



# Federal Register

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**Monday,  
June 12, 2006**

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**Part V**

## **Department of Commerce**

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**International Trade Administration**

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**Notice of Preliminary Results and  
Extension of Final Result of  
Countervailing Duty Administrative  
Review: Certain Softwood Lumber  
Products From Canada; Notice**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-122-839]

**Notice of Preliminary Results and Extension of Final Result of Countervailing Duty Administrative Review: Certain Softwood Lumber Products From Canada**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain softwood lumber products from Canada for the period April 1, 2004, through March 31, 2005. If the final results remain the same as these preliminary results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. (See "Public Comment" section of this notice.)

**DATES:** *Effective Date:* June 12, 2006.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore at (202) 482-3692, or Robert Copyak at (202) 482-2209, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:****Background**

On May 22, 2002, the Department published in the *Federal Register* (67 FR 36070) the amended final affirmative countervailing duty (CVD) determination and CVD order on certain softwood lumber products from Canada (67 FR 37775, May 30, 2002). On May 2, 2005, the Department published a notice of opportunity to request an administrative review of this CVD order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 22631 (May 2, 2005).<sup>1</sup> The Department received requests that it conduct an

aggregate review from, among others, the Coalition for Fair Lumber Imports Executive Committee (petitioners) and the Government of Canada (GOC), as well as requests for review covering an estimated 256 individual companies.<sup>2</sup> On June 30, 2005, we initiated the review covering the period April 1, 2004, through March 31, 2005. See 70 FR 37749.

On July 8, 2005, we determined to conduct this administrative review on an aggregate basis, consistent with section 777A(e)(2)(B) of the Tariff Act of 1930, as amended (the Act). See the memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, entitled, "Methodology for Conducting the Review," dated July 8, 2005, which is a public document on file in the Central Records Unit (CRU) in room B-099 of the main Commerce building. The Department further determined that it was not practicable to conduct any form of company-specific review. *Id.*

On July 11, 2005, we issued our initial questionnaire to the GOC as well as to the Provincial Governments of Alberta (GOA), British Columbia (GOBC), Manitoba (GOM), New Brunswick (GONB), Newfoundland (GON), Nova Scotia (GONS), Ontario (GOO), Prince Edward Island (GOPEI), Quebec (GOQ), and Saskatchewan (GOS).

On August 31, 2005, we extended the period for completion of these preliminary results until May 31, 2006, pursuant to section 751(a)(3)(A) of the Act. See *Notice of Extension of Time Limit for Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber from Canada*, 70 FR 51751 (August 31, 2005).

On October 3, 2005, the GOC, GOA, GOBC, GOM, GONB, GON, GONS, GOO, GOPEI, GOQ, and GOS submitted their initial questionnaire responses. From January through May 2006, we issued a series of supplemental questionnaires to the Federal and Provincial Governments of Canada.

Pursuant to 19 CFR 351.301, the deadline for interested parties to submit factual information is 140 days after the last day of the anniversary month. However, both petitioners and the Canadian parties requested that the Department extend this due date. After a series of extensions, we established that the deadline for interested parties to submit factual information would be December 6, 2005, and that the due date

for submitting rebuttal and/or clarifying information would be extended to December 22, 2005. Both petitioners and the Canadian parties submitted factual information by the established deadlines.

**Extension of Final Results**

Extension of Time Limit for Final Results of Review Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue final results within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the final results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend that 120-day period to 180 days. We determine that completion of the final results of the instant review within the 120-day period is not practicable as there are a large number of programs to be considered and analyzed by the Department. In order to complete our analysis, the Department required additional and/or clarifying information after the publication of the preliminary results, and now needs time to review the responses to these requests as well. Given the complexity of these issues, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of reviews by 60 days to 180 days. Thus, the final results of review are due on or about December 4, 2006, which is the next business day after 180 days from the publication date of the preliminary results.

**Period of Review**

The period of review (POR) for which we are measuring subsidies is April 1, 2004, through March 31, 2005.

**Scope of the Review**

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under sub-headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

- (1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;
- (2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or

<sup>1</sup> In the notice of opportunity to request an administrative review of this CVD order, we inadvertently listed an incorrect period of review. We corrected this error in a subsequent notice of opportunity to request an administrative review. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 31422 (June 1, 2005).

<sup>2</sup> Of these 256 company-specific requests, 145 were for zero/ *de minimis* rate reviews under 19 CFR 351.213(k)(1).

the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and U.S. customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (see comment 53, item D, page 116, and comment 57, item B-7, page 126), available at <http://www.ia.ita.doc.gov>, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits*: if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.

(3) *Radius-cut box-spring-frame components*, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1" or less in actual thickness, up to 8" wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring  $\frac{3}{4}$  inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to the satisfaction of CBP that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,<sup>3</sup> regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the

importer and made available to CBP upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that CBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90, 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the CVD order, provided that these softwood lumber products meet the following condition: Upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the

<sup>3</sup>To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

softwood lumber scope.<sup>4</sup> The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

On March 3, 2006, the Department issued a scope ruling that any product entering under HTSUS 4409.10.05 which is continually shaped along its end and/or side edges which otherwise conforms to the written definition of the scope is within the scope of the order.<sup>5</sup>

### Subsidies Valuation Information

#### Allocation Period

In the underlying investigation and pursuant to 19 CFR 351.524(d)(2), the Department allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over a 10-year average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. See *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Determination: Certain Softwood Lumber Products From Canada*, 66 FR 43186 (August 30, 2001) (*Preliminary Determination*); see also *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Final Determination*). No interested party challenged the 10-year AUL derived from the IRS tables. Thus, in this review, we have allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over a 10-year AUL.

### Recurring and Non-Recurring Benefits

The Department has previously determined that the sale of Crown timber by Canadian provinces confers countervailable benefits on the production and exportation of the subject merchandise under 771(5)(E)(iv) of the Act because the stumpage fees at which the timber is sold are for less

than adequate remuneration. See, e.g., "Recurring and Non-Recurring Benefits" section of the March 21, 2002, Issues and Decision Memorandum that accompanied the *Final Determination (Final Determination Decision Memorandum)*; see also "Recurring and Non-Recurring Benefits" section of the December 5, 2005, Issues and Decision Memorandum (*Final Results of 2nd Review Decision Memorandum*) that accompanied the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448, (December 12, 2005) (*Final Results of 2nd Review*). For the reasons described in the program sections, below, the Department continues to find that Canadian provinces sell Crown timber for less than adequate remuneration to softwood lumber producers in Canada. Pursuant to 19 CFR 351.524(c)(1), subsidies conferred by the government provision of a good or service normally involve recurring benefits. Therefore, consistent with our regulations and past practice, benefits conferred by the provinces' administered Crown stumpage programs have, for purposes of these preliminary results, been expensed in the year of receipt.

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

### Benchmarks for Loans and Discount Rate

In selecting benchmark interest rates for use in calculating the benefits conferred by the various loan programs under review, the Department's normal practice is to compare the amount paid by the borrower on the government-provided loans with the amount the firm would pay on a comparable commercial loan actually obtained on the market. See section 771(5)(E)(ii) of the Act; 19 CFR 351.505(a)(1) and (3)(i). However, because we are conducting this review on an aggregate basis and we

are not examining individual companies, for those programs requiring a Canadian dollar-denominated, long-term benchmark interest rate, we used for these preliminary results the national average interest rates on commercial long-term Canadian dollar-denominated loans as reported by the GOC.

The information submitted by the GOC was for fixed-rate long-term debt. For long-term debt, the GOC provided quarterly rates using data from Statistics Canada's (STATCAN) Quarterly Survey of Financial Statistics for Enterprises. We used the information from this survey as the basis for our long-term loan benchmark.

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

As stated above, the Department is examining non-stumpage programs that confer non-recurring benefits. For those non-stumpage programs that require the allocation of the benefit over time, we have employed the allocation methodology described under 19 CFR 351.524(d). As our discount rate, we have used the rate applicable to long-term fixed interest rate loans for the POR, as reported by the GOC.

### Aggregate Subsidy Rate Calculation

As noted above, this administrative review is being conducted on an aggregate basis. We have used the same methodology to calculate the country-wide rate for the programs subject to this review that we used in the *Final Determination*, the *Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products from Canada*, 69 FR 75917 (December 20, 2004) (*Final Results of 1st Review*), and the *Final Results of 2nd Review*.

### Provincial Crown Stumpage Programs

For stumpage programs administered by the Canadian provinces subject to this review, we first calculated a provincial subsidy rate by dividing the aggregate benefit conferred under each specific provincial stumpage program by the total stumpage denominator calculated for that province. For further information regarding the stumpage denominator, see "Numerator and Denominator Used for Calculating the

<sup>4</sup> See the scope clarification message (# 3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the CRU.

<sup>5</sup> See Memorandum from Constance Handley, Program Manager to Stephen J. Claeys, Deputy Assistant Secretary regarding Scope Request by the Petitioner Regarding Entries Made Under HTSUS 4409.10.05, dated March 3, 2006.

Stumpage Programs' Net Subsidy Rates'' section, below. As required by section 777A(e)(2)(B) of the Act, we next calculated a single country-wide subsidy rate. To calculate the country-wide subsidy rate conferred on the subject merchandise from all stumpage programs, we weight-averaged the subsidy rate from each provincial stumpage program by the respective provinces' relative shares of total exports to the United States during the POR. As in *Final Determination* and subsequent reviews, these weighted-averages of the subject merchandise do not include exports from the Maritime Provinces or sales of companies excluded from the CVD order.<sup>6</sup> We then summed these weighted-average subsidy rates to determine the country-wide rate for all provincial Crown stumpage programs.

#### Other Programs

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

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

<sup>6</sup>The Maritime provinces are Nova Scotia, New Brunswick, Newfoundland, and Prince Edward Island.

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

#### Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates<sup>7</sup>

##### 1. Aggregate Numerator and Denominator

As noted above, the Department is determining the stumpage subsidies to the production of softwood lumber in Canada on an aggregate basis. The methodology employed to calculate the *ad valorem* subsidy rate requires the use of a compatible numerator and denominator. In the second administrative review, the Department explained that in the numerator of the net subsidy rate calculation, the Department included only the benefit from those softwood Crown logs that entered and were processed by sawmills during the POR (*i.e.*, logs used in the lumber production process). See "Aggregate Numerator and Denominator" section and Comment 9 of the *Final Results of 2nd Review Decision Memorandum*. Accordingly, the denominator used for the final calculation included only those products that result from the softwood lumber manufacturing process. *Id.* For purposes of these preliminary results, we continue to calculate the numerator and denominator using the approach adopted in the final results of the second review.<sup>8</sup>

Consistent with the Department's previously established methodology, we included the following in the denominator: Softwood lumber, including softwood lumber that undergoes some further processing (so-called "remanufactured" lumber), softwood co-products (*e.g.*, wood chips and sawdust) that resulted from softwood lumber production at sawmills, and residual products produced by sawmills that were the result of the softwood lumber manufacturing process, specifically, softwood fuelwood and untreated softwood ties.

We would have included in the denominator those softwood co-

products produced by lumber remanufacturers that resulted from the softwood lumber manufacturing process. However, the GOC failed to separate softwood co-products that resulted from the softwood lumber manufacturing process of lumber remanufacturers from those resulting from the myriad of other production processes performed by producers in the remanufacturing category that have nothing to do with the production of subject merchandise. Lacking the information necessary to determine the value of softwood co-products that resulted from the softwood lumber manufacturing process of lumber remanufacturers during the softwood lumber manufacturing process, we have preliminarily determined not to include any softwood co-product values from the non-sawmill category. See, *e.g.*, Comment 16 of the December 13, 2004, Issues and Decision Memorandum that accompanied the *Final Results of 1st Review (Final Results of 1st Review Decision Memorandum)*. See also Comment 9 of the *Final Results of 2nd Review Decision Memorandum*.

##### 2. Adjustments to Account for Companies Excluded From the CVD Order

In the investigation, we deducted from the denominator sales by companies that were excluded from the CVD order. The Department has since also concluded expedited reviews for a number of companies, pursuant to which a number of additional companies have been excluded from the CVD order. See *Final Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada: Notice of Final Results of Countervailing Duty Expedited Reviews*, 68 FR 24436, (May 7, 2003); see also *Notice of Final Results of Countervailing Duty Expedited Reviews of the Order on Certain Softwood Lumber from Canada*, 69 FR 10982 (March 9, 2004).

In the second review, the GOC, GOO, and GOQ indicated that the excluded companies in their respective provinces did not harvest Crown timber during the POR. The GOC stated the same with respect to the excluded companies in the Yukon Territories. The GOC, GOO, and GOQ further claimed they did not have any information regarding the volume of lumber and/or Crown logs purchased by the excluded companies during the POR. The respective governments were also unable to provide POR sales data of the excluded companies. See, *e.g.*, "Adjustments to Account for Companies Excluded from the CVD Order" section of the *Final Results of 2nd Review Decision*

<sup>7</sup>The denominators used for non-stumpage programs are discussed below in the individual program write-ups.

<sup>8</sup>In the case of Alberta and British Columbia, it was necessary to derive the volume of softwood Crown logs that entered and were processed by sawmills during the POR (*i.e.*, logs used in the lumber production process). Our methodology for deriving those volumes is described in the "Calculation of Provincial Benefits" section of these preliminary results.

*Memorandum.* Thus, pursuant to our prior practice, in the second review, we deducted the sales of all companies excluded from the countervailing duty order from the relevant sales denominators used to calculate the country-wide subsidy rates. Further, consistent with our approach in the first review, because we lacked POR sales data, we indexed the excluded companies' sales data to the POR using province-specific lumber price indices obtained from STATCAN. We then subtracted the indexed sales data of the excluded companies from the corresponding provincial denominators. *Id.* In addition, because Canadian parties stated that the excluded companies did not acquire Crown timber during the POR and because they did not provide any other additional benefit data from the companies, in the second review we did not adjust the aggregate numerator data from the relevant provinces. *Id.*

In keeping with our prior findings, we have continued the approach adopted in the second review. Thus, we have indexed the sales of the excluded companies to the POR using province-specific lumber price indices obtained from STATCAN. We then subtracted the sales of the excluded companies from the corresponding provincial denominators. As in the prior review, we have not made any adjustments to the aggregate numerator data from the relevant provinces.

### 3. Pass-Through

In the second administrative review, the Canadian parties claimed that a portion of the Crown timber processed by sawmills was purchased by the mills in arm's-length transactions with independent harvesters. The Canadian parties further claimed that such transactions must not be included in the subsidy calculation unless the Department determines that the benefit to the independent harvester passed through to the lumber producers. The GOO, GOBC, British Columbia Lumber Trade Council (BCLTC), GOM, GOS, and GOA based their claims on aggregate data which they argued indicate that subsidy benefits on specified volumes of Crown timber did not pass through to the purchasing sawmills. In the second administrative review, the Ontario Lumber Manufacturing Association and the Ontario Forest Industries Association (OLMA/OFIA) separately submitted company-specific data for several companies in Ontario and Manitoba. The information provided by the OLMA/OFIA included transaction-specific data, statements and

certification of non-affiliation, and additional supporting documentation.

In the second administrative review, we employed a two-part test to evaluate the Canadian parties' pass-through claims. First, we examined whether the claims involved log transactions between mills and independent harvesters that were conducted at arm's length between unrelated parties. See Comment 5 of *Final Results of 2nd Review Decision Memorandum*. We further specified that the identity of the party that pays the stumpage fee is crucial in determining whether the second part of the analysis is warranted. *Id.* at Comment 4. The identity of the party paying the stumpage is important because, in instances in which the sawmill pays the stumpage fee to the Crown, the subsidy benefits accrue directly to the sawmill just as if it were drawing from its own tenure and contracting out for harvesting and hauling services. *Id.*

In the second administrative review, we further explained that the second part of the pass-through test examines whether the sawmill received a competitive benefit from the purchase of the subsidized logs. *Id.* at Comment 5. The competitive benefit analysis is guided by the provisions of the Department's regulations on upstream subsidies. See 19 CFR 351.523. Under this analysis, a competitive benefit exists when the price for the input is lower than the price for a benchmark input price. To conduct the competitive benefit test, we require specific information on each transaction for which parties request a pass-through analysis, which necessitates that they provide more than just aggregate data and more than self-selected sample data. This approach follows from the very nature of the competitive benefit test, an analysis in which the price of subsidized logs sold in individual transactions are compared to a market-determined benchmark price. Specifically, we require the volume and the unit price, by species, for each of the log sales for which Canadian parties sought a pass-through analysis—so that we can compare these sales to our benchmark price. Furthermore, to ensure that the competitive benefit test is accurate and meaningful, we require specific data (e.g., species, size, grade, quality, discount, delivery terms, and payment terms) on the logs sold in the transactions under analysis. These data are necessary in order to further ensure that we conduct our competitive benefit test on an "apples-to-apples" basis relative to our benchmark prices. *Id.*

In the second administrative review, we determined that, based on the

criteria described above, the GOO, GOBC, BCLTC, GOM, GOS, and GOA each failed to substantiate their respective "aggregate" claims. See "Pass-Through" section and Comments 3 through 5 of the *Final Results of 2nd Review Decision Memorandum*. However, based on our analysis of the company-specific data submitted by the OLMA/OFIA, we determined that a reduction in the Ontario subsidy benefits was warranted. See "Pass-Through" section and Comments 6 through 7 of the *Final Results of 2nd Review Decision Memorandum*.

In anticipation of a similar claim in this administrative review, we explained in the initial questionnaire that if the Canadian provinces wished to claim that any portion of the reported volume of Crown harvest was sold in arm's-length transactions and that subsidies provided for that portion of the Crown harvest did not pass through to the purchasing sawmill, they must provide such information as (1) a breakdown, by species, of the total volume and value that purportedly did not pass through, excluding sales of logs for which sawmills paid the stumpage fees directly to the Crown and (2) documentation regarding the corporate affiliation of each of the parties involved in their pass-through claim, including the identities of affiliated parties of the purchasing sawmills, the harvesters, and the tenure holders of the tenures from which the logs were harvested. See, e.g., pages III-18 and III-19 of the Department's July 11, 2005, initial questionnaire. In response to the Department's original questionnaire, the Canadian parties provided various sets of information for analysis.

In their October 3, 2005, initial questionnaire response, the GOA and the GOBC/BCLTC each provided an aggregate pass-through claim (with accompanying information) of the amount of Crown timber in the respective provinces that was obtained by sawmills through arm's-length transactions.<sup>9</sup> The GOBC/BCLTC provided company-specific data based on a survey conducted by PriceWaterhouseCoopers (PWC) that contained the total volume and value of logs purchased by 42 sawmills

<sup>9</sup>The GOQ, GOM, and GOS did not make any pass-through claims in this segment of the proceeding. However, the OLMA/OFIA submitted a pass-through claim on behalf of a company with operations in Manitoba. See TEM(Manitoba) Volume I, Pass-through questionnaire response of the GOO's October 3, 2005 submission and the May 12, 2006 OFIA/OLMA Supplemental Questionnaire Response. For this particular mill, we analyzed its pass-through claim pursuant to the pass-through analysis described in this section of the preliminary results.

throughout the B.C. interior. See Exhibits 3 and 4 of the BCLTC's December 6, 2005, factual submission for the results of the PWC survey. The GOBC/BCLTC submitted revised PWC survey data in Exhibits A and B of the GOBC's March 30, 2006, supplemental questionnaire response. The GOO and the OLMA/OFIA submitted company-specific/transaction-specific data and supporting information for us to analyze with respect to certain sawmills in Ontario and Manitoba. See OFIA/OLMA Volume I, Exhibits OFIA/OLMA 1 to OFIA/OLMA 11 of the GOO's October 3, 2005, questionnaire response. On March 2, 2006, we issued a supplemental questionnaire to the GOC and the provincial governments in which we requested that they respond to the pass-through appendix included in the Department's July 11, 2005, initial questionnaire. In their March 30 and April 3, 2006, supplemental questionnaire responses, Canadian parties reiterated their arguments that the pass-through claims made in their initial questionnaire response were sufficient for the Department to find that alleged subsidy benefits on certain volumes of Crown-origin logs did not pass through to the purchasing sawmill and, thus, any such benefits should not be included in the numerators of the provincial benefit calculations. On May 2, 2006, we issued a supplemental questionnaire to the OLMA/OFIA, in which we requested clarification of the data provided. The OLMA/OFIA provided a response on May 12, 2006. See OFIA/OLMA's Supplemental Questionnaire Response.

We have reviewed and considered all of the information provided on the record of this administrative review. We find that the GOA and GOBC/BCLTC each failed to provide the information necessary for us to examine whether the claims were with respect to log transactions conducted at arm's length, and whether a competitive benefit was received by the alleged buyer. Regarding the data submitted by the GOO, while the GOO submitted information for each company, it did not provide price data on a transaction-specific basis as requested by the Department and, thus, we lack the information required for the competitive benefit test that is the second part of our pass-through analysis. However, for purposes of these preliminary results, we determine that, based on our analysis of the company-specific/transaction-specific data and information provided by the OLMA/OFIA, a reduction in the Ontario subsidy benefit is warranted. Our analysis and preliminary findings with

respect to these claims are detailed, by province, below.

a. Alberta

The GOA claims that the numerator of Alberta's provincial subsidy rate calculation should be reduced to account for fair-market, arm's-length sales of Crown logs between unrelated parties.<sup>10</sup> The GOA asserts that, on the basis of its pass-through claim, at least 1.5 million m<sup>3</sup> of softwood logs should be removed from the numerator of the provincial subsidy rate calculation. See page XII-1 of the GOA's October 3, 2005, questionnaire response. The GOA bases its claim on a survey of Timber Damage Assessment (TDA) data that was conducted by a private consulting firm hired by the GOA. The survey is an updated version of the TDA survey upon which the GOA based its pass-through claim in the second administrative review. As explained in the second administrative review, the TDA survey lacks the company-specific and transaction-specific data we require to perform the two steps of our pass-through analysis (*i.e.*, the arm's-length test and the competitive benefit test). See Comment 5 of the *Final Results of 2nd Review Decision Memorandum*.

As explained above, on March 2, 2006, we provided the GOA with an opportunity to respond to the pass-through appendix, which was included in the Department's July 11, 2005, initial questionnaire. In its response, the GOA argued that, while it had stated its willingness in the initial questionnaire to provide any additional useful information that it could regarding its pass-through claim, "the Department is now asking for a massive expenditure of time, resources, and effort that is not feasible, and, in fact is not necessary, in light of reliable information already provided." See the GOA's March 30, 2006, supplemental questionnaire response. It further argued that the Department should instead conduct its pass-through analysis using the data in the TDA survey. *Id.*<sup>11</sup>

Based on the GOA's questionnaire responses and in keeping with the approach employed in the second administrative review, we preliminarily determine that we are unable to rely on the TDA survey as a basis for the GOA's

<sup>10</sup> As explained in the "Calculation of Provincial Benefits" section of these preliminary results, the numerator of the provincial subsidy rate calculation is the product of the adjusted unit benefit and the total volume of softwood Crown logs that entered and were processed by sawmills during the POR.

<sup>11</sup> The GOA made the same argument concerning the Department's request for a response to its pass-through appendix in the second administrative review. See, Comment 5 of the *Final Results of 2nd Review Decision Memorandum*.

pass-through claim because it lacks the information we require to perform the two steps of our pass-through analysis. Accordingly, we preliminarily determine that the GOA has failed to substantiate its pass-through claim and, therefore, we have not reduced the numerator of Alberta's provincial subsidy rate calculation, as requested by the GOA.

b. British Columbia

The GOBC claims that the numerator of British Columbia's provincial subsidy rate calculation should be reduced to account for fair-market, arm's-length sales of Crown logs between unrelated parties. Using aggregate data from Interior and Coastal British Columbia, the GOBC estimates that at least 15.6 million m<sup>3</sup> of softwood logs were acquired by sawmills in arm's-length transactions and, thus, the volume of these logs should be removed from the numerator of the provincial subsidy rate calculation. See page BC-XIV-2 of the GOBC's October 3, 2005, and page 3 of the GOBC's March 30, 2006, supplemental questionnaire response. In support of this aggregate claim the GOBC provided data from a survey commissioned by the BCLTC and conducted by PWC on what were purported to be arm's-length log purchases by B.C. sawmills. See Exhibits 3 and 4 of the BCLTC's December 6, 2005, factual submission for the results of the PWC survey. The GOBC submitted a revised PWC survey in Exhibits A and B of the GOBC's March 30, 2006, supplemental questionnaire response. This survey covered 42 sawmills and, according to the GOBC, accounted for 78 percent of the logs consumed in the B.C. interior. See page 3 of the GOBC's March 30, 2006, supplemental questionnaire response. According to the GOBC and BCLTC, the survey provides company- and species-specific data concerning the volume of Crown-origin logs purchased by sawmills from unaffiliated sawmills and log sellers. They further claim the survey separately lists the volume of Crown-origin logs acquired from private lands and affiliated parties by each of the surveyed sawmills. To the extent the Department does not accept their aggregate pass-through claim, the GOBC and BCLTC argue that the Department should, at the very least, conduct its pass-through analysis using the data from the PWC survey. The GOBC and BCLTC contend that the data in the PWC survey demonstrate that a substantial portion of the alleged subsidy benefit attributable to the Crown-origin logs harvested during the



POR did not pass through to the purchasing sawmills.

Regarding the GOBC's aggregate estimation and PWC survey, we note that they fail to identify those transactions in which the sawmill pays the stumpage fee directly to the Crown as specified in our July 11, 2005, initial questionnaire. As explained above, we have previously determined that the identity of the party paying the stumpage is important because, in instances in which the sawmill pays the stumpage fee to the Crown, the subsidy benefits accrue directly to the sawmill just as if it were drawing from its own tenure and contracting out for harvesting and hauling services. See Comment 5 of the *Final Results of 2nd Review Decision Memorandum*. In addition, the data in the GOBC's aggregate pass-through claim as well as those of the PWC survey fail to document, as instructed by the Department in its initial questionnaire, the corporate relationships of each of the parties involved in the transactions associated with the GOBC's pass-through claim. Furthermore, the GOBC's aggregate estimation and the PWC survey do not contain the transaction-specific data we require in order to perform the competitive benefit test. For example, while the PWC survey provides company-specific log purchase data for 42 sawmills operating in the B.C. interior, these data are consolidated by supplier category (*i.e.*, purchases from sawmills, purchases from sellers without sawmills, purchases from private land); they are not presented on a transaction-specific basis. As explained in the second administrative review, transaction-specific data are required in order for the Department to conduct the competitive benefit component of the pass-through analysis. See Comment 5 of the *Final Results of 2nd Review Decision Memorandum*.

In our March 2, 2006, supplemental questionnaire, we provided the GOBC an opportunity to respond to the pass-through appendix included in the Department's initial questionnaire. The GOBC refused to respond to the pass-through appendix, arguing that it was unduly burdensome and that the Department did not need the information solicited in the appendix for it to conduct a pass-through analysis. See page 1 of the GOBC's March 30, 2006, response. Instead, the GOBC submitted revised PWC survey data and reiterated its claim that the data it submitted were sufficient for purposes of the Department's pass-through analysis.

Based on our approach in the prior administrative review and in light of the

deficiencies in the data submitted by the GOBC and BCLTC, we preliminarily determine that we are unable to rely on the aggregate data submitted by the GOBC or on the PWC survey. On this basis, we preliminarily determine that the GOBC and BCLTC have failed to substantiate their respective pass-through claims and, therefore, we have not reduced the numerator of British Columbia's provincial subsidy rate calculation.

#### c. Ontario

The GOO claims that the numerator of Ontario's provincial subsidy rate calculation should be reduced to account for fair-market, arm's-length sales of Crown logs between unrelated parties. Specifically, the GOO claims that at least 2,501,472 m<sup>3</sup> of softwood logs were acquired by sawmills in arm's-length transactions and, thus, the volume of logs should be removed from the numerator of the provincial subsidy rate calculation. See page ON-267 GOO's October 3, 2005, questionnaire response. In support of its claim, the GOO provided information on log purchases between the 25 largest sawmills in Ontario and tenure holders that do not own a sawmill. See Volume 20 of Exhibit ON-PASS-1 of the GOO's October 3, 2005, questionnaire response. In this exhibit, the GOO provided company-specific data indicating, by species, the volume and value of logs that sawmills acquired from each of their respective suppliers. The GOO also identified those sawmills that paid the stumpage fees on behalf of the harvester.<sup>12</sup> See Exhibit ON-PASS-2 of the GOO's October 3, 2005, questionnaire response. The OLMA/OFA separately submitted company-specific information for 11 companies covering numerous sawmills. See Volume I of the OFIA/OLMA's October 3, 2005 questionnaire response and the OFIA/OLMA's May 12, 2006 response. The information from the OLMA/OFA included transaction-specific data regarding sales between sawmills and harvesters, statements and certification of non-affiliation, and additional supporting documentation. The information from the OLMA/OFA also identified those transactions in which the sawmill paid the stumpage fee to the Crown. See the OFIA/OLMA's May 12, 2006 questionnaire response.

As explained above, based on our approach in the second administrative review, we find that a competitive

benefit analysis is not warranted in instances in which the sawmill purchasing the log pays the stumpage fee directly to the Crown. In addition, based on the methodology employed in the second administrative review, we find a competitive benefit analysis is not warranted where the Department lacks transaction-specific data. As a result, we have not utilized the data provided by the GOO for our pass-through analysis. However, with respect to the company-specific/transaction-specific information and data provided by the OLMA/OFA, we accept the certifications by the companies that the transactions they reported were between unaffiliated parties and preliminarily determine that they are sufficient for purposes of conducting a competitive benefit analysis.

For these transactions, we then performed the next step of our pass-through analysis by examining whether the sawmill received a competitive benefit from the purchase of the subsidized logs. Pursuant to 19 CFR 351.523(c), we sought actual or average prices for unsubsidized input products, including imports, or an appropriate surrogate as the benchmark input price. We previously determined in the first and second administrative reviews that there were no private prices in Ontario that were suitable for use as benchmarks to measure the adequacy of remuneration of stumpage fees charged for Crown-origin trees. See "Private Provincial Market Prices" section and Comments 20 and 21 of the *Final Results of 1st Review Decision Memorandum*; see also *Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 33088 at 33102 (June 7, 2005) (*Preliminary Results of 2nd Review*), and Comment 17 of the *Final Results of 2nd Review Decision Memorandum*. As explained in the "Provincial Stumpage Programs" section below, we have reached the same conclusion based on the record in this proceeding.

We also explained in the second review that in Ontario Crown-origin timber supplies a dominant portion of the log market and, as a result, the unit cost of this supply effectively determines the market prices of logs in the province. See *Preliminary Results of 2nd Review*, 70 FR at 33096; see also Comment 6 and 17 of the *Final Results of 2nd Review Decision Memorandum*. As demonstrated in this review, as well as in the prior reviews, the prices harvesters charge for logs are effectively determined by the prices they pay for stumpage plus harvesting costs. Because

<sup>12</sup> The GOO refers to sawmills as an "agent for the Crown" for transactions between a harvester and a sawmill in which the sawmill pays the stumpage fee to the Provincial Government.



of the relationship between timber (stumpage) and log prices, prices for logs in Ontario would be suppressed by the subsidized prices in the timber markets. As such, log prices in Ontario are unsuitable for purposes of measuring whether a competitive benefit has passed-through in transactions involving sales of Crown logs. *Id.*

Instead, we have turned to private stumpage prices in the Maritimes, which we have found are market-determined, in-country prices. However, because we are measuring the competitive benefit for the sale of subsidized logs, we have derived species-specific benchmark log prices by combining the unsubsidized Maritimes stumpage prices with the various harvest, haul, road, and management costs reported by the GOQ.

We then compared the per-unit prices listed for each transaction reported by the OLMA/OFA that we determined were eligible for a competitive benefit analysis based on our benchmark log prices. If the price per cubic meter was equal to or higher than the benchmark price, we determined that no competitive benefit passed through and the corresponding volume was excluded from the numerator of our calculations. Where the per-unit price was lower than the benchmark price, and where the difference between the benchmark and actual log prices was greater than the province-specific per-unit stumpage benefit, we capped the amount of the subsidy considered to have "passed through" by the province-specific per-unit stumpage benefit. As such, the amount of the competitive benefit that was calculated to have passed through in the transaction was never greater than the subsidy granted by the Crown. This approach is consistent with the approach utilized in the second administrative review. *See Preliminary Results of 2nd Review*, 70 FR at 33095–33096; *see also*, the "Pass-Through" section of the *Final Results of 2nd Review Decision Memorandum*. The result of these calculations is that only a small portion of the Crown harvest volume originally included in the numerator is excluded from the numerator of our revised subsidy calculations.<sup>13</sup> Accordingly, a small reduction in the Ontario subsidy benefit is warranted. The calculations are business proprietary. *See* the May 31, 2006, Preliminary Calculations Memorandum for Ontario. As noted

above, if we were unable to determine that the transaction qualified as an arm's-length transaction or was subject to other conditions (*e.g.*, the stumpage fee for the log was paid directly to the provincial government by the sawmill), then we did not conduct a competitive benefit analysis and the corresponding volume associated with these transactions was not excluded from the numerator of the net subsidy calculation.

#### d. Quebec

There are two tenure licenses, Forest Management Contracts (FMCs) and Forest Management Agreements (FMAs), that in past reviews the Department has addressed in the context of the pass-through issue. While claiming in its initial questionnaire response that the volume of Crown timber harvested under FMCs and FMAs and subsequently sold in open market transactions are "undoubtedly arm's length transactions," the GOQ did not make a formal pass-through claim with respect to log volumes harvested under these licenses. *See* page QC–144 of its October 3, 2005, questionnaire response. Our treatment of these types of tenure in these preliminary results are discussed below.

#### FMC Licenses

As explained in the prior review, pursuant to section 102 of the Forestry Act, the GOQ may grant an FMC license to any "person." *See Preliminary Results of 2nd Review*, 70 FR at 33097. Thus, FMC license holders may include companies owning/operating sawmills. We further explained in the prior review that the GOQ often grants FMCs to municipalities in the province. *Id.*; *see also* page QC–144 of the GOC's October 3, 2005, questionnaire response of the current review in which the GOQ states that the majority of FMC holders are municipalities. In addition, in the second review we explained that sections 104.2 and 104.3 of the Forestry Act stipulate that the holder of an FMC license *must* supply standing timber covered by the license to timber wood processing plants in Quebec in the amount specified on the license's management permit and that this stipulation was also reflected in the standard language of the FMC contract. *See Preliminary Results of 2nd Review*, 70 FR at 33097. Based on this information, in the second review we determined that the FMC volume reported by the GOQ included FMC licenses held by sawmills as well as softwood log volumes that were sold directly by government entities in

Quebec (*e.g.*, municipalities) to sawmills. *Id.*

In the current review, the GOQ claims that no sawmills held FMCs during the POR and, thus, were not in the position to purchase Crown timber directly from the Provincial Government under an FMC license. *See* page QC–144 and Exhibit 56 of the GOQ's October 3, 2005, questionnaire response. The GOQ also failed to submit a response to our March 20, 2006, pass-through questionnaire appendix in which it was provided another opportunity to provide information concerning volumes harvested under FMC licenses. As explained in the second administrative review, the volume of timber harvest sold by municipalities to sawmills does not involve an "indirect" subsidy and, thus, such transactions are not eligible for the arm's-length analysis because they are no different from instances in which the Provincial Government itself sells the timber to sawmills. *See Preliminary Results of 2nd Review*, 70 FR at 33097. In keeping with the precedent established in the previous review, we preliminarily determine that, with respect to Crown timber sold under FMC licenses, an arm's-length analysis is not warranted. Therefore, we have included all of the FMC harvest volume in the numerator of Quebec's net subsidy calculation.

Regarding the FMC harvest volumes included in the numerator of Quebec's net subsidy calculation, we note that certain volumes lack corresponding value amounts. In the prior review, we explained that these volumes reflected the amount sold by municipalities and that lacking price information for these volumes, as facts available, we applied the unit prices that the GOQ reported for either the remaining amount of FMC volume or for TSFMA volume as appropriate. *See* 70 FR at 33097–33098. *See also*, the May 31, 2006, Preliminary Calculations Memorandum for Quebec. For these preliminary results, we have utilized the same approach. *See* the May 31, 2006, Preliminary Calculations Memorandum for Quebec.

#### FMA Licenses

We are not including the timber volumes harvested under FMA licenses in the numerator of Quebec's net subsidy calculation. Under section 84.1 of the Forestry Act, an FMA licensee may not be the holder of a wood processing permit or be affiliated with the holder of a wood processing permit. Although the record does not contain the prices which the FMA holders charge their customers for Crown logs, even if the full amount of the subsidy is assumed to pass through to the

<sup>13</sup> We performed the same analysis for the data pertaining to the company with operations in Manitoba. *See* the May 31, 2006, Preliminary Calculations Memorandum for Manitoba.

customer, inclusion of this volume in the numerator has no impact on the portion of the country-wide rate attributable to Quebec. Therefore, we have not included any of the FMA harvest volume in our calculations. This approach is consistent with that employed in the prior review. *See, e.g., Preliminary Results of 2nd Review*, 70 FR at 33098.

### Analysis of Programs

#### *Programs Preliminarily Determined To Confer Subsidies*

##### Provincial Stumpage Programs

In Canada, the vast majority of standing timber sold originates from lands owned by the Crown. Each of the reviewed Canadian provinces, *i.e.*, Alberta, British Columbia, Manitoba, Ontario, Quebec and Saskatchewan,<sup>14</sup> has established programs through which it charges certain license holders "stumpage" fees for standing timber harvested from these Crown lands. With the exception of British Columbia, these administered stumpage programs have remained largely unchanged. Thus, for a description of the stumpage programs administered by the GOA, GOS, GOM, GOO, and GOQ, *see* "Description of Provincial Stumpage Programs" section of the *Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 69 FR 33204 at 33219–33227 (*Preliminary Results of 1st Review*). Changes to British Columbia administered stumpage system are discussed below.

##### Legal Framework

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

<sup>14</sup> In this review, we did not examine the stumpage programs with respect to the Yukon Territory, Northwest Territories, and timber sold on federal land because the amount of exports to the U.S. is insignificant and would have no measurable effect on any subsidy rate calculated in this review.

##### Financial Contribution and Specificity

In the underlying investigation, the Department determined, consistent with section 771(5)(D)(iii) of the Act, that the Canadian provincial stumpage programs constitute a financial contribution because the provincial governments are providing a good to lumber producers, and that good is timber. The Department further noted that the ordinary meaning of "goods" is broad, encompassing all "property or possessions" and "saleable commodities." *See* "Financial Contribution" in the *Final Determination Decision Memorandum*. Further, the Department found that "nothing in the definition of the term 'goods' indicates that things that occur naturally on land, such as timber, do not constitute 'goods.'" To the contrary, the Department found that the term specifically includes " \* \* \* growing crops and other identified things to be severed from real property." *Id.* The Department further determined that an examination of the provincial stumpage systems demonstrated that the sole purpose of the tenures was to provide lumber producers with timber. Thus, the Department determined that regardless of whether the provinces are supplying timber or making it available through a right of access, they are providing timber. *Id.* No new information has been placed on the record of this review warranting a change in our finding that the provincial stumpage programs constitute a financial contribution in the form of a good, and that the provinces are providing that good, *i.e.*, timber, to lumber producers. Consistent with our findings in the underlying investigation, we preliminarily continue to find that the stumpage programs constitute a financial contribution provided to lumber producers within the meaning of section 771(5)(D)(iii) of the Act.

In the investigation, the Department determined that provincial stumpage subsidy programs were used by a "limited number of certain enterprises" and, thus, were specific in accordance with section 771(5A)(D)(iii)(I) of the Act. More particularly, the Department found that stumpage subsidy programs were used by a single group of industries, comprised of pulp and paper mills, and the sawmills and remanufacturers that produce the subject merchandise. *See* "Specificity" section of the *Final Determination Decision Memorandum*. This was true in each of the reviewed provinces. No information in the record of this review warrants a change in this determination and, thus, we preliminarily continue to find that the provincial stumpage

programs are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

##### Benefit

Section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a) govern the determination of whether a benefit has been conferred from subsidies involving the provision of a good or service. Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred by a government when the government provides a good or service for less than adequate remuneration. Section 771(5)(E) further states that the adequacy of remuneration: Shall be determined in relation to prevailing market conditions for the good or service being provided \* \* \* in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of \* \* \* sale. The hierarchy for selecting a benchmark price to determine whether a government good or service is provided for less than adequate remuneration is set forth in 19 CFR 351.511(a)(2). The hierarchy, in order of preference, is: (1) Market-determined prices from actual transactions within the country under investigation or review; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles.

Under this hierarchy, we must first determine whether there are actual market-determined prices for timber sales in Canada that can be used to measure whether the provincial stumpage programs provide timber for less than adequate remuneration. Such benchmark prices could include prices resulting from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. *See* 19 CFR 351.511(a)(2)(i).

The Preamble to the CVD Regulations provides additional guidance on the use of market-determined prices stemming from actual transactions within the country. *See* "Explanation of the Final Rules" *Countervailing Duties, Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (the Preamble). For example, the Preamble states that prices from a government auction would be appropriate where the government sells a significant portion of the good or service through competitive bid procedures that are open to everyone, that protect confidentiality, and that are based solely on price. The Preamble also

states that the Department normally will not adjust such competitively bid prices to account for government distortion of the market because such distortion will normally be minimal as long as the government involvement in the market is not substantial. 63 FR at 65377.

The Preamble also states that “[w]hile we recognize that government involvement in the marketplace may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. 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.”<sup>15</sup>

The guidance in the Preamble reflects the fact that, when the government is the predominant provider of a good or service, there is a likelihood that it can affect private prices for the good or service. Where the government effectively determines the private prices, a comparison of the government price and the private prices cannot capture the full extent of the subsidy benefit. In such a case, therefore, the private prices cannot serve as an appropriate benchmark.

In the first and second administrative reviews, the Department determined that there were no usable private market stumpage prices in the provinces whose stumpage programs are under review that could serve as benchmarks. See “Private Provincial Market Prices” section of the *Final Results of 1st Review Decision Memorandum*; see also “Use of First-Tier Benchmarks in Measuring Stumpage Programs Administered by the GOA, GOBC, GOO, GOQ, GOM, and GOS” section of the *Final Results of 2nd Review Decision Memorandum*. For the reasons discussed below, the Department continues to find that there are no private stumpage market prices in the provinces under review that can serve as first-tier benchmarks in Alberta, British Columbia, Manitoba, Ontario, Quebec, and Saskatchewan.

There Are No Useable First-Tier Benchmarks in the Subject Provinces Measuring the Benefit on Stumpage Programs Administered by the GOA, GOBC, GOO, GOQ, GOM, and GOS

In this administrative review, the GOA reported private price data and

government competitive bid data as reported in Alberta’s 2005 TDA update; the GOO provided an updated survey of private prices prepared by Demers Gobeil Mercier & Associates Inc. (DGM); the GOQ provided private stumpage prices charged in its province; and the GOBC provided prices from auctions the government administrators under the B.C. Timber Sales (BCTS) program. As discussed below, we have preliminarily determined that pricing data reported by the GOA, GOO, GOQ, and GOBC are not suitable for use as a benchmark within the meaning of 19 CFR 351.111(a)(2)(i).

#### 1. Province of Alberta

In response to the Department’s request for private timber prices, the GOA explained that it did not have such data. See GOA’s October 3, 2005, questionnaire response, Volume 1 at page IX–1. However, the GOA instead submitted the TDA survey as a source of data for arm’s-length, cash only private log sales.<sup>16</sup> *Id.* at Volume 1, page IX–1 and Exhibit AB–S–79. We have examined the data in the updated TDA survey and continue to find that the TDA prices are not suitable for use as benchmarks. See *Preliminary Results of 1st Review*, 69 FR at 33214, “Private Provincial Market Prices” section of the *Final Results of 1st Review Decision Memorandum* and at Comment 19, *Preliminary Results of 2nd Review*, 70 FR at 33099, and *Final Results of 2nd Review Decision Memorandum* at “Pass-Through” section and Comment 12 in which we made similar findings.

According to the GOA, the TDA program began in the mid-1990s as a means for mediating disputes between timber operators and other industrial operators concerning the value of standing timber adversely affected by industrial operations on timber tenures. Pursuant to these efforts, a consultant collected information on log purchases made by participants in the TDA program. In describing the methodology in past reviews, they stated that “the values on the {TDA} table are derived by consultants from a two-year average of competitive Commercial Timber Permit (CTP) sales values, as well as the value of arm’s-length log purchases, adjusted to stumpage values by backing out harvesting and haul costs.” See *Preliminary Results of 2nd Review*, 70 FR at 33099.

The GOA’s response indicates that the methodology used to report the TDA private timber transaction data for this administrative review has not changed since the period covered by the prior

administrative review. See page IX–1, Volume 1 of the GOA’s October 3, 2005, initial questionnaire. In particular, the GOA states that the TDA survey continues not to differentiate between logs sold that were harvested from private lands and those sold that originated from provincial lands. *Id.* As explained in the prior review, with respect to the TDA survey, the source of the logs and additional information, such as the respective volume and value of the TDA logs sales in Alberta, are highly relevant for determining whether Crown prices affect private prices in the province. See Comment 12 of the *Final Results of 2nd Review Decision Memorandum*. Such information is relevant because, as stated in the underlying investigation, “where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price.” See the “There Are No Market-based Internal Canadian Benchmarks” and “Private, Provincial, and CTP and CTL Prices as Benchmark” sections of the *Final Determination Decision Memorandum*.

However, despite the lack of specific information regarding transactions from private lands contained in the TDA survey, the GOA has estimated that only 290,439 m<sup>3</sup> of standing timber were harvested from private lands during the POR. See page XII–1 of the GOA’s October 3, 2005, questionnaire response. Therefore, even if the entire volume of private transactions were included in the TDA values, the private transactions would comprise only about two percent of the total provincial harvest volume for the POR. As a result, the private transactions are a negligible proportion of the overall harvest and, as such, are overwhelmingly dominated by the Crown-provided timber. See Comment 12 of the *Final Results of 2nd Review Decision Memorandum* where the Department reached the same conclusion. Although the TDA survey data have been updated for the POR, the TDA survey methodology has not changed from that which was reported in the investigation and prior administrative reviews. Based on the fact that no new information has been presented that would warrant a change in our position and for the same reasons outlined in the prior review, we preliminarily determine that the prices in the TDA survey cannot be used to determine the amount by which the Alberta stumpage program confers a benefit. See *Final Results of 2nd Review Decision Memorandum* at Comment 12.

<sup>15</sup> Preamble, 63 FR at 65377–78 (emphasis added); see also *Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR at 20259.

<sup>16</sup> According to the GOA, the TDA survey covers calendar year 2004.

Therefore, based on the record evidence and consistent with the Department's prior determinations, we continue to find that the TDA survey prices cannot serve as an appropriate benchmark.

## 2. Province of British Columbia

British Columbia did not provide private stumpage prices for the record of this proceeding. Instead, as in the second administrative review, the Province provided prices from auctions the government administers under section 20 of the Forest Act. These auctions were formerly conducted under the Small Business Forest Enterprise Program (SBFEP). In the investigation and first administrative review, the Department determined that the auction prices under the SBFEP program were not suitable for use as benchmarks in determining whether the GOBC sold Crown timber for less than adequate remuneration because the SBFEP auctions were only open to small business forest enterprises. As such, we determined that these prices did not reflect prices from a competitively run government auction, as required by our regulations. See 19 CFR 351.511(a)(2)(i) and the Preamble, 63 FR at 65377; see also the "Private Provincial Market Prices" section of the *Final Results of 1st Review Decision Memorandum* and *Preliminary Results of 1st Review*, 69 FR at 33214.

On June 20, 2003, the Ministry amended the Forest Act to create a new agency called B.C. Timber Sales (BCTS). On November 4, 2003, during the second review, the SBFEP was replaced by the BCTS program. Before the amendment, section 20 sales under the SBFEP were classified under three categories. Category one was broadened to include individuals or corporations that own or lease a timber processing facility. This change effectively eliminated the restriction of section 20 auction sales to small businesses, allowing them to include all applicants in the Province. The second and third categories were subsumed into the new BCTS program largely unchanged, and continue to contain the same restrictions on participants as before the amendments to the law.

The GOBC claimed in the second review that, pursuant to the changes, category one "unrestricted" section 20 auction prices may serve as first-tier benchmarks to determine whether Crown timber in British Columbia was sold for less than adequate remuneration. However, in reviewing the changes to the small business program, the Department determined that record evidence did not support the use of the auction prices as benchmarks

to measure the adequacy of remuneration for Crown stumpage. For example, the Department concluded that the volume sold at auction is not "significant" and does not meet the standard set out in 19 CFR

351.511(a)(2)(i). See *Preliminary Results*, 70 FR at 33100 and Comment 14 of the *Final Results of 2nd Review Decision Memorandum*.

In the second administrative review, the Department further found that the auction prices are effectively limited by Crown stumpage prices paid by Crown tenure-holding sawmills. Thus, the Department determined that the prices for Crown timber auctioned under section 20 of the Forest Act, as amended, are not market-determined prices, but rather reflect prices for administratively set Crown stumpage. We based this conclusion on three factors. First, participants in the auctions included Crown tenure-holding sawmills but, most often, were loggers who then sold the timber to Crown tenure-holding sawmills. Second, the price that Crown tenure-holding mills are willing to pay at auction or, more frequently, to loggers is determined by the price the sawmills pay for Crown stumpage because of the non-binding Annual Allowable Cut (AAC) in British Columbia. Third, the price loggers bid at the auctions is limited by the price they receive from their customers, the largest of whom are tenure-holding sawmills. Based on these factors, we concluded that the auction prices, represented directly or indirectly by sales to Crown tenure-holding sawmills, are effectively determined by Crown stumpage prices. We further determined that the substantial presence of valuations by Crown tenure-holding sawmills within the BCTS prices means that the BCTS auction prices are not market-determined prices as required in the Department's regulations and are not useable as benchmarks for measuring the adequacy of remuneration. See *Preliminary Results of 2nd Review*, 70 FR at 33100 and Comments 13 and 14 of the *Final Results of 2nd Review Decision Memorandum*.

In the current review, the GOBC maintains its position that category one "unrestricted" section 20 auction prices may serve as first-tier benchmarks to determine whether Crown timber in British Columbia was sold for less than adequate remuneration. Furthermore, according to the GOBC, effective February 29, 2004, auctions of standing timber are used to determine the stumpage price for the timber harvested under long-term tenures. During the current POR, "unrestricted" category one BCTS auction sales accounted for

6.5 percent of the total log harvest compared to 1.1 percent (covering five months) in the second review period. Although the GOBC granted more timber auctions under category one during the current POR than in the previous administrative review, for purposes of these preliminary results we continue to find that the volume of Crown timber sold by the GOBC through these auctions cannot be considered to represent a "significant" portion of the timber sold in British Columbia, and that the prices from these auctions, therefore, do not meet a key requirement for their consideration as benchmarks for measuring the adequacy of remuneration for government-provided goods as specified under 19 CFR 351.511(a)(2)(i).

Additionally, the factors noted above that led the Department in the past to conclude that section 20 BCTS auction prices were not suitable for use as benchmarks continue during the current POR. For example, we continue to find that loggers that have acquired Crown-origin timber through the BCTS auctions typically resell the logs to tenure-holding sawmills. See, e.g., *Preliminary Results of 2nd Review*, 70 FR at 33100, citing to a study commissioned by the BCLTC and prepared by Susan Athey and Peter Cramton of Market Design Inc., entitled, "Competitive Auction Markets in British Columbia" (BCLTC Study).<sup>17</sup> Furthermore, we continue to find that loggers consider the price they will receive from tenure-holding sawmills and that this price effectively determines what the loggers bid in the BCTS auctions. See, e.g., *Preliminary Results of 2nd Review*, 70 FR at 33101, citing the BCLTC Study which states that sawmills' valuations of logs are reflected in the prices loggers pay at the BCTS auctions.

Moreover, the record of the current review indicates that, as we found in prior periods, the price that Crown tenure-holding mills are willing to pay at auction or, more frequently, to loggers is effectively determined by the price they pay for Crown stumpage because of the non-binding AAC in B.C. See, e.g., *Preliminary Results of 2nd Review*, 70 FR at 33101. The record shows that these large Crown tenure-holding sawmills did not exhaust the amount of timber they could harvest from their tenures during the POR. As such, they

<sup>17</sup> Evidence also indicates that sawmills continue to participate in the BCTS auctions. See BC-IV-43 of the GOBC's October 3, 2005, questionnaire response, which indicates that three sawmills were among the 20 largest category one BCTS participants during the POR. The 20 largest BCTS participants accounted for 9 percent of the total BCTS volume billed and harvested during the POR.

were not forced to obtain timber from other sources, such as the BCTS section 20 auctions, because of a scarcity of available timber on their own tenure. Specifically, the Crown tenure-holding sawmills, which hold forest licenses and tree farm licenses, were allocated 64.5 million cubic meters of timber or 82 percent of the AAC, which is the annual rate of timber harvesting specified in each Timber Supply Area (TSA), during the POR. However, these licensees harvested only 54.8 million cubic meters or 85 percent of their AAC, a shortfall of 9.7 million cubic meters. See GOBC's October 3, 2005, Questionnaire Response at BC-S-156.

In the current review, the GOBC has argued that BCTS auction prices were used during the POR to determine the stumpage prices for Crown timber harvested under long-term tenures, thereby demonstrating the viability of using the auction prices as benchmarks in the Department's subsidy calculations. However, as noted above, the price loggers bid at the BCTS auctions is limited by the price they receive from their customers, most of which are tenure-holding sawmills that have access to abundant supplies of standing timber in the Crown forest. Therefore, in the absence of new information that would warrant reconsideration of the issue, we preliminarily determine that the factors that led us in earlier periods to conclude that (1) the BCTS auction sale prices are not market-determined and (2) that they reflect prices for administratively set Crown stumpage continued to exist during the POR. Thus, we preliminarily find that section 20 BCTS auction prices cannot be used as valid benchmarks to measure the adequacy of remuneration of B.C.'s administered stumpage system.

### 3. Province of Ontario

In the first and second administrative reviews, we determined that the prices for private standing timber in Ontario placed on the record by the GOO could not be used for benchmark purposes. Specifically, we determined that the prices reported in surveys commissioned by the GOO could not be used as benchmarks because the prices are effectively determined by the price for public timber. We also concluded that private stumpage prices in Ontario are not useable for benchmark purposes because they cannot be considered to be market-determined prices. See *Preliminary Results of 1st Review*, 69 FR at 33204, 33214-33215; *Final Results of 1st Review Decision Memorandum* at Comments 20 and 21, *Preliminary Results of 2nd Review*, 70 FR at 33088, 33095-33096; and *Final Results of 2nd*

*Review Decision Memorandum* at Comment 16.

As new information for this administrative review, the GOO submitted estimates (based on mill return data) of the volumes of private timber delivered to the various mills during the POR. See the GOO's October 4, 2005, questionnaire response at Vol. 1, page ON-3 and ON-4 and Vol. 2 at ON-STATS-1. The GOO also submitted a survey of prices of standing timber from private lands conducted by Bearing Point for 2004-2005 and an assessment of the survey by Charles River Associates. See the GOO's December 6, 2006, submission at Exhibit 1 and Exhibit 2.<sup>18</sup>

For the reasons described below, the new information submitted by the GOO has not led us to alter our findings from the first and second administrative reviews. In the second administrative review, we determined that information on the record shows that sawmills in Ontario rely on Crown timber for the vast majority of their timber supply needs and use private timber only in relatively small quantities. Evidence on the record of the current review leads us to the same conclusion.

According to the GOO, all mills in Ontario that use more than 1000 cubic meters of timber per year are required to be licensed by the MNF, and, as of April 1, 2004, there were 81 licensed mills which produce softwood lumber.<sup>19</sup> See ON-99 through ON-100 of the GOO's October 3, 2005, questionnaire response. The data indicate that 91 sawmills in Ontario reported utilization of softwood timber at the "commercial" level of 1000 cubic meters per year, for a total of 15,990,167 million cubic meters. See ON-TNR-3 of the GOO's October 3, 2005, questionnaire response and the May 31, 2006, Memorandum to the File from Robert Copyak, Financial Analysts, AD/CVD Operations, Office 3, entitled, "Ontario Mill Return Data" (Ontario Mill Return Memorandum). These data also indicate that only 11 of these "commercial" mills used private timber

exclusively and the other 80 used either Crown timber exclusively or both Crown timber and timber from private lands. These 11 mills account for only 3.62 percent of the total private harvest. The remaining 80 mills account for 99.62 percent of the overall timber consumption by "commercial" mills in Ontario and consume 96.38 percent of the timber harvested from Ontario's private forest. Further, the 25 largest sawmills, which account for the large majority of timber consumed in the Province, used more than 11 million cubic meters of Crown timber and over 1 million cubic meters of private timber. Although private timber consumption by these largest 25 sawmills is small relative to their overall consumption (only 8.49 percent), it accounts for 63.28 percent of the all private timber consumed by "commercial" producers during the POR. In other words, although the private standing timber market is a minor source of supply for these tenure-holding sawmills, they represent the main market for sellers of private standing timber in Ontario. See Exhibit ON-TNR-3, Volume 11 of the GOO's October 3, 2005, questionnaire response and the Ontario Mill Return Memorandum.

The information on the record indicates that the GOO is willing to meet any amount of demand for public timber at a fixed, administratively set price. The allocation and harvest figures provided by the GOO indicate that tenure holders in Ontario are virtually unconstrained in the amount of Crown timber they can obtain from the GOO. During the POR, the GOO made available approximately 30 million cubic meters of public timber, yet loggers and mills in Ontario harvested only 70 percent of this annual allocation. See Exhibit ON-TNR-11 of the GOO's October 3, 2005, questionnaire response. Similarly, in each of the last four years, the harvest level never approached the amount allocated by the GOO. Rather, the harvest level ranged from as low as 56.6 percent to no more than 88.9 percent of the annual allocation. *Id.*

With no constraints on the amount of Crown timber that sawmills can obtain, the price that loggers are willing to bid on private stumpage is effectively determined by the difference of the expected sale price of the log and their harvesting costs plus profit. Loggers who sell to tenure-holding mills cannot expect to charge more for their private logs than the cost of the logs that the mills can source from their public tenure. The largest 25 softwood sawmills, producing the vast majority of the lumber in Ontario, have Crown

<sup>18</sup> The GOO submitted copies of price surveys and assessments that it had commissioned for the first and second administrative reviews. See the GOO's December 6, 2006, submission at Exhibits 4-7.

<sup>19</sup> In the first administrative review, the GOO further explained that it is not necessary to obtain a license if the mill consumes less than 1,000 cubic meters of timber a year, stating that anything less than 1,000 cubic meters is not considered a commercial quantity. See page 2 of the June 2, 2004 Memorandum from Robert Copyak, Financial Analyst, AD/CVD Operations, Office 3, to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, entitled, "Verification of Information Submitted in Questionnaire Responses by the Government of Ontario," which was submitted as Exhibit ON-VER-1, Volume 20 of the GOO's October 3, 2005, questionnaire response.

tenure for which they pay government-set stumpage prices. As we previously explained, because the AAC in Ontario is not binding, mills with public tenure can always harvest more timber from their tenure and, therefore, are not driven to the private market by demand that cannot be met from their Crown tenure-holdings. See *Final Results of 1st Review Decision Memorandum* at Comments 20 and 21; see also *Final Results of 2nd Review Decision Memorandum* at Comment 16. Their willingness to pay for logs from other sources will be limited by their costs for obtaining timber from their own tenures. Therefore, the prices loggers bid for private stumpage are effectively determined by the public stumpage prices paid by these mills.

Furthermore, at the verification conducted during the investigation, GOO officials explained that the allocation of public timber is based on elaborate five-year plans and annual forecasts.<sup>20</sup> They then explained that harvest levels fluctuate but the overall harvest need only remain below the five-year target:

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

See GOO Verification Report at page 10; see also *Final Results of 2nd Review Decision Memorandum* at Comment 16.

As noted above, the data indicate that the yearly “planned” allocation

<sup>20</sup> Ontario uses the term “available harvest area” (AHA) rather than “annual allowable cut” (AAC) for harvest planning purposes. AHAs are set for five years in the five-year forest management plans. The management unit’s AHA is calculated based on adjusted net area (total area in the unit minus lakes and protected areas) and the ages and species of the stands. The officials stated that sustainable forestry is the goal, so considerations such as species preservation and wildlife habitat are taken into account. The officials explained that, in general, about 0.5 percent of the area of each management unit is harvested annually.” See page 9 of the February 15, 2002, Memorandum to Melissa Skinner, Director, Office of AD/CVD Enforcement VI, from Robert Copyak and David Salkeld, Case Analysts, Office of AD/CVD Enforcement VI, titled “Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Verification of Questionnaire Responses Submitted by the Government of Ontario” and included in ON-VER-1 of the GOO’s October 3, 2005 questionnaire response (GOO Investigation Verification Report).

amounts far exceed the actual amounts harvested in each of the last four years. The GOO reported that the private timber harvest destined to softwood sawmills during the POR was 1,072,233 cubic meters. See Exhibit ON-STATS-1, Volume 2 of the GOO’s October 3, 2005, questionnaire response. Thus, the amount of public timber allocated by the GOO for the POR was greater than the public and private harvest combined. In addition, the total amount of public timber harvested during the five-year planning period did not approach the amount allocated for the period. See *Id.* at ON-TNR-11.

With regard to the argument that the comparability of private prices and public prices indicates that tenure holders do not have leverage with regard to negotiating with private sellers, in the second administrative review we found that, given the fact that the public price is fixed, if anything, such comparability could indicate the opposite. The market for private standing timber in Ontario is determined by the vast supply of Crown timber because the allocation of timber by the GOO is such that tenure holders may obtain as much timber from the Crown as they choose. Because the allocation of Crown timber to tenure holders exceeds the tenure holders’ demand, tenure holders would only be willing to purchase private timber at prices which result in a net outlay equivalent to the cost of public timber. Private land owners are, therefore, faced with the choice of selling at a price equivalent to the public price or foregoing a sale. Although the private land owners are “price takers” in one sense, this type of “price taking” is not the result of a functional competitive market. Rather, it is the result of a market dominated by a supplier that does not price or allocate its supply using market mechanisms. The fact that private timber from Ontario is purchased by parties in Quebec or the United States is not necessarily indicative of a functional market for timber in Ontario. It simply indicates that Ontario private prices are comparable to or lower than other available stumpage prices. See *Final Results of 2nd Review Decision Memorandum* at Comment 16.

For the above reasons, the Department finds that the transactions recorded in the Bearing Point survey are effectively determined by the Crown stumpage prices and are, hence, not suitable benchmarks for assessing adequacy of remuneration. No new information has been provided on the record to warrant reconsideration of this determination.

#### 4. Province of Quebec

In the first and second administrative reviews, we concluded that prices for private standing timber in Quebec could not serve as benchmarks for determining whether the GOQ sells Crown timber for less than adequate remuneration because the incentives that tenure holders face vis-a-vis the private market are distorted. We based our conclusion on the following factors:

- Tenure-holding sawmills have an interest in maintaining a low value of standing trees in private forests, as this value provides the basis for calculating Crown timber prices (the Feedback Effect).
- Sawmills with access to Crown timber can avoid sourcing in the private forest because, among other things, the annual allowable cut on Crown land is not binding.
- Tenure-holding sawmills dominate the private market.
- Sawmills without access to Crown timber account for small harvest volume in the private forest.

See *Preliminary Results of 1st Review*, 69 FR at 33215–33217, *Final Results of 1st Review Decision Memorandum* at Comments 22 through 33, *Preliminary Results of 2nd Review*, 70 FR at 33102, and *Final Results of 2nd Review Decision Memorandum* at Comments 18 and 19.

A review of the information on the record of this review has not led us to alter this finding. Similar to the first and second administrative reviews, the GOQ provided the aggregate sourcing patterns of Quebec’s 1,000 softwood sawmills during 2004. The mills were divided into four categories: mills sourcing exclusively from public sources (purely public mills), mills sourcing exclusively from private sources (purely private mills), mills sourcing from public and private sources, and mills sourcing from public, private, and other (e.g., imports) sources (public/private/other mills).<sup>21</sup> Analysis of the data provided shows that the purely private mills identified by the GOQ sourced 317,040 cubic meters of softwood timber which accounted for only 0.89 percent (i.e., 317,040m<sup>3</sup>/ 35,642,392m<sup>3</sup>) of the volume of softwood harvested in the province. See GOQ’s stumpage response at Exhibits QC-S-47–48, and GOQ’s

<sup>21</sup> In this review, the GOQ claims that, due to changes to its Forestry Act, sawmills processing less than 2,000 cubic meters of timber per year no longer have to obtain permits and thus, are also not required to report log consumption information to the provincial government. As a result, there are 700 hundred small sawmills for which the GOQ claims it cannot provide any information regarding sourcing patterns. See GOQ’s October 3, 2005, stumpage response at page QC-46.



May 8, 2006, supplemental stumpage response at Exhibit 123; *see also* the May 31, 2006, Memorandum to the File from Brian Ledgerwood, "Quebec Internal Price Memorandum" (Quebec Internal Price Memorandum). Further, record evidence indicates that the average consumption rate of the 120 purely private mills identified by the GOQ continues to be small, on average approximately 2,642 cubic meters, relative to the 148 dual-source mills, (*i.e.*, mills that source from public and private sources),<sup>22</sup> whose average consumption rate was approximately 169,422 cubic meters. *Id.*

In addition, evidence on the record of this review indicates that dual-source mills dominate the market for private standing timber. The 148 dual-source mills accounted for 90.76 percent of the private timber harvested in 2004 (*i.e.*, pub/priv = 45.82% + pub/priv/oth = 44.94%). *Id.* At the same time, dual-source mills obtained only a small percentage of their total harvest during 2004 from private lands. For instance, public/private/other mills obtained 19.34 percent of their total harvest from the private forest while public/private mills sourced just 9.20 percent of their softwood from the private forest. *Id.* Thus, the data continue to indicate that the public stumpage market is a much more important sourcing component for dual-source mills and, thus, continues to be the market on which these mills focus the majority of their interests and operations.

As in the first and second administrative reviews, record evidence indicates that the dominance of the dual-source mills is pronounced at the corporate level. In the GOQ's May 8, 2006, response at Exhibit 141, the GOQ provided actual consumption data for 185 of Quebec's softwood sawmills.<sup>23</sup> The data in the GOQ's May 8, 2006, response at Exhibit 141 indicate that in 2004 six corporations, whose mills

source from both public and private sources, consumed approximately 55 percent of the total timber harvest, 63 percent of the public harvest, and 32 percent of the private harvest. *See* Table 2 of the Quebec Internal Price Memorandum. Further, sorting the data in Exhibit 141 by private timber consumption indicates that 20 corporations (14 of which operate dual-source mills) account for over 72 percent of the private timber harvest. *See* Table 3 of the Quebec Internal Price Memorandum. However, while these corporations consume the majority of private timber in Quebec, private-origin timber accounts, on a weighted-average basis, for 11 percent of their inputs while public timber accounts for 81 percent.

In addition, information on the record of this review indicates that there have been no changes to Quebec's Forestry Act that would lead us to alter our previous findings that feedback effects inherent in the GOQ's administered stumpage system encourage tenure holders to maintain low prices for private timber. We also continue to find that sawmills with access to Crown timber can avoid sourcing in the private forest. Therefore, for purposes of these preliminary results, we find that private prices for standing timber in Quebec cannot serve as benchmarks within the meaning of 19 CFR 351.511(a)(2)(i) when determining whether the GOQ sells Crown timber for less than adequate remuneration, because these prices are distorted by a combination of the GOQ's administered stumpage system, the relative size of public and private markets, feedback effects between the private and public markets, and a non-binding AAC.

##### 5. Provinces of Manitoba and Saskatchewan

With respect to Manitoba and Saskatchewan, the provincial governments did not supply private market timber prices upon which to base a first-tier benchmark arising from those provinces.

##### Private Stumpage Prices in New Brunswick and Nova Scotia May Serve as a First-Tier Benchmarks in the Subject Provinces

As in the first and second administrative reviews, the GONB and GONS submitted on the record of this review, private stumpage prices for New Brunswick and Nova Scotia (together, the Maritimes). These prices are contained in separate price surveys prepared by AGFOR, Inc. Consulting (AGFOR) for each of the Maritime governments. *See* New Brunswick

AGFOR Report at Exhibit 4 of the GONB's October 3, 2005, questionnaire response. *See* Nova Scotia AGFOR Report at Exhibit 6 of the GONS's October 3, 2005, questionnaire response. These are the same private price surveys that were on the records of the first and second administrative reviews. In its initial questionnaire response, the GONS submitted a new report on private stumpage prices collected by Innovative Resource Elements (IRE) between July 1, 2004, and December 31, 2004, and January 1, 2005, and June 30, 2005. *See* Survey Results and Prices for Standing Timber Sales from Nova Scotia Private Woodlots for the period July 1 to December 31, 2004, prepared by IRE (August 3, 2005) ("2004 IRE Report"), at Exhibit 5 of the GONS's October 3, 2005, questionnaire response and Survey Results and Prices for Standing Timber Sales from Nova Scotia Private Woodlots for the period January 1 to June 30, 2005, prepared by IRE (November 21, 2005), at Exhibit 3 of the GONS's January 31, 2006, supplemental questionnaire response. Nova Scotia Primary Forest Products Marketing Board (NSFPMB) commissioned the study. IRE claims that it conducted the stumpage price study using a survey methodology created by AGFOR in 2004. The IRE reports collected price data similar to that collected by AGFOR in its previous Nova Scotia and New Brunswick reports.

In the first and second administrative reviews, we determined that private stumpage prices in the Maritimes constituted market-determined, in-country prices consistent with the first tier of the adequate remuneration hierarchy of 19 CFR 351.511(a)(2). Therefore, we used these prices to assess the adequacy of remuneration of the Crown stumpage provided by the GOA, GOM, GOO, GOQ, and GOS. *See, e.g.*, the "Private Stumpage Prices in New Brunswick and Nova Scotia" section and Comments 34, 35, 37, and 38 of the *Final Results of 1st Review Decision Memorandum*; *see also* Comments 20 through 25 of the *Final Results of 2nd Review Decision Memorandum*. As explained in the first and second administrative reviews, record evidence indicated that in establishing their Crown stumpage rates, the Maritimes consider the prevailing prices for stumpage in the private market and the calculations for the Crown stumpage rates are thus directly linked to actual market-based transactions in the private market. *See e.g.*, *Preliminary Results of 2nd Review*, 70 FR at 33103. In addition, in the first and second administrative reviews, we

<sup>22</sup> As explained above, the GOQ no longer collects consumption information for sawmills consuming less than 2,000 cubic meters of timber per year. Information from the first and second reviews indicates that the purely private mill category is dominated by mills with very small operations. We note that in the first and second reviews, the GOQ indicated that these small sawmills source exclusively from the private forest. *See, e.g.*, *Preliminary Results of 2nd Review*, 70 FR at 33102. Thus, the average consumption of sawmills in the purely private category is likely even smaller than the data from the GOQ indicate.

<sup>23</sup> These 185 mills accounted for the vast majority (88.55 percent—*i.e.*, 29,482,951/33,294,432) of the softwood lumber processed in the Province during the POR. *See* GOQ's May 8, 2006 response at Exhibits 123 and 141). Thus, we find that the data in the GOQ's May 8, 2006 response at Exhibit 141 provide a reasonable summary of the consumption patterns of Quebec's softwood sawmills in operation during 2004.



found that the private supply of standing timber constitutes a significant portion of the overall market in the Maritimes. See e.g., *Preliminary Results of 2nd Review*, 70 FR at 33103. During the POR of this administrative review, private supply accounts for 50 percent of the total harvest in New Brunswick and over 91 percent in Nova Scotia. See 2003 Timber Utilization Survey (“TUS”) at Exhibit 1 of the GONB’s October 3, 2005, questionnaire response and Registry of Buyers 2004 Calendar Year at Exhibit 1 of the GONS’s October 3, 2005, submission.

Although interested parties have contested our use of Maritimes’ private stumpage prices in this review, we find their comments do not contain any new evidence or argument that would warrant a reconsideration of our prior finding. For example, the argument that Maritimes’ private stumpage prices do not reflect prevailing market conditions in the subject provinces is fully addressed in the first and second administrative reviews. See *Final Results of 1st Review Decision Memorandum* at Comment 38; See also *Final Results of 2nd Review Decision Memorandum* at Comments 20 to 25. Thus, we preliminarily determine that the Maritimes’ private prices are market-determined prices in Canada, and are, therefore, usable under the first tier of our adequate remuneration hierarchy. Consistent with our approach in the first and second administrative reviews, we have used Maritimes’ private prices to measure the adequacy of remuneration of the stumpage programs administered by the GOA, GOS, GOM, GOO, and GOQ.<sup>24</sup>

With respect to New Brunswick, we continue to rely on the private stumpage price information contained in the New Brunswick AGFOR Report. However, regarding Nova Scotia, for purposes of these preliminary results we are basing our benchmark on data from the IRE Report. Like the Nova Scotia AGFOR Report, the IRE Report is based on a survey of stumpage fees charged on sales of standing timber in Nova Scotia’s private forest. Further, record evidence indicates that the IRE Report followed a survey methodology designed by the

same firm that produced the Nova Scotia AGFOR Report. See IRE 2004 Report at p. 9. Moreover, the IRE Report reflects private price data that correspond to the POR, as opposed to the data in the Nova Scotia Report, which tracked private stumpage prices charged during 1999.

#### **Comparability of Maritimes Standing Timber and Standing Timber in Alberta, Manitoba, Ontario, Quebec, and Saskatchewan**

The IRE and New Brunswick Reports contain prices for the general timber species category of eastern SPF.<sup>25</sup> SPF species are also the primary and most commercially significant species reported in the species groupings for Quebec, Ontario, Manitoba, Saskatchewan and Alberta, accounting for over 97 percent of the entire timber harvest across these provinces.<sup>26</sup>

In the first and second administrative reviews, we found that although there is some minor variation of the relative concentration of individual species across provinces, this does not affect comparability for benchmark purposes. See, e.g., *Preliminary Results of 1st Review*, 69 FR at 33219; and “Private Stumpage Prices in New Brunswick and Nova Scotia” section of the *Final Results of 1st Review Decision Memorandum* and at Comment 38; see also *Preliminary Results of 2nd Review*, 70 FR at 33104 and Comments 21 and 25 of the *Final Results of 2nd Review Decision Memorandum*. We further found that the provinces themselves do not generally differentiate between these species; rather, they tend to group all SPF species into one category for data collection and pricing, e.g., Quebec charges one stumpage price for “SPF.” See e.g., Comment 25 of the *Final Results of 2nd Review Decision Memorandum*.

As in the past review, petitioners contend that it is not appropriate to measure the adequacy of the GOA’s administered stumpage system using a Maritimes benchmark. In addition to reiterating arguments from the second administrative review, petitioners assert that new information concerning the regional and species make-up of Alberta’s Crown harvest supports their contention that it is inappropriate to use a Maritimes benchmark to measure the adequacy of remuneration of the GOA’s administered stumpage system. Using a

report produced by the Alberta Forest Products Association that lists sawmill consumption in Alberta by region, petitioners estimate that nearly two-thirds of Alberta’s softwood harvest comes from the southwestern region bordering the Rockies. See e.g., page 14 of petitioners’ May 1, 2006, pre-preliminary results filing. Petitioners argue that this new information disproves the GOA’s previous claims that over 80 percent of the Alberta harvest comes from the norther portion of the province. Petitioners assert that the southwestern region of Alberta is in an eco zone that more closely resembles British Columbia and, thus, is not at all similar to the Maritimes.

Petitioners further argue that evidence submitted by the GOA indicates that lodgepole pine is the dominant species in Alberta, which is absent in any of the eastern provinces. *Id.* at page 18.<sup>27</sup> Petitioners argue that lodgepole pine is a Western SPF species that is inherently larger than other species growing in the province and is certainly much larger than any of the Eastern SPF species present in the Maritimes. Petitioners assert that the disparity in the size of lodgepole pine is particularly pronounced in southwestern Alberta. *Id.* at 17–18.

In the first and second administrative reviews, the Department relied on survey data obtained by KPMG in determining that the average diameter at breast height (DBH) of standing timber in Alberta was 8 inches. See, e.g., *Preliminary Results of 2nd Review*, 70 FR at 33104. In the current review, the GOA submitted an updated version of the survey in its initial questionnaire response. See the study conducted by Bearing Point, which was included as Exhibit AB–S–25 of the GOA’s October 3, 2005, questionnaire response. This survey indicates that the average DBH of SPF species in Alberta is 8.04 inches. Petitioners contend that the DBH measurements contained in the Bearing Point survey were based on inventory data and, thus, include both mature and immature trees. As a result, petitioners argue that the average DBH reported in the study is understated due to the inclusion of young trees. Petitioners further claim that the Bearing Point study does not specify that any of the timber included in the survey was harvested for lumber production. Referencing data they submitted on the record of the second administrative review and netting out trees they claim are too small to produce lumber,

<sup>24</sup> In the first and second administrative reviews, we determined that Maritimes’ private prices were not the most appropriate benchmark for British Columbia. See e.g., “Benchmark Prices for B.C.” section of the *Final Results of 1st Review Decision Memorandum*; See also “Selection of Benchmark Price Used for British Columbia” section of the *Final Results of 2nd Review Decision Memorandum*. We have continued to adopt this approach in the current review. See “Maritimes Prices are not the most appropriate Benchmark for British Columbia” section of these preliminary results for further discussion.

<sup>25</sup> This category includes, among other species, white spruce, black spruce, red spruce, jack pine, and balsam fir, and represents the vast majority of the species harvested in the Maritimes.

<sup>26</sup> 98.5 percent for Quebec, 93.5 percent for Ontario, 99.89 percent for Saskatchewan, 99.64 percent for Manitoba, and 99.9 percent for Alberta.

<sup>27</sup> Petitioners argue that information from the GOA demonstrates that lodgepole pine accounts for 45 percent of Alberta’s harvest.

petitioners estimate that the average DBH of SPF trees that entered Alberta's sawmills was, in fact, 9.74 inches. They argue, therefore, that trees in Alberta are too large to be compared to trees in the Maritimes, which the Department has found to average 7.8 inches DBH. *See, e.g.*, petitioners' presentation attached to the April 18, 2006, memorandum to the file from Eric B. Greynolds, Program Manager, Office 3, Operations titled, "Ex Parte Meeting with Counsel to the Coalition for Fair Lumber Imports Concerning the Upcoming Preliminary Results"; see also page 18 and 19 of petitioners' May 1, 2006, filing.

On this basis, petitioners argue that the Department should measure the adequacy of remuneration of Alberta's administered stumpage program using log prices from Montana. At the very least, petitioners argue that the Department should use a Montana-based log benchmark to measure the adequacy of remuneration of lodgepole pine harvested from Alberta's Crown forest. *See* page 24 of petitioners' May 1, 2006, submission.

We disagree with petitioners' argument that differences due to forest conditions, ecosystems, climate, geography, species variations and differences in timber quality warrant refusing to use Maritimes'-based price data for measuring adequacy of remuneration with respect to the provinces located east of British Columbia. As explained in the second administrative review, in terms of species, the Maritimes benchmark consists of prices for the Eastern SPF species group, which includes jack pine, balsam fir, and black, red and white spruce. We have grouped these timber species together for benchmark purposes because the various species share similar characteristics that allow them to be commercially interchangeable in lumber applications (*i.e.*, the lodgepole pine species is considered commercially interchangeable with the pine species that comprise the Eastern SPF classification). Due to the fact that the precise mix of the species will vary in the SPF grouping, the interchangeability of the individual species that comprise the SPF species group eliminates the need to identify a species-specific benchmark for lodgepole pine in Alberta. As a result, the lack of lodgepole pine in the Maritimes does not compromise the adequacy of the Maritimes SPF benchmark for comparison to Alberta's timber in the benefit calculations. *See* Comment 21 of the *Final Results of 2nd Review Decision Memorandum*. In fact, petitioners themselves have claimed

that different species within the SPF species category are interchangeable:

Any comparisons based on log prices should be species-specific. With the exception of the BC Coast, however, the large majority of Canadian timber falls into the spruce-pine-fir ("SPF") category, which is generally recognized as commercially interchangeable.

*See Preliminary Results of 2nd Review*, 70 FR at 33104.<sup>28</sup>

Furthermore, in these preliminary results we continue to find that record evidence demonstrates that SPF trees from the Maritimes and Alberta are comparable across their entire growing range, as evidenced by diameter.<sup>29</sup> As noted in the second administrative review, tree diameter is one of the most important characteristics in terms of lumber use. *Id.* In the current review, the data in the Bearing Point study and from the Maritimes continue to indicate that the average DBH in Alberta and New Brunswick is 8.04 and 7.8 inches, respectively.

We disagree with petitioners' assertion that the Bearing Point survey relies on inventory data and, therefore, understates the average DBH in Alberta. The Bearing Point study clearly indicates that it was based on "coniferous timber harvested by Alberta softwood lumber producers between April 1, 2004 and March 31, 2005." *See e.g.*, page 1 of Exhibit AB-S-25 of the GOA's October 3, 2005, questionnaire response, emphasis added. Further, we disagree with petitioners' claim that the Bearing Point study fails to specify whether the timber covered by the survey was harvested for lumber production. Again, the Bearing Point study clearly indicates that it surveyed ten of Alberta's largest softwood lumber producers, which accounted for 56 percent of the softwood harvest for FMA and CTL licensees during the POR. *Id.*, emphasis added.<sup>30</sup>

<sup>28</sup> In different segments of this proceeding, petitioners have also argued that "adjustments for species within the SPF group \* \* \* are not necessary." *Id.*

<sup>29</sup> We also continue to find that trees in the Maritimes are comparable to those in Quebec, Ontario, Manitoba, and Saskatchewan.

<sup>30</sup> This finding is consistent with the Department's previous determinations that Alberta's calculation of average DBH is reliable. *See, e.g.*, Comment 25 of the *Final Results of 2nd Review Decision Memorandum*; *see also, e.g.*, page 12 of the February 15, 2002, memorandum to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, from Tipten Troidl and Darla Brown, Case Analysts, entitled, "Countervailing Duty Investigation (CVD) of Certain Softwood Lumber from Canada: Verification of the Questionnaire Responses Submitted by the Government of Alberta (GOA)," (GOA Investigation Verification Report), which states that the authors of the DBH report contacted large operators in the

Petitioners argue that, based on their estimation, the average DBH of softwood timber in Alberta is actually 9.74 inches. First, we note that the source of this estimation is not based on new information. Petitioners submitted this same information during the second administrative review. Regarding the source of information, the Department found it inconclusive given that it did not consistently demonstrate larger DBH measurements than those reported in the studies submitted by the GOA. *See* Comment 25 of the *Final Results of 2nd Review Decision Memorandum*. Further, as explained in the second administrative review, petitioners themselves have conceded that diameter differences do not significantly impact the price of logs for sizes up to 10 inches in diameter:

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

*Id.*

In this review, petitioners also claim that over 45 percent of tree stems in southwestern Alberta have a diameter of 10 inches or greater. *See* page 23 of petitioners' May 1, 2006, submission. However, on this point, petitioners concede that there are no data available from the GOA to conduct such a precise analysis and, thus, have based this claim on the diameter study submitted in the second administrative review. *Id.* at 22. As stated above, in the second administrative review the Department found petitioners' study "inconclusive" and did not rely upon its findings in reaching its determination.

Furthermore, we note that the average DBH of 7.8 inches for the Maritimes is based on merchantable timber. Merchantable timber refers to standing timber that has reached a sufficient maturity level to be harvested. However, unlike the DBH data in the Bearing Point survey that is based on timber harvested by softwood *lumber* mills, the data used to derive the average DBH for the Maritimes makes no distinction between sawlog- and pulplog-sized timber.<sup>31</sup> Thus, the average DBH of logs entering sawmills in the Maritimes may be even closer to that of Alberta than is

province who own sawmills and solicited the average DBH of the trees in Alberta "from which logs were harvested during the POL." The public version of the GOA Investigation Verification Report is on file in the CRU.

<sup>31</sup> Pulplogs, which are used in pulpmills, are generally smaller in diameter and less valuable than sawlogs, which are used by sawmills to make lumber.

currently indicated by the average DBHs calculated for the respective provinces.

Therefore, we continue to find that the differences which may exist regarding forest conditions, climate, geography, and ecosystems do not significantly impact diameter for the provinces east of British Columbia.

In sum, we preliminarily determine that Maritimes prices for Eastern SPF are comparable to Crown stumpage prices for the SPF species groupings in Quebec, Ontario, Manitoba, Saskatchewan, and Alberta. Accordingly, consistent with 19 CFR 351.511(a)(2)(i), we have compared these market-determined, in-country prices to the Crown stumpage prices in each of the provinces to determine whether the Crown prices were for less than adequate remuneration.

### Application of Maritimes Prices

Having preliminarily found that the Maritimes' prices are in-country, market-determined prices, we next consider how to apply these prices in our benefit calculations.

#### 1. Indexing

The IRE Report contains price data for Nova Scotia that corresponds to the POR. However, the New Brunswick Report contains price data for the period July 1, 2002, to November 30, 2002. In the second review, we indexed the data in the Nova Scotia and New Brunswick Reports using a lumber-specific index reported for the Atlantic Region by STATCAN. See e.g., *Preliminary Results of 2nd Review*, 70 FR at 33104.

However, new evidence on the record of this review indicates that the GONS does not rely exclusively on the STATCAN lumber index when indexing its provincial stumpage prices. See Appendix F of AGFOR's "Methodology to Survey and Report Standing Timber Prices in Nova Scotia," which was submitted as Exhibit 1 of the GONS's January 31, 2006, supplemental questionnaire response. The response of the GONS indicates that the index is a combination of data from the STATCAN lumber index and an index derived from prices of lumber delivered in Boston, as published by Random Lengths, converted to Canadian dollars. *Id.* In light of this new information indicating that a Maritimes government is using the composite index, we preliminarily determine to use the composite index to convert the private price data in the New Brunswick Report to POR-dollars. For additional information, see the May 31, 2006, Maritimes Calculation Memorandum.

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

In the first and second administrative reviews, we found that the pricing data for New Brunswick and Nova Scotia reflect the prices paid by harvesters for standing timber and include the value of the timber being purchased in addition to any landowner costs. See e.g., *Final Results of 1st Review Decision Memorandum* at Comment 39; see also *Final Results of 2nd Review Decision Memorandum* at Comments 36 through 38. We also found that harvesters in the Maritimes incur additional costs that must be paid in order to be able to acquire private timber. Specifically, we found that harvesters in New Brunswick are required to pay silviculture fees as well as administrative fees to the marketing board operating within the region. In Nova Scotia, in order to be able to acquire the standing timber, the registered buyer must either pay for or perform in-kind activities equal to C\$3.00 for every cubic meter of private wood harvested. *Id.*<sup>32</sup> For purposes of these preliminary results, we find there have been no new information or arguments from interested parties that would warrant reconsideration of these findings. Therefore, we added these costs to the indexed stumpage prices to obtain the average stumpage price for softwood logs from New Brunswick and Nova Scotia. For additional information, see the May 31, 2006, Maritimes Calculation Memorandum.

#### 3. Weighting of Studwood in the Nova Scotia Benchmark

The GONS does not collect harvest volume data by log type (*i.e.*, studwood log, sawlog, or treelength log). Thus, in the second administrative review, we weight-averaged the sawlog and studwood prices in Nova Scotia, as reported by AGFOR in a survey it conducted on behalf of the GONS, by using the actual harvest volumes reported by the harvesters. This approach was consistent with our use of volume data in the New Brunswick Report to derive average marketing board levies for New Brunswick. See Comment 34 of the *Final Results of 2nd Review Decision Memorandum*. However, in its January 31, 2006, supplemental questionnaire response at part G, the GONS provided a breakdown of studwood and sawlogs harvested in

the province. Therefore, for the purposes of these preliminary results, we find it appropriate to weight studwood and sawlogs according to those percentages. For additional information, see the May 31, 2006, Maritimes Calculation Memorandum.

### Benchmark Prices Used for British Columbia

#### *Maritimes' Stumpage Prices Are Not the Most Appropriate Benchmarks for British Columbia*

In the final results of the first review, we concluded that the Maritimes' private stumpage prices were not suitable as benchmarks for British Columbia because of the lack of commercial interchangeability between the species in British Columbia and the Eastern SPF species in the Maritimes. See "Maritimes Benchmarks Are Not the Most Appropriate for B.C." section of the *Final Results of 1st Review Decision Memorandum*; see also "Selection of Benchmark Price Used for British Columbia" section of the *Final Results of 2nd Review Decision Memorandum*. We preliminarily determine that the record does not contain any new evidence which would warrant a reconsideration of our finding from the final results of the first review.

### B.C. Log Prices Are Not an Appropriate Benchmark

In the final results of the first and second reviews, we found that stumpage and log markets in British Columbia were closely intertwined and, therefore, Crown stumpage prices affected both stumpage and log prices. See "B.C. Log Prices Are Not An Appropriate Benchmark" section of the *Final Results of 1st Review Decision Memorandum*; see also *Preliminary Results of 2nd Review*, 70 FR at 33106, and "Selection of Benchmark Price Used for British Columbia" section and Comment 15 of the *Final Results of 2nd Review Decision Memorandum*. We further found that Crown logs were, in fact, sold in substantial quantities on the log market. See e.g., *Preliminary Results of 2nd Review*, 70 FR at 33106. For example, we found that the great majority of wood sold in B.C. (apart from allocated Crown wood) was purchased by large integrated tenure-holding producers who purchase wood for their sawmills following standard purchase contracts that were structured as log or stumpage purchases. Thus, we determined that these producers were indifferent as to which form of wood, *i.e.*, either timber or logs, they purchased for use in softwood lumber production and that the decision to

<sup>32</sup>In the final results of the first and second administrative reviews, we also confirmed that harvesters of private standing timber in Nova Scotia and New Brunswick do not incur any other charges (*i.e.*, road building/maintenance costs, fire prevention costs, or land owner related costs).

purchase either timber or logs would instead ultimately depend on price.

In the final results of the first and second administrative reviews, we further determined that, because these companies simultaneously purchased and used both forms of wood, they must in principle view the cost of stumpage and logs as equivalent, *i.e.*, stumpage price plus the cost of harvesting should equate to the cost of a log. In addition, we explained that the fact that these producers used both timber and logs throughout the period of the first review to produce softwood lumber meant that stumpage-log price equivalence was maintained throughout that review period and that this, in turn, suggested that the timber and log prices were linked (*e.g.*, low (or high) timber prices means low (or high) log prices). *Id.* For these reasons, we determined that B.C. log prices are not market-determined prices independent from the effects of the underlying Crown stumpage prices and, therefore, cannot be used to assess the adequacy of remuneration of B.C.'s stumpage program. In addition, we noted that the log price data submitted by the GOBC did not distinguish between Crown logs and private logs and, thus, even if we found that purely private log prices were not affected by the Crown stumpage prices, it would be impossible to isolate such prices from the Crown log prices to establish a benchmark. See Comment 15 of the *Final Results of 2nd Review Decision Memorandum*. For purposes of these preliminary results, we find that the record does not contain any new evidence that would warrant a reconsideration of our finding from the final results of the first review.

#### **U.S. Stumpage Prices Are Not the Most Appropriate Benchmark for British Columbia**

In the first and second administrative reviews, we explained that we were cognizant of the fact that a NAFTA Panel, considering the B.C. benchmark employed in the underlying investigation, found that standing timber is not a good that is commonly traded across borders. See "World Market Prices" in *Final Results of 1st Review Decision Memorandum*; see also *Preliminary Results of 2nd Review*, 70 FR at 33106, and "Selection of Benchmark Price Used for British Columbia" section of the *Final Results of 2nd Review Decision Memorandum*. We also explained, in considering U.S. stumpage prices as a benchmark under our regulatory hierarchy, that using those prices would require complex adjustments to the available data. We therefore turned our analysis to U.S. log

prices. See *e.g.*, *Preliminary Results of 2nd Review*, 70 FR at 33106. For purposes of these preliminary results, we find that the record of this review does not contain any new evidence that would warrant a reconsideration of our finding from the final results of the first review.

#### **U.S. Log Prices Are a More Appropriate Benchmark**

In the final results of the first and second administrative reviews, we found that U.S. log prices may constitute third-tier benchmarks when determining the adequacy of remuneration of the GOBC's administered stumpage program (*i.e.*, a benchmark that is consistent with market principles under 19 CFR 351.511(a)(2)(iii)). See "U.S. Log Prices Are a More Appropriate Benchmark" in *Final Results of 1st Review Decision Memorandum*; see also Comment 28 of the *Final Results of 2nd Review Decision Memorandum*. In the final results of the first and second administrative reviews, we stated that a market principles analysis by its very nature depends on the available information concerning the market sector at issue, and must, therefore, be developed on a case-by-case basis. In this case, we found that using U.S. log prices is consistent with a market principles analysis, because (1) stumpage values are largely derived from the demand for logs produced from a given tree; (2) the timber species in the U.S. Pacific Northwest and British Columbia are very similar and, therefore, U.S. log prices, properly adjusted for market conditions in British Columbia, are representative of prices for timber in British Columbia; and (3) U.S. log prices are market determined. See *e.g.*, "Selection of Benchmark Price Used for British Columbia" section and Comments 28 and 29 of the *Final Results of 2nd Review Decision Memorandum*. For purposes of these preliminary results, we find that the record of the current review does not contain any new evidence that would warrant a reconsideration of our finding from the final results of the first review. We also continue to make the same adjustments employed in the first and second administrative reviews to derive the market stumpage prices for British Columbia. See "Calculation of the 'Derived Market Stumpage Price' section below.

#### **Application of U.S. Log Prices**

##### *1. Selection of Data Sources*

In the final results of the second administrative review, our U.S. log

benchmark prices for the B.C. Interior consisted of prices from the Oregon Department of Forestry (covering the area east of the Cascade Mountains), Northwest Management Inc.'s Log Market Report (covering Eastern Washington, North Idaho, and Western Montana), the University of Montana's Montana Sawlog and Veneer Price Report (covering Western Montana), the Oregon Log Market Report (covering Eastern Oregon), and the Washington Log Market Report (covering Eastern Washington, Idaho, and Montana). In the final results of the second administrative review, our U.S. log benchmark prices for the B.C. Coast consisted of prices from Log Lines (covering the coastal, northwest, and southwest regions of Washington and Oregon), the Oregon Department of Forestry (covering coastal, northwest, and southwest regions of Oregon), Pacific Rim Wood Market Report (covering western Washington and Oregon), the Oregon Log Market Report (covering northwest and southwest Oregon), and the Washington Log Market Report (covering eastern Washington, Idaho, and Montana).

In the current administrative review, petitioners have reiterated arguments from the previous segment of the proceeding, asserting that the Department should limit its U.S. log benchmark to those regions that are contiguous to Coastal and Interior British Columbia. With respect to Interior British Columbia, petitioners contend that the Department should limit its U.S. log benchmark to the two data sources utilized in the first administrative review, Northwest Management Inc.'s Log Market Report (covering Eastern Washington, North Idaho, and Western Montana), the University of Montana's Montana Sawlog and Veneer Price Report (covering Western Montana). They contend that the use of other data sources results in the inclusion of logs sourced from areas whose ecosystems and species mix are drastically different from those found in the B.C. Interior. They also argue that logs harvested far from the B.C. border are less likely to be integrated with the B.C. Interior and, thus, less comparable than those logs harvested in regions contiguous to the province. See pages 2 through 5 of petitioners' May 1, 2006, filing.

At the very least, petitioners argue that the Department should refrain from using log price data for Eastern Oregon, as published by the Oregon Log Market Report, when measuring the adequacy of the GOBC's administered stumpage program in Interior British Columbia. Petitioners allege that the prices in the

report do not reflect actual sales, are not collected on a month-to-month basis as evidenced by the lack of price changes in certain regions during several consecutive months, are based on reports from voluntary respondents, and are based on reports from a limited number of lumber producers with a limited amount of production. See pages 5 through 11 of petitioners' May 1, 2006, filing; see also petitioners' presentation attached to the April 18, 2006, memorandum to the file from Eric B. Greynolds, Program Manager, Office 3, Operations, entitled, "Ex Parte Meeting with Counsel to the Coalition for Fair Lumber Imports Concerning the Upcoming Preliminary Results." They further argue that harvesting activities in Eastern Oregon are less intense, as measured by harvest density, compared to both the B.C. Interior and the U.S. benchmark regions contiguous with the B.C. border. They argue the differences in harvesting density demonstrate that data from Eastern Oregon are less comparable than data from the states contiguous to B.C. border. See petitioners' May 11, 2006, submission. Petitioners also contend that in the second administrative review, the Department used criteria similar to that employed by petitioners in their evaluation of the Oregon Log Market Report to reject the use of a log-based price index advocated by petitioners for use in calculating the Maritimes benchmark. Petitioners contend that the application of the same rigorous assessment of the reliability and representativeness of the log-based price index would lead to the conclusion that the eastern Oregon log prices contained in the Oregon Log Market Report cannot be used in constructing a benchmark for the B.C. Interior. *Id.*

We have previously addressed petitioners' arguments about the comparability of timber from regions that are not contiguous with the B.C. border. As explained in the second administrative review, the data contained in the reports reflect species harvested in the Pacific Northwest (PNW) that are representative of the dominant species harvested in British Columbia. For example, in the B.C. Interior, the three dominant species are lodgepole pine, spruce, and douglas fir. All of the U.S. log reports relating to the B.C. Interior contain U.S. log prices for each of these dominant species. See Comment 47 of the *Final Results of 2nd Review Decision Memorandum*.

We disagree with petitioners' claim that the data for eastern Oregon in the Oregon Log Market Report are unreliable due to data flaws and methodological errors. On April 21,

2006, staff from the Department of Commerce contacted the editor of the Oregon Log Market Report and asked him to explain the concerns raised by petitioners during their *ex parte* meetings with the Department, as well as answer questions posed by Department staff regarding the report. See the May 2, 2006, Memorandum to the File from Eric B. Greynolds, Program Manager, and Tipten Troidl, Case Analyst, Office 3, Operations, entitled, "Telephone Call to the Editor of the Oregon Log Market Report." As indicated in the memorandum, the editor of the report stated that all prices in the Oregon Log Market Report reflect actual transaction prices, that his survey respondents include log buyers, sawmills, wood chippers, and log sellers, and that he collects price data from his respondents on a monthly basis. *Id.*

We also disagree with petitioners' contention that the criteria employed in the second administrative review to reject the use of a log-based price index compel the Department to also discard the log price data for eastern Oregon in the Oregon Log Market Report. As noted above, evidence indicates that the data in the Oregon Log Market Report reflect transaction prices, which was not the case with respect to the source of petitioners' Maritime log-based price index in the second review. Furthermore, in the second administrative review, the Department was forced to choose between using price indices that were based on different products and data sets. As such, the Department was confronted with an either/or situation. In contrast, in calculating its U.S. log benchmark, the Department is seeking to construct the most representative and robust data set for comparable species in the PNW and, therefore, does not face an either/or situation. Petitioners' characterization of our approach in the second administrative review does not take this distinction into account.

On this basis, we preliminarily determine that it is appropriate to construct our U.S. log benchmarks for Coastal and Interior British Columbia, using the same data sources utilized in the second administrative review. For further information on data sources used, see the May 31, 2006, "Preliminary Results Calculation for the Province of British Columbia Calculation Memorandum ("British Columbia Calculation Memorandum").

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

### a. Weighting of U.S. Log Price Sources

Consistent with our approach in the second administrative review, to make the benefit calculations for Coastal and Interior B.C., we first constructed a U.S. log price benchmark for each species harvested on the B.C. Coast and Interior, respectively. To construct the U.S. log price benchmarks, we calculated an annual average price for each species. We have done this, first, by simple-averaging log prices for each species reported in each U.S. log price report for the POR and, second, by taking a simple average of those species-specific annual average prices by source to arrive at a final species-specific annual average price. See Comment 48 of the *Final Results of 2nd Review Decision Memorandum*.<sup>33</sup> For purposes of these preliminary results, we find that the record does not contain any new evidence which would warrant a reconsideration of our approach from the final results of the second administrative review.

### b. Conversion of U.S. Log Prices Into Canadian Dollar (CAD)/Cubic Meter

The U.S. log price data was expressed in U.S. dollars (USD) per thousand board feet (mbf). Therefore, it was necessary to convert our benchmark data so that they were expressed in the same currency and unit of measure as the B.C. administered stumpage prices. In the final results of the first and second administrative reviews, we converted U.S. log price data for the B.C. Coast using a conversion factor of 6.76 USD/cubic meter. For the B.C. Interior, we used a conversion factor of 5.93 USD/cubic meter. We then converted the benchmark prices into Canadian currency based on the average of the daily USD/CAD daily exchange rate, as published by the Federal Reserve Bank of New York. See e.g., Comment 44 of the *Final Results of 2nd Review Decision Memorandum*. For purposes of these preliminary results, we find that the record does not contain any new evidence that would warrant a reconsideration of our approach from the final results of the first review. Therefore, we continue to apply the same conversion factors and exchange approach that was employed in the final

<sup>33</sup> As explained in the second administrative review, this approach is necessary because we lack data regarding the volume of reported U.S. log sales that would allow us to calculate weighted-average prices. See *Preliminary Results of 2nd Review*, 70 FR at 33107; see also Comment 48 of the *Final Results of 2nd Review Decision Memorandum*.

results of the first and second administrative reviews.

### Calculation of Provincial Benefits

#### *Adjustment to Administrative Stumpage Unit Price*

As explained in the final results of the second administrative review, we employed a methodology for adjusting the unit prices of the Crown stumpage programs administered by the GOA, GOS, GOM, GOO, and GOQ. In making our adjustments, we focused on those costs that are assumed under the timber contract (e.g., the Crown tenure agreement) and those costs that are necessary to access the standing timber for harvesting (but that may differ substantially depending on the location of the timber). Where such costs are incurred by harvesters in either the Maritimes or the subject provinces, we included them in our benefit calculations. We did not, however, make adjustments for costs that might be necessary to access the standing timber for harvesting but that do not differ substantially based on the location of the timber (e.g., costs for tertiary road construction and harvesting). Because the Maritimes data reflect prices at the point of harvest, we also did not include post-harvest activities such as scaling and delivering logs to mills or market. Id. In this manner, we adjusted the unit stumpage prices of the GOA, GOS, GOM, GOO, and GOQ such that they were on the same "level" as the private stumpage prices we obtained from the Maritimes. See the "Calculation of Provincial Benefits" section of the *Final Results of 2nd Review Decision Memorandum*.

For purposes of these preliminary results, we find that the record does not contain any new evidence that would warrant a reconsideration of our approach from the final results of the second review. Therefore, to calculate the unit benefit conferred under the five provinces' administered stumpage programs, we subtracted from the species-specific benchmark prices the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific unit benefit by the total softwood timber harvest volume for that species during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for each province.

#### 1. Province of Alberta

##### a. Derivation of Administered Stumpage Unit Prices

To derive Alberta's administratively established stumpage rate, we divided

the total timber dues charged to tenure holders during the POR for each species by the total softwood stumpage billed under each tenure for each species. In this manner, we obtained a weighted-average stumpage price per species that was paid by tenure holders during the POR.

##### b. Adjustments to Administered Stumpage Unit Price

Pursuant to the methodology established in the final results of the first and second administrative reviews, we have added the following costs to Alberta's administered stumpage unit price:<sup>34</sup>

- Costs for Primary and Secondary Roads (e.g., Permanent Road Costs in Road Classes 1 Through 4).
- Basic Reforestation.
- Forest Management Planning.
- Holding and Protection.
- Environmental Protection.
- Forest Inventory.
- Reforestation Levy.
- Fire, Insect, and Disease Protection.

##### c. Calculation of the Benefit

To calculate the unit benefit under this program, we compared the species-specific benchmark prices (the Maritimes private stumpage prices described above) to the GOA's corresponding adjusted administered stumpage prices. In this manner, we calculated a unit benefit for each species group. Next, we calculated the species-specific unit benefit by the total species-specific softwood timber billed volume in Alberta during the POR.

Regarding the softwood timber billed volume used in the benefit calculations, the GOA claims that its stumpage classification system does not allow the province to isolate the wood volumes going strictly to sawmills and used to produce lumber. Thus, it is necessary to derive the volume of softwood Crown logs that entered and were processed by Alberta's sawmills during the POR (i.e., logs used in the lumber production process). We performed a similar calculation in the first administrative review. However, upon identifying additional information discussed below, we determined that it is necessary to

<sup>34</sup> For a description of the derivation of the unit costs added to the GOA's administered stumpage price, see the May 31, 2006, Preliminary Calculations Memorandum for Alberta. The derivations of the unit costs for the GOS, GOM, GOO, and GOQ are also described in this calculation memorandum. The categories of costs added to the administered stumpage prices of the GOA, GOS, GOM, GOO, and GOQ are the same as those used in the final results of the second review. See the "Calculation of Provincial Benefits" section of the *Final Results of 2nd Review Decision Memorandum*.

alter our approach to the calculations for Alberta.

The GOA argues that this volume amount harvested by non-sawmill-owning tenure holders should not be included in our calculations. However, by the GOA's own admission, this volume amount includes logs that were subsequently sold to sawmills. See, e.g., page 8 of the GOA's May 2, 2005 supplemental questionnaire response. Further, with respect to this volume amount, the GOA provided no means by which we could identify the portion of the volume that went to sawmills and the portion that was exported or went to non-sawmills. Thus, because there is no way to break out this volume amount and because the GOA has offered no information on whether any subsidies attributable to this softwood timber did or did not pass through to any sawmills, we have, as a starting point, included the entire timber volume in question when determining the volume of Crown logs to include in the numerator of Alberta's provincial subsidy rate calculation.

In order to determine the volume of Crown logs that went to sawmills (a.k.a., "net-down" approach), we have slightly revised the methodology that was used in the first administrative review. Specifically, we have used the GOA's Section 80/81 timber data from Table 39, Exhibit AB-S-87 that has not been "netted down" as the basis for Alberta's benefit calculation. This data differs from the data set reported in the first review (Alberta Verification Exhibit, GOA-3, AR Table 43, Exhibit AB-S-70) because it represents the Section 80/81 basket category of timber which has not been "netted down" to exclude the volumes from tenure holders who do not own sawmills.

We subsequently added the volumes of certain non-lumber categories to the Crown Section 80/81 data to capture the universe of timber going to sawmills which corresponds to the provincial softwood billed volume identified in the PwC survey and reported by the GOA in Exhibit AB-S-107. The resulting aggregate Crown softwood billed volume was then "netted down" using the "percentage of survey billed volume as lumber" reported in the PwC survey results. This calculation enabled the Department to derive the Alberta's total Crown stumpage billed volume on a species-specific basis, which reflects the volume of provincial stumpage cut by tenure holders and sent to sawmills for processing into lumber and co-products. For further discussion, see the Preliminary Calculation

Memorandum.<sup>35</sup> Finally, we summed the species-specific benefits to calculate the total stumpage benefit for the province.

#### d. Calculation of Provincial and Country-Wide Rate

To calculate the province-specific subsidy rate, we divided the total stumpage benefit by Alberta's POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see "Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates" in these preliminary results. As explained in "Aggregate Subsidy Rate Calculation," we weight-averaged the benefit from this provincial subsidy program by Alberta's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in "Country-Wide Rate for Stumpage."

### 2. Province of Manitoba

#### a. Adjustments to Administered Stumpage Unit Price

The GOM reported average, per-unit stumpage prices for the POR. Thus, our next step was to adjust the per-unit stumpage prices pursuant to the methodology described above in "Calculation of Provincial Benefits." Specifically, we have added the following costs to Manitoba's administered stumpage unit price:

- Forest Renewal Charge.
- Forest Management License Silviculture.
- Costs for Permanent Roads (*e.g.*, Primary and Secondary Roads).
- Forest Inventory.
- Forest Management Planning.
- Environmental Protection.
- Fire Protection.

#### b. Calculation of the Benefit

To calculate the unit benefit conferred under the GOM's administered stumpage program, we subtracted from the species-specific benchmark prices the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific unit benefit by the total softwood timber harvest volume for that species during the POR. We then summed the species-

specific benefits to calculate the total stumpage benefit for the province.

#### c. Calculation of Provincial and Country-Wide Rate

To calculate the province-specific subsidy rate, we divided the total stumpage benefit for Manitoba by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see "Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates." As explained in "Aggregate Subsidy Rate Calculation," we weight-averaged the benefit from this provincial subsidy program by Manitoba's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in "Country-Wide Rate for Stumpage."

### 3. Province of Saskatchewan

#### a. Derivation of Administered Stumpage Unit Prices

To derive Saskatchewan's administratively established stumpage rate, we divided the total stumpage collections for each species by the corresponding volume of Crown softwood timber destined to sawmills. In this manner, we obtained a weighted-average stumpage price per species that was paid by tenure holders during the POR.

#### b. Adjustments to Administered Stumpage Unit Price

Next, we adjusted the administered stumpage unit prices pursuant to the methodology describe above in "Calculation of Provincial Benefits." Specifically, we have added the following costs to Saskatchewan's administered stumpage unit price:

- Forest Management Fee.
- Processing Facilities License Fee.
- Forest Product Permit Application Fee.
- Forest Management Activities.
- Costs for Permanent Roads (*e.g.*, Primary and Secondary Roads).

#### c. Calculation of the Benefit

To calculate the unit benefit conferred under the GOS's administered stumpage program, we subtracted from the species-specific benchmark prices the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific unit benefit by the total softwood timber harvest volume for that species during the POR. We then summed the species-

specific benefits to calculate the total stumpage benefit for the province.

#### d. Calculation of Provincial and Country-Wide Rate

To calculate the province-specific subsidy rate, we divided the total stumpage benefit for Saskatchewan by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see "Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates." As explained in "Aggregate Subsidy Rate Calculation," we weight-averaged the benefit from this provincial subsidy program by Ontario's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in "Country-Wide Rate for Stumpage."

### 4. Province of Ontario

#### a. Derivation of Administered Stumpage Unit Prices

To derive Ontario's administratively established stumpage rate, we divided the total stumpage collections for each species by the corresponding volume of Crown softwood timber destined to sawmills. In this manner, we obtained a weighted-average stumpage price per species that was paid by tenure holders during the POR.

#### b. Adjustments to Administered Stumpage Unit Price

Next, we adjusted the administered stumpage unit prices pursuant to the methodology describe above in the "Calculation of Provincial Benefits" section of these preliminary results. Specifically, we have added the following costs to Ontario's administered stumpage unit price:

- Forest Management Planning.
- Construction and Maintenance of Primary and Secondary Roads.
- Fire Protection.
- First Nations and Management Fees.

#### c. Calculation of the Benefit

To calculate the unit benefit conferred under the GOO's administered stumpage program, we subtracted from the species-specific benchmark prices the cost-adjusted weighted-average stumpage prices per species. Next, we calculated the species-specific benefit by multiplying the species-specific unit benefit by the total softwood timber harvest volume for that species during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province.

<sup>35</sup> We note that this volume of timber is separate from the volume of timber included in the GOA's pass-through claim. For further information regarding the GOA's pass-through claim, see the "Pass Through" section of these preliminary results.



#### d. Calculation of Provincial and Country-Wide Rate

To calculate the province-specific subsidy rate, we divided the total stumpage benefit for Ontario by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see "Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates." As explained in "Aggregate Subsidy Rate Calculation," we weight-averaged the benefit from this provincial subsidy program by Ontario's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in "Country-Wide Rate for Stumpage."

#### 5. Province of Quebec

##### a. Derivation of Administered Stumpage Unit Prices

To derive Quebec's administratively established stumpage rate, we divided the total stumpage collections for each species by the corresponding volume of Crown softwood timber destined to sawmills. In this manner, we obtained a weighted-average stumpage price per species that was paid by tenure holders during the POR.

##### b. Adjustments to Administered Stumpage Unit Price

Next, we adjusted the administered stumpage unit prices pursuant to the methodology describe above in "Calculation of Provincial Benefits." Specifically, we have added the following costs to Quebec's administered stumpage unit price:

- Forest Fund.
- Administrative Forest Planning.
- Non-Credited Silviculture.
- Construction and Maintenance of Primary and Secondary Roads.
  - Fire and Insect Protection.
  - Logging Camps.
  - Silviculture Credits for Non-Mandatory Activities (Negative Adjustment).

##### c. Calculation of the Benefit

To calculate the unit benefit conferred under the GOQ's administered stumpage program, we subtracted from the species-specific benchmark prices the cost-adjusted weighted average stumpage prices per species. Next, we calculated the species-specific benefit by multiplying the species-specific unit benefit by the total softwood timber harvest volume for that species during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province.

#### d. Calculation of Provincial and Country-Wide Rate

To calculate the province-specific subsidy rate, we divided the total stumpage benefit for Quebec by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see "Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates." As explained in "Aggregate Subsidy Rate Calculation," we weight-averaged the benefit from this provincial subsidy program by Ontario's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in "Country-Wide Rate for Stumpage."

#### 6. Province of British Columbia

##### a. Derivation of Administered Stumpage Unit Prices

To derive British Columbia's administratively established stumpage rate, we divided the total stumpage collections for each species for the Coast and Interior by the corresponding Crown softwood sawlog volume. In this manner, we obtained a weighted-average stumpage price per species.

##### b. Calculation of the "Derived Market Stumpage Price"

Consistent with our approach from the first and second administrative reviews, we calculated a "derived market stumpage price" for each species by using U.S. log prices as the benchmark for standing timber prices to measure the adequacy of remuneration of B.C.'s administered stumpage system. See *supra* section on use of U.S. log prices as B.C. benchmarks. Specifically, we deducted from the U.S. log prices all B.C. harvesting costs, including costs associated with Crown tenure for calendar 2004. See, October 3, 2005, questionnaire response by the Government of British Columbia at BC-S-194. As in the first and second administrative reviews, we relied on cost data from surveys of major tenure holders prepared by PwC. Specifically, PwC was engaged by the B.C. Ministry of Forests (MOF) to collect calendar year 2003 logging and forest management cost data for the Coast and Interior regions of British Columbia. The cost data presented by PwC was derived from three separate surveys—the MOF's 2004 annual Coast survey and two surveys (one for the Coast and the other for the Interior) conducted by PwC itself.

In these preliminary results, we have subtracted the following unit costs from the U.S. log price benchmarks used for the B.C. Coast:

- Tree-to-Truck.
- Hauling.
- Dump, Sort, Boom, and Rehaul.
- Crew Transportation Labor.
- Road Maintenance.
- Towing/Barging.
- Helicopter Logging.
- Camp Operations and Overhead.
- Road Construction.
- Head Office, General Administration.

• Logging Fees and Taxes.

• Forestry, Engineering, and Fire Protection.

In these preliminary results, we have subtracted the following unit costs from the U.S. log price benchmarks used for the B.C. Interior:

- Tree-to-Truck.
- Hauling.
- Dump, Sort, and Boom.
- Towing/Barging.
- On-Block Road and Bridge Maintenance.

• Mainline/Secondary Road and Bridge Maintenance.

- Post Logging Treatment.
- Administration/Overhead.
- Camp Operation.
- Depreciation, Depletion, and Amortization.

• Mainline/Secondary Road and Bridge Construction.

• Mainline/Secondary Road and Bridge Deactivation.

• On-Block Road and Bridge Construction.

• On-Block Road and Bridge Deactivation.

- Protection (Fire, Insect, and Disease Control).
- Silviculture and Reforestation.

In the second administrative review, we addressed whether to subtract a per-unit profit component from the "derived market stumpage prices" used in the benefit calculations for the B.C. Coast and Interior. The issue revolved around the extent to which our cost data from the PWC survey report of B.C. logging and forest management costs accounted for any profit that may have been incurred by independent harvesters.

Based on information from the GOBC that all harvesting activities are performed by contractors, we determined in the second administrative review that the cost data contained in the PWC's survey of the B.C. Interior reflect "fee for service" payments made by sawmills to independent harvesters and, thus already included a profit component. On this basis, we determined that no profit adjustment was appropriate for U.S. log benchmark

prices used in the benefit calculation of the B.C. Interior. See *Preliminary Results of 2nd Review*, 70 FR at 33110; see also "Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC" and Comment 52 of the *Final Results of 2nd Review Decision Memorandum*.

Regarding Coastal B.C., information on the record of the second administrative review indicated that at least 50 percent of the harvesting activities on the coast must be conducted by independent contractors. Further, information from the GOBC indicated that harvesting activities by in-house, company crews were conducted on a "limited" basis. On this basis, in the second administrative review, we assumed that the majority of harvesting activities for Coastal B.C. were performed by independent harvesters and, thus, the majority of the harvesting costs in the PWC survey for the B.C. Coast already contained a profit component. Lacking any other information and, based on the GOBC's characterization of company crew harvesting costs as being "limited," we determined that in-house company crews employed by tenure holders are used 25 percent of the time on the B.C. Coast and the remaining amount is performed by independent contractors. Accordingly, we found that 75 percent of the costs in the PWC survey did not warrant a profit adjustment. However, we applied a profit component to the remaining 25 percent of the costs contained in the PWC survey for the B.C. Coast. *Id.*

To calculate the profit amount, we relied on publically available profit data for the B.C. logging industry from "Industry Canada," a department of the Canadian federal government through its business and consumer site "strategis.gc.ca."<sup>36</sup> Specifically, we obtained a 3.7 percent profit figure for the B.C. logging industry. This profit figure is an average calculated from financial data for the year 2002 (the most recent year for which data were available) from all small businesses (incorporated and unincorporated) in the B.C. logging industry.<sup>37</sup> Thus, we multiplied the per-unit B.C. logging profit figure from Industry Canada by 25 percent and subtracted the resulting product from the per-unit "derived market stumpage price" for the B.C. Coast. See Comment 52 of the *Final*

*Results of 2nd Review Decision Memorandum*; see also Tab A, Table 5A, and page 12 of the B.C. Final Results Calculation Memorandum for the second administrative review.<sup>38</sup>

No new information has been placed on the record of this review warranting a change in our finding from the second administrative review. Therefore, for these preliminary results we have continued not to apply a profit adjustment to the harvesting costs calculated for the B.C. Interior. For the B.C. Coast, we have applied a profit component of 25 percent to the harvesting costs, as reported by the PWC survey. Further, in these preliminary results, we have continued to use the 3.7 percent profit figure for the B.C. logging industry as the source of our profit rate, as reported by Industry Canada.

#### c. Calculation of the Benefit

To calculate the unit benefit per species conferred under the GOBC's administered stumpage program, we subtracted from the cost-adjusted, "derived market stumpage prices" the corresponding average administered stumpage prices. Consistent with our approach in the first and second administrative reviews, we reduced the total Crown harvest to capture that volume of logs destined to sawmills. See, e.g., *Preliminary Results of 2nd Review*, 70 FR at 33111; see also, the "Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC" section of the *Final Results of 2nd Review Decision Memorandum*. Specifically, we multiplied the Coast and Interior Crown volumes by their respective percentage of logs entering sawmills for 2004, i.e., 47.50 percent and 87.50 percent, respectively. See the GOBC's October 3, 2005, questionnaire response at BC-I-5-6 and BC-S-3-4 Next, we multiplied the species-specific unit benefit by the Crown volume destined to sawmills. We then summed the species-specific benefits for the Coast and the Interior to calculate the provincial benefit.

#### d. Calculation of Provincial and Country-Wide Rate

To calculate the province-specific subsidy rate, we divided the total stumpage benefit for British Columbia

<sup>38</sup> In the final results of the second administrative review, our methodological approach concerning the profit issue remained unchanged from our preliminary findings. However, minor changes were made to our profit calculations. See Comment 52 of the *Final Results of 2nd Review Decision Memorandum*. In the current review, we have continued to utilize the calculation approach employed in the final results of the second administrative review.

by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see "Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates" section. As explained in the "Aggregate Subsidy Rate Calculation" section, we weight-averaged the benefit from this provincial subsidy program by British Columbia's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in the "Country-Wide Rate for Stumpage" section.

#### Country-Wide Rate for Stumpage

The preliminary country-wide subsidy rate for the provincial stumpage programs is 10.88 percent *ad valorem*.

#### II. Other Programs Determined To Confer Subsidies

##### *Non-Stumpage Programs Determined To Confer Subsidies*

##### *Programs Administered by the Government of Canada*

##### 1. Western Economic Diversification Program: Grants and Conditionally Repayable Contributions

Introduced in 1987, the Western Economic Diversification program (WDP) is administered by the GOC's Department of Western Economic Diversification headquartered in Edmonton, Alberta, whose jurisdiction encompasses the four western provinces of B.C., Alberta, Saskatchewan and Manitoba. The program supports commercial and non-commercial projects that promote economic development and diversification in the region.

In the first and second administrative reviews, we found that the provision of grants under the WDP constitutes a government financial contribution and confers a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. See *Preliminary Results of 1st Review*, 69 FR at 33228, "Western Economic Diversification Program Grants and Conditionally Repayable Contributions" section of the *Final Results of 1st Review Decision Memorandum*, "Western Economic Diversification Program (WDP): Grants and Conditionally Repayable Contributions" section and Comment 62 of the *Final Results of 2nd Review Decision Memorandum*. Further, we determined that the WDP is specific under section 771(5A)(D)(iv) of the Act because assistance under the program is

<sup>36</sup> Strategis (<http://www.strategis.gc.ca>) offers interactive financial applications, e.g., building industry profiles for specific provinces via Performance Plus, a software tool.

<sup>37</sup> The Logging Industry classification is number 1133 under the North American Industry Classification System (NAICS).

limited to designated regions in Canada. On this basis, we found recurring and non-recurring grants provided to softwood lumber producers under the WDP to be countervailable subsidies. *Id.* No new information has been placed on the record of this review to warrant a change in our finding that the WDP is countervailable.

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

Consistent with our past approach, where the employee's activities were directed towards exports of softwood lumber to all markets, we attributed the subsidy to total softwood lumber exports. Where the employee's activities were directed towards exports of softwood lumber to the United States, we attributed the subsidy to U.S. exports. Where the personnel promoted exports to non-U.S. markets, we did not attribute any of the benefit to U.S. sales. *See, e.g.,* "Western Economic Diversification Program (WDP): Grants and Conditionally Repayable Contributions" section of the *Final Results of 2nd Review Decision Memorandum*. Where personnel promoted softwood lumber production, in general, we attributed the subsidy to total softwood lumber sales. Regarding the WDP program, evidence on the record of this review indicates that benefits were limited to Alberta's softwood lumber industry. Therefore, for the WDP program, we limited the denominator of our expense test to Alberta's total softwood lumber sales. In accordance with 19 CFR 351.524(b)(2), we determine that all ITPP and "WDP Project" grants were less than 0.5 percent of their corresponding denominator in the year of receipt.<sup>39</sup> Therefore, we are expensing all grants received during the POR under this program to the year of receipt.

To calculate the countervailable subsidy rate for this program, we summed the rates for the ITPP and WDP sub-projects. Next, as explained in "Aggregate Subsidy Rate Calculation," for the ITPP program, we multiplied the program rate by the four provinces' relative share of total world-wide exports of softwood lumber to the United States. We adjusted the

provinces' total exports of softwood lumber to the United States to account for any excluded company sales. For the WDP program, we multiplied the program rate by Alberta's total softwood lumber sales. Using this methodology, we preliminarily determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

## 2. Natural Resources Canada (NRCAN) Softwood Marketing Subsidies

In 2002, the GOC approved a total of C\$75 million in grants to target new and existing export markets for wood products and to provide increased research and development to supplement innovation in the forest products sector. This total was allocated to three sub-programs: Canada Wood Export Program (Canada Wood), Value to Wood Program (VWP), and the National Research Institutes Initiative (NRII). The programs were placed under the administration of NRCAN, a part of the Canadian Forest Service.<sup>40</sup>

The VWP is a five-year research and technology transfer initiative supporting the value-added wood sector, specifically through partnerships with academic and private non-profit entities. In particular, NRCAN entered into research contribution agreements with Forintek Canada Corp. (Forintek) to do research on efficient resource use, manufacturing process improvements, product development, and product access improvement.

In the first and second administrative reviews, we found that grants provided to Forintek under the VWP constitute a government financial contribution and confer a benefit to softwood lumber producers within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. *See Preliminary Results of 1st Review*, 69 FR at 33229, the "Natural Resources Canada (NRCAN) Softwood Marketing Subsidies" in the *Final Results of 1st Review Decision Memorandum*, and the "Natural Resources Canada (NRCAN) Softwood Marketing Subsidies" section of the *Final Results of 2nd Review Decision Memorandum*. We also determined that, because VWP grants are limited to Forintek, which conducted research related to softwood lumber and manufactured wood products, the program is specific within the meaning of section 771(5A)(D)(i) of the Act. *Id.* Consequently, we found the

grants under the NRCAN program to be countervailable.

The NRII is a two-year program that provides salary support to three national research institutes: the Forest Engineering Research Institute of Canada (FERIC), Forintek, and the Pulp & Paper Research Institute of Canada (PAPRICAN). In the first and second administrative reviews, we found that research undertaken by FERIC constitutes a government financial contribution to commercial users of Canada's forests within the meaning of section 771(5)(D)(i) of the Act. *Id.* Further, we found that FERIC's research covers harvesting, processing, and transportation of forest products, silviculture operations, and small-scale operations and, thus, we determined that government-funded R&D by FERIC benefits, *inter alia*, producers of softwood lumber within the meaning of section 771(5)(E) of the Act.

Similarly, we found that Forintek's NRII operations, which pertain to resource utilization, tree and wood quality, and wood physics, also constitute a government financial contribution and confer a benefit, *inter alia*, upon the softwood lumber industry within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. *Id.*

In the first and second administrative reviews, we determined that because grants offered under the NRII are limited to Forintek and FERIC, institutions that conducted research related to the forestry and logging industry, the wood products manufacturing industry, and the paper manufacturing industry, the program is specific within the meaning of 771(5A)(D)(i) of the Act. *Id.* On this basis, we found the Forintek and FERIC grants offered under the NRII are countervailable.<sup>41</sup> No new information has been placed on the record of this review to warrant a change in our finding that grants under the VWP and NRII programs are countervailable.

In accordance with 19 CFR 351.524(b)(2), we first examined whether the non-recurring grants under the VWP and NRII programs should be expensed to the year of receipt. We summed the funding approved for Forintek during the POR under the VWP and NRII programs, and divided this sum by the total sales of the wood products manufacturing industry in the year of approval. We also divided the funding approved for FERIC under the NRII program during the POR by the total sales of the wood products

<sup>39</sup> We reduced these denominators, where appropriate, to account for any excluded company sales.

<sup>40</sup> We found the Canada Wood program to be not countervailable in the first administrative review. *See Preliminary Results of 1st Review*, 69 FR at 33229.

<sup>41</sup> We found NRII's support of PAPRICAN to be not countervailable in the first administrative review. *See Preliminary Results of 1st Review*, 69 FR at 33229.

manufacturing and paper industries in the year of approval. Combining these two amounts, we preliminarily determine that the benefit under the NRCAN softwood marketing subsidies program should be expensed in the year of receipt.

Consistent with our approach in the first and second administrative reviews, we then calculated the countervailable subsidy rate during the POR by dividing the amounts received by Forintek during the POR under the VWP and NRII programs by Canada's total sales of the wood products manufacturing industry during the POR. We also divided the funding received by FERIC under the NRII during the POR by Canada's total sales of the wood products manufacturing and paper industries during the POR. We adjusted these sales amounts to account for any excluded company sales. *See, e.g., "Natural Resources Canada (NRCAN) Softwood Marketing Subsidies"* section of the *Final Results of 2nd Review Decision Memorandum*. Combining these two amounts, we preliminarily determine the net subsidy rate from the NRCAN softwood marketing subsidies program to be 0.02 percent *ad valorem*.

### 3. Federal Economic Development Initiative in Northern Ontario (FEDNOR)

FEDNOR is an agency of Industry Canada, a department of the GOC, which encourages investment, innovation, and trade in Northern Ontario. A considerable portion of the GOC assistance under FEDNOR is provided to Community Futures Development Corporations (CFDCs), non-profit community organizations providing small business advisory services and offering commercial loans to small and medium enterprises (SMEs). Assistance in the form of grants is also provided under the FEDNOR program.

In the underlying investigation and first and second administrative reviews, we determined that grants and loans under the FEDNOR program constitute government financial contributions to softwood lumber producers within the meaning of section 771(5)(D)(i) of the Act. *See e.g., Preliminary Results of 1st Review*, 69 FR at 33228; *see also Preliminary Results of 2nd Review*, 70 FR at 33114. In addition, we found that grants under the program confer a benefit to softwood lumber producers under section 771(5)(E) of the Act and that CFDC loans confer a benefit to softwood lumber producers under section 771(5)(E)(ii) of the Act to the extent that the amount they pay on CFDC loans are less than the amount

they would pay on a comparable commercial loan that they could actually obtain on the market. *Id.* Furthermore, we found that the grants and loans provided under the FEDNOR program are specific within the meaning of section 771(5A)(D)(iv) of the Act, because assistance under the program is limited to certain regions in Ontario. *Id.* On this basis, we found the program to be countervailable. No new information has been placed on the record of this review to warrant a change in our findings.

In this administrative review, the GOC provided grants during the POR as well as several long and short-term CFDC loans that were outstanding during the POR.

Consistent with our approach in the first and second administrative reviews, to determine the benefit attributable to loans offered under the FEDNOR program, we compared the long-term and short-term interest rates charged on these loans during the POR to the long-term and short-term benchmark interest rates. *Id.* Our benchmark interest rates are described in "Benchmarks for Loans & Discount Rates." As the interest amounts paid on the loans under the FEDNOR program were greater than what would have been paid on a comparable commercial loan, as indicated by our benchmark interest rate, we preliminarily determine that this program did not confer a benefit upon softwood lumber producers in accordance with section 771(5)(E)(ii) of the Act during the POR.

We have treated the grant received during the POR as non-recurring. In accordance with 19 CFR 351.524(b)(2), we have determined that the approved amount of the grant is less than 0.5 percent of total sales of softwood lumber for Ontario during the POR. Therefore, we have expensed the benefit from this grant in the year of receipt.

To calculate the countervailable subsidy provided under this program, we divided the grant amounts disbursed during the POR by the value of total sales of softwood lumber for Ontario during the POR, net of excluded company sales. Next, as explained in the "Aggregate Subsidy Rate Calculation" section of this notice, we multiplied this amount by Ontario's relative share of total exports to the United States. Using this methodology, we preliminarily determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

### Programs Administered by the Government of British Columbia

#### 1. Forestry Innovation Investment Program (FIIP)

The Forestry Innovation Investment Program came into effect on April 1, 2002. On March 31, 2003, FIIP was incorporated as Forestry Innovation Investment Ltd. (FII). FII funds are used to support the activities of universities, research and educational organizations, government ministries and industry associations producing a wide range of wood products. FII's strategic objectives are implemented through three sub-programs addressing: Research, product development and international marketing. In this review, the GOBC states that research grants provided under the FII are now provided under Forest Science Program (FSP), as of April 1, 2004. For purposes of this review, we find that the FSP is sufficiently similar to the research program previously provided under the FII program. Therefore, in these preliminary results, we have treated the FSP as a successor program to the FII program.

In the first and second administrative reviews, we determined that the FII grants provided for research as well as those to support product development and international marketing constitute a government financial contribution and confer a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. *See e.g., Comment 69 of the Final Results of 2nd Review Decision Memorandum*. Further, we found that the grants are specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited to institutions and associations conducting projects related to wood products generally and softwood lumber, in particular. *Id.* No new information has been placed on the record of this review to warrant a change in our finding that grants FIIP are countervailable.

To calculate the benefit from this program, we first determined whether these non-recurring subsidies should be expensed in the year of receipt. *See* 19 CFR 351.524(b)(2). For grants given to support product development, we divided the amount approved by the total sales of woods products manufacturing industry for B.C. during the year of approval. With respect to the international marketing sub-program, for projects targeting the U.S. market, we divided the amount approved by the total exports of softwood lumber to the United States during the year of approval. For international marketing projects relating to the wood products industry in general, we divided the

amounts by the total sales of the wood products manufacturing industry, excluding co-products, during the year of approval. See 19 CFR 351.525(b)(4). For research grants under the FSP, the successor program to the FII research program, we divided the grants approved by total sales of the wood products manufacturing and paper industries in B.C. during the year of approval. Combining these three amounts, we have preliminarily determined that the FII benefit should be expensed in the POR.

Consistent with our approach in the second administrative review, we then calculated the countervailable subsidy rate during the POR by dividing the amounts disbursed during the POR by their corresponding sales denominator, which are described above. We combined these amounts and, as explained in "Aggregate Subsidy Rate Calculation," we multiplied this total by B.C.'s relative share of total exports to the United States. On this basis, we have preliminarily determined the countervailable subsidy from the FIIP to be 0.04 percent *ad valorem*.

## 2. British Columbia Private Forest Property Tax Program

In the second administrative review we explained that B.C.'s property tax system has two classes of private forest land—Class 3, "unmanaged forest land," and Class 7, "managed forest land"—that incurred different tax rates in the 1990s through the POR. In the first and second administrative reviews, we found that property tax rates for Class 7 were generally lower than for Class 3 land at all levels of tax authority for most, though not all, taxes. See "British Columbia Private Forest Property Tax Program" section of *Final Results of 1st Review Decision Memorandum*; see also "British Columbia Private Forest Property Tax Program" and Comment 72 of the *Final Results of 2nd Review Decision Memorandum*. We further found that the various municipal and district (i.e., regional) level authorities imposed generally lower rates for Class 7 than for Class 3 land. *Id.*

The tax program is codified in several laws, of which the most salient is the 1996 Assessment Act (and subsequent amendments). Section 24(1) of the Assessment Act contains forest land classification language expressly requiring that, inter alia, Class 7 land be "used for the production and harvesting of timber." Additionally, section 24(3) or 24(4) of the Assessment Act, depending on the edition of the statute, requires the assessor to declassify all or part of Class 7 land if "the assessor is

not satisfied\* \* \*that the land meets all requirements" for managed forest land classification. Amendments to the provision, enacted from 1996 through 2003, retained the same language stating these two conditions. Thus, the law as published during the POR required that, for private forest land to be classified and remain classified as managed forest land, it had to be "used for the production and harvesting of timber."

In the first and second reviews, we found that because the tax authorities impose two different tax rates on private forest land, the governments are foregoing revenue when they collect taxes at the lower rate, and we, therefore, determined that the program constitutes a government financial contribution as defined in section 771(5)(D)(ii) of the Act. See e.g., "British Columbia Private Forest Property Tax Program" and Comment 72 of the *Final Results of 2nd Review Decision Memorandum*. We also determined that the program confers a benefit in the form of tax savings within the meaning of section 771(5)(E) of the Act. *Id.* In the second administrative review, we further determined that because the Assessment Act expressly requires that Class 7 land be "used for the production and harvesting of timber," and additionally requires the assessor to declassify any Class 7 land not meeting all the Class 7 conditions (of which timber use was one), the B.C. private forest land tax program is specific as a matter of law (i.e., *de jure* specific) within the meaning of section 771(5A)(D)(i) of the Act. See "British Columbia Private Forest Property Tax Program" and Comment 72 of the *Final Results of 2nd Review Decision Memorandum*. No new information has been placed on the record of this review to warrant a change in our finding that the B.C. private forest land tax program is countervailable.

In the current review, pursuant to revisions to the Assessment Act during the POR, Class 3 tax rates on "unmanaged land" were repealed, effective December 31, 2004. See, e.g., page BC-T-12, Volume 34 of the GOBC's October 3, 2005, questionnaire response. Since we are unable to use the Class 3 tax rate as our benchmark for the portion of the POR covering 2005, we have used the next most applicable tax, which for purposes of these preliminary results, we find is the Class 5 tax rate for light industries. Because the revisions to the Assessment Act did not take effect until 2005, we have continued to use the Class 3 tax rate for unmanaged land as our benchmark for calculating the benefit under the

program during the portion of the POR covering 2004.

Consistent with our approach in the first and second reviews, and in accordance with 19 CFR 351.509(a), we find that the benefit received under this program is the sum of the tax savings enjoyed by Class 7 sawmill landowners at the provincial, regional, and sub-provincial (or local) levels of tax authority in B.C. See "British Columbia Private Forest Property Tax Program" and Comment 72 of the *Final Results of 2nd Review Decision Memorandum*. With regard to the provincial tax, the assessed value is calculated as the sum of the land value and a formulaic valuation of the timber harvested from the land in the prior year. The tax is levied by applying the tax rate to this assessed value. The GOBC did not submit data on the timber value. Accordingly, the Department calculated the tax benefit at the provincial level based solely on the tax savings conferred upon Class 7 land with sawmills.

Consistent with our approach in the second administrative review, we determined the tax benefit at the regional and local level using the data submitted by the GOBC on local tax rates, and on the value and acreage of Class 7 land held by sawmill landowners in the various jurisdictions.<sup>42</sup> Only those jurisdictions whose tax differential resulted in a tax savings for Class 7 sawmill landowners were included in the benefit calculation. *Id.*

The provincial, regional, and local level benefit amounts were summed to produce an overall POR benefit amount. Consistent with our approach in the first and second administrative reviews, we used the POR total value of B.C. sawmill softwood product shipments (i.e., lumber, co-products, and "residual" products from primary sawmills) as the denominator, and, adjusting for B.C.'s share of the total exports to the United States, we preliminarily determine the countervailable subsidy under this program to be 0.10 percent *ad valorem* during the POR. See e.g., "British Columbia Private Forest Property Tax Program" of the *Final Results of 2nd Review Decision Memorandum*.

## 3. Compensation for Tenure Reclamation Under the Protected Areas Forest Compensation Act (PAFCA) and Forest Revitalization Act (FRA)

The Protected Area Forests Compensation Act (PAFCA) clarifies the

<sup>42</sup> Unlike the second administrative review, the GOBC was able to provide the land values for Class 7 land with sawmills at the regional level.

rights of certain tenure holders whose tenures have been taken back by the GOBC. Specifically, the program provides a means through which qualifying tenure holders may seek compensation from the GOBC pursuant to negotiation or third-party arbitration. Payment of compensation under PAFCA is administered by the B.C. Ministry of Forests and Range.

Enacted on May 20, 2002, PAFCA sets forth provisions that compensate tenure holders for tenure areas reclaimed for the purpose of creating 376 identified parks, protected areas, and ecological reserves established under the GOBC's Protected Areas Strategy. PAFCA covers tenure take backs that occurred from 1995 to the end of 2001 for which compensation claims were not otherwise settled. According to the GOBC, claims for compensation are initiated when a licensee whose harvesting rights has been affected by a park subject to PAFCA contacts the B.C. Ministry of Forests and Range to undertake negotiations or commercial arbitration.

Under section 60 of the Forest Act, the Minister of Forests is authorized to take back without compensation up to five percent of a license area or AAC. However, where more than five percent of an AAC, section 60 mandates compensation for the value of the tenure for the remaining term. Moreover, section 60(5) requires the GOBC to compensate the tenure holder for any unamortized costs incurred for improvements, such as roads and bridges that become useless to the tenure holder as a result of the taking. Furthermore, under section 60.93, if the GOBC and the tenure holder cannot agree on the amount of compensation, the issue must be submitted for third-party arbitration as provided in the Commercial Arbitration Act.

During the POR there were three pending arbitration proceedings under the Commercial Arbitration Act pursuant to section 60.93 involving tenure take backs that occurred prior to the POR. One of the tenure holders received a favorable ruling in August 2004. As a result, the GOBC made a C\$14 million payment to the company during the POR, pursuant to a settlement between the company and the GOBC. At the end of the POR, the arbitration for the other two tenure holders had not yet begun.

The GOBC conducts a similar take back program pursuant to the Forestry Revitalization Act (FRA). Under the FRA, which took effect on March 31, 2003, the GOBC reduced certain areas of Crown land covered by a timber

license.<sup>43</sup> According to the GOBC, it reclaimed the tenure areas in order to reallocate Crown timber harvesting rights from long-term tenure holders to the BCTS program. In return, the GOBC compensates tenure holders for the reclamations in an amount equal to the value of the affected timber rights as well as for any tenure improvements approved by the provincial government and not otherwise paid for by the provincial government. The amount of compensation is determined by negotiation between the parties or through binding arbitration under provisions of the Commercial Arbitration Act. During the POR, five companies received compensation payments from the GOBC totaling C\$ 87.5 million. The payments determined by negotiation between the parties were the first payments made under the FRA.

In the first administrative review, petitioners included the PAFCA program among their new subsidy allegations. Petitioners claimed that because tenure holders paid little or no money for the land rights, and because the government owns the land and timber, any payments made to tenure holders in exchange for a reduction in AAC rights are not on market terms. In light of the information submitted by petitioners, the Department initiated an investigation of the PAFCA program. See Memoranda to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, through Eric B. Greynolds, Program Manager from Margaret Ward, Case Analyst regarding "New Subsidy Allegations," dated February 6, 2004 (New Subsidy Allegation Memorandum) which is in the public file in the CRU.

Based on the record information of the current review, we preliminarily determine that the GOBC provided compensation settlements under the PAFCA and FRA in the form of cash in exchange for land rights that were provided for little or no money. We find that the compensation from the GOBC constitutes a financial contribution and confers benefits to lumber producers within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further find that the benefits were specific to tenure holders and, therefore specific within the meaning of section 771(5A)(D) of the Act.

In accordance with 19 CFR 351.504(a) and (b), we are treating these benefits as grants approved and received during the

POR. Further, we preliminarily determine that these grants are non-recurring within the meaning of 19 CFR 351.524(c)(2), because they are not addressed under 19 CFR 524(c)(1) and they confer benefits that are exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an on-going basis. Finally, we preliminarily determine that these grants are attributable to tenure holders and, thus we calculated the provincial rate by dividing the amount of reclamation payments to tenure holders during the POR by the sales of those products produced as part of B.C.'s softwood lumber manufacturing process.<sup>44</sup>

Because the PAFCA and FRA programs are administered under different statutes, we are treating them as separate programs in these preliminary results. Regarding the PAFCA program, because the grant amount is less than 0.5 percent of the corresponding sales denominator in the year of approval, we expensed all of the benefits to the POR, which is the year of receipt. See 19 CFR 351.524(b)(1). We then calculated the provincial rate under this program by dividing the benefit amount allocated to the POR by the sales of those products produced during the POR as part of B.C.'s softwood lumber manufacturing process. As explained in the "Aggregate Subsidy Rate Calculation" section of these preliminary results, we then multiplied the provincial rate by B.C.'s relative share of total exports of softwood lumber to the United States during the POR.

Regarding the FRA program, pursuant to 19 CFR 351.524(b)(2), because the sum of the benefit amounts under this program is larger than 0.5 percent of the corresponding sales denominator in the year of approval, we have allocated the benefit amounts pursuant to the allocation methodology described under 19 CFR 351.524(d). In accordance with 19 CFR 351.524(d)(3)(i)(B), we have used as our discount rate, the long-term benchmark rate described in the "Benchmarks for Loans and Discount Rate" section of these preliminary results. We then calculated the provincial rate under this program by dividing the benefit amount allocated to the POR by the sales of those products

<sup>43</sup> The GOBC defines a timber license as an area of Crown land that is not in a tree farm licence area, and is held by a person who is the holder of a licence in a group of licences. See the FRA, which is included as Exhibit BC-S-90 of the GOBC's October 3, 2005, questionnaire response.

<sup>44</sup> Specifically, the denominator consists of the following: Softwood lumber, including softwood lumber that undergoes some further processing (so-called "remanufactured" lumber), softwood co-products (e.g., wood chips and sawdust) that resulted from softwood lumber production at sawmills, and residual products produced by sawmills that were the result of the softwood lumber manufacturing process, specifically, softwood fuelwood and untreated softwood ties.

produced as part of B.C.'s softwood lumber manufacturing process. As explained in the "Aggregate Subsidy Rate Calculation" section of these preliminary results, we then multiplied the provincial rate by B.C.'s relative share of total exports of softwood lumber to the United States during the POR.

On this basis, we preliminarily determine the net countervailable subsidy for the FRA and PAFCA programs to be 0.09 and 0.10 percent *ad valorem*, respectively.

#### **Programs Administered by the Government of Quebec**

##### *Private Forest Development Program*

In the first and second administrative reviews, we determined that the provision of grants to producers of softwood lumber under the Private Forest Development Program (PFDP) constitutes a government financial contribution and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. See the "Private Forest Development Program" section of the *Final Results of 1st Review Decision Memorandum*; see also "Private Forest Development Program" section of the *Final Results of 2nd Review Decision Memorandum*. In addition, we determined that assistance provided under this program is specific under section 771(5A)(D)(i) of the Act because assistance is limited to private woodlot owners. *Id.*

Every holder of a wood processing plant operating permit must pay the fee of C\$1.20 for every cubic meter of timber acquired from a private forest. These fees fund, in part, the PFDP. The recipients of payments under the PFDP are owners of private forest land. Thus, the sawmill operators that received assistance under the PFDP received assistance because they owned private forest land. Therefore, in the first and second administrative reviews, we determined that the fees paid to harvest timber from private land do not qualify as an offset to the grants received under the PFDP pursuant to section 771(6) of the Act. *Id.* Section 771(6) of the Act specifically enumerates the only adjustments that can be made to the benefit conferred by a countervailable subsidy and fees paid by processing facilities do not qualify as an offset against benefits received by private woodlot owners. *Id.* Consistent with our treatment of the PFDP in the first administrative review, we treated these payments as recurring in accordance with 19 CFR 351.524(c). *Id.* No new information has been placed on the record of this review to warrant a

change in our finding that the PFDP is countervailable.

Consistent with our approach in the first and second administrative reviews, to calculate the countervailable subsidy under the PFDP, we first summed the reported amount of grants provided to sawmills that produce softwood lumber (and other products) during the POR. We then divided the net benefit amount by total sales of softwood lumber (*i.e.*, lumber from primary mills and in-scope lumber from remanufacturers), hardwood lumber, and softwood co-products. *Id.* We adjusted the sales denominator to account for sales of excluded companies from Quebec. Next, as explained in "Aggregate Subsidy Rate Calculation," we multiplied this amount by Quebec's relative share of exports to the United States, adjusted for sales of excluded companies. On this basis, we preliminarily determine the countervailable subsidy from this program is less than 0.005 percent *ad valorem*.

#### **Programs Determined Not To Confer a Benefit**

##### *Government of British Columbia*

##### *Forest Renewal B.C. Program*

The Forest Renewal program was enacted by the GOBC in the Forest Renewal Act in June 1994 to renew the forest economy of British Columbia by, among other things, improving forest management of Crown lands, supporting training for displaced forestry workers, and promoting enhanced community and First Nations involvement in the forestry sector. To achieve these goals, the Forest Renewal Act created Forest Renewal B.C., a Crown corporation. The corporation's strategic objectives were implemented through three business units: The Forests and Environment Business Unit, the Value-Added Business Unit, and the Communities and Workforce Business Unit.

The Forest Renewal B.C. program provides funds to community groups and independent financial institutions, which may in turn provide loans and loan guarantees to companies involved in softwood lumber production.<sup>45</sup> Effective March 31, 2002, the B.C. legislature terminated the Forest Renewal B.C. program. However, during the POR, there remained active Forest Renewal B.C. loans, with interest payments outstanding during the POR.

As explained in the second administrative review, Forest Renewal

B.C. provided blanket guarantees with respect to all loans outstanding under the program during the POR. See *Preliminary Results*, 70 FR at 33115. Accordingly, in the second administrative review we found that the loan guarantees provided under the program constitutes a government financial contribution within the meaning of section 771(5)(D)(i) of the Act. Further, we found that because assistance under the Forest Renewal B.C. program was limited to the forest products industry, the program was specific within the meaning of section 771(5A)(D) of the Act. *Id.* No new information has been placed on the record of this review to warrant a change in our findings.

To determine whether the active Forest Renewal loans provided benefits to the softwood lumber industry, in accordance with section 771(5)(E)(ii) of the Act, we compared the interest rates charged on the Forest Renewal loans to the benchmark interest rates described in "Benchmarks for Loans and Discount Rates." Using this methodology, we have preliminarily determined that no benefit was provided by the Forest Renewal loans because the interest rates charged under this program were equal to or higher than the interest rates charged on comparable commercial loans.

##### *Government of Quebec*

##### 1. Assistance Under Article 28 of Investment Quebec

Assistance under Article 28 is administered by Investissement Quebec, a government corporation. In the underlying investigation, the Department investigated assistance from the GOQ under Article 7, which was administered by the Societe de Developpement Industriel du Quebec (SDI). Article 28 supplanted Article 7 in 1998. Under Article 7, SDI provided financial assistance in the form of loans, loan guarantees, grants, assumption of interest expenses, and equity investments to projects that would significantly promote the development of Quebec's economy. According to the GOQ's response, prior to authorizing assistance, SDI would review a project to ensure that it had strong profit potential and that the recipient business possessed the necessary financial structure, adequate technical and management personnel, and the means of production and marketing required to complete the proposed project. The Article 28 program operates fundamentally in the same manner as Article 7.

<sup>45</sup> Grants have also been provided directly to softwood lumber producers. However, the GOBC has reported that no such grants were provided during the POR.



During the POR, there was one outstanding loan under Article 28. There were no outstanding loans under Article 7. No other assistance was provided to softwood lumber companies under Article 7 or Article 28. Regarding the outstanding loan, it was held by a company that subsequently entered into bankruptcy during the POR. The GOQ indicates that the company paid no interest on the loan during the POR.

The Department does not automatically find reorganizations, workout programs or bankruptcy proceedings to be countervailable. Rather, the Department must find that such events transpired in a manner that is inconsistent with typical practice. See e.g., *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004), and Accompanying Issues and Decision Memorandum at Comment 4 (where the Department found that KAMCO's debt forgiveness to Sammi was not specific or preferential as it was similar to debt forgiveness to other companies in court receivership where KAMCO was the lead creditor), *Final Affirmative Countervailing Duty Determination and Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808 (August 30, 2002), and Accompanying Issues and Decision Memorandum at 24–25 (where the Department found that Saarstahl and its creditors followed established procedures and that there was no evidence indicating that the German government acted in a manner that caused the terms of Saarstahl's bankruptcy/restructuring proceedings to be unduly favorable to the company), and *Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 71 FR 1512 (January 10, 2006).

For purposes of these preliminary results, we find that there is no allegation or evidence the bankruptcy in question transpired in a manner inconsistent with typical practice. Therefore, we preliminarily determine that this program did not provide any countervailing benefits during the POR.

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

SGF Rexfor, Inc. (Rexfor) is a corporation, all of whose shares are owned by the Societe Generale de Financement du Quebec (SGF). SGF is an industrial and financial holding company that finances economic

development projects in cooperation with industrial partners. Rexfor is SGF's vehicle for investment in the forest products industry.

Rexfor receives and analyzes investment opportunities and determines whether to become an investor either through equity or participative subordinated debentures. Debentures are used as an investment vehicle when Rexfor determines that a project is worthwhile, but is not large enough to necessitate more complex equity arrangements. Consistent with our approach in the underlying investigation, we have not analyzed equity investments by Rexfor because (1) there was no allegation that Rexfor's equity investments were inconsistent with the usual investment practice of private investors, and (2) there is no evidence on the record indicating that Rexfor's equity investments conferred a benefit.

Also, consistent with our approach in the investigation and first and second reviews, we examined whether Rexfor's participative subordinated debentures, i.e., loans, conferred a subsidy. Because assistance from Rexfor is limited to companies in the forest products industry, we have preliminarily determined that this program is specific under section 771(5A)(D)(i) of the Act. The long-term loans provided by Rexfor qualify as a financial contribution under section 771(5)(D)(i) of the Act. To determine whether the single loan outstanding to a softwood lumber producer during the POR provided a benefit, we compared the interest rates on the loan from Rexfor to the benchmark interest rates as described in "Benchmarks for Loans and Discount Rates." See 771(5)(E)(ii) of the Act. See, e.g., *Preliminary Results of 2nd Review*, 70 FR at 33116.

Using this methodology, we have preliminarily determined that no benefit was provided by this loan because the interest rates charged under this program were higher than the interest rates charged on comparable commercial loans. On this basis, we have preliminarily found that the debt forgiveness by Rexfor did not confer a benefit in the POR and, thus, provides no countervailable subsidy.

## Preliminary Results of Review

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

Producer/exporter	Net subsidy rate
All Producers/Exporters.	11.23 percent <i>ad valorem</i> .

If the final results of this review remain the same as these preliminary results, the Department intends to instruct CBP to assess countervailing duties as indicated above. The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties of 11.23 percent of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

## Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than seven days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Please note that an interested party may still submit case and/or rebuttal briefs even though the party is not going to participate in the hearing.

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary results. Any requested hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number

of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. An interested party may make an affirmative presentation only on

arguments included in that party's case or rebuttal briefs.

This administrative review is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2006.

**David M. Spooner,**  
*Assistant Secretary for Import  
Administration.*

[FR Doc. 06-5221 Filed 6-9-06; 8:45 am]

**BILLING CODE 3510-DS-P**