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Investigation
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October 17, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Coated Free Sheet Paper from Indonesia

I. Summary

On March 29, 2007, the Department of Commerce (the Department) issued Coated Free Sheet Paper from Indonesia: Preliminary Affirmative Countervailing Duty Determination 72 FR 17498 (April 9, 2007) (Preliminary Determination). Subsequent to the Preliminary Determination, the Department issued a memorandum containing our preliminary analysis of the two new subsidy allegations on debt forgiveness. See Memorandum to the David M. Spooner, Assistant Secretary for Import Administration, through Stephen J. Claeys, Deputy Assistant Secretary, for Import Administration, from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Countervailing Duty Investigation: Coated Free Sheet Paper from Indonesia: Post-Preliminary Analysis of Two New Subsidy Allegations, dated September 7, 2007 (Post-Preliminary Analysis).

Since the issuance of the Preliminary Determination, the Department issued supplemental questionnaires to the Government of Indonesia (GOI) and to PT. Pabrik Kertas Tjiwi Kimia Tbk. (TK) and Pindo Deli Pulp and Paper Mills (PD) (together, "respondent companies" or "SMG/APP CFS paper producers"). The Department also issued initial and supplemental questionnaires to the GOI and to the respondent companies regarding the December 15, 2007 additional allegations concerning debt forgiveness. Both parties submitted timely responses to all of the Department's questionnaires and supplemental questionnaires.

Parties submitted two sets of briefs and rebuttal briefs, one in response to the Preliminary Determination and the other in response to the Post-Preliminary Analysis. Comments were submitted by NewPage Corporation (Petitioner), United Steel, Paper and Forestry, Rubber

Manufacturing, Energy, Allied and Industrial Service Workers International Union, AFL-CIO-CLC (USW), and the GOI and TK and PD (Respondents).

The "Subsidies Valuation Information" and the "Analysis of Programs" sections below, set forth our determinations with respect to the programs under investigation as well as the methodologies applied in analyzing these programs. We have also analyzed the comments submitted by parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions described in this memorandum.

Below is a complete list of issues raised by the interested parties in their case and rebuttal briefs:

Comment 1: Whether the Department Should Find that SMG/APP Received Upstream Subsidies on Purchases of Timber from Non-Cross Owned Entities and Consider the Legality Under which This Timber was Harvested
Comment 2: Whether the Department's Cross-Ownership Regulations Provide for the Attribution of Upstream Subsidies to Cross-Owned Companies
Comment 3: Cross-Ownership of AA and WKS with IK, Lontar, TK and PD
Comment 4: Widjaja Family Interest In Purinusa and Cross-Ownership
Comment 5: Cross-Ownership Between AA and WKS
Comment 6: Cross-Ownership Between WKS and Purinusa
Comment 7: Cross-Ownership Between AA and Purinusa
Comment 8: Cross-Ownership of Certain Additional Companies That Were Preliminarily Found to be Cross-Owned with Companies in the SMG/APP CFS Group
Comment 9: Whether the Provision of Standing Acacia is the Provision of a Good by the GOI to the SMG/APP Forestry Companies
Comment 10: Specificity of the GOI's Provision of Standing Timber for Less Than Adequate Remuneration
Comment 11: Use of Malaysian Export Statistics as the Starting Point for Deriving Stumpage Benchmarks
Comment 12: The Stumpage Rate Calculation Provided by Respondents in their Expert's Report
Comment 13: Calculation of Species-Specific Benchmarks
Comment 14: Whether to Adjust the Benchmark for Movement Expenses
Comment 15: Whether to Use Monthly Exchange Rates
Comment 16: Whether to Adjust the Benchmark for Export Royalty Fees and G&A Expenses
Comment 17: Profit Adjustment to the Benchmark
Comment 18: Use of Actual Versus Accrued Stumpage Payments
Comment 19: Use of the FAO's Conversion Factors
Comment 20: Whether to Adjust WKS' Log Harvest
Comment 21: Adjustments to the Sales Denominator
Comment 22: Treatment of Alleged Illegal Logging in Indonesia

Comment 23: Indications of Illegal Logging Practices in Subsidizing Indonesia's CFS Paper Industry
Comment 24: Examination of Log Purchases from Non-Cross Owned Entities Under the Log Export Ban
Comment 25: The Legality of the WTO's Findings on Export Restraints
Comment 26: Whether Respondent Companies Cured Any Deficiency with Respect to Settling Debt with COEs
Comment 27: Specificity of IBRA's Acceptance of BII Shares and COEs for the Repayment of SMG/APP Debt
Comment 28: The Effect of IBRA's Outright Debt Forgiveness on the Specificity of the Acceptance of COEs for SMG/APP Debt
Comment 29: Benefit from IBRA's Acceptance of COEs as Settlement of Debt
Comment 30: Whether an Adverse Inference Can be Applied in Determining that Orleans was Affiliated with SMG/APP
Comment 31: Specificity of IBRA's Sale of SMG/APP Debt to an Affiliate of the Original Debtor
Comment 32: Whether the Information the Department Relied Upon Was Speculative and Circumstantial
Comment 33: Procedural Abnormalities in IBRA's Sale of the SMG/APP Debt and Specificity
Comment 34: Effect of the Lack of Reduction in Debt on the Countervailability of the Sale of SMG/APP's Debt to Orleans
Comment 35: The Appropriateness of the Department's Reliance on Facts Available with an Adverse Inference
Comment 36: Whether A Government Can Provide a Financial Contribution When the Act is Illegal

II. Background

On April 9, 2007, the Department published Preliminary Determination. Since the issuance of the Preliminary Determination, the Department issued supplemental questionnaires to the GOI and to TK and PD. The Department also issued initial and supplemental questionnaires to the GOI and to TK and PD regarding the December 15, 2007 additional allegations concerning debt forgiveness. Both parties submitted timely responses to all of the Department's questionnaires and supplemental questionnaires.

The Department aligned the final determination in this countervailing duty investigation with the final determination in the companion antidumping duty investigation. See Coated Free Sheet Paper from Indonesia, the People's Republic of China, and the Republic of Korea: Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations, 72 FR 24277 (May 2, 2007). On May 10, 2007, New Page Corporation (Petitioner) requested a hearing pursuant to 19 CFR 351.310(c) and the Department's Preliminary Determination.

On June 18 and June 19, 2007, the petitioner and the respondent companies submitted new factual information concerning the Department's investigation of the "GOI Provision of Standing Timber for Less than Adequate Remuneration," or "stumpage." On June 28, 2007, the petitioner submitted rebuttal comments regarding the respondent companies' new factual information submission.

The Department conducted verification of the questionnaire responses provided by the GOI and the respondent companies from June 25 to July 13, 2007. On July 13, 2007, Petitioner filed an upstream subsidy allegation, claiming, in accordance with section 771A(a) of the Tariff Act of 1930, as amended, (the Act), that (1) a subsidy, other than an export subsidy, has been paid or bestowed on an input product that is used in the manufacture or production of merchandise subject to a countervailing duty proceeding; (2) the subsidy bestows a competitive benefit on the merchandise; and (3) the subsidy has a significant effect on the cost of manufacturing or producing the merchandise. On July 23, 2007, the respondent companies filed rebuttal comments, and on August 10, 2007, Petitioner filed surrebuttal comments on this allegation.

The Department issued verification reports on August 24, 2007. The Department issued the Post-Preliminary Analysis on September 7, 2007. Parties timely filed briefs and rebuttal briefs regarding our Preliminary Determination. Respondents timely filed a brief and Petitioner timely filed a rebuttal brief regarding the Post-Preliminary Analysis. The petitioner withdrew its request for a hearing on September 10, 2007.

On August 20, August 28, and September 10, 2007, Petitioner requested that the Department clarify the scope of the antidumping and countervailing duty investigations of CFS paper from Indonesia, Korea and the People's Republic of China to include coated free sheet paper containing hardwood BCTMP. Because this request affected all six investigations, the Department set up a general issues file to handle this scope request. After considering the comments submitted by the parties to these investigations, we have determined not to adopt the scope clarification sought by Petitioner. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled "Scope Clarification Request: NewPage Corporation" (Scope Memorandum), which is appended to the "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China." All comments submitted by the parties to all six investigations are addressed in the Scope Memorandum.

III. Initiation and Deferral of Upstream Subsidy Investigation

On July 13, 2007, Petitioner filed an upstream subsidy allegation, claiming, in accordance with section 771A(a) of the Act, that (1) a subsidy, other than an export subsidy, has been paid or bestowed on an input product that is used in the manufacture or production of merchandise subject to a countervailing duty proceeding; (2) the subsidy bestows a competitive benefit on the merchandise; and (3) the subsidy has a significant effect on the cost of manufacturing or producing the merchandise. See also 19 CFR 351.523. In the allegation, Petitioner states that, if

the Department finds individual forestry companies not to be cross-owned with the respondent companies, the respondent companies benefitted from upstream subsidies provided to these non-cross-owned forestry companies. Following the regulatory criteria which must be met before the Department can investigate the existence of an upstream subsidy, Petitioner made the following claims and provided supporting documentation and calculations.

First, in accordance with 19 CFR 351.523(a)(1)(i), Petitioner alleges the Department's determination in Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia, 71 FR 47174 (August 16, 2006) and accompanying Issues and Decision Memorandum (Lined Paper) that the GOI provided countervailable subsidies, through the provision of timber for less then adequate remuneration and through the log export ban, provides a reasonable basis to believe or suspect that a countervailable subsidy is being provided with respect to an input product of CFS paper, i.e., timber. Second, Petitioner claims that all three conditions listed in 19 CFR 351.523(a)(1)(ii)(A-C) exist, even though only one of the three conditions must be met in order for the Department to initiate an upstream subsidy allegation. Petitioner claims that: (A) the input suppliers are affiliated; (B) the price for the subsidized input is lower than the price that would otherwise be paid to another seller in an arms-length transaction for an unsubsidized input; and (C) the government sets the price of the input product so as to guarantee that the benefit provided with respect to the input is passed through to producers of subject merchandise. Third, Petitioner alleges, in accordance with 19 CFR 351.523(a)(1)(iii), that the ad valorem subsidy rate on the input product, multiplied by the proportion of the total production costs of subject merchandise accounted for by the input product, is equal to, or greater than, one percent. Petitioner provided calculations to support this allegation.

On July 23, 2007, Respondents filed rebuttal comments on Petitioner's upstream subsidy allegation. In their rebuttal, Respondents first claim that Petitioner's allegation fails to overcome the statutory requirement under section 771A(a)(1) of the Act that the benefit must pass directly from the input product (in this case, according to Respondents, pulp) to the subject merchandise. According to Respondents, section 771A(a)(1) of the Act requires that the input product be used in the "manufacture or production of merchandise which is the subject of a countervailing duty proceeding . . .." Furthermore, Respondents claim that Petitioner's allegation does not demonstrate that any of the three conditions required under 19 CFR 351.523(a)(1)(ii) (A-C) have been met. Contrary to Petitioner's allegation, Respondents claim that the input suppliers are not affiliated. They argue that the price for the allegedly subsidized input is not lower than the price that would otherwise be paid because Petitioner has not provided any information on pulp prices (the direct input into subject merchandise); producers of subject merchandise do not buy the allegedly subsidized input (timber); and the GOI does not set the price of the input product so as to guarantee the benefit. Respondents also argue that Petitioner has not provided sufficient evidence to demonstrate that the ad valorem subsidy rate on the input product, multiplied by the proportion of the total production costs of subject merchandise accounted for by the input product, is equal to, or greater than, one percent, in accordance with 19 CFR 351.523(a)(iii). Respondents argue that timber is not a cost component in the production of CFS, and the relevant

analysis would be whether the pulp that allegedly receives a benefit is a significant cost component. Even assuming timber could be considered a cost component, Respondents argue that Petitioner excluded two other consumers of timber (the SMG/APP CFS pulp producers, Indah Kiat Pulp and Paper Tbk. (IK) and PT. Lontar Papyrus Pulp and Paper (Lontar)) by assuming that all the timber purchased and harvested was used only by TK and PD (the producers of CFS).

Finally, Respondents argue that, even if the Department accepts the allegation from Petitioner, section 703(g)(2)(B)(i) of the Act gives the Department discretion to defer an upstream subsidy determination until the conclusion of the first administrative review. According to Respondents, because the investigation is in its latter stages and none of the information has been gathered, deferral would conserve the Department's and International Trade Commission's resources.

Following Respondents' rebuttal comments, Petitioner filed additional comments on the upstream subsidy issue. First, citing to the Preamble of the Department's regulations, Petitioner states that an upstream subsidy investigation is not limited to alleged subsidies provided to inputs at only the final stage of production. See Countervailing Duties; Final Rule, 63 FR 65348, 65390 (Preamble). In Petitioner's view, the only requirement is to show that the upstream subsidy enters into a conglomerate and is primarily dedicated to the production of the downstream product. Petitioner further argues that, even including the pulp producers' costs, the ratio of timber cost to total cost meets the significant effect test under 19 CFR 351.523(a)(1)(iii). Petitioner provided the calculation worksheets showing the revised ratios.

Petitioner then argues that the record contains all of the information necessary for the Department to determine that upstream subsidies are being provided and to calculate the rate attributable to the subject merchandise from the upstream subsidies. Addressing Respondents' deferral comments, Petitioner argues that deferral of a decision on upstream subsidies requires a request by Petitioner under 19 CFR 351.210(f) and section 703(g)(2)(B)(i) of Act.

Finally, Petitioner states that, if the Department does not initiate an upstream subsidy investigation, the Department must address the purchase of logs from non-cross-owned timber suppliers under the Log Export Ban. Petitioner states that, since the record is clear that purchases made by PT. Arara Abadi (AA) and PT. Wirakarya Sakti (WKS) (two of the five related SMG/APP CFS forestry companies) from any non-affiliated timber suppliers were supplied to either IK or Lontar, the Department will need to address whether Respondents received subsidized timber by virtue of the GOI's log export ban unless the Department investigates upstream subsidies.

For the following reasons, the Department finds there is a reasonable basis to believe or suspect that the elements set forth in 19 CFR 351.523(a)(1)(i - iii), which are the prerequisites to an investigation of the existence of an upstream subsidy, have been met. First, in accordance with 19 CFR 351.523(a)(1)(i), the Department finds that Petitioner has provided a reasonable basis to believe or suspect that a countervailable subsidy, other than an export subsidy, is provided with

respect to an input product. The Lined Paper final determination and the Preliminary Determination in this investigation support this prong of the upstream subsidy allegation. The Department found that pulpwood (an input product) is subsidized through the GOI's provision of government-owned pulp timber (i.e., stumpage) for less than adequate remuneration. See Lined Paper at 71 FR 7524, 7527-28; see also Preliminary Determination, 72 FR at 17501. This is not an export subsidy. Although Petitioner included the Log Export Ban as a countervailable subsidy in its upstream allegation stating that the Department found the Log Export Ban countervailable in the Lined Paper final, we note that we did not make a definitive finding. Rather, we stated that we did not need to reach the issue of whether the log export ban was countervailable because all pulpwood used in the production of paper was " . . . subsidized by virtue of the GOI's stumpage program." See Lined Paper and accompanying Issues and Decision Memorandum at Comment 5.

Contrary to Respondents' arguments that pulp, not timber, is the input product used in the production of CFS paper, we find that there is no requirement that the input product be a direct input into the production of the subject merchandise. The argument that the Department is prohibited from reaching back to earlier stages of production would write out of the statute the very reason that Congress mandated the upstream subsidy provision in the first place – to ensure that subsidies to input products can be captured and attributed to the subject merchandise. See section 771A(a) of the Act. As noted in the Preamble (63 FR at 65390), if a party is able to demonstrate the significance of subsidies at earlier stages of production, the Department has the authority to investigate such subsidies under the upstream subsidy provision. Pulpwood is the primary input into pulp and pulp is the primary input into paper. See Preliminary Determination at 17501. Just as would be the case if the Department were examining a vertically integrated company, pulpwood can be considered to be the first input into a continuous line of production. Pulpwood is turned into pulp which, in turn, is used to make paper. These two upstream products have the same purpose – to be made into paper. See Lined Paper and accompanying Issues and Decision Memorandum at Comment 3.

With respect to the second prong of the upstream subsidy initiation analysis, i.e., competitive benefit, only one of the three conditions listed in the regulations must be met in order for the Department to find there is a reasonable basis to believe or suspect that a competitive benefit is being bestowed on the merchandise. See section 771A(a)(2) of the Act and 19 CFR 351.523(a)(1)(ii)(A-C). Petitioner has provided an analysis of each of the three conditions and claims that all three conditions are met in this case. Respondents countered that none of the three conditions has been met. Because the Department only needs to find that one of the conditions has been met, we have evaluated the allegation and supporting information only to the extent necessary to determine if one of the three conditions has been met. We find that the information provided by Petitioner meets the condition set forth in 19 CFR 351.523(a)(1)(ii)(B): "The price for the subsidized input product is lower than the price that the producer of the subject merchandise otherwise would pay another seller in an arm's-length transaction for an unsubsidized input product."

To demonstrate that this condition has been met, Petitioner provides a comparison between the prices paid by WKS and AA (the cross-owned forestry/logging companies) to unaffiliated suppliers of pulpwood and the pulpwood benchmark prices we used in the Preliminary Determination for deriving the market-based benchmark for the stumpage program. We found in the Preliminary Determination that there were no benchmark prices for standing timber (stumpage) in Indonesia, nor any private log prices in Indonesia, to use as a starting point to derive a market-based stumpage price. See Preliminary Determination, 72 FR at 17503. As such, the Department sought a benchmark outside of Indonesia. Since there are no international or world market prices for standing timber, we had to derive a market-based stumpage price from market-based pulpwood prices. Id. As the starting point, we used official Malaysian Export Statistics for various types of pulpwood, and deducted, from those prices, harvesting costs and profit to derive a market-based benchmark for determining whether the government-set stumpage rate provided a benefit. (See Preliminary Determination 72 FR at 17504). We have continued to rely on the Malaysian Export Statistics for purposes of this final determination. See "Provision of Standing Timber for Less than Adequate Remuneration," below. Petitioner's chart comparing the benchmark pulpwood prices to the prices paid by AA and WKS to unaffiliated suppliers of the subsidized input shows that the prices paid by AA and WKS are significantly lower than the unsubsidized benchmark price for the input.

In their rebuttal comments, Respondents argued that this condition had not been met because pulp is the input into the subject merchandise and the producers of the subject merchandise are not buying the allegedly subsidized input, i.e., pulpwood. As discussed below, we find that there is cross-ownership between, among and across the two producers of the subject merchandise, the two pulp producers and five forestry/logging companies. Furthermore, we find that pulpwood is the primary input into pulp and that pulp is a primary input into subject merchandise. As such, the purchase by the cross-owned group of companies of the subsidized pulpwood input from unaffiliated suppliers can be considered under the upstream subsidy provision of the Act.

Consequently, we find that Petitioner's comparison between the prices paid to unaffiliated suppliers by AA and WKS for the subsidized input and the benchmark price to be an appropriate methodology for alleging competitive benefit. Furthermore, the fact that the prices paid for the subsidized input are much lower than the benchmark prices provides a reasonable basis to believe or suspect that a competitive benefit is being bestowed on the subject merchandise through the provision of timber for less than adequate remuneration.

With regard to the third prong of the allegation, i.e., that the subsidy on the input product has a significant effect on the cost of manufacturing or producing the merchandise, we find that the information and calculations in Petitioner's August 10, 2007 submission provide a reasonable basis to believe or suspect that the subsidy on the input product has a significant effect on the cost of producing the subject merchandise. In this submission, Petitioner recalculated the cost data to include costs for both pulp and paper production. Multiplying the subsidy rate on the input product by the proportion of the total cost of production accounted for by the input product,

Petitioner has calculated a rate significantly more than the one percent required by 19 CFR 351.523(a)(1)(iii).

Accordingly, because Petitioner has provided a reasonable basis to believe or suspect that the three elements necessary to find the existence of an upstream subsidy have been met, we are initiating an upstream subsidy investigation to determine whether stumpage subsidies provided to unaffiliated pulpwood suppliers confer benefits on the production of subject merchandise. However, we are also deferring our upstream subsidy investigation, pursuant to section 703(g)(2)(B)(i) of the Act, until the first administrative review under section 751 of the Act, if a countervailing duty order is issued and if such a review is requested.

Although Petitioner has argued that all of the information necessary to complete the upstream subsidy investigation is already on the record, we disagree. While there is a great deal of information on the record because we are already evaluating the stumpage subsidies provided to the cross-owned forestry companies, we have not gathered any information from the government or the unaffiliated forestry/pulpwood suppliers about the stumpage fees charged to, and actually paid by, these companies, nor have we fully examined the costs of producing pulp and paper. While the information on the record provides a sufficient basis to initiate an upstream subsidy investigation, it does not provide a sufficient basis for rendering a final determination on whether the subject merchandise is benefitting from upstream subsidies.

Petitioner has also stated that "{w}hile the Department has the authority to extend consideration of an upstream subsidy allegation into the first review upon request by Petitioner, Petitioner has not made such a request." Respondents, on the other hand, have argued that the Department has the discretion to defer the investigation under section 703(g)(2)(B)(i) of the Act. Petitioner filed the upstream subsidy allegation after the completion of verification. By then, there was insufficient time remaining for the Department to issue questionnaires, conduct any additional verification, and provide an opportunity for parties to comment before the final determination. While section 351.201(f) of our regulations specifically permits Petitioner to request deferral of an upstream subsidy determination until the first administrative review, the regulations do not limit the Department's authority to defer the determination under section 703(g)(2)(B)(i) of the Act. Accordingly, the Department is deferring the conduct of the upstream subsidy investigation under section 703(g)(2)(B)(i) of the Act until the first administrative review, if a countervailing duty order is issued and such a review is requested.

In its August 10, 2007 submission, Petitioner argued that, if the Department declines to make an upstream subsidy determination in the instant proceeding, regarding Respondents' purchases of pulpwood from any non-cross-owned forestry companies, the Department must address such purchases under the ongoing investigation of the Log Export Ban. Petitioner relies on Lined Paper in support of this argument. In Lined Paper, we found, based on the facts available, that every timber supplier was cross-owned with the pulp and paper producers. We also agreed that the Log Export Ban and the stumpage programs work in conjunction to achieve the same benefit, and that this fact was reflected in the methodology used by the Department to calculate the

subsidy conferred: the methodology treated every pulp log as being subsidized. See Lined Paper and accompanying Issues and Decision Memorandum under Section III.A "Government Ban on Log Exports."

As Petitioner correctly points out, the Department initiated an investigation of whether the GOI's Log Export Ban provided a countervailable subsidy by entrusting or directing timber suppliers to sell pulpwood to the cross-owned SMG/APP CFS forestry companies for less than adequate remuneration. In the Preliminary Determination, we determined that we did not need to reach the issue of the countervailability of the Log Export Ban because we preliminarily determined that SMG/APP CFS pulp producers purchased all of their pulpwood from cross-owned forestry companies. See Preliminary Determination, 72 FR at 17505-17506. As such, any subsidies provided to the cross-owned forestry companies were attributable to the external sales of all the SMG/APP CFS pulp and paper producers. See 19 CFR 351.525(b)(6). Further, we found that the methodology that we used in the Preliminary Determination for the calculation of the benefit from the stumpage program subsumed any potential benefit from the Log Export Ban. See Preliminary Determination, 72 FR at 17506.

Given that we have now found that not all of the pulpwood purchased by the cross-owned SMG/APP CFS group was sourced from cross-owned forestry companies, and given that we have deferred the upstream subsidy investigation, we agree with Petitioner that we must address the countervailabilty of the Log Export Ban. See "Cross-Ownership" and "Log Export Ban" sections below.

IV. Subsidies Valuation Information

A. Cross-Ownership

In the Preliminary Determination, the Department found that cross-ownership exists, as defined by 19 CFR 351.525, between subject merchandise producers TK and PD, and among and across the following pulp producers and pulpwood suppliers involved in the production and sale of the subject merchandise, CFS paper: Lontar, IK, AA, WKS, PT. Satria Perkasa Agung (SPA), PT. Riau Abadi Lestari (RAL), and PT. Finnantara Intiga (FI). See Preliminary Determination. In addition, the Department also preliminarily found that additional pulp wood suppliers were also cross-owned among and across companies in the SMG/APP CFS group, in accordance with 19 CFR 351.525. See Preliminary Determination.

Section 351.525(b)(6)(vi) of the Department's regulations states that "cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets." This section of the Department's regulations explains that this standard will normally "be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations." See 19 CFR 351.525(b)(6)(vi).

The definition of cross-ownership includes relationships where the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (including subsidy benefits) of the other corporation in essentially the same way it can use its own assets (including subsidy benefits). See Preamble at 65401.

As such, 19 CFR 351.525 directs us to examine the facts presented in each case to determine whether cross-ownership exists. In the Preliminary Determination, we found that, in accordance with 19 CFR 351.525(b)(6)(vi), TK and PD (SMG/APP CFS paper producers) are cross-owned through their common parent company, Purinusa; that Lontar and IK (SMG/APP CFS pulp producers), are cross-owned with each other, and also with TK and PD through their common parent company, Purinusa; and, that AA, WKS, SPA, RAL, and FI (SMG/APP CFS forestry companies) are cross-owned with each other and with the CFS and pulp producers through combinations of common ownership, common management, long-term supply and financing agreements.

Based on an examination of information received after the issuance of the Preliminary Determination, and on the results of verification, we continue to find that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6), between the Widjaja family (owners of the companies in the SMG/APP group) and Purinusa, and among the SMG/APP CFS paper producers, SMG/APP CFS pulp producers, and SMG/APP CFS forestry companies. We also find that cross-ownership exists among the SMG/APP CFS paper producers, SMG/APP CFS pulp producers, SMG/APP CFS forestry companies and PT. Cakrawala Mega Indah (CMI), their domestic trading unit. In addition, we find that no additional pulpwood suppliers outside of the five SMG/APP CFS forestry companies referenced above are cross-owned in the SMG/APP CFS group. Our detailed analysis relies on business proprietary information, and is included in the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, Countervailing Duty Investigation: Coated Free Sheet Paper from Indonesia, Cross-Ownership Analysis, dated concurrently with this memorandum (Cross-Ownership Analysis). We have included below our analysis in a form suitable for this public memorandum.

TK and PD have stated that the issue in this investigation is whether the Widjaja family can use or direct the individual assets of the other corporations, such as Purinusa and the companies that it holds, in essentially the same ways that the family can use its own assets. Our examination of record information shows that during the POI, the Widjaja family maintained control over Purinusa. The record also shows that Widjaja family was held personally liable by the GOI for Purinusa's debt, and that the family negotiated debt restructuring agreements that affected Purinusa's debt. The fact that the GOI recognized the family as responsible for all of SMG/APP debt, including Purinusa's, and the fact that the Widjaja family could act on behalf of Purinusa with regard to Purinusa's debt, demonstrates that the family is in position to control Purinusa's assets as if they were its own, and satisfies the Department's definition of cross-ownership. See 19 CFR 351.525; Preamble 63 FR at 65401.

TK and PD, the SMG/APP CFS paper producers, have argued that SMG/APP CFS forestry company, WKS, is not cross-owned with their parent company, Purinusa, or with any of Purinusa's subsidiaries, and claim that the Widjaja family has no direct or indirect interest in the companies that own the remaining shares in WKS. However, information on the record shows otherwise. See Cross-Ownership Analysis at 12. Additionally, during verification, the GOI explained that it examined WKS' ownership information and identified WKS to be cross-owned with companies in the SMG/APP CFS production chain. See Countervailing Duty Investigation of Coated Free Sheet (CFS) Paper from Indonesia: Verification of the Questionnaire Responses Submitted by the Ministry of Forestry and the Ministry of Finance, August 24, 2007 (GOI Verification Report) (Public Version) at 9. Finally, WKS has an exclusive long-term supply and financing relationship with affiliated pulp and paper producer Lontar, which requires Lontar to provide financing to WKS. See Cross-Ownership Analysis at 14; see also Petitioner's March 16, 2007 submission at Exhibit 6, "Asia Pulp & Paper Indonesia: The Business Rationale that Led to Forest Degradation and Financial Collapse," at page 4. This information (with other information more fully discussed in Cross-Ownership Analysis), taken in its totality, demonstrates that WKS and Lontar are intertwined to such a degree that they cannot operate independently of each other. Purinusa is the majority owner of the companies which own Lontar. Thus, Lontar is also cross-owned with Purinusa. Therefore, WKS, Purinusa, and Lontar are cross-owned companies through their common majority ownership by the Widjaja family, because the family can control the assets of all of these companies.

In the Preliminary Determination, we found that Purinusa is the ultimate holding company of TK, PD, Lontar, IK, SPA, and FI. As more fully explained in Cross-Ownership Analysis, we continue to find that cross-ownership exists among and across all of these companies, and among and across WKS, Purinusa, and the Widjaja family, in accordance with 19 CFR 351.525(b)(6)(vi). Because we have determined that the Widjaja family controls the assets of AA, WKS, and Purinusa, we determine that cross-ownership exists among AA, WKS, and Purinusa in accordance with 19 CFR 351.525(b)(6)(vi). We also find that AA, and its majority-owned subsidiary RAL, and WKS are cross-owned with each other, and also with TK, PD, Lontar, IK, SPA, and FI, in accordance with19 CFR 351.525 (b)(6)(vi). See Cross-Ownership Analysis at 18.

TK and PD have also argued that SMG/APP CFS forestry company AA is not cross-owned with WKS, Purinusa, or with any of Purinusa's subsidiaries, and there is no evidence to suggest that AA or Purinusa can use or direct the use of the other's assets as their own. We find that AA and Purinusa are cross-owned in accordance with 19 CFR 351.525(b)(6)(vi), through the Widjaja family's control of both companies. As with WKS, at verification the GOI also identified AA to be cross-owned with the companies in the CFS production chain, and also like WKS, AA has an exclusive long-term agreement with affiliated pulp producer IK, which requires IK to provide financing to AA, and AA to supply pulpwood to IK. Along with the further information explained in Cross-Ownership Analysis, IK's dependence on AA for its pulpwood supply; AA's dependence on IK for financing; and, the common ownership of AA, IK, and Purinusa by the

Widjaja family, all combine to demonstrate that AA and IK are intertwined to such a degree that they cannot operate independently of each other.

We find that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among and across Purinusa, TK, PD, Lontar, IK, AA, RAL, WKS, SPA, FI, and trading company CMI (the SMG/APP CFS group). (A discussion of our analysis concerning CMI is only possible by means of reference to business proprietary information. See Cross-Ownership Analysis at 19.) Record information, such as the GOI's recognition of the Widjaja family as personally responsible for the debt of the entire SMG/APP group including all of the companies in the CFS production and sales chain, and information showing that the Widjaja family was held responsible by the GOI for the debt restructuring negotiations and agreements for both holding companies and operating companies in the chain, demonstrates that the Widjaja family is the ultimate owner or controller of these companies. Further, with regard to the Widjaja family's control of Purinusa, the family's direct and indirect ownership of Purinusa during the POI was sufficient to exercise control of Purinusa's assets in accordance with 19 CFR 351.525(b)(6)(vi). Our examination of the record shows that IK and Lontar are each directly or indirectly owned by Purinusa, WKS is completely intertwined with Lontar, and AA is completely intertwined with IK. Record evidence further demonstrates that the companies within the SMG/APP CFS group have merged to such a degree under the control of the Widjaja family that the family can use or direct the individual assets of these companies in the same way it can use its own assets.

In the Preliminary Determination, the Department found that additional pulpwood suppliers were also cross-owned with companies in the SMG/APP CFS group. In our questionnaires to the GOI and to TK and PD, we requested specific information regarding the purchases from affiliated parties that were made by all companies in the SMG/APP CFS group, including the identity of any unaffiliated parties that supplied logs to companies in the SMG/APP CFS group. TK and PD reported that AA and WKS purchased pulpwood from affiliated and unaffiliated parties during the POI. An examination of the names and locations of these unaffiliated pulpwood suppliers provided a reasonable basis to suspect that they were affiliated with AA and WKS, and we conducted independent research which led us to determine that several of these additional suppliers were cross-owned among and across companies in the SMG/APP CFS group.

In subsequent questionnaire responses, the GOI stated that it did not believe that members of the Widjaja family held ownership in any of these unaffiliated pulpwood suppliers, and TK and PD stated that no companies in the SMG/APP CFS group, or members of the Widjaja family, owned or controlled any of these companies. Our examination and verification of the additional unaffiliated pulpwood suppliers' ownership documents, including articles of association, licenses to harvest timber, and cooperation agreements and long-term supply agreements with AA and WKS, revealed no evidence that any companies or officials in the SMG/APP CFS group held ownership interests in these additional unaffiliated pulpwood suppliers, or that the Widjaja family or its companies can use or direct the assets of these companies in the same ways that it can use or direct its own assets. Therefore, we find that no additional pulpwood suppliers, other

than the five SMG/APP forestry companies discussed above (AA, FI, RAL, SPA, and WKS), are cross-owned with the SMG/APP CFS group.

B. Attribution of Subsidies Provided to Cross-Owned Input Suppliers

In accordance with 19 CFR 351.525(b)(6)(iv), if there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Department will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

In the Preliminary Determination, the Department found that the input products in question, pulp logs, are primarily dedicated to the production of CFS in accordance with 19 CFR 351.525(b)(6)(iv). In Lined Paper and accompanying Issues and Decision Memorandum at Comment 3, the Department determined that the logs harvested by the logging companies and sold to the pulp producers are primarily dedicated to the production of pulp and, thus, to the production of the downstream product, paper, which included certain lined paper products, the subject merchandise in that case. In the instant case, pulpwood harvested by the cross-owned SMG/APP CFS forestry companies is processed into pulp by the cross-owned SMG/APP CFS pulp producers, Lontar and IK. This pulp is consumed by the cross-owned SMG/APP CFS paper producers, TK and PD, to make paper and paper products including the subject merchandise, CFS. Because the pulpwood is primarily dedicated to the production of pulp and, ultimately, to the production of paper products, we conclude that a subsidy to pulpwood also benefits pulp and paper production where all of the companies involved are cross-owned. See "Cross-Ownership" above. Based on the information on the record, we determine that the production of pulpwood is an input product that is primarily dedicated to the production of pulp and paper products, including CFS. In accordance with 19 CFR 351.525(b)(6)(iv), we have attributed subsidies to the appropriate combined external sales of the products produced by the cross-owned companies, excluding any inter-company sales.

C. Allocation Period

Under 19 CFR 351.524(d)(2)(i), the Department will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. Specifically, the party must establish that the difference between the AUL from the tables and the company-specific AUL or country-wide AUL for the industry under investigation is significant, pursuant to 19 CFR 351.524(d)(2)(ii). For assets used to manufacture coated free sheet paper, the IRS tables prescribe an AUL of 13 years. In the Post-Preliminary

Analysis, the Department used the AUL in the IRS tables to allocate the debt forgiveness benefits.

The Department has found no evidence on the record that would cause the Department to reconsider this AUL in allocating non-recurring subsidies. No parties submitted comments concerning this issue. Therefore, the Department has continued to use the AUL of 13 years in this final determination.

D. Loan Benchmark and Discount Rate

In measuring the benefit from the HTI Zero-Rate Loan Program, 19 CFR 351.505(a)(1) provides a preference for using as a loan benchmark an interest rate that the company could have obtained on a comparable loan in the commercial market. Prior to the Preliminary Determination, neither TK nor PD provided sufficient information regarding actual financing they (or the other cross-owned companies) obtained during the relevant time period. When no comparable commercial loans are available on the record, 19 CFR 351.505(a)(3)(ii) stipulates that the Department may use a national average interest rate for comparable commercial loans. Therefore, in the Preliminary Determination, we used as our benchmark the Bank of Indonesia's national average interest rates on investment loans from private national banks for the years in which the loans were approved. No parties submitted comments concerning this issue. Therefore, the Department has continued to use these benchmark rates in this final determination.

In measuring the benefit of debt forgiveness through both the "Debt Forgiveness Through the GOI's Acceptance of Instruments that Had No Market Value," and the "Debt Forgiveness through SMG/APP's the Buyback of Its Own Debt from the GOI," in the Post-Preliminary Analysis, the Department was required to apply a discount rate. Section 351.524(d)(3) of the Department's regulations provides the order of preference for selecting the appropriate discount rate as follows: the cost of long-term, fixed-rate loans of the firm in question, the average cost of long-term, fixed-rate loans in the country in question; or the most appropriate rate.

As discussed in the Creditworthiness section below, the SMG/APP companies were not able to obtain any financing during the period of their debt standstill from March 2001 through April 2005, nor did they provide any information relating to Indonesian interest rates for the year in which the debt forgiveness was granted. Consequently, in Post-Preliminary Analysis, to measure the benefit, we identified the "Lending Rate (Foreign Currency)" for each year in which debt was forgiven (as published in the International Monetary Fund's International Financial Statistics (IMF Statistics)) as the most appropriate rate to calculate the benefit. No parties submitted comments concerning this issue. Therefore, the Department has continued to use these discount rates in this final determination.

E. Creditworthiness

The Department initiated an investigation on the allegation that SMG/APP was uncreditworthy in 2001 and thereafter. See Countervailing Duty Investigation on Coated Free Sheet Paper from Indonesia: Initiation Checklist, November 20, 2006 (Initiation Checklist). While it was not necessary to evaluate creditworthiness for the Preliminary Determination, we did have to evaluate it for the Post-Preliminary Analysis with respect to the "Debt Forgiveness Through the GOI's Acceptance of Instruments that Had No Market Value," and the "Debt Forgiveness through SMG/APP's the Buyback of Its Own Debt from the GOI." Accordingly, we investigated whether SMG/APP was uncreditworthy at the time of SMG/APP's payment of Certificates of Entitlement (COEs) to the Indonesian Bank Restructuring Agency (IBRA) in June 2002 as partial repayment for its debt obligations, and at that IBRA sold SMG/APP debt to Orleans Offshore Investment, Ltd. (Orleans), in February 2004.

In the Post-Preliminary Analysis, we examined the following factors in determining the creditworthiness of the SMG/CFS group: (1) the receipt by the respondent companies of commercial long-term loans (as stated in 19 CFR 351.505(a)(4)(i)(A)); and, (2) the respondent companies' recent past and present ability to meet their costs and fixed financial obligations with their cash flow (as stated in 19 CFR 351.505(a)(4)(i)(C)).

The respondent companies stated that in March 2001, SMG/APP declared a standstill on its obligations (principal and interest) to its creditors. See Post-Preliminary Analysis at 13. According to the respondent companies, SMG/APP began negotiating with its creditors to restructure its debt; however, the "Master Restructuring Agreements" (MRAs), which finalized the debt restructuring, did not go into effect until April 2005. See id. In the time between the announcement of the debt standstill and the effective date of the MRA, none of the four Principal Indonesian Operating Companies (PIOCs)(IK, Lontar, TK and PD) made any payment of principal or interest on their debt obligations except for the $90 million payment that was made to repay a portion of IK's debt in June 2002. See id. Additionally, none of the PIOCs were able to secure long-term loans during this time period due to the debt standstill and the ongoing debt restructuring discussions with their creditors. See id.

In the Post-Preliminary Analysis, we found that companies in the SMG/APP CFS group were uncreditworthy at the time the government forgave debt through the acceptance of COEs as debt repayment and through the sale of Orleans debt to SMG/APP, due to their inability to meet their debt payments and financial obligations (19 CFR 351.505(a)(4)(i)(D)) or to obtain any long-term loans (19 CFR 351.505(a)(4)(i)(A)) during this time period. No party commented on this determination. Accordingly, for purposes of this final determination, we continue to find companies in the SMG/APP CFS group to be uncreditworthy from 2001 through at least April 2005.

V. Application of Facts Available and Use of an Adverse Inference

Section 776 of the Act governs the use of facts available and adverse facts available. Section 776(a) provides that if an interested party or any other person (1) withholds information that has been requested by the Department; (2) fails to provide such information by the deadlines or in the form and manner requested; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching its determination. The statute requires that certain conditions be met before the Department may resort to facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or to explain the deficiency.

If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) of the Act if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316, Vol. 1 (1994) (SAA) at 870. The statute provides, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c) of the Act, rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 of the Act (or section 753 for countervailing duty cases), or any other information on the record.

In the Post Preliminary Analysis, we relied on facts available with an adverse inference in finding that COEs were financial instruments with no market value, and in finding Orleans to be affiliated with the SMG/APP group. As discussed in more detail in the "Debt Forgiveness Through the GOI's Acceptance of Instruments that Had No Market Value," and the "Debt Forgiveness through SMG/APP's the Buyback of Its Own Debt from the GOI" sections below, we continue to find that the application of facts available with an adverse inference is warranted. See also Comments 26, 30 and 35, below.

VI. Analysis of Programs

A. Programs Determined to Be Countervailable

1. GOI Provision of Standing Timber for Less Than Adequate Remuneration

According to the GOI, virtually all harvestable forest land in Indonesia is owned by the National Government. See Coated Free Sheet Paper from Indonesia: Response by the Government of Indonesia to the Department's November 30, 2006 Questionnaire, (March 2, 2007) (Rebracketed Response) (GOI Questionnaire Response), at page 13 (there are 57 million hectares of public harvestable forest land; the 233,811 hectares of private forest land account for 0.4 percent of the total harvestable forest land in Indonesia). The GOI allows timber to be harvested from the government-owned land under two main types of licenses: "HPH" licenses to harvest timber in the natural forest; and "HTI" licenses to establish and harvest timber from plantations. HTI license holders pay "cash stumpage fees" known as PSDH royalty fees which are paid per unit of timber harvested. In addition to paying PSDH fees, HPH license holders pay a per-unit Rehabilitation Fee ("dana reboisasi" or "DR") for timber harvested from the natural forest.[1] License holders in Jambi province also pay a PSDA fee for harvest from plantations. Based on Petitioner's allegations that the stumpage rates charged by the GOI for harvesting government-owned timber are less than the market value of the stumpage, the Department initiated an investigation for the Provision of Standing Timber For Less Than Adequate Remuneration. See Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper From the People's Republic of China, Indonesia, and the Republic of Korea, 71 FR 68546, (November 27, 2006) (CFS Initiation).

In the Preliminary Determination, 72 FR at 17503, the Department found that the "provision of standing timber" (which is also referred to as stumpage) by the GOI was countervailable because the provision: (1) was specific under section 771(5A)(D)(iii) of the Act (limited to a group of industries); (2) provided a financial contribution under section 771(5)(D)(iii) of the Act (provision of goods or services other than general infrastructure); and (3) provided a benefit under section 771(5)(E)(iv) of the Act (goods or services are provided for less than adequate remuneration).

The Department found that the provision of standing timber by the GOI was specific, in accordance with section 771(5A)(D)(iii) of the Act, because it is available to a limited group of industries. Information provided by the GOI indicated that standing timber was provided by the GOI to five industries during the POI. These five industries compare to the 23 industries identified by the GOI that existed in Indonesia at the same level of industrial classification (large and medium manufacturing activities) at which the GOI classified the industries that harvest or consume timber. As such, we found that these five industries constitute a limited group of industries within the universe of 23 industries identified by the GOI. Therefore, we determined

[1] We refer to the PSDH, DR, and PSDA fees collectively as "stumpage fees."

that the provision of standing timber by the GOI was de facto specific in accordance with section 771(5A)(D)(iii) of the Act.

The Department found that the provision of standing timber provided a financial contribution as described in section 771(5)(D)(iii) of the Act. Specifically, the SMG/APP CFS forestry companies were provided goods (pulp timber) by the GOI. The Department preliminarily determined that the provision of timber provided a benefit as described in section 771(5)(E)(iv) of the Act, to the extent that the GOI received less than adequate remuneration, when measured against the market benchmark for stumpage. To measure the adequacy of remuneration for the Preliminary Determination, based on the criteria stipulated in 19 CFR 351.511(a)(2), the Department selected Malaysian export prices for various species of pulpwood as the most appropriate basis for deriving a market-based stumpage benchmark. See Preliminary Determination, 72 FR at 17503. On this basis, we preliminarily determined that there was a benefit because the stumpage fees paid by the SMG/APP CFS forestry companies were less than the benchmark stumpage rates. See id., 72 FR at 17503.

As discussed in the Preliminary Determination, 19 CFR 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration. See id., 72 FR at 17503. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (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.

The "first tier" benchmark in the hierarchy, according to the regulations, is an observed market price for the good, in the country under investigation, from a supplier located either within the country, or outside the country. See 19 CFR 351.511(a)(2)(i). Such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation. Thus, in order to meet the "first tier" benchmark hierarchy, the Department would need to identify an observed market stumpage price from a private supplier in Indonesia. Prior to the publication of the Preliminary Determination, the GOI had not provided any information on the sale of either privately-owned standing timber in Indonesia, or the stumpage fees charged by private timber companies. Furthermore, given the insignificant percentage of harvestable private land in Indonesia, the Department would not have been able to rely on any such private stumpage rates. As such, in the Preliminary Determination, the Department had no private stumpage data in Indonesia that could be evaluated for purposes of a "first tier" benchmark. See Preliminary Determination, 72 FR at 17503.

The "second tier" benchmark, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. See 19 CFR 351.511(a)(2)(ii). In selecting a world market price under this "second tier" approach, the Department will examine the facts on the record regarding the nature and scope of the market for that good to determine if

that market price would be available to an in-country purchaser. Prior to the preliminary determination, Respondents provided information regarding stumpage rates in the United States and argued that the Department should use U.S. stumpage rates as a benchmark. However, Respondents were unable to demonstrate that the types of U.S. timber they were suggesting for comparison purposes are grown in similar conditions as those in Indonesia, and are similar to the species harvested in Indonesia as pulpwood. As such, in the Preliminary Determination, the Department determined that U.S. stumpage prices do not satisfy the "second tier" benchmark requirements. See Preliminary Determination, 72 FR at 17503.

Respondents also provided information on Malaysian stumpage rates for acacia, one of the species used to produce pulp and paper products in Indonesia, as the appropriate basis for a "second tier" benchmark. However, the information Respondents provided was a study commissioned by them for purposes of this investigation, and consisted of a statement of opinion that included no supporting documentation to establish the authenticity of the figures used to calculate this benchmark rate. Additionally, the Department determined the Respondents did not address how Malaysian stumpage rates were representative of rates that would be available to a purchaser in Indonesia. As such, we determined that this data did not provide an appropriate basis for a "second tier" benchmark. See id.

Since we were unable to identify a benchmark under the "second tier" of the regulations, consistent with the hierarchy, we measured the adequacy of remuneration by using the "third tier" benchmark in the hierarchy as stipulated in 19 CFR 351.511(a)(2)(iii) (i.e., an assessment of whether the government price is consistent with market principles). The regulations do not specify how the Department is to conduct such a market principle analysis; the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis. See Preamble, 63 FR at 65377.

The GOI did not provide information or documentation which demonstrated that the stumpage fees it charges are established in accordance with market principles. Because the government could not demonstrate that the price for stumpage was set in accordance with market principles, we searched for an appropriate proxy to determine a market-based stumpage benchmark. See Preliminary Determination, 72 FR at 17504. As a result of the geographic proximity and the similarities of forest conditions, climate, and tree species between Indonesia and Malaysia, we selected Malaysian pulpwood export prices as the most appropriate starting point for deriving a market-based stumpage benchmark for purposes of the Preliminary Determination. See id. These export transactions reflected prices resulting from private transactions between Malaysian pulp log sellers and pulp log buyers in the international market. As such, we found that these transactions represented market-determined pulp log prices. See id. Accordingly, we used the value of pulp log exports from Malaysia during the POI, as reported in the "World Trade Atlas," as the starting point for determining whether the GOI is providing standing timber for less than adequate remuneration. See id.

The Respondents reported that acacia and MTH were the types of pulpwood that were harvested from HTI plantations for pulp and paper production in Indonesia, and that AA, WKS, SPA, RAL, and FI harvested one or both of these types of pulpwood from plantations during the POI. Accordingly, we calculated two unit values from the Malaysian export data: (1) one for acacia; and (2) one for MTH chipwood and logs. See id. To derive a market-based benchmark price for Indonesian stumpage, we then adjusted the Malaysian export pulp log prices to remove the Indonesian costs of extraction (harvesting) of the standing timber. See id. To determine the Indonesian harvesting costs (including a reasonable amount for profit associated with extraction), we used information contained in "Addicted to Rent: Corporate and Spatial Distribution of Forest Resources in Indonesia; Implications of Forest Sustainability and Government Policy" (Addicted to Rent). See Petition for the Imposition of Countervailing Duties: Coated Free Sheet paper from China, Indonesia, and South Korea, October 31, 2006 (CFS Petition), at Exhibit 8. This study, which was issued by the UK-Indonesia Tropical Forestry Management Programme, provided the only independent source that specifies extraction costs and profit in Indonesia. The amounts in this report are $17 for extraction costs and $5 for profit in connection with extraction. See Preliminary Determination, 72 FR at 17504. We subtracted these costs from the benchmark pulplog prices to derive a market-based stumpage benchmark price for Indonesia.

To measure the benefit for the provision of standing timber in the Preliminary Determination we first examined the stumpage fees paid by the SMG/APP CFS forestry companies for acacia and MTH chipwood (collectively, pulpwood) on a per-unit basis, based on the reported DR and PSDH fees accrued by Respondents. We then compared the derived stumpage benchmark prices to the stumpage fees and preliminarily determined that the GOI received less than adequate remuneration for the standing timber during the POI. See id., 72 FR at 17505. We then calculated a per unit benefit (in cubic meters) based on the difference between the benchmark prices and stumpage prices. We then multiplied the per-unit value by the appropriate acacia, MTH and log quantity. For acacia, we multiplied the per-unit value by the sum of AA and WKS' POI acacia harvest and AA's acacia purchases from affiliates RAL and FI. For MTH, we multiplied the per-unit value by AA, WKS, and SPA's POI MTH harvest. For logs, we multiplied the per-unit value by the sum of AA and WKS' log sales to IK and Lontar. Where necessary, the Department converted harvest and purchase quantities from metric tons to cubic meters using the FAO's conversion factor. See Calculations for the Preliminary Determination for PT. Pabrik Kertas Tjiwi Kimia Tbk and PT. Pindo Deli Pulp & Paper Mills, (March 29, 2007) (Preliminary Calculation Memo).

In their questionnaire responses and case brief, Respondents argued that the provision of standing timber was not specific because the use of forest resources is not restricted to a certain enterprise or industry, and no enterprise or industry receives a disproportionate right to use the forests. We have considered this argument, in the context of additional information gathered since the Preliminary Determination, the results of verification, and the rebuttal arguments. For purposes of this final determination, we continue to find, in accordance with section 771(5A)(D)(iii) of the Act, that the provision of standing timber is specific because it is available to only a limited group of industries (i.e., the wood processing industries). See Comment 10.

Respondents also argued that the GOI did not provide standing acacia to the SMG/APP CFS forestry companies, because acacia is grown by license holders on plantations, and therefore, the provision of standing timber does not provide a financial contribution (i.e., timber) to the SMG/APP CFS forestry companies in accordance with section 771(5)(D)(iii) of the Act for acacia. We have considered this argument in the context of additional information gathered since the Preliminary Determination, the results of verification, and the rebuttal arguments. The Department continues to find that the provision of pulp timber, whether from the government-owned natural forest or government-owned plantation land, provides a financial contribution (i.e., in the form of a good, standing timber) to the SMG/APP CFS forestry companies, in accordance with section 771(5)(D)(iii) of the Act. See Comment 9.

In their briefs, parties submitted comments regarding the appropriate basis for calculating stumpage benchmarks. See Comments 11, 12, and 13. After considering these arguments, in light of additional information gathered since the Preliminary Determination, timely new factual information placed on the record by Petitioner and Respondents, and the results of verification, the Department has determined that a few modifications are appropriate in our calculation methodology for measuring the benefit. First, based on information on the record and results of verification, we found that both the GOI and the cross-owned SMG/APP CFS group specifically differentiate between pulpwood (timber under 30 cm in diameter) and logs (timber over 30 cm in diameter), as well as between different species of pulpwood (i.e., acacia and MTH-BBS/KBK (MTH chipwood)). See, e.g., GOI Verification Report, at page 5; see also Respondents' May 8 Response, Exhibit 5. Second, information on the record shows that there were meranti and MTH (campuran) logs harvested by the SMG/APP CFS forestry companies that were sold to IK and Lontar for pulp production. See Comment 13. All purchases of pulpwood during the POI by the SMG/APP CFS pulp producers were from AA and WKS, two of the five cross-owned SMG/APP CFS forestry companies. AA and WKS sold to the SMG/APP CFS pulp producers pulpwood they harvested during the POI, pulpwood they purchased from the other three SMG/APP forestry companies, and pulpwood they purchased from unaffiliated suppliers, as well as a small quantity of meranti and campuran logs for pulp. In calculating the benefit under this program, we are seeking to establish a market-based benchmark that reflects the stumpage fees the SMG/APP CFS forestry companies should have paid for the timber they harvested. We find that by differentiating between pulpwood and logs, and between acacia and MTH chipwood, and between meranti logs and campuran logs, in establishing our benchmarks, our analysis more accurately reflects fees the company would have otherwise paid for these various types of timber. As such, we have determined that the most appropriate basis for calculating the benefit under the provision of standing timber is to use a species-specific benchmark for each of four distinct types of timber (acacia, MTH chipwood, meranti logs, and campuran logs).

Respondents argue that, where possible, instead of making adjustments to the Malaysian log export prices based on information from the Addicted to Rent study, the Department should calculate the benchmark rate based on a report by Prof. Dr. Shahwahid Othman. We continue to find, however, that the Malaysian export statistics and Addicted to Rent study the Department

used in the Preliminary Determination provides the most appropriate basis calculating the benchmark stumpage rates for our analysis. See Comments 11 and 12.

In addition, as explained in the Cross-Ownership section above, the Department continues to find that cross-ownership exists, as defined by 19 CFR 351.525, among and across TK, PD, Lontar, AA, IK, WKS, RAL, SPA, and FI (the SMG/APP CFS group). However, the Department has determined the three additional log suppliers found to be cross-owned in the Preliminary Determination are not cross-owned with the SMG/APP CFS group. Therefore, we are not including the volume of pulpwood supplied by these three additional companies in our calculations for this program in this final determination. See Cross-Ownership Analysis and Comment 8.

The Department has also determined that the actual PSDH, DR, and PSDA fees the logging companies paid during the POI should be used in the calculation. In the Preliminary Determination, the Department used what it believed to be the fees paid. See Preliminary Determination, 72 FR at 17505. However, we found at verification that the stumpage fees actually paid by many of the SMG/APP CFS forestry companies differ significantly from the fees due to the GOI. See Countervailing Duty Investigation of Coated Free Sheet (CFS) Paper from Indonesia: Verification of the Questionnaire Responses Submitted by Forestry Companies PT. Arara Abadi, PT. Wirakarya Sakti, PT. Finnantara Intiga, and PT. Riau Abadi Lestari, August 24, 2007 (Forestry Companies Verification Report), at pages 26-27. While the SMG/APP CFS forestry companies included in their accounts an amount that may ultimately be collected by the GOI, we did not find that these amounts were actually paid to the GOI during the POI. Furthermore, it was unclear whether such payments are collected by the GOI on any regular basis. Therefore, the Department has determined that using the PSDH, DR, and PSDA fees actually paid is more appropriate for measuring the adequacy of remuneration. As such, we have summed the PSDH, DR, and PSDA fees actually paid by the forestry companies during the POI and compared this amount to the market-based stumpage fees the SMG/APP CFS forestry companies should have paid during the POI.

To calculate the benefit received under this program, we first multiply benchmark prices for each of the four distinct types of timber (i.e., acacia, MTH chipwood, meranti logs, and campuran logs) by the appropriate harvest quantity. Where necessary, the Department converted harvest and purchase quantities using the Food and Agriculture Organization of the United Nation's (FAO) conversion factor to convert: metric tons to cubic meters for pulpwood; metric tons to cubic meters for logs; and staple meters to cubic meters. See Comment 19 and Final Affirmative Countervailing Duty Determination on Coated Free Sheet Paper from Indonesia: Analysis Memorandum on Calculations for PT. Pabrik Kertas Tjiwi Kimia Tbk and PT. Pindo Deli Pulp and Paper Mills, (October 17, 2007) (Final Analysis Memo).

After analyzing the parties' comments, we find that the FAO conversion factor for tropical pulpwood (1 metric ton to 1.33 cubic meters) is the most appropriate conversion factor to apply. Additionally, the Department will use the FAO's conversion factor for tropical saw logs and

veneer logs (1 metric ton to 1.37 cubic meters) when converting the meranti and campuran logs, which are classified as sawlogs (i.e., logs over 30 cm). As discussed above, the Department found that: 1) both the GOI and the cross-owned SMG/APP CFS group differentiate between pulpwood (i.e., logs under 30 cm) and logs (i.e., logs over 30 cm); and 2) the FAO conversion factor is more appropriate than the GOI's conversion factor. We find that the FAO's conversion factor (1 metric ton to 1.37 cubic meters) when converting logs (i.e., logs over 30 cm) is more appropriate than the GOI's.

The Department is also using the FAO's conversion factor (1 staple meter to 0.72 cubic meters) to convert FI's reported timber harvest. At verification, FI explained that, unlike the other SMG/APP CFS forestry companies, FI's final payment of DR and PSDH fees is based on the staple meter estimates in the field. See Forestry Companies' Verification Report, at page 14. Since the Department has found that the FAO conversion factor is more appropriate than the GOI's conversion factor, as described above, we find that the FAO factor for converting staple meters to cubic meters is more appropriate than the GOI's. The conversion factor FI used to convert staple meters to cubic meters is from the same source (i.e., the GOI) as the metric ton to cubic meter conversion factor that the Department has found to be unreliable. As such, the Department has the same concerns regarding the reliability of the GOI's staple meter to cubic meter conversion factor. Therefore, we conclude that it is more appropriate to use a conversion factor determined by an international authority (i.e., the FAO). Additionally, in order to maintain consistency, we conclude that it is preferable to use conversion factors from the same source. As such, we will convert FI's reported timber harvest from staple meters to cubic meters using the FAO's 0.72 conversion factor. See Final Analysis Memo.

To calculate the benefit conferred through stumpage fees charged for acacia, we are multiplying the benchmark price by the sum of AA's, FI's, RAL's and WKS' acacia harvest during the POI (SPA did not harvest acacia during the POI). Because only part of FI's harvest was shipped to AA, and because FI did not purchase any pulpwood from unaffiliated pulpwood suppliers, we excluded from the benefit calculation the volume of FI's pulpwood harvest that was sold to external parties outside the SMG/APP CFS group. To calculate the benefit conferred through stumpage fees charged for MTH chipwood, we are multiplying the benchmark price by the sum of AA's, WKS's, and SPA's MTH chipwood timber harvest during the POI (FI and RAL did not harvest MTH chipwood during the POI). See Final Analysis Memo.

In determining the benefit for logs (i.e., harvested timber over 30 cm in diameter that was sold to the SMG/APP pulp producers for pulp production), the Department is using the volume of logs sold by AA and WKS to IK and Lontar as the quantity for which to measure the benefit. We are using log sales to the SMG/APP CFS pulp producers rather than total harvest quantity because we are only capturing in our calculation benefits attributable to the pulp and paper production of the SMG/APP CFS pulp and paper producers. In the questionnaire responses, WKS reported separately its log sales to the SMG/APP CFS pulp producers of meranti and campuran. However, AA did not separately report log sales of meranti and campuran to the SMG/APP CFS pulp producers. Therefore, to calculate WKS' benefit for meranti logs, we are multiplying the

benchmark price for meranti logs by WKS' meranti sales to Lontar. To calculate WKS' benefit for campuran logs, we are multiplying the benchmark price for campuran logs by WKS's campuran sales to Lontar. However, since AA's log sales are not broken down (between meranti and campuran), the Department is unable to calculate the benefit to AA's log sales in the same manner. Therefore, the Department finds that the most appropriate basis to measure the benefit of AA's log sales to the SMG/APP CFS pulp producers is to calculate a weighted-average log benchmark (of the meranti and campuran logs) and to use the total volume of log sales to IK as the quantity for which to measure the benefit. See Final Analysis Memo.

After multiplying each stumpage benchmark by the appropriate harvest quantities, we summed all the values to calculate the total amount of fees that should have been paid at the market-based benchmark stumpage rate. To determine the benefit from the provision of standing timber for less than adequate remuneration, we subtracted the total of the actual PSDH and DR fees, plus the PSDA fees, paid by the SMG/APP CFS forestry companies, from the total amount of stumpage fees that should have been paid.

Based on the analysis of the comments, additional information gathered since the Preliminary Determination and the results of verification, we are making two adjustments in the denominator for this final determination. First, we are including external sales by CMI, the cross-owned home market reseller, during the POI, in the denominator. Second, since the respondent companies had already adjusted the reported sales for sales returns, claims and discounts, we are making no further adjustments to total sales value for such returns, claims and discounts. See Final Analysis Memo and Comment 21.

We then divided the benefit by the total external sales of the SMG/APP CFS pulp and paper producers, including sales through CMI (the total FOB sales values of the pulp and paper producers minus any cross-owned inter-company sales) to calculate the net countervailable subsidy rate. See Final Analysis Memo. The countervailable subsidy rate for this program is 14.21 percent ad valorem for the respondent companies, TK/PD.

2. GOI's Log Export Ban

The Department initiated an investigation of whether the GOI's ban on log exports provides a countervailable subsidy to the production of CFS paper. Petitioner alleged that by banning exports of logs, the GOI entrusts or directs domestic log suppliers to sell logs at suppressed prices to domestic consumers, thus providing a good to pulp and paper producers for less than adequate remuneration in accordance with sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act. See Initiation Checklist at 11. In the preliminary determination, we did not reach the issue of whether the GOI's log export ban was countervailable for two reasons. First, we found three logging companies, in addition to AA, WKS, RAL, FI and SPA, to be cross-owned with the respondent companies. See Preliminary Determination 72 FR at 17501. The pulpwood sold by these three companies as cross-owned logging companies was included in the Department's preliminary benefit calculation for the stumpage program. Id. 72 FR at 17505. When we added

the timber from these three additional cross-owned logging companies to that of the five cross-owned logging companies, we found that, in the aggregate, all of the wood sold to, and purchased by the two SMG/APP CFS pulp producers, IK and Lontar, was sourced from these eight cross-owned logging companies. Id. 72 FR at 17501. Since all of the wood purchased for pulp and paper production during the POI was sourced from these eight cross-owned logging companies, the entire benefit from the stumpage program was attributable to the downstream, external sales of the SMG/APP CFS pulp and paper producers, in accordance with 19 CFR 351.525(b)(6)(iv). Id.

Second, we also found in the Preliminary Determination that the calculation methodology used to determine the benefit provided to the cross-owned logging companies from the stumpage program necessarily included any benefit that might arise from the GOI's log export ban. Id. 72 FR at 17505-17506. Because, in the aggregate, the pulp and paper producers sourced all of their timber from cross-owned logging companies and because the benefit to the cross-owned logging companies from the stumpage program included any benefit that might arise from the GOI's log export ban, there was no need in the preliminary determination to address separately the countervailability of the log export ban. Id. 72 FR at 17505.

However, at verification, respondent companies demonstrated that the standards for cross-ownership were not met by the three additional logging companies which we had preliminarily determined to be cross-owned with the SMG/APP CFS paper group. See "Cross-Ownership" section above, for a complete discussion of our findings with regard to cross-ownership. Because these three logging companies are not cross-owned with the SMG/APP CFS group, we can no longer attribute the benefits they received from the stumpage program directly to the downstream, external sales of the SMG/APP CFS pulp and paper producers in accordance with 19 CFR 351.525(b)(6)(iv).

On July 13, 2007, Petitioner filed an upstream subsidy allegation stating that "{t}o the extent that the Department does not find an individual forestry company to be cross owned with the Respondent in this case, Petitioner provides information . . . that Respondents benefitted from upstream subsidies provided to these companies." See Petitioner's July 13, 2007 Upstream Subsidy Allegation at 1. As noted in the "Initiation and Deferral of Upstream Subsidy Investigation" section above, the Department has initiated on this allegation but has deferred the consideration of this program until the first administrative review, if a countervailing duty order is issued and such a review is requested.

Because our investigation of Petitioner's upstream subsidy allegation has been deferred, and because pulpwood was purchased by the SMG/APP CFS group from unaffiliated suppliers during the POI, the Department is now required to make a finding regarding the countervailability of the log export ban with respect to the production of CFS. The Department asked numerous questions in the original and supplemental questionnaires regarding the log export ban, and discussed the information provided by the GOI in their responses during verification. See GOI Verification Report at pages 10-11. Due to the uncertainty of whether it

would be necessary to evaluate the GOI's log export ban for the final determination, the parties addressed the log export ban in their case and rebuttal briefs, and have had a full opportunity to address the issue of whether the log export ban is a countervailable subsidy.

As noted above, Petitioner alleged that by banning exports of logs, the GOI entrusts or directs domestic log suppliers to sell logs at suppressed prices to domestic consumers, thus providing a financial contribution and a benefit in the form of a provision of a good for less than adequate remuneration in accordance with sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act. Petitioner also alleged that the log export ban is de facto specific in accordance with in section 771(5A)(D)(iii)(I) of the Act because it is limited to a group of industries that use logs as an input.

Petitioner alleged that the GOI bans the export of logs and that this export ban works hand-in-hand with the subsidized stumpage rates to provide downstream users with artificially low-cost raw materials. As a result, Petitioner claims that the log export ban forces loggers to sell logs to only a limited number of downstream users at suppressed prices. To support this claim, Petitioner cites a WTO trade policy review which stated that Indonesia's log export ban may "depress the domestic prices of logs, thereby assisting downstream processors of such products." See Initiation Checklist at 11.

According to Petitioner, the log export ban was originally imposed in 1985 and lifted in the late 1990s under pressure from the International Monetary Fund (IMF). See CFS Petition at 9. The GOI stated that log exports were briefly permitted from 1998 to 2001. See page 20 of the GOI's January 25, 2007 questionnaire response. The GOI reimposed a ban on log and chipwood exports in October 2001, when the Ministry of Forestry and the Ministry of Industry and Trade issued Joint Decree No. 1132/Kpts-II/2001 and No. N292/MPP/Kep/10/2001. As noted in this Decree, the stated intent was to stop the export of logs in order to reduce environmental degradation and to manage the forest in a sustainable manner. Id. at 20 and Exhibit 7. The GOI has export bans on eight categories of products that include "Forestry Products," under which logs and chipwood are listed, as well as rattan, certain sawn timber, and "train rail" made from wood. See Annex to Decree No. 07/M-DAG/PER/4/2005, included in Exhibit 7 of the GOI's January 25, 2007 questionnaire response. According to the GOI, these bans are implemented by preventing the issuance of export permits which are required for all products being exported. See page 21 of the GOI's January 25, 2007 questionnaire response.

Article 1(1) of the GOI's Joint Decree No. 1132/Kpts-II/2001 and No. N292/MPP/Kep/ 10/2001, provides for an outright ban on the export of logs and chipwood from Indonesia: "Log/chip woods export is {to} be stopped from {the} whole country region of Indonesian republic." See Exhibit 7 of GOI's January 25, 2007 questionnaire response. The Department finds that by means of this total ban on log exports, the GOI entrusts or directs domestic log suppliers to sell logs at suppressed prices to domestic consumers, thus providing a good to pulp and paper

producers for less than adequate remuneration in accordance with sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act.

The SAA at 926 notes that regulatory measures can be countervailed as indirect subsidies under section 771(5)(D)(iii) of the Act in cases involving a private entity being entrusted or directed to provide a good or service to producers of the subject merchandise.

> In the past, the Department . . . has countervailed a variety of programs where the government has provided a benefit through private parties. (See, e.g., Certain Softwood Lumber Products from Canada, Leather from Argentina, Lamb from New Zealand, Oil Country Tubular Goods from Korea, Carbon Steel Wire Rod from Spain, and Certain Steel Products from Korea.) The specific manner in which the government acted through the private party to provide the benefit varied widely in the above cases. Commerce has found a countervailable subsidy to exist where the government took or imposed (through statutory, regulatory or administrative action) a formal, enforceable measure which directly led to a discernible benefit being provided to the industry under investigation.
>
> In cases where the government acts through a private party, such as in Certain Softwood Lumber Products from Canada and Leather from Argentina (which involved export constraints that led directly to a discernible lowering of input costs), the Administration intends that the law continue to be administered on a case-by-case basis consistent with the preceding paragraph. It is the Administration's view that Article 1.1(a)(1)(iv) of the Subsidies Agreement and section 771(5)(B)(iii) encompass indirect subsidy practices like those which Commerce has countervailed in the past, and that these types of indirect subsidies will continue to be countervailable, provided that Commerce is satisfied that the standard under section 771(5)(b)(iii) has been met.

See SAA at 926. Furthermore, the Preamble, 63 FR at 65349, states that with regard to the meaning of "entrusts or directs" under section 771(5)(B)(iii) of the Act, "we do not believe it is appropriate to develop a precise definition of the phrase for purposes of these regulations. Rather, we believe that we should follow the guidance provided in the SAA to examine indirect subsidies on a case-by-case basis." With regard to the countervailability of export restraints as indirect subsidies, we have also noted the following in the Preamble, 63 FR at 65351:

> With regard to export restraints, while they may be imposed to limit parties' ability to export, they can also, in certain circumstances, lead those parties to provide the restrained good to domestic purchasers for less than adequate remuneration. This was recognized by the Department in Certain Softwood Lumber Products from Canada, 57 FR 22570 (May 28, 1992) ("Lumber") and Leather from Argentina, 55 FR 40212 (October 2, 1990)("Leather"). Further, as indicated by the SAA (at 926) and as we confirm in these Final Regulations, if the Department were to investigate situations and facts similar to those examined in Lumber and Leather in the future, the new statute would permit the Department to reach the same result.

As a preliminary matter, we observe that the GOI's log export ban in the instant case is not merely a partial restraint on exports; rather, the joint decrees impose a complete, outright ban that prevents any export of logs and chipwood by making such exports illegal. See GOI Verification Report at page 11. The GOI's complete ban on the export of logs was in place from 1985 through the POI, with the exception of a short period of time from 1998 to 2001. See GOI's January 25, 2007 questionnaire response at page 20. As a result, for 17 of the 20 years prior to the POI, the GOI's log export ban completely foreclosed log suppliers' access to any possible alternative to the domestic market.

This fact pattern can be contrasted to other types of export restraints, such as: quantitative export restrictions that curtail but still allow for some amount of exports, export duties, or various types of administrative or bureaucratic requirements (*e.g.,* certification requirements). Depending on the type, severity and other characteristics of the restraint, these "partial restraints" may allow for alternative sales outlets that are not available under an export ban which eliminates all such alternative sales outlets and would likely have a significant impact on the market dynamics of the product in question. A total export ban, especially one that has remained in effect for as long as the Indonesian log ban, therefore, stands out in terms of the scope and extent of its likely impact on the market for the product and players involved.

We find that this log export ban is not a mere policy pronouncement or exhortation; log suppliers are required to comply with the ban under threat of law, including criminal sanctions.[2] The GOI therefore exercises direction over these suppliers by imposing its legal authority to criminally prosecute any supplier who exports logs from Indonesia. The result is that log suppliers are limited to selling in the domestic market as directed by the government. This, as noted by the independent studies discussed below, resulted in an abundant supply of logs at suppressed prices that benefitted the downstream industries that use these logs, particularly the pulp and paper industry.

Turning to the empirical evidence on the impact that this ban has had on the log and downstream forestry products industry in Indonesia, we have reviewed the three independent studies on the log export ban in Indonesia that were provided by the GOI in Exhibit Supp-12 of the GOI's March 6, 2007 response.[3] Our analysis of these independent studies shows that the GOI's log export ban in fact induced log suppliers to sell logs domestically at suppressed prices to benefit

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[2] At verification the Ministry of Forestry officials noted cases where "they have previously identified companies that have committed customs fraud by completing false customs declarations and as a result, have subjected those companies to criminal sanctions." Id.

[3] The following three independent studies are found in Exhibit Supp-12 of the GOI's March 6, 2007 response: "Economic Adjustment and the Forestry Sector: Does Removing the Log Export Ban Matter Much?" published by the Centre for Strategic and International Studies (CSIS) (February 2004)("Economic Adjustment and Forestry Sector"); "Competitiveness and Efficiency of the Forest Product Industry in Indonesia" published by CSIS (February 2004)("Efficiency of Forest Product Industry"); and, "Can Indonesia Gain from Log Export Barriers?" published by CSIS (December 2002)("Gain from Log Export Barriers?").

Indonesia's downstream wood processing industries. More specifically, the evidence in these studies demonstrates that this export ban reduced the price of logs and chipwood, as well as the value of stumpage in Indonesia; it increased the incidence of illegal logging; it led to greater consumption of logs; and, it was specifically used to benefit the expansion of the downstream users of wood, particularly the pulp and paper industries.

Two of the independent studies submitted by the GOI conclude that the imposition of a log export ban in Indonesia acted as a subsidy which lowered the price of logs, and contributed to greater log consumption and illegal logging. The first study, Economic Adjustment and Forestry Sector, examines how the removal of the earlier log export ban in Indonesia affected the domestic wood processing industry.

> In addition, the rapid expansion of the pulp and paper industries in the 1990s has also put additional pressure on Indonesia's forests. The export ban/tax has basically acted as a subsidy, increasing demand for log consumption further. Subsequently, despite lower prices for domestic logs, consumption stayed at relatively high levels, and the gap between official supply and consumption capacity of wood-based industry is very likely filled by illegal logging.

Id. at 14. The authors of the study concluded that they could not prove empirically that the log export ban (noted as "LEB" in the study) had helped to reduce the rate of wood extraction; to the contrary, they found that "the removal of LEB decreased, instead of increased, log production." See Economic Adjustment and Forestry Sector at 13. This study therefore indicates that the log export ban caused an increase in log consumption and production and, thus, contributed to increased illegal logging. An increase in log production within the context of a log export ban would generally mean increased supply and availability of logs, which would clearly be beneficial to downstream users such as pulp and paper producers.

The findings of this first study also indicate that the actual impact of the ban was completely opposite from the GOI's rationale for imposing the ban, i.e., to protect forest resources. In contrast to the GOI's stated intent, this study draws a direct link between the log export ban and the financial contribution and benefit received by the wood processing industries from low log prices - a subsidy which encouraged greater consumption and illegal logging. Moreover, this study is not alone in identifying significant illegal logging that occurs in Indonesia. The record is replete with independent examples that illegal logging and environmental degradation continue to be rampant, rendering the GOI's log export ban an ineffective tool for protecting the environment but an effective means for ensuring the supply of low-cost pulpwood to downstream producers of pulp and paper products.[4]

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[4] See e.g. "Sustaining Indonesia's Forests: Strategy for the World Bank 2006-2009," published by the World Bank (June 2006) at page viii, in Exhibit 14 of USW's March 9, 2007 submission; also "The State of Forest: Indonesia" published by Forest Watch Indonesia and Global Forest Watch (2002) at page 39, in Exhibit 3 of USW's March 9, 2007 submission; also "Economics of Illegal Logging and Associated Trade" published by OECD Roundtable on

The second independent study provided by the GOI, Efficiency of Forest Product Industry, explains how the use of the log export ban in Indonesia increased rather than decreased log consumption by providing a subsidy to the downstream wood-based industries through artificially low domestic log prices. See Efficiency of Forest Product Industry at 6 and 16. In outlining its argument, this study provided the following explanations:

> First, basic economics of renewable resource theory suggests that for slow growing resources such as tropical forest, it is optimal in the eye of concessionaires to harvest the forests when the rate of growth of the timber equals the rate of return from processing the timber. Higher rate of return from timber processing would induce the concessionaires to harvest the forest as quickly as possible, increasing the rate of deforestation.
>
> {Second}, low stumpage value would also induce the concessionaires to use logs inefficiently, to build excessive new capacity and to waste the raw materials during harvesting as well as processing.
>
> Finally, the low stumpage value created disincentives for adopting resource saving technology in Indonesia.

Id. at 7. This study also explains that, with regard to the Indonesian wood-based industries, "the tremendous growth of production and export has been made possible through heavy subsidy, resulting in inefficiencies in harvesting and production." Id. at 16. Specifically, this study noted that since 1980, "Indonesia embarked on a program of massive expansion of its pulp and paper industry. The number of pulp and paper mills increased from 22 to 38 in 1989. Production of paper rose 24% a year from 403 thousand tons in 1984 to around 7 million tons in 2000." Id. at 5. This study found an "inefficiency impact of the log export ban due to the artificially low price of domestic logs," with the result that "the stumpage value was reduced by 33% under the log export ban policy." Id. at 6.

The third independent study provided by the GOI, Gain from Log Export Barriers?, states that the GOI intended the first log export ban to provide a subsidy to benefit downstream wood processing industries: "{t}oward the end of the 1970s, the Indonesia government began to impose log export barriers to encourage the growth of downstream wood industries . . ." This study further explained that "{s}everal economic studies on the impact of log export barriers in Indonesia between 1978 and 1989 suggest a substantial loss in government revenues through large implicit subsidies to the downstream processing industry and foregone revenues from log exports (see, for example, Gillis, 1988; Manurung and Buongiorno, 1997; and for a survey see Barbier et al., 1994)." See Gain from Log Export Barriers? at pages 1-2.

We also note that the effectiveness of the log export ban in reducing the price of logs is further demonstrated by the fact that during the short period when the ban was lifted, export prices for

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Sustainable Development (January 2007) at 22, in Exhibit 15 of USW's March 9, 2007 submission.

logs were significantly higher on average than domestic prices ($110 for export logs versus $80 for domestic logs). See GOI Verification Report at page 8 and Exhibit MOF-11 that includes copies of the April 21, 1999 and April 23, 1999 letters from the World Bank to the Ministry of Forestry. The information presented in the studies discussed above, as well as the information provided at verification showing the price disparity between export and domestic log prices, implicates the GOI and its use of the log export ban to subsidize downstream wood processing industries with low cost timber inputs. The GOI maintained and even re-imposed (in 2001) this log export ban in the presence of mounting empirical evidence that, not only was the ban not effective in furthering the ostensible goal of protecting forest resources and preventing illegal logging, this ban was promoting the opposite by distorting and flooding the market with timber.

Furthermore, the studies' conclusions have not been contradicted by any other record information. In imposing the log export ban, the GOI did not perform its own independent appraisal or assessment of whether it would be effective. Nor has the GOI conducted subsequent studies to evaluate whether the present ban has been effective in its stated purpose. Therefore, the GOI's purported purpose for the log export ban is not supported by evidence to substantiate its claim that imposing a ban would reduce the rate of deforestation and the occurrence of illegal logging.[5] Accordingly, the benefits of the log export ban to the downstream consumers, as noted in the studies, cannot reasonably be considered inadvertent or a mere by-product of the ban.

In sum, the totality of the record evidence refutes the GOI's claim that the log export ban is used to protect forest resources and prevent illegal logging, and that it is not "entrusting or directing" (or inducing) log suppliers to provide a financial contribution to the wood processing industries. To the contrary, these studies show that the GOI imposed or maintained the log export ban in order to provide lower priced inputs (i.e., logs and chipwood) to the industries that consume those inputs, which actually led to increased deforestation and greater illegal logging. Furthermore, these studies show that the pulp and paper industries are among the few beneficiaries of this indirect subsidy. Accordingly, we find that the GOI used its authority to impose a log export ban that directed these logs suppliers, under threat of criminal sanctions, to provide logs and chipwood for less than adequate remuneration to downstream wood processing industries. These industries include the pulp and paper industry that produces subject merchandise. As such, the log export ban provides a financial contribution in accordance with section 771(5)(D)(iii) of the Act. Furthermore, the log export ban provides a benefit (discussed further, below) to the extent that the prices paid for pulpwood and chipwood purchased by the cross-owned companies in the SMG/APP CFS production and sales chain from unaffiliated forestry companies are less than benchmark log prices.

In determining whether the log export ban was specific as a matter of law in accordance with section 771(5A)(D)(i) of the Act, we examined the two government decrees provided by the GOI which first reimposed the export ban on logs and chipwood, and later identified all the product

[5] The GOI reported that it "has not conducted any studies but is aware that several independent groups have done so, none of which the GOI endorses." See GOI's January 25, 2007 questionnaire response at page 25.

categories and the relevant Harmonized Tariff System (HTS) subheadings that fell under those categories which were subject to an export ban. The first GOI decree banned the export of logs and chipwood. See Exhibit 7 of GOI's January 25, 2007 response and Article 1(1) of the GOI's Joint Decree No. 1132/Kpts-II/2001 and No. N292/MPP/Kep/10/2001. A subsequent decree issued by the GOI identified only eight industries which were affected by an export ban, and a small subsection of products within these industries which included a small number of HTS subheadings (33 discrete HTS subheadings were provided at mostly the six-digit and eight-digit level). One of these eight industry categories included "Cultural Products" (referred to as "Ancient things with cultural value") for which there is no designated HTS subheading nor an associated industry. Thus, we have not included this category in our analysis in finding that only seven industries benefitted from an export ban. Id. at Annex to Decree No. 07/M-DAG/PER/4/2005. Based on this information, we find that the GOI's decree banning the export of a small subsection of products in seven industries, and its specific decree banning the exports of logs and chipwood in particular, are de jure specific within the meaning of section 771(5A)(D)(i) of the Act since it is restricted by law to only a limited group of industries and because it covers only a small, discrete number of products within each of these seven industries.

Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (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. The preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country, or outside the country (the latter transaction would be in the form of an import).

In the instant case, there are no meaningful or usable private prices for logs or actual import prices to evaluate for purposes of identifying a "first tier" benchmark. As explained under Comment 11, "Use of Malaysian Export Statistics as the Starting Point for Deriving the Stumpage Benchmarks," below, the GOI owns virtually all harvestable forest land and there is only a minuscule amount of private forest land. See GOI Questionnaire Response, at page 13 where the GOI reported 57 million hectares of public harvestable forest land and only 233,811 hectares of private forest land which is equivalent to 0.4 percent of the total harvestable forest land in Indonesia. This fact alone would render any private prices unusable in accordance with 19 CFR 351.511(a)(2)(i). We also note that all logs, including logs harvested from private land, are subject to the export ban. As such, we find that it is not possible to determine a private price benchmark in Indonesia for the GOI's log export ban.

As discussed in more detail under Comment 11, we have found that the purchase documentation regarding two private log purchases from Malaysia placed on the record by Respondents does not provide an appropriate alternative to use in this analysis. One of the two purchases occurred in

2007, outside of the POI; the other purchase involved a sale for which we are unable to evaluate the reliability of the sale and the price. See Comment 11. Finally, we have no information on the record regarding official import statistics on the quantity and value of pulpwood imports, nor did any of our cross-owned companies in the CFS production and sales chain import any logs or pulpwood during the POI.

We next looked for a "second tier" benchmark which, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. In selecting a world market price under this second approach, the Department will examine the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. The Department finds that the public export statistics of Malaysian pulpwood reported in the World Trade Atlas are reliable for establishing a benchmark under the "second tier" as a world market or alternative price that would be available in Indonesia.

As we noted in the Preliminary Determination 72 FR at 17504, Indonesia and Malaysia share the same geographic proximity and similarities of forest conditions, climate, and tree species, and that the chipwood and logs from these Malaysian trees were exported to Indonesia as well as many other countries during the POI. Accordingly, we have selected as our "second tier" benchmark species-specific Malaysian export prices as published in the World Trade Atlas as representative of market-determined prices for chipwood and logs. We do not find the additional information placed on the record by Respondents following the publication of the preliminary determination concerning Sabah Forestry Department Statistics to provide an appropriate alternative to use in this analysis. The Sabah Forestry Department statistics do not provide the export data by HTS number, nor do these statistics differentiate between pulpwood and sawlogs, a key distinction in our analysis. See Comment 11.

We compared these species-specific Malaysian export prices to the unaffiliated pulpwood suppliers' weighted-average prices for chipwood and acacia sold to the SMG/APP forestry companies during the POI, and calculated a per cubic meter benefit for chipwood and acacia. We then multiplied the volume of chipwood and acacia pulpwood purchased by the SMG/APP CFS forestry companies, on a cubic meter basis, by the appropriate per cubic meter benefit.

We capped the quantity for each type of pulpwood (acacia and MTH) used in the LEB benefit calculation by the lower of the total quantity, by species, purchased by IK and Lontar during the POI (after deducting the harvest quantity used in the stumpage calculation) or the total quantity, by species, purchased by the SMG/APP CFS forestry companies from unaffiliated suppliers during the POI. We consider the application of the second cap appropriate because, based on the companies' pulpwood purchase and sales information, there is insufficient information to include in the benefit calculation any quantity beyond what the SMG/APP CFS forestry companies purchased from unaffiliated suppliers.

We then summed the benefit for each species. In addition, we made an adjustment to the benefit amount; however the information concerning this adjustment is business proprietary. Therefore, we have included a discussion of the adjustment in the Final Analysis Memo. We then divided this benefit by the sum of external sales values of the SMG/APP CFS pulp and paper producers. We have not included in the denominator any external sales by the SMG/APP CFS forestry companies because, just as with stumpage, we are capturing in our benefit calculation only pulpwood sold to the SMG/APP CFS pulp and paper companies. Furthermore, we have not included in this log export ban calculation any cross-owned forestry/logging companies' harvested pulpwood, since we have captured any benefit they receive from the log export ban in the stumpage benefit calculation. On this basis, we calculate a subsidy of 3.11 percent ad valorem for the respondent companies TK/PD.

3. Subsidized Funding for Reforestation (Hutan Tanaman Industria or HTI Program): "Zero Interest" Rate Loans

The GOI reported that "zero interest" rate loans were available to some holders of HTI licenses; such licenses are issued for harvesting timber from plantations. The GOI has reported that there are three types of plantations in Indonesia: (1) privately owned, (2) voluntary HTI joint ventures, and (3) compelled HTI joint ventures which implement transmigration policy. Of these three types of plantations, only HTI joint ventures could apply for zero-interest rate loans.

The GOI reported that the loaned amounts came from the DR Fund. The HTI joint venture could apply for zero-interest loans from the DR Fund for the establishment phase of the plantation. According to the GOI, loan amounts were payable to the joint venture in increments based on the amount of harvesting done each year and the total amount of the loan could not exceed 32.5 percent of the calculated plantation costs. The GOI required that the private party guarantee the loan repayment in full. In 2000, the GOI discontinued funding joint ventures through the DR Fund loan programs, although existing joint ventures which had previously obtained loans through the DR Fund would receive loan disbursements and would be required to make loan payments as required by loan agreements finalized before 2000.

The respondent companies reported and the Department verified that, of the cross-owned SMG/APP forestry companies, only RAL and FI received "zero interest" loans prior to 2000 that remained outstanding during the POI. These loans provide a financial contribution as described in section 771(5)(D)(i) of the Act, as a direct transfer of funds in the form of loans. The loans give rise to a benefit in the amount of the difference between the amount of interest the borrowers actually paid and the amount of interest the borrowers would have paid on a comparable commercial loan under section 771(5)(E)(ii) of the Act. The loan program is de jure specific within the meaning of section 771(5A)(D)(i) of the Act, because participation in the program is limited to HTI joint venture plantations. Therefore, we determine that these loans confer countervailable subsidies.

To calculate the benefit (the amount of the interest savings), we applied the benchmark interest rate described in the "Loan Benchmark and Discount" section above to the average loan balance outstanding during the POI for both RAL and FI. We then divided the amount of interest savings by the total external sales value of all companies in the SMG/APP CFS group, including CMI, as discussed in the "Cross-Ownership" section. Thus, we determine the countervailable subsidy from the HTI zero-interest rate loan program to be 0.01 percent ad valorem for the respondent companies TK/PD.

4. Debt Forgiveness Through the GOI's Acceptance of Instruments that Had No Market Value

Petitioner alleged that the GOI, through IBRA, accepted SMG/APP's shares in its affiliated bank, Bank Internasional Indonesia (BII), for debt repayment at a time when BII was in financial collapse and its shares were essentially worthless. The shares were worthless, Petitioner claimed, in large part due to the fact that BII's primary borrower, SMG/APP, was itself in default on its own loans that it received from BII. Petitioner contended that IBRA's acceptance of these allegedly worthless shares for debt repayment constitutes debt forgiveness within the meaning of section 771(5)(D)(i) of the Act. Petitioner contended that this transaction could also constitute a financial contribution within the meaning of section 771(5)(D)(iv) of the Act because the GOI's purchase of a financial good (the allegedly worthless shares in BII) was for more than adequate remuneration. Petitioner explained that IBRA provided a benefit to SMG/APP to the extent that the value of the debt forgiven by the GOI, through IBRA, was greater than the value of the shares accepted for the debt repayment, and that IBRA's acceptance of shares for debt repayment was limited to a specific enterprise. See the Memorandum to Barbara E. Tillman, Director, Office of AD/CVD Enforcement 6, Countervailing Duty Investigation: Coated Free Sheet Paper from Indonesia; New Subsidy Allegations, dated March 15, 2007 (NSA Initiation Memo).

The Department determined that the requirements of section 702 of the Act were met and initiated an investigation of this transaction. See NSA Initiation Memo. The Department issued questionnaires to Respondents requesting information about this transaction. Respondents provided information about the transfer of BII shares, which they explained occurred as part of a transaction that also involved a $90 million cash payment and the transfer of "Certificates of Entitlement" (COEs). See GOI Verification Report at 17. The COEs were financial instruments that represented a bank's former shareholder's right to repurchase bank shares. See GOI Verification Report at 24. COEs were issued to the Widjaja family when the GOI, through IBRA, assumed the SMG/APP loan assets from BII's balance sheet in an effort to strengthen the bank's financial condition and restore it to a healthy operating condition. See GOI Verification Report at 17. Respondents further stated that this transaction did not affect the debt of companies in the SMG/APP CFS group. See Post-Preliminary Analysis at 7. Neither the GOI nor the respondent companies provided in their questionnaire responses the requested list identifying the SMG/APP CFS companies affected by this transaction. Based on this information, the Department proceeded to verification with the understanding that no SMG/APP CFS company had its debt reduced as a result of this transaction. At verification, the Department

found, as reported, that the companies whose debt was repaid with BII shares are operating companies that have no connection to the SMG/APP CFS group of companies. See Post-Preliminary Analysis at 11.

However, during verification, the Department learned that COEs in BII had been used in this transaction for partial debt repayment for some of the holding companies with shareholdings in the SMG/APP CFS group. In particular, some of Purinusa's debt had been repaid, and all debt had been repaid for the holding companies which together with Purinusa hold all of the shares in one of the SMG/APP CFS forestry companies. See Post-Preliminary Analysis at 12. Because Respondents reported that COEs had not been used to reduce the debt of any companies in the SMG/APP CFS group, and the results of verification showed otherwise, in the Post-Preliminary Analysis the Department relied upon facts available for its analysis of this program. See section 776(a) of the Act. In addition, the Department preliminarily determined that Respondents did not cooperate to the best of their ability because this information had been available but was not provided, and applied adverse inferences to its analysis of record information. See section 776(b) of the Act; Post-Preliminary Analysis at 11.

Based on our analysis of evidence on the record, and our consideration of whether to apply adverse inferences, we preliminarily determined that IBRA's acceptance of COEs as debt repayment to be a company-specific action in accordance with section 771(5A)(D)(iii) of the Act. Because these COEs had no market or commercial value, we preliminarily determined that the GOI's decision to allow SMG/APP to repay its debt with COEs constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act. We preliminarily determined that IBRA's acceptance of the COEs as partial debt repayment conferred a benefit to TK and PD in the amount of the debt repaid with the valueless COEs, as provided by section 771(5)(E)(ii) of the Act. See Post-Preliminary Analysis at 12.

In its initial questionnaires to Respondents regarding this transaction, the Department requested information such as regulations and documentation addressing the manner in which the GOI, through IBRA, valued shares and other non-cash assets used to repay debt obligations, as well as documentation concerning the effect of the transfer of BII shares on the outstanding debt of SMG/APP. In its questionnaire response, the GOI stated that "Information Delivery Factors" hampered its ability to fully respond, citing the 2004 transfer of asset management functions from IBRA to the Asset Management Corporation, the large number of accounts that IBRA managed, and the short time frame available in which to produce the requested information. See Post-Preliminary Analysis at 6. The Department informed the GOI that its questionnaire response was "unresponsive and inadequate," and provided the GOI with additional time to resubmit its questionnaire response. The GOI provided a timely and responsive re-submission of this questionnaire response, which the Department examined. The respondent companies provided a response to the Department's questionnaire, and a response to the Department's subsequent supplemental questionnaire. See Post-Preliminary Analysis at 7.

Respondents' questionnaire responses stated that the transfer of BII shares to IBRA did not result in the reduction of debt owed by TK, PD, Lontar, and IK (the PIOCs), or by their parent company Purinusa. When we asked TK and PD to identify each of the SMG/APP companies whose debt was repaid in this transaction, TK and PD stated that the "debt concerned other SMG companies that were not cross-owned with the PIOCs or Purinusa." In addressing this debt, TK and PD for the first time identified the use of both BII shares and COEs as the means by which IBRA acquired 100 percent ownership of BII, and by which the corresponding debt owed by these companies was reduced. TK and PD stated that the "transfer and valuation of the shares and the corresponding reduction in debt did not stem from action by the GOI, or from an agent of the GOI, and thus, there could not have been a countervailable benefit." Questionnaire responses from the GOI also stated that there was no reduction in the debt owed by the PIOCs to IBRA as a result of this transaction. See Post-Preliminary Analysis at 8. No other information was provided in response to our questions to the GOI regarding IBRA's practice in accepting shares and other non-cash assets, or in response to our questions to TK and PD about which SMG/APP companies' debt was repaid, and in what amounts, in this transaction.

The Department issued verification outlines to Respondents specifically requesting that both the GOI and the respondent companies, TK and PD, be prepared to demonstrate that none of the companies whose debt was paid in this share transfer transaction were directly or indirectly involved in the production or sales of CFS. The Department also requested that the GOI be prepared to review, discuss, and provide documentation supporting how the actual value of the COEs used in this transaction was calculated, and information showing the current disposition of the BII shares that were transferred to IBRA. See GOI Verification Report.

At verification, GOI officials explained that COEs were financial instruments issued by IBRA to a bank's shareholders at the time IBRA assumed non-performing loans (NPLs) from a bank's balance sheet. COEs functioned as options that required these shareholders to repurchase their shares in the bank from IBRA, using the proceeds of IBRA's sale of the bank's loan assets. IBRA issued COEs to the bank's former shareholders, and effectively became the creditor pursuing collection, restructuring, or disposal of the NPLs. The proceeds of the NPL disposal, less IBRA's costs, would be returned to the bank owners, who were required to use the proceeds to repurchase the bank shares from IBRA.

The Department learned at verification that, contrary to what was reported by the GOI and the respondent companies, the debt repaid through the use of COEs actually included some debt of holding companies with shareholdings in companies in the SMG/APP CFS group. See GOI Verification Report at 20, IBRA Exhibit 9.

Because Respondents reported that the COEs had not been used to reduce the debt of any companies in the SMG/APP CFS group, and because the Department learned during verification that such debt was repaid with COEs, the reported non-use by cross-owned companies in the SMG/APP CFS group of this alleged debt forgiveness was unverifiable. Accordingly, the Department relied upon facts available for its analysis of this program. See Post-Preliminary

Analysis at page 11. In addition, we determined that Respondents did not cooperate to the best of their ability because they failed to identify prior to verification, despite our requests to do so, the individual companies whose debt was repaid with BII shares and other non-cash assets (notably, the COEs). Therefore, in accordance with section 776(b) of the Act, we determined that it is appropriate to use an adverse inference in our examination of record information. See section 776(a) of the Act; "Application of Facts Available and Use of an Adverse Inference" section above; and Comment 26, below.

The Department is not discounting Respondents' submissions in their entirety. For the Post-Preliminary Analysis and for this determination, the Department has used information provided by the GOI that we were able to verify, such as information regarding the identity of the companies whose debt was paid with COEs, and the amount of debt that was repaid with these COEs. We are only measuring the benefit from COEs used to repay the debt of companies that are holding companies of companies in the SMG/APP CFS group. However, we have no information regarding specificity because, prior to verification, Respondents had reported that BII shares and COEs had not been used to repay the debt of Purinusa or any of the companies in the SMG/APP CFS group, and had used this answer to explain that all of the Department's other questions regarding specificity, financial contribution, and benefit were not relevant.

We proceeded to verification with the information from Respondents' questionnaire responses that only SMG companies with no connections to the production of CFS had their debt repaid with BII shares or COEs. While TK and PD were able to satisfactorily demonstrate non-use with respect to the BII shares, we could not establish non-use with respect to payments made with COEs. At verification, the Department learned for the first time that some of companies whose debt was paid with COEs are holding companies with ownership interests in companies in the SMG/APP CFS group. See GOI Verification Report, IBRA Exhibit 9. Therefore, based on adverse facts available, we continue to find that IBRA's acceptance of COEs as payment to be a company-specific action of the GOI, in accordance with section 771(5A)(D)(iii) of the Act.

Under 19 CFR 351.525(6)(i), a subsidy to a parent or holding company is attributable to the companies it owns. In the instant case, a subsidy (in the form of debt forgiveness) to holding companies with ownership interest in the SMG/APP CFS group is attributable to companies it owns. We are not attributing to the SMG/APP CFS group the benefits arising from the use of COEs to repay debt of operating companies or holding companies not connected through ownership to the SMG/APP CFS group.

Record information shows that these COEs were non-transferable, non-negotiable, and had no market or commercial value. See GOI Verification Report at 27. COEs only had value to the extent they were used to repurchase previously-owned bank shares back from IBRA. In other words, this was not an equal value-for-value transaction; SMG/APP was allowed by the GOI to use an instrument with no commercial monetary value in the market to repay its debt obligations to the government. Thus, we conclude that these COEs had no value, and we determine that the GOI's decision to allow SMG/APP to repay its debt with COEs constitutes a financial

contribution within the meaning of section 771(5)(D)(i) of the Act in the form of debt forgiveness. Moreover, IBRA's acceptance of the COEs from SMG/APP as partial repayment of its debt conferred a benefit to TK and PD in accordance with section 771(5)(E)(ii) of the Act in the amount of the debt repaid with the valueless COEs.

To calculate the benefit, 19 CFR 351.508(a) provides that a benefit exists equal to the amount of the principal and/or interest that the government has forgiven, and that we will treat this benefit as a non-recurring subsidy in accordance with 19 CFR 351.508(c)(1). Under 19 CFR 351.508(b), in the case of debt forgiveness, we normally will consider the benefit as having been received on the date on which the debt was forgiven.

Petitioner alleged that TK and PD were uncreditworthy beginning in 2001 and thereafter, and the Department initiated on this allegation. See CFS Petition. Accordingly, we investigated whether SMG/APP was uncreditworthy at the time of SMG/APP's payment of COEs to IBRA in June 2002 as partial repayment for its debt obligations. Based on our examination of record information, we determine that companies in the SMG/APP CFS production chain were uncreditworthy at the time of SMG/APP's payment of COEs to IBRA in June 2002. See the "Creditworthiness" section above. Therefore, we have included a risk premium in the discount rate used to allocate the debt forgiveness benefit, calculated according to the methodology described in 19 CFR 351.505(a)(3)(iii).

We have allocated the benefits over an AUL of 13 years. See "Allocation Period," above. In allocating these benefits, we used the Department's standard allocation methodology for non-recurring subsidies under 19 CFR 351.524(d). We used as our discount rate the "Lending Rate (Foreign Currency)" for the year in which the debt was forgiven as published in the International Monetary Fund's International Financial Statistics (September 2007), to which a risk premium was added.

To calculate the subsidy rate, we divided the benefit allocated to the POI by the total external sales value of all companies in the SMG/APP CFS group, including CMI, as discussed in "Cross-Ownership," above. On this basis, we determine the countervailable subsidy rate from IBRA's acceptance of valueless COEs as partial repayment for the CFS parent/holding companies' debt obligations to be 0.75 percent ad valorem for the respondent companies TK/PD.

5. Debt Forgiveness through SMG/APP's the Buyback of Its Own Debt from the GOI

Petitioner alleged that the GOI provided debt forgiveness when IBRA sold $880 million of SMG/APP debt for $214 million to Orleans Offshore Investment Ltd. (Orleans), which Petitioner alleged is affiliated with SMG/APP. Petitioner contended that by allowing Orleans, an alleged agent of SMG/APP, to buy SMG/APP debt at a steep discount, the GOI provided a financial contribution to SMG/APP in the form of debt forgiveness within the meaning of section 771(5)(D)(i) of the Act. Petitioner alleged that in accordance with 19 CFR 351.508(a), IBRA's

debt forgiveness provided a benefit to SMG/APP in the amount of the debt forgiven (the difference between the face value of the original debt plus accrued interest, less any payment made by SMG/APP, and the amount paid by Orleans) when it allowed SMG/APP's alleged agent to purchase SMG/APP debt at a steep discount. Petitioner contended that this subsidy is specific, consistent with sections 771(5A)(D)(iii)(I)(II)(III) and (IV) of the Act, because it was illegal under Indonesian law to sell back debt to agents of the debt owners; such action, Petitioner claims, is contrary to law, and is evidence of government discretion, and shows that this was an individual transaction targeted at a single enterprise. See NSA Initiation Memo.

The Department determined that the requirements of section 702 of the Act were met and initiated an investigation on this transaction. See NSA Initiation Memo. The Department issued questionnaires to Respondents and requested information from the GOI including, but not limited to: a description of IBRA's process for selling debt in general and a description of the SMG/APP debt sale specifically (including all of the bid packages), along with all related documents, the sale and purchase agreement between IBRA and Orleans; the documentation that Orleans was required to provide to IBRA supporting Orleans' statement that they were not the original owner, or affiliated with the original owner, of the SMG/APP debt purchased; and, documentation regarding how SMG/APP's debt was transferred to Orleans. TK and PD were asked to provide information including, but not limited to: details regarding the nature of any relationships between or among any of the SMG/APP companies (including their owners; commissioners or directors; or members of the Widjaja family, owners of SMG/APP) and Orleans and a description of any liens on SMG/APP assets or other agreements and obligations with respect to the debt sold to Orleans. As discussed above, the GOI cited "Information Delivery Factors" which it claimed hampered its ability to respond fully. TK and PD's May 10, 2007 questionnaire response stated that "there is no relationship between any SMG/APP companies (and their owners, commissioners, directors or members of the Widjaja family) and Orleans."

The GOI did not provide the Department with Orleans' registration and bid package (which we learned at verification would have included Orleans' articles of association showing Orleans' shareholders), documentation regarding its own internal procedures for reviewing and evaluating submitted bids in general, or other requested documentation that detailed IBRA's sales of non-performing loan assets, which the Department had requested. Although Indonesian law requires the GOI to retain its records for 15 years, the GOI was unable to provide most of the requested information to the Department. While the GOI did provide the Department with Orleans' "Letter of Compliance," which includes Orleans self-certification that it was not affiliated with SMG/APP (See Post-Preliminary Analysis at 20), this pro forma document alone is not sufficient for a meaningful analysis of the alleged affiliation between Orleans and SMG/APP. As such, the Department relied upon facts available for its analysis of this program. In addition, the Department preliminarily determined that the GOI significantly impeded the Department's investigation of this allegation by not cooperating to the best of its ability, and applied adverse inferences to its analysis of record information, as provided by section 776(b) of the Act. See Post-Preliminary Analysis.

Based on our examination of evidence on the record, and our consideration of whether to apply adverse inferences, we preliminarily determined that Orleans is affiliated with SMG/APP. Because we preliminarily determined that Orleans is affiliated with SMG/APP, and because it was illegal under Indonesian law for original debt holders to buy back their own debt through affiliated parties, we preliminarily determined that the sale by IBRA of SMG/APP debt to Orleans was company-specific, consistent with section 771(5A)(D)(iii) of the Act. We found that this transaction constituted a financial contribution to SMG/APP in the form of debt forgiveness within the meaning of section 771(5)(D)(i) of the Act, because we found that Orleans is an affiliate of SMG/APP. Moreover, as provided by 19 CFR 351.508(a), this transaction provided a benefit to SMG/APP in the amount of debt forgiven (the difference between the total value of the SMG/APP debt as sold by IBRA and the amount paid by SMG/APP, through Orleans, for its own debt).

Under the GOI's Regulation SK-7/BPPN/0101, IBRA was prohibited from selling assets that were under its control back to the original owner, or to a company affiliated with the original owner. The GOI stated that the mechanism IBRA had in place to ensure that these rules were not violated was a requirement that any potential purchaser of debt from IBRA provide a self-certification stating that it was not affiliated with the original debtor. While Article 3 of Regulation SK-7/BPPN/0101 contains a provision for IBRA to conduct due diligence on the "financial condition of the prospective purchaser or on the status of its affiliation with the Original Owner," IBRA did not exercise this provision with regard to the sale of the SMG/APP debt to Orleans, and relied on Orleans' statement of no conflict of interest submitted in Orleans' Letter of compliance and purchase documentation.

The debt purchased by Orleans had a total value of approximately $880 million. During the period when IBRA made the decision to sell the SMG/APP debt to Orleans, IBRA was under increasing public scrutiny amid claims that it was providing special deals to large corporate groups, and was allowing a number of these groups to buy back their own debt. Information on the record, including a report from the World Bank, indicates that "some IBRA sales allegedly allowed debtors to buy back their loans at a steep discount through third parties, against its rules, raising further concerns about transparency." See Post-Preliminary Analysis at 20. Record information also indicates that lawsuits had been filed against SMG/APP, in which court records include speculation that the Widjaja family (owners of SMG/APP) was buying up its own debt through third parties. See Post-Preliminary Analysis at 20.

As discussed in detail in the GOI Verification Report, the Department was only able to review a very small number of requested documents that were part of the sale of SMG/APP debt to Orleans. The GOI did not provide the crucial documentation that Orleans would have provided to IBRA, such as Orleans' bid registration documents, including Orleans' articles of association, which would have identified its shareholders. Nor did the GOI provide the Department with the complete bid packages submitted by all of the bidders for the SMG/APP debt that may have provided us with details regarding ownership of the other bidding companies. Additionally, the GOI did not provide the Department with any information regarding its own internal procedures

for reviewing and evaluating the submitted bid documents, such as internal memoranda or records of the procedural aspects of soliciting the bids and selecting the winner. Thus, the Department was unable to evaluate the procedures followed for the sale of the SMG/APP debt in order to consider whether normal procedures were followed, or whether company-specific exceptions were made in this case. Given that a World Bank report expressed concern that IBRA was selling debt back to the original debt holder, and given news reports that SMG/APP had been allowed to buy back its own debt (see CVD Investigation of Coated Free Sheet Paper From Indonesia/New Subsidy Allegation, dated December 15, 2006 (New Subsidy Allegation) at Exhibits 8 through 11, and Exhibits 13 through 16; see also the respondent companies' December 26, 2007 submission at Attachment 1, page 13), the requested documents were crucial for the Department's evaluation of whether Orleans is affiliated with, or acting on behalf of, SMG/APP or the Widjaja family.

During verification, it became apparent that the GOI's Ministry of Finance, which was responsible for IBRA, did not undertake a serious effort to gather information related to the sale of SMG/APP debt to Orleans until approximately one month before the start of verification. We also learned during verification that a concerted effort to search for the archived files that contained documents regarding this transaction was not undertaken until just a few days before the start of verification.

At verification, we also learned that the sale of SMG/APP debt to Orleans was one of only five sales conducted under the Strategic Asset Sales Program, which was a special program established by the GOI to manage the sale of the assets of companies which the GOI had identified as having particular social or economic significance. See GOI Verification Report at 30. The Strategic Asset Sales Program was created by IBRA to address situations in which the assets held by IBRA were very large, and were a combination of loans and equity. According to the GOI, if the "obligors" whose debt was managed under the Strategic Asset Sales Program were to fail, there would be significant social consequences. The GOI explained that although SMG/APP's situation only involved loans, the size and complexity of SMG/APP's debt, and the number of employees potentially adversely affected by SMG/APP's failure, resulted in SMG/APP's placement in this special program. See GOI Verification Exhibit at 31.

Unique among IBRA programs, bidders in the Strategic Asset Sales Program were required to provide a business plan for the continued operation of the obligor, and bids for the obligor's debt would be evaluated not on price alone, but also on the strength of the accompanying business plans. However, GOI officials explained that no business plan was required for the bidders of the SMG/APP debt because there was no equity held by IBRA. There were other conditions placed on bidders, though. The winning bidder of the SMG/APP debt had to: (1) purchase the debt on an "as is" basis; (2) abide by the terms of the "Master Restructuring Agreement" (MRA) (which stated the debt repayment terms between the PIOCs and their creditors); (3) agree not to transfer the SMG/APP debt to another party until the MRA became effective; and, (4) adhere to the conditions set forth in the June 2002 Memorandum of Understanding between IBRA and the

Export Credit Agencies that were participating in the SMG/APP debt restructuring process. See GOI Verification Report at 31.

At verification, the GOI stated that IBRA had managed over 300,000 NPLs, and that it was difficult to locate the information the Department requested. As discussed in the GOI Verification Report at 40, 57-59, the Department gave the GOI a number of opportunities to provide the Department with requested documentation that would allow for an examination of the alleged affiliation between Orleans and SMG/APP. The GOI claimed that it was hampered in its attempts to provide the requested documents by IBRA's closure, the return of its employees to the private sector, and the remote storage of records related to more than 300,000 accounts. However, the Department was requesting information on one of only five debtors assigned to the Strategic Assets Sales Program, a program created by IBRA to address the debt of companies whose failure would have had the most significant social and economic implications. Furthermore, the GOI's Supreme Audit Agency examined the procedural aspects of the sale of SMG/APP debt to Orleans, and issued its report in late 2006. As such, the Supreme Audit Agency would have had access to all documentation relating to the sale of SMG/APP debt to Orleans after IBRA's closure in early 2004. Therefore, the Department finds that the GOI should have been able to locate the records of one of the five obligors involved in this special program.

Thus, in accordance with section 776(b) of the Act, we determine that the GOI did not cooperate to the best of its ability to provide the Department with the necessary documentation required to determine whether Orleans is affiliated with SMG/APP or the Widjaja family. Although the GOI did provide the Department with Orleans' Letter of Compliance, which includes Orleans' self-certification that it is not affiliated with SMG/APP, this information alone is insufficient for the Department's purposes of conducting a meaningful analysis of the alleged affiliation between Orleans and SMG/APP. Because the GOI did not cooperate to the best of its ability and we were unable to examine crucial documentation necessary to our analysis of the alleged affiliation between Orleans and SMG/APP, we determine that it is appropriate to use adverse inferences when analyzing the information on the record. On that basis, we find that Orleans is affiliated with SMG/APP.

Other information on the record further supports a finding that Orleans is either affiliated with, or acted on the behalf of, SMG/APP or the Widjaja family, owners of SMG/APP. Petitioner placed on the record court documents that stated that there was speculation that the Widjaja family had been buying up its own debt through third parties. See New Subsidy Allegation at Exhibit 11. Petitioner has also submitted news articles suggesting that SMG/APP was "surreptitiously buying back its debt." See New Subsidy Allegation at Exhibit 11. And as discussed above, a World Bank report indicated that IBRA allowed some parties to buy back their own debt through third parties. See New Subsidy Allegation at Exhibit 16.

During verification, the Department met with an independent expert knowledgeable about the debt and banking crisis in Indonesia. We asked the expert to comment on the sale by IBRA of SMG/APP debt on the secondary market, and specifically about the speculation at the time that

Orleans was related to the debtors. In the expert's opinion, it was likely that Orleans was related to SMG/APP or the Widjaja family. See Memorandum to the File from Dana S. Mermelstein, Countervailing Duty Investigation on Coated Free Sheet Paper from Indonesia: Meeting with an Independent Expert, dated August 24, 2007 (Expert Memo), at 2. In his opinion, it is not uncommon for hedge funds to set up special purpose vehicles (SPVs) for the purpose of participating in one particular deal and that these SPVs could easily be established in a way that would make their ultimate ownership unknowable. The expert also pointed to other broader-scope evidence that such an affiliation was likely, and gave his opinion that it was not uncommon for all of the bidders in these auctions to be related to the debtor, and through this control and "rigging" of the bid process, the debtor could guarantee a low price for his debt.

Because we find Orleans to be affiliated with SMG/APP, we also find that SMG/APP bought back its own debt from the GOI, at a steep discount. The sale by the GOI of SMG/APP's debt back to SMG/APP constitutes a financial contribution and benefit in the form of debt forgiveness – that is, SMG/APP's overall debt obligation was reduced by the difference between the amount of the SMG/APP debt held by IBRA and the amount SMG/APP paid for this debt. Through this debt sale, SMG/APP was effectively relieved of the liability of repaying its debt to an outside party.

Regardless of whether such transactions were prohibited under Indonesian law, this transaction provided a financial contribution and benefit to SMG/APP because it bought back its own debt from the GOI at a steep discount. It is the finding of affiliation between Orleans and SMG/APP that informs our decision on financial contribution. Through this sale, by virtue of its affiliation with Orleans, SMG/APP was relieved of a major portion of its debt obligation that would have had to be paid to an outside party. As such, this sale constituted a financial contribution in the form of debt forgiveness in accordance with section 771(5)(D)(i) of the Act, and a benefit in the amount of debt forgiven (the difference between the total value of SMG/APP debt sold by IBRA and the amount paid by SMG/APP, through Orleans, for its own debt) in accordance with 19 CFR 351.508(a).

The prohibition against a company buying back its own debt does, however, inform our analysis of specificity. Finding that a company repurchased its own debt from GOI at a steep discount when such a transaction was prohibited, means that this financial contribution and benefit are specific to a company, SMG/APP, in accordance with section 771(5A)(D)(iii) of the Act. Furthermore, because a special program was created, with special rules and obligations, to handle the debt sales of five large and significant obligors, including SMG/APP, we also find that this sale was limited to a group of enterprises in accordance with section 771(5A)(D)(iii)(I) of the Act.

We are not discounting Respondents' submissions in their entirety regarding this transaction. For the Post-Preliminary Analysis and for this determination, the Department has used information provided by the GOI that we were able to verify to measure the benefit. We are

using the actual amount of SMG/APP debt that was purchased by Orleans and the price Orleans paid for it. See GOI Verification Report at 59.

To calculate the benefit from IBRA's sale of SMG/APP debt back to SMG/APP through Orleans, we took the total value of debt sold and subtracted the amount that Orleans paid for the debt. The remainder is the value of the debt forgiven. We treated the debt forgiven as a non-recurring subsidy in accordance with 19 CFR 351.508(c). We allocated these benefits over an AUL of 13 years. See "Allocation Period," above. In allocating these benefits, we used the Department's standard allocation methodology for non-recurring subsidies under 19 CFR 351.524(d). We used as our discount rate the "Lending Rate (Foreign Currency)" for the year in which the debt was forgiven as published in the International Monetary Fund's International Financial Statistics (September 2007). Additionally, as discussed above, the Department found that companies in the SMG/APP CFS chain were uncreditworthy at the time of IBRA's sale of SMG/APP debt to Orleans. Thus we added to the discount rate a risk premium, calculated according to the methodology described at 19 CFR 351.505(a)(3)(iii).

To calculate the subsidy rate, we divided the benefit allocated to the POI by the total external sales value of all companies in the SMG/APP CFS group, including CMI, as discussed in "Cross-Ownership," above. On this basis, we determine the net countervailable subsidy rate for IBRA's sale of SMG/APP's debt back to SMG/APP through Orleans to be 4.40 percent ad valorem for the respondent companies TK/PD.

B. Program Determined to Be Not Countervailable

Subsidized Funding for Reforestation (Hutan Tanaman Industria or HTI Program): Government Capital Infusions into Joint Venture Forest Plantation

Under this program, the GOI provided equity funding to establish forestry companies as joint ventures between the GOI and a private forestry company. Both RAL and FI are joint ventures between the GOI and an SMG/APP CFS company. In the Preliminary Determination, we examined the joint venture in light of Petitioner's unequityworthiness allegation, and the Department's subsequent initiation, which addressed the companies' unequityworthiness from 2001 through the POI. We found that the capital infusions provided by the GOI to RAL and FI under this program had been provided in the 1990s, and thus pre-dated the alleged unequityworthyiness we were investigating. As such, we did not examine whether the GOI provision of capital to joint venture forest plantations provides a countervailable subsidy, and we preliminarily determined that this program was not used.

For purposes of the final determination, we have also examined these capital infusions in light of 19 CFR 351.507(a)(2), to determine if the prices paid by the government for its shares were greater than the prices paid by the private investors. The Department reviewed information provided at verification with respect to the GOI's capital infusions into both RAL and FI. See Forestry Companies' Verification Report at pages 17-18 and 34-36. Based on verification, we

find that the GOI's capital infusions were provided at the same time and on comparable terms as the private capital infusions. As such, we determine that the investment is not inconsistent with the usual private investment practice of private investors and that these equity infusions are not countervailable.

C. Program Determined To Be Not Used

Subsidized Funding for Reforestation (Hutan Tanaman Industria or HTI Program): Commercial Rate Loans

We established at verification that none of the SMG/CFS forestry companies received loans under this program. See Forestry Companies' Verification Report at pages 16-19 and 33-34. Therefore, we determine that this program was not used.

VII. Analysis of Comments

Comment 1: Whether the Department Should Find that SMG/APP Received Upstream Subsidies on Purchases of Timber from Non-Cross-Owned Entities and Consider the Legality Under which This Timber was Harvested

Petitioner provided arguments related to its upstream subsidy allegation assuming that the Department will formally initiate an investigation of this program. Petitioner highlights the Department's authority to postpone its review of this allegation until the first administrative review only upon a request made by Petitioner, which has not been made. Petitioner states that the record already contains all the information necessary to analyze these alleged upstream subsidies and to make a determination because, according to Petitioner, it is essentially the same analysis as that required of the GOI's provision of timber at less than adequate remuneration. USW adds that the Department should also consider the legality of the timber harvest by AA and WKS' suppliers in determining the full amount of the subsidy being provided by the GOI. In addition, USW supports Petitioner's request that timber provided by such suppliers be addressed as an upstream subsidy.

Based on the Department's finding that the GOI's provision of timber for less than adequate remuneration works hand-in-hand with the log export ban, Petitioner argues that sufficient evidence exists that countervailable subsidies are also provided to all forestry companies that harvest Indonesian timber. Therefore, Petitioner contends, countervailable subsidies exist, in accordance with section 771A(a)(1) of the Act, with regard to any timber suppliers to SMG/APP CFS forestry companies that the Department does not find to be cross-owned with SMG/APP. Petitioner states that these upstream subsidies bestow a benefit, in accordance with section 771A(b)(1) of the Act based on a comparison of the prices reported by SMG/APP for these purchases to the benchmark Malaysian export price.

Petitioner states that the upstream subsidies have a significant effect on the cost of manufacturing the subject merchandise, CFS. According to Petitioner, the ad valorem subsidy rate on timber, when multiplied by the proportion of the total production costs of the subject merchandise accounted for by the input product, meets the regulatory threshold for presumption of a competitive benefit in accordance with section 771(A)(a)(3) of the Act. Petitioner further adds that even if the Department had selected a lower benchmark or lower conversion factor, these timber suppliers would still be receiving a subsidy.

While Petitioner acknowledges that there is no precise information on the record regarding the specific breakdown of each cost component, Petitioner claims that timber is an extremely significant cost in the production of CFS. Accordingly, the ratio of total production costs accounted for by the input product (timber) meets the provisions of 19 CFR 351.523(a)(1)(iii) and (d)(1) regardless of whether the calculation for timber costs is based on either the benchmark stumpage rate or the actual subsidized price at which SMG/APP forestry companies purchased timber. Petitioner has also stated that "{w}hile the Department has the authority to extend consideration of an upstream subsidy allegation into the first review upon request by the Petitioner, Petitioner has not made such a request."

Respondents counter Petitioner's assertion that the Department has the authority to defer the consideration of the upstream subsidy allegation only if Petitioner so requests. According to Respondents, this argument ignores the plain language of section 703b(g)(2)(B)(i) of the Act which notes that such a determination by the Department "need not be made until the conclusion of the first administrative review under section 751 of any eventual countervailing duty order, or, at the option of the Petitioner." In the instant case, according to Respondents, the circumstances exist to defer consideration of this allegation until the first administrative review in order to allow the Department sufficient time to analyze and issue a preliminary determination, since Petitioner did not file its upstream allegation until after the completion of verification.

Respondents incorporated in their rebuttal brief their July 23, 2007 rebuttal comments to Petitioner's allegation of upstream subsidies. In summary, Respondents note that Petitioner has not satisfied the factors enumerated under 19 CFR 351.523(a)(1)(ii)(A)-(C) needed to initiate an upstream subsidy allegation. First, Respondents dispute Petitioner's claim that the non-cross-owned logging companies are affiliated with the SMG/APP CFS forestry companies AA and WKS as a result of the supply and cooperation agreements between them. According to Respondents, the Department examined these agreements at verification, and these agreements provide no indication that the SMG/APP CFS forestry companies can establish control over these non-cross-owned wood companies. Thus, Respondents state that the conditions needed to establish affiliation, as required under 19 CFR 351.523(a)(1)(ii)(A), were not met.

Second, Respondents argue that Petitioner's claim that AA and WKS purchase wood from suppliers at lower prices than they would otherwise be required to pay is irrelevant, since the relevant price is the price paid by pulp producers for their materials, which in the instant case, would be the price paid by IK and Lontar. Since IK and Lontar purchased timber only from AA

and WKS, Respondents compared IK's and Lontar's average purchase prices for chipwood from AA and WKS during the POI, to the price paid by another Indonesian purchaser of chipwood that was imported from Malaysia during the POI. Based on this comparison, Respondents state that IK and Lontar could have purchased chipwood at similar import prices which would not meet the conditions set forth in 19 CFR 351.523(a)(1)(ii)(B).

Third, Respondents state that there is no merit to Petitioner's argument that the GOI's log export ban satisfies the requirement under 19 CFR 351.523(a)(1)(ii)(C) by setting the price of the input. According to Respondents, there is no evidence on the record that the GOI maintains a log export ban for the purpose or with the effect of guaranteeing benefits from lower chipwood prices that are passed through to CFS paper producers. Because there are Malaysian and other sources of imported chipwood at lower prices than chipwood in Indonesia, Respondents argue that such import competition makes it impossible for the GOI to set prices.

Finally, Respondents state that assuming, arguendo, an upstream subsidy exists, there is no evidence that IK and Lontar pass on any benefit through the prices they charge to TK and PD for pulp. Respondents argue that any benefit that AA and WKS receive from subsidized timber is extinguished when the timber is sold to IK and Lontar. According to Respondents, there is no record evidence showing that any benefit passes in any other manner to TK and PD.

Department's Position:

The Department finds that Petitioner has provided a reasonable basis to believe or suspect that the three elements necessary to find the existence of an upstream subsidy have been met. As such, we are initiating an upstream subsidy investigation to determine whether stumpage subsidies provided to unaffiliated pulpwood suppliers confer benefits on the production of subject merchandise. However, we are also simultaneously deferring our upstream subsidy investigation, pursuant to section 703(g)(2)(B)(i) of the Act, until the first administrative review under section 751 of the Act, if a countervailing duty order is issued and if such a review is requested.

For the reasons noted above in the section titled "Initiation and Deferral of Upstream Subsidy Investigation," the Department finds a reasonable basis to believe or suspect that the elements set forth in 19 CFR 351.523(a)(1)(i - iii), which are required before the Department can investigate the existence of an upstream subsidy, have been met. With respect to the second prong of the upstream subsidy initiation analysis, i.e., competitive benefit, only one of the three conditions listed in the regulations must be met in order for the Department to find there is a reasonable basis to believe or suspect that a competitive benefit is being bestowed on the merchandise. See section 771A(a)(2) of the Act and 19 CFR 351.523(a)(1)(ii)(A-C). As explained above, we find that the information provided by Petitioner meets the condition set forth in 19 CFR 351.523(a)(ii)(B): "The price for the subsidized input product is lower than the price that the producer of the subject merchandise otherwise would pay another seller in an arm's-length transaction for an unsubsidized input product."

As discussed in more detail above under "GOI Provision of Standing Timber for Less Than Adequate Remuneration" and under Comment 11 "Use of Malaysian Export Statistics as the Starting Point for Deriving Stumpage Benchmarks," below, there are no reliable market-based stumpage rates for standing timber in Indonesia. Therefore, we identified a market-based pulpwood price by using official Malaysian Export Statistics for various types of pulp logs and pulpwood, and deducting from the starting price harvesting costs and profit to derive a market-based benchmark for determining whether the government-set stumpage rate provided a benefit (see "Provision of Timber for Less than Adequate Remuneration," above). Petitioner's chart comparing the benchmark pulp log/pulpwood prices to the prices paid by AA and WKS to unaffiliated suppliers of the subsidized input shows that the prices paid by AA and WKS are significantly lower than the unsubsidized benchmark price for the input.

Although Petitioner has argued that all of the information necessary to complete the upstream subsidy investigation is already on the record, we disagree. As explained above in "Initiation and Deferral of Upstream Subsidy Investigation," the information on the record provides a sufficient basis to initiate an upstream subsidy investigation, but it does not provide a sufficient basis for rendering a final determination on whether the subject merchandise is benefitting from upstream subsidies.

In their rebuttal comments, Respondents argued that no benefit passes from IK and Lontar to TK and PD because pulp is the input into the subject merchandise and the producers of the subject merchandise are not buying the allegedly subsidized input, i.e., timber. As discussed above, we find that there is cross-ownership between, among and across the two producers of the subject merchandise, the two pulp producers and five forestry companies. Furthermore, we find that pulpwood is the primary input into pulp and that pulp is a primary input into subject merchandise. As such, the purchase by the cross-owned SMG/APP CFS group of the subsidized pulpwood input from unaffiliated suppliers can be considered under the upstream subsidy provision of the Act.

As explained above in "Initiation and Deferral of Upstream Subsidy Investigation," the Department is deferring the conduct of the upstream subsidy investigation until the first administrative review, if a countervailing duty order is issued and such a review is requested. Although we recognize that under our regulations a Petitioner may request deferral, we find that the statute also provides this authority to the Department. While section 351.201(f) of our regulations specifically permits Petitioner to request deferral of an upstream subsidy determination until the first administrative review, the regulations do not limit the Department's authority to defer the determination under section 703(g)(2)(B)(i) of the Act. Accordingly, the Department is deferring the conduct of the upstream subsidy investigation under section 703(g)(2)(B)(i) of the Act until the first administrative review, if a countervailing duty order is issued and such a review is requested.

Comment 2: Whether the Department's Cross-Ownership Regulations Provide for the Attribution of Upstream Subsidies to Cross-Owned Companies

Respondents state that the Department found in the Preliminary Determination that alleged subsidies to the forestry companies provided a benefit to the paper producers, TK and PD. However, TK and PD argue that the Department did not find that the pulp producers (IK and Lontar) or the paper producers (TK and PD) received any subsidies. They further state that the Department automatically attributed the alleged benefit received by the forestry companies to TK and PD based on the claim that they are cross-owned with the forestry companies. Respondents argue that the Department's regulation on cross-ownership as provided at 19 CFR 351.525(b)(6) creates a presumption that an upstream subsidy benefits the subject merchandise which is inconsistent with the statute.

Respondents argue that section 771A(a) of the Act provides for the investigation of an upstream subsidy defined as one that: (1) is paid or bestowed by an authority; (2) bestows a competitive benefit on the merchandise; and, (3) has a significant effect on the cost of manufacturing or producing the merchandise. As such, Respondents argue, there is no exception that allows an upstream subsidy to be automatically attributed to a cross-owned company.

According to Respondents, the statute requires the administering authority to decide that a competitive benefit has been bestowed when the price for the input product is lower than the price a producer of the merchandise would otherwise pay for the product in an arm's-length transaction. Thus, Respondents continue, the statute imposes a clear condition on the attribution of an upstream subsidy, and the Department does not have the legal authority to disregard that condition.

Petitioner argues that 19 CFR 351.525(b)(6)(iv) is a refinement to the Department's practice of countervailing subsidies bestowed on inputs to products, rather than only capturing subsidies bestowed on end products. Petitioner claims that the Preamble indicates that where subsidies are bestowed on input products, the Department makes a distinction between the standards of affiliation and cross-ownership. Petitioner further argues that where there are levels of affiliation that do not meet the threshold for cross-ownership, the appropriate method of investigation is through the upstream subsidies provision.

Petitioner states that, in finding the stumpage subsidies in question countervailable, the Department essentially performed the same competitive benefit analysis as called for under section 771A(a) of the Act. Further, Petitioner continues, the analysis the Department performed under 19 CFR 351.525(b)(6)(iv), finding that the inputs in question were primarily dedicated to the production of the downstream product is, in the instant case, essentially the equivalent to the requirement in section 771A(a)(3) of the Act, and at 19 CFR 351.523(a)(1)(iii), that upstream subsidies have a significant effect on the cost of manufacturing or producing the product. Accordingly, Petitioner concludes, there is no conflict between the Department's methodology for

finding the stumpage subsidies countervailable and the upstream subsidy provisions of section 771A(a) of the Act.

USW claims that Respondents' argument ignores the structure of the statute, the regulations, and judicial and administrative precedent. USW states that the Department has applied its regulations concerning the attribution of subsidies received by cross-owned input suppliers in cases such as 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) and accompanying Issues and Decision Memorandum at Comment "Upstream Subsidies" (Lumber). Further, USW states, the Court of International Trade (CIT) has upheld the Department's regulations as not inconsistent with the statute in Fabrique de Fer De Charleroi, SA v. United States, 166 F. Supp. 2d 593, 603 (Ct. Int'l Trade 2001) (Fabrique). Finally, USW states that in Lined Paper, at Comment 2, the Department recently examined, and rejected, nearly identical arguments raised by Respondents.

USW claims that the Department's regulations on subsidies provided to cross-owned input suppliers are substantially more limited in scope than the statute, because the regulations only address subsidies received by input suppliers who are cross-owned with downstream producers, and the regulations only address subsidies to input products that are "primarily dedicated" to the production of the downstream product. USW further claims that the Department's definition of "cross-ownership" is narrower than the definition of "affiliation" in the statute, because, according to USW, the cross-ownership regulations were designed to address those situations in which two corporations have merged to such a degree that one company can use or direct the assets of the other corporations as it could use or direct its own. Thus, USW argues, the Department's regulations regarding cross-ownership are designed for a very different purpose than the statutory provisions regarding upstream subsidies.

According to USW, the regulations enable the Department to consider whether a subsidy has been conferred indirectly on a downstream product through subsidization of an input product produced by a cross-owned suppler, which is consistent with the statute's direction that the Department determine that a subsidy exists regardless of whether the subsidy is provided directly or indirectly on the production or export of the merchandise.

USW further states that provisions regarding upstream subsidies were added to the statute in order to broaden the Department's authority to examine subsidies to input products produced by companies that are affiliated with, or even unrelated with, the downstream producer, and not to limit the Department's ability to investigate indirect subsidies. Thus, USW argues, the two provisions operate independently and consistently with each other within the structure of the statute and regulations.

Department's Position:

There is no indication that the statutory provision for upstream subsidies was intended to be the only provision that addresses subsidies bestowed on input products. The Department squarely

addressed this issue in Lined Paper at Comment 2, and in several other determinations noted above by USW. Section 351.525(b)(6)(iv) of the Department's regulations provides that, if there is cross ownership between an input supplier and the producer of a downstream product and the input product is primarily dedicated to production of downstream product, the subsidy to the input supplier is attributed to sales of both the input and the downstream product. The Department also possesses authority to conduct upstream subsidy investigations pursuant to section 771A of the Act, which the Department has implemented through 19 CFR 351.523. Upstream subsidy investigations examine purchases of inputs from affiliates that are "used in the production of the subject merchandise." See 19 CFR 351.523. Further, the legislative history makes it clear that the intent of Congress in enacting the Trade and Tariff Act of 1984 was to broaden the Department's ability to examine upstream subsides when companies are not cross-owned, not to restrict the Department's abilities to countervail subsidies received by cross-owned companies. See Report of the House Committee on Ways and Means,
H.R. Rep. No. 98-725 (1984) at 7, 33 -34.

When the issue is the validity of a regulation issued under a statute an agency is charged with administering, it is well established that the agency's construction of the statute is entitled to great weight. See Melamine Chem., Inc. v. United States, 732 F.2d 924 (Fed. Cir. 1984) (Melamine Chem). In Melamine Chem the Court stated "{A}gency regulations are to be sustained unless unreasonable and plainly inconsistent with the statute." Id. at 928. Thus, the question is whether the regulation is based on a permissible construction of the statute. See, eg., Hoogovens Staal BV v. United States, 4 F.Supp.2d 1213, 1216 (CIT 1998); see, also RSI (India) Pvt., Ltd., v. United States, 687 F. Supp. 605, 610 (CIT 1988) (Court must accord substantial weight to an agency's interpretation of the statute it administers).

Section 351.525(b)(6) is not inconsistent with the statute. The CIT has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See Fabrique 166 F. Supp. 2d at 603. As the Court noted in Fabrique (citing Preamble, 63 FR at 65401), "{t}he underlying rationale for attributing subsidies between two separate corporations {with crossownership} is that the interests of those two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits)." Id. at 573.

The Department specifically considered the proper treatment of cross-owned companies relative to the upstream subsidy provision of the statute. In the Department's proposed countervailing duty regulations, the term "cross-ownership" was applied in the context of upstream subsidy investigations. See Proposed Rules: Countervailing Duties, Part II, 62 FR 8818, 8843 (February 22, 1997). In the Preamble to the Department's final regulations, however, the Department explained it was specifically clarifying the standard for upstream subsidy investigations from cross-ownership to affiliation, noting that attribution and cross-ownership were addressed in a different provision of the final regulations. See Preamble, 63 FR at 65390.

As the Department explained, it re-examined the initial upstream subsidy regulation based upon numerous objections that the Department was elevating form over substance. Focusing upon inputs purchased from affiliates and used to produce subject merchandise in upstream subsidy investigations is strictly consistent with the statute.

As accepted by the Court in Fabrique, the attribution between cross-owned companies does not exceed the Department's authority to investigate upstream subsidies. See Fabrique 166 F. Supp. 2d at 603. Rather, our attribution regulation addresses a separate situation, namely, where one corporation can use or direct the individual assets of the other. With regard to attribution, in the final regulation, the Department explained that:

> The main concern we have tried to address is the situation where a subsidy is provided to an input producer whose production is dedicated almost exclusively to the production of a higher value added product - - the type of input that is merely a link in the overall production . . . Accordingly, where the input and downstream production takes place in separately incorporated companies with cross-ownership and the production of the input is primarily dedicated to the production of the downstream product, paragraph (b)(6)(iv) requires the Department to attribute the subsidies . . . to the combined sales of the input and downstream product.

See Preamble, 63 FR at 65401. Countervailing duties are intended to offset the unfair competitive advantage that foreign producers would otherwise enjoy from subsidies paid by their governments. See Zenith Radio Corp. v. United States, 437 U.S. 443, 455-56 (1978). The narrow reading given to the statute by respondents would undermine the purpose of the statute by allowing a company to "avoid countervailing duty exposure for input subsidies simply by separately incorporating the division that makes the input," while retaining the ability to control the division's assets. See Preamble, 63 FR at 65401. Therefore, we have continued to apply 19 CFR 351.525(b)(6)(iv) in this case.

Comment 3: Cross-Ownership of AA and WKS with IK, Lontar, TK and PD

Respondents argue that the alleged cross-ownership link between the pulp timber companies and the paper companies was found by the Department to be through the Widjaja family. Further, on that basis, in the Preliminary Determination, the Department found that cross-ownership exists between Tk, PD, Lontar, IK, AA, WKS, RAL, SPA, and FI. Respondents claim that since the issuance of the Preliminary Determination, the Department has received evidence demonstrating that there is no cross-ownership between and among the companies referenced.

According to Respondents, cross-ownership is not defined by the statute, and the Department's regulations define it at 19 CFR 351.525(b)(6)(vi) as a situation where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use or direct its own assets. Normally, Respondents continue, this standard will be met where there is a majority voting interest or through common ownership of two or more corporations.

Respondents state that cross-ownership is not the same as affiliation, as defined in section 771(33) of the Act, and that a finding of affiliation is not sufficient to warrant a finding of cross-ownership. Rather, Respondents continue, a high level of control must exist to warrant a finding of cross-ownership, and such control is not evident in this case.

Petitioner argues that the Preamble clarifies that cross-ownership can exist in certain scenarios where there is less than a majority voting interest between two companies. Petitioner further argues that in the March 2005 memorandum to Barbara E. Tillman from the Team, Live Swine from Canada, Final Determination Attribution Issues, in order to determine whether the cross-ownership standard was met, the Department considered factors such as: (1) whether a group of companies were organized into one production system dedicated primarily to the production and sale of a product; (2) whether one company owned a plurality of another company; (3) whether companies within the group were contractually bound through long-term purchase and/or supply contracts; (4) whether managerial services were provided by one of the companies to the others; (5) whether the companies marketed products through each other; and, (6) whether companies provided accounting and management services to other companies within the group. According to Petitioner, the record establishes that all of those conditions are met in the instant case.

Petitioner states that throughout its questionnaire responses, TK and PD have readily recognized that the SMG/APP CFS group of companies involved in the production of CFS are cross-owned. Additionally, Petitioner states that TK and PD have indicated that the Widjaja family is the majority shareholder of certain companies within the SMG/APP CFS group. As such, Petitioner argues, TK and PD have acknowledged that the Widjaja family has overarching control of the companies operating within the SMG/APP CFS group.

Department's Position:
In the Preliminary Determination, the Department found that cross-ownership exists, as defined by 19 CFR 351.525, among and across CFS paper producers and exporters, TK and PD; pulp producers, Lontar and IK; and the SMG/APP CFS pulp timber companies AA, WKS, RAL, SPA, and FI. Since the issuance of the Preliminary Determination, the Department has further examined and verified information that demonstrates that during the POI, the Widjaja family, either through direct or indirect ownership, held a majority ownership or control of all of the companies in the SMG/APP CFS group, which includes AA, WKS, IK, Lontar, TK, and PD. Thus, we continue to find that cross-ownership exists, as defined by 19 CFR 351.525, among and across AA, WKS, IK, Lontar, TK, and PD.

As referenced above in the "Cross Ownership" section, a thorough discussion of our analysis and determination is only possible by means of reference to business proprietary information. Thus, we have fully addressed our position in the Cross-Ownership Analysis.

Comment 4: Widjaja Family Interest In Purinusa and Cross-Ownership

Respondents have stated that, at verification, the Department examined the extent of the Widjaja family's ownership in each of the companies in the SMG/APP CFS group, which included an examination of the family's direct and indirect ownership of Purinusa, the parent company of TK, PD, Lontar, IK, SPA, and FI. According to Respondents, this examination shows that the ownership of Purinusa is consistent with the information reported.

Respondents argue that the issue in this investigation is whether the Widjaja family can use or direct the individual assets of the companies, such as Purinusa, as they can use their own assets. Respondents state that the Department has indicated that this standard is normally met when there is a majority ownership between two corporations, and that the Department has verified the Widjaja family's combined direct and indirect interest in Purinusa, in light of the Department's cross-ownership standard.

Petitioner argues that Purinusa's ownership structure does not affect the link of ownership and control between the companies in the SMG/APP CFS group, and that the Widjaja family controls the operations of companies in the SMG/APP CFS group not only through its common ownership and control of interlocking directorates, but also through its network of related-party business transactions.

Department's Position:

Our examination of the Widjaja family's holdings in Purinusa before and during the POI reveals that through the family's personal holdings of Purinusa, and through the family's entire or majority ownership of companies that held shares in Purinusa, the Widjaja family controlled Purinusa. Moreover, through Purinusa and the Widjaja family's own direct holdings, it controlled all of the companies in the SMG/APP CFS group. See Cross-Ownership Analysis. Thus, we determine that the Widjaja family's ownership and control of Purinusa meets the definition of cross-ownership, in accordance with 19 CFR 351.525(b)(6)(vi) and the Preamble.

As referenced above, a thorough discussion of our analysis and determination is only possible by means of reference to business proprietary information. Thus, we have fully addressed our position in the Cross-Ownership Analysis.

Comment 5: Cross-Ownership Between AA and WKS

Respondents argue that WKS and AA have different owners, and that there is no evidence suggesting that either of these companies can use or direct the use of the other's assets as their own. Thus, according to Respondents, cross-ownership does not exist between these two companies. Petitioner agues in its rebuttal brief that business proprietary information suggests that WKS and AA are cross-owned with each other.

Department's Position:
Based on an examination of business proprietary information, we have determined that WKS is cross-owned by Purinusa, which is controlled by the Widjaja family, and that the Widjaja family has a controlling interest in the remaining companies which have an ownership stake in WKS. Thus, we have determined that WKS is cross-owned with other parts of the SMG/APP CFS group through the Widjaja family. We have also determined that AA is directly and indirectly wholly owned by the Widjaja family. Therefore, we find that WKS and AA are cross-owned with each other, with Purinusa, and with other companies in the SMG/APP CFS group in accordance with 19 CFR 351.525(b)(6)(vi). As referenced above, a thorough discussion of our analysis and determination is only possible by means of reference to business proprietary information. Thus, we have fully addressed our position in the Cross-Ownership Analysis.

Comment 6: Cross-Ownership Between WKS and Purinusa

Respondents contend that, based on the Department's regulations, WKS is not cross-owned with Purinusa or with any of its subsidiaries. They claim that the companies do not have common shareholders who account for a greater than fifty percent ownership interest in either company. Respondents reiterate that during verification, the Department examined the Widjaja family's ownership in Purinusa, and they claim that Purinusa's ownership interest in WKS falls short of the Department's cross-ownership standard. Finally, Respondents claim that there is no record evidence that suggests that WKS or Purinusa can use or direct the use of the other's assets as their own. Petitioner agues in its rebuttal brief that business proprietary information suggests that WKS is cross-owned with Purinusa.

Department's Position:
As discussed above in Comment 4, we have examined the ownership structure of Purinusa during the POI, which shows that the Widjaja family's ownership of Purinusa meets the definition of cross-ownership, as provided by 19 CFR 351.525(b)(6)(vi) and the Preamble, 63 FR at 65401. As discussed above in Comment 5, we have also examined the ownership structure of WKS, which shows that WKS is owned by Purinusa, and other shareholders, all of which the Widjaja family either owns or controls. As such, we have determined that WKS and Purinusa are cross-owned with each other, through the Widjaja family's ownership and control of both companies, in accordance with 19 CFR 351.352(b)(6)(vi). As referenced above, a thorough discussion of our analysis and determination is only possible by means of reference to business proprietary information. Thus, we have fully addressed our position in the Cross-Ownership Analysis.

Comment 7: Cross-Ownership Between AA and Purinusa

Respondents claim that, based on the Department's definition, AA is not cross-owned with Purinusa or with any of Purinusa's subsidiaries. Respondents argue that the companies do not have common shareholders who account a greater than fifty percent ownership interest in either company. According to Respondents, the Department examined the Widjaja family's ownership in Purinusa during verification, and they claim that nothing on the record suggests that AA or

Purinusa can use or direct the use of the other's assets as their own. Petitioner agues in its rebuttal brief that business proprietary information on the record suggests that AA is cross-owned with Purinusa.

Department's Position:
As discussed above in Comment 5, we have examined business proprietary information to determine that AA is directly and indirectly wholly owned by the Widjaja family. As discussed above in Comment 4, we have examined business proprietary information to determine that the definition of cross-ownership has been met, in accordance with 19 CFR 351.525(b)(6)(vi) and the Preamble, 63 FR at 65401. Therefore, we have determined that AA and Purinusa are cross-owned with each other, through common ownership by the Widjaja family, in accordance with 19 CFR 351.525(b)(6)(vi). As referenced above, a thorough discussion of our analysis and determination is only possible by means of reference to business proprietary information. Thus, we have fully addressed our position in the Cross-Ownership Analysis.

Comment 8: Cross-Ownership of Certain Additional Companies That Were Preliminarily Found to be Cross-Owned with Companies in the SMG/APP CFS Group

Respondents state that the Department found in the Preliminary Determination that companies in the SMG/APP CFS group were cross-owned with certain unaffiliated pulpwood suppliers that were reported not to be owned or controlled by any of the SMG/APP CFS group of companies.

According to Respondents, they reported that they did not own or control any of these additional pulpwood suppliers, and that no Widjaja family member owned or controlled any of these companies. Respondents state that during verification, the Department examined these companies' ownership information such as such as licenses, owners, directors, articles of association, and supply agreements, and found no discrepancies between the information examined and what was reported. As such, Respondents state that the Department should find that these additional pulpwood suppliers are not cross-owned with the companies within the SMG/APP CFS group.

Petitioner argues that, based on the entirety of the record, the Department should find that cross-ownership exists between these certain additional pulp timber suppliers and the cross-owned companies in the SMG/APP CFS group.

USW states that the Department should consider the legality of the conditions under which the pulp timber is harvested by suppliers to AA and to WKS in determining the full amount of the alleged subsidies provided by the GOI to TK and PD, the producers of CFS. USW contends that, to the extent the Department determines that any of the additional pulp timber suppliers are not cross-owned with TK and PD, they support Petitioner's request that subsidies bestowed on the pulp wood provided by the additional pulp timber suppliers be included as an upstream subsidy in the final determination.

Department's Position:
As discussed above in the "Cross Ownership" section, we determine that none of the other pulp timber suppliers, outside of AA, WKS, RAL, FI, and SPA, are cross-owned in the SMG/APP CFS group.

In the Preliminary Determination, the Department found that additional pulp timber suppliers, in addition to AA, WKS, RAL, FI, and SPA, were cross-owned with companies in the SMG/APP CFS group. We issued questionnaires to TK and PD that requested specific information regarding the purchases from unaffiliated parties that were made by all companies within the CFS production and sales chain (TK, PD, IK, Lontar, AA, WKS, SPA, RAL, and FI), including the identity of any unaffiliated parties that supplied logs to companies in the CFS production and sales chain. AA and WKS reportedly purchased pulp timber from affiliated and unaffiliated parties during the POI, and our examination of the names and locations of these unaffiliated pulp timber suppliers revealed that several of these pulp timber suppliers have the same addresses as SMG/APP forestry companies SPA, RAL, and WKS. This information led us to preliminarily conclude cross-ownership exists with several of these reportedly unaffiliated pulp timber suppliers and companies in the SMG/APP CFS group.

However, based on the examination and verification of the additional pulp timber suppliers' ownership documents, as well as their cooperation agreements and supply agreements with AA and WKS, we did not find evidence that any companies or officials in the SMG/APP CFS group held ownership interests in these companies. Furthermore, we found no indication that the interests between these additional pulp timber suppliers and the SMG/APP CFS group are so intertwined that SMG/APP CFS group can use or direct the use of the assets of these additional pulp timber suppliers in the same ways that it can use or direct its own assets. Thus, we have determined that no cross-ownership exists, as described in 19 CFR 351.525, between these additional pulp timber suppliers and the SMG/APP CFS group.

Comment 9: Whether the Provision of Standing Acacia is the Provision of a Good by the GOI to the SMG/APP Forestry Companies

Respondents argue that it would be inappropriate for the Department to impose any countervailing duties based on acacia used in the production of CFS because none of the acacia that Respondents harvested during the POI was standing timber provided by the GOI. In the Preliminary Determination, the Department found that the GOI provided standing timber for both acacia and mixed tropical hardwood (MTH) under its examination of the provision of standing timber for less than adequate remuneration.

Respondents note that Petitioner's allegation specifically points to standing timber that is provided by the GOI for less than adequate remuneration. According to Respondents, standing timber is pre-existing timber in the forest and the harvesting of such timber as alleged by Petitioner would occur only using a GOI license to harvest timber in natural production forests under HPH licenses. Respondents argue that it is under this type of program that Petitioner made

its subsidy allegation and upon which the Department initiated its investigation (i.e., one in which standing timber is provided). Respondents acknowledge that standing timber is cleared to prepare the plantation for planting, but that this occurs only once and is not a recurring benefit. According to Respondents, the harvest of existing MTH timber, in land clearing exercises during the POI, was a one-time occurrence and it did not involve the harvest of plantation-grown acacia.

Respondents state that HTI licenses are different from HPH licenses in that they give license holders permission to operate plantations on GOI land. This is distinct from Petitioner's allegation and the Department's initiation notice. According to Respondents, Petitioner took no action to expand its allegations to include this factual scenario, and the Petitioner has not provided any information that would enable the Department to determine whether the GOI was being adequately remunerated for the land used by logging companies to grow acacia. Consequently, Respondents argue that the Department does not have the information needed to measure any benefit that may have been received through the GOI permitting HTI concession holders to use heavily degraded forest areas to plant and harvest new trees. According to Respondents, the record shows that all of the acacia that the SMG/APP CFS forestry companies harvested during the POI was from these HTI plantations, and all of the associated costs for establishing and maintaining the plantation were borne entirely by the SMG/APP CFS forestry companies.

Furthermore, Respondents state that Petitioner has not provided any information that would enable the Department to determine whether the GOI was being adequately remunerated for the land used by the logging companies to grow acacia. Respondents note that Petitioner specifically noted in its allegation that "{t}he GOI leases logging rights to companies charging them a royalty (stumpage rate) for the right to harvest roundwood (i.e., logs)." See Initiation Checklist, at 6. In addition, Respondents also note that the Petitioner claimed that this provided a benefit because "under the GOI's forest concession system, the right to harvest public timber is provided by the GOI to paper producers for less than adequate remuneration." Id. at 7. According to Respondents, the Department's initiation notice indicated that it would investigate the "Provision of Standing Timber for Less than Adequate Remuneration."

Petitioner contends that the specific allegations underlying this program have always referenced only stumpage programs. According to Petitioner, Respondents' attempt to cast this investigation as limited to the provision of "standing timber" is incorrect since it has always been an inquiry into GOI stumpage programs. Petitioner also notes that the petition in the instant investigation uses the term "stumpage," which is a general term that the Department is familiar with as result of its investigation of softwood lumber products from Canada. See Lumber.

Petitioner argues that Respondents' definition of "standing timber" is entirely unsupported and in conflict with the literal meaning of the term, which does not contain any reference to forests; the industry's use of the term; the use of the term in the petition; and, the use of the term in the Department's initiation notice and subsequent investigation. According to Petitioner, "standing timber" means timber that has not yet been harvested, which is not limited to trees only in the natural forests but also includes those on a plantation until they are harvested.

Finally, Petitioner notes that, even if the Department accepted Respondents' definition of "standing timber," the Department is required under section 775 of the Act to investigate apparent subsidies discovered during an investigation. Since the Department found that the GOI's provision of stumpage conferred subsidies in Lined Paper, Petitioner states that the Department would be required to investigate this program regardless of Respondents' re-interpretation of this term given that the Department can determine the benefit conferred by this program relative to the value of stumpage, as opposed to land use rights.

USW argues that the Department has used the term "standing timber" in the instant investigation and in other investigations to mean timber that is still in the ground and that has not been harvested. According to USW, there is no requirement that timber be "standing" within a logging company's concession area before the logging company is granted the concession in order for the provision of that timber from government lands to be countervailable. USW notes that Petitioner did not limit its subsidy allegation, nor did the Department limit its investigation, to pre-existing standing timber on government land before the grant of the concession area. USW states that such an arbitrary distinction would exclude any timber derived from trees that only began to grow after the granting of the timber concession.

USW states that Respondents' argument misconstrues the meaning of the word "providing" under section 771(5)(D)(iii) of the Act by arguing that a good, such as standing acacia, is not provided by the government if the company plants that good on government land. USW contends that this does not take into consideration the fact that the logging companies can only have access to that good growing on government land by obtaining a government license and being subject to government harvesting fees.

According to USW, the Department rejected similar arguments in Lumber in which the Department found that "provide" means to "make available," and that "regardless of whether the Provinces are supplying timber or making it available through a right of access, they are providing timber within the meaning of {the statute}. . ." In addition, USW also notes that in Lumber, the Department found that "regardless of the form of the transaction between the provincial governments and those who harvest the timber, in substance it is a sale of timber." USW states that the same analysis applies in the instant case where the GOI is granting a right of access to harvest timber on government-owned forest land through the issuance of licenses, which makes available or provides standing timber to Indonesian logging companies. According to USW, without the GOI's grant of access to those lands, these logging companies would not be able to legally plant or harvest acacia. USW concludes that the GOI is providing acacia under the same terms as all other species of standing timber since they are all subject to the same government licensing restrictions and fee requirements.

Department's Position:
Based on Petitioner's allegations that the stumpage rates charged by the GOI for logging are less than the value of the stumpage, the Department initiated an investigation of the "Provision of Standing Timber For Less Than Adequate Remuneration." See CFS Initiation, 71 FR at 68548.

We initiated on this program based on Petitioner's allegation that a financial contribution is being provided by "the provision of stumpage" which provides a good to the Indonesian paper industry; and, that a benefit is being conferred "under the GOI's forest concession system" for "the right to harvest public timber" for less than adequate remuneration. See Initiation Checklist, at 7. Citing Preliminary Affirmative Countervailing Duty Determination: Certain Lined Paper Products from Indonesia, 71 FR 7524 (February 13, 2006) (Lined Paper Prelim), Petitioner noted that the Department determined that a benefit existed from this program "by comparing the estimated stumpage price of Indonesian pulpwood to the stumpage benchmark derived from the average unit value of 2004 exports of acacia and eucalyptus pulpwood from Malaysia as reported by the World Trade Atlas." Id. Accordingly, the Department finds no evidence to support Respondents' claim that Petitioner's allegation was limited to only pre-existing standing timber in the natural forest. Rather, the Department's initiation and investigation of this program focused on examining the "stumpage price of Indonesian pulpwood" being provided "under the GOI's forest concession system," which includes all types of timber harvested from government-owned land whether that timber was pre-existing or cultivated, or whether it originated from the natural forest or from a plantation.

According to the GOI, all harvestable forest land in Indonesia is owned by the National Government. See GOI Questionnaire Response, at 13. The GOI allows timber to be harvested from the government-owned land under two main types of licenses: "HPH" licenses to harvest timber in the natural forest; and "HTI" licenses to establish and harvest timber from plantations. Id. at 5. Both HTI and HPH license holders pay "cash stumpage fees" known as PSDH royalty fees, which are paid per unit of timber harvested. Id. at 6. According to the GOI, "{t}he PSDH is part of the intrinsic value collected by the government from license holders for forest products harvested from the public forest." Id. at 6. The assessment of stumpage royalties does not distinguish between pre-existing MTH timber and commercially harvested timber such as acacia, and is uniformly applied to both timber harvested in the natural forest under HPH licenses and timber harvested on an HTI plantation. These PSDH fees are charged periodically based on the volume and species harvested by the concessionaire." See Coated Free Sheet Paper from Indonesia: Response by the Government of Indonesia to the Department's February 16, 2007 Supplemental Questionnaire, (March 6, 2007) (GOI February Supplemental Response) at page 3. The GOI reported that the purpose of this PSDH fee is to collect economic rent to "promote efficient and environmentally sustainable use of forest resources. . ." Id. at 4.

Respondents themselves recognized in their questionnaire response that the Department was attempting "to calculate the associated benefit by comparing stumpage fees in Indonesia to stumpage fees or log prices in other countries." Id. Subsequently, every question asked by the Department and all the information reported by Respondents concerning this program centered on the payment of PSDH royalty fees in order to determine how the GOI valued stumpage on public land in Indonesia. Because the allegation under the "Provision of Standing Timber for Less Than Adequate Remuneration" deals specifically with stumpage on any kind of government concession, our analysis correctly focused on examining all PSDH fees that were paid to harvest timber regardless of whether this timber was pre-existing or was grown on a plantation.

Our analysis of the PSDH fees for purposes of measuring the benefit from the "provision of stumpage" is linked to the allegation made by Petitioner. In calculating the alleged subsidy rate for this program

> Petitioner reviewed 2005 Malaysian pulp log export prices as reported in the World Trade Atlas. Petitioner states that it is not aware of any changes in the "forest resource royalty" (also known by the Indonesian acronym "PSDH") rate for acacia and eucalyptus, which was used by the Department to estimate the stumpage benchmark price in Lined Paper Prelim, since the 2004 period of investigation.

See Initiation Checklist, at 7 (citing CFS Petition, at 7). Thus, the record evidence in both the petition and in the GOI's questionnaire responses indicates that the investigation of this program was not limited to pre-existing timber on public land and does not exclude acacia grown on plantations. To the contrary, the petition itself specifically referenced and included such commercially grown species as acacia and eucalyptus in the allegation in citing to Lined Paper. See CFS Petition, at 7. Furthermore, the fact that the government collects PSDH fees on plantation-grown acacia is evidence that the GOI has decided that it is owed a stumpage royalty because these trees are cut from government-owned land just as trees from the natural forest are cut from government-owned land.

Comment 10: Specificity of the GOI's Provision of Standing Timber for Less Than Adequate Remuneration

Respondents argue that the Department should reverse the finding made in the preliminary determination that the GOI's provision of timber for less than adequate remuneration is de facto specific. According to Respondents, the evidence on the record and verified by the Department shows that Indonesian legislation and regulation do not limit access to forest resources to specific enterprises or industries, but are used to benefit all Indonesians. Accordingly, Respondents argue that it cannot be specific as a matter of law under section 771(5A)(D)(i) of the Act.

Furthermore, Respondents note that, in some cases, the GOI regulates the use of resources through licenses (such as HTI licenses) and through the assessment of fees for a diverse array of activities which also include non-wood based activities such as tourism, honey harvesting, and oil and resin extraction. In such cases, Respondents argue that these licenses are analyzed and granted, and these fees are collected pursuant to objective, published criteria. Accordingly, Respondents state these programs as well as the forestry program cannot be regarded to be specific as a matter of law under section 771(5A)((D)(ii) of the Act.

Respondents also argue that the provision of timber for less than adequate remuneration is not de facto specific pursuant to section 771(5A)((D)(iii)(I-III) of the Act because it is not restricted to a certain enterprise or industry, and no enterprise or industry receives a disproportionate right to use the forests. According to Respondents, the widespread use of wood-based forestry resources is demonstrated by the five Indonesian industry groupings that harvest or use timber as a primary

input, which account for approximately 22 percent of the total gross output by medium to large corporations. Therefore, Respondents argue, any benefit conferred to almost a quarter of the entire Indonesia economy would not be specific within the meaning of the statute.

Petitioner argues that Respondents have not provided the Department with any new information since the Preliminary Determination to give the Department reason to revisit its preliminary finding that this program is specific. Specifically, Petitioner notes that the GOI failed to provide the Department with the requested usage data concerning the number of industries that had rights to harvest standing timber. Because the GOI failed to provide the information required to properly analyze this issue after several requests by the Department, according to Petitioner, the Department has no reason to revisit or change its preliminary determination of de facto specificity based on the limited and distorted information on the record.

USW notes that the Department has previously found the government provision of standing timber to be de facto specific and countervailable in a number of cases. Furthermore, the Department has rejected the arguments made by the GOI in the Department's final determination in Lined Paper.

USW adds that the Department appropriately determined in its Preliminary Determination that the GOI's provision of standing timber for less than adequate remuneration, not the GOI's "Forestry Program," was specific and countervailable. According to USW, the Department specifically rejected arguments similar to those being repeated by Respondents regarding the broad range of industries benefitting from access to forest resources in general, by appropriately examining only those industries benefitting from access to government-owned timber and not the industries which benefit from the entire range of forestry policies in Indonesia.

USW adds that Respondents' argument that the "Forestry Program" is not specific as a matter of law is irrelevant because the provision of standing timber is specific as a matter of fact. USW also disagrees with Respondents' argument that this program is also not de facto specific by stating that the provision of the good under investigation is explicitly and specifically the provision of standing timber and not "forest resources." According to USW, the Department's Preliminary Determination that there are five Indonesian industries that the GOI identified as harvesting timber or using timber as a primary input, is evidence enough of a limited number to establish de facto specificity within the meaning of section 771 (5A)(D)(iii)(I) of the Act. In addition, USW notes that this determination is consistent with the Department's practice regarding de facto specificity of subsidies to a limited number of industries because the number of industries benefiting from this program is "sufficiently small." See Certain Refrigeration Compressors from the Republic of Singapore; Final Results of Countervailing Duty Administrative Review, 61 FR 10315, 10316 (March 13, 1996), where the Department found that a program used by companies in five separate and disparate industry groups we de facto specific because the limited number of benefitting industries was "sufficiently small."

Finally, USW agrees with the Department's finding in the Preliminary Determination that the actual number of industries benefitting from the provision of standing timber may be a much smaller number than those identified by the GOI because those industries are not limited only to those that harvest timber or use timber as a primary input. Thus, the actual number of industries benefitting from this program may be much number than the number identified by Respondents.

Department's Position:

In the Preliminary Determination, the Department found that the "provision of standing timber" (which is also referred to as stumpage) by the GOI was countervailable because the provision: (1) was specific under section 771(5A)(D)(iii)(I) of the Act (limited to a group of industries); (2) provided a financial contribution under section 771(5)(D)(iii) of the Act (provision of goods or services other than general infrastructure); and (3) provided a benefit under section 771(5)(E)(iv) of the Act (goods or services are provided for less than adequate remuneration). See Preliminary Determination, 72 FR at 17503. The Department found this program to be specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, because it was available to the limited group of industries that harvest or consume timber. Information provided by the GOI indicated that only five of these industries out of a total of 23 industries at the same level of industrial classification (large and medium manufacturing activities), were "making use of timber" during the POI. See GOI February Supplemental Response at page 6. As such, we preliminarily found that these five industries constituted a limited group of industries within the universe of 23 industries identified by the GOI. Therefore, we determined that the provision of standing timber by the GOI was de facto specific in accordance with section 771(5A)(D)(iii) of the Act. See Preliminary Determination, 72 FR at 17502-17503. This finding is consistent with our decision in Lined Paper in which we found the same program to be de facto specific because there "is a de facto limitation of the stumpage subsidy to a group of industries, namely pulp and paper mills, saw mills and remanufacturers" because they are "the predominant users of timber and receive a disproportionate amount of the subsidy" in Indonesia. See Lined Paper at section I.A. "Provision of Standing Timber at Preferential Rates."

As we noted in our Preliminary Determination, we do not find it appropriate to expand our specificity finding to include other forestry activities and industries that use "non-wood based activities" as suggested by Respondents. We specifically addressed this issue in our preliminary determination by stating that "{a}lthough we are concerned that in its supplemental questionnaire response the GOI broadened the scope of our question by adding in industries that do not harvest timber or consume timber as a primary input, we are relying on the GOI's statement that five industries are provided standing timber by the GOI for purposes of this preliminary determination." See Preliminary Determination, 72 FR at 17502. No additional information has been provided by the GOI since the Preliminary Determination, such as whether all five of these industries actually held, or relied on another industry that held, harvesting licenses during the POI. Furthermore, the GOI explained during verification that "only logging companies are eligible to hold harvesting licenses." See GOI Verification Report at page 2. Accordingly, we find that the five industries identified in our preliminary determination are more apt to be overly inclusive by including industries like "publishing" which is not likely to be a consumer of timber as a primary

input into production. Thus, for purposes of this final determination, we have no reason to change our preliminary finding and continue to find this program to be de facto specific.

Comment 11: Use of Malaysian Export Statistics as the Starting Point for Deriving Stumpage Benchmarks

Respondents argue that the Department should measure the adequacy of the GOI's remuneration using as a stumpage benchmark the prices actually paid in 2005 by Indonesian chipping and pulp companies for Malaysian chipwood. Respondents state that, in the Preliminary Determination, the Department used a third-tier benchmark analysis in the absence of information to conduct a first- or second-tier benchmark analysis as stipulated in 19 CFR 351.511(a)(2). Respondents argue that the record contains several comparable, arm's-length purchases of pulpwood by buyers in Indonesia. Respondents argue that, for this final determination, the Department should use these purchase prices as they fall within a first-tier benchmark analysis.

Specifically, Respondents refer to information on the record regarding two sets of purchases by Indonesian chipping companies or pulp mills of chipwood from sources outside of Indonesia, one of which occurred in 2005, the other in 2007. (See Respondent Companies' Factual Information Submission, dated June 18, 2007 (Respondents' FIS).) With respect to the 2005 purchases, Respondents argue that the transactions are for significant quantities of logs, and the quantities nearly equal the quantity reported in the Malaysian export statistics for the entire year and used by the Department in the Preliminary Determination. Respondents note that the per-unit price for these transactions between Indonesian buyers and Malaysian sellers is consistent with and corroborated by the average FOB Malaysian price reported in Table 6-5 of the Sabah Forestry Department Statistics, which were included in Attachment 4 of the Respondents' FIS.

Respondents argue that the Department should use the per-unit price from the 2005 transactions, as these transactions occurred during the POI, and were for a significant quantity. Respondents argue that since the price is a per-unit delivered price, the Department should deduct the costs of transportation from Malaysia to Indonesia. Additionally, Respondents argue the Department should also remove: (1) the Sabah Export Royalty Rate (see Comment 16); (2) extraction costs; (3) general and administrative (G&A) expenses (see Comment 16); and (4) profit.

Respondents argue that the Department should not use Malaysian export statistics under any circumstances because the wood identified in the statistics is not comparable merchandise. Respondents argue that although the two HTS codes used in the Preliminary Determination (4403.99.150 for acacia and 4403.99.195 for MTH) identify "pulpwood," these logs were not used to produce pulp. Respondents contend that "pulpwood" can be used to produce sawn timber, and that certain Malaysian HTS codes that identify "pulpwood" represent logs that are not suitable for producing pulp.

Respondents also argue that the quantity of exports shown by the HTS codes demonstrates that the merchandise was not used to produce pulp in commercial quantities comparable to the quantities

used by the respondent companies. According to Respondents, the quantity exported during the POI under these HTS codes is significantly smaller than IK's incoming shipments in the POI.

Respondents argue that the prices shown in the export statistics under these HTS codes demonstrate that the merchandise is not comparable. Respondents note that the average FOB unit price of plantation logs exported to Indonesia (127.12 Malaysian Ringgit (RM)/M3) and the average FOB unit price for all export markets (145.02 RM/M3) reported in the Sabah Forestry Department Statistics (at Table 6-5 and 9-4, respectively), are significantly lower that than the per-unit values used by the Department in the Preliminary Determination (253.66 RM/M3 for acacia and 215.53 RM/M3 for MTH). Respondents argue that the discrepancies between both the prices and the quantities demonstrate that either the HTS codes used by the Department were not for comparable merchandise, or that the transactions were for such small quantities that the prices do not provide a legitimate benchmark.

Petitioner argues that the Department should continue to use the Malaysian export statistics for the stumpage benchmark. Petitioner states that the respondent companies' statements in Respondents' FIS regarding the Malaysian exports statistics are incorrect. Petitioner disagrees with Respondents' argument that the Malaysian exports statistics used by the Department are capturing wood used for purposes other than chipping or pulping based on the small volumes. Petitioner contends that this argument is pure speculation and that, in fact, there is no correlation between the size of a shipment and its end use. Petitioner argues that purchase documentation provided by Respondents in Respondents' FIS contradicts its argument.

Petitioner states that, in Respondents' FIS, Respondents highlight the fact that one of the export declarations is from a Malaysian company with "saw mill" in its name. Petitioner argues that the name of a company neither defines nor limits what products it can sell, and as such the name is irrelevant for the Department's analysis.

Petitioner also refutes Respondents' claim that dimensions are not relevant for chippers and pulpers, arguing that Respondents have provided no evidence to support this claim. In fact, Petitioner argues, the information on the record disproves Respondents' statement. Petitioner states that sales information placed on the record by both themselves (see June 28, 2007 Rebuttal to New Factual Information Submission (Petitioner's RFIS) and the Respondents (see Respondents' FIS) show that dimensions are, in fact, relevant to chippers and pulpers. Petitioner also notes that, after reviewing the monthly Malaysian export statistics, that low volumes do not necessarily correlate with high unit prices, or vice versa, as argued by the Respondents. As such, Petitioner argues that the Malaysian export statistics used in the Preliminary Determination are appropriate benchmarks.

Petitioner further argues that Respondents' argument in Respondents' FIS is based on the claim that the log sales represented in the exports statistics' "pulpwood" categories may be used to produce sawn timber. Petitioner notes that the SMG/APP CFS forestry companies harvest timber that could be used as saw logs and that timber represented in the "sawlog" categories can be used

to produce pulp. Petitioner states that there is little if any difference in quality between "sawlog" and "pulpwood." Therefore, Petitioner contends, an average of both these categories best represents the fiber used by IK and Lontar to produce pulp and by TK and PD to subsequently produce CFS. Petitioner states that the fact that, in most instances, roundwood is used interchangeably for either sawn timber or chipping shows that Malaysian "pulpwood" export statistics consist of roundwood that cannot be used to make sawn timber, but "sawlog" categories contain roundwood that can be used to make either sawn timber or chips and pulp. Petitioner also contends that, if the Department uses these "sawlog" categories, Respondents' argument regarding the small quantities represented in the Malaysian export statistics becomes moot because the Malaysian "sawlog" categories contain large quantities of exports.

In their rebuttal arguments, Respondents contend that Petitioner's argument to include additional Malaysian HTS categories for saw logs in the final determination actually demonstrates why the Department should not rely on any Malaysian export data for the final determination. Respondents state that even Petitioner concedes that the "pulpwood" HTS categories in the Malaysian export data include saw logs. Therefore, Respondents state that since the Malaysian HTS data incorrectly group exports of dissimilar products, it is impossible for the Department to identify the appropriate merchandise for benchmark purposes. Additionally, Respondents state that the Petitioner's claim that the volume and price in the Malaysian HTS data are not correlated actually demonstrates that the Malaysian HTS represents merchandise that is not comparable for this investigation.

In its rebuttal arguments, Petitioner states that the Department should not use the transactions submitted by Respondents as benchmarks as these sales are made into the Indonesian market which is distorted from the GOI stumpage subsidies and log export ban. Petitioner states that the Department should compare the subsidized price to a market-determined price. Petitioner also contends that, in using the Malaysian export statistics, the Department should exclude exports to Indonesia. Petitioner notes that based on the Malaysian exports statistics, the average unit value (AUV) for logs exported to Indonesia is significantly less than the AUV of Malaysian logs shipped to any other country.

Additionally, Petitioner argues that the Department should not use the Sabah Forestry Department statistics, provided in Respondents' FIS, as the basis of the benchmarks. Petitioner notes that the exports for 2005 reported in the Sabah Forestry Department statistics do not correspond to the Malaysian export data on the record, even though Respondents claimed that the source of all Malaysian log exports was the state of Sabah. Petitioner states that the Sabah Forestry Department does not explain if the export statistics represent all shipments from Sabah or all shipments from Malaysia, and argue that it is possible the exports could include goods exported from Sabah and into other Malaysian provinces. Petitioner also argues that the lower unit price of logs exported to Indonesia in comparison to other countries shows that the data included prices to the distorted Indonesian market. Finally, according to Petitioner, it is unclear on what basis these sales are made (i.e., FOB, etc.) and what if any fees are charged or included.

Department's Position:
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 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.

Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying benchmarks for determining whether a government good or service is provided for less than adequate remuneration. Specifically, these potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (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.

The most direct means of determining whether the government received adequate remuneration is by comparison with private transactions for a comparable good or service in the country. Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country, or outside the country (the latter transaction would be in the form of an import). See 19 CFR 351.511(a)(2)(i); see also Preamble, 63 FR at 65377. This is because such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation.

The Department has determined that there were no market-determined prices for stumpage in Indonesia during the POI. The GOI owns and controls virtually all harvestable forest land and all prices charged by the GOI are administratively set. See GOI Questionnaire Response, at page 13. Because the GOI owns virtually all harvestable forest, we would not use private stumpage prices in Indonesia. See Preamble, 63 FR at 65377 ("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"). In addition, while 19 CFR 351.511(a)(2)(i) allows the Department to rely on import prices as market-determined prices, there can be no "imports" of stumpage because standing timber cannot be imported. Further, the GOI controls virtually all of the standing timber sold in Indonesia, thus we would reject any actual transactions in Indonesia and move to a second tier analysis. There is, therefore, no basis to calculate a "first tier" benchmark for our analysis.

The "second tier" benchmark relies on world market prices that would be available to purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving

that particular producer. See 19 CFR 351.511(a)(2)(ii). In selecting a world market price under this second approach, the Department will examine the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. As discussed in the Preamble to the regulations, the Department will

> consider whether the market conditions in the country are such that it is reasonable to conclude that a purchaser in the country could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America. However, as another example, the world market price for commodity products, such as certain metals and ores, or for certain industrial and electronic goods commonly traded across borders, could be an acceptable comparison price for a government-provided good, provided that it is reasonable to conclude from record evidence that the purchaser would have access to such internationally traded goods.

See Preamble, 63 FR at 65377. There is no evidence on the record of world market prices for standing timber. Consequently, we are not able to conduct our analysis under tier two of the regulations. Therefore, consistent with the hierarchy, we have measured the adequacy of remuneration by assessing whether the government price is consistent with market principles.

This approach is set forth in 19 CFR 351.511(a)(2)(iii), which is explained further in the Preamble:

> Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination.

The regulations do not specify how the Department is to conduct its analysis of consistency with market principles. By its nature the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis. We found in the Preliminary Determination that it is generally accepted that the market value of timber is derivative of the value of the downstream products. See Preliminary Determination, 72 FR at 17504. The species, dimension and growing condition of a tree largely determine the downstream products that can be produced from a tree; the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is in turn derived from the demand for the products produced from these logs. See e.g., 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) and accompanying Issues and Decision Memorandum, at 16. We continue to find that it is appropriate to use log values as the starting point for determining a market-based stumpage benchmark.

In the Preliminary Determination, we used the value of pulpwood from Malaysia during the POI, as reported in the "World Trade Atlas," as the starting point for assessing whether the GOI set stumpage fees in accordance with market principles and for determining whether the GOI is providing standing timber for less than adequate remuneration. See Preliminary Determination, 72 FR at 17504.

We find that the purchase documentation regarding private log purchases placed on the record by Respondents following the Preliminary Determination does not provide an appropriate alternative to use in this analysis. See Respondents' FIS. Respondents state that both sales for which the Respondents provided information were between a wood supplier in Malaysia and an Indonesian chipping company or pulp mill and therefore meet the provisions of 19 CFR 351.511(a)(2). However, one of the two purchases occurred in 2007, outside of the POI, and thus could not be an indicator of log prices in Indonesia during the POI. As such, the 2007 purchases are irrelevant for our analysis.

Therefore, the only information about log sales/purchases that we have on the record is a single sale selected by Respondents for purposes for our consideration in this investigation. We have examined this information and find that even though the purchaser is apparently an Indonesian importer of pulpwood, it is not one of the companies we are examining among the cross-owned companies in the SMG/APP CFS group. Without knowing more about the purchaser and the Malaysian supplier, and any possible relationship between the two, we are unable to evaluate the reliability of the price or the transaction. Additionally, if this is, in fact, an export sale of pulpwood from Malaysia, it should already be reflected in the Malaysian export statistics that the Department is using for our analysis, since the Department is using all pulpwood exports under the HTS number for the particular species in this sale. We find that the national export statistics are a better representation of prices under 19 CFR 351.511(a)(2) than the information, provided by Respondents, about one sale. Thus, using all exports under this HTS number during the POI is more appropriate than selecting one sale from this larger group of sales.

We also find that the Sabah Forestry Department statistics placed on the record by Respondents following the publication of the Preliminary Determination do not provide an appropriate alternative to the World Trade Statistics. See Respondents' FIS. The Sabah Forestry Department Statistics are compiled by the state government of Sabah, whereas the World Trade Atlas data present official export data at the national level and are, therefore, more comprehensive in scope. As such, we find that the statistics reported in the World Trade Atlas, which are official export statistics from the Malaysian Government, are more reliable than the statistics compiled in the Sabah Forestry Department Statistics, by a state government. In addition, the Sabah Forestry Department statistics do not provide the export data by HTS number. Nor do the Sabah Forestry Department statistics differentiate between pulpwood and sawlogs, a key distinction in our analysis. For these reasons we find that the statistics from the Sabah Forestry Department are not appropriate for our analysis. We also note that even if we were to find either of these two alternatives appropriate, we would still not be in a first tier or second tier analysis of the benchmark hierarchy set forth in regulations. Contrary to Respondents' arguments, because the

alternatives they propose still reflect log prices and not stumpage rates for standing timber, they could only be considered in the analysis of whether GOI stumpage rates are determined in accordance with market principles under the third tier analysis of the benchmark hierarchy.

Thus, based on our analyses of all the alternative benchmark information on the record, the Department continues to find that official, public Malaysian export statistics are the most appropriate basis for deriving a market-based stumpage benchmark for determining whether the GOI provides stumpage for less than adequate remuneration. The Malaysian export prices provide the most appropriate basis for determining a benchmark to use in our assessment of whether the GOI stumpage rate is consistent with market principles under 19 CFR 351.511(a)(2)(iii). Accordingly, we find that the Malaysian export statistics still provide the most appropriate starting point for deriving a market-based stumpage price under 19 CFR 351.511(a)(2)(iii).

Comment 12: The Stumpage Rate Calculation Provided by Respondents in their Expert's Report

Respondents argue that if the Department decides to use Malaysian export prices, it should calculate the benchmark rate based on the report by Prof. Dr. Shahwahid Othman, provided in Respondents' FIS. In the Preliminary Determination, the Department did not use the information from an earlier report by Dr. Othman based on the reasoning that the study was commissioned for the purposes of this investigation and that it lacked supporting documentation to establish the authenticity of the calculated benchmark. See Preliminary Determination, 72 FR at 17503. In their brief, Respondents state that they had submitted a new report in Respondents' FIS from Dr. Othman which provided an analysis of harvesting costs, profit rate and stumpage value for acacia in Malaysia. Respondents argue that Dr. Othman's report is objective and is supported by independent evidence. Respondents contend that the fact that this second report was prepared for this investigation is not a legitimate basis for rejecting it. According to Respondents, in Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy, 63 FR 40474 (July 29, 1998) the Department relied on an expert report for determining a benchmark for the rate of return. As such, Respondents argue that, if the Department uses an out of country benchmark (i.e., Malaysian export prices), the Department should use the prices for acacia stumpage that Dr. Othman calculated in this report submitted in Respondents' FIS.

In its rebuttal argument, Petitioner contends that the Department should not base the benchmark on the derived stumpage rates in the report by Dr. Othman. Petitioner notes that this report by Dr. Othman was commissioned for purposes of this investigation. Petitioner argues that the report lacks supporting explanation or documentation for the information and data provided. Petitioner also states that the Respondents have not explained how Dr. Othman's calculation of stumpage rates is representative of rates available for purchase in Indonesia.

Department's Position:
In the Preliminary Determination, after identifying a starting price from the Malaysian export statistics, the Department made two adjustments in order to derive a market-based stumpage price: the Department subtracted five dollars for Indonesian profit and seventeen dollars for extraction (harvesting) costs of the standing timber. See Preliminary Determination, 72 FR at 17504. The source of these Indonesian harvesting costs and profit was the study Addicted to Rent. See Petition at Exhibit V-8. This study was used by the Department because it was an independent source that was not prepared for purposes of the investigation and it provided specific information regarding extraction costs and profit in Indonesia.

In the Preliminary Determination, the Department did not use information from a study by Dr. Othman placed on the record by Respondents based on the fact that the study was commissioned by Respondents for purposes of this investigation and included a statement of opinion with no supporting documentation to establish the authenticity of the figures used to adjust the starting price to derive the stumpage rate for acacia timber in Malaysia. See id., 72 FR at 17503.

We find that the second Dr. Othman study submitted by Respondents in Respondents' FIS is also not appropriate to use as the basis for our benchmark. This second study was also commissioned specifically for the purposes of this investigation and, as such, would not normally be considered reliable for our analysis. Additionally, Dr. Othman's sources for several significant pieces of information relied upon in this second study are personal interviews that are not supported with any documentation. Finally, the companies used as the basis for this second study were selected by Dr. Othman, and we have no additional information regarding these companies.

As such, we find that this second study by Dr. Othman submitted in Respondents' FIS does not contain useable information and supporting documentation for adjustments that are appropriate to the starting price in the calculation of the market-based stumpage price. Therefore, the Department has continued to use the Addicted to Rent study used in the Preliminary Determination as the source for adjustments to the Malaysian export statistics.

Comment 13: Calculation of Species-Specific Benchmarks

Petitioner notes that SMG/APP CFS forestry companies harvested and purchased different types of timber, which in turn have different world market prices. Petitioner argues that when selecting the benchmarks the Department should ensure an accurate measurement to determine what SMG/APP CFS forestry companies would otherwise have paid for its timber purchases. Petitioner states that the information on the record allows the Department to establish benchmarks for four distinct groups of timber harvested and/or purchased: 1) Acacia Logs; 2) MTH BBS/KBK (less than 30 cm in diameter); 3) Meranti Logs; and 4) MTH (Campuran) Logs.

Regarding the classification for Acacia and BBS/KBK logs, Petitioner argues that the Department should include "sawlog" prices with the "pulpwood" prices. According to Petitioner, the

classification of "pulpwood" and "sawlog" in the Malaysian HTS is not well defined. Petitioner notes both products come from the same input, and that the characteristic distinction between the two can overlap, especially in the 20 cm to 30 cm diameter range. Petitioner argues that it is likely that some Malaysian exports classified as "sawlogs" were actually used to produce pulp, and that some of the timber harvested by SMG/APP CFS forestry companies and used in SMG/APP CFS pulp operations could have been sold as "sawlogs" rather than used for pulping. Petitioner also notes that the Malaysian tariff schedule shows that there is a 15 percent export duty on "sawlogs" while there is no export duty on "pulpwood." As such, Petitioner contends, there are incentives for Malaysian authorities to mis-classify certain timber as "sawlogs" instead of "pulpwood" given the similarities between the two products. Therefore, according to Petitioner, "sawlogs" includes pulpwood, and Petitioner argues that the Department should include "sawlog" prices along with "pulpwood" prices in its benchmark calculation for acacia logs and BBS/KBK logs.

Regarding the acacia benchmark, Petitioner states that information on the record shows that acacia was exported from Malaysia to Indonesia during the POI under HTS 4403.99.150. Additionally, Petitioner explains that acacia is categorized under "light hardwoods" in the Malaysian tariff schedule and that there are only two other Malaysian HTS categories with sufficient exports that could have been used for exports of acacia - 4403.99.394 for logs of "mixed light hardwoods," and 4403.99.395 for "other" hardwood logs. Petitioner also contends that small amounts of exports of acacia could have been categorized under 4403.99.350 during the POI. As such, Petitioner argues that in calculating the acacia benchmark, the Department should use the weighted average of the values for HTS 4403.99.150 and 4403.99.394, or the weighted average of the values for HTS 4403.99.150, 4403.99.394, 4403.99.395, and 4403.99.350.

Regarding the BBS/KBK benchmark, Petitioner notes respondent companies' statement that the MTH harvested consisted mainly of five species: Medang, Jelutung, Renggas, Pulai Petaling, and Kempas. See Respondent Companies' May 8 Response, at page 12. Petitioner states Jelutung, Pulai Petaling, and Kempas are specifically identified in the Malaysian HTS as "tropical wood" and therefore should be categorized under HTS 4403.49. Petitioner also states that the Malaysian schedule classifies Renggas as "medium hardwood" and Medang and Pulai Petaling as "light hardwoods." Petitioner contends that the Department's BBS/KBK benchmark must reflect these various hardwood categories in addition to "pulpwood" and "sawlog" sized timber. As such, Petitioner argues that in calculating the BBS/KBK benchmark, the Department should use the weighted average of the values for HTS 4403.49.930, 4403.49.990, 4403.99.195, 4403.99.348, 4403.99.373, 4403.99.385, 4403.99.394, and 4403.99.396.

Regarding the Meranti log benchmark, Petitioner states that the Department should calculate the benchmark by weight averaging all Meranti log categories. The relevant categories, according to Petitioner, are represented by HTS item numbers 4403.41.130, 4403.41.230, 4403.41.330, and 4403.99.393.

Regarding the Campuran (MTH) logs benchmark, Petitioner reiterates respondent companies' statement that the MTH harvested by the SMG/APP CFS forestry companies consisted mainly of five species: Medang, Jelutung, Renggas, Pulai Petaling, and Kempas. Petitioner again states that Jelutung, Pulai Petaling, and Kempas are specifically identified in the Malaysian HTS as "tropical wood" and therefore, should be categorized under HTS 4403.49. Petitioner also states that the Malaysian schedule classifies Renggas as "medium hardwood" and Medang and Pulai Petaling as "light hardwoods." Petitioner contends that the Department's Campuran log benchmark must reflect these various hardwood categories. Petitioner argues that in calculating the Campuran log benchmark, the Department should use the weighted average of the values for HTS 4403.49.930, 4403.99.348, 4403.99.373, 4403.99.385, 4403.99.394, and 4403.99.396.

Respondents argue that the Department should not distinguish between species (acacia and MTH) in measuring the adequacy of the GOI's remuneration because the two species can be used interchangeably to produce pulp. Respondents argue that the issue before the Department is whether the GOI is receiving adequate remuneration for chipwood. Respondents contend that the fact that there are different species of chipwood is irrelevant since there is no difference in price.

Respondents argue that the GOI does not consider species in collecting its PSDH fees; instead it collects a PSDH fee for "chipwood." Respondents argue that although the GOI collects a PSDH fee on acacia, this fee is established under the "Logs from Timber Estate (HTI)" section. Respondents note that, in contrast to wood from the natural forest, PSDH fees for wood from timber estates do not differ based on log diameters. Instead, the distinction in the fees is based on whether the wood is coming from the natural forest or from an HTI plantation.

Respondents note that the Department has previously used species-specific comparisons to evaluate whether the government received adequate remuneration for standing timber. See Lumber. However, Respondents argue, in Lumber, species was an important factor because the price of the finished good was affected by the species of the lumber. Respondents argue that in the instant case, different species of chipwood are used interchangeably in the production of CFS. Therefore, Respondents contend, the Department should not make a distinction between chipwood species in its analysis.

In rebuttal, Petitioner argues that the Department must distinguish among species for the purposes of this investigation. Petitioner argues that Respondents state the prices are irrelevant because there is no difference in the price each commands based on the transfer prices charged by the forestry companies to these cross-owned pulp companies and prices from the forestry companies to other forestry companies. Petitioner states that these prices are highly distorted by the GOI's stumpage subsidies and log export ban, and, as such, the prices that Respondents use as the basis of their argument are not reliable.

Petitioner also states that, in arguing for one chipwood benchmark to apply for all species, Respondents are claiming that the value of stumpage derives from the price of the end product made from it; various species are used interchangeably to make CFS; and therefore, all stumpage

used to make CFS must have the same value. Petitioner argues this logic is flawed because: 1) the Malaysian export statistics show that the value of timber varies based on species; 2) Respondents make other end products besides CFS which have different prices; 3) there are other purchasers of Indonesian stumpage, who buy or harvest one species over another for a wide variety of reasons which, in turn, affects the value of the species; and 4) while it is possible to produce CFS using pulp made from acacia, MTH, or a mixture, the yield ratios for each are different and are tracked separately in the pulp companies' and paper companies' books and records. Finally, Petitioner argues that SMG/APP's Sustainability Action Plan (SAP) indicates that the amount of timber needed to produce a given quantity of paper varies based on whether MTH or acacia is used.

In their rebuttal argument, Respondents argue that the Department should reject Petitioner's argument to include Malaysian HTS statistics for saw logs. Respondents state that a very small quantity of logs were purchased by the SMG/APP CFS pulp producers. Respondents argue that the AUVs (which include exports of saw logs) proposed by Petitioner (see Petitioner's Case Brief, at Attachment 3) are inconsistent with the record. See Respondents' FIS, at Attachment 3 and 4.

Department's Position:

In the Preliminary Determination, we calculated two stumpage benchmarks (one for acacia and one for MTH) using the Malaysian pulp log export statistics for acacia and MTH to derive a market-based stumpage price to compare to Indonesian stumpage prices. See Preliminary Determination, 72 FR at 17505. To derive the acacia benchmark we first calculated the AUV using the official export quantity and value of HTS 4403.99.150 (Pulpwood, of Type N.E.S., in the Rough, Light Hard-Wood: Acacia Mangium). See Preliminary Calculation Memo. To derive the MTH benchmark we first calculated the AUV using the official export quantity and value of HTS 4403.99.195 (Pulpwood, of Type N.E.S., in the Rough, Light Hard-Wood: N.E.S.). See Preliminary Calculation Memo.

For this final determination, we find that deriving species-specific benchmarks is still the most appropriate approach to measuring the benefit under the GOI's provision of standing timber. Respondents argue that the Department should not distinguish among species in measuring the adequacy of the GOI's remuneration because the timber species can be used interchangeably to produce pulp. However, the GOI considered species and size when establishing PSDH fees and DR fees, and charges different fees for different species of wood. See GOI Verification Report, at page 5. Because the fees vary by species and log type, we concluded that it is reasonable and appropriate to calculate species-specific benchmarks for our analysis. Furthermore, the fact that each species is tracked separately in the SMG/APP CFS forestry companies' books and records through the pulp stage of production further indicates that there are meaningful differences between different species of pulpwood. See Logging Companies Verification Report.

For this final determination, we have decided the most appropriate basis for calculating the benefit from the government provision of standing timber is to use a separate benchmark for each of four distinct groups of timber: 1) acacia; 2) MTH chipwood; 3) meranti logs; and 4) MTH (Campuran)

logs. Information gathered since the Preliminary Determination, and the results of verification, show that there were Meranti and Campuran logs harvested by the SMG/APP CFS forestry companies that were sold to IK and Lontar for pulp production. As such, these logs are appropriately included in our calculations. Therefore, establishing a benchmark for each of these four distinct groups provides the most appropriate basis for our analysis as it more accurately reflects the actual price the company would have otherwise paid for the standing timber. Accordingly, we have calculated a benchmark for each of the following four groups of timber: 1) acacia; 2) MTH chipwood; 3) Meranti logs; and 4) MTH (Campuran) logs.

In its brief, Petitioner identified HTS numbers in addition to the pulpwood HTS numbers the Department used in the preliminary determination that the Department should include when calculating the acacia and MTH benchmarks. For acacia, Petitioner's suggestions include logs identified as "Sawlogs and Veneer Logs" and also species of wood identified as "Acacia Mangium" and "Mixed Light Hardwoods." For MTH, Petitioner's suggestions include logs identified as "Other Wood in the Rough" and "Sawlogs and Veneer Logs" and also include species of wood identified as "Medang," "Pulai," and "Mixed Hardwoods."

For this final determination, the Department has decided not to include in the starting prices for acacia and MTH any HTS numbers that are not classified as pulpwood. The Department does not disagree that some wood not classified as pulpwood may be used to produce pulp, or that some wood classified as pulpwood may be used to produce products other than pulp. However, it is logical and reasonable to find that wood classified as pulpwood is destined to become pulp, and wood not classified as pulpwood (i.e., "sawlogs/veneer logs," "other wood in the rough," etc.) is normally used for the production of other products. As such, for purposes of this final determination, we are continuing to use the HTS numbers for acacia (4403.99.150) and MTH (4403.99.195) pulpwood that we used in the Preliminary Determination.

Petitioner has also specifically identified the HTS numbers the Department should include when calculating the meranti log benchmark. Petitioner's suggestions include logs identified as "Sawlogs and Veneer Logs" and also include species of wood identified as "Meranti" and "Red Meranti." In addition, Petitioner has identified the HTS numbers the Department should include when calculating the campuran log benchmark. Petitioner's suggestions include logs identified as "Sawlogs and Veneer Logs" and also include species of wood identified as "Medang," "Pulai," and "Mixed Hardwoods."

The Department finds that both the GOI and the SMG/APP CFS forestry and pulp companies specifically differentiate between pulpwood and logs. See GOI Verification Report, at page 5; see also Logging Companies Verification Report, at the Inventory sections. Additionally, information on the record shows that there were Meranti and Campuran logs harvested by the SMG/APP CFS forestry companies that were sold to IK and Lontar for pulp production. For this final determination, the Department has determined that it is necessary to calculate separate benchmarks for Meranti and Campuran logs. We find that the most appropriate HTS numbers for deriving the Meranti log benchmark are those suggested by Petitioner since the HTS numbers

suggested are all classified as meranti and as sawlogs/veneer logs, and there are no Malaysian export statistics that classify such logs as pulpwood. For the same reasons, we also find that the most appropriate HTS numbers for the Campuran log benchmark are those suggested by Petitioner.

Comment 14: Whether to Adjust the Benchmark for Movement Expenses

Petitioner argues that the Department should adjust the stumpage benchmark that the Department used in the Preliminary Determination, and which was derived from the Malaysian Export statistics, to account for movement expenses. Petitioner states the Department should calculate this adjustment based on the export declarations provided in Respondents' FIS.

Petitioner states that the Malaysian Export statistics, used as starting point for the benchmark calculations, are reported on the basis of FOB Malaysian port. Therefore, Petitioner contends, the Department should add an amount for ocean freight in accordance with 19 CFR 351.511(a)(2)(iv). This regulation, Petitioner argues, indicates that an adjustment for freight differences must be made for purposes of determining the adequacy of remuneration under 19 CFR 351.511(a)(2)(i) and (ii). According to Petitioner, since the Department selected the benchmarks in the Preliminary Determination pursuant to 19 CFR 351.511(a)(2)(iii) using international trade statistics rather than another methodology, the Department should ensure that these trade statistics are adjusted to account for delivery charges.

Petitioner argues that section 771(5)(E) of the Act supports its argument to make adjustments for movement expenses under 19 CFR 351.511(a)(2)(iv). According to Petitioner, the statute specifies that the adequacy of remuneration shall be determined by prevailing market conditions, which, it argues, should include transportation and other conditions of sale. Petitioner also contends that the preamble to 19 CFR 351.511(a)(2)(iv) does not draw a distinction among the three options for benchmarks (i.e., 19 CFR 351.511(a)(2)(i),(ii), and (iii)). Therefore, Petitioner argues, the fact that 19 CFR 351.511(a)(2)(iv) does not specify an adjustment under 19 CFR 351.511(a)(2)(iii) merely provides the Department with the flexibility to adjust for freight as appropriate.

Petitioner contends that the Department can make its final determination of the adequacy of remuneration in the instant case based on 19 CFR 351.511(a)(2)(ii). Petitioner states that the regulatory preference for a "world market price" should not be ignored, nor should the need to adjust prices to a delivered basis, and as such the Department should take transportation costs into account when measuring the adequacy of the remuneration.

In rebuttal, Respondents argue that there is no basis for including movement expenses in a benchmark which represents the price of standing timber. Respondents argue that the Department is attempting to measure the adequacy of the remuneration for standing timber. The GOI is paid for the access it grants to standing timber, not for transportation. Respondents argue the regulations that the Petitioner cites address a different factual scenario. Respondents argue that

according to 19 CFR 351.511(a)(2)(i) and (ii), the Department must compare the delivered price to the allegedly subsidized price. However, Respondents argue that standing timber cannot be imported. As such, Respondents argue that the Department should eliminate, not add, transportation costs regarding delivered log prices, because they are not part of the price of the standing timber.

Department's Position:

For this subsidy program, the Department is determining whether the GOI has provided a good or service for less than adequate remuneration. Therefore, for our analysis, the Department is calculating a benchmark price based on a good that is similar to the good provided by the GOI. In this investigation, the Department has found that the GOI provides companies standing timber. As such, the adequacy of remuneration is to be measured for standing timber, and therefore, the benchmark should be calculated on a similar basis. See, e.g., Lined Paper, at Comment 4. By its nature stumpage, and the underlying standing timber on which stumpage fees are charged, are not "delivered." For our analysis, we are deriving a market-based stumpage price; we are not comparing log prices to log prices. The Malaysian export statistics are a starting point from which to derive a market-based stumpage price. As such, we find that ocean freight should not be deducted from or added to the Malaysian price for the purposes of our analysis. Therefore, the Department is not adjusting its stumpage benchmark for movement expenses in the final determination.

Comment 15: Whether to Use Monthly Exchange Rates

Petitioner argues that when calculating the benchmark, the conversion from Malaysian Ringgits to U.S. Dollars to Rupiah should be done on a monthly basis. Petitioner argues that the quantity of Malaysian exports is not equally distributed across the POI. Petitioner also contends that the exchange rate between the U.S. Dollar and Malaysian Ringgit fluctuated over the POI, and thus using an annual average exchange rate for the POI rather than average monthly exchange rates is distortive. Respondents did not comment on this issue.

Department's Position:

In the Preliminary Determination, the Department converted the Malaysian Ringgit values reported in the Malaysian export statistics using the annual average Malaysian Ringgit/US dollar exchange rate from the IMF Stastics. The Petitioner has not provided any evidence establishing that there were significant fluctuations in the Malaysian Ringgit/US Dollar exchange rate during the POI. Therefore, the Department finds that there is no basis for departing from the annual average exchange rate used in the Preliminary Determination.

Comment 16: Whether to Adjust the Benchmark for Export Royalty Fees and G&A Expenses

Respondents argue that regardless of which starting price the Department uses, whether from export statistics or observed prices, the Department should make adjustments for export royalty

fees and G&A expenses. Respondents state that all the exports from Malaysia were from Sabah, and information they have provided demonstrates that Sabah imposes an export royalty. Respondents provided a table reflecting what they argue are the relevant fees for the POI. Respondents contend that the Department should also deduct G&A expenses for the POI claiming that the adjustments made in the Preliminary Determination related only to harvesting costs, which are only part of the cost of goods sold (COGS). As such, the Respondents have calculated a POI weighted-average G&A expense ratio, based on the net sales and G&A expenses reported in their initial responses, for the SMG/APP CFS forestry companies. Respondents urge the Department to use this to account for the G&A expenses embedded in the starting price.

In its rebuttal argument, Petitioner states that the Department should not separately adjust for the export royalty and G&A fees. Petitioner argues that the information regarding the Sabah export fee does not indicate at what point the fees are imposed. Petitioner states that it is reasonable to assume that the export royalty is not included in the FOB price reported in the Malaysian export statistics. Therefore, Petitioner argues, the Department should add this royalty to the Malaysian export statistics prices to determine the benchmark to reach a delivered price. Regarding the G&A fees, Petitioner argues that the article by Dr. Brown which was used by the Department to calculate the harvesting costs adjustment to log prices does not indicate that the reported extraction costs are limited to the cost of goods sold of the extractor. Petitioner argues that the article shows that the extraction costs include administration costs; therefore, the Department's deduction for harvesting costs in the Preliminary Determination captured any G&A expenses.

Department's Position:

Because the adequacy of remuneration must be measured for standing timber, the benchmark must be calculated on a standing timber basis. Just as we are not making an adjustment for ocean freight, we are not making an adjustment for purported export royalties. First, there is no information on the record to suggest that these royalties are reflected in the official export values of Malaysia. Second, the information on these royalties indicates that they may only be related to exports from Sabah, and as the Sabah statistics report both sales to other parts of Malaysia as well as sales to other countries, there is no way of knowing whether the export royalty is applied equally to all exports from Sabah to other parts of Malaysia and to other countries. Although respondents claim that these Sabah exports make up all of the Malaysian timber exports, there is no information on the record to substantiate that claim. Therefore, the Department will not deduct export royalty fees from the Malaysian export statistics in deriving market-based stumpage benchmarks for Indonesian stumpage for this final determination.

With respect to Respondents' argument that G&A fees were not included in the extraction costs and that these costs are only part of COGS, our review of the Addicted to Rent study shows that the extraction costs are based on "costs of production" and not just COGS. See CFS Petition, Exhibit 8 at page 72. The GOI itself recognized in its calculation of economic rent that production costs are inclusive of overhead costs (i.e., administrative costs). See the letter from the World Bank regarding the "Economic Rent Calculation of Forest Resource" at Exhibit 3 of the GOI's March 6 Questionnaire Response. Therefore, removing G&A expenses by using

Respondents' ratio, or by any other method, would result in deducting these expenses twice. Accordingly, the Department is continuing to adjust the benchmark prices by deducting $17 for extraction costs from the Malaysian export price.

Comment 17: Profit Adjustment to the Benchmark

Petitioner argues that the Department should use a 20 percent profit rate in adjusting the Malaysian export prices. Petitioner notes that Department used a profit figure of five dollars per cubic meter in the Preliminary Determination based on the Addicted to Rent article. Petitioner states that it has provided updated information on the record, from Dr. Brown, which shows that the profit figure was based on an estimate of a normal profit of 25 percent (of harvesting costs). Petitioner notes that in the same statement, Dr. Brown indicates that the World Bank and Malaysian Prime Minister have stated that a 20 percent profit ratio may be more appropriate and that an analysis by U.S. Agency for International Development and the U.K. Department for International Development used a normal profit rate of 15 percent. Petitioner argues that given the range of profit estimates, the Department should use a simple average of these percentages (i.e., 20 percent) to calculate profit. Petitioner states that a profit figure using 20 percent equals $4.40 per cubic meter for profit. In the alternative, Petitioner suggests that the Department could calculate normal profit using 5.8 percent of the sales value, which was the average profit rate for the U.S. timber industry in 2005.

In their rebuttal argument, Respondents state that the Department should not use the 5.8 percent U.S. timber industry profit rate. Respondents argue that the profit rate used in the Preliminary Determination is in line with the profit estimate used for logging companies by the World Bank and in Dr. Othman's report. Additionally, the 5.8 percent profit rate suggested by Petitioner is for the wood manufacturing industry, not the logging industry. As such, Respondents state that the record contains no information that can reasonably be construed as providing a profit rate for U.S. logging companies. Therefore, Respondents argue the Department should not use the 5.8 percent profit rate argued by Petitioner.

Department's Position:

To derive a market-based stumpage price for Indonesia, it is necessary to deduct Indonesian extraction costs (including a reasonable amount for profit) from the Malaysian starting pulp log prices. The five dollar profit value used in the Preliminary Determination was based on information provided in "Addicted to Rent." See Preliminary Calculation Memo. Based on the information on the record we find that the five dollar profit value used in the Preliminary Determination continues to provide the most appropriate value for our analysis. We find that the 5.8 percent profit rate suggested by Petitioner is not appropriate for our analysis because this rate is for the U.S. wood manufacturing industry and Petitioner has not shown how the profit rates for the U.S. wood manufacturing industry are comparable to the rates in the Indonesian logging industry.

We find that, while the profit rates suggested by Dr. Brown in Petitioner's RFIS may be valid rates in theory, no supporting documentation was provided to explain the basis for these proposed rates. In addition, there are no articles or reports on the record to substantiate the use of these other profit rates. Additionally, the five dollar value for profit was used by Dr. Brown in the Addicted to Rent article which is on the record. As such, the five dollar profit value used by the Department in the Preliminary Determination, is the most appropriate profit value for this final determination.

Comment 18: Use of Actual Versus Accrued Stumpage Payments

Petitioner argues that the Department should only account for the DR and PSDH fees that each forestry company actually paid for their timber harvests during the POI. With the exception of FI, Petitioner argues that the SMG/APP CFS forestry companies make only estimated payments based on the staple meter measurements taken in the field. To the extent that the final fees are greater than this estimated payment, Petitioner notes that the GOI will later bill these companies for these fees. Petitioner states that the Department was not able to verify the difference between the fees accrued and the fees that were actually paid on the timber harvested during the POI. Accordingly, Petitioner argues that the Department should only use the fees that were actually paid by these companies for their POI harvests because it is unclear when or if the balance will be paid. Petitioner also argues that, to the extent that each forestry company in question did not report the necessary accruals and payments on a species specific basis, the Department should apply the ratio of payments to accruals.

Petitioner notes that during verification, the Department found that FI's final payments of PSDH fees were unlike those made by the other SMG/APP CFS forestry companies because they were final payments based solely on the volume measurements made in the field. The GOI does not subsequently issue to FI a supplemental bill or refund. Accordingly, Petitioner argues that even though FI made an overpayment during the POI as a result of the GOI's incorrect volume conversions, FI is in the process of recovering these overpayments which will lower the unit cost of FI's actual payments for its timber harvest during the POI. Therefore, Petitioner argues, the Department should adjust FI's reported PSDH fees so that it only accounts for the fees that should have been paid.

If the Department chooses not to use actual fees paid, Petitioner argues that the Department must then recognize as interest-free loans any timber harvest fees that the companies are accruing. According to Petitioner, the record does not show that forestry companies paid any interest on PSDH and DR fees that they owed to the GOI. Petitioner notes that it is unclear from the verification report whether the fees for the year prior to the POI and reported by the GOI as the 2004 supplisi, were paid during the POI. Therefore, Petitioner argues that, if the Department decides not to use actual payments, then it must treat any underpayments as outstanding interest-free loans as part of the GOI's program for the provision of timber for less than adequate remuneration.

USW argues that, in the final determination, the Department should ensure that the amounts it includes in the benefit calculation reflect the actual amount of logging fees received by the GOI during the POI. Additionally, USW states that volume of timber included in the benefit calculation should include the full volume of timber that the pulp producers report purchasing. USW argues that any discrepancies between harvest volume and timber purchase volumes should be resolved by relying on volumes recorded by the pulp producers as they are in the best position to track timber purchases through the production process.

In their rebuttal arguments, Respondents argue that the Department verified both the amounts the companies paid to the GOI and the amounts accrued. Respondents provided a table of the PSDH and DR fees paid by each company during the POI. Respondents argue that there is no dispute among the parties that actual payments should be used, and that the Department should use the PSDH and DR fees provided in the table as reported by the companies and as verified by the Department.

In response to Petitioner's argument regarding the underpaid PSDH and DR fees constituting a zero-interest loan, Respondents state that there is no record evidence showing that this practice is specific within the meaning of section 771(5A) of the Act. Respondents state that the GOI has similar procedures for every other sector in the Indonesian economy, and as such this practice is not specific. Respondents argue that Petitioner has not put any information on the record that shows otherwise. Additionally, Respondents state that any outstanding amount would be minor and would not affect the overall rate. As such, Respondents argue the Department should not treat these under-payments as zero-interest loans.

Department's Position:

In the Preliminary Determination, the Department used the DR and PSDH fees reported by Respondents on a species-specific basis in calculating a per unit stumpage fee paid to the GOI for comparison to the derived market-based stumpage rate benchmark. Based on information provided for the record since the Preliminary Determination, and the results of verification, we have determined that the DR and PSDH fees used by the Department were in fact accrued fees that do not reflect actual payments made by these SMG/APP CFS forestry companies during the POI. As such, we agree with Petitioner, USW and Respondents that actual PSDH and DR payments should be used. In addition, license holders in Jambi province also pay a PSDA fee for harvest from plantations. Therefore, we have used the actual PSDH, PSDA, and DR fees paid as reported by the SMG/APP CFS forestry companies as verified, for our calculations for this final determination. Additionally, because the Department is using the fees actually paid, to be consistent, it is appropriate to use FI's reported PSDH fees actually paid without adjusting for the overpayment. Further, because the Department is using actual fee payments, there is no need to consider Petitioner's argument regarding interest-free loans.

Finally, while we agree, in principal, with USW that the purchase volumes of pulpwood by the SMG/APP CFS pulp producers are the most accurate in tracking quantities of pulpwood entering the pulp production facility, we cannot apply the principal in these calculations for stumpage

because not all of the pulpwood sold to the SMG/APP CFS pulp producers is harvested by SMG/APP CFS forestry companies. The SMG/APP CFS forestry companies also purchase pulpwood from unaffiliated suppliers. In turn, they sell virtually all of the harvested and purchased pulpwood to the SMG/APP CFS pulp producers, but they do make a few small external sales of pulpwood. Based on the information on the record, we are unable to determine whether the external sales of pulpwood are from their own harvest or from purchases made from unaffiliated suppliers, and we are also unable to segregate harvested pulpwood from purchased pulpwood. As such, it would be inappropriate to extrapolate the benefit attributable to the harvest of pulp timber by the SMG/APP forestry companies beyond the total harvest figure, as adjusted using the FAO conversion factors, on which these companies paid stumpage fees. Finally, we find it reasonable to attribute the entire harvest of pulpwood by the SMG/APP CFS forestry companies to the SMG/APP CFS pulp producers because IK and Lontar reimburse AA and WKS, their sole suppliers of pulpwood, for the stumpage fees that they incur. The only portion of pulpwood harvested by the five SMG/APP forestry companies that was excluded in the benefit calculation was the quantity sold by FI to external parties. Because FI did not purchase pulpwood from external sources during the POI, we know that all of FI's pulpwood sales to external parties were from its own harvest (see Countervailing Duty Investigation of Coated Free Sheet (CFS) Paper from Indonesia: Verification of the Questionnaire Responses Submitted by Pulp Producers PT. Lontar Papyrus Pulp and Paper and Indah Kiat Pulp and Paper Tbk. (Pulp Companies' Verification Report at Lontar Exhibit 1)), and the quantity of those sales is appropriately excluded from the benefit calculation.

Comment 19: Use of the FAO's Conversion Factors

Petitioner argues that the Department should not use the conversion factor mandated by the GOI for converting metric tons to cubic meters, or the GOI conversion factor for converting staple meters to cubic meters to determine the volume of timber harvested and purchased. Regarding the factor for converting the metric tons to cubic meters, Petitioner states that GOI law requires the use of the 1.052 conversion factor even when the actual volume for a given weight is substantially higher. Petitioner refers to a report by Mr. Alberto Goetzl, an expert in the forest products industry, which indicates that, as a measure of the wood consumed by a mill, a government-mandated factor will almost never be accurate and can mask the true volume of wood fiber in the supply chain. See Petitioner's June 19, 2007 Factual Information Submission (Petitioner's FIS), at Exhibit 1. This report also states that other conversion factors (i.e., the APP-derived factor of 1.142, and the FAO factor of 1.33) are substantially higher, and likely more accurate. The report further notes that these higher factors indicate that the GOI-mandated factor most likely underestimates the true volume of material being measured. Petitioner contends that the Department should not use the GOI-mandated conversion factor for converting metric tons to cubic meters of 1.052 in the final determination.

Additionally, Petitioner argues that the Department should not use the 1.142 conversion factor that SMG/APP used in its 2004 SAP. Petitioner believes that Respondents would have an incentive to understate the conversion factor in the SAP. Specifically, Petitioner contends, an

understated conversion factor would impact the DR and PSDH fees the SMG/APP CFS forestry companies would have to pay and would also have aided SMG/APP in reaching the goals outlined in the SAP. Petitioner also states that the SMG/APP CFS group was unable to provide the Department with any information on how the conversion factor reported in the SAP was determined. Therefore, Petitioner contends that the Department should not use the SAP conversion factor in the final determination.

Petitioner argues that, for the final determination, the Department should continue to use the FAO conversion factor (1.33) it used in the Preliminary Determination to convert the harvest and purchase of acacia and BBS/KBK from metric tons to cubic meters. However, Petitioner states, MTH logs (i.e., logs over 30 com) should be converted using the FAO's conversion factor of 1.37 for metric tons to cubic meters for sawlogs and veneer logs in the final determination. Petitioner argues that these FAO conversion factors are based on independent and unbiased information and were not calculated by any of the parties in the investigation.

Regarding the staple meters to cubic meters conversion factor, Petitioner states the GOI's standard staple meter to cubic meter conversion factor (0.6) utilized in calculating DR and PSDH fees should not be used by the Department to determine the cubic meters of timber SMG/APP CFS forestry companies harvested and purchased. Petitioner notes that, unlike the other SMG/APP CFS forestry companies, FI's final payment of DR and PSDH fees is based on the staple meter estimates in the field. Petitioner states that the Department should use a more accurate factor to covert the staple meter estimates of FI's harvest to the cubic meters of timber harvested. Petitioner states that the Department should use the staple meter to cubic meter conversion rate of 0.72 in the FAO report to adjust FI's reported timber harvest. Additionally, Petitioner contends that the fact that the GOI issues a bill for the difference in DR and PSDH fees accrued as a result of differences between the weight measured in the field and the volume measured at the mill gate demonstrates that the staple meter to cubic meter factor used by the GOI is understated.

USW argues that, in the final determination, the Department should continue to use the FAO conversion factor used in the Preliminary Determination. USW notes that, at verification, the Department was unable to verify the GOI-mandated factors because the Ministry of Forestry officials were unable to support the calculation of the GOI's conversion factor by providing a copy of the study showing the calculation of the 1.052 figure. Therefore, USW contends, based on the fact that there is no evidence supporting the GOI rate, the Department should use the more credible FAO conversion factor.

Respondents argue that the Department should use the GOI-mandated conversion factor to convert metric tons to cubic meters. Respondents note that, in the Preliminary Determination, the Department used a generic conversion factor (1.33) taken from the FAO. Respondents state that since the Preliminary Determination, the Department has gathered additional information showing that the Respondents do apply the GOI conversion factor in their operations. Therefore, the Department should use the government-mandated conversion factor in the final determination.

In its rebuttal arguments, Petitioner contends that Respondents mischaracterized the Department's rationale for using the FAO conversion factor in the Preliminary Determination. Petitioner argues that the Department chose to use the FAO conversion factor because it was seeking the most accurate factor and not because there was a question of whether the forestry companies actually applied the GOI factor. Petitioner states that the most reliable conversion factor to use in this analysis for this investigation is the FAO factor.

In its rebuttal arguments, USW reiterates that the Department should not use the GOI- mandated conversion factors in the final determination. USW argues that, contrary to Respondents' argument, the Department did not use the GOI-mandated factors in the Preliminary Determination merely because of concerns that the factors may not be applied by the Respondents. Instead, USW states, the Department did not use the GOI-mandated factor because the factor could not ensure a uniform measurement of the benefit conferred by logging subsidies since the benchmark was derived from Malaysian export statistics. USW concludes that given the inability of the GOI or respondent companies to provide support for the GOI's conversion factor, the Department should rely instead on a neutral, internationally-accepted conversion factor, such as that provided by the FAO.

In their rebuttal, Respondents contend that there is no justification for using any factor other than the one that the GOI mandates and the SMG/APP CFS forestry companies use. Respondents argue that Department confirmed at verification, both at the GOI and the logging companies, that the SMG/APP CFS forestry companies use the GOI-mandated conversion factors in their operations. Respondents state that if the Department had any doubts about the appropriate conversion factor, it should not use a generic conversion factor (i.e., the FAO conversion factor) over the GOI factor. As an alternative to the GOI factor, the Respondents contend, the Department should use the conversion factor used by the Sabah Forestry Department.

Department's Position:

In the Preliminary Determination, export prices used as the starting point for our benchmark calculation were Malaysian exports statistics which were reported in cubic meters. For the Preliminary Determination, we considered that the GOI charges PSDH on both a metric ton and cubic meter basis, depending on the log type and species. Furthermore, companies reported making payments on both a metric ton and cubic meter basis. Accordingly, in order to calculate the benefit, it was necessary to have all quantities on the same basis and to convert from metric tons to cubic meters consistently. The Department found that the FAO (1.33) conversion factor was more appropriate than that the GOI (1.052) or SAP (1.142) conversion factors. This was based on the fact that the FAO conversion factor was determined by an international authority. See Preliminary Analysis Memo, at Attachment 4.

Given that an inaccurate conversion factor can be a basis for over- or under-reporting harvest and for over- or under-paying stumpage fees, it is essential that any conversion factor used by a government reflect the measurements and conversions as accurately as possible. Although we asked the GOI in our questionnaires and at verification to provide any studies or other

documentation in support of their mandated conversion factor, none were provided. Furthermore, the GOI could not explain what variables were considered in the development of its conversion factor or the methodology employed. See GOI Verification Report at page 9. Without such supporting documentation, we cannot rely on the GOI's mandated conversion factor in our calculations. Regarding the conversion factor in APP's 2004 SAP, Respondents did not provide supporting documentation to support this factor. The conversion factors applied by the FAO are based on independent information and are provided by a neutral international authority. As such, the FAO conversion factor provides the most appropriate basis for converting metric tons to cubic meters.

In addition to using the FAO conversion factor for tropical pulpwood (1.33) for acacia and MTH chipwood (logs under 30 cm.), the Department is using the FAO conversion factor for tropical sawlogs and veneer logs (1.37) to make the necessary conversions for logs over 30 cm. where necessary in the calculations. Again, because the GOI was unable to support its metric tons to cubic meters conversion factor, we are relying on the FAO conversion factor for this conversion. As described above in the "GOI Provision of Standing Timber for Less Than Adequate Remuneration" section, we have determined that it is also appropriate to rely on the FAO conversion factor for staple meters to cubic meters.

Comment 20: Whether to Adjust WKS' Log Harvest

Petitioner argues that the Department should use the volume of WKS' timber harvest that was provided by the GOI, corrected at the outset of verification, and calculated using the GOI's mandated conversion factor. Petitioner notes that these log volume data were provided by the GOI as a minor correction submitted at verification. Petitioner urges the Department to use this updated figure in the Department's calculations for the final determination.

In their rebuttal arguments, Respondents state that using Petitioner's approach would incorrectly countervail all of WKS' harvested chipwood during the POI, regardless of whether the chipwood remained in its inventory or was sold to non-cross-owned companies. Respondents argue that the only chipwood that provides a benefit is that which is sold to a cross-owned company and used to produce subject merchandise. Thus, according to Respondents, the Department should only countervail the benefit on the quantity that WKS harvested and sold to Lontar or IK (through AA) during the POI.

Department's Position:
The Department finds that the harvest quantities reported by the SMG/APP CFS forestry companies are the most appropriate figures to use in our benefit analysis. As explained above in Comment 18, the Department is unable to determine whether the external sales of pulpwood are from their own harvest or from purchases made from unaffiliated suppliers and is unable to segregate harvested pulpwood from purchased pulpwood. We find it reasonable to attribute the entire harvest of pulpwood by the SMG/APP CFS forestry companies to the SMG/APP CFS pulp producers because IK and Lontar reimburse AA and WKS, their sole suppliers of pulpwood, for

the stumpage fees that they incur. The only exception made was for FI, where we excluded in the benefit calculation the quantity sold by FI to external parties. Because FI did not purchase pulpwood from external sources during the POI, we know that all of FI's pulpwood sales to external parties were from its own harvest, and that the quantity of those sales is appropriately excluded from the benefit calculation.

Comment 21: Adjustments to the Sales Denominator

Respondents claim that, in the Preliminary Determination, the Department incorrectly adjusted the reported POI sales value for sales returns, claims and discounts. Respondents state that POI sales had already been reported net of sales returns, claims and discounts. Respondents note that the Department recognized this error in Ministerial Error Memo. As such, Respondents argue that the Department should not make any adjustment to the sales figures for sales returns, claims and discounts for the final determination.

Additionally, Respondents argue that the Department should include the value of home market sales in its calculation of total POI sales used as the denominator for calculating the net countervailable subsidy. Respondents state that, in the Preliminary Determination, the Department did not include the value of any home-market sales in its calculation of total POI sales. Respondents stated this occurred because the value of the sales that the Department used did not include the sales to CMI, the cross-owned home market reseller, and did not include the value of CMI's home market sales outside the CFS production chain. Respondents argue, for the final determination, the Department should include CMI's external sales in the total POI sales.

In their rebuttal arguments, Petitioner argues that, consistent with Department policy and past practice, returns, claims and discounts were correctly excluded form the sales denominator. Petitioner states that the Department should ensure that, in the final determination, the denominator excludes all returns, claims and discounts. Petitioner also argues that if the Department decides to include CMI's sales in the denominator it must ensure that all sales to CMI are excluded from the sales value of the other cross-owned companies.

Department's Position:

In the Preliminary Determination, the Department calculated the POI sales denominator by summing the external sales values of TK, PD, IK, and Lontar (i.e., total FOB sales values minus inter-company sales to cross-owned companies in the CFS production and sales chain), and adjusted, where possible, for sales returns, claims, and discounts. See Preliminary Determination, 72 FR at 17505. We made an adjustment, for TK and IK only, for sales returns, claims and discounts as they were the only companies for which such information was reported in their financial statements. After reviewing Respondents' ministerial error allegation, we acknowledged in the Ministerial Error Memo, that TK's and IK's sales had apparently been reported net of discounts, returns and claims, but we found that no amendment to the Preliminary Determination rate was warranted. We were able to verify that all sales by the SMG/APP CFS paper producers and SMG/APP CFS pulp producers were reported net of sales returns, claims and discounts. See

Paper Companies Verification Report, at the Sales sections. Therefore, in the final determination, we are not making any additional adjustments for sales returns, claims and discount to the verified sales values.

In the Preliminary Determination, the Department included the sum of the external sales values outside the CFS production chain. See Preliminary Determination, 72 FR at 17505. Because CMI had been identified as a selling agent, the Department did not include CMI's sales as part of the production chain. Since the Preliminary Determination, Respondents have provided, and the Department has verified, information regarding this issue. In particular, CMI both purchased from and sold goods from the SMG/APP CFS paper producers and SMG/APP CFS pulp producers, as well as sold goods to external customers. See Paper Companies Verification Report at 15. Respondents also showed that in reporting sales values for TK, PD, Lontar, and IK, they eliminated inter-company sales, including sales to CMI, to ensure there was no double counting of any sales. See Paper Companies Verification Report, at 15-16; see also Pulp Companies' Verification Report. Therefore, in order to capture all external sales values outside the CFS production and sales chain, in accordance with 19 CFR 351.525(b)(6)(iv), the Department has included in the denominator CMI's external sales during the POI.

Comment 22: Treatment of Illegal Logging in Indonesia

USW argues that illegal logging in Indonesia is systematic and widespread, and is estimated to account for a majority of all timber produced in the country. According to USW, illegal logging consists of any practice which violates a legal requirement that applies to logging companies and timber purchasers, whether it consists of cutting timber in protected forests or conservation forests where logging is not allowed, or harvesting wood without a license or in violation of the license's terms. According to USW, illegal logging may include harvesting more than the volume allowed in a company's license; harvesting in restricted areas; failing to replant or comply with other terms of the logging concession; or, falsifying documents or misreporting amounts harvested in order to reduce or avoid royalty payments. USW provided a number of studies to support its argument that a vast majority of all timber in Indonesia is harvested under conditions that violate Indonesian law.

USW states that the prevalence of illegal logging results from GOI actions that permit logging companies to harvest state-owned timber in contravention of its law. USW cites to World Bank reports which note that government policies and management practices in Indonesia are often not consistent with its legal framework. Specifically, USW notes that the World Bank has identified problems with the enforcement of Indonesian forestry laws at the provincial, local, and central levels of government as a result of decentralization. In addition, the World Bank has also noted corruption within the forest sector from "off-budget flows of revenues and taxes, as well as lack of transparency in the allocation of land and forest use rights." USW also cited the Organization for Economic Cooperation and Development's finding that the GOI failed to issue the necessary implementing regulations for three years after the passage of Indonesia's forestry law.

USW notes a number of studies indicating that the enormous growth in Indonesia's pulp and paper industries was fueled in large part by government subsidies which raised the demand for timber and thus, increased pressures for illegal logging. For example, USW cites one study showing that in 2000, the consumption of wood in pulp production alone exceeded the entire legal supply of timber in Indonesia, as well as an article showing that in 2003, the GOI acknowledged that "{m}any companies are supplied not from HTIs (industrial tree plantations), but from natural forests and even illegal operations." See USW's March 9, 2007 submission at Exhibit 5.

Department's Position

While the Department has examined the numerous reports placed on the record with regard to the many types of illegal logging activities in Indonesia observed by independent experts in this field, neither the statute nor the Department's practice provides a mechanism for assessing the economic, environmental, and social consequences and costs of such behavior beyond the financial contribution and benefit provided by the subsidy programs under investigation. The subsidy programs under investigation with regard to timber and pulpwood are the "Provision of Standing Timber for Less than Adequate Remuneration" and the "Log Export Ban." See CFS Initiation, 71 FR at 68458. The focus of our investigation has been the examination and verification of the amount of timber that was harvested or purchased, and the fees paid by the SMG/APP CFS forestry companies during the POI, as well as the purchases of pulpwood made by these companies from unaffiliated pulpwood suppliers. To determine the benefit, we have compared those fees and those prices to market-determined benchmarks which is the statutory basis for evaluating whether a good has been provided for less than adequate remuneration.

As part of the verification process, we reviewed company and government source documentation including the actual licenses and cutting plans, as well as purchase, inventory and production records to verify the reported timber harvests and purchases of pulpwood during the POI by the companies under investigation. We also verified the total amount of actual stumpage fees paid to the GOI during the POI. See Logging Companies Verification Report. Further, we checked the aggregate information on harvest and purchases by the SMG/APP CFS forestry companies against aggregate purchases by the SMG/APP CFS pulp producers to ensure that the reported amounts for harvest and purchases of pulpwood by the forestry companies were in line with purchases by the pulp producers because it is at the pulp mill gate where the actual weighing of the pulpwood takes place. Id. Thus, we have addressed, to the extent possible, the concerns raised by USW, such as the potential misreporting of amounts harvested in order to reduce or avoid royalty payments, or the misreporting of purchase quantities from unaffiliated suppliers. However, the other general concerns noted by USW with regard to the country-wide cutting of timber in protected forests or conservation forests where logging is not allowed, or the general problems with the enforcement of Indonesian forestry laws at the provincial, local, and central levels of government as a result of decentralization or corruption, are broad issues that are beyond the parameters of the subsidy programs under investigation which involve the harvest, production, purchase and sale of pulpwood.

While the Department acknowledges the concerns raised by USW, the countervailing duty law does not provide a mechanism for measuring the economic, social, or environmental consequences of such illegal logging. However, the extent to which the SMG/APP CFS group may have obtained logs at below market prices due to illegal logging is reflected in the countervailing duty rates for the "Provision of Standing Timber for Less than Adequate Remuneration" and "Log Export Ban" programs.

Comment 23: Indications of Illegal Logging Practices in Subsidizing Indonesia's CFS Paper Industry

USW argues that there are indications from a variety of sources which were placed on the record that the Indonesian CFS paper industry may be among those downstream industries that benefit as a result of questionable logging practices. According to USW, these publicly available reports indicate that some of the timber being provided to pulp producers supplying CFS paper producers in 2005, is from SMG/APP cross-owned forestry companies and may be of questionable legality. USW states that a World Wildlife Fund (WWF) survey, based on Landsat images made in 2005, shows that a larger portion of AA's and RAL's concession areas have been cleared beyond the terms of their logging concessions. According to USW, this suggests that a portion of their timber harvests may have been collected in violation of Indonesia law since the forest cover reserved for species preservation, conservation, community use, and infrastructure fell below the legal limits that are supposed to be maintained under the terms of their logging concessions.

USW cites to other public reports indicating that illegal logging occurred on a number of AA concession areas in 2005. Although these reports did not directly attribute these illegal logging activities to AA, USW states that the auditor's reports noted that AA's actions to address illegal logging were limited and ineffective, and indicated that additional company engagement was required by AA to adequately address these practices. Furthermore, USW notes that there are other indications that the SMG/APP pulp producers subject to this investigation may have purchased questionable logs from non-cross owned timber suppliers during the POI.

USW states that the Department should include logging beyond legal limits as a subsidy in its final determination. USW states that the GOI's failure to enforce its laws regulating logging qualifies as a financial contribution as it provides a provision of a good under section 771(5)(D)(iii) of the Act and 19 CFR 351.511 since it provides logging companies with timber that would otherwise be protected. USW argues that the provision of standing timber is also specific under section 771(5A)(D)(iii) of the Act because it is limited to an industry.

USW argues that the provision also confers a benefit under section 771(5)(E)(iv) of the Act and 19 CFR 351.511. In the case of logging that violates Indonesian laws, USW argues that the government may receive no remuneration at all from the pulpwood producers for the standing timber provided from government-owned land. USW states, in other cases, the pulpwood producer may provide some remuneration to the GOI for logs obtained illegally in the form of stumpage fees that would apply to legally-logged timber or other compensation. USW contends

that in either case, the benefit is equal to the difference between the remuneration, if any, actually paid to the GOI and what the Department determines as adequate remuneration for standing timber that is not legally permitted to be harvested.

USW argues that, to the extent that such non-enforcement results in logging companies harvesting and selling timber that would otherwise be legally protected from harvest, the market benchmark for such timber should reflect the higher economic value of legally protected timber. Accordingly, USW argues that information it has placed on the record demonstrates the economic costs of illegal logging in comparison to the costs of legal logging. Therefore, USW argues, the market-based benchmark for timber that is otherwise protected from harvest in Indonesia should be significantly higher than the benchmark for timber that is legally harvested. Based on the submitted reports, USW states these benchmarks should be 36 to 67 percent higher than the benchmark for legally harvested timber.

In addition, USW notes that to the extent that the record in this investigation lacks verifiable evidence that logging fees for timber harvested during the POI have actually been paid to the GOI, the Department should not presume that such fees have been paid. Rather, the Department should only use those reported harvesting fees that have actually been paid to the GOI in full compliance of the law and which were verified by the Department.

USW states that if the Department does not initiate an investigation of Indonesia's non-enforcement of its laws regarding illegal logging, it should consider information regarding logging beyond legal limits in its final determination regarding the government provision of timber for less than adequate remuneration. USW states that in the final determination, the Department should include both: (1) the provision by the government of timber that is nominally protected from harvest under Indonesian law; and (2) the provision of timber without complete collection of legally owed stumpage fees.

Respondents refute USW's argument that the GOI sanctions illegal logging and that this, in turn, provides a benefit to the respondents. Respondents state that the record shows that the GOI enforces its laws through annual work plans, five year plans and master plans for logging companies' concessions; all of these, respondents claim, were verified by the Department.
In fact, respondents argue, the Department verified an instance in which AA had underestimated the amount of timber allotted in the cutting plan. Respondents argue that the Department verified that AA requested and received permission to harvest beyond the allotted amount in the original working plan. Finally, respondents note, during the time period the request was pending, AA did not harvest from the particular regency. As such, respondents argue, the Department should disregard USW's arguments.

Department's Position

As noted above in the Department's Position on Comment 22, "Treatment of Illegal Logging in Indonesia," the Department has examined numerous documents such as the actual licenses and cutting plans of the SMG/APP CFS forestry companies, as well as company and government

records, to verify the reported timber harvests and purchases made during the POI by SMG/APP CFS companies under investigation. While USW has provided independent observations suggesting that AA or RAL may be clearing beyond the terms of their concession or within high conservation value forest area, or may have purchased timber of questionable legal origin, we are capturing in our subsidy benefit calculations all pulpwood harvested by the SMG/APP CFS forestry companies, as well as all pulpwood supplied by unaffiliated pulpwood suppliers that was purchased by the SMG/APP CFS pulp producers. If some of that pulpwood was logged from protected areas or from areas that are outside their concession boundaries, such wood is still being captured in our benefit calculation.

With regard to USW's claim that AA had harvested more timber than allowed by its cutting plan, at verification, the Department reviewed the SMG/APP CFS forestry companies' annual cutting plans, five-year plans and master cutting plans. Each of these plans provided the projected production of the particular logging company's concession area for the plan's relevant time period. In reviewing the logging companies' annual cutting plans which must be submitted to the GOI for approval, the Department did not note any instances of the cross-owned logging companies harvesting beyond the amounts stipulated in their respective annual plans, except in one instance. In that one instance where the company harvested beyond its plan, the company had underestimated in its cutting plan the amount of timber that it would be harvesting during the POI. However, the Department verified that the company had stopped harvesting once the allotted amount had been reached, and did not resume harvesting until it had received approval from the GOI for an amendment to its annual cutting plan. See Logging Companies Verification Report at page 22.

In addition, the Department has also addressed USW's concern that the Department should not presume the payment of logging fees without verifiable evidence. For this final determination, we are relying on the actual and verified PSDH and DR payments by SMG/APP CFS forestry companies reported during the POI in our calculations of the subsidy rate because they provide a more accurate reflection of the benefit provided under the "Provision of Standing Timber for Less than Adequate Remuneration" program.

Comment 24: Examination of Log Purchases from Non-Cross Owned Entities Under the Log Export Ban

Petitioner argues that the Department will either need to address whether upstream subsidies were received by the Respondents as a result of pulpwood purchased from unaffiliated suppliers, or to address whether SMG/APP received subsidies as a result of SMG/APP CFS forestry companies' purchases of a significant amount of timber from non-crossed owned parties for less than adequate remuneration due to the log export ban. Petitioner notes that the Department initiated an investigation of the log export ban but deferred issuing a preliminary determination because of the preliminarily finding that IK's and Lontar's supply of pulpwood was exclusively sourced from the production of SMG/APP's other cross-owned companies.

Petitioner states that the GOI's log export ban works in conjunction with its subsidized stumpage rates to provide users of downstream products with artificially-low cost materials. As a result, the export ban serves to suppress the price that non-cross owned suppliers can charge AA and WKS for its purchases of logs. Petitioner cites to the Malaysian timber export prices as evidence of the GOI's price suppression on the overall Indonesian timber market as a result of the log export ban. According to Petitioner, if these unaffiliated timber suppliers were able to sell their product outside Indonesia, where they would command higher prices, the supply of logs in Indonesia would shrink and prices for pulp wood would be higher. Petitioner notes that this is reflected in the WTO's recent review of Indonesian trade policy which found that this export ban may "depress the domestic prices of logs, thereby assisting downstream processors of such products." See "Trade Policy Review: Indonesia" at page 72, provided as Exhibit 15 of Petitioner's March 1, 2007 submission. Petitioner also states that the GOI provided an article that concludes that the log export ban keeps prices "artificially low." See Economic Adjustment in the Forestry Sector at page 14.

Petitioner argues that the GOI's log export ban is specific pursuant to sections 771(5A)(D)(iii)(I)-(III) of the Act because it is both de jure and de facto limited to a group of industries, namely pulp and paper mills, saw mills and re-manufacturers that use logs as an input. Petitioner cites to the "Specificity" section in Lumber, in which the Department made a similar finding and stated that "applying the standard set-forth in the statute and SAA, whether we classify the users of the stumpage programs as sawmills and pulp mills, the primary timber processing group, the wood products industry, the forest products industries, the wood fiber user industry, the 'industries' suggested by Respondents, or any combination thereof, the subsidies provided by these stumpage programs are not 'broadly available and widely used'."

Petitioner argues that the GOI export ban affects very few products. According to Petitioner, the list of products provided by the GOI in its questionnaire response shows only eight products that are subject to an export ban. Petitioner adds that most of these listed products, like sea sand, artwork and baby fish, are not being used as inputs for downstream products as in the case of logs; this provides further evidence that the export ban on logs must be considered to be limited in accordance with the Department's statute.

Petitioner states that by banning the export of logs, the GOI is entrusting and directing domestic log suppliers to sell logs at suppressed prices to domestic consumers, and is thus providing a good for less than adequate remuneration. Thus, according to Petitioner, the statute provides that a government program may provide a financial contribution even if it is provided indirectly, through the government's entrusting or directing a private body to provide a financial contribution in accordance with section 771(5)(A) of the Act. Furthermore, Petitioner cites to the SAA which shows the clear intention of the Department to use the "entrusts or directs" provision to address indirect subsidies. Petitioner notes that the SAA references specific cases where the Department "has found a countervailable subsidy to exist where the government took or imposed (through statutory, regulatory or administrative action) a formal, enforceable measure which directly led to

the discernible benefit being provided to the industry under investigation." See SAA at 926. The discernable benefit in the instant case, according to Petitioner, is pulpwood inputs priced below prevailing prices.

In calculating the benefit under the log export ban, Petitioner urges the Department to follow a similar methodology to that used to calculate the subsidy for the provision of standing timber program. Petitioner notes one exception that the Department should make in calculating the benefit under the log export ban by using, as the starting point for the appropriate benchmark, the Malaysian export statistics since these prices represent world market prices for acacia and MTH timber, and Respondents have provided evidence that Malaysian timber would be available to purchasers in Indonesia. In using these prices, Petitioner argues that the Department should adjust them to account for transportation expenses in accordance with 19 CFR 351.511(a)(2)(iv). Respondents did not provide comments on this issue.

Department's Position:
For the reasons explained above, in the section "Programs Determined To Be Countervailable," the Department finds that the GOI's log export ban provides an indirect subsidy by directing domestic log and chipwood suppliers to sell logs at reduced prices to downstream wood processing companies that include the pulp and paper industry, for less than adequate remuneration in accordance with sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act. The Department finds, as explained above, that this program is de jure specific within the meaning of section 771(5A)(D)(i) of the Act because the number of industries is limited by law and includes a very small number of discrete products within each of these industries.

We have measured the benefit using official Malaysia export statistics that include species-specific Malaysian pulpwood export prices as available world market prices for comparable logs and chipwood. We compared these species-specific Malaysian pulpwood export prices to the unaffiliated suppliers' species-specific sales price to the SMG/APP forestry companies in order to determine the extent to which logs and MTH chipwood are being provided for less than adequate remuneration in accordance with 19 CFR 351.511(a)(2)(ii) and (iv). These official Malaysian export prices are reported on an F.O.B. basis. While parties have argued that we should make adjustments to the benchmark to reflect a delivered price to Indonesia, there is no information on the record that would allow the Department to make such an adjustment to the Malaysian export price. If a countervailing duty order is issued and a review is requested, the Department will evaluate whether it is appropriate to include delivery charges in the calculation of the benchmark for this program.

Comment 25: The Legality of the WTO's Findings on Export Restraints

Petitioner notes, as a legal matter, the WTO panel's decision United States: Measure Treating Export Restraints as Subsidies (WT/DS194/R)("Export Restraints") does not preclude the Department from finding that the Indonesian ban on exports provides a countervailable subsidy. According to Petitioner, Export Restraints at paragraph 8.4, found that the U.S. countervailing

duty law does not require or mandate the treatment of export restraints as a subsidy and therefore, found that U.S. law does not violate WTO rules, noting that "discretionary legislation cannot be found to violate WTO obligations 'as such'."

Petitioner states that the WTO panel in Export Restraints did conduct an analysis of whether an export restraint could constitute a countervailable subsidy. Petitioner argues that this was clearly outside the mandate of the WTO panel because it was not ruling on any specific case on the record but rather, was hypothesizing about whether a specific government action would constitute a financial contribution. However, Petitioner also notes that the WTO panel did find that an export restraint would not constitute a financial contribution in the sense of Article 1.1(a) of the Agreement of Subsidies and Countervailing Measures ("SCM Agreement"). According to Petitioner, as a result of this decision and the WTO panel's use of a hypothetical scenario rather than an actual case, the United States took exception to this decision and concluded that the WTO panel had exceeded its mandate and that such decisions are non-binding and are without legal effect. Accordingly, Petitioner concludes that the Department should not consider this decision in determining whether the GOI's log export ban constitutes a subsidy and instead, should rely on the plain language of the statute and the Department's regulations.

Respondents counter that Petitioner's argument on disregarding the WTO's findings on export restraints ignores several relevant findings by the WTO Appellate Body and Panels. According to Respondents, the WTO Appellate Body in United States: Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea (WT/DS296/AB/R) ("DRAMS"), at paragraph 114, found that entrustment and direction do not cover "the situation in which the government intervenes in the market in some way, which may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market . . ." Respondents also argue that the decision in DRAMS was made in the context of the ruling in United States: Softwood Lumber IV (WT/DS194/R)("Softwood Lumber") in noting that "not all government measures capable of conferring benefits would necessarily fall within Article 1.1(a)." Thus, Respondents argue, the WTO Appellate Body has expressed clear agreement that export restraints cannot constitute countervailable subsidies just because an entity may benefit from the effects of government regulation.

Respondents also claim that Petitioner's argument on the WTO finding in Export Restraints carries no weight and is outside the WTO's mandate, is incorrect. Respondents argue that it is well-established in WTO case law that WTO Panel reports create legitimate expectations among WTO members and should be taken into account where they are relevant to any dispute. Finally, Respondents note that in Export Restraints, the WTO Panel made its conclusions on export restraints based on Canada's claim as set forth in its request and as part of the Panel's mandate to make an objective assessment of the matter under Article 11 of the Dispute Settlement Understanding.

Department's Position:
The Department's position regarding WTO reports is well established. See, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Mexico, 71 FR 54614 (September 18, 2006), and accompanying Issues and Decisions Memorandum, at Comment 1; Ball Bearings and Parts Thereof from Japan and Singapore; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results, 71 FR 26321 (May 4, 2006), and accompanying Issues and Decisions Memorandum, at Comment 1; Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decisions Memorandum, at Comment 8.

Congress made clear that reports issued by WTO panels or the Appellate Body "will not have any power to change U.S. law or order such a change." See SAA at 660. The SAA emphasizes that "panel reports do not provide legal authority for federal agencies to change their regulations or procedures . . . ." Id. To the contrary, Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. See section 129 of the Act. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute. See section 129(b)(4) of the Act (implementation of WTO reports is discretionary); see also SAA at 1023 ("{a}fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is 'not inconsistent' with the panel or Appellate Body recommendations . . ."); Corus Staal BV v. Dep't of Commerce, 395 F.3d 1343, 1349 (Fed. Cir. 2005) ("WTO decisions are 'not binding on the United States, much less this court." (quoting Timken Co. v. United States, 354 F.3d 1334, 1344 (Fed. Cir. 2004)).

Accordingly, we have conducted our analysis of the GOI's log export ban in accordance with the Act, the SAA, and the Department's regulations. For the reasons set forth in "GOI's Ban on Log Exports," above, we find that all of the statutory standards for countervailability have been met by the GOI's log export ban.

Comment 26: Whether Respondent Companies Cured Any Deficiency with Respect to Settling Debt with COEs

Respondents contend that the Department justified its use of an adverse inference with respect to the settlement of debt with COEs because Purinusa's involvement first became known at verification. According to Respondents, this finding was unfairly punitive because the GOI provided the information to the Department without hesitation, and the Department was able to see why the GOI had referred to the companies, including Purinusa and the other relevant holding companies, as non-APP companies in its submissions. Therefore, Respondents contend, the information provided at verification was consistent with what had been reported in the questionnaire responses, and any deficiency in the responses was cured by the information provided at verification.

As a result, Respondents argue, the Department should reverse its preliminary application of an adverse inference by recognizing that the information provided at verification cured what, at most, was an inadvertent deficiency in the response. Respondents maintain that the Department has recognized that information provided at verification can cure such a deficiency, as indicated in Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001) (Thai Hot-Rolled) and accompanying Issues and Decision Memorandum at Comment 18, and Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from Korea, 68 FR 37122 (June 16, 2003) (D-RAMS) and accompanying Issues and Decision Memorandum at Comment 32. Because of this, Respondents argue, an adverse inference is unjustified.

Department's Position:

The Department approached verification of the alleged debt forgiveness subsidy resulting from IBRA's acceptance of BII shares and COEs with repeated statements by the GOI and the respondent companies that the program was "not used." This information, provided in four separate questionnaire responses (two submitted by the GOI and two by the respondent companies), indicated that this transaction did not result in the reduction of the outstanding debt of the PIOCs (TK and PD, and cross-owned pulp producers IK and Lontar) or Purinusa. In these questionnaire responses, both the GOI and respondent companies declined to provide full answers to many of the Department's questions, instead stating that the Department's questions were inapplicable as there was no reduction in the PIOCs' debt. The Department specifically requested the respondent companies to identify each company whose debt was affected by the transaction and to provide information regarding each company's business activities and the value of its debt that was repaid. The response we received was the debt concerned "other SMG companies that were not cross-owned with the PIOCs or Purinusa." See GOI June 5, 2007 response at page 8. The GOI did not provide any information regarding IBRA's regulations for valuing non-cash assets, or other debtors from whom IBRA accepted such assets as payment. Thus, the Department had none of the information necessary for analyzing the countervailability of this alleged subsidy, i.e., whether it was specific to an enterprise, industry, or group thereof; whether it provided a financial contribution; and whether there was a benefit. Further, the Department had no basis for predicting the necessity of such information prior to verification. Thus, the Department prepared for verification with the information at hand, which indicated that the debt settled with the acceptance of BII shares and COEs was not the debt of the respondent paper producers, TK and PD, or other companies in the CFS production chain.

The verification outline that the Department issued to the GOI specified the following:

> Despite two requests, the GOI has not provided the identification of the APP/SMG companies whose debt was paid by the transfer of BII shares to IBRA. You have stated that none of the companies whose debt was paid by this share transfer are involved in CFS production and sales, and that this had "no effect on the debt owed by these companies to IBRA as a result of the pledge of shares." In order to demonstrate this, you must provide the following information for each company identified in the worksheet prepared in

> response to No. 2 above whose debt was paid via the transfer of BII shares: the ownership structure during the POI, its business (e.g., whether it is a pulp or paper producer, or a logging, exporting, trading, holding, services or financial services company), and whether it had any business dealings with any company in our cross-owned production chain as identified in our preliminary determination. Because you have not given us the requested information on specificity, you must provide the requested documentation to demonstrate that the companies whose debt was paid by the transfer of BII shares were not directly or indirectly involved in CFS production and/or sales.

See Letter from the Department to the Government of Indonesia, Verification of the Government of Indonesia's Responses in the Countervailing Duty Investigation of Coated Free Sheet Paper from Indonesia, dated June 18, 2007 (Company Verification Outline). The outline issued under separate cover to TK and PD contained similar language.

At the GOI verification, we received a document that provided the twice-requested identification of individual companies whose debt was affected by this transaction (the settlement of debt with cash and the transfer of BII shares and COEs). Included among the listed companies were Purinusa, the holding company through which the paper companies TK and PD are cross owned, as well as two additional holding companies with ownership interests in one of the cross-owned forestry companies that supplies pulpwood to the cross-owned pulp companies (we continue to find this forestry company to be cross owned for purposes of this final determination; see Cross Ownership section, above). The GOI explained that IBRA had separated the individual SMG/APP company debtors into "APP" and "non-APP" debtors. However, this distinction, which formed the basis of the GOI's response that this transaction involved the debt of SMG companies not cross-owned with the PIOCs or Purinusa, was not based in any way on the business activities of the company, but rather, according to the GOI, was based on the characteristics of each company's debt. See GOI Verification Report at page 16. The GOI's own distinction cannot form the basis for our determination, and our examination of the distinction found that it is not meaningful or correct for purposes of our consideration of the reported non-use. Furthermore, the respondent companies were in a position to accurately identify the individual SMG/APP company debtors whose debt was affected by this transaction, and they did not do so. Thus, contrary to the information reported in the questionnaire responses, the record shows that there are companies whose debt was repaid with COEs which are cross-owned with companies in the CFS production and sales chain.

Respondents are incorrect in claiming that the information provided at verification "cured" the record deficiency regarding the companies whose debt was settled with COEs. The information provided at verification contradicted the information presented in the questionnaire responses by showing that not only was some Purinusa debt paid with COEs, but also repaid in this transaction was the debt of holding companies which, together with Purinusa, wholly own one of the SMG/APP forestry companies. Under 19 CFR 351.525(b)(6)(iii), a subsidy to a parent or holding company is attributable to the companies it owns. In the instant case, a subsidy (in the form of

debt forgiveness) to holding companies with ownership interests in the SMG/APP CFS group is attributable to companies they own.

In addition, the facts in Thai Hot-Rolled and D-RAMS are distinct from those at issue here. In Thai Hot-Rolled, there was a particular document that the Department identified and was seeking to review. The Royal Thai Government (RTG) did not provide this document in its questionnaire responses, and this failure to provide requested documentation was the basis for the Department's preliminary determination based on facts available. However, the RTG provided the document for the Department's review at verification, and the document provided all of the information necessary to the Department's specificity analysis. See Thai Hot-Rolled at Comment 18. A review of D-RAMS also shows that the facts of that case are distinct: the Department found that the resort to facts available was not warranted because the Respondents provided the requested information, and the Department reviewed the relevant source documentation at verification. Furthermore, the facts available arguments in D-RAMS urged the Department to make a de facto specificity finding, and the Department made a de jure finding of specificity with respect to the program at issue. See D-RAMS at pages 29 -30 and at Comment 32.

In neither of these cases was there an instance in which respondents withheld information based on a claim which, in Respondents' own view, made their provision of the requested information unnecessary and which the Department later discovered to be incorrect. In this case, the GOI and the respondent companies maintained up until verification that the alleged subsidy resulting from IBRA's acceptance of BII shares and COEs as debt repayment was "not used" in that none of the debt repaid was debt of the cross-owned companies in the CFS production and sales chain. The GOI used that claim as a reason not to provide additional information requested by the Department and required by the Department to analyze the countervailability of the alleged subsidy, e.g., GOI information regarding IBRA's practice of accepting non-cash assets as debt repayment, the valuation of such assets, and the identification of other debtors allowed to repay debt in a similar manner. The respondent companies similarly did not provide the requested information regarding which individual SMG/APP companies' debt and in what amounts were repaid in this transaction. Had this information been provided prior to verification, the Department could have pursued collection of additional information necessary to analyzing the countervailability of the alleged subsidy. The documents reviewed at verification established otherwise, and thus did not "cure" the deficiency. Rather, they contradicted the reported information, and established that the alleged subsidy was "used." Thus, as discussed in more detail in Comment 35, below, we determine that the application of facts available with an adverse inference is warranted.

Comment 27: Specificity of IBRA's Acceptance of BII Shares and COEs for the Repayment of SMG/APP Debt

The Respondents argue that the Department was unjustified in using an adverse inference to find IBRA's acceptance of Certificates of Entitlement (COEs) as payment for SMG/APP debt to be a

company-specific action of the GOI. Further, the record shows that the GOI did not forgive SMG/APP debt in a manner that is specific within the meaning of section 771(5A) of the Act. According to the Respondents, the Department has previously stated that it "does not automatically find reorganizations, workout programs or bankruptcy proceedings to be countervailable. Rather, the Department must find that the program is not generally available in the country or, if it is generally available in the country in question, that it is provided in a manner that is inconsistent with typical practice." See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 1512, 1518 (January 10, 2006).

The Respondents claim that the record shows that IBRA had the authority to settle debt in a number of ways, and that the manner in which SMG/APP debt was settled was generally available, and was not on preferential terms. The Respondents contend that the Department's initiation notice claimed that the alleged action by the GOI was specific, based on the Petitioner's allegation that IBRA gave SMG/APP preferential treatment. According to the Respondents, Indonesian law provided that for a bank taken over, payments for the settlement of obligations could have been made in cash, or by transferring properties such as shares, fixed assets, movable assets, and other assets. IBRA could also accept the personal guarantee of a bank's former controlling shareholder if the value of the assets was insufficient. Indonesian law, the Respondents claim, did not limit IBRA to accepting cash as settlement of debt, and therefore, the Respondents conclude, IBRA's acceptance of COEs to settle SMG/APP debt did not represent preferential treatment and was not specific as a matter of law.

The Respondents claim that SMG/APP was not the only group from which IBRA accepted COEs to settle debt. As shown in an IBRA July 2003 monthly report, according to the Respondents, debtors repaid their liabilities with cash, and with transferrable saleable assets such as group loans, COEs, and other assets.

Petitioner contends that the Respondents have mischaracterized the basis for the Department's reliance on adverse facts available (AFA) for the finding that the use of COEs was specific. According to Petitioner, the Department relied on AFA because both the GOI and the Respondent companies inaccurately reported that the debt that was repaid with COEs was debt of SMG companies unrelated to the CFS production chain, when in fact the Department found at verification that some such debt was repaid with COEs. Because of this inaccurate reporting, there was no information on the record regarding specificity. Petitioner argues that the information cited by Respondents to demonstrate that this transaction was not specific is insufficient for conducting a specificity analysis. Contrary to that information, Petitioner maintains, the verification report shows that in the case of SMG/APP debt, there was special treatment.

Department's Position:
In the Post-Preliminary Analysis, the Department found that IBRA's acceptance of COEs as debt repayment was a company-specific action. As outlined in the Post-Preliminary Analysis, this

finding was based on adverse facts available and it stemmed from the Respondents' inability to substantiate their repeated statements in the questionnaire responses that no debt of cross-owned companies in the CFS production chain, or companies cross-owned with those companies, was repaid in this transaction. The verification outlines provided to the GOI and the respondent companies specifically identified the information and documentation the Department expected would be available for review and discussion at verification. Specifically, the outline provided to the GOI stated "{b}ecause you have not given us the requested information on specificity, you must provide the requested documentation to demonstrate the companies whose debt was repaid were not directly or indirectly involved in CFS production and/or sales." See GOI Verification Outline at page 6. See also Company Verification Outline at page 13 ("{t}he requested documentation must be provided to demonstrate that the companies whose debt was paid . . . were not involved in CFS production and/or sales directly or indirectly"). Thus, the Department proceeded to verification with a record that lacked information about specificity, and with the understanding that it would be able to verify the discrete claim of the Respondents that relevant company debt was not repaid in this transaction. Once it was established that this claim was unverifiable, there was no information in the record that provided a basis for proceeding with a discussion of specificity; the Respondents had declined to provide the requested information, identifying it as "irrelevant."

Respondents contend that there is information in the record showing that IBRA was authorized to receive non-cash assets as debt payment, and that it did so from many parties. Assuming that the Department has reached an analysis of the information on the record, the information relied upon by Respondents is limited and superficial, and is insufficient for an analysis of whether the alleged subsidy was limited to an enterprise or industry, or group thereof. The mere fact that other debtors used this instrument to repay debt is not enough information for the Department to analyze which debtors, in which industries, did so. Such information is necessary for an analysis of de facto specificity based on the number of users. Nor is there information about the amount of debt repaid with COEs by debtor and by industry which would enable the Department to analyze whether certain debtors or industries were dominant or disproportionate users of this type of debt forgiveness. In addition, there is no information on the record which would enable the Department to evaluate whether the GOI was consistent in allowing debtors to use COEs to repay their debts or whether the GOI exercised discretion in allowing certain debtors to do so. Finally, the fact that IBRA was authorized to accept various types of non-cash assets, including COEs, does not inform a specificity analysis. Thus, the fact that the information on the record is insufficient for purposes of conducting a specificity analysis further supports our finding, based on adverse facts available, that IBRA's acceptance of COEs as repayment of SMG/APP debt is company-specific.

Comment 28: The Effect of IBRA's Outright Debt Forgiveness on the Specificity of the Acceptance of COEs for SMG/APP Debt

According to the Respondents, IBRA held debt from every Indonesian industry sector. In order to restructure that debt, the Respondents continue, IBRA had the authority to (1) reschedule total

loan amounts and their terms; (2) recalculate interest and the amount of fines to be imposed; (3) perform debt-for-equity conversions; (4) reduce the amount of total debt; and (5) write off debt. The Respondents claim that IBRA's programs were available to debtors of all sizes. The Respondents conclude that the fact that IBRA did not forgive any SMG/APP debt without receiving something of value in return (cash and COEs), in light of other IBRA outright debt forgiveness, further demonstrates that SMG/APP did not receive preferential treatment, and the acceptance by IBRA of COEs was not specific.

Department's Position:
Regardless of how IBRA treated other debtors, and in the absence of the information necessary for conducting a specificity analysis, we conclude that the acceptance of COEs for the repayment of SMG/APP debt was a company-specific action. Even if IBRA forgave other debtors' debt outright, it did not outright forgive any SMG/APP debt, and only forgave SMG/APP debt in return for the transfer of COEs (an asset with value, according to Respondents); outright debt forgiveness was one option on a continuum of options that, according to Respondents, included the acceptance of COEs. Many of the options identified by Respondents result in the forgiveness of some company obligations. Without the ability to conduct an analysis of which debtors, in which industries had debt forgiven through the various IBRA options, we cannot make an informed specificity finding. Thus, we continue to find, based on adverse facts available, that IBRA's acceptance of COEs as repayment of SMG/APP debt was company-specific.

Comment 29: Benefit from IBRA's Acceptance of COEs as Settlement of Debt

The Respondents argue that the Department's preliminarily determination that COEs had no market or commercial value is based on an unjustified adverse inference, is directly contradicted by record evidence, and is based on the Department's misunderstanding of COEs. The Respondents claim that COEs were issued to the shareholders of all commercial banks that were recapitalized, and that all banks with a capital adequacy ratio of between four percent and negative 25 percent were eligible to participate in the program. The Respondents claim that, in the year IBRA took over BII, seven private banks, including BII, were under the recapitalization program.

The Respondents state that, in order to maintain the healthy financial condition of the banks under the recapitalization program, IBRA issued government bonds to the banks, and received shares in those banks in return. According to the Respondents, IBRA also took over the NPLs of those banks and issued COEs to the banks' shareholders in return. The Respondents claim that holders of the COEs had the right to the value of their NPLs that IBRA sold (less the costs IBRA incurred), and that the COEs represented that right. The Respondents state that IBRA was to pay the COE holders the accumulated value of its asset disposals after the assets were transferred, and unsold assets, according to the Respondents, were valued by IBRA based on the recovery rate of realized assets, with a maximum recovery rate of 25 percent. Regardless of what the verification report says about whether this valuation methodology was specific to SMG/APP, according to the Respondents, this valuation methodology applied to all of the recapitalized banks, as shown in IBRA's 2002 Annual Report. Further, far from having no value, Respondents argue, the COEs

represented IBRA's liability to bank shareholders, including BII shareholders, for their assets that had been sold. Thus, Respondents conclude, IBRA's acceptance of COEs did not provide a benefit.

Petitioner maintains that the Department verified that COEs were not transferable and had no market value. Contrary to Respondents' claim that holders of COEs had the right to the value of the non-performing loans sold by IBRA, Petitioner notes the Department's verification finding that this right only accrued once all of the NPLs were sold, and at that time the COEs could only be used to repurchase the BII shares that IBRA had seized. Petitioner characterizes COEs as an illiquid option to repurchase the seized shares; further, without the special treatment for the shareholders, these options would be valueless. Finally, Petitioner contends that IBRA's prudential accounting for the potential future value of the COEs does not ameliorate the fact that they had no value at the time they were used to repay SMG/APP debt. As such, Petitioner maintains that the Department appropriately found that there was a financial contribution and a benefit.

Department's Position:
Prior to verification, there was very little information on the record regarding COEs. At the outset, the Department focused its questions on the use of BII shares to repay debt. Only in the supplemental responses on the debt forgiveness allegations did the Department learn that there was another financial instrument used by SMG/APP to repay some debt in June 2002. The first reference was in the GOI's May 29 response, on page 9, which states that the June 2002 Memorandum of Understanding (MOU) "specifies the terms that SMG/APP followed, namely: 1) a $90 million cash payment . . . and 2) provision by SMG/APP of 18% of share of BII and their Certificate of Entitlement to repurchase the shares of BII." The next reference was in the respondent companies' June 5 response, which states on page 4 "{i}n addition to the transfer of BII shares, Certificates of Entitlement and a cash payment of $90 million were made. Valuation of the Certificates of Entitlement was established at Rp. 2,348,841 million." Although the 2002 IBRA Annual report, which was provided by the GOI on May 29, provided some additional information, it was very limited and it was not discussed by either the GOI or the respondent companies in their questionnaire responses or at verification. More importantly, the responses stated that this transaction related to debt that "concerned other SMG companies that were not cross-owned with the PIOCs or Purinusa." See June 5 response of TK and PD at page 3. Therefore, the GOI and the respondent companies did not provide any detailed information about this aspect of the June 2002 transaction. Because we did not have the list of companies involved in this transaction and because virtually no information about the COEs had been provided, we decided that it would be appropriate to inform the GOI to be prepared to demonstrate at verification that the COEs had value and how that value was established, in general, and for purposes of this transfer. See GOI Verification Outline at page 6; Company Verification Outline at page 13.

Again, at verification, the Respondents could not substantiate their claim that the debt "concerned other SMG companies that were not cross-owned with the PIOCs or Purinusa." With no

information of the record about COEs that would have informed the Department's analysis of whether this transaction provided a financial contribution or benefit, the Department pursued, consistent with its outline, a discussion of the valuation of COEs in this transaction and in general. We were unable to establish the rules for how IBRA valued COEs and how those rules were applied in this case. The policy documents we reviewed appeared to relate specifically to SMG/APP, and although the GOI maintained that the SMG/APP case established the rule that was applied going forward in all other cases, the GOI could not document this claim. See GOI Verification Report at pages 25 - 26. We further pursued an explanation of COEs and what function they fulfilled in the context of IBRA's bank restructuring and recapitalization efforts. We received an explanation, but received no documentation in support of that explanation. Finally, we specifically asked whether COEs were a financial instrument that was negotiable and could be traded for cash, and we learned they were not negotiable and could not be traded. See GOI Verification Report at page 27. Therefore, with no other information on the record, and because, based on Respondents' repeated statements in the questionnaire responses that the program was "not used," we had not requested complete information regarding COEs in our questionnaires, we must rely on adverse facts available and conclude that COEs had no value, and that any debt reduction that was received in exchange for COEs amounted to debt forgiveness.

With respect to Respondents' argument that IBRA's accounting for the value of COEs substantiates their value in the context of debt repayment and demonstrates that there was no benefit, we emphasize that there was no information in the record prior to verification. Further, the Department could not predict prior to verification that a full discussion and review of this information would become necessary. In light of the clear statement at verification that COEs were not negotiable and could not be traded for cash, we cannot evaluate the information cited by Respondent as presented at Note 15 to IBRA's 2002 Annual Report. Respondents did not make any of these points at verification so we were unable to have a full discussion about whether COEs had monetary value. Nor can we establish that this information substantiates the inherent value of COEs and the resulting lack of a benefit under section 771(5)(E)(ii) of the Act.

Comment 30: Whether an Adverse Inference Can be Applied in Determining that Orleans Was Affiliated with SMG/APP

Respondents contend that the Department was not justified in using an adverse inference that Orleans was related to SMG/APP based on the fact that the GOI was unable to provide certain documents, and on what the Department perceived was insufficient preparation. According to Respondents, courts have ruled that a party's inability to cooperate is not a lawful basis for making an adverse inference, and have said that, before making such an inference, the Department "must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation . . . Compliance with the 'best of its ability' standard is determined by assessing whether respondent has put forth its maximum effort" to provide the requested information. Further, while "the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record-keeping." Nippon Steel Corp. V. United States, 337 F.3d 1371, 1382 (Fed. Cir. 2003) (Nippon Steel).

Respondents contend that in this context, there is no basis for applying an adverse inference: the GOI provided the Department with all of the information it could gather, and searched through warehouses of boxes in an effort to do so; the Department's own review of the indexing system showed that there was no way to locate specific information. According to Respondents, the respondent in Nippon Steel did not even try to locate the relevant information. Respondents also distinguish Nippon Steel by maintaining that it was reasonable for the Department to expect an importer to maintain a year's worth of records, but to impose the same expectation on a government, for an agency that has been dissolved, and for a large number of records, is not reasonable.

Finally, Respondents contend that the Department erred by not corroborating the information on which it relied. The statute, according to Respondents, expressly requires the corroboration of "secondary information" which Respondents claim would include newspaper articles and second- and third-hand accounts. Respondents claim that having the secondary information on the record does not relieve the Department of its obligation to corroborate it.

Petitioner contends that the GOI did not conduct a timely search for documents or personnel and therefore, failed verification. Petitioner notes the Department's concerns, expressed in the verification report, that after two days of verification, there were no officials who could answer questions concerning the sale of SMG/APP debt, and that the team had been unable to review and discuss original documentation regarding the sale. According to Petitioner, the verification report shows that it was not until June 4, 2007, nearly six months after the Petitioner filed its new subsidy allegations, that the GOI engaged in discussions about whether various GOI ministries could provide the relevant documents to one another. Petitioner maintains that the verification report further indicates that a search in the warehouse for the boxes of documents identified using the index of IBRA files was begun during verification.

Petitioner also takes issue with Respondents' arguments that the Department's own efforts at querying the index, which produced no better results, constitute a complete search for the relevant documents. Rather, Petitioner argues, the record shows that the GOI failed to "put forth its maximum effort" to provide the Department with the requested and necessary information. Further, Petitioner maintains that the GOI's record keeping was entirely inadequate. Petitioner rejects the distinction that Respondents draw between this case and the facts of Nippon Steel: rather than "a government program that spanned several years and covered thousands of transactions," as characterized by Respondents, Petitioner maintains that this case involves only five obligors, not thousands of transactions. Petitioner concludes that either the GOI failed to put forth the maximum effort to find the relevant documents or there was inadequate record keeping, or both.

Department's Position:

Section 776 of the Act governs the use of facts available and adverse facts available. Section 776(a) of the Act provides that if an interested party or any other person (1) withholds information that has been requested by the Department; (2) fails to provide such information by deadlines or in

the form and manner requested; (3) significantly impedes a proceeding; or, (4) provides information but the information cannot be verified, the Department shall use the facts otherwise available in reaching its determination. According to the statute, certain conditions must be met before the Department may resort to facts available, and section 782(d) of the Act provides that the Department will so inform the party submitting the response, and to the extent practicable, provide that party an opportunity to remedy or to explain the deficiency.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. In addition, the statute provides that in selecting from among the facts available the Department may rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 of the Act (or section 753 for countervailing duty cases), or any other information on the record, subject to the corroboration requirements of section 776(c) of the Act.

In the Post-Preliminary Analysis, the Department stated that its questionnaires to the GOI requested that the GOI provide the Department with all documents related to the sale of SMG/APP debt to Orleans, including the documentation that Orleans was required to provide to IBRA that supported Orleans' statement that it was not the original owner, or affiliated with the original owner, of the SMG/APP debt purchased. While the GOI provided the Department with Orleans' "Letter of Compliance," which includes Orleans' self-certification that it was not affiliated with SMG/APP, the GOI did not provide information which would have been part of Orleans' complete bid package, including Orleans' articles of association and certification of Orleans' access to the funds necessary to complete the transaction. Nor did the GOI provide reports or other documentation that detailed IBRA's sales of non-performing loan assets, which the Department had requested.

We continue to find that the use of facts available with an adverse inference is justified in finding that Orleans was related to SMG/APP. While the GOI did provide documentation in its questionnaire responses, very little of it was responsive to our requests to understand IBRA's operations in general and this debt sale in particular. As a result, the Department's verification outlines to the GOI and to the respondent companies contained a description of information that each party should be prepared to provide to the Department during verification. With respect to IBRA's sale of SMG/APP debt to Orleans, the Department's verification outline to the GOI specifically requested information including, but not limited to: IBRA's internal evaluations, analyses, or recommendations developed through the process of selling SMG/APP debt; information provided by Orleans and by the other bidders during the bid registration and bidding processes; and, information related to the tender process which set out the requirements for bidder registration and due diligence. Additionally, the letter accompanying the outline specifically requested that the officials involved in preparing the questionnaire responses be present at verification and that "any current or former IBRA officials who were directly involved with {SMG/APP's} debt restructuring and who prepared any reports or audits regarding the sales process related to IBRA's auctioning of similar debt to outside parties . . . " be made available to

address this topic. Further, an item in the outline specifically addressed our interest in discussing due diligence and the application of Article 3 of SK-7/BPPN/0101. See GOI Verification Outline. At verification, it was unclear who had prepared the questionnaire responses and no officials were present who had been involved even in the broader credit asset sales program. Although the GOI asked three former IBRA officials to attend the verification and to provide background about IBRA and to respond to the verification team's questions, none of these former officials was involved in credit asset sales, let alone the Strategic Assets Disposal Program under which SMG/APP debt was handled. Not until we had pressed the GOI repeatedly over the course of two days to speak with someone knowledgeable about due diligence, did we meet on the third day with a former IBRA official, currently working for the Ministry of Finance, who had actually been directly involved with credit asset sales, though not directly involved with the sale of SMG/APP debt. See GOI Verification Report at page 50.

At verification, the GOI did not provide the crucial documentation that Orleans would have provided to IBRA, such as Orleans' registration and bid documents, including Orleans' articles of association, which would have identified its shareholders. The GOI explained that Orleans would have been required to submit such documentation. Furthermore, the GOI reported that Indonesian law requires the retention of official government records for 15 years. In addition, the GOI Supreme Audit Agency, which examined IBRA's operations in general and specifically with respect to the procedural aspects of the sale of SMG/APP debt to Orleans, issued its report in late 2006, and had access to all of the relevant IBRA records on the SMG/APP debt sale for purposes of preparing its report.

Moreover, the SMG/APP sale to Orleans was one of only five transactions conducted under the Strategic Asset Sales Program. This was a special program expressly for those companies whose potential failure the GOI had identified as having the most significant social and economic implications. The verification report also shows, however, that the GOI's efforts to identify and retrieve documents, regardless of how untimely, insufficient, and incomplete we find them, were not entirely fruitless. The limited number of documents provided as verification exhibits was located as a result of the searches undertaken. We learned that these searches were limited to the two stages that preceded the final stage of credit asset disposal, asset acquisition and asset restructuring (see GOI Verification Report at page 36). Searches using the index had not been undertaken for files and records related to the disposal of the SMG/APP debt. In fact, in only a few extra days' time after the verification team raised this issue at verification, additional search efforts located a reported 17 boxes of documents, marked "Sinar Mas." (Id. at 58.) Thus, with only incremental additional effort, the GOI located more of the IBRA files than it had prior to verification. As such, we conclude that the GOI did not put forth its maximum effort in preparing questionnaire responses and preparing for verification.

The Department's own limited opportunity to use the Ministry of Finance's index, and the results of our efforts in querying the index, does not demonstrate that the files we were seeking were unavailable; neither can it form the basis for a conclusion that the GOI put forth its maximum effort in attempting to locate the files. The Department's efforts do show that there were

complications in identifying and locating the records; IBRA had an electronic file index and the Ministry of Finance had its own index. See GOI Verification Report at page 46. However, staff familiar with the index together with the GOI's knowledge that there was a special program created for five obligors, would have led any reasonable person to recognize that additional efforts were necessary to search further for the files of one of the largest debt sales IBRA conducted.

Thus, we conclude that the GOI should have been able to locate the records regarding the sale of SMG/APP debt to Orleans. Like Nippon Steel, the efforts undertaken in this case were insufficient and incomplete. That the respondent in Nippon Steel had undertaken no effort to locate the relevant information as compared with some effort undertaken by the GOI is immaterial; both efforts were insufficient and incomplete. Nippon Steel specifically recognizes that the standard "does not condone inattentiveness, carelessness, or inadequate record-keeping"; here the Department concludes that the GOI was careless and inattentive in responding to our requests for information and in preparing for verification. Finally, our expectation that the GOI would be able to provide the requested information if it had put forth its maximum effort is entirely reasonable, particularly in light of Indonesian records retention requirements, the fact that SMG/APP was identified as one of five debtors whose debt had strategic economic and social significance, and the fact that marginal additional efforts produced numerous boxes of records.

Further, we conclude the eventual appearance of a former IBRA official knowledgeable in general about credit asset sales is additional evidence that the GOI did not put forth a serious effort to identify individuals who could knowledgably respond to our questions and inform our efforts at verification. After pressing the GOI over the course of two days, we finally met with a former IBRA official who had actually been directly involved with credit asset sales, though not directly involved with the sale of SMG/APP debt. See GOI Verification Report at page 50. Again, with incremental additional effort, the GOI located an official with some of the experience we were seeking, and we therefore conclude that the GOI did not put forth its maximum effort to identify a former IBRA official with the direct experience we were seeking. As such, we have resorted to the use of adverse facts available to conclude that Orleans was affiliated with SMG/APP.

With respect to Respondents' argument regarding corroboration, Respondents have misconstrued the definition of secondary information. Section 776(c) of the Act requires the corroboration of secondary information: "{w}hen the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation or review . . ." Thus, the statute implies that secondary information is information other than information obtained in the course of an investigation or review. The SAA defines secondary information as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870. This language draws a distinction between information on the record in one segment of a proceeding being used in a later segment of the proceeding (e.g., using information from the investigation or a review in a later review) and information in the record of the current segment, whether investigation or review. The former situation defines secondary information. Furthermore, the SAA defines independent sources (not

secondary sources) of information as including, "for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular review or investigation." Id. In this case, we are relying on information provided by Petitioner in the course of this investigation, as well as information provided by Respondents and information gathered by the Department in consultation with the independent expert. Because these sources do not constitute secondary information, we continue to find that the statute does not require corroboration.

Comment 31: Specificity of IBRA's Sale of SMG/APP Debt to an Affiliate of the Original Debtor

The Respondents contend that the record shows that Orleans was not affiliated with SMG/APP, and that the information the Department examined at verification was consistent with what was reported. The Respondents state that the GOI submitted documentation which contained certifications that Orleans was not directly, or indirectly, affiliated with, or acting as an agent of SMG/APP, the original debtor. The Respondents also cite to additional documentation, the identification and contents of which are business proprietary, which, in their view further demonstrate the lack of affiliation between Orleans and the original debtor.

The Respondents further contend that, at verification, the GOI demonstrated that the procedures followed by IBRA to ensure that Orleans was not related to the original debtor were the standard procedures followed by IBRA in all transactions: IBRA relied on the documents and certifications presented by the purchaser and its attorneys. Further, these documents, which according to Respondents, establish that Orleans was not related to SMG/APP, were provided to the Department. Because these documents establish that the GOI followed its standard procedures to ensure that the SMG/APP debt was not sold to a related party, the Respondents continue, the GOI's action could not give rise to a countervailable subsidy.

Petitioner argues that, contrary to Respondent's claims, the record does not show that Orleans was not related to SMG/APP. Petitioner maintains that despite the GOI's further indication at verification that IBRA would have reviewed Orleans' Articles of Association and other documentation, and would have been required to retain these records, the GOI was unwilling to produce such documents. According to Petitioner, the GOI was also unable to produce relevant internal memoranda and correspondence files, even though an SMG/APP representative stated that he presumed that there would careful record-keeping, for the good of all parties. The nature of the documents on which Respondents rely to support their position, Petitioner maintains, does not constitute actual evidence regarding the ownership of Orleans. Further, Petitioner contends that the Department recognized, and the independent expert confirmed, that it would be unlikely that explicit information "regarding a business relationship that the relevant parties would have considerable interest in protecting would be available" in a public forum. See NSA Initiation Memo at 5.

Petitioner also maintains that Respondents' reliance on a document provided among the "auxiliary exhibits" is undermined by the fact that those documents, in Petitioner's view, were not verified, and therefore the Department cannot use them as the basis for its determination. The identification of the document and the details therein are business proprietary, but Petitioner argues that Respondents' claims of the document's validity are unsupported on the record, and the timing and contents of the document itself could not have been used to confirm Orleans' non-affiliation claims.

Finally, Petitioner argues that the Department should disregard the IBRA auxiliary exhibits as unverified information. According to Petitioner, the Department clearly stated at verification that these documents constitute untimely and incomplete information related to the new subsidies, and they were submitted well after the end of verification. Petitioner notes that while the Department was able to review these documents briefly, the documents were not provided until a week after the GOI verification was completed, they did not represent the complete set of documents the Department had identified as critical, and they were not provided with the requested translation. Finally, the Department did not have the opportunity to discuss the documents with Ministry of Finance or IBRA officials. Thus, Petitioner contends that these documents constitute unverified information on which the Department cannot legally rely.

Department's Position:
To determine whether the sale of SMG/APP debt to Orleans was specific in accordance with section 771(5A)(D)(iii)(I) of the Act, the Department's questionnaires and verification outline to the GOI requested information regarding the GOI's internal procedures for reviewing and evaluating bid documents, such as internal memoranda, or records of the procedural aspects of soliciting the bids and selecting the winner. At verification, we learned that the GOI is required to maintain government records for 15 years; however, the GOI failed to provide the requested information to the Department. Regardless of whether IBRA followed all of its normal procedures in conducting the sale of SMG/APP debt, the GOI did not provide the complete records to demonstrate that such procedures were followed. In particular, GOI officials explained at verification that IBRA would have reviewed a bidder's articles of association as part of its bid package. As we explained in the Post-Preliminary Analysis, this document, along with the rest of the documents normally submitted during the sales registration and bid process, were crucial to our examination of the alleged affiliation. Information provided by Petitioner with their allegation showed that there was considerable speculation in the press and a concern expressed by the World Bank that debtors were buying back their own debt at steep discounts. Such information was sufficient to support the Department's initiation. See NSA Initiation Memo at pages 5-6. This information was confirmed by the independent expert with whom the Department consulted at verification. See Expert Memo.

The GOI did not provide the information which we were told IBRA would have routinely required and examined. With respect to the copies of documents that the GOI did provide, without access to the files, we were unable to see the originals of any of the documents provided (or official file copies) as they were kept by IBRA in the normal course of business in the context of IBRA's

official files. Thus, we were unable to evaluate any of the documents provided in the full context of how IBRA would have received or evaluated them. While the GOI did provide Orleans' letter of compliance indicating no conflict of interest, this pro forma document alone is not sufficient for a meaningful analysis of the alleged affiliation between Orleans and SMG/APP. And although GOI officials explained at verification that this document fulfilled IBRA's due diligence requirements (see GOI Verification Report at page 51), they also explained that IBRA reviewed additional information regarding a bidder's ownership and access to financing to determine whether a bidder was qualified. The Department also noted at verification that it had not been able to uncover any information about Orleans' ownership. See Countervailing Duty Investigation of Coated Free Sheet Paper from Indonesia: Verification of Cross-Ownership and Debt Restructuring for the Asia Pulp and Paper/Sinar Mas Group, August 24, 2007, Public Version (SMG/APP Verification Report), at page 15. And a representative of SMG/APP in the MRA negotiations and implementation explained that special purpose companies would seek to conceal their ownership and their interests. Id. As such, the fact that IBRA's files reportedly would contain Orleans' articles of association which would have identified Orleans' shareholders was a crucial starting point for the Department's attempt to verify the statements on the record that Orleans was not affiliated with SMG/APP. Petitioner also demonstrated that its own extensive public research about Orleans' ownership was fruitless. See Petitioner's submission of January 30, 2007 at pages 10-14. The GOI also did not provide any IBRA internal documents or memoranda to show the procedures followed in preparing the SMG/APP debt for sale or IBRA's internal consideration and evaluation of the registration and bid packages. Such information was necessary for the Department's understanding of IBRA's consideration of all aspects of the debt sale, which was among the largest handled by IBRA.

We have also considered whether information provided by the Respondent companies could help us to evaluate the question of Orleans' ownership and alleged affiliation with SMG/APP. At verification, we received listings of investments/subsidiaries of Asia Pulp & Paper Ltd. (APP), and Purinusa. See SMG/APP Verification Report at page 2, and Exhibits APP 2 and 9. These listings show that each companies' affiliates number in the hundreds. And particularly for APP, the listing provided at Exhibit APP 9, is an excerpt from the public, published Annual Report which shows that there are holding companies and finance companies all around the world. This information demonstrates that APP is part of a very complex and multi-layered web of companies. In light of record information describing highly complex, multi-layered corporate structures and special purpose finance vehicles, the information in IBRA's files is essential. The GOI did not provide the official files of this debt sale. Because the Department could not review those official files, we have no choice but to rely on an evaluation of all the information on the record to make our determination. Thus, in the absence of the substantive information from the official files regarding Orleans' ownership, and in light of our finding that the GOI did not cooperate to the best of its ability (see "Application of Facts Available" section, above) we continue to find, as facts otherwise available, that Orleans was affiliated with SMG/APP.

Furthermore, the sale of SMG/APP debt by IBRA was conducted under the Strategic Asset Sales Program that was established by IBRA to separately address the debt of the five obligors whose

continuing operations were of particular interest to the GOI due to the significant and serious social and economic consequences if they were to fail. See GOI Verification Report at 31. As the GOI explained at verification, under this program, unlike under all other IBRA programs to dispose of seized assets, bidders were required to submit business plans for the future operation of the obligor's assets. This particular rule was not applied to the bidders for SMG/APP debt, though separate, special rules were mandated: the debt was for sale on an "as is" basis; bidders had to abide by the terms of the MRA; bidders could not sell the debt to another party until after the MRA became effective; and, bidders had to abide by the terms of the June 15, 2002 MOU between IBRA and SMG/APP's other creditors. See GOI Verification Report at 31. Thus, we continue to conclude that the sale of SMG/APP debt by IBRA to Orleans by IBRA was specific in accordance with section 771(5A)(D)(iii)(I) of the Act.

Regarding the "auxiliary exhibits" that the GOI provided to the Department at verification, as discussed in the GOI Verification Report, the Department gave the GOI a third opportunity to provide information: the Department prepared a list of 11 documents, and later added two more items that it considered crucial for a meaningful discussion of the sale of SMG/APP debt to Orleans. The GOI responded to this opportunity by providing, after the deadline established by the Department for doing so, documents which it claimed satisfied four of the items on the Department's list: Item 1, the FSPC decision regarding freezing of interest for all debt taken over by IBRA; Item 5, correspondence between IBRA and Orleans or APP regarding the winning bid; Item 7, the independent legal opinion issued after the award and before the sale and purchase agreement; and, Item 8, documentation of the exchange rate and the rule that governs the application of the exchange rate.

Our review of the six documents provided shows that only two documents partially fulfill our requests as indicted on the list: the notice to Orleans regarding their winning bid and one of the independent legal opinions. While the letter to Orleans regarding payment (Auxiliary Exhibit 3) does indicate the exchange rate applied by IBRA for purposes of this transaction, the additional documentation provided regarding exchange rates does not provide the requested information about the rules which IBRA was required to follow in applying exchange rates; it is merely a printout, dated July 2, 2007, from Bank Indonesia's website showing exchange rates for the month of October 2003, with no explanation of the relevance of this information to our inquiry. Furthermore, contrary to the explanation we received regarding these auxiliary exhibits, none of the documents provided establishes the rule of the Financial Sector Policy Committee regarding the freezing of interest on all debts taken over by IBRA. The other documents provided are the terms of reference IBRA issued with the announcement of the SMG/APP debt sale, and an internal IBRA memorandum regarding Orleans' payment schedule.

Our analysis of these documents shows that they do not establish that IBRA's normal procedures were followed, nor do they establish that Orleans was not affiliated with SMG/APP. First and foremost, very few of the documents identified in the discrete list of crucial documents were provided. More importantly, the complete registration and bid packages which would have included the articles of association were not provided. Furthermore, without IBRA's official files

and the opportunity to review the document originals in the context in which they were collected, solicited, or created, and how they were kept, we have no basis for understanding how the documents informed IBRA's analysis or decision-making. See GOI Verification Report at 59.

We informed GOI officials at verification that the documents on this discrete list, which we agreed to consider after the end of the GOI verification, would serve as a starting point for further discussion of this issue at the Ministry of Finance (where the verification of the debt forgiveness information was conducted), and that the provision of the documents alone did not constitute verification. See id. at 58. Without a complete set of documents responsive to our request, and without the opportunity to have a meaningful discussion regarding these documents, these documents cannot meaningfully inform the Department's analysis of the central question before it, namely whether Orleans was affiliated with SMG/APP. Thus, we continue to find, based on an evaluation of the information on the record, that SMG/APP was affiliated with Orleans.

Comment 32: Whether the Information the Department Relied Upon Was Speculative and Circumstantial

The Respondents argue that the Department has attempted to cobble together evidence of a relationship between SMG/APP and Orleans based on speculative and circumstantial evidence, without relying upon first-hand sources. The Respondents claim that the Department relied on: (1) an unnamed expert; (2) a report from the World Bank; (3) Court Records; and (4) a "Fate of the Forests" article. According to the Respondents, none of these constitute first-hand sources or source documentation. According to the Respondents, all of the documentation that the Department relied upon in making its preliminary determination pre-dates the sale to Orleans and thus cannot speak to IBRA's sale of the SMG/APP debt. None of the reports, the Respondents claim, provide definitive proof of a sale by IBRA to the original debtor, or provide proof that the sale of SMG/APP debt to an alleged affiliate was sanctioned by the GOI or by IBRA.

Petitioner maintains that Respondents are flatly wrong, and that a number of the reports it provided, indicating that Orleans was related to SMG/APP, were issued immediately after IBRA's announcement of the sale of SMG/APP's debt to Orleans. In addition, according to Petitioner, Respondents' inference that the presence of parties at the opening of the bids imbues legitimacy on Orleans' bid is unexplained. Finally, according to Petitioner, the evidence Respondents themselves rely upon to establish the lack of affiliation is itself secondary evidence, which is a particular concern in light of the GOI's statements at verification that IBRA's files should contain direct evidence regarding Orleans' ownership at the time of the transaction.

Regarding the independent expert with whom the Department met, the Respondents claim that the unnamed expert is wrong in his speculation regarding the bidding process in IBRA's sale of SMG/APP debt. The expert, the Respondents continue, "indicated that it was not uncommon for all of the bidders in these auctions to be related to the debtor, and through this control and 'rigging' of the bid process, the debtor could guarantee a low price..." The Respondents argue that it is evident from documents the Department reviewed that not all of the bidders were related

to the debtor. According to Respondents, it is evident that the expert did not have first-hand knowledge of the sale, and thus his speculation is no better informed than gossip.

Petitioner argues that the Department has an established practice of meeting with independent experts, and indeed, the Department has dismissed concerns about this practice in the companion countervailing duty investigation of China. In that case, the Department explained that "frank and open advice" was a necessary component of the Department's analysis, that "Department regularly consults experts when conducting countervailing duty investigations," and that the WTO recently "upheld the Department's practice of holding such meetings." See Petitioner's case brief at page 3, quoting from Memorandum to the File from Sarah Ellerman, Meeting with Officials from the Government of the People's Republic of China, (C-570-907) dated July 18, 2007, a public document on file in Import Administration's Central Records Unit.

Petitioner addresses Respondents' concern regarding the withholding of the identity of the expert by citing 19 CFR 351.304(a)(2) which allows for the disclosure of business proprietary information to authorized applicants "except for . . . information for which the {Department} finds a clear and compelling need to withhold from disclosure." According to Petitioner, the Department's access to "obtain frank and open advice on complex issues," would be hampered by revealing the identities of the experts the Department consults. Indeed, according to Petitioner, the Department frequently allows the withholding of the names of market researchers because revealing their identities could endanger their livelihoods. Thus, Petitioner concludes, the Department should reject Respondents' argument that the Department should exclude the information obtained from the independent expert because his identity has been withheld by the Department.

Department's Position:

In the Post-Preliminary Analysis, we determined that the GOI did not cooperate to the best of its ability to provide the Department with the necessary documentation required to evaluate whether Orleans was affiliated with SMG/APP. As such, the Department determined that it was appropriate to use facts otherwise available and to apply of adverse inferences for this analysis. The Department initiated on this allegation, stating that Petitioner's allegation included information to establish that Orleans may be "affiliated with or an agent of the Widjaja family and SMG/APP," that this information was sufficient for initiating its investigation, and that such an action was company-specific in accordance with section 771(5A)(D) of the Act. See NSA Initiation Memo. The information provided in Petitioner's allegation, which was sufficient for initiating an investigation, together with information the Department developed in consultation with an independent expert (see Expert Memo), was the information the Department relied upon as facts otherwise available for purposes of the Post-Preliminary Analysis.

Respondents have argued that, in making its preliminary determination, the Department relied solely upon non-first-hand information sources that pre-date IBRA's sale of SMG/APP debt to Orleans, and that this documentation cannot specifically address IBRA's sale of SMG/APP debt. Our review of the record shows otherwise. In its allegation, Petitioner provided several news

articles which established that IBRA sold SMG/APP debt to Orleans. See Petitioner's December 15, 2006 submission at Exhibit 8, Troubled Company Reporter, "Asia Pulp: IBRA Picks U.S. Firm to Buy Debt-holdings," December 22, 2003, and Exhibit 9, Troubled Company Reporter, "Asia Pulp: US$800 Million Debt Buyback Blocked," December 26, 2003. See also Petitioner's January 30, 2007 submission at Exhibit 11, Financial Times, "APP offered chance to buy back own debt," December 22, 2003 and Exhibit 14, Bisnis Indonesia, "IBRA Refuse to Disclose Investor's Identity," January 2, 2004. In fact, all of these reports are contemporaneous with and specifically address the sale of SMG/APP debt to Orleans. Thus, contrary to Respondents' claims, in making its preliminary determination, the Department did indeed rely upon information on the record, as facts otherwise available, which specifically addressed IBRA's sale of SMG/APP debt to Orleans. The Department examined this information in the context of the World Bank report and its consultation with the independent expert and concluded, based on facts available, that Orleans and SMG/APP were affiliated.

Regarding Respondents' claim that the unnamed independent expert, with whom the Department consulted during verification, was wrong in his assessment of the SMG/APP debt sale, the Department finds that there is no basis to discount the information from the expert. The Department has an established practice of consulting such experts when conducting countervailing duty investigations. See Dynamic Random Access Memory Semiconductors: Final Affirmative Countervailing Duty Determination (68 FR 37122, June 23, 2003) and accompanying Issues and Decision Memorandum at Comment 1. During countervailing duty investigations, the Department is often in the position of examining alleged countervailable subsidy programs and companies for the first time. Consulting independently with unbiased individuals who are knowledgeable about the matters which are being examined aids the Department in developing a comprehensive view of the circumstances that are at issue. The Department provides detailed reports to interested parties when such consultations are held, and allows interested parties the opportunity to provide their comments. Thus, the Department gathers information at such meetings and reports such information in a transparent manner that affords the parties the opportunity to comment.

Furthermore, while we agree with Respondents that first-hand information, i.e., original source documentation, is ideal, the Department was unable to consider any such information because only the GOI is in a position to provide such information, and it did not do so. Thus, for facts available to use as the basis of its decision, the Department looked to the record and used the information provided by Petitioner, and the information provided by the independent expert.

Comment 33: Procedural Abnormalities in IBRA's Sale of the SMG/APP Debt and Specificity

According to the Respondents, the record evidence shows that IBRA's sale of the SMG/APP assets occurred under the same terms and conditions as all other sales. The Respondents state that IBRA's regulations specified that in the process of offering assets for sale, IBRA was obligated to require prospective purchasers to: (1) certify that they are not the original debt owner or affiliated

with the original debt owner; (2) certify that they will not transfer the purchased assets to the original owner, within two years of the date of purchase unless the original owner has fully repaid the debt and settled its debt claims with the GOI; and (3) submit information showing that they are capable of paying the full price for the purchased assets. The Respondents claim that IBRA's sale of the SMG/APP assets complied with all of these conditions.

Further, the Respondents contend that IBRA announced the sale of APP assets in the national media; the announcements included the conditions to which interested bidders had to agree; and these announcements were provided to the Department. According to the Respondents, interested bidders registered to bid on the APP assets by submitting "letters of compliance" to IBRA, which included certifications of no direct or indirect economic interest in the original debtor; all registered bidders submitted bids, which were opened in the presence of a number of parties. The Respondents claim that Orleans' bid was the highest qualifying bid (i.e., the highest bid that met the conditions specified in the terms of reference).

The Respondents state that IBRA and Orleans signed a sales and purchase agreement, which was provided to the Department. According to the Respondents, this agreement required the purchaser to certify that all of the warranties and representations were true, and that the purchaser was not related in any way to the original debtor.

The Respondents argue that IBRA had no reason to exercise its discretion under its regulatory provision regarding due diligence, and that the sale was conducted in an open and transparent manner. According to the Respondents, the bidders were known to have no relation to SMG/APP, and the bids were opened in the presence of a number of parties.

Department's Position:

IBRA's regulation SK-7/BPPN/0101 required that in the offering process for the relevant sale of assets (in this case, non-performing loans), prospective purchasers were required to sign a statement containing the warranties that they were not the original owner, or affiliated with the original owner, of the debt. According to these regulations, prospective purchasers were also required to certify that they would not transfer such debt back to the original owners within two years of the date of the debt's purchase, unless the debt's original owner had settled its problems with the GOI. IBRA's regulations also required that prospective purchasers submit information, supported by a statement from a financial institution acceptable to IBRA, regarding its capability to pay the full purchase price for the debt sold by IBRA.

In its questionnaire responses, the GOI provided the Department with a copy of Orleans "Letter of Compliance," which contained Orleans self-certification that it had no conflict of interest with SMG/APP. However, at verification, the GOI did not make available to the Department other information necessary to the Department's evaluation of whether IBRA's normal procedures were followed. While there was a discussion at verification of the normal procedures for conducting the sale of former bank assets, little documentation was provided to establish the normal procedures, or that they were followed, in the case of SMG/APP debt. The Department requested

but did not receive information with which to evaluate how the procedures followed in this case reflected the procedures required by IBRA's rules. The Department requested the notification information for the sale, the entire set of documents filed by each potential bidder (including articles of association), all internal analyses and recommendations and records of the internal review process performed by IBRA in the normal course of business, the documentation of the evaluation conducted by IBRA after opening of the sealed bids and the identification of the winner, notification of the winners and the non-winning bidders, payment documentation, and the rules regarding the application of exchange rates and the source of exchange rate data.

Although the GOI asked three former IBRA officials to attend the verification and to provide background about IBRA and to respond to the verification team's questions, none of these former officials was involved in credit asset sales, let alone the Strategic Assets Disposal Program under which SMG/APP debt was handled. The verification team did eventually meet with a former IBRA official who had been involved with credit asset sales, though not with the sale of SMG/APP debt. See GOI Verification Report at page 50. Without the opportunity to meet with officials who could discuss the context in which the documentation that the GOI provided to the Department was reviewed and used by IBRA and to explain how the sale of SMG/APP debt to Orleans followed normal procedures, including those designed to ensure that the bidder is not related to the debtor, the Department cannot rely on the limited information and documentation provided by the GOI for evaluating whether normal procedures were followed and evaluating whether SMG/APP received specific treatment.

The Department is not suggesting that there were abnormalities in IBRA's sale of SMG/APP debt to Orleans. However, the information provided by the GOI was insufficient to establish that there was no special, company-specific treatment. Furthermore, the fact that SMG/APP was one of the five obligors whose debt was handled under the Strategic Asset Sales Program, a special, distinct program developed by IBRA due to the social and economic significance of only five debtors, shows that this debt sale was specific to a group of enterprises, in accordance with section 771(5A)(D)(iii)(I) of the Act.

Comment 34: Effect of the Lack of Reduction in Debt on the Countervailability of the Sale of SMG/APP's Debt to Orleans

According to the Respondents, during verification, the Department examined audited financial reports, profit and loss statements, and online accounting systems to determine whether there was any reduction to the PIOCs' debt. Without exception, the Respondents continue, the Department found that there was no reduction in the PIOC's debt that did not correspond to a debt payment that had been made. The Respondents contend that in addition to proving that no debt was reduced, this further proves that debt was not sold to an affiliate.

Petitioner claims that Respondents' argument that the lack of debt forgiveness is evidence that the debt was not sold to an affiliate fails to address the point that Orleans is not an acknowledged affiliate. Further, and as confirmed by the independent expert, "continuing to service the debt to

an affiliated creditor would be a very effective way to move large sums of money offshore." See Expert Memo.

In addition, Petitioner argues that the Department should recognize the interest forgiven as a countervailable benefit. Petitioner notes that the original debt forgiveness allegation identified the benefit as the difference between the outstanding principal and the amount Orleans paid, plus the accrued interest on the principal balance. Petitioner notes that the GOI was unable to produce at verification any documents supporting its claim that IBRA forgave the interest on all debts that it took over from obligors. As such, Petitioner contends, the Department should find that any forgiven interest and accrued guarantee premium constitutes a countervailable benefit, consistent with the allegation on which the Department initiated. Despite the GOI's claim, according to Petitioner, that the auxiliary exhibits included documentation of the "FSPC decision regarding freezing of interest for all debt taken over by IBRA," such a document was not actually included in the package. Even if it were, Petitioner argues that the Department should disregard it as unverified.

Department's Position:

The Department found that the amount of SMG/APP debt assumed by IBRA from the balance sheet of BII was transferred to Orleans without reduction (except for the reductions resulting from the transfer of BII shares, COEs and the $90 million cash payment). See Exhibit 5 to the SMG/APP Verification Report. However, this fact does not establish the lack of a relationship between Orleans and SMG/APP or the Widjaja family. In light of the prohibition under Indonesian law against selling debt back to the debtor, we would not expect to find accounting entries on the books of the debtors showing the reduction and/or the elimination of debt by virtue of such a sale. Thus, we attempted to evaluate the question of whether Orleans is related to SMG/APP or the Widjaja family in the context of the procedures established and the documentation collected to ensure that this prohibition was not violated. In the absence of a full understanding and review of the procedures and documentation, we cannot rely on this one fact, that the balance of outstanding debt was unchanged as a result of the sale, to determine that there is no relationship between Orleans and SMG/APP or the Widjaja family.

The record is replete with examples of complex financial transactions including a debt push-down, transfers of debt to special purpose financial companies, and complicated structures for the payment of principal and interest. As explained at verification, the individual debtor companies (IK, Lontar, TK and PD) do not pay their creditors directly; payments are handled through sophisticated financial systems and special finance companies that are designed, at least in part, to protect the identity of the creditor. See SMG/APP Report at pages 13 - 15. Regardless of the lack of reduction in the balance of debt outstanding, in this environment, it becomes very difficult for the Department to evaluate whether Orleans was affiliated with SMG/APP. Under these circumstances, the information that the GOI had in its official records became all the more crucial to our evaluation of whether Orleans was affiliated with SMG/APP.

Regarding Petitioner's argument that the Department should recognize the interest forgiven as a countervailable benefit, the Department initiated its investigation of a financial contribution of debt forgiveness resulting in a benefit in the amount of the difference between the value of the debt sold and the price for which it was sold. In the Post-Preliminary Analysis, the Department relied upon definitive information that showed the value of the SMG/APP debt that IBRA sold to Orleans, and Orleans' purchase price for this debt, to measure the benefit from the financial contribution.

Since we were able to verify the actual value of the debt sold by IBRA, we do not think it is appropriate to add to that amount any interest that would have accrued and was not paid. The interest issue would need to be addressed separately since the record is clear that SMG/APP suspended its principal and interest payments when it declared the debt standstill. See SMG/APP Verification Report at page 5. As such, the non-payment of interest involved not only the debt which was subsequently held by IBRA and sold to Orleans, but also the debt held by all of SMG/APP's private creditors, and the issue of interest was covered under the broader MRA negotiations. See GOI Questionnaire Response, May 29, 2007, at page 20. Since Petitioner did not allege, and we did not initiate on, the broader SMG/APP debt restructuring pursuant to the MRA, which included many private and foreign creditors, we find that the issue of whether interest was forgiven should not be evaluated as part of IBRA's sale of SMG/APP debt to Orleans, and that we have no basis for considering it in this investigation.

Comment 35: The Appropriateness of the Department's Reliance on Facts Available with an Adverse Inference

As the basis for their argument that the Department's reliance on facts available and adverse inference was not justified, Respondents provide an overview of the chronology of the Department's investigation of the alleged debt forgiveness subsidies. Petitioner's new subsidy allegation, submitted a month after the Department's initiation, was not, according to Respondents, new. It was the same allegation the Department had rejected in its investigation of lined paper, and Respondents contend that gamesmanship was the only reason for Petitioner to withhold the allegation from the original petition. Nearly two months later, the Department initiated its investigation, and a month after that, on April 20, 2007, issued its questionnaire. Thus, Respondents note, the questionnaire was not issued until five months after the petition was filed and four months after the initiation.

Respondents were originally given less than two weeks to respond to this questionnaire, although this deadline was extended until May 10, 2007. Respondents note that the GOI made clear in its extension request and the May 10 response that it was encountering difficulties in responding to the questionnaire. Specifically, Respondents cited IBRA's dissolution in 2004 and the magnitude of the financial crisis as making it difficult for the GOI to respond to many of the Department's questions, especially within the time provided. On May 29, the GOI submitted a supplemental response, and less than one month later verification began. In comparison with the four months the Department took to decide on initiation and issue its questionnaire, Respondents note, the GOI

had only two months from the time the questionnaire was issued to coordinate internally, gather information, and participate in verification. In addition, Respondents note that these activities occurred against a background of other supplemental questionnaires issued by the Department to which the GOI and the respondent companies had to respond. The Respondents contend that despite the simultaneous information requests, the GOI and the respondent companies cooperated to the best of their ability and made every effort to be responsive to the Department's requests.

Respondents argue that the difficulties at verification regarding the alleged debt forgiveness subsidies are further evidence of the effects of the short time frames, which were compounded by the fact the IBRA was dissolved in February 2004, most of IBRA's personnel had returned to the private sector, and IBRA's records had been warehoused. The GOI also had to resolve jurisdictional questions about the records and which officials had authority to access them.

Respondents also argue that the Department's statements are inconsistent with the evidence gathered at verification, particularly with regard to the Department's review of the index of IBRA documents maintained by the Ministry of Finance. According to Respondents, the GOI was able to identify and make available 14 boxes containing documents related to the SMG/APP debt, but the fact that the index showed that documents were not segregated by debtor, but rather by the nature of the debt, meant that the documents for numerous debtors were mixed together among hundreds of boxes stored in an off-site warehouse. Respondents note that in its continuing efforts to find the documents the Department had requested, the GOI sent officials during the verification to the warehouse, and this additional search effort produced some of the additional documents the Department had requested. Respondents conclude that the fact that the debt at issue was large did not change the fact that locating the relevant records required a physical search through hundreds of thousands of boxes, a search that was impossible within the allotted time.

Thus, Respondents conclude, the record shows that the GOI's inability to provide the requested information is not a result of the failure to act to the best of its ability, a lack of cooperation, or a desire to impede the Department's investigation. Instead, it was the limited time, IBRA's dissolution, and the manner in which the records were kept that made it impossible for the GOI to comply with all of the Department's requests. Respondents argue that when it is not possible for a respondent to comply with a request, an adverse inference is not justified, and given the information that the GOI and the respondent companies did provide, the use of facts available is not warranted. In addition, the respondent companies submit that an adverse inference taken against the GOI should not be applied to their disadvantage. See, e.g., Final Results of Countervailing Duty Administrative Review: Certain In-shell Pistachios from the Islamic Republic of Iran, 70 FR 54027 (September 13, 2005) (Pistachios) and accompanying Issues and Decision Memorandum at Comment 1.

Petitioner contends that the Department correctly concluded that the GOI failed to cooperate to the best of its ability, given the statutory requirements for the Department to verify all information relied on in making a final determination and to use facts available if record information cannot be verified. In light of the ample opportunity which the GOI had to provide the required information

in response to the Department's questionnaires or during verification, according to Petitioner, the Department's reliance on adverse inferences was entirely appropriate. Petitioner maintains that the Department did not calculate a punitive rate based on adverse facts available, but merely calculated the rate attributed to these subsidies assuming as adverse facts available that Orleans is affiliated with SMG/APP, in order to induce compliance with the Department's future requests for information.

Petitioner contends that Respondents distort the factual record in attempting to cast the Department's initiation on these new subsidy allegations as an unjustified reversal of a decision on similar allegations. Petitioner maintains that in Lined Paper, the Department left the door open to further consideration of this allegation, and in this case, Petitioner provided additional information and argument which cured the particular deficiencies identified in Lined Paper. Thus, according to Petitioner, there was no rational basis for Respondents to think that there was not a reasonable likelihood that the Department would initiate. Petitioner dismisses both Respondents' argument that there was insufficient time to respond to the Department's questionnaire and locate relevant documents, and Respondents' claim that they did not know until the Department issued its questionnaire that it needed to gather information. According to Petitioner, the GOI and SMG/APP had ample opportunity to provide the necessary documents, beginning in December 2006. Petitioner notes that the GOI itself made several submissions in, December 2006 and February 2007, attempting to rebut Petitioner's new subsidy allegations. At that time, according to Petitioner, a search in earnest for information and documents should have begun. When the Department announced its initiation on the new subsidy allegations on March 15, 2007, Petitioner maintains, the GOI reasonably could be expected to have started its search for IBRA's records and relevant personnel. At the time the Department issued its questionnaire, on April 20, 2007, Petitioner contends that the GOI and SMG/APP officials should have had no doubt that the Department's document requests would require a complete search of IBRA's records. Finally, the Department's June 18, 2007 verification outline included explicit instructions regarding the availability of officials and documents. Thus, Petitioner maintains, by the time verification began, the Respondents had had months to gather information, identify and retrieve relevant files from archives, and identify and contact parties with knowledge of the transactions at issue. Further, according to Petitioner, Respondents had been strongly warned, a month and a half prior to verification, of the consequences of failing to provide the requested documents. Petitioner argues that the problems which the GOI cited in obtaining the documents arose late, because the GOI did not even meet to begin its efforts to resolve them until after the questionnaire responses had been filed. Merely showing up at verification and explaining that the document collection process is onerous cannot be construed as acting to the best of one's ability.

Finally, Petitioner contends that Respondents' reliance on Pistachios is misplaced. In that case, Petitioner notes, while the government of Iran did not provide the necessary information to determine that a program was not used, the Respondent company did; as a result, the Department was able to establish non-use based on its review of company records only. Petitioner argues that Pistachios is inapposite in the absence of a claim by the Respondent companies in this case that their own provision of documents is sufficient to establish the non-countervailability of the

alleged debt forgiveness subsidies. Rather, Petitioner cites Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Korea, 69 FR 2113 (January 14, 2004), in which the Department applied adverse inferences based on its finding that the Government of Korea failed to cooperate to the best of its ability. The decision to use adverse inferences, according to Petitioner, was not ameliorated by the cooperation of the respondent company.

Department's Position:
In December 2006, Petitioner submitted two new allegations that countervailable subsidies were provided through two GOI actions of debt forgiveness. In the first allegation, Petitioner alleged that SMG/APP received a countervailable subsidy when the GOI, which had taken over almost a billion dollars in SMG/APP debt, accepted, as debt repayment, worthless shares in BII, an affiliated bank. In the second allegation, Petitioner alleged that SMG/APP received a countervailable subsidy when the GOI sold the remaining debt back to an affiliate of SMG/APP at a steeply discounted price. Contrary to Respondents' argument, these were not identical to the allegations on which the Department declined to initiate in Lined Paper. In Lined Paper, Petitioner alleged that there was a single countervailable subsidy of debt forgiveness resulting from IBRA's handling of SMG/APP's debt by both accepting BII shares for debt repayment and selling the debt to an affiliate of the original debtor. Petitioner alleged that there was a second countervailable subsidy in the form of GOI entrustment or direction of private lenders to restructure SMG/APP debt on favorable terms. In Lined Paper, we declined to initiate on the overall debt forgiveness allegation as well as the entrustment or direction allegation, stating that Petitioner had not directly addressed specificity or supported its contention that both alleged subsidies were specific. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Susan Kuhbach, Director, Office I, Import Administration, Countervailing Duty Investigation: Certain Lined Paper Products from Indonesia: New Subsidy Allegation, February 10, 2006.

In the instant case, Petitioner identified two separate and distinct allegations of debt forgiveness. We found, as explained in the NSA Initiation Memorandum, that Petitioner had expressly addressed specificity, for both allegations: with respect to the first allegation, Petitioner had supported the contention that certain large corporate family groups received special, preferential treatment by IBRA; with respect the second allegation, Petitioner had obtained the law which implemented the prohibition on the sale of debt to the original debtor.

Regardless of whether these new allegations were submitted in the original petition or thereafter, the allegations were timely in accordance with 19 CFR 351.301(d)(4)(i)(A), and the Department had an obligation to evaluate them and to determine whether they met the initiation standard. After the allegations were filed, the GOI made two separate submissions providing information that the Department considered before deciding to initiate on these allegations. In those submissions, Respondents provided some information and documentation relevant to these debt transactions, including the full Project Performance Assessment Report of the World Bank and numerous press articles which they argued established the widespread, non-specific, nature of

both types of alleged debt forgiveness. It was only after considering all of the information submitted by both Petitioner and Respondents that the Department decided to initiate on these two discrete allegations.

The Department issued the NSA Initiation Memorandum on March 15, 2007. The Department issued the questionnaire for these new subsidies on April 20, 2007. However, the Respondents were aware, long before this date, of the type of information and documentation that the Department generally requests in its countervailing duty investigation questionnaires. The Department had issued such questionnaires (for the programs originally initiated) on November 30, 2006, and the GOI and the respondent companies had responded.

On May 10, 2007, the GOI and the respondent companies provided their responses to the Department's first questionnaire addressing the alleged debt forgiveness subsidies. The GOI indicated that they had responded to the extent that they could locate information and cited "information delivery factors," related to the closure of IBRA and the archiving of IBRA's records, that had hampered their ability to respond fully. The Department quickly determined that the GOI response was "unresponsive and inadequate," and on May 11, 2007, the Department issued a letter providing the GOI another opportunity to respond fully. The GOI provided an additional response on May 29, 2007. In contrast, the Department did not find the companies' response of May 10, 2007 to be unresponsive and inadequate. The Department analyzed that response and issued a supplemental questionnaire, to which the companies responded on June 5, 2007.

With respect to the allegation related to BII shares used to repay SMG/APP debt, the GOI and the companies reported that this transaction involved only the debt of SMG companies that were not cross-owned with the PIOCs or with Purinusa. This claim was the basis for both the GOI and the respondent companies declining to answer many additional questions about this transaction and to provide information that would have enabled the Department to conduct a full analysis of the countervailability of this transaction, i.e., whether it was specific to an enterprise, industry, or group thereof, whether it provided a financial contribution, and whether there was a benefit. Neither did the GOI or respondent companies provide information to identify each of the SMG/APP companies whose debt was repaid in this transaction despite one request of the GOI and two separate requests of the companies. See Letter to the Government of Indonesia, and attachment Questions on New Subsidy Allegations for Government of Indonesia (GOI Debt Questionnaire), dated April 19, 2007, at question B. 11 ("Please describe and document the effect of the transfer of BII shares on the outstanding debt of SMG/APP."); Letter to PT. Kertas Tjiwi Kimia TBK. and PT. Pindo Deli Pulp & Paper Mills, and attachment Questions on New Subsidy Allegations for PT. Kertas Tjiwi Kimia TBK. and PT. Pindo Deli Pulp & Paper Mills, dated April 19, 2007, at question B. 12 ("Provide a breakdown, by company, showing which SMG/APP member companies' debt was repaid in this transaction and in what amounts."); Letter to PT. Kertas Tjiwi Kimia TBK. and PT. Pindo Deli Pulp & Paper Mills, and attached supplemental questionnaire, dated May 24, 2007, at question B.1. ("Your May 10, 2007 response indicates that the transfer of BII shares to IBRA did not result in the reduction of debt owed by IK, TK, PD and

Lontar . . . and Purinusa to IBRA. Please identify each of the SMG companies, other than the PIOCs and Purinusa, which owed the additional . . . debt held by IBRA . . . Please include the amounts owed by each of these companies, and provide relevant sections of their financial statements which tie to these figures.").

The GOI's May 29, 2007 response contains the first reference to COEs and explains that "in addition to the shares, all Certificates of Entitlement were transferred. A Certificate of Entitlement is an option to repurchase shares." See GOI May 29, Response at page 12. No other information was provided about COEs, based on the claim that this payment did not involve the debt of companies relevant to our investigation, save for a reference to the agreement which governed their transfer from the Wijaja family to IBRA. Id. at page 9. We expressly asked the respondent companies whether Purinusa was part of this transaction (May 24 questionnaire at question B.1) and they reported it was not (June 5 response at page 2).

Petitioner provided comments prior to verification urging the Department to discontinue its investigation of this alleged subsidy and proceed to a final determination based wholly on adverse facts available. See Coated Free Sheet Paper from Indonesia: Petitioner's Additional Pre-verification Comments, June 20, 2007. Petitioner properly noted that in claiming "non-use" of this program, Respondents themselves made two findings which are within the Department's sole authority to make: Respondents effectively claimed that there was no cross ownership between the SMG/APP companies whose debt was repaid in this transaction and the SMG/APP CFS companies; and Respondents claimed that the involvement of other non-Indonesian parties in the MOU rendered the transaction not countervailable. While our preparation for verification evidences our disagreement with Petitioner regarding the need to proceed from that point based on adverse facts available, we do recognize that the manner in which Respondents answered our questions foreclosed the Department's opportunity to analyze fully the countervailability of this transaction in the context of information about cross ownership as well as information related to specificity, financial contribution and benefit.

As discussed in more detail in Comment 26, above, the Department prepared for verification intending to verify the reported "non-use" of this program. As shown in Pistachios, if the Department can substantiate the non-use of a program based on information on the record, even if that information was provided only by the company respondents and even in the absence of information related to specificity, financial contribution, or benefit, then the Department can proceed without relying on facts available or adverse inferences. The converse is also true; if the Department can substantiate non-use based only on information provided by the government, the Department can proceed without relying on facts available or adverse inferences, even if the government did not provide requested information related to specificity, financial contribution, or benefit. See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Mexico 58 FR 37352 (July 9, 1993). In this case, however, the Respondents were unable to substantiate the reported "non-use"; to the contrary, the information provided at verification indicated the this transaction resulted in the repayment of some debt of Purinusa, the holding company that directly or indirectly controls the PIOCs, and all of the debt of two other holding

companies that, together with Purinusa, wholly own one of the cross-owned logging companies. Thus, the reported non-use was contradicted by the results of verification, and the Respondents had provided no information regarding specificity, financial contribution, and benefit. Had the parties provided, as requested in the questionnaires, this listing of the SMG/APP companies whose debt had been repaid with shares and/or COEs, the Department would have recognized the importance to our analysis of the information, not yet provided, regarding specificity, financial contribution, and benefit, and we would have issued the appropriate questionnaires to obtain this information as well as more substantive information about COEs, their creation, and their use as a financial instrument.

With respect to the Orleans transaction, the Department requested the information which would allow an evaluation of the alleged affiliation between Orleans and SMG/APP, including information about IBRA's policies and practices for selling debt and ensuring that all of its procedural requirements were met. We also asked for all the documentation regarding IBRA's sale of SMG/APP debt, including the registration packages submitted by all prospective bidders, and the complete bid packages for all eventual bidders. See GOI Debt Questionnaire at questions C. 1-18. As detailed in the GOI Verification Report and in Comment 30 above, the GOI provided virtually none of this documentation despite being given several opportunities to provide the documentation that would allow the Department to have a full understanding and conduct a more complete assessment of the sale. Moreover, the GOI did not comply with our request to meet with individuals with experience in debt sales. Further discussions at verification revealed that the GOI had not begun its search for information responsive to our questionnaires or verification outline in sufficient time and that their efforts were incomplete and inadequate. See GOI Verification Report at pages 43 to 46.

As a result, as we explained in our Post-Preliminary Analysis, we found that the GOI did not cooperate to the best of its ability, and significantly impeded our investigation. Thus, the use of adverse facts available was warranted.

With regard to Respondents' reliance on Pistachios to support the argument that the Department cannot use an adverse inference against the government to the disadvantage of the company, Respondents misunderstand the facts in Pistachios. In that case, the Department was able to develop the information it needed to establish non-use of a program based solely on company information. In this case, for the transaction involving the BII shares and the COEs, the GOI and the company information are consistent in showing that the claim of non-use was unverifiable. For the sale of debt to Orleans, Respondents argue that, because it was impossible for the GOI to comply with the Department's information requests, the Department is not permitted to use adverse inferences against the GOI to the disadvantage of the companies. We appreciate that, under the circumstances of IBRA's closure and the remote storage of IBRA's records, more effort was required to locate the documents. However, we do not agree with Respondents' characterization that it was impossible. Neither do we find that the nature of the efforts undertaken by the GOI demonstrates that the task was impossible. As such, we have concluded that the effort undertaken was begun too late, and was incomplete and insufficient. Thus, an

adverse inference is warranted, and permitted under the statute. Finally, we are applying adverse inferences as part of our determination of the countervailability of the sale to Orleans. Of necessity, this analysis must focus on the government, not on the companies. Furthermore, although we found this transaction to be countervailable, we did not use adverse inferences in our calculations. We used the information from the GOI and the companies showing the value of the debt sold and the price paid for it to calculate the benefit.

Comment 36: Whether A Government Can Provide a Financial Contribution When the Act is Illegal

Assuming arguendo that the Department does not reverse its interim decision to rely on facts available, Respondents argue that the Department must reverse its legal conclusion with respect to the countervailability of the sale of SMG/APP debt to Orleans. Respondents note that Petitioner alleged that because Indonesian law prohibited the sale of debt to affiliates of the original debtor, such a sale was illegal, and therefore it is countervailable. Having refused to initiate on this allegation in Lined Paper, the Department initiated in this case, according to Respondents, because Petitioner provided the applicable regulation. Respondents argue that the Department's decision to reverse its previous position is flawed. According to Respondents, by its nature, an unlawful act by officials within a government agency does not constitute a financial contribution by a government; an illegal act by an official does not demonstrate an exercise of government discretion because it is not a valid act taken on behalf of the government. Respondents contend that "where the officers' powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions. The officer is not doing the business which the sovereign has empowered him to do or he is doing it in way which the sovereign has forbidden." Larson v. Domestic & Foreign Commerce Corp, 337 US 682, 689 (1949) (Larson). Further, illegal action cannot be attributed to the sovereign because "{i}f the foreign state has not empowered its agent to act, the agent's unauthorized act cannot be attributed to the foreign state; there is no 'activity' of the foreign state." Phaneuf v. Republic of Indonesia, 106 F. 3d 302, 308 (9th Cir. 1997) (Phaneuf).

Similarly, Respondents argue, there would be no countervailable act if the GOI did not know of a relationship with the original debtor because, assuming arguendo, Orleans submitted a false certification. In other words, if the government had been defrauded, it would not know that it was acting in violation of its law, and there would be no basis for the Department to find that the government provided a financial contribution pursuant to section 751(5)(D) of the Act. See Velasco v. Government of Indonesia, 370 F.3d 392, 399 (4th Cir. 2004) (Velsaco).

Petitioner argues that Respondents have conflated the legal requirements for finding a countervailable subsidy with legal arguments that are inapplicable to the administration of the countervailing duty law. According to Petitioner, section 751(5)(D)(i) of the Act defines financial contribution without regard to whether the official action was illegal. Further, IBRA's sale of SMG/APP debt to Orleans is a financial contribution because the GOI effectively forgave debt by

allowing SMG/APP to repurchase its debt at a discount. The regulations, as well, define how to calculate the benefit of debt forgiveness without regard to the illegality of the action.

Petitioner maintains that the only prong of the countervailing duty law where the Department considers the illegality of an action is in defining whether a government action was specific, and that was precisely where the Department relied on the illegality as evidence of government discretion. Thus, according to Petitioner, the arguments regarding illegality are only relevant to specificity, not to financial contribution. Petitioner also discounts the cases cited by Respondents in support of their arguments. Velasco addresses the Foreign Sovereign Immunities Act, in a case in which GOI officials had fraudulently issued promissory notes without the authority of the GOI. In this case, Petitioner notes, Respondents are not arguing that the GOI did not authorize the sale of the debts taken over by IBRA, and there is no evidence that the GOI has ever repudiated IBRA's actions, as it did in Velasco. With regard to Del Rio Drilling Programs, Inc. v. United States, 146 F.3d 1358, 1362 (Fed. Cir. 1998), Petitioner urges the Department to take note of the court's statement that "government agents have the requisite authorization if they act within the general scope of their duties." Clearly, Petitioner contends, IBRA acted within the general scope of its duties. Thus, Petitioner concludes, the cases on which Respondents rely are irrelevant.

Department's Position:

Regardless of whether the GOI knew that Orleans was related to SMG/APP, our conclusion that there was a relationship supports our finding that the transaction resulted in a financial contribution to SMG/APP. First, Respondents conflate the specificity and financial contribution aspects of Petitioner's allegation and the Department's initiation. In Lined Paper, the Department did not initiate on similar allegations of debt forgiveness because Petitioner had failed to substantiate the specificity aspect of their allegation; the Department had accepted as sufficient the allegation with respect to financial contribution. In this case, the Department initiated an investigation on debt forgiveness because Petitioner had properly supported its narrowed allegation with respect to the specificity prong, by substantiating the claimed illegality with documentation of the relevant law. See NSA Initiation Memo. Similarly, in the Post-Preliminary Analysis, we found Orleans to be affiliated with SMG/APP, and because it was illegal under Indonesian law to sell debt back to parties affiliated with the original debt holders, we preliminarily determined that the sale by IBRA of SMG/APP's debt to Orleans is company-specific, consistent with section 771(5A)(D)(iii) of the Act.

In addressing Respondents' argument that an illegal government act cannot result in a financial contribution, we have first considered the cases cited by Respondents. Velasco and Phaneuf address the jurisdictional question under the Foreign Sovereign Immunities Act, of the circumstances under which a government can be sued in U.S. courts under the Foreign Sovereign Immunities Act. Similarly, Larson addresses the jurisdictional question of sovereign immunity for the United States government in U.S. courts. However, under the Tariff Act of 1930, as amended, the Department has specifically enumerated authority to take action with respect to subsidized imports; this authority clearly extends to evaluating the actions of foreign governments for their compliance with the Act. Further, as Petitioner notes, Del-Rio establishes the proposition that

"government agents have the requisite authorization if they act within the general scope of their duties," and in this case, IBRA was clearly acting within its scope to sell former bank assets to the public and realize a return for the state (unlike in Velasco, in which the government official at issue had clearly acted outside his government-mandated authority). Finally, unlike in Phaneuf, there is no evidence in this case that the Government of Indonesia has made any effort to disavow the IBRA sale.

The most important factor in our consideration of Respondents' argument is, however, the fact that the Act does not require the Department to find that a foreign government willfully or knowingly provided a direct financial contribution in order to recognize that there was a financial contribution. Regardless of whether the provision of a direct financial contribution is legal or illegal, there is clearly no statutory requirement for the Department to find that a government intends to provide, or knows it is providing, a direct financial contribution, or that it intended to provide or knows it is providing a specific financial contribution. That is precisely why the statute gives the Department the authority to evaluate the countervailability of many different types of government actions. Furthermore, the Department must examine not only whether a program is de jure specific but also, if it is not de jure specific, whether it is de facto specific. For example, in implementing a program to provide low-cost loans to industry, a government may not intend for the program to be specific. If, in fact, only a limited number of companies or industries are approved for loans, then this program is specific and countervailable if it also provides a financial contribution and benefit. A requirement for the Department to find "government intent" would impose an investigative necessity on the Department to establish in every case that a government intended to provide, or knew it was providing a financial contribution. Investigating government intent in any case would be both impractical and impossible.

Finally, we are not impugning the conduct of individual government officials, or implying that their actions did not comply with relevant Indonesian law. We are concluding that our efforts to establish whether or not Orleans was affiliated with SMG/APP, based on record evidence as required by the Act, were hampered by the GOI's untimely, incomplete, and insufficient efforts to provide the documentation necessary to support the claim that there was no relationship between SMG/APP and Orleans. Once we determine that there is such a relationship, on the basis of adverse facts available, we must evaluate the elements of subsidy, as provided in sections 771(5)(B) and (5A) of the Act. Accordingly, the relationship between SMG/APP and Orleans results in a financial contribution of debt forgiveness as provided for in section 771(5)(b)(i) of the Act.

VIII. Recommendation

Based on the results of verification and our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination in the Federal Register.

Agree_________ Disagree__________

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David M. Spooner
Assistant Secretary
for Import Administration

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Date