70 FR 73448, December 12, 2005

C-122-839
2nd Administrative Review
POR: 04/01/2003 - 03/31/2004
Public Document
Office III: Lumber Team

December 5, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

RE: 2nd Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada

SUBJECT: Issues and Decision Memorandum: Final Results of Administrative Review

SUMMARY

We have analyzed the comments and rebuttal comments of interested parties in the final results of the above-mentioned countervailing duty (CVD) administrative review covering the period April 1, 2003, through March 31, 2004. As a result of our analysis, we have have made certain modifications to our Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 23088 (June 7, 2005) (Preliminary Results). The "Methodology and Background Information" and "Analysis of Programs" sections below describe the decisions made in this CVD administrative review. Also below is the "Analysis of Comments" section in which we discuss the issues raised by interested parties. We recommend that you approve the positions we have developed below in this memorandum.

METHODOLOGY AND BACKGROUND INFORMATION

Subsidies Valuation Information

A. Allocation Period

In the underlying investigation, the first review, and the Preliminary Results of this review, pursuant to 19 CFR 351.524(d)(2), the Department allocated, where applicable, all of the

non-recurring subsidies provided to the producers/exporters of subject merchandise over a 10-year average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. See Preliminary Results, 70 FR at 33090. No interested party challenged the 10-year AUL derived from the IRS tables. Thus, in the final results of this review, we have allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over a 10-year AUL.

B. Recurring and Non-Recurring Benefits

The Department has previously determined that the sale of Crown timber by Canadian provinces confers countervailable benefits on the production and exportation of the subject merchandise under section 771(5)(E)(iv) of the Tariff Act of 1930, as amended (the Act), because the stumpage fees for which the timber is sold is less than adequate remuneration. For the reasons described in the program sections below, the Department continues to find that Canadian provinces sell Crown timber for less than adequate remuneration to softwood lumber producers in Canada. Pursuant to 19 CFR 351.524(c)(1), subsidies conferred by the government provision of a good or service normally involve recurring benefits. Therefore, consistent with our regulations and past practice, benefits conferred by the provinces' administered Crown stumpage programs have, for purposes of these final results, been expensed in the year of receipt.

In this review the Department also investigated other programs that involve the provision of grants to producers and exporters of subject merchandise. Under 19 CFR 351.524, benefits from grants can either be classified as providing recurring or non-recurring benefits. Recurring benefits are expensed in the year of receipt, while grants providing non-recurring benefits are allocated over time corresponding to the AUL of the industry under review. Specifically, under 19 CFR 351.524(b)(2), grants which provide non-recurring benefits will also be expensed in the year of receipt if the amount of the grant under the program is less than 0.5 percent of the relevant sales during the year in which the grant was approved (referred to as the 0.5 percent test).

C. Benchmarks for Loans

In selecting benchmark interest rates for use in calculating the benefits conferred by the various loan programs under review, the Department's normal practice is to compare the amount paid by the borrower on the government provided loans with the amount the firm would pay on a comparable commercial loan actually obtained on the market. See section 771(5)(E)(ii) of the Act; 19 CFR 351.505(a)(1) and (3)(i). However, because we are conducting this review on an aggregate basis and we are not examining individual companies, for those programs requiring a Canadian dollar-denominated, short-term or long-term benchmark interest rate, we used for the final results the national average interest rates on commercial short-term or long-term Canadian dollar-denominated loans as reported by the Government of Canada (GOC).

The information submitted by the GOC was for fixed-rate short-term and long-term debt. For short-term debt, the GOC provided monthly weight-averaged short-term interest rates based on the prime business rate, small and medium enterprise (SME) rate, three-month corporate

paper rate period of review (POR), and one-month bankers' acceptance rate, as reported by the Bank of Canada. For long-term debt, the GOC provided quarterly implied rates calculated from long-term debt and the interest payments made on long-term debt as reported by Statistics Canada (STATCAN). Based on these rates, we derived simple averaged POR rates for both short-term and long-term debt.

Some of the reviewed programs provided long-term loans to the softwood lumber industry with variable interest rates instead of fixed interest rates. Because we were unable to gather information on variable interest rates charged on commercial loans in Canada, we have used as our benchmark for those variable loans the rate applicable to long-term fixed interest rate loans for those reported by the GOC.

D. Aggregate Subsidy Rate Calculations

This administrative review is being conducted on an aggregate basis. We have used the same methodology to calculate the country-wide rate for the programs subject to this review that we used in the prior review. See 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) (Final Results of 1st Review), as amended by the Notice of Amended Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 9046 (February 24, 2005) (Amended Final Results of 1st Review).

1. Provincial Crown Stumpage Programs

For stumpage programs administered by the Canadian provinces subject to this review, we first calculated a provincial subsidy rate by dividing the aggregate benefit conferred under each specific provincial stumpage program by the total stumpage denominator calculated for that province.[1] As required by section 777A(e)(2)(B) of the Act, we next calculated a single country-wide subsidy rate. To calculate the country-wide subsidy rate conferred on the subject merchandise from all stumpage programs, we weight-averaged the subsidy rate from each provincial stumpage program by the respective provinces' relative shares of total exports to the United States during the POR. As in the Final Results of the 1st Review, in calculating weight-average provincial rates, we have not included the Maritime Provinces, nor have we included sales of companies excluded from the CVD order.[2] We then summed these weight-averaged subsidy rates to determine the country-wide rate for all provincial Crown stumpage programs.

2. Other Programs

---

[1] In this review, we did not examine the stumpage programs with respect to the Yukon Territory, Northwest Territories, and timber sold on federal land because the amount of exports to the United States is insignificant and would have no measurable effect on any subsidy rate calculated in this review.

[2] The Maritime provinces are Nova Scotia, New Brunswick, Newfoundland, and Prince Edward Island.

We also examined a number of non-stumpage programs administered by the Canadian Federal Government and certain Provincial Governments in Canada. To calculate the country-wide rate for these programs, we used the same methodology employed in the first administrative review. For federal programs that were found to be specific because they were limited to certain regions, we calculated the countervailable subsidy rate by dividing the benefit by the relevant denominator (i.e., total production of softwood lumber in the region or total exports of softwood lumber to the United States from that region), and then multiplying that result by the relative share of total softwood exports to the United States from that region. For federal programs that were not regionally specific, we divided the benefit by the relevant country-wide sales (i.e., total sales of softwood lumber, total sales of the wood products manufacturing industry (which includes softwood lumber), or total sales of the wood products manufacturing and paper industries).

For provincial programs, we calculated the countervailable subsidy rate by dividing the benefit by the relevant sales amount for that province (i.e., total exports of softwood lumber from that province to the United States, total sales of softwood lumber in that province, or total sales of the wood products manufacturing and paper industries in that province). The result was then multiplied by the relative share of total softwood exports to the United States from that province.

Where the countervailable subsidy rate for a program was less than 0.005 percent, the program was not included in calculating the country-wide countervailing duty rate.

E. Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates[3]

1. Aggregate Numerator and Denominator

As noted above, the Department is determining the stumpage subsidies to the production of softwood lumber in Canada on an aggregate basis. The methodology employed to calculate the ad valorem subsidy rate requires the use of a compatible numerator and denominator. In the final results of the first review as well as in the Preliminary Results, the Department explained that in the numerator of the net subsidy rate calculation, it 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). See "Denominator" section of the December 13, 2004, Issues and Decision Memorandum that accompanied the Final Results of 1st Review (Final Results of 1st Review Decision Memorandum); see also Preliminary Results, 70 FR 33091.[4] Accordingly, the denominator used for the first review and Preliminary Results included only those products that result from the softwood lumber manufacturing process. Id.

Consistent with the Department's previously established methodology, we included the

---

[3] The denominators used for non-stumpage programs are discussed below in the individual program write-ups.

[4] In the case of Alberta and British Columbia, it was necessary to derive the volume of softwood Crown logs that entered and were processed by sawmills during the POR (i.e., logs used in the lumber production process). Our methodology for deriving those volumes is described in the Calculation of Provincial Benefits section of the Preliminary Results. See 70 FR at 33107 and 33111.

following in the denominator: softwood lumber, including softwood lumber that undergoes some further processing (so-called "remanufactured" lumber), softwood co-products (e.g., wood chips and sawdust) that resulted from softwood lumber production at sawmills, and residual products produced by sawmills that were the result of the softwood lumber manufacturing process, specifically, softwood fuel wood, and untreated softwood ties.

In the Preliminary Results we explained that we would have included in the denominator those softwood co-products produced by lumber remanufacturers that resulted from the softwood lumber manufacturing process. See 70 FR 33092. However, the GOC failed to separate softwood co-products that resulted from the softwood lumber manufacturing process of lumber remanufacturers from those resulting from the myriad of other production processes performed by producers in the remanufacturing category that have nothing to do with the production of subject merchandise. Lacking the information necessary to determine the value of softwood co-products that resulted from the softwood lumber manufacturing process of lumber remanufacturers during the softwood lumber manufacturing process, we preliminarily determined not to include any softwood co-product values from the non-sawmill category. Id.; see also Final Results of 1st Review Decision Memorandum at Comment 16.

We received comments from interested parties concerning our numerator and denominator calculations. We find that there are no new arguments or information from interested parties that would warrant a reconsideration of our calculations. Thus, for purposes of these final results, we continue to calculate the numerator and denominator as described in the Preliminary Results. For further discussion, see **Comment 9**.

2. Adjustments to Account for Companies Excluded from the Countervailing Duty Order

In the investigation, we deducted from the denominator sales by companies that were excluded from the countervailing duty order. The Department has since also concluded expedited reviews for a number of companies, pursuant to which a number of additional companies have been excluded from the countervailing duty order. See Final Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada: Notice of Final Results of Countervailing Duty Expedited Reviews, 68 FR 24436, (May 7, 2003); see also Notice of Final Results of Countervailing Duty Expedited Reviews of the Order on Certain Softwood Lumber from Canada, 69 FR 10982 (March 9, 2004). In the final results of the first review, we removed the sales of companies excluded from the countervailing duty order from the relevant sales denominators of our country-wide rate calculations. See "Excluded Companies" section of the Final Results of 1st Review Decision Memorandum.

In its case briefs submitted for consideration in the final results of the first review, the GOC argued for the first time in that proceeding that, for the numerator and denominator to match, the Department must also reduce the numerator to account for any de minimis benefits received by the excluded companies.[5] See, e.g., Final Results of 1st Review Decision Memorandum at Comment 15. We agreed with the GOC in principle. However, because the

[5] Though excluded from the countervailing duty order, many companies involved in the exclusion and/or expedited review processes received de minimis levels of countervailable benefits.

GOC first raised the issue in its case briefs, the Department was unable to solicit the information from the excluded Canadian parties regarding the appropriate numerator. Thus, we placed the exclusion calculations from the underlying investigation and expedited reviews on the record of the first review. Id. We then multiplied the countervailable volumes of logs and lumber reported by the excluded companies by each subject provinces' weight-average unit benefit. The resulting products were then removed from provincial stumpage benefit of each of the corresponding province. Id.

In the current review, we requested benefit and sales data on an aggregate basis for each province as they pertained to the excluded companies during the POR. See page 2 of our April 8, 2005 Supplemental Questionnaire. The GOC, Government of Ontario (GOO), and Government of Quebec (GOQ) responded that they did not have the requested POR sales data. See page 2 of the GOC's April 28, 2005 Questionnaire Response. Regarding the benefit information we requested, the GOQ and GOO stated that the excluded companies in their respective provinces did not harvest Crown timber during the POR. The GOC stated the same with respect to the excluded companies in the Yukon Territories. Id. at page 6. The GOC, GOO and GOQ further claimed they did not have any information regarding the volume of lumber and/or Crown logs purchased by the excluded companies during the POR.

Pursuant to our prior practice and, as discussed above, in the Preliminary Results we deducted the sales of all companies excluded from the countervailing duty order from the relevant sales denominators used to calculate the country-wide subsidy rates. Because we lack POR sales data from the excluded companies, in the Preliminary Results, we indexed the excluded companies' sales data to the POR using province-specific lumber price indices obtained from STATCAN. We then subtracted the indexed sales data of the excluded companies from the corresponding provincial denominators. See 70 FR at 33092; see also Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 69 FR 33204, 33207 (June 14, 2004) (Preliminary Results of 1st Review) and the "Excluded Companies" section of the Final Results of 1st Review Decision Memorandum. Because the Canadian parties have stated that the excluded companies did not acquire Crown timber during the POR and because they have not provided any other additional benefit data from the companies, we have not adjusted the aggregate numerator data from the relevant provinces. No interested party submitted arguments since the publication of the Preliminary Results that would warrant reconsideration of these findings. For further discussion, see **Comment 2**.

3. Pass-Through

In this administrative review, the Canadian parties provided two sets of pass-through information for us to analyze. The Governments of Alberta (GOA), British Columbia (GOBC), and Ontario, along with the British Columbia Lumber Trade Counsel (BCLTC), each provided an "aggregate" claim, with accompanying information, of the amount of Crown timber that was obtained by the sawmills through arm's-length transactions. The Ontario Lumber Manufacturers Association (OLMA) also provided company-specific transaction data and supporting information for us to analyze with respect to Ontario and Manitoba. The GOQ asserted that the Department would have to conduct a pass-through analysis before it included in the benefit calculation any softwood log volumes harvested under Forest Management Contracts (FMCs)

and Forest Management Agreements (FMAs). The Governments of Manitoba (GOM) and Saskatchewan (GOS) did not claim that their sawmills purchased Crown logs in arm's-length transactions. See Preliminary Results, 70 FR at 33093.

In the Preliminary Results, we determined that none of the provinces or parties provided any new information regarding their aggregate claims which would warrant a change in or departure from the methodology we used in the first administrative review. Id. We also determined that the GOA, GOBC/BCLTC, GOM, GOO, and GOS each failed to provide the information necessary to demonstrate that the transactions included in their respective "aggregate" claims were in fact conducted at arm's length. Id. at 33093 - 33098. We further determined that no pass-through analysis was warranted for many of the transactions, (e.g., where the sawmill paid the stumpage fee directly to the Crown, and for fiber exchanges between Crown tenureholders). On this basis, we preliminarily determined that changes to the subsidy calculation based on the Canadian parties' "aggregate" claims were not warranted. Id. However, with respect to the company-specific data submitted by the OLMA, we determined that a reduction in the Ontario subsidy benefit was warranted. Id.

Concerning Quebec, we preliminarily determined to include the volume of Crown timber harvested under the FMC license program in the numerator of Quebec's provincial subsidy rate calculation. We based our determination on the fact that the GOQ did not break out separately the volume of Crown timber harvested by government entities and sawmills with tenure from the volume harvested by independent harvesters that sold logs to sawmills during the POR. Id. at 33096 through 33098.

Regarding the FMA license program, we determined not to include such volumes in the numerator of Quebec's provincial rate calculation because, assuming arguendo that the full amount of the subsidy associated with the FMA licenses passed-through, the inclusion of these volumes would have no impact on the portion of the country-wide rate attributable to Quebec. Id.

On November 2, 2005, we issued a supplemental questionnaire to the GOC as well as to the provincial governments in which we requested that they respond to the pass-through appendix included in the Department's September 8, 2004 initial questionnaire. On November 10, 2005, the Canadian parties submitted their response to our supplemental questionnaire. In their response, Canadian parties reiterated their contention that any subsidies originally bestowed on a log are extinguished by means of an arm's-length transaction between an unaffiliated buyer and seller. They further asserted that since they have previously established on the record of this review that the log transactions included in their respective aggregate pass-through claims were conducted at arm's-length, the Department should remove all relevant log volumes from the net subsidy calculation.

We received comments from numerous parties on the pass-through issue.[6] For the final results of this review, we continue to determine that the GOA, GOBC/BCLTC, GOM, GOO, and GOS each failed to substantiate its "aggregate" claims that logs entering sawmills during the POR included logs purchased in arm's-length transactions. We have also continued our approach with respect to the GOQ's FMC and FMA license program. Lastly, based on the data

[6] These comments included those we received on November 16 and November 18, 2005, which we solicited in our November 2, 2005 Supplemental Questionnaire.

submitted by the OLMA, we continue to reduce Ontario's subsidy benefit in the manner described in the Preliminary Results.[7] See 70 FR at 33095-33096. For further discussion, see **Comments 3** through **8** below.

ANALYSIS OF PROGRAMS

I. Provincial Stumpage Programs Determined to Confer Subsidies

In Canada, the vast majority of standing timber that is sold originates from lands owned by the Crown. Each of the reviewed Canadian provinces, i.e., Alberta, British Columbia (B.C.), Manitoba, Ontario, Quebec, and Saskatchewan, has established programs through which they charge certain license holders "stumpage" fees for standing timber harvested from these Crown lands. These programs, the sole purpose of which is to provide lumber producers with timber, are described in detail in the province-specific sections of the Preliminary Results of 1st Review. See 69 FR at 33219 - 33227. We did not receive any comments with respect to the operation of any of the provinces' stumpage programs. Therefore, we have not repeated the full description of the provincial stumpage programs here.

In accordance with section 771(5) of the Act, to find a countervailable subsidy, the Department must determine that a government provided a financial contribution and that a benefit was thereby conferred, and that the subsidy is specific within the meaning of section 771(5A) of the Act. As set forth below, no new information or argument on the record of this review has resulted in a change in the Department's determinations from the Preliminary Results that the provincial stumpage programs constitute financial contributions provided by the provincial governments, confer a benefit, and are specific.

A. Financial Contribution and Specificity

As noted in our Preliminary Results, the Department determined, consistent with section 771(5)(D)(iii) of the Act, that the Canadian provincial stumpage programs constitute a financial contribution because the provincial governments are providing a good to lumber producers, and that good is timber. See 70 FR at 33098. As in the investigation, the Department noted that the ordinary meaning of "goods" is broad, encompassing all "property or possessions" and "saleable commodities." The Department found that "nothing in the definition of the term 'goods' indicates that things that occur naturally on land, such as timber, do not constitute 'goods.'" To the contrary, the Department found that the term specifically includes ". . . growing crops and other identified things to be severed from real property." The Department further determined that an examination of the provincial stumpage systems demonstrated that the sole purpose of the tenures was to provide lumber producers with timber. Thus, the Department determined that regardless of whether the provinces are supplying timber or making it available through a right of access, they are providing timber. Id., 70 FR at 33098.

No new information has been placed on the record of this review warranting a change in

---

[7] Since the Preliminary Results, we have determined to include additional data from the GOO in the competitive benefit test of our pass-through analysis. See **Comment 7**.

our finding that the provincial stumpage programs constitute a financial contribution in the form of a good, and that the provinces are providing that good (i.e., timber) to lumber producers. Consistent with the investigation, we continue to find that the stumpage programs constitute a financial contribution provided to lumber producers within the meaning of section 771(5)(D)(iii) of the Act.

In our Preliminary Results, the Department determined that provincial stumpage subsidy programs were used by a "limited number of certain enterprises" and, thus, were specific in accordance with section 771(5A)(D)(iii)(I) of the Act. Furthermore, we found that stumpage subsidy programs were used by a single group of industries, comprised of pulp and paper mills, and the saw mills and remanufacturers that produce the subject merchandise. This is true in each of the reviewed provinces. Id., 70 FR at 33098. See also, the "Specificity" section of the March 21, 2002, Issues and Decision Memorandum (Final Determination Decision Memorandum) that accompanied the Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002) (Final Determination).

We received comments on this determination. See **Comment 11**, below. Based on our analysis of the information and arguments on the record, the Department continues to find that the stumpage programs are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

B. Benefit

1. Use of First-Tier Benchmarks in Measuring Stumpage Programs Administered by the GOA, GOBC, GOO, GOQ, GOM, and GOS

Section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a) govern the determination of whether a benefit has been conferred from subsidies involving the provision of a good or service. Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred by a government when the government provides a good or service for less than adequate remuneration. Section 771(5)(E) further states that the adequacy of remuneration

> shall be determined in relation to prevailing market conditions for the good or service being provided . . . in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of . . . sale.

Under 19 CFR 351.511(a)(2), the hierarchy for selecting a benchmark price to determine whether a government good or service is provided for less than adequate remuneration is set forth. The hierarchy, in order of preference, is: (1) market-determined prices from actual transactions within the country under investigation or review; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. See Preliminary Results of 1st Review, 69 FR at 33213 - 33219, for a full discussion of the application of the hierarchy.

As discussed in the Preliminary Results, the Department found that there were no private market prices in the provinces whose stumpage programs are under review that could serve as

first-tier benchmarks. See 70 FR at 33099 - 33103. Specifically, the Department preliminarily found with respect to Manitoba and Saskatchewan, there was no province-specific private stumpage data upon which to base a first-tier benchmark arising from those provinces. The GOA reported private price data and government competitive bid data as reported in Alberta's Timber Damage Assessment (TDA) 2004 update. In the Preliminary Results, we determined that the TDA prices were not actual market-determined prices, as required by 19 CFR 351.511(a)(2). Id. The GOBC did not provide private stumpage prices for the record of this proceeding. Instead, the GOBC provided prices from auctions the government administers under the British Columbia Timber Sales (BCTS) program. In the Preliminary Results, we determined that the prices for Crown timber auctioned under the BCTS program are effectively limited by prices for administratively-set Crown timber and, as such, the BCTS prices could not serve as benchmarks. Id., 70 FR at 33099 - 33102. The GOO provided private stumpage prices based on a survey conducted conducted by Bearing Point. Regarding these prices, we preliminarily determined that the prices in the Bearing Point survey are dictated by the price for Crown timber and, thus, are not useable under tier one of our regulatory hierarchy. Id., 70 FR 33102. The GOQ provided private stumpage prices charged in Quebec. In our Preliminary Results, we determined that such prices cannot serve as benchmarks because they are distorted by a combination of the GOQ's administered stumpage system, the relative size of public and private markets, feedback effects between the private and public markets, and a non-binding annual allowable cut (AAC). Id., 70 FR at 33102 - 33103.

We received comments from parties concerning our preliminary finding that there were no useable first-tier benchmarks in Alberta, British Columbia, Ontario, and Quebec. See **Comments 12** through **19** below. Based on our analysis of the information and arguments on the record, for purposes of these final results, we continue to find that there are no useable private market prices in the provinces whose provincial stumpage programs are under review.

2. Private Stumpage Prices in New Brunswick and Nova Scotia May Serve as a First-Tier Benchmark in Alberta, Manitoba, Ontario, Quebec, and Saskatchewan

As noted in the Preliminary Results, we have private stumpage prices from New Brunswick and Nova Scotia (collectively, the Maritimes) on the record of this review.[8] In the Preliminary Results, we determined that the Maritimes' prices for eastern Spruce-Pine-Fir (SPF) are comparable to Crown stumpage prices for the SPF species groupings in Alberta, Manitoba, Ontario, Quebec, and Saskatchewan because the species in the Maritimes are representative of the species in those provinces. Accordingly, we preliminarily determined that the Maritimes provinces constitute market-determined, in-country prices under the first-tier of our adequate remuneration hierarchy and, thus, compared these prices to the Crown stumpage prices in each of the subject provinces in order to determine the benefit conferred by their respective administered stumpage programs. See Preliminary Results, 70 FR at 33103 - 33104.

[8] These prices are contained in separate price surveys prepared by AGFOR Inc. Consulting (AGFOR) for the Governments of New Brunswick (GONB) and Nova Scotia (GONS). See the New Brunswick AGFOR Report at Exhibit 1 of the GONB's November 22, 2004 Questionnaire Response at page 6. See the Nova Scotia AGFOR Report at Exhibit 4 of the GONS's November 22, 2004 Questionnaire Response at page 12.

Based on our analysis of the comments received and evidence on the record, for these final results, we continue to find that the Maritimes' prices are an appropriate first-tier benchmark for measuring the adequacy of remuneration of the stumpage programs administered in Alberta, Manitoba, Ontario, Quebec, and Saskatchewan. For further discussion, see **Comments 20** through **25**.

C. Application of Maritime Prices

1. Indexing

The Nova Scotia Report contains price data from 1999. The New Brunswick Report contains price data for the period July 1, 2002, to November 30, 2002. As discussed in the Preliminary Results, we indexed the private stumpage price data in the Nova Scotia and New Brunswick Reports using using a lumber-specific index reported for the Atlantic Region by STATCAN. See 70 FR at 33104 - 33105. We received comments from parties concerning our preliminary finding to index the private stumpage prices in the AGFOR reports using the STATCAN lumber index. See **Comment 31** below. Based on our analysis of the information and arguments on the record, for purposes of these final results, we continue to find that the STATCAN lumber index constitutes the best available means by which to index the private stumpage price data in the AGFOR reports into POR Canadian dollars.

2. Costs That Must Be Paid in Order to Harvest Private Standing Timber in New Brunswick and Nova Scotia

In the Preliminary Results, we determined that the pricing data for New Brunswick and Nova Scotia reflect the prices paid by harvesters for standing timber and include the value of the timber being purchased in addition to any landowner costs. See 70 FR at 33105. We also found that harvesters in the Maritimes incur additional costs that must be paid in order to be able to acquire private timber. Specifically, we found that harvesters in New Brunswick are required to pay silviculture fees as well as administrative fees to the marketing board operating within the region. In Nova Scotia, in order to be able to acquire the standing timber, the registered buyer must either pay for or perform in-kind activities equal to C$3.00 for every cubic meter of private wood harvested. Id.[9]

We received comments regarding this issue from interested parties. See **Comments 36** through **38**. Based on these comments, we have revised the manner in which we have added the costs discussed above to our benchmark prices from New Brunswick and Nova Scotia. Id.

3. Weighting of Studwood in the Nova Scotia Benchmark

As explained in the Preliminary Results, the GONS does not collect harvest volume data

[9] In the Preliminary Results, we also found that harvesters of private standing timber in Nova Scotia and New Brunswick do not incur any other charges (i.e., road building/maintenance costs, fire prevention costs, or land-owner related costs).

by log type (i.e., studwood log, sawlog, or treelength log). See 70 FR at 33105. Thus, in its Nova Scotia Report, AGFOR used a methodology which allowed it to allocate prices collected as part of its stumpage price survey to the corresponding log type. Specifically, when it constructed the weighted prices found on page 23 of the AGFOR Nova Scotia Report, AGFOR allocated an equal share of the volume to all of the log types harvested in a given region within Nova Scotia. See, e.g., page 13 and 14 of the October 1, 2004, Memorandum to Melissa G. Skinner, Director, Office of AD/CVD Enforcement 3, from Maura Jeffords, Case Analyst, Office of AD/CVD Enforcement 3, regarding, "Verification of the Questionnaire Responses Submitted by the Governments of New Brunswick (GONB) and Nova Scotia (GONS) and AGFOR Reports Submitted in Reference to Private Prices in New Brunswick and Nova Scotia," (Maritimes Verification Report), which was placed on the record of this review in the GOC's March 15, 2005 submission. Consistent with our approach in the first administrative review, we preliminarily determined that it was reasonable to accept AGFOR's methodology for reporting the Nova Scotia stumpage prices. See Preliminary Results, 70 FR at 33105.

Based on comments received from interested parties, we have revised our method of weighting the sawlogs and studwood prices contained in the Nova Scotia Report. Specifically, we have determined to weight the Nova Scotia prices using the volume data from AGFOR's stumpage price survey. Unlike the volume data collected by the GONS, the volume data collected as part of AGFOR's stumpage price survey tracks prices by log type, thereby enabling us to calculate a weight average price for studwood and sawlogs in Nova Scotia. We note that the volume data correspond to and come from the same survey as the Nova Scotia stumpage prices used in the Preliminary Results. The volume data were originally collected as exhibit 2 of the Maritimes Verification Report. For further discussion of this issue, see **Comment 34**.

D. Selection of Benchmark Price Used for British Columbia

In the Preliminary Results, consistent with our finding in the first review, we found that the Maritimes were not the most appropriate benchmark for British Columbia because of the lack of commercial interchangeability between the species in British Columbia and the eastern SPF species in the Maritimes. We further determined that, because timber and log prices were linked, subsidized prices in the Crown stumpage market would result in price suppression in the sales of Crown logs. We therefore found that B.C. logs are not independent of the effects of the underlying administratively set Crown stumpage fees on other prices and, thus, cannot be used to assess the adequacy of remuneration of the GOBC's administered stumpage program. In the Preliminary Results, we further determined not to use U.S. stumpage prices as our benchmark for measuring the benefit conferred by the GOBC's administered stumpage program because a NAFTA Panel stated that standing timber is not a good that is commonly traded across borders and because of the complex adjustments that would have to be made to any cross-border benchmark. See 70 FR at 33106. For these final results, Canadian parties continue to argue that U.S. stumpage prices cannot be used as a benchmark to determine the adequacy of remuneration, however their comments are moot.

In keeping with our findings from the first administrative review, we preliminarily determined that U.S. log prices constitute third-tier benchmarks when determining the adequacy of remuneration of British Columbia's administered stumpage program (i.e., a benchmark that is

consistent with market principles under 19 CFR 351.511(a)(2)(iii)). Specifically, we found that the use of U.S. log prices is consistent with a market principle analysis because (1) stumpage values are largely derived from the demand for logs produced from a given tree; (2) the timber species in the U.S. Pacific Northwest (PNW) and British Columbia are comparable and, therefore, U.S. log prices, properly adjusted for market conditions in British Columbia, are representative of prices for timber in British Columbia; and (3) U.S. log prices are market-determined. In the Preliminary Results, we also determined to continue to make the same harvest, haul, and tenure adjustments as we did in the first administrative review to derive the market stumpage prices for British Columbia for this review. Id.

We received comments regarding this issue from interested parties. See **Comments 27** through **30**. For purposes of these final results, we find that there are no new arguments or information from interested parties that warrant a reconsideration of these findings. Therefore, we continue to find that U.S. log prices are an appropriate third-tier benchmark for measuring the adequacy of remuneration of the stumpage program administered in British Columbia.

E. Application of U.S. Log Prices

1. Selection of Data Sources

In the Preliminary Results, we used the following U.S. log price data sources to construct the log benchmarks for the B.C. Coast and Interior:

SOURCE	AREA/REGION
B.C. Coast	
Log Lines	Washington & Oregon (Coast/NW/SW)
Oregon Department of Forestry	Oregon (Coast/NW/SW)
Pacific Rim Wood Market Report	Western Washington, Oregon
Oregon Log Market Report	Oregon (NW/SW)
Washington Log Market Report	Western Washington
B.C. Interior	
Oregon Department of Forestry	East of Cascade Mountains
Log Market Report by Northwest Management Inc.	Eastern Washington, North Idaho, &Western Montana
Montana Sawlog & Veneer Log Price Report by the University of Montana	Western Montana
Oregon Log Market Report	Eastern Oregon
Washington Log Market Report	Eastern Washington, Idaho, & Montana

In the Preliminary Results, we further determined not to use the western Washington log

prices reported by the Timber Data Company[10] and the Idaho Department of Lands' "pond value" log prices, as derived by the Timber Data Company. See 70 FR at 33106; see also the May 31, 2005 Memorandum to the File from Kristen Johnson and Stephanie Moore, Case Analysts, concerning Preliminary Calculations for the Province of British Columbia at 5-6 (B.C. Preliminary Calculations Memorandum).

We received comments regarding this issue from interested parties. See Comments **29**, **42**, **45**, and **47**. For purposes of these final results, we find that there are no new arguments or information from interested parties that would warrant a reconsideration of these findings. Therefore, we continue to construct the log benchmarks for the B.C. Coast and Interior using the same U.S. log prices listed above.

2. Derivation of U.S. Log Prices on a per Unit Basis for Use in Comparison to Log Prices on the B.C. Coast and Interior

In the Preliminary Results, we employed a two-step approach to construct the U.S. log benchmark prices. We first simple-averaged the price data for each species from each source used for the Coast and the Interior, respectively. We then simple-averaged the log prices from each source together for the Coast and the Interior, respectively. See B.C. Preliminary Calculations Memorandum at 1.

The U.S. log price data was expressed in either U.S. dollars (USD) per thousand board feet (mbf) or USD / ton. Therefore, it was necessary to convert our benchmark data so that they were expressed in the same currency and unit of measure as the B.C. administered stumpage prices. In the Preliminary Results, we converted U.S. log price data for the B.C. Coast using a conversion factor of 6.76 USD / cubic meter (m^3). For the B.C. Interior, we used a conversion factor of 5.93 USD / m^3. We then converted the benchmark prices into Canadian dollars (CAD) based on the average of the daily USD / CAN daily exchange rate, as published by the Federal Reserve Bank of New York. See 70 FR at 33107; see also B.C. Preliminary Calculations Memorandum at 1-3. For U.S. log prices expressed in tons, we first converted them from USD / tons to USD / mbf and then converted those USD / mbf prices to CAD / m^3.

We received comments from interested parties regarding the manner in which we performed our averaging calculation. We also received comments concerning the factor we used to convert the U.S. log price data from mbf to m^3 as well as from USD / tons to USD / mfb. Based on comments from interested parties, we have changed the conversion factor used to convert USD / ton prices to USD / mbf prices in both the B.C. Coast and Interior benchmark areas. For a discussion of the issues and descriptions of the changes made, see Comments **39**, **44**, and **48**.

F. Calculation of Provincial Benefits

1. Methodology for Adjusting the Unit Prices of the Crown Stumpage Programs Administered by the GOA, GOS, GOM, GOO, and GOQ

[10] See Petitioners' February 22, 2005 submission at Volume 3, Exhibit 32.

As explained in the Preliminary Results, we employed a methodology for adjusting the unit prices of the Crown stumpage programs administered by the GOA, GOS, GOM, GOO, and GOQ. See 70 FR at 33107. In making our adjustments, we focused on those costs that are assumed under the timber contract (e.g., the Crown tenure agreement) and those costs that are necessary to access the standing timber for harvesting (but that may differ substantially depending on the location of the timber). Where such costs are incurred by harvesters in either the Maritimes or the subject provinces, we included them in our benefit calculations. We did not, however, make adjustments for costs that might be necessary to access the standing timber for harvesting but that do not differ substantially based on the location of the timber (e.g., costs for tertiary road construction and harvesting). Because the Maritimes data reflect prices at the point of harvest, we also did not include post-harvest activities such as scaling and delivering logs to mills or market. Id. In this manner, we adjusted the unit stumpage prices of the GOA, GOS, GOM, GOO, and GOQ such that they were on the same "level" as the private stumpage prices we obtained from the Maritimes.[11]

We received comments from interested parties concerning the adjustments we used in these five provinces' stumpage benefit calculations. See **Comments 53** through **58**. For purposes of these final results, we find that there has been no new information or arguments from interested parties that would warrant a reconsideration of these findings. Therefore, we have continued to adjust the stumpage prices of the GOA, GOS, GOM, GOO, and GOQ using the adjustments described in the Preliminary Results.

In keeping with our approach in the Preliminary Results, to calculate the unit benefit conferred under the five provinces' administered stumpage programs, we subtracted from the species-specific benchmark prices the cost-adjusted weighted average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific unit benefit by the total softwood timber harvest volume for that species during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for each province. See, Preliminary Results, 70 FR at 33108.

2. Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC

As explained in the Preliminary Results, to derive B.C.'s administratively established stumpage rate, we divided the total stumpage collections for each species for the Coast and Interior by the corresponding Crown softwood sawlog volume. In this manner, we obtained a weight-averaged stumpage price per species. See 70 FR at 33109.

In the Preliminary Results, we then calculated a "derived market stumpage price" for each species by using U.S. log prices, adjusted for B.C. timber market conditions, as the benchmark for standing timber prices to measure the adequacy of remuneration of B.C.'s administered stumpage

---

[11] The adjustments granted to the GOA, GOS, GOM, GOO, and GOQ are listed in the Preliminary Results. See 70 FR at 33107 - 33019. Regarding the calculation of the GOO's adjusted unit price for Crown stumpage, while we included costs related to First Nations and Management Fees in our preliminary calculations, in the Preliminary Results, we inadvertently neglected to include these costs in our list of adjustments added to the GOO's Crown stumpage price. In these final results, we have continued to include the First Nation and Management Fee costs when adjusting the unit prices the GOO charges for Crown stumpage.

system. Specifically, we subtracted from the U.S. log prices all B.C. harvesting costs, including costs associated with Crown tenure for calendar year 2003, and profit.[12] We relied on cost data from surveys of major tenureholders prepared by PricewaterhouseCoopers (PwC). Specifically, PwC was engaged by the B.C. Ministry of Forests (MOF) to collect calendar year 2003 logging and forest management cost data for the Coast and Interior regions of British Columbia. The cost data presented by PwC was derived from three separate surveys – the MOF's 2004 annual Coast survey and two surveys (one for the Coast and the other for the Interior) conducted by PwC itself. Id.

We received comments from interested parties concerning the adjustments we used in our stumpage benefit calculations for Coastal and Interior British Columbia. Based on comments from interested parties, we have made changes to our approach on this issue. See **Comments 50** through **52**.

Consistent with our approach in the Preliminary Results, to calculate the unit benefit per species conferred under the GOBC's administered stumpage program, we subtracted from the cost and profit adjusted "derived market stumpage prices" the corresponding average administered stumpage prices. See 70 FR at 33111. We next reduced the total Crown harvest to capture that volume of logs destined to sawmills. Id. Next, we multiplied the species-specific unit benefit by the Crown volume destined to sawmills. We then summed the species-specific benefits for the Coast and the Interior to calculate the provincial benefit.

G. Calculation of Provincial and Country-Wide Rate

As in the Preliminary Results, to calculate the province-specific subsidy rate, we divided the total stumpage benefit for each province by its corresponding stumpage denominator for the POR. See 70 FR at 33111. Next, we weight averaged the benefits from the provincial subsidy programs by each province's relative share of total exports of softwood lumber to the United States during the POR. We then summed each of the provinces' weighted-average subsidy rate to arrive at the total country-wide rate attributable to the stumpage programs. Id. On this basis, we find the country-wide subsidy rate for the provincial stumpage programs is 8.53 percent ad valorem.

II. Non-Stumpage Programs Determined To Confer Subsidies

A. Programs Administered by the Government of Canada

1. Western Economic Diversification Program (WDP): Grants and Conditionally Repayable Contributions

In the Preliminary Results, we found that the provision of grants under the WDP constitutes a government financial contribution and confers a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Further, we determined that the

---

[12] The unit costs for Coastal and Interior British Columbia are listed in the Preliminary Results. See 70 FR 33110 - 33111.

WDP is specific under section 771(5A)(D)(iv) of the Act, because assistance under the program is limited to designated regions in Canada. On this basis, we found recurring and non-recurring grants provided to softwood lumber producers under the WDP to be countervailable subsidies. See 70 FR at 33111.

During the POR, the WDP provided grants to softwood lumber producers or associations under two "sub-programs," the International Trade Personnel Program (ITPP) and "Other WDP Projects."[13] Under the ITPP and "Other WDP Projects," companies were reimbursed for certain salary expenses in Alberta, British Columbia, Manitoba, Saskatchewan.

In the Preliminary Results, where the employee's activities were directed towards exports of softwood lumber to all markets, we attributed the subsidy to total softwood lumber exports. Where the employee's activities were directed towards exports of softwood lumber to the United States, we attributed the subsidy to U.S. exports. Where the personnel promoted exports to non-U.S. markets, we did not attribute any of the benefit to U.S. sales. In accordance with 19 CFR 351.524(b)(2), we determined that all ITPP and "Other WDP Project" grants were less than 0.5 percent of their corresponding denominator in the year of receipt.[14] Therefore, we expensed all grants received during the POR under this program to the year of receipt. See 70 FR at 33111.

To calculate the countervailable subsidy rate for this program, we summed the rates for the ITPP and "Other WDP" sub-projects. Next, we multiplied this amount by the four provinces' relative share of total exports of softwood lumber to the United States. We adjusted the provinces' total exports of softwood lumber to the United States to account for any excluded company sales.

We received comments from interested parties regarding our approach to this program in the Preliminary Results, however we have not changed our approach. Therefore, we determine the countervailable subsidy rate for this program to be less than 0.005 percent percent ad valorem.[15] See **Comment 62**.

2. Natural Resources Canada (NRCAN) Softwood Marketing Subsidies

In the Preliminary Results, we found that grants received during the POR under the following sub-programs constitute a government financial contribution, confer a benefit, and are specific under sections 771(5)(D)(i), 771(5)(E), and 771(5A)(D)(i) of the Act, respectively: (1) research conducted by Forintek Canada Corp. (Forintek) under the Value to Wood Program (VWP), (2) research performed by Forest Engineering Research Institute of Canada (FERIC), and (3) certain research activities conducted by Forintek under the National Research Institutes Initiative (NRII).[16] See 70 FR at 33112.

We expensed all grants received in the year of receipt. We divided funding approved for Forintek under the VWP and NRII programs by the total sales of the wood products

---

[13] These are the same two sub-programs analyzed in the first administrative review.

[14] We reduced these denominators, where appropriate, to account for any excluded company sales.

[15] We deem net subsidy rates less than 0.005 percent ad valorem to be not measurable.

[16] These grant programs are described in the Preliminary Results. See 70 FR at 33112.

manufacturing industry during the POR. To calculate the country-wide rate, we divided the the funding approved for FERIC under the NRII program by the total sales of the wood products manufacturing and paper industries during the POR. We adjusted the denominators to account for sales of excluded companies.

We received comments from interested parties regarding our approach to this program in the Preliminary Results. See **Comment 68**. For purposes of these final results, we find that there has been no new information or arguments from interested parties that would warrant a reconsideration of our findings. Therefore, we determine the countervailable subsidy rate for this program to be 0.02 percent ad valorem.

B. Programs Administered by the Government of British Columbia

1. Forestry Innovation Investment Program (FIIP)

In the Preliminary Results, we determined that FII grants provided to support product development and international marketing constitute a government financial contribution and confer a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Further, we found that the grants are specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited to institutions and associations conducting projects related to wood products generally and softwood lumber, in particular. See 70 FR at 33113.

In the Preliminary Results, we expensed all FII grants to the year of receipt. Thus, to calculate the provincial rate under this program, we divided all grants received during the POR by their corresponding sales denominator. For grants given to support product development for softwood lumber, we divided the amounts disbursed by total sales of softwood lumber for British Columbia during the POR. For grants to support international marketing, we divided the amounts disbursed by exports of softwood lumber from British Columbia to the United States during the POR. For research grants, we divided the amounts disbursed by total sales of the wood products manufacturing and paper industries for British Columbia during the POR. Next, to calculate the country-wide rate attributable to this program, we weighted the sum of the provincial rates by B.C.'s relative share of exports to the United States during the POR. See 70 FR at 33113.

We received comments from interested parties regarding our approach to this program in the Preliminary Results. For purposes of these final results, we have revised the manner in which we calculated the subsidy benefit under this program. See **Comments 69** and **70**. Therefore, we determine the countervailable subsidy rate for this program to be 0.05 percent ad valorem.

2. British Columbia Private Forest Property Tax Program

In the Preliminary Results, we found that during the POR tax rates on Class 3, "un-managed forest land,"were higher at the provincial, regional, and local levels than those levied on Class 7, "managed forest land." We therefore determined that the Private Forest Property Tax program constitutes a government financial contribution and confers a benefit sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. We further found that the program is de jure specific under 771(5A)(D)(i) of the Act. See 70 FR at 33113.

We found that the benefit received under this program is the sum of the tax savings enjoyed by Class 7 sawmill landowners at both the provincial and sub-provincial levels of tax authority in British Columbia. With regard to the provincial tax, the assessed value is calculated as the sum of the land value and a formulaic valuation of the timber harvested from the land in the prior year. The tax is levied by applying the tax rate to this assessed value. The GOBC did not submit data on the timber value. Accordingly, the Department calculated the tax benefit (net of administrative fees) at the provincial level based solely on the land value. Id.

We determined the tax benefit at the local level using the data submitted by the GOBC on local tax rates, and on the value and acreage of Class 3 and Class 7 land held by sawmill landowners in the various jurisdictions. Only those jurisdictions with both Class 3 and Class 7 land in the assessment rolls for 2003 and 2004, and whose tax differential resulted in a tax savings for Class 7 sawmill landowners, were included in the benefit calculation. Id.

With regard to the regional level, while the GOBC was able to provide Class 3 and Class 7 tax rates and the value for Class 7 land for the relevant regional and hospital districts, it was unable to provide the land values for Class land 7 with sawmills within those areas. Therefore, we derived the share of value of Class 7 land with sawmills at the provincial level for 2003 and 2004 and applied the ratios to the corresponding Class 7 land values of the regional and hospital districts. Using this approach, we calculated the regional tax savings enjoyed by Class 7 sawmills owners. See Preliminary Results, 70 FR at 33113 - 33114.

To calculate the provincial rate, we divided the sum of the provincial, regional, and local level benefits by POR total value of B.C. sawmill softwood product shipments (i.e., lumber, co-products, and "residual" products from primary sawmills). We then calculated the country-wide rate attributable to the program by weighting the provincial rate by B.C.'s share of total exports to the United States during the POR.

We received comments from interested parties regarding our approach to this program in the Preliminary Results. For purposes of these final results, we have revised the manner in which we calculated the subsidy benefit under this program. See **Comment 72**. Therefore, we determine the countervailable subsidy rate for this program to be 0.10 percent ad valorem.

C. Programs Administered by the Government of Quebec

Private Forest Development Program

In the Preliminary Results, we determined that the provision of grants to producers of softwood lumber under the Private Forest Development Program (PFDP) constitutes a government financial contribution and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. In addition, we determined that assistance provided under this program is specific under section 771(5A)(D)(i) of the Act because assistance is limited to private woodlot owners. See 70 FR at 33114.

In the Preliminary Results, to calculate the countervailable subsidy under the PFDP, we first summed the reported amount of grants provided to sawmills that produce softwood lumber (and other products) during the POR. Next, we reduced the total benefit amount to account for any PFDP benefits received by companies in Quebec that have been excluded from the countervailing duty order. See 70 FR at 33114.

To calculate the provincial rate, we divided the net benefit amount by total sales of softwood lumber (i.e., lumber from primary mills and in-scope lumber from remanufacturers), hardwood lumber, and softwood co-products. We adjusted the sales denominator to account for sales of excluded companies from Quebec. To calculate the country-wide rate attributable to this program, we multiplied the provincial rate by Quebec's relative share of exports to the United States, adjusted for sales of excluded companies. See Preliminary Results, 70 FR at 33114.

We received comments from interested parties regarding our approach to this program in the Preliminary Results. See **Comment 67**. For purposes of these final results, we find that there has been no new information or arguments from interested parties that would warrant a reconsideration of our findings. Therefore, we determine the countervailable subsidy rate for this program to be less than 0.005 percent ad valorem.

III. Programs Determined Not to Confer a Benefit

A. Programs of the Government of Canada

1. Federal Economic Development Initiative in Northern Ontario (FEDNOR)

In the investigation and first administrative review, we found grants and loans under the FEDNOR program to be countervailable. See e.g., the "Federal Economic Development Initiative in Northern Ontario (FEDNOR)" section of the Final Results of 1st Review Decision Memorandum. As explained in Preliminary Results, the GOC claims that no grants were disbursed during the POR; however it reported several long- and short-term Community Futures Development Corporations (CDFC) loans were outstanding during the POR. See 70 FR at 33114. As the interest amounts paid on the loans under the FEDNOR program were greater than what would have been paid on a comparable commercial loan, as indicated by our benchmark interest rate, we preliminarily determined that this program did not confer a benefit upon softwood lumber producers in accordance with section 771(5)(E)(ii) of the Act during the POR. Id.

We received comments from interested parties regarding our approach to this program in the Preliminary Results. See **Comment 61**. For purposes of these final results, we find that there has been no new information or arguments from interested parties that would warrant a reconsideration of our findings.

2. Payments to the Canadian Lumber Trade Alliance (CLTA) & Independent Lumber Remanufacturing Association (ILRA)

In the first administrative review, we determined that grants under this program constitute a government financial contribution and confer a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Further, because the program provided grants to two associations, CLTA and ILRA, we determined that it was specific within the meaning of section 771(5A)(D)(i) of the Act. See Preliminary Results of 1st Review, 69 FR at 33229. Accordingly, we determined that the GOC grants to CLTA and ILRA provided a countervailable subsidy to the softwood lumber industry.

In this review, the GOC has claimed all grants bestowed under the program were received

prior to the POR of the current review. Therefore, in the Preliminary Results, pursuant to 19 CFR 351.525(b)(4), we performed the 0.5 percent test in order to determine whether the grants should be expensed in the year of receipt or allocated over the AUL for the softwood lumber industry. Because the resulting amount was less than 0.5 percent, we expensed the benefit in the year of receipt, which was prior to the POR. On this basis, we preliminary determined that the CLTA and ILRA programs did not confer provide countervailable benefits during the POR of the instant review. See 70 FR at 33115.

We received comments from interested parties regarding our approach to this program in the Preliminary Results. See **Comment 71**. For purposes of these final results, we find that there has been no new information or arguments from interested parties that would warrant a reconsideration of our findings.

B. Programs of the Government of British Columbia

Forest Renewal B.C. Program/Land Base Investment Program

In the Preliminary Results, we found that loan guarantees provided under the Forest Renewal B.C. program constitute a government financial contribution within the meaning of section 771(5)(D)(i) of the Act. Further, in the first administrative review we found that because assistance under the Forest Renewal B.C. program was limited to the forest products industry, the program was specific within the meaning of section 771(5A)(D) of the Act. However, because the interest rates charged under the program were equal to or higher than the interest rates charged on comparable commercial loans, we preliminarily determined that no benefit was provided during the POR. See Preliminary Results, 70 FR at 33115.

We received comments from interested parties regarding our approach to this program in the Preliminary Results. See **Comment 66**. For purposes of these final results, we find that there has been no new information or arguments from interested parties that would warrant a reconsideration of our findings.

C. Programs of the Government of Quebec

1. Assistance Under Article 28 of Investment Quebec

In the Preliminary Results, we determined that in accordance with section 771(5)(E)(iii) of the Act, no benefit was provided under the program because the interest rates charged under the program were equal to or higher than the interest rates charged on comparable commercial loans. See 70 FR at 33115.

We received comments from interested parties regarding our approach to this program in the Preliminary Results. See **Comment 64**. For purposes of these final results, we find that there has been no new information or arguments from interested parties that would warrant a reconsideration of our findings.

2. Assistance from the Societe de Recuperation d'Exploitation et de Developpement Forestiers du Quebec (Rexfor)

In the Preliminary Results, we found that long-term loans provided by Rexfor qualify as a financial contribution under section 771(5)(D)(i) of the Act. We further determined that because assistance from Rexfor is limited to companies in the forest products industry, the program is specific under section 771(5A)(D)(i) of the Act. However, because the interest rates charged under the program were equal to or higher than the interest rates charged on comparable commercial loans, we preliminarily determined that no benefit was provided during the POR. See Preliminary Results, 70 FR at 33116.

We received comments from interested parties regarding our approach to this program in the Preliminary Results. See **Comment 65**. For purposes of these final results, we find that there has been no new information or arguments from interested parties that would warrant a reconsideration of our findings.

IV. Total Ad Valorem Rate

In accordance with 777A(e)(2)(B) of the Act, we have calculated a single country-wide subsidy rate to be applied to all producers and exporters of the subject merchandise from Canada, other than those producers that have been excluded from this order. This rate is summarized in the table below:

Producer/Exporter	Net Subsidy Rate
All Producers/Exporters	**8.70** percent ad valorem

V. Analysis of Comments

A. Company-Specific Review Comments

Comment 1: Company-Specific Reviews

The Quebec Border Mills (QBM) argue that they are in the unique situation of consistently accessing the majority of their standing timber and lumber from U.S. or private Canadian lands or from companies previously excluded from the countervailing duty order.[17] The QBM argue that virtually all of the country-wide rate calculated throughout the proceeding has been attributable to subsidies provided on Crown timber through provincial stumpage programs. Therefore, by the Department's own criteria, the vast majority of the timber sourced by the QBM is not subsidized. In light of what the QBM describe as their unique sourcing pattern, a pattern that it claims the Department has itself recognized, it contends that the Department must conduct company-specific administrative reviews covering their companies.

The QBM further argue that Article 19.3 of the Subsidies and Countervailing Measures Agreement (SCM) specifies that an exporter not individually investigated shall be entitled to an

[17] The QBM consists of Bois Daaquam Inc., Bois Omega, Limitee, Fontaine Inc., Maibec Industries Inc., Materiaux Blanchet Inc., and Scierie West Brome Inc.

individual expedited review for the purposes of establishing an individual countervailing duty rate. The QBM assert that in the context of Article 19.3 and the SCM as a whole, the reference to a rate can only mean a final assessment rate and not merely to a cash deposit, as previously interpreted by the Department. They asserts that 751(a)(1) of the Act, the section of the statute under which the Department conducted the expedited reviews, also contemplates individual reviews for the assessment of countervailing duties. In addition, the QBM claims that in the Preamble to its regulations the Department noted that individual reviews are to follow expedited reviews. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27321 (May 19, 1997).

The QBM further argue that individual reviews of the firms would result in extremely low assessment rates that are well below any rate calculated on an aggregate basis. Thus, they contend that the Department's refusal to assign individual assessment rates to their firms violates Article 19.4 of the SCM, which states that no countervailing duty shall be levied on any product in excess of the amount o the subsidy found to exist.

In addition, the QBM contend that the URAA's change of the statutory provision from an aggregate to individual review (e.g., section 777A of the Act) means that individual reviews should be more available now than they were prior to the URAA.

The QBM claim that the Department has acknowledged that its regulations do not address expedited reviews in aggregate cases. See, e.g., Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products From Canada, 67 FR 46955 (July 17, 2002). Similarly, they contend there are no regulations that address individual administrative reviews following company-specific expedited reviews in aggregate cases. Further, they argue that were 19 CFR 351.213(k) were to apply, the plain meaning of the regulation is that, in addition to an aggregate review, the Department is to conduct some number of individual reviews.

Lastly, the QBM contest the Department's claim that conducting individual reviews of their firms would pose too great of an administrative burden. They claim that only four of the six firms would require the Department to perform calculations. Further, the QBM contend that if the Department considers reviews for these companies to be too burdensome, then the Department must develop a streamlined methodology that would allow it to conduct the administrative reviews.

The GOC argues that the Department's refusal to conduct company-specific reviews in conjunction with the current aggregate review is contrary to the Department's statements in earlier segments of the proceeding and before a WTO panel, where the GOC claims the Department acknowledged both its obligation to conduct company-specific reviews as well as the appropriateness of reviews to establish non-subsidization for specific companies. See e.g., Final Determination Decision Memorandum at page 19; see also Answers of the United States to the June 6, 2002 Questions of the Panel, United States - Preliminary Determinations with Respect to Certain Softwood Lumber from Canada, WT/DS236 (June 13, 2002) at paragraph 57.

Petitioners contend that Canadian Parties' argument that the Department is legally required to conduct company-specific reviews is without merit. They argue that the Department exercised its discretion to conduct this review, like the investigation, on an aggregate country-wide basis. They further assert that, in these circumstances, U.S. law does not permit any form of company-specific treatment. They add that the Department has correctly determined that any broader

dedication of its resources would be inappropriate as it would undermine the country-wide examination.

Department's Position: As explained in the first review, when conducting an administrative review on an aggregate basis pursuant to section 777A(e)(2)(B) of the Act, the Department is not required to conduct any company-specific reviews. Rather, the Department's regulations require only that the Department "consider" company-specific requests in an aggregate case, and conduct the reviews "to the extent practicable." Furthermore, pursuant to 19 CFR 351.213(k)(1), determining whether or to what extent it is practicable to conduct individual reviews is entirely within the Department's discretion. See Comment 1 of the Final Results of 1st Review Decision Memorandum. Accordingly, at the outset of the second administrative review, we determined to conduct the review on an aggregate basis. Furthermore, because it was not practicable to conduct company-specific reviews of all 263 companies for which a review was requested nor practicable to conduct zero/de minimis rate reviews, we determined not to conduct any form of company-specific review. See the July 30, 2004 memorandum to James J. Jochum, Assistant Secretary, from Jeffrey May, Deputy Assistant Secretary, "Methodology for Conducting the Review," a public document on file in room B-099 of the Central Records Unit (CRU).

Regarding the QBM's contention that our refusal to conduct company-specific reviews will result in the Department applying cash deposit rates well above those that would be calculated as part of a company-specific analysis, we disagree. As explained above, section 777A(e)(2)(B) of the Act allows the Department to conduct aggregate reviews. It is therefore logical to expect that, in an aggregate review, a weight average country-wide rate will reflect a variety of subsidy levels experienced by the producers of subject merchandise.

B. Subsidy Valuation Comments

1. Numerator

a. Treatment of Company-Specific Data of Excluded Companies

Comment 2: Whether Benefits to Excluded Companies Should Be Deducted from Numerator of Net Subsidy Calculation

The GOC explains that the Department has deducted sales by companies excluded from the countervailing duty order from the denominator of its net subsidy rate calculations but notes that the Department failed to deduct the alleged benefit received by those companies from the numerator of the preliminary calculations. The GOC contends that the Department's approach causes an obvious mismatch in the numerator and denominator of the subsidy calculations as many of the excluded companies were de minimis rather than zero and, thus, the removal of their benefits from the numerator of the net subsidy rate calculation has an impact on the country-wide rate.

In its April 28, 2005 Questionnaire Response, the GOC argues that in the first administrative review the Department estimated the benefit attributable to the excluded companies by multiplying the volume of Crown logs and lumber that entered the excluded companies' mills

during the POI by the provincial unit benefit corresponding to the companies' respective province. The GOC argues that, lacking the relevant volume data for the POR, the Department should adjust the numerator of the net subsidy rate calculation using the same methodology it employed in the final results of the first review.

Petitioners contend that while the Department has agreed with the the GOC's proposed approach in principle, the Department has stated that there is no information on the record to indicate the benefit that those excluded companies might have received during the POR. See Preliminary Results, 70 FR at 33092. Accordingly, petitioners argue that it is impossible to adjust the numerator as the GOC requests.

Department's Position: As explained in the Preliminary Results, we requested benefit and sales data, on an aggregate basis, for each province, as they pertained to the excluded companies during the POR. See 70 FR at 33092. Regarding the benefit information we requested, the GOC, GOO, and GOQ responded that the excluded companies in their respective provinces did not harvest Crown timber during the POR. The GOC, GOO, and GOQ further claimed they did not have any information regarding the volume of lumber and/or Crown logs purchased by the excluded companies during the POR.[18] Id.

Furthermore, while we acknowledge that, in the final results of the first administrative review, the Department adjusted the numerator of the net subsidy rate calculation using volume data from the POI, the factual record of that segment of the proceeding is distinct from that of the current administrative review. For example, in its case briefs submitted for consideration in the final results of the first review, the GOC argued for the first time in that proceeding that, for the numerator and denominator to match, the Department must also reduce the numerator to account for any de minimis benefits received by excluded companies. We agreed with the GOC in principle. However, because the issue was raised for the first time in its case briefs, we were unable to solicit the necessary information from the excluded companies. For this reason, we adjusted the numerator of the net subsidy rate calculation using volume data from the POI.

Unlike the first administrative review, in this segment of the proceeding, we were in a position to seek the relevant volume information of the excluded companies. Thus, in our April 8, 2005, Supplemental Questionnaire, we asked the GOC, GOO, and GOQ to obtain the relevant volume data for the POR from the excluded companies. In their April 28, 2005 response, the GOC, GOO, and GOQ stated that the excluded parties did not acquire Crown timber during the POR. They further claimed that they did not have any information regarding the volume of lumber and/or Crown logs purchased by the excluded companies during the POR.

While the GOC, GOO, and GOQ claim in their case briefs that the Department's approach to this issue in the Preliminary Results causes a mismatch between the numerator and denominator, they maintain that none of the excluded companies acquired standing timber from Crown lands during the POR. This is notable since standing timber from Crown forests

---

[18] As part of the exclusion and expedited review processes, the Department included the volume of lumber and Crown logs purchased by the respondent companies in the subsidy benefit calculation. For this reason, we asked the GOC, GOO, and GOQ to arrange for similar information to be provided on the record of the current administrative review for purposes of adjusting the numerators of the provinces' respective provincial rate calculations. See the Department's April 8, 2005 Supplemental Questionnaire.

accounted for a substantial portion of the de minimis benefits received by the excluded companies during the POI. Moreover, with respect to the other countervailable sources (i.e., the volumes of purchased lumber and purchased Crown-origin logs) examined as part of the exclusion and expedited review processes, the GOC, GOO, and GOQ failed to provide the relevant POR volume data from the excluded companies that would enable the Department to carry out adjustments to the numerator of the net subsidy rate calculation.

Therefore, because the GOC, GOO, and GOQ have stated that the excluded companies did not acquire standing timber from Crown lands during the POR and because they have not provided any other additional benefit data from the companies, we have not adjusted the aggregate numerator data from the relevant provinces.

b. Pass-Through

Comment 3: U.S. Law and WTO Agreements Require the Department to Conduct a Pass-Through Analysis

Canadian parties argue that the Department is required by U.S. law and the WTO Agreements, to conduct a pass-through analysis before it may countervail alleged subsidies when the downstream sawmill purchases logs as its input to lumber production. They contend that the Federal Circuit found that the Department may not presume a pass-through of benefit. See Delverde, SrL v. United States, 202 F.3d 1360, 1367 (Federal Circuit 2000). They also claim that two WTO panels and the WTO Appellate Body have concluded that the Department's failure to conduct the required pass-through analysis in the investigation and first review is inconsistent with the United States' obligations under the WTO. See e.g., Appellate Body Report, United States - Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, WT/DS257/AB/R (January 19, 2002) (WTO AB Report), and Panel Report, United States - Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, WT/DS257/R (August 29, 2003) (WTO Panel Report). Canadian parties also claim that the recent WTO 21.5 Compliance Panel found that the Department's failure to conduct a pass-through analysis with respect to the majority of transactions covered by the Section 129 determination and first administrative review was not consistent with the United States WTO obligations. See Panel Report, United States - Final Countervailing Duty Determination With Respect to Certain Softwood Lumber from Canada: Recourse by Canada to Article 21.5, WT/DS257/RW (August 1, 2005) (WTO 21.5 Panel Report). Further, Canadian parties claim that the Department has itself recognized that it must first conduct a pass-through analysis before it can countervail the alleged subsidy to sawmills that purchase logs. See WTO AB Report at paragraph 127.

Petitioners contend that the Department is acting well within the scope of its statutory responsibilities when it requires information necessary to evaluate the nature of the transaction at issue and the relationship between parties involved. Petitioners claim that primary focus of the original Panel decision on pass-through was on the affiliation between the parties to the transaction, and specifically whether such transactions were "between unrelated parties." See WTO 21.5 Panel Report at 4.62 through 4.67. Petitioners argue that the presence of contractual arrangements such as log purchase agreements, wood supply agreements, etc., can shape the

relationship between purportedly unrelated parties that can render the unrelated label inaccurate.

Department's Position: We agree that the Department should conduct a pass- through analysis in instances where Canadian parties claim that Crown timber was purchased by sawmills from unrelated harvesters. We disagree, however, with the view that, by rejecting pass-through claims in the Preliminary Results, the Department necessarily failed to conduct pass-through analyses. As explained in the Preliminary Results, the Department thoroughly evaluated each of the Canadian parties' pass-through claims. See 70 FR at 33092 - 33098. Upon review of the claims, the Department concluded that for many of the claims the parties failed to provide the information necessary to demonstrate that the subsidies attributable to the Crown logs in question did not pass-through to the buyer of the logs. Id.

Where Canadian parties provided the requisite information, however, the Department conducted a pass-through analysis and, in certain instances, the Department determined that the subsidies on Crown-origin logs did not pass-through to the buyer. See the Department's discussion in the Preliminary Results of the company-specific data submitted by the Ontario Lumber Manufacturing Association (OLMA) and Tembec, 70 FR at 33095 - 33096. With respect to those claims, the Department determined that certain Crown-origin logs were sold at arm's-length, and the Department examined whether the log seller passed on a competitive benefit to the log buyer. In instances where the price for the log was higher than the benchmark log price, the Department determined that the subsidy on the Crown-origin log did not pass-through to the buyer (i.e., that no competitive benefit passed through). Accordingly, we excluded the log volumes corresponding to such transactions from the numerator of our benefit calculations.

Thus, contrary to Canadian parties' claims, we conducted a pass-through analysis in all instances where Canadian parties provided the Department with the information necessary to such an analysis. Where we concluded that the subsidies did not pass-through, we removed the relevant sales volumes from our benefit calculations.

Comment 4: Whether the Department's Evaluation Criteria Is Relevant to a Pass-through Analysis

Canadian parties explain that the Department rejected a significant portion of their reported arm's-length sales pursuant to five factors.[19] They argue that these five factors establish a standard where no pass-through of subsidies can only be established where Canadian parties demonstrate that a transaction has occurred not only between unrelated parties, but also outside any possible influence of government-mandated restrictions and other factors. They argue that the five factor test in the Preliminary Results ignores the arm's-length standard set out in the SAA, which defines an arm's-length transaction as one between unrelated parties or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties. Canadian parties therefore argue that the five factors

[19] The five factors discussed in the Preliminary Results are: (1) government-imposed appurtenancy and local processing requirements, (2) government-mandated wood supply agreements, (3) the structure of certain log purchase agreements, (4) fiber exchange between Crown tenure holders, and (5) the payment of Crown stumpage fees by sawmills for logs purchased from independent harvesters. See Preliminary Results, 70 FR at 33093.

identified by the Department are irrelevant to a determination of whether a transaction is between unrelated parties and results in an analysis that presumes pass-through of the subsidy. Thus, Canadian parties argue that the factors it uses to test for the existence of arm's-length transactions cannot be used to relieve the Department of its obligation to conduct a pass-through analysis.

They further argue that none of the five factors cited by the Department in the Preliminary Results alters the fact that sellers of logs attempt to obtain the best price available in transactions with unrelated purchasers. For example, they assert that whether the independent harvester directly pays the Crown stumpage fee or the sawmill writes the check on behalf of the harvester does not make the sale of the log a non-arm's-length transaction nor is it relevant to a pass-through analysis. They add that because the Department has found the financial contribution in this case to be the provision by the government of standing timber to timber harvesters, the Department's conclusion that the government provided the alleged stumpage subsidy directly to sawmills in instances where the mills paid the fee on behalf of harvesters is not supported by its own financial contribution decision.

Regarding fiber exchange agreements, Canadian parties argue that they merely provide that the buyer is paying the consideration owed to the seller in goods rather than in cash; they do not alter the total amount of consideration paid for the log and therefore are not relevant to a pass-through analysis.

Canadian parties also contend that appurtenancy and local processing requires do not affect the extent to which a subsidy is passed through as such requirements do not increase the amount of logs harvested or lower the market price of logs. Even if such requirements did affect volume and prices, they argue it would not excuse the Department from determining the extent to which the requirements affect log prices in arm's-length transactions between buyers and sellers.

They also argue that, with respect to British Columbia, the Department erred in concluding that appurtenancy and local processing requirements existed in the province during the POR. Specifically, the GOBC claims it provided the Department with numerous actual and sample agreements that contain no such clauses. It also claims that the Department acknowledged the infeasibility of requiring the provincial government to supply 10,000 plus agreements active during the POR. The GOBC further argues that it eliminated virtually all government mandates concerning tenureholder disposition of logs pursuant to the Forest Revitalization Amendment Act on November 4, 2003.

The GOBC also argues that a substantial volume of their pass-through analysis is attributable to sawmill-to-sawmill transactions. The GOBC contends that there is logical basis for the Department not to include these sawmill-to-sawmill transactions in a pass-through analysis.

With respect to log purchase agreements that the Department identified as one of its five factors, Canadian parties claim that the Department neglected to provide any specific indication of what particular terms, beyond those with respect to the payment of stumpage, it believes permits the presumption of full pass-through. As the Department has failed to explain how the existence of log purchase agreements in stumpage contracts renders a transaction ineligible for a pass-through analysis, the Department's reliance on this factor is unreasonable and unsupported by factual evidence.

Concerning wood supply agreements, Canadian parties argue that provincial regulations regarding such agreements do not dictate the material terms of the log sale agreement. They further argue that a regulatory vacuum is not a prerequisite for arm's-length transactions and that

were it so, no sale could ever be found to be at arm's-length.

On this basis, Canadian parties argue that the Department should accept their claims that alleged subsidies on certain log volumes, as identified by their respective questionnaire responses, did not pass-through to the purchasing sawmills and therefore should not be included in the aggregate benefit calculations.

Petitioners argue that Canadian parties' arguments concerning who pays the stumpage illustrates their confusion on the subject of whether a pass-through analysis is required. Canadian parties' assertion that the identity of the log purchaser does not alter the value of the logs at issue ignores, according to petitioners, the fact the purchaser's identity informs the question of whether there has truly been a "sale" to an independent harvester such that a pass-through analysis is warranted. Petitioners claim that the GOA's arguments on this issue illustrates this point. Citing the GOA's reference in its case brief to a sample log purchase contract, petitioners point out that the GOA indicates that the contract has two components; a price for the log itself and a logging cost. Petitioners argue that if the price for the log itself is paid directly to the province, there is no real "sale" of the log by the harvester to the sawmill; rather, the harvest is being paid for its logging services while the sawmill is purchasing the log directly from the province. Petitioners contend this fact pattern, as well as others that are similar to it, obviate the need for a pass-through analysis.

Department's Position: As explained below, none of the aggregate claims made by Canadian parties were presented in a manner that would enable the Department to conduct the competitive benefit portion of the pass-through analysis. For that reason alone, those pass-through claims must be rejected. Thus, while we disagree with the Canadian parties' argument that the criteria of our arm's-length test are inappropriate in determining whether the subsidy on a Crown log passes through to the unaffiliated buyer, those criteria do not cause the Department to reject any pass-through claims. Similarly, we have repeatedly rejected pass-through claims with respect to transactions in which the sawmill pays the Crown stumpage fees for logs harvested by independent harvesters.

It is clear from the record of this proceeding that Canadian parties (namely the provincial governments that made aggregate pass-through claims) failed to provide the Department with the data necessary for us to conduct our competitive benefit analysis. For example, in spite of the Department's instructions, Canadian parties largely failed to provide the transaction-specific data requested by the Department.[20] Submission of the data in this form is required in order to identify those sales in which the sawmill paid the stumpage fee directly to the Crown. In addition, as explained in further detail in **Comments 4** and **5**, as the pass-through analysis is geared toward determining whether the subsidy passed through to the individual buyer of the log, the competitive benefit test, by its very nature, requires transaction-specific data.

Further, we find Canadian parties' arguments concerning transactions in which the sawmill pays the Crown stumpage fees for logs harvested by independent harvesters are misplaced. The identity of the party that pays the stumpage fee is crucial in determining whether a pass-through analysis is warranted. As explained in the Preliminary Results, in instances in

[20] As stated in **Comment 3**, the exceptions were the OLMA and Tembec, which provided transaction-specific data for various sawmills.

which the sawmill pays the Crown stumpage fees for logs acquired from a so-called independent harvester, any subsidy benefits would go directly to the sawmill, just as if the mill were harvesting standing timber from its own tenure and contracting out the harvesting operations. See 70 FR at 33093.

We further disagree with Canadian parties' argument that our finding that the administered programs constitute a financial contribution undermines our contention that a pass-through analysis is not necessary when sawmills pay the stumpage fee directly to the Crown. As clearly stated in the Preliminary Results, we found that the provincial stumpage programs constitute a financial contribution in the form of a good (i.e., timber) that provincial governments provide to "lumber producers" and not, as Canadian parties contend, to "timber harvesters." See 70 FR at 33098. As such, our findings concerning financial contribution are completely consistent with our findings on the pass-through issue (i.e., the recipient of the financial contribution and the benefit are the same).

Comment 5: Whether Company-Specific Details are Required for the Department to Conduct a Pass-through Analysis

The GOA argues that the Department unfairly refused to deduct TDA log sale volumes from the numerator of the benefit calculation on the grounds that the province had failed to provide "necessary company-specific data" and that it had not made reasonable efforts to obtain these data. See Preliminary Results 70 FR at 33094. The GOA claims that the data to which the Department referred were data on whether the TDA contracts were at arm's-length and data on whether the TDA sales were in cash. Id. at 70 FR 33093 - 33094. The GOA argues that the Department has verified multiple times that the TDA process only involves cash sales and does not involve fiber exchanges and that the TDA sales are only permitted between unrelated parties that operate at arm's-length. The GOA further argues that such issues pertaining to the TDA log sale volumes had already been vetted by TDA consultants. In light of these facts, the GOA contends that it was unnecessary for the Department to require the GOA to undertake the onerous task of determining which contracts included in the TDA sales data did or did not include submission authority clauses.

The GOA also asserts that the Department was wrong to reject from its pass-through analysis the additional log sale volumes included in the PricewaterhouseCoopers study.[21] They argue that the fact that the data supplied by PricewaterhouseCoopers represented only a subset of the total volume of logs covered by the GOA's pass-through claim, is not a reasonable basis for rejection. At the least, they argue the volumes from the PricewaterhouseCoopers subset should be removed from the numerator of the benefit calculation. The GOA further contends that the PricewaterhouseCoopers data had already been vetted to ensure that the included sales were at arm's-length. It also argues "submission authority" is irrelevant to any pass-through analysis and, thus, it was not necessary to remove such sales from the data subset. In addition, the GOA asserts that there is no need for it to provide value data on the transactions at issue because the fact that the sales were arm's-length is all the Department needs to find that no subsidies passed through.

[21] The GOA explains that it submitted PricewaterhouseCoopers data after the Department requested that the GOA base its pass-through claim on data that was independent of the sales volumes included in the TDA survey.

On this basis, the GOA argues that the Department should find sufficient its claims that it does not have and has no reason to collect transaction-specific data on the log transactions included in its pass-through claim.

Department's Position: As explained in **Comments 4** and **5**, our pass-through analysis requires more than simply establishing that the transactions in question were conducted at arm's-length between unrelated parties. In order to determine whether the subsidy on the log passed through to the buyer, the Department must also conduct the competitive benefit analysis.

With respect to the second part of our pass-through analysis, the competitive benefit test, we disagree with the GOA's contention that company-specific/transaction-specific data are not necessary in order to complete the analysis. In order to conduct the competitive benefit test, we required specific information on each transaction for which Canadian parties requested a pass-through analysis, which necessitated that they provide more than just aggregate data and more than self-selected sample data. This approach follows from the very nature of the competitive benefit test, an analysis in which the price of subsidized logs sold in individual transactions are compared to a market-determined benchmark price. Specifically, we required the volume and the unit price for each of the log sales for which Canadian parties sought a pass-through analysis - so that we could compare these sales to our benchmark price. Furthermore, to ensure that the competitive benefit test is accurate and meaningful, we required specific data (e.g., species, size, grade, quality, discounts, deliver terms, and payment terms) on the logs sold in the transactions under analysis. These data were necessary in order to further ensure that we conducted our competitive benefit test on an "apples-to-apples" basis relative to our benchmark price.

In the case of the GOA's pass-through claim, we provided the GOA with several opportunities to supply the detailed information we required. In response to the Department's first supplemental questionnaire, the GOA stated that "Alberta has no means on its own to respond to the Department's pass-through questions aside from the independent, private sector TDA study, which provides very reliable data." See GOA's Supplemental Questionnaire Response dated April 8, 2005, AB Volume 1 at page 45. Given that the TDA study did not identify the necessary pass-through information (e.g., indications of signing authority on a transaction-specific basis) and that the GOA was unable to obtain this data on a transaction-specific basis, the Department subsequently requested that the GOA provide the same type of company-specific information that was submitted by the GOA in the context of the WTO Section 129 Proceeding, including volume, value, species, corporate affiliations and an indication of whether the transaction was subject to a signing authority agreement. However, the GOA reported that they would not expend the necessary resources required to provide this information for this review. See the GOA's Supplemental Questionnaire Response dated May 2, 2005 at pages 1-2. Instead, the GOA provided a limited update of PwC survey responses from the investigation which lacked any data on the value of the reported transactions and lacked the identification of whether transactions were subject to a submission authority agreement. On November 2, 2005, we issued yet another supplemental questionnaire to Canadian parties in which we gave them the opportunity to respond to the pass-through appendix included in the Department's September 8, 2004 initial questionnaire. The GOA responded that the Department's request was unreasonable and that it had already provided the data necessary for the Department to conduct an analysis that would result in no pass-through. See the GOA's November 10, 2005 Supplemental Questionnaire

Response. Thus, in all instances, the GOA refused to provided the necessary company-specific information we requested.

In this respect, the GOBC also failed to submit the transaction-specific data needed for our pass-through analysis. In its initial questionnaire, the GOBC stated that it was not able to obtain the information contained in the pass-through appendix of the Department's September 8, 2004 initial Questionnaire. See BC-XIV-8 of the GOBC's November 22, 2004 Questionnaire Response. The GOBC again indicated its inability to provide the transaction-specific data in its November 10, 2005 supplemental Questionnaire Response. Instead, the GOBC asserts that the data in its questionnaire responses coupled with the information in the PricewaterhouseCoopers study supplied by the BCLTC is sufficient for the Department to accept the province's aggregate pass-through claim.

We find that Canadian parties' refusal to provide the requested data prevents the Department from conducting its pass-through analysis. Furthermore, the Department finds that acceptance of Canadian parties' pass-through claims would enable responding parties to effectively control the outcome of the pass-through analysis. Under Canadian parties' theory, if responding parties choose not to provide necessary information or choose to submit a pass-through claim based on aggregate or self-selected data, the Department must either presume no pass-through or conduct the analysis using the data that responding parties unilaterally decided to submit. Thus, pursuant to Canadian parties' reasoning, once a responding party makes a pass-through claim, it would be in a position to simply refuse to provide any evidence to substantiate the extent to which a pass-through occurred or present its claim in a self-serving manner. For these reasons, we disagree with Canadian parties' contention that, due to the difficulties involved in collecting transaction-specific data and based on the purported accuracy of its commissioned studies, the Department should accept their aggregate claims. Therefore, we continue to find that, in order for the Department to properly evaluate pass-through claims, Canadian parties are required to submit transaction-specific data, in the manner requested by the Department.

Comment 6: Benchmark to Be Used When Conducting a Pass-through Analysis

Canadian parties contend that for the few transactions from Ontario and Manitoba for which it conducted a pass-through analysis, the Department improperly relied on benchmarks outside the jurisdiction of provision of the alleged subsidy. Specifically, for Ontario and Manitoba, they claim the Department improperly relied on Maritimes data. They argue these data are unrepresentative of log markets in the respective provinces for the same reasons that a Maritimes stumpage benchmark is not appropriate. Canadian parties argue that the Department's rationale for using benchmarks outside of the respective province is contrary to law and not supported by the facts of the case. For further discussion of Canadian parties' position on this subject, see **Comment 20**. Canadian parties therefore argue that the Department should select in-province benchmarks when conducting its pass-through analysis for Ontario, Alberta, and British Columbia, as it did in the WTO Section 129 proceeding. In the case of the pass-through data pertaining to Manitoba, Canadian parties argue that the Department should use a weighted average of the import and domestic log prices from provinces with boreal forests (e.g., Quebec, Ontario, Manitoba, Saskatchewan, and Alberta). It notes this approach to Manitoba has been sanctioned by a NAFTA Panel.

The GOBC argues that the record contains B.C. log price data reflecting prices for Crown and private log purchase transactions by 41 mills during the POR that the Department could use for purposes of its pass-through analysis should it adopt the benchmark it applied in its Section 129 determination. See PricewaterhouseCoopers 2005 Report on B.C. Interior Purchased Logs at Tab A, which was included in the GOBC's February 25, 2005 factual submission.

Petitioners argue that the Department correctly rejected the use of in-province prices when deriving the benchmark used in its pass-through calculations because such prices are not independent of the government prices that the Department seeks to examine. In the case of Ontario, petitioners note that derived log prices consisting of adjusted private stumpage prices from the Maritimes plus harvest and haul costs from Ontario are higher than the reported Crown-origin log prices included in Ontario's pass-through claim. Petitioners contend this comparison demonstrates that, in most cases, the entire stumpage subsidy benefit would pass-through to the purchaser of the log.

Department's Position: As explained in **Comment 17**, we continue to find that the Ontario log and standing timber markets are linked and that subsidies found to exist in Ontario's standing timber market effectively determine the prices that prevail in Ontario's log markets. See also, Preliminary Results, 70 FR at 33096. Furthermore, as explained in **Comments 20** and **21**, we continue to find that private stumpage prices in the Maritimes constitute a valid, in-country price within the meaning of section 771(5)(E) of the Act. We therefore disagree with the GOO that the Department should use a benchmark consisting of imported and in-province log prices when conducting its competitive benefit test.

Regarding Manitoba, the GOM did not submit any log pricing data on the record of this review. Thus, given that the GOM did not provide the Department with any benchmark data (e.g., in-province private log prices), the Department had no choice but to look outside the province for a benchmark when conducting its competitive benefit test. Similar to Ontario, in conducting the competitive benefit test, we selected as a our benchmark a constructed log price that consisted of Maritime private stumpage prices plus the various, related costs reported by the GOM.[22] See Preliminary Results, 70 FR at 33096.

We further disagree with the GOBC's argument that the Department should conduct a competitive benefit test on the limited, self-selected data contained in the PricewaterhouseCoopers Report using a benchmark consisting of imported and domestic log prices. As explained in **Comments 4** and **5**, the Department requires transaction-specific data at the company level in order for it to be able to conduct the arm's-length and competitive benefit tests that are part of its pass-through analysis. Furthermore, as discussed in **Comment 5**, to accept anything other than transaction-specific data (i.e., aggregate or self-selected data) effectively cedes control of our pass-through analysis to the party making the pass-through claim. On this basis, we reject the GOBC's request for the Department to conduct a pass-through analysis based on the limited data in the PricewaterhouseCoopers Report which, in turn, renders moot the GOBC's arguments concerning the benchmark to be applied as part of that analysis.

---

[22] Because the GOM did not report certain harvesting costs and hauling costs, we used, where necessary, harvesting and hauling costs placed on the record by the GOO as surrogates.

Comment 7: Whether the Department Rejected The GOO's Pass-through Claim Based on an Incorrect Understanding of Record Evidence

The GOO contends that in rejecting its pass-through claim, the Department relied on faulty assumptions concerning the record evidence. The GOO explains that in the Preliminary Results, the Department improperly asserted that Ontario's pass-through submissions lacked certifications of non-affiliation from certain Ontario mills. The GOO claims that it plainly indicated to the Department that the remaining certifications were being provided in the submission of the Ontario industry that pertained to the pass-through issue. See the GOO's November 22, 20004 Questionnaire, Volume 1 at ON-237. Further, the GOO argues that the Department wrongly stated in its Preliminary Results that Ontario did not delineate the transactions in which the mills paid the stumpage fees directly to the Crown. See 70 FR 33095. The GOO argues it specifically provided the Department with a list of mills acting as agents of the Crown for the transactions Ontario identified as sales between unaffiliated third parties. See the GOO's November 22, 2004 Questionnaire, Volume 1 at ON-238.

Petitioners did not comment on this issue.

Department's Position: Upon further review, we agree with the GOO that we incorrectly asserted that Ontario's pass-through submissions lacked certifications of non-affiliation from certain Ontario mills. In addition to the certifications in the GOO's submission, the submission from the Ontario Forest Industries Association (OFIA), the Ontario Lumber Manufacturers Association (OLMA) (collectively, OFIA/OLMA), and Tembec Inc. contains additional certifications that we inadvertently overlooked at the time of the Preliminary Results. See the April 28, 2005 submission from the OLMA/OFIA/Tembec.

Regarding the GOO's contention that it delineated the transactions included in its pass-through claim in which the sawmill paid the stumpage fee, we agree, in part. Upon further examination of the transactions included in the GOO's pass-through claim, we find that we incorrectly concluded that certain sawmills paid stumpage fees to the GOO for Crown-origin logs when, in fact, the sawmills paid unaffiliated, independent harvesters. See Exhibit ON-PASS-1 and ON-PASS-2 of the GOO's November 22, 2004 Questionnaire Response. Thus, for transactions from those sawmills that were conducted at arm's-length and contained the proper certifications, we conducted the competitive benefit test pursuant to the methodology described in the Preliminary Results. See 70 FR at 33095 - 33096; see also our Final Calculations Memorandum. However, for the reasons explained in **Comment 4**, we continue to find that a pass-through analysis is not warranted in instances in which the sawmills pays the Crown stumpage fees for logs acquired from "independent harvesters" because any subsidy benefits would go directly to the sawmill thereby negating the need for a pass-through analysis.

Comment 8: Whether the Department's November 2, 2005, Supplemental Questionnaire Imposed Unreasonable Burdens on Canadian Parties

In their November 10, 2005, Questionnaire Response, and in their comments from November 16 and November 18, 2005, Canadian parties criticize the Department for waiting until nearly the end of the second review to issue its November 2, 2005, Supplemental Questionnaire in

which the Department instructed Canadian parties to respond to the Pass-Through Appendix.[23] Canadian parties further complain that it was unreasonable of the Department to expect them to be able to respond to the supplemental questionnaire in the short period of time allotted.

Canadian parties further contend that the questions asked in the November 2, 2005, Supplemental Questionnaire are similar to the questions asked in the Department's September 8, 2004, Initial Questionnaire. They also argue that the issuance of the supplemental questionnaire was not necessary, because the provinces have already indicated that the data requested in the Pass-Though Appendix cannot be answered under any circumstances, or because the Provincial governments and industry associations have, in prior submissions, supplied to the Department detailed data that readily permit the Department to perform the legally required pass-through analysis. See e.g., section XII of the GOA's November 22, 2005, Questionnaire Response, page BC-XIV-2 and Exhibit BC-S-133 of the GOBC's November 22, 2005, Questionnaire Response, and the Tab 2 of the PricewaterhouseCoopers report submitted by the BCLTC on February 28, 2005.

Regarding Canadian parties' claim that the Department imposed an unreasonable time-frame in its November 2, 2005, supplemental questionnaire, petitioners point out that Canadian parties previously received the same questions in the Department's September 8, 2005, Initial Questionnaire, and that the Department had concluded in the Preliminary Results that the pass-through information Canadian parties previously submitted was inadequate. Therefore, petitioners argue that the Department's issuance of another supplemental questionnaire cannot have taken Canadian parties by surprise. Regardless, petitioners contend that, as a legal matter, it is well established under U.S. law that "the party in possession of the necessary information" bears the burden of production. See Zenith Elecs. Corp v. United States, 988 F.2d 1572, 1583 (Federal Circuit 1993); accord Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1336 (Federal Circuit 2002).

In response to Canadian parties' contention that the requisite data have already been provided, petitioners argue that Canadian parties' arguments are unavailing, as the Department has already analyzed their aggregate pass-through claims and found them lacking, specifically because the aggregate and self-selected information provided did not allow for an informed appraisal of the transactions. Petitioners argue that since Canadian parties have provided no additional information, there is no basis for the Department to revisit its determination in the Preliminary Results.

Department's Position: In their November 10, 2005, response to our supplemental questionnaire, Canadian parties reiterated their previous refusal to respond to the types of questions solicited in the Pass-Through Appendix. For example in the November 10, 2005, submission, the GOBC states:

> As British Columbia stated in its initial questionnaire response at the outset of this review, it would be enormously burdensome - and practically impossible - to attempt to manage the information-gathering exercise contemplated by the Pass-Through Appendix."

---

[23] The Pass-Through Appendix was included as part of the Department's September 8, 2004 Initial Questionnaire.

See page 3 of the Canadian Parties' November 10 Supplemental Questionnaire Response, quoting page BC-XIV-8 of the GOBC's November 22, 2004, Questionnaire Response. In the case of Alberta, as explained in **Comment 5**, throughout this proceeding we provided the GOA with multiple opportunities to supply the information we required for our pass-through analysis (i.e., transaction/company-specific data similar to those solicited in the Pass-Through Appendix). In response to these requests, the GOA indicated that it was unable to respond with anything other than the private sector TDA study it had previously submitted. Thus, in light of Canadian parties' responses to our questions on the pass-through issue, we do not agree that the Department acted unreasonably when it issued its November 2, 2005, supplemental questionnaire. Rather, in issuing the supplemental questionnaire, the Department provided Canadian parties with yet another opportunity to respond to questions they had previously refused to answer.

Furthermore, we disagree with Canadian parties' contention that it was unnecessary for them to provide the type of transaction/company-specific data requested in the Pass-Through Appendix because the data in their respective aggregate claims are sufficient to grant their pass-through claims. As explained in **Comment 5**, transaction/company-specific data are required in order for the Department to conduct the competitive benefit test that is part of our pass-through analysis. Further, as explained in **Comment 5**, the acceptance of Canadian parties' pass-through claims based on aggregate or self-selected data would effectively enable them to control the outcome of the analysis, which, in turn, would place the Department, as the administering authority, in an untenable position.

2. Denominator

Comment 9: Attribution of Stumpage Benefit

In the Preliminary Results, the Department limited its denominator to only those products that result from the softwood lumber manufacturing process (e.g., softwood lumber and by-products from primary mills as well as in-scope lumber produced by remanufacturers). See 70 FR at 33091-33092. The GOC argues that the approach in the Preliminary Results ignores the attribution methodology established in 19 CFR 351.525(b)(5)(ii).

The GOC notes that in the case of an input subsidy, 19 CFR 351.525(b)(5)(ii) requires that the Department calculate an ad valorem subsidy rate by dividing the amount of the benefit allocated to the period of review by the sales of both the input and downstream products produced by the firm. Thus, the GOC contends that in a proceeding involving alleged stumpage subsidies, the law requires that any benefit to the subsidized softwood log be attributed to all of the downstream products produced from that log. The GOC asserts such a denominator would include (1) any and all softwood products produced by remanufacturers using subject lumber regardless of whether the resulting output is subject to the order and (2) pulp products that are the immediate downstream products of softwood chips that are produced by sawmills.

The GOC also argues that the Department's attribution methodology conflicts with its practice. It notes that in Industrial Phosphoric Acid From Israel: Final Results of Countervailing Duty Administrative Review, 63 FR 13626 at 13630 (March 20, 1998) (IPA from Israel) the Department attributed grants for the production of inputs to subject merchandise over sales of the input as well as all downstream products that could be produced from the input. See also, Certain

Pasta From Italy: Final Results of Countervailing Duty Administrative Review, 63 FR 43905 at 43906 (August 17, 1998) (Pasta from Italy).

Lastly, the GOC takes issue with what it claims is an attribution methodology that is tied to a production process (i.e., a denominator that is limited to those products produced during the softwood lumber manufacturing process). The GOC argues that 19 CFR 351.525(b) does not allow for a subsidy to be tied to a production process and that the Department may not deviate from attribution methods specifically enumerated in its regulations. Further, the GOC contends that the Department has not and cannot explain how a stumpage subsidy could benefit from the lumber production process or, in the case of remanufacturers, how the in-scope products produced from allegedly subsidized lumber would benefit from a stumpage subsidy while all non-scope products produced from those same inputs would not benefit.

In their rebuttal comments, petitioners take issue with the GOC's contention that the inclusion of in-scope lumber produced by remanufacturers constitutes an implicit assumption that the subsidy benefit is attributable to downstream products produced from softwood lumber. Rather, petitioners argue that the Department properly included the value of all shipments of in-scope lumber in the denominator (i.e., lumber from both primary and remanufacturing producers) because all in-scope merchandise is by definition subject to the application of the countervailing duty. In this way, argue petitioners, the Department ensures that the average countervailing duty assessed on shipments of softwood lumber, including those individual pieces of lumber that may not receive any subsidy at all (i.e., lumber produced from private-origin logs) is "equal to the amount of the net countervailable subsidy." See section 701(a)(2)(B) of the Act. Whether the subsidy benefit is attributable to the primary lumber product or the remanufactured lumber product, or is shared between them, the aggregate CVD rate is the same and the proper amount of duty is assessed by using all sales of subject merchandise. Petitioners argue the WTO Appellate Body supports their claim. See United States - Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, WT/DS257/AB/R at 167

Petitioners further argue that the Department's attribution methodology in the Preliminary Results does not conflict with its approach in IPA from Israel. Petitioners explain that in IPA from Israel, the Department determined that the grants at issue were tied to particular products and, thus, attributed the benefit to sales of those products as well as to downstream products manufactured by the company from the products to which the grants were tied. See 62 FR at 47648. In contrast, the petitioners point out that the Department never found stumpage subsidies to be tied to any particular product, but rather to a production process. See Certain Softwood Lumber Products from Canada, 57 FR 22570, 22576 (May 28, 1992) (Lumber III). See also, Certain Softwood Lumber Products from Canada, No. USA-CDA-2002-1904-03 (NAFTA Panel Decision (2003)) at 81.

Department's Position: The GOC's comments on this issue are the same as those addressed in the first administrative review. See Comment 16 of the Final Results of 1st Review Decision Memorandum. First, we note that the precedents to which the GOC cites (e.g., IPA from Israel) relate to company-specific proceedings involving tied subsidies. In contrast, we are conducting this administrative review on an aggregate basis, in which we have not found the subsidy to be tied to an input product.

Second, as explained in the previous review, in all net subsidy rate calculations, the

denominator is determined by what is captured in the numerator (subsidy benefit). To determine the numerator in this proceeding, the Department examined whether Canadian provinces subsidized the production of softwood lumber in Canada by selling standing timber (stumpage) for less than adequate remuneration, as described in 19 CFR 351.511. As such, the Department used only the volume of Crown logs that entered, and were actually processed in, lumber-producing sawmills during the POR. We did not also examine whether Canada's various stumpage programs confer countervailable benefits on other wood products. Thus, for example, the Department has not included in the numerator calculation volumes of Crown logs harvested and processed in pulp mills, Crown logs that were harvested but never processed during the POR, or Crown logs processed by whole log chippers during the POR. Id.

Because we calculated the numerator in the manner described above, we selected a denominator that corresponded to all products produced during the softwood lumber manufacturing process from logs that entered, and were processed by, sawmills during the POR. The selection of the denominator is thus a logical result of the numerator calculation, as it must be in order to properly calculate the subsidy rate under the aggregate methodology employed in this administrative review.

Furthermore, we continue to disagree with the GOC's claim that our approach constitutes a methodology that ties the subsidy to a production process in violation of the Department's attribution regulations. As explained in prior proceedings, we have not reached a determination that the subsidy is "tied" to an input product, within the meaning of the regulations. Rather, because we are conducting this review on an aggregate basis, we have merely limited our numerator calculation to the subsidized products that are used to produce the subject merchandise and then selected a corresponding denominator, i.e., the output of the lumber manufacturing process. This "matching" of the numerator and denominator is essential in order to calculate an accurate country-wide ad valorem countervailing duty rate on Canadian lumber exported to the United States. Id.

Based on the approach described above, we have included in our denominator all softwood products produced by sawmills during the softwood lumber manufacturing process from logs that entered, and were processed by, sawmills during the POR. In addition, because we are collecting duties based on the ad valorem value of subject merchandise at the final-mill and because we do want to use a denominator that would result in the over-collection of duties, we have also included in our denominator all in-scope merchandise produced by remanufacturers. As explained in the Preliminary Results, we would have included any co-products produced by remanufacturers during the softwood lumber production process. The GOC, however, did not provide breakouts of the softwood co-products produced by remanufacturers. See 70 FR at 33092.

The GOC asserts that there are also remanufacturers that use in-scope lumber in their production process to make other non-scope softwood products. However, these items (e.g., chemically treated wood in the rough, fiberboard, etc.) are not products that are produced during the production of softwood lumber, and thus do not correspond to our numerator calculation. Thus, consistent with our methodology in the investigation and first administrative review, we are not including these additional remanufactured products in the denominator of the net subsidy calculation. See Comment 16 of the Final Results of 1st Review Decision Memorandum.

C. Provincial Stumpage Program Comments

1. Scope and Specificity

Comment 10: Scope of the Order

Canadian parties argue that, in its Preliminary Results, the Department failed to exclude certain products from the scope of the order (i.e., Maritime lumber that is remanufactured in other Canadian provinces and certain recycled wood products such as used railway ties and barnboard) despite the fact that such products cannot benefit from the alleged subsidies in this case. Canadian parties assert that the Department should correct this omission in the final results and exclude these products from the scope of the order.

Canadian parties maintain that the Department has previously determined that unsubsidized Maritimes-origin lumber that is reprocessed in another Province prior to exportation to the United States is excluded from the scope of the CVD order. Canadian parties point out that the Department issued this ruling in response to the finding of the NAFTA panel that the Department had no legal basis for imposing countervailing duties on reprocessed Maritime lumber. Moreover, Canadian parties point out that in the judicial review of the underlying investigation segment of this proceeding, the Department agreed with the NAFTA panel that used railroad ties or barnboard or other "old wood" from demolished buildings should be excluded from the scope, provided that the products were more than ten years old.

Canadian parties argue that the Department's decision not to exclude these products from the scope is unsupported by the facts and is not in accordance with the law. Canadian parties urge the Department to correct this error in the final results and to instruct CBP to refund all cash deposits that have been made during the POR on entries of these products.

Petitioners counter that positions on the Department's remand determinations made in response to a NAFTA panel decision have no effect unless and until the position is approved by the panel and the panel proceeding is completed. Petitioners argue that, pursuant to section 516A of the Act, subject merchandise that enters the United States before the completion of the effective date of the final panel decision is to be liquidated in accordance with the Department's original determination. Therefore, argue petitioners, there is no authority under U.S. law for the Department to modify the scope of the order for these final results.

Department's Position: We agree with petitioners that scope clarifications in the Department's remand determinations made in response to a NAFTA panel decision do not take effect unless and until the positions are approved by the panel and the panel proceeding is completed. Therefore, for purposes of these final results, we continue to find that certain products, such as Maritime lumber that is remanufactured in other Canadian provinces and certain recycled wood products, such as used railway ties and barnboard, are within the scope of the CVD order.

Comment 11: Whether the Provincial Stumpage Programs Are Specific

The OFIA/OLMA and Tembec Inc. argue that the record evidence does not support the Department's preliminary finding that stumpage programs were used by a single industry or limited group of industries. Rather, they assert, record evidence in this review demonstrates that provincial stumpage programs are used by a wide range of industries. Further, the OFIA/OLMA

argue that if the Department were to properly apply the de facto specificity factors enumerated in the statute, the Department would find that stumpage is not specific to an industry or group of industries.

Moreover, the OFIA/OLMA argue that the NAFTA Panel's August 13, 2003, decision sustaining the Department's specificity findings in the investigation provides no support for the Department's specificity finding in the instant review. They argue that this record contains new survey information that shows there are thousands of users in dozens of different industries.

Petitioners counter that stumpage subsidies are de jure specific to producers of subject merchandise. Furthermore, petitioners argue that the Department's determination in the investigation, that stumpage subsidy programs were specific because a limited number of certain industries utilized the subsidies, has been upheld by NAFTA and WTO. Petitioners assert that, as no new evidence or changed circumstances have been presented to challenge the Department's determination in the investigation, and because the OFIA/OLMA have identified no legal basis for the Department to change its practice, the Department should disregard the OFIA/OLMA's arguments in this review concerning specificity.

Department's Position: In the Preliminary Results and in Final Determination, the Department determined that provincial stumpage subsidy programs were used by a "limited number of certain enterprises" and, thus, were specific in accordance with section 771(5A)(D)(iii)(I) of the Act. Particularly, the Department found that stumpage subsidy programs were used by a single group of industries, comprised of pulp and paper mills, and the saw mills and remanufacturers that produce the subject merchandise. No new evidence or changed circumstances have been presented to challenge the Department's specificity determination. Therefore, we continue to determine that no information in the record of this review warrants a change to our finding that stumpage subsidy programs were used by a single group of industries and are, therefore, specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Contrary to the OFIA/OLMA's claim, the language of the statute is clear. Section 771(5A)(D)(iii) of the Act (as well as the SAA and the CVD Regulations) clearly states that the Department will find de facto specificity if one or more of the factors listed in section 771(5A)(D)(iii) of the Act exists. Indeed, 19 CFR351.502(a) states that if a single factor warrants a finding of specificity, the Department will not undertake further analysis. Therefore, the Department is not required to address the other factors listed in section 771(5A)(D)(iii) of the Act. For these final results, we continue to find that the stumpage programs are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

2. Whether Private Stumpage Prices from Inside the Respective Subject Provinces Are Viable Benchmarks [24]

a. Alberta

Comment 12: Whether Timber Damage Assessment Data May Serve as a Benchmark in

[24] The GOS and GOM did not submit any private stumpage prices for consideration by the Department. Therefore, these provinces are not addressed in this section of the decision memorandum.

Alberta

The GOA argues that in the Preliminary Results, the Department incorrectly rejected timber damage assessment (TDA) data as an Alberta benchmark. The GOA describes TDA prices as the arm's-length negotiated determination of the value of mature standing timber in Alberta developed by private parties with opposing interests. The GOA argues that the NAFTA panel that considered countervailing duty allegations in this case noted that the stumpage values calculated from the TDA process result from "what is, in effect, an arm's length negotiation." Certain Softwood Lumber Products from Canada, USA-CDA-2002-1904-03, Panel Decision (June 7, 2004) at 24. The GOA contests the Department's decision in the Preliminary Results, which stated that TDA prices could not be used because the Department could not determine which of the log sales used to derive the stumpage values were from private sources and which sales were from Crown sources. See 70 FR at 33099. Specifically, the GOA argues that TDA represents a completely arm's length assessment of the value of mature standing Crown timber in Alberta and the GOA asserts that source of the log is irrelevant because the price data in the TDA survey represent arm's length, cash only sales between unrelated parties. As a result, the GOA asserts that TDA is a valid benchmark for assessing the value of Alberta crown stumpage and should be used in the final results of this review.

Petitioners contest the GOA's assertion that the TDA values represent market-determined prices for timber, arguing that the Department has previously found that the TDA value is not used as a benchmark to price actual sales of timber used for lumber production. See e.g., Preliminary Results of 1st Review, 69 FR at 33214 and 33232. Instead, petitioners assert that the TDA is used only in limited situations where the province requires non-lumber producers to compensate FMA holders, regardless of whether the timber that is damaged is used for lumber or any other commercial purpose. Petitioners state that the determination of the value to be paid as compensation for timber damage by opposing interests is informative of what would be adequate compensation to make the Forest Management Agreement (FMA) holder whole given the terms and conditions under which the licensee could have obtained the timber through its FMA had the damage not occurred. Petitioners also assert that the TDA prices are determined by the Alberta stumpage program itself, therefore, they cannot be used to determine the extent to which the Alberta program confers a benefit. Furthermore, petitioners argue that the GOA failed to rebut the Department's finding that the allegedly arm's-length TDA transactions are effectively determined by government timber sales.

Department's Position: In the investigation and the prior administrative review, the Department determined that the TDA prices do not represent actual market-determined prices and, thus, are inadequate as benchmarks to measure the adequacy of remuneration for Crown provided stumpage in Alberta. The parties have not submitted any new evidence on the record of this administrative review the would lead us to alter our prior decision. As we previously stated, the Department disagrees with the GOA's assertion that the arm's length nature of the TDA transactions obviates the Department's need to know whether the logs were sourced from private or Crown sources. The source of the logs and additional information, such as the respective volume and value of the TDA logs sales in Alberta, is highly relevant for determining whether Crown prices affect private prices in the province. As stated in the investigation, "where the

market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price." See the "There Are No Market-based Internal Canadian Benchmarks"section of the Final Determination Decision Memorandum; see also the "Private, Provincial, and CTP and CTL Prices as Benchmark section of that same decision memorandum.

Despite the lack of specific information regarding transactions from private lands contained in the TDA values, the GOA has reported that only 203,041 m^3 of timber were harvested from private lands. See GOA's November 22, 2004 questionnaire response at VIII-1 and Exhibit AB-S-1. Therefore, even if the entire volume of private transactions were included in the TDA values, the private transactions would comprise only about two percent of the total provincial harvest volume for the POR. As a result, the private transactions are a negligible proportion of the overall harvest and, as such, are overwhelmingly dominated by the Crown provided timber. Although the TDA survey data has been updated for the POR, the TDA survey methodology has not changed from that which was reported in the investigation and the prior review. See GOA's November 22, 2004 Questionnaire Response at Exhibit AB-S-7 and AB-S-76. Based on the fact that no new information has been presented that would warrant a change in our position and for the reasons outlined in the prior review, we find that the TDA values cannot be used to determine the amount by which the Alberta stumpage program confers a benefit. See Final Results of 1st Review Decision Memorandum at Comment 19. Accordingly, we continue to reject the TDA values as a provincial benchmark for Alberta in this administrative review.

b. British Columbia

Comment 13: Whether the BCTS Auction Sales Are Distorted or Suppressed by Crown Stumpage Rates

The GOBC argues that the fact that participants in the BCTS auctions included both Crown tenureholders with processing facilities as well as market loggers who resold the logs to mills is irrelevant to any analysis of whether the BCTS auction prices are distorted. The Department's regulations do not preclude the use of competitively-run government auctions merely because the logs are sold to large customers in the market. The GOBC claims that the demand for timber is a derived demand, driven largely by the prices that can be obtained for the downstream products, and argues that this is the reason why BCTS bidders consider the price at which they can sell the logs in determining how to bid for standing timber. Thus, this process reflects normal business behavior in a well-functioning market, and is not an indication of market distortion.

The GOBC also argues that the Department's conclusion that unused AAC distorts the price of stumpage from other sources (e.g., from private landowners or through auctions of Crown lands) assumes that provinces set the administered stumpage charge for the unharvested timber below the level of market-determined stumpage, i.e., the level that is less than 100 percent of the economic rent, which is the difference between the market price of logs and the marginal cost of harvesting the stand. The GOBC further contends that the Department assumes that if a province collects less than 100 percent of the available economic rent, then the remuneration it receives is inadequate. However, full economic rent is a measure of maximum remuneration, and not

adequate remuneration as stipulated in the statute. The GOBC claims that given the derivative nature of the market for standing timber, stumpage charges in a competitive market will allow a tenureholder to harvest every stand of trees where there is a positive difference between the market price of logs that it can produce from the stand and its marginal cost of harvesting the stand. Thus, the GOBC argues that the tenureholder would harvest all such stands even if it were required to pay 100 percent of the economic rent to the province because it is profitable to do so.

The GOBC contends that the Department's preliminary findings with respect to the effect of unused AAC on private market prices assumes that there are no stands that are uneconomic to harvest either because marginal harvesting costs exceed the market price of logs or because marginal harvesting costs plus stumpage charges exceed the market price of logs. The fact that some portion of the tenureholder's AAC is not harvested can mean only that it is not subsidized, and that it is uneconomic to harvest. Under the Department's reasoning, tenureholders are failing to collect the windfall benefit (i.e., the gap between log prices and harvest costs) that the Department presumes to exist from below-market stumpage. On the contrary, the tenureholder will harvest all allegedly subsidized Crown timber that is economical to harvest, and will purchase timber from other sources at market prices when it is profitable to do so.

The GOBC asserts that the Department's conclusion that mills with unused AAC can always harvest more timber from their tenure and are not driven to the private market by demand that cannot be met from their tenure holdings is false. The GOBC argues that this could only be true if the unused AAC available to the tenureholder is economical to harvest but the tenureholder declines to harvest the timber. It contends the Department's assumption is predicated on three conditions: (1) the unused AAC generates some amount of positive economic rent for the tenureholder; (2) the provincial stumpage charge on the unused AAC does not exceed the amount of the available economic rent on the unused AAC; and (3) harvesters are economically irrational and refuse to harvest timber that carries extra return for them. However, the Department cites no evidence that could support the existence of these conditions, and the record contains none.

The GOBC contends that even if the Department's theory were correct, its factual premise is incorrect. The GOBC states that the timber to which B.C. tenureholders have access through their long-term tenures, at allegedly subsidized prices, is the timber available through their Forest Licenses (FLs) and Tree Farm Licenses (TFLs). However, the GOBC argues that the Department's calculation of AAC mistakenly includes other types of tenures, such as woodlot licenses, community forests, and BCTS auction sales, which account for approximately 15 percent of the total provincial AAC. The GOBC argues that during the POR, even if tenureholders with FLs or TFLs could have harvested their entire AAC economically, they still would have been forced to go to the market to obtain more than ten percent of their log needs because the harvest from long-term tenures in British Columbia represented only 69 percent of the total demand for timber. Thus, the price of timber and logs from those other sources, including BCTS, would not be suppressed.

Finally, the GOBC contends that the Department's conclusion that BCTS auction prices are distorted ignores the numerous policy reforms instituted by British Columbia, which further improved the functioning of the market, such as the take back of tenure, increasing the volume of timber sold at auction, and other key legislative and regulatory changes that came into effect during the POR.

Petitioners counter that the province made particularly large amounts of timber available

to the major tenureholders, which include all or nearly all of the major sawmills. Petitioners argue that there was an additional 40 million cubic meters that Crown tenureholders could have exploited if alternative sources of supply (such as logs sold by BCTS loggers) had become more expensive. According to petitioners, this means that BCTS prices and domestic log sales were inevitably determined and suppressed by Crown prices.

Petitioners contend that by providing an administratively determined volume of timber at an administratively set price, the GOBC necessarily moves the supply curve for private timber. Petitioners further contend that unless the government sets the timber price or the available volume so low that mills always buy the entire public supply at the government price, mills will harvest something less than the full available public volume, in addition to some private timber that the market is willing to supply at the low, depressed price. Because the full AAC is not used, sawmills can always choose to purchase additional government timber at administered prices. Thus, petitioners claim, private timber (and log) sellers must adjust their prices to the government price in order to sell to these sawmills.

Department's Position: We agree with the GOBC that the Department's regulations proscribe the use of auction prices where the bidders are dominated by large customers. We also agree with the general proposition that in determining how to bid for standing timber, bidders will take into account the price of the downstream products. We continue, however, to disagree with the GOBC that the BCTS auction prices are market determined, as required by our regulations.

As we explained in the Preliminary Results, record evidence demonstrates that the B.C. timber market is dominated by a few major players. For example, during the POR, the ten largest licensees by AAC accounted for approximately 59 percent of the Crown harvest and 52 percent of all timber harvested in the province. We also determined that these same large tenureholders are major purchasers of BCTS auction timber. Furthermore, because of their dominance in the marketplace and their negotiating influence with potential bidders (who are relatively much smaller players), they have the ability to affect the bid prices at the auctions. For these reasons, we preliminarily determined that the BCTS auction prices did not reflect prices from a well-functioning competitive market during the POR. For further discussion, see Preliminary Results 70 FR at 33101.

The economic arguments put forth by the GOBC are analogous to the GOQ's contention that dual-source mills maximize their revenues by sourcing high-quality fiber from private lands inside and outside of Quebec and mixing it with lower quality wood from Quebec's public forest. In the first review, the Department stated that even if a stand of trees in Quebec's private forest were superior to those in the public forest, it would not eliminate the imbalance in negotiating leverage that exists in Quebec. See Final Results of 1st Review Decision Memorandum, Comment 24. See also, e.g., Stoner Price Distortion Study (2002) at 4-5, included as part of petitioners' March 15, 2004 submission of expert studies in the first review, which states that an administratively set volume at an administratively determined price will necessarily shift the supply curve for private timber values, unless the volume and price set by the government somehow manages to equal what would normally be obtained on the market. The smaller the non-administered sector is relative to the size of the total market, the less its ability to charge prices over administered levels. The price in the non-administered sector is heavily influenced by the presence and behavior of the administered sector. Thus, even if quality differences exist, the

ability of firms in the non-administered sector to raise the price above the artificially-determined administered price level depends on the supply in the administered sector. See Stoner et., al "Government Timber Policies and Practices Distort Canadian Log Prices" (2002) at 11-12, included as part of petitioners' March 15, 2004 submission of expert studies in the first review. This reasoning applies with equal force to the BCTS auction prices.

Furthermore, the fact that some portion of the tenureholder's AAC is not harvested does not necessarily mean that the Crown stumpage is unsubsidized or that it is uneconomical to harvest. Rather, precisely because the tenureholder has the ability and incentive to bid down auction prices, it becomes more profitable for the tenureholder to purchase timber from the loggers than to harvest from its own AAC. In such a situation, BCTS auction prices are based on the administered Crown stumpage charges and, therefore, not independent of the prices charged in the public forest.

Regarding the GOBC's argument that the Department's calculation of AAC mistakenly includes other types of tenures besides FLs and TFLs, we find that the data are correct. We are not persuaded by the GOBC's argument that even if tenureholders with FLs or TFLs could economically harvest their entire AAC, they would still be forced to go to the market to obtain more than 10 percent of their log needs. We find that the data the GOBC uses to support its argument is faulty because it relies on estimated primary log use by lumber mills, chip mills, and other mills for 2003 from all types of tenure licenses, and it does not provide a breakdown by tenureholders. Therefore, a correlation between the amount of harvest from FL and TFL tenureholders and their actual log use cannot be made. As stated in the Preliminary Results, these large FLs and TFLs tenure-holding sawmills did not exhaust the amount of timber they could harvest from their tenures during the POR. As such, they were not forced to obtain timber from other sources, such as the BCTS section 20 auctions, because of a scarcity of available timber on their own tenure. Moreover, since Crown tenureholders are allowed to over cut their AAC, even meeting their AAC allocation would not have necessitated their buying from the auctions, as additional timber could have been harvested from their tenures. See Preliminary Results at 33101.

Contrary to the GOBC's contentions, the Department did consider the policy reforms, and the legislative and regulatory changes that British Columbia instituted during the POR. For example, the Department noted that the Forest Act was amended effective November 4, 2003, which included specific changes to the section 20 auction program. The program was changed from the Small Business Forest Enterprise Program (SBFEP) to the BCTS program, and category one of the BCTS auction program was broadened to include individuals or corporations that own a timber processing facility. This change effectively eliminated the restriction of section 20 auction sales to small businesses allowing them to include all applicants in the Province.[25] See Preliminary Results at 33095, 33099. Nevertheless, as explained in the Preliminary Results, we determined that, despite these changes, the BCTS auction prices were not appropriate for use as benchmarks.

Comment 14: Whether BCTS Auction Prices for Timber are Valid First-Tier benchmarks

The GOBC asserts that the Department established a bright-line presumption that

[25] As explained in the Preliminary Results, SBFEP licenses granted prior to November 2003 remained in effect absent the legislative revisions enacted by the GOBC. See 70 FR at 33100.

competitively run auctions that constitute less than a majority of the sales in the jurisdiction cannot serve as a valid benchmark. The GOBC contends that the Department's regulations require it to consider the specific facts in each case, and where actual transaction prices are significantly distorted as a result of the government's involvement in the market, resort to the next alternative in the hierarchy. Therefore, the Department must determine, based on the particular facts of a particular case, whether the proposed benchmark prices are in fact distorted. The GOBC also contends that the Department's regulations should be interpreted consistently with the statute and the WTO agreements, which do not permit the use of a bright-line test.

The GOBC argues that in the investigation and in the first administrative review, the Department rejected auction prices under the predecessor SBFEP on the grounds that the auctions were not open to all bidders, and therefore not competitively run. The GOBC states that, effective November 4, 2003, the SBFEP was replaced by the BCTS program, and argues that the BCTS auction sales satisfied all criteria for a valid market price benchmark because: (1) BCTS auction sales as of November 5, 2003, were unrestricted and open to all applicants; (2) the auction sales were based solely on price; and (3) sealed bids were used to protect confidentiality. Thus, the GOBC contends that the Department's previously stated rationale for rejecting the use of the competitively run auction sales is no longer applicable.

The GOBC also argues that the Department's finding that the volume of timber sold in the BCTS auctions was insufficient to serve as a valid market price benchmark incorrectly relies on the actual harvest volume during the POR, which is only a fraction of the timber sold in the BCTS auctions during the POR. The GOBC posits that the Department should instead use the extended period of November 5, 2003, through January 31, 2005, which has the most recent, and most complete, harvest data. The GOBC contends that this extended period is more appropriate to use because the BCTS auction sales were introduced approximately halfway through the POR, and it takes loggers some time to harvest the timber. The GOBC also argues that the Department's reliance on actual harvest ignores the manner in which timber is harvested and, thus, violates the requirement that, when selecting benchmarks, the Department must account for actual conditions of sale and other factors affecting comparability. Moreover, the GOBC argues that record evidence from Drs. Athey and Cramton confirms that the BCTS auctions constitute a significant volume of the total harvest and, thus, are valid indicators of market stumpage values. Furthermore, the GOBC asserts that the Department did not explain why or how the volume of BCTS auction sales are insufficient to use as a benchmark, although the Department used a significantly smaller volume of B.C. log prices as a benchmark in the fourth NAFTA Panel remand determination.

Petitioners respond that B.C. timber auction sales are suppressed, distorted, and do not satisfy the Department's requirements for a first-tier benchmark. Petitioners maintain that BCTS sales, like the predecessor SBFEP sales, are unusable as benchmarks for assessing the adequacy of remuneration for Crown timber. Petitioners state that although there were changes to section 20 of the Forest Act, and bids under category one of the BCTS auction program were no longer formally restricted to small businesses after November 4, 2005, the province continued to prohibit bidding by persons who already held three or more BCTS licenses that were not fully harvested. Petitioners argue that this restriction has no economic basis. Moreover, petitioners contend that large companies cannot use their economies of scale to bid aggressively in BCTS auctions or obtain sufficiently large volumes to secure supplies for a large mill. Thus, even though the

program is technically open to all, the bids are not. Hence, BCTS auction prices are depressed and sales are not made through competitive bid procedures that are open to everyone.

Petitioners also maintain that the volumes sold under the former part one of the SBFEP and BCTS auction sales were not significant during the POR and, thus, these sales cannot serve as an appropriate benchmark in accordance with the relevant provisions under the Department's Preamble, which require that a government auction price represent a significant portion of the goods being provided. Petitioners argue that the Department should reject the GOBC's contentions that the harvest data time period should be expanded for purposes of assessing whether the volume is significant. Petitioners assert that, if the Department considers 15 months of data for BCTS harvest, then it should consider the same period for the administered harvest. According to petitioners, the relevant pool for comparison with the SBFEP/BCTS volume is the total Crown harvest and the AAC harvest.

Petitioners claim that, while Drs. Athey and Cramton laud of the mechanics of the BCTS auction system (including the fact that it includes sealed bids, rules against collusion, etc.), such aspects are beside the point. Petitioners argue that it is possible to have a very competitive market that is still profoundly distorted by government policies. Petitioners also claim that Athey and Cramton do not address the fact that major tenureholders have an incentive not to bid aggressively in BCTS auctions and to avoid paying aggressive prices for logs purchased through the BCTS.

Petitioners respond that in the first administrative review the Department used a smaller volume of B.C. log prices as a benchmark in the NAFTA Panel remand determination because the Department did not have adequate evidence regarding the influence of administered timber sales on the log markets. In the current review, however, the Department has sufficient evidence regarding the relationship between administered stumpage markets and auction stumpage markets. Thus, according to the petitioners, these auction prices cannot serve as appropriate benchmarks.

Department's Position: Contrary to the GOBC's assertion, the Department did not establish a bright-line presumption that competitively run auctions constituting less than a majority of the sales in the jurisdiction cannot serve as a valid benchmark. Rather, in accordance with the statute and the Department's regulations, the Department considered the record facts to determine whether the BCTS auction sales could serve as a valid first-tier benchmark. See 19 CFR 351.511. As discussed in the Preliminary Results, the record evidence does not support the use of prices for Crown timber auctioned under section 20 of the Forest Act, as amended, as benchmarks to measure the adequacy of remuneration for Crown stumpage. See Preliminary Results 70 FR at 33100. Under 19 CFR 351.511(a)(2)(i), in measuring the adequacy of remuneration the Department may derive the benchmark from actual sales from competitively run government auctions. The Preamble to the CVD Regulations further explains that the use of actual sales prices from government-run auctions are appropriate, where a significant portion of the goods or services is sold through a competitive bid process that is open to everyone, protects confidentiality, and is based solely on price. See Preamble, 63 FR at 65377. In this review, we find that competition for the auction sales under the BCTS program was limited and insignificant during the POR.

Regarding the competitiveness of the BCTS, as explained in the Preliminary Results, the Department found that the principal customers of auction winning loggers were large tenure-

holding sawmills, a finding supported by record information, including evidence that the B.C. timber market is dominated by the large Crown tenure-holding sawmills. See 70 FR at 33099 - 33102. This is significant to the extent that it limits the loggers' ability to sell timber bought at the auctions to other customers. Moreover, we found that, although most of the actual bidders were logging firms, the bid prices were predetermined by the major timber companies or large tenureholders, thereby hindering competition. We also found that the amendment to the Forest Act allowing category one individuals or corporations that own a timber processing facility to bid on auction sales, which became effective on November 4, 2003, accounted for an insignificant amount (1.1 percent) of the total Crown harvest and volume billed during the POR. Thus, because the volume of timber sold at auction is not significant and the auction prices are constrained by Crown tenure-holding sawmills, we find that the auction prices do not meet the key requirements for consideration as benchmarks for measuring the adequacy of remuneration for government-provided goods. Id.

The GOBC's argument that the Department's preliminary finding that the volume of timber sold in the BCTS incorrectly relies on the actual harvest volume during the POR is without merit. The POR harvest data reflect the species of provincial logs harvested on the coast and in interior British Columbia during the POR and, thus, are the relevant data for the Department to use. Moreover, the GOBC's suggestion that the Department should instead rely on an extended period to account for the manner in which timber is harvested is misplaced. Because the Department is measuring the benefit during the POR, we do not take prospective harvest data into account or use pricing data that is not contemporaneous with the POR as benchmarks.

With respect to the GOBC's assertion that because the Department used, as a benchmark in the fourth NAFTA Panel remand determination, a smaller volume of B.C. log prices than the harvest volume of BCTS auctions sales, the Department should use the small BCTS harvest volume, we note that NAFTA panel decisions, and any remand determinations that result from them, are not binding precedent. Remand calculations are performed as directed by a panel and are applicable only to that segment of the proceeding. Moreover, based on the evidence on the record of this review, we find that the BCTS harvest volume was insignificant and could not serve as a valid benchmark under U.S. law.

Comment 15: B.C. Domestic Log Prices Constitute Valid Third-Tier Benchmark

The GOBC contends that the Department relied entirely on its reasoning from the first administrative review to conclude that B.C. domestic log prices are distorted by allegedly subsidized Crown stumpage rates and, therefore, cannot serve as a valid benchmark. The GOBC argues that the Department's reasoning is faulty, and that the Department also failed to analyze or acknowledge significant new evidence on the record of this administrative review demonstrating that B.C. domestic log prices are not distorted. The GOBC asserts that expert studies placed on the record confirm that B.C. log markets are not distorted by Crown stumpage rates. These studies concluded that government-set stumpage rates that are lower than market-set stumpage rates do not alter log supply; hence they do not alter log market supply and demand, or distort log markets by depressing log prices. In addition, the GOBC contends that valid log price data from the Vancouver Log Market (VLM) for the Coast and new log price data for the Interior were placed on the record. The GOBC contends that although the VLM log price data and the Interior

log price survey data do not distinguish between logs harvested from Crown and private lands, record evidence demonstrates that the source of a log is irrelevant to buyers, and that these logs are sold at prices that reflect prevailing market conditions in British Columbia. Moreover, the GOBC points out that the Department used the VLM data as a benchmark for the Coast in the NAFTA Panel remand determination in the underlying investigation.

The GOBC claims that in the remand proceeding the Department found that the record did not contain evidence sufficient to establish that B.C. log prices are distorted by stumpage charges, log processing requirements, or any other aspect of the B.C. forest management system. The GOBC contends that the record in this review is not materially different in this respect than the record in the investigation, but the Department did not provide an explanation for the rejection of the B.C. domestic log prices as a valid third-tier benchmark. The GOBC also claims that in the Preliminary Results, the Department stated that producers were indifferent as to which form of wood, i.e., either timber or logs, they purchased for use in softwood lumber production, but concluded in the NAFTA Panel remand determination that there are significantly different types of transactions and that the substitution of one product with the other may not be as easily performed in the short run. However, the GOBC argues that the Department does not provide any explanation for its policy reversal. Furthermore, the GOBC argues that while the Department has proffered a new log price suppression theory based on unused and available AAC, that theory rests on speculation and is contrary to law.

The GOBC asserts that the record of this review also does not support the conclusion that log processing requirements or other measures distort B.C. log markets. The GOBC claims that Dr. Leamer's study demonstrated that long-established log processing requirements in developed countries, including log export restraints, do not affect log prices over time due to the natural tendency for mills to locate in close proximity to their timber source.

The GOBC also argues that the significant reforms in British Columbia during the POR resulted in the elimination of virtually all of the provincial mandates which the Department, in part, relied on in the first review as grounds for rejecting B.C. benchmarks. According to the GOBC, these important reforms constitute significant new evidence on the record of this review demonstrating that B.C. timber and log markets are not distorted by allegedly subsidized Crown stumpage rates.

Petitioners did not comment on this issue.

Department's Position: The Department previously determined that the B.C. log prices in the VLM are not market-determined prices independent from the effects of the underlying Crown stumpage prices and, therefore cannot be used to assess the adequacy of remuneration of B.C.'s stumpage program. See "B.C. Log Prices Are Not An Appropriate Benchmark" section of the Final Results of 1st Review Decision Memorandum. In addition to the VLM prices, during the POR, the Ministry collected limited data on log purchases in the Interior, which was placed on the record of this review. As with the VLM data, the GOBC Interior prices do not distinguish between Crown logs and private logs. As the Department stated in the Final Results of 1st Review Decision Memorandum, even if we thought purely private prices were not affected by the Crown stumpage prices, it would be impossible to isolate such prices from the Crown log prices to establish a benchmark. Id. Regarding the GOBC's cite to the NAFTA Panel remand determination, we again note that this review is a separate segment of the proceeding, and the

remand determination does not set a precedent that is binding on future proceedings.

c. Ontario

Comment 16: The Department Should Compare the Price for Ontario Crown Softwood Timber with Private Stumpage Prices in Ontario

The GOO argues that the Department should use as a benchmark a "market-determined" price that reflects the prevailing market conditions in Ontario. Noting that section 771(5)(E) of the Tariff Act mandates that "the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided in the country which is subject to the investigation or review," the GOO argues that Department should compare the Crown stumpage charges with the Ontario "market-determined" prices for private timber. The GOO argues that, in the Preliminary Results, the Department improperly concluded that the prices for private standing timber in Ontario are effectively determined by the price for public timber and, thus, cannot be used as benchmarks for determining whether the GOO sells Crown timber for less than adequate remuneration. The GOO contends that the Department's premise that Ontario's AAC does not constrain the harvest of Crown timber in Ontario is an inadequate reason to find that the Ontario private timber market is distorted.

The GOO argues that evidence on the record demonstrates that Ontario has a thriving and competitive private timber market that reflects the "prevailing market conditions" in Ontario. The GOO contends that Ontario's private timber market operates free of direct government involvement and that the GOO does not limit who can buy or sell timber in the province. The GOO argues that it provided the Department with complete and thorough documentation of Ontario's private market prices in the form of a report by Bearing Point entitled Ontario 's Private Land Timber Sale Survey. The GOO argues that the Ontario private market is characterized by a high level of competition between buyers and sellers, a significant number of bidders participating in individual timber sales, and price-taking buyers and sellers who have significant market alternatives.

The GOO also argued that the existence of substantial exports of private timber from Ontario to Quebec and the United States during the POR provides further evidence of the competitive nature of the Ontario private market. The GOO contends that the Bearing Point report shows that approximately 16.9 percent of Ontario SPF standing timber harvested from private lands during the POR was delivered to mills outside of Ontario. The GOO argues that these exports demonstrate that harvesters of private timber in Ontario have an alternative market for their timber, assure that the market price will be competitive, and demonstrate the competitive nature of the private market.

The GOO further contends that, as explained by Charles River Associates (CRA), the price charged for "marginal timber"determines the market price for timber in Ontario irrespective of the price of timber from Crown lands. It argues that the volume of timber from Crown lands is not sufficient at all times, nor available under all circumstances, to satisfy the demand for timber in Ontario. The GOO argues that changes in the Crown stumpage fee do not alter Crown volume harvested, and without a change in volume, the market price of timber is unaffected. The GOO further argues that there are private suppliers who are willing to supply timber at prices above the

price charged by the Crown and that varying the stumpage fee for Crown timber does not affect timber prices observed in private market transactions. The GOO claims that, for these reasons, there is a viable private market in Ontario in which sellers are available to meet demand.

The GOO argues that it has demonstrated that timber prices do not affect the quantity of Crown timber available for harvest, explaining that all Crown timber is sold at the administered price. The GOO explains that the amount of Crown land made available for harvest in Ontario is limited by approved harvest plans which reflect a variety of ecological and cultural values and forest management concerns. The GOO argues that the price of standing timber is not taken into account in setting harvest limitations, and the permitted harvest does not vary with price.

The GOO argues that, in contrast, privately held land is regulated largely by market forces, meaning that the amount of private land available for harvest can adjust flexibly to current and future timber pricing in relation to the returns associated with alternate land uses. The GOO argues that empirical evidence on the record demonstrates that marginal demand for timber is met by private supply, not Crown supply. The GOO explains that Crown softwood timber harvest in the northwest region of Ontario remained flat in the POR, but the private softwood timber harvest rose by nearly 77 percent, accounting for nearly all of the increase in the softwood timber harvest throughout Ontario. The GOO argues that private sellers who supply the marginal demand in Ontario do not compete with Crown timber, and therefore can sell timber for prices that are not influenced by Crown rates.

The GOO argues that the Bearing Point survey demonstrates that the price of Crown timber does not distort the private market. It argues that the purchase price of private SPF standing timber delivered to sawmills by loggers who hold forest resource licenses (FRLs) during the POR differed only slightly from the purchase price of standing timber purchased by loggers who did not hold FRLs. The GOO argues that, if access to Crown timber could be used as a bargaining lever to drive down the price of private timber, this would show in prices: FRL holders would pay significantly lower prices than non-FRL holders.

The GOO takes issue with the Department's determination in the Preliminary Results that private stumpage prices are effectively determined by the Crown stumpage prices. It argues that the data show that the two groups of loggers do not pay statistically different prices in the private market and that the ability of FRL holders to harvest both Crown and private timber therefore does not give FRL holders a price advantage over non-FRL holders. It notes that, according to CRA, Crown timber *cannot* be used as a bargaining lever to drive down the price of private timber and the distribution of prices for standing timber in Ontario is consistent with a well-functioning competitive market. The GOO argues that Bearing Point's results indicate that 76 percent of the logger respondents purchased their private SPF timber *at or above* stumpage prices for private SPF timber paid prior to the POR (only 24 of 120 loggers indicated a price decrease).

The GOO also takes issue with the Department's determination in the Preliminary Results that the AAC in Ontario is not binding and the prices loggers bid for private stumpage are limited by the public stumpage paid by these mils. It argues that the Department failed to show that the volume of timber harvested from Crown land has responded to price variations. The GOO argues that AAC is a theoretical harvest rate used as a planning tool to ensure that the productive capacity of Crown land is not eroded by excessive production. The GOO explains that the AAC is neither an allocation of timber nor an entitlement to harvest. It argues that the planning process, not the AAC, sets harvest limitations. The GOO explains that the planning process includes a variety of

non-price factors, such as fish and wildlife management, silviculture investment, land-use management, and transportation planning. The GOO argues that even the planned harvest volume, which is not the same as AAC, typically will overstate true harvest capacity because it cannot account for some significant factors that tend to limit the ability to harvest (such as timber access problems or labor strikes). It contends that neither the AAC, nor planned harvest volumes reflect actual harvest "capacity."

The GOO states that the comparison of actual harvest volumes to AAC or to planned harvest volumes does not demonstrate that there is excess Crown production capacity in the Ontario timber market that could affect prices for private timber. It argues that the production of timber from Crown land has varied for a variety of exogenous reasons such as weather, mill disruptions, blow downs, and insect infestation. The GOO also attributes variations in the Crown timber harvest to: (1) tract accessibility and wildlife habitat requirements; (2) forest conditions (such as spruce budworm epidemic); (3) set-asides for natural renewal; and (4) reductions in the land base available for timber harvesting as a result of various provincial initiatives (such as expansion of park areas).

The GOO concludes that in comparing the prices of Ontario private market timber and stumpage fees for Crown timber, the Department should ensure that the relevant prices are expressed in equivalent terms (i.e., an "apples to apples" comparison).

The Ontario Forest Industries Association (OFIA), Ontario Lumber Manufacturers Association (OLMA) and Tembec Inc. (Tembec) also argue that the Department may not apply a "cross-border" benchmark (i.e., use Maritime prices) based on a finding that Ontario private stumpage and log market prices are distorted by public sales. They argue that evidence on record shows that market-determined private stumpage prices are available for a valid first-tier benchmark, and private log sale data are available for the Department's log-price derived stumpage benchmark. They argue that private stumpage prices are not distorted, and the volumes of private transactions in Ontario are substantial, almost 4 million cubic meters. They argue that Ontario provided the Department substantial evidence, which the Department verified, that its private market timber and log transactions are competitive and that prices are not controlled by any particular segment of the market.

The OFIA, OLMA, and Tembec argue that the demand for timber in Ontario is not satisfied by timber harvested from Crown lands and that private timber and log sales in Ontario satisfy the excess demand for wood fiber when the government supply has been exhausted. They contend that private timber constitutes the marginal supply of timber because logs taken from private lands are much more elastically supplied than timber drawn from Crown lands. They argue that prices in the private market are unconstrained by Crown stumpage prices.

The OFIA, OLMA, and Tembec argue that private sellers have no power to control the market – which is a sign of healthy competition – but they do control when and whether they choose to sell. They argue that private sellers are not constrained by the market and have no reason to sell at allegedly lower Crown timber prices when they can wait for the right opportunity to sell at a higher price that will satisfy their profit expectations. They contend that the RISI survey shows that most private timber owners have been selling timber from private land for a long time and have made multiple sales during the year. They argue that record evidence indicates that private timber owners and loggers in Ontario frequently had multiple bidders for their timber and used auction-like processes. They contend that private sellers would not expend

the time and resources to evaluate different bid offers were the market controlled by Crown stumpage fees. They also argue that the significant volumes of timber and logs sold in the Ontario private market confirm that private market participants profit from sales in Ontario more than they would profit from sales to third markets, and are not being driven to other markets by any market distortion.

The OLMA contends that the Department's refusal to use private Ontario stumpage as a first-tier benchmark is unsupported by substantial evidence and contrary to the plain meaning of the statute and the Department's adequacy of remuneration regulation. They note that the statute requires that adequacy of remuneration be determined in relation to the "prevailing market conditions ... in the country which is subject to the ... review." They surmise that Congress must have intended that private market transactions, even in markets where the government was an important participant, would serve as the basis for determining the adequacy of remuneration. They take issue with the Department's reliance on the Preamble, which states: "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." They argue that neither in the original investigation, nor in any of the results of the administrative reviews, has the Department offered factual findings or analysis to establish that Ontario's private softwood timber prices were distorted by prices for Ontario Crown stumpage. They argue that record evidence shows that the Ontario Crown supply of timber is inelastic, and changes in Crown stumpage fees do not affect the volumes of Crown timber being supplied to the market.

Finally, they argue that, because timber demand is derived from the prices that can be obtained for downstream products, prices for crown timber can have no impact on the market for private timber. They conclude that the Department has not provided any justification why its assumptions regarding price distortion should prevail over the apparent intent of Congress, nor has it explained how its theory of price distortion can be reconciled with the inelastic supply of Crown timber in Ontario.

Petitioners argue the private prices in Ontario are effectively determined by the administered prices. They argue that the alleged general uniformity of private prices in Ontario simply reflects the single province-wide price for Subject Timber and the pervasive nature of price distortion in the Ontario market. They also argue that short-term price trends do not undermine the Department's analysis that Ontario private timber prices are depressed by the subsidy program. They argue that price distortion depends on several factors, including the size of the administered sector, the shape of the supply curve, the amount of secondary costs imposed on tenure holders, and the share of sawmills for which public and private timber compete at the margin. Petitioners conclude that fluctuations of any of these factors, as well as short term economic phenomena, could affect the degree of observed price depression.

Department's Position: In the Preliminary Results of this review, we explained that we cannot utilize a benchmark that is effectively determined by the very subsidy we are investigating. See also Preliminary Results of 1st Review, 69 FR at 33215-33217; and Final Results of 1st Review Decision Memorandum at Comments 20 and 21. In this review, the GOO has repeated certain arguments made in the prior review regarding that determination, and it has submitted certain new information and argument. Specifically, the GOO submitted estimates (based on mill return data) of the volumes of private timber delivered to the various mills and a survey of prices of standing

timber from private lands conducted by Bearing Point. In addition, the GOO submitted an economic analysis written by Charles River Associates and a map, which shows the distribution of private forest lands in Ontario. These arguments and new information have not led us to alter our prior findings. Rather, for the reasons described below, we continue to determine that the allocation of Crown timber to tenure holders is excessive and that, as a result, the fixed, administratively-set price for Crown timber effectively determines the price of private timber. Therefore, we continue to determine that the prices for private standing timber in Ontario cannot be used as benchmarks in this review.

The Canadian parties claim that the volume of timber from Crown lands is not sufficient to satisfy the demand in Ontario and that the marginal demand is met by private suppliers. They contend that private stumpage prices in Ontario are competitively set, are independent of the Crown price and supply allocations, and thus are viable for use as market-determined benchmarks. Our analysis of the evidence on the record leads us to the opposite conclusions, that is, that private timber is a residual supply and that private stumpage prices are not indicative of the market value of timber in Ontario.

First, information on the record shows that sawmills in Ontario rely on Crown timber for the vast majority of their timber supply needs and use private timber only in relatively small quantities. Data provided by the GOO indicates that 65 out of 70 sawmills (accounting for 99.7 percent of the total volume of standing timber that the GOO reported as being consumed in Ontario sawmills during the POR) reported usage of both Crown timber and timber from private lands. Further, the twenty-five largest sawmills, which account the large majority of timber consumed in the Province, used approximately 11 million cubic meters of Crown timber during POR and approximately one million cubic meters of private timber. Although these sawmills' private timber consumption is small relative to their overall consumption, they account for 76 percent of all private timber consumed during the POR. In other words, though private standing timber market is minor source of supply for these tenureholding sawmills, they represent the main market for sellers of private standing timber in Ontario. See Exhibit ON-SUPP-3 of the GOO's April 15, 2005, supplemental questionnaire response, see also the May 31, 2005 Memorandum to the File from Robert Copyak, Financial Analyst, Office of AD/CVD Enforcement III, "Ontario Mill Return Data."

Second, the information on the record indicates that the GOO is willing to meet any amount of demand for public timber at a fixed, administratively-set price. Despite the arguments to the contrary, the allocation and harvest figures provided by the GOO indicate that tenure holders in Ontario are virtually unconstrained in the amount of Crown timber they can obtain from the GOO. During the POR, the GOO made available approximately 30 million cubic meters of public timber, yet loggers and mills in Ontario harvested only 70 percent of this annual allocation. See Exhibit ON-TNR-11 of the GOO's November 22, 2004, questionnaire response. Similarly, in each of the last four years, the harvest level never approached the amount allocated by the GOO. Rather the harvest level ranged from as low as 56.6 percent to no more than 88.9 percent of the annual allocation. Id.

With no constraints on the amount of Crown timber that sawmills can obtain, the price that loggers are willing to bid on private stumpage is dictated by the difference of the expected sale price of the log and their harvesting costs plus profit. Loggers who sell to tenure-holding mills cannot expect to charge more for their private logs than the cost of the logs that the mills can

source from their public tenure. The largest 25 softwood sawmills, producing vast majority of the lumber in Ontario, have Crown tenure for which they pay government-set stumpage prices. See page ON-236 of the GOO's November 22, 2004 initial questionnaire response. As we previously explained, because the AAC in Ontario is not binding, mills with public tenure can always harvest more timber from their tenure and are not driven to the private market by demand that cannot be met from their tenure-holdings. See Final Results of 1st Review Decision Memorandum at Comment 20. Their willingness to pay for logs from other sources will be limited by their costs for obtaining timber from their own tenures. Therefore, the prices loggers' bids for private stumpage are limited by the public stumpage prices paid by these mills.

At the verification conducted during the investigation, GOO officials explained that the allocation of public timber is based on elaborate five-year plans and annual forecasts.[26] They then explained that harvest levels fluctuate but the overall harvest need only to remain below the five year target:

> . . .the yearly forecast harvest amounts differ from the yearly actual harvest amounts. The officials explained that this yearly variation is normal because companies need only harvest less than the total AHA for the five-year period. The officials explained that a tenure holder may harvest more one year and less the next year (say in an effort to take advantage of high lumber prices), so long as the overall levels set out in the five-year plan are not exceeded. If there is a drastic change in available harvest area (due to a large fire, for example), then AHAs agreed to in the five-year forest management plans may be altered, with salvage areas being swapped for areas originally slated for harvest.

See GOO Verification Report at page 10.

The GOO argues that the AAC and allocation figures it provided are not indicative of oversupply of Crown timber, explaining that harvest levels actually are a function of the planning process, "non-price factors," and "exogenous" influences. As noted above, the data indicate that the yearly "planned" allocation amounts far exceed the actual amounts harvested in each of the last four years. The GOO reported that the private timber harvest destined to softwood sawmills during the POR was 1,072,233 cubic meters. See ON-STATS-1 of the GOO's February 28, 2005 Submission. Thus, the amount of public timber allocated by the GOO for the POR was greater than the public and private harvest combined. In addition, the total amount of public timber harvested during the five-year planning period did not approach the amount allocated for the period. See Id. at ON-TNR-11. Although variables such as the ones noted by the GOO may

---

[26] Ontario uses the term "available harvest area" (AHA) rather than "annual allowable cut" (AAC) for harvest planning purposes. AHAs are set for five years in the five-year forest management plans. The management unit's AHA is calculated based on adjusted net area (total area in the unit minus lakes and protected areas) and the ages and species of the stands. The officials stated that sustainable forestry is the goal, so considerations such as species preservation and wildlife habitat are taken into account. The officials explained that, in general, about 0.5 percent of the area of each management unit is harvested annually." See page 9 of the February 15, 2002, Memorandum to Melissa Skinner, Director, Office of AD/CVD Enforcement VI, from Robert Copyak and David Salkeld, Case Analysts, Office of AD/CVD Enforcement VI, titled "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Verification of Questionnaire Responses Submitted by the Government of Ontario" and included in Volume 19, Exhibit ON-VER-1 of the GOO's November 22, 2004, initial questionnaire response (GOO Investigation Verification Report).

account for some of the disparity between the "allocated" and "actual" harvest levels, there is not evidence on the record demonstrating that these variables account for the large difference in the planned and actual harvest volume.

Third, with regard to the argument that the Department should use prices found in Ontario as the benchmark, we agree in that our practice is first to examine whether there are market-determined prices in Ontario for the good at issue. As explained above, however, the prices for stumpage for timber on privately-held lands in Ontario are not useable for benchmark purposes because they cannot be considered to be market-determined prices. Therefore, we have looked for market-determined stumpage prices available in the country of Canada to use as benchmarks.

Fourth, with regard to the argument that the comparability of private prices and public prices indicates that tenure holders do not have leverage with regard to negotiating with private sellers, we find that, given the fact that the public price is fixed, if anything, such comparability could indicate the opposite. The market for private standing timber in Ontario is determined by the vast supply of Crown timber because the allocation of timber by the GOO is such that tenure holders may obtain as much timber from the Crown as they choose. Because the allocation of Crown timber to tenure holder exceeds the tenure holders' demand, tenure holders are only willing to purchase private timber at prices which result in a net outlay equivalent to the costs they would incur for public timber. As respondents allude, private land owners are therefore faced with the choice of selling at a price equivalent to the public price or choosing not to sell. Private landowners face this choice hoping that the GOO allows the public price to be market determined or that it severely reduces the allocation of public timber to levels significantly below the overall capacity of the tenureholding sawmills. Although the private land owners are "price takers" in one sense, this type of "price taking " is not the result of a functional competitive market. Rather, it is the result of the market being dominated by a supplier that does not price or allocate its supply using market mechanisms. The fact that private timber from Ontario is purchased by parties in Quebec or the United States is not necessarily indicative of a functional market for timber in Ontario. It simply indicates that Ontario private prices are comparable or lower than other available stumpage prices.

For the above reasons, the Department finds that the transactions recorded in the Bearing Point Survey are effectively determined by the Crown stumpage prices and are, hence, not suitable benchmarks for assessing adequacy of remuneration.

Comment 17: Ontario Crown Stumpage Was Provided for More than Adequate Remuneration in Comparison to Ontario's Unsubsidized Domestic Log Market

The GOO contends that, if the Department decides to use an Ontario log benchmark methodology in the POR, the Department must conclude that Ontario's internal log market is not distorted and that Crown stumpage was not subsidized during the POR. The GOO argues that it has provided the Department with verifiable private market timber prices from actual transactions in Ontario and that there is ample evidence on the record with which to construct a viable benchmark based on Ontario domestic log prices. The GOO argues that domestic log prices are reflective of actual market conditions in Ontario and that when the residual stumpage value of Crown logs is properly compared with Crown stumpage, it is evident that Ontario Crown timber

was provided for more than adequate remuneration during the POR. The GOO states that the Department may not use log import or export data, arguing that neither is representative of the prevailing market conditions for Crown stumpage in Ontario.

The GOO argues that Ontario's log market is not distorted by Crown stumpage charges, explaining that the weighted-average prices for logs from private and Crown land are from arm's-length, third party transactions. It contends that, according to an economic study written by CRA, the Ontario log market is not affected by any alleged distortion in the timber market because log prices are derived from the downstream lumber market, not from the upstream timber market. The GOO argues that there is no evidence in the record demonstrating that Ontario log prices are distorted and therefore unuseable as a benchmark for Crown stumpage.

The GOO argues that, using a weighted-average price for logs from Crown and private land in Ontario of C$49.83 per cubic meter and reducing it by costs associated with harvesting, hauling and other logging activities amounting to C$ 46.80 per cubic meter, the resulting benchmark is a derived price for SPF stumpage of C$3.03, which is less than Ontario Crown stumpage price for SPF timber of C$8.00 per cubic meter. The GOO contends that, if the Department uses a log price benchmark, it must include prices for logs harvested from Crown land, as well as for logs harvested from private land. The GOO states that, as is the case with logs that originated from timber harvested on private land, logs that originate from timber harvested on Crown land are sold by private entities engaged in arm's-length transactions, and the negotiated terms of sale in these transactions represent prevailing market conditions in Ontario.

The GOO argues that the Government of Ontario does not regulate the price of logs in Ontario. It contends that a profit maximizing operator will sell logs at a price established by the market, adjusting its sales to take advantage of its ability to sell either timber or logs depending on the relative market-determined price. The GOO argues that prices for arm's-length sales of logs harvested from Crown land are not depressed by stumpage charges and that evidence on the record confirms that prices for logs harvested from private land are similar to those for logs harvested from Crown land.

The OFIA,OLMA, and Tembec also argue that, in lieu of using Ontario private stumpage prices under the first tier of the benchmark hierarchy or performing a cost-revenue analysis under the third tier, the Department should use Ontario domestic log prices to derive the stumpage benchmark. They argue that, with this methodology, there is no need to make adjustments to account for cross-border differences, because the log prices are province-specific and reflect the prevailing market conditions for logs inside the province. They also argue that this approach as been endorsed by the NAFTA panel and is preferable to using a cross-border benchmark.

The OFIA,OLMA, and Tembec further argue that the Ontario log sales data on the record are viable for benchmark purposes. They contend that there is no evidence on the record that log prices are distorted and argue that the Department's is preliminary determination not to use the Ontario log sales data is inconsistent with its findings that demand for stumpage is derived from demand for logs (i.e., log prices derive stumpage values, not the other way around.). They state that because log prices drive stumpage values, it is not possible for the government's involvement in the stumpage market to distort the log market.

Department's Position: As explained above, we have used Maritimes stumpage prices, and not Ontario private stumpage or log prices, as the benchmarks to determine whether Ontario Crown

stumpage was provided for less than adequate remuneration. Also noted above in the pass-through section of this decision memorandum, in order to conduct the competitive benefit analysis with regard to the issue of pass through, we used derived log prices that were comprised of maritime private stumpage prices plus tenure, harvest, and haul costs from Ontario, rather than Ontario log prices, as the benchmarks. As we explained in the Preliminary Results, Ontario Crown timber supplies a dominant portion of the market, and the unit cost of this supply effectively determines the market prices of logs in Ontario. See 70 FR 33096. We further explained in the Preliminary Results and the prior review that the prices harvesters charge for logs are derived directly from the prices they pay for stumpage plus harvesting costs. Because of the relationship between timber (stumpage) and log prices, prices for logs in Ontario would be suppressed by the subsidized prices in the timber markets. Id. As such, log prices in Ontario are unsuitable for purposes of measuring the adequacy of remuneration of the GOO's provision of Crown stumpage or whether a competitive benefit has passed through in transactions involving sales of Crown logs.

d. Quebec

Comment 18: Whether Prices for Private Standing Timber in Quebec Are Distorted by Prices Charged in Quebec's Public Forest

The GOQ challenges the Department's rejection of private prices in Quebec. The GOQ argues that the Department's conclusion that prices are distorted based on the combination of the GOQ's administered stumpage system, the relative size of the public and private markets, the feedback relationship between the public and private markets, and a non-binding allowable cut is preconditioned on fundamental misapplications of economic principles and a misunderstanding of the operation of Quebec's public and private stumpage systems. The GOQ argues that the Department's position is essentially based on the feedback effect theory and the other three factors are merely preconditions to the feedback effect theory.

The GOQ claims the Department's feedback effect theory ignores the competitive implications of dual-source mills trying to lower public stumpage dues. The GOQ asserts that the incentives among dual source mills to suppress prices in the private market vary among mills because of the varying degrees of reliance upon tenure. The GOQ contends that a proportion of timber sourced from public and private sources varies among sawmills which contradicts the Department's finding that dual source mills have an incentive to bid down private prices. The GOQ also claims that a reduction in the price of standing timber in the private forest does not result in a dollar for dollar price reduction of public stumpage prices. The GOQ further argues that the Department's feedback effect theory would result in some dual source mills lowering the price of public stumpage for their competitors, which according to the GOQ, would unlikely occur.

The GOQ claims that the Department's feedback effect theory is based on two incorrect and unsupported conditions: sawmills with tenure can avoid sourcing from the private forest because the annual allowable cut (AAC) is not binding and tenure holding mills dominate the private market.

The GOQ claims that the Department's characterization that the AAC is not binding is unsupported in the record evidence and the Department's findings. The GOQ challenges the Department's conclusions that the AAC is binding because the tenure holders can rollover unused allocations; exceed their allocations in a given year and shift allocations within a corporate family and are allocated more public timber than needed. The GOQ claims that the rollover option limits mills to transferring no more than 15 percent of its allocation to the following year. The GOQ contends that the rollover option has no impact on price. The GOQ also claims that record evidence demonstrates that the GOQ enforces the AAC as binding and does not allow companies to revise allocations or to shift allocations between mills in the same corporate family. The GOQ also challenges the Department's interpretation of the harvest data, used to support the Department's position that dual-source mills can obtain sufficient or excess timber from public tenures. The GOQ claims that the Department's analysis fails to recognize that delivered log costs on public tenures increase in proportion to increases in harvests from public tenures, which deters a tenure holder from increasing its costs on its tenure to manipulate private timber costs.

Furthermore, the GOQ argues that the Department's allegation that dual-source mills dominate the private forest market is not supported by evidence on the record. The GOQ contends that the Department's allegation ignores the sawmills that source exclusively from the private market. The GOQ claims that the Department's analysis should focus on the cumulative impact and potential cumulative impact of mills sourcing exclusively from the private market on the market. The GOQ also contends that exclusively private sourcing mills could expand production if dual sourcing mills attempted to bid down private market prices. The GOQ claims that there is no record evidence to suggest that barriers to expansion for sawmills sourcing exclusively from the private forest exist.

The GOQ also takes issue with the Department's conclusion that the Quebec private market is dominated by six companies. The GOQ cites comparisons to other markets, including the benchmark Maritime provinces' markets and asserts that if the Department finds these comparison markets to be competitive, then the Department must conclude that the Quebec private market is competitive. The GOQ claims its argument that Quebec's private market is competitive is supported by the high volume of private forest logs moving among the different regions in Quebec. The GOQ asserts that the final results of this review cannot rely on the Final Results of 1st Review's finding that Quebec's private forest market is dominated by a small number of firms when analyzed at the regional level. The GOQ challenges the Department's analysis made in the Final Results of 1st Review as being based entirely on a single exceptional region within Quebec; therefore, the GOQ asserts that the record lacks evidence for the Department to perform this analysis in this review.

Next, the GOQ argues that the Department's feedback effect theory must rely on several theoretical and factual requirements: (1) a market mechanism existing for dual source mills to suppress private forest standing timber prices; (2) the existence of barriers to entry into the private forest; (3) the existence of barriers to expansion of sawmill operations for firms without tenure; (4) no alternative export market for private logs; (5) a situation in which marketing boards in Quebec know that private timber prices in Quebec are suppressed but lack power to counter the power of the dual source mills; and (6) Quebec mills sourcing imported logs must be willing either to pay a higher price than source lower priced, suppressed logs from the private forest or the markets from which the imports originate must be equally suppressed.

The GOQ claims the Department's feedback effect theory relies on dual source mills having a mechanism by which they can suppress prices. The GOQ contends that the Department fails to explain how dual source mills bid down prices and that the only way to reduce the price of standing timber is not to purchase it. The GOQ also claims that no mechanism to bid down prices exists because there is no even distribution of price suppression benefits among all the mills sourcing from the private forest. The GOQ also asserts that even if an effective mechanism for dual source mills to bid down the price of private timber existed, dual source mills would have to pressure harvesters to pressure private woodlot owners to lower their prices and that would be difficult because the GOQ claims that private woodlot owners could just withdraw from the market when timber prices were too low. The GOQ challenges the existence of a mechanism enabling dual source mills to bid down prices because dual source mills would have to wait two years following bidding down of private stumpage for Crown stumpage prices to be affected.

The GOQ also argues that the Department's feedback effect theory relies on the existence of barriers to expansion for existing sawmills to expand production. The GOQ claims that no barriers to entry into the Quebec private forest stumpage market exist. The GOQ claims that the existence of a large number of producers in Quebec refutes the Department's claim that barriers to expansion exist in Quebec. The GOQ contends that the feedback effect theory cannot be valid when there are so few logs exported from Quebec. The GOQ asserts that if dual source mills attempted to bid down private stumpage prices, then Quebec private woodlot owners could export logs to other provinces within Canada and to the United States.

The GOQ also asserts that, in positing its feedback effect theory, the Department fails to explain how dual source mills could suppress private market prices without resistance from the Marketing Boards/Syndicates, through which 69 percent of logs from the private forest are sold. The GOQ also claims that the amount of imports into Quebec challenge the validity of the Department's feedback effect theory because the amount of imports suggests that demand for timber is intense in Quebec. According to the GOQ, if dual source mills were suppressing prices then there would be no incentive for mills to buy high priced import logs. The GOQ also states that the existence of the border mills sourcing a substantial amount of logs shows no suppression. Moreover, according to the GOQ, given the amount of imported logs into Quebec, the feedback effect theory is only valid if neighboring Canadian provinces and U.S. states are suppressed as well. The GOQ argues that the Department must address these factors, all of which must be true for the feedback effect theory to be valid.

The GOQ claims that the Department's reliance on anecdotal evidence is unsupported by record evidence. The GOQ contends that the Department cannot use an August 2000 White Paper from the Federation of Quebec's Wood Producers (FPBQ), 1999 petitions from the FPBQ and the transcript of a September 2000 hearing before a Quebec parliamentary commission because these documents do not relate to the POR. The GOQ also asserts that these writings relate to complaints about the hardwood sector of the forest. On this basis, the GOQ claims that the Department cannot rely on this anecdotal evidence to support its feedback effect theory.

Petitioners rebut the GOQ's argument that the Quebec Syndicates/Marketing Boards enable Quebec private wood sellers to obtain the best prices for wood sold from the private forest. Petitioners assert that the Department has examined this claim previously and the GOQ presents no new evidence warranting that the Department revisit its prior decision. Petitioners also refute the GOQ's argument that the Syndicate/Marketing Boards possess power to counter dual source

mills' suppression of private market prices by highlighting new information placed on the record during the course of this review. Petitioners point to briefs submitted by the Montreal, Gaspe and Bas-St.-Laurent Syndicates/Marketing Boards to the Coloumbe Commission.[27] According to the petitioners, these briefs highlight the lack of power possessed by the Marketing Boards/Syndicates to challenge price suppression by dual source mills in the Quebec private forest. For example, volume six of petitioners' February 28, 2005 submission contains excerpts from the Montreal Region Syndicate in which the Montreal Syndicate discusses how wood manufacturing companies in negotiations with the Syndicates will refuse to pay more for wood from the private forest when they can obtain wood from the public forest.

Department's Position: We disagree with the GOQ's characterization of the Department's findings regarding the state of Quebec's private forest market, as discussed in the Preliminary Results, Final Results of 1st Review Decision Memorandum, and Preliminary Results of 1st Review. Our finding that private prices for standing timber in Quebec were distorted by Crown stumpage prices was based on four compelling and equally justified reasons. See Preliminary Results of 1st Review, 69 FR at 33215 - 33217.

The GOQ's assertion that the Department's feedback effect theory ignores the competitive implications of dual-source mills lacks merit. The Department addressed the implications cited by the GOQ during the first administrative review. See Comment 26 of the Final Results of the First Review Decision Memorandum. We find that the GOQ has presented no new evidence to refute the Department's findings in Comment 26 of the Final Results of 1st Review Decision Memorandum where the Department found that competitors among the dual-source mills would not forego a price reduction on the majority of their purchases to prevent a competitor from receiving a benefit. While it is true that all dual-source mills do not source precisely the same amount of timber from the private and public forests, they do not have to source the same amount for the Department's finding to be reasonable. The GOQ has not provided any new evidence on the record of the current review to demonstrate why its argument has merit.

We have also addressed the GOQ's claim that a reduction in the private stumpage prices will not translate into a dollar-for-dollar price reduction in Crown stumpage. During the first administrative review, we dismissed this argument in Comment 24 of the Final Results of the First Review Decision Memorandum, where we noted that a tenure holding mill does not necessarily face a penalty of increased harvest costs on its tenure by trying to manipulate private stumpage prices. In response to this argument, the Department further found that the GOQ's parity technique offers a wide variety of offsets for tenureholders. As costs for road construction and maintenance, harvesting, silviculture, logging camps, etc. increase, the costs have the effect of decreasing the price paid for Crown stumpage. The FPBQ's White Paper also criticized this element of the Quebec parity system. See Comment 24 of the Final Results of the First Review Decision Memorandum. As the GOQ has presented no new evidence in this review to support its

[27] The Coulombe Commission, officially known as "The Commission for the Public Study of Forest Management in Quebec" was set up in October 2003 to examine the management of Quebec's public forests. Over the course of its study, the Coulombe Commission met with tenureholders, marketing boards, Indian tribes and other stakeholders of Quebec's forests to review how the province manages the forest resources. The Coulombe Commission was mandated by the Quebec National Assembly. For more information, see http://commission-foret.qc.ca/index.htm

argument that the Department's feedback effect finding ignored the competitive implications of dual-source mills, we continue to find valid the Department's determination that private timber prices in Quebec are distorted.

The GOQ also argued that the Department's feedback effect theory relies on such unsupported conditions as a non-binding AAC. During the first administrative review, we addressed this argument and found it to be flawed. For example, during the first administrative review, the Department found that, contrary to the GOQ's claims, the AAC was, in fact, not binding. See Comment 25 of the Final Results of 1st Review Decision Memorandum. As no new information or arguments have been presented, we therefore continue to find as we did in the first administrative review that the AAC is not strictly enforced.

In the first administrative review, the Department also addressed the GOQ's argument that dual-source mills do not dominate the market. We responded to the GOQ's argument by noting the small cumulative impact of mills sourcing exclusively from the private market. The Department found that mills sourcing entirely from the private sector consumed on average 705 m^3 and concluded that this amount was minuscule in comparison to the private timber sourced by mills from the public/private and public/private/other categories. See Comment 22 of the Final Results of 1st Review Decision Memorandum. More importantly, we found that the average consumption rate of the private sawmills made it unlikely that the purely private mills could operate on an equal footing with the dual-source mills. Id. In the current review, we note that mills sourcing exclusively from the private sector consumed on average 653 m^3 during the POR. See the May 31, 2005, Memorandum to the File from Eric B. Greynolds, Program Manager, Office of AD/CVD Enforcement III, "Quebec Internal Price Memorandum." As the profile of the mills sourcing exclusively from the private forest has not changed, we continue to find, as we did in the first review, that the purely private mills operate on the fringe of a market dominated by industrial-size dual-source mills.

We note that in the first review Department rejected Canadian parties' contention that private stumpage prices in Quebec are viable benchmarks because market conditions for private standing timber in Quebec and the Maritimes are not distinct. See Comment 34 of the Final Results of First Review Memorandum. We found, to the contrary, that there was no feedback effect in the Maritimes and that private prices in the Maritimes are not effectively determined by the Crown. The GOQ has presented no new evidence or arguments presented in this review to warrant a reconsideration of this finding. See the "Private Stumpage Prices from the Maritime Provinces" section of this issues and decision memorandum. For these reasons, the Department continues to find that the market-based conditions that exist in the Maritimes do not exist in Quebec's private forest.

During the first review, the Department analyzed the theoretical and factual requirements which the GOQ claims must be present for the Department's feedback effect theory to be valid. The GOQ's argument that a market mechanism must exist in order for dual-source mills to join together to suppress prices is essentially a restatement of its argument presented during the first review, in which it argued that no evidence exists indicating that dual-source mills engage in collusion. The Department addressed this argument in the first review and we continue to follow the reasoning set out in that review. See Comment 27 of the Final Results of 1st Review Decision Memorandum. The Department's feedback effect theory is not based on the assumption that there is collusion (or any mechanism like collusion). Rather, it is based on the evidence indicating that

in Quebec the AAC is non-binding and that dual-source mills know the price of Crown timber is based on the price of private timber. Thus, our model is that the actions of each dual-source mill are independent of the actions of others and based on its own costs – because "every little bit of downward pressure on the price of private timber contributes to the reduction of the dual-source mill's cost of public timber." Id.

In the first administrative review, the Department also addressed the GOQ's arguments pertaining to barriers to entry and expansion in the Quebec market. See Comment 28 of the Final Results of 1st Review Decision Memorandum. Examination of the record evidence shows that the Department's findings from the first review remain valid. For example, through the Forest Act, the GOQ is able to regulate which sawmills are allowed to produce, control the operating capacity of sawmills, and oversee the sale and dismantling of sawmills. The GOQ has not presented any information to warrant a reconsideration of our findings.

The Department also examined the arguments regarding the flow of exports and imports in Quebec during the first review. In Comments 29 and 31 of the Final Results of 1st Review Decision Memorandum, the Department responded to the GOQ's arguments that the lack of exports from Quebec and the high volume of imports into Quebec demonstrate the existence of a functioning market. Specifically, we found that no viable export market for logs from Quebec exists, as recognized by the GOQ. We further found that the imports into Quebec are consumed by border mills along the border between Quebec and northern Maine (for historical, logistical and geographical reasons) and, thus, do not represent the type of consumption patterns that exist in the rest of the Province. The GOQ has presented no information to indicate that these longstanding sourcing patterns in Quebec have substantially changed from the first review period.

In the first review the Department also examined the power of the Marketing Boards to prevent price suppression by the dual-source mills. See Comment 30 of the Final Results of First Review Decision Memorandum where we found that Marketing Boards/Syndicates lack negotiating leverage to challenge prices offered by mills. The GOQ has provided no new evidence to warrant consideration of this finding. In fact, information on the record of the second review further supports the Department's prior findings regarding the market power of the Marketing Boards. For example, as part of their comments submitted to the Coulombe Commission, the Marketing Boards of Montreal, Gaspe and Bas-Saint-Laurent stated that dual-source mills dictate the maximum price they are willing to pay private landowners. In their comments to the Coulombe Commission, the Marketing Boards also commented that the GOQ's Forest Ministry failed to enforce the AAC requirements. See volume 6 of petitioners' February 28, 2005 submission. For the above-stated reasons, we reject the GOQ's argument that the Department failed to properly support its contentions regarding market conditions in Quebec's private forest.

The GOQ's challenge to the Department's use of "anecdotal evidence" on the grounds that the evidence is outdated and irrelevant is also not unsupported. See Comment 32 of the Final Results of 1st Review Decision Memorandum, where the Department demonstrated in detail how the anecdotal evidence from the FPBQ was relevant to market conditions encountered by sellers of softwood timber from Quebec's private forests. Secondly, the fact that the White Paper and other documents used by the Department to develop its reasoning are from 1999 – 2000, itself does not disqualify them from being valid. Furthermore, there is no information on the record of this review to indicate that market conditions in Quebec have changed in a manner that would

render irrelevant the charges leveled by private forest landowners in the White Paper and accompanying documents.

Comment 19: Basis for the Department's Findings Regarding Quebec's Private Forest

The GOQ claims that the three reasons cited by the Department to justify its distinction between the private markets of the Maritime provinces and Quebec lack support in the record. The GOQ argues that the first two reasons, the AGFOR price reports for the New Brunswick and Nova Scotia governments were prepared outside of this proceeding and that public stumpage rates are linked to the prevailing market prices in the private market, are equally true of Quebec and contradict the Department's rejection of private prices in Quebec. The GOQ also claims that the third reason underlying the Department's distinction between the Maritime and the Quebec private markets, (i.e., the extent to which the GOQ' s presence in the stumpage market affects the prices charged for private standing timber.), is also unsupported in the record. The GOQ asserts that the Department excluded Quebec private prices solely on the basis of the fact that the GOQ provided more than 50 percent of the timber, and that this reason contradicts the Department's analysis in the first administrative review.

The GOQ also claims that the Department ignored record evidence about the Quebec parity system. According to the GOQ, the Department performed no thorough economic analysis comparing the relationship between the private and public timber markets in Quebec to the same in New Brunswick. The GOQ requests that the Department explain the record evidence that supports its Preliminary Results finding that a distinction exists between the Quebec and Maritime private forests.

Petitioners respond to the GOQ's arguments, by stating that the Coalition agrees that many elements of the Department's analysis of distortion in the Quebec private forest apply to New Brunswick. Petitioners, however, argue that the analysis of whether there is distortion in the Quebec private forest and the New Brunswick private forest differs because the GOQ has a much greater market share of timber sales in Quebec than the GONB has in New Brunswick. Further, petitioners assert that any similarities between the Quebec's and New Brunswick's public and private forest markets do not support a conclusion that private prices in Quebec are undistorted but rather that New Brunswick prices are unusable as a benchmark.

Department's Position: As an initial matter, we refer both interested parties to the Final Results of 1st Review Decision Memorandum, which describes in detail our continued finding that no distortion exists in the Maritime benchmark provinces. During the Final Results of 1st Review, we analyzed record evidence provided by both petitioners, Canadian parties and interested parties[28] that detailed the distinctions between the Quebec private market and the Maritime private markets. The Department also verified the data used in the compilation of the AGFOR Reports. Our reasoning, as articulated in the Final Results of 1st Review and restated in the Preliminary Results of this review, is based on our co-findings that private prices in the Maritimes are market-based and Quebec private prices are distorted. We found that the AGFOR Reports to be a credible source of market-determined private prices in the Maritime provinces on the grounds that

[28] Interested parties included the Maritime Lumberman's Bureau, which submitted extensive comments responding to claims that the private markets in the Maritime provinces were distorted.

they were compiled outside of the course of these proceedings and that the GONB and GONS used these reports to price its their Crown stumpage. For a detailed discussion, Comment 34 of the Final Results of 1st Review Decision Memorandum.

We also find that the GOQ's argument that the Department rejected private prices in Quebec solely on the basis that the GOQ provides more than fifty percent of the timber in Quebec is flawed. The GOQ's claim ignores the Department's analysis and conclusion in Comment 34 of the Final Results of 1st Review Decision Memorandum. In Comment 34, the Department stated that "[t]he Department, therefore, not only examines the portion of the market share held by the government but also considers the impact of that market share and has discretion to determine if the level of government involvement significantly distorts the private market." See Comment 34 of the Final Results of 1st Review Decision Memorandum. See also Comments 22 through 33 of the Final Results of 1st Review Decision Memorandum. Thus, the Department did not base its analysis solely on market share. The Department considered in the first administrative review and, again, in the Preliminary Results, the impact of the market share of timber held by the GOQ, as well as the factors that are part of the province's administered stumpage system, when reaching its conclusion that private standing timber markets in Quebec and the Maritimes are distinct. See Preliminary Results, 70 FR at 33102-03. All of these reasons formed the basis for our determination that private stumpage prices in Quebec are distorted by administered Crown stumpage, and therefore cannot serve as market-determined benchmarks.

3. Private Stumpage Prices from the Maritime Provinces

Comment 20: Whether the Law Requires That the Benefit Be Determined Using Benchmarks That Reflect Market Conditions in Jurisdiction in Which the Good Is Provided

Canadian Parties argue that the Department cannot use as benchmarks prices that are from outside the jurisdictions in which the provincial stumpage programs are administered to measure the benefit from those programs. As support, they cite section 771(5)(E) of the Act, which states that "the adequacy remuneration shall be determined in relation to prevailing market conditions in the country which is subject to investigation or review." According to the Canadian Parties, the term "country" must be interpreted as meaning the jurisdiction/market under investigation or review. Canadian Parties assert that section 771(5)(E) of the Act was designed to prevent any observed price differences between the benchmark and the government price from being attributable solely to differences in the prevailing marketing conditions, as opposed to the conferral of any government subsidy.

The GOQ further argues that section 771(3) of the Act defines the term "country" as being synonymous with "political subdivision" and that this definition is also reflected in the legislative history of the provision. The GOQ argues that the SCM Agreement contains similar language in Articles 1.1(a)(1) and 2.1. The GOQ therefore asserts that the Province of Quebec is a political subdivision and therefore constitutes a "country" as defined by the applicable laws and regulations. Accordingly, it contends that the Department is required to examine the prevailing market conditions in Quebec by using private stumpage prices inside the province when conducting in its benefit calculations.

Petitioners do not specifically address this issue in their rebuttal briefs.

Department's Position: Regarding Canadian parties' contentions that benchmark data from the Maritimes do not constitute prices in the "country" subject to the review, we disagree. As discussed in detail in Comment 35 of the Final Results of 1st Review Decision Memorandum, the statute expressly provides that the the Department determine the adequacy of remuneration "in relation to prevailing market conditions for the good . . . being provided . . . in the country which is subject to the investigation or review." See section 771(5)(E)(iv) of the Act, (emphasis added). Tier one of the Department's regulation, 19 CFR 351.511(a)(2)(i), provides that the Department "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." (emphasis added). Id. The statute, as interpreted by the Department's regulations, thus specifically requires that the Department first consider whether there are useable market-determined prices resulting from actual transactions in the country in question. Consistent with the statute and the regulations and as explained in this Decision Memorandum and in the Preliminary Results, the Department has assessed the adequacy of remuneration for Quebec, Ontario, Manitoba, Saskatchewan, and Alberta using market-determined stumpage prices from Nova Scotia and New Brunswick (together, the "Maritimes"), i.e., using stumpage prices from provinces in Canada.

We disagree with the contention the Maritimes are not part of the country under investigation. The purpose of a countervailing duty proceeding is to determine whether and to what extent the government of the exporting country has subsidized the production, sale or export of the subject merchandise. The countervailing duty order under review is the order on certain softwood lumber products from Canada. The purpose of this review, therefore, is to determine whether and to what extent the government of the exporting country, i.e., Canada, subsidized the production, sale or export of the subject merchandise.

The inclusion of "political subdivision" within the definition of the term "country" ensures that the Department may investigate and review subsidies granted by sub-federal level government entities and ensures that those governments qualify as interested parties under the statute. In other words, an examination of subsidies granted by the government of the exporting country includes subsidies granted by sub-federal governmental authorities. The language in section 771(3) does not mean, as the parties contend, that the term "province" is interchangeable with the word "country" under the CVD law. The fact that the statute permits the Department to examine sub-federal programs does not change the fact that the "country," i.e., the "foreign country" that is subject to this review is Canada. See Comment 35 of the Final Results of 1st Review Decision Memorandum.

Moreover, the scope of this CVD order and, therefore, this review, is certain softwood lumber products from Canada. The exclusion of certain products from the Maritime Provinces from the scope of the CVD order is just that, the exclusion of certain *products* – the Maritime Provinces were not excluded as *provinces*. Consequently, private stumpage prices from the

Maritimes represent actual transactions in the country under review within the meaning of tier one of 19 CFR 351.511(a)(2)(i).[29]

Comment 21: Whether Private Standing Timber in the Maritimes is Comparable to Standing Timber in Provinces East of British Columbia

Petitioners and Canadian parties both argue that there are significant differences between the market conditions in the Maritimes and Alberta that make the Maritimes prices inappropriate as benchmarks for Alberta. The parties argue that differences regarding ecosystems, climate, geography, species variations, diameter, and timber quality demonstrate that market conditions for stumpage in the Maritimes and Alberta are not comparable. Thus, petitioners and Canadian parties both agree that a comparison of Alberta to a Maritimes benchmark is untenable. However, the parties differ in their analyses of the factors that affect timber quality and in their proposed benchmark regions.

Petitioners argue that, as the GOA itself has admitted, the spruce-pine-fir (SPF) timber in Alberta is not comparable to the Maritimes SPF. Alberta timber, petitioners claim, resembles BC Interior SPF more than it resembles Maritimes timber and, petitioners note, the Department found in the Preliminary Results that BC Interior SPF is not comparable to Maritimes SPF. Therefore, petitioners assert that there are distinctions between Western and Eastern provinces' timber and market conditions that prohibit any meaningful comparison between Alberta and the Maritimes. Petitioners further assert that the methodologies that the Department applied to Alberta and British Columbia in the Preliminary Results were inconsistent and should be revised for the final results. Petitioners state additionally that the timber industry and nature itself draw a distinction between eastern and western SPF timber at the location where the Great Plains divide the continent, rather than the artificial boundary between Alberta and British Columbia. Finally, petitioners argue that the Maritimes timber is located thousands of miles from Alberta and is in an entirely separate log market.

Citing to Section 771 (5)(E)(iv) of Act, the GOA argues that the benchmarks must reflect "prevailing market conditions for the good or service being provided," and asserts that the Department's analysis was inadequate because it did not consider factors such as the nature of the resource, its location, and the available markets. The GOA maintains that markets for stumpage are inherently local and that, therefore, it is inappropriate to use timber values 2,500 miles to the east of Alberta forests as a benchmark for Alberta stumpage. The GOA also states that Alberta's forest, unlike the Maritimes' forest, suffers from low precipitation, cold northern climates, a short growing season, minimal road construction, stand-replacing fires, and poor proximity to the mills,

[29] We also disagree with Canadian parties' arguments that the use of U.S. log prices as the benchmark for measuring the adequacy of remuneration under the GOBC's administered stumpage programs is in violation of the standard set forth in 771(5)(E)(iv) of the Act. As explained in the "Use of U.S. Prices as Benchmark for Measuring the Adequacy of Remuneration" section of this decision memorandum, we find that the same species of trees grow in British Columbia and the PNW and that similar market conditions exist on both side of the border. Furthermore, logs are a good that is commonly traded across borders. In addition, the existence of tenure, harvest, and haul cost data from the GOBC enables us to derive a benchmark stumpage price that is based on the experiences of tenureholders and log harvesters in British Columbia. For these reasons, we find a derived stumpage benchmark based on U.S. log prices is reflective of market conditions in British Columbia.

all of which result in Alberta tress with poorer quality, smaller diameter, and lower value than those in the Maritimes.

Further, both petitioners and the GOA argue that there are significant differences in the species composition between private timber in the Maritimes and public timber in Alberta. For example, the Maritimes forest includes white pine, red pine, and Eastern hemlock, which are species that are not present in Alberta. Conversely, lodgepole pine is a species that grows in Alberta but not in the Maritimes. In addition, the GOA states that, due to frequent forest fires, Alberta has to deal with mixed stands of hardwoods and softwoods, a disadvantage not faced by the Maritimes.

The GOM and GOS argue that the Department's choice of private prices in New Brunswick and Nova Scotia as benchmarks for Manitoba and Saskatchewan, respectively, does not comport with the Department's statutory obligations to measure the adequacy of remuneration in relation to prevailing market conditions in the country subject to the investigation. Both governments maintain that the Department's analysis in its Preliminary Results was inadequate because it did not consider factors such as the nature of the resource, its location, and the available markets. Specifically, the GOM and GOS argue that any attempt to compare stumpage prices between jurisdictions, including between provinces that are more than 2,000 miles apart, must begin by recognizing the prevailing market conditions in the jurisdiction at issue and identifying differences with the proposed comparison jurisdiction. Both governments assert that differences in climate, topography, growing conditions, distances to market, log-haul distances, utilization standards and scaling rules between their respective provinces and the Maritimes all must be considered in the statutorily-mandated analysis of prevailing market conditions.

Moreover, the GOM and GOS argue that the low precipitation, cold northern climate, short growing season, and overall harsh growing conditions in their provinces result in trees that are of poorer quality, smaller diameter, and lower value than trees in the Maritimes. Finally, both governments argue that if the Department persists in using a Maritimes benchmark for their provinces in the final results, then it must measure the adequacy of remuneration in relation to the prevailing market conditions in their provinces, and must quantify and adjust for these myriad differences.

The OFIA, OLMA and Tembec Inc. argue that the deficiencies in a cross-border benchmark also exist in the Maritimes benchmark. They argue that the adjustment problems are insurmountable because the differences between the Maritimes and other provinces in terms of government regulations, species, climate and all other relevant factors are as stark, and impervious to adjustment, as the difference in these factors between Canada and the United States. They argue that, from one province to another in Canada, there are different management, environmental and tax regimes, different degrees of developed infrastructure, different technological developments influencing the price, terms, and market conditions for standing timber."

The OFIA, OLMA, and Tembec Inc. further argue that the Ontario private market data on the record is superior to the the record evidence of private markets in the Maritime Provinces. In particular, they argue that the Bearing Point survey data cover the POR, whereas the AGFOR Report for Nova Scotia and the New Brunswick Report date back to 1999 and 2002, respectively. They argue that the Bearing Point survey reflects actual transactions, broken down by region and

species, whereas the Maritimes data are estimated prices, with no information regarding the sample size, either by volume or by value.

Petitioners agree with Canadian parties that Maritime timber is not representative of timber in the six provinces subject to this review. Petitioners claim that timber from the Maritime provinces grows in a distinct forest region within Canada and in a unique ecozone. Petitioners argue that the Department has not provided support for its use of Maritimes timber as representative of the other provinces under review.

Petitioners rebut Canadian parties' assertion that faster growth rates for timber in the Maritimes provinces is an indicator that the timber is of higher quality than timber from the other Canadian provinces subject to this review. Specifically, in response to assertions made by the GOA, petitioners claim that slow-growing wood fiber is more valuable because it produces more chips. In particular, they draw on evidence they claim indicates that balsam fir predominates in New Brunswick and Nova Scotia because its low value eliminated it as a target for commercial logging over many years.

Petitioners also rebut the GOA's argument that differences in the species mix between the forests in Nova Scotia and New Brunswick and those in Alberta support its assertion that the timber from the Maritimes is of higher quality than timber from the provinces subject to this review. Petitioners claim that the GOA offers no support from the record that the species mix in Alberta is less valuable than the species mix in New Brunswick and Nova Scotia. On the contrary, petitioners argue that the higher concentrations of balsam fir in New Brunswick and Nova Scotia, as compared to the provinces subject to review, make the species mix in the benchmark Maritime provinces less valuable.

Moreover, according to the petitioners, Canadian parties' arguments do not address the issues of over harvesting and higher proportion of pulpwood growing in the Maritimes. Petitioners claim in their rebuttal arguments that the over harvesting of the forests in New Brunswick and Nova Scotia has resulted in no old-growth trees remaining in those forests. Petitioners argue that second or later-generation growth periods can produce over mature trees due to early successional stump deterioration, as well as a disproportionate amount of young trees with lower stems, larger knots and more taper.

Petitioners also argue on rebuttal that Canadian parties' claim that timber from the Maritime provinces is of higher quality than timber in provinces subject to this review ignores the higher quantity of pulpwood in the Maritime provinces. Petitioners argue fact that the Maritime provinces have a higher share of pulpwood in its harvests. Petitioners claim that the proportion of pulpwood in a region serves as a useful proxy for the overall quality of the region.

Department's Position: For purposes of these final results, we find that the record of the current review does not contain any new evidence that would warrant a reconsideration of our finding in the first administrative review and in the Preliminary Results to use private standing timber prices from the Maritimes as our benchmark for all subject provinces east of British Columbia. See Final Results of 1st Review Decision Memorandum at Comment 38. Although most of the parties' arguments have been addressed in the prior review, petitioners have raised several additional arguments in the current review. Specifically, petitioners assert that Alberta timber has more in common with BC Interior SPF than with Maritimes timber and that the methodologies applied by the Department to Alberta and British Columbia in the Preliminary Results are

inconsistent. The Department disagrees with petitioners regarding both arguments. In the final results of the first review, the Department explained its basis for revising its methodology with respect to British Columbia. See the "Benchmark Prices for B.C." section of the Final Results of 1st Review Decision Memorandum. In particular, we found that B.C. species were generally larger and produced more valuable lumber than timber species harvested in the Maritimes. In addition, record evidence attested to the greater value of western timber in British Columbia relative to eastern timber, based in part on size.

In contrast to British Columbia, Alberta has provided information showing that its timber is very similar in average diameter, as compared to the timber in the Maritimes. The record indicates comparable diameters among eastern SPF trees grown in the Maritimes and Alberta. Specifically, the average diameter at breast height (dbh) of Eastern SPF in New Brunswick is 7.78 inches, while the average dbh in Alberta is 8.00 inches. Id. at Comment 38. In addition, the GOA reported that lodgepole pine averages only 20 cm (7.87 inches) in diameter at breast height in Alberta. See GOA's November 22, 2004 Questionnaire Response, Volume 1 at page II-13. Moreover, petitioners previously stated that log prices do not substantially vary on a per-unit-basis for sawlog sizes up to the 10-inch diameter class. See Preliminary Results, 70 FR at 33104. Therefore, based on the record evidence, we do not find that the differences in timber diameters between the benchmark region and Alberta warrant consideration of a benchmark based on an alternate region. Similarly, we found in the first review that Maritimes SPF was comparable in terms of average diameter to SPF in Quebec, Ontario, Saskatchewan, Manitoba. See Final Results of 1st Review Decision Memorandum at Comment 38.

In terms of species, the Maritimes' benchmark consists of prices for the eastern SPF species group, which includes jack pine, balsam fir, and black, red and white spruce. See Maritime Verification Report at pages 3 and 11. We have grouped these timber species together for benchmark purposes because the various species share similar characteristics. For example, the similar physical characteristics of these species allows them to be commercially interchangeable in lumber applications. (i.e., the lodgepole pine species is considered commercially interchangeable with the pine species that comprise the Eastern SPF classification). Due to the fact that the precise mix of the species will vary in the SPF grouping, the interchangeability of the individual species that comprise SPF eliminates the need to identify a species-specific benchmark for lodgepole pine in Alberta. See Preliminary Results, 70 FR at 33104. As a result, the lack of lodgepole pine in the Maritimes does not compromise the adequacy of the SPF benchmark for comparison to Alberta's timber in the benefit calculations. See **Comment 25** for further discussion of issues regarding diameter comparisons. Our analysis of the representativeness of timber from the Maritime provinces to serve as a benchmark also resulted in our conclusion that Eastern SPF is the dominant species of all the forests from Nova Scotia to Alberta.

Parties argue that differences due to forest conditions, ecosystems, climate, geography, species variations and differences in timber quality preclude the Department from comparing the Maritimes to the provinces located to the east of British Columbia. However, as the Department stated in the prior review, "the record indicates that eastern SPF trees are comparable across their entire growing range as demonstrated by tree diameter, which is one of the most important characteristics in terms of lumber use." See Final Results of 1st Review Decision Memorandum at Comment 38. Therefore, the comparable species that comprise the "commercially

interchangeable" Eastern SPF species grouping have comparable diameters for the respective provinces. As a result, the differences that may exist regarding forest conditions, climate, geography, and ecosystems do not significantly impact a major factor in lumber use, diameter, for the provinces east of British Columbia, which demonstrates that the Department's use of a benchmark from the Maritimes is appropriate.

In conclusion, our examination of petitioners' and Canadian parties' comments reveals that no new evidence has been offered to support these arguments since the final results of first review. Therefore, the Department continues to find that timber prices from the Maritimes are sufficiently representative of the forest and market conditions in Alberta, Manitoba, Saskatchewan, Ontario and Quebec to serve as a benchmark.

Comment 22: Whether Quebec's Private Forest Is More Competitive than That of the Maritimes

The GOQ argues that Quebec's private forest is a competitive market-based system with market-determined prices comparable to the private forest markets in the Maritime provinces whose prices were used as the Department's benchmark.

The GOQ claims that the Department's conclusion that the Maritimes' private markets are more competitive than the Quebec private market is refuted by record evidence on the structure, composition and operation of the private forests in Quebec. The GOQ supports its claim by stating that the fact that Quebec imports more logs than any other Canadian province demonstrates that log prices in Quebec are not distorted because according to the GOQ, mills would not pay higher prices for imports when they could buy domestic timber for lower prices. The GOQ also asserts, in support of its claim that its private market is functioning, that Quebec, with the largest private forest in Canada, harvests more private timber than the New Brunswick's private forest. The GOQ further contends that the Department's position that a high degree of sawmill-to-corporation concentration causes distortion is erroneous. The GOQ claims that the sawmill-to-corporation concentration is lower in Quebec than in New Brunswick. The GOQ also challenges the Department's concentration position on the basis that, in New Brunswick, more private forest land is owned by fewer forest products companies than in Quebec. The GOQ argues that the Department's conclusion that the Maritimes private market is larger, as a proportion of the total market, than the private market in Quebec fails to consider the volume of independent competitive private sources not associated with sawmills. According to the GOQ, the Quebec private market has more harvest sourced by independent private timber entities than does the New Brunswick private market. The GOQ also claims that the Department should consider the fact that Quebec has more marketing boards than New Brunswick as relevant in its comparison between Quebec and the Maritime provinces. The GOQ cites other characteristics of the Quebec marketing board structure (i.e., tenureholders are precluded from serving on the board of a Quebec marketing board and the largest integrated wood product companies are not members of the Quebec marketing boards) as indicative of competition in the Quebec private market. The GOQ also argues that Quebec has a large number of buyers and sellers operating in the Quebec private timber market, whereas the record does not indicate whether any mills in New Brunswick and Nova Scotia source their entire input from the private forest.

The GOQ also claims that empirical data from its own consultant's report shows that private timber prices in New Brunswick and Quebec respond to market signals in an identical fashion. Therefore, the GOQ claims that the Department's conclusion that private prices in Quebec are distorted fails to acknowledge the record evidence.

The GOQ contends that the public stumpage systems in Quebec and New Brunswick are identical; furthermore, the basis of collection and use of private prices in Quebec and New Brunswick is also identical. The GOQ asserts that because of the similarity of the public stumpage systems in Quebec and New Brunswick, the Department cannot conclude that Quebec's private market prices are distorted.

Department's Position: During the final results of the first review, we addressed these very same arguments put forward by the GOQ. See Comment 34 of the Final Results of 1st Review Decision Memorandum. We distinguished the timber market in New Brunswick from the private market for standing timber in Quebec. The Department concluded after performing an economic analysis that private timber prices in New Brunswick were suitable for use in our benchmark. Our economic analysis also supported the Department's conclusion that private prices in Quebec were distorted. As no new evidence has been presented in this review to support the GOQ's argument that the private timber market in Quebec is a superior benchmark, the Department continues to determine that private prices in New Brunswick are useable in our benchmark.

Comment 23: Whether the Department Market Conditions in New Brunswick and Nova Scotia Are Similar Enough to Be Combined into a Single Benchmark Price

The OFIA/OFMA argue that the combination of New Brunswick and Nova Scotia stumpage prices fails to account for significant differences between the two provinces. According to Canadian parties, the differences in the laws and regulations governing forestry operations on private lands in New Brunswick and Nova Scotia support their argument that private prices from New Brunswick and Nova Scotia cannot be used as a benchmark. Canadian parties claim that because of these differences in forestry governance, the Department cannot use the combined New Brunswick and Nova Scotia prices as benchmarks to compare against Ontario Crown prices.

Department's Position: We continue to find that private prices from New Brunswick and Nova Scotia are appropriate under the Department's regulations. The Department's regulations instruct the Department to determine adequate remuneration by comparing the government price for stumpage to an in-country private price. See 19 CFR 351.511(a)(2)(i). When comparing the government price to a private price, the Department is to consider product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability. The OFIA/OLMA claim there are differences in laws and regulations between New Brunswick and Nova Scotia but provides no explanation of how a consideration of the differences in the laws and regulations of New Brunswick and Nova Scotia would impact our analysis – the OFIA/OLMA claims do not even address the degree to which these differences offset one another. Moreover, the OFIA/OLMA provides no evidence on the quantitative impact of these differences. Consequently, we are unable to take into account the alleged impact of the differences in laws and regulations cited by Canadian parties.

We also note that Canadian parties argued during the investigation that the Department could use prices from the Maritime provinces as a benchmark. See the "Maritime Provinces as Source of Potential Benchmark" section Final Determination Decision Memorandum.

Finally, we find relevant the Department's reasoning in response to Canadian parties' argument during the investigation, that the Department should adjust benchmark prices for the differences in political and economic conditions between Canadian provinces and the U.S. states from which the benchmark prices were taken. We found Canadian parties' approach to this issue to be impracticable. See the "Comparability of U.S. Timber Stands" section of the Final Determination Decision Memorandum.

Comment 24: Whether the Private Stumpage Prices in the Maritimes, as Reported by AGFOR, Reflect Actual Stumpage Transactions

The OFIA/OLMA argue that the AGFOR prices for New Brunswick and Nova Scotia, upon which the Department relied, cannot be used because the Department has not shown that these prices reflect actual stumpage transactions between private parties. The OFIA/OLMA specifically argue that because the AGFOR report employed a methodology which weight averaged prices by using estimated volumes, the prices cannot represent actual transactions. The OFIA/OLMA also challenge the AGFOR prices for Nova Scotia on the basis that the prices are reported in round numbers (e.g., C$20.0, C$40.0) and, thus, the round stumpage prices suggest that survey respondents were not reporting actual market transactions. The OFIA/OLMA also argue that the AGFOR Nova Scotia prices cannot be used because they are not contemporaneous to the POR and must be indexed.

The OFIA/OLMA also claim that the AGFOR New Brunswick prices do not represent actual transactions that reflect market conditions because the Department weight averaged prices reported by AGFOR survey respondents using volumes reported separately by the Marketing Boards. According to the OFIA/OLMA, the Department must use the volumes associated with the prices reported by the AGFOR survey respondents. The OFIA/OLMA also assert that the Department did not verify whether the survey respondents reported actual transaction prices. The OFIA/OLMA further challenge the New Brunswick prices on the grounds that survey respondents reported prices in percentages.

Department's Position: The Department has addressed some of these arguments in the final results of the first administrative review. See Comment 37 of the Final Results of 1st Review Decision Memorandum. In the final results of the first administrative, we rejected the claim that AGFOR prices cannot be used because they need to be indexed. We continue to reject this claim. The Department routinely indexes prices and other data that are not contemporaneous with the POR. For example, in investigation and the final results of the first administrative review, the Department indexed certain adjustments to Quebec Crown stumpage prices because the reported data was outside the POI and POR, respectively. See Calculations for Province of Quebec for the Investigation and the First Administrative Review.[30] Thus, in indexing the private stumpage

[30] We note that the index for inflation comes from the STATCAN Producer Price Index for Quebec; this is similar to the STATCAN Lumber Index for Atlantic Canada, the very index used by the Department to index prices in the Nova Scotia and New Brunswick Reports to the POR.

prices in AGFOR's Nova Scotia Report forward to the POR, the Department acted well within its established practice.

Regarding the OFIA/OLMA's claim that the AGFOR prices in New Brunswick cannot be used because parties reported these prices as "percent of mill", we explained in the final results of the first review, that "percent of mill" is a commercial term for transactions between buyers and sellers in New Brunswick, as verified by the Department. See Comment 37 of the Final Results of 1st Review Decision Memorandum. Because the OFIA/OLMA have offered no new evidence to challenge that "percent of mill" is a pricing mechanism used by private parties in New Brunswick, we continue to find this argument to be without merit.

This same reasoning also holds true in response to the OFIA/OLMA's novel argument that because Nova Scotia prices are expressed in round numbers they cannot be actual transactions. The Department verified the AGFOR Nova Scotia Report and the underlying data and found no discrepancies in how that data was collected. Furthermore, the OFIA/OLMA offers no evidence to support its theory that because the Nova Scotia stumpage prices are reported in round numbers they cannot represent market transactions.

Finally, the OFIA/OLMA have offered no new evidence to support their arguments about the weight averaging methodology employed by AGFOR. Therefore, we continue to find, as we did in the Final Results of the 1st Review, that AGFOR's survey methodology is appropriate. See Comment 37 of the Final Results of 1st Review Decision Memorandum.

Comment 25: Whether Tree Diameters in Alberta and the Maritimes are Sufficiently Comparable

Petitioners argue that Maritimes timber is smaller and inferior in quality to timber in Alberta, and assert that Alberta has consistently understated sawtimber diameter. Specifically, petitioners take issue with the results of a KPMG study used to identify the average dbh, and first submitted by the Government of Alberta (GOA) during the investigation. Petitioners claim the survey was performed solely for litigation purposes and is not credible due to problems with the methodology used. Petitioners state that the KPMG study is based on inventory data, which therefore includes pulplogs and may include trees that were not used to produce lumber. Petitioners argue that the inclusion of small trees not suitable for lumber production significantly lowers the average dbh of a particular stand reported in the KPMG study and petitioners assert that the dbh of the sawtimber is much higher than the results stated by KPMG. In addition, petitioners state that the conclusions of the KPMG study lack credibility because the study does not identify the size of the timber in its sample, does not segregate the sawtimber-quality trees or identify the average dbh for sawtimber separately, and does not list the minimum and maximum diameter figures included in the sample, which would enable a fair evaluation of the report.

According to petitioners, there are more carefully documented scientific studies that are on the record such as Huang (1994) and Kozak & Yang (1981). See Shongming Huang, et al. Ecologically Based Individual Tree Volume Estimation for Major Alberta Tree Species. Edmonton: AB Sustainable Resource Development Public Lands and Forests Division (1994) app. to Lutz SPF Comparison Study (Feb. 28) at Exh. 5. See also, "Equations for Estimating Bark Volume and Thickness of Commercial Trees in British Columbia," app. to Letter from Dewey Ballantine LLP to the U.S. Department of Commerce, Case No. C-122-839 (Feb. 28, 2005) Vol.

1, Exh. 8. The Huang (1994) report includes much more detail than the KPMG study, which petitioners assert, is necessary for the report to be considered for serious analysis and commentary. Petitioners assert that the Alberta Forest Service (AFS) timber inventory report submitted by the GOA in the instant review demonstrates that Alberta timber is much larger than Maritimes timber. Petitioners state that the AFS report provides average dbh figures for standing timber, was authored by a team of foresters, and was developed outside of litigation. However, petitioners state that the AFS report summary is similar to KPMG data because petitioners claim it is also based on inventory data and includes small trees that cannot be used to make lumber. Therefore, petitioners assert that the AFS data understate the size of Alberta's sawtimber, such that one would expect the report to arrive at average dbh figures much smaller than those found in the KPMG report, if in fact the KPMG report is based on harvest data, as implied by Alberta. Yet, the AFS timber inventory report produces average dbh figures nearly 10 percent higher than those produced by KPMG for the two species (white spruce and lodgepole pine) that petitioners state, make up 87 percent of Alberta's harvest. Petitioners claim that, despite its deficiencies, the AFS report is more reliable than the KPMG report but still presents an understated picture of the size of mature trees actually ready for harvest as sawtimber in Alberta.

The GOA argues that timber in Alberta and the Maritimes is not comparable for different reasons than those expressed by petitioners. Specifically, the GOA claims that Maritimes timber is superior to the standing trees in Alberta due to the Maritimes location and its beneficial climate. The GOA rebuts petitioners' assertion that the data used in the KPMG study is a byproduct of litigation and argues that the data on the average dbh for Alberta commercial timber were collected in the ordinary course of business and represent trees actually being harvested. The GOA defends the use of the diameter data compiled by KPMG, arguing that the Department verified in the investigation that the 8 inch dbh reported in the KPMG study is a reliable average for trees harvested by Alberta sawmills. The GOA further contests assertions made by petitioners which stated that the data obtained from the 1986 New Brunswick Forest Inventory report is more probative than the KPMG data. See Jack Lutz (Lutz Associates), "Price Distortion of Private Woodlot Stumpage in New Brunswick," February 28, 2005 app. to Pet. Feb. 28 Expert Studies Submission. Specifically, the GOA argues that the New Brunswick data includes all merchantable timber, which the GOA claims, includes data on timber destined for pulpmills, resulting in the inclusion of much larger volumes of smaller trees in the New Brunswick data than the KPMG data. Finally, the GOA rebuts the assertions petitioner made based on the KPMG study and the Huang study. In particular, the GOA argues that the smaller log size classes that petitioners stated were too small to produce lumber can, in fact, be used to produce lumber dimensional sizes 1 x 3 and 2 x 3 inches.

Department's Position: We continue to find that the KPMG study is reliable with respect to the dbh of Alberta's standing timber. The KPMG study was verified in the investigation and found to be a reliable measure of average diameter in Alberta, and is consistent with results of Alberta's log scaling data. Although petitioners have noted several deficiencies in the KPMG study, the alternate reports advocated by petitioners also contain deficiencies. In particular, the AFS report is based on inventory data rather than harvest data; therefore, the extent to which the AFS data includes trees that were not used in the production of lumber is unknown. In addition, the results of the Huang report on estimated tree growth metrics in Alberta are inconclusive, given that they

do not consistently demonstrate larger diameters than those reported in the KPMG study. Specifically, the Huang data report an average dbh of 5.50 inches for black spruce and 7.06 inches for jack pine in Alberta, as compared to the KPMG's reporting an average dbh of 6.40 inches and 8.20 inches, respectively for these species. See Huang (1994) report at 9 and the GOA's Questionnaire Response, Exhibit AB-S-25 at 19. Furthermore, as explained in the Preliminary Results, petitioners previously conceded that diameter differences do not significantly impact the price of logs for sizes up to10 inches in diameter, stating:

> . . .for sawlog sizes up to the 10-inch diameter class - the vast bulk of relevant logs in both the U.S. and Canada, outside of the B.C. Coast - log prices do not substantially vary on a per-unit-basis, as long as the logs are of a sufficient size and quality to be sold to sawmills for milling into lumber.

See Preliminary Results, 70 FR at 33104.

For these reasons, we continue to find that prices for standing timber in the Maritimes may serve as benchmarks when measuring the adequacy of remuneration of Alberta's administered stumpage program.

4. Use of U.S. Prices as Benchmark for Measuring the Adequacy of Remuneration

Comment 26: Montana as an Alternate Benchmark for Alberta

Petitioners argue that Montana represents the best benchmark region for determining whether Alberta Crown timber is being provided for adequate remuneration, because it shares common log and timber markets. Petitioners contest the GOA's assertion that Alberta logs would not be traded with Montana sawmills. Citing a report from the GOA's own expert consultants, petitioners state that Montana already has a two-way trade in logs with Idaho, Washington, Colorado, and Wyoming, and exports logs to Minnesota. See Keegan Report (2001) at 28-30 & Table 10. Thus, petitioners assert that log and timber prices in markets throughout the region would equilibrate. Petitioners state that the GOA has provided no evidence to support its claim that SPF timber in the southwestern portion of Alberta has greater value than SPF timber in central Alberta. In contrast, petitioners assert that the timber in Alberta is homogenous, which explains why Alberta's Timber Management Regulation system of timber pricing sets general timber prices throughout the province at the same levels. Petitioners state that the Department could avoid any potential problems with its proposed benchmark by utilizing log prices from eastern Montana, because this region and central Alberta are both located to the east of the Rockies.

Petitioners provide an alternative methodology, stating that if the Department does not use Montana values to benchmark all Alberta timber, it should use a Montana benchmark for lodgepole pine because this species does not occur in the Maritimes. Petitioners argue that lodgepole pine is not an Eastern SPF species because it does not grow in the Maritimes, Quebec, Ontario, Manitoba or Saskatchewan. Although Alberta reports lodgepole pine, jack pine and spruce in a single "spruce and pine" category, petitioners provided calculations to separate the

volume of lodgepole pine included in this species group. Petitioners further recommend that the Department restrict its analysis to eastern Montana if the Department is concerned that the mountainous region of western Montana is less representative of northern Alberta.

The GOA argues that Montana timber is superior to Alberta timber, has a more valuable species mix, is more accessible, and produces far more valuable products. In describing differences between Alberta and Montana timber, the GOA states that Alberta's forest, unlike Montana's forest, suffers from low precipitation, cold northern climates, short growing season, and poor proximity to the mills, all of which results in poorer-quality, smaller-diameter, and lower-value Alberta trees. In addition, the GOA states that the small trees that grow in the remote forests of Alberta are less valuable than those in Montana due to greater harvesting, hauling, and processing costs. In regard to lodgepole pine, respondents state that Alberta lodgepole pine is shorter, skinnier and more difficult to harvest than its Montana counterpart. In addition, the GOA states that Montana lodgepole pine trees are 40 percent larger in diameter than Alberta lodgepole pine. See GOA's Questionnaire Response dated November 22, 2004, Exhibit AB-S-25 at 18-19, which states that the average dbh of lodgepole pine in Montana is 11.2 inches. Finally, the GOA states that the Department, in both the investigation and the first administrative review, has already rejected the claim that Alberta has any timber like the timber in Montana.

Department's Position: As we have explained in the "Private Stumpage Prices from the Maritime Provinces" section of this decision memorandum, we are using Maritimes' price data as our benchmark for Crown-origin timber in Alberta, because we find that these prices are market-determined and are representative of market conditions in Alberta. These data represent actual transactions in the country under review within the meaning of tier one of 19 CFR 351.511(a)(2)(i). The comments concerning whether the Maritimes' benchmarks are representative of Alberta timber are addressed separately in the "Private Stumpage Prices from the Maritime Provinces" section of this decision memorandum. Because we have found that it is appropriate to use Maritimes prices under tier one of our adequate remuneration hierarchy of 19 CFR 351.511(a)(2)(i), we do not reach the issue of whether there are potential additional benchmarks under tiers two and three of our regulations, such as those proposed by petitioners. See Comment 35 of the Final Results of 1st Review Decision Memorandum.

Comment 27: Use of Cross-Border Benchmark

The GOBC and BCLTC discuss that in Lumber I, the Department cited factors like differences in quality in support of its finding that "a comparison of Canadian stumpage prices with U.S. prices would be arbitrary and capricious." See Certain Softwood Lumber Products from Canada, 48 FR 24159, 24168 (May 31, 1983) (Lumber I). Likewise, in Lumber III, the Department stated that "{w}e find that other factors which could adversely affect the comparability of adjacent U.S. and Canadian timber (e.g., exchange rate fluctuations) merely underscore the appropriateness of remaining within the relevant jurisdictions." See Lumber III, 57 FR at 22592. Canadian parties submit that many of the factors that make U.S. stumpage prices an arbitrary and capricious benchmark apply also to U.S. log prices. They also argue that if the Department departs from a prior position, as it did in the B.C. calculations of the final results of the first review and the Preliminary Results, then it must provide a reasoned explanation. See

Hoogovens Staal BV v. United States, 4 F. Supp. 2d at 1213, 1217 (CIT 1998); Fujian Machinery & Equipment Import and Export Corp. v. United States, 178 F. Supp. 2d 1305, 1327 (CIT 2001); see also the August 13, 2003, NAFTA Panel Decision at 32-33.

Petitioners rebut stating that the Department made timber comparisons in the underlying investigation of the instant review, justifying them based on an intervening change in law that altered the Department's former "preferentiality standard." See the "Prior Lumber Cases" section of the Final Determination Decision Memorandum at 45-47. The Department did not, however, explain what new evidence showed that such comparisons were now reasonable as a factual matter. Therefore, in the instant review, petitioners argue that the Department should explain why using either U.S. log or timber prices is reasonable.

Department's Position: We provided a reasoned explanation in the "Prior Lumber Cases" section of the Final Determination Decision Memorandum concerning our decision to use U.S. stumpage prices during that proceeding, and that explanation equally applies to our decision to use U.S. log prices in the final results of the first review and in the instant review. As discussed in the Final Determination Decision Memorandum, contrary statements in the past by the Department with respect to cross-border prices were made in the context of a different legal framework. Specifically, the final determination in Lumber III was made in 1992, before the URAA amendments to the Act. At the time of Lumber III, the provision of a good or service was a benefit if it was provided at preferential rates.[31] Subsequent to Lumber III, there was a change in the governing statute. To be consistent with the statute and the modifications concerning how to measure a benefit, the Department's analysis and methodology changed. See the "Prior Lumber Cases" section of the Final Determination Decision Memorandum.

There are important differences between the discarded preferentiality standard and the current adequate remuneration standard. Preferentiality is a measure of price discrimination, i.e., whether a government favors some buyers over others with lower prices. The first benchmark choice under the preferentiality methodology was to use another government price as a benchmark to determine whether the investigated program provides a benefit. A government price was the benchmark used by the Department in Lumber III. However, that benchmark does not measure adequate remuneration in accordance with the current governing statute. See section 771(5)(E)(iv) of the Act. Under 19 CFR 351.511(a)(2) there is a three-tier hierarchy for selecting a benchmark to measure the adequacy of remuneration. First, the Department will normally compare the government price to a market-determined price for the good or service resulting from actual transactions in the country in question. See 19 CFR 351.511(a)(2)(i). If there is no such in-country market-determined price, then the Department will make the comparison to a world market price that is reasonably available to the country in question. See 19 CFR 351.511(a)(2)(ii). Finally, if a world market price is not available, then the Department will select a benchmark that

[31] The methodology used by the Department to determine whether the good was provided at preferential rates was set forth in the "Preferentiality Appendix" and in section 355.44(f) of the then Proposed CVD Regulations. According to the methodology in place at that time, the Department would measure whether the government provided a good or service at a preferential rate based upon, in order of preference, the following benchmarks: (1) the price the government charges to other parties for the identical or similar good; (2) the price charged by other sellers within the same political jurisdiction (i.e, country under investigation); (3) the government's cost of providing the good or service; or (4) the price paid for that good outside the country under investigation.

is consistent with market principles. See 19 CFR 351.511(a)(2)(iii). As discussed in the final results of the first review and the Preliminary Results of this instant review, we have found that there is no market-determined price in British Columbia and no available world market price. Consequently, we turned our analysis to U.S. log prices, which have been determined to be consistent with market principles and, therefore, appropriate benchmarks under tier-three of the regulatory hierarchy for determining the adequacy of remuneration of B.C.'s administered stumpage program. For a further discussion, see the "Selection of Benchmark Price Used for British Columbia," section of this decision memorandum.

Comment 28: Whether Fundamental Differences in Log Market Conditions Exist in the U.S. Pacific Northwest and British Columbia

The GOBC and BCLTC argue that the methodology the Department relied upon in the Preliminary Results, that log prices are the same throughout bordering regions in North America with similar species mixes, does not produce a benchmark that reflects prevailing market conditions in British Columbia. This methodology, they further argue, is contrary to record evidence which demonstrates that prevailing log market conditions are substantially different in the U.S. PNW and British Columbia. They submit that the record establishes that log markets are local, and logs of the same species and grade sell at different prices in different markets.

Specifically, they discuss that the economic evidence demonstrates that logs do not obey the Law of One Price and that log prices do not equilibrate within jurisdictions, much less across borders. The record, they contend, shows that average log prices in bordering regions vary substantially, even where species mixes are similar. They submit that if average log prices did equalize in these circumstances, then average log prices in adjacent areas in the U.S. PNW would be the same, because those areas have generally the same species and the lumber manufactured is sold almost exclusively into the North American lumber market. But, the Canadian parties note, empirical analysis of the data demonstrates significant differences in log prices among regions within the U.S. PNW, reflecting that prices vary according to local market conditions, e.g., availability of timber supply in relation to mill demand. See the GOBC's February 28, 2005, submission at Volume VII, Tab 3 for Leamer's "Log Price Variability in the U.S. Pacific Northwest: Implications for Commerce's Cross-Border Log Price Methodology" at 203 (Leamer Report); see also Volume I, Tab 1 for Jendro and Hart's "Use of U.S. Prices as Benchmarks for B.C. Stumpage" at 21-40 (Jendro Report). Therefore, they argue, because log prices are clearly not the same in each region, the Department has no basis upon which to assume that any difference in log prices between the U.S. PNW and British Columbia is a measure of alleged subsidies in British Columbia and not the result of the same kinds of factors that cause log prices to vary within the U.S. PNW.

The GOBC and BCLTC further argue that numerous factors cause the Canadian log market conditions to be substantially different than U.S. log market conditions and, they contend, it is impossible to adjust for all the differences. See Jendro 2005 at 9-12, 40-54. They assert that the most significant of the factors, which cause B.C. log prices to be lower than U.S. PNW log prices, are: (1) differences in local conditions of supply and demand; (2) the mountain pine beetle

infestation in the B.C. Interior;[32] (3) increased transportation costs for downstream products of B.C. log processors; (4) differences in log characteristics; (5) differences in conditions of sale; (6) differences in measurement systems; (7) exchange rates; (8) differences in regulatory and tax environments; and (9) the antidumping and countervailing duty cash deposit requirements imposed on Canadian lumber sold in the U.S. market.

The Canadian parties also argue that the above-indicated differences in market conditions also contribute to Canada's comparative advantage in logs and lumber. And, as the Department explained in Lumber I, "{i}t is not the DOC's policy to use cross-border comparisons in establishing commercial benchmarks, because such comparisons fail to account for differences in comparative advantage between countries." See Certain Softwood Lumber Products from Canada, 48 FR 24159, 24182 (May 31, 1983) (Lumber I). They also argue that the Preliminary Results do not accord with prior NAFTA and WTO Appellate Body decisions regarding comparative advantage. By attributing the entire price difference to the subsidy, the Department's methodology impermissibly "offset{s} differences in comparative advantages between countries." See WTO Appellate Body Report at para. 109; see also the August 13, 2003, NAFTA Panel Decision at 35. ("{C}ountervailing measures may be used only for the purpose of offsetting a subsidy bestowed upon a product, provided that it causes injury to the domestic industry producing the like product. They must not be used to offset difference in comparative advantages between countries.")

Petitioners argue that the conditions necessary for the integration of log markets across the U.S.-Canadian border are present and such integrated markets would develop absent the provincial subsidy arrangements. Specifically, they discuss that the subject/benchmark log market regions consist of the same geographic and bioclimatic zones; contain the same species; could service the same overlapping mill-demand markets because they are within the same mills' log-haul radii; and service the same downstream lumber markets. Petitioners further discuss that one of the key factors in determining the likelihood of market integration between regions is similarity in species and that the subject/benchmark regions grow, harvest, and process the same species of trees. Thus, a benchmark using the same species as that of the subject timber could reasonably be expected to belong to the same natural integrated market. They further argue that absent Canada's distortive government measures, each of the subject/benchmark regions would have integrated log markets and the Law of One Price would apply. Petitioners discuss that studies on the record demonstrate that log markets can be integrated across regions equivalent or larger in size to the subject/benchmark regions and provide the example of four Nordic countries which comprise an integrated log/timber market spanning approximately 446,000 square miles. See Petitioners' April 15, 2004, submission for Thorsen's "Spatial Integration in the Nordic Timber Market: Long-Run Equilibria and Short-Run Dynamics" at Appendix B.

Petitioners also state that any significant differences in log prices among the U.S. PNW regions are rare and that respondents' analysis comparing price averages ignores the significant and extensive overlaps that exist among the prices in the U.S. PNW. They submit that analyses of the data demonstrate that prices from one subregion have large overlaps with those of the neighboring subregions and that each of the subject benchmark regions exhibits a generally

[32]During the POR, the mountain pine beetle infestation affected timber in the Interior. A beetle-infested tree becomes marked with a signature "blue stain" on its outer rings caused by fungi.

normal distribution of prices clustered around an average. See Petitioners' March 15, 2005, submission for Cox & Lord's "Response to Report by Jendro & Hart et al. dated February 2005 regarding U.S. Prices as Benchmarks for B.C. Timber" at 27. Petitioners further add that, as respondents' experts have attested, the existence of a range of values for logs – a distribution of prices around a mean – is what one would expect in an integrated market. See Petitioners' February 28, 2005, submission for Nordhaus' "An Economic Analysis of the Use of U.S. Log Prices to Determine Adequacy of Remuneration for B.C. Stumpage" at 81-82.

Department's Position: We have previously determined that timber harvested in the U.S. PNW is representative of timber grown in British Columbia. A key factor in reaching this determination is that the same timber species grow throughout the PNW. As we discussed the final determination for the underlying investigation, a review of a North American forestry map demonstrates that there is a vast contiguous forest region in the PNW, and the U.S.-Canada border in no way alters this fact. See Final Determination Decision Memorandum at 44. Moreover, the growing conditions in the U.S. PNW and in British Columbia are also largely the same. Timber species and growing conditions are both key factors in determining the market value of standing timber, and thus whether timber from the U.S. PNW and British Columbia are comparable. The comparability of PNW timber is also attested to by numerous studies on the record that examine the forest products industries in the U.S. PNW and British Columbia. See Final Results of 1st Review Decision Memorandum at 17 -18. While these studies have identified certain differences between the regions, e.g., different corporate tax codes, the studies demonstrate the many underlying similarities across the geographic region, which further supports the conclusion that timber throughout this region is highly comparable. See "Benefit" section above.

Once we established that timber in the U.S. PNW is comparable to that in British Columbia, we further examined whether prices in the United States were market determined and therefore suitable for benchmark purposes.[33] Information on the record demonstrates that U.S. log prices are from private transactions between log sellers and buyers participating in an open, competitive market for logs harvested from private lands. As such, these are market determined prices.[34] For these reasons, we determined that it was appropriate to use U.S. log prices as benchmarks pursuant to a market principles analysis under 19 CFR 351.511(a)(2)(iii).

To calculate "derived market stumpage prices" to compare with Crown stumpage, we deducted the harvesting costs reported by harvesters of Crown and private timber in British Columbia from the U.S. log price benchmarks. The costs we made adjustments for were, *inter alia,* costs associated with the tenure contract and with accessing timber for harvesting, and costs of acquiring timber. Because these cost adjustments were made with respect to market conditions

[33] As explained in the "Benefit" section, above, in evaluating potential benchmarks, we already rejected the use of all prices in Canada to assess the adequacy of remuneration for Crown stumpage in British Columbia.

[34] State and Federal Timber is sold as stumpage. Some of the transactions in question may represent logs harvested from these lands and resold in a separate private transaction. Private land accounts for the majority of logs. Further, because the U.S. log prices are averages of prices obtained from numerous log buyers and sellers through pricing surveys, some price variance across the regions of U.S. PNW is normal and expected.

in British Colombia, the derived market stumpage prices were representative of the prevailing market condition in the province.[35]

For all of the reasons described above, we concluded that U.S. log prices are appropriate benchmarks to assess the adequacy of remuneration for Crown provided stumpage in British Columbia. We continue to disagree with the GOBC that the differences in the prevailing market conditions between the U.S. PNW and British Columbia that the GOBC describes are significant or that these differences make a cross-border comparison impossible.

First, respondents have not submitted any record evidence to demonstrate that the timber species grown in the U.S. PNW and in British Columbia are not comparable. Record evidence demonstrates the opposite, that the forests of the PNW are contiguous, extend across the geopolitical border, and that the same species and growing conditions prevail in the U.S. and British Columbia. Further, in deriving market determined stumpage prices from U.S. log prices, we have selected prices for comparable species and made adjustments to these prices to account for the commercial environment of the B.C. timber market. We have also taken into account other market conditions, such as the mountain pine beetle infestation which afflicted trees in the B.C. Interior. To do this, we have, for these final results, incorporated into the B.C. Interior benchmarks all blue stain U.S. log prices available on the record.

Second, we are not persuaded by the GOBC's arguments that cross-border comparisons are complicated by, for example, differences in regulatory, tax, and other conditions. As an initial matter, if these arguments were true, all potential transactions that are not strictly "in-country", or "in-province" for that matter, would be impermissible as benchmarks. This result is contrary to U.S. law and the Department's regulations, which provide for the use of benchmarks that are from outside the jurisdiction that is granting the subsidy. Furthermore, it would be both impracticable and superfluous to require adjustments be made to reflect the impact certain differences in market conditions that do not have any manifest or demonstrated effect on the comparability of goods. Nothing in the countervailing duty statute or regulations requires such refinement in the construction of subsidy benchmarks. Moreover, the mere fact that there may be differences in a myriad of regulatory, tax, and other conditions in the respective jurisdictions says nothing about the relative impact of those conditions on prices for goods sold. Because many of these conditions largely exist on both sides of the U.S. - Canadian border, and the GOBC has not demonstrated how these differences render insupportable any timber comparison, we do not agree that adjustments for these factors are either necessary or required.

Finally, concerning the GOBC's "comparative advantage" arguments, we find as a threshold matter that nothing in the countervailing duty statute or regulations requires the Department to consider whether comparative advantage lies behind the provision of goods or services. The statute and regulations simply require that the Department determine whether the provision of goods or services is for adequate remuneration. Furthermore, insofar as comparative advantage can be a cross-border difference that might be taken into account in making cross-border comparisons, we find that there is no reason to do this where the Department is not comparing autarchy prices, i.e., prices in the absence of trade where the price on one side of the border is independent of the price on the other side of the border. Although the log prices that we

[35] It is important to recognize that the species in British Columbia and U.S. Pacific Northwest are sold into the same markets; primarily high quality log exports to Japan, and finished lumber into the North American Market.

are comparing are not directly dependent on each other, they are indirectly interdependent in that they are all derived from lumber prices – and lumber trades across the border. Because the prices in question are, therefore, not autarchy prices, we find that there is no basis for the requested adjustment.

Comment 29: Whether U.S. Log Price Data Are Complete, Representative, and Reliable

GOBC and BCLTC argue that even if it were possible to adjust for all the market conditions that cause log prices in the United States and Canada to diverge, the information on the U.S. log prices is insufficient to assess the comparability of the U.S. and B.C. log market conditions because the record does not contain key information about U.S. logs such as size characteristics and grade distribution. See Jendro Report at 48-54. Diameter, length, taper, and other physical qualities of a log may affect its value, even within a grade, yet no price reports on the record contain any information on the size characteristics of the logs associated with the reported prices. Id. at 5-54. It is therefore impossible, they contend, to calculate average log prices that reflect the species and grades of the B.C. harvest during the review period. Because the Department's goal was to estimate the value of the log harvest in British Columbia, it should have weighted U.S. log prices based on the distribution of log grades and sizes in the province. But the Department instead calculated a simple average of reported U.S. log prices, which caused the resulting species-specific price not to reflect the distribution of logs of different grades sold in U.S. log markets, much less in B.C. log markets, they claim. The Department's simple-averaging, they argue, inflated the U.S. log price benchmark by giving undue weight to smaller but higher-priced sales of unrepresentative logs, and effectively presumed incorrectly that each grade is equally represented in U.S. log sales.

Further , they argue that the log price reports used are not compiled using a statistically valid survey methodology, and the data contain no information that would allow the Department to draw conclusions about the accuracy of the reported prices. Id. at 46-47. Lacking the ability to assess the reliability of the statistical information, the Department had no basis on which to conclude that the difference in the prices that it found were attributable to a subsidy, and not simply with in the margin of error for the reported data.

Petitioners agree that the size and other physical qualities of a log may affect its value. However, they argue that the log price data used by the Department include all information necessary to calculate reliable benchmarks and that the price data sources, in particular, Log Lines and Northwest Management Inc. (NWI), use widely accepted price survey techniques. Specifically, they discuss that Log Lines and NWI collect prices using the same survey method used to collect the price data published by Random Lengths. The prices published by Random Lengths are relied upon by industry and governments, including the government of Alberta. Further, they argue that there is no evidence indicating that any difference in the distributions in the size and quality of logs between the Canadian and U.S. sides of the border would cause the calculated subsidy benefit to be overstated. Petitioners discuss that NWI does not publish grade-specific prices but ranges which encompass the range of grades of logs sold. They submit that it would be appropriate to use the higher end of the range, rather than the midpoint (as the Department has done) as the higher value would be most representative of the mix of Canadian timber harvested.

Department's Position: We agree that the size, grade, and other physical qualities of a log may affect its value. Respondents' criticisms of the U.S. log benchmark data, and their reliability as benchmarks, however, are without merit.

First, the log market reports, many of which were placed on the record by respondents, apply widely accepted survey techniques by obtaining their U.S. log pricing data from surveys of numerous log buyers and sellers either by phone or fax, on a monthly or quarterly basis. The reports are published and used by sawmills and loggers in both the U.S. PNW and British Columbia, as well as by state and local governments and timber and logging consultants and associations. There is no information on the record that indicates the survey methodologies employed by these market reports are unsound and that, therefore, the prices reported are unreliable.

Second, respondents have not provided any evidence to support their claim that the benchmarks were inflated because the U.S. log price benchmarks give more weight to smaller, higher-priced sales of unrepresentative logs. There is also no evidence indicating that there is any difference in the distributions in the size and quality of logs between the U.S. PNW and British Columbia

Finally, we disagree that the precise matching of logs by species, size characteristics and grade distribution that is advocated by respondents, is either required or possible. There is no requirement in the statute or the Department's regulations that a benchmark price match precisely all of the characteristics of the subsidized price. Rather, benchmark prices must take into account a number of factors affecting comparability. This is what we have done here: we have selected as our market benchmarks prices for U.S. logs that are representative of the species grown in British Colombia, and we have further adjusted these prices to derive market-determined stumpage prices to compare against the Crown stumpage prices in the province. Moreover, the GOBC did not submit the information on the record of this review which would allow the Department to estimate the value of the log harvest in British Columbia by weighting U.S. log prices based on the distribution of log grades and sizes in the province. The GOBC simply submitted information on the average top and butt diameter and log length for the province. See GOBC's November 22, 2004, Questionnaire Response at Exhibit BC-S-167. Further, the GOBC commenced collecting that average log data in November 2003 and, therefore, it is not even representative of the entire period of review. Id. at BC-V-2. As such, the weighting suggested by respondents would not even be possible.

Comment 30: B.C. Log Import and Export Data

The GOBC contends that the B.C. log import data are limited, unrepresentative and unreliable and should not be used as a benchmark for determining adequacy of remuneration. The GOBC points out that the log import data are covered by a single HTS category, which is a basket category that includes many products other than logs. In addition, STATCAN found that the import data are characterized by errors, including misclassification of lumber as logs and conversion errors.

The GOBC claims that in the NAFTA Panel Remand Determination the Department determined that prices for logs exported from Canada to the United States do not represent actual log prices in Canada, and argues that the record of the second review supports the Department's

finding in the NAFTA Panel proceeding. The GOBC argues that B.C. log export prices do not reflect prevailing market conditions in Canada because only five percent of the B.C. timber is exported, and it is not representative of the other 95 percent that is processed domestically. The GOBC also contends that as with the import data, the record reveals that STATCAN export data contain classification and conversion errors, and do not accurately reflect the composition of major species categories. Hence, import and export prices cannot be included in any log price benchmark.

Petitioners counter that U.S. prices most accurately indicate adequate remuneration for subsidized timber because U.S. logs are produced in a free market absent the artificial constraints that characterize the Canadian market. Petitioners rebut that import price data as a benchmark price by itself undervalue the Canadian subsidy because imports compete against subsidized Crown timber and distorted domestic prices, reflecting the lowest range of U.S. log prices. Consequently, log import prices do not reflect the full price Canadian governments could obtain consistent with market principles.

Petitioners contend that the addition of export log prices to the import prices could be used as a benchmark for determining adequacy of remuneration. Petitioners assert that exported logs are logs harvested in Canada, and reflect Canadian market conditions. They argue that a market-based seller of stumpage in Canada would take the possibility of log exports into account and would act in its "own best interest" to base its price to the buyer/harvester on the highest available log prices in Canada, less costs, regardless of the location of the log purchaser. However, they also contend that a mix of import and export price data is inferior to U.S. log prices as an indicator of adequate remuneration for subject timber.

Department's Position: The Department has used neither B.C. log import or export prices in its benchmark calculations for the province. Instead, the Department found that U.S. log prices, consistent with market principles analysis, is a more appropriate benchmark to use. See Preliminary Results, 70 FR at 33106; see also the "U.S. Log Prices Are a More Appropriate Benchmark" section of the Final Results of 1st Review Decision Memorandum. No new information has been submitted in this review that warrants a reconsideration of our prior finding.

D. Stumpage Calculation Issues

1. Calculation of Maritime Benchmark

Comment 31: Data Used to Index Private Maritime Stumpage Prices to the POR

Petitioners argue that the Department erred in selecting STATCAN's Atlantic Region Softwood Lumber Price Index over an index constructed from Atlantic Forestry Review (AFR) log prices to adjust the Maritime benchmark prices to the POR.[36] First, petitioners note that STATCAN has a separate price index for chip prices, which indicates that the STATCAN lumber index reflects only a portion of the value derived from the log. Petitioners also challenge the use

[36] STATCAN's Atlantic Region Softwood Price Index is a lumber-specific index which the Department used in the first administrative review and the Preliminary Results of this review to index prices forward to the POR. See Preliminary Results, 70 FR at 33104.

of the STATCAN index on the basis that it collects data from Prince Edward Island and Newfoundland and Labrador, provinces not covered by AGFOR's private price survey. Petitioners further argue that the use of lumber prices to index the AGFOR prices is distortive because the lumber index covers a whole year of data while the AGFOR prices are for a portion of a year. Petitioners also claim that the STATCAN lumber index does not reflect price trends in the standing timber market that are attributable to the seasonality of the harvest in Nova Scotia, e.g., higher harvesting costs in the springtime which, in turn, increase stumpage prices in the province.

Petitioners also assert that the Department should not reject the log price index derived from the AFR data based on perceived defects related to the AFR's data collection methods. Moreover, petitioners claim that the supposed defects cited by the Department in the Preliminary Results are, in fact, not present in the AFR data. For example, petitioners argue that the prices for logs listed in the AFR publications are regularly collected from the same group of mills on a year-to-year basis. Petitioners also claim that the Department can easily construct a log price index from the AFR data because they are readily available on the public record. Petitioners claim that, in contrast, the data underlying the STATCAN index are treated as confidential and are therefore not subject to review.

Petitioners also argue that the Department's selection of the STATCAN lumber index over the AFR log price index on the grounds that it did not constitute a pre-existing index and was constructed outside the course of this proceeding constitutes an unreasonable application of form over substance. Petitioners argue that the issue germane to the Department's analysis is the selection of an index that best tracks standing timber prices. On this point, petitioners argue that a log price index is a superior indicator of the movement of standing timber prices because logs are more closely related to standing timber. In contrast , petitioners claim that lumber is not a suitable proxy by which to track the movement of standing timber prices because they are too far removed from the market participants that buy and sell standing timber. In support of this contention, petitioners cite to the Athol study which they claim demonstrates that log and lumber prices diverged during the period 1999 through 2004. According to petitioners, the drop in lumber prices during this time period is attributable to the increased mechanization of Nova Scotia's harvesting industry. Petitioners also contend that the divergence of lumber and log prices is attributable to the fact that private woodlot owners can withdraw from the standing timber market during periods of weak lumber prices. Petitioners have further claimed throughout this segment of the proceeding that a graphical comparison of the STATCAN lumber and AFR log prices indices illustrates the divergence in prices that occurred from 1999 through 2004. See e.g., page 9 of the attachment contained in the April 14, 2005 memorandum to the file from Eric B. Greynolds, Program Manager, Office of AD/CVD Enforcement III, entitled, "Meeting with Counsel to the Coalition for Fair Lumber Imports Concerning the Upcoming Preliminary Results."

Canadian parties argue that AGFOR prices are not comparable to prices from the subject provinces, regardless of how the Department indexes the AGFOR private stumpage price data to the POR. However, to the extent the Department continues to use Maritime prices as a benchmark, Canadian parties argue that the Department was correct in rejecting petitioners' constructed log indices in favor of the STATCAN Atlantic Lumber price index. In particular, Canadian parties argue that the STATCAN index is created in the ordinary course of business by STATCAN and follows high standards of accuracy and representativeness. They further contend

that the AFR prices argued for by petitioners are not reliable and contain many defects. For example, Canadian parties claim that petitioners' constructed log price index is incomplete, cannot be segregated according to delivery terms, and has not undergone any investigative review. They also argue that the AFR's lack of detail regarding delivery terms could result in a data set with prices that are too high because delivery costs are included. According to Canadian parties, neither the petitioners nor its consultant, Athol, have demonstrated the representativeness of the AFR data. Canadian parties further challenge the log price index petitioners constructed from the AFR data on the basis that neither Athol's methodology nor its calculations of prices are disclosed. Lastly, Canadian parties claim that the AFR prices are merely offer prices which cannot be used to construct an index.

Department's Position: As we stated in the Preliminary Results of this review, we find that the STATCAN Lumber index is the most reliable means to index the private standing timber prices from the AGFOR reports forward to the POR because the STATCAN index is an index constructed from actual prices using valid methods for statistical sampling, data collection and extrapolation. See Preliminary Results, 70 FR at 33104. In addition, we continue to find that the price data from the AFR is insufficient to form an index to measure price trends for logs from 1999 to the POR. We also find that the AFR data are not sufficiently representative of market conditions and do not adequately support petitioners' divergence theory, which is the basis for petitioners' argument that the Department should use the AFR prices over the STATCAN index.

We disagree with petitioners' contention that the lumber price index from STATCAN is overly broad because it contains price data from all of the Maritime provinces. As discussed below, our analysis of the AFR data petitioners used to construct the log price index indicates that, in some time segments, price data for New Brunswick are lacking or are non-existent. Thus, we find that it is more accurate to use an index that includes data for the entire Maritimes region, as opposed to one that, in certain time periods, fails to reflect the market conditions that prevailed in the region from which the benchmark data were obtained.

We also fail to see how the STATCAN lumber index is inferior to petitioners' constructed log index simply because it reflects a breadth of data and over extended, uninterrupted time periods. Furthermore, there is no evidence suggesting that petitioners' constructed log price index is any more contemporaneous or reflective of seasonal changes, especially since the log price data from the AFR are published but twice a year and reflect only a single week of price data in each publication. See the May 31, 2005 memorandum to the file from Maura Jeffords, Case Analyst, AD/CVD Enforcement, Office 3, entitled, "Telephone Conversation with General Manager of the Atlantic Forestry Review," (AFR Memorandum) in which an AFR employee explains that the log price data for 2003 reflected prices at which mills were buying softwood sawlogs during one-week periods in late May and November of 2003.

We do not agree with petitioners' claim that their constructed log price index is superior because the underlying AFR data are publicly available while the data used in the STATCAN index are treated as confidential and, thus, are not available for review. The Department has conducted two verifications at STATCAN during which officials from the Department specifically examined the lumber price index. See e.g., page 8 and 9 of the February 15, 2002, Memorandum to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, from Eric B. Greynolds, Senior Case Analyst, Office of AD/CVD Enforcement VI, entitled, "Verification of

the Questionnaire Responses Submitted by the Government of Canada (GOC)," which was included in Exhibit QC-S-117 of the GOQ's November 22, 2004 Questionnaire Response; see also page 5 of the June 2, 2004 memorandum to Eric B. Greynolds, Program Manager, Office of AD/CVD Enforcement VI, from Margaret Ward, Import Compliance Specialist, Office of AD/CVD Enforcement VI, entitled, "Verification of the Questionnaire Responses Submitted by the Government of Canada and Statistics Canada," which was included as Exhibit QC-S-118 of the GOQ's November 22, 2004 Questionnaire Response.

We note that the Athol report petitioners suggest we use was generated in the context of the countervailing duty proceeding and that Athol consists of a cooperative of Nova Scotian woodlot owners who would benefit from prices for logs remaining high although lumber prices might decline. We also point out that Athol's contention that log prices remained high while lumber prices decreased is based on anecdotal evidence as well as on an index devised from log prices and offer prices from the AFR.[37] This log price index is the basis for Athol's and petitioners' "divergence theory." A review of the AFR log price data suggests that petitioners' "divergence theory" is not substantiated by record evidence and that the data suffer from numerous flaws.

First, a review of the AFR data for 1999 and 2002 to 2004 shows that they are not sufficiently representative of market conditions in order to index prices in New Brunswick and Nova Scotia to the POR. Our analysis shows that there were a total of 76 prices/offer prices for sawlogs and studwood in the 1999 and 2002 through 2004 editions of the AFR that petitioners placed on the record of this review. A further breakdown of these numbers shows that 70 of these prices/offer prices are traceable to Nova Scotia mills. The predominant use of Nova Scotia prices for purposes of constructing an index would not accurately reflect the price trends in Nova Scotia and New Brunswick between the survey periods and the POR.

Moreover, for the reasons discussed below, the Department finds that the Nova Scotia AFR prices/advertisements are flawed and inadequate for purposes of indexing the AGFOR Nova Scotia prices forward to the POR. An analysis of the companies contained in the AFR publications indicates that the pricing data comes from a total of twelve companies covering a total of five time segments.[38] Nine of those companies are from Nova Scotia and three are from New Brunswick, which again demonstrates the bias towards Nova Scotia prices in the price index. Further our analysis shows that in some time segments, the AFR editions contain little or no data on New Brunswick prices/advertisements. Finally, a review of the AFR data on a mill-specific basis indicates that the price/offer prices are from relatively small mills that would not

---

[37] See AFR Memorandum where the AFR employee explains that the publication contacts mills that purchase the subject merchandise (e.g. softwood sawlogs) and generally asks them to solicit their price. In the AFR Memorandum, the employee further explains that some mills disclose what they actually pay while others provide the mill's price list for that week.

[38] See the December 5, 2005, memorandum to the file from Eric B. Greynolds, Program Manager, Office of AD/CVD Enforcement III, entitled, "Analysis of Price Data from the Atlantic Forestry Review and Statistics Canada for Use in Final Results of Review" (Maritime Index Memorandum), where we define a time segment as the AFR edition which lists the advertisements/prices and the softwood product. The five time segments are: January 1999 for sawlogs, January 1999 for studwood, July 2002 for sawlogs, July 2002 for studwood, January 2003 for sawlogs, January 2003 for studwood, July 2003 for sawlogs, July 2003 for studwood, January 2004 for sawlogs and January 2004 for studwood.

significantly influence price trends in their respective provinces. For instance, the majority of the Nova Scotia prices in petitioners' constructed index are from mills which annually process between 30, 000 and 70,001 cubic meters. See Maritime Index Memorandum. The Nova Scotia Registry of Buyers indicates that the majority of wood consumed in Nova Scotia is processed by mills requiring more than 200,000 cubic meters of log inputs per year. Id.

When these AFR data are compared to the STATCAN Lumber index, these observed deficiencies show that the AFR price data are inferior and lack the qualities necessary for a statistically valid index. For example, STATCAN's lumber price index consists of survey responses from mandatory respondents, while the data from the AFR, upon which petitioners base their log price index, consist of voluntary submissions. Further, the STATCAN index mandates that important producers are "must take" respondents to any survey; the AFR has no way of compelling or guaranteeing that the important producers in Nova Scotia or New Brunswick are represented. Prices used for the STATCAN index are collected monthly over a three week period; AFR prices/advertisements are reported for a one week period, two times a year. STATCAN's index emphasizes that respondents report actual price data, yet the AFR acknowledges that the information it publishes can be either actual prices or offer prices. See Preliminary Results, 70 FR at 33104 - 33105. We also note that petitioners' argument that the STATCAN index is over inclusive because it contains prices from Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador is not persuasive; the number of lumber producers in Price Edward Island and Newfoundland and Labrador is so few that these provincial governments could not report the lumber production because doing so would reveal confidential information.[39]

Petitioners "divergence theory" is also unreliable because log price data on the record do not completely cover the time segments corresponding to the Nova Scotia and New Brunswick AGFOR benchmark prices through the POR. For example, the record only contains data from the AFR for 1999 and between 2002 and 2004. Moreover, a comparison of the AFR data (using all available AFR data points and utilizing standard indexing methods) from 2002 through 2004 with STATCAN lumber price index data from the same period shows that the prices track each other rather closely. See Maritimes Index Memorandum. As stated above, we find that the AFR data are incomplete and unreliable. Thus, we do not contend that our analysis of the AFR data, in relation to the STATCAN data, is necessarily conclusive. However, regarding the AFR data, the fact that an entirely different result can be obtained using less selective data plotting methods reveals the discretion applied in order to reach petitioners' conclusion concerning the "divergence" of log and lumber prices. Given this fact, we find this particular aspect of petitioners' "divergence" argument unpersuasive.

For these reasons along with the reasons articulated in the Preliminary Results of this review, we reject petitioners' contention that the Department should replace its STATCAN lumber price index with a constructed index using log price advertisements from the AFR.

---

[39] See Exhibit 1 of the November 23, 2004 Question Response of the Government of Newfoundland and Labrador; see also page 2 of the November 23, 2004 Questionnaire Response of the Government of Prince Edward Island.

Comment 32: Rounding of the Maritimes Stumpage Index

Canadian parties claim that the Department inconsistently applied the index of 0.9671 needed to index the New Brunswick benchmark prices forward to the POR. Specifically, Canadian parties claim that the Department used 0.9671 to index SPF prices forward but used 0.97 to index the SPFL benchmark for Quebec. Canadian parties request that the Department apply the 0.9671 index consistently across the New Brunswick prices.

Department's Position: We have reviewed the calculations and agree with Canadian parties. We have corrected the error. See Calculation Memorandum for the Maritime Benchmark at Table Tables 5A, 5B, and 7.

Comment 33: Method Used to Weight Average Benchmark Prices in New Brunswick

Petitioners argue that the Department incorrectly calculated stumpage prices for New Brunswick because the Department failed to follow its methodology. According to the petitioners, in the Preliminary Results, the Department stated that it weight averaged when every Marketing Board reported volume and price data; otherwise we simple-averaged the prices. See Table 4 of the Maritime Benchmark Calculation Memorandum. Petitioners contend that the Department calculated weight average prices for species where it did not have a price and volume for every Marketing Board. Furthermore, when the Department did weight average in these cases, it excluded prices where no volume was reported, e.g., White Pine. Petitioners argue that the Department calculate prices for stumpage in New Brunswick based on the Department's methodology stated on Table 4 of the New Brunswick calculation.

Although Canadian parties do not rebut petitioners' arguments, Canadian parties do include a footnote in their briefs stating that in general, using a weighted average method is more representative than a simple average. Canadian parties do challenge petitioners' calculations that a simple average of SPF prices in New Brunswick would yield an average price of C$23.00. Canadian parties claim the average price would be C$21.69.

Department's Position: Upon review of the calculations for the New Brunswick prices, the Department acknowledges that it was inconsistent in its application of its weight averaging methodology. The Department has corrected this error for the New Brunswick AGFOR prices by weight averaging when every Marketing Board reported a volume and price and simple averaging when volume or price was not reported by every Marketing Board. This approach is consistent with the methodology we intended to employ in the Preliminary Results.

Comment 34: Weighting of Benchmark Studwood Stumpage Prices in Nova Scotia

Petitioners claim that the Department did not properly weight the prices from AGFOR for studwood and saw timber in Nova Scotia. Petitioners claim that record evidence demonstrates that saw timber and studwood are not equally harvested in Nova Scotia, even though the AGFOR Report upon which the Department relied, weighted studwood and saw timber equally. Petitioners criticize AGFOR for not collecting volume information on studwood products for

Nova Scotia yet later collecting volume information for sawlogs and studwood for New Brunswick. Petitioners argue that since there is no evidence on the record which indicates the proportion of studwood to total harvest in the Nova Scotia, the Department instead should use the US Forest Service's Sawmill Survey, which reported studmills accounting for 10.3 percent of Nova Scotia's sawmill capacity.[40] Petitioners also advocate the use of the Sawmill Survey on the grounds that it was conducted outside the context of litigation and in the ordinary course of business. Petitioners disagree with the Department's basis of rejecting the US Forest Service Sawmill Survey in the Preliminary Results on the grounds that the Survey did not account for all sawmill capacity in Nova Scotia. Petitioners rebut the Department's rationale by stating that the AGFOR Study does not account for all the studwood and sawmill production in Nova Scotia.

Canadian parties argue that the Department must weight Nova Scotia sawlogs and studwood volumes based on the prevailing market conditions in the provinces subject to review. Canadian parties argue that the law requires the Department to utilize the Maritime benchmark after properly accounting for size-related pricing differences between Crown logs in the provinces under review to private market timber entering mills in the Maritimes. Canadian parties rebut petitioners' claim that the Sawmill Survey provides a means to weight the proportion of studwood produced in Nova Scotia because petitioners' methodology is based on weighting by mill capacity. Canadian parties argue that weighting by mill capacity is a flawed approach because it underestimates the amount of studwood harvested. Canadian parties claim that 18 percent of Nova Scotia's SPF harvest is exported, a significant amount that would impact the amount of capacity in the Nova Scotia mills. On this basis, Canadian parties contend that the Department should not weight studwood and saw timber prices using the approach endorsed by petitioners.

Department Position: Upon review of the record evidence, the Department agrees with petitioners that studwood and sawlogs are not harvested in equal proportions in Nova Scotia. We also agree with Canadian parties that petitioners' approach to proportioning sawlogs and studwood by mill capacity is not the proper method for weighting studwood and sawlog prices in Nova Scotia. While the GONS does not collect harvest data based on log type, i.e. sawlogs or studwood, our review of the AGFOR Nova Scotia report and underlying data shows that AGFOR did collect data by log type during the course of writing its report. Our verification of the Nova Scotia AGFOR Report shows this report provides a representative snapshot of the Nova Scotia timber market. Given this representative quality of the AGFOR Nova Scotia Report, we find it is reasonable to weight-average the sawlog and studwood prices in Nova Scotia, as reported in the AGFOR Nova Scotia report, by using the actual harvest volumes reported by harvesters. We note that this approach is consistent with our use of the New Brunswick AGFOR volume data to derive average marketing board levies for New Brunswick.

Comment 35: Method for Deriving a Single Weight Average Price for Standing Timber Prices from New Brunswick and Nova Scotia

Petitioners argue that the Department incorrectly weight averaged prices for SPF in New Brunswick and Nova Scotia to calculate the Maritime SPF price. Petitioners argue that the Department erred by using as weights only the SPF harvest in New Brunswick while using the

[40] See Preliminary Results at 33105.

total softwood log harvest number in Nova Scotia. Petitioners assert that the Department should use the total softwood sawlog harvest in both New Brunswick and Nova Scotia.

Canadian Parties did not brief this issue.

Department's Position: We agree with petitioners' comment and have adjusted the benchmark calculations in Table 1 to contain the "Total Softwood SawLog Harvest" for New Brunswick[41] and Nova Scotia total softwood sawlog harvests.[42] We find this correction results in a weight average price that is based on similar weights.

Comment 36: Application of Marketing Fees Added to Maritimes Benchmark

Canadian parties claim that the Department cannot add Marketing Board silviculture fees to stumpage prices in New Brunswick because some private market sales take place outside the Marketing Board structure. Canadian parties further claim that the record evidence shows that wood sold from industrial freeholds is not subject to the Marketing Boards' required levies, and that there was no evidence that such levies were collected on industrial freeholds sales. Canadian parties argue that the Department must allocate the Marketing Board levies only to the portion of the private market sales that pay the levies.

Petitioners counter that the Canadian parties' argument is flawed because the New Brunswick stumpage prices calculated by AGFOR did not incorporate industrial freehold sales. Petitioners also claim that there is no evidence that the freehold sales are significant enough to warrant an adjustment.

Department's Position: The Department has reviewed the information concerning the Marketing Board levies and the AGFOR prices. We agree with Canadian parties that industrial freehold sales are not subject to the levies. Therefore, we have removed from the total softwood sawlog harvest in New Brunswick the volume of harvest from industrial freeholds that would be subject to the Marketing Board levies, were these sales to occur from a private woodlots. We note that the amount of such sales is inconsequential relative to the weight averaged price of SPF in New Brunswick. See Calculation Memorandum for the Maritime Benchmark.

Comment 37: Calculation of Marketing Board Levies Added to Private Stumpage Prices in New Brunswick

Canadian parties claim that the Department incorrectly calculated a Marketing Board levy for red pine in New Brunswick. Canadian parties allege that, for the calculation of the North Shore and YSC Marketing Boards, the levies should have been C$/$m^3$ 0.10 and not C$/$m^3$ 0.23. Canadian

[41] See the New Brunswick Timber Utilization Survey at Part I "Summary of Industrial Roundwood Harvest and Consumption" and Part IV, which was submitted as part of the GONB's May 2, 2005 supplemental questionnaire response.

[42] See the Nova Scotia Registry of Buyers 2003 at page 8, Exhibit NS-GEN-3, which was submitted as part of the GONS's November 23, 2005 questionnaire response.

parties request that the Department correct the North Shore and YSC marketing board levies applied to red pine prices.

Department's Position: We have reviewed the calculations and agree with Canadian parties. We have corrected the error. See Calculation Memorandum for the Maritime Benchmark at Table 6D.

Comment 38: Calculation of Silviculture Fee Added to Private Stumpage Prices in Nova Scotia

Canadian parties claim that the Department did not properly adjust Nova Scotia timber prices to reflect the actual amount of silviculture requirements imposed on registered buyers under the Forest Sustainability regulations.

Canadian parties claim that the regulations in Nova Scotia require that purchasers of more than 5,000 m^3 of timber pay a C$3.00/$m^3$ Forest Sustainability Charge. Consequently, Canadian parties claim that the Department can only adjust the Nova Scotia stumpage prices to reflect only the buyers who purchased more than 5,000 m^3 of timber and who paid the Forest Sustainability Charge.

Canadian parties also argue that Department's C$3.00 adjustment for the Forest Sustainability Charge is in error. Canadian parties claim that for 2003, the Government of Nova Scotia reduced the silviculture requirement to 70 percent; registered buyers were required to pay C$2.10/$m^3$ not C$3.00/$m^3$. Canadian parties argue that the Department must reduce the required silviculture amount to correspond to the reduced requirement for the March through December 2003 portion of the POR.

Petitioners rebut Canadian parties' claim that Nova Scotia harvesters did not meet the C$3.00 silviculture requirement, as required under the Forest Sustainability Regulations. Petitioners claim that Canadian parties' arguments that a significant portion of Nova Scotia's harvesters did not pay the required silviculture amount are based on hypothetical numbers. Petitioners argue that the Department does not need to modify the C$3.00 silviculture adjustment because Nova Scotia harvesters exceeded the required amount of silviculture by performing 47 percent more than legally obligated.

Department's Position: The Department agrees in part with petitioners and in part with Canadian parties. Petitioners are correct that harvesters in Nova Scotia exceeded their C$3.00/$m^3$ silviculture requirement. Based on our review of the record and understanding of the Forest Sustainability Charge, we reject the Canadian parties' claim that the C$3.00/$m^3$ should be reduced because the Nova Scotia Registry of Buyers states that C$3.00/$m^3$ was reduced by 70 percent. First, the 2003 Buyers' Registry only states that "[t]his reduction can be attributed to a one year silviculture requirement of 70% of required value due to the regulatory change for wood chips."[43] This statement must be taken in context with our knowledge of the Forest Sustainabilty Charge, acquired during verification of the GONS and supported by record evidence. Registered buyers acquiring more than 5,000 m^3 of timber are required to pay a C$3.00/$m^3$ Forest Sustainability Charge. This amount is mandated by statute; it is not modified from year to year. Further, the

[43] See Exhibit 3 of the November 23, 2004 Questionnaire Response of the Government of Nova Scotia.

Department asked the GONS how much registered buyers were required to pay during the POR for the Forest Sustainabilty Charge. In its April 7, 2005, response, the GONS confirmed that the C$3.00/$m^3$ was in effect for the POR. In addition, the fact that registered buyers performed more than the C$3.00/$m^3$ supports our conclusion that harvesters performed the legally required C$3.00/$m^3$. Absent any evidence that the GONS refunded or credited Nova Scotia harvesters the 30 percent difference, the Department's interpretation of the GONS's response and the Buyers' Registry is reasonable.

However, we also note that Canadian parties are correct in asserting that some harvesters in Nova Scotia did not pay the C$3.00/$m^3$ charge, whether in kind or in cash because the Forest Sustainability regulations only require the C$3.00/$m^3$ be paid by buyers purchasing more than 5,000 m^3 per year. The 2003 Buyers Registry at page eight details the amount of timber exempted from the C$3.00/$m^3$ Forest Sustainabilty charge. Therefore, we have adjusted the total softwood sawlog harvest to reflect the volume purchased by buyers of more than 5,000 m^3. We note that the amount of timber purchased by buyers in the category of 5,000 m^3 or less is inconsequential to the weight averaged price of SPF in Nova Scotia. See Calculation Memorandum for the Maritime Benchmark.

2. Calculation of British Columbia Benchmark

Comment 39: Factor Used to Convert from Tons to Thousand Board Feet

The GOBC and BCLTC claim that the conversion factor used to convert U.S. log price data from tons to thousand board feet (mbf) is arbitrary and unreasonable. They discuss that the conversion factor was obtained from a 2003 master's thesis entitled "Investigation of Alternative Fuel Removal Strategies." They question whether the conversion factor is appropriate for use in an analysis of log prices and note that more reliable and reasonable tons-per-mbf conversion factors, such as those used by the Washington State Department of Revenue, are on the record.

Petitioners argue that the Department should exclude logs priced by weight from the calculation of the B.C. benchmarks because such logs are used predominately for the production of pulp, not lumber. See Petitioners' March 15, 2005, submission for Cox and Lord's "Response to Report by Jendro and Hart et al. dated February 2005 regarding U.S. Prices and Benchmarks for B.C. Timber" at 70. Absent the exclusion of such logs, petitioners argue that the Department should continue to use the log weight to volume conversion factor employed in the Preliminary Results. Petitioners rebut Canadian parties' statement that the conversion factor is inappropriate because the factor was published in a study relating to removal of fuel wood from forests, and because the study's author admits that weight to volume factors can vary.

Department's Position: For these final results, we continue to include U.S. log prices reported by weight for the construction of the B.C. Coast and Interior benchmarks. The prices reported in tons are for "Chip & Saw" grade logs, which are used to produce lumber. A "Chip & Saw" grade log, as defined by Log Lines, yields approximately two 2x4's and chips, and are usually 5"-7" in diameter on the small end and 12' to 40' in length. See Petitioners' February 22, 2005, submission at Volume 3, Exhibit 33, Log Lines' Definitions at 2. For the final calculations, however, we have changed the conversion factor used to convert from tons to mbf. We find that the

Washington State Department of Revenue's "Tax Reporting Instructions and Stumpage Value Determination Tables" (WA State Report) is a more appropriate, authoritative source for conversion factor data. Id. at Exhibit 29. The WA State Report, which divides the state into western and eastern areas, contains conversion factor data for a number of species. Based on that information, we have calculated, for the western and eastern area (i.e., factors that will be compared to the B.C. Coast and Interior regions), respectively, a simple-average, all-species tons-to-mbf conversion factor.[44] We have applied the western Washington tons-to-mbf conversion factor to all U.S. log prices reported in tons used to construct the B.C. Coast benchmark. Similarly, we have applied the eastern Washington tons-to-mbf conversion factor to all U.S. log prices reported in tons used to construct the B.C. Interior benchmark. For more information, see the December 5, 2005, Memorandum to the File from Kristen Johnson and Stephanie Moore, Case Analysts, regarding the "Final Results Calculations for the Province of British Columbia" (B.C. Final Calculations) at Tab A, Table 9, page 20.

Comment 40: Log Market Report Data Relate Only to Small Log Sales

Petitioners submit that the log price surveys in the Washington and Oregon Log Market reports (WA Report and OR Report) cover only small sales of logs, i.e., a few truckloads or perhaps 50 mbf, and that such sales command lower prices than large-volume sales or long-term supply contracts. See Petitioners' June 10, 2005, submission at Attachment 2 "Email to and from John Lindberg, the editor and co-publisher of the WA Report and OR Report." Petitioners argue that large contracts, not small log sales, are comparable to the secure, long-term tenures enjoyed by B.C. tenureholders and, thus, use of the log price data presented in the reports understates the value of the subject timber.

Canadian parties respond that the information provided in the emails to which petitioners refer has not been confirmed by the Department and they have reason to believe that such information is not accurate based on a subsequent conversation Mr. Lindberg had with David Jendro, a consultant to Canadian parties. Canadian parties claim that Mr. Lindberg told Mr. Jendro that the information in the email was incorrect and that the log reports include information about transactions up to 100 mbf, not only 50 mbf. Therefore, Canadian parties argue that the Department should not rely on the information provided by petitioners without verifying it directly with Mr. Lindberg.

Department's Position: There is no evidence on the record to suggest that the prices reported in the Washington and Oregon log market reports cover only small volume log sales and that the use of such prices in the benchmarks understates the value of the subject timber. In Mr. Lindberg's June 9, 2005 email, to which petitioners refer, Mr. Lindberg does not state that the price reports cover only small sales of logs of either a few truckloads or 50 mbf, or that such sales command lower prices than large-volume sales or long-term supply contracts. Mr. Lindberg also does not validate the summarization by Mr. Cox (a consultant for petitioners) of an alleged June 6, 2005 conversation between Mr. Lindberg and Mr. Cox, and we therefore do not place any weight on

[44] We excluded from the simple-average calculations the conversion factors for Red Alder (which includes Maple, Black Cottonwood, and other hardwoods) and Chipwood (also know as, pulpwood which is not used to produce lumber).

Mr. Cox's summarization of Mr. Lindberg's alleged June 6, 2005 comments. In the June 9, 2005 email, Mr. Lindberg merely indicates that he obtains log price information via fax from mills. Id.

Comment 41: High Value of Cypress

Petitioners argue that, because of the high value of Cypress and lack of U.S. log price data for Cypress, the Department should (1) recognize the full value of Cypress; (2) base the benchmark on market-determined Western Red Cedar (WRC) prices from the coastal U.S. PNW; and (3) adjust those proxy values to reflect prevailing market conditions in Canada by using the ratio between Cypress and WRC log prices in the VLM. They disagree with the Department's approach in the Preliminary Results to use U.S. PNW benchmark prices for all other B.C. Coast softwood species minus B.C. Coastal harvesting costs, profit, and stumpage, to calculate a weight-average subsidy benefit for Cypress. They contend that new evidence on the record of this review shows that Cypress log values exceed the average log value in British Columbia and are equal to or greater than Red Cedar log values. See Petitioners' February 28, 2005, submission for Lutz's "A Comparison of ESPF vs. WSPF Timber and Western Red Cedar vs. Yellow Cedar" at 17-19. Further, petitioners discuss that in the underlying investigation, the Department found Red Cedar to be the species most closely analogous to Cypress, and used western Washington Red Cedar timber prices as a benchmark. See the "Cross-Border Benchmark" section of the Final Determination Decision Memorandum.

Canadian parties submit that petitioners' argument illustrates that timber in the U.S. benchmark areas is substantially different from timber in British Columbia, and underscores the impossibility of cross-border comparisons of stumpage values. The lack of U.S. log price data for Cypress reflects the underlying differences in prevailing market conditions between the B.C. Coast and the U.S. PNW. Canadian parties further add that the Department rejected the petitioners' argument in the first review and should do the same in the instant review.

Department's Position: In the underlying investigation, we used western Washington Red Cedar prices as a surrogate benchmark for Cypress harvested on the B.C. Coast. See the "Cross-Border Benchmark" section of the Final Determination Decision Memorandum. Our decision was based on information obtained from a forestry expert that Cypress has uses and characteristics that are most similar to Red Cedar. See the August 8, 2001, Memorandum to the File from the Team regarding "Calculation of Stumpage Subsidy in British Columbia." We find, based on the information on the record of this review, that those conclusions are valid for this period of review. For these the final results, we have therefore gone back to the approach we used in the investigation for calculating the benefit for Cypress harvested on the B.C. Coast. We find that it is more appropriate to use Red Cedar's "derived market stumpage price" as a surrogate market stumpage price for Cypress than to calculate a weight-average subsidy benefit for Cypress using data for species which are less similar to Cypress than Red Cedar. For more information, see B.C. Final Calculations at Tab A, Table 1, page 1.

Comment 42: Log Price Data from Other States that Border British Columbia

Canadian parties discuss that the Department did not use Alaska log prices, though that state shares a border with British Columbia and has a similar species mix. They claim there is no record evidence showing that prevailing log market conditions in Alaska are any less comparable to prevailing log market conditions in British Columbia or any states in the U.S. PNW. If such log prices are not included, then at a minimum, the Department must explain why certain regions used to construct the U.S. benchmark are more representative of prevailing market conditions in British Columbia than other regions excluded.

Petitioners discuss that contrary to Canadian parties' arguments, Alaska market conditions are not useable for benchmark purposes. Specifically, timber prices on the Tongass National Forest have been set by non-market means and, thus, would suppress log prices in much the same way as the B.C. government prices. Further, the vast bulk of B.C. Coast harvesting and log processing occurs on the southern portion of the Coast. Petitioners submit that only 6.3 percent of the B.C. harvest occurs in the two districts bordering Alaska and 99 percent of the B.C. Coast's log processing occurs in the three southern districts. See GOBC's November 22, 2004, Questionnaire at Exhibits BC-LER3, BC-S-12, and BC-S-5. As such, it is not appropriate for the Department to include Alaska log prices in constructing the B.C. Coast benchmark.

Department's Position: No new information has been placed on the record of this review to warrant a reconsideration of our finding concerning the Alaska market. In the underlying investigation, we determined that Alaska is not an appropriate comparison benchmark for British Columbia. See the "Cross Border Benchmark" section of the Final Determination Decision Memorandum. Moreover, the record of this review merely contains limited Alaska data of export log prices reported in Japanese yen/m^3. See GOBC's February 28, 2005, submission at Volume 4, Folio C, the Pacific Rim Wood Market Report at Table 2A of the report section entitled "Japan Market Report."

Comment 43: Negative Species-Specific Benefit

The GOBC and BCLTC argue that the Department disregarded negative species-specific benefits as part of its benefit calculations for the B.C. Coast. Specifically, they submit that the Department counted as "zero" any instance in which its calculation of a species-specific benchmark price was lower than the individual stumpage rate for that species. See B.C. Preliminary Calculations Memorandum at Tab A, page 1. They discuss that the NAFTA Panel, reviewing the final determination of the investigation, found this practice to be inconsistent with the statutory requirement to measure the adequacy of remuneration in relation to prevailing market conditions. The Panel noted that Crown stumpage fees are charged for stands including multiple species, not for individual species. As such, Canadian parties submit, the Department's methodology does not measure the full adequacy of remuneration in relation to the stand and, thus, negative species-specific benefits should be included in the B.C. Coast benefit calculations.

Petitioners' contend that the GOBC's pricing system gives discounts on high-value timber to encourage the harvesting of uneconomical timber. Therefore, they argue the Department must reject the GOBC's suggestion to consider that there is a reduced subsidy for high-value timber just because the government encourages tenureholders to spend some of this additional subsidy on extra harvesting of low-value timber.

Department's Position: In a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked by negative benefits from other transactions. The adjustment the GOBC and BCLTC are seeking is thus an impermissible offset – a credit for transactions that did not provide a subsidy benefit. Such an adjustment is not permitted under the statute and is inconsistent with the Department's practice.

The statute defines the "net countervailable subsidy" as the gross amount of the subsidy less three narrow offsets: (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, and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy. See section 771(6) of the Act; 19 U.S.C. § 1677(6). Both Congress and the courts have confirmed that these are the only permissible offsets the Department is permitted to make. See S. Rep. No. 96-249, at 86 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 472 ("The list is narrowly drawn and is all inclusive."); Kajaria Iron Castings Pvt. Ltd. v. United States, 156 F.3d 1163, 1174 (Fed. Cir. 1998) ("{W}e agree that 19 U.S.C. § 1677(6) provides the exclusive list of permissible offsets . . . ."); see also Geneva Steel v. United States, 914 F. Supp. 563, 609 (CIT 1996) (explaining that section 771(6) contains "an exclusive list of offsets that may be deducted from the amount of a gross subsidy").

Accounting for the impermissible offset requested by the GOBC and BCLTC would be at odds with the purpose of a benefit inquiry. The Preamble notes that:

> {I}f there is a financial contribution and a firm pays less for an input than it would otherwise pay in the absence of that financial contribution (or receives revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit element is concerned.[45]

Thus, if the Department determines, taking into account prevailing market conditions in the province, that a province has sold timber for less than adequate remuneration, a benefit exists and the inquiry ends. The Department consistently has rejected similar requests to reduce the benefit amount, because the proposed offsets were not expressly permitted by the statute.

For instance, when the Department compares the interest rate paid on government loans to a commercial benchmark interest rate, it does not offset the benefit calculated on the government loans that are below the market rate with any interest paid on government loans that are above the market rate, or for penalties paid on the subsidized government loans. Rather, the government loans that do not confer a benefit are simply not countervailed. See e.g., Final Results of Countervailing Duty Administrative Reviews: Oil Country Tubular Goods from Argentina, 56 FR 38116, 38117 (August 12, 1991) ("It is not the Department's practice to offset the less favorable terms of one loan as an offset to another, preferential loan."). Similarly, the Department does not offset a countervailable equity infusion with dividends paid by the company to the government subsequent to the infusion. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, 64 FR 38742, 38750-51 (July 19, 1999); see also Final Results of Countervailing Duty Administrative Review: Rice from Thailand, 59 FR 8906, 8910 (February 24, 1994).

---

[45] See Countervailing Duties; Final Rule, 63 FR 65348, 65361 (November. 25, 1998).

Concerning the NAFTA Panel decision, that decision is not binding precedent on the Department. Moreover, the facts of this administrative review are distinct from those reviewed in the cited NAFTA Panel decision. In the NAFTA Panel decision, the Panel determined that standing timber of Crown-origin in British Columbia is sold by the tree stand and, thus, instructed the Department to calculate the benefit attributable to individual tree stands, as opposed to calculating the benefit on a species-specific basis. This ruling resulted in the Department cumulating the "negative" and "positive" benefits within tree stands. In contrast, in this administrative review, we are calculating benefits on a species-specific basis. Specifically, we are deriving market-determined, species-specific stumpage benchmarks for each species harvested on the B.C. Coast and B.C. Interior, respectively, using the prices of logs in the U.S. Pacific Northwest.

Comment 44: Volume Conversion Factors Used for U.S. Log Prices Expressed in Thousand Board Feet

The GOBC and BCLTC argue that the conversion factors used by the Department in the Preliminary Results are not valid for logs harvested in British Columbia during the POR. See B.C. Preliminary Calculations Memorandum at 2. They claim the record evidence demonstrates that the conversion factors, sourced from a U.S. Forest Service (USFS) study, which relied on harvest data in Washington from 1998, underestimate the actual conversion factors for British Columbia. During the review period, they submit that the B.C. harvest had a higher proportion of species that produce smaller logs and, therefore, have higher conversion factors than the 1998 harvest in Washington. See Jendro Report at 59. In addition, Canadian parties submit that the USFS report acknowledges that harvested log size in Washington has steadily declined and this trend is "likely to have carried forward in 2000." See GOC's February 28, 2005, submission at Volume IV for the USFS' "Conversion of Board Foot Scaled Logs to Cubic Meters in Washington State, 1970-1998" (USFS Study) at 5, note 2; see also Jendro Report at 59-60. Thus, Canadian parties argue, the USFS report recognizes that the log diameter assumptions utilized would not be accurate for the period of review. Further, they contend that the conversion factor reported by the USFS for eastern Washington was based on a study of mill-length logs, whereas the U.S. inland log prices used for the B.C. Interior benchmark calculation reflected transactions for truck-length logs, which tend to be smaller than mill-length logs. See Jendro Report at 60.

Because the record evidence indicates that the Department's chosen conversion factors are too low, and the use of unreasonably low conversion factors inflates the benchmarks, Canadian parties argue that the Department should use: (1) USFS conversion factor formulas with updated B.C. harvest average diameter data; (2) an all-species conversion factor reported by the University of Montana for Montana; or (3) species-specific conversion factors developed from the conversion factors reported by the USFS for Washington and by the University of Montana for Idaho and Montana. Id. at 61-72.

In rebuttal, petitioners state that the factors used by the Department to convert the benchmark log prices are not too low; no alternative proposed by Canadian parties is from a source as authoritative as the USFS report; and no alternative is more up-to-date than the USFS report. They argue that Canadian parties fail to provide any evidence that the 1998 Washington data are outdated and that use of more current data would yield different conversion factors. They

further argue that there are problems with the alternative factors suggested by Canadian parties, such as, the proposed factors are not published, use dubious average log diameter figures, are arbitrary, and not supported by empirical evidence.

Department's Position: Since the underlying investigation, the Department's conversion factors have been the subject of submissions by both the petitioners and Canadian parties. After reviewing the various options, including the University of Montana's conversion factors, we concluded in the Final Results of 1st Review that the USFS Study presented the most appropriate information for converting U.S. logs from mbf-to-m^3. See the December 13, 2004, Memorandum to the File from Stephanie Moore and Joy Zhang regarding "Calculations for the Province of British Columbia" at 2. We determined that the USFS Study is the most appropriate source for the mbf-to-m^3 conversion factor because it: (1) covered the actual sawmills which pay the log prices used to construct the U.S. log price benchmark; (2) is current; (3) is peer reviewed; and (4) was created outside the context of litigation. The USFS Study objectively measured the average diameter of sawlogs that entered sawmills over the last 28 years and found a conversion factor of 6.76 for Scribner Long logs and 5.93 for Scribner Short logs.

While the USFS Study reports that average log diameter decreased over the period 1970-1998, a trend likely to have carried forward, the study also discusses the improvements in sawing, over the prior three decades, that have increased lumber yields and have offset some of the yield-reducing impact of smaller log sizes. See USFS Study at 3. The technological progress to lumber recovery were also taken into consideration when setting the conversion factors. Specifically for Scribner Short logs, the USFS study states "the implied improvement in recovery is about 12 percent and the metric conversion factor is reduced from 6.42 to 5.93 in 1998." Id. at 5. Therefore, though there is a descending trend for average log diameter, it is not correct to assume, as Canadian parties do, that a high conversion factor is appropriate due to the concurrent technological sawing improvements. Moreover, the USFS report does not make any statements that the log diameter data utilized would not be accurate for the period of review. Also, there is no information on the record that suggests it is distortive to use the 5.93 conversion factor for any U.S. truck-length logs used to construct the B.C. Interior benchmarks.

Canadian parties have not placed any information on the record of this review that demonstrates that their proposed conversion factors are more accurate or reliable than the USFS' study and, thus, more accurate to use in the calculations. In particular, Canadian parties' proposal to use the USFS conversion factor formulas with B.C. harvest average diameter data is not appropriate. The B.C. average diameter log information, reported for the POR, is based on limited data, which the GOBC began collecting in November 2003. See GOBC's November 22, 2004, Questionnaire Response at BC-V-2. The USFS Study, conversely, relied on data from 15 industry censuses. See USFS Study at 2. In addition, the GOBC did not provide the requested source documentation explaining how the average was obtained. See GOBC's November 22, 2004, Questionnaire Response at BC-V-2,3. Therefore, for these reasons, we continue to rely on the USFS study for the mbf-to-m3 conversion factors to calculate the B.C. Coast and Interior benchmarks for the final results.

Comment 45: Pond Values

The Department's decision to exclude Idaho Department of Lands (IDOL) "pond values" from its B.C. Interior benchmark calculations was incorrect, according to the GOBC and BCLTC. They note that the Department excluded the "pond values" because the "'pond value log prices were constructed from stumpage prices by the Timber Data Company." See B.C. Preliminary Calculations Memorandum at 5. However, Canadian parties claim that nothing on the record suggests that the IDOL "pond values" were constructed from stumpage prices by the Timber Data Company. They contend that the inverse is true and the IDOL "pond values" served as the starting point in the IDOL pre-sale stumpage appraisals, for which eventual sales were reported by the Timber Data Company. See Jendro Report at 75 and Attachment D, Folio 1.

In rebuttal, petitioners state that there is no evidence on the record to support the claim that the "pond values" served as the starting point for IDOL's pre-sale stumpage appraisals and that the prices are actually reported in quarterly surveys of entities that buy and sell logs. Canadian parties cannot substantiate that the prices were ever published by IDOL, and fail to produce any publication that supports their claim that these prices are obtained from surveys. As such, given the uncertain origin and questionable reliability of the pond value prices, the Department should continue to exclude them from its calculations of benchmark prices for the B.C. Interior.

Department's Position: For these final results, we continue to exclude from the calculation of the B.C. Interior benchmark the IDOL "pond values." The evidence on the record indicates that the "pond values" were derived by the Timber Data Company and not obtained through a survey of log buyers and sellers. The IDOL sells stumpage at public auctions and does not sell logs. Therefore, we determine that it is not appropriate to include such data in the benchmark calculation.

Comment 46: Stud Log Values

According to the GOBC and the BCLTC, the Department unreasonably excluded "stud log" prices in calculating the B.C. Interior benchmark. See B.C. Preliminary Calculations Memorandum at Tab A, page 11, note 3. They claim that this omission is inconsistent with the Department's practice elsewhere in the Preliminary Results to include smaller diameter logs as part of the data set for its benchmark calculations. They discuss that the category of "stud logs" in the WA Report's inland log price data describe small diameter sawlogs similar to the "chip & saw" grade logs reported for the coastal regions of Washington and Oregon, which the Department included in developing the B.C. Coast benchmark. See Jendro Report at 72, note 72; see also B.C. Preliminary Calculations Memorandum at 1. Likewise, the Department in its calculation of the Maritimes benchmark included "studwood" logs, which are also similar to the "stud logs" reported in the WA Report. See the May 31, 2005, Memorandum to the File regarding "Maritime Benchmark Calculation Memorandum for Preliminary Results" at 2. They argue that not only as a matter of consistency should the Department incorporate the WA Report's "stud log" price data into the benchmark calculations, but also as a matter of fairness the prices should be included since over 40 percent of the sawlogs harvested in the B.C. Interior consisted of logs with an average top diameter of less than six inches and would have met the description of "stud logs." See Jendro Report at 54.

Petitioners state that the Department is correct to omit "stud logs" from the benchmark calculation. They contend that a stud log is not capable of producing lumber wider than a 2 x 6 at most. See Maritimes Verification Report at 4. In contrast, the average B.C. Interior log is 19.8 feet long. Petitioners discuss that these longer logs produce premium lengths or wider lumber from the base portion and, therefore, very little if any B.C. Interior sawtimber falls into the studwood category. Further, the GOBC does not list any stud mills in its list of major primary timber processing facilities in British Columbia and failed to supply length or diameter distribution data, even though the Department requested it. For these reasons, petitioners argue that the Department should not include "stud logs" in the B.C. Interior benchmark calculation.

Department's Position: We erred in omitting the U.S."stud log" prices when constructing the B.C. Interior benchmark for the Preliminary Results. Studwood logs are small sawlogs intended to be sawn into dimensional lumber. We did not exclude "stud log" prices in the calculation of the B.C. Interior benchmark in the final results of the first review. Therefore, for these final results, we have incorporated the "stud log" prices as reported in the WA Report into the calculation of the B.C. Interior benchmark. See B.C. Final Calculations at Tab A, Table 4C, page 11. Concerning the petitioners' statement regarding stud mills in British Columbia, the GOBC has provided a listing of all lumber mills in the province, at Exhibit BC-S-4 of its November 22, 2004, response. We note that the GOBC does not further categorize the mills as either sawlog or stud log mills, but both types of mill produce lumber.

Comment 47: Additional U.S. Log Price Data

Petitioners disagree with the Department's preliminary decision to include in the B.C. Interior benchmark calculation additional log price data which the GOBC submitted on the record, i.e., Regions 2 and 3 of Northwest Management Inc.'s Log Market Report (NWI Report), WA Report, and OR Report. Petitioners discuss that, in the first administrative review, the Department used only two sources for U.S. log price data to assess the value of B.C. Interior timber[46] and that those price data were from regions contiguous with the B.C. Interior. They contend that only the areas nearest to the B.C. border (i.e., within log haul distance) provide the closest possible price comparison because such areas near the border naturally form integrated log markets. In contrast, the new log price data sources draw prices from regions farther removed from the B.C. Interior and, with the exception of the WA Report, none of the new data sources report log prices for areas that are contiguous with the B.C. Interior.

Petitioners discuss that it is paradoxical for the GOBC to advocate the inclusion of the additional benchmark data because the government has maintained that U.S. log and timber price benchmarks are unreliable precisely because U.S. timber and sawmills are far from British Columbia. As such, the inclusion of regions such as eastern Oregon, which is at least 200 miles

[46] The two U.S. log price data sources were: (1) University of Montana's "Sawlog and Veneer Log Price Report," covering log sales in western Montana; and (2) Northwest Management Inc.'s Log Market Report, specifically Region 1 (eastern Washington and northern Idaho) and Region 4 (counties in Montana).

from the B.C. border and the Klamath region of Oregon,[47] which is approximately 380 miles away, makes the U.S. log price benchmark for the B.C. Interior inaccurate and the log price comparisons indefensible.

Petitioners also argue that the new benchmark regions suggested by the GOBC involve areas with different ecosystems and species distribution from the B.C. Interior. Specifically, petitioners contend that the additional benchmark regions[48] do not coincide well with the Temperate Steppe ecosystem found in the B.C. Interior. For example, they state that Oregon's Klamath region is in coastal Mediterranean and Marine ecosystems and not an interior ecosystem and, as such, the Department was correct in the first review to include data from the Klamath region in the B.C. Coast benchmark and not the B.C. Interior benchmark. Further, they submit that ecoprovinces show that the ecosystems in Oregon are almost entirely distinct from the ecosystems in the B.C. Interior. Petitioners observe that Lodgepole Pine and Spruce account for 81 percent of sawmill timber in the B.C. Interior and that the U.S. state with the highest proportion of Lodgepole Pine and Spruce is Montana with 37 percent, and not Oregon. See Jendro Report at 23, Table 6. They argue that no data on the record indicate that eastern Oregon Lodgepole Pine and Spruce, which account for just three percent of the species mix in Oregon, are comparable to the B.C. Interior. Id. Petitioners contend that where a species comprises a small portion of the overall supply in an area, it is likely that few mills will process that species and, thus, the species will not be well adapted to the ecosystem, resulting in little demand and correspondingly reduced prices. For these reasons, petitioners argue, the inclusion of the additional log price data, and especially the Oregon log values, in the B.C. Interior benchmark calculation will understate the subsidy in the B.C. Interior.

The GOBC and BCLTC respond that petitioners' arguments demonstrate that U.S. log prices cannot be used to value B.C. logs or timber. As petitioners acknowledge, log prices in some parts of the U.S. PNW are not sufficiently representative of B.C. log market conditions and log prices in one area may not provide a reliable benchmark for log prices in another area depending on distance between the areas, ecoregions, species mix, and distance to lumber markets. The GOBC and BCLTC also agree with petitioners that it is illogical to use prices from U.S. PNW areas which are not immediately across the border. They submit that if log prices in Oregon, which is approximately 200 miles south of the U.S.-Canada border, cannot be used to value B.C. logs one mile north of that border in a different ecoregion, then log prices in Washington, Idaho, and Montana one mile south of the border cannot be used to value B.C. logs 750 miles north of the border in a different ecoregion. They argue that most of British Columbia lies far outside the log haul distances for border mills that petitioners claim creates "naturally integrated log markets," and that a large percentage of the logs in both Coastal and Interior British Columbia are harvested more than 200 miles from the border. See GOBC's November 22, 2004, Questionnaire Response at Exhibits BC-S-12 and BC-S-13. Further, they argue that, as demonstrated by petitioners' maps, the ecoregions for a substantial majority of British Columbia are different than any of the ecoregions of the U.S. PNW, e.g., region M211a, where much B.C.

[47] Log prices for the Klamath region of Oregon are reported by the Oregon Department of Forestry (ODF), whose data the Department used in the final results of the first review and the preliminary results of the instant review.

[48] ODF's Klamath Region 5, NWI Report's Regions 2 and 3, WA Report, and OR Report.

lumber is produced, does not extend into the United States. They contend that only one quarter of the B.C. Interior harvest during the review period was from ecoregions that cross the international border. See Jendro Report at 84-87.

Canadian parties also rebut petitioners' characterization of the Klamath region, covered by Region 5 of the Oregon Department of Forestry (ODF) log price data, as "coastal." They discuss that the Klamath region lies to the east of the Cascade range, which is typically considered the boundary between coastal and inland regions of the U.S. PNW. Also, the ODF log price data were reported in Short Log Scribner scale, not the Long Log Scribner scale typically used in western Oregon and other coastal areas. Id. at 74, note 74. Therefore, Canadian parties argue that the Department properly included the Klamath region in the B.C. Interior benchmark calculation.

Department's Position: As explained in the "Benefit" discussion under the "Analysis of Programs" section above, when measuring the adequacy of remuneration, the Department considers the prevailing market conditions and compares the government-determined price for the good in question to a market-consistent benchmark price chosen as the measure of adequate remuneration, in accordance with the provisions of section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

As we stated in the final results of the first review, a key consideration in evaluating the market value of timber is the comparability of the species. See the "U.S. Log Prices are a More Appropriate Benchmark" part of "Benefit - Benchmark" section of the Final Results of 1st Review Decision Memorandum. As petitioners note, in the final results of the first review, to construct the B.C. Interior benchmark, the Department used U.S. log pricing data from two sources: the NWI Report (Regions 1 and 4) and the University of Montana's Sawlog & Veneer Log Price Report (Montana Report). However, we did not use these two U.S. log pricing reports to the neglect of other U.S. log price data sources; the NWI Report (Regions 1 and 4) and the Montana Report were the only sources of U.S. log pricing data on the record of the first review for the Department to use in constructing the B.C. Interior benchmark. In this review, however, both petitioners and Canadian parties have submitted additional reports of U.S. log pricing data on the record. We have thoroughly evaluated the additional reports and find that the U.S. log pricing data contained therein are for species harvested in the U.S. PNW that are representative of the species harvested in the B.C. Interior. In the B.C. Interior, the three dominant species are Lodgepole Pine, Spruce, and Douglas Fir. The additional reports (i.e., NWI Report (Regions 2 and 3), WA Log Report, and OR Log Report) contain U.S. log prices for each of these dominant species. Additionally, we find nothing in these reports that would otherwise detract from the comparability of the pricing data. Thus, for the purposes of deriving market-determined stumpage benchmarks to assess the adequacy of remuneration of B.C.'s stumpage prices for the Interior, we have reliable U.S. log prices from western Montana, eastern Washington, eastern Oregon and northern Idaho for the same species of softwood timber as those harvested in the Interior.

The petitioners now object to the inclusion of the new data in our benchmark calculations, contending that the log prices contained in these reports are for timber that is harvested farther from the border with Canada, in different ecosystems and from markets that are less readily integrated with those in Canada. We have considered these objections, but do not find them to be sufficient to negate the comparability of the timber and the usefulness of the pricing data.

Concerning the Klamath region of Oregon, we disagree with petitioners that the log pricing data for this region should be incorporated into the construction of the B.C. Interior benchmark and not the B.C. Coast benchmark. As the evidence on the record shows, the Klamath region is located east of the Cascade mountains. It is industry practice to use "long log" Scribner log scale for those areas west of the Cascades in Washington and Oregon. The "short log" Scribner log scale is applied to all other areas of the western United States. Since the Klamath region is east of Cascades and the ODF log prices for this region are reported in "short log" Scribner,[49] it is correct to incorporate the Klamath log pricing data into the construction of the B.C. Interior benchmark.

Comment 48: Averaging of U.S. Benchmark Log Values

The GOBC and BCLTC discuss that because the Department lacks data regarding the volume of reported U.S. log sales it cannot weight-average the log prices. The Department instead calculated simple averages of reported U.S. log prices by source and not by state. This approach, they claim, resulted in erroneously overstated benchmarks. Specifically, they argue the Department's methodology gave greater weight to log prices in those states that had more data sources, and because the states with more data sources have higher average log prices, the benchmarks were inflated. See Jendro Report at 76-81.

In the absence of volume data, Canadian parties suggest that the least arbitrary method would be to calculate a simple-average log price for each state within each benchmark area from the various data sources, and then simple average those resulting prices to establish respective benchmark prices. Id. at 79. They claim that this approach avoids the disruptive effect of giving increased weight to log prices in certain jurisdictions solely due to the greater number of sources of log price data. For those data sources that cover more than one state, they suggest that the Department should include those log price averages into its state-specific calculations for each state involved, a solution analogous to the Department's practice of double-counting log imports for the Coast and the Interior in the NAFTA Panel remand determinations.

Petitioners disagree with Canadian parties' claim that volume data necessary to create weighted averages is not on the record and, therefore, argue that averaging log prices by state is not appropriate. They discuss that the record contains state-specific timber drain/inventory ratios[50] from the USFS. See Jendro Report at 41, Figure 6. Also on the record, they state, are harvest estimates published in the USFS' "*Profile 2003: Softwood Sawmills in the United States and Canada*" (USFS Sawmills Survey), which also include volume data on the distribution of mill capacity by county and benchmark region. See GOC's February 28, 2005, submission at Volume IV for USFS Sawmill Survey. Petitioners propose that combining these data with Canadian parties' estimates of state-specific species production results in a reliable estimate of the volumes harvested of each species in the relevant benchmark areas of each state. With state-specific species proportions, petitioners submit, the Department can derive and use weights that

[49] See GOBC's February 28, 2005, submission at Volume 1, Attached F for Klamath region log prices reported in Short Log Scribner.

[50] Timber drain is approximated by the summation of lumber, plywood, panel, and pulpwood consumption. See GOBC's February 28, 2005, submission at Volume 1, page 40.

are state and species-specific, such that the benchmark for each species reflects a weighting commensurate with the particular species' harvest and processing distribution in the benchmark area.

Petitioners further state that should the Department decide to not derive volume weights, then it should continue to simple average the log prices by source.

Department's Position: We disagree with the averaging methodologies proposed by both petitioners and Canadian parties and continue to simple average the U.S. log prices by source for these final results. After considering the proposed alternatives, we find that they do not provide more accurate averaging calculations. As discussed in the Preliminary Results, to conduct the benefit calculations, we are first constructing a U.S. log price benchmark for each species harvested on the B.C. Coast and Interior, respectively. To construct the U.S. log price benchmarks, we need to calculate for each species an annual average price. We have done this, first, by simple-averaging log prices for each species reported in each U.S. log price report for the POR and, second, by taking a simple average of those species-specific annual average prices by source to arrive at a final species-specific annual average price. Those species-specific annual average US$/mbf prices are then converted to CAN$/$m^3$ average annual prices. See Preliminary Results, 70 FR 33107.

Canadian parties have not provided any evidence to support their claim that the benchmarks were inflated because states with more data sources have higher average log prices. Although we frequently weight average data from different sources, absent the appropriate data to do so, we will use simple averages instead. Canadian parties' proposed alternative simple averaging methodology suggests that state borders are somehow relevant in the benchmark construction. We disagree. As we discuss above, we have determined that the species harvested in the U.S. PNW forest region are representative of the species harvested in British Columbia. Just as the species population in the North American forest does not change at the U.S.-Canadian border, the species grown in the U.S. PNW do not change at the state borders. Therefore, to simple average log prices by state would not be appropriate.

We also reject petitioners' argument to derive and use weights that are state and species-specific to construct benchmarks that reflect weights commensurate with the each species' harvest in the benchmark area. Absent the actual volume data for the reported U.S. log purchases during the review period, we find that a simple averaging approach of the U.S. log prices is the most appropriate and reasonable.

3. Adjustments to Government Stumpage Prices

a. Alberta

Comment 49: Whether the Department Properly Adjusted the GOA's Administered Stumpage Price

The GOA argues that the Department's Preliminary Results did not include credit for all the in-kind services provided to Alberta tenureholders or adjust for other technical issues. In the Preliminary Results, the Department granted adjustments for road construction and maintenance

costs, basic reforestation, forest management planning, holding and protection, environmental protection, inventory, reforestation levies, and costs for fighting fire, insects and disease. The GOA argues that the Department should also adjust for scaling, land use administration, costs for coordinating overlapping tenures and adjust any comparison for differing scaling rules between Alberta and the Maritimes. First, the GOA argues that an adjustment for scaling is required because costs of scaling are not only mandatory, but are borne exclusively by tenureholders. Second, the GOA asserts that the Department should adjust for costs the province imposes upon tenureholders to coordinate activities on public land. Third, the GOA argues that an adjustment is needed to account for the costs tenureholders incur to administer the coordination of planning, road building, road use, harvest activities and reforestation. Finally, the GOA asserts that the Department should adjust for differences that may occur due to differences in the scaling rules of Alberta and the Maritimes.

Citing to the Department's prior decisions in the investigation and the first administrative review, petitioners state that the Department has consistently recognized that adjustments for scaling, land use administration and overlapping tenures are unnecessary and should do so again in the final results of this administrative review. First, petitioners argue that no adjustment should be made for scaling because scaling must be done by all harvesters in the U.S. and the Maritime provinces as well as Alberta. Second, petitioners assert that the coordination of overlapping tenures would result in cost savings because it would help avoid the duplication of activities and aid in the coordination of harvesting and reforestation between tenureholders. Third, with respect to land use administration, petitioners argue that any administrative costs due to coordination with companies outside the forest products industry will be offset by cost savings resulting from such activities. Finally, petitioners argue that an adjustment to account for differences in scaling rules between Alberta and the Maritimes is unnecessary because, according to the petitioners, a conversion factor can be used to convert board feet into cubic meters. Furthermore, petitioners state that the Department has conducted a significant amount of research to identify an appropriate conversion factor and argue that the Department should continue to use the standard published conversion factors in this administrative review.

Department's Position: In determining which cost adjustments to make, we have focused on those costs that are assumed under the timber contract (e.g., the Crown tenure agreement), and those costs that are necessary to access the standing timber for harvesting, but that may differ substantially depending on the location of the timber. Where such costs are incurred by harvesters in either the Maritimes or the subject provinces, we have included them in our benefit calculations. See Preliminary Results at 70 FR 33107. Post-harvest activities such as scaling and delivering logs to mills or markets are not included as an adjustment in the benefit calculations because they are not necessary to access the standing timber for harvesting. In regard to differing scaling rules, the Department finds that there is no additional information on the record that would warrant a change in utilizing the published conversion factor used in the prior administrative review and the preliminary results of this review. In regard to the administration of land use and the coordination of overlapping tenures, we agree with petitioners that the coordination of tenure activities and administrative costs would be offset by the cost savings that result from the more efficient use of resources and the elimination of duplicate activities. Accordingly, we have not adopted any of the changes in the adjustments suggested by the GOA for these final results.

b. British Columbia

Comment 50: Old-Growth Adjustment

Petitioners argue that old-growth logs are worth far more than second-growth logs of the same species and that the record of this review establishes that an old growth adjustment is appropriate. They discuss that the GOBC's latest Market Pricing System appraises old growth timber stands at higher values than second-growth stands. See Petitioner's February 28, 2005 submission for Stoner's "Changes in B.C.'s Timber Policy and Market Stumpage Rates" at 17-18. In addition, the Ministry of Forests makes a negative adjustment to costs for harvesting second-growth timber, which, according to petitioners, indicates that standing second-growth timber is worth less than old growth. See GOBC's November 22, 2004 Questionnaire Response at Volume 3, Exhibit BC-S-16 for the Coast Appraisal Manual at section 4.4.6. During the review period, the second-growth timber adjustment was C$3.67/$m^3$ and, thus, petitioners argue, the Department should make an adjustment of at least C$3.67/$m^3$ for all species except Douglas fir. Petitioners also state that, among the U.S. log price data, only Douglas fir old growth log prices were reported during the POR.

The GOBC and BCLTC respond that the Department has twice rejected the petitioners' old-growth adjustment argument and should do the same in the instant review. They discuss that the petitioners' argument presumes that B.C. old-growth timber is more valuable because old-growth logs are sometimes more valuable than second-growth logs. However, the value of standing timber, they argue, depends not only on the value of end-products, but also on other factors, including the costs that must be incurred to harvest the standing timber and to transport the logs, which the Department has acknowledged. See the "Old Growth and Quality Characteristics" section of the Final Determination Decision Memorandum. They add that the record of this review shows that the harvesting costs for old-growth timber are high, which reduces its value and that old-growth timber, unlike second-growth, is of variable quality, often with defects, decays, and stains. See GOBC's November 22, 2004 Questionnaire Response at Volume 6 for Pearse's "Ready for Change: Crisis and Opportunity in the Coast Forest Industry" at Exhibit BC-S-20, page 7. For these reasons, they note that Department determined, in both the investigation and the first administrative review, that it was not possible to calculate the net effects of the innumerable factors that tend to raise or lower stumpage values for old-growth timber. See the "Old Growth and Quality Characteristics" section of the Final Determination Decision Memorandum at 88-90 and the "Calculation of Benefit" part of the section "Benefit - Calculations" of the Final Results of 1st Review Decision Memorandum.

Department's Position: There is no evidence on the record of this review to justify a reversal of the Department's established position not to make an adjustment for old-growth timber. There are several factors that call into question any potential differences between the value of old growth trees in British Columbia and trees in the U.S. PNW. For example, record information indicates that, although old-growth trees can produce more valuable logs, they can also have a higher incidences of quality imperfections (e.g., rot and decay) and higher harvesting costs. As the Department has made clear in earlier proceedings, it is not possible to adjust for every difference that may exist between British Columbia and the U.S. PNW, including the factors affecting value

due to old growth. Knowing this, we have endeavored to construct a robust benchmark for the B.C. Coast and Interior, by using U.S. log pricing data from a variety of sources to account for inherent differences that may exist between the quality of logs harvested in British Columbia and in the U.S. PNW. To this end, we included U.S. prices for old-growth logs as reported by the log data sources. Therefore, consistent with past practice, we are making no adjustment for old-growth timber.

Comment 51: Other Harvesting Costs for B.C. Interior

The GOBC and BCLTC discuss that in the preliminary calculations the Department intended to include all logging costs reported in the survey undertaken by PwC for the B.C. Ministry of Forests. See B.C. Preliminary Calculations Memorandum at 3. However, in its aggregation of average logging costs for B.C. Interior, the Department failed to include "other" indirect divisional logging costs of $\$0.07/m^3$. See GOBC's November 22, 2004, Questionnaire Response at Volume 26, Exhibit BC-S-179, page 14; see also B.C. Preliminary Calculations Memorandum at Tab A, Table 5A, page 12. Canadian parties assert that the Department should correct this omission and add $\$0.07/m^3$ to the total average logging costs for the B.C. Interior.

Department's Position: We erred in omitting the "other" indirect divisional logging costs of $\$0.07/m^3$ in our aggregation of the average logging costs for B.C. Interior in the Preliminary Results. For these final results, we have included in our summation of the Interior's logging costs the $\$0.07/m^3$ in "other" costs. See B.C. Final Calculations at Tab A, Table 5A, page 12.

Comment 52: Proper Calculation of Profit Earned by B.C. Tenureholders

The GOBC and BCLTC argue that the Department's decision to apply a profit adjustment only to the extent that logging was performed by company crews rests on a false premise and impermissibly limits the profit adjustment that should be applied. They contend that the Department cites no support for its proposition that tenureholders should not earn a profit on the money they spend when they purchase services from contractors. They explain that when a tenureholder hires a logging company to log the timber, the tenureholder is acting like a general contractor, who hires a sub-contractor and employs its own people, resources, and capital to manage that sub-contractor and assume the risk that the sub-contractor will not perform properly. They submit that just as a building general contractor can reasonably expect to profit from the use of sub-contractors in completing a building project, so too does a tenureholder expect to profit from his decision to purchase logging services rather than to conduct harvest operations using his own materials and labor.

They further discuss that whether or not a tenureholder purchases logging services, he remains responsible for the management of the entire harvesting process and bears the risks of long-term forest management. Therefore, Canadian parties argue that it is unreasonable for the Department to not account for the profit associated with these costs and risks merely because the tenureholder chooses to purchase logging services. They also submit that nothing in the statute permits a "carve-out" for profits based on whether the exporter used contractors in producing and selling the subject merchandise.

Canadian parties also argue that the Department's profit methodology contradicts its NAFTA Panel remand determinations. They discuss that in the third NAFTA Panel remand determination, the Department used a profit figure for Alberta following the Panel's conclusion "that there is no credible record evidence which shows that any of the C$3.46 is attributable to independent harvesters' profit." See NAFTA Third Remand Determination at 3. Respondents argue that without credible evidence that any of the 3.7 percent profit for the review period can in fact be attributed to contractors, the Department has no basis "to eliminate the profit component entirely." See the December 1, 2004, NAFTA Panel Decision at 11. Also, they note that in the fourth NAFTA Panel remand determination, the Department stated, when describing the methodology for the calculation of the Quebec log-seller profit, that "we reasonably concluded that a portion of this overall profit amount is attributable to the 'value added' of the process of harvesting the timber and selling it to a mill (that is, paying to have the tree harvested and de-limbed and then hauled as a log to the purchasing mill)." See Fourth NAFTA Panel Remand Determination at 19. Respondents contend that by acknowledging that tenureholders "pay" for harvesting, the Department has recognized the use of contractors in the ordinary course of business.

In addition, Canadian parties claim that the 3.7 percent profit figure used by the Department includes costs associated with the use of contractors. See the May 31, 2005, Memorandum to the File from Kristen Johnson, Case Analyst, concerning "Supporting Documentation for the Preliminary Calculations for the Province of British Columbia (B.C.)" at Tab A, page 1 (showing that the cost of sales figure on that website includes an amount for "purchases, materials, and sub-contracts") (B.C. Supporting Documentation Memorandum). Therefore, they argue that it is inconsistent for the Department to rely on a profit figure that recognizes costs associated with the use of contractors, but then decline to apply that figure to B.C. logging costs based on the use of contractors.

They further argue that the Department incorrectly applied the profit rate. In the preliminary calculations, the Department applied 0.925, or one-fourth of 3.7 percent, to the total harvest and haul costs reported by British Columbia. However, the 3.7 percent profit figure was calculated based on a denominator consisting of total revenue, not costs. They argue that the Department should recalculate the profit figure so it is based on a denominator of total costs, which results in a 3.84 percent figure and apply the full 3.84 percent to both the Coast and the Interior calculations.

Petitioners respond that the record demonstrates that most tenureholders perform limited administrative overhead with the bulk of their expenses incurred and profits accounted for by contractors. See GOBC's November 22, 2004, Questionnaire Response at Volume 1, page BC-VI-22. Because B.C. tenureholders perform almost all of their forest management work through contractors, tenureholders, therefore, cannot expect to make the full share of profit.

Petitioners also rebut respondents' argument that the 3.7 percent cost figure, used as an estimate of profit, includes costs of small businesses for subcontractors. They state that the STATCAN data shows that such subcontractor costs were a very small component of total small business costs and the large bulk of work was performed using the businesses' own equipment and employees. See B.C. Supporting Documentation Memorandum at Tab A, page 1.

Concerning respondents' argument that the Department's profit adjustment in this review is inconsistent with its NAFTA Panel remand determination, petitioners argue that on the record of this review the GOBC has made clear that all or nearly all work is done by contractors.

Finally, with regard to the calculation of the profit figure, petitioners argue that a profit figure calculated based on percentage of revenue makes no more sense than a calculation based on cost due to problems using a "rule of thumb" that fixes a particular percentage of costs as a means to estimate a required return. For example, if an estimate is based on a percentage of total costs, then the higher the costs the higher the apparent profit but, in fact the higher the costs, the less profit.

Department's Position: In the preliminary calculations, we erred in applying the 0.925 profit figure for company crew logging to the total harvest and haul costs for the B.C. Coast. The profit figure was calculated based on a denominator of total revenue, not costs. Therefore, for these final results, we have corrected the B.C. Coast benefit calculation by subtracting the 0.925 percent from the log price benchmarks. We then subtracted the harvest and haul costs from the benchmark prices to derive the market stumpage prices. See B.C. Final Results Calculations at Tab A, Table 1, page 1.

It is possible that the 3.7 percent cost figure (from which the 0.925 percent figure is derived) might include costs associated with the use of contractors, as the cost category "purchases, materials, and sub-contracts" is part of the total expenses reported. See B.C. Supporting Documentation Memorandum at Tab A, page 1. However, there is no itemization of the cost category to know what portion, if any, is attributable to costs incurred by businesses that hire outside firms. Therefore, absent more detailed information of the "sub-contracts" costs, we find it reasonable to base our profit figure adjustment for company crew logging using the full 3.7 percent.

Further, our decision to apply a profit adjustment only to the extent that logging was performed by company crews is based on information the GOBC submitted on the record. In this review, the GOBC has made clear that all or nearly all work in the province is done by contractors. Specifically, the GOBC reported:

> In British Columbia, the vast bulk of logging activity, including road construction, basic silviculture, and other forest management obligations, is undertaken by independent contractors. In the Interior, company crews are virtually non-existent – all work is done by contract and the tenureholders do not perform the work themselves. On the Coast, there are some company crews for some activities, but much of the work is done by contractors. Therefore, the cost report prepared by PricewaterhouseCoopers (PwC) . . . already reflects contractor costs for the Interior and contractor and some limited company costs for the Coast.

See GOBC's November 22, 2004, Questionnaire Response at Volume 1, page BC-VI-22.

Considering that contractors perform all logging activity in the B.C. Interior and the majority of such activity on the B.C. Coast, we find that the contractor cost data, contained in the PwC's survey, reflect "fee for service" payments made by sawmills to independent contractors. In conducting the cost survey, PwC sought information from the sawmill facilities concerning their

logging costs. As noted, most of these facilities hired contractors to perform the logging and forest management responsibilities. The payments the sawmills made to the contractors covered the contractors' charges for performing the logging and forest management services and the contractors' profit associated with those services. Therefore, the logging costs which the sawmills reported to PwC contained a logging profit component. As such, in calculating the "derived market stumpage prices," it is not appropriate, when logging is undertaken by contractors, to account for profit because profit is imbedded in the cost data – such an adjustment would overstate the profit realized and errorously inflate the adjustment.

Further, in calculating our derived stumpage benchmark, we adjusted for all harvest and haul costs, including general, administration, and overhead, and their associated profits incurred by B.C. sawmills as reported by PwC in its "B.C. Ministry of Forests 2004 Survey of Selected British Columbia Logging and Forest Management Costs." See GOBC's November 22, 2004, Questionnaire Response at Volume 26, Exhibit BC-S-179; see also B.C. Final Results Calculations at Tab A, Table 5A, page 12. Finally, we note that the respondents have not attempted to quantify any remaining profit that tenureholders may realize from the management of contractors engaged in the harvesting process and from assuming the risks of long-term forest management. Because the Department is unable to quantify these items, and because they are likely to be negligible in any event, we have not included them in our calculations.

Finally, concerning the NAFTA Panel Remand Determinations, those decisions are not binding precedent on the Department. Moreover, the facts of this administrative review concerning B.C. profit are distinct from those of the investigation remands.

c. Saskatchewan

Comment 53: Whether the Department Properly Adjusted the GOS's Administered Stumpage Price

The GOS argues that in the Preliminary Results, the Department did not take into account differences in utilization standards, scaling rules, climate and growing conditions, and log-haul distances, and differences in distances from mill to market between logs harvested in Saskatchewan and those harvested in the Maritimes.

The GOS notes that, in the Preliminary Results, the Department did not adjust for all costs incurred by timber licensees in Saskatchewan. Specifically, the GOS points out that the Department's preliminary calculation memorandum did not include an adjustment for forest management fees paid by Term Supply License (TSL) holders. The GOS argues that the omission of the TSL forest management fees should be corrected in the final results.

Moreover, the GOS argues that the Department erred by adjusting for only a share of road construction and maintenance costs in Saskatchewan and that these errors should be corrected. The GOS asserts that the Department should adjust for all road construction and maintenance costs, not just for primary and secondary roads, as there is no evidence that harvesters in the Maritimes are required to build tertiary roads to the same degree as harvesters in Saskatchewan. Moreover, the GOS maintains that even if the Department should continue to limit its adjustments to primary and secondary roads only, the record does not support the Department's allocation of

maintenance costs proportionately among all three types of roads, as tertiary roads are temporary and do not incur maintenance costs.

Petitioners, in their rebuttal brief, argue that not only does the GOS misconstrue the significance of the differences it identifies, but differences in climate and growing conditions between Saskatchewan and the Maritimes demonstrate that timber harvested in New Brunswick and Nova Scotia is inferior in quality and value to timber harvested in Saskatchewan. Further, argue petitioners, there is no indication that the costs of tertiary roads are more significant to Saskatchewan's tenureholders than New Brunswick's harvesters. Moreover, petitioners assert that the GOS does not provide any basis to conclude that maintenance costs associated with tertiary roads are significantly different in degree from those associated with primary and secondary roads. Therefore, conclude petitioners, no further adjustment for tertiary road construction and maintenance costs is warranted.

Department's Position: We agree with the GOS that we inadvertently failed to apply an adjustment for forest management fees paid by TSL holders. We have corrected this error for these final results.

Pursuant to the methodology described in the first administrative review and in the Preliminary Results, we adjusted for certain costs incurred in Saskatchewan. Specifically, in the Preliminary Results, the Department adjusted for forest management fees, processing facilities license fees, FPP application fees, primary and secondary road costs, and forest management activities. We disagree with the GOS that additional adjustments are required, as there is no evidence on the record to indicate that timber harvested in the Maritimes is inferior in quality and value to that harvested in Saskatchewan.

Moreover, we disagree with the GOS that additional adjustments for tertiary road construction costs and road maintenance costs are warranted. As explained in the final results of the first review, we determined that we would not make an adjustment to provinces' Crown stumpage prices for tertiary road costs because these costs do not substantially differ depending on the location of the timber. See, e.g., Comment 39 of the Final Results of 1st Review Decision Memorandum. We also made no adjustments for distance from forest to mill because we found that our benchmark price data (i.e., the prices paid by harvesters to landowners in the Maritimes) do not reflect either a delivered mill price or a delivered lumber price. Id. As no new evidence relative to these adjustments has been offered in this review, we continue to find that such adjustments are not warranted.

Further, we disagree with the GOS's contention that the Department improperly allocated maintenance costs proportionately among tertiary, secondary, and primary roads. The GOS did not provide a breakdown of maintenance costs among the three road categories nor did it provide any record evidence to support the claims it made in its case brief. Lacking information from the GOS, the Department reasonably attributed an equal amount of maintenance costs to each road category. Therefore, we have continued to allocated the maintenance costs amount the three road categories using the method employed in the Preliminary Results.

d. Manitoba

Comment 54: Whether the Department Properly Adjusted the GOM's Administered Stumpage Price

The GOM argues that, in the Preliminary Results, the Department did not take into account differences in utilization standards, scaling rules, topography, climate and growing conditions, species, and size differences between logs harvested in public forests and those harvested in the Maritimes. The GOM also argues that the Department must adjust for differences in log-haul distances and distances from mill to market. Finally, the GOM argues that the Department must adjust for prevailing market conditions in Manitoba by adjusting for road construction costs and full road maintenance costs.

Petitioners argue that not only does the GOM misconstrue the significance of the differences it identifies, but differences in climate and growing conditions between Manitoba and the Maritimes demonstrate that timber harvested in New Brunswick and Nova Scotia is inferior in quality and value to timber harvested in Manitoba. Further, argue petitioners, because there is no indication that the costs of tertiary roads are more significant to Manitoba's tenureholders than New Brunswick's harvesters, no further adjustment for tertiary road construction and maintenance costs is warranted.

Department's Position: Pursuant to the methodology described in the first administrative review and in the Preliminary Results, we adjusted for certain costs incurred in Manitoba. Specifically, in the Preliminary Results, the Department adjusted for forest renewal charges, FML silviculture, primary and secondary road costs, forest inventory, forest management and planning, environmental protection, and fire protection costs. For the same reasons discussed above in **Comment 53**, we disagree with the GOM that additional adjustments for tertiary road construction costs and road maintenance costs are warranted. Therefore, for these final results, we continue to apply the same adjustments we applied in the Preliminary Results.

e. Ontario

Comment 55: Whether the Department Properly Adjusted the GOO's Administered Stumpage Price to Account for Road Costs

The GOO argues that a Maritimes price that does not reflect full road construction and maintenance obligations must be adjusted before it can be compared to the administered stumpage price. Arguing that Crown tenure holders in Ontario incurred road construction, maintenance and associated overhead costs of $C6.44 per cubic meter during the POR, the GOO takes issue with the Department's preliminary decision to grant only a partial road cost adjustment of C$3.14. The GOO contends that there are no comparable road construction and maintenance obligations and costs in the Maritimes. The GOO further contends that tertiary road costs are far greater than any costs incurred in the Maritimes, where the existing road network is extensive, and argues that the Department failed to collect any record evidence demonstrating tertiary road construction costs in the Maritimes.

Petitioners take issue with the claim that there is no evidence on the record indicating that road costs are incurred by harvesters in the Maritimes. They argue that the Department stated in

its verification report that harvesters of private wood lots incur costs to build and maintain tertiary roads in New Brunswick. They also argue that it is not necessary to make an adjustment for tertiary roads because the GOO has not demonstrated that tertiary road costs for Ontario tenure holders are more substantial than the tertiary road costs incurred by harvesters of private wood lots in the Maritimes.

Department's Position: In the final results of the first administrative review, we determined that we would not make an adjustment to the provinces' Crown stumpage prices for tertiary road costs because these costs do not substantially differ depending on the location of the timber. See, e.g., Comment 39 of the Final Results of the 1st Review Decision Memorandum. As no new evidence regarding these issues has been offered in this review, the Department continues to find that the adjustments sought by the GOO are unwarranted.

Comment 56: Whether the Department Properly Adjusted the GOO's Administered Stumpage Price to Account for Longer Distances from Stump to Mill and Mill to Market

The GOO argues that the stump-to-mill and mill-to-market costs in Ontario are substantially higher than those in the Maritimes. The GOO contends that a comparison price that does not reflect these differences does not reflect market conditions in Ontario. The GOO states that on average, the minimum distance between a community in Ontario with a sawmill and the next closest community with a sawmill is approximately 62 kilometers, but in New Brunswick and Nova Scotia, the average minimum distance is a mere 19.5 kilometers. The GOO contends that all else equal, shorter haul distances from the harvest site to the sawmill increases stumpage prices. The GOO also contends that softwood lumber mills in Ontario are generally located farther from markets than comparable mills in the Maritimes. The GOO takes issue with Department's determination in the Preliminary Results, that "{b}ecause the Maritimes data reflect prices at the point of harvest, we also did not include post-harvest activities such as scaling and delivering logs to mills or market." The GOO argues that "an inherent part of the value of stumpage is the distance from the tree stand to the mill and from the mill to the market" and that to the extent Ontario wood must travel longer distances from the mill to relevant markets, it is inherently less valuable than similar wood in the Maritimes. It states that the weighted average distance from sawmills in the Maritimes to U.S. markets is 977 kilometers, whereas in Ontario the weighted-average distance is 1,208 kilometers. The GOO argues that additional transportation costs reduce the value of Ontario Crown timber and therefore any Maritimes benchmark should be adjusted accordingly.

Petitioners argue the distances between communities with sawmills indicate nothing about the distances between harvest sites and sawmills. They argue that differences in log haul distances are a function of provincial policies, not economics. They argue that the provinces provide supply guarantees as incentives to build mills in particular locations. They further argue that where such policies exist, log haul distances are longer than in a competitive market, where mills must locate near their timber supply or risk having another competitor establish itself between them. Thus, they argue that tenure security allows mills to choose locations based on factors other than log haul distances.

Petitioners argue that higher average distances from the mill to market do not necessarily mean that transportation costs are higher. They explain that mills in Ontario may have lower transportation costs than mills in the Maritimes because they may ship by rail or use water transport methods. In addition, they argue that, despite difference in the distance to markets in the U.S., Ontario mills are closely proximate to large market for lumber in Ontario.

Department's Position: In the first administrative review, we made no adjustments for the distances from forest to mill and from mill to market because we determined that our benchmark price data (i.e., the prices paid by harvesters to landowners in the Maritimes) do not reflect either a delivered mill price or a delivered lumber price. As no new evidence relative to these issues has been offered in this review, the Department continues to find that the adjustments sought by the GOQ are unwarranted.

Comment 57: Whether Maritimes "Studwood" Is More Comparable To Timber Entering Ontario Sawmills Than Maritimes "Sawlogs"

The GOO argues that the Department erred in its Preliminary Results by failing to account for the size differential between timber entering Ontario mills and timber entering mills in the Maritimes. The GOO contends that the record evidence shows that SPF studwood from private lands in the Maritimes is generally priced much lower than Maritimes SPF sawlogs. The GOO also contends that a comparison of butt diameters of New Brunswick "sawlogs" and "studwood" with Ontario Crown timber destined to sawmills shows that, on average, wood going into sawmills in Ontario is generally smaller than timber entering Maritimes sawmills. The GOO argues that it is necessary to adjust the Maritimes stumpage prices because Ontario wood is generally closer in size to lower-priced "studwood" in the Maritimes.

Petitioners argue that the GOO incorrectly compares the alleged actual diameters of harvested Crown timber in Ontario with the maximum diameter capacity of the machinery contained in sawmills in New Brunswick and Nova Scotia. They argue that trees with butt diameters approaching the maximum size capacity of Maritimes' sawmills (30-36 inches) are rare if not entirely non-existent in New Brunswick and Nova Scotia. Petitioners contend that a size adjustment is not warranted because there is no record evidence that demonstrates any appreciable difference in log sizes in New Brunswick/Nova Scotia and Ontario.

Department's Position: The evidence on the record indicates that the timber that entered and was processed by sawmills in Ontario is comparable in size to timber that entered and was processed in sawmills in the Maritimes. In its November 22, 2004, initial questionnaire response, the GOO argued that, on average, Crown timber harvested during the POR was less than 9 inches in diameter at breast height (dbh). Based on an analysis of the sample data, the GOO estimated that a minimum of 76.2 percent of the Crown timber that was manually scaled was less then 9 inches in dbh .[51] See pages ON-67 and ON-68. Evidence on the record also indicates that the

[51] The large majority of the Crown timber destined to sawmills in Ontario is weigh-scaled. The GOO did not report diameter estimates for the Crown timber that was weigh-scaled. The estimates provided by the GOO regard only timber that was scaled manually.

average dbh of Maritimes timber is also less than nine inches. See e.g., Preliminary Results, 70 FR at 33104.

As explained above, the Maritimes benchmark price is an average of the price for "saw" timber and the price for timber of smaller diameters that are classified as "studwood." Studwood prices were included in order to ensure that the benchmark reflects the fact that, during the POR, both "saw" timber and the smaller "studwood" timber were used by sawmills produce softwood lumber.

f. Quebec

Comment 58: Quebec Road Costs

The GOQ argues that transportation costs associated with distance influence the value and price of standing timber. The GOQ claims that the Department must make adjustments for the distance from forest to mill and mill to market because the value of a tree includes how expensive it is to transport it to market.

The GOQ also claims that the Department must make an adjustment for tertiary roads because they are an essential component of the forest-to-mill and mill-to-market costs, and do not differ based on the location of the timber. The GOQ further argues that the record contains data that demonstrates tertiary road-building and maintenance costs differ between Quebec's private and public forests.

Petitioners rebut the GOQ's claim that the Department should make an adjustment for transportation costs. Petitioners argue that the GOQ's claim fails because it does not even allege that Quebec mills are any farther from their end markets than mills in the benchmark provinces of New Brunswick and Nova Scotia are from their end markets. Therefore, petitioners state that no adjustment is warranted.

Petitioners also rebut the GOQ's claim that the Department must adjust for tertiary road costs incurred by Quebec tenureholders. Petitioners support their rebuttal by showing that the GOQ offers no evidence why a comparison of between tertiary road costs in Quebec private forests with the same costs in Quebec public forests has any relevance to tertiary road costs incurred in Nova Scotia and New Brunswick.

Department Position: In the final results of the first administrative review, we determined that we would not make an adjustment to Crown stumpage prices in Quebec for tertiary road costs because these costs do not substantially differ depending on the location of the timber. See Comment 39 of the Final Results of the 1st Review Decision Memorandum. We also made no adjustments for distance from forest to mill and from mill to market in the final results of the first administrative review because we found that our benchmark price data (i.e., the prices paid by harvesters to landowners in the Maritimes) do not reflect either a delivered mill price or a delivered lumber price. Id. As no new evidence relative to these issues has been offered in this review, the Department continues to find that the adjustments sought by the GOQ are unwarranted.

E. Whether to Measure the Adequacy of Remuneration of the Administered Stumpage Programs Under Tier III of the Department's Regulations

Comment 59: Market Principles as Benchmark Under Third-Tier Category

Assuming the Department persists in refusing to use private benchmarks that are available inside the respective provinces, Canadian parties argue that the next best alternative should be to measure the adequacy of remuneration by examining whether the provincial stumpage programs are consistent with market principles pursuant to 19 CFR 351.511(a)(2)(iii). They argue that under the third tier of the benchmark hierarchy, the Department's regulations provide for an analysis of the government's costs and whether the government price achieves "rates of return sufficient to ensure future operations." See the Preamble to the CVD Regulations, 63 FR at 65378.

Canadian parties contend that record evidence clearly indicates that each of the provincial governments operates its respective stumpage programs such that stumpage revenues exceed the costs of managing their forests and are sufficient to ensure future operations. Accordingly, they argue the Department should conclude that the provincial governments operate their respective programs in a manner that is consistent with market principles.

The GOA argues that the Department should have used TDA as the benchmark to assess the adequacy of remuneration Alberta receives from its forests. The GOA asserts that if the Department finds that TDA is not available as a benchmark, the Department should not have used the Maritimes benchmark. Instead, the GOA argues that the Department should use Alberta's financial statements which show that Alberta's returns on its stumpage sales during the POR more than adequately covered Alberta's costs of renewing this forest asset. The GOA states that these data show that Alberta is acting consistently with market principles in its commercial timber management activities and, therefore, receiving adequate remuneration for its stumpage.

The GOBC further argues that the Department interprets the term adequate remuneration to mean what would be charged in a competitive market. According to the GOBC, this effectively requires the province to charge not adequate remuneration but maximum remuneration. It argues that Congress and the drafters of the SCM deliberately chose the term adequate instead of maximum or any other formulation that would have required governments in all cases to obtain the full amount of what would have been charged in a competitive market.

The GOBC further argues that remuneration is adequate if it prevents distortions in international trade that result if the government sets a price at a level that increases volume or decreases the price of the good or service compared to a competitive market. It claims that for some goods distortions may result if the government collects anything less than the market price; however, they assert that basic principles of natural resource economics demonstrate this is not true in the case of stumpage prices.

The GOO argues that in the event that the Department improperly should refuse to employ Ontario market prices as its Ontario benchmark, the Department must use a "market principles" benchmark. The GOO argues that a comparison of the costs and revenues of Ontario's stumpage program demonstrates that stumpage for Crown softwood timber was provided for more than adequate remuneration during the POR. It argues that total Crown revenues on softwood timber

destined to sawmills in Ontario were C$126.3 million, related expenditures were C$104.8 million, and thus the GOO realized a 17 percent rate of return on revenue.

Petitioners point out that the Department has already rejected Canadian parties' proposed approach for using a cost-revenue test under the third-tier benchmark of 19 CFR 351.511. See e.g., Comment 44 of the Final Results of 1st Review Decision Memorandum. Further, petitioners argue that the Department has previously concluded that Canadian parties' proposed cost-revenue tests omit the value of the good being provided - standing timber. Id.

Petitioners claim that Canadian parties' theory purporting to demonstrate the lack of trade effects from stumpage subsidies is factually inaccurate. In addition, petitioners assert that as a matter of law, a government provides goods for less than adequate remuneration when it charges less than "full value" for the goods. See e.g., Delverde, SrL v. United States, 202 F.3d 1360 (Federal Circuit 2000). They also argue that whether trade effects of that subsidy benefit have been identified by the Department is not relevant because, if the financial contribution provides a competitive advantage to respondents, then there is a countervailable benefit. They note that the courts have agreed that an effects test for subsidies has never been mandated by the law and is inconsistent with effective enforcement of the countervailing duty law. See e.g., Saarstahl v. United States, 78 F.3d 1539, 1543 (Federal Circuit 1996).

Department's Position: We are using Maritimes' stumpage prices for benchmark purposes under tier one of 19 CFR 351.511(a)(2)(i) to examine the administratively-set prices paid for Crown stumpage in Alberta, Manitoba, Ontario, Quebec, and Saskatchewan. The Maritimes' prices are useable under tier one because they are market-determined, in-country prices.

In the case of British Columbia, we are using U.S. log prices under tier three of 19 CFR 351.511(a)(2)(iii) to examine the administratively-set prices paid for Crown stumpage. In conducting a market principles analysis, the Department's practice is to consider the facts of the case. Consistent with our practice, we have examined how the market determines the price of timber and developed benchmark stumpage prices accordingly. By deriving species-specific benchmark prices in the same manner that the market derives such prices, the Department is able to assess whether B.C.'s stumpage prices were consistent with market principles. This approach reasonably effectuates the purpose of the statute and the regulations and is supported by record evidence. See Comment 44 of the Final Results of 1st Review Decision Memorandum.

Given that we have previously determined that the third-tier methodology advocated by Canadian parties is not reflective of market principles and that no new information has been submitted to warrant a reconsideration of that determination, we find that their third-tier methodology is inadequate for purposes of a market principles analysis. See Comment 44 of the Final Results of 1st Review Decision Memorandum, in which we discussed this topic. Furthermore, our use of the two benchmarks discussed above makes it unnecessary to consider other data or methodologies under the second or third tier of 19 CFR 351.511(a)(2)(ii) and (iii).

F. Miscellaneous Comment

Comment 60: Tenure Security

Petitioners argue that in the Preliminary Results, the Department did not address the additional value bestowed on Crown tenureholders through the stable, steady, and secure supply of wood fiber. Petitioners claim that the Department has acknowledged that tenure security does have value to sawmills but that it is difficult to quantify. See e.g., Preliminary Results of 1st Review, 69 FR 33217 and Final Results of 1st Review Decision Memorandum at Comment 31. Petitioners argue that information on the record of the current review gives a concrete indication of the magnitude of the benefit attributable to tenure security. For example, petitioners cite to the "Final Report on Wood Supply in New Brunswick" issued in 2004, which includes a recommendation that Crown stumpage rates in the province be increased to account for the actual value that a secure supply of timber affords to tenureholders. See Exhibit 11 of petitioners' February 28, 2005, factual filing.

To the extent the Department continues to use private stumpage prices from the Maritimes to measure the adequacy of remuneration in the provinces of Quebec through Alberta, petitioners argue that it should account for the extra procurement costs faced by buyers of private woodlot timber in the Maritimes. Petitioners claim that an upward adjustment of USD$4.13/mbf to the Maritime benchmark constitutes a conservative estimate of the extra costs that buyers of private standing timber incur in the Maritimes. See Assessing Market Value, Volume 4, Attachment 5, at pages 87-88 of petitioners November 30, 2004, factual filing.

The GOC rebuts petitioners' arguments by noting that in Lumber III and the investigation of the current proceeding, the Department declined to make petitioners' proposed tenure adjustment. See Lumber III, 57 FR at 22596; see also the "Bid Preparation Costs" section of the Final Determination Decision Memorandum. Further, the GOC points out that in its briefs to the NAFTA Panel, the Department specifically rejected the notion that tenure security provides significant value to sawmills. See Brief of the United States Department of Commerce in Opposition to NAFTA Secretariat (November 15, 2002) at Volume 4 at H-II-44-45.

The GOC further argues that petitioners' allegations concerning tenure security fail to consider the long-term obligations and resulting costs inherent in the Crown tenure systems. In addition, the GOC asserts that petitioners incorrectly allege that Crown tenure systems provide reliable timber volumes at "pre-determined prices" when, in fact, stumpage rates are variable and regularly adjusted to reflect market conditions.

The GOC also contests petitioners' claim that the Maritimes benchmark should be adjusted to account for tenure security. The GOC notes that petitioners' claim is wholly unrelated to the tenure systems in the subject provinces and has nothing to do with the subsidy or benchmark calculation of any of those provinces. The GOC further contends that petitioners' claims concerning tenure security rely on commissioned reports that fail to support their contentions with factual evidence.

In addition, the GOC argues that petitioners' proposed adjustment to the Maritimes benchmark of US$4.13/mbf is not supported by any credible evidence pertaining to Maritimes procurement costs. Rather, the GOC asserts the figure relies on estimated harvesting costs in the

United States during the period of investigation. Further, the GOC contends that petitioners do not provide any company or survey data to support their derivation of the US$4.13/mbf figure.

Department's Position: As explained in the final determination of the investigation, we acknowledge that, at least in theory, there could be some value to having long-term tenure rights guaranteed. See Comment 2 of the Final Determination Decision Memorandum. However, in the investigation, we did not make a determination as to whether a countervailable benefit was provided via tenure security on the grounds that the information on the record did not contain the appropriate data necessary to make an accurate quantification of the alleged benefit. We further determined that without the necessary data on the record with which to quantify the benefits allegedly conferred by tenure security, there was no need to analyze whether a countervailable benefit is conferred through tenure security. Id. Upon review of the information on the record of the second review, we have reached the same conclusion; there is not sufficient evidence to make an accurate quantification of the alleged benefit.

G. Non-Stumpage Program Issues

Comment 61: Whether Loans Provided by Community Futures Development Corporations Provide a Countervailable Subsidy

The GOC agrees with the Department's preliminary determination that Community Futures Development Corporations (CFDC) loans outstanding during the POR did not confer a benefit. The GOC notes that this determination is based on the fact that interests paid on those loans were greater than what would have been paid on a comparable commercial loan using the Department's benchmark interest rate. The GOC does, however, contest the use of the Department's own constructed benchmark interest rate.

Specifically, because CDFC loans are required to be made at rates that are at a minimum of prime plus two percent, the GOC contends there is no rational basis for constructing and applying a benchmark to the loans, as the Department did in the Preliminary Results. The GOC further argues that as the interest rates applied under the loan program are inherently market-based, the Department should revise its finding from "Programs Determined Not to Confer a Benefit" to "Programs Determined to Be Not Countervailable" in the final results.

Department's Position: As explained in the Preliminary Results of this review, our methodology for determining whether benefits have been provided by loans under this program involves comparing the long-term and short-term interest rates charged on these loans during the POR to short-term and long-term benchmark interest rates. See 70 FR 33114. In this case, because we are conducting an aggregate review, we are using national average interest rates as reported by the GOC. We disagree with the GOC's argument that the FEDNOR CFDC loan program should be reclassified under "Programs Determined to Be Not Countervailable." Although we determined that the interest amounts paid on loans under the program were higher than the benchmark rate during the POR, this determination is particular to, and based on the facts of, this segment of the proceeding with regard to benefit; it does not negate the Department's findings in the underlying investigation with regard to financial contribution and specificity. The information submitted in

subsequent reviews may still demonstrate that benefits are still being conferred under this program.

Comment 62: Western Economic Diversification Program

The GOC maintains that, although in the Preliminary Results, the Department found the Western Economic Diversification Program to be countervailable, the subsidy rate calculated for this program, was less than 0.0005 percent and thus, had no impact on the aggregate duty rate. Therefore, the GOC asserts that this program is not countervailable.

Department's Position: The Department continues to find the Western Economic Diversification Program countervailable in these final results. As we noted in the Preliminary Results, no new information has been placed on the record of this review to warrant a change in our finding that this program is countervailable. Furthermore, the fact that in a given administrative review a program is found to confer only a very small benefit is not sufficient, in and of itself, for the Department to find that the program itself is not countervailable.

Comment 63: Whether the Canadian Forest Service Industry, Trade and Economics Program Provides a Countervailable Subsidy

The GOC maintains that the Preliminary Results do not address the Canadian Forest Service Industry, Trade and Economics Program (IT&E). See 70 FR 33114. The GOC asserts that the record of this review shows that this program involves an economic and policy research office staffed by professionals who produce studies in conjunction with universities, non-profit organizations and other government-related entities. According to the GOC, IT&E does not provide grants or other funding to lumber producers or other private companies. Therefore, the GOC argues that the Department must find this program non-countervailable in these final results.

Department's Position: We note that the GOC reported in its November 22, 2004, questionnaire response that no producer or exporter of softwood lumber applied for, used or benefitted from IT&E during the POR. However, we disagree with the GOC's argument that these facts compel the Department to find the program itself not to be countervailable. As explained in the Preliminary Results, when a program is not used, the Department typically does not make a finding as to its countervailability. This is a matter of both administrative efficiency and practicality. Regarding administrative efficiency, the respondents are relieved from the requirement of providing extensive information related to those programs. Regarding the practicality, it is generally easier to understand how a program works when the program is being used. Otherwise, the analysis is necessarily abstract. Therefore, we have not gone beyond the non-use determination to examine whether this program potentially provides a countervailable subsidy.

Comment 64: Article 28 of Investissement Quebec

The GOQ asserts that the Department should affirm its preliminary finding that no benefit was provided under Article 28 of Investissement Quebec (Article 28) during the POR. The GOQ notes that the Department examined the one outstanding Article 28 loan during the POR and determined that the Article 28 loan interest rate was higher than the benchmark interest rate. The GOQ asserts that on the basis of this record evidence, the Department determined that no benefit was provided by this loan. See Preliminary Results, 70 FR 33115-33116. The GOQ also argues that Article 28 is not countervailable because it is not specific. The GOQ contends that there is no evidence on the record that Article 28 is dependent upon export performance or the use of domestic goods over imported goods. Moreover, the GOQ claims that the record evidence shows there is no predominant or disproportionate use by softwood lumber producers of Article 28, which provides a domestic subsidy. Furthermore, the GOQ argues that there is nothing on the record that shows that Investissement Quebec exercised its discretion, by providing Article 28 loans, in a way that would favor the wood sector over another sector. The GOQ notes that this conclusion would be consistent with the evidence in this proceeding and with the Department's previous determinations (citing to, e.g., Alloy and Magnesium and Pure Magnesium from Canada: Preliminary Results of Full Sunset Reviews, 65 FR 10766, 10768 (February 29, 2000) (Alloy Magnesium and Pure Magnesium from Canada: Sunset)). Therefore, the Department should also find in the final results that Article 28 is not specific.

Department's Position: Having found no benefit, we have determined that there is no subsidy conferred on softwood lumber by this program. Therefore, there is no need to make additional findings and, as a matter of administrative economy, we have chosen not to address the specificity of this program.

Comment 65: SGF-Rexfor

The GOQ argues that SGF-Rexfor is not a program. The GOQ claims that SGF-Rexfor is a financial investment company that manages a commercial portfolio comprising equity and debenture investments in the forest products industry. The GOQ does not agree with the Department's determination that SGF-Rexfor provides countervailable loans. However, it concurs with the Department's finding that the interest rate on SGF-Rexfor's debenture investment during the POR was at a higher level than the interest rates charged on comparable commercial loans. Therefore, the GOQ asserts that the Department should affirm its preliminary finding in these final results that SGF-Rexfor did not provide unlawful subsidies to the Quebec lumber industry during the POR.

Department's Position: The Department continues to find SGF-Rexfor's equity investments did not confer a benefit to producers of subject merchandise in these final results. As we noted in the Preliminary Results, no new information has been placed on the record of this review to warrant a change in our finding with respect to SGF-Rexfor. See 70 FR at 33116.

Comment 66: Whether the Land Base Investment Program (LBIP) is Countervailable

Petitioners argue that the Department wrongly decided not to preliminarily countervail the BC Land Base Investment Program (LBIP). According to petitioners, the GOBC claims that it is providing services under LBIP and not grants. Petitioners maintain that this position would enable a foreign government to avoid the countervailing duty laws by having the subsidy recipient perform some action that it portrays as a service for the government. Petitioners argue that under LBIP, the payments received by tenureholders are grants. According to petitioners, the Department has countervailed the allocation of funds by governments if it occurs for some act as a quid pro quo on the part of an exporting industry. Petitioners argue that this has been the Department's consistent practice, citing Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea. 67 FR 62102, (October 3, 2002), (Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410, (October 3, 2001), and Certain Cut-to-Length Carbon Steel Plate from Mexico, 65 FR 18067, 18069, (April 6, 2000).

GOBC contends that in the Preliminary Results, the Department correctly determined that the LBIP does not provide a countervailable benefit based on its verification of the program in the first administrative review and its decision in the underlying investigation. According to the GOBC, petitioners give no reason in this administrative review for the Department to reconsider the countervailablility of the LBIP program, which involves a non-countervailable purchase of services. The respondent argues that the Department verified in the first administrative review that LBIP activities are carefully designed not to provide a competitive benefit to any company or industry, but to improve the forest resource over the long term. According to the respondent, the Department properly concluded that the LBIP was similar to the land-based Forest Renewal B.C. program. Respondent maintains that the record of this review confirms that there is no reason for the Department to revisit its conclusions from the first review. The GOBC maintains that the titles of several LBIP projects in this review confirm the reasonableness of the Department's conclusion in the first administrative review that the purpose of LBIP projects is to provide services that benefit the forest resource for all users. Moreover, the GOBC states that for this review, as in the first review, LBIP funds can be used only to perform the agreed-upon activity, which is thoroughly reviewed prior to approval of the project by the LBIP administrator, as well as after completion of the project, to ensure compliance.

As for the three cases cited by petitioners, the GOBC argues that the referenced programs involved subsidies geared to the production of particular products and allowed companies various tax or import duty exemptions that were contingent on the companies using domestic materials or locating facilities in certain areas. The respondent argues that the LBIP is clearly distinguishable from these programs in that LBIP projects relate to the long-term improvement of the forest resource. Therefore, the GOBC contends that the Department should sustain its proper conclusion not to include the LBIP in this review.

Department's Position: At verification in the first review, the Department confirmed the GOBC's claim regarding the similarity between the LBIP and the land-based activities of Forest Renewal B.C., which the Department determined not to investigate in the investigation. As a result, in the Preliminary Results we determined not to include the LBIP in this administrative review. Since the Preliminary Results, the parties have submitted no new information or evidence indicating that this program is different from the land-based activities of Forest Renewal B.C., or that it otherwise conferred a countervailable subsidy. Moreover, we do not find the precedents

cited by petitioners in Carbon Steel from Korea, Carbon Steel from Thailand, or Carbon Steel from Mexico to be persuasive. These programs provided tax and import duty exemptions to companies that utilized domestic materials over imported materials or located production facilities in specific regions. The LBIP does not offer any such exemptions. Therefore, for these final results we are not revising the Department's determination in the Preliminary Results.

Comment 67: Whether the Private Forest Development Program (PFDP) Is Countervailable

The GOQ disagrees with the Department's finding that the Private Forest Development Program (PFDP) is countervailable. According to the GOQ, the Department's preliminary finding that PFDP is specific is based on the assistance being limited to private woodlot owners. See Preliminary Results, 70 FR at 33114. The GOQ argues that this finding is legally and factually flawed because the Department does not explain how private woodlot owners constitute an "industry" or "enterprise" within the meaning of 19 U.S.C. section 1677(5). According to the GOQ, any landholder (i.e., any person who owns land on which trees grow) with more than 4 hectares is eligible to participate in this program and eligibility is automatic. Therefore, the GOQ asserts that the only conclusion the Department can logically reach is that the PFDP is neither de facto nor de jure specific.

The GOQ further states that it has never argued that the sawmill contributions to the PFDP should be viewed as one of the enumerated offsets under 771(6) of the Act. According to the GOQ, its argument was that, in addition to not being specific to an "enterprise or an industry" producing softwood lumber, there is simply no benefit being conferred. In particular, the GOQ argues that PFDP does not provide a financial benefit to the production of softwood lumber, but instead imposes a financial cost on softwood lumber production. The GOQ maintains that it does not indirectly provide subsidies to softwood lumber production because most private woodlot owners do not have sawmills and the few private woodlot owners that do own sawmills pay more into the PFDP program than what they receive. Instead of providing a benefit to softwood lumber producers, PFDP transfers funds from the sawmills to the private woodlot owners. Therefore, the GOQ argues there is no financial contribution to lumber production.

According to the GOQ, of the more than 40,000 registered private woodlot owners in Quebec, approximately 13,000 private woodlot owners received payments under PFDP during the POR. The GOQ contends that these 13,000 beneficiaries received an annual average payment of less than C$3,000 per recipient. According to the GOQ, only 41 registered private woodlot owners in the program are sawmill owners, which constitute a de minimis percentage of the total number of recipients. The GOQ claims that the total amount received by the 41 sawmills was C$551,895, which is less than the C$1,985,616 these companies paid into PFDP. Therefore, the GOQ argues that the record shows that PFDP does not provide a financial contribution or benefit with respect to the production of softwood lumber.

The GOQ further argues that PFDP is not countervailable because the program does not reimburse private woodlot owners for work that they are required to do, and the reimbursement covers only 80 percent of the silviculture costs incurred by woodlot owners. The GOQ claims that the Department has failed to take into account that 20 percent of the unreimbursed cost to landowners is an additional source of funding. The respondent asserts that PFDP has not

changed in its fundamental function or structure with the exception that today the industry is responsible for supporting the program in addition to the funding by the Ministere des Ressources Naturelles de la Faune et des Parcs.

Based on the above, the GOQ argues that PFDP is not specific and does not provide a financial contribution or subsidy within the meaning of 19 U.S. C. 1677(5). Therefore, in these final results the GOQ argues the Department should find PFDP not countervailable.

In rebuttal, petitioners assert that the GOQ claims again, as it has in the past review, that the PFDP is not countervailable because the Department did not explain how "woodlot owners" constitute an "industry" or "enterprise" within the meaning of 19 U.S.C. section 1677(5). Petitioners further note that it is Departmental practice not to revisit prior determinations regarding the specificity of programs, absent the presentation of new facts or evidence. See Pure and Alloy Magnesium from Canada; Final Results of the Fifth (1996) Countervailing Duty Administrative Reviews, 63 FR 45045-45046 (August 12, 1998). Petitioners assert that the Department should not revisit whether the PFDP is a specific and countervailable program, because the GOQ has not provided any new information or evidence in this review.

Petitioners agree with the Department's preliminary finding that PFDP is specific because the benefits provided, silviculture assistance and reimbursements, are limited to private timberland owners who engage in silviculture and are not provided to a wide range of industries. Petitioners note that the application to obtain the PFDP assistance requires the woodlot owner be a certified forest producer. Moreover, petitioners claim that private woodlot owners would only participate in silviculture if they intended to harvest the timber commercially. Because this program is limited to owners of commercially useable timberland, petitioners argue that this program is specific under section 771(5A)(D) of the Act.

Petitioners also disagree with the GOQ's argument that the PFDP does not confer a benefit because it transfers wealth from sawmills to private woodlot owners. Petitioners note that the GOQ admits that sawmill operators received benefits under PFDP during the POR as a result of being woodlot owners. Therefore, petitioners assert that at a minimum, sawmills that also produced softwood lumber during the POR received funds of C$551,895 that covered at least 80 percent of the woodlot owners' silviculture expenses which they otherwise would have had to pay. Therefore, petitioners maintain that the PFDP is countervailable because it provides a specific financial contribution.

Department's Position: In Pure and Alloy Magnesium from Canada, the Department stated that, absent new evidence, it is Departmental policy not to revisit prior determinations that a program is, or is not, specific. See Pure and Alloy Magnesium from Canada at 63 FR 45045-45046. In the present review, no new evidence has been presented regarding the specificity of this program. Therefore, the specificity finding from the investigation and the prior administrative review stands.

Regarding the GOQ's claim that this program does not confer a benefit, we disagree. The payments to the sawmills are grants and, hence, financial contributions within the meaning of section 771(5)(D)(I) of the Act. Under 19 CFR 351.504(a), the benefit from a grant is the amount of the grant. Hence, we find that there is a benefit in the amount of the payments to the sawmills.

We also disagree with the GOQ's claims that the amount received under the PFDP was less than the amount the recipients paid into it and, thus, the program is not countervailable.

Pursuant to 351.503(c), the Department is not required to consider the effect of the government action on the firm's performance, including its prices or outputs, or how the firm's behavior is otherwise altered.

Comment 68: Natural Resources Canada (NRCan) Softwood Lumber Marketing Research Subsidies Under the Value-to-Wood Program (VWP) and the National Research Institutes Initiative (NRII)

The GOC argues that the Department's preliminary finding that the GOC provided countervailable subsidies through funding by Natural Resources Canada (NRCan) to research institutes and universities was incorrect and must be changed in these final results. According to the GOC, during the POR, NRCan provided Value-to-Wood Program (VWP) funding to Forintek Canada Corp. (Forintek), a national, not-for-profit research institute, to carry out research projects and a technology transfer. The GOC claims that the specific research projects carried out were related to value-added wood products, not subject merchandise. Moreover, according to the GOC, under the technology transfer project of the VWP, industry advisors visited only secondary, value-added wood manufacturers, and no primary sawmills received technical input or intervention from this program. The GOC maintains that neither softwood lumber producers or exporters received funding or benefitted from research funded through VWP. Funding was also provided under the National Research Institutes Initiative (NRII) to Forintek and two other national not-for-profit research institutes, the Forest Engineering Research Institute of Canada (FERIC) and the Pulp and Paper Research Institute of Canada (Paprican), to conduct pre-competitive research. According to the GOC, funding to these institutes was used to maintain highly specialized personnel during a financial crisis, so that the institutes could continue conducting core research. The GOC claims that none of the funding under NRII was transferred directly to any softwood lumber producers or exporters.

The GOC asserts that the Department's practice regarding financial assistance to research organizations is to treat such funding as a direct subsidy only when it can be demonstrated that the producers of the subject merchandise would have carried out the particular research project themselves if the government funding had not been available. The GOC claims that in the Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea (Korean DRAMS), 68 FR 37122 (June 23, 2003) (citing the unpublished decision memorandum, dated July 3, 2003, at 121-122), the Department found government contributions to Seoul National University and various research institutes to be not countervailable, because there was no evidence that the research would otherwise have been conducted by the respondents. In contrast, in the Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea (Korean Structural), the Department found government funding to an institute established by steel companies for the development of new iron and steel technology to be countervailable, because it "relieves {the} companies" of their own obligation to fund their own R&D projects. Moreover, the Department noted that "[i]f the research is deemed successful, 50 percent of the GOK's contribution will be repaid in proportionate amounts from each individual participating company." See Preliminary Negative Determination in Structural Steel Beams from the Republic of Korea, 64 FR 69731, 69740.

The GOC argues that to be consistent with the Department's established practice with respect to government funding to research organizations, as demonstrated in DRAMS, the Department must find that NRCan funded projects are not countervailable in these final results. Furthermore, the GOC asserts that NRCan funding is not similar to the countervailable programs in Korean Structural, because neither VWP nor NRII projects were established by an association of softwood lumber producers and no lumber producer directly benefitted from or repaid the GOC for this technology. According to the GOC, there is no evidence on the record that producers of the subject merchandise would have undertaken these research activities themselves if the research was not funded by the government.

Petitioners dispute the GOC's arguments regarding the Department's practice as shown in the Drams and Steel Beams cases, asserting that the GOC has miscontrued the Department's test for countervailability of government-funded research. Petitioners assert that the Department properly applied its test for research programs in determining the countervailability of NRCan programs in the first administrative review and this review. Petitioners claim that the Department's real countervailability test for government-funded research and development is "whether the record evidence indicates that the government-funded research by Forintek and FERIC aims to improve the subject merchandise or the technology for producing subject merchandise." See Final Results of 1st Review Decision Memorandum at Comment 47. Petitioners assert that, in this case, the Department has been correctly applying its practice to determine that such improvement to the subject merchandise or the technology for production of the subject merchandise leads the Department to conclude that "the government is relieving producers in the industry of the costs they would normally incur in carrying out the R&D themselves." Id. at Comment 51. Petitioners note that these concepts were correctly employed in Korean DRAMS and Korean Structural cases, but the record evidence in those cases compelled different results. Id.

Petitioners maintain that, in the current review, the record evidence indicates that the government-funded R&D "aims to improve the subject merchandise or the production of subject merchandise" because the R&D carried out by Forintek and FERIC is limited to "wood product manufacturers" and "members," respectively. Thus, petitioners argue the evidence clearly indicates that the results of this government-funded R&D are not made publicly available and are distributed only for the benefit of producers of subject merchandise. Therefore, petitioners argue that the Department properly applied its past practice in finding that grants under NRCAN are countervailable in this administrative review.

Department's Position: With respect to assistance provided to research organizations, it is the Department's practice to treat such assistance as a direct subsidy to the production, manufacture or exportation of the subject merchandise if the research is for the improvement of the merchandise or enhancement of the technology used to produce the merchandise. Where the government funds such research, we determine that the government is relieving producers in the industry of the costs they would normally incur in carrying out the R&D themselves.

This practice is articulated in two cases involving assistance provided by the Korean government. First, in the Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea, 65 FR 41051 (July 3, 2000) (Korean Structurals), the Department investigated assistance to the Korean New Iron & Steel Technology Research

Association (KNISTRA), an association of steel companies established for the development of new iron and steel technology. KNISTRA was a member-based R&D agency that supports R&D projects through private and public contributions. In preliminarily determining assistance to KNISTRA to be countervailable, the Department stated:

> Since most companies normally fund R&D programs to enhance their own technology, we determine that GOK funding to KNISTRA relieves companies of this obligation. Therefore, GOK's grants are a financial contribution under section 771(5)(D)(i) of the Act which provide a benefit to the recipient in the amount of the grant.

(See Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Structural Steel Beams from the Republic of Korea, 64 FR 69731, 69740 (December 14, 1999). The preliminary finding was confirmed without comment in the final.)

In the second case, Korean DRAMSs, petitioners alleged that government funding of research by Seoul National University and government research institutes regarding nano-technology conferred a subsidy on the semiconductor industry because such research was vital to the future of the industry and would have been undertaken by members of the industry if it had not been funded by the Korean government. The Department, however, found no subsidy, inter alia, because there was no evidence that the semiconductor producers would have undertaken this particular research. See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003).

In light of this practice, the issue before the Department in this review is to determine whether the record evidence indicates that the government-funded research by Forintek and FERIC aims to improve the subject merchandise or the technology for producing subject merchandise.

In May 2002, NRCAN announced funding for three programs to help insure that Canada's forest industry remains prosperous and competitive, and to secure the industry's position in the global market. The first program, Canada Wood, was available only for projects outside Canada and the United States, and is not discussed further here. The second program, Value to Wood, was established to provide funds to Forintek and several universities to conduct research related to value-added wood products. Forintek and four universities received funds under Value to Wood during the POR. The final program, the Three Institutes Initiative, provided funds to Forintek, FERIC, and PAPRICAN, to allow these institutes to maintain their core staff while seeking to achieve long-term financial stability. Because any research conducted by PAPRICAN relates to non-subject merchandise (pulp and paper), funding for PAPRICAN is not discussed further here.

Under Value to Wood, seven projects were funded during the POR. These projects were selected as follows. An industry research advisory committee was established to identify key research issues. Forintek developed research proposals in response. The industry advisory committee then ranked the proposals and sent its recommendations to NRCAN which approved the funding. Under the Three Institutes Initiative, Forintek and FERIC submitted requests for funding to NRCAN to cover anticipated shortfalls in their research programs. Thus, the government funding helped to defray the cost of these institutes' ongoing research.

Both Forintek and FERIC are non-profit, member-based organizations. Forintek's members include numerous producers of softwood lumber. These producer members participate in Forintek's ongoing research as "project liaisons." This ongoing research includes, inter alia, numerous projects on aspects of lumber manufacturing. See the November 22, 2004, Questionnaire Response of the GOC at Volume 12, attachment 13.

FERIC describes its mission "...is to provide its members with knowledge and technology to conduct cost-competitive and quality operations that respect the forest environment." Most of FERIC's funding come from members and partners which include leading forestry companies, the Government of Canada, and the provinces. FERIC's research program is developed with guidance from its partners. See Id. at Volume 11, attachment 11.

Based on this evidence, we believe it is appropriate to conclude that the research being conducted by FERIC and Forintek serves to improve the subject merchandise or the technology for producing subject merchandise. Therefore, there is evidence that softwood lumber producers would have undertaken this research if it had not been funded by the GOC. While it may be possible that some of the research projects at issue do not relate to subject merchandise, the burden is on the respondent to demonstrate that any particular government-funded projects do not benefit the subject merchandise. Consequently, we have determined that the GOC's grants to Forintek and FERIC provide a direct subsidy on the manufacture or productions of the subject merchandise.

Comment 69: Whether Forestry Innovation Investment ("FII") Expenditures Are Countervailable

The GOBC contends that the Department's preliminary findings in this review that Forestry Innovation Investment Ltd. (FII) expenditures constitute countervailable grants is based on its contested findings in the first review and is not supported by the record. The GOBC asserts that in the first review the Department determined that FII Research Program expenditures are countervailable because they provide a benefit to softwood lumber producers and are specific because they are limited to entities carrying out projects related to wood products in general and softwood lumber in particular. According to the GOBC, the FII grants provided to support research, product development, and international marketing serve to improve the long-term health and sustainability of the forest resource overall. The connection between the aggregate FII expenditure and the production of subject merchandise, argues the GOBC, is at most extremely remote and tenuous. The GOBC maintains that this program is not focused on wood products or softwood lumber specifically and, therefore, does not provide countervailable benefits.

For example, in regard to the Research Program projects supported by the FII, the GBOC contends that they are designed to support the long-term health and sustainability of the forest resource as a whole. According to the GOBC, a review of several FII research projects that received support during the POR, such as "Development and analysis of a B.C. natural disturbance database," "An adaptive management study of water temperature best management practices," and "Effects of logging on export of organic matter from headwater streams," provides good examples of the broad focus of the research projects carried out under this program. The GOBC asserts that such broad-based research does not benefit the production or export of softwood lumber.

The vast majority of these projects, notes the GOBC, were conducted by universities, government ministries, and research organizations, that have no direct relation to the production of subject merchandise or the softwood lumber industry. Although there are a few cases in which companies received project funding, the GOBC claims that these projects focused on the health and sustainability of the forest resource as a whole and not on any company's proprietary interests. The GOBC further asserts that FII Research project results do not benefit only the entity conducting the research, but are publically available to all interested parties in order to advance British Columbia's goals of improving forest health and sustaining the forest resource. Moreover, the GOBC states that these projects could not provide a direct benefit to these companies and that there is no evidence that producers of softwood lumber would undertake this research themselves. Thus, the GOBC asserts that FII Research project funding did not relieve producers of the subject merchandise of costs they otherwise would have incurred.

As for FII's Product Development and International Marketing Programs, the GOBC asserts that projects undertaken under these programs are conducted only by associations and educational organizations, and deal with a wide range of activities that encompass the forest resource generally. The GOBC claims that FII guidelines prohibit the use of program funds for conducting activities that benefit the interest of a specific company or that can provide financial benefits to for-profit entities. The GOBC claims that the results of all projects are publically available. Therefore, the GOBC argues that the Department should find in these final results that FII expenditures made under the Research, Product Development, and International Marketing Programs do not provide direct benefits to producers of the subject merchandise and do not constitute countervailable subsidies.

Petitioners did not brief this issue.

Department's Position: In the Preliminary Results, we found the FII grants, provided to support research, product development, and international marketing, to be countervailable subsidies. The GOBC argues that grants to support these activities should not be countervailed because they serve to improve the forest resource over the long-term and their connection to the subject merchandise is tenuous. We disagree.

In regard to the research sub-program, the Department's practice with respect to assistance provided to research organizations is to treat such assistance as a direct subsidy to the production, manufacture, or exportation of the subject merchandise if the research is for the improvement of the merchandise or enhancement of the technology used to produce the merchandise. Where the government funds such research, we believe that the government is relieving producers in the industry of the costs they would normally incur in carrying out the R&D themselves.

As in the first administrative review, we determined that FII grants provided to support the Product Development sub-program and the International Marketing sub-program constitute government financial contributions and confer benefits within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. See Preliminary Results of 1ST Review, 69 FR at 33230. Further, we found that the grants are specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited to institutions and associations conducting projects related to wood products generally and softwood lumber in particular. Id. While the GOBC may view the connection between the projects reported in this POR and the subject

merchandise to be tenuous and remote, the Department notes a connection and the benefit has been attributed accordingly.

No new information has been placed on the record of this review to warrant a change in our preliminary findings that FII grants are countervailable. Therefore, for these final results, we are continuing to find the projects that received funding through the FII program during the POR from the research, product development, and international marketing sub-programs to be countervailable.

Comment 70: Denominator Used to Calculate the FII Subsidies

If the Department continues to find the FII Product Development and International Marketing Programs are countervailable, the GOBC argues that the Department should use the same denominator that it used to calculate the subsidy rate for the FII Research Program, which is the amount of sales of the wood products manufacturing and paper industries. The GOBC notes that in the preliminary results of this review for the FII Product Development Program, the denominator included sales of softwood lumber by sawmills and remanufacturers, and sales of "other softwood" products by sawmills exclusive of sales of co-products. For the International Marketing Program, the denominator used was lumber exports from British Columbia to the United States. The GOBC maintains that the Department used these denominators in the final results of the first administrative review because British Columbia had not reported all projects supported by the Product Development and International Marketing Programs. Therefore, since the Department lacked information on all of the projects under these two sub-programs, the Department decided it was not appropriate to use the larger denominator that it used for the FII Research program. See Final Results of 1st Review Decision Memorandum at Comment 52.

The GOBC claims that in this review British Columbia did provide information on all projects that received funding from these two sub-programs during the POR. According to the GOBC, this information shows that the funding supported a wide array of projects involving many products and issues other than softwood lumber. Therefore, the GOBC argues that if the Department improperly decides that these sub-programs provide countervailable benefits, it should use sales of the wood products manufacturing and paper industries as the denominator in the benefit calculation. The GOBC argues that, at a minimum, the Department should use the same denominator that it used in its stumpage calculations. According to the GOBC, the Department has not provided any reason to exclude co-products from the denominator.

Petitioners did not comment on this issue.

Department's Position: As an initial point, we note that, according to FII's 2003-2004 Annual Report, funding under the FII during the POR for the International Marketing and Product Development projects, in conjunction with contributions from industry and the federal government, provided "benefits for both primary and secondary manufacturing sectors across B.C." See November 22, 2004, Questionnaire Response, Volume 34, Exhibit BC-FII-6, FII Annual Report 2003-2004 at 10. Moreover, this report states that FII's International Marketing and Product Development activities are closely aligned with the goal of developing a globally competitive forest industry by "developing new products, promoting new and existing products, maintaining and growing existing markets...". Id. at 16. Upon careful review of the detailed

results of projects funded under these two FII sub-programs during the POR, we note the emphasis of these projects on high-quality construction products and value-added products, but find no mention of paper products. Therefore, for the Product Development sub-program, we are including in the denominator for this benefit calculation only sales of the wood products manufacturing industry and not those of the paper products industry. With respect to the International Marketing sub-program, for the three projects targeting the U.S. market, we are using the same denominator as in the preliminary results, i.e., exports of softwood lumber to the United States. For the other three projects which relate to the wood products industry in general, we are using the total sales of the wood products manufacturing industry, excluding co-products.

As a result of these changes in the denominator for the calculations for the Product Development and International Marketing sub-programs, the benefits from these program have changed in these final results. See Final Results Calculation Memorandum.

Comment 71: Litigation-Related Payments to Forest Products Association of Canada (FPAC)

Petitioners argue that a litigation-related grant provided during the POR by the GOC to the Forest Products Association of Canada (FPAC), a group comprised of softwood lumber producers, confers a countervailable subsidy. According to petitioners, the Department incorrectly found in the first administrative review that such grants, provided as part of a public relations campaign, constituted a type of assistance that did not confer a countervailable subsidy. See "Programs Determined Not to be Countervailable" section of the Final Results of 1st Administrative Review Decision Memorandum. In particular, petitioners contend that the Department erred in accepting the GOC's argument that under the Preamble to the Department's regulations the FPAC grants were not countervailable because they allegedly did not directly aid softwood lumber production. See Final Results of 1st Administrative Review Decision Memorandum at Comment 55. Petitioners contend that the exception under 19 CFR 351.514(b) for "general informational activities that do not promote particular products"is unambiguously narrow. Citing to the Preamble, 63 FR at 65381, petitioners argue that the exception applies only to the indirect benefit from services, such as "government guides on how to export, overseas marketing reports, and marketing opportunity bulletins," as well as "certain advocacy efforts, such as country image events or county product displays," not to payments to associations of subject merchandise producers.

Petitioners contend that the Department recognized this narrow scope of the exception when it countervailed government payments to two other associations, the Canadian Lumber Trade Alliance (CLTA) and the Independent Lumber Remanufacturers Association (ILRA). Petitioners assert that the payment to FPAC cannot be distinguished from payments to CLTA and ILRA, which the Department found countervailable in the Preliminary Results and the first administrative review. In the case of FPAC, say petitioners, the government did not merely undertake "general informational activities," but, rather, simply handed the industry C$17 million as a cash grant. Petitioners claim the Department has consistently recognized that government financial contributions to producer associations provide a countervailable benefit to the industry. On this point, petitioners cite to, e.g., Raspberries from Chile, in which the Department found it reasonable to "treat funds received by a trade association as benefitting the members of the

association and the products they produce." See "Issues and Decision Memorandum" (Comment 2), regarding Final Negative Countervailing Determination on Red Raspberries from Chile, (Raspberries from Chile) 67 FR 35961 (May 22, 2002). Petitioners also cite to Structural Steel Beams, where the Department found government contributions to a steel industry association to be countervailable. See "Issues and Decision Memorandum" (section IIA), regarding the Final Affirmative Countervailing Duty Determination in Structural Steel Beams from the Republic of Korea, (Structural Steel Beams) 65 FR 41051 (July 3, 2000). In any event, petitioners note, the Preamble states that efforts to "promote particular products" and "image events...that focus on individual products..." would not meet the exception for general export promotion" (citing to the Preamble, 63 FR at 65381, specifically in reference to Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile, 63 FR 31437 (June 9, 1998)). Thus, petitioners conclude that specific grants to associations of producers of subject merchandise, such as those to FPAC, are always countervailable, because they provide government financial assistance which covers expenses the association would have had to pay.

The GOC argues that the record evidence contradicts petitioners' assertion that the FPAC grant does not meet the exception in the Preamble for the provision of "general informational services." According to the GOC, the grant to FPAC is to be used only to "inform and educate" the public and to "affect public opinion and political climate" in the United States. To this end, and in accordance with FPAC guidelines, the FPAC worked with a U.S. advertising firm to develop marketing materials aimed at increasing public awareness in the United States with respect to the softwood lumber dispute. Although the campaign featured information about the softwood lumber dispute and its harmful effects on U.S.-Canadian relations, it did not promote the sale of Canadian softwood lumber.

The GOC claims that petitioners were incorrect to assert that the government "simply handed the trade association C$17 million." The money was given pursuant to an FPAC proposal that did not mention marketing Canadian softwood lumber or provide any funds to aid in softwood lumber production. The GOC adds that FPAC provided reports detailing the expenditure of the grant money and assuring the government that FPAC was following the proposal rather than providing money to the softwood lumber industry.

Petitioners' reliance on Raspberries from Chile and Structural Steel Beams is misplaced, according to the GOC, since those cases involved grants that supported the marketing and production, respectively, of subject merchandise. The GOC contends that, in Raspberries from Chile, the programs in question "funded specific promotional activities"; in contrast, the FPAC grant was specifically tied to political and educational goals. In Structural Steel Beams, the Department found that the R&D project supported by the grant was used in the production of subject merchandise. These, the GOC claims, are unlike the situation with regard to the FPAC grant, which was not intended to, and did not, support the marketing or production of softwood lumber.

Department's Position: We disagree with petitioners that we have expanded the narrowly drawn export promotion exception in 19 CFR 351.514(b). As explained in the preamble to the regulation (63 FR at 65381), the exception encompasses "government advocacy efforts on behalf of a country's exporter..." Whether that advocacy is undertaken by the government itself or is paid for by the government does not change the nature of effort, i.e., a public relations campaign to

influence members of the U.S. government. We further disagree with petitioners that the campaign promoted particular products. Clearly, the campaign focused on the softwood lumber dispute, but its purpose was to educate U.S. government and the public about the impact of the dispute and not to promote sales of Canadian softwood lumber in the United States.

Because we have found that this program is not a subsidy because it falls within 19 CFR 531.514(b), we are not addressing the additional comments regarding the countervailability of payments to industry organizations.

Comment 72: British Columbia Private Forest Land Tax Program

The GOBC argues that the Department has miscontrued the nature of the British Columbia property tax system in its Preliminary Results, when it determined that this tax program provides financial benefits by imposing lower property tax rates on owners of Class 7 Managed Forest Land than on owners of Class 3 Unmanaged Forest Land. The GOBC claims that Class 7 land is not tied to the production of softwood lumber, as any owner of private forest land may apply for Managed Forest land status, which is dependent upon the owner's agreement to comply with British Columbia's forest management standards. According to the GOBC, to be classified as Class 7 Managed Forest Land, as defined by section 24 of the Assessment Act, owners must follow strict reforestation requirements set forth in the Private Land Forest Practices Regulation or the Forest Practices Code. The GOBC maintains that although the Assessment Act mentions harvesting timber, there is no mention of lumber production or the requirement that Class 7 land owners must own a sawmill.

According to the GOBC, it does not provide a financial contribution to owners of any class of property, including softwood lumber producers who may or may not be owners of Class 7 land, but instead makes a policy decision to distribute the tax burden among property categories. The GOBC asserts that it is illogical to conclude that Class 7 rates are preferential or provide a tax savings, since Class 7 land owners voluntarily agree to incur the additional costs of reforestation and environmental requirements to which Class 3 land owners are not obligated. The GOBC argues that the tax rate assigned to Class 7 landowners is a policy decision with the goal of benefitting the entire province by encouraging private forest land owners to use sustainable forest practices.

The GOBC contends that the Class 3 rates are punitive and do not reflect the tax rates normally applicable to private forest land. According to the GOBC, Class 3 Unmanaged Forest land, which represents only seven percent of total private forest land, is not the base rate for forest land, but rather a higher rate that reflects British Columbia's policy to encourage private forest land owners to adopt forest management plans. The GOBC contends that it is not reasonable to use the small volume of Class 3 land as the benchmark for an alleged "benefit" received by Class 7 landowners. In conclusion, the GOBC argues that its variable rate property tax system reflects its distribution of the tax burden among different land classes to promote provincial policies. The GOBC contends that no landowners of any class receive a benefit from the land property tax system.

Moreover, the GOBC claims that the Department's calculation of the alleged benefit to owners of Class 7 Managed Forest Land is not consistent with conducting an aggregate review, because the benefit to Class 7 Managed Forest Land is based on a company-specific analysis.

According to the GOBC, the Department's calculation at the provincial level is based on company-specific information for Class 7 land values of owners with sawmills, which in this case includes only 12 Class 7 companies. The GOBC maintains that the Department applied the differential between the Class 3 and Class 7 tax rates to the total "land value with sawmills" to determine the alledged provincial benefit. The GOBC claims that the Department used a similar methodology in calculating the alleged benefit at the local level. The GOBC maintains that the Department should be consistent with its decision not to investigate company-specific subsidies and reverse its decision in these final results, i.e., not include this alleged tax benefit based on a small number of companies with sawmills.

The GOBC further argues that if the Department continues to calculate a benefit for the British Columbia land tax system, then corrections should be made to the Department's calculation methodology. According to the GOBC, the Department should take into account, at both the provincial and municipal levels, the jurisdictions in which Class 7 land tax rates are higher than Class 3 tax rates. In such cases, the GOBC claims that a negative benefit should be calculated instead of using the Department's preliminary results methodology which results in calculating a zero benefit.

In addition, the GOBC asserts that the Department should adjust the alleged benefit at the provincial level to account for the annual administrative fee that Class 7 landowners pay to be a part of the Managed Forest Land Program. According to the GOBC, this fee, which ranges from 40 to 60 cents per $1,000 of assessed land value, is within the category of offsetting costs specified in the statute, because it is a payment required to receive the alleged subsidy. See Section 771(6)(A) of the Act, 19 USC section 1677(6)(A). At a minimum, the GOBC continues, the Department should adjust its calculations at the provincial level by deducting the total administrative fee of C$325,315 from the total alleged benefit of C$11,144,432. Moreover, the GOBC further argues that the Department inappropriately applied the "rural areas tax" to all jurisdictions in its preliminary provincial-level calculation of the alleged tax benefit. According to the GOBC, pursuant to the Taxation (Rural Area) Act, the "rural areas tax" is applicable only to jurisdictions outside municipalities. Respondents maintain that if the Department continues to find this program countervailable, it should remove this error from the provincial-level calculation for all Class 7 land located within municipalities. The GOBC claims that, after correcting this error with information from the B.C. April 25, 2005, questionnaire response, the land value with sawmills should be C$852,837,240 for 2003 and C$638,068,142 for 2004.

Finally, the GOBC claims that the calculation of the alleged benefit from the land tax program should also be corrected by using the same denominator that the Department used in the stumpage benefit calculation and adding remanufacturer lumber shipments. The GOBC argues that the POR value of sawmill softwood lumber shipments used as the denominator was unduly narrow because, as British Columbia's responses show, the small number of Class 7 landowners that also own sawmills includes some of the province's major tenureholders who process lumber into a wide range of products. The GOBC argues that there is no basis for excluding remanufacturers' lumber sales from the denominator of the benefit calculation.

In contrast, petitioners concur with the Department's preliminary decision that the B.C. Private Forest Land Tax Program is a countervailable subsidy. Petitioners cite the Assessment Act at section 24(1) and claim that B.C. law requires that timberland owners use their land "for the production and harvesting of timber" in order to qualify for Class 7 preferential tax status.

According to petitioners, this program benefits producers of subject merchandise by providing them with a larger supply of timber harvested from private lands. Petitioners assert that landowners who enjoy Class 7 land status are motivated by their property tax status to harvest timber instead of using their lands for recreation and other purposes. In addition, petitioners argue that the record shows that private sawlogs are generally supplied to B.C. sawmills. Therefore, petitioners maintain that the B.C. Forestry Tax Program is directly tied to the production of subject merchandise, because it provides direct tax savings to producers of subject merchandise while increasing the supply of the major input, logs.

In rebuttal to respondent's assertions, petitioners argue that the Department properly applied the definition regarding financial contribution under section 771(5)(D)(ii) of the Act in the preliminary results of this review. Petitioners assert that the Department properly explained in the Preliminary Results that the B.C. government is foregoing revenue by collecting taxes at a lower rate for one class of private forest land than for another. According to petitioners, the lower tax rate paid by Class 7 landowners is preferential and makes the program countervailable, because Class 7 landowners are paying lower taxes than they would have had to pay. Petitioners assert that whether or not the lower Class 7 tax rate is designed to offset the increased financial burden these land owners have in engaging in reforestation and meeting environmental requirements is irrelevant to the countervailability of this program. Petitioners further assert that, as with PFDP, the Department correctly determined that this program does not qualify for an offset of expenses under the statutory offset provision, because it relieves producers of the subject merchandise of costs they would have otherwise had to pay.

With respect to respondent's argument that Class 3 land cannot be used as the base rate for comparison with Class 7 land, petitioners maintain that the GOBC is incorrect. According to petitioners, the Department need only evaluate whether the different tax rates established by GOBC on different classes of forest land result in the collection of less revenue for the government and thereby provide a financial contribution to softwood lumber producers. Petitioners argue that there is no reason for the Department to search for a generally applicable base rate.

Moreover, petitioners agree with the Department's subsidy calculation for the Forest Land Tax Program with regard to offsets. Petitioners maintain that the GOBC has misstated the law with respect to what constitutes a net subsidy. According to petitioners, the statute and the Department's practice recognize that the market distortions resulting from subsidies are independent of costs that subsidy recipients incur in taking advantage of the benefits. Petitioners assert that the differential between Class 7 and Class 3 taxation does not qualify for an offset, because the Department does not calculate a "net" subsidy to reflect the combined effect of two government measures on company's costs. See Preamble, 63 FR at 65361; Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991). In addition, petitioners assert that, with respect to government-subsidized loans, where such loans are provided at a higher-than-market rate, the Department treats those loans as providing a zero benefit. See Final Results of Countervailing Duty Administrative Review: Oil Country Tubular Goods from Argentina, 56 FR 38116, 38117 (August 12, 1991). Moreover, petitioners maintain that the Department used the correct denominator to calculate the benefit from the B.C. Tax Program. Therefore, petitioners assert that

the Department should reaffirm its preliminary calculation of the B.C. Forestry Tax Program in these final results.

Department's Position: In the first administrative review, we found that the statutory requirement for timber production in Class 7 land is dispositive. Moreover, we noted that Section 24 of the *Assessment Act* states that Class 7 land is land "that is being used for the production and harvesting of timber." See Final Results of 1st Administrative Review Decision Memorandum at Comment 60. Although the GOBC claims that the *Assessment Act* does not have a softwood lumber production requirement, it nowhere precludes Class 7 land owners from using harvested sawlogs for the production of softwood lumber.

Moreover, we do not agree with respondent's view that this program does not provide a financial contribution because of its economic policy goals. The tax differential at issue pertains to two alternative tax classifications, Class 3 and Class 7, that provide tax savings to a class of landowners. Those who qualify for the lower rate based on such a requirement would clearly "pay a lower tax than otherwise owed." In the Preliminary Results, we found that the governments are foregoing revenue when they collect taxes at a lower rate on one class of private land and therefore, the program constitutes a government financial contribution as defined in section 771(5)(D)(ii) of the Act. See Preliminary Results of 2nd Review at 33113. The Department's benefit analysis does not extend to the broader economic analysis implied in the respondent's argument that Class 7 rates provide no benefit because Class 7 owners commit to the additional costs of eco-friendly forestry practices that are being encouraged by the government through its distribution of the taxes.

We also disagree with the GOBC's contention that Class 3 rates are not the default rate. In the first review, we found that, although Class 3 rates may be punitive, "the language and structure of Section 24 of the Assessment Act clearly pose Class 3 and Class 7 as alternatives to each other and not to some other classification." See Final Results of 1st Administrative Review Decision Memorandum at Comment 60. There is no new information on the record that indicates that another class of land is more comparable than Class 3 for the purposes of selecting a benchmark for Class 7 land.

With respect to respondent's suggested correction to the calculation to account for a negative benefit, we have addressed this in **Comment 43**. Specifically, where the Class 3 tax rates are higher than Class 7 tax rates and thus do not confer a subsidy, such instances cannot mask the differential elsewhere where a benefit is provided. This type of "offset" is not permitted under U.S. statute and is not the Department's practice. However, we have reviewed information regarding the annual administrative fee that Class 7 landowners must pay at the provincial level to receive Managed Forest Land status and agree that it qualifies as an offset. The document "Changes to the FLR and the Private Managed Forest Land Program" states that "Managed Forest landowners who do not pay their annual {program administrative} fees will lose their Managed Forest property assessment classification. See November 22, 2004 Questionnaire Response, Volume 38, Exhibit -T-37 at 6. Therefore, we are adjusting the calculations at the provincial level by deducting the total amount that we derived for administrative fees from the total benefit. See Final Results Calculation Memorandum. Regarding the respondent's contention that the preliminary denominator was unduly narrow, it is our understanding that the value of sawmill shipments we used, comprising in-scope lumber, co-products and other softwood (residual),

comprise the totality of primary wood products shipments by sawmills in the Province. Accordingly, for the final calculation, we are using the same value for the denominator.

With respect to the respondent's argument that the Department should correct its calculation for errors in application of the "rural areas tax," we find that they did not provide information to support their contention. Specifically, while we were able to find the total assessed values for Class 7 land with sawmills in Exhibit BC-T-43 of the April 25, 2005, questionnaire response (as discussed by the GOBC in its case briefs), we were unable to find any information for the total assessed value of sawmills located within municipalities, which, according to the GOBC, amounted to C$15,691,100 for 2004 and C$13,859,300 for 2003. See pages 88-89 for the GOBC's August 11, 2005 case brief. Therefore, we are not making adjustments to our calculations with respect to "rural areas tax" in these final results.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the review in the Federal Register.

_____ _____

Agree Disagree

_____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____

Date