such as logging camps are not part of the stumpage prices in the *2021-2022 Private Stumpage Survey* and the *2023 Private Stumpage Survey*. As such, to ensure a comparison that consists solely of the price of stumpage, we are not adjusting for the cost of logging camps.

[739] *See* MNP Cross Border Report, Volume II at paragraph 5.2.1 at fn. 147, which contains the HC Haynes "trucking formula."
[740] *See* Canadian Parties Joint Case Brief Vol. I at 129-130.
[741] *See* FP Innovations Report at Figures 15 and 16.
[742] *See* Marshall Report at 9.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 25: Whether the Nova Scotia Benchmark Is Comparable or Should Be Adjusted to Account for Log Grade or 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 at Vol. I at 82-101 and 117-125.

> The harvested timber products (*i.e.*, logs) in Nova Scotia are classified and priced differently from those in Alberta, Ontario, and Québec, 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, consuming lower-quality logs that would be purchased by sawmills in Alberta, Ontario, and Québec. 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, Ontario, or Québec. 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 98-113.

> 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 for high-value product categories that represent only a small portion of Nova Scotia's private harvest. Specifically, {Commerce} compared the main Alberta coniferous timber product, Product Code "01," a classification for normal-sized logs used by sawmills, studmills, and pulpmills that accounted for the substantial majority (70.7%) of the Alberta harvest in 2024, 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 lumber mills in Alberta purchase all of the log products on which stumpage prices are based (including the smallest and lowest quality log

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

products), {Commerce} excluded from the benchmark the prices paid in Nova Scotia for the smallest sized, lowest quality, and lowest priced logs, which most closely correspond to Alberta's Code 06 and Code 99 logs.

Evidence presented in this review demonstrates that these comparisons are fundamentally flawed, as Alberta's product codes are preliminarily being compared to Nova Scotia products that make up vastly different proportions of the Nova Scotia harvest. Such comparisons are in direct conflict with {Commerce's} own finding that standing timber on private woodlots in Nova Scotia is comparable to Alberta's Crown standing timber.

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 71% of the Alberta harvest in 2024, to combined prices for sawlogs and studwood in Nova Scotia.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 29-35.

Resolute and Central Canada adopt and incorporate by reference the arguments by the Government of Canada and the Canadian Parties explaining why the private Nova Scotia timber survey does not offer a comparable benchmark for determining the adequacy of remuneration for Crown stumpage in Québec and Ontario.

Nova Scotia and Québec classify and price timber differently and incomparably. Nova Scotia classifies logs by destination, where the output of the log is predetermined. Québec classified timber during the {POR} by the physical characteristics and condition of the log. Québec sawmills, like those of Resolute, produce multiple outputs — lumber, chips and other by-products. Québec Grade C, M and R logs have different sizes, characteristics, and commercial values than Nova Scotia studwood and cannot rationally be compared.

In addition to the obvious differences with Grades C, M and R, Québec Grade B logs overlap by size with Nova Scotia sawlogs and studwood. Should {Commerce} continue to make these comparisons, it should at least make adjustments to reduce the distortions: Québec Grade B should be compared with a hybrid of Nova Scotia sawlogs and studwood. Québec Grades C and M should be considered pulpwood. Grade R has no commercial value and should be excluded to avoid an artificial subsidy margin.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 16-17.

> {I}f {Commerce} were to rely on the Nova Scotia benchmark data (which it should not), {Commerce's} preliminary LTAR determination for Alberta stumpage failed to 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 63-69.

> {Commerce} should reject the Canadian Parties' arguments regarding comparability of product classification and segmentation methodologies between Alberta and Nova Scotia. {Commerce} has previously considered and rejected all of these arguments. 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 that 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 the comparison; rather, it is the prices and categories in question that are relevant.
>
> {Commerce} should reject the Canadian Parties' argument that certain revisions should be made to the benchmark calculation to account for differences in product codes and classifications between Alberta, Quebec, and Nova Scotia. The Canadian Parties' arguments for the inclusion of pulpwood into the calculation methodology are unsupported by the record. Specifically, the record demonstrates that fiber categorized as pulpwood in Nova Scotia is not used to produce softwood lumber, while grades 06 and 99 in Alberta and Grades B and C in Quebec may be used for this purpose. {Commerce's} benefit calculation is thus reasonable, based on facts on the record, and necessarily excludes pulpwood, as the value of timber is derived from the value of the products which are produced from it. The inclusion

> of pulpwood would result in a benchmark calculation less reflective of the value of timber used to produce softwood lumber.

Commerce's Position: The Canadian Parties raised the same arguments in prior reviews regarding timber classification and comparisons, which we continue to reject.[743] We disagree with the Canadian Parties' claim that the sawable standing timber that comprises the Nova Scotia benchmark is considerably larger and, thus, incomparable to the sawable Crown-origin standing timber harvested by the respondents in Québec, Ontario, and Alberta. Consistent with prior reviews,[744] we continue to find the average DBH (diameter measured at breast height – 4.5 feet above ground, measured outside the bark) of Nova Scotia's SPF timber is within the same DBH range as SPF timber in Québec, Ontario, and Alberta. Therefore, we disagree that Commerce should compare non-sawlog standing timber prices (*e.g.*, pulplog prices), as contained in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*, to certain sawable Crown-origin standing timber grades in Alberta and Québec that the respondents purchased during the POR.[745]

As an initial matter, we disagree with the Canadian Parties that Nova Scotia is unique in terms of classifying standing timber based on its use or destination. For Ontario, the GOO explained:

> . . .{t}he majority of Ontario's softwood timber stumpage sales to consuming mills would be classified as pulpwood. Since no class/grade distinction is made at the time of harvest, the Province of Ontario tracks the destination of its timber harvest and stumpage sales and classifies timber based on destination.[746]

And

> Ontario does not classify or grade timber as "sawlogs" or "pulpwood." Spruce-pine-fir (which includes larch/tamarack) ("SPF") timber is tracked and stumpage invoiced based on the timber's destination, not attributes such as diameter.[747]

Regarding Alberta, the GOA's scaling manual states, "{t}he end product of a load of logs (*e.g.*, lumber, pulp, etc.) will dictate the product code assigned to load, population, or disposition."[748]

Concerning Québec, record information indicates that "{s}tumpage dues {in Québec} are billed after the wood has been scaled by the permit holders."[749] In Québec, permit holders are defined by the products they produce. Thus, while the GOQ does not have a product classification that specifically denotes sawable timber, it is reasonable to conclude that harvested, Crown-origin

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[743] *See Lumber V AR6 Final* IDM at Comment 13; *see also Lumber V AR5 Final* IDM at Comment 11; *Lumber V AR4 Final* IDM at Comment 25; *Lumber V AR3 Final* IDM at Comment 31; and *Lumber V AR2 Final* IDM at Comment 34.
[744] *See, e.g., Lumber V AR3 Final* IDM at Comments 26 and 31; and *Lumber V AR2 Final* IDM at Comments 34 and 40.
[745] We use the term "sawable" to refer to timber that is suitable for use by sawmills to make lumber products.
[746] *See* GOO Stumpage IQR Response at 3.
[747] *Id*. at 4.
[748] *See* GOA Stumpage IQR Response at Exhibit AB-AR7-S-18 at 19.
[749] *See* GOQ Stumpage IQR Response at 62.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

standing timber that is scaled by permit holding sawmills in Québec will be processed as sawable timber.

However, regardless of how Nova Scotia, Québec, Ontario, and Alberta classify their standing timber, we disagree with Canadian Parties' argument that the focus of Commerce's LTAR analysis should be all Crown-origin standing timber (*e.g.*, sawable and non-sawable timber) in Québec, Ontario, and Alberta. The goal of Commerce's LTAR benefit analysis is to compare the respondents' purchases of sawable Crown-origin standing timber (*e.g.*, standing timber that was processed into lumber) to a market benchmark that is similarly comprised of prices for sawable standing timber. Consistent with 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.[750] Accordingly, we have utilized a benchmark that is similarly comprised of prices charged for sawable standing timber in Nova Scotia.[751] 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,[752] 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.[753]

We also disagree with the Canadian Parties that the overall share of the Crown-origin harvest accounted for by certain grades of standing timber in the provinces at issue relative to the overall share of sawable standing timber grades in Nova Scotia should lead Commerce to compare the respondents' purchases of such Crown-origin grades to pulplog grade standing timber prices in Nova Scotia. The overall share of standing timber accounted for by a particular grade in Nova Scotia (*e.g.*, sawlogs and studwood) or in the provinces at issue (*e.g.*, grades 06 or 99 in Alberta or grades B and C in Québec) is not relevant to our price comparisons. What is relevant are the prices and categories of sawable, Crown-origin standing timber actually purchased by and sent to the respondents' sawmills compared to benchmark prices of sawable, private-origin standing timber. The *2021-2022 Private Market Survey* and the *2023 Private Market Survey* contain prices for harvested, standing timber categorized as sawlogs and studwood, which the record makes clear are sawable timber.[754] Thus, we have utilized the sawlog and studwood standing timber prices contained in the *2021-2022 Private Market Survey* and the *2023 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

[750] *See* Initial Questionnaire at Questionnaire for Producers/Exporters of Subject Merchandise at Table 1, which instructs Resolute to report Crown-origin standing timber purchased by sawmills.
[751] *See, e.g.*, Resolute Final Calculation Memorandum and West Fraser Final Calculation Memorandum; *see also* GNS Stumpage IQR Response at Exhibits 5a and 5b; and Nova Scotia Final Benchmark Memorandum.
[752] *See Lumber V AR2 Final* IDM at Comment 34; *see also Lumber V AR3 Final* IDM at Comment 31; *Lumber V AR4 Final* IDM at Comment 25; *Lumber V AR5 Final* IDM at Comment 11; and *Lumber V AR6 Final* IDM at Comment 13.
[753] *See* GNS Stumpage IQR Response at Exhibit 6 and Exhibit 8 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.
[754] *Id*. at Exhibit NS-6 and Exhibit NS-8 at Appendix 1.

suitable for sawing into 8-foot, 9-foot, or 10- foot studs.[755] Thus, consistent with prior reviews 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.[756]

With regard to Resolute's purchases of Crown-origin stumpage in Québec, recall that we have partly adjusted the benchmark comparison to reflect log size differences. The GOQ's scaling manual defines grade B SPF logs as having "a diameter at the small end {} in the 14 cm class and a length of 2.50 m" and defines grade B hemlock and cedar logs as having a minimum nominal length of 2.5 meters and minimum end diameter of 20 cm for hemlock or 16 cm for cedar and minimal defects (*i.e.*, decay, holes, cracks, and any defects that affect the internal quality of the timber).[757] Based on this information, we continue to find that the grade B standing timber purchased by Resolute is comparable to the sawlog prices contained in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*.[758] The GOQ's scaling manual defines grade C SPFL logs as "{l}ogs or parts of logs, which do not meet the criteria for each method {used to classify grade B logs} while being of a merchantable and billable size…," and defines grade C hemlock and cedar logs as logs which do not meet the minimum standards of grade B.[759] The GNS's classification of studwood is similarly based on size.[760] Thus, because the GOQ's description of grade "C" logs and the GNS's description of studwood both hinge primarily on size, and both descriptions encompass smaller sawable timber (*e.g.*, timber that is smaller than sawlogs), we determine it is more appropriate to compare Resolute's purchases of grade C Crown-origin standing timber to the prices for studwood as listed in the 2017-2018 Private Market Survey.[761]

Resolute argues that the Crown-origin grade C timber it purchased is incomparable to Nova Scotia studwood because the former is defined as having a small-end diameter of 14 cm or less and a length of 2.5 meters or less while the latter is defined as having a small end diameter between 9 – 30 cm and length between 2.4 - 3.0 m.[762] We disagree that these two timber types are incomparable for purpose of LTAR benefit analysis. As noted elsewhere in this memorandum, our benchmark methodology does not require perfection, as such a standard would largely preclude Commerce from utilizing a tier-one benchmark.[763] We also note the size parameters of Nova Scotia's studwood and Québec's grade C timber overlap, which we have

[755] *Id*. at Exhibit NS-7.
[756] *See Lumber V AR2 Final* IDM at Comment 34; *see also Lumber V AR3 Final* IDM at Comment 31; *Lumber V AR4 Final* IDM at Comment 25; *Lumber V AR5 Final* IDM at Comment 11; and *Lumber V AR6 Final* IDM at Comment 13.
[757] *See* GOQ Stumpage IQR Response at Exhibit QC-STUMP-33 at 157 and 179.
[758] *See Lumber V AR2 Final* IDM at Comment 34; *see also Lumber V AR3 Final* IDM at Comment 31; *Lumber V AR4 Final* IDM at Comment 25; *Lumber V AR5 Final* IDM at Comment 11; and *Lumber V AR6 Final* IDM at Comment 13.
[759] *See* GOQ Stumpage IQR Response at Exhibit QC-STUMP-33 at 157-158 and 179.
[760] *See* GNS Stumpage IQR Response at Exhibit NS-8 at Appendix 1.
[761] *See* Resolute Final Calculation Memorandum.
[762] *See* Resolute Case Brief at 32-34 (citing GOQ Stumpage IQR Response at Exhibits QC-STUMP-34 at section 11.3.2.3; and GNS Stumpage IQR Response at Exhibit NS-8).
[763] *See, e.g.*, *HRS from India* IDM at Comment 12.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

appropriately analyzed to the extent such information is on the record.[764] Absent from Resolute's arguments, however, are the minimum diameter and length parameters of the Crown-origin grade C timber processed at its sawmills, which is information that is needed when determining the full extent to which the diameter and length of Resolute's grade C timber overlaps with the low-end diameter and length parameters of Nova Scotia studwood. Additionally, while we lack information on the average small-end diameter of studwood timber harvested in Nova Scotia, there is information on the optimal small-end diameter of studwood timber harvested in New Brunswick. As noted elsewhere in this memorandum, we find that diameter information for timber harvested in New Brunswick may serve as a reasonable proxy for standing timber diameter (measured as DBH) in Nova Scotia. The information for New Brunswick indicates that the optimal small-end diameter for studwood timber is between 10.16 and 15.24 cm.[765] Thus, while the GNS may indicate that studwood may include harvested timber with a small-end diameter as large as 30 cm, information from New Brunswick indicates that optimally-sized studwood timber falls within a range that is similar to the small-end diameter for grade C timber in Québec.

Additionally, regarding grade C timber in Québec, the GOC argues that:

> {w}hile almost none of the Grade C logs in Québec would qualify as either studwood or sawlogs in Nova Scotia, almost all Grade C logs are purchased by and processed in Québec sawmills. To account for their low quality, the GOQ charges sawmills a lower price for Grade C logs, a discount which reflects its value as pulpwood.[766]

We disagree with the GOC that Commerce should use a pulplog standing timber benchmark price to compare to Resolute's reported purchases of grade C standing timber purchases because such grades are discounted to "reflect its value as pulpwood."[767] The GOC argues grade C logs are of poor quality, yet only references length and diameter size to support that claim.[768] The GOQ does not provide any record evidence to support its claim that grade C logs' "discounted" price are a result of its poor quality. How a grade of standing timber is referred to in Québec is not relevant to our LTAR benefit analysis. Our goal is to compare Resolute's purchases of Crown-origin standing timber delivered to sawmills (in other words sawable standing timber) to a sawable standing timber benchmark in Nova Scotia. Under the GOQ's pricing scheme, Resolute purchased grade C timber (whose length and diameter parameters overlap with those of studwood timber in Nova Scotia) from the GOQ at a "discounted" pulpwood price. Then, rather than process the grade C timber into pulp at its pulp mills, Resolute sawed the timber into lumber at its sawmills. Thus, as evident from the GOQ's argument, the GOQ's discussion of "discounted" timber prices demonstrates why Resolute's purchases of grade C timber yields a benefit. The grade C purchases reported by Resolute were delivered to its sawmills, thereby demonstrating they are sawable.[769] No information on the record suggests otherwise.

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[764] *See Preliminary Results* PDM at 48; *see also* Resolute Preliminary Calculation Memorandum at 3; GOQ Stumpage IQR Response at Exhibit QC-Stump-34 at section 11.
[765] *See* GNB Stumpage IQR Response at Exhibit NB-AR7-STUMP-11 at 21 (figure 8) and 22 (Table 13).
[766] *See* Canadian Parties Joint Case Brief Vol. I at 87-88.
[767] *Id.* Vol. I at 88.
[768] *Id*. at 86-87.
[769] *See, e.g.*, Resolute Stumpage IQR Response at Exhibit RES-STUMP-QC-1.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Accordingly, we compared those grade C purchases to a similar, sawable benchmark price, specifically, the price for studwood standing timber, as contained in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*, on the basis that the length and size of the GOQ's grade C timber are comparable to the length and size of Nova Scotia studwood.

Regarding the Crown-origin timber grades M and R that Resolute harvested during the POR, the GOQ's scaling manual indicates that this is timber exhibiting crown decay or bark and timber with "cracks and surface checks."[770] Thus, consistent with prior reviews,[771] we have compared the prices that Resolute paid for sawable, M and R grades of Crown-origin standing timber to the prices for studwood in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*, which reflect the lowest prices for sawable standing timber in the survey.[772] We find this is an appropriate comparison given that Resolute processes lumber from these grades of timber.

Regarding Alberta, information in the GOA's Scaling Manual indicates that Crown-origin standing timber graded as 01 refers to "spruce/pine logs that are green and healthy ('GR') and may be used to make sawlog products."[773] Based on this information, we find purchases of standing timber graded as 01 and purchased by West Fraser are comparable to Nova Scotia sawlog quality grade standing timber. Information in the GOA's Scaling Manual also indicates that the codes for Crown-origin standing timber graded as 06 and 99 are for small-stem and undersized logs.[774] The smaller-size grades are included in the volume of the sawable timber volume purchased by West Fraser during the POR, as indicated by the sawmill data templates they submitted as part of their respective questionnaire responses.[775] 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 West Fraser paid for such 06 and 99 grades of Crown-origin standing timber to the prices of Nova Scotia studwood standing timber, which is smaller than Nova Scotia sawlog timber.

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.[776] 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

[770] *See* GOQ Stumpage IQR Response at Exhibit QC-STUMP-32 at 251 and Exhibit QC-STUMP-34 at 199.
[771] *See Lumber V AR2 Final* IDM at Comment 34; *see also Lumber V AR3 Final* IDM at Comment 31; *Lumber V AR4 Final* IDM at Comment 25; *Lumber V AR5 Final* IDM at Comment 11; and *Lumber V AR6 Final* IDM at Comment 13.
[772] *See* Resolute Final Calculation Memorandum; *see also Lumber V AR2 Final* IDM at Comment 34; *Lumber V AR3 Final* IDM at Comment 31; *Lumber V AR4 Final* IDM at Comment 25; *Lumber V AR5 Final* IDM at Comment 11; and *Lumber V AR6 Final* IDM at Comment 13.
[773] *See* GOA Stumpage IQR Response at 198.
[774] *Id*. at Exhibit AB-AR7-S-18 at 19.
[775] *See* West Fraser Final Calculation Memorandum, which indicates the volume and value of Crown-origin standing timber purchased by West Fraser's sawmills.
[776] *See* GOA Case Brief Vol. IV.A at 48-50.

the characteristics of Alberta's overall harvest or the usage patterns of all of Alberta's saw and pulp mills relative to that of Nova Scotia. Rather, our LTAR benefit analysis focuses on the Crown-origin standing timber purchased by respondents during the POR and the standing benchmark that is most comparable to those purchases.[777] Thus, for Alberta, we obtained the volume and value of Crown-origin standing timber delivered to West Fraser's sawmills.[778] As a result, the universe of the respondents' Crown-origin standing timber purchases is comprised of sawable timber and does not include standing timber that was processed by pulp mills. Accordingly, we conducted the LTAR benefit analysis using a benchmark that is similarly comprised of sawable standing timber.

We disagree with the arguments of the GOA and West Fraser that: (1) industry practice in Nova Scotia is to classify and price timber after it is trimmed and cut-to-length; (2) the sawlog and studwood prices contained in the *2021-2022 Private Market Survey* and the *2023 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.[779] We continue to find the record demonstrates otherwise. As explained elsewhere in this memorandum, a declaration from one of Nova Scotia's largest timber harvesters indicates that buyers and sellers of stumpage determine prices for "felled" trees:

> {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.[780]

Moreover, the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* (as well as the prior *2017-2018 Private Market Survey* and *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).[781] 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").[782] Additionally, the source documentation that Commerce examined in the GNS's verification questionnaire similarly indicates that the data collected as part of the *2017-2018 Private Market Survey* reflected prices for standing timber.[783] Thus, we disagree that the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*, which were conducted using similar methods as the prior surveys, 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.

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[777] *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.
[778] *See* West Fraser Final Calculation Memorandum.
[779] *See* GOA Case Brief Vol. IV.A at 98-113; *see also* West Fraser Case Brief at 16-17.
[780] *See* Petitioner Comments on IQR Responses, Exhibit S-47 at 73-74 at paragraph 5.
[781] *See Lumber V AR6 Final* IDM at Comment 13; *see also* GNS Stumpage IQR at Exhibits NS-7 and NS-15.
[782] *See* GNS Stumpage IQR at Exhibit NS-8 at 8.
[783] *See* GNS ILOVQNR at Attachments 1-3.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 101-113 and 125-126.

> Evidence on the record of this review, establishes that the {Commerce's} Nova Scotia benchmarks suffer from errors, deficiencies, and ambiguities that render them unusable or 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 provincial 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* 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 86-95.

> The benchmark used by {Commerce} was derived by applying an administrative weight-to-volume conversion factor to the actual transaction prices reported by survey respondents. The conversion factor, which was unrelated to the actual prices and was not relied on by the private parties to the transactions, produced unreliable and distorted per cubic meter prices. As a result, Nova Scotia transactions were converted from tonnes to fewer cubic meters than would have been the case under Alberta's more appropriate conversion factor, artificially inflating the benchmark prices.
>
> The conversion factor used to derive the reported prices in the surveys underestimates the volume of cubic meters per tonne in each transaction and therefore overestimates the price per cubic meter. The record demonstrates that the conversion factor survey participants were instructed to use to convert weight-based transactions into cubic meters is not ordinarily used by private parties in Nova Scotia. For an apples-to-apples comparison with Alberta per-m^3 stumpage prices, weight-based transactions in Nova Scotia should be converted to m^3 using the weight-to-volume conversion factor relied on for all of Alberta's cubic-meter-based stumpage transactions. Without this adjustment, {Commerce} cannot rely on the Nova Scotia transaction prices as a benchmark.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> The record confirms that the Nova Scotia conversion factor, which was used to develop the volume-based prices reported in the *2021-2022* and *2023 Surveys*, is outdated, distortive, and not used in the normal course for actual transactions in Nova Scotia. The Nova Scotia conversion factor was created over thirty years ago using scaling data from a single pulp mill in Nova Scotia and has not been updated since. No evidence shows that either the GNS or private parties engaged in stumpage transactions actually rely on the conversion factor to set or calculate stumpage charges. When mills in Nova Scotia purchase standing timber from private land owners, 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. Nevertheless, the actual transaction prices paid by the private market survey participants were converted from per-tonne prices to per-cubic meter prices, using this conversion factor.
>
> To accurately determine a volume-based price in Nova Scotia to use as a benchmark for Alberta's volume-based prices, {Commerce} cannot rely on prices converted using a conversion factor that is wildly different from the conversion factor relied on in Alberta. If {Commerce} insists on using Nova Scotia survey data in the Final Results, it must apply Alberta's conversion factor to the underlying weight-based transactions captured in the private market survey. Without doing so, {Commerce} will underestimate the volumes reported in the Nova Scotia surveys and overestimate its benchmark 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 80-84 and 96-97.[784]

> {Commerce} has consistently found the GNS's 1.167 conversion factor to be reliable. The Canadian Parties' arguments are mostly repeated from previous administrative reviews, and {Commerce} has provided detailed explanations for why each of these arguments is speculative and misleading. 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 that {Commerce} requires in determining the adequacy of remuneration." {Commerce} has consistently found, contrary to the Canadian Parties' methodological concerns over the creation and later reassessment of the factor, "in developing, re-examining, and confirming the continued applicability of the 1.167 conversion factor, the GNS followed the 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." 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

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

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

reliability of the sampling methodologies. Finally, the Alberta Parties posit that "{t}he record shows that nearly all of the private woodlot Nova Scotia stumpage survey transactions that were collected by both Deloitte and CLK were made on a weight basis." This claim is devoid of support and is plainly contradicted by record evidence. Therefore, {Commerce} should continue to reject these repeated arguments for the final results.

The Canadian Parties argue that {Commerce} should "adjust" the conversion factor used in the Nova Scotia benchmark for Alberta, Ontario, and Quebec stumpage because the 1.167 conversion factor does not reflect the forests in those provinces. As in prior reviews, the requested adjustment is no adjustment at all; rather, the Canadian Parties request that {Commerce} entirely replace the conversion factor used in the ordinary course of business in Nova Scotia with a conversion factor used in Alberta or, alternatively, New Brunswick. As explained throughout this brief, the 1.167 conversion factor used in the NS Survey is reliable and is a standard factor used by both the government and private parties in Nova Scotia. {Commerce} has consistently determined that Nova Scotia is comparable in "terms of tree size, species, and overall forest conditions" to Alberta, factors which all "play an important role in deriving conversion factors." These arguments are not new to this review, and the Canadian Parties present no new evidence or argumentation to warrant a change in {Commerce's} methodology in the final results.

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 2-11.

The Government of Nova Scotia has long priced its Crown timber at fair market value using periodic private stumpage surveys of purchasers of hardwood and softwood products within the Province. During years in which the Government of Nova Scotia does not conduct a private stumpage survey, the Government of Nova Scotia 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, including the use of its private stumpage survey to set Crown stumpage rates in Nova Scotia and a reliable regulatory standard weight-to-volume conversion factor.

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 20-22.

{Commerce} determination that Nova Scotia private stumpage prices are a suitable tier-one benchmark for stumpage in Alberta is reasonable and supported by

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> 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 every prior segment of this proceeding, as well as in administrative reviews of the previous {CVD} 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-province" 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 have raised 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 this review and in the two prior reviews.[785] The Canadian Parties now direct these same critiques toward the conversion factor that Cassidy Levy Kent used to generate per-cubic-meter weighted-average prices in the *2023 Private Market Survey*, which Commerce is using in the current review in addition to the *2021-2022 Private Market Survey* to construct a stumpage benchmark.[786] We continue to reject these arguments and find the conversion factor used in the *2021-2022 Private Market Survey* and the *2023 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 20 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.[787] From 1989 to 1994, the GNS surveyed delivered SPF timber to derive a tons to cubic meter conversion factor.[788] When developing the 1.167 conversion factor, the GNS followed the CSA Scaling Roundwood Standard CAN3-0302.1-M86, which is a nation-wide standard for developing conversion factors.[789] 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

[785] *See Lumber V AR6 Final* IDM at Comment 5; *see also Lumber V AR5 Final* IDM at Comment 26; *Lumber V AR4 Final* IDM at Comment 23; *Lumber V AR3 Final* IDM at Comment 29; and *Lumber V Final* IDM at Comment 41.
[786] *See Lumber V AR7 Prelim* PDM at 20-24; *see also* Nova Scotia Final Benchmark Memorandum at Attachment.
[787] *See* GNS Stumpage IQR Response at 15.
[788] *Id*.
[789] *Id*.; *see also* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 at Exhibit 2.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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.[790]

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.[791] 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*.[792] During the investigation, Commerce verifiers examined the process and information that went into the GNS's development and continued evaluation of the conversion factor.[793] In the prior review, Commerce determined that the GNS' conversion factor was reliable and accurate.[794] Record evidence shows that the GNS and the firms that it has contracted to conduct the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* have continued to use the same conversion factor, and that these prices were used by the GNS to set the prices charged for Crown-origin standing timber.[795]

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.[796] 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.[797] 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.[798]

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.[799] Moreover, record evidence indicates the GNS used the conversion factor at issue to set

[790] *See* GNS Stumpage IQR Response at 15; *see also* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 at Exhibit 2.
[791] *See* GNS Stumpage IQR Response at 15 and Exhibits NS-13 and 15; *see also* Petitioner Comments on Sec. II IQR Responses, Volume I-43 at Exhibit 2.
[792] *See Lumber V AR6 Final* IDM at Comment 5.
[793] *See Lumber V Final* IDM at Comment 41.
[794] *See Lumber V AR6 Final* IDM at Comment 5.
[795] *See* GNS Stumpage IQR Response at 2-4 and 19; *see also* GNS September 23, 2025 Stumpage SQR Response at Exhibit NS-SQR1-1 at 6 and 10-11.
[796] *See* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 at Exhibit 2.
[797] *Id*. at Exhibit 2.
[798] *See* GNS Stumpage IQR Response at 15-16; *see also* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 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.
[799] *See* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 at Exhibit 2.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

the prices charged for Crown-origin standing timber during the POR.[800] 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.[801]

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* and the *2023 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, which was commissioned by the GOC, 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.[802] Further, the claim made in the Miller Report that stumpage prices in Nova Scotia do not reflect a felled tree, are not consistent with the experience of sawmill operators in Nova Scotia. For example, the co-owner of Harry Freeman & Son Ltd. stated:

> {f}or each load that leaves the woodlot, the harvester (sometimes but not always us) will pay the woodlot owner for the types of trees harvested. At the same time, the woodlot owner will attempt to maximize his or her revenue on a per-load basis. Concluding the transaction requires that the buyer and seller come to an agreement as to what product has been harvested. That is: whether the felled tree is classified as a sawlog or studwood log, or pulpwood. This information is maintained on cutting slips, invoices, truck slips, or the like, depending on the harvester's practice or the mill's requirements.[803]

The GNS Registry of Buyers for 2024 indicates that Harry Freeman & Son Ltd. is one of only three sawmill operators in Nova Scotia that acquired more than 200,000 cubic meters of timber during the POR,[804] 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* and the *2021-2023 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

[800] *See* Stumpage IQR Response at 2-4 and 19; *see also* GNS September 23, 2025 Stumpage SQR Response at Exhibit NS-SQR1-1 at 4.
[801] *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.
[802] *See* Miller Report at 4.
[803] *See* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 at Exhibit 4 at paragraph 5.
[804] *See* GNS Stumpage IQR Response at Exhibit NS-8 at 14.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

to cut-to-length segments of timber).[805] 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").[806] We found in prior reviews that the prices in the *2017-2018 Private Market Survey* also reflected prices for pure stumpage.[807] According to information that Deloitte provided to participants in the *2021-2022 Private Market Survey*, survey participants were instructed to provide price and quantity for "the purchase of private stumpage {excluding} any purchases of harvested logs (roadside) and amounts reported must not include costs for brokerage, harvesting, trucking, and applicable private silviculture fees {and o}nly the pure stumpage price should be reported."[808] In addition, the *2023 Private Market Survey* used the same product definitions and procedures as the *2021-2022 Private Market Survey* and the prices in this survey only represent the cost of stumpage and are exclusive of any other services or fees.[809]

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.[810] However, in determining in the first review not to rely on the Dual-Scale Study, Commerce noted several reasons that did not involve the number of observations or data sources: (1) the GBC commissioned the Dual Scale study for purposes of the lumber proceeding; (2) the GBC is not a disinterested party; (3) the GBC has an interest in a desired outcome favorable to the interests of its softwood lumber industry; and (4) the "self-selection of the scale sites by the GBC is fundamentally inconsistent with Commerce's finding that it must evaluate whether any study or report by an interested party is free of data and conclusions that were tailored to generate a desired (biased) result."[811]

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.[812] 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.[813] In fact, Commerce's explanation for

[805] *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.
[806] *See* GNS Stumpage IQR Response at Exhibit NS-7 at 8.
[807] *See Lumber V AR5 Final* IDM at Comments 11, 17, 26, and 30; *see also Lumber V AR4 Final* IDM at Comments 5, 23, 27, and 32; and *Lumber V AR3 Final* IDM at Comments 29 and 31.
[808] *See* GOC Stumpage IQR Response at GOC-AR7-STUMP-41 at 5.
[809] *See* GNS Stumpage IQR Response at 3; *see also* GNS January 21, 2026 Stumpage SQR Response at 3.
[810] *See* Canadian Parties Joint Case Brief Vol. I at 103-104 (citing *Lumber V Final* IDM at 59).
[811] *See Lumber V AR1 Final* IDM at Comment 22.
[812] *See* Canadian Parties Joint Case Brief Vol. I at 64-67.
[813] *See Lumber V AR1 Final* IDM at Comment 22.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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.[814] Concerning the Dual-Scale Study, Commerce reached the same conclusion in the instant review.[815]

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*.[816] 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.[817]

Also, in developing, re-examining, and confirming the continued applicability of the 1.167 conversion factor, the GNS followed CSA scaling guidelines.[818] 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.[819] Therefore, unlike the Dual Scale Study, we find it is reasonable for Commerce to rely on the 1.167 conversion factor because it was developed and re-examined pursuant to industry standards, and it was utilized by the GNS and the Nova Scotia forest industry in the ordinary course of business.

The Canadian Parties 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;[820] and (2) used the prices in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* as the basis to set Crown-origin standing timber prices in

[814] *See Lumber V AR3 Final* IDM at Comment 22.
[815] *See Lumber V AR7 Prelim* PDM at 39-40.
[816] *See Lumber V Prelim.*
[817] *See* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 at Exhibit 2 at paragraph 5.
[818] *See* GNS Stumpage IQR Response at 15.
[819] *Id*.
[820] *See* GNS Stumpage IQR Response at 15; *see also* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 at Exhibit 2.

2023.[821] 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.[822] 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.[823] Thus, the Canadian Parties' claims that the 1.167 conversion factor fails to reflect Nova Scotia's forest conditions, did not reflect actual measurements, and was derived using a flawed methodology is belied by the fact that the GNS confirmed the accuracy of the conversion factor based on sampling studies that followed CSA scaling standards.

We disagree with the Canadian Parties' claims that the GNS's 2007 update to its scaling manual means that the 1.167 conversion factor no longer reflects or follows the province's most recent 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."[824]

We also disagree with the GOA's argument that Commerce should adjust the conversion factor used in both the *2021-2022 Private Market Survey* and the *2023 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-

[821] *See* GNS Stumpage IQR Response at 3 and Exhibit NS-5b; *see also* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 at Exhibits 1 and 4.
[822] *See* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 at Exhibit 2.
[823] *See* GNS Stumpage IQR Response at 15; *see also* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 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.
[824] *See* Petitioner Comments on Sec. II IQR Responses, Exhibit S-47 at Exhibit 3.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

one benchmark perfectly match the goods that are the subject of the LTAR benefit analysis.[825] 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.[826] 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.

The GOA cites to *Coated Paper from Indonesia*, in which Commerce declined to apply a conversion factor used by the government because it was not corroborated by any supporting documentation. As explained above, we find that the GNS' conversion factor is supported by the surveys that the GNS conducted from 1989 to 1994 to develop the conversion factor, the GNS' re-examination of the 1.167 conversion factor from 2001 to 2009, and its use across Nova Scotia as an accurate measure of the volume of softwood timber harvested in that province. The GOA also cites to *La Molisana*, in which the Federal Circuit found that the use of differing conversion factors, specifically the conversion factors for protein content in pasta adopted by the U.S. FDA and the European Union for the purpose of establishing the protein content on food labels, creates inaccuracies in the comparison of identical products. We find that *La Molisana* is inapposite to the issue of conversion factors for timber. The nitrogen conversion factor at issue in *La Molisana* relates to identifying product characteristics for the purposes of model-matching in an AD margin analysis, and not an LTAR analysis in a CVD investigation.[827] Moreover, the two nitrogen conversion factors in *La Molisana* were based on differences in food labeling standards and rounding by two different regulatory bodies, the U.S. FDA and the European Union, and not on a weight-to-volume conversion or a product.[828]

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.[829] As the Federal Circuit has recognized, Congress was clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent unless and until the United States Trade Representative has determined the scope of its implementation, if any, pursuant to the statutory scheme.[830] WTO panel or Appellate Body reports do not automatically limit nor have an effect on Commerce's discretion in applying the statute in an AD or CVD proceeding.[831] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[832]

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[825] *See, e.g.*, *HRS from India* IDM at Comment 12.
[826] *See* Petitioner Comments on Sec. II IQR Responses, Volume I-43 at Exhibit 2.
[827] *See La Molisana S.p.A. v. United States*, 138 F.4th 1353, 1355-56 (Fed. Cir. 2025).
[828] *Id.* at 1359-60.
[829] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[830] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[831] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[832] *See* SAA at 659.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 27: Whether To Revise the Indexing Method Employed in the Derivation 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 at Vol. I at 11-31.

> {Commerce} should revisit its preliminary reliance on the Statistics Canada Forestry Products Purchasers' Price Index {FPPPI} to approximate Nova Scotia prices during the POR by indexing earlier survey results. In prior reviews, {Commerce} has relied, most recently, on the {IMF} Softwood Index and, prior to that, on the {FLCI}, to adjust data from Nova Scotia surveys of private stumpage for the POR. In its *Preliminary Results*, {Commerce} eschewed the IMF and FLC indices and instead indexed Nova Scotia survey data using the FPPPI submitted by Petitioner. This was a mistake that {Commerce} can easily correct in its final results.
>
> First, the FPPPI includes prices for a wide range of non-softwood products that do not reflect market conditions and price fluctuations for softwood lumber. Although {Commerce} correctly acknowledged that the FPPPI includes prices for irrelevant non-subject products, it erred by concluding that the previously relied-upon IMF Softwood Index suffers from the same defect. The record shows that the IMF Softwood Index includes prices exclusively for North American softwood timber and sawn softwood. Thus, {Commerce} relied on an erroneous factual premise for treating the FPPPI as more suitable for indexing softwood stumpage prices than the IMF Softwood Index.
>
> Second, adjusting the Nova Scotia benchmarks using the FPPPI results in a fundamentally distorted benchmark in two respects. The FPPPI includes costs—like transportation and harvesting costs—that are expressly excluded from the Nova Scotia surveys and that have a well-documented inverse relationship with the stumpage prices being indexed. Upward trends in the FPPPI-captured costs would (all else being equal) correlate with downward trends in stumpage prices. More fundamentally, {Commerce} fails to address the inconsistency and circularity of using prices from the Canadian provinces with allegedly distorted markets to adjust the benchmarks used to evaluate those prices from those Canadian provinces. If {Commerce} maintains its erroneous market-distortion findings, it cannot simultaneously rely on an index reflective of prices in allegedly distorted markets as evidence of trends in the purportedly undistorted market of Nova Scotia.
>
> Third, the evidence on the record demonstrates that trends in the IMF Softwood Index and the Random Lengths FLC Index correlate more strongly with trends in market prices than does the FPPPI. The failure of the FPPPI to predict past movements in actual market prices should disqualify it from being used for that

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> purpose in this Review, particularly given the availability of more reliable options that {Commerce} has found suitable for this purpose in prior reviews.

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 113-121.

> {Commerce} correctly applied Statistics Canada's {FPPPI} to update the 2021-2022 Survey and make the provincial benchmark contemporaneous with the POR. The Canadian Parties argue that the FPPPI distorts the benchmark and that the IMF Global Softwood Index and Random Lengths Framing Lumber Composite Index more accurately reflect market conditions. However, as the only Canada-specific price index on the record, the FPPPI reflects domestic raw-material prices, including forestry products, and for reasons that are business proprietary, serves as the best available index compared to the other two indices proposed by the Canadian parties. Accordingly, {Commerce} should continue to apply Statistics Canada's index to update the 2021–2022 Survey in the final results.

Commerce's Position: After taking into consideration interested parties' arguments for this administrative review and for the reasons explained below, we have decided to revise our indexing methodology used in the *Preliminary Results* and revert to the indexing methodology we used in the prior review. As an initial matter, we are continuing to use private stumpage prices in Nova Scotia as a benchmark and, because the prices in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* are from a period that precedes the POR, we continue to find that it is appropriate to index these prices to the POR.

Our aim is to use an index methodology that reflects as closely as possible the private prices in Nova Scotia during the POR. There are no price indexes on the record that are specific to stumpage prices. Instead, there are three price indexes on the record which are all based on one or more goods that are downstream from standing timber: (1) U.S. export prices of softwood logs and sawn softwood (*i.e.*, the IMF Softwood Index); (2) a broad basket of forestry products in Canada, including logs, pulpwood, natural rubber and other forestry products (*i.e.*, the IMF Softwood Index); and (3) North American prices for a basket of framing lumber products (*i.e.*, the Random Lengths FLC Index).

We agree that the IMF Softwood Index is the most appropriate price index to index the private-origin standing timber prices contained in the *2021-2022 Private Market* and the *2023 Private Market* because this price index is specific to softwood timber prices and does not contain prices for Canadian forestry products that may be affected by subsidization. As we explained in the prior review, an important characteristic of a price benchmark is that it is contemporaneous with the POR.[833] In *Lumber V AR6*, we applied the IMF Softwood Index to the *2021-2022 Private Market* to inflate the benchmark prices to the AR6 POR.[834]

[833] *See Lumber V AR6 Final* IDM at Comment 23.
[834] *See Lumber V AR6* PDM at 28-29, unchanged in *Lumber V AR6 Final* IDM at Comment 23.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

The record evidence, including supporting documentation for the IMF Softwood Index and the StatCAN FPPPI, indicates that the products in the IMF Softwood index (*i.e.*, softwood logs and sawn softwood) are more closely aligned with the benchmark (*i.e.*, softwood stumpage prices), whereas the StatCan FPPPI contains forestry products that are not softwood lumber (*i.e.*, pulpwood and rubber).[835]

We also note that unlike the prices in the StatCan FPPPI, which are potentially impacted by subsidized softwood stumpage prices, the IMF Softwood Index prices are based on U.S. export prices and are not subject to similar concerns regarding subsidization.[836] The StatCan FPPPI is based on prices in Canada for "{l}ogs, pulpwood, natural rubber and other forestry products."[837] In the instant review, we find the markets for softwood standing timber in Alberta, Ontario and Québec are distorted by the respective provincial government's involvement in those markets, such that the prices of softwood standing timber, both private-origin and Crown-origin standing timber, in those provinces are not market-based. As such, we find that the prices of logs and other downstream forestry products contained in the StatCan FPPPI may be distorted and therefore unreliable for use as a price index.

Finally, when utilizing the IMF Softwood Index for these final results, we are continuing to employ the "corresponding month methodology" by indexing the monthly average benchmark price from the corresponding month in the year covered by the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* to the month in the POR that was not covered by the survey (*e.g.*, indexing data from October 2021 to October 2024).[838]

Comment 28: 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 101-102 and 114-117.

> Evidence on the record of this review, establishes that the {Commerce's} Nova Scotia benchmarks suffer from errors, deficiencies, and ambiguities that render them unusable or 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 provincial 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* and *2017-18 Nova*

[835] *See* GOC Stumpage Benchmark Submission at Exhibit GOC-ADEQ-AR7-18; *see also* Petitioner Non-BC Stumpage Benchmark Submission at Exhibit 5A.
[836] *See* GOC Stumpage Benchmark Submission at Exhibit GOC-ADEQ-AR7-18.
[837] *See* Petitioner Non-BC Stumpage Benchmark Submission at Exhibit 5A.
[838] *See, e.g., Lumber V AR1 Final* IDM at Comment 35 where we applied this same corresponding month methodology.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> *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 54-72.

> The survey conducted by the {GNS's} U.S. trade law firm, Cassidy Levy Kent, cannot serve as a source for benchmark prices in this case. In addition to the obvious conflict of the survey being conducted by GNS's counsel for this case, the survey suffers from a number of other deficiencies. These deficiencies include the limited number of survey respondents, absence of any articulated sampling methodology, and the GNS's failure to submit (as business proprietary information or otherwise) the underlying data within its U.S. trade counsel's possession. {Commerce} has rejected relying on other more robust surveys, notably the B.C. Dual-Scale Study.

GOO Case Brief

The GOO did not provide the requested public executive summary regarding this argument. For further details. For further details, *see* GOO Case Brief Vol. VI at 11-13.

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(a) at 59-62.

> {Commerce's} use of the flawed private timber price survey in Nova Scotia as a tier-one benchmark to assess the adequacy of remuneration for public stumpage in Québec is unsupported by substantial evidence and not in accordance with law. The requirement set forth in section 771(5)(E) of the Act is that benchmarks must be reasonable and take into account "{p}revailing market conditions include{ing} price, quality, availability, marketability, transportation, and other conditions of purchase or sale" for the good provided. The good provided is timber standing on public land in Québec. The benchmark constructed by {Commerce} from the GNS Survey does not account for prevailing market conditions affecting timber in Québec and is neither comparable to, nor representative of, Québec timber. The Nova Scotia benchmark excludes pulpwood prices and is based on micro-transactions in Nova Scotia that are unrepresentative of timber and timber markets in Québec.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 76-80.

> The Canadian Parties argue that because the *2015-16 Survey* and *2017-18 Survey* may have contained non-stumpage costs in some data points, and because the *2021-22 Survey* and *2023 Survey* are similar, they likely also contain non-stumpage costs. As in the previous administrative reviews, this argument is entirely speculative.
>
> In the *Preliminary Results*, {Commerce} determined that the *2021-22 Survey* and the *2023 Survey* constitute reliable data sources that are sufficiently representative of the private stumpage market in Nova Scotia because the *2021-22 Survey* and *2023 Survey* were 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.
>
> {Commerce} also has previously rejected the argument that "additional errors could pervade the survey responses because of the vague product definitions provided to respondents." The agency has explained that the GNS and the lumber industry writ large regularly use the relevant terms (*i.e.*, sawlog and studwood) and, therefore, there is no reason to believe that respondents to the *2017-2018 Survey* would misinterpret the terms. This is further supported by a declaration from the co-owner of Harry Freeman & Son Ltd.
>
> Given this evidence, there is no reason for {Commerce} to doubt the accuracy of the data in the *2021-22 Survey* and *2023 Survey* for purposes of representing private stumpage prices in Nova Scotia.

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 11-24.

> The Government of Nova Scotia has long priced its Crown timber at fair market value using periodic private stumpage surveys of purchasers of hardwood and softwood products within the Province. During years in which the Government of Nova Scotia does not conduct a private stumpage survey, the Government of Nova Scotia adjusts Crown stumpage rates using available market indices to update the private stumpage prices reflected in survey results. As discussed {in the GNS's rebuttal brief}, 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 reliable regulatory standard weight-to-volume conversion factor. The record further shows that the Government of Nova

Scotia commissions private stumpage surveys from third parties in furtherance of domestic forestry policy and not for any advantage in this litigation.

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.[839]

The Canadian Parties also raise concerns regarding the treatment of the number of transactions and the average prices in both the *2021-2022 Nova Scotia Private Stumpage Survey* and the *2023 Private Market Survey* as proprietary information, which we address below in Comment 29.

In addition, the Canadian Parties raise several concerns regarding the reliability of the *2023 Private Market Survey*. As an initial matter, we note that we are not relying solely on the *2023 Private Market Survey* as the only source of price data for a tier-one stumpage benchmark; rather, we are weight averaging the transactions in the *2023 Private Market Survey* with the transactions in the *2021-2022 Private Market Survey* in order to incorporate as many private transactions in the benchmark as possible. We find that more data points are preferable to fewer data points in constructing the benchmark, and for the reasons detailed below, we find that the price data in the *2023 Private Market Survey* are reliable and suitable to be included in the tier-one benchmark to measure the adequacy of remuneration for Crown stumpage in Alberta, Ontario, and Québec.

We find that the Canadian Parties' concerns that the sampling methodology behind the survey is flawed and that the size or representativeness of the *2023 Private Market Survey* is inadequate are unfounded. The GNS used the price data in the *2023 Private Market Survey* to set Crown stumpage rates in the ordinary course of business.[840] The *2021-2022 Private Market Survey* conducted by Deloitte and the *2023 Private Market Survey* conducted by Cassidy Levy Kent used the same product and species definitions established by the NSDNRR, which are widely known and used across the province.[841] The *2023 Private Market Survey* was based on a sample of mills in different regions across the province, the responses received to the survey were subject to on-side audits,[842] and the GNS found the survey to be a reliable and accurate representation of private stumpage prices in the province and used the price data in the survey to set Crown stumpage rates.[843]

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[839] *See Lumber V Final* IDM at Comment 41; *see also Lumber V AR1 Final* IDM at Comment 29; *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 Final* IDM at Comment 30.
[840] *See* GNS Stumpage IQR Response at 2-3; *see also* GNS January 21, 2026 Stumpage SQR Response at Attachment A at 4-5.
[841] *See* GNS Stumpage IQR Response at 19 and Exhibit NS-7.
[842] *See* GNS Stumpage IQR Response at 3-4; *see also* GNS January 21, 2026 Stumpage SQR Response at 3 and Exhibit SQR2-2.
[843] *See* GNS Stumpage IQR Response at 2-3; *see also* GNS January 21, 2026 Stumpage SQR Response at 2-3.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

The Canadian Parties also argue that Commerce rejected the Dual-Scale Study in part based on concerns regarding that study's sampling methodology, while accepting the *2023 Private Market Survey* despite the issues raised by the Canadian Parties regarding the sampling methodology used in the *2023 Private Market Survey*. We disagree with this comparison. In determining in the first review not to rely on the Dual-Scale Study, the context in which Commerce detailed concerns with the sampling methodology or the size of the survey were specifically because the GBC commissioned the Dual Scale study for purposes of the lumber proceeding and that the "self-selection of the scale sites by the GBC is fundamentally inconsistent with Commerce's finding that it must evaluate whether any study or report by an interested party is free of data and conclusions that were tailored to generate a desired (biased) result."[844] In short, our concerns regarding the Dual-Scale Study were based on the fact that the study was prepared for the purpose of the *Lumber V* investigation and was not prepared or used in the ordinary course of business. Therefore, we found that any flaws in the methodology of the study were potentially the result of interested parties trying to achieve a desired outcome in this proceeding.

The Canadian Parties also allege that the GNS and Cassidy Levy Kent conducted the survey solely for the purpose of submitting it to Commerce for use as a benchmark in this proceeding. This is contradicted by the record evidence, which shows that the GNS commissioned the *2023 Private Market Survey* and "updated Crown stumpage prices {} based on the industry trends observed in the {*2023 Private Market Survey*}" as part of the GNS' statutory role to "provid{e} effective management of all Crown lands" and "achieve the best economic use of the forests of the Province."[845] Thus, the GNS commissioned and used this survey in the ordinary course of business for its own purposes.

We found in the *Lumber V* investigation that the GNS commissioned the *2015-2016 Private Market Survey* several months prior to the filing of the Petition, and that the survey was not conducted specifically for purposes of the *Lumber V* investigation.[846] The GNS has relied on commissioned surveys to set Crown stumpage rates in every year since the underlying investigation of *Lumber V*, and has commissioned surveys of private prices for periods well before the *Lumber V* investigation (*e.g.*, the GNS commissioned a survey of private stumpage prices conducted by Nortek Resource Solutions covering calendar year 2008).[847] In short, the GNS commissions surveys of private stumpage prices in the ordinary course of business for its own purposes – to set Crown stumpage rates in the province – and not for the purpose of submitting benchmark information to Commerce.

In this proceeding, in response to our request that the GNS provide the "data for any survey available from Deloitte or any other data commissioned by the GNS for private transactions that occurred during {the POR}},"[848] the GNS, through its counsel, provided the transaction-level data

[844] *See Lumber V AR1 Final* IDM at Comment 22.
[845] *See* GNS Stumpage IQR Response at 2-3 and Exhibit NS-9 at 1 and 3.
[846] *See Lumber V Final* IDM at Comment 41.
[847] *See* GOC Stumpage Benchmark Submission at 21; *see also 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 Final* IDM at Comment 30.
[848] *See* Initial Questionnaire at NS Province Stumpage Template at Table 5.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

for the two surveys of private stumpage transactions that it has used to establish Crown stumpage rates (*i.e.*, the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*).[849]

The Canadian Parties also argue that the interests of the GNS and Cassidy Levy Kent are aligned towards generating survey results with higher prices in order to promote the competitiveness of private timberland in Nova Scotia. This is contradicted by the policy of the NSDNRR, which is to set Crown stumpage rates "so that the cost of Crown timber reflects the price negotiated between private parties in a competitive marketplace… {which is} accomplished by conducting periodic surveys of Registered Buyers who routinely purchase stumpage from independent private land."[850]

In addition to arguments regarding the *2023 Private Market Survey*, the Canadian Parties continue to argue that the *2021-2022 Private Market Survey* suffers from similar flaws as the *2015-2016 Private Market Survey* and the *2017-2018 Private Market Survey*, and thus, that Commerce cannot rely on prices from the *2021-2022 Private Market Survey* as part of its tier-one benchmark. As explained in the *Lumber V AR7 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.[851] 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*.[852] The disaggregated survey results redacted the identities of the purchasers of the private-origin standing timber.[853] At verification, Deloitte provided Commerce officials with access to the unredacted and disaggregated survey results.[854] 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.[855] Thus, because the GNS submitted the disaggregated survey results from the *2015-2016 Private Market Survey* on the

[849] *See* GNS Stumpage IQR Response at Exhibits NS-5a and NS-5b.
[850] *Id.* at 5.
[851] *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; *Lumber V AR5 Final* IDM at Comment 30; *Lumber V AR6 Final* IDM at Comment 14; *Lumber V AR7 Prelim* PDM at 20-24; and Nova Scotia Preliminary Benchmark Memorandum.
[852] *See Lumber V Final* IDM at Comments 40 and 41.
[853] *See* GNS Stumpage IQR Response at Exhibit 5a.
[854] *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.").
[855] *Id.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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*.[856] 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.[857] 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.[858] 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.[859] Therefore, we continue to disagree with the Canadian Parties' claims that the private stumpage surveys conducted by Deloitte contain extraneous non-stumpage costs.

We disagree with the Canadian Parties' claim that the *2021-2022 Private Market Survey* does not reflect prices for standing timber and contains vague product definitions. Deloitte instructed respondents to the *2021-2022 Private Market Survey* to report pure stumpage prices for standing timber, and the instructions to the survey further direct respondents not to report purchases of logs.[860] A declaration from the co-owner of a Nova Scotia lumber mill confirms that the *2017-2018 Private Market Survey* solicited purchase information for standing timber using product definitions that were well-understood by the survey respondents:

> {s}ince Crown stumpage royalty rates are set with reference to fair market value surveys of private land stumpage, it is in our economic interest for the private land stumpage price to be as low as possible. Likewise, it is in our economic interest to secure the lowest private land stumpage prices when harvesting private land standing timber. These same economic incentives exist across sawmills and purchasers of standing timber, especially those with Crown licenses. … {t}he prices reported {in the 2017-2018 survey} — and carried forward into our Crown stumpage royalty rates — strike me as being representative prices of standing timber in Nova Scotia.[861]

[856] *See* GNS Stumpage IQR Response at Exhibit 5a.
[857] *See Lumber V AR6 Final* IDM at Comment 14.
[858] *See* GOC Stumpage IQR Response at Exhibit GOC-AR7-STUMP-56.
[859] *See Lumber V AR6 Final* IDM at Comment 14.
[860] *See* GOC Stumpage IQR Response GOC Exhibit GOC-AR7-STUMP-41 at 5.
[861] *See* Petitioner Comments on Sec. II IQR Responses, Volume I-43 at Exhibit 4.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Record evidence demonstrates that the transactions in the *2021-2022 Private Market Survey* include only stumpage costs. As the GNS explained,

> {a}s part of its testing process, Deloitte validated several data elements to confirm that … {t}he reported value included only the transaction price for the private stumpage, excluded the payment of private silviculture fees, and excluded any non-stumpage charges that have been "bundled" in the Survey Participants' records.[862]

The GNS further stated that the "transactions reported in the survey reflected transactions maintained in the Survey Participants' ERP system or records maintained in the normal course of business" and that "Deloitte assured the {NSDNRR} that the survey results exclude all non-stumpage fees or expenses and that this was subject to on-site verification."[863] Further, the *2023 Private Market Survey* used the same product definitions provided by the NSDNRR.[864]

As a result, we find that the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* contains "pure" stumpage prices that reflect solely the costs buyers incurred for the right to harvest individual trees.

As to the product definitions themselves, the product definitions used in the *2021-2022 Private Market Survey* and the *2023 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 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).[865]

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

[862] *See* GOC Stumpage IQR Response at Exhibit GOC-AR7-STUMP-39 at 6.
[863] *Id.* at Exhibit GOC-AR7-STUMP-39 at 6-7 and 10.
[864] *See* GNS Stumpage IQR Response at 19.
[865] *Id*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> maintained on cutting slips, invoices, truck slips, or the like, depending on the harvester's practice or the mill's requirements.[866]

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.

We disagree with the GOQ's argument that our decision to exclude pulpwood prices from the Nova Scotia benchmark does not reflect prevailing market conditions in Québec, where Resolute's softwood sawmills consumed Crown-origin pulpwood (*i.e.*, grades C, M, and R). However, record information indicates that "{s}tumpage dues in Québec are billed after the wood has been scaled by the permit holders."[867] In Québec, permit holders are defined by the products they produce.[868] Thus, while the GOQ does not have a product classification that specifically denotes sawable timber, it is reasonable to conclude that harvested, Crown-origin standing timber that is scaled by permit holding sawmills in Québec will be processed as sawable timber. Regardless of how Nova Scotia, Alberta, Ontario, or Québec classify their standing timber, we disagree with Canadian Parties' argument that the focus of Commerce's LTAR analysis should be all Crown-origin standing timber (*e.g.*, sawable and non-sawable timber) in Alberta, Ontario, and Québec. As we explain in Comment 25 above, the goal of our 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. The respondents reported the volume and value of Crown-origin sawable standing timber they purchased for their sawmills during the POR and, similarly, we have utilized a benchmark that is comprised of prices charged for sawable standing timber in Nova Scotia.[869] 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.[870]

The Canadian Parties argue that Commerce subjected the functioning and nature of the standing timber markets in Alberta, Ontario, and Québec to great scrutiny yet unfairly chose not to subject Nova Scotia's standing timber market to a similarly stringent analysis. However, the Canadian Parties' argument fails to acknowledge the central differences that exist between Nova Scotia and Alberta, Ontario, and Québec, namely that there is no allegation that the GNS sells Crown-

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[866] *See* Petitioner Comments on Sec. II IQR Responses, Volume I-43 at Exhibit 4, which contains the affidavit of Richard Freeman, co-owner of Harry Freeman & Son.
[867] *See* GOQ Stumpage IQR Response at 62.
[868] *Id.* at 146-153 and Exhibits QC-STUMP-24 and QC-STUMP-25.
[869] *See, e.g.*, Resolute Final Calculation Memorandum; *see also* GNS Stumpage IQR Response at Exhibits NS-5a, NS-5b, NS-6, and NS-17; and GNS September 23, 2025 Stumpage SQR Response at Exhibit NS-SQR1-2.
[870] *See* GNS September 23, 2025 Stumpage SQR Response at Exhibit NS-SQR1-2 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.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

origin standing timber for LTAR. Furthermore, unlike Alberta, Ontario, and Québec, Crown-origin standing timber in Nova Scotia accounts for a substantially smaller share of the overall standing timber market in Nova Scotia.[871] Therefore, consistent with prior reviews,[872] we continue to find that it is not necessary to make the use of private-origin standing timber prices in Nova Scotia as a tier-one benchmark contingent upon the results of a distortion analysis of Nova Scotia's standing timber market.

We continue to disagree that Commerce should not use the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* as the source of its tier-one benchmark for standing timber because the total volume of the private market sales transactions contained in the survey are substantially less than the total volume of Crown-origin standing timber harvested in Québec during the POR.[873] It is not appropriate to compare surveyed volumes to total volumes, because the former represents a sample of the total universe of observations while the latter represents the total universe of observations. Rather, the proper analysis is one that examines whether the information in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*, as a whole, is representative of Nova Scotia's overall, private-origin standing timber market. Information on the record demonstrates that the transaction volume in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* is reflects approximately 42 percent of the total volume of private-origin standing timber purchased in Nova Scotia during the POR.[874] Further, the volumes of the individual transactions contained in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* are within the range of volumes of Crown-origin standing timber purchased by the respondents.[875]

The GOQ cites to a figure indicating that the production of lumber products in Nova Scotia is concentrated among the five largest mills; however, this information relates to *production* and does not indicate the level of concentration in terms of standing timber *purchases* in Nova Scotia. Record information shows that standing timber consumption in Nova Scotia is broadly distributed, with 54 of 117 total registered buyers consuming 1,000 m^3 or less in 2024 and only 18 registered buyers acquiring 5,000 m^3 or more.[876]

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.[877] As the Federal Circuit has recognized, Congress was clear in the URAA and its

[871] *See* GNS Stumpage IQR Response at Exhibit NS-1.
[872] *See Lumber V AR6 Final* IDM at Comment 14; *see also Lumber V AR5 Final* IDM at Comment 30; *Lumber V AR4 Final* IDM at Comment 32; *Lumber V AR3 Final* IDM at Comment 32; and *Lumber V AR2 Final* IDM at Comment 44.
[873] *See Lumber V AR6 Final* IDM at Comment 14; *see also Lumber V AR5 Final* IDM at Comment 30; *Lumber V AR4 Final* IDM at Comment 32; *Lumber V AR3 Final* IDM at Comment 32; and *Lumber V AR2 Final* IDM at Comment 44.
[874] *See* GNS Stumpage IQR Response at Exhibit NS-1, NS-5a and NS-5b.
[875] *Id.* at Exhibits NS-5a and NS-5b; *see also, e.g.*, Resolute Final Calculation Memorandum reflecting Crown-origin standing timber it purchased in Québec and Ontario.
[876] *See* GNS September 23, 2025 Stumpage SQR Response at Exhibit NS-SQR1-2 at 24.
[877] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

legislative history that WTO reports have no application to U.S. law absent unless and until the United States Trade Representative has determined the scope of its implementation, if any, pursuant to the statutory scheme.[878] WTO panel or Appellate Body reports do not automatically limit nor have an effect on Commerce's discretion in applying the statute in an AD or CVD proceeding.[879] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[880]

Comment 29: Whether To Publicly Disclose the Anonymized Data that Comprise the *2021-2022 Private Market Survey* and the *2023 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 113-117.

> {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 {Commerce} fall under any of {Commerce's} definitions of 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. For further details, *see* GNS Rebuttal Brief at 24-29.

> {T}he Government of Nova Scotia submits that its survey data are entitled to business proprietary treatment and that the Government of Nova Scotia 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 stumpage prices for 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, and the *2023 Private Market Survey*, which is based on a survey conducted by Cassidy Levy Kent of private stumpage transactions in Nova Scotia.[881] 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.[882] Similarly, in

[878] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[879] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[880] *See* SAA at 659.
[881] *See* GNS Stumpage IQR at Exhibits NS-5a and NS-5b.
[882] *See* Nova Scotia Final Benchmark Memorandum at Attachment.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

prior reviews, the GNS consented to the public release of only the monthly benchmark of SPF standing timber prices for sawlogs and studwood averaged from individual transactions in the *2021-2022 Private Market Survey* database.[883] Consistent with prior reviews, we have utilized the same redaction approach.[884] In addition, the GNS has consented to the public release of only the monthly benchmark of SPF standing timber prices for sawlogs and studwood averaged from individual transactions in the *2023 Private Market Survey* database and, similar to the *2021-2022 Private Market Survey*, we have not redacted the monthly average prices for sawlogs and studwood.[885]

The private stumpage prices in *2021-2022 Private Market Survey* and the *2023 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.[886] 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.[887]

The remaining datapoints in the *2021-2022 Private Market Survey* and the *2023 Private Market Survey* datasets 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).[888] 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* and the *2023 Private Market Survey* datasets are such that their disclosure could reasonably lead to the disclosure of individual prices and survey respondents.[889] 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.[890]

[883] *See Lumber V AR6 Final* IDM at Comment 6; *see also Lumber V AR5 Final* IDM at Comment 28; *Lumber V AR4 Final* IDM at Comment 21; and *Lumber V AR3 Final* IDM at Comment 40.
[884] *Id.*; *see also* Nova Scotia Final Benchmark Memorandum at Attachment.
[885] *See* Nova Scotia Final Benchmark Memorandum at Attachment.
[886] *See* GNS Stumpage IQR at Exhibits NS-5a and NS-5b.
[887] *See* GNS Rebuttal Brief at 28-29; *see also Lumber V AR6 Final* IDM at Comment 6; *Lumber V AR5 Final* IDM at Comment 28; *Lumber V AR4 Final* IDM at Comment 21; and *Lumber V AR3 Final* IDM at Comment 40.
[888] *See* Nova Scotia Final Benchmark Memorandum at Attachment.
[889] *Id.*; *see also* GNS Rebuttal Brief at 24-29.
[890] *See Lumber V AR6 Final* IDM at Comment 6; *see also Lumber V AR5 Final* IDM at Comment 28; *Lumber V AR4 Final* IDM at Comment 21; and *Lumber V AR3 Final* IDM at Comment 40.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

H. Log Export Restraint Issues

Comment 30: Whether the LER Is Countervailable

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. III at 4-41.

> The law and facts do not permit a finding that the {LER} process provides a countervailable subsidy. The {LER} process at issue in this review is not a "financial contribution" as defined in Sections 771(5)(D) and 771(5)(B)(iii) of the {Act}. Neither Canada nor British Columbia entrusts or directs the provision of goods through the administration of the {LER} process, as this process does not require owners of logs to sell their logs to particular purchasers or at particular prices.
>
> Further, the requisite linkage between the government action and the alleged lowering of log prices in British Columbia is likewise lacking in this review, as it has been in every segment of this proceeding. {Commerce}'s preliminary finding that the {LER} process "impacts" the log markets in the B.C. inland Interior from which the mandatory respondents supply their sawmills is unsupported by substantial evidence on the record and does not meet the requirements for a linkage finding.
>
> Nor does the process entail any function normally vested in the government, as required by Section 771(5)(B)(iii) of the {Act}. {Commerce} has not attempted to show – and it could not show based on the record – that the provision of logs is a function normally vested in the Governments of Canada and 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 164-168.

> {Commerce} preliminarily determined that West Fraser's "countervailable subsidy rate" as a result of the GBC's {LER} was "not measurable." Consequently, {Commerce} did not have reason to revisit its prior determinations regarding the countervailability of BC's LERs. {Commerce} should reject the Canadian Government's challenge to the countervailability of the LERs as moot.
>
> First, {Commerce} has no "preliminary finding{} of subsidization" to "reverse" with respect to the LERs. Rather, {Commerce} found it "unnecessary . . . to make a preliminary determination as to the countervailability" of programs that did not provide a measurable benefit during the POR. Accordingly, the only preliminary determination for {Commerce} to consider as it prepares its final results is whether

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

that benefit calculation was correct. As no party has challenged that calculation, there is no need for {Commerce} to reverse its findings.

Second, the Canadian Government's arguments are only relevant to the extent that they undermine {Commerce}'s preliminary finding that "prices within British Columbia, including prices from the BCTS auctions, are not consistent with market principles and cannot serve as a tier-three benchmark{.}" However, as in the fifth administrative review, no party has challenged {Commerce}'s overall findings with respect to the nonviability of in-province prices as a benchmark, no party has suggested that {Commerce}'s findings with respect to distortion in the BC stumpage market must fail without a showing of log price suppression, and no party has challenged {Commerce}'s preliminary determination to rely on prices from the U.S. PNW as the benchmark for measuring the adequacy of remuneration for stumpage and logs in British Columbia. Accordingly, interested parties have waived their opportunity to contest these issues, and {Commerce} should reject the Canadian Government's arguments with respect to log price suppression as moot.

In the fifth administrative review, {Commerce} engaged with the Canadian Government's arguments regarding the impact of British Columbia's LERs despite their mootness. However, there is no need to take the same approach here, as {Commerce} has repeatedly and thoroughly addressed the exact same arguments presented by the Canadian Government and other interested parties in prior segments. Moreover, the only real development since the conclusion of the sixth administrative review is {Commerce}'s recent remand redetermination concerning the administrative record as constructed during the 2017 investigation and {Commerce}'s conclusions with respect to that record. The evidence regarding British Columbia's LERs and {Commerce}'s analysis have developed considerably since then, and it is simply not necessary to indulge the Canadian Government in its rhetorical quest to defend its subsidy programs when doing so has absolutely no bearing on the results of this review.

Commerce's Position: In the *Preliminary Results*, when we calculated a benefit for this program, the benefit for West Fraser was not measurable.[891] For these final results, we have not changed our BC LER calculations for West Fraser. Thus, whether the British Columbia LER conferred a financial contribution during the POR is moot.

[891] *See* West Fraser Preliminary Calculation Memorandum at 9-11 and Attachment 4.

I. Purchase of Goods for MTAR Program Issues

British Columbia

Comment 31: 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 54-59.

> In Section IV.A.2, the BC Parties demonstrate that the EPAs between BC Hydro and West Fraser cannot qualify as countervailable subsidies. Specifically, any alleged benefit resulting from the EPAs is tied to West Fraser's sales of electricity to BC Hydro, not to its production or sale of subject merchandise, and the electricity purchased by BC Hydro from West Fraser cannot be used by the company as an input into its 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 32.

> 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 three 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 total sales including 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 364-371.

> In the *Preliminary Results*, {Commerce} correctly found that the {EPAs} between BC Hydro and West Fraser to be countervailable and appropriately calculated benefits conferred by the respondent as outlined in sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act. {Commerce's} analysis of this program was consistent with the underlying investigation and previous administrative reviews where {Commerce} found this program to be countervailable. The BC Parties and West Fraser argue that BC Hydro's purchases of electricity are not countervailable {…}. {…} the BC Parties claim that the subsidy program is allegedly tied to electricity, not subject merchandise. However, under {Commerce's} attribution rules,

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> subsidies on inputs that could be used in the production of subject merchandise are properly attributed to a firm's overall production, irrespective of their direct use.

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 33-34.

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

Commerce's Position: The GBC again raises the same arguments regarding the attribution of benefits provided under the BC Hydro EPA program which Commerce has repeatedly rejected, most recently, in the *Lumber V AR6 Final*.[892] Specifically, the GBC contends that when a company sells electricity to a government, those sales are tied to the "sale of a particular product," which here is the incremental green, wholesale firm electricity that West Fraser sold to BC Hydro.[893] The GBC adds that such electricity cannot benefit the company's production or sales of subject merchandise because once West Fraser sells the electricity to BC Hydro, title to the electricity transfers to BC Hydro, leaving West Fraser to obtain electricity from the grid to power its facilities.[894] Thus, the GBC asserts that "it would have been *impossible* for West Fraser to both sell the particular type of electricity it sold to BC Hydro pursuant to the EPAs and use that same electricity as an input in its production of subject merchandise."[895]

As an initial matter, Commerce has consistently found that electricity is electricity regardless of supply source (*i.e.*, biomass, hydro, wind, natural gas, etc.) and regardless of whether it is wholesale or retail electricity,[896] and continues to do so in this review for the reasons discussed below. Further, as we explained in prior segments of this proceeding and in *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, is not consistent with the statute.[897] The GBC has not presented any new evidence or arguments in the instant review to warrant a change in Commerce's finding that the benefits from BC Hydro EPAs are appropriately attributed to the total sales of West Fraser and not tied to West Fraser's sales of electricity to BC Hydro.

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[892] *See Lumber V AR6 Final* IDM at Comment 27; *see also Lumber V Final* IDM at Comment 49; *Lumber V AR1 Final* IDM at Comment 6; *Lumber V AR2 Final* IDM at Comment 51; *Lumber V AR3 Final* IDM at Comment 47; *Lumber V AR4 Final* IDM at Comment 36; and *Lumber V AR5 Final* IDM at Comment 33.
[893] *See* GBC Case Brief Vol. V at 58-59.
[894] *Id.* at 58-59 (citing GBC Non-Stumpage IQR Response Volume II at Exhibits BCH-30 (Section 6.5 in the West Fraser EPAs and Section 7.7 in the Cariboo EPA)).
[895] *Id*. at 56 (emphasis original).
[896] *See*, *e.g.*, *Lumber V AR1 Final* IDM at Comment 50; *see also Lumber V AR5 Final* IDM at Comment 34.
[897] *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; *Lumber V AR5 Final* IDM at Comment 33; *Lumber V AR6 Final* IDM at Comment 27; and *Groundwood Paper from Canada Final* IDM at Comment 41.

Generally, Commerce considers subsidies to be untied, as most subsidies benefit the entire production of a company.[898] The tying regulations, however, were implemented "to attribute subsidies rather than tracing subsidies through {a} company{'s}" production process.[899] 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, {Commerce} will attribute the subsidy only to that product."[900] When determining whether a subsidy is tied to particular product or market Commerce's practice, codified at 19 CFR 351.525(b), is to examine whether the intended use is known to the subsidy provider and so acknowledged prior to or concurrent with the bestowal of the subsidy.[901] As the *Preamble* to Commerce's regulations makes clear, our analysis of whether a subsidy is tied to a particular product focuses on the "stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal."[902] As noted above, 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 upheld by the CIT.[903]

Under the EPA program, BC Hydro's aim is to secure long-term electricity supply with long-term price certainty from IPPs to meet electricity demand.[904] Contrary to the GBC's claims,[905] none of the EPA documents indicate that the government's purchases of electricity from West Fraser were tied to its sales of electricity to BC Hydro, or any other good.[906] The fact that the name of the agreements indicates "electricity purchases" by BC Hydro does not tie the EPA payments to West Fraser's "sales of electricity" to BC Hydro. Further, West Fraser's delivery of electricity to BC Hydro's transmission and distribution systems[907] is not evidence that BC Hydro's purchases of the electricity from West Fraser were tied to West Fraser's sales of the electricity.

For the Bioenergy Phase 2 and the 2009 Integrated Power Offer, the two procurement processes under which West Fraser's EPAs were issued,[908] we examined the requests for proposals and the agreements in place with BC Hydro during the POR.[909] Notably, the lack of any language or criteria in that documentation tying the benefits of the program to the participant's sales of

[898] *See CVD Preamble*, 63 FR at 65400.
[899] *See Rectangular Pipe and Tube from China* IDM at 37-38 (citing *CFS from China* IDM at Comment 18).
[900] *Id*. (citing *CFS from China* IDM at Comment 18).
[901] *See Pipes and Tubes from Türkiye* IDM at 21 (citing *Lumber V Final* IDM at Comment 53).
[902] *See CVD Preamble*, 63 FR at 65403.
[903] *See*, *e.g.*, *Essar Steel Ltd. v. U.S.*., 678 F.3d at 1296.
[904] *See* GBC Non-Stumpage IQR Response Volume II at 44 and Exhibits BCH-46 and BCH-47.
[905] *See* GBC Case Brief Vol. V at 55-58.
[906] *See* GBC Non-Stumpage IQR Response Volume II at Exhibits BCH-30 (POR EPAs in effect during the POR for West Fraser), BCH-55 (2009 Integrated Power Offer Project Submission Guide), and BCH-58 (Report on Request for Proposal Process for Bioenergy Phase 2); *see also* West Fraser Non-Stumpage IQR Response Volume II at Exhibits WF-AR7-EPA-1 (Fraser Lake EPA), EPA-2 (Chetwynd EPA), EPA-3 (Cariboo EPA),
[907] *See* GBC Non-Stumpage IQR Response Volume II at Exhibit BCH-30 (Section 3.1 of the West Fraser EPAs and Section 4.1 of the Cariboo EPA).
[908] *Id*. at 50-52.
[909] *Id*. at Exhibits BCH-30, BCH-55, BCH-58.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

electricity indicate that the BC Hydro EPA program provides untied subsidies and, thus, are appropriately attributed to total sales. The record is devoid of evidence to support the finding that, at the time of bestowal, the GBC knew the subsidy would be used for the production of electricity. Further, the fact that the GBC pays West Fraser for the product, *i.e.*, electricity, is not the equivalent of knowing *or* acknowledging an intended purpose. Commerce has found no evidence on the record to support a finding that the GBC knows, and acknowledged as such, at the time it provides the revenue to West Fraser that any particular purpose was intended for that revenue. Accordingly, we continue to find that the BC Hydro EPA program is not tied to electricity.

Even assuming, *arguendo*, that the program is demonstrably tied to the production of electricity—which it is not—under 19 CFR 351.525(b)(5)(ii), the subsidy provided would be attributed to both the input—electricity—and downstream products—softwood lumber. "If a subsidy is tied to the production or sale of a particular product, {Commerce} will attribute the subsidy only to that product."[910] However, where the subsidy "is tied to production of an *input product*, then {Commerce} will attribute the subsidy to both the input and downstream products produced by a corporation."[911]

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 is an input in the production and manufacture of the subject merchandise since electricity is required to operate the production facilities of the softwood lumber producer. Because it is uncontroverted that electricity is an input to the production of softwood lumber, no party has contested the finding that electricity is consumed in the production of softwood lumber. The revenue that West Fraser earns from selling electricity to BC Hydro benefits the company's overall operations, including the production of softwood lumber and other products. Commerce has consistently held that money is fungible.[912]

West Fraser obtains electricity from the grid to power its facilities to produce subject merchandise[913] 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).[914] As Commerce has consistently explained in this proceeding, electricity is electricity.[915] The GBC's statements on the record confirm that the electricity West Fraser sold to the grid is indistinguishable from the electricity purchased from the grid to produce subject merchandise. Further, the fact that the title to the electricity sold by 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.[916] Accordingly, even if Commerce were to accept the faulty premise that this program is "tied" – which it is not –

[910] *See* 19 CFR 351.525(b)(5)(i).
[911] *See* 19 CFR 351.525(b)(5)(ii) (emphasis added).
[912] *See CTL Steel Plate from Korea Final 2022* IDM at 47-48.
[913] *See* West Fraser Non-Stumpage IQR Response Volume II at 128-129 and Exhibit WF-AR7- EPA-16; *see also* West Fraser January 22, 2026 Non-Stumpage SQR Response at Exhibit WF-AR7-EPA-16 (rev).
[914] *See* GBC Non-Stumpage IQR Response Volume II at 58.
[915] *See*, *e.g.*, *Lumber V AR1 Final* IDM at Comment 50; *see also Lumber V AR5 Final* IDM at Comment 34.
[916] *See* GBC Case Brief Vol. V at 56 and 58 (citing GBC Non-Stumpage IQR Response Volume II at Exhibit BCH-30 (Section 6.5 in the West Fraser EPAs and Section 7.7 in the Cariboo EPA)).

Commerce would attribute benefits under the BC Hydro EPA program to both the input and downstream products, consistent with 19 CFR 351.525(b)(5)(ii).

Furthermore, 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.[917] The result of the GBC's argument would be that Commerce would be unable to countervail programs that provide electricity subsidies (or, *e.g.*, programs that provide water and land subsidies), because the benefits from the programs would only benefit electricity (or water or land). This argument is at odds with over 30 years of case precedent with respect to electricity alone.[918] Thus, we find the GBC's interpretation to be impermissible as it would effectively negate the language of section 771(5)(D)(iv) of the Act, exempting government purchases of goods from CVD measures. As such, within this proceeding, Commerce has consistently attributed the benefits from government provided electricity subsidies to all products of the company.[919] Furthermore, the attribution of MTAR benefits over sales of all products is consistent with case precedent.[920] To the extent that West Fraser receives more revenue than it otherwise would have earned from the sale of electricity to BC Hydro, Commerce will attribute that benefit to West Fraser's total sales, as directed under 19 CFR 351.525(a) and (b)(5)(ii). Further, section 771(5)(D) of the Act states that the government purchase of a good—and electricity is a good[921]—is a financial contribution, and section 771(5)(E)(iv) of the Act provides that the purchase of a good provides a benefit if that good is purchased for MTAR. Therefore, the statute explicitly provides that a government purchase of a good can constitute the provision of a countervailable subsidy to a company. If we interpreted the attribution rules as suggested by the GBC, Commerce would effectively negate the language of the statute with respect to the provision of a subsidy.

[917] Commerce's attribution rules were designed to accommodate the myriad ways that governments provide subsidy programs. *See CVD Preamble*, 63 FR at 65399-400.
[918] *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.
[919] *See*, *most recently, Lumber V AR6 PDM* at 42-43 (LSSi), 45 (BC Hydro Power Smart: Incentives), 46 (BC Hydro Power Smart: Energy Manager), and 56-58 (BC Hydro EPAs), unchanged in *Lumber V AR6 Final*.
[920] *See, e.g., 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), unchanged in *SC Paper from Canada Final*.
[921] *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.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 32: 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 59-72.

> …the BC Parties demonstrate that even if the EPAs were tied to West Fraser's production or sale of subject merchandise, {Commerce} should reverse its finding that BC Hydro paid West Fraser MTAR for its purchases of incremental green (*i.e.*, biomass-based), wholesale firm energy under the EPAs. {Commerce} improperly measured the benefit to West Fraser by comparing the prices of manifestly different goods: *i.e.*, the retail regulated electricity that BC Hydro sold to West Fraser, and the incremental green, wholesale firm energy that West Fraser 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 32-53.

> {…} even assuming (incorrectly) that these West Fraser sales {to BC Hydro} are not tied to its sales of electricity, the Preliminary Results relied on a manifestly inappropriate benchmark. That is, these Preliminary Results improperly relied upon a benchmark based on the prices at which West Fraser purchased one type of electricity "good" from BC Hydro—that is, electricity generated from all sources and sold on a retail and "interruptible" basis with rates that were administratively set—to assess whether the fundamentally different electricity "good" that West Fraser sold to BC Hydro pursuant to the EPAs—that is, electricity generated from a single "green" source (biomass-based) and sold on a wholesale and "firm" basis and that also included additional valuable consideration—was sold for "more than adequate remuneration." Specifically, {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 electricity "good" that West Fraser purchased from BC Hydro from the electricity "good" that West Fraser sold to BC Hydro pursuant to the EPAs. Further, as detailed below, there is no reason for {Commerce} to rely upon the retail electricity prices at which West Fraser purchased this fundamentally different "good," since 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.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 371-379.

> {…} the BC Parties and West Fraser argue that {Commerce's} benefit calculation allegedly failed to take into account prevailing market conditions and supposed differences in the product being purchased and the benchmark. These parties further claim that {Commerce} should have relied on alternative benchmark information. However, {Commerce} should maintain its approach of prioritizing direct comparisons between government purchase and sale prices to West Fraser, as it aligns with statutory requirements, past practices and 19 CFR 351.512(a)(3). In this case, {Commerce} lawfully measured the benefit of this program by comparing the price at which the government provided the good to the price at which the government purchased the good consistent with the agency's regulations.

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 raise the same benefit arguments for the BC Hydro EPA program that Commerce previously found unpersuasive, most recently in the *Lumber V AR6 Final*.[922] Specifically, the parties argue that Commerce's "electricity is electricity" approach compares different products sold in distinct markets and fails to account for prevailing market conditions under section 771(5)(E) of the Act.[923]

As an initial matter, the benefit analysis applied in this review is consistent with 19 CFR 351.512(a)(3), which carves out an exception to Commerce's analysis of a government's purchase of goods for MTAR when the government is both a provider and purchaser of the good, such as with electricity. At 19 CFR 351.512(a)(3), Commerce codified its practice stating that it "will normally measure the benefit to the recipient firm by comparing the price at which the government provided the good to the price at which the government purchased the same good from the firm."[924]

Further, section 771(5)(E) of the Act states that a benefit will normally be treated as conferred when there is a "benefit to the recipient." In other words, section 771(5)(E) of the Act provides

[922] *See Lumber V AR6 Final* IDM at Comment 28; *see also Lumber V Final* IDM at Comment 51; *Lumber V AR1 Final* IDM at Comment 7 and 50; *Lumber V AR2 Final* IDM at Comment 50; *Lumber V AR3 Final* IDM at Comment 46; *Lumber V AR4 Final* IDM at Comment 37; and *Lumber V AR5 Final* IDM at Comment 34.
[923] *See* GBC Case Brief Vol. V at 59-68; *see also* West Fraser Case Brief at 32-47.
[924] *See* 19 CFR 351.512(a)(3).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy and reflects the "benefit-to-the-recipient" standard which "long has been a fundamental basis for identifying and measuring subsidies under U.S. CVD practice."[925] Therefore, in situations where the government is acting on both sides of the transactions—both selling a good to, and purchasing that good from, a respondent—under 19 CFR 351.512(a)(3), Commerce will measure the benefit to the respondent by determining 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 from the company.

We find that the GBC and West Fraser have not presented any new arguments or evidence regarding the BC Hydro EPA program on the record of this review that would lead us to alter our previously stated analysis and position. Therefore, for all the reasons discussed below, we continue to apply the benefit-to-the-recipient standard, as codified at 19 CFR 351.512(a)(3), to the program and apply as the benchmark BC Hydro's tariff schedule rates which were paid by West Fraser to determine the benefit in these final results.

During the POR, West Fraser sold electricity to BC Hydro, a government utility, under three EPAs and also purchased electricity from BC Hydro for its facilities.[926] The GBC asserts that the rates paid to West Fraser under the EPAs are market-based because the process for selecting participants under the Bioenergy Phase 2 call and 2009 Integrated Power Offer was open, transparent, and competitive.[927] The GBC notes that an independent "fairness advisor" hired to monitor the Bioenergy Phase 2 call proposal process found that BC Hydro conducted a fair and transparent evaluation of the proposals received.[928] The GBC claims that no benchmark analysis is needed because the rates paid to West Fraser under the EPAs are market-based because the process was open and competitive, and the winning bids were those with the lowest proposed prices. The GBC, therefore, argues that West Fraser did not receive more revenue than it otherwise would earn under 19 CFR 351.503(b)(1).[929]

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 resulted from a competitive and open bidding process. 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.[930] The GBC reported that the EPAs at issue in this proceeding were part of the government's attempt to fulfill that policy objective. The GBC stated that the "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

[925] *See* SAA at 927.
[926] *See* West Fraser Non-Stumpage IQR Response Volume II at 121, 128-129, and Exhibits WF-AR7-EPA-1 (Fraser Lake EPA), EPA-2 (Chetwynd EPA), EPA-3 (Cariboo EPA), EPA-13 (West Fraser's sales of electricity to BC Hydro), and EPA-16 (West Fraser's purchases of electricity from BC Hydro); *see also* West Fraser January 22, 2026 Non-Stumpage SQR Response at Exhibit WF-AR7-EPA-16 (rev).
[927] *See* GBC Case Brief Vol. V at 69-70.
[928] *Id*. at 52 (citing GBC Non-Stumpage IQR Response Volume II at Exhibit BCH-58, Appendix B (Report on RFP Process for Bioenergy Phase 2).
[929] *Id*. at 70.
[930] *See* GBC Non-Stumpage IQR Response Volume II at 52-53.

supply shortfall."[931] As of April 1, 2025, BC Hydro had 132 EPAs in place.[932] The GBC's clean energy policy framework limits the sources from which BC Hydro can source electricity.[933] Commerce, therefore, cannot simply assume the prices that result from the EPA process are market-based because the BC Hydro power call process was deemed to be open and fair by observers.[934] Consequently, we disagree with the GBC that Commerce's analysis of the EPAs does not require any price comparison with a benchmark to determine whether a benefit was conferred under the program.

The GBC and West Fraser assert that, if Commerce's 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 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.[935] The respondents state that there are alternative benchmark pricing data on the record for Commerce's consideration to comply with the statutory responsibility to determine the adequacy of remuneration in relation to prevailing market conditions for the good or service provided. 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).[936] 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.[937]

As discussed above, Commerce's analysis of the appropriate benchmark to apply to measure the benefit under the BC Hydro EPA program is based upon 19 CFR 351.512(a)(3). Commerce explained in the *AB25 Preamble* that this regulation reflects the methodologies it has developed with regard to MTAR programs, "especially where the government is both a provider and a purchaser of the good at issue."[938] Section 351.512(a)(3) of Commerce's regulations, which concerns the benefit calculation when the government is both a provider and a purchaser of the good, codifies Commerce's practice of comparing the price at which the government provided the good to the price at which the government purchased the same good from the firm.

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[931] *Id*. at 43.
[932] *Id*.
[933] *Id*. at 42-43 and Exhibits BCH-3 (*Clean Energy Ac*t at section 2(a) and 6, "BC Hydro must be capable of meeting its electricity supply obligations solely from electricity generation facilities within British Columbia," and section 2(c)), "100 percent of the electricity generated in British Columbia and supplied to the integrated grid is to be generated from clean or renewable resources….").
[934] *Id*. at Exhibits BCH-44 (Rosenzweig Report) and BCH-58 (Report on RFP Process for Bioenergy Phase 2).
[935] *See* GBC Case Brief Vol. V at 59-68; *see also* West Fraser Case Brief at 33-34 and 37-45.
[936] *See* GBC Case Brief Vol. V at 70-71.
[937] *Id*. at 71-72 (citing West Fraser NFI Submission at Exhibits WF-AR7-NFI-7 and NFI-11); *see also* West Fraser Case Brief at 47-53 (citing West Fraser NFI Submission at Exhibits WF-AR7-NFI-1 through NFI-18 and NFI-28 through NFI-31.
[938] *See AB25 Preamble*, 89 FR at 101737.

During the POR, West Fraser purchased electricity from BC Hydro at the retail regulated tariff rate schedules and sold electricity to BC Hydro under the EPAs at a contractually-set price.[939] Because the GBC is on both sides of the transaction, we continue to find the difference between these two prices is the benefit conferred to West Fraser. Thus, the retail regulated tariff schedule rates, which West Fraser paid to BC Hydro for electricity during the POR, constitute the benchmark to calculate the benefit under the BC Hydro EPA program, as the retail tariff rates reflect the prices at which West Fraser actually purchased electricity from BC Hydro. Consequently, it is not necessary for us to consider the respondents' alternative benchmarks.

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 not change the physical makeup of the electricity sold.[940] 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 the government has elected to pay more than adequate remuneration for the same good it subsequently sells is not part of this analysis. As reflected in 19 CFR 351.512(a)(3), the benefit to the recipient firm is to be calculated using a benchmark of "the price at which the government purchased *the same good* from the firm."[941] Electricity is electricity.[942] Because the record demonstrates that the electricity sold by West Fraser to BC Hydro is "the same good" as the electricity bought by West Fraser from BC Hydro, Commerce has appropriately compared such prices.

In line with that, 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 (or interruptible) energy to incremental green, wholesale firm (or non-interruptible) energy.[943] 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.[944]

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[939] *See* West Fraser Non-Stumpage IQR Response Volume II at 121, 128-129, and Exhibits WF-AR7-EPA-1 (Fraser Lake EPA), EPA-2 (Chetwynd EPA), EPA-3 (Cariboo EPA), EPA-13 (West Fraser's sales of electricity to BC Hydro), and EPA-16 (West Fraser's purchases of electricity from BC Hydro); *see also* West Fraser January 22, 2026 Non-Stumpage SQR Response at Exhibit WF-AR7-EPA-16 (rev); and GBC Non-Stumpage IQR Response Volume II at Exhibits BCH-28 (electricity tariff schedule), BCH-29 (electricity tariff rates in effect during the POR), and BCH-30 (POR EPAs for West Fraser).

[940] *See* West Fraser Case Brief at 38, 40-45, and 47. The aspects associated with the cost and sale of electricity under the EPAs are proprietary information and are defined on pages 40-45 and 47 of West Fraser's case brief. *See also* GBC Case Brief Vol. V at 63-64. The aspects associated with the sale of electricity under the EPAs are proprietary information and are defined on pages 63-64 of the GBC's case brief.

[941] *See* 19 CFR 351.512(a)(3) (effective January 15, 2025).

[942] *See*, *e.g.*, *Lumber V AR1 Final* IDM at Comment 50; *see also Lumber V AR6 Final* IDM at Comment 28.

[943] *See* GBC Case Brief Vol. V at 63-68; *see also* West Fraser Case Brief at 33-36 and 39-40.

[944] *See* GBC Non-Stumpage IQR Response Volume II at 35.

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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.[945]

The GBC's statements are corroborated by the tariff rate schedules which indicate that there is no distinction between types of electricity.[946] 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.[947] We thus continue to find no basis to the argument that the incremental green, wholesale firm electricity that West Fraser sells to BC Hydro is somehow different than the retail non-firm electricity that BC Hydro sells to West Fraser. Electricity, regardless of its fuel source or market, is electricity.[948] As such, we find no merit to the arguments that the electricity prices paid by West Fraser cannot be used as a benchmark for the BC Hydro EPA program.

The GBC continues to claim that the Rosenzweig Report disproves Commerce's description of the fungibility of electricity.[949] We, however, remain steadfast that this claim is unconvincing and irrelevant to Commerce's analysis here. 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.[950] As we have discussed, the record does not support the GBC's argument that biomass-produced electricity is a markedly different product from other types of electricity. Accordingly, it does not follow that such electricity, which is demonstrably interchangeable with all other kinds of electricity, could create a separate and unique market reflecting a different product. Even assuming, *arguendo*, that the GBC's buying of biomass-generated electricity constitutes a distinct "market," the record does not support a finding that such a market is anything but a direct result of a GBC policy choice for clean and renewable energy sources.[951] Accordingly, to the extent that the Rosenzweig Report may identify a distinct "market" as a result of policy

[945] *Id.* at 52.
[946] *Id.* at Exhibits BCH-28- and BCH-29.
[947] *See*, *e.g.*, *Lumber V AR6 Final* IDM at Comment 28.
[948] *See*, *e.g.*, *Lumber V AR1 Final* IDM at Comment 50; *see also Lumber V AR6 Final* IDM at Comment 28.
[949] *See* GBC Case Brief Vol. V at 65-68 (citing Rosenzweig Report at 13-18).
[950] *See* Rosenzweig Report.
[951] *See* GBC Non-Stumpage IQR Response Volume II at Exhibits BCH-3, BCH-39, BCH-40, and BCH-41.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

choices, we find this does not illustrate that biomass-generated electricity differs from other types of electricity such that an alternative benchmark is warranted.

Additionally, contrary to West Fraser's assertions,[952] 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, or that there is one, singular transaction between the parties. 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.[953] "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."[954] As such, the electricity purchased by BC Hydro under EPAs is treated the same as energy supplied by BC Hydro's own generation resources.

Finally, we disagree with the GBC's and West Fraser's argument that the fact that West Fraser sells electricity at a "wholesale price" and buys electricity from BC Hydro at a "retail price" renders the comparison faulty.[955] As explained in *AB25 Preamble*, where a wholesale price is normally lower than a retail price, it is wholly illogical to find that such a difference would render the comparison faulty.[956] Where West Fraser sells electricity at a "wholesale price," and buys electricity at a "retail price," logic would suggest the price paid by BC Hydro should be lower than the price BC Hydro charges West Fraser for electricity. Indeed, if as here, the "wholesale price" is higher than the "retail price," "this fact would provide useful information to Commerce that the government purchase is for MTAR."[957]

For all the aforementioned reasons, under 19 CFR 351.512(a)(3), we have correctly determined the benefit conferred from West Fraser's sales of electricity to BC Hydro, where the benchmark is the price that West Fraser paid to BC Hydro for electricity.

Québec

Comment 33: Whether Commerce Properly Calculated the Benefits Under the Power Purchase Agreement: CTS

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 43-60, 112.

> {Commerce} should not use the Hydro Québec L Rate — a retail price for government sales of electricity from a wide range of sources — as a benchmark for determining the adequacy of remuneration for Resolute's sales of biomass

[952] *See* West Fraser Case Brief at 45-46.
[953] *See* GBC Non-Stumpage IQR Response Volume II at 35.
[954] *Id*.
[955] *See* GBC Case Brief Vol. V at 63-68; *see also* West Fraser Case Brief at 33-36 and 39-40.
[956] *See AB25 Preamble*, 89 FR at 101738.
[957] *Id.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> cogenerated electricity to Hydro Québec. Hydro Québec specifically procured electricity generated from biomass consumption, which has a higher cost of production compared to other types of electricity making up the variety of sources in Hydro Québec's retail electricity sales. The L Rate does not reflect prevailing market conditions for selling biomass cogenerated electricity to Hydro Québec.
>
> The price for biomass power under Resolute's {PPAs} is consistent with biomass energy pricing across North America. Both the Merrimack Report, used in the investigation remand as a benchmark, and the Coyne Report demonstrate that Resolute's PPAs do not confer a countervailable subsidy on Resolute. These sources provide a legitimate benchmark. Resolute also has submitted benchmark evidence from other jurisdictions in the United States, Canada, and Europe that affirms the adequacy of remuneration under Resolute's PPAs. {Commerce's} new regulations for determining sales of electricity for { MTAR} cannot override the statutory requirement to reflect prevailing market conditions in the comparisons. Should {Commerce} insist on an L Rate retail electricity benchmark, it must adjust that benchmark to account for credits under energy efficiency and demand response programs that further reduce the L Rate or already are treated in other subsidy analyses.

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 161-163.

> The Power Purchase Agreement for Centrale Thermique Résolu Senneterre did not provide a countervailable benefit. First, the cogeneration facility in question was tied to non subject merchandise, did not transmit electricity to Resolute facilities producing subject merchandise, and does not operate in a manner that would allow funds to flow freely to separate Resolute entities. Second, {Commerce} erred in comparing the rates paid by Hydro-Québec to Resolute against Hydro-Québec's Industrial L retail tariff because this rate does not take into account prevailing market conditions. The PPA is a bilateral agreement, "freely negotiated between the parties based on their respective interests." Hydro-Québec specifically contracted for biomass energy due to an urgent need to diversify its energy supply away from hydro-electric power during a period of low water levels. Similarly to Hydro-Québec's purchases of biomass generated electricity under PAE 2011-01—but even more starkly—entail the purchase of more than just electricity, with benefits to Hydro-Québec including improved grid stability and fuel source diversification.
>
> If {Commerce} nevertheless calculates a benefit, {Commerce} is required to use the Merrimack Report data for many of the reasons described above in relation to Hydro-Québec's purchases of biomass-generated electricity under PAE 2011-01. The Merrimack Report shows that Resolute did not receive a countervailable benefit from its sale of biomass-generated electricity to Hydro-Québec. Québec

> also notes that if {Commerce} does calculate a benefit, it should strip out the Québec Sales Tax and Goods and Services Tax from each side of the calculation, as the seller does not get to keep the taxes collected, and the ultimate burden of the tax is passed down to the end consumer of the electricity (or good into which the electricity is an input), which is neither Hydro-Québec nor Resolute in this case.

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 379-384.

> Consistent with the investigation and prior administrative reviews, {Commerce} found that Hydro Quebec's purchases of biomass cogenerated electricity from Resolute under the PAE 2011-01 was countervailable in the preliminary results. {Commerce} also found that another PPA between Hydro Quebec and Resolute—the CTS PPA—was similarly countervailable. In reaching this decision, {Commerce} analyzed whether Resolute received a benefit under the PAE 2011-01 and CTS PPA programs using the "benefit-to-the-recipient" standard pursuant to section 771(5)(E) of the Act and 19 {CFR} 351.512(a)(3). In contesting this result, Resolute and the Quebec Parties argue that {Commerce}'s benchmark did not reflect prevailing market conditions for electricity generated from biomass. These arguments are without merit. Here, {Commerce}'s benefits analysis was consistent with 19 {CFR} 351.512(a)(3) which applies when the government is both a provider and a purchaser of the good. That regulation expressly identifies "electricity" as a good where the government may be both a provider and purchaser of the good. Applying that regulation, {Commerce} analyzed whether the Hydro Quebec's PAE 2011-01 and the CTS PPA programs provided a benefit by "compar{ing} the unit price for electricity that Resolute paid to Hydro Quebec to the unit price of electricity that Hydro Quebec paid to Resolute for each month of the POR." In addition to correctly applying 19{CFR} 351.512(a)(3), {Commerce}'s analysis was also consistent with the investigation and prior administrative reviews. The Quebec Parties' arguments regarding how the electricity was generated must be rejected as consumers of electricity do not know the underlying source of the electricity supplied by Hydro Quebec. {…} Thus, the Quebec Parties' attempt to distinguish electricity by how it was generated should be rejected and {Commerce} should maintain its determinations regarding the Hydro Quebec PAE 2011-01 and CTS PPA in the final results.

Commerce's Position: As an initial matter, the benefit analysis applied in this review is consistent with 19 CFR 351.512(a)(3), which carves out an exception to Commerce's analysis of a government's purchase of goods for MTAR when the government is both a provider and purchaser of the good, such as with electricity. At 19 CFR 351.512(a)(3), Commerce codified its practice stating that it "will normally measure the benefit to the recipient firm by comparing the price at which the government provided the good to the price at which the government purchased the same good from the firm."[958]

[958] *See* 19 CFR 351.512(a)(3).

Further, section 771(5)(E) of the Act states that a benefit will normally be treated as conferred when there is a "benefit to the recipient." In other words, section 771(5)(E) of the Act provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy and reflects the "benefit-to-the-recipient" standard which "long has been a fundamental basis for identifying and measuring subsidies under U.S. CVD practice."[959] Therefore, in situations where the government is acting on both sides of the transactions—both selling a good to, and purchasing that good from, a respondent—under 19 CFR 351.512(a)(3), Commerce will measure the benefit to the respondent by determining 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 from the company.

As described at the *Preliminary Results*, on May 3, 1991, Hydro Québec launched a "restricted call for proposals," to address an energy deficit.[960] The Senneterre power plant contract originated from this "restricted call for proposals,"[961] resulting in a Power Purchase Agreement signed in 1993, between Hydro Québec and an original producer. Resolute acquired the forest biomass cogeneration power plant in Senneterre, Québec in 2022.[962] When Resolute acquired this power plant, the 1993 Power Purchase Agreement was transferred to Resolute.[963] Resolute now sells electricity generated at this biomass power plant to Hydro Québec pursuant to this power purchase agreement established by previous owners of the plant in 1993.[964]

During the POR, Resolute sold electricity to Hydro-Québec, a government utility, under the 1993 CTS PPA and also purchased electricity from Hydro-Québec for its facilities.[965] Resolute asserts that the rates paid to Resolute under the CTS PPA are consistent with "prevailing market conditions." Further, Resolute and the GOQ claim that no benchmark analysis is needed because the rates paid to Resolute under the CTS PPA are market-based as the electricity was sold on a wholesale market through an arms-length PPA. The Canadian Parties, therefore, argue that Resolute did not receive more revenue than it otherwise would earn under 19 CFR 351.503(b)(1).[966]

As discussed above, Commerce's analysis of the appropriate benchmark to apply to measure the benefit under the CTS PPA program is based upon 19 CFR 351.512(a)(3), and consistent with prevailing market considerations as provided in section 771(5)(E) of the Act. Commerce explained in the *AB25 Preamble* that this regulation reflects the methodologies it has developed with regard to MTAR programs, "especially where the government is both a provider and a purchaser of the good at issue."[967] Section 351.512(a)(3) of Commerce's regulations, which

[959] *See* SAA at 927.
[960] *See* GOQ IQR at Exhibit QC-CFB-A at 1.
[961] *Id.*
[962] *Id.* at Exhibit QC-CFB-A and QC-CFB-14.
[963] *Id.* at Exhibit QC-CFB-14.
[964] *Id.* at Exhibit QC-CFB-A and QC-CFB-14.
[965] *See* Resolute Non-Stumpage IQR at 53 and Exhibit RESNS-CTS-APP, RES-NS-CTS-4, RES-NS-CTS-5, and Exhibit RES-NS-USAGE; *see also* Resolute February 26, 2026 Non-Stumpage SQR Response at 1-2 and Exhibit RES-NS3-1.
[966] *See* Resolute Case Brief at 47-51.
[967] *See AB25 Preamble*, 89 FR at 101737.

concerns the benefit calculation when the government is both a provider and a purchaser of the good, codifies Commerce's practice of comparing the price at which the government provided the good to the price at which the government purchased the same good from the firm.

During the POR, Resolute purchased electricity from Hydro-Québec at the retail regulated tariff rate schedules and sold electricity to Hydro-Québec under the CTS PPA at a contractually-set price.[968] Because the GOQ is on both sides of the transaction, we continue to find the difference between these two prices is the benefit conferred to Resolute. Thus, the retail regulated tariff schedule rates, which Resolute paid to Hydro-Québec for electricity during the POR, constitute the benchmark to calculate the benefit under the CTS PPA program, as the retail tariff rates reflect the prices at which Resolute actually purchased electricity from Hydro- Québec. Consequently, it is not necessary for us to consider the respondents' alternative benchmarks.

Further, costs incurred to generate electricity as well as any aspects associated with the electricity produced and sold by Resolute are irrelevant to our analysis as they do not change the physical makeup of the electricity sold.[969] 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. As reflected in 19 CFR 351.512(a)(3), the benefit to the recipient firm is to be calculated using a benchmark of "the price at which the government purchased *the same good* from the firm."[970] Electricity is electricity.[971] Because the record demonstrates that the electricity sold by Resolute to Hydro-Québec is "the same good" as the electricity bought by Resolute from Hydro-Québec, Commerce has appropriately compared such prices, in consideration of alleged prevailing market considerations.

In line with that, we continue to disagree with the GOQ and Resolute that Commerce is comparing different goods in its benchmark analysis, *i.e.*, comparing retail regulated non-firm energy to incremental green, wholesale firm energy.[972] There is no evidence that electricity is differentiated based upon how it is generated or sourced. The GOQ itself reported that, "Hydro-Québec pools the electricity together from the various sources and sells it for a uniform price. . . That is, the consumer does not know the underlying source of the electricity supplied by Hydro-Québec but knows that the price paid for the electricity is the same regardless of the source."[973]

Thus, Hydro-Québec makes no distinction between sources of electricity generated. The GOQ's statement is corroborated by the tariff schedules which indicate that there is no distinction. Within the schedules, the L rate is listed with no disclosure as to the source from which that electricity is generated.[974] This evidence indicates that electricity is electricity regardless of the source from which it was generated. As such, we find no merit to the argument that a rate for

[968] *See* Resolute Non-Stumpage IQR at 53 and Exhibit RES-NS-CTS-APP, RES-NS-CTS-1 (Section 8.1 details the "Electricity Prices" stipulated by the contract), RES-NS-CTS-4 and RES-NS-CTS-5; *see also* Resolute February 26, 2026 Non-Stumpage SQR Response at 1-2 and Exhibit RES-NS3-1.
[969] *See* Resolute Case Brief at 49-51.
[970] *See* 19 CFR 351.512(a)(3) (effective January 15, 2025).
[971] *See*, *e.g.*, *Lumber V AR1 Final* IDM at Comment 50; *see also Lumber V AR6 Final* IDM at Comment 28.
[972] *See* Resolute Case Brief at 43-61; *see also* GOQ Case Brief Vol. VII(b) at 162.
[973] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-BIO-A at 10.
[974] *Id.* at Exhibits QC-BIO-53.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

electricity which might be generated from hydropower cannot be used as a benchmark for the CTS PPA program, or that it does not reasonably reflect prevailing market conditions for sources of electricity. We also find no basis to the argument that incremental electricity Resolute sells to a Hydro-Québec with biomass is somehow different than the electricity that Hydro-Québec sells to Resolute. Electricity, regardless of its fuel source, is electricity. Further, because we conclude that the appropriate benchmark to determine the benefit that Resolute received from the sale of electricity back to Hydro-Québec is the L rate, we need not address the respondent parties' arguments that Commerce must use the Merrimack Study or Coyne Study as a benchmark under 19 CFR 351.511(a)(2).

Similarly, we disagree with the GOQ and Resolute that the capital costs of biomass cogeneration electricity facilities should be taken into consideration. As explained above, we determine the amount of any benefit conferred to Resolute under the benefit-to-the recipient standard. This standard requires that we calculate the benefit by comparing the price at which the government purchased electricity to the price at which the government sold electricity; the reason for any pricing difference is not part of this analysis.

Finally, we disagree with Resolute's argument that the fact that Resolute sells electricity at a "wholesale price" and buys electricity from Hydro- Québec at a "retail price" renders the comparison faulty.[975] As explained in *AB25 Preamble*, where a wholesale price is normally lower than a retail price, it is wholly illogical to find that such a difference would render the comparison faulty.[976] Where Resolute sells electricity at a "wholesale price," and buys electricity at a "retail price," logic would suggest the price paid by Hydro-Québec should be lower than the price Hydro- Québec charges Resolute for electricity. Indeed, if as here, the "wholesale price" is higher than the "retail price," "this fact would provide useful information to Commerce that the government purchase is for MTAR."[977]

Further, we disagree with the GOQ's claim that the *Lumber V Final Results of Redetermination* requires Commerce to rely on the Merrimack Group Report for its benchmark for comparison to the prices paid for the purchase of electricity from Resolute, rather than the "benefit-to-the recipient" standard. Commerce conducted that remand under respectful protest.[978] We note that Chapter 19 NAFTA Panels sit in the place of the Court of International Trade, whose decisions are not precedential and not binding on any case but the one before it.[979] We therefore disagree with Resolute that this approach is "unlawful."[980] As such, we continue to rely on the benefit-to-the-recipient standard set forth under 19 CFR 351.512(a)(3) when constructing the benchmark for the CTS PPA program.

When arguing that the L rate is a hydropower price that cannot serve as the benchmark for a biomass energy program, the Canadian Parties also reference the *DS 533 Panel Report*, a WTO

[975] *See* GOQ Case Brief Vol. VII(b) at 161-163; *see also* Resolute Case Brief at 43-45.
[976] *See AB25 Preamble*, 89 FR at 101738.
[977] *Id.*
[978] *See Lumber V Final Results of Redetermination* at 97.
[979] *See Algoma Steel Corp.* at 243; *see also Alloy Magnesium from Canada* at 19 n. 54; *and CORE from Canada* at 78 n.254.
[980] *See* Resolute Case Brief at 43-44.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

dispute.[981] 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.[982] 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.[983] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[984] Commerce's determination to use the L rate is based on our interpretation of the Act regarding the calculation of benefit where a government procures a good for MTAR; the Act is fully consistent with the international obligations of the United States. Moreover, Commerce is governed by U.S. law, and, as we have explained, our calculation of benefit using the L rate as a benchmark is fully consistent with section 771(5)(E) of the Act.

For all the aforementioned reasons, under 19 CFR 351.512(a)(3), we have correctly determined the benefit conferred from Resolute's sales of electricity to Hydro-Québec, where the benchmark is the price that Resolute paid to Hydro-Québec for electricity.

Lastly, the GOQ and Resolute ask Commerce to remove the Québec Sales Tax and Goods and Services Tax from each side of the benefit calculation. As we explained in *Lumber V Final*,[985] Commerce does not consider the tax consequences of a benefit in accordance with 19 CFR 351.503(e). 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 the Canadian Parties argues for – removing the Québec Sales Tax and the Goods and Services Tax from each side of the calculation– 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 CTS PPA program.

[981] *See* Resolute Case Brief at 43.
[982] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[983] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[984] *See* SAA at 659.
[985] *See Lumber V Final* IDM at Comment 72.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 34: Whether the Electricity Purchase Agreements Are Tied to Non-Subject Merchandise

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 66-70.

> Subsidies that are attributable only to non-subject merchandise are excluded from the {CVD} rate. {Commerce} "determines whether a subsidy is tied by evaluating the purpose of the subsidy based on information available at the time of bestowal." When bestowal documents show government intent that the financial contribution be used for the production of certain products, the subsidy is tied and attributable only to those products. The bestowal documents concerning both the CTS and PAE 2011-01 PPAs show government intent to pay for production of biomass cogenerated electricity. The Dolbeau, Gatineau, and St.-Félicien mills produced and sold biomass electricity for Hydro Québec, as set out in the bestowal documents. They are pulp and paper mills and have no relation to the subject merchandise. The CTS PPA is an arm's-length agreement, dating to 1993, and inherited from a prior owner. The purpose of that agreement was to procure biomass energy from a freestanding co-generation plant. {Commerce}'s attribution rules require the payments for electricity be attributed to electricity sales that are non-subject merchandise.

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 156-159.

> The Power Purchase Agreement for Centrale Thermique Résolu Senneterre did not provide a countervailable benefit. First, the cogeneration facility in question was tied to non-subject merchandise, did not transmit electricity to Resolute facilities producing subject merchandise, and does not operate in a manner that would allow funds to flow freely to separate Resolute entities. Second, {Commerce} erred in comparing the rates paid by Hydro-Québec to Resolute against Hydro-Québec's Industrial L retail tariff because this rate does not take into account prevailing market conditions. The PPA is a bilateral agreement, "freely negotiated between the parties based on their respective interests." Hydro-Québec specifically contracted for biomass energy due to an urgent need to diversify its energy supply away from hydro-electric power during a period of low water levels. Similarly to Hydro-Québec's purchases of biomass generated electricity under PAE 2011-01—but even more starkly—entail the purchase of more than just electricity, with benefits to Hydro-Québec including improved grid stability and fuel source diversification.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 384-389.

> Resolute and the Quebec Parties contend that Resolute's PPAs are tied to non-subject merchandise. These arguments have consistently been rejected by {Commerce} in prior segments of this proceeding and disregard {Commerce}'s consistent practice with respect to electricity subsidy programs. Contrary to the Québec Parties claim that assistance under the PPAs "was targeted only towards Resolute's pulp and paper mills," there is no information on the record that establishes, at the time of approval or bestowal, the benefits from Resolute's sales of electricity were tied to the production of pulp or paper, or any other good. Because attribution is established at the time the subsidy is bestowed, {Commerce} should continue to find that there is no justification to revise {Commerce}'s treatment of Resolute's electricity programs in the final results.

Commerce's Position: At the outset, we address other arguments pertaining to the PAE 2011-01 and CTS programs at comments 33, 35, 36, and 59. In this position, we solely discuss whether the electricity purchase agreements, PAE 2011-01 and CTS, are tied to non-subject merchandise for purposes of attribution under 19 CFR 351.525.

In prior segments of this proceeding, Commerce addressed the same attribution arguments raised by the GOQ, and Resolute in this review regarding Resolute's PPAs with Hydro-Québec.[986] As we explained in the *Lumber V AR3 Final*, 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.[987] If, as the respondents continue to argue, a subsidy provided to the sale of electricity is tied to electricity, then electricity subsidies would escape the remedies provided under the CVD law. Under the premise of the respondents' argument, Commerce would be unable to countervail such programs as electricity subsidies, water subsidies, and land subsidies, because the benefits from 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.[988]

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[986] *See*, most recently, *Lumber V AR3 Final* IDM at Comment 48.
[987] *Id.*
[988] *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.

As previously explained, Commerce has consistently attributed the benefits from electricity subsidies to all products.[989] Furthermore, the attribution of MTAR benefits over sales of all products is consistent with precedent. For example, in *CRS from Korea*, the benefit conferred from the purchase of electricity for MTAR was attributed over the respondents' total sales.[990]

Moreover, section 701(a) of the Act requires Commerce to countervail subsidies that are provided "directly or indirectly" to the manufacture or production of the subject merchandise. Electricity benefits the production and manufacture of the subject merchandise since electricity is required to operate the production facilities of the softwood lumber producer. Under the CVD regulations, if subsidies allegedly tied to a particular product are, in fact, provided to the overall operations of a company, Commerce will attribute the subsidy to sales of all products produced by the company.[991] 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 has contested the finding that electricity is consumed in the production of softwood lumber.

Consequently, to the extent that Resolute receives more revenue than it otherwise would have earned from the sale of electricity to the GOQ, Commerce will attribute that benefit to Resolute's total sales as directed under 19 CFR 351.525(a) and (b)(5)(ii). Further, section 771(5)(D) of the Act states that the government purchase of a good is a financial contribution, and section 771(5)(E)(iv) of the Act provides that the purchase of a good provides a benefit if that good is purchased for MTAR. Therefore, the statute explicitly provides that a government purchase of a good can constitute the provision of a countervailable subsidy to a company. If we interpreted the attribution rules as suggested by the respondents, Commerce would effectively negate the language of the statute with respect to the provision of a good.

Commerce recognizes that money is fungible and its use for one purpose may free up money to benefit another purpose. Subsidies provided to a division of a company, such as a pulp and paper mill, will impact the overall production and sale of all other products of the company. Consequently, there is no need to address attribution because money is fungible within a single, integrated corporate entity (as opposed to a conglomeration of entities for which an analysis under 19 CFR 351.525(b)(6) may be required). How Resolute records the benefit from the CTS and PAE 2011-01 programs internally within its financial accounts is irrelevant to our analysis, which is informed by our regulations and practice. Further, Commerce does not tie subsidies on a plant- or factory-specific basis.[992]

An exception is whether the subsidy is tied to the production or sale of a particular product. Section 351.525(b)(5)(i) of Commerce's regulations states that, generally, "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." In making this determination, Commerce analyzes the purpose of the subsidy

[989] *See, e.g.*, *Lumber V AR3 Final* IDM at Comment 48.
[990] *See CRS from Korea* IDM at 37. The final determination was based upon AFA; *see also SC Paper from Canada Prelim* PDM at 42 (where Commerce allocated the benefit from the purchase of land for MTAR over the respondent company's total sales).
[991] *See CVD Preamble,* 63 FR at 65400.
[992] *See, e.g., SC Paper from Canada – Expedited Review – Final Results* IDM at 99.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

based on information available at the time of bestowal.[993] Commerce's practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed rather than examine the use or effect of subsidies (*i.e.*, to trace how the benefits are used by companies). A subsidy is only tied to a particular product when the intended use is known to the subsidy provider (here, the GOO and the GOQ) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been previously upheld by the CIT.[994]

However, contrary to the respondent parties' claims, there is no information on the record that establishes, at the time of approval or bestowal, the benefits from Resolute's sale of electricity under the CTS to Hydro-Québec or under the PAE 2011-01 to Hydro-Québec were tied to the production of pulp or paper, or any other good. Under the CTS program, Hydro-Québec's aim is to address a short-term energy deficit of approximately 750 MW, prompted by prolonged periods of low water levels in the mid-1980s.[995] Hydro-Québec's objective under the PAE 2011-01 program is the purchase of 300 MW of energy from residual forest biomass cogeneration power plants.[996] Neither program has any qualification that the electricity to be purchased must be from producers of non-subject merchandise or that profits from sales of electricity to the GOO or GOQ must be used for further electricity generation.[997] Notably, the lack of any language or criteria in the request for proposals and PPAs tying the benefits of the CTS and PAE 2011-01 to the production of a particular product at a participant's facility indicate that the programs are untied subsidies.

For all the above stated reasons, there is no justification for a change to Commerce's finding that the benefits from a company's sale of electricity to the government are appropriately attributed to all products of the company.

Comment 35: Whether Commerce Properly Countervailed PAE 2011-01

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 149-150.

> {Commerce} found that the Hydro Québec PAE 2011-01 biomass electricity purchase program was de facto specific in the Preliminary Results. {Commerce}'s specificity analysis failed to examine biomass cogenerated PPAs in the overall context of government initiatives to purchase alternative forms of electricity (e.g., hydropower, natural gas, wind, forest biomass, and other biomass sources). The PAE 2011-01 PPAs were but one part of a larger and continuously growing green energy initiative and the record shows that PPAs were available to and used by companies in many different industries.

[993] *See CVD Preamble*, 63 FR at 65403.
[994] *See, e.g., Essar Steel Ltd. v. U.S.* at 1296.
[995] *See* GOQ Non-Stumpage IQR Response at QC-CFB-A at 1 and Exhibit QC-CFB-1.
[996] *Id.* at Exhibit QC-BIO-A at 13, Exhibit QC-BIO-35 (PAE 2011-01 Contract between Hydro-Québec and Resolute (Gatineau)), and Exhibit QC-BIO-47 (PAE 2011-01 Contract between Hydro-Québec and Resolute (Dolbeau)), and QC-BIO-55 (PAE 2011-01 Contract between Hydro-Québec and Resolute (St-Felicien)).
[997] *Id.* at Exhibit QC-BIO-A and QC-CFB-A at 1 and Exhibit QC-CFB-1.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 114-159.

> Hydro-Québec's purchases of biomass-generated electricity under PAE-2011-01 contracts were neither countervailable nor made for MTAR. The purchases under PAE 2011-01 are not countervailable for a number of reasons. First, the production of electricity was tied to non-subject merchandise. The three facilities that produce the co-generated electricity are pulp and paper mills, and there is no transmission of electricity between them and Resolute's lumber mills. Second, the plain language of the statute shows that {Commerce} erred in concluding that electricity is a good rather than a non-countervailable service. Notably, even if the sale of "electrons" is a good, record evidence shows that Hydro-Québec received more than just electrons, including services, which {Commerce} does not have the authority to countervail but which were not accounted for in {Commerce}'s analysis. Third, the purchases were not *de facto* specific because, as shown by record evidence, Hydro-Québec has many contracts for purchases green power from a wide variety of sources, and should not make its specificity determination exclusively on the PAE 2011-01 contracts.
>
> Even if countervailable, the purchases under PAE 2011-01 were not made for MTAR. As determined by the NAFTA panel in the underlying investigation, MTAR determinations must be made on the basis of a cost-to-provider analysis rather than benefit-to-recipient. Commerce erred by comparing a selling price for electricity (Industrial L Rate) based almost wholly on inexpensive, abundant hydropower, to the purchase price of costly green electricity produced from forest biomass. In doing so, {Commerce} failed to account for prevailing market conditions affecting comparability as required by the statute. Evidence on the record clearly shows that green electricity is a distinct product, with a discrete set of benefits and downsides, subject to its own market conditions. The Merrimack Group report is the appropriate benchmark. This report, alongside the Expert Report of James M. Coyne, demonstrates that the biomass-generated electricity purchases were made for adequate remuneration, and there was no benefit to Resolute. Québec also notes that if {Commerce} does calculate a benefit, it should strip out the Québec Sales Tax and Goods and Services Tax from each side of the calculation, as the seller does not get to keep the taxes collected, and the ultimate burden of the tax is passed down to the end consumer of the electricity (or good into which the electricity is an input), which is neither Hydro-Québec nor Resolute in this case.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 379-384.

> Consistent with the investigation and prior administrative reviews, {Commerce} found that Hydro Quebec's purchases of biomass cogenerated electricity from Resolute under the PAE 2011-01 was countervailable in the preliminary results. {Commerce} also found that another PPA between Hydro Quebec and Resolute—the CTS PPA—was similarly countervailable. In reaching this decision, the {Commerce} analyzed whether Resolute received a benefit under the PAE 2011-01 and CTS PPA programs using the "benefit-to-the recipient" standard pursuant to section 771(5)(E) of the Act and 19 C.F.R. § 351.512(a)(3). In contesting this result, Resolute and the Quebec Parties argue that {Commerce}'s benchmark did not reflect prevailing market conditions for electricity generated from biomass. These arguments are without merit. Here, {Commerce}'s benefits analysis was consistent with 19 C.F.R. § 351.512(a)(3) which applies when the government is both a provider and a purchaser of the good. That regulation expressly identifies "electricity" as a good where the government may be both a provider and purchaser of the good. Applying that regulation, {Commerce} analyzed whether the Hydro Quebec's PAE 2011-01 and the CTS PPA programs provided a benefit by "compar{ing} the unit price for electricity that Resolute paid to Hydro Quebec to the unit price of electricity that Hydro Quebec paid to Resolute for each month of the POR." In addition to correctly applying 19 C.F.R. § 35.512(a)(3), {Commerce}'s analysis was also consistent with the investigation and prior administrative reviews. The Quebec Parties' arguments regarding how the electricity was generated must be rejected as consumers of electricity do not know the underlying source of the electricity supplied by Hydro Quebec. Nor does a to Thus, the Quebec Parties' attempt to distinguish electricity by how it was generated should be rejected and {Commerce} should maintain its determinations regarding the Hydro Quebec PAE 2011-01 and CTS PPA in the final results.

Commerce's Position: Commerce last countervailed the PAE 2011-01 program in the *Lumber V AR3 Final*.[998] We address the GOQ's arguments that the production of electricity was tied to non-subject merchandise at comment 34.

First, Resolute and the GOQ argue that the PAE-2011-01 is not *de facto* specific. In prior reviews, we found the respondents' arguments unpersuasive, most recently in the *Lumber V AR3 Final,*[999] and continue to do so here.

We disagree with the GOQ and Resolute that Commerce's specificity analysis should focus on Hydro-Québec's relative purchase of electricity generated from various sources, such as biomass, wind, hydro-electric, natural gas, solar, *etc*. While electricity can be generated using

[998] *See Lumber V AR3 Final* IDM at Comment 51 and 52; *see also Lumber V AR2 Final* IDM at Comment 57 and 56; *and Lumber V AR1 Final* IDM at Comment 55.
[999] *See Lumber V AR3 Final* IDM at Comment 51 and 52.

various fuel sources, there is no information on the record to support a finding that the method used to generate electricity changes the physical characteristics of electricity or the fungibility of electricity. Electricity, regardless of its fuel source, is electricity.

Section 771(5A)(D)(iii) of the Act directs Commerce to determine whether a subsidy may be specific as a matter of fact by examining the enterprises and industries which received assistance under the program being examined. During the POR, Resolute used the PAE 2011-01 program.[1000] Therefore, the program under examination in this review is Hydro-Québec's PAE 2011-01. Other programs that Hydro-Québec may have implemented for the purchase of other types of green power and public policy initiatives the GOQ may have in place to encourage alternative energy supplies are not under review by Commerce because those programs were not reported or alleged to be used by Resolute.

For the PAE 2011-01, the GOQ reported that there were 16 purchase agreements with 11 companies in place during the POR.[1001] With only 11 companies participating in the PAE 2011-01[1002] the number of recipients of benefits under the program is limited in number. We disagree with the argument that the program is used by a diverse set of industries and therefore, it is not *de facto* specific. Under section 771(5A)(D)(iii)(I) of the Act, a subsidy is *de facto* specific if "the actual recipients of the subsidy . . . are limited in number." Thus, the question before Commerce is whether the number of actual recipients of the subsidy are limited in number, regardless of the set of industries to which those limited recipients belong. Even so, in contrast with the argument made by Resolute,[1003] the record demonstrates that this program is not used by a diverse set of industries because the 11 companies participating in the PAE 2011-01 program all use the program in relation to the production of electricity.[1004] Resolute claims that because the recipients of the program were not limited to users of forestry biomass, the PAE 2011-01 program was available to companies across a wide range of industries.[1005] However, the manner in which the electricity is produced is beyond the matter at hand, as electricity is a good in itself.[1006] Commerce has consistently found that electricity is electricity regardless of supply source (*i.e.*, biomass, hydro, wind, natural gas, *etc*.) and regardless of whether it is wholesale or retail electricity.[1007] The source of the electricity (*i.e.,* biogas or biomass), is thus irrelevant when determining diversity across industries. Still, the "wide range of industries" argument notwithstanding, the record shows that the number of companies that had PAE 2011-01 agreements is limited. The specificity test is designed to avoid the imposition of CVDs where a subsidy is broadly available and used throughout an economy.[1008] It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the CVD law.[1009] We, therefore, continue

[1000] *See* Resolute Non-Stumpage IQR response at 39-42 and Exhibit RES-NS-PAE-2; *and* GOQ Non-Stumpage IQR Response at Exhibit QC-BIO-50.
[1001] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-BIO-50.
[1002] *Id.* at Exhibit QC-BIO-A at 30.
[1003] *See* Resolute Case Brief at 150.
[1004] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-BIO-10.
[1005] *See* Resolute Case Brief at 150.
[1006] *See, e.g., Lumber V AR1 Final* IDM at Comment 5; *see also Lumber V AR2 Final* IDM at Comment 3.
[1007] *See*, *e.g.*, *Lumber V AR1 Final* IDM at Comment 50; *see also Lumber V AR5 Final* IDM at Comment 34.
[1008] *See* SAA at 930.
[1009] *Id.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

to find the purchase of electricity by Hydro-Québec to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because recipients of the subsidy are limited in number.

Second, Commerce previously addressed the arguments concerning the benchmark for PAE 2011-01 raised by the GOQ and Resolute in the *Lumber V AR1 Final*, *Lumber V AR2 Final,* and the *Lumber V AR3 Final*.[1010] In the *Lumber V AR1 Final*, we explained the interpretive framework applied in conducting a benefit analysis where the government is both the purchaser and provider of a good.[1011] Since the *Lumber V AR3 Final*, Commerce has codified its "benefit-to the-recipient" standard under 19 CFR 351.512(a)(3). Under 351.512(a)(3), when the government is both a provider and a purchaser of the good, such as electricity, the Secretary will normally measure the benefit to the recipient firm by comparing the price at which the government provided the good to the price at which the government purchased the same good from the firm. No new argument has been presented in 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 351.512(a)(3). Thus, for all the reasons discussed below, we continue to apply the benefit-to-the recipient standard to the GOQ's purchase of electricity for MTAR program in these final results and apply as the benchmark Hydro-Québec's L Rate to determine the benefit under the PAE 2011-01 program in this administrative review.

During the POR, Resolute sold electricity to Hydro-Québec under a PAE 2011-01 PPA and purchased electricity from Hydro-Québec. We find that an electricity tariff benchmark, which allows us to compare the prices that the utility charged Resolute for electricity to the rates that the utility paid Resolute when purchasing electricity under the PPA, best reflects the "benefit-to the-recipient" standard that is set forth under section 771(5)(E) of the Act and the SAA,[1012] and conforms with the new language codified within 19 CFR 351.512(a)(3).

The respondents argue that the prices at which Hydro-Québec, a government utility, purchases electricity under the PAE 2011-01 program are consistent with "market principles" and that a biomass cogenerated electricity benchmark should be applied. However, our analysis of the appropriate benchmark is based upon 19 CFR 351.512(a)(3), and not a tiered analysis set forth in the regulation for the government provision of a good or service under 19 CFR 351.511. Section 351.511(a)(2) of Commerce's regulations does not provide the appropriate framework given the unique facts of the transaction under examination, *i.e.*, Hydro-Québec is both selling electricity and purchasing electricity from Resolute. The government's presence on "both sides" of the transaction 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*,[1013] where the government is only a purchaser of a good from a respondent.

[1010] *See Lumber V AR1 Final* IDM at Comment 55*; see also Lumber V AR2 Final* IDM at Comment 56*; and Lumber V AR3 Final* IDM at Comment 51.
[1011] *See Lumber V AR1 Final* IDM at Comment 7.
[1012] *See* SAA at 927.
[1013] *See CVD Preamble*, 63 FR at 65379.

Under 19 CFR 351.512(a)(3), when the government is both a provider and a purchaser of the good, such as electricity, the Secretary will normally measure the benefit to the recipient firm by comparing the price at which the government provided the good to the price at which the government purchased the same good from the firm. Thus, when applying the benefit-to-recipient standard set forth in 19 CFR 351.512(a)(3), 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.[1014]

Resolute's Dolbeau and Gatineau mills, in addition to Fibrek's St. Felicien mill, all purchase electricity from Hydro-Québec at the L rate, which is the tariff in effect during the POR. Those same mills sell electricity to Hydro-Québec under the PAE 2011-01 program at an administratively-set price.[1015] The benefit to Resolute is the difference between these two prices. We thus continue to find that the appropriate benchmark to calculate the benefit that Resolute received from the sale of electricity back to Hydro-Québec is the L rate.

The GOQ and Resolute assert that the L rate is a hydropower price that cannot serve as the benchmark for a biomass energy program.[1016] In support of their arguments, they rely on *Canada – Feed-In Tariff Program* and the *DS 533 Panel Report*, which were disputes at the WTO.[1017] 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.[1018] 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.[1019] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[1020] Commerce's determination to use the L rate is based on our interpretation of the Act regarding the calculation of benefit where a government procures a good for MTAR; the Act is fully consistent with the international obligations of the United States. Moreover, Commerce is governed by U.S. law, and, as we have explained, our calculation of benefit using the L rate as a benchmark is fully consistent with section 771(5)(E) of the Act.

Further, there is no evidence that electricity is differentiated based upon how it is generated or sourced. The GOQ itself reported that, "Hydro-Québec pools the electricity together from the various sources and sells it for a uniform price. . . That is, the consumer does not know the underlying source of the electricity supplied by Hydro-Québec but knows that the price paid for the electricity is the same regardless of the source."[1021] Thus, Hydro-Québec makes no distinction between sources of electricity generated. The GOQ's statement is corroborated by

[1014] *See Lumber V AR1 Final* IDM at Comment 7.
[1015] *See* GOQ Non-Stumpage IQR Response at Exhibits QC-BIO-35 (Gatineau PPA), BIO-47 (Dolbeau PPA) and BIO-54 (St. Felicien PPA); *see also* Resolute Non-Stumpage IQR response at Exhibit RES-NS-PAE-2.
[1016] *See* Resolute Case Brief at 49; *see also* GOQ Case Brief Vol. VII(b) at 115.
[1017] *See* Resolute Case Brief at 44; *see also* GOQ Case Brief Vol. VII(b) at 146-151.
[1018] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[1019] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[1020] *See* SAA at 659.
[1021] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-BIO-A at 10.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

the tariff schedules which indicate that there is no distinction. Within the schedules, the L rate is listed with no disclosure as to the source from which that electricity is generated.[1022] This evidence indicates that electricity is electricity regardless of the source from which it was generated. As such, we find no merit to the argument that a rate for electricity which might be generated from hydropower cannot be used as a benchmark for the PAE-2011-01 program. We also find no basis to the argument that incremental electricity Resolute sells to a Hydro-Québec with biomass is somehow different than the electricity that Hydro-Québec sells to Resolute. Electricity, regardless of its fuel source, is electricity. Further, because we conclude that the appropriate benchmark to determine the benefit that Resolute received from the sale of electricity back to Hydro-Québec is the L rate, we need not address the respondent parties' arguments that Commerce must use the Merrimack Study or Coyne Study as a benchmark under 19 CFR 351.511(a)(2).

Similarly, we disagree with the GOQ and Resolute that the capital costs of biomass cogeneration electricity facilities should be taken into consideration. As explained above, we determine the amount of any benefit conferred to Resolute under the benefit-to-the recipient standard. This standard requires that we calculate the benefit by comparing the price at which the government purchased electricity to the price at which the government sold electricity; the reason for any pricing difference is not part of this analysis.

Contrary to the GOQ's assertion, *Glycine from Thailand*[1023] has no bearing on Commerce's selection of a benchmark for the PAE 2011-01 program. In that proceeding, Commerce was investigating the provision of electricity for LTAR—not the purchase of electricity for MTAR—finding that the wholesale prices on the record were not comparable to the retail prices for which the adequacy of remuneration was being measured. Here, as noted, Commerce is examining the government's purchase of electricity for MTAR where the government is both the provider and purchaser of the good. The benefit-to-the-recipient standard set forth under 19 CFR 351.512(a)(3) is proper in this situation, and the price at which Resolute purchased electricity from Hydro-Québec is the appropriate benchmark to measure the adequacy of remuneration of Resolute's sales of electricity to Hydro-Québec.

Further, we disagree with the GOQ's claim that the *Lumber V Final Results of Redetermination* requires Commerce to rely on the Merrimack Group Report for its benchmark for comparison to the prices paid for the purchase of electricity from Resolute, rather than the "benefit-to-the recipient" standard. Commerce conducted that remand under respectful protest.[1024] We note that Chapter 19 NAFTA Panels sit in the place of the Court of International Trade, whose decisions are not precedential and not binding on any case but the one before it.[1025] As such, we continue to rely on the benefit-to-the-recipient standard set forth under 19 CFR 351.512(a)(3) when constructing the benchmark for the PAE 2011-01 program.

[1022] *Id.* at Exhibits QC-BIO-53.
[1023] *See Glycine from Thailand* IDM at Comment 4.
[1024] *See Lumber V Final Results of Redetermination* at 97.
[1025] *See Algoma Steel Corp.* at 243; *see also Alloy Magnesium from Canada* at 19 n. 54; and *CORE from Canada* at 78 n.254.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Lastly, the GOQ asks Commerce to remove the Québec Sales Tax and Goods and Services Tax from each side of the benefit calculation. As we explained in *Lumber V Final*,[1026] Commerce does not consider the tax consequences of a benefit in accordance with 19 CFR 351.503(e). 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 the GOQ argues for – removing the Québec Sales Tax and the Goods and Services Tax from each side of the calculation– 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 PAE 2011-01 program.

Comment 36: Whether To Adjust the L Rate Benchmark for PAE 2011-01

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 58-61.

> Should {Commerce} insist on an L Rate retail electricity benchmark, it must adjust that benchmark to account for credits under energy efficiency and demand response programs that further reduce the L Rate or already are treated in other subsidy analyses.

No other party commented on this issue.

Commerce's Position: As discussed in Comment 35, Commerce is performing a benefit-to-recipient analysis in calculating a benefit for this MTAR program. Consistent with past reviews, Commerce is utilizing Resolute's purchases of L rate electricity from the mills at which it sold electricity, Dolbeau, Gatineau and St. Felicien, as the benchmark in this analysis. Resolute received credits, or reductions in the amount due, for its purchases of L rate electricity from Hydro-Quebec at its Dolbeau, Gatineau and St. Felicien mills. Resolute argues that Commerce should adjust the L rate values it reported for L rate rebates/credits associated with programs that Commerce is separately countervailing elsewhere in this review (IEO, DRO and EDL).[1027] Making these adjustments by adding the rebates/credits back into the reported L Rate values would increase the per-unit benchmark rate used in the benefit calculation. Resolute contends that by separately countervailing the IEO, DRO and EDL programs as grants, while failing to remove the electricity credits received by Resolute on its electricity invoices, Commerce is countervailing the same amounts twice.[1028] Resolute cites to Commerce making similar adjustments in constructing its benchmark price for the GOO's Combined Heat and Power program in *Lumber V AR 3 Final*, also calculated using a benefit to recipient analysis.[1029]

[1026] *See Lumber V Final* IDM at Comment 72.
[1027] *See* Resolute Case Brief at 61.
[1028] *Id*. at 60.
[1029] *Id*. at 61.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

We agree, in part. We are countervailing the DRO, EDL, and IEO programs separately; therefore, any reductions associated with these programs should not be included in the benchmark price. Thus, any credits/rebates *included in the build-up of the reported electricity value* should be added back into the construction of the benchmark price. For example, if Resolute received a credit (a negative number) of -5 CAD associated with a program we are countervailing separately in this review on an invoice totaling 20 CAD worth of electricity, we agree that the proper value of the electricity should be adjusted to 25 CAD. However, we disagree with Resolute that credits that do not alter the L rate value *reported* by Resolute should be afforded the same treatment.

In reviewing the invoices associated with Resolute's reported L rate values, we have noted that rebates associated with the EDL program[1030] are included in the invoice total, but are not included in the L Rate valuation reported by Resolute (*i.e.*, the L Rate value reported by Resolute is pre-rebate and not the final invoice total due). Accordingly, it is not appropriate to add the EDL rebates back into the reported L Rate valuations because the valuations reported were never reduced by those rebates.

At the *Preliminary Results*, we adjusted Gatineau's electricity values at tab "QUE.ElecBMrate.BPI," because we mistakenly determined the L rate rebate received through the EDL program affected the reported electricity value reported by Resolute. This was an error, as the valuations *reported* do not include the EDL rebates. To be clear, the *valuations reported by Resolute* were not the total invoice value, but a pre-EDL rebate L Rate valuation. Accordingly, we have discontinued making that adjustment to Resolute's reported L Rate value as part of the benchmark calculation for these final results.

After reviewing the invoices associated with each L Rate value reported for the Dolbeau, Gatineau and St. Felicien mills, we have made certain adjustments to the L Rate benchmark calculation when the invoices demonstrated that the L Rate value *reported by Resolute* was reduced by DRO and IEO rebates. As such we are only making an adjustment for the DRO/GDP and IEO rebates, when applicable, but not the EDL/LRR rebates, because the EDL/LRR rebates are not factored into the reported electricity value. The discussion surrounding these adjustments contains business proprietary information; *see* the Resolute Final Calculation Memorandum for further detail.

[1030] The EDL program is also known as the LRR.

J. Grant Program Issues

Alberta

Comment 37: Whether the AESO Load Shedding 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 5-15.[1031]

> {Commerce} erred in preliminarily finding 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}. To be countervailable, a subsidy must be a "financial contribution." The statute makes clear that the purchase of services is not countervailable. Here, the transactions at issue involved AESO's purchase of load shedding services from West Fraser. Load shedding services are necessary to prevent load imbalance from creating an uncontrolled failure of the electrical system when there is a sudden loss of supply. The services that AESO purchased from West Fraser, which include offering load that can be tripped from the grid in the event of a supply outage, arming that load to be tripped, and potentially having the load tripped (*i.e.*, losing power to its facilities) if an event occurred, plainly provided a service of value to AESO. AESO's load shedding contracts with West Fraser and others allowed it to import more electric power to the Alberta grid from {British Columbia} and Montana via interties with those jurisdictions. West Fraser's offer of these services in exchange for payment cannot be reasonably considered a grant, which is described by the courts as a "gift-like transfer." In contrast with a gift, the load shedding contract between AESO and West Fraser was a contract for the company to provide a service to AESO necessary for it to fulfill Alberta's electric grid obligations.

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 186-194.

> In the *Preliminary Results*, {Commerce} correctly determined that {AESO's LSSi} is countervailable. This aligns with {Commerce's} consistent practice, finding that electricity is a good, not a service, and a government's attempts to "incentivize" firms to reduce consumption of that good through payments are 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

[1031] Within its case brief, West Fraser incorporates by reference the arguments made by the GOA for this program. *See* West Fraser Case Brief at 54-55.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> programs, that the provision of payments as "incentives" to participate in load curtailment schemes constitutes a transfer of funds under U.S. law. Importantly, the statute does not obligate {Commerce} to consider the real or potential benefits a government obtains from having companies participate in a subsidy program, and {Commerce} has acknowledged this with regard to various other {CVD} programs in prior reviews. Furthermore, {Commerce} correctly found the LSSi program to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the subsidy are limited in number. The Canadian Parties argue that the number of recipients merely reflects "the number of companies that participated in the bidding process," and that the companies represent "an array of industries." However, record evidence confirms that only a limited number of companies received LSSi payments during the POR, demonstrating that the program is *de facto* specific. In the absence of any new information or argument warranting a different result, {Commerce} should continue to find the LSSi program *de facto* specific in the final results.

Commerce's Position: As an initial matter, Commerce has consistently determined that electricity is a good and not a service,[1032] and has previously determined that electricity curtailment programs are properly treated as grants.[1033] As discussed below, the GOA has not raised any new arguments in this review that warrant a reconsideration of Commerce's finding regarding the countervailability of the LSSi program.[1034]

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.[1035] Under the LSSi program, AESO, a government authority,[1036] made payments to West Fraser for disconnecting from the electrical system when called upon to avoid a load imbalance in the system.[1037] Regardless of the 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.[1038] This reduction in power consumption is a reduction in the consumption of the *good*, *i.e.*, electricity. 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

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[1032] *See, e.g., Lumber V AR1 Final* IDM at Comment 5; *see also Lumber V AR2 Final* IDM at Comment 3.
[1033] *See, e.g., Lumber V AR1 Final* IDM at Comment 8; *see also Lumber V AR2 Final* IDM at Comment 4; *Lumber V AR3 Final* IDM at Comment 4; *Groundwood Paper from Canada* IDM at Comment 66; *Carbon and Alloy Steel Wire Rod from Italy* IDM at Comment 2; and *Silicon Metal from Australia* IDM at Comment 2.
[1034] *See, most recently, Lumber V AR6 Final* IDM at Comment 31.
[1035] *See* GOA Case Brief Vol. IV.B at 8-10.
[1036] *See Lumber V AR2 Prelim* PDM at 45-46, unchanged in *Lumber V AR2 Final.* The AESO's status was unchanged during the POR. *See* GOA Non-Stumpage IQR Response at Appendix H at 1-2 and 10 (and exhibits referenced therein).
[1037] *See* GOA Non-Stumpage IQR Response at Appendix H at 1-4 and 11.
[1038] *Id.* at Appendix H and all referenced exhibits therein.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

"gift-like transfer"[1039] (*i.e.*, a grant) that would result in the provision of a financial contribution. As Commerce has explained in prior reviews,[1040] 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.[1041]

Further, the GOA asserts that Commerce failed to consider the program in its entirety, claiming that the record shows that AESO received services of value from West Fraser in the form of load shedding.[1042] We disagree. As discussed above, when analyzing the LSSi and concluding that West Fraser received a grant under the program, we considered all the information submitted by the parties on the record.[1043] Additionally, we find the GOA's reference to the *Gov't of Sri Lanka v. U.S.*, in support of its argument that Commerce did not evaluate the LSSi program in its entirety, to be off-point.[1044] In *Gov't of Sri Lanka v. U.S.*—concerning a program in which the Government of Sri Lanka mandated that rubber purchasers buy at an above-market guaranteed price, and then repaid the purchaser the difference between the market price and the guaranteed price—the CIT rejected Commerce's finding of financial contribution on the basis that the program acted as an "interest-free repayment of a debt" on the part of the Government of Sri Lanka.[1045] This is distinguishable from the LSSi program, in which West Fraser received payments from AESO for disconnecting from the electrical system when called upon.

Additionally, in its case brief, the GOA implies that Commerce should consider that a company's participation in the LSSi program requires a substantial investment, such as in equipment to allow the tripping of their load when needed.[1046] Commerce need not consider any costs or obligations incurred by a participant that are associated with the curtailing of energy usage as part of this program, as it does not affect the underlying financial contribution ultimately conferred to the participant, nor the amount of the benefit. We 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."[1047] Also, the statute supports this

[1039] *See* GOA Case Brief Vol. IV.B at 12-14.
[1040] *See, most recently, Lumber V AR6 Final* IDM at Comment 31.
[1041] *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.").
[1042] *See* GOA Case Brief Vol. IV.B at 13-14 (citing *Gov't of Sri Lanka v. U.S.* at 1381-82).
[1043] *See* GOA Non-Stumpage IQR Response Volume I at Appendix H (and all referenced exhibits therein); *see also* West Fraser Non-Stumpage IQR Response Volume II at 10-17 (and all referenced exhibits therein).
[1044] *See* GOA Case Brief Vol. IV.B at 13-14 (citing *Gov't of Sri Lanka v. U.S.* at 1381-82).
[1045] *See Gov't of Sri Lanka v. U.S.* at 1381.
[1046] *See* GOA Case Brief Vol. IV.B at 10.
[1047] *See Lumber V AR2 Final* IDM at Comment 60*; see also CVD Preamble*, 63 FR at 65361 ("A subsidy that reduces a firm's cost of compliance remains a subsidy (subject, of course, to the statute's remaining tests for countervailability), even though the overall effect of the two government actions, taken together, may leave the firm with higher costs.")

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

position, providing that in determining the "net countervailable subsidy," Commerce may reduce the "gross countervailable subsidy" by the amount of certain types of payments, loss of value, or export charges levied specifically to offset the countervailable subsidy received.[1048] The equipment costs and investments incurred by companies to trip their electricity loads as participants in the LSSi 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.

Regarding specificity, 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) these firms encompass an array of industries.[1049] 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.[1050] 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.

That the number of firms selected as LSSi providers is commensurate with the number of companies that participated in the bidding process is immaterial to Commerce's *de facto* specificity analysis. As discussed in the *Lumber V AR6 Final*, the Federal Circuit in *Gov't of Québec v. U.S.* upheld Commerce's usage of comparator numbers when analyzing *de facto* specificity under section 771(5A)(D)(iii)(I) of the Act.[1051] The selection of such a comparator number analyzes what entities or industries can *avail* themselves of the program.[1052] As the GOA itself noted, any market participant may participate in the bidding process.[1053] Accordingly, Commerce correctly compared the number of users of the program to the number of entities that could avail themselves of the program, *i.e.*, companies operating or established in Alberta during 2024.

Lastly, the GOA's argument regarding the range of industries represented among the companies that received payments[1054] 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.[1055] Moreover, the statute explicitly provides for a limited in number *de facto* specificity finding "whether on an enterprise *or* industry basis," section 771(5A)(D)(iii)(I) of the Act (emphasis added), and Commerce appropriately considered whether the number of actual recipients was limited in number on an enterprise basis. Our analysis in this review is fully consistent with Commerce's current practice, regulations, and the language of the SAA. The GOA reported that a small number of

[1048] *See* section 771(6) of the Act.
[1049] *See* GOA Case Brief Vol. IV.B at 14 (citing GOA Non-Stumpage IQR Response Volume I at Appendix H (p. 17-18).
[1050] *See Lumber V AR7 Prelim* PDM at 50 (citing GOA Non-Stumpage IQR Response Volume I at Appendix H (p. 24) and Exhibit AB-AR7-AESO-25). The number of companies approved under the LSSi program is proprietary information.
[1051] *See Lumber V AR6 Final* IDM at Comment 1 (citing *Gov't of Québec v. U.S.* at 1373-74).
[1052] *See Gov't of Québec v. U.S.* at 1374.
[1053] *See* GOA Case Brief Vol. IV.B at 14.
[1054] *Id.* at 15.
[1055] *See* SAA at 930.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

companies, in comparison to the total number of companies operating or established in Alberta during 2024 (*i.e.*, 481,692), was approved for the program during the POR.[1056] The number of actual recipients is, therefore, limited on an enterprise basis. We, therefore, continue to find the LSSi program to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, and need not consider whether any identifiable group benefited disproportionately as asserted by the GOA.[1057]

British Columbia

Comment 38: Whether the FUFP 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 89-95.[1058]

> {T}he BC Parties explain that payments under the {FUFP} do not provide a financial contribution because they constitute compensation for services procured by the {GBC}—namely, the recovery, removal, and delivery of otherwise uneconomic residual fiber from provincial land— rather than a direct transfer of funds. The FUFP is also not *de jure* specific because the program identifies categories of eligible applicants and project-implementation roles, not an express limitation to a specific enterprise, industry, or group of industries.

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 199-205.

> {Commerce} correctly determined in the *Preliminary Results* that the GBC's {FUFP} provides a countervailable subsidy and financial contribution under sections 771(5)(B)(iii) and 771(5)(D)(i) of the Act. The GBC and West Fraser argue that the FUFP "is a payment for services procured by the {GBC} for recovering, removing, and delivering otherwise uneconomic residual fiber from provincial land{,}" and therefore, is not a financial contribution within the meaning of section 771(5)(D) of the Act. However, FUFP funding does not cover delivery charges but is, instead, comparable to other grants that offset normal business costs that {Commerce} has found to be countervailable in past reviews.
>
> Here, the record demonstrates that the GBC is not purchasing delivery services from participating companies but is, instead, incentivizing the use of otherwise "uneconomic" fiber by offsetting normal operational costs for the companies that

[1056] *See* GOA Non-Stumpage IQR Response Volume I at Appendix H (p. 24-25) and Exhibit AB-AR7-AESO-25. The number of companies approved under the LSSi program is proprietary information.
[1057] *See* GOA Case Brief Vol. IV.B at 15.
[1058] Within its case brief, West Fraser incorporates by reference the arguments made by the GBC for this program. *See* West Fraser Case Brief at 55.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

obtain and use such fiber. These incentives are functionally no different than grants used to offset normal operational costs such as silviculture and harvest costs that {Commerce} has previously countervailed throughout Canada. The fact that the cost offset here involves the movement of uneconomic fiber does not change the fact that the GBC is providing a direct transfer of funds to West Fraser in order to make that fiber economically feasible. Indeed, this GBC program is very similar to the GOQ's "Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances," which {Commerce} preliminarily determined to be countervailable in this review after making the same determination in the second and third administrative reviews. The FUFP serves a similar function using a similar mechanism in British Columbia, and {Commerce} should maintain its preliminary determination that FUFP funding constitutes a financial contribution.

{Commerce} also correctly found the FUFP to be *de jure* specific in the *Preliminary Results* because the program expressly limits eligibility to specified categories of forestry-related enterprises. The record demonstrates that the program is inherently limited to the forestry sector, including forest tenure holders, fiber suppliers, and purchasers of non-sawlog fiber. {Commerce} reasonably concluded that these express eligibility criteria create a discrete class of eligible recipients consistent with the statutory requirements for *de jure* specificity, and {Commerce} should continue to find the FUFP *de jure* specific in the final results.

Commerce's Position: Consistent with the *Preliminary Results* and after considering the BC parties' arguments, we continue to find FUFP Program is countervailable. As discussed in the *Preliminary Results*, the FUFP funds projects that increase residual fiber utilization by non-lumber producing facilities, utilize fiber from fire and insect damaged stands, and minimize emissions associated with open burning.[1059] Cariboo, an operating pulp and paper mill within West Fraser, received funding under the FUFP during the POR to recover uneconomical fiber (pulp logs) for use in the production of northern bleached softwood kraft pulp and energy.[1060]

In arguing that under the FUFP the government pays for services, and thus, there is no financial contribution, the GBC notes Commerce stated that "{d}elivery charges could be considered the provision of a service but purchases of services by the government are not financial contributions under section 771(5)(D) of the Act. Thus, delivery charges are also not countervailable subsidies under the CVD law."[1061] The GBC asserts that the distinction between payments for goods (which may constitute a financial contribution) and payments for services (which are not countervailable) applies to the FUFP. The GBC states that the FESBC pays for the delivery of uneconomic residual fiber to non-sawlog facilities and that "delivery" is an activity which Commerce recognizes as a service, and thus, there is no grant. The GBC adds that, if payment alone were sufficient to establish a direct transfer of funds, the statute's separate inclusion of a

[1059] *See Lumber V AR7 Prelim* PDM at 33-34; *see also* GBC March 9, 2026 Non-Stumpage SQR Response at 2-3 and Exhibit FESBC-1; and West Fraser Non-Stumpage IQR Response Volume II at 45.
[1060] *See* GBC March 9, 2026 Non-Stumpage SQR Response at 5, 15-16, and Exhibits FESBC-4, FESBC-8-A, and FESBC-9-A; *see also* West Fraser Non-Stumpage IQR Response Volume II at 45, 47, 49-50, and Exhibit WF-AR7-FESBC-2.
[1061] *See* GBC Case Brief Vol. V at 91-92 (citing *Proposed Methodology Codification Rule*, 89 FR at 57314; and 19 CFR 351.512(a)(2)(iv)).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

government purchase of goods and its omission of a government purchase of a service, would have no effect. Further, the GBC states that costs for activities that a tenure holder is already obligated to perform are ineligible for funding.[1062]

We disagree with the GBC's characterization that the FUFP funding is a "delivery charge." Rather, based on the record, we find the FUFP no different than other grants that offset a company's normal operating costs. As noted above, the objective of the FUFP is to fund projects that increase fiber supply. In the press release for the FUFP, the GBC states "{w}e know that access to fiber is one of the most critical challenges facing the industry and we're working hard to find new sources" and "{t}he projects funded through the {FESBC} will help us get more fire-damaged wood and logging waste to the mills that need it."[1063] Additionally, within the "FESBC 2023-25 Fiber Utilization Funding Program Guide," one of the key strategies listed is "Fund only the differential between the cost of operations and the market value of the end product."[1064] Thus, the GBC is not purchasing "delivery services" from participating companies but is, instead, incentivizing the use of otherwise uneconomic fiber by offsetting normal operational costs for companies which obtain and use such fiber within their businesses. We, therefore, determine that under the FUFP, the GBC provided a direct transfer of funds to West Fraser within the meaning of section 771(5)(D)(i) of the Act. We also find the GBC's reference to 19 CFR 351.512(a)(2)(iv) and its preamble language[1065] off-point when arguing there is no financial contribution under the FUFP. Section 351.512(a)(2)(iv) of Commerce's regulations addresses the use of an ex-factory or ex-works price in the context of goods purchased by the government for MTAR. For all the reasons discussed above, the GBC provides a financial contribution in the form of a grant under the FUFP.

Additionally, we find the GBC's statement that "costs for activities that a tenure holder is already obligated to perform are ineligible for funding,"[1066] not relevant to the facts here. First, as discussed below, the program is not limited to tenure holders but includes other subsets of the forestry industry, such as fiber suppliers and purchasers of non-sawlog fiber.[1067] Second, when responding to Commerce's questionnaires on the FUFP, neither the GBC nor West Fraser provided any evidence that Cariboo, a pulp and paper mill, is a tenure holder.[1068] Thus, the record does not support the proposition that Cariboo was obligated to perform activities related to the FUFP.

Regarding specificity, we disagree with the arguments raised by the GBC. As stated in the *Preliminary Results*, FUFP eligibility is restricted to First Nations in British Columbia; companies owned in full or in part by First Nation government or Indigenous entrepreneurs; small area-based tenures, including community forest agreement holders and woodlot licensees;

[1062] *See* GBC Case Brief Vol. V at 91-92 (citing GBC March 9, 2026 Non-Stumpage SQR Response at Exhibit FESBC-2 (p. 5, section 3.9)).
[1063] *See* GBC March 9, 2026 Non-Stumpage SQR Response at Exhibit FESBC-1.
[1064] *Id*. at Exhibit FESBC-2 (p. 1). A description of "Eligible Funding" is found at Section 3.5 (p. 4). *Id*.
[1065] *See* GBC Case Brief Vol. V at 91-92 (citing *Proposed Methodology Codification Rule*, 89 FR at 57314); and 19 CFR 351.512(a)(2)(iv)).
[1066] *See* GBC Case Brief Vol. V at 92.
[1067] *See* GBC March 9, 2026 Non-Stumpage SQR Response at 2-3, 6, and Exhibit FESBC-2 (p. 2-3).
[1068] *Id*. at 1-23 (and all referenced exhibits therein); *see also* West Fraser Non-Stumpage IQR Response Volume II at 45-51 (and all referenced exhibits therein).

forest tenure holders, fiber suppliers, or purchasers of non-sawlog fiber that do not own or control a primary forest product manufacturing facility; the BC Ministry of Forests and other provincial agencies; and local governments, and excludes companies that manufacture dimensional softwood lumber.[1069] Thus, the FUFP is limited to the forestry industry, including forest tenure holders, fiber suppliers, and purchasers of fiber, with certain subsectors of the forestry industry excluded (*i.e.*, companies that manufacture dimensional softwood lumber).[1070] In making its specificity argument, the GBC asserts that Commerce "did not identify which of these categories constitutes an 'enterprise or industry' within the meaning of section 771(5A)(D)(i) {of the Act}, or determine how the categories collectively constitute an enterprise, industry, or group of industries."[1071] The GBC further states, citing to the *BGH Edelstahl* cases, that while eligibility criteria by definition limit those who may access a program, "something more must be shown to prove that the program benefits only a specific industry or group of industries."[1072]

With regard to the *BGH Edelstahl* cases, we find the facts of the FUFP under review to be inapposite. In *BGH Edelstahl II*, the Court remanded Commerce's *de jure* specificity finding on the basis that Commerce failed to "explain how criteria based solely on electricity consumption and pricing is not horizontal in application" nor "economic in nature."[1073] As the Court recognized in *BGH Edelstahl II*, "the issue is whether the {subsidy's} criteria are economic in nature and horizontal in application."[1074] In that case, the Court found Commerce had insufficiently explained how the amount of electricity consumed was not economic in nature and horizontal in application.[1075] In contrast, eligibility for the FUFP is demonstrably *not* horizontal nor economic in nature. As the Court held in *Hyundai Steel 2025*, the relevant question is whether the metrics favor enterprises or industries based on the "substantive character of their operations."[1076] Here, the FUFP's eligibility criteria are limited to a subset of the forestry industry.[1077] As such, we continue to find that the FUFP is *de jure* specific under section 771(5A)(D)(i) of the Act for these final results.

[1069] *See Lumber V AR7 Prelim* PDM at 53 (citing GBC March 9, 2026 Non-Stumpage SQR Response at 2-3, 6, and Exhibit FESBC-2 (p. 2-3)).
[1070] *See* GBC March 9, 2026 Non-Stumpage SQR Response at 2-3, 6, and Exhibit FESBC-2 (p. 2-3).
[1071] *See* GBC Case Brief Vol. V at 94.
[1072] *Id*. at 94 (citing *BGH Edelstahl III* at 1381; and *BGH Edelstahl II*).
[1073] *See BGH Edelstahl II*, 639 F.Supp.3d at 1244.
[1074] *Id.* at 1243 (discussing SAA at 930 ("the objective criteria or conditions must be neutral, must not favor certain enterprises or industries over others, and must be economic in nature and horizontal in application, such as the number of employees or the size of the enterprise")).
[1075] *Id.* at 1244.
[1076] *See Hyundai Steel 2025*, 753 F.Supp.3d at 1360.
[1077] *See* GBC March 9, 2026 Non-Stumpage SQR Response at 2-3, 6, and Exhibit FESBC-2 (p. 2-3).

Ontario

Comment 39: Whether the FSIIP Is *De Jure* Specific

GOO Case Brief

The following is a verbatim summary of the argument submitted by the GOO. For further details, *see* GOO Case Brief Vol. VI at 23.

> Commerce erred by…finding the {FSIIP} to be *de jure* specific.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute. For further details, *see* Resolute Case Brief at 153.

> Resolute adopts and incorporates by cross-reference the arguments of the {GOC}, the {GOQ}, and the {GOO} that {Commerce's} preliminary specificity findings with respect to non-stumpage and programs applicable to Resolute are unsupported by record evidence or otherwise 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 212-213.

> {Commerce} correctly found the Ontario {FSIIP} to be *de jure* specific under section 771(5A)(D)(i) of the Act because the governing legislation expressly limits eligibility to projects benefitting Ontario's forest sector. The Canadian Parties argue that the program is broadly available because it extends to various types of entities. However, the statute requires only that the governing authority expressly limit access to particular enterprises or industries, and the FSIIP does so by restricting eligibility to Ontario's forestry sector and projects that benefit the forestry industry. The program guidelines, the {GOO's} questionnaire responses, and Resolute's own all confirm that eligibility is expressly limited to forestry-related businesses and projects. Accordingly, {Commerce} correctly found the FSIIP to be *de jure* specific and should continue to do so in the final results.

Commerce's Position: For the final results, Commerce continues to find that the FSIIP program is *du jure* specific.

As discussed in the *Preliminary Results*, the FSIIP was enacted in 2019 in accordance with the Ministry of Economic Development and Trade Act, and is designed to provide project financing and/or loan forgiveness in exchange for the development and implementation of projects that will improve productivity, increase innovation, support market expansion, strengthen regional

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

economies and supply chains, and positively impact Ontario's broader forest sector.[1078] The FSIIP has two financing streams available to applicants: (1) Business Projects, available to manufacturers and processors of wood and forest biomass; and (2) Collaboration Projects, available to public-private partnerships or similar arrangements.[1079] Resolute reported that it applied for financing assistance under the Business Projects Stream in 2021, but completed the project before negotiations regarding the assistance had concluded, and thus no longer needed the loan requested.[1080] As an alternative, the GOO provided a one-time payment to Resolute during the POR to support the previously completed project.[1081]

In the *Preliminary Results*, Commerce determined that the FSIIP is *de jure* specific.[1082] The GOO argues that the FSIIP is not *de jure* specific because it is "broadly available across industries and extends well beyond sawmills," including processors of forest biomass, bio-product manufacturers, not-for profit organizations such as research organizations, and secondary education institutions.[1083] Resolute likewise argues that the eligible participant pool is "wide and diverse."[1084] While we agree with the GOO that the FSIIP is not specific to sawmills, we continue to find the that FSIIP is *de jure* specific to the forestry sector, as explained below.

The specificity test is designed to avoid the imposition of CVDs where a subsidy is broadly available and used throughout an economy.[1085] It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the CVD law.[1086] Commerce may make a finding of *de jure* specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.

The FSIIP guidelines list as eligible, "for-profit forest sector businesses that are registered to conduct business in Ontario," including *inter alia*, "bio-product manufacturers utilizing forestry-based inputs."[1087] Ontario-based post-secondary education institutions may be eligible under the collaboration projects stream, which requires at least three project partners "with involvement or interest in Ontario's forest industry," one of which must be an "Ontario-based for-profit forest sector business."[1088] The guidelines also provide that "{n}ewly formed businesses (start-ups) may be considered on a case by case basis, at the discretion of the province, provided the project meets objectives of the program."[1089] As discussed in the *Preliminary Results*, the objectives of

[1078] *See Preliminary Results* PDM at 56 (citing GOO Non-Stumpage IQR Response at ON-FSIIP-1; and Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSIIP-APP at 3).
[1079] *Id*. (citing Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSIIP-APP at 1).
[1080] *Id*. (citing Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSIIP-APP at 4).
[1081] *Id*. (citing Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSIIP-APP at 4-5).
[1082] *Id*.
[1083] *See* GOO Case Brief Vol. VI at 23.
[1084] *See* Resolute Case Brief at 153.
[1085] *See* SAA at 930.
[1086] *Id*.
[1087] *See* GOO Non-Stumpage IQR at Exhibit ON-FSIIP-1 (FSIIP Program Guidelines at "Program Eligibility").
[1088] *Id*.
[1089] *Id*.

the FSIIP include that a project will "positively impact Ontario's broader forest sector."[1090] We find that these eligibility criteria restrict participation in the FSIIP based on involvement with the forestry sector. As such, we continue to find that the FSIIP is *de jure* specific under section 771(5A)(D)(i) of the Act for these final results.

Comment 40: Whether the OFRFP Is Countervailable

GOO Case Brief

The following is a verbatim summary of the argument submitted by the GOO. For further details, *see* GOO Case Brief Vol. VI at 15-18.

> Commerce erred by … finding that the {OFRFP} confers a countervailable benefit when the program imposes a net cost on harvesters for constructing public general infrastructure.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 100-103, and 126-130.

> Provincial payments for road construction and maintenance programs were not grants because the provincial governments were buying from Resolute valuable services. Provincial governments look to harvesters to build and maintain public road networks through forested areas.
>
> {Commerce} erroneously – contrary to record facts – has treated the payments for valuable services as a unilateral "direct transfer of funds," disregarding the reciprocity inherent in the road programs. Resolute received compensation – only partial – in exchange for building and maintaining roads owned by the provincial governments and open to the public. Besides, the province bought a service, not a good. Payment for a service is not countervailable.
>
> The Québec and Ontario road construction and maintenance programs provide only partial or capped reimbursement of eligible costs. Resolute remains responsible for the remainder of roadwork costs as well as the full cost of roads within its own harvest stands. Because the payments merely offset part of Resolute's expense of providing public infrastructure, the programs did not confer any advantage, profit, or good. If Commerce continues to treat the payments as financial contributions, it should find no measurable countervailable benefit.

[1090] *See Preliminary Results* PDM at 56 (citing Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSIIP-APP at 3); *see also* GOO Non-Stumpage IQR Response at Exhibit ON-FSIIP-1 (FSIIP Program Guidelines at "Overview").

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 208-211.

> In the *Preliminary Results*, consistent with prior reviews, {Commerce} found the {OFRFP} constitutes a financial contribution under section 771(5)(D)(i) of the Act. The GOO and Resolute argue that this program does not provide a financial contribution because the roads at issue constitute general infrastructure and, as such, Resolute's construction and maintenance of these roads amount to a service performed for the government. However, the GOO's own record evidence demonstrates that primary roads are "used as the main road system on the forest management unit," and branch roads "provide{} access to and through areas of operations on a forest management unit." These descriptions emphasize that primary and branch roads are integral to forest management and harvesting activities. As such, {Commerce} should continue to find that this subsidy provides a financial contribution in the final results of this review.
>
> In the *Preliminary Results*, consistent with prior reviews, {Commerce} found the OFRFP confers a benefit under section 771(5)(E) of the Act. The GOO and Resolute argue that this program fails to confer a benefit to Resolute as it imposes a net cost to the company and only provides partial reimbursements. However, this argument is irrelevant to {Commerce's} benefit analysis, as "there is no statutory requirement that a subsidy program completely offset a cost incurred by a respondent for it to be countervailable." Thus, the reimbursements received by Resolute offer some financial relief in meeting its obligations. As such, {Commerce's} benefit determination is in accordance with the agency's regulations and should be sustained in the final results.

Commerce's Position: The GOO and Resolute raise substantially the same arguments about the OFRFP as in the third administrative review, which we found unpersuasive,[1091] and continue to find so here. Consistent with our findings in prior reviews, we therefore continue to find that the OFRFP is a countervailable grant program that confers a benefit on Resolute.[1092]

As discussed in the *Preliminary Results*, harvesters of Crown timber in Ontario are responsible for constructing and maintaining provincially-owned public access roads in Crown forests.[1093] The OFRFP provides for the GOO, through the MNR, to reimburse SFL and certain FRL holders fully for the construction and maintenance of primary roads, and partially for the construction and maintenance of branch roads on lands covered by the SFL or FRL.[1094]

[1091] *See Lumber V AR3 Final* IDM at Comment 67.
[1092] *Id*; *see also Lumber V AR2 Final* IDM at Comment 70; and *Lumber V AR1 Final* IDM at 71.
[1093] *See Preliminary Results* PDM at 55 (citing GOO Stumpage IQR Response at ON-STUMP-144).
[1094] *Id*. (citing GOO Stumpage IQR Response at ON-STUMP-147).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

The GOO and Resolute argue that the OFRFP does not convey a benefit to Resolute, because the obligations to build roads in crown forests impose a net cost after OFRFP payments.[1095] The GOO argues that Commerce impermissibly "analyze{d} payments in isolation from the overall program."[1096] The GOO and Resolute both argue that, in the absence of the OFRFP, the GOO would have borne the costs of road construction, such that Resolute's road activities should be viewed as consideration exchanged for the government contribution.[1097]

We discuss related arguments on *Gov't of Sri Lanka v. U.S.*, regarding whether Commerce must account for reciprocal value when assessing the countervailability of grant programs in Comment 3. As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the "benefit" as "the amount of the grant." In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1098] The record demonstrates that the OFRFP is designed to reduce costs that harvesters are legally required to incur under their tenure agreements in their normal course of business of harvesting Crown timber in Ontario.[1099] We thus disagree that, in the absence of OFRFP payments, the GOO would have borne the costs of road construction and maintenance. Because the GOO provides reimbursements to Resolute for costs it incurs for the construction and maintenance of roads in public forest areas to perform its harvesting activities, we find that the OFRFP provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and bestows a benefit in the amount of the reimbursement under section 771(5)(E) of the Act and 19 CFR 351.504(a). As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the "benefit" as "the amount of the grant." In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1100] The fact that the reimbursements that Resolute received only partially covered its costs does not negate the fact that a benefit was received.

We disagree that Resolute's road building activities for primary and branch roads under the OFRFP constitute a service to the GOO and, thus, the associated payments are not countervailable.[1101] The activities performed by Resolute—building and maintaining roads to access harvesting areas on Crown land—were performed in the furtherance of its harvesting activities, not to render a service to the GOO or the general public.[1102] The respondent parties

[1095] *See* GOO Case Brief Vol. VI at 16; *see also* Resolute Case Brief at 129-130.
[1096] *See* GOO Case Brief Vol. VI at 17 (citing *Gov't of Sri Lanka v. U.S.* at 1380).
[1097] *Id*.; *see also* Resolute Case Brief at 102.
[1098] *See CVD Preamble*, 63 FR at 65361.
[1099] *See* GOO Stumpage IQR Response at 144-172 (and all referenced exhibits); *see also* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-ONROADS-APP (and all referenced exhibits); and Resolute Stumpage IQR Response at Exhibits RES-STUMP-ON-4 and ON-14.
[1100] *See CVD Preamble*, 63 FR at 65361.
[1101] *See* Resolute Case Brief at 102-103.
[1102] Accordingly, we continue to find it appropriate to not provide account for any "burden" or costs associated with such activities. *See e.g.*, *Hyundai Steel Company v. United States*, 659 F.Supp at 1339 (rejecting the premise that Commerce must take into account compliance costs in its calculation of benefit).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

would have Commerce conclude that because primary and branch roads can be used by the public, the roads built by Resolute are general infrastructure and, thus, the GOO's partial reimbursement of Resolute's road costs are not countervailable. However, a primary road is a permanent road that provides principal access to a forest management unit, which is part of the main road system in the Crown forest.[1103] A branch road splits off a primary road and provides further access to, through, or between areas of harvesting operations within a forest management unit.[1104] The 2021-2031 Black Spruce Forest FMP contains further information regarding the purpose of primary and branch roads that indicate that these roads are principally built to provide access for forestry operations.[1105] This document has only been submitted on the record of this review as proprietary information, unlike previous versions of FMPs which have been public.[1106] Please *see* Resolute's calculation final calculation memorandum for further discussion of the FMP.[1107] Based on this record evidence, we find that primary and branch roads were not built by Resolute for the betterment of the public's welfare, but rather those roads were built by Resolute to access to the forest areas, assigned under its forest license, where it could build operational roads (*i.e.*, roads within an area of operation that provides access for harvest) to allow for its harvesting activities. Because we find Resolute's construction of roads was to further its harvesting activities, we do not find the roads to be "general infrastructure" as defined under 19 CFR 351.511(d). Resolute's road building activities, thus, do not fall under the rubric of "general infrastructure."

Additionally, we disagree with Resolute that Commerce should make an adjustment for the road costs in the stumpage calculations.[1108] As we have explained in the prior and current review, in-kind and other related expenses are not part of the stumpage price as calculated from the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*.[1109] Commerce cannot adjust for such costs without distorting the benchmark.

Comment 41: Whether the Ministry of Transportation of Ontario Roads Maintenance Program Is Countervailable

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 7-8.

> {Commerce} erred in finding that the Ministry of Transportation of Ontario Roads Maintenance program is not countervailable. The record shows that this program reimburses Resolute for costs it would incur in the ordinary course of business.

[1103] *See* GOO Stumpage IQR Response at ON-STUMP-147; *see also Lumber V AR3 Final* at Comment 67.
[1104] *See* GOO Stumpage IQR Response at ON-STUMP-147; *see also Lumber V AR3 Final* at Comment 67.
[1105] *See* Resolute Stumpage IQR Response at Exhibit RES-STUMPAGE-ON-4 (2021-2031 Black Spruce Forest FMP and Supplementary Documentation).
[1106] *See*, *e.g.*, *Lumber V AR3 Final* IDM at 350.
[1107] The 2021-2031 Black Spruce FMP is proprietary. For a detailed discussion, *see* Resolute Final Calculation Memorandum.
[1108] *See* Resolute Case Brief at 103-104.
[1109] *See* Comment 23; *see also Lumber V AR3 Final* IDM at Comment 42.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> Accordingly, {Commerce} should follow its normal practice and treat this reimbursement as a countervailable subsidy in the form of a grant.

GOO Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GOO (internal citations omitted). For further details, *see* GOO Rebuttal Brief at 2-7.

> In its Case Brief, Sierra Pacific contends that Commerce erred in concluding that the Ministry of Transportation of Ontario Roads program is not countervailable. Specifically, Sierra Pacific claims that Commerce's analysis was incomplete, and that a complete analysis demonstrates that Resolute would have incurred the road maintenance costs in the ordinary course of its business, even absent any agreement with the {Ministry of Transportation of Ontario}. This assertion finds no support in the record evidence. The only purported support offered by Sierra Pacific is the original 1994 Agreement between {Ministry of Transportation of Ontario} and Resolute and the related correspondence. But, this does not support Sierra Pacific's erroneous proposition, which contradicts the statute and precedent from the United States CIT. An agreement acknowledging Resolute's use of certain roads and related correspondence indicating the same does not mean that Resolute would have incurred these road maintenance costs absent its agreement with {Ministry of Transportation of Ontario}. Commerce's conclusion that the {Ministry of Transportation of Ontario} Roads program is not countervailable is correct. Further, the {Ministry of Transportation of Ontario} Roads program is not specific and thus not countervailable. The GOO Non-Stumpage IQR Response and Commerce's Post-Prelim results show that the funds used to compensate Resolute for maintenance work under the {Ministry of Transportation of Ontario} Roads program are drawn from the same general allocation fund used for highway maintenance across the entire {Ministry of Transportation of Ontario} network. Further, this program is broadly available, as the {Ministry of Transportation of Ontario} is permitted to enter into a cost-sharing agreement with "any person," extending well beyond companies that operate in any specific sector. During the POR, MTO held 92 contracts with industry operators across a variety of economic sectors. As such, Commerce should find this program not specific and thus not countervailable on this additional basis Ultimately, there is no basis for Commerce to conclude that the reimbursements Resolute received for its maintenance costs under the cost-sharing agreement with the {Ministry of Transportation of Ontario} constitute a countervailable benefit. Commerce's decision on the {Ministry of Transportation of Ontario} contract in the Post-Prelim results is in accordance with the statute and should remain unchanged in the final results.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Resolute Rebuttal Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Rebuttal Brief at 5-8.

> {Commerce} should not countervail payments under the {Ministry of Transportation of Ontario Road Maintenance}. The agreement is a contract for the purchase of services, which is not a countervailable financial contribution under {section 771(5)(D) of the Act}0. The contract is with Ministry of Transportation, which neither owns nor operates Ontario Crown forest lands. Even if the agreement were countervailable, there could be no benefit because Resolute's services were reimbursed at 50 percent of cost. {Commerce} must recognize the value of the services Resolute provided in exchange for reimbursement and should conclude that no benefit or advantage was gained when those services were reimbursed at 50 percent of cost.

Commerce's Position: The OMOT signed a contract with Resolute in 1993 for a cost sharing agreement where OMOT reimburses Resolute for fifty percent of Resolute's direct costs for maintaining provincial Tertiary Road 811 (811).[1110] This road is one of several classifications of public, OMOT-owned highways under the Public Transportation and Highway Improvement Act (PTHIA).[1111] Under provisions within the PTHIA, OMOT can only conduct winter maintenance on a Tertiary Road through a cost-sharing agreement with "any person" and pay a maximum of 50 percent of the costs for such work.[1112] Under the terms of the agreement, Resolute maintains 811 to a standard that meets both the needs of the travelling public as directed by OMOT and the company's use of the road.[1113] The GOO reports that funds used to compensate Resolute for this maintenance work are not part of any particular funding program, but drawn from the same general allocation used for highway maintenance across the entire OMOT highway network, including King's Highways and Secondary Highways.[1114]

Sierra Pacific argues that Commerce erred in finding the Ontario Road Maintenance program not countervailable because the program reimburses Resolute for costs it would incur in the ordinary course of business.[1115] As we state at the *Preliminary Results*, we have countervailed reimbursements of road maintenance and repair when the record sufficiently establishes that the reimbursements relieve the respondent of obligations that it is legally obligated to incur under its forestry licenses or where the respondent would have incurred the reimbursed costs in its ordinary course of business. For the reasons outlined below, we continue to find that absent the Ontario Road Maintenance program, there is no indication on the record that Resolute is obligated to maintain this public road.

[1110] *See* GOO Non-Stumpage IQR Response at ON-MTO-1; *see also* Resolute Non-Stumpage IQR at Exhibits RES-NS-ONTOADSMTO-APP and RES-NS-ONROADSMTO-1.
[1111] *See* GOO Non-Stumpage IQR at ON-MTO-1.
[1112] *Id.* at ON-MTO-1 and Exhibit ON-MTO-1.
[1113] *Id.* at ON-MTO-1; *see also* Resolute Non-Stumpage IQR at Exhibit RES-NS-ONROADSMTO-1 at 3.
[1114] *See* GOO Non-Stumpage IQR at ON-MTO-2.
[1115] *See* Sierra Pacific Case Brief at 2-7.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

There is no record evidence that Commerce can pinpoint that demonstrates that 811 is tied to any of Resolute's forestry licenses. Unlike the OFRFP, where the Ontario Ministry of Natural Resources and Forestry reimburses SFL holders and certain FRL holders fully for the construction and maintenance of primary roads, and partially for the construction and maintenance of branch roads on lands covered by the SFL or FRL, we do not find that record evidence here sufficiently demonstrates that Resolute is being relieved of an obligation under one of its licenses.

Sierra Pacific argues that in addition to determining whether Resolute is obligated to maintain the road, Commerce must also analyze whether Resolute would have incurred the costs of maintaining the road as part of its normal operations.[1116] While there is information on the record that Resolute uses this road in its ordinary course of business, there is no indication that Resolute would maintain this road as part of its ordinary course of business absent the agreement with OMOT. Unlike in the OFRFP/MCRP/MCCRP programs, there is no affirmative evidence on the record that 811 is primarily constructed for the purpose of harvesting activities.[1117] Additionally, unlike the OFRFP/MCRP/MCCRP programs that we do find countervailable, the funding for this program is coming from OMOT and drawn from the same general allocation fund used for highway maintenance across the entire OMOT highway network, including King's Highways and Secondary Highways,[1118] as opposed to being funded by the respective provincial ministry of forests or natural resources (as is the case with the OFRFP/MCRP/MCCRP programs).[1119] Accordingly, we do not find there is sufficient evidence on this record that demonstrates that Resolute would have incurred the costs for maintaining 811 in its ordinary course of business outside of the agreement with OMOT.

Commerce intends to seek further information relating to this program in the next administrative review, but our evaluation of the record evidence on this review does not sufficiently demonstrate that Resolute is either obligated to perform maintenance on 811 as part of is forestry licenses nor is there affirmative evidence that 811 is primarily a logging road that Resolute would maintain on its own absent the agreement with OMOT. Accordingly, we continue to find that reimbursements received by Resolute under this program do not constitute a financial contribution that confers a benefit under sections 771(5)(D) and 771(5)(E) of the Act.

Comment 42: Whether the GOO's Silviculture Reimbursements Are Countervailable

GOO Case Brief

The following is a verbatim summary of the argument submitted by the GOO. For further details, *see* GOO Case Brief Vol. VI at 26-28.

> Commerce erred by {} finding that the Ontario Silviculture Reimbursement program provides a countervailable benefit to Resolute.

[1116] *Id.* at 8.
[1117] *See* Comments 40 and 50.
[1118] *See* GOO Non-Stumpage IQR Response at ON-MTO-2.
[1119] *See* Comments 40 and 50.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 104.

> {Commerce} improperly is treating {OMNR} FRT reimbursements to Resolute as one-way transfers of funds. The reimbursements compensate Resolute for silvicultural work performed for the benefit of Ontario's forest sustainability goals. Payment is one side of a reciprocal exchange, not a "gift-like transfer." Or, were {Commerce} to consider these activities part of Resolute's harvesting obligations, their value must be recognized as remuneration associated with stumpage.

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 213-217.

> The GOO argues that the Silviculture Reimbursement Program conferred no benefit because Resolute paid for the silviculture work in the form of the forest renewal charge included in the stumpage fee. However, {Commerce} has determined that the "forest renewal charge" is part of the stumpage price, *i.e.*, the sales price of standing timber. The Canadian Parties did not contest this finding. Given that the forest renewal charge is determined to be part of the payment for Crown standing timber, it cannot also be a payment for silviculture activities, which Resolute is required to perform under the law in Ontario.
>
> Because the GOO requires Resolute and other SFL holders to perform silviculture and then reimburses the companies for some of the legally obligated silviculture work, such an action constitutes a countervailable subsidy, and the benefit conferred is the amount of reimbursement provided. Accordingly, {Commerce's} *Preliminary Results* finding the Silviculture Reimbursement Program to be countervailable is supported by record evidence. Alternatively, {Commerce} may treat the forest renewal charge as a payment separate from the stumpage price. In its case brief, the GOO repeatedly emphasizes that Resolute paid the forest renewal charge for the sole purpose of funding its legally mandated silviculture work. If {Commerce} agrees with the GOO's argument, the agency should treat Resolute's payments for the forest renewal charge as what the GOO said it is: payments to prefund Resolute's silviculture work, as opposed to a part of the payment for Crown standing timber (*i.e.*, stumpage). If {Commerce} does so, it should subtract Resolute's reported forest renewal charge from the stumpage price paid for each stumpage transaction and use the resulting amount as the respondent purchase price in the agency's benefit calculation for the GOO's provision of Crown stumpage. In that case, {Commerce} can properly find this Silviculture Reimbursement Program to be not countervailable.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce's Position: Consistent with our analysis in the Post-Preliminary Analysis Memorandum,[1120] we continue to find that the reimbursements that the GOO provides SFL holders under the Silviculture Reimbursement Program are a government financial contribution that confers a benefit, *i.e.*, reimbursements, which offset a portion of the legally required costs incurred by harvesters within their ordinary course of business.[1121] As the landowner and steward of the public forest, the GOO sets silviculture prescriptions for all SFL holders and FRL holders to perform in order to maintain the sustainability of the forest.[1122] After an SFL holder, or a contractor retained by the SLF holder, performs eligible silviculture work, the SFL holder (or the contractor) documents the work performed and submits a claim to the FRT to be reimbursed for the actual cost of the eligible silviculture work performed.[1123]

During the POR, Resolute carried out the silviculture activities that it was legally required to perform under its SFL.[1124] Resolute then received payments under the Silviculture Reimbursement Program, which offset the costs the company incurred related to these silviculture activities, therefore, we determined that this program provides a benefit to Resolute under section 771(5)(E) of the Act, and that a benefit exists in the amount of reimbursements received by Resolute, pursuant to 19 CFR 351.504(a).[1125]

In analyzing whether this program is countervailable, Commerce is concerned with whether there is financial contribution wherein there is a direct transfer of funds by a government or public entity to a producer or exporter.[1126] The GOO includes a forest renewal charge as part of its stumpage fee, and the revenue that the GOO receives through the forest renewal charge goes into the FRT, which is specific to each management unit *(i.e.*, the tenure area granted to an SFL holder).[1127] When an SFL holder or a contractor hired by the SFL holder performs eligible silviculture work, the SFL holder documents the work performed and submits a claim to the FRT to be reimbursed for the actual cost of the eligible silviculture work performed.[1128] The manner in which the GOO funds the FRT, by collecting a forest renewal charge for each stumpage transaction, and the fact that the GOO uses the FRT to reimburse SFL holders for silviculture does not negate the fact that this program involves a financial contribution in the form of a direct transfer of funds from the GOO to Resolute and that a benefit was received by Resolute.

The GOO cites to *Gov't of Sri Lanka* and argues that, under section 771(5)(C) of the Act, Commerce cannot selectively analyze reimbursement payments in isolation from the overall program. The program at issue in *Gov't of Sri Lanka* (*i.e.*, the Guaranteed Price Scheme for Rubber), involved the government accruing a debt with a producer of subject merchandise and then transferring funds to the producer to repay the debt.[1129] The CIT found that the repayment

[1120] *See* Post-Preliminary Analysis Memorandum at 3.
[1121] *See CVD Preamble*, 63 FR at 65361.
[1122] *See* Resolute IQR Response at 11-15 and 20-21; *see also* GOO Stumpage IQR at 78-84; *see also* GOO NSA Response at 11-21.
[1123] *See* GOO Stumpage IQR at 78-84 and 114-115; *see also* GOO Second Non-Stumpage SQR at 12-14.
[1124] *See* Resolute NSA Response at Exhibit RES-NS2-2.
[1125] *Id.*; *see also* Resolute IQR Response at 20-21 and Exhibit RES-STUMP-ON-3.
[1126] *See* section 771(5)(D)(i) of the Act.
[1127] *See* GOO Stumpage IQR at 71 and 78-84; *see also* GOO Second Non-Stumpage SQR at 11.
[1128] *See* GOO Stumpage IQR at 114-115; *see also* GOO Second Non-Stumpage SQR at 12-14.
[1129] *See Gov't of Sri Lanka v. U.S.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

of a debt is not one of the illustrative examples provided of a transfer of funds under section 771(5)(D)(i) of the Act (*i.e.*, grants, loans, and equity infusions, or the potential direct transfer of funds or liabilities, such as loan guarantees) because the interest-free repayment of a debt does not result in a net increase to the recipient's capital base whereas the receipt of a grant, loan, or equity infusion does create an increase to the recipient's capital base.[1130] We have analyzed the Silviculture Reimbursement Program overall and we find that, unlike the interest-free repayment of a debt in program at issue in *Gov't of Sri Lanka*, the GOO's reimbursements for silviculture activities are a direct transfer of funds, such as a grant, as illustrated under section 771(5)(D)(i) of the Act.

We also disagree with the GOO and Resolute that the manner in which the GOO funds the Forest Renewal Trust by collecting a forest renewal charge results in a situation where the SFL holder is effectively reimbursing itself for silviculture expenses it incurred. We have consistently applied a benefit calculation for the provision of Crown stumpage based on a pure stumpage-to-stumpage comparison, which includes only the price the respondent pays for stumpage and excludes costs that are charged separately from the stumpage price (*i.e.*, in-kind costs) and which a respondent incurs as part of its long-term tenure obligations.[1131] Here, the GOO includes a forest renewal charge as part of the stumpage price and, given that this charge is part of the remuneration the government receives for each stumpage transaction, the forest renewal charge that Resolute pays when purchasing stumpage through its SFL is not an in-kind cost that Resolute incurs as part of its long-term tenure obligations. The GOO's ultimate use of revenue it received through the forest renewal charge does not negate the fact that the GOO's reimbursements to Resolute for silviculture activities performed constitute a financial contribution, and that a benefit was received by Resolute.

The GOO made a "direct transfer of funds" through grants provided to Resolute; thus, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a). In the absence of the reimbursements, as an SFL-holder, Resolute would still have been legally obligated to comply with the GOO's requirements to perform silviculture. As such, any reimbursement of the costs Resolute incurred to perform silviculture are a benefit to Resolute in the form of a grant.

The GOO and Resolute's argument that Resolute both pays into the Forest Renewal Trust and is reimbursed from this trust for silviculture activities performed essentially results in Resolute "self-funding" its silviculture activities ignores the fact that the GOO includes a forest renewal charge as part of the stumpage price and then holds the revenue received through this component of the stumpage price charged to all SFL holders. Regardless of whether the funds received from the forest renewal charge go into a specific trust or a general treasury account, the GOO retains the revenue received under this forest renewal charge. As we explain in Comment 69, nearly any financial contribution from a government to a company is "self-funded" simply because the funds are raised by imposing taxes. The source of the revenue that the GOO uses to fund the silviculture reimbursements provided to the SFL holders or the contractors that perform silviculture activities does not change the fact that the payments to Resolute under the

[1130] *Id.* at 1381-82.
[1131] *See, e.g.*, *Lumber V AR7 Prelim* PDM at 36; *Lumber V AR6 Final* IDM at Comment 7; and *Lumber V AR5 Final* IDM at Comment 17.

Silviculture Reimbursement Program are a direct transfer of funds under section 771(5)(D)(i) of the Act and bestow a benefit in the amount of the reimbursement under section 771(5)(E) of the Act and 19 CFR 351.504(a).

Québec

Comment 43: Whether Agreements with Consumers to Reduce Energy Consumption and GHG Are Grants

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 45-48 and 65-66.

> Commerce improperly found that the EDL was a countervailable grant. The EDL program provides reduced electricity costs to encourage large industrial (Rate L) power consumers to make productivity- or energy-efficiency-related investments. The EDL program does not confer a benefit because it is contractual in nature, with the amount of assistance corresponding to specific energy efficiency measures that must be fulfilled before any support is received. It is not *de jure* specific because it is not limited by law to an enterprise or industry. Further, it constitutes the purchase of a service by the GOQ because it increases energy efficiency in Québec and furthers environmental commitments relating to decarbonization.
>
> Québec's ÉcoPerformance program consists of the purchase of the service of {GHG} reduction and avoidance by Québec. It benefits Québec by allowing Québec to achieve the energy targets defined in Québec's 2030 Energy Policy and is the purchase of a service.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 119-123

> {Commerce} preliminarily countervailed provincial energy efficiency and {GHG} reduction programs in Québec as grants. {Commerce's} approach ignored record evidence and the plain language of the CVD statute to classify these reciprocal transactions as financial contributions. Hydro Québec and other Québec entities (one of which is not even a government entity) have adopted policies to realize energy efficiencies and fight climate change. They have entered into agreements to pay consumers like Resolute in exchange for efficiency energy improvements and lower GHG emissions. The programs here are not gift-like transfers to Resolute because they involve contracts with valuable consideration.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 227-230.

> The ÉcoPerformance, ESP, and EDL programs constitute countervailable grants, the payments for which generate a benefit to Resolute in the amount of the grant. Transfers made under these three programs do not constitute payments for services rendered. The "services" described by Resolute are rather general policy goals, such as having "greater . . . capacity to meet public electricity needs," and generate no binding obligations on the part of Resolute. When calculating benefit under these programs, {Commerce} is not required to consider advantages which might accrue to the government from administering the programs, and quantification of the benefit accrued requires only determining the amount of the funds directly transferred by GOQ to Resolute.

Commerce's Position: We disagree with the respondents' arguments that the ÉcoPerformance and Hydro-Québec ESP and EDL programs are not grants because, according to Resolute, they involve transactions with valuable consideration. In Comment 3, *supra*, we address similar comments regarding whether Commerce must account for reciprocal value when evaluating the countervailability of grant programs. Commerce has consistently determined that these provincial programs provide countervailable subsidies in the form of grants to program participants.[1132] There is no information or argument on the record of this review that would cause Commerce to reconsider its findings that the assistance provided under these programs constitutes a financial contribution in the form of a direct transfer of funds from the government, pursuant to section 771(5)(D)(i) of the Act. We, therefore, continue to determine that the programs bestow a benefit in the amount of the grants provided, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).

A grant is not a gift without consideration, and it is not appropriate to consider the context in which a grant is provided in Commerce's analysis. Section 771(5)(D)(i) of the Act includes the word "grant" in its definition of a "financial contribution," stating that it is "the direct transfer of funds, such as grants…" Therefore, under the statute, a grant is not limited to a transfer of money without consideration, nor must a grant only be a gift. Pursuant to the regulations, Commerce measures the extent to which a financial contribution confers a benefit as provided for the specific type of benefit.[1133]

The fact that the ÉcoPerformance and Hydro-Québec ESP and EDL programs may benefit the province with energy efficiencies and reduced GHG emissions is immaterial under the benefit to the recipient standard applied by Commerce when analyzing these programs. When analyzing the benefit, Commerce considers the amount of the grant received by the company, pursuant to 19 CFR 351.504(a), to be the benefit. Under the ÉcoPerformance and Hydro-Québec ESP and EDL programs, Resolute received a financial contribution from the GOQ in the form of direct

[1132] *See, most recently*, *Lumber V AR3 Final* IDM at Comment 5.
[1133] *See* 19 CFR 351.503(a).

transfers of funds. Under this framework, any grant payments are, in fact, a benefit to the recipient.

Under 19 CFR 351.504, Commerce does not contemplate any advantages the government might receive by administering a program.[1134] As Commerce explained in the *CVD Preamble*, "{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the 'effect' of a subsidy."[1135] Commerce does not consider "the effect of the government action" on a respondent's performance, or whether the respondent altered its behavior for government policy objectives.[1136] Any advantages to the government or society at large as a result of the programs are not relevant to the benefit that Resolute actually received under the programs. We, thus, disagree that the ÉcoPerformance and Hydro-Québec ESP and EDL programs do not benefit the participating companies, like Resolute.

Further, whether the GOQ was able to realize energy efficiencies or advance environmental conservation goals are not factors that Commerce's statute and regulations authorize it to take into account within its subsidies examination. The focus of Commerce's analysis is the direct transfer of funds that the GOQ made to Resolute, within the meaning of section 771(5)(D)(i) of the Act, which conferred a benefit to the company in the amount of the grants received, pursuant to 19 CFR 351.504(a). 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.

Finally, the GOQ argues, citing the *DS 533 Panel Report*, that Commerce has "failed to take into account the exchange of rights and obligations and consideration reflected in the transactions" under the EDL program. 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.[1137] As the Federal Circuit has recognized, Congress was clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent unless and until the United States Trade Representative has determined the scope of its implementation, if any, pursuant to the statutory scheme.[1138] WTO panel or Appellate Body reports do not automatically limit nor have an effect on Commerce's discretion in applying the statute in an AD or CVD proceeding.[1139] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[1140] We continue to determine that the programs bestow a benefit in the amount of the grants provided, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).

[1134] *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.").
[1135] *Id.*
[1136] *See* 19 CFR 351.503(c).
[1137] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[1138] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[1139] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[1140] *See* SAA at 659.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 44: Whether the ÉcoPerformance Program Is Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 65-68.

> Québec's ÉcoPerformance program consists of the purchase of the service of {GHG} reduction and avoidance by Québec. It benefits Québec by allowing Québec to achieve the energy targets defined in Québec's 2030 Energy Policy and is the purchase of a service. Assistance under the ÉcoPerformance program is governed by the program requirements detailed in the ÉcoPerformance Normative Framework. The assistance provided is tied to non-subject merchandise. In the *Preliminary Results*, Commerce properly reviewed each project separately to determine whether the projects are tied to the production of non-subject merchandise. Commerce also correctly determined that the St. Félicien Project "is tied to non-subject merchandise" and, thus, did not "include{} the funds associated with this project in Resolute's benefit calculation." However, the record evidence contradicts Commerce's decisions with respect to the Kénogami and the Clermont Project. The record demonstrates that all projects reported – St. Felicien, Kénogami, and Clermont – are not tied to non-subject merchandise. Commerce must consider the record evidence, the relevant tying standard, and reconsider its decision in the final results.

Resolute Case Brief

The following is a verbatim summary of the arguments submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 79-82, 121, and 154.

> Québec's Environment Ministry's {ÉcoPerformance}, {Énergir L.P. Feasibility Study and Implementation}, and Hydro Québec's {ESP} were intended from the time of bestowal to fund energy-saving and emission-reducing projects related to the production of pulp and paper products at Resolute's mills. Any payments under these programs are, therefore, attributable to the production of non-subject merchandise.
>
> {Commerce} found that, in all instances but one, the payments under these programs were untied and attributable to all Resolute's sales. The sole finding to the contrary relied on a novel "integral to production test." Yet, in the {Post-Preliminary Analysis Memorandum}, {Commerce} found that payment to the same mill under another energy program related to the same production process was attributable to all sales. {Commerce} must correct its attribution error, take into account bestowal documentation, and recognize that all four programs are tied to non-subject merchandise.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> Resolute adopts and incorporates by cross-reference the arguments of the {GOC}, the {GOQ}, and the {GOO} that {Commerce's} preliminary specificity findings with respect to non-stumpage and programs applicable to Resolute are unsupported by record evidence or otherwise 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 227-234.

> The {ÉcoPerformance}, ESP, and EDL programs constitute countervailable grants, the payments for which generate a benefit to Resolute in the amount of the grant. Transfers made under these three programs do not constitute payments for services rendered. The "services" described by Resolute are rather general policy goals, such as having "greater . . . capacity to meet public electricity needs," and generate no binding obligations on the part of Resolute. When calculating benefit under these programs, {Commerce} is not required to consider advantages which might accrue to the government from administering the programs, and quantification of the benefit accrued requires only determining the amount of the funds directly transferred by GOQ to Resolute.
>
> The {ÉcoPerformance} grants at Resolute's Clermont and {Kénogami} facilities are not tied to pulp and paper production, and neither is the grant for the {St.-Félicien} mill. Significant record information confirms that the purpose of the program {is to} "reduce GHG emissions in Quebec through measures related to consumption, energy production and fugitive emissions from processes from a sustainable development perspective." Participation is not limited to projects at facilities that produce a certain product; rather, it is open to entities that "consume one or more fossil fuels or uses processes that produce fugitive GHG emissions" and operate in the "commercial, institutional, municipal, industrial or manufacturing" sectors. {Commerce} should find that none of these grants are tied in the final results.

Commerce's Position: We have addressed parties' arguments regarding whether the ÉcoPerformance program provides a financial contribution in Comment 43, *supra*. After analyzing arguments made by respondent parties, we have reconsidered our tying analysis put forward in the *Preliminary Results*.[1141] For these final results, we find that all ÉcoPerformance payments received by Resolute during the POR were not tied to particular merchandise. We continue to find that the ÉcoPerformance program is *de facto* specific, under section 771(5A)(D)(iii)(I) of the Act.

In the *Preliminary Results*, Commerce found that a project conducted at Resolute's St.-Félicien mill was tied to the production of non-subject merchandise because the subject of the project was "integral to the production" of non-subject merchandise.[1142] We found that two other projects

[1141] *See Preliminary Results* PDM at 59-61; *see also* Resolute Preliminary Calculation Memorandum at 5-7.
[1142] *See Preliminary Results* PDM at 59-61; *see also* Resolute Preliminary Calculation Memorandum at 5.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

conducted at the Kénogami and Clermont mills were not tied as they were not integral to the production of non-subject merchandise.[1143] Commerce's preliminary analysis determining whether the projects were or were not integral to the production of certain merchandise was not consistent with our practice for determining whether assistance is tied. Generally, Commerce considers subsidies to be untied, as most subsidies benefit the entire production of a company.[1144] The tying regulations, however, were implemented "to attribute subsidies rather than tracing subsidies through {a} company{'s}" production process.[1145] 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, {Commerce} will attribute the subsidy only to that product."[1146] When determining whether a subsidy is tied to particular product or market Commerce's practice, codified at 19 CFR 351.525(b), is to examine whether the intended use is known to the subsidy provider and so acknowledged prior to or concurrent with the bestowal of the subsidy.[1147] As the *CVD Preamble* to Commerce's regulations makes clear, our analysis of whether a subsidy is tied to a particular product focuses on the "stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal."[1148] 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 GOQ) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been upheld by the CIT.[1149]

The GOQ argues that funds provided under the ÉcoPerformance program are tied to non-subject merchandise because funds must be used for the approved projects, which involve reductions of fossil fuel usage or GHG emissions.[1150] The GOQ further argues that the projects were conducted at Resolute's pulp and paper mills, which are distinct from its sawmills.[1151] Resolute, in turn, argues that the applications, contracts, and payment information for each project demonstrates that funds under the ÉcoPerformance are tied directly to the production of pulp or paper at the applicable plants.[1152] Resolute further argues that the "integral to production" test applied in the *Preliminary Results* requires tracing subsidies to determine how they were used, which Commerce has repeatedly declined to do.[1153] The petitioner agrees with Resolute that no "integral to production" test should be applied, but argues instead that Commerce should find the program untied based on the program guidelines eligibility criteria.[1154] We agree with both parties that we should not be performing an "integral to production" tracing analysis when determining whether a subsidy is tied, and as such do not incorporate that test into these final results.

[1143] *Id*.
[1144] *See CVD Preamble*, 63 FR at 65400.
[1145] *See Rectangular Pipe and Tube from China* IDM at 37-38 (citing *CFS from China* IDM at Comment 18).
[1146] *Id*. (citing *CFS from China* IDM at Comment 18).
[1147] *See Pipes and Tubes from Türkiye* IDM at 21 (citing *Lumber V Final* IDM at Comment 53).
[1148] *See CVD Preamble*, 63 FR at 65403.
[1149] *See*, *e.g.*, *Essar Steel Ltd. v. U.S.*, 678 F.3d at 1296.
[1150] *See* GOQ Case Brief Vol. VII(b) at 68.
[1151] *Id*.
[1152] *See* Resolute Case Brief at 80.
[1153] *Id*. at 80-81.
[1154] *See* Petitioner Rebuttal Brief at 231-234.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

As noted above, after considering the arguments put forth by respondent parties, we have reconsidered our tying analysis for the ÉcoPerformance Program. As explained below, for these final results, we find that the ÉcoPerformance program as a whole is not tied to the production or sale of a particular product within the meaning of 19 CFR 351.525(b)(5) and (9). The GOQ states that the ÉcoPerformance program is "designed to provide financial support to participants that reduce their {GHG} emission through implementation of measures or projects."[1155] The 2023 ÉcoPerformance Normative Framework, which governs the administration of the program,[1156] reflects this goal in its "Objectives" section:

> The program aims to reduce GHG emissions in Quebec by providing financial assistance for energy analyses and energy efficiency and conversion projects in the business sector.[1157]

On this basis, we find that the stated purpose of the subsidies granted under the ÉcoPerformance program is not to support the production of particular kinds of merchandise, but rather to support projects which reduce GHG emissions through energy conversion and efficiency. There is no information on the record to suggest that this purpose necessarily limits the benefits to the production or sale of particular products. Therefore, we find that the stated purpose of the ÉcoPerformance program is not tied to the production or sale of a particular product within the meaning of 19 CFR 351.525(b)(5) and (9).

The eligibility requirements for this program reflect the untied purpose of this program. The GOQ states that "{the} program is designed to support all sectors, including municipalities, hospitals, industries, commerce, mining and transformation."[1158] The 2023 Normative Framework does not exclude participants based on their industry or products produced.[1159] Thus, the program does not limit participation based on the particular merchandise produced by a company.

Likewise, there is no indication on the record that projects are approved or denied based on the particular underlying products supported. Approval for individual projects is not dependent on the use or production of particular non-subject merchandise.[1160] Rather, the GOQ states that projects which reduce GHG emissions, and fulfill the other program criteria, such as time limits on the return on investment, are automatically approved for financial support.[1161]

Therefore, because the stated purpose of the program is not tied to particular merchandise, and eligibility for the program does not restrict benefits to the production of particular merchandise at a participant or project-level, we find the benefits received under the ÉcoPerformance program to be not tied to the production of particular merchandise.

[1155] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-ECO-A at 1.
[1156] *Id*. at Exhibit QC-ECO-A at 5.
[1157] *Id*. at Exhibit QC-ECO-01 (Section 2.1, "Objectives").
[1158] *Id*. at Exhibit QC-ECO-A at 1.
[1159] *Id*. at Exhibit QC-ECO-01 (Sections 3.1, "Eligible Participant" and 3.2, "Ineligible Participant").
[1160] *Id*. at Exhibit QC-ECO-01 (section 3.3, "Ineligible Projects").
[1161] *Id*. at Exhibit QC-ECO-A at 9-12.

While we find the benefits under this program to be untied for these final results, we disagree with Resolute's argument that the program should be untied because emissions "are essential" to the production of pulp and paper at its mills.[1162] This reasoning misunderstands Commerce's tying analysis. There is no evidence on the record of this review that suggests the GOQ approves or denies ÉcoPerformance projects based on the particular products produced in meeting the criteria of the program. That Resolute produced non-subject merchandise as one way to meet the non-product-specific eligibility criteria of the ÉcoPerformance program does not indicate that the GOQ intended to support the production of that merchandise in designing the program. Instead, the record evidence discussed above indicates that the GOQ intended the funds under the ÉcoPerformance program to be used for the reduction of GHG emissions, which could be achieved in improving emissions in the production of subject and non-subject merchandise. Given the nature of the program, Commerce determines that all support under this program is untied.

Additionally, we disagree with the GOQ that benefits should be tied to non-subject merchandise because the Kénogami and Clermont mill exclusively produce non-subject paper products and "are separate from Resolute's softwood lumber production."[1163] As Commerce has consistently stated in this proceeding, and codified under 19 CFR 351.525(b)(8), Commerce does not tie on a plant or facility-specific basis.[1164] The fact that Resolute manufactures non-subject merchandise at the Kénogami and Clermont mills does not change the fact that the mills are part of the Resolute corporate group. The pulp and paper mills are not distinct corporate entities, which would require Commerce to conduct an analysis under 19 CFR 351.525(b)(6)(ii)-(vi) to determine whether subsidies received by them are attributable to Resolute. Rather, Resolute is the corporate entity which files the tax documents for the Kénogami and Clermont mills as one corporate entity.[1165] Commerce recognizes that money is fungible and its use for one purpose may free up money to benefit another purpose. Subsidies provided to a division of a company, such as a pulp and paper mill, will impact the overall production and sale of all other products of the company. Therefore, we continue to find that subsidies provided to Resolute's Kénogami and Clermont mills under the ÉcoPerformance program are attributable to Resolute's consolidated sales as a parent company, pursuant to 19 CFR 351.525(b)(6)(i) and (iii). As discussed in Comment 77, we are attributing subsidies transferred from Fibrek solely to the sales of the recipient, Resolute, pursuant to 19 CFR 351.525(b)(vi).

We note that, after reviewing the documentation relating to payments received during the POR, we are correcting two errors from the *Preliminary Results*. First, while we preliminarily determined that a subsidy transferred from Fibrek was tied to non-subject merchandise, we included this amount in Resolute's preliminary calculations. For the final results, because we are finding the amount to be untied, we are continuing to include the amount in the benefit calculation. Additionally, in the *Preliminary Results*, we inadvertently excluded a reported

[1162] *See* Resolute Case Brief at 82.
[1163] *See* GOQ Case Brief Vol. VII(b) at 67-68 (citing Resolute Non-Stumpage IQR Response at Exhibit RES-NS-ECP-APP at 5).
[1164] *See AB25 Preamble*, 89 FR at 101745; *see also Lumber V AR5 Final* IDM at Comments 56; *Lumber V AR4 Final* IDM at Comment 43; *Lumber V AR3 Final* IDM at Comments 48 and 64; *Lumber V AR2 Final* IDM at Comments 52 and 67; *Lumber V AR1 Final* IDM at Comments 54 and 57; and *Lumber V Final* IDM at Comment 53.
[1165] *See* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-GEN-4-A7.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

payment from Resolute's POR benefit calculation for the ÉcoPerformance program. As discussed above, we are including all subsidies received by Resolute and all subsidies transferred to Resolute during the POR in the benefit calculation for the ÉcoPerformance program. For further discussion of this business proprietary information, *see* the Resolute Final Calculation Memorandum.

Finally, Resolute states that Commerce erred in finding the ÉcoPerformance to be *de facto* specific, and claims that the program is "available to any person or company in Québec, including municipalities, hospitals, industries, commerce, mining and manufacturing."[1166] We discuss general comments on our specificity findings in Comment 3. Commerce found similar arguments unpersuasive in the *Lumber V AR3 Final*, and continue to do so here.[1167] The fact that many sectors of the Québec economy are eligible to seek financial support under the program does not negate the evidence that the actual recipients are limited in number.

The GOQ reported the total number of participants that received grants under the ÉcoPerformance for the years 2021 through 2024.[1168] On its face, the total recipients of assistance over that period are small and, thus, limited in number on an enterprise basis.[1169] We, therefore, determine that the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. This finding is consistent with the *Lumber V AR3 Final*.[1170]

Comment 45: Whether Hydro-Québec's ESP Is Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 84-86.

> The {ESP}, previously named {ISEE}, supports customers improving energy performance in their buildings and factories located in Québec. It covers a wide range of measures to make industrial facilities, processes and electromechanical systems more energy-efficient. Financial assistance is provided only after Hydro-Québec approves the formal application and, then, after Hydro-Québec has reviewed the project results to ensure that the program accomplished the set energy efficiency goals. The evidence on the record shows that, at the time of bestowal, the applications and approvals for the Clermont Project are tied directly to non-subject merchandise. Commerce's {*Preliminary Results*} are thus not based on substantial record evidence.

[1166] *See* Resolute Case Brief at 154.
[1167] *See Lumber V AR3 Final* IDM at Comment 76.
[1168] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-ECO-06 and Exhibit QC-ECO-A at 15.
[1169] *See* Québec Specificity Memorandum. The program usage data are proprietary information.
[1170] *See Lumber V AR3 Final* IDM at Comment 76.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 85-86.

> Québec's Environment Ministry's {ÉcoPerformance}, {Énergir Feasibility Study and Implementation}, and Hydro Québec's {ESP} were intended from the time of bestowal to fund energy-saving and emission-reducing projects related to the production of pulp and paper products at Resolute's mills. Any payments under these programs are, therefore, attributable to the production of non-subject merchandise. {Commerce} found that, in all instances but one, the payments under these programs were untied and attributable to all Resolute's sales. The sole finding to the contrary relied on a novel "integral to production test." Yet, in the {Post-Preliminary Analysis Memorandum}, {Commerce} found that payment to the same mill under another energy program related to the same production process was attributable to all sales. {Commerce} must correct its attribution error, take into account bestowal documentation, and recognize that all four programs are tied to non-subject merchandise.
>
> {Commerce} preliminarily countervailed provincial energy efficiency and {GHG} reduction programs in Québec as grants. {Commerce's} approach ignored record evidence and the plain language of the CVD statute to classify these reciprocal transactions as financial contributions. Hydro Québec and other Québec entities (one of which is not even a government entity) have adopted policies to realize energy efficiencies and fight climate change. They have entered into agreements to pay consumers like Resolute in exchange for efficiency energy improvements and lower GHG emissions. The programs here are not gift-like transfers to Resolute because they involve contracts with valuable consideration.
>
> Resolute adopts and incorporates by cross-reference the arguments of the {GOC}, the {GOQ}, and the {GOO} that {Commerce's} preliminary specificity findings with respect to non-stumpage and programs applicable to Resolute are unsupported by record evidence or otherwise 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 273-277.

> The {ÉcoPerformance}, ESP, and EDL programs constitute countervailable grants, the payments for which generate a benefit to Resolute in the amount of the grant. Transfers made under these three programs do not constitute payments for services rendered. The "services" described by Resolute are rather general policy goals, such as having "greater . . . capacity to meet public electricity needs," and generate no binding obligations on the part of Resolute. When calculating benefit under these programs, {Commerce} is not required to consider advantages which might

> accrue to the government from administering the programs, and quantification of the benefit accrued requires only determining the amount of the funds directly transferred by GOQ to Resolute.
> . . .
> Financing under ESP is not tied to non-subject merchandise just because the project was undertaken at a paper mill. {Commerce} only analyzes the purpose of the government program, not the participant's use of the funds. The purpose of the ESP program is to "support the realization of energy efficiency projects in industrial businesses in Quebec that will reduce the average amount of electricity used per unit produced." The program was created because "Hydro-Quebec is committed to actively participating in Quebec's energy transition." {Commerce} should reject Resolute and the GOQ's arguments.

Commerce's Position: We do not find the arguments made by Resolute and the GOQ to be persuasive and, thus, continue to find that Hydro-Québec's ESP is countervailable.[1171]

As discussed in the *Preliminary Results*, the ESP, like its predecessor, the ISEE, provides financial assistance to improve energy performance of buildings and factories located in Québec.[1172] Under the ESP, Hydro-Québec provides support to industrial businesses for projects which reduce the average amount of electricity used per unit produced.[1173] Under the program, a company submits a project proposal and a plan to measure the electricity savings resulting from the project.[1174] If approved, the company implements the project and submits electricity measurements to Hydro-Québec.[1175] Hydro-Québec then reviews the completed project and informs the participant of the final amount of support to be paid.[1176] Resolute received assistance during the POR and AUL under the ESP for energy efficiency projects.[1177] Resolute reported that the assistance received during the POR was for a project implemented at its Clermont paper mill.[1178]

Resolute argues that funds granted under Hydro-Québec's ESP constitute payment for a service, and thus are not countervailable, because of the benefits Hydro-Québec receives from the improved energy efficiency of its customers such as Resolute.[1179] Resolute contends that, as a result of the energy saving projects undertaken, Hydro Québec is able to delay or forego investments and thus maintain low electricity rates.[1180]

[1171] *See Preliminary Results* PDM at 72-73.
[1172] *Id*. at 72 (citing GOQ Non-Stumpage IQR Response at Exhibit QC-EE-A).
[1173] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-EE-A at 1 and 8.
[1174] *Id*. at Exhibits QC-EE-A at 6-7 and QC-EE-16 at 10-11 and 16-20.
[1175] *Id*.
[1176] *Id*.
[1177] *See* Resolute IQR Response at Exhibits RES-NS-ESP-APP and RES-NS-ESP-3; *see also* Resolute January 26, 2026 Non-Stumpage SQR Response at Exhibit RES-NS-SQR-ISEE-1.
[1178] *See* Resolute IQR Response at Exhibit RES-NS-ESP-APP at 2 and 5 and RES-NS-ESP-2; *see also* GOQ Non-Stumpage IQR Response at Exhibit QC-EE-11.
[1179] *See* Resolute Case Brief at 120-121.
[1180] *Id*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

We have addressed similar arguments that Commerce must account for reciprocal value, and Commerce's definition of a "grant" in Comment 3. We continue to find that the GOQ's payments under the ESP constitute a financial contribution under section 771(5)(D)(i) of the Act. Commerce has previously rejected arguments that payments under the ISEE constituted the purchase of a service by the GOQ, and we continue to do so here for the ESP.[1181] We do not agree that the reduction of electricity usage amounts to the performance of a service for which the government is paying. Record evidence indicates that ESP payments are incentives to companies to support the realization of energy efficiency projects that will reduce the average amount of electricity used per unit produced.[1182] We find that investment in energy efficiency is an action that companies would engage in the ordinary course of business. Therefore, for the final results, we find that the GOQ's payments under the ESP constitute a financial contribution under section 771(5)(D)(i) of the Act. Pursuant to 19 CFR 351.504(a), we continue to find Hydro-Québec's ESP confers a benefit equal to the amount of the grant received.

The GOQ argues that the criteria of the ESP tie the benefits to non-subject merchandise.[1183] The GOQ further argues that the application and approvals for the Clermont Project tie the project to non-subject merchandise.[1184] Resolute likewise argues that benefits should be tied to non-subject merchandise because the Clermont project was intended to make performance improvements in the manufacturing of paper and had no connection to subject merchandise.[1185] Resolute further argues that Commerce improperly relied on the fungibility of money, and should instead focus of the attribution regulations and Commerce's practice in discerning "government intent at the time of bestowal."[1186] As discussed below, we continue to find the benefits granted under the ESP to be untied for these final results.

Generally, Commerce considers subsidies to be untied, as most subsidies benefit the entire production of a company.[1187] The tying regulations, however, were implemented "to attribute subsidies rather than tracing subsidies through {a} company{'s}" production process.[1188] 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, {Commerce} will attribute the subsidy only to that product."[1189] When determining whether a subsidy is tied to particular product or market Commerce's practice, codified at 19 CFR 351.525(b), is to examine whether the intended use is known to the subsidy provider and so acknowledged prior to or concurrent with the bestowal of the subsidy.[1190] As the *CVD Preamble* to Commerce's regulations makes clear, our analysis of whether a subsidy is tied to a particular product focuses on the "stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal."[1191] As noted above, Commerce's practice is to identify the type and monetary value of a subsidy at the time the

[1181] *See Lumber V AR2 Final* IDM at Comment 89.
[1182] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-EE-A at 1.
[1183] *See* GOQ Case Brief Vol. VII(b) at 84.
[1184] *Id*. at 85.
[1185] *Id*. at Resolute Case Brief at 85-86.
[1186] *Id*. at 86.
[1187] *See CVD Preamble*, 63 FR at 65400.
[1188] *See Rectangular Pipe and Tube from China* IDM at 37-38 (citing *CFS from China* IDM at Comment 18).
[1189] *Id*. (citing *CFS from China* IDM at Comment 18).
[1190] *See Pipes and Tubes from Türkiye* IDM at 21 (citing *Lumber V Final* IDM at Comment 53).
[1191] *See CVD Preamble*, 63 FR at 65403.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 GOQ) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been upheld by the CIT.[1192]

As an initial matter, we disagree with the GOQ's arguments that the benefits should be tied because payments were made to Resolute's Clermont mill, which only produces non-subject merchandise.[1193] Pursuant to 19 CFR 351.525(b)(8), and consistent with our established practice, Commerce does not establish tying on a plant or factory-specific basis.[1194] That Resolute's Clermont mill happens to produce exclusively non-subject merchandise is not relevant to Commerce's tying analysis.

Rather, as discussed above, Commerce establishes tying based on the "stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal."[1195] The GOQ states that the objective of the ESP is to "support the realization of energy efficiency projects in industrial businesses in Québec that will reduce the average amount of electricity used per unit produced."[1196] The participant's guide describes the medium and large business stream, under which Resolute received benefits during the POR, as encouraging its business customers to "optimize the electricity consumption" of their buildings.[1197] Hydro-Québec's annual reports, in turn, describe the performance of the program in relation to energy savings, rather than particular merchandise or sectors supported.[1198] On this basis, we find that the stated purpose of Hydro-Québec's ESP is to improve the electrical energy efficiency of its customers, rather than to support the production of particular merchandise.

The GOQ likewise describes the eligibility criteria for the Hydro-Québec ESP in relation to electricity consumption, which consider whether the projects "aim for Energy Efficiency Measures or Energy Demand Management Measures" or generate a threshold amount of electricity savings.[1199] The approval documents provided by the GOQ do not show that projects were approved or denied on the basis of which products were to be impacted.[1200] Rather, the GOQ states that projects which meet the eligibility criteria "will always and automatically" receive assistance.[1201] We thus find that the GOQ does not intend for the program to subsidize specific production activities through explicit criteria for receiving the subsidy. As such, we find that arguments from the GOQ and Resolute that benefits should be tied to non-subject merchandise based on individual project details are unpersuasive.[1202]

[1192] *See*, *e.g.*, *Essar Steel Ltd. v. U.S.*, 678 F.3d at 1296.
[1193] *See* GOQ Case Brief Vol. VII(b) at 84-85; *see also* Resolute Case Brief at 85-86.
[1194] *See, e.g., SC Paper from Canada – Expedited Review – Final Results* IDM at 99.
[1195] *See CVD Preamble*, 63 FR at 65403.
[1196] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-EE-A at 8.
[1197] *Id*. at Exhibit QC-EE-16 at 4.
[1198] *Id*. at Exhibits QC-EE-12 at 9 and QC-EE-13 at 9.
[1199] *Id*. at Exhibit QC-EE-A at 8-9 and Exhibit QC-EE-16 at 8-9.
[1200] *Id*. at Exhibit QC-EE-11.
[1201] *Id*. at Exhibit QC-EE-A at 11.
[1202] *See* GOQ Case Brief Vol. VII(b) at 84-85; *see also* Resolute Case Brief at 85-86.

There is no information on the record to suggest that the purpose of the program, to improve the electrical energy efficiency of Hydro-Québec's customers, necessarily limits the benefits to the production or sale of particular products. To the contrary, Commerce has consistently held that benefits to electricity are attributable to overall production.[1203] No party to this administrative review has argued that electricity can contribute to only a subset of Resolute's production. Therefore, we find that Hydro-Québec's ESP is not tied to the production or sale of a particular product within the meaning of 19 CFR 351.525(b)(5) and (9).

As discussed in the *CVD Preamble*, "we do not believe that fungibility should be the guiding principle for attributing subsidies."[1204] Commerce nonetheless recognizes that money is fungible and its use for one purpose may free up money to benefit another purpose. Subsidies provided to a division of a company, such as a pulp and paper mill, will impact the overall production and sale of all other products of the company. Because money is fungible, there is no need to address attribution within a single, integrated corporate entity (as opposed to a conglomeration of entities for which an analysis under 19 CFR 351.525(b)(6) may be required). We therefore continue to find that benefits received by Resolute's Clermont mill under the ESP are attributable to the total sales of Resolute, pursuant to 19 CFR 351.525(b)(6)(i). Further, because Resolute is a parent company, we continue to attribute benefits under the ESP to Resolute's consolidated sales (net of intercompany sales), pursuant to 19 CFR 351.525(b)(6)(ii).

Finally, Resolute argues that the ESP is not specific because it is "available to all businesses having at least one establishment billed at electricity Rate L in Québec regardless of industrial sector."[1205] As discussed in the *Preliminary Results*, we do not find the ESP is limited, by law, to certain enterprises or industries under section 771(5A)(D)(i) of the Act.[1206] However, based on our analysis of the usage data submitted by the GOQ, we determined that the number of recipients under Hydro-Québec's ESP was limited under section 771(5A)(D)(iii)(I) of the Act.[1207] On this basis, consistent with our determination regarding the predecessor ISEE program in the *Lumber V AR2 Final*, we continue to find that usage of Hydro-Québec's ESP is limited in number and is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Comment 46: Whether Énergir L.P. Is an Authority

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 88-96.

> {Commerce} erroneously preliminarily found that {Énergir L.P.} "constitutes an 'authority' within the meaning of Section 771(5)(B) of the Act" and that the "production of subject merchandise did benefit from the Énergir funding."

[1203] *See*, *e.g.*, *Lumber V AR6 Final* IDM at Comment 27.
[1204] *See CVD Preamble*, 63 FR at 65403.
[1205] *See* Resolute Case Brief at 153 (citing Resolute Non-Stumpage IQR Response at Exhibit RES-NS-ESP-APP at 1-2).
[1206] *See Preliminary Results* PDM at 72.
[1207] *Id*. at 72-73 (citing Québec Specificity Memorandum, which discusses the business proprietary usage information for Hydro-Québec's ESP).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> {Énergir L.P.} is a limited partnership and the largest national gas distribution company in Québec which is owned, in part, by {CDPQ}. {CDPQ} is an "independent pension fund" within the meaning of Chapter 22 of {the USMCA}. Contrary to Commerce's findings, it is not an "authority" within the meaning of the {Act} which defines an "authority" as a "government of a country or any public entity within the territory of the country." The corporate structure of {Énergir L.P.} shows that the {GOQ} does not exercise meaningful control over {Énergir L.P.}. {Énergir L.P.'s} programs "were internally developed and implemented by {Énergir L.P.} as a service to its customers, and not in response to a government policy" and are "funded by customer rates", not public funds. The fact that no government entity provides funding or support for the programs reflects the company's commercial behavior. Regulatory oversight does not constitute government control. That {Énergir L.P.} programs align with {the GOQ's} energy policy goals does not show that {Énergir L.P.} follows GOQ initiatives or is acting at the behest of the government.

Resolute Case Brief

Resolute did not provide the requested public executive summary regarding this argument. For further details, *see* Resolute Case Brief at 123-124.

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 273-276

> {Commerce} properly found that {Énergir L.P.} constitutes an authority within the meaning of section 771(5)(B) of the Act, contrary to the GOQ's arguments. CDPQ, {Énergir L.P.'s} majority owner, is an authority as it is a legislatively-created "mandatory of the State" whose governance is fully controlled by the GOQ.55 CDPQ owns 80.9 percent of Trencap, which wholly owns {Énergir L.P.} through a few wholly-owned intermediaries. As {Commerce} explained, the corporate structure permits CDPQ to control {Énergir L.P.'s} board of directors, meaning that the GOQ has the ability to control {Énergir L.P.} through CDPQ. Indeed, the GOQ has a hand in {Énergir L.P.'s} operations. In particular, the GOQ's agencies must approve energy efficiency programs and determine how they will be funded. Additionally, this finding is consistent with {Commerce's} practice in {*Fabricated Structural Steel*} and {*CORE from Canada Prelim* and *CORE from Canada Final*}.

Commerce's Position: A subsidy may be found countervailable if, *inter alia*, an authority provides a financial contribution, pursuant to sections 771(5)(B) and (B)(i) of the Act. Section 771(5)(B) of the Act explains that "the term 'authority' means a government of a country or any public entity within the territory of the country."[1208] In order to determine whether an entity is an "authority" for the purposes of our CVD laws, Commerce analyzes the totality of the record to

[1208] *See* section 771(5)(B) of the Act.

determine whether the entity possesses, exercises, or is vested with government authority.[1209] While this analysis is made on a case-by-case basis, Commerce normally considers: (1) whether the government has meaningful control over the entity in question; and (2) whether the entity pursues government policy objectives.[1210]

As an initial matter, the GOQ, citing the *DS 436 Appellate Body Report*, argues that government ownership or power to appoint board members are "mere 'formal indicia of control'" which do not provide a sufficient basis to find that a private entity is an "authority."[1211] The GOQ's 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.[1212] As the Federal Circuit has recognized, Congress was clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent unless and until the United States Trade Representative has determined the scope of its implementation, if any, pursuant to the statutory scheme.[1213] WTO panel or Appellate Body reports do not automatically limit nor have an effect on Commerce's discretion in applying the statute in an AD or CVD proceeding.[1214] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[1215] We continue to find that the record evidence discussed below supports a finding that the GOQ has meaningful control of Énergir L.P. through CDPQ.

The GOQ additionally states that CDPQ is an "independent pension fund" within the meaning of Chapter 22 of the USCMA.[1216] The GOQ does not make further arguments about how this designation, if accepted, becomes binding on Commerce's application of CVD laws. We find that the question of CDPQ's status under Chapter 22 of the USMCA is moot in analyzing "authority" for the purposes of CVD laws.

In regard to the GOQ and Resolute's arguments as to whether the Énergir L.P. Feasibility Study and Implementation program is tied to non-subject merchandise, *see* Comment 47, *infra*.

As discussed in the Post-Preliminary Analysis Memorandum, we continue to find that the GOQ, through CDPQ, has meaningful control over Énergir L.P., and that Énergir L.P. pursues government policy objectives, such that Énergir L.P. possesses, exercises, and is vested with governmental authority, and is thus an "authority" within the meaning of section 771(5)(B) of the Act, and grants a financial contribution through the Énergir L.P. Feasibility Study and Implementation program.[1217]

[1209] *See*, *e.g.*, *Fabricated Structural Steel* IDM at Comment 13.
[1210] *Id*.
[1211] *See* GOQ Case Brief Vol. VII(b) at 89-90 (citing *DS 436 Appellate Body Report*).
[1212] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[1213] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[1214] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[1215] *See* SAA at 659.
[1216] *See* GOQ Case Brief Vol. VII(b) at 90-91.
[1217] *See* Post-Preliminary Analysis Memorandum at 4-6.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

CDPQ is a "mandatary of the State," or an entity authorized to act on behalf of the State, created by the *CDPQ Act*.[1218] The GOQ controls the composition and the remuneration of CDPQ's board of directors and executive leadership.[1219] The government must also approve the appointment of CDPQ's President/Chief Executive Officer.[1220] According to the *CDPQ Act*, with the exception of certain regulations, the board of directors shall make the regulations of the CDPQ and submit the regulations to the government for approval.[1221] The *CDPQ Act* states that "{t}he board of the directors shall hear the Auditor General at the latter's request."[1222] The *CDPQ Act* states that CDPQ "shall furnish the Minister of Finance with any information that the Minister may require on its operations and activities and those of its wholly-own subsidiaries."[1223] The *CDPQ Act* also mandates CDPQ to submit an annual report to the Minister of Finance on CDPQ's operations for the previous year.[1224]

As noted above, by CDPQ's own admission in its annual reports, CDPQ implements government policy.[1225] According to the *CDPQ Act*, CDPQ's mission is, "to receive moneys on deposit as provided by law and manage them with a view to achieving optimal return on capital within the framework of depositors' investment policies while at the same time contributing to Québec's economic development."[1226] CDPQ's annual reports show CDPQ's implementation of this government mandate.[1227] Furthermore, CDPQ is a mandatary of the state, whose property, based on the *CDPQ Act*, "shall be the property of the State."[1228] CDPQ also has sovereign immunity.[1229] Based on the totality of the facts on the record in the instant segment of the proceeding, we conclude that CDPQ is an authority under section 771(5)(B) of the Act.

We further find Énergir L.P. to be an authority within the meaning of section 771(5)(B) of the Act. The totality of record evidence shows that the government's involvement in CDPQ extends to Énergir L.P. The record evidence shows that each of the entities in the corporate ladder between CDPQ and Énergir L.P. is controlled by CDPQ (either by owning a majority interest, controlling the general partner, and/or controlling a plurality or simple majority of seats to the board of directors), thereby ensuring that CDPQ is able to direct and control Énergir L.P. by virtue of its control of each entity in the chain between itself and Énergir L.P.[1230] Specifically, CDPQ is the majority stakeholder in Trencap, which is the majority stakeholder (through Noverco and Énergir Inc.) of Énergir L.P.[1231] The record in this review is consistent with

[1218] *See CDPQ Act*, sections 1 and 4.
[1219] *Id*. at "Division II Administration".
[1220] *Id*. at section 5.3.
[1221] *Id*. at section 13.
[1222] *Id*. at section 13.2.
[1223] *Id*. at section 49.
[1224] *Id*. at sections 44 and 46.
[1225] *See* GOQ May 7, 2026 Non-Stumpage SQR Response at Exhibits QC-NSSUP2-02 through QC-NSSUP2-05.
[1226] *See CDPQ Act*, section 4.1.
[1227] *See* GOQ May 7, 2026 Non-Stumpage SQR Response at Exhibits QC-NSSUP2-02 through QC-NSSUP2-05.
[1228] *See CDPQ Act*, section 4.
[1229] *Id*.
[1230] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-EFSI-7; *see also* GOQ May 7, 2026 Non-Stumpage SQR Response at Exhibits QC-NSSUP2-27 through QC-NSSUP2-36.
[1231] *Id*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce's findings in *Fabricated Structural Steel* where Commerce determined that CDPQ controls Énergir L.P., through its ownership of Trencap.[1232]

Additionally, Énergir Inc. is the general partner of Énergir L.P. and Énergir Inc.'s board of directors controls Énergir L.P.[1233] CDPQ has the right to nominate and see elected directors of Énergir Inc. in proportion to its unit holding in Énergir L.P.[1234] Thus, CDPQ controls a clear plurality of the seats on Énergir Inc.'s board.

We have also previously found in other proceedings that Énergir L.P. follows the GOQ's initiatives, particularly those related to the implementation of Québec's energy policy goals.[1235] We find that this same information is present on the record of the instant segment of this proceeding. Énergir L.P. must apply annually to the Régie for approval of Énergir L.P.'s annual rate case and other regulated activities as required under regulations providing that authorization is required from the Régie.[1236] The Régie is Québec's energy regulator.[1237] As part of its annual approval of Énergir L.P.'s rate for the provision of natural gas in the province, the Régie approves any program related to energy efficiency for that year.[1238] Further, amounts granted under the program are offset against grants from other energy distributors or government organizations for the same project.[1239] Moreover, the 2030 Energy Policy provides for further integration of the activities of Énergir L.P. with GOQ energy policy objectives.[1240] We determine that the preceding facts, taken in totality, demonstrate that the GOQ has meaningful control of Énergir L.P. through CDPQ and that Énergir L.P. pursues government policy objectives; thus, Énergir L.P. possesses, exercises, and is vested with governmental authority. Therefore, we continue to find that Énergir L.P. constitutes an "authority" within the meaning of section 771(5)(B) of the Act.

The GOQ argues that Commerce has failed to identify CDPQ's role in implementing the GOQ's energy policy, or its involvement in Énergir L.P.'s energy efficiency programs, such as the feasibility study at issue in this segment.[1241] As mentioned above, in considering whether an entity is a "public entity," and thus an "authority," pursuant to section 771(5)(B) of the Act, Commerce considers the totality of the record to determine whether an entity possesses, exercises, or is vested with government authority. As explained above, the totality of the facts on this record, including CDPQ's mission and actions taken to contribute to Québec's economic development, support finding that CDPQ is an "authority" pursuant to section 771(5)(B) of the

[1232] *See Fabricated Structural Steel* IDM at Comment 13; *see also CORE from Canada Prelim* PDM at 34, unchanged in *CORE from Canada Final* IDM at Comment 23.
[1233] *See* GOQ May 7, 2026 Non-Stumpage SQR Response at Exhibit QC-NSSUP2-35.
[1234] *Id*. at 9-11.
[1235] *See CORE from Canada Prelim* PDM at 34, unchanged in *CORE from Canada Final* IDM at Comment 23; *see also Fabricated Structural Steel from Canada* IDM at Comment 13.
[1236] *See* GOQ May 7, 2026 Non-Stumpage SQR Response at 11-12 and Exhibits QC-NSSUP2-08 and QC-NSSUP2-44.
[1237] *Id*. at Exhibit QC-NSSUP2-08.
[1238] *Id*. at Exhibit QC-NSSUP2-44; *see also* GOQ Non-Stumpage IQR Response at Exhibit QC-EFSI-3.
[1239] *See* GOQ Non-Stumpage IQR Response at Exhibits QC-EFSI-5 and QC-EFSI-6.
[1240] *Id*. at Exhibits QC-EFSI-3, QC-EFSI-7, and QC-EFSI-18 through QC-EFSI-20; *see also* GOQ May 7, 2026 Non-Stumpage SQR Response at Exhibits QC-NSSUP2-40, QC-NSSUP2-45 through QC-NSSUP2-50, and QC-NSSUP2-53 through QC-NSSUP2-54.
[1241] *See* GOQ Case Brief Vol. VII(b) at 95.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Act. As discussed above, according to the *CDPQ Act*, CDPQ's mission, as assigned by the GOQ, is, "to receive moneys on deposit as provided by law and manage them with a view to achieving optimal return on capital within the framework of depositors' investment policies while at the same time contributing to Québec's economic development."[1242] CDPQ's annual report consistently highlights its contributions to Québec's economic development:

- "We work to ensure the financial future of millions of people and to energize the entrepreneurial fabric and the entire community. All our teams are mobilized to support companies and projects that generate optimal returns for our depositors and contribute to Québec's economic development."[1243]
- "We propel companies' growth ambitions and support the next generation while promoting increased sustainability for our economy and for the development of buildings and infrastructure."[1244]
- "In early 2025, CDPQ launched a program designed to encourage Québec companies to develop projects aimed at boosting their productivity or to strategically pivot toward new markets. This program is structured around CDPQ's three pillars of action for Québec: capital, expertise and networks."[1245]
- "Geared toward Québec SMEs, {the Repères numériques} training program is designed to support the transformation of their corporate culture to seize opportunities associated with high-tech innovations."[1246]
- "In late 2023, CDPQ announced plans to move more than double the amount entrusted to external Québec managers, which is set to reach $8 billion by 2028, thereby promoting the growth of Québec's asset management industry. As at December 31, 2024, these amounts totalled $4.8 billion."[1247]
- "Pursuant to its Policy on Contracts for the Acquisition or Leasing of Goods and Services, CDPQ favours Québec suppliers, provided they meet its cost and quality criteria."[1248]

The GOQ further argues that CDPQ, and thus the GOQ, has no meaningful control over Énergir L.P.[1249]. Resolute likewise argues that the GOQ does not control Énergir L.P.[1250] The GOQ additionally argues that general regulatory oversight is not a sufficient basis to for finding government control, arguing that other "energy distributors" are subject to government oversight for regulated activities.[1251] While we agree that the Régie's role in the rate approval process does not alone establish government control, Commerce's finding that the GOQ controls Énergir L.P. is not grounded simply in the rate approval process of the Régie. We continue to find, for the reasons discussed above, that the GOQ has meaningful control over CDPQ. Further, as detailed above, CDPQ controls (either by owning a majority interest, controlling the general

[1242] *See CDPQ Act*, section 4.1.
[1243] *See CDPQ 2024 Annual Report* at 52.
[1244] *Id*.
[1245] *Id*. at 54.
[1246] *Id*. at 55.
[1247] *Id*. at 59.
[1248] *Id*. at 60.
[1249] *See* GOQ Case Brief Vol. VII(b) at 90-92.
[1250] *See* Resolute Case Brief at 124.
[1251] *See* GOQ Case Brief Vol. VII(b) at 93-94.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

partner, and/or controlling a plurality or simple majority of seats to the board of directors) each of the entities in the corporate ladder between CDPQ and Énergir L.P. Specifically, CDPQ is the majority stakeholder in Trencap, which is the majority stakeholder (through Noverco and Énergir Inc.) of Énergir L.P.[1252] As we explained in *Fabricated Structural Steel*:

> {I}f a legal entity has control in a corporate entity that has control in another corporate entity, the percentage of shares or partnership units held may not necessarily reflect the actual decision-making power the shareholder or partner has.[1253]

The presence of multiple entities in a corporate chain does not, in itself, erase the influence of a controlling interest or other controlling privileges in effect throughout the chain. As such, we continue to find that the GOQ, through CDPQ, has meaningful control over Énergir L.P.

The GOQ argues that Énergir L.P. is not an authority because its energy efficiency programs, such as the feasibility study at issue here, were internally developed by Énergir L.P. as a service to its customers, rather than in response to government policy, and were funded by customer rates, rather than public funds.[1254] Resolute states that Énergir L.P. launched its energy efficiency programs in 2001 to help its customers reduce energy consumption.[1255] While we acknowledge that Énergir L.P. develops its efficiency programs internally, and uses customer payments to fund the programs, we do not find these facts dispositive. As discussed in *Kitchen Racks from China*, a firm's commercial behavior is not dispositive in determining whether that firm is a government "authority" within the meaning of the Act:

> It has been argued that government-owned firms may act in a commercial manner. We do not dispute this. Indeed, {Commerce's} own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit. However, this line of argument conflates the issues of the 'financial contribution' being provided by an authority and 'benefit.' If firms with majority government ownership provide loans or goods or services at commercial prices, *i.e.*, act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, the loans or goods or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.[1256]

Similarly, we do not find the GOQ's arguments that Énergir L.P. internally develops its energy efficiency programs, or funds the programs as part of the overall rate case approved by the Régie to negate Commerce's finding that Énergir L.P. pursues government policies. In the *Preliminary Results*, we found that amounts granted under the feasibility study program are offset against

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[1252] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-EFSI-7; *see also* GOQ May 7, 2026 Non-Stumpage SQR Response at Exhibits QC-NSSUP2-27 through QC-NSSUP2-36.
[1253] *See Fabricated Structural Steel* IDM at 54.
[1254] *See* GOQ Case Brief Vol. VII(b) at 93 (citing GOQ Non-Stumpage IQR at Exhibit QC-EFSI-A at 3-4).
[1255] *See* Resolute Case Brief at 123-124.
[1256] *See Kitchen Racks from China* IDM at Comment 4.

grants from other energy distributors or government organizations for the same project,[1257] and that the 2030 Energy Policy provides for further integration of the activities of Énergir L.P. with GOQ energy policy objectives.[1258] We continue to find that the totality of the record, including these facts, supports our finding in the Post-Preliminary Analysis Memorandum that Énergir L.P. pursues government policy objectives.[1259] Thus, combined with our findings above, we continue to find that Énergir L.P. is an authority within the meaning of section 771(5)(B) of the Act.

Comment 47: Whether the Énergir L.P. Feasibility Study and Implementation Program Is Tied to Non-Subject Merchandise

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 96.

> {Commerce} erroneously preliminarily found that {Énergir L.P.} "constitutes an 'authority' within the meaning of Section 771(5)(B) of the Act" and that the "production of subject merchandise did benefit from the Énergir funding."

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 83-85.

> Québec's Environment Ministry's {ÉcoPerformance}, {Énergir Feasibility Study and Implementation}, and Hydro Québec's {ESP} were intended from the time of bestowal to fund energy-saving and emission-reducing projects related to the production of pulp and paper products at Resolute's mills. Any payments under these programs are, therefore, attributable to the production of non-subject merchandise. {Commerce} found that, in all instances but one, the payments under these programs were untied and attributable to all Resolute's sales. The sole finding to the contrary relied on a novel "integral to production test." Yet, in the {Post-Preliminary Analysis Memorandum}, {Commerce} found that payment to the same mill under another energy program related to the same production process was attributable to all sales. {Commerce} must correct its attribution error, take into account bestowal documentation, and recognize that all four programs are tied to non-subject merchandise.

[1257] *See* GOQ Non-Stumpage IQR Response at Exhibits QC-EFSI-5 and QC-EFSI-6.
[1258] *Id*. at Exhibits QC-EFSI-3, QC-EFSI-7, and QC-EFSI-18 through QC-EFSI-20; *see also* GOQ May 7, 2026 Non-Stumpage SQR Response at Exhibits QC-NSSUP2-40, QC-NSSUP2-45 through QC-NSSUP2-50, and QC-NSSUP2-53 through QC-NSSUP2-54.
[1259] *See* Post-Preliminary Analysis Memorandum at 4-6.

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 276-277.

> {Commerce} properly found that {Énergir L.P.} constitutes an authority within the meaning of section 771(5)(B) of the Act, contrary to the GOQ's arguments. … The payments from {Énergir L.P.} are not tied to non-subject merchandise. Resolute's use of the subsidy does not establish a tie. The objective of the {Énergir L.P.} Feasibility Study and Implementation program is to "help companies … assess different energy efficiency scenarios and {GHG} emissions," as a first step before implementing projects to "optimize energy consumption and avoid GHGs." The eligibility criteria do not restrict access to or show preference for any particular sector or product. {Commerce} should reject Resolute's argument in the final results.

Commerce's Position: We do not find the arguments made by Resolute and the GOQ to be persuasive and, thus, continue to find this program countervailable.[1260] However, as explained in Comment 77, we are changing our calculation methodology for subsidies transferred by Fibrek to Resolute.

Resolute argues that the applications, contracts, and payment documentation provided show that the GOQ intended to fund studies related to the production of specific non-subject merchandise at the three mills, such that benefits under the Feasibility Studies and Implementation program should be tied to non-subject merchandise.[1261] Resolute further argues that Commerce inconsistently applied its tying analysis between the projects subject to the ÉcoPerformance and Feasibility Studies and Implementation programs.[1262] The GOQ supports Resolute's arguments regarding tying.[1263] The petitioner disagrees with Resolute and the GOQ, arguing that the eligibility criteria "do not restrict access to or show preference for any particular sector or product."[1264] The petitioner argues that the projects' execution at pulp and paper facilities do not mean that the GOQ intended the grants to specifically promote the production of a particular product.[1265] As explained below, we disagree with the GOQ and Resolute, and find that benefits granted under the Feasibility Studies and Implementation program are untied.

Generally, Commerce considers subsidies to be untied, as most subsidies benefit the entire production of a company.[1266] The tying regulations, however, were implemented "to attribute subsidies rather than tracing subsidies through {a} company{'s}" production process.[1267] 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, {Commerce} will attribute the subsidy only to

[1260] *See* Post-Preliminary Analysis Memorandum at 4-7.
[1261] *See* Resolute Case Brief at 83-85.
[1262] *Id*. at 84-85.
[1263] *See* GOQ Case Brief Vol. VII(b) at 96.
[1264] *See* Petitioner Rebuttal Brief at 276-277.
[1265] *Id*.
[1266] *See CVD Preamble*, 63 FR at 65400.
[1267] *See Rectangular Pipe and Tube from China* IDM at 37-38 (citing *CFS from China* IDM at Comment 18).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

that product."[1268] When determining whether a subsidy is tied to particular product or market Commerce's practice, codified at 19 CFR 351.525(b)(9), is to examine whether the intended use is known to the subsidy provider and so acknowledged prior to or concurrent with the bestowal of the subsidy.[1269] As the *CVD Preamble* to Commerce's regulations makes clear, our analysis of whether a subsidy is tied to a particular product focuses on the "stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal."[1270] As noted above, 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 GOQ) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been upheld by the CIT.[1271]

Commerce acknowledges that its preliminary analysis relating to the ÉcoPerformance program was in error and has revised its determination to find all projects under that program untied; *see* Comment 44. As a result, there is no conflict between our analysis and determination in that program and our determination for this program. We also note that while Resolute reported usage of this program during the AUL period, all benefits received prior to the start of the POR have been expensed in the year of receipt; accordingly, any arguments relating to benefits received prior to the POR are moot as Commerce is not countervailing that support as part of this administrative review.

As discussed in the Post-Preliminary Analysis Memorandum, the goal of this program is to encourage the acquisition of new, more efficient gas equipment or the adoption of more efficient processes that consume natural gas.[1272] The GOQ states that the program "is aimed to identify and implement energy efficiency measures for reducing the consumption of natural gas and limiting GHG emissions."[1273] Additionally, the participant's guide for the Feasibility Studies and Implementation program explains that "{a}s part of its Energy Efficiency Plan, Énergir {L.P}offers grants to its customers through its energy efficiency programs to help them reduce their natural gas consumption and their greenhouse gas (GHG) emissions."[1274]

The eligibility requirements for this program reflect the GOQ's stated purpose of this program. The eligibility criteria laid out in the participant's guide for the Feasibility Studies and Implementation program limit projects on the basis of the form of energy involved, noting that measures substituting natural gas by another form of energy are not admissible.[1275] The criteria further exclude studies which already receive assistance under the ÉcoPerformance program.[1276] These criteria do not limit participation to particular sectors or limit benefits to the production of

[1268] *Id*. (citing *CFS from China* IDM at Comment 18).
[1269] *See Pipes and Tubes from Türkiye* IDM at 21 (citing *Lumber V Final* IDM at Comment 53).
[1270] *See CVD Preamble*, 63 FR at 65403.
[1271] *See*, *e.g.*, *Essar Steel Ltd. v. U.S.*, 678 F.3d at 1296.
[1272] *See* Post-Preliminary Analysis Memorandum at 6 (citing GOQ Non-Stumpage IQR Response at Exhibits QC-EFSI-A, QC-EFSI-1, and QC-EFSI-5, and Resolute Non-Stumpage IQR Response at Exhibits RES-NS-ENE-APP and RES-NS-ENE-1).
[1273] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-EFSI-A at 1.
[1274] *Id*. at Exhibit QC-EFSI-5 at 2.
[1275] *Id*. at Exhibit QC-EFSI-5 at 9-13 and 16-19.
[1276] *Id*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

particular merchandise.[1277] The participant's guide for the program outlines the specifications required for any feasibility study assistance, and all of the criteria concern energy usage and energy improvements proposed. There is no mention of evaluation of the product being manufactured as part of its approval process.[1278] For the implementation portion of the program, the evaluation criteria for the program are only concerned with whether the project has reduced consumption of natural gas and whether those natural gas savings fall within its criteria for the payback period.[1279] The approval documents provided by the GOQ and Resolute do not indicate that projects under the Feasibility Studies and Implementation program were approved or denied on the basis of production of a particular product.[1280] We thus find that the GOQ does not intend for the program to subsidize specific production activities through explicit criteria for receiving the subsidy.

Accordingly, we find that the stated purpose of the subsidies granted under the Feasibility Studies and Implementation program is to support projects which reduce natural gas consumption and GHG emissions. There is no information on the record to suggest that this purpose necessarily limits the benefits to the production or sale of particular products. Therefore, we find that the stated purpose of the Feasibility Studies and Implementation program is not tied to the production or sale of a particular product within the meaning of 19 CFR 351.525(b)(5) and (9).

We are attributing subsidies received by Resolute's Alma and Kénogami mills under the program to Resolute's consolidated sales (net of intercompany sales), pursuant to 19 CFR 351.525(b)(6)(ii). As discussed in Comment 77, for subsidies transferred from Fibrek to Resolute, we are attributing benefits solely to the sales of Resolute, pursuant to 19 CFR 351.525(b)(6)(vi).

Comment 48: Whether the Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances Is Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 62-65.

> Commerce improperly found that the {Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances} is a countervailable grant. The {Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances} is a Québec forestry support program that compensates timber harvesters for the additional costs of performing salvage operations needed to preserve forest health after a natural or anthropogenic disturbance causes significant forest destruction, such as fire, wind-throw, or insect epidemics. The

[1277] *Id.*
[1278] *Id.* at Exhibit QC-EFSI-5 at 12-13.
[1279] *Id.* at Exhibit QC-EFSI-10 at "Summary of Measures Covered by the Request for Financial Assistance."
[1280] *Id.* at Exhibit QC-EFSI-13 and QC-EFSI-14; *see also* Resolute Non-Stumpage IQR Response at Exhibits RES-NS-ENE-4 and RES-NS-ENE-5.

> program does not confer a benefit on harvesters but instead compensates for additional costs associated with performing salvage operations required to preserve the health of the forest, when a natural or anthropogenic disturbance causes significant destruction of the forest, such as fire, wind-throw, or insect epidemics, which is a service to Québec. {Commerce} erred in its determination as the {Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances} is not a grant as it does not provide a gift to Resolute, instead it is a reimbursement involving a reciprocal obligation.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 110-112 and 133.

> Québec's Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbance {} addresses salvage harvesting operations in areas significantly affected by insect infestations, wind damage, and wildfire damage. {Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances} has three separate and distinct program streams for dealing with each kind of disturbance. Resolute, along with other harvesters, provides vital forest clearing services of poorer quality wood in exchange for partial payment from the {GOQ}, the steward of the public forests. {Commerce} should find that the program confers no financial contribution and is, therefore, not countervailable.
>
> When salvage harvesting was performed on stands impacted by disturbances from insects, fire, and wind, Resolute incurred higher costs to perform the valuable service of forest clean-up, including lower harvested volumes per acre and greater dispersion of harvesting operations. Reimbursements from Québec for these services did not cover all Resolute's costs. Without a gain, profit, or advantage, Resolute did not receive any benefits under NADB, TSORBA, and TSOBA.

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 260-265.

> In the *Preliminary Results*, {Commerce} correctly determined that Quebec's Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances {} provides a countervailable grant because the {GOQ} makes direct transfers of funds to offset harvesters' additional operating costs upon forest destruction. The Canadian Parties argue that the payments merely reimburse reciprocal obligations or compensate companies for services rendered to the Government rather than confer a subsidy. However, the record shows that Resolute and the GOQ did not enter into a mutually agreed service agreement as two equal parties. Instead, Resolute incurred higher costs performing its legally required harvesting and salvage activities, and the GOQ decided that it had the means to

> provide some financial assistance to help offset some of Resolute's costs. This fact pattern supports {Commerce's} finding that the GOQ's financial assistance under the Investment Program constitutes a direct transfer of fund. Further, {Commerce} has repeatedly rejected these arguments, and the record contains no new facts warranting a different conclusion. Accordingly, {Commerce} should continue to find the {Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances} countervailable in the final results.

Commerce's Position: Commerce continues to find that Québec's Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances is countervailable for these final results. The GOQ and Resolute argue the same points with regard to this program as in prior reviews. We have found these arguments to be unpersuasive in prior reviews, most recently the *Lumber V AR3 Final*,[1281] and continue to do so here.

Resolute argues that payments under the program constitute a "mutual exchange of rights and obligations," made "in exchange for removal of damaged timber."[1282] Resolute further argues that it would not have undertaken the required activities without financial assistance, stating that it would otherwise have "harvested trees elsewhere or shuttered mills with no alternative sources of timber."[1283] We continue to find these arguments unconvincing.

Like other reimbursement programs under review (*e.g.*, the PCIP), GOQ payments under the Investment Program are provided to offset harvesting costs that Resolute is legally required to incur in its normal course of business and, thus, the payments constitute a direct transfer of funds under section 771(5)(D)(i) of the Act, and confer a benefit under section 771(5)(E) of the Act. As the landowner and steward of the public forest, the GOQ requires harvesters who hold TSGs to perform various reforestation and land stewardship activities in order to maintain the sustainability of forest areas. Under the SFDA, the GOQ requires TSG holders to perform accelerated or selective harvesting in the public forest when a natural disturbance occurs, stating that, in the event of substantial damage to timber stands:

> The Minister may … prepare a special development plan to ensure that timber is salvaged and that the appropriate silvicultural treatments are applied … {a} person or body to which the Minister has entrusted or delegated forest development activities on land covered by a special plan must comply with the plan. To the extent specified in it, the plan replaces any development plan that was applicable on that land. The Minister may grant financial assistance for the implementation of a special plan to a person or body that is to carry out the forest development activities described in the plan and that applies for assistance in writing. [1284]

[1281] *See Lumber VAR3 Final* IDM at Comment 73; *see also Lumber V AR2 Final* IDM at Comment 79.
[1282] *See* Resolute Case Brief at 111-12.
[1283] *Id*. at 113.
[1284] *See* Resolute Stumpage IQR Response at 41-42 and Exhibit RES-STUMP-QC-14 (Article 60 of the SFDA); *see also* GOQ Stumpage IQR Response at Exhibit QC-STUMP-24(a) and STUMP-24(b).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

The SFDA makes clear that the GOQ "may" grant financial assistance to comply with the plan, but is not required to do so.[1285] By contrast, Resolute is obligated to comply with the special development plans issued by the MRNF, regardless of financial assistance under the program. That Resolute may choose to neglect its legal obligation, and so forfeit the harvestable volume covered by the plan, does not negate the existence of the obligation.[1286] As such, we disagree that the GOQ exchanges rights and obligations with Resolute when it bestows payments under the program. We rather find that, at the time of the award of the TSG license, Resolute bears the risk of natural and anthropogenic disturbances to the timber stands and the higher costs associated with harvesting impacted stands, which the GOQ later relieves through program payments. Because GOQ payments under this program are provided to offset harvesting costs that Resolute is legally required to incur as a TSG holder, we find that payments under the program constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confer a benefit under section 771(5)(E) of the Act.

As discussed in Comment 3, section 771(5)(D)(i) of the Act defines the term "financial contribution" as "the direct transfer of funds, such as grants…" and 19 CFR 351.504(a) states that, in the case of a grant, "a benefit exists in the amount of the grant." Because the GOQ made a "direct transfer of funds" via a grant to Resolute, we determine that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1287] The fact that Resolute received partial reimbursements for its harvesting activities does not negate the fact that a benefit was received.

We do not agree that any advantages to Québec in undertaking the program are relevant to the benefit that Resolute received from the GOQ. Any gain that the GOQ receives from this program is separate from the benefit conferred on Resolute. When analyzing the benefit received by a grant, pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Under 19 CFR 351.504(a) Commerce does not contemplate any advantages the government might receive by administering the program, nor do the regulations require Commerce to consider advantages other parties, such as the general public, may or may have not received. Because the GOQ made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

We also disagree that Resolute's activities under this program constitute a service, and, thus, the associated payments are not countervailable.[1288] The manner in which the program operates confirms that payments are not for services rendered to the GOQ or the general public, but for the furtherance of Resolute's harvesting activities. Funds are disbursed under this program after companies "submit a request in writing to the Ministry to obtain financial assistance," which

[1285] *See* Resolute Stumpage IQR Response at Exhibit RES-STUMP-QC-14 (Article 60 of the SFDA).
[1286] *Id*. at 41; *see also* GOQ Non-Stumpage IQR Response at Exhibit QC-AD-2 (March 2023 Special Development Plan Framework at section 1.1.1, quoting article 99 of the SFDA: "The guarantee of supply does not give the beneficiary the right to refuse, other than by waiving it, wood affected by a disturbance of natural or anthropogenic origin.").
[1287] *See CVD Preamble*, 63 FR at 65361.
[1288] *See* Resolute Case Brief at 113.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

takes the form of "grants or credits."[1289] The funding offsets a portion of a harvester's operating expenses that are incurred as a result of its tenure obligations.[1290] The record evidence makes clear that the GOQ provided grants to Resolute to make the company's salvage harvesting and processing of timber from forest areas impacted by fire, blowdown, and spruce budworm financially profitable.

In support of its arguments, the GOQ cites to the *DS 533 Panel Report*.[1291] However, as explained *supra*, WTO panel conclusions are without effect under U.S. law unless and until such a report has been adopted.[1292] WTO reports, like the *DS 533 Panel Report*, have no application to U.S. law absent the United States agreeing to such application and do not limit automatically Commerce's discretion in applying the statute in an AD or CVD proceeding.[1293] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[1294]

Finally, we disagree with Resolute that benefits granted under the various streams of the NAD program, such as the TSOBA stream, should be treated as separate programs.[1295] The March 2023 Special Development Plan Management Framework, provided by the GOQ, discusses wildfire, insect, and windthrow damage without distinction, and states that assistance "is administered under the Public Forest Investments Affected by Natural or Man-Made Disturbance Program."[1296] The GOQ likewise describes the program as "allow{ing} for the performance of special interventions … when a natural or anthropogenic disturbance causes significant destruction of the forest, such as fire, wind-throw, or insect epidemics."[1297] Therefore, consistent with our handling of this program in prior reviews, we continue to find that it is appropriate to treat the Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances as one program, and aggregate all payments received in our benefit calculation.[1298]

Comment 49: Whether the MASTE Program Is Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 80-83.

> The MASTE program provides financial support for the hiring of external specialists who perform tailor-made technical interventions for Québec's forest-products sector. Contrary to {Commerce's} findings, MASTE disbursements are

[1289] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-AD-A at 6-7.
[1290] *Id*. at Exhibit QC-AD-A at 1.
[1291] *See* GOQ Case Brief Vol. VII(b) at 63 (citing *DS 533 Panel Report* at para. 7.626).
[1292] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[1293] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[1294] *See* SAA at 659.
[1295] *See* Resolute Case Brief at 112, n.303.
[1296] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-AD-2 (March 2023 Special Development Plan Management Framework at sections 1.2.3 – 1.2.5, and section 2.1).
[1297] *Id*. at Exhibit QC-AD-1 at 1.
[1298] *See*, *e.g.*, *Lumber V AR3 Prelim* PDM at 60, unchanged in *Lumber V AR3 Final* IDM at 20 and Comment 73.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> not unconditional grants but rather conditional reimbursements: recipients must first engage and pay a third-party specialist, front at least 25% of the eligible project cost from private funds, and complete a defined scope of technical work before MASTE will reimburse any portion of that cost. For projects tied to non-subject merchandise, {Commerce} erroneously attributed funds to the production of softwood lumber.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute. For further details, *see* Resolute Case Brief at 89.

> Projects at Resolute's St. Félicien, Alma and Dolbeau pulp and paper mills were intended to benefit the production of pulp and paper products at those mills. {Commerce} should review the bestowal documents approving those projects and find that the MASTE funds for those projects were tied to the production of non-subject merchandise.

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 265-270.

> The MASTE program generates a financial contribution in the form of a direct transfer of funds, constituting a grant. The GOQ's argument that prerequisites for receiving payments under MASTE, such as project eligibility requirements, meeting certain output benchmarks, and that payments exist in the form of reimbursements for costs previously absorbed misconstrue eligibility requirements for reciprocal exchange of value between the province and beneficiaries. The statute does not require that {Commerce} construe only "gift-like transfers" of funds as constituting the universe of grants. Even if the term "grant" were to be construed as argued by the Canadian Parties, the plain language of the statute, dictionary definitions, and SAA all support {Commerce's} treatment of MASTE payments as countervailable financial contributions. {Commerce} is not obligated to account for expenses incurred by beneficiaries when determining whether a program constitutes a grant, as the GOQ argues.
>
> Payments under MASTE are not tied to non-subject merchandise. Resolute's theory is that because the government knew that the projects were for innovations in specific areas (because they approved the projects), the government intended to subsidize the production of those products. However, this confuses the purpose of the government's assistance program with the way Resolute used the funding. {Commerce's} focus is only on the former. The stated "objective of MASTE is to support Québec forestry companies facing a shortage of qualified workers by offering them financial support for hiring external specialists." Accordingly,

> {Commerce} should reject Resolute and the GOQ's arguments in the final results and continue to countervail all of the payments Resolute received under MASTE.

Commerce's Position: As discussed in the *Preliminary Results*, the MASTE program provides funding for Québec forestry product companies to retain, on a temporary basis, the services of specialists in the improvement of forestry operations, equipment, products, processing methods, or supplies.[1299] Resolute reported that it received funding under the MASTE program during the POR and AUL.[1300]

The GOQ argues that payments under the program do not constitute "unconditional grants of money," and thus are not grants, because companies must incur costs of completing technical work prior to receiving funding.[1301] We address related arguments on our definition of the term "grant" in Comment 3. A grant is not limited to a transfer of money without consideration, nor must a grant only be a gift. Likewise, we disagree that a grant must be unconditional, as the GOQ suggests. In evaluating the benefit of countervailable subsidies, Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1302] The GOQ itself describes the program as a "support measure for Québec forestry companies" which "provides grants" for those same companies.[1303] While we acknowledge that participants must incur costs for completed work prior to receiving disbursements, we continue to find that the MASTE program payments are properly analyzed as grants. We therefore continue to find that the MASTE program constitutes a direct transfer of funds under section 771(5)(D)(i) of the Act.

The GOQ further argues that several of the MASTE projects for which Resolute received funds were tied to non-subject merchandise.[1304] Resolute similarly argues that several of the MASTE projects related to improving the production of pulp and paper products, and that the applications for these projects indicate that the intended use of the funds is for non-subject merchandise.[1305] Commerce notes that all MASTE funding prior to the POR was expensed in the year of receipt,[1306] so any arguments relating to projects without payments during the POR are moot as Commerce is not countervailing that assistance in this review.

Commerce generally considers subsidies to be untied, as most subsidies benefit the entire production of a company.[1307] 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, {Commerce} will attribute the subsidy only to that product."[1308] When determining whether a subsidy is tied to particular product or market, Commerce's practice is to examine whether the intended use is known to the subsidy provider and so acknowledged prior to or concurrent with the bestowal of

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[1299] *See Preliminary Results* PDM at 73-74.
[1300] *Id*.
[1301] *See* GOQ Case Brief Vol. VII(b) at 81-82.
[1302] *See* 19 CFR 351.503(c).
[1303] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-MASTE-A at 1-2.
[1304] *See* GOQ Case Brief Vol. VII(b) at 82-83.
[1305] *See* Resolute Case Brief at 89.
[1306] *See* Resolute Final Calculation Memorandum at Attachment 3 at worksheet "Grants.NonRecurring.BPI."
[1307] *See CVD Preamble*, 63 FR at 65400.
[1308] *Id*. (citing *CFS from China* IDM at Comment 18).

the subsidy.[1309] As the *CVD Preamble* to Commerce's regulations makes clear, our analysis of whether a subsidy is tied to a particular product focuses on the "stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal."[1310] A subsidy is only tied to a particular product when the intended use is known to the subsidy provider (here, the GOQ) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been upheld by the CIT.[1311]

Resolute has argued that some of the MASTE support is provided for assistance relating to facilities that only produce non-subject merchandise, and this support should be tied to non-subject merchandise.[1312] We disagree. According to 19 CFR 351.525(b)(8), Commerce does not make attribution decisions on a plant- or factory-specific basis.

Resolute and the GOQ also argue that certain of the projects themselves should be tied to the production of non-subject merchandise and urge Commerce to look at the applications and approval documents relating to the projects to determine whether they are tied to the production of non-subject merchandise.[1313] However, here we find it illustrative to weigh this evidence alongside the stated purpose and eligibility requirements of the overall subsidy program.

As the GOQ itself explains, the stated purpose of the subsidy program is to provide assistance to forestry companies in Québec to hire external specialists to "receive guidance and technical support."[1314] The MASTE Normative Framework states that the objective of the program is "to support Québec forestry companies facing a shortage of qualified labour by offering them financial support for the hiring of external specialists."[1315] The MASTE brochure states two objectives for the program: (1) Provide guidance to companies in the forestry products manufacturing industry that are facing a lack of a highly qualified workforce, and (2) Provide access to external specialists who carry out customized technical interventions thus ensuring a transfer of technological expertise and an offering of technical services.[1316] Additionally, the MASTE Normative Framework stipulates that the only eligible expenditures for which companies can obtain support are for professional fees for the external specialists and/or for documentation fees.[1317] Accordingly, considering this evidence alongside the approval documentation cited by Resolute and the GOQ, we determine that the stated objective of the program is to facilitate hiring of external specialists in the forestry products manufacturing industry and not for the production of a particular forestry product.

While eligible MASTE beneficiaries include for-profit forestry product companies in Québec that participate in the sawmill products, wood construction, structural and non-structural panels, bioenergy, bio products, or pulp and paper sectors, there is no record evidence that the sector for which approval is requested is considered by the MRNF beyond whether it falls within one of the

[1309] *See Pipes and Tubes from Türkiye* IDM at 21 (citing *Lumber V Final* IDM at Comment 53).
[1310] *See CVD Preamble*, 63 FR at 65403.
[1311] *See*, *e.g.*, *Essar Steel Ltd. v. U.S.*, 678 F.3d at 1296.
[1312] *See* Resolute Case Brief at 89.
[1313] *Id*; *see also* GOQ Case Brief Vol. VII(b) at 83.
[1314] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-MASTE-A at 1.
[1315] *Id.* at Exhibit QC-MASTE-6 at 4.
[1316] *Id.* at Exhibit QC-MASTE-1.
[1317] *Id.* at Exhibit QC-MASTE-6 at 7-8.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

eligible sectors (*i.e.*, there is no indication that MRNF approval is based on the type of product being manufactured beyond whether it falls within one of the eligible sectors). In fact, the GOQ has stated that support is available on a "first-come, first-served basis until MASTE's budget is exhausted."[1318] As such, even if individual projects may result in funds being used for the production of non-subject merchandise, the GOQ does not appear to weight different types of forestry products differently in granting the subsidy, whether pertaining to subject or non-subject merchandise.

Based on an evaluation of the record evidence discussed above, Commerce continues to find that this program is countervailable for these final results and that all projects are untied to the production of a particular product.

Comment 50: Whether the MCRP and MCCRP Are Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(a) at 76-80.

> The {MCRP} and its successor {MCCRP} are not grants. The program reimburses up to 90% of the cost of building, improving, and rehabilitating bridges and multiuse roads, without exceeding the maximum amounts per type of work as established by the MRNF. Eligible program activities include the construction, improvement, and repair of multiuse roads and bridges, or the construction, improvement, and rehabilitation of access roads that allow for the strategic development of the road network and access to remote areas for purposes of forest assessment, protection, and preservation, including diagnosing and intervening disease and insect infestations, and fire prevention. The program provides payment for services rendered—the building, improving, and rehabilitating bridges and multi-use roads on public land. This is work that would otherwise have been done by the {GOQ}. Following completion of the service, the infrastructure is the property of the State. The GOQ pays for services rendered relating to road and infrastructure work, and therefore no countervailable benefit is provided.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 100-103 and 126-130.

> Provincial payments for road construction and maintenance programs were not grants because the provincial governments were buying from Resolute valuable services. Provincial governments look to harvesters to build and maintain public road networks through forested areas.

[1318] *Id.* at Exhibit QC-MASTE-A at 6.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> {Commerce} erroneously – contrary to record facts – has treated the payments for valuable services as a unilateral "direct transfer of funds," disregarding the reciprocity inherent in the road programs. Resolute received compensation – only partial – in exchange for building and maintaining roads owned by the provincial governments and open to the public. Besides, the province bought a service, not a good. Payment for a service is not countervailable.
>
> The Québec and Ontario road construction and maintenance programs provide only partial or capped reimbursement of eligible costs. Resolute remains responsible for the remainder of roadwork costs as well as the full cost of roads within its own harvest stands. Because the payments merely offset part of Resolute's expense of providing public infrastructure, the programs did not confer any advantage, profit, or good. If Commerce continues to treat the payments as financial contributions, it should find no measurable countervailable 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 224-247.

> {Commerce} properly found that Quebec's {MCRP} payments constitute a financial contribution in the form of a grant, not payment for services as the GOQ and Resolute argue, because the construction and maintenance of these roads is an expense that forestry companies would incur in their normal course of business. In creating the MCRP, the GOQ recognized that road construction and maintenance are an obligatory expense for forestry companies, with payments under the program intended to defray some of these costs. The program, therefore, acts to defray otherwise obligatory operating expenses for the beneficiaries and improve their financial position relative to what it would be in the absence of the program. {Commerce} is not required under either the statute or regulation to consider costs incurred by Resolute related to the funds received and properly treated the full value of the reimbursements as the benefit to Resolute.

Commerce's Position: The GOQ and Resolute continue to raise the same arguments for the MCRP which Commerce consistently rejected in the prior segments of this proceeding.[1319] Further, for the MCCRP, the successor program to the MCRP, the GOQ and Resolute raise identical arguments. Because we have found the parties' arguments unpersuasive for the MCRP, we continue to determine that those same arguments are equally unconvincing for the MCCRP. For all the reasons discussed below, we find that the MCRP and MCCRP are countervailable grant programs that confer a benefit on Resolute.

Under the MCRP, the MRNF provides reimbursements of up to 90 percent of the costs of construction, improvement, and repairs of multi-use public access roads in the public forest to TSG-holders, buyers of timber on the open market, holders of a forestry permit stipulated in

[1319] *See, most recently, Lumber V AR3 Final* IDM at Comment 74.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

section 73 of the SFDA, Rexforêt, and holders of an over-the-counter contract for timber.[1320] Likewise, under the MCCRP, the MRNF provides reimbursement for certain road, bridge, and culvert construction, improvement, and repair to persons or enterprises that "under an agreement, {are} required to pay the fees payable for the volumes of wood from the public forest" and, in certain instances, Rexforêt, a Crown Corporation.[1321] As such, the MCRP and MCCRP are designed to reduce costs that the forestry sector is legally required to incur under TSGs, *i.e.*, road construction/maintenance, in its normal course of business of harvesting in the public forest.

As we explained in previous reviews regarding the MCRP, and in this review under the MCCRP, the GOQ provides payments to Resolute for costs it incurs for the construction and repair of roads in public forest areas to perform its harvesting activities.[1322] Resolute argues that Commerce has disregarded the roadbuilding and maintenance activities of Resolute and presumed that Resolute should build the infrastructure without reimbursement, and that, without Resolute's activities, the GOQ would need to perform the activities itself or hire an independent contractor.[1323] Resolute compares the MCRP and MCCRP to the government provision of port-usage rights in *Hyundai Steel Co. v. U.S.*, arguing that Commerce should consider the reimbursements in light of the costs incurred through its roadbuilding and maintenance activities.[1324] We disagree.

In *Hyundai Steel Co. v. U.S.*, the government authorized private companies to build government-owned port facilities at their own expense in exchange for a set period of both free port-usage and the right to collect fees from other users of the port. Commerce determined that the program represented a financial contribution in the form of revenue foregone because, in the absence of the agreement, the government would have collected the port fees.[1325] The CIT found that Commerce erred by failing to consider the company's costs in constructing the port, which were reflected in the subsidy agreement, because "In normal market conditions, private companies don't gratuitously build government-owned infrastructure; they demand something in return—'consideration,' in contract law terms.[1326] As an initial matter, we note that the CIT did not find the program in that case to be a "service," as Resolute claims of the MCRP and MCCRP,[1327] but instead found that Commerce was required to consider whether the value of the port-usage rights exceeded the company's construction costs.[1328] Additionally, the facts of this case are distinguishable from *Hyundai Steel Co. v. U.S.* because record evidence shows that road construction and maintenance are costs that TSG-holders are legally required to incur in their normal course of business. As the landowner and steward of public forest areas, the GOQ requires harvesters who hold TSGs to perform various forest development activities in order to

[1320] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-MCRP-A at 1 and 12.
[1321] *Id.* at Exhibit QC-MCCRP-A at 1-2 and Exhibit QC-MCCRP-2 at Section 5.
[1322] *See Lumber V AR3 Final* IDM at Comment 74; *see also Lumber V AR2 Final* IDM at Comment 80; and *Lumber V AR1 Final* IDM at Comment 77.
[1323] *See* Resolute Case Brief at 102.
[1324] *Id.* at 102 and 126-129 (citing *Hyundai Steel Co. v. U.S.*, 658 F.Supp.3d at 1336).
[1325] *See Hyundai Steel Co. v. U.S.*, 658 F.Supp.3d at 1334.
[1326] *Id.*, 658 F.Supp.3d at 1334.
[1327] *See* Resolute Case Brief at 102.
[1328] *See Hyundai Steel Co. v. U.S.*, 658 F.Supp.3d at 1334.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

maintain the sustainability of forest areas.[1329] During the POR, Resolute secured a significant proportion of its Crown-origin timber from TSGs; therefore, to ensure a secure supply of timber, Resolute must carry out the activities required of TSG-holders under the SFDA, including the construction and repair of roads and bridges in the public forest areas.[1330]

Further, even if not obligated as part of licenses, which alone would be sufficient to find this was a grant and not compensation for a service, record evidence shows Resolute would have built and maintained these roads without compensation. The GOQ explains that a significant portion of the "vast network of multiuse road infrastructures" in state-owned forests are "constructed by the forestry industry for the purpose of conducting timber harvesting activities."[1331] Resolute itself notes that it bears the cost of "building and maintaining tertiary roads that were for its own business operations," even in the absence of government subsidies.[1332] While the GOQ may recognize the value these roads provide to other users,[1333] we find that the MCRP and MCCRP compensate behavior that forestry companies would engage in through the normal course of business, and do not constitute expressly reciprocal transactions. Thus, this program is distinct from the expressly reciprocal transaction in *Hyundai Steel Co. v. U.S.* cited by Resolute, and discussed in further detail in Comment 3, *supra*.[1334]

We continue to find that the MCRP and MCCRP provide a financial contribution from the GOQ to Resolute in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and bestow a benefit in the amount of the reimbursement under section 771(5)(E) of the Act and 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1335] Here, Resolute received direct payments from the GOQ. The fact that the reimbursements were only partial does not negate the fact that Resolute received a benefit under the MCRP and MCCRP.[1336]

We also disagree that Resolute's activities under the MCRP and MCCRP constitute a service to Québec, and, thus, the associated payments are not countervailable.[1337] In its "Guide to the Application of the 2023-2024 {MCCRP}," the MRNF acknowledges that "{a} large proportion

[1329] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-STUMP-24(b) (SFDA). Section 4(1) of the SFDA defines "forest development activity" as "an activity related to timber felling and harvesting, the operation of a sugar bush, *the construction, improvement, repair, maintenance or closure of infrastructures*, the carrying out of silvicultural treatments, including reforestation and the use of fire, fire protection, the suppression of insect epidemics, cryptogamic diseases and competing vegetation, and all similar activities that tangibly affect forest resources" (emphasis added).
[1330] *See* GOQ Stumpage IQR Response at 158 ("The TSG holders are responsible for harvesting and hauling timber, construction, improvement, rehabilitation and maintenance of infrastructure under the SFDA and the Harvest Agreement … TSG holders are required to perform scaling, forest planning and supervision, harmonization, and environmental management."); *see also* GOQ Non-Stumpage IQR Response at Exhibits QC-STUMP-11 (GOQ Verification Report from the Investigation, p. 11), QC-STUMP-104 (Mandatory Costs), QC-STUMP-24(b) (SFDA, section 103.6), and QC-STUMP-101 (Sample Harvest Agreement).
[1331] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-MCCRP-A at 1.
[1332] *See* Resolute Case Brief at 102.
[1333] *See* GOQ Case Brief Vol. VII(b) at 78.
[1334] *See* Resolute Case Brief at 102 and 126-129 (citing *Hyundai Steel Co. v. U.S.*, 658 F.Supp.3d at 1346).
[1335] *See CVD Preamble*, 63 FR at 65361.
[1336] *See* Resolute Case Brief at 129-130.
[1337] *See* GOQ Case Brief Vol. VII(a) at 80; *see also* Resolute Case Brief at 102-103.

of these roads are built by the forest industry for the purpose of harvesting timber."[1338] The guide reveals that the activities performed by Resolute—building and repairing roads—were performed in the furtherance of its harvesting activities on Crown-land, not to render a service to the GOQ or the general public. Because Resolute's roadwork was done to further its harvesting operations, we find no merit to the argument that reimbursements were payments for the execution of services rendered to the MRNF.

Additionally, any advantages to Québec in undertaking the MCRP and MCCRP are not relevant to the benefit that Resolute received.[1339] Any gain that Québec receives from these roads programs is separate from the benefit conferred on Resolute. When analyzing the benefit received by a grant, pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Under 19 CFR 351.504(a) Commerce does not contemplate any advantages the government might receive by administering the program, nor do the regulations require Commerce to consider advantages other parties, such as the general public, may or may have not received. Because, for each program, the GOQ made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a). For the foregoing reasons, we continue to determine that the MCRP and MCCRP are grant programs that provide countervailable benefits.

Finally, as discussed with regard to the OFRFP program in Comment 40, we disagree with Resolute that Commerce should make an adjustment for the road costs in the stumpage calculations.[1340] As we have explained in a prior and in the current review, in-kind and other related expenses are not part of the stumpage price as calculated from the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*.[1341] Commerce cannot adjust for such costs without distorting the benchmark.

Comment 51: Whether FDRCMO and MFOR Are Non-Recurring Subsidies

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 98-103.

> {Commerce} erroneously preliminary concluded that the MFOR and FDRCMO programs are {…} non-recurring. The FDRCMO grants assistance for projects related to the development of work skills, which may include literacy, French language training, improving skills to enable internal mobility and improvement of the business' overall competitiveness if the proposed project meets the objective criteria of the program. The MFOR program grants assistance to support the development of skills for low and unskilled workers, and also workers requiring additional training relevant to the job in order to retain employment. {…} {T}he

[1338] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-MCCRP-7 (p. 1, regarding the MCCRP) and QC-MCRP-13 (p.1, containing the same statement from the MRNF concerning the MCRP).
[1339] *See* GOQ Case Brief Vol. VII(a) at 79-80; *see also* Resolute Case Brief at 126-127.
[1340] *See* Resolute Case Brief at 103-104.
[1341] *See* Comment 23; *see also Lumber V AR3 Final* IDM at Comment 42.

> FDRCMO and MFOR programs are non-recurring because they are worker training programs found on the illustrative list; no party claimed that the FDRCMO and MFOR programs are not on the illustrative list; and the regulations do not provide Commerce with unilateral authority to apply the three-factor test in 19 CFR 351.524(c)(2) on its own initiative to find that the programs are not on the illustrative list.

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 249-251.

> {Commerce's} treatment of payments under FDRCMO and MFOR were properly treated as recurring subsidies in the form of grants, and should not be treated as non-recurring subsidies as the GOQ argues. FDRCMO and MFOR are both worker training programs and grants. Payments received under a program cannot be treated as both recurring and non-recurring simultaneously. {Commerce's} analysis, which found the payments to be recurring subsidies, was logical and informed by the facts on the record. The GOQ's argument that the regulations provide a three-prong conjunctive test misreads the relevant regulation.

Commerce's Position: The GOQ raised the same arguments in the first, second, and third administrative reviews.[1342] We continue to find these arguments unpersuasive for the reasons detailed below and, therefore, continue to find that the FDRCMO and MFOR provide non-recurring benefits.

While Commerce's regulations include a non-binding illustrative list of the programs "normally" treated as providing recurring benefits (*i.e.*, "{d}irect tax exemptions and deductions; exemptions and excessive rebates of indirect taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; wage subsidies; and upstream subsidies"),[1343] the regulations also provide a non-binding illustrative list of the programs "normally" treated as providing non-recurring benefits (including, *inter alia*,. "grants").[1344] Here, while the benefits provided under the FDRCMO and MFOR are worker's training assistance, the benefits are also in the form of grants. Given this situation, 19 CFR 351.524(c)(2) provides the following:

> {i}f a subsidy is not on the illustrative lists, or is not addressed elsewhere in these regulations, or if a party claims that a subsidy on the recurring list should be treated as non-recurring or a subsidy on the non-recurring list should be treated as recurring, the Secretary will consider the following criteria in determining whether the benefits from the subsidy should be considered recurring or nonrecurring:

[1342] *See Lumber V AR1 Final* IDM at Comment 82; *see also Lumber V AR3 Final* IDM at Comment 79; and *Lumber V AR2 Final* IDM at Comment 85.
[1343] *See* 19 CFR 351.524(c)(2).
[1344] *Id.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> (i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;
>
> (ii) Whether the subsidy required or received the government's express authorization for approval (*i.e.*, receipt of benefits is not automatic); or
>
> (iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

We do not dispute that Commerce treated a worker training program as a recurring subsidy in *Certain Pasta from Italy AR7 Final* and *Certain Pasta from Italy AR3 Prelim*, and the program is not tied to capital assets.[1345] However, because parties have argued that these subsidies should be non-recurring in prior reviews,[1346] we continue to find it appropriate to consider the 19 CFR 351.524(c)(2) factors, which were not discussed in the *Certain Pasta from Italy* determinations,[1347] here. As Commerce explained in *Wire Rod from Italy*, when worker training grants relate to specific, individual projects where each requires separate government approval, then those grants will be treated as non-recurring subsidies.[1348] Therefore, in determining whether the FDRCMO and MFOR are providing recurring or non-recurring benefits, we examined whether the grants disbursed under the programs are for specific projects that require the express approval of the GOQ.

As Commerce explained in past administrative reviews, the record shows that, under the FDRCMO, a company requests assistance to address workforce training challenges.[1349] This application is not automatically approved.[1350] Rather, an advisor from the MESS analyzes the application based on the program criteria, and approves the finalized application form.[1351] Agreements for funding are made on an *ad hoc* and non-continuous basis, and can last up to three years.[1352] These facts indicate that FDRCMO work training grants are not automatically provided, or provided on a predictable basis, and that a company must receive government approval for each worker training measure.

Similarly, for the MFOR, a company must submit a request for intervention for each worker training project, and that express approval by MESS is required in order to receive financial assistance for the training.[1353] Once the intervention application is approved, the company and MESS enter into a subsidy agreement of one to three years.[1354] These facts indicate that

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[1345] *See* GOQ Case Brief Vol. VII(b) at 103 (citing *Certain Pasta from Italy AR7 Final* IDM at 12; and *Certain Pasta from Italy AR3 Prelim*, 65 FR at 48484).
[1346] *See*, *e.g.*, *Lumber V AR1 Final* IDM at Comment 82.
[1347] *See Certain Pasta from Italy AR7* IDM at 12; *Certain Pasta from Italy AR3 Prelim*, 65 FR at 48484.
[1348] *See Wire Rod from Italy*, 63 FR at 40488.
[1349] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-FDRCMO-A at 6-8.
[1350] *Id*. at Exhibit QC-FDRCMO-A at 15.
[1351] *Id*. at Exhibit QC-FDRCMO-A at 6.
[1352] *Id*. at Exhibit QC-FDRCMO-A at 15.
[1353] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-MFOR-A at 5-6 and 9-10.
[1354] *Id*. at Exhibit QC-MFOR-A at 15.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

assistance under MFOR is not automatic—each request for assistance must be applied for individually and receive separate government approval, and the financial assistance to be provided is based on specific agreements between the company and MESS. Further, grants under the MFOR are not received on a regular or predictable basis as "applications for the program were assessed on a case-by-case basis" when "MESS receives a request for intervention from the employer."[1355]

On the basis of the evidence, we continue to determine that the FDRCMO and MFOR are properly treated as a non-recurring subsidy.

Comment 52: Whether the FDRCMO Is Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 103-106.

> {Commerce} erroneously preliminary concluded that the MFOR and FDRCMO programs are *de facto* specific and non-recurring. The FDRCMO grants assistance for projects related to the development of work skills, which may include literacy, French language training, improving skills to enable internal mobility and improvement of the business' overall competitiveness if the proposed project meets the objective criteria of the program. The MFOR program grants assistance to support the development of skills for low and unskilled workers, and also workers requiring additional training relevant to the job in order to retain employment. The FDRCMO and MFOR programs should be treated as not *de facto* specific as they are not limited to any sector and are generally available.
>
> {Commerce} erroneously preliminary found that the FDRCMO program providing funding to Formabois and other {SWCs} is countervailable and *de facto* specific. Formabois is an autonomous nonprofit body formally recognized as a SWC under the Act to Promote Workforce Skills Development and Recognition, and is not itself a component of the FDRCMO program. Formabois does not qualify as a government authority or as a private entity that the authority has entrusted or directed to make a financial contribution. Further, the program is not limited by law to certain enterprises or industries, with thousands of companies in dozens of industries across the Québec economy applying for and benefiting from the FDRCMO fund.

[1355] *Id*. at Exhibit QC-MFOR-A at 5.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 124-25 and 154.

> Reimbursements under Québec training and manpower programs are not grants but reciprocal workforce-development arrangements. Québec reimburses training costs in exchange for benefits that accrue to workers and the provincial economy through enhanced skills, employability, and labor mobility. By treating these payments as gift-like transfers, {Commerce} ignores the substantial consideration received by the government and the public.
>
> Resolute adopts and incorporates by cross-reference the arguments of the {GOC}, the {GOQ}, and the {GOO} that {Commerce's} preliminary specificity findings with respect to non-stumpage and programs applicable to Resolute are unsupported by record evidence or otherwise 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 247-255.

> Payments under Quebec's {MFOR} and {FDRCMO} programs are properly treated as grants, not payments for services rendered, as Resolute argues. Fund transfers distributed by a government intended to further a policy goal cannot render those transfers payments for services rendered. Payments under these programs create no binding reciprocal obligations on Resolute to actually impact those policy goals, as payments were distributed so long as Resolute met the eligibility criteria set out for the grant.
>
> …
>
> {Commerce} also correctly found the MFOR and FDRCMO programs to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients of each subsidy are limited in number. Record evidence demonstrates that only a limited number of Quebec companies received assistance under either program, establishing that both programs are *de facto* specific. Because {Commerce's} finding is supported by section 771(5A)(D)(iii)(I) of the Act, it need not address the remaining *de facto* specificity factors, and the Canadian Parties have identified no new facts or arguments that warrant a different result. Accordingly, {Commerce} should continue to find the MFOR and FDRCMO programs *de facto* specific in the final results.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce's Position: The GOQ and Resolute raise substantially the same arguments as prior reviews, which we rejected, and we continue to do so here.[1356] As an initial matter, in the *Lumber V AR2 Final*, and most recently in the *Lumber V AR3 Final*, we determined that the Formabois Fund and FDRCMO are one and the same, and, thus, there is just one subsidy program, the FDRCMO, which is administered by MTESS.[1357] The GOQ has not presented any new arguments in this review to cause Commerce to reconsider its determination. Therefore, we continue to find that the FDRCMO constitutes a financial contribution and confers a benefit under sections 771(5)(D) and 771(5)(E) of the Act, respectively. As such, we need not respond to the GOQ's arguments regarding whether Formabois is an authority that is entrusted or directed to make a financial contribution.[1358] We also note that arguments relating to whether the program is a recurring or non-recurring program were addressed in Comment 51.

Because the FDRCMO is the subsidy program, we agree with the GOQ that specificity should be examined with regard to the FDRCMO.[1359] We clarify, however, as the Federal Circuit held in *Gov't of Québec v. U.S.*, that "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."[1360] Thus, while we preliminarily found that the FDRCMO is not limited, by law, to certain enterprises or industries under section 771(5A)(D)(i) of the Act, we note that this analysis was not required by the Act.[1361] In the *Preliminary Results*, we therefore examined whether the program is specific as a matter of fact under section 771(5A)(D)(iii) of the Act.

We reviewed the usage data that the GOQ submitted for the years 2020 through 2024.[1362] Given the nature of this provincial program—training assistance, it is reasonable to compare the number of companies that received FDRCMO grants to the total number of companies operating/established in the jurisdiction of the granting authority to determine whether the recipients of FDRCMO assistance are limited in number. The data show that a limited number of companies received benefits under the FDRCMO.[1363] Based on our analysis of the data, we find that a small number of companies received grants under the program in the years examined.[1364] We thus determine that the number of recipients of assistance under the FDRCMO is limited in number, and thus the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act in the POR.

Lastly, given that Resolute received financial assistance from the GOQ, we find the company's argument that payment for education and training of students cannot be considered a grant to be

[1356] *See Lumber V AR3 Final* at Comment 77; *see also Lumber V AR2 Final* at Comment 83; and *Lumber V AR1 Final* at Comment 81.
[1357] *See Lumber V AR2 Final* at Comment 83; *see also Lumber V AR3 Final* at Comment 77.
[1358] *See* GOQ Case Brief Vol. VII(b) at 105-106.
[1359] *Id.*
[1360] *See Gov't of Québec v. U.S.*, 105 F.4th at 1374. (Emphasis in original. Internal citations omitted).
[1361] *See Preliminary Results* PDM at 71.
[1362] *See* GOQ Non-Stumpage IQR Response at Exhibits QC-FDRCMO-4 through QC-FDRCMO-6.
[1363] *See* Québec Specificity Memorandum. The program usage data and the total number of companies operating/established in Québec are proprietary information.
[1364] *Id.*

meritless. The fact that recipients of the training had no obligation to do anything for Resolute in return is irrelevant to Commerce's analysis. Further, consistent with our discussion on reciprocal value in Comment 3, we find that the record of this review does not support the claim the FDRMO program is a reciprocal exchange which relieves the GOQ from requiring or investing in "a larger infrastructure for vocational education."[1365] The information on the record indicates that the FDRCMO provides funding to businesses which request support for skills development for their workers.[1366] No information on the record indicates that, in the absence of individual requests for support, the GOQ would have assumed the workforce training costs associated with the FDRCMO program. When analyzing the benefit received by a grant, pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Under 19 CFR 351.504(a) Commerce does not require Commerce to consider advantages other parties, such as the general public, may or may have not received. Because the GOQ made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

Comment 53: Whether the MFOR Is Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 97-98.

> {Commerce} erroneously preliminary concluded that the MFOR and FDRCMO programs are *de facto* specific and non-recurring. The FDRCMO grants assistance for projects related to the development of work skills, which may include literacy, French language training, improving skills to enable internal mobility and improvement of the business' overall competitiveness if the proposed project meets the objective criteria of the program. The MFOR program grants assistance to support the development of skills for low and unskilled workers, and also workers requiring additional training relevant to the job in order to retain employment. The FDRCMO and MFOR programs should be treated as not *de facto* specific as they are not limited to any sector and are generally available.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 154.

> Resolute adopts and incorporates by cross-reference the arguments of the {GOC}, the {GOQ}, and the {GOO} that {Commerce's} preliminary specificity findings with respect to non-stumpage and programs applicable to Resolute are unsupported by record evidence or otherwise not in accordance with law.

[1365] *Id.*
[1366] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-FDRCMO-A at 6 and 8.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 247-255.

> Payments under Quebec's {MFOR} and {FDRCMO} programs are properly treated as grants, not payments for services rendered, as Resolute argues. Fund transfers distributed by a government intended to further a policy goal cannot render those transfers payments for services rendered. Payments under these programs create no binding reciprocal obligations on Resolute to actually impact those policy goals, as payments were distributed so long as Resolute met the eligibility criteria set out for the grant.
>
> …
>
> {Commerce} also correctly found the MFOR and FDRCMO programs to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients of each subsidy are limited in number. Record evidence demonstrates that only a limited number of Quebec companies received assistance under either program, establishing that both programs are *de facto* specific. Because {Commerce's} finding is supported by section 771(5A)(D)(iii)(I) of the Act, it need not address the remaining *de facto* specificity factors, and the Canadian Parties have identified no new facts or arguments that warrant a different result. Accordingly, {Commerce} should continue to find the MFOR and FDRCMO programs *de facto* specific in the final results.

Commerce's Position: The GOQ and Resolute raised the same arguments regarding specificity in previous administrative reviews.[1367] Consistent with the *Lumber V AR3 Final*, we do not dispute that the MFOR is generally available to companies in Québec. We, however, continue to disagree with the arguments that actual recipients are not limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act, and that Commerce applied an incorrect test for *de facto* specificity. We further disagree with Resolute that the MFOR should not be considered a grant. We also note that discussion relating to whether the program is a recurring or non-recurring program are addressed in Comment 51.

As stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies that truly are broadly available and widely used throughout an economy.[1368] 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 {CVD} law."[1369] 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.[1370]

[1367] *See Lumber V AR3 Final* IDM at Comment 78; *see also Lumber V AR2 Final* IDM at Comment 84.
[1368] *See* SAA at 929.
[1369] *Id.*
[1370] *Id.* at 931.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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.[1371] Thus, we have followed the instructions of the SAA and our practice in determining whether the MFOR is *de facto* specific.

The MFOR is not a new program, but was created in 1998.[1372] The GOQ provided program usage data for each year 2015 to 2024.[1373] Given the nature of this provincial program—workforce skills training assistance—and the program data on the record, it is reasonable to compare the number of companies that received MFOR grants to the total number of companies operating/established in Québec. While the GOQ argues that the MFOR program criteria do not restrict benefits to any industry, this argument speaks to *de jure* specificity and does not negate our finding that the program is *de facto* specific.[1374] As the Federal Circuit held in *Gov't of Québec v. U.S.*, "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."[1375]

Thus, in the *Preliminary Results*, consistent with Commerce's practice, we analyzed the usage data for the POR (2024) and the three preceding years to evaluate the program's specificity.[1376] The data submitted by the GOQ show that few companies received grants under the MFOR in each year 2021 to 2024, when compared to the total number of companies operating/established in Québec.[1377] For the POR of 2024 and as detailed in the Québec Specificity Memorandum, a small percentage of the companies operating/established in Québec received disbursements under the MFOR.[1378] As such, we determine that the MFOR program's users are limited in number, and the program was not widely used throughout Québec's economy during the POR; therefore, the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Lastly, given that Resolute received financial assistance from the GOQ, we find the company's argument that payment for education and training of students cannot be considered a grant to be meritless. Consistent with our discussion on reciprocal value in Comment 3, we find that the record of this review does not support the claim the MFOR program is a reciprocal exchange which relieves the GOQ from requiring or investing in "a larger infrastructure for vocational education."[1379] The information on the record indicates that the MFOR provides funding to businesses for workforce development on a case-by-case basis based on the needs of the business.[1380] No information on the record indicates that, in the absence of individual requests

[1371] *See CRS from Korea* IDM at Comment 13; *see also Lumber V Final* IDM at Comment 62.
[1372] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-MFOR-A at 1.
[1373] *Id*. at Exhibit QC-MFOR-09.
[1374] *See* GOQ Case Brief Vol. VII(b) at 97-98.
[1375] *See Gov't of Québec v. U.S.*, 105 F.4th at 1374. (Emphasis in original. Internal citations omitted).
[1376] *See* Québec Specificity Memorandum. The number of companies that received disbursements under the MFOR and the number of companies operating/established in Québec for the years examined are proprietary data.
[1377] *Id*.
[1378] *Id*.
[1379] *See* Resolute Case Brief at 125-126.
[1380] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-MFOR-A at 1 and 5.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

for support, the GOQ would have assumed the workforce training costs associated with the FDRCMO program. When analyzing the benefit received by a grant, pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Under 19 CFR 351.504(a) Commerce does not require Commerce to consider advantages other parties, such as the general public, may or may have not received. Because the GOQ made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

Comment 54: Whether the PCIP and PIAF Are Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 40-45.

> Commerce improperly found that the PCIP and its successor program PIAF were countervailable grants. The PCIP and PIAF programs partially reimburse timber harvesters for up to 90% of the incremental costs of the government-mandated partial-cut silviculture prescriptions. The PCIP and PIAF programs do not confer a benefit because harvesters subject to the partial cut mandate remain at a cost disadvantage relative to unrestricted harvesters, even after receiving partial reimbursement as they are still billed normal stumpage rates. Further, the programs are non-countervailable government purchase of services, as compliance with the partial-cut mandate assists the GOQ in achieving sustainable management of Quebec's public forests under its integrated forest management plans (*i.e.*, any benefit runs to Quebec rather than to Resolute).

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 104-110, and 130-132.

> {Commerce} has found preliminarily that partial payments to Resolute under the Québec {PCIP}, the {PIAF}, and the {PDB}, for the performance of certain harvesting treatments in public forests constituted grants and, therefore, were financial contributions. But these three programs all involve a mutual exchange of consideration – harvesters are paid in exchange for the costs of performing valuable silvicultural treatments and foregoing harvesting rights at normal volumes and rates. Payments to Resolute under PCIF, PIAF, and PDB during the POR were, therefore, not financial contributions and not countervailable.
>
> The PCIP/PIAF and PDB required Resolute to undertake more costly harvesting practices (partial cutting, mosaic cutting) and forego timber volume, while nonetheless paying the same price for stumpage. Québec provided only partial compensation for those additional burdens. Because the payments did not provide

> a net gain, profit, or advantage, {Commerce} should find that the programs conferred no measurable 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 255-258.

> The GOQ and Resolute erroneously argue that payments under the partial cut reimbursement programs render a service to the GOQ, and are therefore not countervailable. Payments under the programs help defray the costs of legal obligations on the part of harvesters, as leaving certain portions of the forest uncut within their designated harvest areas is a legal obligation imposed by the GOQ. Any benefit accruing to the GOQ under these programs is irrelevant to {Commerce's} analysis, as {Commerce} is only required to consider the value of the benefit accruing to the recipient of a grant program under {19 CFR 351.504(a)}. The fact that program payments defray only a portion of the costs to harvesters of conforming to the partial cut mandates does not mean that a benefit did not accrue, as the Canadian Parties argue, and {Commerce} is not required, under statute or regulation, to consider whether obligations under a program generate a net cost to the recipient.

Commerce's Position: The GOQ and Resolute continue to raise substantially the same arguments for the PCIP, and the successor PIAF, which Commerce has consistently rejected in prior segments of this proceeding.[1381] Therefore, for all the reasons discussed below, we find that the PCIP and PIAF are countervailable grant programs that confer a benefit on Resolute.

Under the PCIP and PIAF,[1382] there is a government action that confers a benefit, *i.e.*, reimbursements, which offset a portion of the legally required costs incurred by harvesters within their ordinary course of business.[1383] As the landowner and steward of the public forest, the GOQ sets silviculture prescriptions for every harvest block for harvesters to perform in order to maintain the sustainability of the forest.[1384] Under the SFDA, the GOQ requires TSG holders to perform forest development activities, which include partial cuts, whereby a harvester is limited in the volume of timber that can be removed from a stand.[1385] Resolute secures a portion of its Crown-origin timber from TSGs; therefore, to ensure a secure supply of timber, Resolute must

[1381] *See, most recently, Lumber V AR3 Final* IDM at Comment 70.
[1382] The PIAF operates in the same manner as the PCIP. *See* GOQ Non-Stumpage IQR Response at Exhibits QC-PIAF-A (and all referenced exhibits therein) and QC-PCIP-A (and all referenced exhibits therein); *see also* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-PIAF-APP (and all reference exhibits therein). Resolute's Exhibit RES-NS-PIAF-APP includes a response for both the PCIP and PIAF.
[1383] *See CVD Preamble*, 63 FR at 65361.
[1384] *See* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-PIAF-APP at 3-4.
[1385] *Id.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

carry out the activities required of TSG holders, including partial cuts on certain harvest stands.[1386]

During the POR, Resolute received payments under both the PCIP and PIAF, which partially offset costs incurred for a legally required activity under its TSG; therefore, we determine that this program provides a benefit to Resolute under section 771(5)(E) of the Act, and that a benefit exists in the amount of reimbursements received by Resolute, pursuant to 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1387] The fact that the reimbursements were only partial does not negate the fact that a benefit was received by Resolute.

We disagree that any advantages to Québec in undertaking the PCIP and PIAF are relevant to the benefit that Resolute received from the GOQ.[1388] Any gain that Québec receives from the PCIP and PIAF is separate from the benefit conferred on Resolute. When analyzing the benefit received by a grant, pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Under 19 CFR 351.504(a) Commerce does not contemplate any advantages the government might receive by administering the program, nor do the regulations require Commerce to consider advantages other parties, such as the general public, may or may have not received. Because the GOQ made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

We have addressed arguments from the GOQ and Resolute regarding whether Commerce must account for reciprocal value when assessing the countervailability of grant programs in Comment 3, *supra*. As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the "benefit" as "the amount of the grant." As noted above, in the absence of the reimbursements, Resolute would still have been legally obligated to comply with the government's rules to harvest in the affected forest areas. Under this framework, any reimbursement of the associated costs incurred is, in fact, a benefit to Resolute in the form of a grant.

We also disagree that Resolute's harvesting activities under the PCIP and PIAF constitute a service, and, thus, the associated payments are not countervailable because the exchange of partial cutting for partial reimbursement is a reciprocal obligation. As a TSG holder, Resolute was legally required to perform partial cuts on certain harvest stands. Under the PCIP and PIAF, the GOQ provided a grant to Resolute for harvesting on lands where such partial cutting of harvest stands was required. The partial cutting was performed in the furtherance of Resolute's

[1386] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-PCIP-A (and all referenced exhibits therein) and Exhibit QC-PIAF-A (and all referenced exhibits therein); *see also* Resolute Stumpage IQR Response at 39-40 and Exhibit RES-STUMP-QC-14 (SFDA); and Resolute Non-Stumpage IQR Response at Exhibit RES-NS-PIAF-APP (and all referenced exhibits therein). Resolute's Exhibit RES-NS-PIAF-APP includes a response for both the PCIP and PIAF.
[1387] *See CVD Preamble*, 63 FR at 65361.
[1388] *See* Resolute Case Brief at 131-132.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

harvesting activities within its normal course of business, and not to render a service to the GOQ or general public.

Additionally, in support of their arguments that the reimbursements are not grants, both the GOQ and Resolute cite to the *DS 533 Panel Report*.[1389] 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.[1390] 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.[1391] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[1392]

Lastly, Resolute's argument that the costs of the partial harvesting should be treated in the stumpage calculations as in-kind contributions is baseless.[1393] As we have explained in a prior and in the current review, in-kind and other related expenses are part of Resolute's TSG and are not part of the stumpage price as calculated from the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*.[1394] Commerce cannot adjust for such costs without distorting the benchmark. Resolute's reference to *Lumber IV* is unavailing, as the record evidence in this review stands on its own.[1395]

Comment 55: Whether PDB Is Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 68-74.

> {Commerce} erroneously preliminarily concluded that the {PDB} program is a countervailable grant. The {PDB} program partially reimburses commercial harvesters for the incremental costs of complying with harvesting restrictions imposed under the {ENRQC Agreement}. The program is not countervailable as the reimbursement under the {PDB} {p}rogram does not confer any benefit to Resolute, but instead compensates Resolute for the services it performed for the benefit of the public and the government's environmental goals, as well as its obligations to the Cree Nation. In the alternative, the GOQ contends that no grant or benefit is conferred on harvesters such as Resolute because there is no gift of money and the benefit runs to Québec rather than to the harvester.

[1389] *See* GOQ Case Brief Vol. VII(b) at 63 (citing *DS 533 Panel Report* at para. 7.625); *see also* Resolute Case Brief at 106-107 (citing *DS 533 Panel Report* at paras. 7.626 and 7.628).
[1390] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[1391] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[1392] *See* SAA at 659.
[1393] *See* Resolute Case Brief at 109-110.
[1394] *See* Comment 23; *see also Lumber V AR3 Final* IDM at Comment 42.
[1395] *See* Resolute Case Brief at 110.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 104-105, 108-110, 130-131, and 132-133.

> {Commerce} has found preliminarily that partial payments to Resolute under the Québec {PCIP}, the {PIAF}, and the {PDB}, for the performance of certain harvesting treatments in public forests constituted grants and, therefore, were financial contributions. But these three programs all involve a mutual exchange of consideration – harvesters are paid in exchange for the costs of performing valuable silvicultural treatments and foregoing harvesting rights at normal volumes and rates. Payments to Resolute under PCIF, PIAF, and PDB during the POR were, therefore, not financial contributions and not countervailable.
>
> The PCIP/PIAF and PDB required Resolute to undertake more costly harvesting practices (partial cutting, mosaic cutting) and forego timber volume, while nonetheless paying the same price for stumpage. Québec provided only partial compensation for those additional burdens. Because the payments did not provide a net gain, profit, or advantage, {Commerce} should find that the programs conferred no measurable 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 255-258.

> The GOQ and Resolute erroneously argue that payments under the partial cut reimbursement programs render a service to the GOQ, and are therefore not countervailable. Payments under the programs help defray the costs of legal obligations on the part of harvesters, as leaving certain portions of the forest uncut within their designated harvest areas is a legal obligation imposed by the GOQ. Any benefit accruing to the GOQ under these programs is irrelevant to {Commerce's} analysis, as {Commerce} is only required to consider the value of the benefit accruing to the recipient of a grant program under {19 CFR. 351.504(a)}. The fact that program payments defray only a portion of the costs to harvesters of conforming to the partial cut mandates does not mean that a benefit did not accrue, as the Canadian Parties argue, and {Commerce} is not required, under statute or regulation, to consider whether obligations under a program generate a net cost to the recipient.

Commerce's Position: The GOQ and Resolute raised substantially the same arguments in prior administrative reviews.[1396] We found the arguments unpersuasive then and continue to do so here. We therefore continue to find that the PDB is a countervailable grant program that confers a benefit on Resolute.

[1396] *See, most recently, Lumber V AR3 Final* IDM at Comment 71.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Just as with the PCIP and PIAF, there is a government action that confers a benefit, *i.e.*, reimbursements, under the PDB which offset a portion of the legally required costs incurred by harvesters within their ordinary course of business.[1397] When harvesting on Cree Nation land, forestry companies are legally required to cut smaller blocks in a widely dispersed mosaic pattern and build additional roads. Pursuant to the ENRQC Agreement the GOQ compensates forestry companies for a portion of the increased costs of harvesting timber in forests located within the Cree territories.[1398]

During the POR, Resolute received payments in the form of reimbursements under the PDB that partially offset its harvesting costs. Because payments under the PDB offset a portion of the legally required costs incurred by harvesters within their ordinary course of business, we determine that this program provides a benefit to Resolute under section 771(5)(E) of the Act, and that the benefit exists in the amount of reimbursements received by Resolute, pursuant to 19 CFR 351.504(a). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1399] The fact that the reimbursements were only partial does not negate the fact that a benefit was received by Resolute.

We disagree that any cost advantages to harvesters cutting in other forest areas of the province are relevant to this issue.[1400] The fact that harvesters of Crown land in other areas are not participating in the PDB says nothing about the benefit that Resolute itself actually received under the program. Equally, we disagree that any advantages to Québec in undertaking the PDB are relevant to the benefit that Resolute received from the GOQ.[1401] Any gain that Québec receives from the PDB is separate from the benefit conferred on Resolute. When analyzing the benefit received by a grant, pursuant to 19 CFR 351.504(a), Commerce considers the benefit to be the amount of the grant received by the company. Under 19 CFR 351.504(a) Commerce does not contemplate any advantages the government might receive by administering the program, nor do the regulations require Commerce to consider advantages other parties, such as the general public, may or may have not received. Because the GOQ made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

We further discuss arguments on whether Commerce must define grants as "gifts" and whether Commerce must account for reciprocal value when evaluating the countervailability of grant programs in Comment 3.[1402] As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the "benefit" as "the amount of the grant." We also disagree that Resolute's harvesting activities under the PDB constitute a service, and, thus, the associated payments are not countervailable because the exchange of

[1397] *See CVD Preamble*, 63 FR at 65361.
[1398] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-CA-A (and all referenced exhibits therein); *see also* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-PDB-APP (and all referenced exhibits therein).
[1399] *See CVD Preamble*, 63 FR at 65361.
[1400] *See* GOQ Case Brief Vol. VII(b) at 71.
[1401] *Id*. at 73.
[1402] *Id*. at 72; *see* also Resolute Case Brief at 108-109.

partial cutting for partial reimbursement is a reciprocal obligation. Under this program, the GOQ provided a grant in furtherance of Resolute's harvesting activities within its normal course of business on Cree land, and not to render a service to the GOQ or general public.

Additionally, in support of its arguments, the GOQ cites the *DS 533 Panel Report*.[1403] However, as explained *supra*, WTO panel conclusions are without effect under U.S. law unless and until such a report has been adopted.[1404] WTO reports, like the *DS 533 Panel Report*, have no application to U.S. law absent the United States agreeing to such application and do not limit automatically Commerce's discretion in applying the statute in an AD or CVD proceeding.[1405] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[1406]

Lastly, Resolute's argument that the costs of the partial harvesting should be treated in the stumpage calculations as in-kind contributions is baseless.[1407] As we have explained in a prior and in the current review, in-kind and other related expenses are part of Resolute's TSG and are not part of the stumpage price as calculated from the *2021-2022 Private Market Survey* and the *2023 Private Market Survey*.[1408] Commerce cannot adjust for such costs without distorting the benchmark. Resolute's reference to *Lumber IV* is unavailing, as the record evidence in this review stands on its own.[1409]

Comment 56: Whether the PEEOL Program Is Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 52-55.

> The {PEEOL} is not a countervailable grant because it is tied to non-subject merchandise. Respondents cannot benefit from any assistance because the assistance cannot be applied to the production of softwood lumber. The PEEOL is a {GOQ} program that provides assistance for certain transportation expenses to harvesters of hardwood in the Outaouais and Laurentians regions. Commerce's *Preliminary Results* improperly do not address the fact that the PEEOL is unrelated to the subject merchandise – softwood lumber – and is explicitly tied at the time of bestowal to non-subject merchandise, low-quality hardwood.

[1403] *See* GOQ Case Brief Vol. VII(b) at 71.
[1404] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[1405] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[1406] *See* SAA at 659.
[1407] *See* Resolute Case Brief at 109-110.
[1408] *See* Comment 23; *see also Lumber V AR3 Final* IDM at Comment 42.
[1409] *See* Resolute Case Brief at 110.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 135-136.

> {Commerce} has countervailed payments to Resolute under PEEOL, a program adopted to address the economic and sustainability issues arising from the closure of a pulp mill in the Outaouais/Laurentides regions. Resolute was reimbursed only incremental transportation costs associated with moving low-quality hardwood fiber to alternative markets after the closure of a regional pulp facility. A partial reimbursement for such additional expenses does not create an advantage, profit, or good.

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 270-272.

> Resolute received countervailable financial contributions when the GOQ distributed funds whose purpose was to offset some of the transportation cost for low-value hardwood harvested in the Outaouais and Laurentides regions. Payments under PEEOL defrayed some of those transportation costs which Resolute otherwise would have absorbed in their entirety in the absence of the program. It is irrelevant to {Commerce's} analysis whether the program covered some of, all of, or more than the cost Resolute incurred. Rather, {Commerce} is only required to ask whether Resolute received a direct transfer of funds under the terms of the program at hand. In turn, {Commerce} correctly attributed the full value of the payments as a grant when calculating the benefit to Resolute.
>
> The PEEOL is not tied to non-subject hardwood products. As Resolute explained, "{l}ow-quality hardwood pulpwood often is harvested incidentally as part of the process of harvesting in softwood forest areas." Accordingly, for softwood lumber producers such as Resolute at its Maniwaki mill, the costs for dealing with this unwanted hardwood fiber are costs incidental to the production of its own products such as softwood lumber. The GOQ is therefore helping Resolute cover its costs of operating its sawmill, which leaves no room for the payments to be "tied" solely to non-subject merchandise. {Commerce} should reject the GOQ's arguments to the contrary and continue to find payments under the PEEOL untied and countervailable in the final results.

Commerce's Position: As discussed in the *Preliminary Results*, the PEEOL provides financial assistance for transporting low-quality hardwood outside the Outaouais and Laurentians regions and returning quality hardwood from the Abitibi-Témiscamingue region.[1410] Resolute reported that it received assistance during the POR for the transport of hardwood pulpwood outside the

[1410] *See Preliminary Results* PDM at 74-75.

Outaouais and Laurentides regions.[1411] For these final results, for the reasons detailed below, we find that the PEEOL program is countervailable.

The GOQ argues that assistance granted under the PEEOL is tied to non-subject merchandise because the assistance is limited to hardwood transportation, and thus does not benefit the overall operations of the company.[1412] Resolute argues that the PEEOL funding did not confer an "advantage, profit, or good" to Resolute because the funds only partially reimbursed Resolute's costs of transporting non-subject merchandise.[1413] As explained below, we find that the purpose of the PEEOL payments are to ensure Resolute's continued overall harvesting operations in these regions and are not specifically tied to the production of non-subject merchandise.

The record indicates that costs associated with dealing with excess low-quality hardwood are costs incurred in the normal operations of all harvesters in the Outaouais and Laurentians regions, such as Resolute. As explained by the GOQ, the Outaouais and Laurentians regions are primarily composed of deciduous and mixed forests, such that "{i}t is impossible to harvest a site without generating volumes of low-quality hardwood."[1414] Resolute confirms that "{l}ow-quality hardwood pulpwood often is harvested incidentally as part of the process of harvesting in softwood forest areas."[1415] After the closure of the Thurso pulp mill in 2019, the GOQ states that "substantial volumes of low-quality hardwood from the Outaouais and Laurentians regions have found no buyers."[1416] In the PEEOL Normative Framework 2023-2025, which contains the conditions and guidelines governing the program,[1417] the GOQ explains that "it is difficult for private landowners and loggers to carry out profitable harvesting operations without outlets for low-quality hardwood."[1418] As acknowledged by Resolute, the closure of the Thurso pulp mill "forc{ed} forestry companies located in the region to determine how best to manage the excess supplies" of the low-quality hardwood.[1419] Thus, the costs of dealing with this low-quality hardwood, including costs incurred in selling and transporting the wood to buyers, is part of Resolute's normal operations. Under the program, Resolute received reimbursements for costs it incurred in shipping hardwood pulpwood to customers outside the Outaouais and Laurentides regions.[1420] Because the GOQ reimburses companies for costs incurred in their ordinary course of business, we find that payments under PEEOL constitute a financial contribution as a direct transfer of funds under section 771(5)(D)(i) of the Act.

Regarding Resolute's argument that "partial reimbursement" of costs associated with a subsidized activity negates the benefit conferred by the subsidy,[1421] Commerce has previously

[1411] *See Preliminary Results* PDM at 75 (citing Resolute Non-Stumpage IQR Response at Exhibits RES-NS-PEEOL-APP and RES-NS-PEEOL-2).
[1412] *See* GOQ Case Brief Vol. VII(b) at 53-55.
[1413] *See* Resolute Case Brief at 135-136.
[1414] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-PEEOL-A (p. 1).
[1415] *See* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-PEEOL-APP (p. 1).
[1416] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-PEEOL-A (p. 1).
[1417] *Id*. at Exhibit QC-PEEOL-A (p. 5).
[1418] *Id*. at Exhibit QC-PEEOL-2 (PEEOL Normative Framework 2023-2025, p. 5.)
[1419] *See* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-PEEOL-APP (p. 1).
[1420] *See* Resolute Case Brief at 135; *see also* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-PEEOL-APP (pgs. 1-3).
[1421] *See* Resolute Case Brief at 136.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

rejected similar arguments in other programs and we do so here as well.[1422] As stated at 19 CFR 351.503(a), Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations. The language of our regulations at 19 CFR 351.504(a) for determining the benefit in the case of a grant explicitly describes the "benefit" as "the amount of the grant." In analyzing whether a benefit exists, Commerce is concerned with what goes into a company.[1423] The fact that Resolute received partial reimbursements for its transportation activities does not negate the fact that a benefit was received. Therefore, we continue to find that the entire amount of the PEEOL payments constitutes a benefit to Resolute, pursuant to 19 CFR 351.504(a).

Regarding tying, Commerce generally considers subsidies to be untied, as most subsidies benefit the entire production of a company.[1424] The tying regulations, however, were implemented "to attribute subsidies rather than tracing subsidies through {a} company{'s}" production process.[1425] 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, {Commerce} will attribute the subsidy only to that product."[1426] When determining whether a subsidy is tied to particular product or market Commerce's practice, codified at 19 CFR 351.525(b), is to examine whether the intended use is known to the subsidy provider and so acknowledged prior to or concurrent with the bestowal of the subsidy.[1427] As the *CVD Preamble* to Commerce's regulations makes clear, our analysis of whether a subsidy is tied to a particular product focuses on the "stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal."[1428]

As discussed above, the sale of incidentally harvested hardwoods, including low-quality hardwood, is important for profitable harvesting operations in the Outaouais and Laurentides regions. As the PEEOL Normative Framework 2023-2025 details, "{l}ow-quality hardwoods are found in all harvested forest stands; therefore, it is impossible to avoid them. The problem therefore comes up every year and without an outlet for these volumes, the entire forest industrial structure of these regions is in danger."[1429] The Private Forest Application Framework 2021-2022 echoes this concern:

> On October 7, 2019, Fortress Specialty Cellulose Inc. (Fortress) announced the shutdown of the Thurso pulp mill for an indefinite period. Since this closure, large volumes of low-quality hardwood in the Outaouais and Laurentides regions have gone unfilled. The lack of outlets for these lumbers therefore threatens the

[1422] *See*, *e.g.*, *Lumber V AR3 Final* IDM at Comment 72, where Commerce countervailed the entire amount of the grants under the Côte-Nord Wood Residue program, which partially offset the cost of the subsidized projects: "The fact that the reimbursements were only partial does not negate the fact that a benefit was received by Resolute."); *see also Lumber V AR3 Final* IDM at Comments 67, 70, 71, 73, and 74.
[1423] *See CVD Preamble*, 63 FR at 65361
[1424] *Id*., 63 FR at 65400.
[1425] *See Rectangular Pipe and Tube from China* IDM at 37-38 (citing *CFS from China* IDM at Comment 18).
[1426] *Id*. (citing *CFS from China* IDM at Comment 18).
[1427] *See Pipes and Tubes from Türkiye* IDM at 21 (citing *Lumber V Final* IDM at Comment 53).
[1428] See *CVD Preamble*, 63 FR at 65403.
[1429] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-PEEOL-2 at 5.

> profitability of sawmills in these regions since they must absorb the supply costs usually born by Fortress.[1430]

In order to "maintain the industrial structure of the Outaouais and Laurentides regions," the GOQ launched the PEEOL for the 2020-2021 fiscal year, and renewed the program for the 2021-2023, and 2023-2025 fiscal years.[1431] As explained in the *Preliminary Results*, the PEEOL has two components: (1) assistance for the transport of low-quality hardwood out of the Outaouais and Laurentides regions, the original component of the program; and (2) assistance for the transport of quality wood into the Abitibi-Témiscamingue region, added in the 2023-2025 Normative Framework.[1432]

As explained in the PEEOL Normative Framework 2023-2025, the stated purpose of the PEEOL is to support the harvesting/processing of all timber in the region, not just to assist with the production of hardwood or the harvesting/processing of hardwood:

> This assistance is intended to channel volumes of low-quality hardwood to users outside the said regions in order to maintain harvesting activities in public and private forests in the Outaouais and Laurentides regions.[1433]

Also:

> The general objective of this Program is to allow the disposal of volumes of low-quality hardwood from the harvesting and management of public and private forests in the Outaouais and Laurentides regions in order to maintain the harvesting and processing of quality wood.[1434]

While the GOQ argues that the PEEOL only supports the transport of hardwood, the GOQ itself explains that this funding is meant to support the "harvest and processing of peeling and sawn quality wood."[1435] As the GOQ explains, through its two components of "ensuring a market for low-quality hardwood from harvests" and "reducing impacts on hardwood sawmills," the PEEOL program "aims to maintain the industrial structure of those regions."[1436] On this basis, we find that the stated purpose of the PEEOL program is to support continued overall harvesting operations in the program regions and is not tied to the production/processing of a particular product.. We therefore determine that the benefits under the PEEOL program are not tied to the production or sale of a particular product. As a result, for the final results, we continue to attribute benefits under the PEEOL to Resolute's total sales.

[1430] *Id.* at Exhibit QC-PEEOL-13 at 1.
[1431] *Id*. at Exhibit QC-PEEOL-A at 2 and QC-PEEOL-2 (PEEOL Normative Framework 2023-2025) at 6.
[1432] *Id*. at Exhibit QC-PEEOL-A at 1-2.
[1433] *Id*. at Exhibit QC-PEEOL-2 (PEEOL Normative Framework 2023-2025) at 6.
[1434] *Id*. "Quality Wood" is defined in the framework as "Hardwoods or white and red pines, usable by sawmills or peelers," (Exhibit QC-PEEOL-2 at 3).
[1435] *Id*. at Exhibit QC-PEEOL-17 at "Objectives of the PEEOL."
[1436] *Id*. at Exhibit QC-PEEOL-A at 1.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 57: Whether the PIB Is Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(a) at 74-76; *see also* GOQ Case Brief Erratum.

> The {PIB} does not confer a countervailable benefit because it is tied to non-subject merchandise. The program provides support for innovative projects in the forest products industry or industrial projects using volumes of pulpwood-quality wood. The projects approved were tied to new, innovative products, all of which are non-subject merchandise.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 76-78, and 154.

> {The GOQ} intended PIB funding to promote the creation of new and innovative wood fiber products other than lumber. Record evidence of the bestowal documents, including applications, approvals, and project agreements, demonstrates that, for each of the five PIB projects, {the GOQ} intended payment for the production of products other than the subject merchandise.
>
> Resolute adopts and incorporates by cross-reference the arguments of the {GOC}, the {GOQ}, and the {GOO} that {Commerce's} preliminary specificity findings with respect to non-stumpage and programs applicable to Resolute are unsupported by record evidence or otherwise 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 258-260.

> Grants under PIB are not tied to non-subject merchandise. Resolute and the GOQ assert that because the projects that Resolute received funding for were related to developments in forest product areas outside of softwood lumber, the subsidy is necessarily tied to that non-subject merchandise. In other words, their theory is that because the government knew that the projects were for innovations in specific areas (because they approved the projects), the government intended to subsidize the production of those products. However, this confuses the purpose of the government's assistance program (to aid and promote the forestry industry) with the way Resolute used the funding. Commerce's focus is only on the former. The purpose of the PIB is to promote the forestry industry by funding innovation.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce's Position: Commerce continues to find that the PIB is not tied to non-subject merchandise and is *de jure* specific for these final results. We find that the GOQ and Resolute raised the same arguments in prior reviews[1437] and there is no new record evidence in this review that would lead Commerce to revise our analysis.

In the *Preliminary Results* Commerce preliminarily determined that the PIB is *de jure* specific pursuant to section 771(5A)(D)(i) of the Act.[1438] Resolute argues that the PIB is not specific because "eligible participants must either work in the forest products industries or use products from these industries, which means the participants may work in virtually any industry."[1439] For a discussion of Commerce's overall practice regarding specificity, *see* Comment 2, *supra*.

As explained in the *Lumber V AR3 Final*, the specificity test is designed to avoid the imposition of CVDs where a subsidy is broadly available and used throughout an economy.[1440] It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the CVD law.[1441] Commerce may make a finding of *de jure* specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.

The 2016 Forest Innovation Program Normative Framework, under which the PIB was established explicitly states that an eligible applicant must be "specializing in the forest products industry."[1442] The 2023 Forest Innovation Program Normative Framework's eligibility criteria similarly require that participants "work in the forest products industry or use the products of this industry, or in the forestry equipment manufacturing industry."[1443] Because the GOQ expressly limits access to the subsidy to particular enterprises, *i.e.*, entities working in the forest products or forest equipment manufacturing industries and entities using forest products, Commerce continues to find that the PIB is *de jure* specific, under section 771(5A)(D)(i) of the Act.

Further, there is no evidence to suggest, as the respondents do, that the PIB cannot confer a benefit on softwood lumber producers because the PIB stimulates investments in innovative products and innovative products are not related to subject merchandise. The Normative Framework makes clear that the projects funded under PIB are to enhance the value of wood fiber and diversify the product offerings in order to promote the competitiveness of the forest industry.[1444] The 2023 Normative Framework states that "{the} purpose of this program is to support investments by companies in the forest industry in order to stimulate the Québec economy."[1445] The record shows that eligibility for this subsidy is not tied to non-subject

[1437] *See Lumber V AR1 Final* IDM at Comment 79; *see also Lumber V AR2 Final* IDM at Comment 86; and *Lumber V AR3 Final* IDM at Comment 75.
[1438] *See Preliminary Results* PDM at 69.
[1439] *See* Resolute Case Brief at 154 (citing Resolute Non-Stumpage IQR at Exhibit RES-NS-PIB-APP at 2).
[1440] *See* SAA at 930.
[1441] *Id*.
[1442] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-PIB-1 at 5.
[1443] *Id*. at Exhibit QC-PIB-5 (Section 3.1). The 2023 Normative Framework is the most recent framework submitted by the GOQ.
[1444] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-PIB-1 at 4 and Exhibit QC-PIB-5 (Section 2).
[1445] *Id*. at Exhibit QC-PIB-5 at 3.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

merchandise,[1446] but rather, the Normative Framework indicates that the PIB supports the forest products industry, which is defined as "industry comprising primary, secondary and tertiary processing in the pulp, paper and bioproducts, panels, sawmilling, wood construction and bioenergy sectors, as well as manufacturers of equipment specializing in wood processing."[1447] As such, we continue to find that the PIB was not tied to non-subject merchandise and bestowed a benefit to Resolute during the POR, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).

Comment 58: Whether Commerce Properly Countervailed Hydro-Québec's EDL Program

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 119-124 and 153.

> Resolute adopts and incorporates by cross-reference the arguments of the Government of Canada, the Government of Québec, and the Government of Ontario that {Commerce}'s preliminary specificity findings with respect to non-stumpage and programs applicable to Resolute are unsupported by record evidence or otherwise not in accordance with law.
>
> {Commerce} preliminarily countervailed provincial energy efficiency and GHG reduction programs in Québec as grants. {Commerce}'s approach ignored record evidence and the plain language of the CVD statute to classify these reciprocal transactions as financial contributions. Hydro Québec and other Québec entities (one of which is not even a government entity) have adopted policies to realize energy efficiencies and fight climate change. They have entered into agreements to pay consumers like Resolute in exchange for efficiency energy improvements and lower GHG emissions. The programs here are not gift-like transfers to Resolute because they involve contracts with valuable consideration.

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief at 45-52.

> Commerce improperly found that the EDL was a countervailable grant. The EDL program provides reduced electricity costs to encourage large industrial (Rate L) power consumers to make productivity- or energy-efficiency-related investments. The EDL program does not confer a benefit because it is contractual in nature, with the amount of assistance corresponding to specific energy efficiency measures that must be fulfilled before any support is received. It is not *de jure* specific because it is not limited by law to an enterprise or industry. Further, it constitutes the

[1446] *Id*. at Exhibit QC-PIB-A at 8-13 and Exhibit QC-PIB-5 (Section 3).
[1447] *Id*. at Exhibit QC-PIB-5 (Section 1).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

purchase of a service by the GOQ because it increases energy efficiency in Québec and furthers environmental commitments relating to decarbonization.

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 227-238.

> The EcoPerformance, ESP, and EDL programs constitute countervailable grants, the payments for which generate a benefit to Resolute in the amount of the grant. Transfers made under these three programs do not constitute payments for services rendered. The "services" described by Resolute are rather general policy goals, such as having "greater . . . capacity to meet public electricity needs," and generate no binding obligations on the part of Resolute. When calculating benefit under these programs, {Commerce} is not required to consider advantages which might accrue to the government from administering the programs, and quantification of the benefit accrued requires only determining the amount of the funds directly transferred by GOQ to Resolute. The EcoPerformance grants at Resolute's Clermont and Kenogami facilities are not tied to pulp and paper production, and neither is the grant for the St.-Felicien mill. Significant record information confirms that the purpose of the program "reduce GHG emissions in Québec through measures related to consumption, energy production and fugitive emissions from processes from a sustainable development perspective." Participation is not limited to projects at facilities that produce a certain product; rather, it is open to entities that "consume one or more fossil fuels or uses processes that produce fugitive GHG emissions" and operate in the "commercial, institutional, municipal, industrial or manufacturing" sectors. {Commerce} should find that none of these grants are tied in the final results. Financing under ESP is not tied to non-subject merchandise just because the project was undertaken at a paper mill. {Commerce} only analyzes the purpose of the government program, not the participant's use of the funds. The purpose of the ESP program is to "support the realization of energy efficiency projects in industrial businesses in Quebec that will reduce the average amount of electricity used per unit produced." The program was created because "Hydro-Quebec is committed to actively participating in Quebec's energy transition." {Commerce} should reject Resolute and the GOQ's arguments. The Canadian Parties argue that the EDL program is not specific because Rate L customers do not constitute a particular enterprise or industry. However, EDL's energy restriction hinges on "the nature of an enterprise's operations" and thus renders the program de jure specific. {Commerce} has consistently found this program *de jure* specific in prior segments of this proceeding, concluding that the governing legislation establishes a limited group of enterprises eligible to receive benefits under the program. The Canadian Parties have identified no new facts or arguments warranting a departure from {Commerce}'s longstanding practice. Therefore, {Commerce} should continue to find the EDL program *de jure* specific in the final results.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce's Position: Under Hydro-Québec's EDL program, also known as the LRR program, businesses billed at the large power industrial rate (Rate L) that carry out one or more eligible investment projects can receive government assistance in the form of reduced electricity costs in their establishments billed at Rate L.[1448] As the GOQ reported, "the purpose of the program is to encourage large industrial power consumers—defined as Rate L customers—to undertake eligible investments."[1449] The GOQ and Resolute raised these same arguments about the EDL in prior reviews, most recently the *Lumber V AR3 Final*.[1450] We found the arguments unpersuasive then and continue to do so here.

First, the GOQ claims that the EDL program is not *de jure* specific, because it is not limited by law to an enterprise or industry.[1451] Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. The subsidies that are provided by Hydro-Québec through this program are expressly limited by Decree 675-2016 to only "consumers billed at Rate L."[1452] This evidence shows that the GOQ has established, by law, a discrete group of enterprises—Rate L consumers—that can receive assistance from Hydro-Québec in the form of electricity rebates for investment projects.[1453] That the GOQ may not have limited eligibility to commonly defined enterprises or industries does not alter this conclusion. Therefore, we continue to find the Rate L discount program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity, we need not examine whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

Second, the GOQ argues that an electricity discount in exchange for a service is not a grant and does not confer a benefit, because, according to Resolute, the EDL program involves transactions with valuable consideration. Instead, the Canadian Parties claim that the EDL program is a purchase of a service by the GOQ because it increases energy efficiency in Québec and furthers environmental commitments relating to decarbonization. As explained in the *Lumber V AR3 Final*, we disagree that, consistent with the *Government of Sri Lanka v. U.S.*, Commerce must define the term "benefit" as a "gift without consideration" or that it is appropriate to consider the context in which a grant is provided. A grant is not limited to a transfer of money without consideration, nor must a grant only be a gift. Pursuant to the regulations, Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations.[1454] Section 771(5)(D)(i) of the Act includes the word "grant" in its definition of a "financial contribution," stating that it is "the direct transfer of funds, such as grants…." According to 19 CFR 351.504(a), "a benefit exists in the amount of a grant." Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1455] Under this framework, any grant payments are, in fact, a benefit to the recipient.

[1448] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-EDL-A.
[1449] *Id.* at 1.
[1450] *See Lumber V AR3 Final* IDM at Comment 5 and 83; *see also Lumber V AR2 Final* IDM at Comment 90; and *Lumber V AR1 Final* IDM at Comment 85.
[1451] *See* GOQ Case Brief Vol. VII(b) at 46.
[1452] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-EDL-A and QC-EDL-2.
[1453] *Id.*
[1454] *See* 19 CFR 351.503(a).
[1455] *See* 19 CFR 351.503(c).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

The Canadian Parties claim that the EDL program is a purchase of a service by the GOQ because it increases energy efficiency in Québec and furthers environmental commitments relating to decarbonization.[1456] However, Decree 675-2016 also states that "the rebate applied through the electricity bill will provide consumers billed at Rate 'L' with additional liquidity to make investments in order to be more competitive."[1457] The reduced electricity costs (in the form of electricity rebates) allow for the reimbursement of up to 50 percent of the eligible costs of an investment.[1458] In other words, the GOQ provides an incentive to encourage a particular behavior which both aligns with the government's policy goals and increases the competitiveness of Canadian businesses. We thus continue to find that the Rate L discount program confers a benefit equal to the amount of electricity rebates received, as provided under section 771(5)(E) of the Act, which states that a benefit shall normally be treated as conferred where there is a benefit to the recipient. Under the program, participants—like Resolute—receive a benefit in the form of electricity rebates from Hydro-Québec on their monthly electricity bills. The fact that the electricity rebates were provided as part of a contract does not negate the fact that a benefit was received.

Commerce has consistently determined that the EDL program provides countervailable subsidies in the form of grants to program participants.[1459] There is no new information or argument on the record of this review that would cause Commerce to reconsider its findings that the assistance provided under these programs constitutes a financial contribution in the form of a direct transfer of funds from the government, pursuant to section 771(5)(D)(i) of the Act. We, therefore, continue to determine that the programs bestow a benefit in the amount of the grants provided, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a).

Comment 59: Whether the Plant Closure under the Power Purchase Agreement: Centrale Thermique PF Résolu de Senneterre Program Is Countervailable

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 113-114 and 139-140.

> The CTS "Plant Closure under the Power Purchase Agreement" represents payments made pursuant to a 2016 contract between Boralex, the previous owner of CTS, and Hydro Québec (CTS Suspension Contract). The contract reflected a mutual exchange of consideration. The contract payments were not unidirectional "assistance" that is accorded to facilities undergoing economic decline. The suspension payments were intended to compensate Resolute (initially Boralex) for a service – the temporary suspension of production – in furtherance of provincial

[1456] *See* GOQ Case Brief Vol. VII(b) at 50-52.
[1457] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-EDL-2.
[1458] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-EDL-A.
[1459] *See Lumber V AR3 Final* IDM at Comment 5; *see also Lumber V AR2 Final* IDM at Comment 5, 72, and 90.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

energy efficiency goals. As services, they do not constitute financial contributions and are not, therefore, countervailable.

{Commerce} assigned a preliminary rate of 0.05 percent to payments made to Resolute under the CTS Suspension Contract, which erroneously included provincial taxes. Consistent with {section 771(6) of the Act} (Net Countervailable Benefit) and {Commerce}'s practice in *Lumber V*, {Commerce} should exclude from the total payment amount the amount of sales taxes as reported by Resolute. The revised numerator, when divided by Resolute's total sales for the POR, results in a final rate of 0.04 percent.

GOQ Case Brief

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

As Commerce explained in the Preliminary Results, "Resolute acquired the forest biomass cogeneration power plant in Senneterre, Québec in 2022. When Resolute acquired this power plant, the 1993 Power Purchase Agreement transferred to Resolute." The Reduction Agreement between the two parties provides that "Hydro Québec is to pay Resolute in two installments {annually} for the suspension of electricity production at the Senneterre facility." The record provides substantial evidence that the plant closure under the power purchase agreement is tied to non-subject merchandise at the time of bestowal. The Senneterre facility produces only electricity, and the Power Purchase Agreement is related only to that plant. In the final results, Commerce must consider as much.

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 218-222.

The payments made by Hydro Québec to Resolute to compensate Resolute for the temporary shutdown of its cogeneration facility at Seneterre were properly treated as conferring a benefit to Resolute. Contrary to the Canadian Parties' assertion, record evidence shows that the Suspension Agreement does not constitute a mutual exchange of value. Under 19 C.F.R. § 351.524(c)(1), {Commerce} will "normally treat . . . plant closure assistance" as a nonrecurring benefit to the recipient. Resolute's references to *British Steel* incorrectly treat that decision as defining the universe of countervailable plant closures as compensation for shuttering "facilities undergoing economic decline." Resolute's claim that any subsidy generated by the Suspension Agreement would be extinguished at the time it purchased the Senneterre facility is unsupported and should be treated as waived by {Commerce}. These payments are not tied to non-subject merchandise. {Commerce}'s clearly stated practice is to "consider certain subsidies, such as payments for plant closures, equity infusions, debt forgiveness, and debt-to-equity conversions, to be untied

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> because they benefit all production." Indeed, this is logical as payments to help close a facility cannot be intended to benefit the production or sale of that facility's merchandise, as it is being closed. {Commerce} should reject the GOQ's argument and continue to attribute the subsidy to Resolute's total sales in the final results.

Commerce's Position: We disagree with Resolute and the GOQ and continue to find the Plant Closure under the Power Purchase Agreement: Centrale Thermique PF Résolu de Senneterre Program to be countervailable.

On May 3, 1991, Hydro Québec launched a "restricted call for proposals," to address an energy deficit.[1460] The Senneterre power plant contract originated from this "restricted call for proposals," resulting in a Power Purchase Agreement signed in 1993, between Hydro Québec and an original producer.[1461] Resolute acquired the forest biomass cogeneration power plant in Senneterre, Québec in 2022.[1462] When Resolute acquired this power plant, the 1993 Power Purchase Agreement was transferred to Resolute.[1463] Resolute now sells electricity generated at this biomass power plant to Hydro Québec pursuant to this power purchase agreement established by the previous owners of the plant in 1993. Commerce addresses Hydro-Québec's purchase of electricity for MTAR through the 1993 CTS PPA, at comment 33. Per a related agreement with the original producer, and maintained by Resolute, Hydro Québec is to pay Resolute in two installments for the suspension of electricity production at the Senneterre facility.[1464] Resolute and Hydro Québec amended the existing 1993 PPA on June 15, 2022, to account for the change of ownership of the plant from the previous owner to Resolute.[1465]

As explained in the *Lumber V AR3 Final*, we disagree that, consistent with the *Government of Sri Lanka v. U.S., Commerce* must define the term "benefit" as a "gift without consideration" or that it is appropriate to consider the context in which a grant is provided. A grant is not limited to a transfer of money without consideration, nor must a grant only be a gift. Pursuant to the regulations, Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations.[1466] Section 771(5)(D)(i) of the Act includes the word "grant" as an example in its definition of a "financial contribution," stating that it is "the direct transfer of funds, such as grants…." According to 19 CFR 351.504(a), "a benefit exists in the amount of a grant." Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1467] Under this framework, any grant payments are, in fact, a benefit to the recipient.

Per 19 CFR 351.524(c)(1), the Secretary normally will treat the following types of subsidies as providing non-recurring benefits: equity infusions, grants, plant closure assistance, debt forgiveness, coverage for operating losses, debt-to-equity conversions, provision of non-general

[1460] *See* GOQ IQR at Exhibit QC-CFB-A at 1.
[1461] *Id.*
[1462] *Id.* at Exhibit QC-CFB-A and QC-CFB-14.
[1463] *Id.* at Exhibit QC-CFB-14.
[1464] *See* Resolute's Non-Stumpage IQR at Exhibits Res-NS-CTS-APP and CTS-3.
[1465] *Id.* at Exhibit Res-NS-CTS-APP.
[1466] *See* 19 CFR 351.503(a).
[1467] *See* 19 CFR 351.503(c).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

infrastructure, and provision of plant and equipment. We therefore disagree with Resolute's arguments that plant closure assistance constitutes the purchase of services. The regulation is clear: plant closure assistance is to be treated as a non-recurring grant. Resolute ceased its plant's operations at the CTS location for a contractually mandated period and was in-turn provided funds from Hydro Québec.[1468] Under 19 CFR 351.524(c)(1), the intent behind the plant closure assistance, *i.e.* whether or not the plant closure assistance was contractually mandated, is irrelevant to our analysis. Further, we agree with the petitioner that Resolute misrepresents the statute when referencing *British Steel* to argue that plant closure assistance must be tied to facilities undergoing "economic decline."[1469] Under 19 CFR 351.524(c)(1), plant closure assistance need not be associated with a facility with financial difficulties. Rather, countervailable plant closure assistance could include government funds provided to facilities implementing temporary closures for various reasons, including temporary closures requested or required by a contract, as is the case in the Plant Closure under the CTS PPA program.[1470]

We additionally disagree with the GOQ that the Plant Closure under the CTS PPA program is tied to non-subject merchandise at the time of bestowal and therefore not countervailable. The Plant Closure portion of the overall CTS PPA is required by contract between Hydro-Québec and the original owner of the plant.[1471] The GOQ argues that the plant closure under the power purchase agreement is tied to non-subject merchandise at the time of bestowal because the Senneterre facility produces only electricity, and the Power Purchase Agreement is related only to that plant.[1472] As explained at comment 34, 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.[1473] If, as the respondents continue to argue, a subsidy provided to the sale of electricity is tied to electricity, then electricity subsidies would escape the remedies provided under the CVD law. Under the premise of the respondents' argument, Commerce would be unable to countervail such programs as electricity subsidies, water subsidies, and land subsidies, because the benefits from 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.[1474] Additionally, Commerce considers certain subsidies, such as payments for plant closures, equity infusions, debt forgiveness, and debt-to-equity conversions, to be

[1468] *See* Resolute Non-Stumpage IQR at RES-NS-CTS-APP and Exhibit RES-NS-CTS-3.
[1469] *See* Resolute Case Brief at 114.
[1470] *See* Resolute Non-Stumpage IQR at RES-NS-CTS-APP and Exhibit RES-NS-CTS-3.
[1471] *Id.* at RES-NS-CTS-APP.
[1472] *See* GOQ Case Brief Vol. VII(b) at 86-88.
[1473] *See*, most recently, *Lumber V AR3 Final* IDM at Comment 48.
[1474] *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.

untied because they benefit all production.[1475] As such, we continue to find that the Plant Closure under the CTS PPA program is untied to subject merchandise.

Lastly, Resolute asks Commerce to remove the Québec Sales Tax and Goods and Services Tax from each side of the benefit calculation. As we explained in *Lumber V Final*,[1476] Commerce does not consider the tax consequences of a benefit in accordance with 19 CFR 351.503(e). 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 the Canadian Parties argue for – removing the Québec Sales Tax and the Goods and Services Tax from each side of the calculation– 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 Plant Closure under the CTS PPA program.

Comment 60: Whether the Rail Service Interruption Program Is Countervailable

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 86-88 and 136-138.

> The {STO} undertook construction near Resolute's paper mill in Gatineau, forcing the shutdown of rail service on which the mill depended to move paper products to customers. STO entered an agreement with Resolute to cover the increased transportation and labor costs resulting from the project. {Commerce} attributed the contract payments to all Resolute's sales, but the compensation was limited to the adverse impact of the service interruption on Resolute's sale of non-subject merchandise. When a subsidy is tied to the "production or sale" of a product, {Commerce} must attribute the subsidy only to that product.
>
> The STO Agreement compensated Resolute for increased transportation and labor costs caused by a public works project that disrupted rail access to the Gatineau paper mill. The STO Agreement did not cover any such expenses for Resolute beyond those which were necessitated by the project's impact. The payments restored Resolute to the position it would have occupied absent the rail-service disruption. There was no "benefit" as defined in the statute.

[1475] *See* CVD Preamble, 63 FR at 65400.
[1476] *See Lumber V Final* IDM at Comment 72.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 55-61.

> The {STO} is the transit service of the Outaouais region of Québec. In 2021-2022, STO undertook public works near Resolute's paper mill in Gatineau. This project required the temporary shutdown of rail service at the Gatineau plant, which lasted for 16 months. The STO conducted works in the vicinity of Resolute's paper plant in Gatineau which resulted in rail service shutdown. This rail service shutdown resulted in increased shipping costs for Resolute because Resolute had to ship goods from its Gatineau plant during that period by truck rather than by rail. STO and Resolute entered into a compensation agreement pursuant to which STO agreed to reimburse Resolute for those increased shipping costs incurred by Resolute during rail service shutdown. The agreement does not constitute a gift-like transfer or grant to Resolute, it is a considered agreement in which Québec pays Resolute for increased shipping costs. If Commerce continues to countervail this assistance, it should be treated as an MTAR program. However, Commerce should ultimately find that this assistance does not confer a countervailable benefit because it is tied to non-subject merchandise. Here, it is clear that the providing authority, the STO, was made aware of, or otherwise had knowledge of, the intended use of the subsidy and acknowledged that intended use of the subsidy prior to, or concurrent with, the bestowal of the subsidy given the terms of the compensation agreement between STO and Resolute. The compensation agreement is explicit on this point. At the time of bestowal, the STO knew that the intended use of the subsidy pertained to the production or sale of paper products, *i.e.* non-subject merchandise.

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 222-227.

> {Commerce} properly found that the GOQ's compensation payments for rail service interruption generated a financial contribution and benefit to Resolute. As a public utility, STO is empowered to engage in public works projects. Record evidence does not support the claim that Resolute was empowered to block STO from conducting the project that resulted in rail closures. The STO Agreement lacks consideration as Resolute bears no binding obligations to STO under the terms of the agreement. Because payments made under the STO Agreement do not constitute a contractual exchange or payment for services, {Commerce} properly found payments to constitute a financial contribution, the full value of which constitutes the benefit to Resolute. Additionally, proprietary record information demonstrates that the STO payments are not tied to non-subject paper products. Therefore, the subsidy is attributable to all products. {Commerce} should continue to find as much in the final results and countervail the payments from STO.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce's Position: Consistent with the *Preliminary Results*, we continue to find that Rail Service Interruption program is countervailable. The STO is the transit service of the Outaouais region of Québec.[1477] Between 2021 and 2022, STO undertook public works near Resolute's Gatineau paper mill, which shut down rail service for the plant for 16 months.[1478] The STO agreed to compensate Resolute for the expenses associated with the service suspension in a written agreement.[1479]

First, the GOQ and Resolute argue that the program is tied to non-subject merchandise.[1480] As explained in the *Preliminary Results*,[1481] 19 CFR 351.525(b)(9) states that a subsidy will normally be determined to be tied to a product or market when the authority providing the subsidy was made aware of, or otherwise had knowledge of, the intended use of the subsidy and acknowledged that intended use of the subsidy prior to, or concurrent with, the bestowal of the subsidy. While Resolute states in its questionnaire responses, and its case brief, that the funds are tied to the production of non-subject merchandise, the agreement between Resolute and the STO contains no mention of the specific merchandise affected by the rail service outage.[1482] The fact that the Gatineau paper mill produces non-subject merchandise is not sufficient to determine tying to non-subject products. Under 19 CFR 351.525(b)(8), Commerce will not tie or attribute a subsidy on a plant- or factory-specific basis. We therefore continue to find that the Rail Service Interruption program is not tied to non-subject merchandise.

Second, the Canadian Parties argue that the Rail Service Interruption program is not a grant, because the STO funds were "not a payment for nothing."[1483] Resolute additionally argues that because the Rail Service Interruption program compensated Resolute for increased transportation and labor costs caused by a public works project that disrupted rail access to the Gatineau paper mill *in lieu* of potential litigation, there was no benefit as defined in the statute.[1484] There is no guarantee, and Resolute cites no evidence to support the proposition,[1485] that Resolute would have won any hypothetical resulting litigation and thus received any payment in absence of the STO agreement. Further, as explained in the *Lumber V AR3 Final*, and at comment 3, we disagree that, consistent with the *Government of Sri Lanka v. U.S.*, Commerce must define the term "benefit" as a "gift without consideration" or that it is appropriate to consider the context in which a grant is provided. A grant is not limited to a transfer of money without consideration, nor must a grant only be a gift. Pursuant to the regulations, Commerce will measure the extent to which a financial contribution confers a benefit as provided for the specific type of benefit, as described under the regulations.[1486] Section 771(5)(D)(i) of the Act includes the word "grant" in its definition of a "financial contribution" as an example, stating that it is "the direct transfer of funds, such as grants…." Under 19 CFR 351.504(a), "a benefit exists in the amount of a grant." Commerce does not consider "the effect of the government action" on the respondents'

[1477] *See* Resolute's Non-Stumpage IQR at 49-50 and Exhibit RES-NS-STO-APP.
[1478] *Id.*
[1479] *Id.* at Exhibit RES-NS-STO-1.
[1480] *See* Resolute Case Brief at 86-88; *see also* GOQ Case Brief Vol. VII(b) at 60-61.
[1481] *See Preliminary Results* PDM at 58.
[1482] *Id.*
[1483] *See* GOQ Case Brief Vol. VII(b) at 60.
[1484] *See* Resolute Case Brief at 137.
[1485] *Id.*
[1486] *See* 19 CFR 351.503(a).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

performance, or whether the respondents altered their behavior.[1487] Under this framework, any grant payments constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and the amount of such payments constitute a benefit to the recipient.

Lastly, the Canadian Parties assert that the Rail Service Interruption program is not specific. However, the GOQ reported that there are "no eligibility criteria," and that "payments were made pursuant to the terms of compensation between the STO and Resolute."[1488] Meaning, only Resolute is eligible to receive funds from the STO. No other enterprises are eligible to receive funds under this program. As such, we continue to find that program is *de jure* specific under section 771(5A)(D)(i) of the Act because it is expressly limited to one enterprise.

Accordingly, based on each of the above continued findings raised in issues by the Canadian Parties, we continue to find that the Rail Service Interruption Program is countervailable.

Comment 61: Whether the IEO Program Is Countervailable

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 96-99 and 152-153.

> The *Preliminary Results* treat payments to Resolute under the Hydro-Québec IEO and DRO as government grants. Both these programs, however, represent an exchange of valuable consideration: the provincial utility purchased a service (electricity curtailment upon demand to increase available grid capacity) and, in return, Resolute received compensation. A government purchase of services is not a financial contribution and is, therefore, not countervailable.
>
> Resolute adopts and incorporates by cross-reference the arguments of the Government of Canada, the Government of Québec, and the Government of Ontario that {Commerce}'s preliminary specificity findings with respect to non-stumpage and programs applicable to Resolute are unsupported by record evidence or otherwise not in accordance with law.

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 23-40.

> Commerce improperly found that Hydro-Québec's Demand Response programs, namely the IEO and the DRO are countervailable. The IEO and DRO programs are not *de jure* specific because they are widely available, widely used, and the eligibility criteria do not limit access to any particular enterprises or industries. There is likewise no benefit because participants exchange credits on a contractual

[1487] *See* 19 CFR 351.503(c).
[1488] *See* GOQ IQR at Exhibit QC-STO-APP.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

basis and are required to fulfill specific commitments, *i.e.* curtailed electricity usage, to receive a final contribution. The two programs constitute the purchase of a service, *i.e.* power interruption, benefitting Hydro-Québec by providing it with system reliability and easy local access to power that would otherwise need to be secured in neighboring markets at a comparable or greater cost. Because the statute specifically excludes the purchase of services as countervailable subsidies, {Commerce} should find these programs to be non-countervailable in the final determination.

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 239-244.

> {Commerce} correctly found Hydro-Quebec's Interruptible Electricity Option IEO, and DRO programs generate a countervailable benefit for Resolute in the form of electricity credits. Resolute and the GOQ's arguments that demand response energy credits act as payments for a service, and that payments require both compliance with curtailment commitments and that failure to do so results in a penalty, do not accurately reflect the structure of the agreements. When Hydro Quebec issues a curtailment notice, program participants can choose whether or not to actually perform the required curtailment, and if participants elect not to curtail, the penalties may impact the amount of benefit received, but will not result in penalties greater than those payments received from Hydro Quebec. The programs therefore constitute grants, the full value of which {Commerce} properly countervailed in the *Preliminary Results.* {Commerce} correctly found Hydro-Quebec's IEO and DRO programs to be *de jure* specific as eligibility is expressly limited to a discrete class of electricity customers with specified rate classifications and the technical capability to curtail power consumption upon request. The Canadian Parties argue that the programs are not *de jure* specific because they merely establish eligibility criteria that are broadly available to customers capable of reducing electricity consumption. However, the statute provides that a subsidy is *de jure* specific where the governing authority expressly limits access to particular enterprises or industries, and both the IEO and DRO do so by restricting participation to customers meeting defined rate classifications and technical requirements. {Commerce} has consistently found similar demand response programs *de jure* specific because they establish, by law, a limited class of eligible enterprises. The Canadian Parties have identified no new facts or arguments warranting reconsideration of {Commerce}'s determinations. Accordingly, {Commerce} should continue to find both the IEO and DRO programs *de jure* specific in the final results.

Commerce's Position: We find that the GOQ and Resolute have again raised substantially similar arguments regarding Hydro-Québec's IEO. We have found the respondents' arguments unpersuasive, most recently in the *Lumber V AR3 Final*,[1489] and continue to do so here. The

[1489] *See Lumber V AR3* IDM at Comment 80; *see also Lumber V AR2 Final* IDM at Comment 93.

program remains unchanged since the *Lumber V AR3 Final.* We address Resolute's comments concerning "valuable consideration" at comment 3.

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

We also continue to disagree that Hydro-Québec, and not Resolute, benefits from the electricity curtailment programs, or that any advantages to the utilities in administering the programs are relevant to the benefit that the companies received from those authorities. Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1490] Under this framework, any grant payments of the associated costs incurred (*i.e.*, power interruption to their operations) are, in fact, a benefit to the recipient. As such, we disagree that the demand response programs benefit the government-owned utilities or the public at large, and not the participating companies. Any advantages to the GOQ/Hydro-Québec in administering the program are not relevant to the benefit that Resolute received under the program. In analyzing the benefit received by a grant, Commerce considers the benefit to be the amount of the grant received by the company, pursuant to 19 CFR 351.504(a). Commerce's regulations at 19 CFR 351.504 do not contemplate any advantages the government might receive by administering the program.[1491]

Given the manner in which load curtailment programs, like the Hydro-Québec's IEO, operate, Commerce finds that such programs are, in fact, the provision of a grant,[1492] and not the purchase of a service by the GOQ. Further, Commerce has consistently determined that electricity is a good and not a service.[1493] We, therefore, continue to find that the IEO confers a benefit equal to the amount of electricity credits received, as provided under section 771(5)(E) of the Act, which states that a benefit shall normally be treated as conferred where there is a benefit to the recipient. Under the IEO, participants—like Resolute—receive electricity credits when they curtail their power usage on demand in response to an interruption notice issued by Hydro-Québec.

[1490] *See* 19 CFR 351.503(c).
[1491] *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.").
[1492] *See, e.g., Lumber V AR1 Final* IDM at Comment 8, 73 and 84; *Lumber V AR2 Final* IDM at Comment 4, 75, and 93; *Lumber V AR3 Final* IDM at Comment 4, 59, and 80; *Lumber V AR4 Final* IDM at Comment 39; *Lumber V AR5 Final* IDM at Comment 38; *Lumber V AR6 Final* IDM at Comment 31; *Groundwood Paper from Canada Final* IDM at Comment 66; *Wire Rod from Italy* IDM at Comment 2; *Silicon Metal from Australia Final* IDM at Comment 2; and *CTL Steel Plate from Korea*, 64 FR at 73182.
[1493] *See*, most recently, *Lumber V AR3 Final* IDM at Comment 80.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Further, 19 CFR 351.503(a) states that Commerce will "measure the extent to which a financial contribution (or income or price support) confers a benefit" as provided for the specific type of benefit, as described under the regulations. Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1494] Under this framework, any grant payments of the associated costs incurred (*i.e.*, power interruption to their operations) are, in fact, a benefit to the recipients. In analyzing the benefit of electricity credits, Commerce considers the benefit to be the amount of grant received by the company, pursuant to 19 CFR 351.504(a). Because the GOQ provides grants and not just services to the participants of the IEO program, we find that the respondents' arguments on the adequacy of remuneration to measure the benefit are not relevant.

Additionally, we are unpersuaded by the respondents' assertion that the IEO program is not specific. Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, the subsidy is specific as a matter of law. The subsidies that are provided by Hydro-Québec through the IEO are expressly limited by law to enterprises that meet specific energy generation and consumption requirements and have the technical capacity to curtail power on notice of interruption.[1495] The IEO is available to only Medium-Power Customers, Large-Power Customers on Rate L (industrial), and Rate LG Customers.[1496]

Thus, the evidence shows that the GOQ established, by law, a limited group of enterprises that may receive electricity credits from Hydro-Québec under this program based on the substantive character of those enterprises' operations.[1497] Therefore, we continue to find the IEO program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

Lastly, we disagree that the *Silicon Metal from Australia Final* supports a finding that the IEO is not countervailable. That case did not establish a requirement that there be no actual curtailments in order for the curtailment payments to be countervailable. In the *Silicon Metal from Australia Prelim*, no company participating in the program curtailed its electricity consumption during the POI.[1498] Commerce's analysis, however, did not end there; the absence of curtailment activities was only one of the factors Commerce considered when determining that the load curtailment program was a grant.[1499]

[1494] *See* 19 CFR 351.503(c).
[1495] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-IEO-1.
[1496] *Id.* at Exhibit QC-IEO-A at 14.
[1497] *See Hyundai Steel 2025*, 753 F.Supp.3d at 1360.
[1498] *See Silicon Metal from Australia Prelim* PDM at 6-8, unchanged in *Silicon Metal from Australia Final* IDM at Comment 2.
[1499] *See Silicon Metal from Australia Prelim* PDM at 6-8, unchanged in *Silicon Metal from Australia Final* IDM at Comment 2. In this investigation, Commerce also analyzed the reserved electricity capacity.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 62: Whether the DRO Program Is Countervailable

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 23-40.

> Commerce improperly found that Hydro-Québec's Demand Response programs, namely the IEO and the DRO are countervailable. The IEO and DRO programs are not *de jure* specific because they are widely available, widely used, and the eligibility criteria do not limit access to any particular enterprises or industries. There is likewise no benefit because participants exchange credits on a contractual basis and are required to fulfill specific commitments, *i.e.* curtailed electricity usage, to receive a final contribution. The two programs constitute the purchase of a service, *i.e.* power interruption, benefiting Hydro-Québec by providing it with system reliability and easy local access to power that would otherwise need to be secured in neighboring markets at a comparable or greater cost. Because the statute specifically excludes the purchase of services as countervailable subsidies, {Commerce} should find these programs to be non-countervailable in the final determination.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 96-99 and 152-153.

> The *Preliminary Results* treat payments to Resolute under the Hydro-Québec IEO and DRO as government grants. Both these programs, however, represent an exchange of valuable consideration: the provincial utility purchased a service (electricity curtailment upon demand to increase available grid capacity) and, in return, Resolute received compensation. A government purchase of services is not a financial contribution and is, therefore, not countervailable.
>
> Resolute adopts and incorporates by cross-reference the arguments of the Government of Canada, the Government of Québec, and the Government of Ontario that {Commerce}'s preliminary specificity findings with respect to non-stumpage and programs applicable to Resolute are unsupported by record evidence or otherwise 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 239-244.

> {Commerce} correctly found Hydro-Quebec's Interruptible Electricity Option IEO, and DRO programs generate a countervailable benefit for Resolute in the form

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> of electricity credits. Resolute and the GOQ's arguments that demand response energy credits act as payments for a service, and that payments require both compliance with curtailment commitments and that failure to do so results in a penalty, do not accurately reflect the structure of the agreements. When Hydro Quebec issues a curtailment notice, program participants can choose whether or not to actually perform the required curtailment, and if participants elect not to curtail, the penalties may impact the amount of benefit received, but will not result in penalties greater than those payments received from Hydro Quebec. The programs therefore constitute grants, the full value of which {Commerce} properly countervailed in the Preliminary Results. {Commerce} correctly found Hydro-Quebec's IEO and DRO programs to be de jure specific as eligibility is expressly limited to a discrete class of electricity customers with specified rate classifications and the technical capability to curtail power consumption upon request. The Canadian Parties argue that the programs are not de jure specific because they merely establish eligibility criteria that are broadly available to customers capable of reducing electricity consumption. However, the statute provides that a subsidy is de jure specific where the governing authority expressly limits access to particular enterprises or industries, and both the IEO and DRO do so by restricting participation to customers meeting defined rate classifications and technical requirements. {Commerce} has consistently found similar demand response programs de jure specific because they establish, by law, a limited class of eligible enterprises. The Canadian Parties have identified no new facts or arguments warranting reconsideration of {Commerce}'s determinations. Accordingly, {Commerce} should continue to find both the IEO and DRO programs de jure specific in the final results.

Commerce's Position: The DRO, administered by Hydro-Québec, is a demand-response program which provides fixed and variable credits to eligible customers who agree to curtail power usage during peak demand periods at the request of Hydro-Québec.[1500] The GOQ stated that the predecessor GDP program, which Commerce referred to as Hydro-Québec's New Demand-Side Management Program,[1501] was replaced with the DRO.[1502] On July 30, 2021, Québec's energy board, known as the Régie, approved decision D-2021-100, which incorporated the terms of the DRO into Hydro-Québec's Electricity Rates guide.[1503] Commerce previously countervailed the DRO's predecessor, the New Demand-Side Management Program, at the *Lumber V AR1 Final*.

Resolute and the GOQ make the same arguments with respect to the DRO as they make against the IEO program, *see* comment 61. The arguments against the IEO are repetitive assertions which Commerce has rejected across multiple segments of this proceeding.[1504] Specifically, the Canadian Parities argue that the DRO, like the IEO, is not *de jure* specific because the program

[1500] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-DRO-A at 1-3; *see also* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-GDP-APP at 2.
[1501] *See Lumber V AR1 Prelim* PDM at 66, unchanged in *Lumber V AR1 Final* IDM at 23.
[1502] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-DRO-A at 2.
[1503] *Id.* at Exhibits QC-DRO-A and QC-DRO-3.
[1504] *See Lumber V AR3* IDM at Comment 80; *see also Lumber V AR2 Final* IDM at Comment 93.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

is widely used and the eligibility criteria do not limit access to any particular enterprises or industries. Moreover, Resolute and the GOQ assert that payments associated with the DRO are payments in exchange for a service and are therefore not countervailable. We address Resolute's comments concerning "valuable consideration" at comment 3.

First, we reject the Canadian Parties' arguments that the DRO program is not *de jure* specific. Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. The subsidies that are provided by Hydro-Québec through the DRO are expressly limited to customers whose electrical service contract is subject to Rate DM, DP, G, G9, M, H and LG.[1505] Thus, only customers with certain billing rates and load reduction capabilities are eligible to participate in the DRO program. The evidence shows that the GOQ has established, by law, a limited group of enterprises that may receive electricity credits from Hydro-Québec under this program.[1506] The SAA makes clear that Commerce's *de jure* specificity analysis is fact intensive and case-specific.[1507] Further, the CIT in its subsequent opinion to *Hyundai Steel Co.* recognized "that a foreign statute need not name industries for a subsidy to be *de jure* specific."[1508] The CIT highlighted that, "{a}s Commerce has repeatedly and correctly recognized, metrics that select enterprises based on the substantive character of their operations – whether their inputs, outputs, customers, or externalities – are not neutral."[1509] The Court explicitly recognized that "if eligibility {for a program} turned on emission intensity . . ., the credit would discriminate according to operational characteristics and so be *de jure* specific."[1510] Therefore, we continue to find the DRO program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity, we need not examine whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

Second, we reject Resolute and the GOQ's assertions that payments associated with the DRO are payments in exchange for a service and are therefore not countervailable. Commerce continues to find that an electricity curtailment program does not equate to a government-owned utility purchasing a service from a company that reduces its electricity consumption on demand. Given the manner in which load curtailment programs, like the Hydro-Québec's DRO, operate, Commerce finds that such programs are, in fact, the provision of a grant,[1511] and not the purchase of a service by the GOQ. In the case of the DRO, a customer is eligible to receive fixed and variable credits if it reduces its power demand during peak demand periods at the request of Hydro-Québec. [1512] In other words, the GOQ provides an incentive to encourage a particular behavior which aligns with the government's policy goals. As Commerce has explained in prior

[1505] *See* GOQ Non-Stumpage IQR Response at Exhibits QC-DRO-A, QC-DRO-4, and QC-IEO-42.
[1506] *Id.* at Exhibit QC-DRO-4.
[1507] *See* SAA at 930.
[1146] *See Hyundai Steel 2025*, at 1359 (explicitly disagreeing with the CIT's holding in *Hyundai Steel 2024)*.
[1509] *Id.*, 753 F.Supp.3d at 1360.
[1510] *Id.*
[1511] *See, e.g., Lumber V AR1 Final* IDM at Comment 8, 73 and 84; *Lumber V AR2 Final* IDM at Comment 4, 75, and 93; *Lumber V AR3 Final* IDM at Comment 4, 59, and 80; *Lumber V AR4 Final* IDM at Comment 39; *Lumber V AR5 Final* IDM at Comment 38; *Lumber V AR6 Final* IDM at Comment 27 and 31; *Groundwood Paper from Canada Final* IDM at Comment 66; *Wire Rod from Italy* IDM at Comment 2; *Silicon Metal from Australia Final* IDM at Comment 2; and *CTL Steel Plate from Korea*, 64 FR at 73182.
[1512] *See* GOQ Non-Stumpage IQR Response at Exhibits QC-DRO-A (p. 1).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

reviews,[1513] 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."

Moreover, Commerce has consistently determined that electricity is a good and not a service.[1514] We, therefore, continue to find that the DRO confers a benefit equal to the amount of electricity credits received, as provided under section 771(5)(E) of the Act, which states that a benefit shall normally be treated as conferred where there is a benefit to the recipient. Under the DRO, participants—like Resolute—receive electricity credits when they curtail their power usage on demand in response to a critical peak event notification issued by Hydro-Québec.[1515] Further, 19 CFR 351.503(a) states that Commerce will "measure the extent to which a financial contribution (or income or price support) confers a benefit" as provided for the specific type of benefit, as described under the regulations. Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1516] Under this framework, any grant payments of the associated costs incurred (*i.e.*, power interruption to their operations) are, in fact, a benefit to the recipients. In analyzing the benefit of electricity credits, Commerce considers the benefit to be the amount of grant received by the company, pursuant to 19 CFR 351.504(a).

K. Tax and Other Revenue Forgone Program Issues

Federal

Comment 63: Whether the ACCA 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 6-42.

> {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 Class 53 assets sets out activity-based eligibility criteria does not, in any way, limit the program to specific enterprises or industries.

[1513] *See,* most recently, *Lumber V AR6 Final* IDM at Comment 31.
[1514] *See*, most recently, *Lumber V AR6 Final* IDM at Comment 27.
[1515] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-DRO-4.
[1516] *See* 19 CFR 351.503(c).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> Rather than engage 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's} *de jure* specificity finding is also 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, even with such exclusions, it is still widely available. {Commerce's} *de jure* specificity finding implicitly requires that a program be universally or near universally available to avoid a *de jure* specificity finding. Such a requirement is inconsistent with the statute. If a program is widely available, as is 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 (internal citations omitted). For further details, *see* Petitioner Rebuttal Brief at 300-310.

> {Commerce} reasonably determined that the ACCA for Class 53 Assets is *de jure* specific under section 771(5A)(D)(i) of the Act because the governing regulations expressly exclude certain manufacturing and processing activities from eligibility. The Canadian Parties maintain that these exclusions merely identify activities rather than enterprises or industries and that the program remains broadly available throughout the manufacturing sector. Those arguments disregard both the text of the {CITR} and {Commerce's} past practice recognizing that exclusions of particular activities necessarily exclude the enterprises and industries engaged exclusively in those activities. {Commerce} has repeatedly rejected these arguments in the investigation and every prior administrative review, and the Canadian Parties identify no new facts or legal authority warranting a different result. Alternatively, the record independently demonstrates that the program is *de facto* specific because only a small fraction of Canadian taxpayers claimed the deduction during the POR. Accordingly, {Commerce} should continue to find the ACCA for Class 53 Assets specific in the final results.

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-

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

manufacturing activities are excluded from the definition of "manufacturing or processing."[1517] Because there was no change to the law regarding the eligibility criteria for the program during the POR,[1518] 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" expressly excludes "farming, fishing, construction, logging, and extraction of natural gas, oil, and minerals."[1519] As such, by excluding particular activities, 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 for Class 53 is not *de jure* specific.[1520] However, across multiple CVD proceedings involving Canada, we have consistently found the ACCA for Class 53 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 we have repeatedly explained why the GOC's references to other cases are unavailing.[1521]

For example, the GOC again claims that the ACCA is similar to a tax program that Commerce examined in *CRS from Russia*.[1522] 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."[1523] The GOC also again cites *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.[1524] Unlike the facts for the ACCA for Class 53, 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."[1525]

[1517] *See, most recently, Lumber V AR6 Final* IDM at Comment 33.
[1518] *See* GOC Non-Stumpage IQR Response Volume II at 1-6.
[1519] *Id*. at 14-15 and Exhibits GOC-AR7-CRA-Class53-1 and Class53-4.
[1520] *See* GOC Case Brief Vol. II at 13-22, 27-29, and 38-43.
[1521] *See Lumber V AR6 Final* IDM at Comment 33; *see also Lumber V AR5 Final IDM at Comment 42; Lumber V AR4 Final* IDM at Comment 44; *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.
[1522] *See* GOC Case Brief Vol. II at 27-28 and 40.
[1523] *See CRS from Russia* IDM at Comment 20.
[1524] *See* GOC Case Brief Vol. II at 28-29 and 40.
[1525] *See NOES from Taiwan* IDM at 21.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

The GOC argues that the ITR excludes activities and not enterprises or industries and, therefore, the ACCA for Class 53 is not specific under section 771(5A)(D)(i) of the Act.[1526] The GOC contends that the excluded activities do not change the fact that eligibility for the program 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.[1527] 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 for Class 53. 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.[1528]

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.[1529] The GOC adds that a program cannot be *de jure* specific when it is widely available, and that wide availability does not mean or require universal availability.[1530] To support its "widely available" argument, the GOC points to information on the record, claiming that it shows: (1) companies engaged exclusively in the excluded activities under Class 53 accounted for only 14 percent of all companies, meaning that 86 percent of companies are eligible for the program; and (2) at least 23,850 enterprises in almost every NAICS category used Class 53 during the POR (*i.e.*, for tax year 2023).[1531]

We continue to disagree with the GOC that the exclusion at issue is "very limited" or that the ACCA for Class 53 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."[1532] 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."[1533] The GOC also contends that, during the POR,

[1526] *See* GOC Case Brief Vol. II at 22-24.
[1527] *Id*. at 11.
[1528] *See Magnesium from Israel* IDM at Comment 2.
[1529] *See* GOC Case Brief Vol. II at 21-22.
[1530] *Id.* at 30-38.
[1531] *Id*. at 10 and 36-37 (citing GOC Non-Stumpage IQR Response Volume II at Exhibits GOC-AR7-CRA-CLASS53-4, CLASS53-5, and CLASS53-10).
[1532] *See* GOC Non-Stumpage IQR Response Volume II at 15 and Exhibit GOC-AR7-CRA-CLASS53-1. Subsection 1104(9) of the ITR provides that, for purposes of defining what constitutes manufacturing or processing for Class 53 in Schedule II, "manufacturing or processing" does not include certain described categories of activities, such as farming and fishing, construction, logging, and extraction of natural gas, oil, and minerals.
[1533] *See* SAA at 930.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

companies listed in the excluded "industries" claimed the ACCA for Class 53 for covered manufacturing and processing activities that they performed.[1534] 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 program, based on the tax law, as discussed above. For this reason, we also find that the data referenced by the GOC do not relevantly support its "widely available" argument as there are companies in industries engaged exclusively in excluded activities for which access to the Class 53 accelerated deduction is denied.

To further bolster its specificity arguments, the GOC cites numerous CVD cases, claiming that, in each case, Commerce did not find *de jure* specificity where a program was widely available.[1535] We disagree that these cases support a different result here. We do not find that the ACCA for Class 53 is widely available for the reasons discussed above, and the fact patterns in the cited cases are distinguishable from the ACCA for Class 53 Assets program. For example, in *Laminated Hardwood Trailer Flooring from Canada*, Commerce found the "Decentralized Fund for Job Creation Program of the Société Québecoise de Developpement de la Main-d'Oeuvre to be not *de jure* specific.[1536] In its analysis, Commerce 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.[1537] Here, the ACCA for Class 53 contains numerous more general 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.[1538] 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 for Class 53 contains numerous additional eligibility restrictions. In contrast, in *Live Swine from Canada*, Commerce found the program to be not *de jure* specific on the basis that it was available to the entire agricultural sector with one exception. Likewise, 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."[1539] Furthermore, this case predates the statutory amendments made under the URAA, and in any event, is not analogous to the numerous activities that are excluded under the ACCA for Class 53 Assets 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."[1540] Though Commerce made this statement within the context of its discussion regarding the diversity in enterprises and industries that used the relevant steam coal for LTAR program, a

[1534] *See* GOC Case Brief Vol. II at 22-24.
[1535] *Id.* at 38-41.
[1536] *See Laminated Hardwood Trailer Flooring from Canada*, 61 FR at 59084.
[1537] *Id.*
[1538] *See Live Swine from Canada Final* IDM at 27.
[1539] *See Fresh Cut Flowers from the Netherlands*, 52 FR at 3301 and 3306.
[1540] *See Citric Acid from China First Review Final* IDM at Comment 6.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

full reading of Commerce's analysis there makes clear that the discussion of the "diverse array of industries" identified is in the context of a *de facto* analysis, not *de jure*.[1541] Accordingly, the determination is not applicable here.

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."[1542] 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."[1543] However, again, the facts of this Korean electricity program are not comparable to the ACCA for Class 53 Assets 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.[1544] 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.[1545] 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."[1546] Under the safe harbor provision, a program that is otherwise *de jure* specific is not where the implementing legislation "establishes objective criteria or conditions," *i.e.*, criteria or conditions that are neutral and do not favor one enterprise over another.[1547] In *Hyundai Steel 2025,* the CIT recently upheld Commerce's *de jure* specificity finding for an emissions credits program, holding that "metrics that select enterprises based on the substantive character of their operations—whether their inputs, outputs, customers, or externalities—are not neutral."[1548] Here, the ITR is limited to enterprises based on the substantive character of their operations: whether they engaged in the listed activities. Likewise, 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 for Class 53 not *de jure* specific consistent with the Class 1 CCA and SR&ED programs.[1549] However, we continue to

[1541] *Id.*
[1542] *See CTL Steel Plate from Korea Final*, 64 FR at 73193.
[1543] *See CTL Steel Plate from Korea Prelim*, 64 FR at 40456.
[1544] *See CTL Steel Plate from Korea Final*, 64 FR at 73191-92.
[1545] *See* GOC Case Brief Vol. II at 13-22.
[1546] *See* section 771(5A)(D)(ii) of the Act.
[1547] *Id*.
[1548] *See Hyundai Steel 2025*, 753 F.Supp.3d at 1360.
[1549] *See* GOC Case Brief Vol. II at 24-26.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

find those tax programs to be distinguishable from the ACCA for Class 53 Assets program. First, the GOC claims that the ACCA for Class 53'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.[1550] While the relevant regulations for Class 1 CCA involve eligibility for one category of building based on that building's use in "manufacturing or processing," the definition of which contains the same exclusions as the ACCA for Class 53, the Class 1 CCA also provides depreciation above the standard four percent rate for "non-residential buildings."[1551] The Class 1 CCA program thus has broader eligibility criteria than the ACCA for Class 53, 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 programs and the ACCA for Class 53 Assets program. The GOC argues that the SR&ED "excluded activities"[1552] are no more limitations on eligibility than are the activities that are excluded from the definition of "manufacturing or processing" under the ACCA for Class 53. However, unlike the activities listed in the SR&ED implementing laws, the activities excluded under the ACCA for Class 53 are based on the substantive character of an enterprise's operations, *e.g.*, construction. 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. The ACCA for Class 53 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 ACCA for Class 53 Assets program is not *de jure* specific the GOC cites *BGH Edelstahl II, BGH Edelstahl III, Hyundai Steel, Hyundai Steel 2024, POSCO, Risen Energy I, and Risen Energy II.*[1553] However, it is important to note that the Court in *Hyundai Steel 2025*, has since sustained Commerce's *de jure* specificity finding.[1554] Specifically, the Court sustained Commerce's finding that the GHG emissions credits program was *de jure* specific, and did not meet the safe harbor provision under section 771(5A)(D)(ii) of the Act.[1555] Under the safe harbor provision, a program that is otherwise *de jure* specific is not where the implementing legislation "establishes objective criteria or conditions," *i.e.*, criteria or conditions that are neutral and do not favor one enterprise over another.[1556] The Court upheld Commerce's analysis of the program in *Hyundai Steel 2025*, holding that "metrics that select

[1550] *Id.* at 25; *see also Lumber V AR6 Final* IDM at Comment 36.
[1551] *See* GOC Non-Stumpage IQR Response Volume II at 74-75.
[1552] 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 24 (citing GOC Non-Stumpage IQR Response Volume II at Exhibit GOC-AR-7-CRA-SRED-2).
[1553] *See* GOC Case Brief Vol. II at 15-22 (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; *Hyundai Steel 2024*, 701 F.Supp.3d at 1410 and 1412-13; *POSCO*, 794 F.Supp.3d at 1411, 1415-16; *Risen Energy I*, 658 F.Supp.3d at 1372-73; and *Risen Energy II*).
[1554] *See Hyundai Steel 2025*, 753 F.Supp.3d 1355.
[1555] *Id.* at 1360.
[1556] *See* section 771(5A)(D)(ii) of the Act.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

enterprises based on the substantive character of their operations—whether their inputs, outputs, customers, or externalities—are not neutral."[1557]

We also find that *POSCO* does not alter our determination that the ACCA for Class 53 Assets program is *de jure* specific. In *POSCO*, the Court held that Commerce had not adequately shown that the emissions intensity criteria at issue fell outside the safe harbor for criteria under section 771(5A)(D)(ii) of the Act.[1558] The ACCA for Class 53 Assets program is distinguishable because eligibility is expressly tied to the substantive character of an enterprise's operations and the program expressly excludes certain described activities. Thus, unlike *POSCO*, Commerce is not finding specificity merely from the existence of neutral eligibility criteria, rather, the ACCA for Class 53 Assets program limits eligibility according to the nature of the enterprises' activities. Accordingly, *POSCO* does not undermine Commerce's determination that the Class 53 Assets program is *de jure* specific.

With regard to the *BGH Edelstahl* cases, we find the facts of the program under review to be inapposite. In *BGH Edelstahl II*, the Court remanded Commerce's *de jure* specificity finding on the basis that Commerce failed to "explain how criteria based solely on electricity consumption and pricing is not horizontal in application" nor "economic in nature."[1559] As the Court recognized in *BGH Edelstahl II*, "the issue is whether the {subsidy's} criteria are economic in nature and horizontal in application."[1560] In that case, the Court found Commerce had insufficiently explained how the amount of electricity consumed was not economic in nature and horizontal in application.[1561] In contrast, here, eligibility for the ACCA for Class 53 Assets program is demonstrably *not* horizontal nor economic in nature. As the Court held in *Hyundai Steel 2025,* the relevant question is whether the metrics favor enterprises or industries based on the "substantive character of their operations."[1562] Whether an enterprise or industry engages in the qualifying activities (versus the activities excluded from eligibility) for the ACCA for Class 53 Assets program is not horizontal in application nor economic in nature, but instead favors enterprises or industries that engage in such activities over enterprises and industries that do not.

The GOC's reliance on the *Risen* cases is also unavailing, as the facts are distinguishable. Whereas the Court in *Risen* found that Commerce did not identify an "adequately specific enterprise or industry" where eligibility was limited to investment gains derived from "direct investment in another resident enterprise," here, the limitations on specific excluded activities does expressly limit eligibility to enterprises or industries engaged in the included activities.[1563]

[1557] *See Hyundai Steel 2025*, 753 F.Supp.3d at 1360.
[1558] *See POSCO*, 794 F.Supp.3d at 1415-17.
[1559] *See BGH Edelstahl II*, 639 F.Supp.3d at 1244.
[1560] *Id.*, 639 F.Supp.3d at 1243 (discussing SAA at 930 ("the objective criteria or conditions must be neutral, must not favor certain enterprises or industries over others, and must be economic in nature and horizontal in application, such as the number of employees or the size of the enterprise")).
[1561] *Id.,* 639 F.Supp.3d 1244.
[1562] *See Hyundai Steel 2025*, 753 F.Supp.3d at 1360 ("{M}etrics that select enterprises based on the substantive character of their operations . . . are not neutral").
[1563] *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* at 7 (analyzing the same Article 26(2) tax subsidy program); and *Risen Energy II*.

Furthermore, the SAA makes clear that Commerce's *de jure* specificity analysis is fact intensive and case-specific.[1564] Thus, the GOC's reliance on these cases fails 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.[1565] 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.[1566] As the Federal Circuit has recognized, Congress was clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States Trade Representative determining the scope of its implementation, if any, pursuant to the statutory scheme.[1567] WTO panel or Appellate Body reports do not automatically limit nor have an effect on Commerce's discretion in applying the statute in an AD or CVD proceeding.[1568] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[1569]

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 64: Whether To Recalculate the ACCA Class 53 Benefit

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 43-46.

> {Commerce} calculated the benefit from the Class 53 ACCA in part by comparing the Class 53 rate under the {AII} with the normal, non-AII 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.

[1564] *See* SAA at 930.
[1565] *See* GOC Case Brief Vol. II at 33-35.
[1566] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[1567] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[1568] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[1569] *See* SAA at 659.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 53-54.

> In calculating the purported benefit from West Fraser's use of the {ACCA}, {Commerce} improperly used a single-year methodology that failed to account for the historical {UCC} balance for the applicable assets. This incorrect analysis involved an about face from the {*Lumber V AR5 Final*}, where {Commerce} determined that a multi-year methodology should be used to avoid overstating West Fraser's purported benefit from the use of the program. In the *Final Results*, {Commerce} should correct this error and revert to its previous approach based on an appropriate multi-year methodology.

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 297-300.

> In the {*Lumber V AR7* Post-Prelim Memorandum}, {Commerce} found that the {ACCA} for Class 53 Assets program confers a benefit under section 771(5)(E) of the Act. West Fraser argues that {Commerce} should have used a multi-year methodology for the calculation of benefit, instead of a single-year methodology. However, a multi-year methodology is improper as the agency must "calculate a benefit based on what the company would have paid in this POR based solely on the respondents' situation in this POR and not what theoretically may have happened in the past." Second, the GOC argues that {Commerce} should adjust the benchmark in accordance with its "tiering" methodology. However, as {Commerce} found in the final results for the fifth and sixth administrative reviews, 19 CFR 351.503(d) is not applicable here. Rather, 19 CFR 351.509(a) is the relevant regulation, as it "addresses the benefit for tax subsidies."

Commerce's Position: As an initial matter, West Fraser is incorrect to state that, in the *Preliminary Results*, Commerce did "an about face" from a decision in the *Lumber V AR5 Final* "that a multi-year methodology should be used" for the ACCA for Class 53 Assets program.[1570] In the *Lumber V AR5 Final*, we acknowledged the parties' comments on the opening undepreciated capital costs balance for Class 43 (the benchmark) used in the benefit calculation, but did not modify the respondents' calculations for the ACCA for Class 53 Assets program.[1571] In fact, we stated that "{in} the ongoing 2023 administrative review, Commerce *may consider* a different methodology to more accurately perform the CCA 43 benchmark calculation."[1572] In the *Lumber V AR6 Final*, after considering the information on the record and the parties' comments, we determined that the appropriate opening balance for undepreciated capital costs that should be used to construct the Class 43 benchmark is the opening balance for Class 53

[1570] *See* West Fraser Case Brief at 5-6; *see also Lumber V AR5 Final* IDM at Comment 44.
[1571] *See Lumber V AR5 Final* IDM at Comment 44.
[1572] *Id*. (emphasis added).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

assets, and thus, rejected the multi-year methodology proposed by West Fraser.[1573] In this review, West Fraser has not presented any new argument or evidence to warrant a change in how Commerce calculates the benefit under the ACCA for Class 53 Assets program.

As we stated in *Lumber V AR6*, the Class 53 opening balance for undepreciated capital costs is the balance that is reported in Schedule 8 of the income tax returns that were filed by the companies during the POR.[1574] Thus, we continue to find the undepreciated capital costs balance for Class 53, which was the balance reported to the Canadian tax authorities, is the correct balance to apply in the benefit methodology. Commerce is evaluating the benefit provided to the respondents during the POR. The respondents depreciated their qualifying assets in line with the opening balance for Class 53 that is reported in Schedule 8 at the start of the POR; this is not in dispute, but what actually happened.[1575] Commerce, therefore, must calculate the benefit based on what the company would have paid in this POR based solely on the respondents' situation in this POR and not what theoretically may have happened in the past. As such, we continue to disagree with West Fraser's argument that Commerce should adopt a multi-year methodology to take into account the historical UCC balance for the assets.

Concerning the GOC's "tiering" argument, the GOC again argues that because the respondents were able to claim an accelerated investment incentive for Class 53 assets, Commerce should increase the normal Class 43 depreciation rate, which is the benchmark rate, to reflect the AII-related amount.[1576] The GOC claims that the "tiering" methodology at 19 CFR 351.503(d) requires Commerce to do so. We rejected the GOC's arguments in the *Lumber V AR5 Final* and *Lumber V AR6 Final* and continue to do so here.[1577]

Section 351.509(a) of Commerce's regulations, which addresses the benefit for tax subsidies, is the relevant regulation under which Commerce determines the benefit under this program, and not 19 CFR 351.503(d).[1578] The proposed regulations and cases cited by the GOC[1579] 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.[1580]

[1573] *See Lumber V AR6 Final* IDM at Comment 35.
[1574] *Id.*; *see also* Resolute Non-Stumpage IQR Response at Exhibits RES-NS-GEN-4-A9, GEN-4-B, GEN-4-C, GEN-4-D5, and GEN-4-E for Schedule 8 in the Federal income tax returns and Schedule CO-130.A-T in the Québec income tax returns; and West Fraser Non-Stumpage IQR Response Volume II at Exhibits WF-AR7-GEN-8, GEN-9, GEN-10, GEN-11, and GEN-12 for the Schedule 8.
[1575] *See* Resolute Non-Stumpage IQR Response at Exhibits RES-NS-GEN-4-A9, GEN-4-B, GEN-4-C, GEN-4-D5, and GEN-4-E for Schedule 8 in the Federal income tax returns and Schedule CO-130.A-T in the Québec income tax returns; and West Fraser Non-Stumpage IQR Response Volume II at Exhibits WF-AR7-GEN-8, GEN-9, GEN-10, GEN-11, and GEN-12 for the Schedule 8.
[1576] *See* GOC Case Brief Vol. II at 44-45.
[1577] *See Lumber V AR5 Final* IDM at Comment 43; *see also Lumber V AR6 Final* IDM at Comment 34.
[1578] *See Lumber V AR7 Prelim* PDM at 9-10.
[1579] *See* GOC Case Brief Vol. II. at 45-46 (citing *CVD Proposed Rulemaking*, 54 FR at 23373-74, *see also Geneva Steel v. U.S.*, 914 F.Supp. 563; *Certain Steel Products from Belgium*, 58 FR at 37275-76; and *Certain Granite Products from Italy*, 53 FR at 27200-01).
[1580] *See CVD Preamble*, 63 FR at 65375 (stating "{s}ection 351.509 deals with subsidy programs that provide a benefit in the form of relief from direct taxes.").

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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, 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 GOC states that assets depreciated under Class 43 are eligible for the AII, 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…." The GOC is effectively pointing to the existence of a different incentive program in arguing that Commerce can only countervail some *additional* amount of benefit.[1581] 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 of 30 percent 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.

The GOC indicated on the record that the AII "*may be claimed* by any taxpayer in any industry in Canada that acquires and uses property included in an eligible CCA class."[1582] The AII is, thus, a permissive deduction. Canadian taxpayers are not required to use the AII rate, and can instead use the standard non-AII rate or take no depreciation deduction for an asset. As such, we continue to find that 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 65: Whether the CCA for Class 43.2 Assets Program Is *De Facto* Specific

GOC Case Brief

The following is a verbatim summary of the argument submitted by the GOC (internal citations omitted). For further details, *see* GOC Case Brief Vol. II at 66-68.

> Similar to its treatment of the SR&ED tax credit, {Commerce} found that the CCA for Class 43.2 assets is *de facto* specific by comparing the number of taxpayers that used the measures with the total number of business tax filers in Canada. As explained above with respect to the SR&ED tax credit, {Commerce}'s percentage methodology is not in accordance with law, and as applied by {Commerce} is

[1581] *See* GOC Case Brief Vol. II at 44-46.
[1582] *See* GOC Non-Stumpage IQR Response Volume II at 3-4 (emphasis added).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> unsupported by substantial evidence on the record. {Commerce} should revisit and reconsider its *de facto* specificity finding for 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 320-323.

> {Commerce} correctly found the CCA for Class 43.2 Assets to be *de facto* specific because the actual recipients of the subsidy are limited in number. The Canadian Parties argue that {Commerce} should not rely on its enterprise-based comparison methodology, that the program is broadly available across the Canadian economy, and that {Commerce} should instead evaluate usage over five- and ten-year periods rather than during the POR. However, the record demonstrates that only a very small percentage of Canadian corporate taxpayers claimed the Class 43.2 deduction during the POR, and {Commerce} appropriately made its determination on an enterprise basis. Because {Commerce} reasonably found the first *de facto* specificity factor was satisfied, it was not required to analyze the remaining statutory factors. Moreover, {Commerce} should not adopt the Canadian Parties' proposed multi-year methodology, as the purpose of each review is to capture subsidies received by the respondents during the {POR} and nothing in the statute requires {Commerce} to speculate as to the number of recipients that might use a program over time. Accordingly, {Commerce} should continue to find the CCA for Class 43.2 Assets *de facto* specific in the final results.

Commerce's Position: We continue to find the CCA for Class 43.2 Assets program, which provides a depreciation deduction for clean energy generation and energy conservation equipment, to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the recipients are limited in number. Within its case brief, the GOC makes largely the same arguments[1583] that were made in the *Lumber V AR2 Final*.[1584] Because there is no new record evidence relating to the program, other than the number of users during this POR, we continue to reject the GOC's specificity arguments as discussed below.

As an initial matter, we disagree with the GOC's argument that Commerce's percentage methodology is unlawful.[1585] We address these general specificity comments in more detail at Comment 2. 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.[1586] 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 {CVD} law."[1587] Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy

[1583] *See* GOC Case Brief Vol. II at 66-68.
[1584] *See Lumber V AR2 Final* IDM at Comment 96.
[1585] *See* GOC Case Brief Vol. II at 46.
[1586] *See* SAA at 929.
[1587] *Id.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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.[1588] The Federal Circuit has held that the statute grants Commerce "the necessary latitude afforded it in choosing the appropriate approach" for analyzing *de facto* specificity.[1589] This analysis is inherently fact-intensive and case-specific.[1590] Further, Commerce's percentage methodology for the Class 43.2 Assets program 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. The Federal Circuit in *Gov't of Québec v. U.S.* upheld Commerce's usage of total corporate tax filers as the comparator for this same program in the underlying investigation.[1591]

In conducting *de facto* specificity analysis for Class 43.2, we agree with the GOC that the incorrect number of corporate tax filers in Canada was used.[1592] In the *Lumber AR7 Post-Prelim* Memorandum, we inadvertently referenced the number of corporate tax filers for the years 2014 through 2023 (*i.e.*, 24,808,590), rather than the number of corporate tax filers for tax year 2023, which was 2,605,590.[1593] However, even when using the correct figure, we continue to find that the recipients of the subsidy remain limited in number during the POR. The GOC reported that, out of 2.6 million corporate tax filers in Canada for the 2023 tax year, just 3,190 companies claimed and were allowed the Class 43.2 CCA.[1594] Because we treat the CCA for Class 43.2 Assets as one program, and not as separate federal and provincial tax programs (*see* Comment 4), 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 0.12 percent of Canadian corporate tax filers claimed the additional CCA for Class 1 Assets in their 2023 income tax returns filed with the tax authorities in the POR.

The GOC further argues that this program is not *de facto* specific because thousands of enterprises claim the Class 43.2 assets deduction yearly, across almost all sectors of the economy. We disagree. The fact that the Class 43.2 CCA is available to all taxpayers in all industries and sectors in Canada does not negate the fact that only 0.12 percent of corporate tax filers used this program for tax year 2023, demonstrating that the actual recipients of the subsidy were limited in number. [1595] Further, contrary to the GOC's statements, because we find the Class 43.2 Assets program to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, we need not consider whether the usage data demonstrate disproportionality or predominate use or whether any discretion was exercise by the government, under sections 771(5A)(D)(iii)(II), (III), and (IV) of the Act, in making the CCA deduction available.[1596] As stated at 19 CFR 351.502(a), Commerce will examine the factors at section 771(5A)(D)(iii) of the Act

[1588] *See CRS from Korea* IDM at Comment 13; *see also Lumber V Final* IDM at Comment 62.
[1589] *See Gov't of Québec v. U.S.*, 105 F.4th at 1374.
[1590] *Id.*
[1591] *Id*. at 1373-75.
[1592] *See* GOC Case Brief Vol. II at 67.
[1593] *See* GOC Non-Stumpage IQR Volume II at 119 and Exhibit GOC-AR7-CRA-CLASS43.2-8.
[1594] *Id*. at 119 and Exhibit GOC-AR7-CRA-CLASS43.2-8.
[1595] *See* GOC Non-Stumpage IQR Response Volume II at 119 and Exhibit GOC-AR7-CRA-CLASS43.2-8.
[1596] *See* GOC Case Brief Vol. II at 68.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

sequentially and if a single factor warrants a finding of specificity, then no further analysis is necessary.

Lastly, we disagree with the GOC that Commerce should examine usage of Class 43.2 "over a five-year and ten-year period" because a single year does not capture the large number of companies that use the program."[1597] The Class 43.2 Assets program is a recurring tax program. Therefore, in conducting the *de facto* specificity analysis, we evaluate usage data based on the income tax returns filed with the tax authorities during the POR. Here, companies filed their 2023 income tax returns during the POR. Commerce therefore must conduct a POR-specific *de facto* specificity analysis based on the number of subsidy users and total corporate tax filers for the 2023 tax year only, rather than consider historical usage information for the program. As discussed above, based on the usage data, we continue to find the CCA for Class 43.2 Assets program to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because recipients of the subsidy are limited in number during the POR.

Comment 66: 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 68-82.

> As with the SR&ED tax credit and the CCA for Class 43.2 assets, {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. As explained above with respect to the SR&ED tax credit, {Commerce's} percentage methodology is not in accordance with the law, and as applied by {Commerce} is unsupported by substantial evidence on the record. {Commerce} should revisit and reconsider its *de facto* specificity finding for the final results.
>
> {Commerce} erred in finding that the 6 and 10 percent CCA depreciation rates for Class 1 buildings used for non-residential purposes confers a countervailable benefit and provides a financial contribution. The 6 and 10 percent rates simply reflect the actual rate of depreciation for such assets, as determined in an empirical study undertaken by {StatCan} before the rates were introduced, and so confer no countervailable benefit. {Commerce} inappropriately treated different subclasses of assets in Class 1 as if they are the same kind of asset, despite extensive evidence to the contrary. {Commerce} also 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. What {Commerce} should have done, under the

[1597] *Id*. at 68.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

so-called "tiering" methodology codified at 19 CFR. 351.503(d), is 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 that is otherwise due." In finding that there was a financial contribution, {Commerce} ignored the statutory language "otherwise due." {Commerce} must take Canada's tax 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.

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 310-320.

{Commerce} found that the CCA for Class 1 assets confers a benefit as provided in 19 CFR 351.509(a)(1). The GOC argues that this determination is flawed because {Commerce} disregarded the "nature of the different kinds of buildings" that make up this program. However, {Commerce's} analysis here is quite simple. Class 1 buildings are usually depreciated at the CCA rate of 4 percent, but those used for manufacturing may receive an additional 6 percent deduction, which clearly falls under the definition of revenue foregone and constitutes financial contribution. 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 Federal Circuit has upheld this result in a separate proceeding.

The GOC also argues that {Commerce} erred in calculating the benefit by comparing the Class 1 rate under the AII provision with the non-accelerated rate application to Class 1 assets. Instead, the GOC argues that {Commerce}, under the "tiering" methodology codified at 19 CFR 351.503(d), should use the "AII rate applicable to Class 43 assets." The argument is without merit. Class 1 and Class 43 programs apply to distinct categories of asset groups, Class 1 assets cover most buildings, whereas Class 43 assets cover qualifying machinery and equipment. Alternatively, if the GOC intended to argue that the benchmark should be the AII rate applicable to Class 1 assets, rather than the Class 43 AII rate, {Commerce} has already considered and rejected that argument. The applicable regulation for determining a benefit under this program is 19 CFR 351.509(a), which was promulgated for the purpose of calculating the benefit received from tax-related subsidies, instead of 19 CFR 351.503(d). Accordingly, {Commerce} should maintain its use of the 4 percent depreciation rate as the benchmark for Class 1 Assets.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> The Canadian Parties argue that the program is too broadly available to be specific and contend that {Commerce} was required to place greater emphasis on the diversity of industries receiving the deduction. These arguments disregard both the statutory framework and the SAA, which permit {Commerce}to determine *de facto* specificity by comparing the actual recipients of a subsidy to the universe of potential recipients and to make its determination on an enterprise basis. The record confirms that only a small percentage of eligible corporate taxpayers claimed the additional Class 1 depreciation during the POR, supporting {Commerce's} finding that the recipients are limited in number.

Commerce's Position: Commerce found the CCA for Class 1 Assets program countervailable in prior administrative reviews, most recently, in *Lumber V AR6 Final*.[1598] We find that the GOC has not submitted any new arguments regarding the program and, therefore, we decline to reconsider 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 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.[1599] 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.[1600]

The Federal Circuit upheld Commerce's countervailable determination for the Class 1 program in the underlying investigation in *Gov't of Quebec v. United States*.[1601] The Court confronted nearly identical arguments to those made by the GOC here, and was unpersuaded. Central to the Court's finding was its finding that, of the reasons behind varied depreciation rates in a tax system, "absent the additional allowance, the generally applicable 4% standard rate would have applied."[1602] The Court explicitly held 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."[1603]

[1598] *See Lumber V AR6 Final* IDM at Comment 36; *see also Lumber V AR5 Final* IDM at Comment 45; *Lumber V AR4 Final* IDM at Comment 46; *Lumber V AR3 Final* IDM at Comment 88 and 89; *Lumber V AR2 Final* IDM at Comment 99 and 100; and *Lumber V AR1 Final* IDM at Comment 95 and 96.
[1599] *See* GOC Case Brief Vol. II at 74-81.
[1600] *Id.* at 81.
[1601] *See Gov't of Québec v. U.S.*, 105 F.4th at 1371-72.
[1602] *Id.* at 1372.
[1603] *Id.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

The fact remains that under the program, the GOC allows additional CCAs for different classes of property.[1604] 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.[1605] 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 the building is at least 90 percent used for non-residential use in Canada.[1606] Thus, under the Class 1 Assets 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.

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."[1607] We find that *Hyundai Steel* does not alter our determination here. In *Hyundai Steel*, the Court found that companies receiving the standard allocation of emissions permits might not incur a permit shortfall and, even if they did, had options for satisfying that shortfall that did not require payment to the Government of Korea.[1608] This is not the case here, as the additional CCA directly reduces the tax otherwise payable under the applicable tax regime. As explained above, absent the additional CCA, the generally applicable four-percent depreciation rate applies, resulting in a smaller deduction and correspondingly greater tax liability. Thus, the additional CCA reduces tax that otherwise would have been due. Accordingly, even under *Hyundai Steel*, the additional CCA constitutes revenue forgone that is otherwise due under section 771(5)(D)(ii) of the Act.

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.[1609] 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.[1610] As the Federal Circuit has recognized, Congress was clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent unless and until the USTR has determined the scope of its implementation, if any, pursuant to the statutory scheme.[1611] WTO panel or Appellate Body reports do not automatically limit nor have an effect on Commerce's discretion in applying the

[1604] *See* GOC Non-Stumpage IQR Response Volume II at 74-77, 101-102, and Exhibit GOC-AR7-CRA-CLASS1-1.
[1605] *Id*. at 75 and 101.
[1606] *Id*.
[1607] *See* GOC Case Brief Vol. II at 75-77 (citing *Hyundai Steel*, 659 F.Supp.3d at 1336).
[1608] *See Hyundai Steel*, 659 F.Supp.3d at 1336-37.
[1609] *See* GOC Case Brief Vol. II at 78-81 (citing *DS 108 Panel Report* at para. 61-66).
[1610] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.
[1611] *See Corus Staal v. U.S. (2005)*, 395 F.3d at 1347-49, accord *Corus Staal v. U.S. (2007)*, 502 F.3d at 1375; and *NSK v. U.S.*, 510 F.3d at 1379-80.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

statute in an AD or CVD proceeding.[1612] Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."[1613]

We also continue to disagree with the GOC's arguments that Commerce erred in finding that the six and10 percent depreciation rates for non-residential buildings provided a benefit.[1614] As reported on the record, 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 and those used for non-residential use may receive an additional two percent deduction.[1615] 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."[1616] 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 also continues to 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.[1617] They assert that because companies were able to claim extra depreciation on top of the additional CCA set forth under Class 1, Commerce should increase the benchmark rate (*i.e.*, four percent CCA rate).[1618] As with the ACCA for Class 53 Assets (*see* Comment 63), the GOC argues that Commerce should apply its "tiering" methodology under 19 CFR 351.503(d) to calculate the benefit.[1619] 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 buildings.[1620] We disagree. The GOC 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. The fact that a different incentive, the AII, 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.

[1612] *See* 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).
[1613] *See* SAA at 659.
[1614] *See* GOC Case Brief Vol. II at 70-74,
[1615] *See* GOC Non-Stumpage IQR Response Volume II at 74-77, 101-102, and Exhibit GOC-AR7-CRA-CLASS1-1.
[1616] *See also CVD Preamble*, 63 FR at 65375 (emphasis added).
[1617] *See* GOC Case Brief Vol. II at 82.
[1618] *Id.*
[1619] *Id.*
[1620] *Id.* It appears that the GOC inadvertently referenced Class 43 within its argument for Class 1 on page 82 of its case brief. For reference, see GOC Case Brief Vol. II at 6.

Additionally, the GOC's arguments regarding the specificity of the CCA for Class 1 Assets[1621] have been addressed in prior administrative reviews.[1622] 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.[1623] 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 {CVD} law."[1624] 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.[1625] The Federal Circuit has held that the statute grants Commerce "the necessary latitude afforded it in choosing the appropriate approach" for analyzing *de facto* specificity.[1626] This analysis is inherently fact-intensive and case-specific.[1627] For further discussion of Commerce's specificity analysis, *see* Comment 2.

The GOC reported that, out of 2.6 million corporate tax filers in Canada for the 2023 tax year,[1628] 32,820 companies claimed and were allowed the additional Class 1 CCA of six percent, and 5,440 companies claimed and were allowed the additional Class 1 CCA of 10 percent.[1629] Because we treat the CCA for Class 1 Assets as one program, and not as separate federal and provincial tax programs (*see* Comment 4), 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 1.3 percent of Canadian corporate tax filers claimed the additional CCA for Class 1 Assets in their 2023 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. The Federal Circuit in *Gov't of Quebec v. U.S.* upheld Commerce's usage of total corporate tax filers as the comparator for this same program in the underlying investigation.[1630]

[1621] *Id.* at 69-70.
[1622] *See Lumber V AR6 Final* IDM at Comment 36; *see also Lumber V AR5 Final* IDM at Comment 45; *Lumber V AR4 Final* IDM at Comment 46; *Lumber V AR3 Final* IDM at Comment 89; *Lumber V AR2 Final* IDM at Comment 99; and *Lumber V AR1 Final* IDM at Comment 95.
[1623] *See* SAA at 929.
[1624] *Id.*
[1625] *See*, *e.g.*, *Lumber V Final* IDM at Comment 62; *see also CRS from Korea* IDM at Comment 13.
[1626] *See Gov't of Quebec v. U.S.*, 105 F.4th at 1374.
[1627] *Id.*
[1628] In the *Lumber V AR7* Post-Prelim Memorandum, we inadvertently stated that the GOC reported 24,808,590 corporate tax filers in Canada for the 2023 tax year. *See Lumber V AR7* Post-Prelim Memorandum at 11. The GOC reported 2,605,590 corporate tax filed in Canada for tax year 2023. *See* GOC Non-Stumpage IQR Volume II at Exhibit GOC-AR7-CRA-CLASS1-7.
[1629] *See* GOC Non-Stumpage IQR Volume II at 94 and Exhibit GOC-AR7-CRA-CLASS1-7.
[1630] *See Gov't of Quebec v. U.S.*, 105 F.4th at 1373-75.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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.[1631]

Comment 67: Whether the Federal and Provincial SR&ED Credits Are Specific

GOC Case Brief

The following is a verbatim summary of the argument submitted by the GOC (internal citations omitted). For further details, *see* GOC Case Brief Vol. II at 46-66.

> {Commerce} found that the SR&ED tax credit is *de facto* specific by calculating a percentage derived by dividing the number of taxpayers that used the SR&ED tax credit into the total number of corporations in Canada (the "percentage methodology"). Finding that the resulting percentage was small, Commerce concluded that the number of users was limited in number and, thus, that the SR&ED measure is *de facto* specific. The percentage methodology is not in accordance with the law, and as applied by {Commerce} is unsupported by substantial evidence on the record.
>
> First, in other proceedings {Commerce} has found that the SR&ED tax credit is not *de facto* specific. However, in this proceeding, {Commerce} has never offered an explanation for its finding that the SR&ED tax credit is *de facto* specific in light of contrary findings in those other cases.
>
> Second, the SAA and jurisprudence from the courts demonstrate that {Commerce's} percentage methodology is unlawful. {Commerce} is legally required to 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 number of users compared to the number of *eligible* users. The percentage methodology ignores all of these factors. {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.
>
> Third, even if this "percentage" methodology were lawful, {Commerce} failed to take into account important factors affecting its calculation. {Commerce} underestimated the numerator by not considering the number of different companies that used the SR&ED tax credit over a number of years. {Commerce}

[1631] *See Lumber V AR6 Final* IDM at Comment 36; *see also Lumber V AR5 Final* IDM at Comment 45; *Lumber V AR4 Final* IDM at Comment 46; *Lumber V AR3 Final* IDM at Comment 89; *Lumber V AR2 Final* IDM at Comment 99; and *Lumber V AR1 Final* IDM at Comment 95.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> overestimated the denominator by including entities that did not engage in research and development or that paid no taxes. 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.

GOO Case Brief

The following is a verbatim summary of the argument submitted by the GOO (internal citations omitted). For further details, *see* GOO Case Brief Vol. VI at 21-22.

> Commerce erred by…finding the Ontario SR&ED…to be specific.

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 106-107.

> {Commerce} improperly determined that the number of recipients that received the SR&ED tax credit was limited in number on an enterprise basis when compared to the total number of corporate tax filers in Québec and, therefore, the program was *de facto* specific. {Commerce} reached its determination by comparing the number of companies that received benefits under the program to the total corporate tax filers in Québec. However, statistics show that thousands of different companies across a diverse set of industries have received the tax credit on a yearly basis. The SR&ED tax credit is therefore widely available and record evidence shows broad usage throughout Québec's economy.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute. For further details, *see* Resolute Case Brief at 143-144.

> The federal SR&ED tax credits were accrued by Resolute's predecessor in bankruptcy and would have been extinguished by that bankruptcy consistent with {Commerce's} findings as to Resolute in other proceedings. Alternatively, {Commerce} should recognize that Resolute did not retain the full face value of the credit, but only the amount remaining after payment of the resulting income tax liability. The appropriate benefit measure must be the after-tax value. The Ontario and Québec SR&ED credits likewise should be measured by their after-tax value.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 277-297.

> In the *Preliminary Results*, {Commerce} continued to find the Federal SR&ED program is countervailable and confers a benefit equal to the amount of tax savings pursuant to 19 C.F.R. § 351.509(a)(1). Resolute argues that {Commerce} should not treat the SR&ED tax credits as a countervailable benefit because the credits were earned by a predecessor entity before its restructuring. This argument misconstrues {Commerce's} analysis, as the relevant inquiry is not when the credits were accrued, but when the benefit was received. Thus, because Resolute claimed the tax credits during the POR, it received the benefit during the POR, regardless of when the underlying credits were accrued. Second, Resolute contends that {Commerce} should calculate the benefit based on the purported "after-tax" value of the tax credit, rather than the full amount of credit received. However, {Commerce's} regulations clearly state that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit." Instead, "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." Accordingly, {Commerce} should reject Resolute's argument and continue to countervail the full amount of the benefit received.
>
> The Canadian Parties also contend that the program is not limited in number, {Commerce's} percentage methodology is inconsistent with the statute, {Commerce} improperly relied on only one of the *de facto* specificity factors, and the denominator should be limited to a narrower group of recipients. However, the record demonstrates that the Federal SR&ED tax credit is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the subsidy are limited in number. {Commerce's} enterprise-based comparison methodology is consistent with the statute, the SAA, {Commerce's} regulations, and judicial precedent. Moreover, where {Commerce} finds that recipients are limited in number, neither the Act nor the SAA requires it to conduct further analysis into the other *de facto* specificity factors. Finally, {Commerce} should not limit the denominator to exclude "enterprises that were not in goods-producing sectors," as the statute requires {Commerce} to compare the number of actual recipients to the "universe or composition of the group of potential recipients," and nothing in the Canadian Income Tax Act expressly excludes entire categories of taxpayers from eligibility.

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 26-32.

> {Commerce's} *de facto* specificity findings for the federal and provincial tax and employment 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: At the outset, we note that we address the Canadian Parties' general specificity arguments at Comment 2. Commerce found, in prior segments of this proceeding, the federal, Ontario, and Québec SR&ED 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 in number on an enterprise basis under section 771(5A)(D)(iii)(I) of the Act and then explained how these findings accorded with the Act, the SAA, and past case precedent.[1632] Commerce also explained the legitimacy of using a percentage analysis to determine whether the Québec SR&ED was specific in the *Groundwood Paper from Canada Final*.[1633] In this review, we find that the Canadian Parties make substantively the same arguments as in prior proceedings, and we continue to find their arguments unconvincing as we have done in each prior segment of the proceeding. As discussed below, we continue to find that the federal, Ontario, and Québec SR&ED tax credit programs are *de facto* specific.[1634]

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 economy.[1635] 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 {CVD} law."[1636] 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.[1637] 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

[1632] *See Lumber V AR6 Final* IDM at Comment 37 (Federal); *see also Lumber V AR5 Final* IDM at Comment 46; *Lumber V AR4 Final* IDM at Comment 47; *Lumber V AR3 Final* IDM at Comment 85 (Québec); *Lumber V AR2 Final* IDM at Comment 94; *Lumber V AR1 Final* IDM at Comment 89 (Ontario); and *Lumber V Final* IDM at Comment 65.
[1633] *See Groundwood Paper from Canada Final* IDM at Comment 61.
[1634] *See Preliminary Results* PDM at 77-78 (Federal), 82 (Ontario), and 84-85 (Québec).
[1635] *See* SAA at 930 (referencing *Carlisle Tire v U.S.*, 564 F.Supp.834 (CIT 1983)).
[1636] *Id.*
[1637] *Id.* at 931.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

enterprises using a subsidy is actually large or small.[1638] 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 we 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.[1639]

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.[1640] 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.[1641] On the contrary, as the Federal Circuit recently held, the statute grants Commerce "the necessary latitude afforded it in choosing the appropriate approach" for analyzing *de facto* specificity.[1642] This analysis is inherently fact-intensive and case-specific.[1643]

Further, the SAA provides that "the specificity test was intended to function as a rule of reason and to avoid the imposition of CVDs in situations where, because the widespread availability and use of a subsidy, the benefit of the subsidy is spread throughout an economy."[1644] 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, Ontario, and Québec governments. We considered whether the recipients of each program were limited in number on an enterprise basis in comparison to the total number of eligible entities in each jurisdiction.[1645] For each program, we found that the usage data showed that the actual recipients of the tax credits were "limited in number."[1646]

In making their arguments, the Canadian Parties cite *Mosaic Morocco (2023)*,[1647] asserting the CIT held that Commerce may not find a tax program to be *de facto* specific by comparing the number of recipients who use a tax program to the total number of tax filers.[1648] First, we note that this litigation, and subsequent litigation,[1649] 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.[1650] 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 that investigation, Commerce's analysis was flawed because it did not consider whether the

[1638] *See CRS from Korea* IDM at Comment 13.
[1639] *See* GOC Case Brief Vol. II at 50-52.
[1640] *See Lumber V Final* IDM at Comments 62 and 64.
[1641] *See* Canadian Parties Joint Case Brief Vol. I at 142-146.
[1642] *See Gov't of Quebec v. U.S.*, 105 F.4th at 1374.
[1643] *Id.*
[1644] *See* SAA at 929-30.
[1645] *See Preliminary Results* PDM at 77-78 (Federal), 82 (Ontario), and 84-85 (Québec).
[1646] *Id.*
[1647] *See Mosaic Morocco (2023)*, 659 F.Supp.3d at 1314-17.
[1648] *See* GOC Case Brief Vol. II at 55-58; *see also* GOO Case Brief Vol. VI at 20-21.
[1649] *See Mosaic Morocco (2025)*, 744 F.Supp.3d 1367.
[1650] *See Mosaic Final Results of Redetermination*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

denominator used reflected the "universe or composition of the group of potential recipients."[1651] Commerce's analysis of the R&D tax credit programs in this review is fully consistent with the Court's holding in *Mosaic Morocco (2023)*. The denominator used in Commerce's specificity analysis for each SR&ED tax credit program reflects the universe of potential recipients for each program. The record demonstrates that all corporate/business taxpayers in Canada, Ontario, and Québec, for the federal, Ontario and Québec SR&ED programs, respectively, can engage in the qualifying research and development activities. [1652] Accordingly, Commerce reasonably 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 Quebec 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.[1653] In *Gov't of Quebec 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."[1654]

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.[1655] The GOC notes that the 20,830 users of the Federal SR&ED program is "substantial" and that the users represent "nearly all economic sectors."[1656] The provincial governments that administer SR&EDs likewise argue that these programs have many users representing diverse industries in their respective provincial economies.[1657] 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, the GOC, citing *Mosaic Russia (2025)*, 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.[1658] The GOC also argues that Commerce incorrectly included in its comparator number companies which are not subject to paying taxes, such as not-for-profit entities and entities with no taxable income that year.[1659] Both arguments emphasize that the tax credit users are not "limited" when compared against a much smaller denominator. As explained above in Comment 2, the Federal Circuit recently upheld Commerce's usage of comparator numbers when analyzing *de facto* specificity under section

[1651] *See Mosaic Morocco (2023)*, 659 F.Supp.3d 1315.
[1652] *See* GOC Non-Stumpage IQR Response Volume II at 139-140, 146, and Exhibit GOC-AR7-CRA-SRED-1; *see also* GOO Non-Stumpage IQR Response at ON-ORDTC-1 and ON-ORDTC-6 – 7; and GOQ Non-Stumpage IQR Response at Exhibit QC-C02-A (pgs. 1 and 7-9).
[1653] *See Gov't of Quebec v. U.S.*, 105 F.4th 1374.
[1654] *Id.*
[1655] *See* GOC Case Brief Vol. II at 47, 52, 54, 57, and 60.
[1656] *Id*. at 47.
[1657] *See* GOQ Case Brief Vol. VII(b) at 106-107; *see also* GOO Case Brief Vol VI. at 18-21.
[1658] *See* GOC Case Brief Vol. II at 61-66 (citing *Mosaic Russia (2022)*, 589 F.Supp.3d at 1309–10, *aff'd* in *Mosaic Russia (2025)*, 160 F.4th 1340).
[1659] *Id*. at 4, 57, and 62-66.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

771(5A)(D)(iii)(I) of the Act.[1660] The selection of such a comparator number analyzes what entities or industries can *avail* themselves of the program.[1661] In *Mosaic Russia (2025)*, the Federal Circuit upheld Commerce's determination that a natural gas for LTAR program was *de facto* specific because the agrochemical industry, which included the fertilizer industry at issue, was a "predominant user," pursuant to section 771(5A)(D)(iii)(II) of the Act.[1662] The Federal Circuit found that, because the record indicated that the government-regulated price of natural gas differed between industrial and non-industrial users, it was "within Commerce's reasonable discretion to limit its predominant usage analysis to only industrial users."[1663] The GOC itself acknowledged that in this example "the only users who could potentially access the regulated natural gas prices under the Russian program" were industrial users.[1664] As explained above, the record of this review does not demonstrate that any of the SR&ED programs at issue are limited exclusively to goods-producing sectors. Likewise, there is no indication that the companies not subject to paying taxes make up a meaningful portion of the total number of enterprises, and the GOC cites no such evidence in its brief.[1665] As such, Commerce correctly compared the number of users of the program to the number of entities that could avail themselves of the program.

Furthermore, the CIT, in *Gov't of Québec*, explicitly addressed this argument for using a denominator reflecting the number of entities that engaged in the qualifying activities.[1666] The Court considered whether Commerce reasonably compared the number of entities that benefitted from a program that provided a tax credit to entities that hired student trainees and apprentices to the number of corporate tax filers in the jurisdiction, where plaintiffs argued that the denominator should have been the number of entities that employed trainees.[1667] The Court held: "{t}he Plaintiffs' arguments urging comparison to entities that employ trainees would improperly convert this test into a standard for predominant use – a result which is particularly apparent when considering a limited-in-number analysis on an industry, rather than enterprise, basis."[1668] Likewise, here, to compare the users of the SR&ED programs to the number of enterprises that that had taxable income in the same year would suffer from the same flaw.[1669]

Further, the Federal Circuit in *Gov't of Québec v. U.S* upheld Commerce's usage of total corporate tax filers as the comparator for a similar Québec on-the-job training tax credit.[1670] 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.[1671] Commerce's analysis in this administrative review, as well as its analysis in prior segments of this proceeding and the *Groundwood Paper Final* was therefore fully consistent with Commerce's current practice,

[1660] *See Gov't of Quebec v. U.S.*, 105 F.4th at 1373-74.
[1661] *Id.* 105 F.4th at 1374.
[1662] *See Mosaic Russia (2025)*, 160 F.4th at 1344-45.
[1663] *Id.*, 160 F.4th at 1348.
[1664] *See* GOC Case Brief Vol. II at 65-66 (citing *Mosaic Russia (2025)*, 160 F.4th at 1347-48).
[1665] *Id*. at 57.
[1666] *See Gov't of Québec*, 567 F.Supp.3d at 1291.
[1667] *Id.*
[1668] *Id.*
[1669] *See* GOC Case Brief Vol. II at 57.
[1673] *See Gov't of Québec v. U.S.*, 105 F.4th at 1373-1375.
[1671] *See* SAA at 930.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

regulations, and the language of the SAA accompanying the change in the law as part of the URAA.

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.[1672] The cases cited by the GOC—*AK Steel Corp. v. U.S.* and *CTL Steel Plate from Korea Final* (litigated in *Bethlehem Steel I*)[1673]—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.[1674] 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*.[1675] Firstly, comparisons of actual numbers of users of programs across different proceedings and segments is of limited value in determining *de facto* specificity. As the CIT held in *BGH Edelstahl I*, "that the actual number of users is greater than in previous cases where Commerce concluded no specificity … is of no moment here{, where} *de facto* specific{ity} relates not only to the number of users in absolute terms, but also to the portion of the economy that number represents."[1676]

Furthermore, the Federal Circuit has stated that Commerce is afforded latitude and not subject to rigid rules when determining specificity.[1677] Moreover, the statute directs Commerce to conduct its *de facto* specificity analysis under section 771(5A)(D)(iii) of the Act on a case-by-case basis.[1678] As the Federal Circuit stated, specificity "must be determined on a case-by-case basis

[1672] *See* GOC Case Brief Vol. II at 58-60.
[1673] *Id*.
[1674] *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).
[1675] *See* GOC Case Brief Vol. II at 59-60 (citing *OCTG from Türkiye* (upheld in *Borusan 2015*, 61 F.Supp.3d at 1342-43); *CRS from Russia* IDM at 20-21; and *Compressors from Singapore*, 61 FR at 10316).
[1676] *See BGH Edelstahl I*.
[1677] *See Gov't of Quebec v. U.S.*, 105 F.4th at 1373-74.
[1678] *Id.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

taking into account all facts and circumstances of a particular case."[1679] 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.

The GOC also asserts that it is a fundamental principle of administrative law that Commerce must administer its authority fairly and rationally, which includes not treating similar situations in dissimilar ways.[1680] The GOC notes that in the 1986 investigations of *OCTG from Canada* and *Softwood Lumber from Canada*, Commerce found the SR&ED tax credit to be neither *de jure* nor *de facto* specific.[1681] The GOC adds that since the SAA made clear that the URAA amendments to the specificity sections of the statute were not intended to require a change to Commerce's pre-URAA practice,[1682] these prior decisions remain valid and should have been followed here. We disagree with the GOC. The decisions made in the1986 investigations to which the GOC refers were made prior to the URAA amendments to the specificity sections of the statute and were therefore based on different law. Furthermore, factual determinations from nearly 40 years ago are not relevant to Commerce's analysis of the SR&ED in this review. As noted above, Commerce conducts its *de facto* specificity analysis under section 771(5A)(D)(iii) of the Act on a case-by-case basis and that is necessarily a fact-specific inquiry. As such, Commerce properly determined, based on the record of this review, that the recipients of the federal, Ontario, and Québec SR&ED credits in Canada were limited in number and that the programs were therefore *de facto* specific, in accordance with the Act, regulations and the SAA.

With respect to *Royal Thai Gov't (2004)* and *Royal Thai Gov't v. U.S. (2006)*, also cited by the Canadian Parties,[1683] Commerce addressed the unique and distinguishing facts of that case in *Lumber V Final*.[1684] 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 (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.[1685]

Commerce properly determined on the record of this case that the recipients of the Federal and provincial SR&ED credits in Canada were limited in number and that the programs were therefore *de facto* specific, in accordance with the Act, regulations and the SAA. As Commerce has explained above, and in prior decisions,[1686] these programs are specific because the number of users was limited.

[1679] *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 Quebec v. U.S.,* 105 F. 4th at 1374.
[1680] *See* GOC Case Brief Vol. II at 48 (citing *Nakornthai*, 587 F.Supp.2d at 1307).
[1681] *Id*. at 49 (citing *OCTG from Canada*, 51 FR at 15039; and *Softwood Lumber from Canada*, 51 FR at 37458).
[1682] *Id*. (citing SAA at 929).
[1683] *See* GOC Case Brief Vol. II at 58-59.
[1684] *See Lumber V Final* IDM at Comment 64.
[1685] *See Royal Thai Gov't (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 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)}.").
[1686] *See Lumber V AR3 Final* IDM at Comment 85; and *Lumber V AR2 Final* IDM at Comment 94; *see also Lumber V AR1 Final* IDM at Comment 89; *Lumber V AR1 Final* IDM at Comment 89; *Lumber V Final* IDM at Comment 65; and *Groundwood Paper from Canada* Final IDM at Comment 61.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Lastly, Resolute contends that Commerce should revise the calculations to exclude federal and provincial taxes.[1687] However, 19 CFR 351.503(e) clearly states when calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit. 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 the Canadian Parties argues for – removing provincial taxes– are not one of the three enumerated offsets that are permitted by the statute. We therefore decline to use the "after-tax value" for our calculations.

Alberta

Comment 68: Whether the TEFU Is Specific

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 15-20.

> {Commerce} erred in finding countervailable the TEFU program, which partially exempts certain 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, including any commercial or government purpose in a motor vehicle that is not required to be licensed or registered or any other purpose other than burning fuel in an internal combustion or turbine engine. The record shows that 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.
>
> 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).

[1687] *See* Resolute Case Brief at 144-146.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 324-328.

> {Commerce} appropriately determined that Alberta's {TEFU} program is *de jure* specific because the governing legislation expressly limits eligibility to enterprises that purchase marked fuel for a prescribed list of qualifying uses. The Canadian Parties assert that the program is not limited to particular enterprises or industries and that its eligibility criteria are objective within the meaning of the Act. These are the same arguments {Commerce} has repeatedly rejected in the investigation and prior administrative reviews, and the record contains no new facts or changed circumstances warranting a different conclusion. The TEFU program expressly distinguishes between eligible and ineligible fuel uses and, as a result, limits access to the subsidy to a limited group of enterprises engaged in prescribed activities. {Commerce} has repeatedly held that it makes "no distinction between activity and industry for purposes of determining specificity." In addition, the record independently demonstrates that the program is *de facto* specific because only a small percentage of Alberta enterprises received benefits during the POR. Accordingly, {Commerce} should continue to find the TEFU program specific in the final results.

Commerce's Position: As there are no new arguments or information on the record of this administrative review with regard to the TEFU, consistent with *Lumber V AR5 Final*,[1688] Commerce continues to find the program to be *de jure* specific under section 771(5A)(D)(i) of the Act.

The GOA's TEFU program provides a partial fuel tax exemption for "marked" fuel[1689] used in unlicensed vehicles, machinery, and equipment for qualifying off-road activities as set out in the *Fuel Tax Act* and *Fuel Tax Regulation*.[1690] In prior segments of this proceeding, we found the TEFU to be *de jure* specific as it is expressly limited to enterprises or industries engaged in certain activities, and there is no 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.[1691]

In the instant review, the GOA again contests our specificity finding, repeating that within the tax-exempt certificate application a company indicates "the type of operations in which the applicant will be involved, identifying twenty-three diverse operations types, including a catch-all, 'other' category … operations {that} include 'road or pipeline construction,' 'home heating,'

[1688] *See Lumber V AR5 Final* IDM at Comment 49.
[1689] The GOA reported that fuel destined for prescribed tax-exempt uses is "marked" with a colorant and sold separately from "clear" fuel destined for non-prescribed purposes or uses. *See* GOA Non-Stumpage IQR Response Volume I at Appendix K, p. 1.
[1690] *Id*. and Exhibit AB-AR7-TEFU-2 (*Fuel Tax Act*) and Exhibit AB-AR7-TEFU-3 (*Fuel Tax Regulation* at section 8(3)).
[1691] *See Lumber V AR5 Final* IDM at Comment 49.; *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; *Lumber V AR3 Final* IDM at Comment 91; and *Lumber V AR4 Final* IDM at Comment 49.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

'waste management,' 'recycling" … {and that the} TEFU is available and used by a diverse group of users, and the use-based eligibility criteria do not limit availability or favor one industry or enterprise over another."[1692] The GOA's argument is inconsistent with the language of the law, which limits the program to enterprises or industries engaged in certain activities. Specifically, the TEFU is expressly limited to enterprises or industries that use fuel to engage in certain activities, such as heating, cooling, off-road equipment, and other non-motive uses.[1693]

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 segments of an economy could escape the purview of the CVD law."[1694] Rather, though the GOA cites potentially diverse uses, these uses are narrowly tailored "discrete segments" of the economy, namely enterprises or industries that use unlicensed vehicles, machinery, and equipment for off-road activities.[1695] As such, we continue to find the GOA's argument unpersuasive.

Further, we disagree with the cases cited by the GOA as supporting a finding that the TEFU is not *de jure* specific.[1696] In both *Pasta from Italy* and *NOES from Taiwan*, Commerce found the programs at issue to not be *de jure* specific, under section 771(5A)(D)(i) of the Act, because the applicable laws indicated that the benefits were not expressly limited to any particular enterprise or industry, or other criteria, but were available to companies engaging in research and development more broadly.[1697] In contrast, Commerce's specificity finding for the TEFU is in fact consistent with our past practice of finding *de jure* specificity where limitations and/or exclusions based on whether a recipient engages in specific activities can act as limitations on an enterprise- or industry-basis. 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 {Gulf Cooperation Council} 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.[1698] Furthermore, we note that in *Magnesium from Israel*, Commerce made no distinction between activity and industry for purposes of determining specificity.[1699] 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.

Additionally, we continue to disagree with the GOA's argument that the TEFU has objective criteria or conditions governing its eligibility, and thus, the program is not *de jure* specific under section 771(5A)(D)(ii) of the Act.[1700] To begin with, we note that the controlling statutes and eligibility criteria for the TEFU have not changed since *Lumber V AR5*, the most recent review in

[1692] *See* GOA Case Brief Vol. IV.B at 17-18.
[1693] *See* GOA Non-Stumpage IQR Response Volume I at Appendix K, p. 1-2, 8, 10-11, and Exhibits AB-AR7-TEFU-2 (*Fuel Tax Act*) and TEFU-3 (*Fuel Tax Regulation* at section 8(3)).
[1694] *See, e.g., Lumber V AR5 Final* IDM at Comment 49.
[1695] *See* SAA at 930.
[1696] *See* GOA Case Brief Vol. IV.B at 17-18 (citing *Pasta from Italy* IDM at 17; and *NOES from Taiwan* IDM at 21).
[1697] *See Pasta from Italy* IDM at 17; *see also NOES from Taiwan* IDM at 21.
[1698] *See Steel Pipe from Oman* IDM at Comment 2; *see also Nails from Oman* IDM at Comment 1.
[1699] *See Magnesium from Israel* IDM at Comment 2.
[1700] *See* GOA Case Brief Vol. IV.B at 19-20.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

which the program was examined and found to be countervailable.[1701] Section 771(5A)(D)(ii) of the Act defines "objective criteria" as criteria "that are neutral and that do not favor one enterprise or industry over another." Under the TEFU, the eligibility criteria limit access to the subsidy to only those users purchasing fuel for a prescribed list of approved activities.[1702] Therefore, the eligibility criteria do not meet the statutory definition of "objective criteria," because they favor certain enterprises or industries, that is, those enterprises or industries that use marked fuel for one of those limited, prescribed purposes. Our finding that *de jure* specificity exists when eligibility is clearly limited to certain activities because only the enterprises or industries involved in those activities are, in fact, eligible to obtain the tax exemption or reduction is consistent with the statute and the SAA. We, thus, continue to find that the TEFU program is *de jure* specific in accordance with the statute. Therefore, we need not consider whether the TEFU program is *de facto* specific.

British Columbia

Comment 69: Whether the CIF, CIIP, and BC OBPS Programs Are 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 82-89.

> …the BC Parties explain that {Commerce} erred in countervailing CleanBC's subprograms CIF, CIIP, and BC OBPS for three reasons. First, these programs do not provide a benefit; instead, they impose burdens on the subject companies. Second, CIF, CIIP, and the BC OBPS are not *de jure* specific because they are 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. CIIP, as described below, is a self-funding program in which the funds are provided by industries themselves.

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 194-199 and 334-341.[1703]

> {Commerce} correctly determined that the CleanBC {CIF} confers a benefit on West Fraser in the *Preliminary Results*. As {Commerce} has explained in prior administrative reviews, its benefit analysis is concerned only with what the company receives (*i.e.*, incentive payment reimbursements under CIF), not with the initial collection of taxes or the source of that revenue. Record evidence supports {Commerce's} analysis, confirming that CIF incentivizes qualifying emissions

[1701] *See* GOA Non-Stumpage IQR Response Volume I at Appendix K and Exhibits AB-AR7-TEFU-2 and TEFU-3.
[1702] *Id.* at Appendix K, p. 1-2, 8, and 10-11.
[1703] This executive summary exceeds 450 words because we have addressed more than one "issue" in this comment.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

reduction projects through a shared-cost structure and dispenses payments to industry participants based on emissions performance. As such, the GBC provides a direct transfer of funds to companies, like West Fraser, that undertake emissions reduction projects.

Record evidence further demonstrates that West Fraser received CIF payments during the POR. Absent this funding, West Fraser would have borne the full cost of these projects itself. Accordingly, CIF constitutes a financial contribution in the form of a grant under section 771(5)(D)(i) of the Act, with the benefit equal to the amount of the grant received under 19 CFR 351.504(a). {Commerce} should reaffirm its determinations regarding CIF in the final results.

Additionally, {Commerce} correctly found the CIF program to be *de jure* specific in the *Preliminary Results* because the governing legislation expressly limits eligibility to large industrial operations with attributable {GHG} emissions above 10,000 tCO2e per year that report emissions under the {*GGIRCA*}.

Despite challenges from the GBC, the CIIP and OBPS provide 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. {Commerce} has previously rejected this argument, reasoning that the GBC's imposition of a carbon tax and subsequent refunds to companies meeting certain emissions benchmarks constitutes a financial contribution regardless of the tax's self-funding nature. Record evidence further supports that the CIIP, by incentivizing lower carbon tax liabilities and supporting emissions reductions projects, results in a financial contribution through revenue forgone as described in section 771(5)(D)(ii) of the Act. Similarly, under OBPS, regulated operations like West Fraser could apply for and receive a full exemption from the consumer carbon tax. This tax savings likewise constitutes revenue forgone under section 771(5)(D)(ii) {of the Act}.

The GBC also argues that neither CIIP nor OBPS confers a benefit to the respondents due to the overall burdens imposed by the broader CleanBC program. The GBC's cited case law in support of its argument is inapposite. {Commerce's} benefit analysis properly hinges on whether respondents pay less tax under the program than they would absent it, rendering the GBC's emphasis on additional obligations and conditions as irrelevant. Because the CIIP reimburses companies for a portion of carbon taxes paid, and OBPS provides a full exemption from that same tax, {Commerce} has previously maintained its position that the CIIP confers a benefit to respondents in this review.

{Commerce} correctly determined that the CIIP and OBPS are *de jure* specific because the governing legislation expressly limits eligibility to a defined group of large industrial facilities while excluding numerous categories of operations from participation. The Canadian Parties argue that the programs merely identify a "type of business" rather than a specific enterprise or industry and therefore cannot satisfy

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> the *de jure* specificity standard. The record demonstrates that the CIIP and OBPS expressly restrict eligibility to a limited group of industrial operations producing regulated products while excluding entire categories of facilities from participation, thereby favoring certain industries over others. Consistent with {Commerce's} prior determinations and established practice, these express statutory limitations satisfy section 771(5A)(D)(i) of the Act, and the Canadian Parties identify no new facts or legal authority warranting a different conclusion.

Commerce's Position: As in prior reviews, the GBC again raises the same arguments regarding the CleanBC, which incentivizes companies to reduce GHG through the sub-programs CIF and CIIP. We found the GBC's arguments unpersuasive, most recently, for the CIF in *Lumber V AR4 Final* and for the CIIP in *Lumber V AR5 Final*,[1704] and continue to do so here for the same reasons as discussed below. Additionally, we do not find the GBC's arguments regarding the BC OBPS, another CleanBC sub-program, to be persuasive. Thus, based on the record evidence, we continue to find the BC OBPS, an industrial carbon pricing system that replaced the CIIP starting on April 1, 2024,[1705] to be a countervailable subsidy. During the POR, West Fraser received payments under the CIF and CIIP, and carbon tax exemptions under the BC OBPS.[1706]

The GBC argues that Commerce must evaluate the programs as a whole, and not separately, citing *Government of Sri Lanka v. U.S.*[1707] When considered in totality, the GBC claims, there is no benefit because of the burdens and requirements that the programs place on companies covered under the *GGIRCA* (*i.e.*, an additional tax or requirements to make emissions reduction investments, as well as emissions reporting).[1708] The GBC also states that CleanBC is a "self-funding" program that uses funds—*i.e.*, carbon tax payments made by companies—to provide incentive payments under the CIF and tax refunds under the CIIP.[1709] However, consistent with the court's opinion in *Gov't of Sri Lanka v. U.S.*, in conducting the benefit analysis of the programs, Commerce is only concerned with "what goes into a company,"[1710] (*i.e.*, the benefit received from payments under the CIF and CIIP as well as tax savings realized by exemptions under the BC OBPS) and not with the initial collection of the taxes or the source of the revenue generally. Because West Fraser received payments under the CIF and CIIP, separate sub-programs of CleanBC, and carbon tax exemptions under the BC OBPS during the POR, a benefit was received by West Fraser under each distinct program, and thus, should be analyzed separately.

[1704] *See Lumber V AR4 Final* IDM at Comment 52; *see also Lumber V AR5 Final* IDM at Comment 52.
[1705] *See* GBC Non-Stumpage IQR Response Volume VII (CIIP) at 1.
[1706] *See* West Fraser Non-Stumpage IQR Response Volume II at 42, 44, and 94-95; *see also* West Fraser January 22, 2026 Non-Stumpage SQR Response at 3 and Exhibit WF-AR7-OBPS-8; and West Fraser February 11, 2026 Non-Stumpage SQR Response at 1-2.
[1707] *See* GBC Case Brief Vol. V at 84 (citing *Gov't of Sri Lanka v. U.S.*, 308 F.Supp.3d at 1380).
[1708] *Id*. at 85.
[1709] *Id*. at 82-84.
[1710] *See Gov't of Sri Lanka v. U.S.*, 308 F.Supp.3d at 1382; *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; *Lumber V AR4 Final* IDM at Comment 52; and *Lumber V AR5 Final* IDM at Comment 52.

Further to the GBC's "self-funded" argument for the CIF and CIIP, the GBC reported that between January 1, 2024, and March 31, 2024, it charged a carbon tax of C$65 per tonne for large industry, meaning the GBC funded CleanBC using the C$35 in excess of the C$30 per tonne that was established in 2019.[1711] On April 1, 2024, the GBC raised the carbon tax for large industry to C$80 per tonne and continued to fund the program in the same manner.[1712] 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 use the funding from the incremental additional carbon tax above the C$30 per tonne (standard rate) paid by eligible industry participants (*i.e.*, large industrial operations with high GHG emissions that report their emissions under the *GGIRCA*) to refund a portion of the taxes paid under the CIIP and to reimburse costs for emissions-reduction projects under the CIF.[1713] Under the GBC's argument, 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 CIF, CIIP, and BC OBPS operate, we reject the GBC's argument that burdens imposed on subject companies by the programs equate to no benefit being conferred. Under the CIF, West Fraser reported receiving payments for its Thermal Recovery Improvement Project during the POR.[1714] In the absence of the payments, West Fraser would have been responsible for the entire cost of its emissions reduction project. We, therefore, continue to find that the CIF confers a benefit under section 771(5)(E) of the Act and 19 CFR 351.504, and that the payment under the CIF constitutes a financial contribution in the form of a grant under section 771(5)(D)(i) of the Act.

By its design, the CIIP returns to companies the incremental carbon tax paid above the initial C$30 tax base.[1715] In the absence of the CIIP, West Fraser would not have received a refund during the 2024 POR of the incremental carbon tax paid in 2023.[1716] We, thus, continue to find that the CIIP confers a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1), and that the payments under the CIIP constitute a financial contribution under section 771(5)(D)(ii) of the Act as taxes previously paid are refunded to companies by the government, which equates to revenue forgone by the GBC. Similarly, under the BC OBPS, West Fraser was exempt from paying the carbon tax during the POR.[1717] Therefore, we continue to find that the BC OBPS confers a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) in the form of tax savings, and that the payments under the program constitute a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act.

[1711] *See* GBC Non-Stumpage IQR Response Volume V (CIF) at 1.
[1712] *Id.*
[1713] *Id.* at 2-3.
[1714] *See* West Fraser Non-Stumpage IQR Response Volume II at 41-42 and 44; *see also* GBC Non-Stumpage IQR Response Volume V at 6-7.
[1715] *See* GBC Non-Stumpage IQR Response Volume V at 25.
[1716] *See* West Fraser Non-Stumpage IQR Response Volume II at 94-95; *see also* GBC Non-Stumpage IQR Response Volume VII (CIIP) at 2.
[1717] *See* GBC Non-Stumpage IQR Response Volume VII (CIIP) at 4; *see also* West Fraser January 22, 2026 Non-Stumpage SQR Response at 2-3 and Exhibit WF-AR7-OBPS-8; and West Fraser February 11, 2026 Non-Stumpage SQR Response at 1-2.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Additionally, in the *Preliminary Results*, we found the CIF, CIIP, and BC OBPS to be *de jure* specific because each program is expressly limited by law to large industrial emitters (*i.e.*, those that emit 10,000 tonnes or more of CO2e annually) that report their emissions under the *GGIRCA*.[1718] We also preliminarily found that, under the CIIP and BC OBPS certain types of facilities are excluded from receiving benefits under the programs (*i.e.*, 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).[1719] Additionally, under the BC OBPS, the regulated operations must produce a regulated product as identified in the GGERR, such as "wood products: lumber."[1720]

In arguing that the programs are 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."[1721] The GBC notes that, as the CIT observed, "that some industries may benefit from the additional assistance … while other do not, … merely reflects the truism that not all industries will 'qualify under the criteria.'"[1722] The GBC asserts that the CIF, CIIP, and BC OBPS cover a particular "type" of business—all large industrial operations with high GHG emissions that report their emissions under *GGIRCA*—and, therefore, the programs are too broadly available to be *de jure* specific.[1723] 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."[1724] 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."[1725] The GBC claims that the *GGIRCA* establishes objective criteria that are strictly followed and neutral for the CIF, CIIP, and BC OBPS.[1726]

The GBC's reliance on the *Risen Energy* cases is unavailing because the program at issue was entirely different than the program under review here.[1727] The SAA makes clear that Commerce's *de jure* specificity analysis is fact intensive and case-specific.[1728] Further, the CIT in its subsequent opinion to *Hyundai Steel Co.* recognized "that a foreign statute need not name

[1718] *See Lumber V AR7 Prelim* PDM at 52 and 79-81.
[1719] *Id*. at 80-81 (citing GBC Non-Stumpage IQR Response Volume VII (CIIP) at 14-15).
[1720] *Id*. at 80 (citing GBC Non-Stumpage IQR Response Volume VII (CIIP) at 3 and Exhibit CIIP-3a (Schedule A.1, Table 2 for the listing of regulated products).
[1721] *See* GBC Case Brief Vol. V at 86 (citing *Hyundai Steel Co.*, Slip Op. 23-182 at 18-19 {emphasis in original}).
[1722] *Id*. (citing *Hyundai Steel*, 659 F.Supp.3d at 1342).
[1723] *Id*. at 86 (citing GBC Non-Stumpage IQR Response Volume V (CIF) at 1 and Volume VII (CIIP) at 1.
[1724] *Id*. at 87 (citing section 771(5A)(D)(ii) of the Act).
[1725] *Id*. (citing *BGH Edelstahl III*, 663 F.Supp.3d at 1381).
[1726] *Id*. at 87-88.
[1727] *See Risen Energy I* 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/FinalRemandRedetermination, at 7 (analyzing the same Article 26(2) tax subsidy program); and *Risen Energy II,* Slip Op. 2024-25.
[1728] *See* SAA at 930.

industries for a subsidy to be *de jure* specific."[1729] The CIT highlighted that, "{a}s Commerce has repeatedly and correctly recognized, metrics that select enterprises based on the substantive character of their operations – whether their inputs, outputs, customers, or externalities – are not neutral."[1730] The Court explicitly recognized that "if eligibility {for a program} turned on emission intensity . . ., the credit would discriminate according to operational characteristics and so be *de jure* specific."[1731] Thus, the GBC's reliance on these cases fails 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 CIF, CIIP, and BC OBPS 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),[1732] the criteria for the CIF, CIIP, and BC OBPS favor certain industries and enterprises. The GBC itself states that the CIF, CIIP, and BC OBPS "specifically target" 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."[1733] For the CIIP and BC OBPS, the GBC reported that the programs exclude certain types of facilities.[1734] Also, for the BC OBPS, the GBC stated that enterprise/industry must produce a regulated product as identified in the GGERR.[1735] By specifically identifying particular industries for subsidization, and excluding others, the criteria or conditions for the CIF, CIIP, and BC OBPS are not neutral and favor certain enterprises/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[1736] 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).[1737] 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.[1738] Here, the GBC reported that to receive CIF funds, an industrial

[1729] *See Hyundai Steel 2025*, at 1359 (explicitly disagreeing with the CIT's holding in *Hyundai Steel 2024*).
[1730] *Id.*, 753 F.Supp.3d at 1360.
[1731] *Id.*
[1732] *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.").
[1733] *See* GBC Case Brief Vol. V at 82 (citing GBC Non-Stumpage IQR Response Volume V (CIF) at 1 and Volume VII (CIIP) at 1).
[1734] *See* GBC Non-Stumpage IQR Response Volume VII (CIIP) at 14 (the certain types of facilities excluded are 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).
[1735] *See* GBC Non-Stumpage IQR Response Volume VII (CIIP) at 3 and Exhibit CIIP-3a (Schedule A.1, Table 2 for the listing of regulated products).
[1736] 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.
[1737] *See, e.g.*, *Lumber V AR3 Final* IDM at Comment 103.
[1738] *See, e.g.*, *Silicon Metal from Australia* IDM at Comment 3 ("With respect to the {Renewable Energy Target (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

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

operation entity must meet performance standards, and to receive a tax refund under the CIIP, the industrial operation must meet two emissions-intensity benchmarks (an eligibility threshold and a performance-based benchmark).[1739] Under the BC OBPS, the GBC reported that an industrial operation must emit below its emissions limit to receive benefits[1740] and produce a regulated product as identified in the GGERR.[1741] Consequently, on the basis of the record evidence, we continue to find that the CIF, CIIP, and BC OBPS are *de jure* specific under section 771(5A)(D)(i) of the Act because access to the subsidy is expressly limited to an enterprise or industry, or group thereof.

Comment 70: Whether the BC 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 72-82.[1742]

> … the BC Parties explain that {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 use the subprogram.

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 328-334.

> In accordance with sections 771(5)(D)(ii) and 771(5)(E) {of the Act}, {Commerce} should uphold its preliminary determination that the {BC Coloured Fuel Program} confers a benefit to {West Fraser} 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

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.").

[1739] *See* GBC Non-Stumpage IQR Response Volume V (CIF) at 2-3 and Volume VII (CIIP) at 1-2.

[1740] *Id*. Volume VII (CIIP) at 4.

[1741] *Id*. at 3 and Exhibit CIIP-3a (Schedule A.1, Table 2 for the listing of regulated products).

[1742] Within its case brief, West Fraser incorporates by reference the arguments made by the GBC for this program. *See* West Fraser Case Brief at 55.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

the respondents are less than the taxes they would have paid in absence of the program. {Commerce} has further emphasized that the 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.

The Canadian Parties argue that the program cannot be *de jure* specific because any enterprise may qualify if it uses coloured fuel for one of the listed purposes and because the eligibility criteria are purportedly objective. These arguments ignore {Commerce's} longstanding interpretation that express limitations based on prescribed activities necessarily limit eligibility to the enterprises and industries engaged in those activities, an approach the CIT has sustained. The Canadian Parties identify no new legal authority or factual developments that undermine {Commerce's} prior determinations. Because {Commerce} properly found the program *de jure* specific, it need not separately establish *de facto* specificity. Indeed, the Federal Circuit has confirmed that {Commerce} need only find that a program is either *de jur*e or *de facto* specific. Accordingly, {Commerce} should continue to find the BC Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification program specific in the final results.

Commerce's Position: We find that the arguments raised by the GBC are the same as those raised in prior administrative reviews.[1743] Accordingly, 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.

Pursuant to the *Motor Fuel Tax Act*, the GBC taxes "clear" and "coloured" fuel at different rates.[1744] Coloured fuel is gasoline or diesel to which a specific dye has been added to distinguish it from standard fuel and is used for the operation of equipment and vehicles off-road or non-highway (*e.g.*, generators, bulldozers, and tractors).[1745] In the prior segments of this proceeding, we found this program to be 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

[1743] *See, most recently, Lumber V AR6 Final* IDM at Comment 41.
[1744] *See* GBC Non-Stumpage IQR Response Volume IX at 1 and Exhibit GAS-1 (*Motor Fuel Tax Act*). Sections 4, 5, 5.1, 10, and 12.1 of the *Motor Fuel Tax Act* collectively establish the tax rates applicable to clear gasoline and diesel, depending upon where the purchase of the fuel occurs in the province.
[1745] *Id*. at 1.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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."[1746]

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, most recently, in *Lumber V AR6 Final* and, as such, do not provide grounds for reconsideration.[1747] With regard to *de jure* 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{.}[1748]

The GBC argues that, as in prior reviews, Commerce continues to conflate limitations on "approved activities" with an express government statement favoring certain enterprises.[1749] The GBC asserts that the statute says nothing about limitations on activities being equivalent to restricting access to the subsidy to specific enterprises or industries.[1750] The GBC adds that the *Motor Fuel Tax Act* defines only approved activities and not approved enterprises or industries, and thus, any industry or user in British Columbia may pay the lower tax rate for coloured fuel when it is used for an off-highway activity.[1751] However, the operative fact here is that the express language of the law, which limits eligibility to certain activities, effectively limits eligibility to the enterprises and industries engaged in such activities. Further, 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 statute and eligibility criteria for the program have not changed since the prior review.[1752]

Additionally, in support of its argument that the BC Coloured Fuel program is not *de jure* specific because it does not "expressly limit{} access to a subsidy to a sufficiently small number of enterprises, industries or groups thereof,"[1753] the GBC cites *BGH Edelstahl II*, *BGH Edelstahl III*, *Hyundai Steel*, and *Hyundai Steel Co.*[1754] Importantly, we note that the Court in *Hyundai Steel Co.* sustained Commerce's *de jure* specificity finding.[1755] Specifically, the Court sustained Commerce's finding that the greenhouse gas emissions credits program was *de jure* specific, and did not meet the safe harbor provision under section 771(5A)(D)(ii) of the Act.[1756] Under the

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[1746] *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; *Lumber V AR3 Final* IDM at Comment 94; *Lumber V AR4 Final* IDM at Comment 41; *Lumber V AR5 Final* IDM at Comment 40; and *Lumber V AR6 Final* IDM at Comment 41.
[1747] *See Lumber V AR6 Final* IDM at Comment 41.
[1748] *See Lumber V AR3 Final* IDM at Comment 94.
[1749] *See* GBC Case Brief Vol. V at 76-80.
[1750] *Id*. at 77.
[1751] *Id*. at 75 and 77.
[1752] *See* GBC Non-Stumpage IQR Response Volume IX at 3-6 and Exhibit GAS-1 (*Motor Fuel Tax Act*). Section 15 of the *Motor Fuel Tax Act* outlines the criteria governing the eligibility for paying the lower tax rate applicable to the authorized uses of coloured fuel.
[1753] *See* GBC Case Brief Vol. V at 76.
[1754] *Id.* (citing *BGH Edelstahl II*; *BGH Edelstahl III*; *Hyundai Steel*; and *Hyundai Steel Co.*).
[1755] *See Hyundai Steel 2025,* 753 F.Supp.3d.
[1756] *Id.,* 753 F.Supp.3d at 1360.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

safe harbor provision, a program that is otherwise *de jure* specific is not where the implementing legislation "establishes objective criteria or conditions," *i.e.*, criteria or conditions that are neutral and do not favor one enterprise over another.[1757] The Court upheld Commerce's analysis of the program in *Hyundai Steel 2025*, holding that "metrics that select enterprises based on the substantive character of their operations—whether their inputs, outputs, customers, or externalities—are not neutral."[1758]

With regard to the *BGH Edelstahl* cases, we find the facts of the program under review to be inapposite. In *BGH Edelstahl II*, the Court remanded Commerce's *de jure* specificity finding on the basis that Commerce failed to "explain how criteria based solely on electricity consumption and pricing is not horizontal in application" nor "economic in nature."[1759] As the Court recognized in *BGH Edelstahl II*, "the issue is whether the {subsidy's} criteria are economic in nature and horizontal in application."[1760] In that case, the Court found Commerce had insufficiently explained how the amount of electricity consumed was not economic in nature and horizontal in application.[1761] In contrast, here, eligibility for the BC Coloured Fuel program is demonstrably *not* horizontal nor economic in nature. As the Court held in *Hyundai Steel 2025*, the relevant question is whether the metrics favor enterprises or industries based on the "substantive character of their operations."[1762] Whether an enterprise or industry uses the machinery that qualifies for the BC Coloured Fuel program is not horizontal in application nor economic in nature, but instead favors enterprises or industries that do use such machinery. Specifically, the program favors enterprises and industries that operate equipment and vehicles off-highway (*e.g.*, generators, bulldozers, backhoes, graders, and tractors).[1763]

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[1764] 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).[1765] 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.[1766] Because we find

[1757] *See* section 771(5A)(D)(ii) of the Act.
[1758] *See Hyundai Steel 2025*, 753 F.Supp.3d at 1360.
[1759] *See BGH Edelstahl II*, 639 F.Supp.3d at 1244.
[1760] *Id.* at 1243 (discussing SAA at 930 ("the objective criteria or conditions must be neutral, must not favor certain enterprises or industries over others, and must be economic in nature and horizontal in application, such as the number of employees or the size of the enterprise")).
[1761] *Id.* at 1244.
[1762] *See Hyundai Steel 2025*, 753 F.Supp.3d at 1360 ("{M}etrics that select enterprises based on the substantive character of their operations . . . are not neutral").
[1763] *See* GBC Non-Stumpage IQR Response Volume IX at 1 and 10-11.
[1764] 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.
[1765] *See, e.g., Lumber V AR3 Final* IDM at Comment 103.
[1766] *See, e.g., Silicon Metal from Australia* IDM at Comment 3 ("With respect to the {Renewable Energy Target (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

the BC Coloured Fuel program to be *de jure* specific under section 771(5A)(D)(i) of the Act, we need not address the GBC's arguments that the program is not *de facto* specific.[1767]

Lastly, the GBC repeats its argument that taxing coloured fuel at a lower rate than clear fuel is supported by a logical policy rationale (*i.e.*, non-highway activities contribute less to the wear and tear of public roads) and asserts that Commerce was wrong to dismiss the rationale.[1768] 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 which 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 sections 771(5)(D)(ii) and (5)(E) of the Act and 19 CFR 351.510(a)(1), which state that a financial contribution is provided when a government foregoes revenue that is otherwise due, and the recipient receives a benefit to the extent that the taxes it pays as a result of the program are less than what it would have paid in the absence of the program. Section 771(5A) of the Act similarly directs Commerce to find a subsidy specific where an authority limits access to a group of enterprises or industries. 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.

Comment 71: Whether To Countervail the GBC's Non-Collection of Penalties for Unauthorized Timber Harvesting Violations

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 21-28.

> In the *Preliminary Results*, {Commerce} found that the GBC's non-collection of penalties for unauthorized timber harvesting violations (Unauthorized Harvesting program) was not used by West Fraser. This decision is unsupported by the record and contrary to {Commerce's} regulation at 19 CFR 351.529(a). Section 351.529(a) states that "{Commerce} will not be required to consider whether the government took efforts to seek payment or grant deferral, or otherwise acknowledged nonpayment, of the fee, fine, or penalty." In other words, {Commerce} does not ask whether the foreign government conducted an investigation or whether it issued a fee, fine, or penalty upon an affirmative finding of violation and subsequently decided to forgo the collection of the fee, fine, or penalty. Instead, {Commerce} must determine (1) whether the foreign government maintains a law that prohibits a certain activity, and (2) whether the respondents engaged in the prohibited activity.

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.").

[1767] *See* GBC Case Brief Vol. V at 80.

[1768] *Id.* at 80-81.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> During this review, the petitioner provided information demonstrating that the GBC undertook unauthorized harvesting inspections of West Fraser during the POR which resulted in "Alleged Non-Compliance" outcomes, as opposed to "Compliant." In addition, the GBC has admitted a pattern of non-enforcement of the relevant law. A GBC official specifically told reporters from *The Narwhal*, a Canadian investigative journalism outlet, that "the province doesn't consistently track unauthorized logging by forestry companies." Accordingly, the record strongly suggests that West Fraser may have violated the FRPA during the POR. The GBC's lack of full investigation or issuance of penalties does not prove otherwise.
>
> To make a proper determination as to whether West Fraser benefited from this subsidy, {Commerce} needed to ask better questions and require documentation, not only with respect to the investigations carried out by the GBC, but also regarding West Fraser's harvesting behavior in general. {Commerce} has the time and ability to now request the information necessary to make such a determination in the final results. However, if {Commerce} finds that there is not sufficient time in this review to do so and maintains its conclusion in the Preliminary Results, in the final results, the agency should properly explain how it reached such a conclusion and how the agency's analysis comports with the mandate under 19 CFR 351.529(a).

GBC Rebuttal Brief

The following is a verbatim summary of the argument submitted by the GBC. For further details, *see* GBC Rebuttal Brief at 30-34.

> In Section V, the BC Parties explain that {Commerce} correctly declined to countervail any alleged non-collection of penalties for unauthorized timber harvesting because the record does not substantiate any countervailable "benefit" during the POR. Contrary to {the petitioner's} claim, the record does not indicate either (1) that West Fraser violated any timber harvesting laws or regulations during the POR or (2) that the {GBC} failed to collect penalties for any unauthorized timber harvesting violations. {The petitioner's} arguments rest on an inaccurate conflation of investigations conducted by the BC Natural Resource Officer Service with violations of forestry law, as well as on a quotation obtained from an anonymous and therefore unreliable source. {Commerce} should therefore continue to decline to countervail this alleged program in the final results.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

West Fraser Rebuttal Brief

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

> {The petitioner's} argument regarding the GBC's purported decision not to collect penalties from West Fraser for unauthorized timber harvesting violations runs into a simple problem: there is no record evidence that West Fraser committed any violations that warranted a penalty. {The petitioner} attempts to cite various "inspections," but as the BC Parties explain, "inspections" are in fact "inspections" and not findings of violations. Without any evidence of a violation warranting a penalty, {the petitioner} has no support for its claim that West Fraser received a subsidy related to the purported non-collection of penalties.

Commerce's Position: After considering the arguments submitted by the parties, we continue to determine that there was no non-collection of penalties for unauthorized timber harvest violations by the GBC with respect to West Fraser in this review.

At 19 CFR 351.529, Commerce codified its long-standing practice to treat unpaid and deferred fees, fines, and penalties as a countervailable subsidy, no matter if the government took efforts to seek payment, recognized that no payment had been made, or indicated to the company that it was permitting a payment to be deferred. When a government issues a fee, fine, or penalty to a company, yet does not collect the payment, that revenue forgone is considered a financial contribution and benefit pursuant to sections 771(5)(D)(ii) and (5)(E) of the Act.

Based on an NSA submitted by the petitioner, we initiated on the Unauthorized Harvesting Program.[1769] Under this program, the petitioner alleged that the GBC failed to collect administrative penalties owed by West Fraser for violating unauthorized timber harvesting laws.[1770] Information in the allegation showed that, during the POR, there were two inspections of West Fraser that resulted in "Alleged Non-Compliance" outcomes and for inspections done in 2022 and 2023, the outcome was "Enforcement Action."[1771] However, there was no additional information available as to whether there was an affirmative harvesting violation and, if so, whether a penalty was assessed and the status of any payment owed by West Fraser.[1772]

In the NSA questionnaires, we requested the GBC and West Fraser to submit a response to the *Standard Questions Appendix* with regard to the non-collection of penalties for unauthorized timber harvesting violations.[1773] In its NSA response, the GBC stated that hundreds of inspections are performed annually to ensure compliance with regulatory requirements under the FRPA and, as a result of the inspections, the MOF decides whether to initiate an investigation into an alleged harvesting infraction under BC law.[1774] Specifically, to enforce the FRPA and

[1769] *See* NSA Analysis Memorandum at 14-16.
[1770] *Id*. at 14.
[1771] *See* NSA Submission at Exhibit 65.
[1772] *Id*.
[1773] *See* GOC NSA Questionnaire at 5; *see also* Respondents NSA Questionnaire at 6.
[1774] *See* GBC NSA Response at 3.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Forest Act, the GBC reported there are 900 to 1,500 forestry-related inspections yearly, and from these inspections approximately 200 forestry-related investigations are opened, with about C$2 million in penalties assessed annually.[1775] In rebuttal, the GBC asserts that the petitioner incorrectly conflates "inspections" with a "violation" of the forestry law.[1776]

Within its stumpage response, the GBC provided the MOF's Compliance and Enforcement Branch Annual Report for 2023-24, which states that "Enforcement actions are used when an NRO determines that legislation has been contravened and a formal sanction is warranted."[1777] An Enforcement Action is described as a compliance notice; warning ticket/letter; stop work order; violation ticket; order to vacate; trespass notice; seizure; search warrant; restorative justice; administrative hearing; prosecution; remediation order; and civil remedies.[1778] A monetary penalty is just one of many possible outcomes of the enforcement process. The GBC reported that there were no billings or penalties levied against West Fraser during the POR, and there were no outstanding penalty notices for which payment was due from West Fraser during the POR.[1779] West Fraser likewise reported that it was not found to have committed any unauthorized timber harvesting violations during the POR that would have warranted penalties.[1780]

The petitioner argues that Commerce's preliminary finding of "non-use" of the Unauthorized Harvesting Program is contrary to 19 CFR 351.529(a), which states:

> When determining if a fee, fine, or penalty that is otherwise due, has been forgone or not collected, within the meaning of section 771(5)(D)(ii) of the Act, {Commerce} may conclude that a financial contribution exists if information on the record demonstrates that payment was otherwise required and was not made, in full or in part. In making such a determination, {Commerce} will not be required to consider whether the government took efforts to seek payment or grant deferral, or otherwise acknowledged nonpayment, of the fee, fine, or penalty.

The petitioner further cites to the preamble of 19 CFR 351.529(a), where Commerce stated:

> … if a government creates an income tax law which sets the corporate income rate at 25 percent and makes it applicable to all corporations except those in the car industry, *it would be nonsensical to claim that a countervailable subsidy has not been provided to the car industry because no bill was demanded of the car manufacturers*. In creating this income tax law, the government undertook an act or practice to exempt one industry from income taxes.
>
> Similarly, *if a government created a law* to address the releasing of pollutants into the water which provided for fines of companies that violate this law, *but*

[1775] *Id*. at 3
[1776] *See* GBC Rebuttal Brief at 31.
[1777] *See* GBC Stumpage IQR Response at Exhibit BC-AR7-S-232, p. 9.
[1778] *Id*.
[1779] *Id.* at 99; *see also* GBC NSA Response at 4.
[1780] *See* West Fraser NSA Response at 15.

> *specifically exempted or simply did not include the car industry within this law, this exclusion or exemption would provide a financial contribution and benefit under the statute to the car industry if it was determined that an investigated car manufacture released pollutants into the water*, and the benefit would be based on the amount of the fines it otherwise would have been assessed under the law if it were any manufacturer other than a car manufacturer.[1781]

First, the preamble language cited by the petitioner was Commerce's response to illustrate that a commenter's statement with regard to the limitations of a revenue forgone analysis was illogical. As Commerce stated, 19 CFR 351.529(a) is not intended to preclude the agency from addressing measures of a government under the other forms of financial contributions defined within the statute.[1782] However, as the preamble clarified, "{t}he regulation is limited only to the nonpayment of fees, fines, and penalties{.}"[1783] Here, as discussed above, there is no evidence on the record that the GBC assessed a fee, fine, or penalty for West Fraser.

Second, the scenarios described in the preamble language cited by the petitioner are not relevant to Commerce's analysis of the Unauthorized Harvesting Program here. The GBC maintains regulations and laws (*e.g.*, the FRPA and *Forest Act*) to prohibit unauthorized timber harvesting under which neither the forestry industry nor West Fraser are exempt, unlike the car industry in the preamble language cited by the petitioner. Further, as noted above, there is no evidence of an affirmative finding that West Fraser engaged in the prohibited activity of unauthorized timber harvesting and that a payment was otherwise required and was not made, in full or in part. Contrary to the petitioner's contention, Commerce cannot base a countervailable finding for a program on an article which quotes an unnamed MOF official about unauthorized logging by forestry companies, which was not specifically tied to the respondent.[1784]

We find that there is not sufficient evidence on the record of this review to demonstrate that the GBC failed to enforce its regulations, requirements, or obligations by not collecting a payment from West Fraser because it did not issue any fines, fees, or penalties to West Fraser for a violation of the BC timber harvesting laws. As such, we determine that there was no non-collection of penalties for unauthorized timber harvest violations by the GBC with respect to West Fraser in this review. In subsequent reviews, such as the ongoing eighth administrative review of this *Order*, we intend to continue to examine the countervailability of the Unauthorized Harvesting Program under 19 CFR 351.529.

[1781] *See RISE Final Rule,* 89 FR at 20829 (emphases added by petitioner).
[1782] *Id.*, 89 FR at 20828-29.
[1783] *Id.*, 89 FR at 20829.
[1784] *See* NSA Submission at Exhibits 67 and 68.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Ontario

Comment 72: Whether the Ontario Coloured Fuel Tax Exemption Is *De Jure* Specific

GOO Case Brief

The following is a verbatim summary of the argument submitted by the GOO (internal citations omitted). For further details, *see* GOO Case Brief Vol. VI at 21-22.

> Commerce erred by…finding the Ontario SR&ED, the {Ontario Coloured Fuel Tax Exemption}, and the IEI to be specific.

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 345-347.

> {Commerce} correctly determined that the {Ontario Coloured Fuel Tax Exemption} is *de jure* specific because the governing legislation expressly limits eligibility to prescribed commercial and industrial uses of coloured fuel. The Canadian Parties contend that the program is not limited to any particular enterprise or industry. However, Ontario's legislation expressly limited the tax exemption to specified commercial and industrial uses, including operating forestry, mining, construction, and farming equipment, generating electricity, and other enumerated business uses. Consistent with {Commerce}'s treatment of analogous coloured fuel programs, {Commerce} should continue to find the {Ontario Coloured Fuel Tax Exemption} *de jure* specific in the final results.

Commerce's Position: As explained in the *Preliminary Results*, coloured fuel is a tax-exempt fuel to which a special dye has been added in accordance with the Ontario Fuel Tax Act.[1785] The Ontario Fuel Tax Act permits the GOO to charge different tax rates for clear and coloured fuel, 9.0 cents per liter for clear fuel, and 0 cents per liter for coloured fuel; however, *certain conditions* must be met in order to purchase coloured fuel.[1786] Specifically, coloured fuel in Ontario may not be used to generate power in a licensed motor vehicle or for motor vehicles or vessels (ships, boats, barges or other watercraft) to operate principally for pleasure or recreation.[1787] Permitted uses of fuel include: heating, lighting or cooking; generating electricity; operating unlicensed construction, forestry, mining, farm and other business equipment; operating commercial marine vessels; powering auxiliary equipment of a motor vehicle if the equipment has a separate fuel tank.[1788] Resolute reported that it received the tax exemption associated with the program at the point of purchase of the coloured fuel.[1789]

[1785] *See* Resolute Non-Stumpage IQR at 55-56.
[1786] *Id.*
[1787] *Id.* at Exhibit RES-NS-ONFUEL-1.
[1788] *Id.*
[1789] *Id.* at 55-56 and Exhibit RES-NS-QCFUEL–2.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

At the *Preliminary Results*, we preliminarily found the Ontario Coloured Fuel Tax Exemption program to be specific under section 771(5A)(D)(i) of the Act, because it is "expressly limited to enterprises or industries engaged in certain activities." The Canadian Parties cite *Kaptan Demir v. United States* to argue that "activity-based" eligibility factors do not qualify as enterprise or industry limitations for the purposes of *de jure* specificity and the program is therefore not *de jure* specific. In *Kaptan Demir v. United States*, Commerce initially determined that Turkish steel producers received countervailable subsidies in the 2021 administrative review of the CVD order on Turkish rebar.[1790] The CIT remanded Commerce's determination that the BITT exemption is specific as a matter of law, because it was unsupported by the substantial evidence required to make such a determination.[1791]

The GOO claims that in line with the CIT's decision under *Kaptan Demir v. United States*, "{a} program available to any entity engaged in specified activities—rather than limited to identified enterprises or industries—is not *de jure* specific."[1792] We find that this is a mischaracterization of *Kaptan Demir v. United States*, as the facts of the case concerning the BITT program differ greatly to the Ontario Coloured Fuel Tax Exemption program. The court explains its reasoning in remanding the BITT program, internal citations omitted, which centers on case-specific facts irrelevant to the Ontario Coloured Fuel Tax Exemption program:

> Commerce again found the BITT exemption to be specific as a matter of law despite the exemption's availability to any company that holds an "industrial registry certificate"—a certificate that Kaptan argued "all enterprises are required to hold." Commerce reasoned that even if "industrial registry certificates can be obtained by all industrial enterprises[,] . . . this does not demonstrate that all eligible enterprises actually apply for and obtain industrial registry certificates." Additionally, Commerce noted that the exemption is limited to companies that make foreign exchange transactions. Commerce concluded that "the BITT exemption necessarily only applies to a limited number of companies that make foreign exchange transactions…In both the Final 2020 Review and the Final 2021 Review, Commerce premised its determination of specificity as a matter of law on its view that the "universe of companies" that qualify for the exemption is limited to those that make foreign exchange transactions. This is the type of extrinsic factor that could potentially support a finding of specificity as a matter of fact. However, in neither administrative review did Commerce make an adequate finding that Turkish law "expressly limits access to the subsidy to an enterprise or industry," as it must to find a benefit specific as a matter of law.[1793]

The BITT program, unlike the Ontario Coloured Fuel Tax Exemption, was ultimately available to all industrial enterprises, because all industrial enterprises were required to hold a "industrial registry certificate."[1794] The Ontario Coloured Fuel Tax Exemption program, however, is limited to customers of coloured fuel who do not use the fuel to generate power in a licensed motor

[1790] *See Kaptan Demir v. United States*.
[1791] *Id.,* at 16-17.
[1792] *See* GOO Case Brief Vol. VI at 21.
[1793] *See Kaptan Demir v. United States* at 17-18.
[1794] *Id.*

vehicle or for motor vehicles or vessels (ships, boats, barges or other watercraft) to operate principally for pleasure or recreation.[1795]

Further, the court's remand instructions lay plainly that the CIT is not expressly barring Commerce's use of activity-based specificity findings, it simply required further explanation for the case-specific BITT exemption: "In conducting this redetermination, Commerce may consider . . . whether evidence in the record supports a determination of *de facto* specificity under section {771(5A)(D)(iii) of the Act}. Alternatively, Commerce may attempt on remand to further explain why the BITT exemption is specific as a matter of law."[1796] We therefore reject the GOO's argument that the court's decision in *Kaptan Demir v. United States* bars activity-based specificity findings.

Ultimately, the Ontario Coloured Fuel Tax Exemption may only be afforded to parties engaged in certain activities. Specifically, the *Ontario Fuel Tax Act* limits the tax exemption to any reason other than to generate power in a licensed motor vehicle or when a motor vehicle or vessel (ship, boat, barge or other watercraft) is operated principally for pleasure or recreation..[1797] The *Ontario Fuel Tax Act* provides a list of examples of permitted coloured fuel use, which includes: fuel used as heating, lighting or cooling; generating electricity; operating unlicensed construction, forestry, mining, farm and other business equipment; testing or operating commercial marine vessels; powering auxiliary equipment of a motor vehicle if the equipment has a separate fuel tank; use by First Nations individuals ad bands registered under the Indian Act (Canada) as long as the fuel is acquired on a reserve; and operating railway equipment, provided that the operator is registered with the Ministry of Finance and pays fuel tax on all fuel used in its railway stations.[1798] The Ontario Coloured Fuel Tax Exemption restricts use of coloured fuel from one of the most widespread uses, fuel used to generate power in a licensed motor vehicle. The GOO states that "{s}o long as the requirements are met, purchasers can purchase coloured diesel exempt from fuel tax."[1799] The fact that the requirements, as described above, must be met in order to receive the Ontario Coloured Fuel Tax Exemption means the program is expressly limited to enterprises engaged in certain activities.

Lastly, the GOO argues that taxing coloured fuel at a lower rate than clear fuel is supported by a logical policy rationale (*i.e.*, the coloured fuel tax is a "road use" tax and has historically been connected to the cost of maintaining public roads) and asserts that Commerce was wrong to dismiss the rationale.[1800] However, we find that the rationale outlined by the GOO is not relevant to our CVD determination. While the long-term repair costs generated by the use of motor vehicles on public roads may be relevant to the GOO in setting fuel tax rates, our analysis of whether a program provides a financial contribution which confers 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 sections 771(5)(D)(ii) and (5)(E) of the Act and 19 CFR 351.510(a)(1), which states that a financial contribution is provided when a government foregoes

[1795] *See* Resolute Non-Stumpage IQR at Exhibit RES-NS-ONFUEL-1.
[1796] *Id.*
[1797] *Id.* at Exhibits RES-NS-ONFUEL-APP, RES-NS-ONFUEL-1 and RES-NS-ONFUEL-2.
[1798] *Id.* at Exhibit RES-NS-ONFUEL-1.
[1799] *See* GOO Case Brief Vol. VI at 22.
[1800] *Id.* Vol. VI at 21-22.

revenue that is otherwise due, and the recipient receive 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. Section 771(5A) of the Act similarly directs Commerce to find a subsidy specific where an authority limits access to a group of enterprises or industries. The additional social policy rationale underlying a program argued by the GOO is simply not a factor for consideration under the applicable statutory and regulatory provisions pertinent to this program and the CVD law in general.

We thus continue to find that the program constitutes a financial contribution, is *de jure* specific because it is "expressly limited to enterprises or industries engaged in certain activities," and confers a benefit under sections 771(5)(D)(ii), 771(5A)(D)(i), and 771(5)(E) of the Act, respectively.

Comment 73: Whether the IESO IEI Is Specific

GOO Case Brief

The following is a verbatim summary of the argument submitted by the GOO (internal citations omitted). For further details, *see* GOO Case Brief Vol. VI at 22-23.

> Commerce erred by…finding the Ontario SR&ED, the {Ontario Coloured Fuel Tax Exemption}, and the IEI to be specific.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 150-152.

> {Commerce} found Ontario's IEI *de jure* specific in the *Preliminary Results* because program recipients are limited to customers who undertake activity under certain 2012 NAICS sector codes. {Commerce}'s findings are divorced from the underlying facts of the program. Rather than being restricted to a single industry or enterprise, the IEI was open to a broad array of "energy-consuming consumers" in diverse sectors of Ontario's economy. During the POR, sawmills received a small share of the overall funding distributed under the program. IEI does not favor a particular industry and no company is a disproportionate participant.

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 205-208.

> In the *Preliminary Results*, {Commerce} correctly found Ontario's IEI program to be *de jure* specific because eligibility is expressly limited by law to enterprises operating within specified NAICS sector codes. The Canadian Parties argue that the IEI is not de jure specific because the eligible recipients span several industries

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> and limiting eligibility to energy-consuming customers is insufficient to support a specificity finding. However, the plain language of the statute provides that a subsidy is *de jure* specific where the governing authority expressly limits access to particular enterprises or industries, and the IEI does so by restricting eligibility to a discrete group of industries identified by specific NAICS classifications. {Commerce} has consistently found this program *de jure* specific in prior segments of this proceeding, as well as in *Uncoated Groundwood Paper from Canada*, concluding that the governing legislation establishes a limited group of enterprises eligible to receive benefits under the program. The Canadian Parties have identified no new facts or arguments warranting a departure from these prior determinations. Thus, {Commerce} should continue to find the IEI program *de jure* specific in the final results.

Commerce's Position: Commerce most recently countervailed the IESO IEI program in this proceeding in the *Lumber V AR3 Final*.[1801] The stated purpose of the IEI is to manage electricity demand by "increasing industrial load to better match supply conditions."[1802] In prior reviews, the GOO and Resolute raised the same specificity arguments, and there have been no changes to the program since the *Lumber V AR3 Final*.[1803] We have found the respondents' arguments unpersuasive and continue to do so here for the reasons detailed below. We continue to find that the IESO IEI is *de jure* specific, in accordance with section 771(5A)(D)(i) of the Act, because the program remains expressly limited to certain energy-consuming customers classified within specific NAICS codes.

Based on the record, the IEI is *de jure* specific because recipients of assistance under the IEI are limited to customers who undertake activity under certain 2012 NAICS sector codes.[1804] Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. In the November 1, 2012, letter of direction issued by Ontario's Minister of Energy to the OPA (now IESO) establishing the IEI program, the GOO defined the eligible industries as those classified in mining, quarrying, and oil and gas extraction (sector 21) and manufacturing (sector 31, 32, and 33).[1805] In the April 24, 2014, letter of direction issued by the Minister of Energy to OPA, IEI eligibility was expanded to include NAICS codes 1114 (greenhouse/floriculture production), 49312 (refrigerated warehousing), and 518 (data processing).[1806]

In this review, the GOO argues that, in light of *Kaptan Demir v. United States,* Commerce's activity-based *de jure* specificity finding is contrary to law. In *Kaptan Demir v. United States,* Slip Op. 25 – 131, Commerce initially determined that Turkish steel producers Kaptan Demir Celik Endustrisi ve Ticaret A.S. received countervailable subsidies in the 2021 administrative review of the CVD order on Turkish rebar.[1807] The CIT remanded Commerce's determination

[1801] *See Lumber V AR3 Final* IDM at Comment 66.
[1802] *See* GOO Non-Stumpage IQR Response at IEI-1.
[1803] *See Lumber V AR3 Final* IDM at Comment 66; *see also Lumber V AR2 Final* IDM at Comment 74; and *Lumber V AR1 Final* IDM at Comment 74.
[1804] *See* GOO Non-Stumpage IQR Response at IEI-15.
[1805] *Id.* at Exhibit ON-IEI-1.
[1806] *Id*. at Exhibit ON-IEI-5.
[1807] *See Kaptan Demir v. United States*.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

that the BITT exemption is specific as a matter of law, because it was unsupported by the substantial evidence required to make such a determination.[1808]

The GOO claims that in line with the CIT's decision under *Kaptan Demir v. United States*, "pointing to the presence of a particular sector among recipients does not suffice."[1809] This is a mischaracterization of *Kaptan Demir v. United States*, as the facts of the case concerning the BITT program differ greatly to the IEI program. The court explains its reasoning in remanding the BITT program, internal citations omitted, which centers on case-specific facts irrelevant to the IEI program:

> Commerce again found the BITT exemption to be specific as a matter of law despite the exemption's availability to any company that holds an "industrial registry certificate"—a certificate that Kaptan argued "all enterprises are required to hold." Commerce reasoned that even if "industrial registry certificates can be obtained by all industrial enterprises[,] . . . this does not demonstrate that all eligible enterprises actually apply for and obtain industrial registry certificates." Additionally, Commerce noted that the exemption is limited to companies that make foreign exchange transactions. Commerce concluded that "the BITT exemption necessarily only applies to a limited number of companies that make foreign exchange transactions…In both the Final 2020 Review and the Final 2021 Review, Commerce premised its determination of specificity as a matter of law on its view that the "universe of companies" that qualify for the exemption is limited to those that make foreign exchange transactions. This is the type of extrinsic factor that could potentially support a finding of specificity as a matter of fact. However, in neither administrative review did Commerce make an adequate finding that Turkish law "expressly limits access to the subsidy to an enterprise or industry," as it must to find a benefit specific as a matter of law.[1810]

The BITT program, unlike the IEI program, was ultimately available to all industrial enterprises, because all industrial enterprises were required to hold a "industrial registry certificate." The IEI program, however, is limited to electricity customers who undertake activity under certain 2012 NAICS sector codes.

Further, the court's remand instructions lay plainly that the CIT is not expressly barring Commerce's use of activity-based specificity findings, they simply require further explanation for the case-specific BITT exemption: "In conducting this redetermination, Commerce may consider . . . whether evidence in the record supports a determination of *de facto* specificity under section {771 (5A)(D)(iii) of the Act}. Alternatively, Commerce may attempt on remand to further explain why the BITT exemption is specific as a matter of law."[1811] We therefore reject the GOO's argument that the court's decision in *Kaptan Demir v. United States* bars activity-based specificity findings.

[1808] *Id.,* at 16-17.
[1809] *See* GOO Case Brief Vol. VI at 23.
[1810] *See Kaptan Demir v. United States* at 17-18.
[1811] *Id.*

The GOO additionally cites to *Mosaic Co. (2023)* in arguing about *de facto* specificity;[1812] however, because Commerce continues to find that the IEI program is *de jure* specific, it is not necessary to examine *de facto* specificity and any related arguments for this program.[1813]

Record evidence shows that the subsidies provided by the GOO under the IEI program are expressly limited to customers classified within specific NAICS codes. The GOO thus established, by law, a limited group of enterprises that may receive grants under the IESO IEI. Therefore, we continue to find that the IEI program is *de jure* specific under section 771(5A)(D)(i) of the Act.

Comment 74: Whether To Reconsider If the GOO Forgave Debt Owed by Resolute

GOO Case Brief

The following is a verbatim summary of the argument submitted by the GOO (internal citations omitted). For further details, *see* GOO Case Brief Vol. VI at 24-26.

> In the *Preliminary Results*, Commerce countervailed the {FSPF} settlement between the {GOO} and Resolute's now-defunct predecessor, AbitibiBowater finding it *de jure* specific to Resolute and allocating C$22.5 million in forgiven debt over a 10-year {AUL}. Commerce once again erred. {Commerce} has already determined that the underlying FSPF grant did not confer a benefit to softwood lumber production. The June 29, 2017 settlement and release agreement discharged Resolute's obligation to repay that particular FSPF grant in exchange for Resolute's waiver of claims against Ontario and its pledge to take certain actions to maintain the plant as an ongoing concern. The subsequent agreement did not change the fundamental nature of the underlying untied subsidy. No facts have changed since this determination to warrant a different outcome. Commerce must correct this error in the Final Results.
>
> The settlement and release agreement between the {GOO} and Resolute to settle a commercial dispute over satisfaction of a condition of a previously extinguished grant was executed prior to the POR. No assistance was provided pursuant to the settlement, which simply discharged the obligation imposed pursuant to the original conditional grant funding agreement under the FSPF between the {GOO} and Resolute's now-defunct predecessor, AbitibiBowater. As noted above, {Commerce} has twice earlier determined that any benefit received by Resolute or its predecessor through the FSPF does not confer a benefit to softwood lumber production:
>
> > (1) In the {*Lumber V Prelim*}, {Commerce} found that the FSPF grant was made to AbitibiBowater's Fort Frances mill and did not confer a benefit on softwood lumber; and

[1812] *See* GOO Case Brief Vol. VI at 19-20.
[1813] *See Gov't of Québec v. U.S.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

(2) In the {*Groundwood Paper from Canada Final*}, Commerce again determined that the FSPF does not confer a benefit.

Again, no facts have changed since these determinations. Moreover, any benefit that may have existed was extinguished through the AbitibiBowater bankruptcy proceeding. Commerce has identified no new record evidence or changed circumstances that would justify departing from its own prior determinations. Commerce must determine that neither the FSPF grant nor the associated settlement and release agreement confer a benefit to softwood lumber and eliminate the corresponding duty allocation in the Final Results.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 70-75, 115-18, and 134-35.

{Commerce} previously found FSPF grants to be tied to the production of pulp and paper. The 2007 FSPF Funding Agreement was the bestowal document upon which {Commerce} determined the FSPF funds were tied to the production of pulp and paper. The settlement between Resolute and {the GOO} of any obligation arising from that Agreement cannot untie the intended purpose of those funds. Consistent with decisions by the {CIT}, {Commerce} should find that the Settlement and Release Agreement is tied to non-subject merchandise and is not countervailable.

The {GOO} FSPF Settlement and Release Agreement resolved obligations arising from grants previously tied to the Fort Frances pulp and paper mill. The settlement did not create a new subsidy of "debt forgiveness." It addressed the same pulp-and-paper project under FSPF and required substantial reciprocal consideration from Resolute. {Commerce} considered only the release of repayment obligations while ignoring consideration provided by Resolute, including maintaining and marketing the mill as a going concern and releasing claims against {the GOO}.

The FSPF Settlement and Release Agreement conferred no benefit. Resolute provided significant consideration, including preserving the Fort Frances facility as a going concern and the surrender of legal rights against the Province. {Commerce} considered only the alleged release of FSPF claims against Resolute. The value provided by Resolute equaled or exceeded the alleged relief identified by {Commerce}. Because Resolute received no net advantage from the settlement, Commerce should find no countervailable benefit.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

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 347-353.

> {Commerce} properly found that the GOO's forgiveness of Resolute's debt stemming from its noncompliance with its Fort Frances Conditional Funding Agreement provided a financial contribution as "revenue forgone" pursuant to section 771(D)(5)(ii) of the Act and that the subsidy conferred a benefit on Resolute pursuant to section 771(5)(E) of the Act. Resolute argues that {Commerce's} determination was flawed as {Commerce} failed to consider Resolute's "consideration" in the settlement, both in terms of financial contribution and benefit. However, proprietary record evidence demonstrates that Resolute had a clear obligation to repay a debt, and the GOO relieved Resolute of the obligation. Additionally, the fact that Resolute incurred costs as a result of its breach of the FSPF funding agreement is not relevant to {Commerce's} analysis. The statute is clear that a financial contribution has occurred if a government has forgone revenue. {Commerce's} benefit determination represents a straightforward application of the facts to {Commerce's} well-worn regulations. In the case of debt forgiveness, "a benefit exists equal to the amount of the principal and/or interest … that the government has assumed or forgiven." Neither the statute nor the regulations contemplate ancillary costs potentially borne by a company whose debt was forgiven. Further, the argument that this subsidy was extinguished through the AbitibiBowater bankruptcy proceeding incorrectly conflates the FSFP grant with the debt forgiveness at issue here.
>
> Finally, this subsidy is not tied to pulp and paper products. The debt forgiveness subsidy here was intended to forgive Resolute's debt, not to support the production of pulp and paper. In fact, it could not have been, as the reason the debt existed in the first place is because the production of pulp and paper at the Fort Frances mill ceased upon its closure in 2014, three years before this subsidy was bestowed. Furthermore, the *CVD Preamble* specifically contemplated that "certain subsidies, such as payments for plant closures, equity infusions, debt forgiveness, and debt-to-equity conversions, {are} untied because they benefit all production." Accordingly, {Commerce} should reject Resolute and the GOO's arguments and continue to countervail the GOO's debt forgiveness in the final results.

Commerce's Position: The GOO and Resolute raise substantially the same arguments regarding the debt forgiveness the GOO provided to Resolute as in previous administrative reviews.[1814] We have previously found this program countervailable, most recently in the *Lumber V AR3 Final*,[1815] and continue to do so here. There are no new arguments or evidence on

[1814] *See Lumber V AR1 Final* IDM at Comment 118; *see also Lumber V AR2 Final* IDM at Comment 119; and *Lumber V AR3 Final* IDM at Comment 105.
[1815] *See Lumber V AR3 Final* IDM at Comment 105.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

the record of this review[1816] that would lead Commerce to revise its finding that, in 2017, the GOO forgave a debt of $22.5 million that Resolute owed to the government.

As we discussed in the *Lumber V AR3 Final*,[1817] in 2007, Resolute's pre-bankruptcy predecessor, Abitibi-Bowater Inc.,[1818] was approved for a C$22.5 million grant (the Conditional Funding Agreement) under the GOO's FSPF for the construction of a biomass cogeneration plant at the Fort Frances pulp and paper mill.[1819] The funding was conditional on the continuous operation of the mill for at least three years following the final grant disbursement, which was in March 2012.[1820] However, in May 2014, Resolute permanently closed the Fort Frances mill.[1821] Pursuant to the terms of the Conditional Funding Agreement, which Resolute discussed in its filings with the U.S. Securities and Exchange Commission, in October 2014, the MNRF directed Resolute to repay the full amount of the FSPF grant.[1822] On June 29, 2017, through the Settlement and Release Agreement between Resolute and the GOO, Resolute was excused of the requirement to repay the C$22.5 million.[1823]

Resolute argues that Commerce should follow *Kajaria Iron Castings v. United States* to find the 2017 debt forgiveness tied to non-subject merchandise on account of Commerce's previous determinations that the FSPF grant itself was tied to non-subject merchandise.[1824] We find this argument unpersuasive. We recognize that in the *Lumber V Final* and *Groundwood Paper from Canada Final*, Commerce found the FSPF grant tied to the production of pulp and paper products.[1825] However, this prior finding is not instructive here, because the subsidy at issue here is not the FSPF grant issued in 2007, but the 2017 forgiveness of debt owed when Resolute broke the terms of the Conditional Funding Agreement. By Resolute's own admission, once the Fort Frances mill was idled, the conditions of the original FSPF grant were breached.[1826] At that point, the condition upon which the grant was based was no longer met, and Resolute was under an obligation to repay the full amount.[1827] This obligation to repay—of which Resolute was excused—is the subject of this subsidy analysis.

[1816] *See* GOO Non-Stumpage IQR Response at ON-FSPF-1 to ON-FSPF-3 (and all referenced exhibits); *see also* Resolute Non-Stumpage IQR Response at Exhibits RES-NS-FSPF-1 and RES-NS-FSPF-2.
[1817] *See Lumber V AR3 Final* IDM at Comment 105.
[1818] In 2012, Abitibi-Bowater Inc. legally changed its name to Resolute FP Canada Inc.
[1819] *See* GOO Non-Stumpage IQR Response at ON-FSPF-1; *see also* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSPF-1 (Exhibit RES-NS-FSPF-APP at 2). We note that Resolute re-submitted Exhibit RES-NS-FSPF-APP from the third administrative review under Exhibit RES-NS-FSPF-1 in this review.
[1820] *See* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSPF-1 (Exhibit RES-NS-FSPF-APP at 2).
[1821] *Id*; *see also* GOO Non-Stumpage IQR Response at ON-FSPF-1; and *Lumber V AR3 Final* IDM at Comment 105.
[1822] *See Lumber V AR3 Final* IDM at Comment 105.
[1823] *See* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSPF-1 (Exhibit RES-NS-FSPF-APP at 2); *see also Lumber V AR3 Final* IDM at Comment 105.
[1824] *See* Resolute Case Brief at 74-76 (citing *Kajaria Iron Castings v. United States*, 156 F.3d at 1168-69 and 1175-76).
[1825] *See Lumber V Prelim* PDM at 88, unchanged in *Lumber V Final* IDM at 18; *see also Groundwood Paper from Canada Final* IDM at 29-30 and Comment 10.
[1826] *See* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSPF-1 (Exhibit RES-NS-FSPF-APP at 3); *see also* Resolute Case Brief at 116.
[1827] *See* GOO Non-Stumpage IQR Response at ON-FSPF-1.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

In any event, even if *Kajaria Iron Castings v. United States* were on point here—which it is not—as noted by the petitioner, the CIT has recognized that *Kajaria Iron Castings v. United States* "predated the *CVD Preamble* and therefore did not analyze Commerce's interpretation of {19 CFR 351.525(b)}."[1828] When making a finding of attribution, we analyze the purpose of the subsidy based on information available at the time of bestowal.[1829] Commerce's tying practice states that "a subsidy is tied to particular products or operations … {when} an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy."[1830] The *CVD Preamble* further states:

> …there are various ways in which a subsidy can be tied. However, regardless of the method, we attribute a subsidy to sales of the product or products to which it is tied. In this regard, one can view an ''untied'' subsidy as a subsidy that is tied to sales of all products produced by a firm. For example, we consider certain subsidies, such as payments for plant closures, equity infusions, debt forgiveness, and debt-to-equity conversions, to be untied because they benefit all production.[1831]

The subsidy provision on June 29, 2017—debt forgiveness—was separate and distinct from the FSPF grant in 2007. On June 29, 2017, the time of bestowal of the GOO's forgiveness of the C$22.5 million debt, Resolute was not producing pulp and paper at the Fort Frances mill, and the debt forgiveness was unrelated to pulp and paper production.[1832]

Further, the actions taken by the GOO on June 29, 2017, were not the resolution of a commercial dispute, but the provision of a subsidy by the GOO to Resolute.[1833] Resolute was the sole owner of the Fort Frances mill with no government ownership.[1834] The Settlement and Release Agreement freed Resolute of its obligation to repay to the GOO the C$22.5 million when it did not keep the Fort Frances mill operational. That Resolute may have incurred costs in negotiating the Settlement and Release Agreement is irrelevant to Commerce's subsidy examination.[1835] Commerce's analysis is focused on whether the GOO provided a financial contribution to Resolute on June 29, 2017. The evidence unequivocally shows that on June 29, 2017, the GOO forgave a debt of C$22.5 million that Resolute was obligated to pay under the Conditional Funding Agreement.[1836]

Additionally, citing to *Groundwood Paper from Canada Final*, in which Abitibi-Bowater's 2009-2010 bankruptcy proceeding was examined, both Resolute and the GOO claim that Commerce found that the FSPF grants received, prior to and during the bankruptcy proceeding,

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[1828] *See* Petitioner Rebuttal Brief (citing *Samsung Electronics Co., Ltd.*, 973 F.Supp.2d at 1330).
[1829] *See CVD Preamble*, 63 FR at 65402-04.
[1830] *Id*. at 65402.
[1831] *Id*. at 65400.
[1832] *See* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSPF-1 (Exhibit RES-NS-FSPF-APP at 2).
[1833] *See* GOO Case Brief Vol. VI at 25; *see also* Resolute Case Brief at 115-119.
[1834] *See Lumber V AR3 Final* IDM at Comment 105.
[1835] *See* Resolute Case Brief at 116-117.
[1836] *See* GOO Non-Stumpage IQR Response at ON-FSPF-1 and Exhibits ON-FSPF-1 and ON-FSPF-2; *see also* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-FSPF-1 (Exhibits RES-NS-FSPF-1 and RES-NS-FSPF-2 from the third administrative review).

were extinguished.[1837] We acknowledge that Commerce found that payments under the FSPF program received prior to December 9, 2010, were extinguished as a result of Abitibi-Bowater's bankruptcy and subsequent change-in-ownership.[1838] However, as discussed, we find that the subsidy under examination in this review is not the 2007 FSPF grant issued to Abitibi-Bowater, but the debt forgiveness that was bestowed upon the newly formed company, Resolute, after Abitibi-Bowater emerged from bankruptcy. The notice from the GOO directing Resolute to repay the conditional incentive of C$22.5 million was made in October 2014, and the GOO forgave the debt owned by Resolute on June 29, 2017; these are events that occurred several years after Abitibi-Bowater emerged from bankruptcy on December 9, 2010. Thus, the GOO's forgiveness of the debt owed by Resolute could not have been extinguished through the bankruptcy proceeding.

Based on the aforementioned facts, we continue to determine that the GOO's debt forgiveness of Resolute's obligation to repay the C$22.5 million conditional grant for its Fort Frances mill constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because the GOO forgave the collection of revenue that was otherwise owed to it, and confers a benefit to Resolute under section 771(5)(E) of the Act.

Québec

Comment 75: Whether the Québec Lower Tax Rates on Coloured Fuel Is Specific

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 109-114.

> Likewise, although the Tax Rate for Coloured Fuel is only provided for certain purposes, this criteria does not limit the fuel tax refund to a group of enterprises or industries and neither the Act nor Commerce's regulations authorize a determination of specificity based on whether a program is limited to "certain activities." The Fuel Tax Act does not identify any specific enterprises or industries that are prohibited from receiving the exemption. Any enterprise or industry that uses coloured fuel for any of the broad range of purposes described above is eligible to purchase the fuel without paying fuel tax. {Commerce}'s preliminary results therefore equate the existence of eligibility requirements for a program to *de jure* specificity. In fact, the exemption on fuel tax for coloured fuel is automatically applied for any buyer of the product at the point of purchase. Therefore, the Fuel Tax Refund for Stationary Purposes is not *de jure* or *de facto* specific.

[1837] *See Groundwood Paper from Canada Final* IDM at Comment 6.
[1838] *Id.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 147-149.

> {Commerce} should find that the federal SR&ED Tax Credit, OSRED, QSRED, FUELSP, ONFUEL, and QCFUEL programs are not countervailable because they are generally available tax measures that do not satisfy the specificity requirements of section 771(5A) 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 360-363.

> {Commerce} correctly determined that Quebec's Lower Tax Rates on Coloured Fuel program is *de jure* specific because the Fuel Tax Act expressly limits the reduced tax rate to narrowly defined authorized uses of coloured fuel while excluding the vast majority of propulsion-engine applications. The Canadian Parties again argue that activity-based eligibility cannot establish *de jure* specificity and that the program's objective criteria make the program broadly available. Those arguments merely repeat challenges {Commerce} has consistently rejected with respect to comparable coloured fuel programs. The statute expressly defines the class of eligible fuel users, identifies only limited exceptions for certain propulsion-engine applications, and thereby limits access to a discrete group of enterprises and industries. Accordingly, {Commerce} should continue to find the Quebec Lower Tax Rates on Coloured Fuel program *de jure* specific in the final results.

Commerce's Position: We note that we address the GOC's general specificity arguments at Comment 2.

We disagree with the arguments raised by the GOQ and Resolute that the Québec Lower Tax Rates on Coloured Fuel program is not *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. As a result, we made no change to our preliminary finding that this subsidy is *de jure* specific because it is "expressly limited to enterprises or industries engaged in certain activities."[1839]

As we explained in the *Preliminary Results*:

> The Québec Fuel Tax Act permits the GOQ to charge different tax rates for clear and colored fuel, approximately 2 cents per liter for clear fuel, and 0 cents per liter for colored fuel; however, certain conditions must be met in order to purchase colored fuel. Specifically, colored fuel in Québec may *not* be used for supplying a propulsion engine. The GOQ defines a propulsion engine as "any internal

[1839] *See* section 771(5A)(D)(i) of the Act.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> combustion engine which can directly or indirectly generate propulsion." Coloured fuel may be acquired or used for all purposes other than supplying a propulsion engine, except the propulsion engine: of a pumper truck while used to fight a forest fire; of a railroad locomotive; of a vessel described as a commercial vessel by regulation, provided that it be put directly into the tank installed as standard equipment for supplying the engine of a fishing boat, but only while the boat is used for fishing, provided that the principal occupation of the consumer of the colored fuel oil is fishing or the processing and marketing of fish. [1840]

The GOQ argues that Commerce's analysis equates the existence of eligibility requirements for a program to *de jure* specificity.[1841] In reaching this conclusion, the GOQ states that the criteria for this subsidy does not identify any specific industries that are prohibited from receiving an exemption.[1842] Resolute adds that access to the subsidy is based on the nature of fuel use rather than the identity of the claimant and asserts this is objective criteria that makes the subsidy generally available.[1843] However, the express language of the Québec Fuel Tax Act, which limits eligibility to activities other than supplying a propulsion engine, effectively limits eligibility to enterprises and industries engaged in such activities.[1844] A "propulsion engine" is defined by the Québec Fuel Tax Act as "any internal combustion engine which can directly or indirectly generates propulsion."[1845] Thus, the only enterprises or industries that can participate in this program are those that acquire or use colored fuel for purposes beside the supply of propulsion engines. While there exists a few exceptions for certain types of propulsion engines (*e.g.*, railroad locomotives), they are limited is number.[1846] 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.[1847]

Moreover, the Québec Lower Tax Rates on Coloured Fuel program is comparable to the BC Colored Fuel program, which Commerce has a well-established practice of countervailing. As long as colored fuel is used to supply non-propulsion engines, with few exceptions for certain types of propulsion engines, participants of the Québec colored fuel program are subject to a lower tax rate than they would otherwise pay on clear fuel. Thus, like the BC Colored Fuel program discussed in Comment 70, this program's eligibility criteria "limit access to the subsidy to only those users purchasing fuel for a prescribed list of approved activities."

[1840] *See Preliminary Results* PDM at 85 (internal citations omitted).
[1841] *See* GOQ Case Brief Vol. VII(b) at 114.
[1842] *Id*. at 113.
[1843] *See* Resolute Case Brief at 148.
[1844] *See* Resolute Non-Stumpage IQR at 56.
[1845] *Id*. at Exhibit RES-NS-QCFUEL-1.
[1846] *Id*.
[1847] *See Lumber V AR3 Final* IDM at Comment 103.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Comment 76: Whether the Refund of Fuel Tax Paid on Fuel Used for Stationary Purposes Is Specific

GOQ Case Brief

The following is a verbatim summary of the argument submitted by the GOQ (internal citations omitted). For further details, *see* GOQ Case Brief Vol. VII(b) at 109-114.

> In the *Preliminary Results*, {Commerce} relied on its determinations in the *Lumber V AR3 Final* case to determine the that Refund of Fuel Tax Paid on Fuel Used for Stationary Purposes and Tax Rate on Coloured Fuel programs are *de jure* specific. Although the Fuel Tax Refund for Stationary Purposes is only provided for fuel used for stationary engines, this criteria does not limit the fuel tax refund to a group of enterprises or industries. The statute does not identify any specific enterprises or industries that are prohibited from receiving the refund. By law the refund is available to a wide variety of enterprises and industries. {Commerce}'s *de jure* analysis therefore does not meet the requirement that the legislation affirmatively limit the program to a small number of enterprises or industries. The data for the Fuel Tax Refund for Stationary Purposes also demonstrates that the refund is widely granted for a large number of companies across a wide set of industries.

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Case Brief at 147-149.

> {Commerce} should find that the federal SR&ED Tax Credit, OSRED, QSRED, FUELSP, ONFUEL, and QCFUEL programs are not countervailable because they are generally available tax measures that do not satisfy the specificity requirements of section 771(5A) 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 353-357.

> In the *Preliminary Results*, {Commerce} determined that the {FUELSP} confers a benefit within the meaning of section 771(5)(E) of the Act. Resolute nevertheless contends that {Commerce} should calculate the benefit based on the purported "after-tax" value of the refund, rather than the full amount of the tax savings received. However, {Commerce}'s regulations clearly state that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit." Instead, "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." Accordingly, {Commerce} should reject Resolute's argument and continue to countervail the full amount of the benefit received. {Commerce}

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> correctly determined that FUELSP is *de jure* specific because the governing legislation expressly limits benefits to prescribed fuel uses and, in particular, to farm, forest, and mining operations. The Canadian Parties argue that the refund is generally available to qualifying fuel users and does not expressly favor any enterprise or industry. To the contrary, FUELSP was established to reduce production costs and improve the competitiveness of specified industries, and the eligibility requirements expressly restrict benefits to defined commercial activities and industries. The Canadian Parties identify no new facts or legal authority that undermine {Commerce}'s prior determinations, which {Commerce} has consistently reaffirmed in prior administrative reviews. Alternatively, contrary to the Canadian Parties arguments, the record independently demonstrates that the program is *de facto* specific because only a small percent of Quebec corporations claimed the deduction during the POR. Accordingly, {Commerce} should continue to find the FUELSP program *de jure* specific in the final results.

Commerce's Position: The GOQ and Resolute again raise the same arguments about the fuel tax refund. We have found the respondents' arguments unpersuasive, most recently in the *Lumber V AR3 Final*,[1848] and continue to do so here as there has been no change to the law under which this tax program is administered. We therefore continue to find refunds of tax paid on fuel used for stationary purposes to be *de jure* specific within the meaning of section 711(5A)(D)(i) of the Act.

As we explained in the *Lumber V AR3 Final*, under the *Fuel Tax Act*, the Refund of Fuel Tax Paid on Fuel Used for Certain Purposes and Stationary Purposes program is expressly limited to companies that are entitled to refunds on fuel tax paid for certain specified activities.[1849] In this review, the GOQ again reported that this subsidy is available for any qualifying equipment.[1850] The refund may be claimed for equipment whose use or purpose does not require that the vehicle be moving.[1851] The "Application for a Tax Refund Respecting Fuel Used for Stationary Purposes" continues to indicate the limited equipment and activities that qualify for the refund of fuel tax paid, *i.e.*, vehicles with eligible equipment as power shovels, drilling machines, cranes, and cement mixers, concrete pumping trucks and well drills, fire trucks, garbage and recycling trucks, and cleaning trucks (sewer and septic tanks).[1852] The Application also continues to make clear that the following are not eligible for a refund: bulldozer, grader, rotary mixer {soil stabilizer}, compactor, scraper, snow-grooming machine, snow plough, snow blower, spreader of melting agents or abrasives, dump trucks, moving trucks, container trucks, refrigerated trucks, carpet-cleaning trucks, and tow trucks.[1853]

The specificity test is designed to avoid the imposition of CVDs where a subsidy is broadly available and used throughout an economy.[1854] It is not intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an

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[1848] *See Lumber V AR3 Final* at Comment 103.
[1849] *Id.*
[1850] *See* GOQ Non-Stumpage IQR Response at Exhibit QC-FTR-A (p. 11).
[1851] *Id.*
[1852] *Id.* at Exhibit QC-FTR-15 (p.4).
[1853] *Id.*
[1854] *See* SAA at 930.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

economy could escape the purview of the CVD law.[1855] Commerce may make a finding of *de jure* specificity in instances where an authority has limited access to a subsidy enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.[1856]

We also disagree that our finding equates the existence of eligibility requirements or "objective criteria" for a program to *de jure* specificity. Under section 771(5A)(D)(ii) of the Act, the term "objective criteria" mean criteria "that are neutral and that do not favor one enterprise or industry over another." However, under the Refund of Fuel Tax Paid on Fuel Used for Certain Purposes and Stationary Purposes program, the eligibility criteria limit access to the subsidy to only those users operating specified stationary equipment of a vehicle. Therefore, the eligibility criteria do not meet the statutory definition of "objective criteria," because they favor certain enterprises.

L. Company-Specific Issues

Resolute

Comment 77: Whether To Recalculate Resolute's Denominator for Certain Transferred Subsidies

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.

> In this review, Resolute identified fourteen cross-owned affiliates that met one of the criteria for reporting. Of these, three affiliates, {Fibrek}, {Resolute St-Prime} and {Larouche}, met the "transfer of a subsidy" criteria. Resolute reported these transferred subsidies in its questionnaire responses. In the *Preliminary Results*, {Commerce} acknowledged that "Fibrek, Resolute St-Prime and Larouche received subsidies that were transferred to Resolute." In discussing how it would attribute those subsidies, the agency cited 19 {CFR} 351.525(b)(6)(vi), which states that "{i}f a cross-owned corporation received a subsidy and transferred the subsidy to a producer of subject merchandise, the Secretary will only attribute the subsidy to products produced by the recipient of the transferred subsidy." However, {Commerce} appears to have inadvertently attributed these subsidies not just to Resolute, but to the consolidated sales of Resolute, Mauricie, Fibrek, Larouche, and {Resolute St-Prime}, in addition to Resolute's other wholly-owned companies. In the final results, {Commerce} should correct this error and attribute the subsidies, or the transferred portion of these subsidies, solely to the sales of the recipient, Resolute, in accordance with the agency's regulation.

[1855] *Id.*
[1856] *See Steel Pipe from Oman* IDM at Comment 2; *see also Magnesium from Israel* IDM at Comment 2.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Resolute Rebuttal Brief

The following is a verbatim summary of the argument submitted by Resolute (internal citations omitted). For further details, *see* Resolute Rebuttal Brief at 2-5.

> {Commerce} should deny the Coalition's request to treat subsidies to Resolute subsidiaries as attributable only to Resolute FP Canada. The record does not contain evidence that alleged subsidies to Fibrek, {Resolute St-Prime}, and Larouche were transferred to Resolute. The evidence shows the alleged subsidies were related to equipment at those companies producing non-subject merchandise or to the sale of electricity; hence, the alleged subsidies could not have been transferred. The Coalition's argument underscores the fact that the alleged subsidies to those subsidiaries were intended for the production of non-subject merchandise and should be excluded from the margin calculations.

Commerce's Position: After further considering record evidence and the arguments raised by parties, we have determined that Commerce should attribute transferred subsidies solely to the sales of Resolute and not to Resolute's consolidated sales as we did in the *Preliminary Results*.

Resolute FP Canada Inc. is a parent company to a number of firms, including Mauricie, Fibrek, Larouche, and Resolute St-Prime.[1857] As described in the *Preliminary Results*, Resolute reported that Fibrek, Resolute St-Prime, and Larouche received subsidies that were then transferred to Resolute.[1858] In its case brief, the petitioner argues that Commerce inadvertently attributed the transferred subsidies to Resolute's consolidated sales, rather than the sales of the recipient of the subsidies (*i.e.*, attribute the subsidies solely to the unconsolidated sales of Resolute).[1859]

Commerce's regulation at 19 CFR 351.525(b)(6)(vi), the explanation of that regulation when it was a proposed rule, and the preamble to the final rule detail how a subsidy that was transferred between corporations with cross-ownership should be attributed. The regulation reads:

> If a cross-owned corporation received a subsidy and transferred the subsidy to a producer of subject merchandise, the Secretary will only attribute the subsidy to products produced by the recipient of the transferred subsidy. When the cross-owned corporation that transferred the subsidy could fall under two or more of the paragraphs under paragraph (b)(6) of this section the transferred subsidy will be attributed solely under this paragraph.[1860]

[1857] *See* Resolute Non-Stumpage IQR at 1 and RES-NS- USAGE; *see also* Resolute Affiliation Response at 3-4 and Exhibit RES-AFFILIATION-4.
[1858] *See* Resolute Non-Stumpage IQR at Exhibit RES-NS-SALES-1; *see also Lumber V AR7* Prelim Memorandum at 7-8.
[1859] *See* Resolute Case Brief at 2-4.
[1860] *See* 19 CFR 351.525(b)(6)(vi).

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

Commerce made its intent to not attribute transferred subsidies to the consolidated sales of the recipient clear in its explanation of the proposed revision to the regulation:

> Move current § 351.525(b)(6)(v), covering the transfer of subsidies between corporations with cross-ownership producing different products, to § 351.525(b)(6)(vi) and modify it to address the transfer of subsidies from any cross-owned corporation. Under this modification, a transferred subsidy from a cross-owned corporation would be attributed solely to products produced by the recipient of the transferred subsidy.[1861]

Commerce confirmed its intent in its discussion of the regulation when publishing the final rule:

> With these revisions to the transfer attribution rule, as proposed in the Proposed Rule and codified in this final rule, Commerce clarifies that when a cross-owned corporation transfers a subsidy, that subsidy will be attributed only to the recipient of the subsidy.
>
> In addition, the agency amended the title of § 351.525 in the Proposed Rule from "Transfer of subsidy between corporations with cross-ownership producing different products" to "Transfer of subsidy between corporations with cross-ownership" to indicate that the transfer of a subsidy can be from any cross-owned corporation, not just from a cross-owned corporation that is a manufacturer.[1862]

Because the recipient of the transferred subsidies is Resolute, Commerce should attribute transferred subsidies solely to the sales of Resolute and not to Resolute's consolidated sales as we did in the *Preliminary Results*. Section 351.525(b)(6)(vi) of Commerce's regulations is clear that no other paragraph under (b)(6) should be considered for the purposes of attribution where a subsidy is transferred.

Further, we disagree with Resolute's rebuttal arguments that the record does not contain evidence that subsidies were transferred to Resolute from its cross-owned companies.[1863] Resolute itself reported that it received transferred subsidies from certain affiliated cross-owned companies.[1864] Resolute then submitted full responses on behalf of those affiliates solely because they qualified for full reporting because of the transferred subsidies (*i.e.*, based on the record evidence there is no additional manner in which any of these affiliates would be found to have attributable subsidies). While Resolute points to a comment that it was not conceding the receipt of subsidies in reporting for these cross-owned affiliates,[1865] this is a general statement as to whether the assistance it was reporting was countervailable and not whether the assistance was transferred. It is the responsibility of the respondents to build the record and at no point did Resolute or its affiliates indicate that the assistance reported in the responses was not fully

[1861] *See Regulations Enhancing the Administration of AD/CVD Laws – Proposed*, 89 FR at 57289.
[1862] *See Regulations Enhancing the Administration of AD/CVD Laws – Final*, 89 FR at 101745.
[1863] We note that Resolute did not make an affirmative argument relating to this point and has only raised it as part of its rebuttal brief, but we address it nonetheless.
[1864] *See* Resolute Non-Stumpage IQR at Exhibit RES-NS- USAGE.
[1865] *Id.* at Exhibit RES-NS- USAGE at tab "Table1.Cross.OwnedCoInfo."

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

transferred to Resolute. In fact, the record demonstrates in certain instances that the assistance was, in fact, transferred for the entities Resolute had listed as transferring their subsidies to Resolute. For example, when describing a QCCA for Class 53 tax deduction received by Resolute St-Prime, Resolute's cross-owned affiliate from which Resolute reported receiving transferred subsidies, Resolute St-Prime explained that the tax deduction was "passed through" to Resolute and Resolute Larouche from Resolute St-Prime: "As noted above, the QCCA deduction claimed in 2024 was passed through to Resolute and Resolute Larouche, which were both in a loss position for December 2023 YE."[1866] The record also contains a general statement that the income received by its affiliates were passed through to Resolute:

> Income or loss of partnership entities (such as Resolute PFM {Mauricie}, Resolute St-Prime and Fibrek GP) are passed through to Resolute, and also to Resolute Larouche (for Resolute St-Prime).[1867]

As such, we reject Resolute's rebuttal[1868] as demonstrating that no such transferred subsidies exist.

Resolute also argues that certain of the alleged transferred subsidies are not transferrable because they are "for specific equipment or other needs related to the production of certain goods at specific mills or for the purchase of electricity…"[1869] Resolute then cites to the *Regulations Enhancing the Administration of AD/CVD Laws - Final*, stating that Commerce's regulation for attribution for transfer of subsidies was not intended to apply to government payments for the purchase of a good sold by the cross-owned corporation, and it was instead intended to address transfers of grants, financial assets, or physical assets that might avoid CVD review.[1870] Resolute has taken the language from the *Regulations Enhancing the Administration of AD/CVD Laws - Final* out of context. In the *Regulations Enhancing the Administration of AD/CVD Laws - Final*, Commerce was providing a history of its attribution rules for cross-owned companies and explained that in 1993, it first required companies to provide full responses for all related companies that where there was "…{a}ny transfer of funds (*e.g.*, grants, financial assets) or physical assets to the respondent…"[1871] This is simply a history of cross-ownership reporting from over three decades ago, specifically what Commerce had *previously* required respondents to report before the development of Commerce's "detailed practice with respect to the treatment of cross-owned companies and the attribution to respondent of subsidies received by cross-owned companies{,}" and in no way limits which types of subsidies Commerce's subsequently promulgated transferred subsidies attribution regulation covers.[1872]

We further disagree with Resolute's assertions that the subsidies at issue were tied to non-subject merchandise. Resolute's only mention of a particular transferred subsidy by name, involves the PAE 2011-01 program, an electricity for MTAR program. Resolute contends, generally, that the subsidies are "not transferable because they are for specific equipment or other needs related to

[1866] *See* Resolute Non-Stumpage IQR at RES-NS-TAX-QC-2 at 9 and RES-NS-GEN-4-E.
[1867] *Id.* at RES-NS-TAX-QC-2 at 9.
[1868] *See* Resolute Rebuttal Brief at 2-5.
[1869] *Id.* at 4.
[1870] *Id.* at 4 at fn. 11.
[1871] *See Regulations Enhancing the Administration of AD/CVD Laws – Final*, 89 FR at 101740.
[1872] *Id.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

for the production of certain goods at specific mills or for the purchase of electricity (also non-subject merchandise) produced there."[1873] However, as discussed above at comment 34, we have repeatedly found the PAE 2011-01 program to be untied to non-subject merchandise. 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.[1874] Under 19 CFR 351.525(a) and (b)(5)(ii), subsidies tied to an input product, *i.e.*, electricity, are attributed to sales of all products produced by the company. No party has contested the finding that electricity is consumed in the production of softwood lumber. For a further discussion, *see* comment 34.

Therefore, for the reasons detailed above, we attribute the transferred portion of the transferred subsidies solely to the sales of the recipient, Resolute FP Canada Inc.

Comment 78: Whether Commerce Applied the Correct Denominator In Resolute's Stumpage Calculations

Resolute Case Brief

The following is a verbatim summary of the argument submitted by Resolute. For further details, *see* Resolute Case Brief at 61-66.

> {Commerce} should use all of Resolute's sales in the denominator of the stumpage subsidy margin calculations. Resolute's stumpage sales include all of Resolute's stumpage, whether considered "sawlogs" or "pulplogs." {Commerce} has found stumpage to be an untied subsidy throughout this proceeding. {Commerce}'s regulations {19 CFR 351.525(b)}, practice and treatment of other subsidy allegations in this proceeding require the use of all of a company's sales in the denominator where the alleged subsidy is untied.

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 162-164.

> Resolute argues that in the *Preliminary Results*, {Commerce} incorrectly limited the stumpage sales denominator to the company's sales of products produced by its sawmills. However, {Commerce}'s attribution practice for stumpage subsidies is reasonable and consistent with its past practice. In prior softwood lumber proceedings, {Commerce} has measured the stumpage subsidy benefit by comparing the subsidy on all logs harvested and used in sawmills to make lumber

[1873] *See* Resolute Rebuttal Brief at 4.
[1874] *See CVD Preamble,* 63 FR at 65400; *see also* 19 CFR 351.525(b)(3).

> (the numerator) to the sales of products produced in sawmills (lumber and byproducts) the denominator. This practice is consistent with the *CVD Preamble*, which explained that the goal of the attribution rules is to make sure that "subsidies are . . . attributed, to the extent possible, to the sales for which costs are reduced (or revenues increased)." This case concerns softwood lumber. Accordingly, during the review, {Commerce} requested and Resolute provided only timber purchases that were used in sawmills for lumber production. The benefits that the provincial government provided through the provision of this timber at less than adequate remuneration reduced the costs of lumber and byproducts production. As such, {Commerce} appropriately limited the denominator to sales of products produced in sawmills.

Commerce's Position: Resolute again raises the same arguments about the sales denominator used in Commerce's stumpage subsidy margin calculations it raised in several prior administrative reviews.[1875] We have previously found Resolute's arguments unpersuasive, most recently in the *Lumber V AR3 Final*,[1876] and continue to do so here. With respect to Resolute's purchases of Crown-origin stumpage in Québec and Ontario, Resolute argues that in calculating the benefit received for the Québec stumpage for LTAR and Ontario stumpage for LTAR programs, Commerce should utilize Resolute's full company sales as the denominator.[1877] 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."[1878] 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 examination of the subsidy programs was limited to stumpage that turned into softwood Crown logs which entered into and were processed by sawmills.[1879] 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.[1880]

As we explained in the *Lumber IV AR1 Final*:

> in the numerator of the calculation, {Commerce} included only the benefit from those softwood Crown logs that entered and were processed by sawmills during the POR (*i.e.*, logs used in the lumber production process). Accordingly, the denominator used for this final calculation included only those products that result from the softwood lumber manufacturing process. Consistent with {Commerce's}

[1875] *See* Resolute Case Brief at 61-66.
[1876] *See Lumber V AR3 Final* IDM at Comment 9; *see also Lumber V AR2 Final* IDM at Comment 8; and *Lumber V AR1 Final* IDM at Comment 10.
[1877] *See* Resolute Case Brief at 61-66.
[1878] *See CVD Preamble*, 63 FR at 65400.
[1879] *See Preliminary Results* PDM at 36.
[1880] *Id.*

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

> 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 coproducts (*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.[1881]

Thus, Commerce's practice in *Lumber IV* and in the current proceeding with regard to stumpage for LTAR is to include in the stumpage denominator all sales of subject merchandise–both softwood lumber produced in sawmills, as well as co-products of the sawmills–but not any value-added products produced from the lumber or co-products that are non-subject merchandise, such as pulp, paper, or electricity.[1882]

Resolute argues that Commerce has not found purchases of stumpage for LTAR to be tied to lumber production; therefore, Commerce must treat these this program as an "untied" subsidy and attribute the subsidies to Resolute's total sales.[1883] We agree with Resolute that we have not found stumpage to be tied. Resolute also correctly pointed out that in *Groundwood Paper from Canada Final*, we did not find that stumpage for LTAR tied only to lumber production or only to pulp and paper products.[1884]

However, we do not agree with Resolute that we should attribute subsidies received by sawmills to all sales. While 19 CFR 351.525(b)(3) states that Commerce will attribute a domestic subsidy to all products sold by a firm, as explained in the *CVD Preamble*, that is because an untied domestic subsidy reduces the costs of all products sold by the firm.[1885] Thus, if we were to attribute a subsidy to all sales by Resolute, we would need to make sure that we capture all domestic subsidies (*i.e.*, stumpage subsidies) that reduce the costs of all products sold by Resolute. Resolute argues that in the instant review it has reported all Québec and Ontario stumpage purchases as all stumpage purchased was required for its sawmills.[1886] However, whether Resolute's pulp mills had any purchases of stumpage during the period of review is inapposite to our stumpage for LTAR benefit calculation. Respondents in prior segments of this proceeding have purchased stumpage for use at facilities other than their sawmills, so Commerce has needed to clarify which purchases are subject to this subsidy program and has done so consistently since the investigation.[1887] For example, West Fraser, the other mandatory respondent in the instant review, stated that, as instructed, it excluded pulp logs from its reported

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[1881] *See Lumber IV AR1 Final* IDM at 7.
[1882] *Id.*; *see also Lumber V AR6 Prelim* PDM at 27, unchanged in *Lumber V AR6 Final*; *Lumber V AR5 Prelim* PDM at 30, unchanged in *Lumber V AR5 Final* IDM at Comment 5; *Lumber V AR4 Prelim* PDM at 28, unchanged in *Lumber V AR4 Final* IDM at Comment 4; *Lumber V AR3 Prelim* PDM at 34, unchanged in *Lumber V AR3 Final* IDM at Comment 9; *Lumber V AR2 Prelim* PDM at 31, unchanged in *Lumber V AR2 Final* IDM at Comment 8; *Lumber V AR1 Prelim* PDM at 28, unchanged in *Lumber V AR1 Final* IDM at Comment 10; and *Lumber V Prelim* PDM at 51, unchanged in *Lumber V Final*.
[1883] *See* Resolute Case Brief at 61-66.
[1884] *Id*. at 65 (citing *Groundwood Paper from Canada Final*).
[1885] *See CVD Preamble*, 63 FR at 65400.
[1886] *See* Resolute Case Brief at 65 (citing Resolute Stumpage IQR Response at 7 and 22).
[1887] *See Lumber V AR6 Final* IDM at Comment 13; *see also Lumber V AR5 Final* IDM at Comment 11; *Lumber V AR4 Final* IDM at Comment 25; *Lumber V AR3 Final* IDM at Comment 31; *Lumber V AR2 Final* IDM at Comment 34; *Lumber V AR1 Final* IDM at Comments 31 and 40; and *Lumber V Final* IDM at Comments 40 through 42.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

British Columbia and Alberta stumpage purchases.[1888] Across the investigation and the previous reviews, Commerce has been clear that respondents should report only softwood *sawmill* purchases of Crown-origin standing timber in response to the questionnaire.[1889] In the instant proceeding, Commerce's Initial Questionnaire was clear that respondents are only to report stumpage purchases by their *sawmills*.[1890] Accordingly, in this review, as in the investigation and the prior reviews, respondents' numerators are reported on a sawmill-basis. The current record indicates that Resolute's total sales values include lumber and its co-products, as well as non-lumber products, such as sales of pulp and paper products.[1891] Thus, to utilize a total sales denominator, we would need a numerator that not only captures sawtimber stumpage subsidies but also stumpage subsidies on pulp logs. As noted above, Commerce only requested information on stumpage subsidies for sawlogs delivered to sawmills.[1892] Subsidies for lumber and its co-products can only reduce production costs for lumber and its co-products. Thus, we did not attribute stumpage subsidies on this record to all sales.

As stated above, consistent with *Lumber IV*, with regard to stumpage for LTAR, our practice is to include in the stumpage denominator all sales of subject merchandise–both softwood lumber produced in sawmills, as well as co-products of the sawmills–but not any value-added products produced from the lumber or co-products that are non-subject merchandise, such as pulp, paper, or electricity. Resolute asserts that, "disregarding regulations," cannot be justified by past practice.[1893] Furthermore, Resolute asserts that the attribution rule used in the country-wide investigation of *Lumber IV* is not comparable to the company-specific case in the instant review.[1894] However, we disagree with Resolute's characterization. As described above, we find that Commerce's practice is consistent with the *CVD Preamble*.[1895] In the instant review Resolute was asked to report its sawmill stumpage purchases.[1896] Since Resolute's numerator is limited to sawmill purchases, we find it appropriate to limit the denominator to sales of products produced by sawmills to ensure that the numerator and denominator used in our calculation are on the same basis and that Commerce's benefit calculation methodology is applied consistently across respondents.

[1888] *See* West Fraser Stumpage IQR Response at III-6 through III-7 and IV-2. Because West Fraser excluded pulp logs from its reported British Columbia and Alberta stumpage purchases, even if we were to agree with Resolute here—which we do not—we could not apply their proposed denominator on a consistent basis across respondents, because we lack a numerator that captures stumpage subsidies on pulp logs for West Fraser in this review.
[1889] See *Lumber V AR6 Prelim* PDM at 27, unchanged in *Lumber V AR6 Final*; *see also Lumber V AR5 Prelim* PDM at 30, unchanged in *Lumber V AR5 Final* IDM at Comment 5; *Lumber V AR4 Prelim* PDM at 28, unchanged in *Lumber V AR4 Final* IDM at Comment 4; *Lumber V AR3 Prelim* PDM at 34, unchanged in *Lumber V AR3 Final* IDM at Comment 9; *Lumber V AR2 Prelim* PDM at 31, unchanged in *Lumber V AR2 Final* IDM at Comment 8; *Lumber V AR1 Prelim* PDM at 28, unchanged in *Lumber V AR1 Final* IDM at Comment 10; and *Lumber V Prelim* PDM at 51, unchanged in *Lumber V Final*.
[1890] *See* Initial Questionnaire, Section III at Table 1.
[1891] *See* Resolute Non-Stumpage IQR Response at Exhibit RES-NS-SALES-1.
[1892] *See* Initial Questionnaire, Section III at Table 1.
[1893] *See* Resolute Case Brief at 65.
[1894] *Id*.
[1895] *See CVD Preamble*, 63 FR at 65400.
[1896] *See* Initial Questionnaire, Section III at Table 1.

Filed By: TJ Worthington, Filed Date: 10/14/26 12:05 PM, Submission Status: Approved

VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this review in the *Federal Register*.

☒	☐
Agree	Disagree

X 

Signed by: SCOT FULLERTON
Scot Fullerton
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Appendix I - Document Citation Table for the Final Results: Lumber CVD Seventh Administrative Review

Acronym/Abbreviation	Complete Name
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-5a and NS-6 of GNS Stumpage IQR
2023 Private Market Survey	A survey of private stumpage transactions in Nova Scotia between July 1, 2023, and December 31, 2023, submitted in Exhibit NS-5a and NS-6 of GNS Stumpage IQR
AAC	Annual Allowable Cut
AAF	Alberta Agricultural and Forestry
AbitibiBowater	AbitibiBowater Canada Inc.
ACCA	Accelerated Capital Cost Allowance
AD	Antidumping Duty
AESO	Alberta Electric System Operator
AFA	Adverse Facts Available
AHA	Available Harvest Area
AII	Accelerated Investment Incentive
AITC	Atlantic Investment Tax Credit
AJCTC	Apprenticeship Job Creation Tax Credit
Alberta Parties	Government of Alberta, the Alberta Softwood Lumber Trade Council and its members, Boucher Bros. Lumber Ltd.; Canfor Corporation; Dunkley Lumber Ltd.; La Crete Sawmills Ltd.; Northland Forest Products Ltd.; Tolko Industries Ltd.; Vanderwell Contractors (1971) Ltd.; West Fraser Mills Ltd.; Zavisha Sawmills Ltd.
AR	Administrative Review
AR2 Athey Report	Submitted as GBC Stumpage IQR Response Exhibit BC-AR7-S-148 at Attachment 9
Asker Report	"Economic Analysis of Factors Affecting Cross Jurisdictional Stumpage Price Comparisons," submitted as Exhibit GOC-AR7-STUMP-15 of GOC Stumpage IQR Response
AUL	Average Useful Life
AWS	Annual Work Schedules
BC	British Columbia
BC OBPS	BC Output-Based Pricing Scheme
BC Parties	Government of British Columbia, the British Columbia Lumber Trade Council, and West Fraser Mills, Ltd.
BCAA	British Columbia Assessment Authority
BCPRME	BC Provincial Sales Tax Rebate on Select Machinery and Equipment
BCTS	British Columbia Timber Sales
BCUC	BC Utilities Commission
BLM	Bureau of Land Management
Blue Ridge	Blue Ridge Lumber Inc.
BMMB	*Bureau de la mise en marché de bois* (Québec's Wood Marketing Bureau)
Bowater	Bowater Canadian Holdings Incorporated
BPI	Business Proprietary Information
Brattle Report	"Assessment of an Internal Benchmark for Alberta Crown Timber (July 15, 2019)," submitted as Volume II Exhibit AB-AR7-S-24a of GOA Stumpage IQR Response
C$	Canadian Dollar
Canadian Parties	Government of Canada, the Provinces of Alberta, British Columbia, New Brunswick, Ontario, Québec, Saskatchewan, as well as Resolute FP Canada Inc., West Fraser Mills Ltd., Alberta Softwood Lumber Trade Council, and British Columbia Lumber Trade Council
Canfor	Canfor Corporation
Cariboo	Cariboo Pulp & Paper
Carrier	Carrier Forest Products Ltd. and Carrier Lumber Ltd.
CBP	U.S. Customs and Border Protection
CCA	Capital Cost Allowance
CDPQ	Caisse de Dépôt et Placement du Québec
CDPQ 2024 Annual Report	Submitted as GOQ May 7, 2026 Non-Stumpage SQR Response Exhibit QC-NSSUP2-05
CDPQ Act	*Act Respecting the Caisse De Dépôt Et Placement Du Québec* , submitted as GOQ May 7, 2026 Non-Stumpage SQR Response Exhibit QC-NSSUP2-01

Acronym/Abbreviation	Complete Name
Central Canadian Companies	Resolute FP Canada Inc., Arbec Lumber Inc. (Arbec bois D'oeuvre inc.), B.B. Pallets Inc. (Les Palettes B.B. Inc.), Barrette-Chapais Ltée, BarretteWood Inc. (BarretteBois Inc.), Benoît & Dionne Produits Forestiers Ltée (Benoît & Dionne Forest Products Ltd.), Blanchet Multi Concept Inc., Bois Aisé de Montréal Inc., Bois Bonsaï Inc., Bois Daaquam Inc. (Daaquam Lumber Inc.), Bois D'oeuvre Cedrico Inc. (Cedrico Lumber Inc.), Bois et Solutions Marketing SPEC, Inc. (SPEC Wood & Marketing Solution or SPEC Wood and Marketing Solutions Inc.), Bois Weedon Inc., Boisaco Inc., Boscus Canada Inc., Busque & Laflamme Inc., Canadian Wood Products - Montreal Inc. (CWP - Montreal Inc.), Carrier & Bégin Inc., Clermond Hamel Ltee, CWP Industriel Inc., Goodfellow Inc., Groupe Crête Chertsey Inc., Groupe Crête division St-Faustin Inc., Groupe Lebel inc., Jan Woodlands (2001) Inc., Kébois Ltée/Ltd., Les bois d'oeuvre Beaudoin Gauthier inc., Les Chantiers de Chibougamau Ltd./Ltee, Les Industries P.F. Inc., Les Produits Forestiers D&G Ltee (D&G Forest Products Ltd.), Les Produits Forestiers Sitka Inc. (Sitka Forest Products Inc.), Lulumco inc., Maibec inc., Marcel Lauzon Inc., Portbec Forest Products Ltd. (Les Produits Forestiers Portbec Ltée), Produits Forestiers Petit Paris Inc., Produits Matra Inc., Promobois G.D.S. Inc., René Bernard inc., Scierie St-Michel inc., Scierie West Brome Inc., Séchoirs de Beauce inc., Usine Sartigan Inc., Manitou Forest Products Ltd, Lecours Lumber Co. Limited, Hornepayne Lumber LP, White River Forest Products L.P., Nakina Lumber Inc., Midway Lumber Mills Limited, Plaster Rock Lumber Corporation, and CHAP Alliance Inc.
CES	Custom Energy Solutions
CFP	Canadian Forest Products, Ltd.
CFR	Code of Federal Regulations
CIB	Climate Investment Branch
CIF	CleanBC Industry Fund
CIIP	CleanBC Industrial Incentives Program
CIT	U.S. Court of International Trade
CITR	Canadian Income Tax Regulations
CleanBC	CleanBC Program for Industry
CLFA	Crown Land and Forests Act
CLFA	Crown Land and Forests Act
CO2e	Carbon Dioxide Equivalent
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 (aka, D&G Forest Products Ltd.)
DBH	Diameter at Breast Height
DERD	Department of Energy and Resource Development
DLF	Department of Lands and Forestry
DNR	Minister of Natural Resources
DNRED	Department of Natural Resources and Energy Development
DRO	Demand Response Option
Dual-Scale Study	Submitted as GBC Stumpage IQR Response Exhibit S-201 Appendix B
East Mountain	East Mountain Forest Products Ltd.
EDL	Electricity Discount Program Applicable to Consumers Billed at Rate L (aka, Programme d'aide fmanciere a l'investissement (PAFI))
EEI	Energy Efficiency for Industry
eFAR	Electronic Facility Annual Return
EIPA	Export and Import Permits Act
ENRQC Agreement	l'Entente concernant une nouvelle relation entre le gouvernement du Québec et les Cris du Québec (aka, Agreement on a New Relationship between the Québec Government and the Cree of Québec)
EOCs	Emissions Offset Credits
EPAs	Electricity Purchase Agreements
EPCs	Emissions Performance Credits
ESP	Efficient Solutions Program
EWP	Eastern White Pine
F2M	Forest2Market

Acronym/Abbreviation	Complete Name
FDA	U.S. Food and Drug Administration
FDRCMO	Workforce Skills Development & Recognition Fund
Federal Circuit	U.S. Court of Appeals for the Federal Circuit
FESBC	Forest Enhancement Society of British Columbia
Fibrek	Fibrek General Partnership/Fibrek S.E.N.C.
FLCI	Random Lengths Framing Lumber Composite Index
FLTC	Federal Logging Tax Credit
FMA	Forest Management Agreement
FMM	Forest Management Manual
FMP	Forest Management Plans
FRIAA	Forest Resource Improvement Association of Alberta
FRL	Forest Resource License
FRPA	Forest and Range Practices Act
FSIIP	Forest Sector Investment and Innovation Program
FSPF	Forest Sector Prosperity Fund
FTC	Foreign Trade Commission
FUELSP	Refund of Fuel Tax Paid on Fuel Used for Stationary Purposes
FUFP	Fibre Utilization Funding Program
FY	Fiscal Year
G&A	General and Administrative
GBC	Government of British Columbia
GDP	Gestion de la demande de puissance
GGERR	Greenhouse Gas Emission Reporting Regulation
GGIRCA	Greenhouse Gas Industrial Reporting and Control Act
GHG	Greenhouse Gas
GIS	Geographic Information System
GNB	Government of New Brunswick
GNS	Government of Nova Scotia
GOA	Government of Alberta
GOC	Government of Canada
GOO	Government of Ontario
GOQ	Government of Québec
GWh	Gigawatt Hours
Haida	Haida Forest Products Ltd.
Harry Freeman	Harry Freeman & Son
Hendricks AR7 Report	Expert Report of Dr. Kenneth Hendricks, "An Economic Analysis of the Ontario Timber Market and an Examination of Private Market Prices in that Competitive Market – A Fourth Update (2025)," submitted at GOO Stumpage Benchmark Submission at Appendix 1
HHI	Herfindahl–Hirschman Index
HTSUS	Harmonized Tariff Schedule of the United States
IDM	Issues and Decision Memorandum
IEI	Industrial Electricity Incentive Program
IEO	Interruptible Electricity Option
IESO	Independent Electricity System Operator
IFG	Idaho Forest Group
IFS Report	Report of Robert Schuetz, Industrial Forestry Service LTD, "Review of Softwood Sawlog Haul Costs Delivered to Sawmills in Nova Scotia in 2024," Exhibit PR-NSR-AR7-2
IMF	International Monetary Fund
IMF Softwood Index	International Monetary Fund's softwood commodity price index, submitted at GOC Stumpage Benchmark Submission at Exhibit GOC-ADEQ-AR7-18
Interfor	Interfor Corporation, Interfor Sales & Marketing Ltd., EACOM Timber Corporation, Chaleur Forest Products Inc. and Chaleur Forest Products LP
IPPs	Independent Power Producers
IPTC	Industrial Property Tax Credit
IQR	Initial Questionnaire
ISED	Innovation, Science, and Economic Development Canada
ISEE	Industrial Systems Energy Efficiency
ISO	International Organization for Standardization
ITR	Income Tax Regulations

Acronym/Abbreviation	Complete Name
JDIL	J.D. Irving, Limited
Kalt Report	"Economic Analysis of Remuneration for Canadian Crown Timber: Are In-Jurisdiction Benchmarks Distorted by Crown Stumpage?," submitted as Exhibit GOC-AR7-STUMP-14 of GOC Stumpage IQR Response
Larouche	Resolute Engineered Wood Larouche Inc.
Ledwidge Lumber	Ledwidge Lumber Co., Ltd.
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 as GOQ's Letter, "The Government of Québec's Submission of the Expert Report of Robert C. Marshall, Ph.D.," dated June 12, 2025 at Attachment
MASTE	Mesure D'Accompagnement et de Soutien Technique aux Entreprises Québécoises de Transformation des Produits Forestiers (translated as Guidance and Technical Support Initiative for Forest Products Manufacturing Companies in Québec)
Mauricie	Forest Products Mauricie L.P./Produits Forestiers Mauricie S.E.C.
MBF	Thousand Board Feet
MCCRP	Forest Management Activities on Multiuse Roads Reimbursement Program
MCRP	Multi-resource Road Cost Reimbursement Program
MESS	Ministère de l'Emploi et de la Solidarité Sociale (aka, Ministry of Work and Social Solidarity)
MFFP	Québec Ministry of Forests, Fauna and Parks
MFOR	Mesure de formation de la main d'oeuvre (aka, Manpower Training Measures)
Miller Report	"2nd Update and Supplemental Report to Characteristics of Nova Scotia's Wood Fibre Market," submitted as Exhibit GOC-AR7-STUMP-16.a of GOC Stumpage IQR Response
MNP Cross Border Report	GOA Stumpage IQR Response at Exhibit AB-AR7-S-23
MNP Ontario Survey	"Survey of the Ontario Private Timber Market," submitted as Exhibit ON-PRIV-13-A of GOO Stumpage IQR Response
MNR	Ontario Ministry of Natural Resources
MOF	Ministry of Forests (BC)
Montana Study	"Impacts of the Mountain Pine Beetle on Sawmill Operations, Costs, and Product Values in Montana," by Dan Loeffler and Nathaniel Anderson, submitted at Exhibit BC-AR7-S-219 of GBC Stumpage IQR Response
MPB	Mountain Pine Beetle
MPS	Market Pricing System
MPS Performance Report	Submitted as GBC Stumpage IQR Response Exhibit BC-AR7-S-148.
MRNF	Québec Ministère des Ressources Naturelles et des Forêts (aka, Ministry of Natural Resources and Forests)
MTAR	More Than Adequate Remuneration
MTR	Monthly Timber Return
NADB	Incentives For Harvesting Areas Infested By Spruce Budworm
NAICS	North American Industry Classification System
Non-Selected Exporters and U.S. Importers	0752615 B.C Ltd., Fraserview Remanufacturing Inc., (dba Fraserview Cedar Products), Absolute Lumber Products Ltd., Adwood Manufacturing Ltd., Alpa Lumber Mills Inc., Aspen Planers Ltd., Bakerview Forest Products Inc., BPWood Ltd., Bramwood Forest Inc., Brink Forest Products Ltd., Canasia Forest Industries Ltd., Canyon Lumber Company Ltd., Carter Forest Products Inc., Cedarline Industries Ltd., Central Cedar Ltd., Channel-ex Trading Corporation, Chinook Wood Products Ltd., CLG Enterprises Inc., Columbia River Shake & Shingle Ltd./ Teal Cedar Products Ltd., DBA the Teal Jones Group, D & D Pallets Ltd., Dakeryn Industries Ltd., Delta Cedar Specialties Ltd., Doubletree Forest Products Ltd., East Fraser Fiber Co. Ltd., East Mountain Forest Products Ltd., Falcon Lumber Ltd., Fraser Specialty Products Ltd., Furtado Forest Products Ltd., Goldwood Industries Ltd., Haida Forest Products Ltd., Horizon Coatings Inc., Independent Building Materials Distribution Inc., Ivor Forest Products Ltd.,

Acronym/Abbreviation	Complete Name
Non-Selected Exporters and U.S. Importers (cont.)	J.H. Huscroft Ltd., Jhajj Lumber Corp., Kalesnikoff Lumber Co Ltd., Kan Wood Ltd., Kermode Forest Products Ltd., Kings Wood Products Inc., Leslie Forest Products Ltd., Lignum Forest Products LLP, Lonestar Lumber Inc., Mid Valley Lumber Specialties Ltd., Mill & Timber Products Ltd., Monterra Lumber Mills Limited, Multicedre ltee, National Forest Products Ltd., Nicholson & Cates Ltd., Norsask Forest Products Limited Partnership, North American Forest Products Ltd. (Abbotsford), North Enderby Timber Ltd., Oakwood Manufacturing A Division of Weston Forest Products Inc., Pacific Lumber Remanufacturing Inc., Pacific NorthWest Lumber Ltd., Pacific Western Wood Works Ltd., Parallel Wood Products Ltd., Partap Forest Products Ltd., Phoenix Forest Products Inc., Pine Ideas Ltd., Pioneer Pallet & Lumber Ltd., Porcupine Wood Products Ltd., Power Wood Corp., Precision Cedar Products Corp., Rembos Inc., Rielly Industrial Lumber Inc., Riverside Forest Products Inc., Sawarne Lumber Co. Ltd., Shakertown Corp., Sigurdson Forest Products, Skana Forest Products Ltd., South Beach Trading Inc., Surrey Cedar Ltd., Taan Forest Limited Partnership (aka Taan Forest Products), Terminal Forest Products Ltd., Top Quality Lumber Ltd., Triad Forest Products Ltd., Tyee Timber Products Ltd., Universal Lumber Sales Ltd., Vancouver Specialty Cedar Products Ltd., Vanderhoof Specialty Wood Products Ltd., Visscher Lumber Inc., W.I. Woodtone Industries Inc., Welco Lumber Corp., West Bay Forest Products Ltd., Westminster Industries Ltd., Weston Forest Products Ltd., Woodtone Specialties Inc., Metrie, Inc., Patrick Lumber Company, Sapphire Lumber Company, and Silvaris Corporation
NorSask LP	NorSask Forest Products Limited Partnership
NRCan	Natural Resources Canada
NRO	Natural Rescoure Officer
NROS	Natural Resource Officer Service
NSA	New Subsidy Allegation
NSDNRR	Nova Scotia Department of Natural Resources and Renewables
OFRFP	Ontario Forest Roads Funding Program
OIC	Order-in-Council
OMNR	Ontario Ministry of Natural Resources and Forestry
OMOT	Ontario Ministry of Transportation
ONFUEL	Ontario Coloured Fuel Tax Exemption
OSRED	Ontario Scientific Research & Experimental Development Tax Credit
Patrick Lumber	Patrick Lumber Company
PCIP	Partial Cut Investment Program
PDB	Paix des Braves
PDM	Preliminary Decision Memorandum
PEEOL	Exceptional Program for the Disposal of Low-Quality Hardwoods from the Outaouais and Laurentians Regions
Petitioner	Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (aka, COALITION)
PIAF	Programme d'investissement pour l'aménagement des forêts (aka, Forest Management Investment Program)
PIB	Program Innovation Bois (aka, Wood Innovation Program)
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
PRAU	Permit to harvest timber to supply a wood processing plant (Québec)
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-AR7-STUMP-11 of the GNB IQR Response
Profor	Profor Renaissance LP
PwC	PricewaterhouseCoopers LLP
QCFUEL	Québec Coloured Fuel Tax Exemption
QMD	Quadratic-Mean Diameter
QSRED	Québec Scientific Research & Experimental Development Tax Credit
R&D	Research and Development

Acronym/Abbreviation	Complete Name
RCW	Revised Code of Washington, submitted at Exhibit 9 of Petitioner BC Stumpage Benchmark Submission
Régie	Régie de l'énergie du Québec
Report of the Auditor General of New Brunswick – 2008	Report of the Auditor General of New Brunswick - 2008, submitted at Exhibit NB-AR7-STUMP-9 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-AR7-STUMP-10 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-AR7-STUMP-17 of the GNB IQR Response
Resolute	Resolute FP Canada Inc. ("Resolute" is also Resolute FP Canada Inc. and its cross-owned companies 9192-8515 Québec Inc., 9340939 Canada Inc., AbitibiBowater Canada Inc., Bowater Canadian Holdings Incorporated, Bowater Canadian Limited, Fibrek General Partnership/Fibrek S.E.N.C., Fibrek International Inc., Forest Products Mauricie L.P./Produits Forestiers Mauricie S.E.C., Resolute Engineered Wood Larouche Inc., Resolute Engineered Wood St. Prime Limited Partnership, Resolute Forest Products Inc., and SFK Pulp Finco Inc.)
Resolute St-Prime	Resolute Engineered Wood St. Prime Limited Partnership
RFP	Request for Proposals
RLFLCI	Random Lengths Framing Lumber Composite Index, submitted at GOC Stumpage Benchmark Rebuttal at Exhibits GOC-ADEQR-AR7-5 and GOC-ADEQR-AR7-6
Rosenzweig Report	Expert Report of Dr. Michael Rosenzweig, ""An Analysis of Certain Economic Issues Relating to BC Hydro's Electricity Purchase Agreements," dated July 8, 2019 submitted at Exhibit BCH-44 of 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
Scotsburn Lumber	Scotsburn Lumber Co. Ltd.
Sexton Lumber	Sexton Lumber Co. Ltd.
SFDA	Sustainable Forest Development Act
SFL	Sustainable Forest License
Sierra Pacific	Sierra Pacific Industries, including its subsidiary Seneca Sawmill Company
SPF	Spruce Pine Fir
SPFL	Spruce-Pine-Fir-Larch
Spray Lake	Spray Lake Sawmills (1980) Ltd.
SR&ED	Scientific Research and Experimental Development
StatCan	Statistics Canada
StatCan FPPPI	Statistics Canada Forestry Products Purchasers' Prices Index, submitted at Petitioner's Benchmark Submission at Exhibit 5A
STO	Société de Transport de l'Outaouais
Sundre	Sundre Forest Products Inc.
SVA	Sumpage Valuation Area
SWC	Sector Workforce Committee
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
TMR	Timber Management Regulation
TOA	Tenure Obligation Adjustment
Tolko	Tolko Marketing and Sales Ltd., Tolko Industries Ltd., and Gilbert Smith Forest Products Ltd.
TPEA	Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 (June 29, 2015)
TSA	Timber Supply Area
TSG	Timber Supply Guarantee
TSL	Timber Sale License
TSOBA	Timber Salvage Operations In A Blowdown Area
TSORB	Timber Salvage Operation In Recently Burned Area
UCC	Undepreciated Capital Cost
Unauthorized Harvesting Program	Non-Collection of Penalties for Unauthorized Timber Harvesting Violations
URAA	Uruguay Round Agreements Act

Acronym/Abbreviation	Complete Name
USFS	United States Forest Service
USMCA	United States–Mexico–Canada Agreement
USTR	United States Trade Representative
VAT	Value Added Tax
WAC	Washington Administrative Code, submitted at Exhibit BC-AR7-S-196 of GBC Stumpage IQR Response
WDNR	Washington Department of Natural Resources
WDOR	Washington Department of Revenue
West Fraser	West Fraser Mills Ltd. ("West Fraser" is also West Fraser Mills Ltd. and its cross-owned companies Blue Ridge Lumber Inc., Manning Forest Products, Ltd., Spray Lake Sawmills (1980) Ltd., Sundre Forest Products Inc., West Fraser Alberta Holdings, Ltd., and West Fraser Timber Co., Ltd.)
West Fraser Alberta	West Forest Alberta Holdings Ltd.
West Fraser Timber	West Fraser Timber Co.
West Wind Hardwood	West Wind Hardwood Inc.
WFPA	Washington Forest Protection Association
WTO	World Trade Organization

Appendix II - Court and Case Citation Table for the Final Results: Lumber CVD Seventh Administrative Review

This Section is Sorted by Short Citation

Short Citation	Administrative Case Determinations
AB25 Preamble	*Regulations Enhancing the Administrative of the Antidumping and Countervailing Duty Trade Remedy Laws* , 89 FR 101694 (December 16, 2024)
Ad Hoc Shrimp Trade Action Comm. v. U.S.	*Ad Hoc Shrimp Trade Action Comm. v. United States* , 925 F. Supp. 2d 1367 (CIT 2013)
AK Steel Corp. v. U.S.	*AK Steel Corp. v. United States* , 192 F.3d 1367 (Fed. Cir. 1999)
Algoma Steel Corp.	*Algoma Steel Corp. v. United States* , 865 F.2d 240, 243 (Fed. Cir. 1989)
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)
Alloy Magnesium from Canada	*Alloy Magnesium from Canada* , USA-CDA-2003-1904-02 at 19 n.54 (Sep. 9, 2005)
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)
Archroma	*Archroma U.S., Inc. v. Dep't of Commerce* , 185 F.4th 1341, 1348 (Fed. Cir. 2026)
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 at 1378 (CIT 2023)
Bio-Lab	*Bio-Lab, Inc. v. United States* , 776 F. Supp. 3d 1315, 1329 (CIT 2025)
Borusan	*Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States* , 61 F.Supp.3d 1306 (CIT 2015)
British Steel	*British Steel Corp. v. United States,* 605 F. Supp. 286, 293 (CIT 1985)
BYD (H.K.)	*BYD (H.K.) Co. v. United States* , 785 F.Supp.3d 1359, 1377 (CIT 225), appeal docketed, No. 25-1937 (Fed. Cir. July 16, 2025)
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 and Rubber Co. v. United States* , 564 F.Supp. 834 (CIT 1983)
Certain Granite Products from Italy	*Final Negative Countervailing Duty Determination; Certain Granite Products from Italy* , 53 FR 27197 (July 19, 1988)
Certain Pasta from Italy AR7 Final	*Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review* , 69 FR 70657 (December 7, 2004)
Certain Pasta from Italy AR3 Prelim	*Certain Pasta From Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review* , 65 FR 48479 (August 8, 2000)
Certain Steel Products from Belgium	*Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Belgium* , 58 FR 37273 (July 9, 1993)
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)
Coated Paper from Indonesia	*Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination* , 72 FR 60642 (Oct. 25, 2007)
Compressors from Singapore	*Certain Refrigeration Compressors from the Republic of Singapore; Final Results of Countervailing Duty Administrative Review* , 61 FR 10315 (March 13, 1996)
CORE from Canada	*Certain Corrosion-Resistant Carbon Steel Products from Canada* , USA-CDA-93-1904-03 at 78 n.254 (Oct. 31, 1994)
CORE from Canada Prelim	*Certain Corrosion-Resistant Steel Products from Canada: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination* , 90 FR 9231 (February 10, 2025)

Short Citation	Administrative Case Determinations
CORE from Canada Final	*Certain Corrosion-Resistant Steel Products from Canada: Final Affirmative Countervailing Duty Determination* , 90 FR 42200 (August 29, 2025)
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)
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)
CTL Steel Plate from Korea Final 2022	*Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2022* , 89 FR 73626 (September 11, 2024)
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)
CVD Proposed Rulemaking	*Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* , 54 FR 23366 (May 31, 1989)
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 Communities* , WT/DS108/RW (adopted January 29, 2002), Annex A-2, First Written Submission of the United States (February 7, 2001), paras. 61-66
DS 412 Appellate Body Report	Appellate Body Report, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector/Canada – Measures Relating to the Feed-In Tariff Program* , WT/DS412/AB/R, WT/DS426/AB/R (May 24, 2013)
DS 436 Appellate Body Report	Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* , WTO Doc. WT/DS436/AB/R (December 19, 2014)
DS 533 Panel Report	Panel Report, *United States – Countervailing Measures on Softwood Lumber from Canada* , WT/DS533/R (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)
Fabricated Structural Steel	*Certain Fabricated Structural Steel from Canada: Final Negative Countervailing Duty Determination* , 85 FR 5387 (January 30, 2020)
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)
Fujitsu	*Fujitsu Gen. Ltd. v. United States* , 88 F.3d 1034, 1039 (Fed. Cir 1996)
Geneva Steel v. U.S.	*Geneva Steel v. United States* , 914 F. Supp. 563 (CIT 1996)
Gov't of Québec	*Government of Québec v. United States* , 567 F.Supp.3d 1273 (CIT 2022)
Gov't of Quebec v. U.S.	*Government of Quebec v. United States,* 105 F.4th 1359 (Fed. Cir. 2024)
Gov't of Sri Lanka v. U.S.	*Government of Sri Lanka v. United States* , 308 F. Supp. 3d 1373 (CIT 2018)
Grobest	*Grobest & I-Mei Industrial Vietnam Co. v. United States* , 815 F. Supp. 2d 1342 (CIT 2012)
Grobest II	*Grobest & I-Mei Industrial Vietnam Co. v. United States* , 853 F. Supp. 2d 1352 (CIT 2012)
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)
Hyundai Steel Co. v. U.S.	*Hyundai Steel Co. v. United States* , 658 F.Supp.3d 1331 (CIT 2023)
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)

Short Citation	Administrative Case Determinations
Hyundai Steel 2024	*Hyundai Steel Co. v. United States* , 701 F.Supp. 3d 1398 (CIT 2024)
Hyundai Steel 2025	*Hyundai Steel Co. v. United States* , 753 F.Supp. 3d 1355 (CIT 2025)
Initiation Notice	*Initiation of Antidumping and Countervailing Duty Administrative Reviews* , 89 FR 15827, 15835 (March 5, 2024)
Jiangsu Senmao Bamboo v. U.S.	*Jiangsu Senmao Bamboo and Wood Indus. Co. v. United States* , 322 F. Supp. 3d 1308 (CIT 2018)
Kajaria Iron Castings v. United States	*Kajaria Iron Castings Pvt. Ltd. v. United States* , 156 F.3d 1163 (Fed. Cir. 1998)
Kaptan Demir v. United States	*Kaptan Demir Celik Endustrisi va Ticaret A.S. v. United States,* 803 F. Supp. 3d 1291 (CIT 2025)
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)
La Molisana	*La Molisana S.p.A. v. United States* , 2023-2060, (Fed. Cir. June 5, 2025)
Lesko	*Lesko v. United States* , 161 F.4th 1352, 1358 (Fed. Cir. 2025)
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)
Loper Bright	*Loper Bright Enterprises v. Raimondo* , 603 U.S. 369 (2024)
Lumber IV AR1 Final	*Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products from Canada* , 69 FR 75917 (December 20, 2004)
Lumber V Final or *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 Final Results of Redetermination	*Final Results of Redetermination Pursuant to Binational Panel Order* , C-122-858 (Dec. 17, 2024)
Lumber V Prelim	*Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination* , 82 FR 19657 (April 28, 2017)
Lumber V AR1 Final	*Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review; 2017–2018* , 85 FR 77163 (December 1, 2020)
Lumber V AR1 Resolute Post-Prelim Memorandum	Memorandum, "Post-Preliminary Decision Memorandum for Resolute FP Canada," dated May 15, 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 AR1 Respondent Selection Memorandum	Memorandum, "Respondent Selection" dated May 17, 2019
Lumber V AR2 Final	*Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review, 2019* , 86 FR 68467 (December 2, 2021)
Lumber V AR2 Prelim	*Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review, 2019* , 86 FR 28556 (May 27, 2021)
Lumber V AR2 Respondent Selection Memorandum	Memorandum, "Respondent Selection" dated May 19, 2020
Lumber V AR3 Final	*Certain Softwood Lumber Products from Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review, 2020* , 87 FR 48455 (August 9, 2022)
Lumber V AR3 Post-Prelim Memorandum	Memorandum, "Decision Memorandum for the Post-Preliminary Results of Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2020," dated June 10, 2022
Lumber V AR3 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	*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)

Short Citation	Administrative Case Determinations
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 Final	*Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review; 2022, 89 FR 67062 (August 19, 2024)*
Lumber V AR5 Prelim	*Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2022, 89 FR 8147 (February 6, 2024)*
Lumber V AR6 Final	*Certain Softwood Lumber Products from Canada: Final Results and Rescission, in Part, of the Countervailing Duty Administrative Review; 2023, 90 FR 38755 (August 12, 2025)*
Lumber V AR6 Prelim	*Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2023, 90 FR 15224 (April 9, 2025)*
Lumber V AR7 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; 2024," dated June 29, 2026
Lumber V AR7 Prelim Memorandum	Memorandum, "Decision Memorandum for the Preliminary Results of Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2024," dated April 8, 2026.
Lumber V AR7 Prelim or *Preliminary Results*	*Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2024* , 91 FR 19099 (April 14, 2026)
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)
Maverick	*Maverick Tube Corp. v. United States* , Slip Op. 16-16, Consol. Court No. 14-00229 (CIT 2016)
Maverick Tube Corp.	*Maverick Tube Corp v. United States* , 857 F. 3d 1353 (Fed. Cir. 2017)
Melamine from Trinidad and Tobago	*Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination* , 80 FR 68849 (November 6, 2015)
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
Mosaic Morocco (2023)	*Mosaic Company v. United States* , 659 F.Supp.3d 1285 (CIT 2023)
Mosaic Morocco (2025)	*Mosaic Company v. United States* , 744 F.Supp.3d 1367 (CIT 2025)
Mosaic Russia (2022)	*Mosaic Company v. United States* , 589 F.Supp.3d 1298 (CIT 2022)
Mosaic Russia (2025)	*Mosaic Company v. United States* , 160 F.4th 1340 (Fed. Cir. 2025)
Nakornthai	*Nakornthai Strip Mill Pub. Co. v. United States* , 587 F.Supp.2d 1303 (CIT 2008)
Nexteel	*Nexteel Co. v. United States* , 28 F.4th 1226, 1239 (Fed. Cir. 2022)
NOES from Taiwan	*Non-Oriented Electrical Steel from Taiwan: Final Affirmative Countervailing Duty Determination* , 78 FR 61602 (October 14, 2014)
Notice of Reinstatement of Exclusion from Order	*Certain Softwood Lumber Products from Canada: Notice of Reinstatement of Exclusion from the Countervailing Duty Order* , 88 FR 85225 (December 7, 2023)
NSK v. U.S.	*NSK v. U.S.,* 510 F. 3d 1379-80 (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 Canada	*Oil Country Tubular Goods from Canada: Final Affirmative Countervailing Duty Determination* , 51 FR 15,037 (April 22, 1986)
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)
Opportunity Notice	*Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List* , 89 FR 63 (January 2, 2024)
Order	*Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* , 83 FR 347 (January 3, 2018)

Short Citation	Administrative Case Determinations
Pasta from Italy	*Certain Pasta from Italy: Final Results of the Eleventh (2006) Countervailing Duty Administrative Review* , 74 FR 5922 (February 3, 2009)
PET Resin from Oman	*Certain Polyethylene Terephthalate Resin From the Sultanate of Oman: Final Negative Countervailing Duty Determination* , 81 FR 13321 (March 14, 2016)
Pipes and Tubes from Türkiye	*Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part; Calendar Year 2017* , 84 FR 56173 (October 21, 2019)
POSCO	*POSCO v. United States* , 794 F. Supp. 3d 1402 (CIT 2025)
Proposed Methodology Codification Rule	*Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws* , 89 FR 57286 (July 12, 2024)
Qingdao v. U.S.	*Qingdao Sea-Line Trading Co. v. United States* , 766 F.3d 1378 (Fed. Cir. 2014)
Rectangular Pipe and Tube from China	*Light-Walled Rectangular Pipe and Tube from People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination* , 73 FR 35642 (June 24, 2008)
Regulations Enhancing the Administration of AD/CVD Laws - Final	*Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws* , 89 FR 101694 (December 16, 2024).
Regulations Enhancing the Administration of AD/CVD Laws - Proposed	*Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws* , 89 FR 57286 (July 12, 2024).
RISE Final Rule	*Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws* , 89 FR 20766 (March 25, 2024)
Risen Energy I	*Risen Energy Co., Ltd., et al. v. United States,* 658 F. Supp. 3d 1364 (CIT 2023)
Risen Energy II	*Risen Energy Co. v. United States,* No. 22-000231, 2024 WL 864345 (CIT 2024)
Risen Energy Final Results of Redetermination	*Final Results of Redetermination Pursuant to Court Remand* , *Risen Energy Co., Ltd., et al. v. United States* , 658 F. Supp. 3d 1364 (CIT 2023), dated January 9, 2024, available at *https://access.trade.gov/FinalRemandRedetermination*
Royal Thai Gov't (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)
SAA	Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994)
Samsung Electronics Co., Ltd.	*Samsung Electronics Co., Ltd. v. United States* , 973 F.Supp.2d 1321 (CIT 2014)
SC Paper from Canada Final	*Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination* , 80 FR 63535 (October 20, 2015)
SC Paper from Canada NAFTA Panel Decision	*Supercalendered Paper from Canada* , USA-CDA-2005-1904-01, Panel Decision and Order (Apr. 13, 2017)
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)
Seven County	*Seven County Infrastructure Coalition v. Eagle County, CO* , 605 U.S. 168, 179-80 (2025)
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)
Silicon Metal from Australia Prelim	*Silicon Metal from Australia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 82 FR 37843 (August 14, 2017)
Smith-Corona	*Smith-Corona Grp. v. United States* , 713 F.2d 1568, 1571 (Fed. Cir 1983)
Softwood Lumber from Canada	*Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination* , 51 FR 37,453 (October 22, 1986)
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)

Short Citation	Administrative Case Determinations
Stainless Steel Sinks from China INV	*Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination* , 78 FR 13017 (February 26, 2013)
Steel 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)
Sugar from Mexico	*Sugar from Mexico: Final Affirmative Countervailing Duty Determination* , 80 FR 57337 (September 23, 2015)
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)
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)
Welded Line Pipe from Korea	*Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination* , 80 FR 61365 (October 13, 2015)
Wilmar Trading Pte Ltd.	*Wilmar Trading Pte Ltd. v. United States* , 466 F.Supp.3d 1334 (CIT 2020)
Wind Towers from Canada	*Utility Scale Wind Towers from Canada: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances* , 85 FR 40245 (July 6, 2020)
Wire Rod from Italy	*Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy* , 63 FR 40474 (July 29, 1998)
Wire Rod from Saudi Arabia	*Notice of Final Countervailing Duty Determination: Carbon Steel Wire Rod from Saudi Arabia* , 51 FR 4206 (February 3, 1986)
Wire Rod from Trinidad and Tobago	*Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago* , 62 FR 55003 (October 22, 1997)
Wire Rod from Venezuela	*Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela* , 62 FR 55014 (October 22, 1997)

Appendix III - Document Citation Table for the Final Results: Lumber CVD Seventh Administrative Review

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To	Barcode(s)
1/2/2025	Commerce	*Opportunity Notice*	*Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List* , 90 FR 71 (January 2, 2025)	Interested Parties	4693795
2/21/2025	Commerce	*Initiation Notice*	*Initiation of Antidumping and Countervailing Duty Administrative Reviews* , 90 FR 10048, 10057 (February 21, 2025)	Interested Parties	4717732
3/7/2025	West Wind Hardwood	West Wind Hardwood No Sales Letter	West Wind Hardwood's Letter, "Notice of No Sales," dated March 7, 2025	West Wind Hardwood	4728226
3/14/2025	Commerce	CBP Data Memorandum	Memorandum, "Release of U.S. Customs and Border Protection Entry Data," dated March 14, 2025	Interested Parties	4731994
3/20/2025	Harry Freeman	Harry Freeman No Sales Letter	Harry Freeman's Letter, "No Shipments Submission," dated March 20, 2025	Harry Freeman	4734600
3/20/2025	Ledwidge Lumber	Ledwidge Lumber No Sales Letter	Ledwidge Lumber's Letter, "No Shipments Submission," dated March 20, 2025	Ledwidge Lumber	4734602
3/21/2025	Scotsburn	Scotsburn No Sales Letter	Scotsburn's Letter, "No Shipments Submission," dated March 21, 2025	Scotsburn	4735075
3/21/2025	Petitioner	Petitioner Comments on CBP Data	Petitioner's Letter, "Comments on CBP Data and Respondent Selection," dated March 21, 2025	Interested Parties	4735186
3/24/2025	Sexton	Sexton No Sales Letter	Sexton's Letter, "No Shipments Submission," dated March 24, 2025	Sexton	4736076
4/21/2025	Commerce	Respondent Selection Memorandum	Memorandum, "Respondent Selection," dated April 21, 2025	Interested Parties	4750116
4/22/2025	Commerce	Initial Questionnaire	Commerce's Letter, "Initial Questionnaire for Seventh Administrative Review," dated April 22, 2025	Interested Parties	4750558
4/22/2025	Commerce	Economic Diversification Memorandum	Memorandum, "Economic Diversification Memorandum," dated April 22, 2025	Interested Parties	4750569
5/6/2025	Resolute	Resolute Affiliation Response	Resolute's Letter, "Response to Section III Questionnaire for Producers/Exporters, Part I – Affiliated Companies," dated May 6, 2025.	Resolute	4756537
5/6/2025	West Fraser	West Fraser Affiliation Response	West Fraser's Letter, "Response to Section III, Part I of the Department's April 22, 2025 Questionnaire Concerning Affiliated and Cross-Owned Companies," dated May 6, 2025	West Fraser	4756384
5/6/2025	JDIL	JDIL Affiliation Response	JDIL's Letter, "Affiliated Companies Response," dated May 6, 2025	JDIL	4757307
5/27/2025	Petitioner	Petitioner Comments Affiliated Companies IQR Responses	Petitioner's Letter, "Comments on West Fraser, Resolute, and J.D. Irving's Affiliated Companies Questionnaire Responses," dated May 27, 2025	Petitioner	4766123
6/9/2025	Resolute	Resolute IQR Response	Resolute's Letter, "Response to the Initial CVD Questionnaire," dated June 9, 2025	Resolute	4772220
6/9/2025	West Fraser	West Fraser Non-Stumpage IQR Response	West Fraser's Letter, " Response to the Department's April 22, 2025 Initial Countervailing Duty Complaint: Volume I-General Questions and Volume II-Other Government Assistance," dated June 9, 2025	West Fraser	4773999
6/9/2025	West Fraser	West Fraser Stumpage IQR Response	West Fraser's Letter, "Response to the Department's April 22, 2025 Initial Countervailing Duty Complaint: Volume III-Alberta Stumpage and Volume IV-BC Stumpage," dated June 9, 2025	West Fraser	4773999
6/9/2025	Resolute	Resolute Non-Stumpage IQR Response	Resolute's Letter, "Response to the Initial CVD Questionnaire: Volume 2: Non-Stumpage Response," dated June 9, 2025	Resolute	4772220, 4772499, 4772794
6/9/2025	Resolute	Resolute Stumpage IQR Response	Resolute's Letter, "Response to the Initial CVD Questionnaire: Volume 1: Stumpage Response," dated June 9, 2025	Resolute	4772220
6/9/2025	JDIL	JDIL IQR Response	JDIL's Letter, "Response to Section III of the Initial Questionnaire," dated June 9, 2025	JDIL	4774038, 4774252, 4774262
6/12/2025	Commerce	Notice of Intent to Rescind	Memorandum, "Notice of Intent to Rescind Review, In Part," dated June 12, 2025	Interested Parties	4775009
6/12/2025	GOQ	GOQ Marshall Report Response	GOQ's Letter, "The Government of Québec's Submission of the Expert Report of Robert C. Marshall, Ph.D.," dated June 12, 2025	GOQ	4775059
6/12/2025	GOQ	GOQ Marshall Report Data File Response	GOQ's Letter, "The Government of Québec's Filing of back-up data sets and files to the Expert Report of Robert C. Marshall, Ph.D.," dated June 12, 2025	GOQ	4775072, 4775094, 4775100, 4775107, 4775150
6/14/2025	GOO	GOO Non-Stumpage IQR Response	GOO's Letter, "Non-Stumpage Response of the Government of Ontario to the Department's April 22, 2025 Questionnaire," dated June 14, 2025	GOO	4776693, 4776698, 4776728, 4776743, 4776815
6/15/2025	GOO	GOO Stumpage IQR Response	GOO's Letter, "Stumpage Response of the Government of Ontario to the Department's April 22, 2025 Questionnaire," dated June 15, 2025	GOO	4777139, 4777144, 4777276, 4777367, 4777378, 4777786, 4777810

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To	Barcode(s)
6/16/2025	GOA	GOA Stumpage IQR Response	GOA's Letter, "Response to the Department's April 22, 2025 Initial Questionnaire - Volume II, Stumpage Response," dated June 16, 2025	GOA	4779617
6/16/2025	GOA	GOA Non-Stumpage IQR Response	GOA's Letter, "Response to the Department's April 22, 2025 Initial Questionnaire - Volume I, Non-Stumpage Response," dated June 16, 2025	GOA	4776831, 4776881, 4778650, 4778685
6/16/2025	GNB	GNB IQR Response	GNB's Letter, "Initial Questionnaire Response of the Government of New Brunswick," dated June 16, 2025	GNB	4777679
6/16/2025	GOQ	GOQ Stumpage IQR Response	GOQ's Letter, "Response to the Department's April 22, 2025 Initial Questionnaire: Stumpage," dated June 16, 2025	GOQ	4776637
6/16/2025	GOQ	GOQ Non-Stumpage IQR Response	GOQ's Letter, "Response to the Department's April 22, 2025 Initial Questionnaire: Non-Stumpage," dated June 16, 2025.	GOQ	4777015
6/16/2025	GNS	GNS Stumpage IQR Response	GNS' Letter, "Response of the Government of Nova Scotia to the Department's Initial Stumpage Questionnaire," dated June 16, 2025	GNS	4778440, 4778446
6/16/2025	GBC	GBC Stumpage IQR Response	GBC's Letter, "Initial Questionnaire Response: Volume I Stumpage," dated June 16, 2025	GBC	4777706
6/16/2025	GBC	GBC Non-Stumpage IQR Response	GBC's Letter, "Initial Questionnaire Response: Volume II to Volume XV Non-Stumpage," dated June 16, 2025	GBC	4777706
6/17/2025	GOC	GOC Non-Stumpage IQR Response	GOC's Letter, "Initial Questionnaire Response: Non-Stumpage," dated June 17, 2025	GOC	4779748
6/20/2025	Resolute	Resolute June 20, 2025 SQR Response	Resolute's Letter, "Resolute's Response to the First Supplemental Questionnaire," dated June 20, 2025	Resolute	4780561
6/20/2025	West Fraser	West Fraser June 20, 2025 Affiliation SQR Response	West Fraser's Letter, "Response to June 10, 2025 Supplemental Countervailing Duty Questionnaire," dated June 20, 2025	West Fraser	4780657
6/26/2025	Petitioner	Petitioner Comments on Notice of Intent to Rescind	Petitioner's Letter, "Comments on Notice of Intent to Rescind Review," dated June 26, 2025	Commerce	4783857
6/30/2025	Petitioner	Petitioner Comments on Sec. III IQR Responses	Petitioner's Letter, "Petitioner Submission of New Factual Information in Response to Section III Initial Questionnaire Responses," dated June 30, 2025	Petitioner	4785000
6/30/2025	Petitioner	Petitioner NFI to Section III IQR Responses	Petitioner's Letter, "Submission of New Factual Information in Response to Section III Initial Questionnaire Responses," dated June 30, 2025	Petitioner	4785000
7/1/2025	East Mountain	East Mountain Rebuttal Comments	East Mountain's Letter, "Rebuttal to Petitioner Comments on Notice of Intent to Rescind Review," dated July 1, 2025	Petitioner	4785749
7/1/2025	Patrick Lumber	Patrick Lumber Rebuttal Comments	Patrick Lumber's Letter, "Rebuttal to Petitioner Comments on Notice of Intent to Rescind Review," dated July 1, 2025	Petitioner	4785751
7/7/2025	Petitioner	Petitioner Comments on Sec. II IQR Responses	Petitioner's Letter, "Submission of New Factual Information in Response to Section II Initial Questionnaire Responses," dated July 7, 2025	Petitioner	4787953
7/7/2025	Petitioner	NSA Submission	Petitioner's Letter, "New Subsidy Allegations," dated July 7, 2025	Petitioner	4787938
7/7/2025	GOC	Canadian Parties' Comments on GNS Stumpage IQR Response	GOC's Letter, "Comments from the Governments of Alberta, Ontario, and Québec on the Government of Nova Scotia's Initial Questionnaire Response," dated July 7, 2025	Interested Parties	4789362
8/1/2025	Commerce	Postponement of Preliminary Results	Memorandum, "Extension of Deadline for Preliminary Results for Preliminary Results of Countervailing Duty Administrative Review, dated August 1, 2025	Interested Parties	4804063
8/5/2025	Petitioner	Petitioner Comments on IQR Responses	Petitioner's Letter, "Comments on Initial Questionnaire Responses," dated August 5, 2025	Petitioner	4806219
8/20/2025	Resolute	Resolute August 20, 2025 SQR Response	Resolute's Letter, "Resolute's Second Supplemental Questionnaire Response," dated August 20, 2025	Resolute	4812661
9/9/2025	Commerce	Voluntary Respondent Memorandum	Memorandum, "Voluntary Respondent," dated September 9, 2025	JDIL	4823178
9/15/2025	Resolute	Resolute AR3 Final Calculations	Memorandum, "Placing on the Record Resolute's AR3 Post-Preliminary Results Calculations," dated September 15, 2025	Commerce	4826459
9/23/2025	GNS	GNS September 23, 2025 Stumpage SQR Response	GNS' Letter, "Response of the Government of Nova Scotia to Commerce's First Supplemental Questionnaire," dated September 23, 2025	GNS	4829827
9/24/2025	Petitioner	Petitioner BC Stumpage Benchmark Submission	Petitioner's Letter, "BC Stumpage Benchmark Submission," dated September 24, 2025	Petitioner	4830469
10/6/2025	Petitioner	Petitioner Non-BC Stumpage Benchmark Submission	Petitioner's Letter, "Other Provinces Stumpage Benchmark Submission," dated October 6, 2025	Petitioner	4834969
10/17/2025	West Fraser	West Fraser October 17, 2025 Non-Stumpage SQR Response	West Fraser's Letter, "Response to the Department's September 30, 2025 First Non-Stumpage Supplemental Questionnaire," dated October 17, 2025	West Fraser	4838069
10/28/2025	Resolute	Resolute October 28, 2025 Affiliation SQR Response	Resolute's Letter, "Resolute's Affiliation Supplemental Questionnaire Response," dated October 28, 2025	Resolute	4841447
11/14/2025	GNB	GNB Stumpage Benchmark Submission	GNB's Letter, "Submission of Factual Information," dated November 14, 2025	GNB	4845015

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To	Barcode(s)
11/14/2025	Commerce	Deadlines Affected by Shutdown Memorandum	Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025	Interested Parties	4845825
11/17/2025	Resolute	Resolute Stumpage Benchmark Submission	Resolute's Letter, "CVD Seventh Administrative Review, Resolute's Submission Of New Factual Information Regarding The Adequacy Of Remuneration of Crown Stumpage," dated November 17, 2025	Resolute	4845891
11/17/2025	JDIL	JDIL Stumpage Benchmark Submission	JDIL's Letter, "Benchmark Submission," dated November 17, 2025	JDIL	4846408
11/17/2025	GOO	GOO Stumpage Benchmark Submission	GOO's Letter, "The Government of Ontario's Submission of Factual Information Regarding the Adequacy of Remuneration for the Provision of Stumpage in Ontario," dated November 17, 2025	GOO	4845134
11/17/2025	BC Parties	BC Parties Stumpage Benchmark Rebuttal	BC Parties' Letter, "Rebuttal B.C. Stumpage Benchmark Information and Comments," dated November 17, 2025	BC Parties	4846334, 4846358, 4846428, 4846443
11/18/2025	GOC	GOC Stumpage Benchmark Submission	GOC's Letter, "Submission of Factual Information to Measure the Adequacy of Remuneration," dated November 18, 2025	GOC	4847050
11/24/2025	Commerce	Tolling Memorandum	Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025	Interested Parties	4849328
12/15/2025	GOC	GOC Stumpage Benchmark Rebuttal	GOC's Letter, "Government of Canada's Submission to Rebut Petitioner's Stumpage Adequacy of Remuneration Submission for Provinces Other Than British Columbia," dated December 15, 2025	GOC	4855677
12/15/2025	GOQ	GNB Stumpage Benchmark Rebuttal	GOQ's Letter, "Government of Québec's Rebuttal Response to Petitioner's Stumpage Benchmark Submission," dated December 15, 2025	GOQ	4855281
1/21/2026	GNS	GNS January 21, 2026 Stumpage SQR Response	GNS' Letter, "Additional Revised Bracketing of the Government of Nova Scotia's Second Supplemental Questionnaire Response," dated January 21, 2026	GNS	4867957
1/22/2026	West Fraser	West Fraser January 22, 2026 Non-Stumpage SQR Response	West Fraser's Letter, "Response to January 8, 2026 Second Supplemental Non-Stumpage Questionnaire," dated January 22, 2026	West Fraser	4868562
1/22/2026	GOO	GOO January 22, 2026 Non-Stumpage SQR Response	GOO's Letter, "Response of the Government of Ontario to the Department's January 5, 2026, Non-Stumpage Supplemental Questionnaire," dated January 22, 2026	GOO	4868657
1/26/2026	Resolute	Resolute January 26, 2026 Non-Stumpage SQR Response	Resolute's Letter, "Resolute's Response to Non-Stumpage Supplemental Questionnaire," dated January 26, 2026	Resolute	4869705
1/26/2026	GOQ	GOQ January 26, 2026 Non-Stumpage SQR Response	GOQ's Letter, "Non-Stumpage Supplemental Questionnaire Response," dated January 26, 2026	GOQ	4870055
1/30/2026	Commerce	NSA Analysis Memorandum	Memorandum, "New Subsidy Allegations," January 30, 2026	Interested Parties	4873228
2/2/2026	Resolute	Resolute February 2, 2026 Affiliation SQR Response	Resolute's Letter, "Resolute's Response to Second Affiliation Supplemental Questionnaire," dated February 2, 2026	Resolute	4874266
2/4/2026	Commerce	GOC NSA Questionnaire	Letter, "New Subsidy Allegations Questionnaire for the Federal and Provincial Governments," dated February 4, 2026	GOC	4875627
2/4/2026	Commerce	Respondents NSA Questionnaire	Letter, "New Subsidy Allegations Questionnaire for Resolute and West Fraser," dated February 4, 2026	Resolute, West Fraser	4875629
2/6/2026	Resolute	Resolute NFI Submission	Resolute's Letter, "Resolute's New Factual Information Submission," dated February 6, 2026	Resolute	4876935
2/6/2026	West Fraser	West Fraser NFI Submission	West Fraser's Letter, " Submission of Factual Evidence Potentially Relevant to Measurement of Adequacy of Remuneration Regarding BC Hydro's EPA Purchases and West Fraser's Purchases of British Columbia Stumpage," dated February 6, 2026	West Fraser	4876704
2/11/2026	West Fraser	West Fraser February 11, 2026 Non-Stumpage SQR Response	West Fraser's Letter, "Response to February 4, 2026 Third Supplemental Non-Stumpage Questionnaire," dated February 11, 2026	West Fraser	4879346
2/13/2026	GOA	GOA February 13, 2026 Non-Stumpage SQR Response	GOA's Letter, "Response to the Department's February 4, 2026 First Non-Stumpage Supplemental Questionnaire," dated February 13, 2026	GOA	4880513
2/26/2026	Resolute	Resolute February 26, 2026 Non-Stumpage SQR Response	Resolute's Letter, "Resolute's Response to Third Supplemental Non-Stumpage Questionnaire," dated February 26, 2026	Resolute	4885293
2/27/2026	GOO	GOO NSA Response	GOO's Letter, "Response of the Government of Ontario to the Department's February 10, 2026, Second Non-Stumpage Supplemental Questionnaire," dated February 27, 2026	GOO	4886137
2/27/2026	GOA	GOA NSA Response	GOA's Letter, "Response to the Department's February 4, 2026 New Subsidy Allegations Questionnaire," dated February 27, 2026	GOA	4886690, 4886142

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To	Barcode(s)
2/27/2026	GBC	GBC NSA Response	GBC's Letter, "New Subsidy Allegations Questionnaire Response," dated February 27, 2026	GBC	4885959
2/27/2026	Resolute	Resolute February 27, 2026 Non-Stumpage SQR Response	Resolute's Letter, "Resolute's Response To Second Supplemental Non-Stumpage Questionnaire," dated February 27, 2026	Resolute	4886050
2/27/2026	Resolute	Resolute NSA Response	Resolute's Letter, "Resolute's Response to New Subsidy Allegations Questionnaire," dated February 27, 2026	Resolute	4885701
2/27/2026	West Fraser	West Fraser NSA Response	West Fraser's Letter, "Response to February 4, 2026 New Subsidy Allegation," dated February 27, 2026	West Fraser	4885803
3/2/2026	GOC	GOC NSA Response	GOC's Letter, "New Subsidy Allegations Questionnaire Response," dated March 2, 2026	GOC	4886802
3/5/2026	Resolute	Resolute March 5, 2026 Stumpage SQR Response	Resolute's Letter, "Resolute's Response to Stumpage Supplemental Questionnaire," dated March 5, 2025	Resolute	4888870
3/9/2026	GBC	GBC March 9, 2026 Non-Stumpage SQR Response	GBC's Letter,"Non-Stumpage Supplemental Questionnaire Response," dated March 9, 2026	GBC	4890901
3/9/2026	West Fraser	West Fraser Second NFI Submission	West Fraser's Letter, "Submission of Factual Evidence Potentially Relevant to Measurement of Adequacy of Remuneration Regarding BC Hydro's EPA Purchases," dated March 9, 2026	West Fraser	4890597
3/11/2026	Petitioner	Petitioner Pre-Preliminary Comments	Petitioner's Letter, "Petitioner's PrePreliminary Results Comments," dated March 11, 2025	Commerce	4893467
3/11/2026	West Fraser	West Fraser March 11, 2026 Non-Stumpage SQR Response	West Fraser's Letter, "Response to March 10, 2026 Fourth Supplemental Non-Stumpage Questionnaire," dated March 11, 2026	West Fraser	4893363
3/19/2026	Resolute	Resolute March 19, 2026 Non-Stumpage SQR Response	Resolute's Letter, "Resolute's Response to 4th Non-Stumpage Supplemental Questionnaire," dated March 19, 2026	Resolute	4897329
3/20/2026	West Fraser	West Fraser March 20, 2026 NSA SQR Response	West Fraser's Letter, "Response to March 3, 2026 New Subsidy Allegations Supplemental Questionnaire," dated March 20, 2026	West Fraser	4898198
3/20/2026	GOO	GOO Pre-Preliminary Comments	GOO's Letter, "Government of Ontario Comments for the Preliminary Results," dated March 20, 2026	GOO	4898388
3/23/2026	GOA	GOA Pre-Preliminary Comments	GOA's Letter, "Pre-Preliminary Comments Concerning Alberta Programs," dated March 23, 2026	GOA	4900001
3/25/2026	GBC	GBC Pre-Preliminary Rebuttal Comments	GBC's Letter, "B.C. Parties' Pre-Preliminary Results Rebuttal Comments," dated March 25, 2026	GBC	4900475
3/27/2026	Petitioner	Petitioner Comments on GBC/West Fraser NSA Responses	Petitioner's Letter, "Comments on the GBC and West Fraser's Responses to NSA Questionnaire," dated March 27, 2026	GBC, West Fraser	4901817
4/8/2026	Commerce	GOA Market Memorandum	Memorandum, "Preliminary Results Memorandum on Alberta Stumpage Market Distortion," dated April 8, 2026	GOA	4910112
4/8/2026	Commerce	GOO Market Memorandum	Memorandum, "Ontario Private Stumpage Market Distortion," dated April 8, 2026	GOO	4911582
4/8/2026	Commerce	Québec Market Memorandum	Memorandum, "Québec Private Stumpage Market Distortion," dated April 8, 2026	GOQ	4910879
4/8/2026	Commerce	BC Stumpage Analysis Memo	Memorandum, "Negative Benchmark and Tenure Access Calculations for British Columbia Stumpage," dated April 8, 2026	BC Parties	4910506
4/8/2026	Commerce	Québec Specificity Memorandum	Memorandum, "Specificity Analysis of Québec Grant & Tax Programs," dated April 8, 2026	GOQ	4910903
4/8/2026	Commerce	Nova Scotia Preliminary Benchmark Memorandum	Memorandum, "Nova Scotia Benchmark Calculation Memorandum for the Preliminary Results," dated April 8, 2026	Interested Parties	4911210
4/8/2026	Commerce	Resolute Preliminary Calculation Memorandum	Memorandum, "Preliminary Results Calculations for Resolute FP Canada Inc.," dated April 8, 2026	Resolute	4911296
4/8/2026	Commerce	West Fraser Preliminary Calculation Memorandum	Memorandum, "Preliminary Results Calculations for West Fraser Mills, Ltd. and its cross-owned affiliates," dated April 8, 2026	West Fraser	4910616
4/8/2026	Commerce	Preliminary Calculation of Non-Selected Rate	Memorandum, "Non-Selected Rate for Preliminary Results," dated April 8, 2026	Interested Parties	4909110
4/8/2026	Commerce	DBH Analysis Memorandum	Memorandum, "Diameter at Breast Height (DBH) Analysis Memorandum," dated April 8, 2026	Interested Parties	4910719
4/8/2026	Commerce	Federal Specificity Memorandum	Memorandum, "Federal Specificity Memorandum," dated April 8, 2026	GOC	4911568
4/8/2026	Commerce	Ontario Specificity Memorandum	Memorandum, "Ontario Specificity Memorandum," dated April 8, 2026	GOO	4911570
4/14/2026	Commerce	*Preliminary Results*	*Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2024* , 91 FR 19099 (April 14, 2026)	Interested Parties	4909103

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To	Barcode(s)
4/16/2026	Commerce	Resolute April 16, 2026 Non-Stumpage Supplemental Questionnaire	Commerce's Letter, "Fifth Non-Stumpage Supplemental Questionnaire for Resolute," dated April 16, 2026	Resolute	4913650
4/16/2026	Commerce	GOQ April 16, 2026 Non-Stumpage Supplemental Questionnaire	Commerce's Letter, "Second Non-Stumpage Supplemental Questionnaire for the Government of Québec," dated April 16, 2026	GOQ	4913641
4/22/2026	Resolute	Resolute April 22, 2026 Non-Stumpage SQR Response	Resolute's Letter, "Resolute's Response to Fifth Supplemental Non-Stumpage Questionnaire," dated April 22, 2026	Resolute	4915186
5/5/2026	Petitioner	Petitioner Hearing Request	Petitioner's Letter, "Request for Hearing," dated May 5, 2026	Petitioner	4918559
5/5/2026	Canadian Parties	Canadian Parties Hearing Request	Canadian Parties' Letter, "Request for Hearing," dated May 5, 2026	Canadian Parties	4918591
5/7/2026	GOQ	GOQ May 7, 2026 Non-Stumpage SQR Response	GOQ's Letter, "The Government of Québec's Second Non-Stumpage Supplemental Questionnaire Response," dated May 7, 2026	GOQ	4919182
5/20/2026	Commerce	Resolute May 20, 2026 Stumpage Supplemental Questionnaire	Commerce's Letter, "Stumpage Supplemental Questionnaire for Resolute," dated May 20, 2026	Resolute	4922359
5/27/2026	Resolute	Resolute May 27, 2026 Stumpage SQR Response	Resolute's Letter, "Resolute's Response to May 20, 2026 Stumpage Supplemental Questionnaire," dated May 27, 2026	Resolute	4923724
6/4/2026	Commerce	Resolute June 4, 2026 Non-Stumpage Supplemental Questionnaire	Commerce's Letter, "Non-Stumpage Supplemental Questionnaire for Resolute," dated June 4, 2026	Resolute	4925873
6/11/2026	Commerce	GOO June 11, 2026 Non-Stumpage Supplemental Questionnaire	Commerce's Letter, "Non-Stumpage Supplemental Questionnaire for the Government of Ontario," dated June 11, 2026	GOO	4927762
6/12/2026	Resolute	Resolute June 12, 2026 Non-Stumpage SQR Response	Resolute's Letter, "Resolute's Response to June 4, 2026 Non-Stumpage Supplemental Questionnaire," dated June 12, 2026	Resolute	4928160
6/15/2026	GOO	GOO June 15, 2026 Non-Stumpage SQR Response	GOO's Letter, "Response of the Government of Ontario to the Department's June 11, 2026, Third Non-Stumpage Supplemental Questionnaire," dated June 15, 2026	GOO	4928619, 4928632
6/29/2026	Commerce	Post-Preliminary Analysis Memorandum	Memorandum, "Decision Memorandum for the Post-Preliminary Results of Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2024," dated June 29, 2026	Interested Parties	4931889
7/20/2026	Interfor	Interfor Letter in Lieu of Case Brief	Interfor's Letter, "Interfor Letter in Lieu of Case Brief," dated July 20, 2026	Interfor	4937589
7/20/2026	Canfor	Canfor Letter in Lieu of Case Brief	Canfor's Letter, "Canfor Letter in Lieu of Case Brief," dated July 20, 2026	Canfor	4937539
7/20/2026	Tolko	Tolko Letter in Lieu of Case Brief	Tolko's Letter, "Tolko Letter in Lieu of Case Brief," dated July 20, 2026	Tolko	4937596
7/20/2026	Non-Selected Exporters and U.S. Importers	Non-Selected Exporters and U.S. Importers Case Brief	Non-Selected Exporters and U.S. Importers' Letter, "Case Brief of Non-Selected Exporters and U.S. Importers," dated July 20, 2026	Non-Selected Exporters and U.S. Importers	4937506
7/20/2026	Petitioner	Petitioner Case Brief	Petitioner's Letter, "Petitioner's Case Brief," dated July 20, 2026	Petitioner	4937575
7/20/2026	Sierra Pacific	Sierra Pacific Case Brief	Sierra Pacific's Letter, "Case Brief," dated July 20, 2026	Sierra Pacific	4937602
7/20/2026	GNB	GNB Case Brief	GNB's Letter, "Case Brief," dated July 20, 2026	GNB	4937616
7/20/2026	Resolute	Resolute Case Brief	Resolute's Letter, "Resolute and Central Canada's Case Brief," dated July 20, 2026	Resolute	4937623
7/20/2026	JDIL	JDIL Case Brief	JDIL's Letter, "Case Brief," dated July 20, 2026	JDIL	4937855
7/20/2026	West Fraser	West Fraser Case Brief	West Fraser's Letter, "Case Brief of West Fraser Mills Ltd.," dated July 20, 2026	West Fraser	4938091
7/20/2026	GOC	Canadian Parties Joint Case Brief Vol. I	GOC's Letter, "Canadian Parties' Joint Case Brief," dated July 20, 2026	GOC	4938179
7/20/2026	GOC	GOC Case Brief Vol. II	GOC's Letter, "Volume II: Case Brief of the Government of Canada," dated July 20, 2026	GOC	4938179
7/20/2026	GOC/GBC	GBC Case Brief Vol. III	GOC/GBC's Letter, "Volume III: Log Export permitting Process," dated July 20, 2026	GOC/GBC	4938179
7/20/2026	GOA	GOA Case Brief Vol. IV.A	GOA's Letter, "Volume IV.A - Stumpage, Case Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council," dated July 20, 2026	GOA	4938179
7/20/2026	GOA	GOA Case Brief Vol. IV.B	GOA's Letter, "Volume IV.B - Non Stumpage Programs, Case Brief of the Government of Alberta and the Alberta Softwood Lumber Trade Council," dated July 20, 2026	GOA	4938179
7/20/2026	GBC	GBC Case Brief Vol. V	GBC's Letter, "Volume V, Case Brief of the Government of British Columbia and the British Columbia Lumber Trade Council," dated July 20, 2026	GBC	4938179
7/20/2026	GOO	GOO Case Brief Vol. VI	GOO's Letter, "Volume VI, Case Brief of the Government of Ontario," dated July 20, 2026	GOO	4938179
7/20/2026	GOQ	GOQ Case Brief Vol. VII(a)	GOQ's Letter, "Volume VII(a), Stumpage Case Brief of the Government of Québec," dated July 20, 2026	GOQ	4938179
7/20/2026	GOQ	GOQ Case Brief Vol. VII(b)	GOQ's Letter, "Volume VII(b), Non-Stumpage Case Brief of the Government of Québec," dated July 20, 2026	GOQ	4938179
7/23/2026	GOQ	GOQ Case Brief Erratum	GOQ's Letter, "Request to Submit Erratum to Québec's Final BPI Case Brief," dated July 23, 2026	GOQ	4938644

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To	Barcode(s)
8/5/2026	Resolute	Resolute Rebuttal Brief	Resolute's Letter, "Resolute and Central Canada's Rebuttal Brief," dated August 5, 2026	Resolute	4941971
8/5/2026	Sierra Pacific	Sierra Pacific Rebuttal Brief	Sierra Pacific's Letter, "Rebuttal Brief," dated August 5, 2026	Sierra Pacific	4941995
8/5/2026	GBC	GBC Rebuttal Brief	GBC's Letter, "Volume I, Rebuttal brief of the Government of British Columbia and the British Columbia Lumber Trade Council," dated August 5, 2026	GBC	4942466
8/5/2026	GOO	GOO Rebuttal Brief	GOO's Letter, "Rebuttal Brief of the Government of Ontario," dated August 5, 2026	GOO	4942466
8/5/2026	GNS	GNS Rebuttal Brief	GNS' Letter, "Rebuttal Brief on Behalf of the Government of Nova Scotia," dated August 5, 2026	GNS	4942135
8/5/2026	Petitioner	Petitioner Rebuttal Brief	Petitioner's Letter, "Petitioner's Rebuttal Brief," dated August 5, 2026	Petitioner	4942448
8/5/2026	West Fraser	West Fraser Rebuttal Brief	West Fraser's Letter, "Rebuttal Brief of West Fraser Mills Ltd.," dated August 5, 2026	West Fraser	4942225
8/6/2026	Commerce	Final Extension	Memorandum, "Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2024," dated August 6, 2026	Interested Parties	4942384
9/24/2026	Commerce	Additional Final Extension	Memorandum, "Additional Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2024," dated September 24, 2026	Interested Parties	4955693
4/30/2026 - 7/8/2026	Canadian Producers/Exporters and U.S. Importers	Canadian Producers/Exporters and U.S. Importers Letters in Lieu of Case Briefs	Delco Forest Products Ltd., Devon Lumber Co. Ltd., H.J. Crabbe & Sons Ltd., and Marwood Ltd.'s Letter, "Letter in Lieu of Case Brief," dated April 30, 2026; AJ Forest Products Ltd. and E.R. Probyn Export Ltd.'s Letter, "Letter in Lieu of Case Brief," dated May 5, 2026; CS Manufacturing Inc. (dba Cedarshed)'s Letter, "Letter in Lieu of Case Brief," dated May 5, 2026; GreenFirst Forest Products (QC) Inc.'s Letter, "Letter in Lieu of Case Brief," dated May 5, 2026; Magnum Forest Products, Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 4, 2026; Conifex Fibre Markeing Inc.'s Letter, "Letter in Lieu of Case Brief," dated July 6, 2026; FraserWood Industries Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 6, 2026; Cedarland Forest Products Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 6, 2026; River City Remanufacturing Inc.'s Letter, "Letter in Lieu of Case Brief," dated July 7, 2026; Canadian Bavarian Millwork & Lumber Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 7, 2026; Tall Tree Lumber Company's Letter, "Letter in Lieu of Case Brief," dated July 7, 2026; Mobilier Rustique (Beauce) Inc.'s Letter, "Mobilier Rustique Case Brief," dated July 7, 2026; Materiaux Blanchet Inc.'s Letter, "Materiaux Blanchet Case Brief," dated July 7, 2026; Cowichan Lumber Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 7, 2026; Commonwealth Plywood Co. Ltd's Letter, "Letter in Lieu of Case Brief," dated July 8, 2026; Linwood Homes Ltd's Letter, "Letter in Lieu of Case Brief," dated July 8, 2026; 5214875 Manitoba Ltd (oa AM Lumber Brokerage)'s Letter, "Letter in Lieu of Case Brief," dated July 8, 2026; Sinclar Group Forest Products Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 8, 2026; Northland Forest Products Ltd's Letter, "Letter in Lieu of Case Brief," dated July 8, 2026; Specialists Du bareau De Cedre Inc.'s Letter, "Letter in Lieu of Case Brief," dated July 8, 2026; R.A. Green Lumber Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 8, 2026; 10104704 Manitoba Ltd (oa Woodstock Forest Product)'s Letter, "Letter in Lieu of Case Brief," dated July 8, 2026; Hampton Tree Farms, LLC (dba Hampton Lumber Sales)'s Letter, "Letter in Lieu of Case Brief," dated July 8, 2026; TRAPA Forest Products Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 8, 2026; and DH Manufacturing Inc.'s Letter, "Letter in Lieu of Case Brief," dated July 8, 2026	Interested Parties	4917404, 4918397, 4918403, 4918413, 4933018, 4933298, 4933301, 4933303, 4933641, 4933762, 4933838, 4933905, 4933908, 4933946, 4934136, 4934148, 4934166, 4934202, 4934240, 4934378, 4934384, 4934397, 4934414, 4934415, 4934417

Date (MM/DD/YY)	Submitting Party	Short Citation	Document Title	Pertaining To	Barcode(s)
7/9/2026 - 7/20/2026	Canadian Producers/Exporters and U.S. Importers	Canadian Producers/Exporters and U.S. Importers Letters in Lieu of Case Briefs (cont.)	Centurion Lumber Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 9, 2026; Gorman Bros. Lumber Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 9, 2026; Downie Timber Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 9, 2026; Similkameen Forest Products Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 9, 2026; Antrim Cedar Corporation's Letter, "Letter in Lieu of Case Brief," dated July 9, 2026; PalletSource Inc.'s Letter, "Letter in Lieu of Case Brief," dated July 10, 2026; F.D. Age Cedar Products's Letter, "Letter in Lieu of Case Brief," dated July 10, 2026; Van Urban Timber's Letter, "Letter in Lieu of Case Brief," dated July 10, 2026; Mirax Lumber Products, Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 10, 2026; Central Forest Products, Inc.'s Letter, "Letter in Lieu of Case Brief," dated July 10, 2026; Taiga Building Products Ltd's Letter, "Letter in Lieu of Case Brief," dated July 10, 2026; Peak Industries (Cranbrook) Ltd.'s Letter, "Letter in Lieu of Case Brief," dated July 10, 2026; Carrier's Letter, "Letter in Lieu of Case Brief," dated July 20, 2026; and Olympic Industries, Inc. and Olympic Industries ULC 's Letter, "Letter in Lieu of Case Brief," dated July 20, 2026	Interested Parties	4934719, 4934894, 4934895, 4934897, 4934945, 4935169, 4935170, 4935171, 4935172, 4935173, 4935214, 4935310, 4937816, 4937822
10/13/2026	Commerce	Resolute Final Calculation Memorandum	Memorandum, "Final Results Calculations for Resolute FP Canada Inc.," dated October 13, 2026	Interested Parties	
10/13/2026	Commerce	Final Calculation of Non-Selected Rate	Memorandum, "Non-Selected Rate for Final Results," dated xx/xx/2026	Interested Parties	
10/13/2026	Commerce	Nova Scotia Final Benchmark Memorandum	Memorandum, "Nova Scotia Benchmark Calculation Memorandum for the Final Results," dated October 13, 2026	Interested Parties	
10/13/2026	Commerce	West Fraser Final Calculation Memorandum	Memorandum, "Final Results Calculations for West Fraser Mills, Ltd. and its cross-owned affiliates," dated October 13, 2026	Interested Parties	
10/13/2026	Commerce	Alberta Stumpage Final BPI Memorandum	Memorandum, " Alberta Stumpage Final BPI Memorandum," dated October 13, 2026	Interested Parties	
10/13/2026	Commerce	BC Stumpage Final BPI Memorandum	Memorandum, "BC Stumpage Final Analysis Memorandum," dated October 13, 2026	Interested Parties	