REMAND REDETERMINATION

In the Matter of Sales at Less Than Fair Value of Certain Softwood Lumber from Canada,
Secretariat File No. USA-CDA-2002-1904-02
NAFTA Binational Panel Review

SUMMARY

In accordance with the June 9, 2005, Decision of the Panel Following Remand (June 9 Panel Decision) in the above-referenced case, the Department of Commerce (the Department) makes this redetermination on remand with regard to issues challenged in the underlying investigation as directed by the Panel.

The Department has addressed the issues as follows: 1) procedural and analytical concerns with respect to the Panel's determination, 2) recalculation of the less than fair value (LTFV) margins consistent with the Panel's analysis; and 3) revocation of the order with respect to West Fraser Mills Ltd. (West Fraser). Each of these issues is discussed in detail below. Consistent with the June 9 Panel Decision, the Department has recalculated the company-specific dumping margins for certain softwood lumber products from Canada, as well as the "All Others" rate, using a methodology permitted under U.S. law and which is not inconsistent with the international legal obligations of the United States. Because the legal analysis and conclusions drawn by the Panel with respect to the so-called "zeroing" issue apply equally to all respondents, we have modified our calculations with respect to all investigated companies, including West Fraser. This recalculation results in an overall weighted average dumping margin for West Fraser that is above de minimis. Because the revocation of the order with respect to a respondent that does not have a de minimis margin would not be in accordance with section 735(a) of the Act and 19 CFR 351.106(b), we will not revoke the order as to West Fraser pending the Panel's

decision with respect to the Motions for Re-examination currently before it.[1]

ANALYSIS AND REDETERMINATION

1) ***Procedural and Analytical Concerns***

As a preliminary matter, the Department has filed two Notices of Rule 76 Motions to Re-Examine Panel Decision in this case explaining procedural and analytical concerns arising out of the June 9 Panel Decision. These concerns are based on what appear to be accidental mistakes or omissions on the part of the Panel. Therefore, the Department has requested that the Panel invite further argument from all parties and revisit its order to the Department to offset for non-dumped sales in its calculations. Additionally, the Department believes the Panel erred in instructing the Department to revoke the order as to West Fraser on the basis of a margin calculation that the Panel finds not to be in accordance with law.

Our primary concern is that the finding of the June 9 Panel Decision with respect to the Department's comparison methodology is in direct conflict with the findings of the Court of Appeals for the Federal Circuit (CAFC) in Corus Staal BV, et. al. v. United States, 395 F. 3d 1343 (Fed. Circ. 2005)(Corus), notwithstanding the Panel's efforts to reconcile the two cases. In Corus, the CAFC held that the Department's comparison methodology, which does not offset for non-dumped sales, "is in fact permissible in administrative investigations" and that "Commerce is not obligated to incorporate WTO procedures into its interpretation of U.S. law." Corus 395 F.3d. at 1347. The CAFC explained that it accorded "no deference" to WTO decisions and that it would "not attempt to perform duties that fall within the exclusive province of the political

[1] See Commerce's Notice of Rule 76 Motion to Re-Examine Panel Decision, filed with the NAFTA Secretariat June 14, 2005; Commerce's Second Notice of Rule 76 Motion to Re-Examine Panel Decision, filed with the NAFTA Secretariat June 20, 2005.

branches." Id. at 1349. The Court recognized that "the conduct of foreign relations is committed by the Constitution to the political departments of the Federal Government ..." and stated that it would "refuse to overturn Commerce's zeroing practice based on any ruling by the WTO or other international body unless and until such ruling has been adopted pursuant to the specified statutory scheme." Id. (citing United States v. Pink, 315 U.S. 203, 222-23 (1942)). Furthermore, the Court recognized that the implementation of any decision was left to the discretion of the Executive Branch and that Congress authorized USTR, "an arm of the Executive branch ... to determine whether or not to implement WTO reports and determinations, *and if so implemented, the extent of implementation*." Id. at 1349 (emphasis added).

In the June 9 Panel Decision, the Panel determined that because the Department has implemented the Section 129 Determination in this case, the reasoning and analysis of the CAFC in Corus was distinguishable. June 9 Panel Decision at 33; Notice of Determination Under Section 129 of the Uruguay Round Agreements, 70 Fed. Reg. 22636 (May 2, 2005)(Section 129 Determination). Specifically, because the CAFC stated that it would not overturn Commerce's practice "unless and until" a WTO adverse decision was "adopted pursuant to the specified statutory scheme," the Panel held that Commerce's implementation of the Section 129 Determination allowed the Panel to determine that Commerce's comparison methodology was "unreasonable and not in accordance with law." June 9 Panel Decision at 33, 44 (citing Corus at 1349). The Panel reasoned that through the implementation of the Section 129 Determination, the United States had "accepted" the findings of the WTO that "zeroing" is inconsistent with U.S. WTO obligations. June 9 Panel Decision at 27, n. 19 and 41. Furthermore, the Panel found that the "United States has acknowledged in its Section 129 Determination that its measure is inconsistent with its Antidumping Agreement obligations" and that the United States government "recognized that zeroing is precluded." June 9 Panel Decision at 33, 40. Accordingly, under the Panel's interpretation of the effect of the Section 129 Determination, this Panel stated that this case was a "matter of first impression for this Panel to determine whether the statutory mechanism for responding to an adverse DSB decision has been completed and its preclusive effect has terminated." June 9 Panel Decision at 33. Once the Panel found that the United States had "accepted" the findings of the WTO, and that the Section 129 process was completed, the Panel concluded, invoking the Charming Betsy doctrine, that the Department's "zeroing" methodology was "inconsistent with the United States international obligations," and therefore was "unreasonable" and "not in accordance with law." Id. at 43-44.

The Department believes that the Panel's analysis in its June 9 Panel Decision conflicts with the findings of the CAFC in Corus and does not conform with the language of either Section 129 of the Uruguay Round Agreements Act (URAA) or the SAA. See 19 USC § 3538; Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1944)(SAA) at 1020-27. The Department also believes that this incorrect interpretation of the effect of the Section 129 Determination on the ongoing NAFTA litigation resulted from the absence of a process in this case by which the parties could brief this issue to the Panel.

Once the WTO Dispute Settlement Body (DSB) adopts a report of a dispute settlement panel or the Appellate Body finding that an action by the Department is "not in conformity with the obligations of the United States under the Antidumping Agreement," the United States must decide if it will bring its measure into conformity with the findings of the DSB. If the United States decides that it will bring its measure into conformity, section 129(b)(2) provides that the

United States Trade Representative (USTR) request the Department to take an action "not inconsistent with the findings of the panel or the Appellate Body." Once the Department implements its "new" determination, section 129(b)(4) indicates that USTR then has the authority to direct the Department to "implement" the decision "in whole or in part."

By its express terms, section 129 does not obligate, or imply, that the United States government, in general, or the USTR or the Department, in particular, "accept" or "acknowledge" that its initial decision is inconsistent with an international and legal obligation. The Executive Branch, pursuant to section 129, is instructed to evaluate whether or not to adopt a report of the DSB or, in the alternative, to provide compensation or accept retaliation. Section 129 does not prescribe the considerations to be weighed by the Executive Branch, nor does it impose upon the Executive Branch an obligation to accept, as a consequence of implementation, that the initial determination was inconsistent with the international legal obligations of the United States.

Congress anticipated that, pursuant to a section 129 determination, the Department might adopt a different interpretation of its obligations under U.S. law from that which it otherwise applied. Congress explained in the SAA that the implementation of a section 129 determination does not render other interpretations not in accordance with U.S. law. This language plainly anticipates the situation with which the Panel was faced in this case:

> In some cases, implementation of section 129 determinations may render moot all or some issues in pending litigation in connection with the agency's initial determination. For example, should the Trade Representative direct Commerce to implement a section 129 determination that changes the cash deposit rate, such action could render moot any pending domestic litigation solely involving the amount of the cash deposit rate, as opposed to the validity of the underlying antidumping or countervailing duty order. If, by contrast, the litigation also involved the validity of the original determination, the court or binational would still have to render an opinion on that subject.

> Since implemented determinations under section 129 may be appealed, it is possible that Commerce or the ITC may be in the position of simultaneously defending determinations in which the agency reached different conclusions. In such situations, the Administration expects the courts and binational panels will be sensitive to the fact that under the applicable standard of review, as set forth in statute and case law, multiple permissible interpretations of the law and the facts may be legally permissible in any particular case, and the issuance of a different determination under section 129 does not signify that the initial determination was unlawful.

SAA at 1027. See also NAFTA Hearing Transcript at 157-59; 177-78; and 199. Thus, it is clear that Congress recognized that a determination under a section 129 "does not signify," and therefore should not be interpreted to require a finding by the Court or a Panel, "that the initial determination was unlawful."

The CAFC recognized the Executive Branch's sole authority to implement the findings of a DSB decision, and to limit the effect of the implementation, in Corus, when it explained that it was the responsibility of USTR to determine "whether or not to implement WTO reports" and, in implementing those reports, "the extent of implementation." Corus at 1349. Thus, the CAFC properly recognized that Congress provided the Executive Branch with the sole discretion to determine whether, how and the extent to which to implement WTO reports.

Accordingly, the Department believes that the Panel's analysis in the June 9 Panel Decision is not in accordance with the binding precedent of the CAFC in Corus, that the "extent of implementation" of section 129 lies solely with the Executive Branch. Furthermore, the Department believes that the Panel's conclusion that the United States "accepted" the Appellate Body's findings with respect to so-called "zeroing" is incorrect and inconsistent with the plain meaning of the text of section 129. Once the Panel corrects for these errors, the Department believes that the Panel will find that the analysis of the CAFC in Corus applies, and the

Department's comparison methodology remains fully consistent with United States law and international obligations.

For these reasons, the Department has requested that the Panel re-examine its determination and invite further briefing with respect to the relevance of the decision of the Appellate Body in light of the Department's Section 129 Determination.[2]

Furthermore, the Department has also requested that the Panel re-examine its determination with respect to the relationship between the two distinct aspects of the June 9 Panel Decision. On the one hand, the Panel found that West Fraser's margin was de minimis, and on this basis, ordered the Department to revoke the antidumping duty order as to West Fraser. June 9 Panel Decision at 45. On the other hand, the Panel determined that the Department's methodology for determining the weighted average dumping margins "conflicts with an international legal obligation of the United States" and that the methodology is "unreasonable and not in accordance with law." Id. at 44. Nevertheless, this was the same methodology used to calculate the de minimis margin for West Fraser, on which the Panel's first instruction was premised. As the Department explained in its June 14, 2005 Notice of Rule 76 Motion to Re-Examine the Panel's Decision, "a methodology cannot be lawful when applied to some respondents, but unlawful when applied to others" in the absence of some relevant factual distinctions.

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[2] As the Panel notes in its decision, it did hold a hearing on September 28, 2004, to discuss the effect of a negative WTO decision on United States law. However, the hearing preceded the implementation of the Section 129 Determination by seven months and did not address this determination specifically. Nonetheless, the Department counsel articulated some of its concerns at the hearing, explaining that "whether and how such reports are implemented under U.S. law is a matter explicitly left to the Executive Branch in consultation with the Legislative Branch. Neither the Judicial Branch nor this panel sitting in the place of a U.S. court may override these statutory provisions." NAFTA Hearing Transcript, page 152.

Because there is no basis for distinguishing the methodology applied to West Fraser, the Department presumes that this inconsistency is based upon an accidental oversight in the drafting of the two parts of the June 9 Panel Decision, and the Department has requested that the Panel modify its decision and order the Department to bring these two parts into conformity with one another.

2) ***Recalculation of the Less Than Fair Value (LTFV) Margins Consistent With the Findings of the June 9 Panel Decision***

The Panel remanded this issue to the Department with instructions that it recalculate the final LTFV margins for respondents without regard to "zeroing," relying for its analysis in large part on Commerce's implementation of the Section 129 Determination. Accordingly, the Department is modifying its calculations in this case and applying the exact same methodology and criteria used in the Section 129 Determination.

In short, in the Department's Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber from Canada, 67 Fed. Reg. 15539 (April 2, 2002), and accompanying Issues and Decision Memorandum (Final Determination), the Department used a weighted-average to weighted-average comparison methodology that did not offset for non-dumped sales. This was the methodology, therefore, reviewed by the NAFTA Panel and the Appellate Body. For purposes of this remand redetermination, the Department has used a transaction-to-transaction comparison methodology which the Department believes is fully in accordance with law.

The Benefits of the Transaction-to-Transaction Comparison Methodology

We believe that there are particular benefits from this analysis which do not exist in the context of the weighted-average-to-weighted-average comparisons. It is beyond question that the prices for lumber during the POI in both the United States and Canadian markets were volatile. See Final Determination at Comment 4; see also Memorandum from Constance Handley, Program Manager, to the File, re: Price Volatility, dated January 28, 2005. To the extent that the sales volume of a particular product varies over time and between the markets, the weighted-average price of any particular product could be skewed toward a period of low prices in one market and toward a period of high prices in the other market. In such a case, the weighted-average margin calculated for that product would not reflect the dumping, or lack of dumping, that may have occurred on the individual sales incorporated into the average. In the transaction-to-transaction analysis, however, the matching of identical or similar merchandise within a narrow time frame allows us to judge more accurately whether dumping was occurring when sales were made under the same market conditions.[3]

[3] The Department has not specifically addressed the issue of price volatility in the context of transaction-to-transaction comparisons in past anti-dumping investigations. In one case, Final Determination of Sales at Less than Fair Value: Certain Fresh Cut Flowers from Colombia, 52 Fed. Reg. 6842, 6843 (March 5, 1987)(Flowers from Colombia), the Department rejected a transaction-by-transaction analysis of U.S. sales because of i) the administrative burden and ii) the perishable nature of the product in question, which meant that "end of the day" sales were made at distress prices. The Department stated that because it treated non-dumped sales as having zero margins, the distress sales would be given a disproportionate weight. Unlike fresh cut flowers, lumber is not a highly perishable product that needs to be disposed of by the end of each business day regardless of price. Thus, there is no separate, identifiable class of sales that can be said *a priori* to give rise to a distortion in our dumping analysis, as was the case in Flowers from Colombia.

Although lumber prices can vary widely in a single day, large price ranges on a single day may indicate that the companies are reacting to fluctuations in market prices, but it may also indicate that they are able to sell to different customers at different prices. The purpose of our dumping analysis is to look at an individual company's selling practices to determine whether it is engaging in unfair price discrimination. When faced with a situation where there were multiple sales of the same product on the same day, the criteria we have selected as tie-breakers allow us to determine which sales were made under the most similar circumstances.

The Act, Regulations and the Legislative History Permit the Application of the Transaction-to-Transaction Methodology

Sections 777A(d)(1)(A)(i) and (ii) of the Act provide that in antidumping investigations, the Department may calculate a dumping margin using either weighted-average-to-weighted-average comparisons or transaction-to-transaction comparisons, with no stated preference.

Congress, in the SAA, stated that "normally" the Department will measure dumping margins on the basis of weighted-average-to-weighted-average comparisons. See SAA at 842. The SAA states that a transaction-to-transaction analysis "would be appropriate in situations where there are very few sales and the merchandise sold in each market is identical or very similar or is custom made. However, given past experience with this methodology and the difficulty in selecting appropriate comparison transactions, the Administration expects that the Department will use this methodology far less frequently than the average-to-average methodology." Id. at 842-43.

Section 19 CFR 351.414(c) of the Department's regulations, adopted shortly after the URAA came into force, adopted the SAA's preference for weighted-average-to-weighted-average comparisons in investigations, explaining that the Department will use the transaction-to-transaction means of comparison "in unusual situations." The language of the regulation directly tracks the language of the SAA, and the Department explained in the Preamble to its final regulations that this provision was implemented to reflect the language of the SAA. See Preamble, Antidumping and Countervailing Duty Final Rule, 62 Fed. Reg. 27295, 27373 - 7374 (May 19, 1997) (Preamble). The Department further explained in the Preamble that the reason for this preference was directly tied to difficulties the agency had in the past with regard to the transaction-to-transaction methodology and concerns about the difficulty of guaranteeing that "merchandise in both markets" would be "identical or very similar" in order for such a comparison to work appropriately. Id. at 27374.

The language of the SAA and the regulations do not foreclose the application of the transaction-to-transaction analysis in this case. First, there are no statutory or regulatory hierarchical criteria which govern the selection of the comparison methodology. The preferences expressed in the SAA and regulations merely indicate that in "normal" cases, weighted-average comparisons will be applied. However, among other things, the volatility of prices of subject merchandise and of the products sold in Canada during the POI distinguishes this case from the norm.

Second, the SAA was drafted and implemented in 1994, and the regulations soon followed in 1997. Both of these sources explain that the preference for a weighted-average methodology was based upon past experiences and an expressed difficulty in selecting appropriate comparison transactions. The Department's computer resources have improved greatly in the last few years, and many resource and programming difficulties the Department faced in 1994, and even in 1997, for conducting transaction-to-transaction matching on large databases no longer exist.

Third, when the URAA was negotiated, the Department did not apply an offset for non-dumped sales in antidumping investigations. Consequently, when Congress expressed a preference for weighted-average comparisons, and when the Department adopted its regulations, they did so in the context of the Department's long-standing approach of not applying such an offset when making such comparisons. Because the Department is precluded in this instance from using its "normal" methodology (i.e., not offsetting non-dumped sales after making weighted-average-to-weighted-average comparisons), it is not clear that the stated preferences at the time of the SAA and regulations should continue to apply.

Thus, we believe that our application of the transaction-to-transaction comparison methodology analysis is fully consistent with United States law.

Pursuant to the June 9 Panel Decision, we have modified our calculation methodology so that the Department is no longer applying the methodology the Panel found to be not in accordance with law. Instead, we have applied the transaction-to-transaction comparison methodology utilized in the Section 129 Determination. While we have utilized the methodology of the Section 129 Determination, the calculated dumping margin for each respondent differs from the results of the Section 129 Determination. This is because we have continued to include the changes made to the margin calculations that were made as a result of the prior NAFTA remand redeterminations.

A summary of our calculations follows:

To determine the dumping margin for each respondent, we matched individual transactions in the U.S. sales database with individual transactions in the home market database. In seeking to determine which specific home-market transaction would be the most suitable match for a given U.S. transaction, we began our analysis with the model-match characteristics used in our Final Determination. Consistent with our Final Determination, we did not match across product type, species, or grade group.

Period of Time Within Which to Compare Transactions

Because lumber prices were extremely volatile and the market was in a constant state of flux during the period of investigation (POI), we first attempted to find an identical match at the same level of trade on the same day. If no identical match was found, we looked for an identical home-market sale the day before the U.S. sale, then the day after the U.S. sale, and so forth, up to seven days before or after the U.S. sale. We continued to use the date of sale reported by each respondent, which had been found to be consistent with Department practice.[4] We did not match U.S. sales to home market sales that occurred either more than seven days before or more than seven days after the date of the U.S. sale. If no identical sale was found at the same level or trade, we looked for an identical match at a different level of trade.[5] We then began to look for the most similar sale, based on product characteristics and level of trade, in the same manner.

While the Department has an established precedent for using price-to-price matches where possible,[6] the transaction-to-transaction methodology is consistent with our statutory obligation in that it exhausts all possible identical matches within the two-week window of contemporaneous sales before searching for similar matches, and exhausts all price-to-price matches based on comparisons to similar merchandise before going to constructed value.

Although section 771(16) of the Act lists identical matches as the first choice among the

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[4] We found that for the preponderance of sales, the invoice date most properly reflected when the material terms of sale (i.e., price and quantity) were set. Thus, for most transactions, the Department used the date of invoice for the date of sale, consistent with the Department's practice and 19 CFR 351.401(i). Nowhere in the statute or regulations does it state or imply that a different date of sale methodology should be employed when the Department uses a transaction-to-transaction methodology in calculating margins. Furthermore, all of the respondents were instructed in their section A questionnaires to report date of invoice, unless another date better reflected the material terms of sale. Again, consistent with our practice, where the invoice was issued after the date of shipment, we relied on the date of shipment as the date of sale.

[5] Section 773(a)(1)(B) of the Act requires the Department, to the extent practicable, to determine Normal Value based on sales in the comparison market at the same level of trade as the EP or CEP transactions. We have done this analysis consistent with this provision in all comparisons.

[6] See Cemex S.A. v. United States, 133 F.3d 897 (Fed.Cir.1998).

options for selecting a match, it does not address the issue of the time period over which the search for identical matches should be conducted in a transaction-to-transaction methodology. Section 773(a)(1)(A) states that the price to be used for normal value must be "at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price." We note that in administrative reviews individual U.S. sales are matched to home market sales within a time frame that is less than the whole review period. See 19 CFR 351.414(e)(2). In addition, in cases where use of a limited time period was warranted by special circumstances in the market, such as high inflation, the Department has used averaging periods shorter than the full POI.[7] The same logic applies when doing transaction-to-transaction comparisons. Absent a specific statutory mandate on the time period to be used, the Department must exercise its discretion in determining the most appropriate period over which to search for an identical match.

We limited the window to sales within a two-week time frame because we are looking for a specific sale that represents the best possible match. Furthermore, because we do not have all possible matches for sales during the first and last seven days of the POI, we have disregarded U.S. sales which took place in those weeks. Given the high level of price volatility, we felt that a window period of any longer than seven days on either side of individual U.S. sales would result in these sales being matched to home market sales made under different market conditions. We note that in cases where price volatility is not as important a consideration, it may be more

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[7] See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part, 69 Fed. Reg. 64731 (November 8, 2004); Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 Fed. Reg. 14064 (March 29, 1996).

appropriate to use another period, such as the 90/60-day window period used in administrative reviews.

Methodology for Identifying the Single Most Appropriate Match

When sales were equally similar based on product characteristics, we identified the sale with the smallest difference in the variable cost of manufacturing as being the most similar. We did not match sales whose difference in variable cost exceeded 20 percent of the total cost of manufacturing of the U.S. sale.

Within these parameters, we found a significant number of instances in which more than one home market sale qualified as an equally appropriate match. In order to identify the most appropriate match among the equally qualified sales, we looked for the sale that was the most similar in quantity to the U.S. sale. Section 773(a)(6)(C)(i) of the Tariff Act of 1930, as amended (the Act), contemplates that the sale quantity may have an effect on price. While the parties did not claim a quantity adjustment in this case, to the extent that the quantity of merchandise sold may affect the price of an individual transaction, we have taken that factor into account by using it as our first "tie-breaker."

For all companies, if there was still more than one equally appropriate match, we took customer categories, as reported by the individual respondents, into account. In order to do so, we had to give the customer categories a numerical ranking, to reflect which categories would be considered the most similar. Wherever possible, we attempted to be consistent between companies. For example, we considered wholesalers to be more comparable to distributors than to retailers. Where there were still multiple equally comparable transactions, we looked for the transaction with the most comparable channel of distribution.

When there remained multiple equally comparable transactions, we attempted to distinguish the single most appropriate match based on total movement expenses. Movement is the most significant expense related to the sale of softwood lumber. The amount of movement expenses can be considered indicative of the distance between the customer and the mill, and of the logistical coordination necessary to comply with the delivery terms of the sale. One company, Slocan, reported commissions. Accordingly, for this company, as a "tie-breaker," we also looked at whether or not a commission was paid. We did not consider the total amount of the commission because the commission was price dependent: considering the amount of the commission would result in a match to the sale with the most similar price, rather than one made under the most similar conditions.

The next criterion we used to distinguish among equally comparable transactions was the number of days between payment and shipment. We used the number of days that payment was outstanding rather than the code for terms of sale, because the former more accurately reflects exactly when the customer paid. We did not use indirect selling expenses as a tie-breaker because such expenses are strictly price dependent. Just as in the case of commissions, relying on indirect selling expenses to define the most similar sale would result in selecting the sale with the closest price as the match, rather than the sale made under the most similar conditions. After we considered these criteria, a small number of U.S. sales still had more than one equally comparable home market match. In these cases, we programmed the computer to select the first observation on the short list of equally comparable sales.

3) ***Revocation of the Order with Regard to West Fraser***

As we have explained above, to the extent that the Panel has found the Department's calculation methodology to be inconsistent with law, that same methodology cannot be consistent with law simply when applied to West Fraser. Thus, the Department modified its calculation methodology, consistent with its Section 129 Determination, with respect to all the respondents, including West Fraser. As a result of these new antidumping calculations, West Fraser has a 3.21 percent dumping margin. This margin is not de minimis. Section 735(a) of the Act and 19 CFR 351.106(b) provide that Commerce may only exclude from an antidumping duty order companies for which de minimis margins are calculated. Accordingly, the Department has not revoked the order with respect to West Fraser, pending the Panel's decision with respect to the Motions for Re-examination currently before it.[8]

FINAL REDETERMINATION

In accordance with the remand order, we have recalculated the antidumping duty margins for all companies. We have also recalculated the "All Others" rate. The weighted-average percentage dumping margins for the period April 1, 2000, through March 31, 2001, for certain softwood lumber products from Canada are as follows:

Company	Original Remand Margin (percent)	Revised Remand Margin (percent)	Remand III Margin (percent)
Abitibi-Consolidated, Inc.	11.85	**N/A**	8.88
Canfor Corporation	5.74	**N/A**	8.29
Slocan Forest Products, Inc.	8.77	8.56	13.32
Tembec, Inc.	6.66	6.28	9.08

[8] On June 28, 2005, West Fraser filed unsolicited comments with the Department pertaining to the Department's obligation to "find on remand that West Fraser is entitled to a refund of its AD deposits." See letter from West Fraser to the Department, dated June 28, 2005 at 3. Because West Fraser does not have a de minimis dumping margin and the order is not being revoked with respect to West Fraser at this time, the Department need not address West Fraser's comments in this remand redetermination.

West Fraser Mills Ltd.	2.22	1.79	3.19
Weyerhaeuser Company	12.36	**N/A**	17.59
All Others	8.07	8.85	10.52

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Susan H. Kuhbach
Acting Assistant Secretary
for Import Administration

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Date