

**DEPARTMENT OF COMMERCE****International Trade Administration****[C-122-839]****Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products From Canada**

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

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**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 May 22, 2002, through March 31, 2003. 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.)

**EFFECTIVE DATE:** June 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra at (202) 482-3965, Stephanie Moore at (202) 482-3692, or Robert Copyak at (202) 482-2209, Office of AD/CVD Enforcement VI, Group II, 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 determination and countervailing duty order on certain softwood lumber products from Canada, as corrected (67 FR 37775, May 30, 2002). On May 1, 2003, the Department published a notice of "Opportunity to Request Administrative Review of Certain Softwood Lumber Products from Canada" (68 FR 23281, May 1, 2003). 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 approximately 400 requests for review covering an estimated 290 individual companies. On

July 1, 2003, we initiated the review covering the period May 22, 2002, through March 31, 2003 (68 FR 39055).

On July 25, 2003, the Department 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), and to the extent practicable, conduct a limited number of individual reviews between May 7 and May 11, 2004. The pool of companies considered for company-specific review was limited from the estimated 290 companies for which we received requests for individual review to those 148 companies claiming zero or *de minimis* rates. Section 351.213(k)(1) of the countervailing duty (CVD) Regulations provides that the Department will, to the extent practicable, conduct reviews of companies requesting and claiming either zero or *de minimis* rates if the Department conducts an administrative review upon an aggregate basis under section 777A(e)(2)(B) of the Act. For further discussion, see Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration from Holly A. Kuga, Acting Deputy Assistant Secretary regarding "Methodology for Conducting the Review," dated July 25, 2003, which is in the public file in the Central Records Unit (CRU), Room B-099, of the Department of Commerce.

On August 14, 2003, in accordance with section 351.301(d)(4)(i)(B) of the CVD Regulations, petitioners timely filed new subsidy allegations. Petitioners alleged that Canadian softwood lumber producers benefitted from twelve additional subsidy programs during the period of review (POR). Petitioners further alleged that the Canadian federal and provincial governments increased their subsidy programs, in some cases specifically in an effort to offset the effects of the countervailing and antidumping duties imposed by the Department. The Department determined that the petitioners had sufficiently supported their allegations, and initiated an investigation of the new programs. 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, and April 19, 2004, which are in the public file in the CRU.

On January 16, 2004, the Department extended the period for completion of these preliminary results pursuant to section 751(a)(3)(A) of the Act. See *Certain Softwood Lumber Products from*

*Canada: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 69 FR 2568 (January 16, 2004).

On March 15, 2004, the Department determined to conduct individual company-specific reviews of 11 companies. The Department selected these 11 companies from the already narrowed pool of 148 companies claiming zero/*de minimis* subsidies on the basis of (1) whether the company claimed to source all of its inputs from the United States, Maritime Provinces,<sup>1</sup> and/or Canadian private lands, or (2) the company acquired Crown logs from third parties and had quantities of either lumber inputs or Crown stumpage that could be considered insignificant when compared to overall volume and, therefore, ignored in any analysis. See Memorandum to James J. Jochum, Assistant Secretary for Import Administration, from Holly A. Kuga, Acting Deputy Assistant Secretary, regarding "Conduct of Company-Specific Reviews," dated March 15, 2004, which is in the public file in the CRU.

On April 9, 2004, the Department sent questionnaires to the 11 companies. We received timely responses from all 11 companies, as well as a voluntary response from Commonwealth Plywood Co., Ltd.

From April 13 through May 4, 2004, we conducted verifications in Canada of the government questionnaire responses.

Due to the unexpected emergency closure of the main Commerce building on Tuesday, June 1, 2004, the Department has tolled the deadline for these preliminary results by one day to June 2, 2004.

**Period of Review**

The POR for which we are measuring subsidies is May 22, 2002, through March 31, 2003. By memorandum dated July 31, 2003, the Department determined that any subsidy rate calculated during this review would be based on data from the Canadian fiscal year (April 1, 2002–March 31, 2003) and would apply to entries between May 22, 2002 (the date of the countervailing duty order), and March 31, 2003. See Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary for Group II, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, regarding the "First Administrative Review of the Countervailing Duty Order on Softwood

<sup>1</sup> Nova Scotia, New Brunswick, Newfoundland, and Prince Edward Island.

Lumber Products From Canada—Period of Review.”

### Extension of Time Limits for Final Results

Pursuant to section 19 CFR 351.213(h)(2) of the CVD Regulations, the Department finds that as a result of the complex nature of the issues in this case it is not practicable to complete the review within the normal time period allocated under 19 CFR 351.213(h)(1); therefore, we are extending the final results from 120 days to 180 days after the publication of these preliminary results. Therefore, the Department will issue its final results no later than 180 days after the publication of the preliminary results of this review, *i.e.*, on or about December 7, 2004.

### 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 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 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 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 heading 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 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>2</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

<sup>2</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.

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 countervailing duty 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 softwood lumber scope.<sup>3</sup> The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

#### **Subsidies Valuation Information**

##### *Aggregation and Company-Specific Rates*

In the countervailing duty investigation of softwood lumber from Canada, the Department solicited information from the GOC on an aggregate or industry-wide basis in accordance with section 777(A)(e)(2)(B) of the Act, rather than from individual producers and exporters, as a result of the large number of producers and exporters of softwood lumber in Canada. See page 7 of the April 23, 2001, Memorandum to the File from the Team, "Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada," which is in the public file in the CRU. As noted

above, in accordance with 19 CFR 351.213(b), the GOC and petitioners requested an administrative review of this countervailing duty order and both requested that this review be conducted on an aggregate basis. See *Initiation Notice*. The Department also received requests for company-specific reviews from a large number of individual Canadian producers/exporters pursuant to 19 CFR 351.213(b).

Because of the extraordinarily large number of softwood lumber producers in Canada, the Department is conducting this administrative review of the order on an aggregate basis and will calculate a single country-wide subsidy to be applied to all exports of subject merchandise. See section 777A(e)(2)(B) of the Act. As noted above in the "Background" section of this notice, the Department also determined to calculate company-specific rates for certain selected companies that claimed zero/*de minimis* rates. See the March 15, 2004, Memorandum to James J. Jochum, Assistant Secretary, for Import Administration, from Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, (Company Selection Memorandum), which is in the public file in the CRU.

As noted in the "Background" section of this notice, the Department received questionnaire responses from the companies selected for individual review. Based upon our review of the questionnaire responses, the Department preliminarily has concluded that additional information will be needed in order to complete our analysis of these companies. Therefore, the Department intends to issue a decision memorandum related to subsidy rate calculations involving these companies prior to issuing the final results of this review in order to provide parties an opportunity to comment.

##### *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 2001), and in the *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Lumber IV*). 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 is for less than adequate remuneration. For the reasons described in the program sections, below, the Department continues to have found that Canadian provinces sell Crown timber for less than adequate remuneration to softwood lumber producers in Canada. Pursuant to section 351.524(c)(1) of the CVD Regulations, 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 investigating other programs that involve the provision of grants to producers and exporters of subject merchandise. Under section 351.524 of the CVD Regulations, benefits from grants can either be classified as providing recurring or non-recurring benefits. Recurring benefits are expensed in the year of receipt, while grants providing non-recurring benefits are allocated over time corresponding to the AUL of the industry under review. Specifically, under section 351.524(b)(2) of the CVD Regulations, 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).

<sup>3</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.

### *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 with the exception of the company-specific reviews noted above we are not examining individual companies, for those programs requiring a Canadian dollar-denominated discount rate or the application of a Canadian dollar-denominated, short-term or long-term benchmark interest rate, we used for these preliminary results the national average interest rates on commercial short-term or long-term Canadian dollar-denominated loans as reported by the GOC.

The information submitted by the GOC was for fixed-rate short-term and long-term debt. For short-term debt, the GOC provided monthly weight-averaged short-term interest rates based on the prime business rate, SME rate, three-month corporate paper rate, and one-month bankers' acceptance rate, as reported by the Bank of Canada. For long-term debt, the GOC provided quarterly implied rates calculated from long-term debt and the interest payments made on long-term debt as reported by Statistics Canada (STATCAN). Based on these rates, we derived simple averaged POR rates for both short-term and long-term debt.

Some of the investigated 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 loans the rate applicable to long-term fixed interest rate loans for the POR as reported by the GOC.

Regarding the selection of a discount rate for the purposes of allocating non-recurring subsidies over time, we are directed by 19 CFR 351.524(d)(3). Because we are conducting this review on an aggregate basis under section 777A(e)(2)(B) of the Act, we used as the discount rate, the average cost of long-term fixed-rate loans in Canada as reported by the GOC. See 19 CFR 351.524(d)(3)(i)(B).

### *Aggregate Subsidy Rate Calculation*

As noted above, this administrative review is being conducted on an aggregate basis, with the exception of 11 individual company-specific reviews. We have used the same methodology to calculate the country-wide rate for the programs subject to this review that we used in the investigation.

#### 1. Provincial Crown Stumpage Programs

For stumpage programs administered by the Canadian provinces subject to this review, we first calculated a provincial subsidy rate by dividing the aggregate benefit conferred under each specific provincial stumpage program by the total stumpage denominator calculated for that province. For further information regarding the stumpage denominator, see the "Denominator Issues" 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 *Lumber IV*, these weight-averages of the subject merchandise do not include exports from the Maritime Provinces. See e.g., the April 25, 2002, Memorandum to Faryar Shirzad, Assistant Secretary for Import Administration, from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, "Ministerial Error Allegations Filed by Respondents and Petitioners," a public document that is on file in the CRU. We then summed these weight-average subsidy rates to determine the country-wide rate for all provincial Crown stumpage programs.

#### 2. Other Programs

We are also examining a number of non-stumpage programs administered by the Canadian Federal Government and certain Provincial Governments in Canada. These include programs previously investigated and programs newly alleged in this review. To calculate the country-wide rate for these programs, we have used a different methodology than that employed in the investigation. For federal programs that were found to be specific because they were limited to certain regions, we have 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 sales (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 multiplied by the relative share of total softwood exports to the United States from that province.

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

#### 3. Excluded Companies

In the investigation, we deducted from the above-mentioned denominators sales by companies that were excluded from the countervailing duty order. The Department has since also concluded expedited reviews for a number of companies, pursuant to which a number of additional companies have been excluded from the countervailing duty order. See, Final Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada: Notice of Final Results of Countervailing Duty Expedited Reviews (68 FR 24436, May 7, 2003). Pursuant to our prior practice, we have 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, as discussed above.

On May 25, 2004, we requested sales data for the POR from the companies that were excluded from the countervailing duty order as a result of exclusion and expedited review process. Because of the timing, we have yet to receive any responses to our requests.

Lacking actual POR sales data from the excluded companies, we have estimated the companies' POR sales using sales data they supplied during the underlying investigation or expedited review. Specifically, we have indexed the sales data of the excluded companies to the POR using province-

specific lumber prices indices obtained from STATCAN. We then subtracted the indexed sales data of the excluded companies from the provincial and Canada-wide sales denominators.

#### Pass-Through

During the underlying investigation, the Canadian parties claimed that a portion of the Crown logs processed by sawmills were purchased by the mills in arm's-length transactions with independent harvesters. Canada further claimed that such logs must be excluded from the subsidy calculation unless the Department determines that the benefit to the independent harvester passed through to the lumber producers. In anticipation of a similar claim in this administrative review, we requested in the original questionnaire that each of the Canadian provinces report the volume and value of Crown logs sold by independent harvesters to unrelated parties during the POR. See September 12, 2003, Questionnaire.

In response to the Department's original questionnaire, and in more recent submissions, certain provinces have submitted information on the record of this proceeding that they claim demonstrate the volume of the provincial Crown logs harvested during the POR that were sold in arm's-length transactions, and for which a pass-through analysis must be performed. Our analysis and preliminary findings with respect to these claims are detailed, by province, below.

#### Alberta

The volumes of Crown timber sales claimed by Alberta to be at arm's-length and for which a pass-through analysis should be conducted is contained in its original November 12, 2003, questionnaire response and in two more recent submissions. In a letter dated May 18, 2004, at page 8, the GOA stated that "at least 1.5 million cubic meters of wood were sold in arm's length transactions in the period of review" and "more than 2 million cubic meters of provincial Section 80/81 wood moved between unrelated parties." A letter submitted on May 24, 2004, on behalf of the Canadian parties further states that at least 1,724,826 cubic meters of Section 80/81 log volume was "moved from unrelated parties" during the POR and should therefore be removed from the subsidy rate calculation. See Respondent's May 24, 2004, letter "First Administrative Review, Pass-Through of Benefit to Arm's Length Purchasers of Log and Lumber Inputs" dated May 24, 2004, at page 8. For the reasons described below, we preliminarily determine that Alberta

has failed to substantiate its claim that logs entering sawmills during the POR included logs purchased in arm's-length transactions.

The GOA and the Canadian parties have failed to provide any evidence to support the claim that there were arm's length sales of logs. They have provided only vague assertions of "transfers" to "unrelated parties" that "likely represent sales, and could include both cash and other forms of transactions." *Id.* at page 7 (emphasis added). Thus, they have only provided conjecture, not evidence, that these were, in fact, sales or that they were at arm's-length. In addition, with respect to volume, Alberta asserts that "the Alberta numerator should be decreased by a substantial amount, e.g., at least 1,724,826 cubic meters of log volume, to account for arm's-length transactions during the POR." Again, Alberta has failed to establish the basis for this claim. *Id.* at page 7 (emphasis added). In particular, Alberta's figures include logs from both Crown and private sources. Moreover, Alberta is basing its claim for its 1.5 million figure on data obtained for calendar year 2002, rather than the POR. *Id.*; see also the GOA's November 12 Questionnaire response, Exhibit 69, "2003 Update" at pages 5-6.

In addition, at verification, the Department obtained information that further undermines Alberta's claims. In Alberta, the GOA explained that it is common for sawmills to enter into agreements where a tenure-holding independent harvester will supply timber to the sawmill but the sawmill will pay the stumpage directly to the province. We examined three separate contracts between mills and harvesters of Crown timber that include this provision, which is known as "delegation of signing authority" ("submission authority"). We also reviewed the timber return associated with one of the contracts to confirm that the timber dues were made by the sawmill directly to the GOA. Under this type of agreement, the sawmill simply pays the tenure holder for harvesting and hauling services. In such cases, there is not an arm's length log sale—i.e., there is no log sale at all between the sawmill and the harvester because the sawmill is paying the Crown directly for the timber. More importantly, any stumpage benefit goes directly to the sawmill paying the stumpage fee, just as if the sawmill were drawing from its own tenure and contracting out for harvesting and hauling services. Accordingly, because the GOA has failed to substantiate its claim that sawmills purchased Crown logs in arm's-length transactions during

the POR, a pass-through analysis is not warranted.

#### British Columbia

The Canadian parties and the Government of British Columbia (GBC) claim that "at least 25.7 percent of logs harvested from Crown lands and consumed in sawmills were purchased at arm's length during the POR," of which about 20 percent were logs sold by independent harvesters and 5.7 percent logs sold by tenure holders with sawmills. May 24, 2004, at 6; see also BC November 12, 2003, Questionnaire Response at BC-IV-26. In support of this claim, B.C. provided survey data on what were purported to be B.C.'s primary sawmills' arm's length log purchases. See the "Norcon Forestry Ltd. Survey of Primary Sawmills' Arm's Length Log Purchases in the Province of British Columbia" at Appendix I of the March 15, 2004, letter from Steptoe & Johnson, LLP. We have examined the transactions which the Canadian parties and the GBC claim involved arm's-length sales of logs harvested from Crown lands during the POR and preliminarily have determined that these sales were not conducted at arm's-length.

At verification, we learned that these transactions involved sales of Crown logs through Section 20 small business auction sales which are administered under the Small Business Forest Enterprise Program (SBFEP) and sales to mills by small "woodlot" tenureholders. Most of these transactions are structured under standard contracts called "Log Purchase Agreements" in which sawmills purchasing the Crown timber are billed for the Crown stumpage fee directly by the B.C. Ministry of Forests. See BC Verification Report. Although the terms of these agreements may vary, most also involve additional payments and services incurred by the sawmill purchasing the logs, including (1) payments to a contractor for logging and harvesting the logs; (2) cash advances or "decking advance" to the small business tenureholder or to the independent harvesters; and (3) providing equipment to the harvester to defray harvesting costs. As explained in the Alberta section, above, where the sawmill, not the tenure-holding harvester, pays the Crown directly for the stumpage fee of the harvested timber, there is no arm's-length sale of a log between the sawmill and the harvester. Under this arrangement, the stumpage benefit goes directly to the sawmill paying the stumpage fee, just as if the sawmill were drawing from its own tenure and contracting out for harvesting and hauling services. Moreover, the debtor/

creditor relationship and other aspects of the contractual relationships further call into question whether transactions between the parties are at arm's-length, even if log sales were to take place.

The log transactions which the GBC claims were at arm's-length also involve exchanges of logs between tenure holders with sawmills. These transactions are mostly volume based exchanges that occur because of domestic processing requirements under B.C. law. Under these provisions, major B.C. tenure holders may only dispose of unneeded logs harvested from their own tenure by swapping these with logs with other major tenure holders. *See* B.C. Verification Report. The contracts involving these logs demonstrate that they merely involve log exchanges necessitated by government restrictions; they are not freely negotiated, arm's-length sales of logs. *Id.*

For the reasons explained above, we preliminarily have concluded that the B.C. has failed to demonstrate that sawmills purchased Crown logs in arm's-length transactions during the POR. Therefore, a pass-through analysis is not warranted.

#### Ontario

The Canadian parties and the Government of Ontario (GOO) claim that about 42 percent of the total timber harvested from Crown lands during the POR, approximately 6.5 million cubic meters, was sold by independent harvesters in arm's-length transactions during the POR. May 24, 2004, letter at 8. They further state that the GOO provided detailed information at verification showing that the 25 largest sawmills in Ontario purchased 4,391,798 cubic meters of Crown softwood logs from unaffiliated tenure holders during the POR. *Id.* For the reasons described below, we preliminarily have determined that the Canadian parties and the GOO have not demonstrated that the volume of Crown logs sold by independent harvesters or the volume of Crown logs purchased by sawmills during the POR involved transactions conducted at arm's-length.

The GOO requires that the tenure holders in the province enter into a long-term wood supply agreement with a sawmill. This requirement is reflected in Section 25 of the Crown Forest Sustainability Act. *See* GOO November 12, 2003, Questionnaire Response at ON-59 and ON-60. In addition, sawmills are typically required also to enter into private agreements with tenure holders as a condition of entering into a formal Section 25 supply agreement. *Id.* The GOO also issues so-called "commitment letters," which

outline wood supply commitments with sawmills that independent harvesters must meet as a condition of holding the tenure. The record therefore demonstrates that the relationship between so-called "independent" harvesters and sawmills is not at "arm's-length." Rather it is governed largely by provincial mandates to enter into various arrangements with the mills. Moreover, we have found once again that, similar to Alberta and B.C., contracts examined at verification demonstrate that the stumpage fees for the Crown timber are actually paid for by the sawmills and not the independent harvesters. *See* GOO Verification Report. The sawmills simply pay the harvester for harvesting and haulage costs. Again, in these transactions the stumpage benefit goes directly to the sawmill paying the stumpage fee and not the tenure holder. As explained above, under this type of arrangement, there is no arm's-length sale of a log between the sawmill and the harvester and we therefore preliminarily have determined that no pass-through analysis is required for the transactions reported by Ontario.

For the reasons explained above, we preliminarily have concluded that Ontario has failed to demonstrate that sawmills purchased Crown logs in arm's-length transactions during the POR. Therefore, a pass-through analysis is not warranted.

#### Manitoba and Saskatchewan

The claims by Manitoba and Saskatchewan and the Canadian parties in the May 24, 2004, letter that "there is definitive record evidence demonstrating arm's-length transactions" in both provinces during the POR are, in fact, merely vague and unsubstantiated assertions.

Manitoba asserts that independent "loggers" harvested 61,583.60 cubic meters of softwood timber during the POR, about 9.2 percent of the total softwood harvest. MB November 12, 2003, Questionnaire Response at MB-16. However, Manitoba also states that "the province has no information on these harvesters' affiliations, if any." MB November 12, 2003, Questionnaire Response at MB-18. As such, we fail to see how Manitoba can claim that the reported volume of log sales in fact were arm's-length transactions.

Saskatchewan merely claims that many licensees without a licence to operate a sawmill harvested Crown timber during the POR. SK November 12, 2003, Questionnaire Response at SK-34. Saskatchewan reports that "FPP licensees harvesting 173,766.981 m3 of Crown timber during the period of

review did not have a license to operate a sawmill (or other type of treatment plant) during the period of review." SK November 12, 2003, Questionnaire Response at SK-35. Saskatchewan also provides a table listing the volume and value of Crown stumpage harvested by FPP licensees and indicates which licensees were not licensed to operate a sawmill or other treatment plant. However, this table provides no information about the harvesters' affiliations with any of the mills that ultimately purchased the harvesters' logs. SK November 12, 2003, Questionnaire Response at Exhibit SK-S-3.

For the reasons explained above, we preliminarily have concluded that Manitoba and Saskatchewan have failed to demonstrate that sawmills purchased Crown logs in arm's-length transactions during the POR. Therefore, a pass-through analysis is not warranted.

#### Denominator

As noted above, the Department is determining the stumpage subsidies to 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 numerator of the calculation, the Department has included only the benefit from those softwood Crown logs that entered and were processed by sawmills during the POR (*i.e.*, logs used in the lumber production process). Accordingly, the denominator used for this calculation includes only those products that result from the softwood lumber manufacturing process.

Consistent with the Department's previously established methodology, we have 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) that resulted from lumber production at sawmills, and residual products produced by sawmills that were the result of the softwood lumber manufacturing process, specifically, softwood fuelwood and untreated softwood ties.

During the course of this administrative review, we repeatedly sought information regarding the GOC's sales denominator data for each of the provinces under review. This includes actual shipment values for the POR for Quebec, Ontario, Alberta and British Columbia (B.C.), however, despite our requests that data was not provided for Saskatchewan and Manitoba.

Specifically, in our September 12, 2003 initial questionnaire, we requested the GOC to provide, by province, the total f.o.b. value of all lumber shipments and sales of co-products (such as wood chips and sawdust) produced during the softwood lumber manufacturing process during the POR. Further, in that initial questionnaire, we warned the GOC that failure to cooperate could result in the use of adverse facts available:

If you do not act to the best of your ability to comply with our requests for information, we may use information that is adverse to your interests in conducting our analysis. Our decisions will be made on the basis of information received during this proceeding (including information from you), in light of applicable provisions of U.S. law.<sup>4</sup>

In its November 13, 2003, response to the Department's initial request for softwood lumber and softwood co-product shipment values, the GOC stated:

As in the investigation, many of the provincial totals are confidential and cannot be disclosed by Statistics Canada. Those values, indicated by an "X," are not included in the denominator totals in Attachment A. In limited circumstances, where the Statistics Canada data are confidential, Canada has used public Statistics Canada data to derive *estimates* for shipment values. See Exhibit GOC-GEN-5, Table 7 (estimates of Saskatchewan POR softwood lumber shipments and production, and Saskatchewan and Manitoba POR co-products shipments) \* \* \*

In the case of lumber shipment values for Saskatchewan, the GOC used data from the underlying investigation to calculate average unit values that they projected to the POR using softwood lumber price indices. The GOC, in turn, multiplied the indexed average lumber unit values by actual POR volume data for Saskatchewan to arrive at an estimated POR lumber shipment value. In the case of softwood co-product shipment values for Saskatchewan and Manitoba, the GOC adopted a similar approach and estimated values for the two provinces using data from the underlying investigation. See e.g., GOC-GEN-46 of the GOC's March 15, 2004, submission. In this manner, the GOC derived estimated POR shipment values for Saskatchewan and Manitoba.

In our February 6, 2004, supplemental questionnaire, we explained that if confidentiality restrictions prevent the GOC from providing the data requested, the GOC should contact the official in charge and also arrange for the affected

producers to provide the necessary information directly to the Department, for release under administrative protective order, if necessary.

In its March 8, 2004, response, the GOC claimed that actual POR lumber shipment values, such as those requested for Saskatchewan and Manitoba, are confidential and cannot be disclosed under Canadian law. The GOC further stated that the Department's request that STATCAN contact companies for confidential information would require months, not weeks, and if the Department wanted Canada to attempt to collect such data, a lengthy extension would be necessary.

On March 24, 2004, the Department issued another supplemental questionnaire to the GOC, specifically related to this confidential data issue for Manitoba and Saskatchewan. In the supplemental questionnaire, we reiterated our request that the GOC provide the actual POR softwood lumber shipment and softwood co-product sales data for Saskatchewan and Manitoba. We further requested the GOC to provide a clear and specific explanation as to why it considers the actual POR shipment values of softwood co-products from Saskatchewan and Manitoba and actual POR shipment values of softwood lumber from Saskatchewan to be confidential.

In its April 1, 2004, response, the GOC explained that the actual values for Saskatchewan and Manitoba co-products shipments, and Saskatchewan POR softwood lumber shipments are confidential because disclosure of the data could reveal company-specific information. It stated that, with respect to Saskatchewan and Manitoba, there are very few producers. For example, it claimed that in Saskatchewan four Forest Management Agreement licenses (FMA's) operate only five sawmill establishments and those establishments use almost 93 percent of all Crown logs harvested in the province. See page 2 of the GOC's April 1, 2004, response and the GOC's November 12, 2003, response at SK-3. The GOC also claimed that disclosure of the provincial totals could potentially reveal the individual shipment information for all or some of the producers in the province, which would be a criminal violation of the Statistics Act. See page 2 of the GOC's April 1, 2004, submission.

Regarding Manitoba, the GOC similarly explained that the province has only four sawmill establishments accounting for 82 percent of all softwood sawlogs harvested in the province. See page 2 of the GOC's April 1, 2004, submission; see also the GOC's November 12, 2003, questionnaire

response at MB-3 to MB-4. The GOC also claimed that disclosure of provincial totals could reveal the individual shipment information for some or all of those companies, which would be a criminal violation of the Statistics Act. See the GOC's April 1, 2004, submission at page 2.

During verification, we discussed with STATCAN, the GOC agency responsible for supplying the denominator data, its policies concerning the release of confidential data. According to STATCAN officials, the release of confidential data is permitted under section 17(2) of the Confidentiality Act provided that STATCAN obtains written consent from the individual or company that provided the information. See page 2 of the June 2, 2004, Memorandum to Eric B. Greynolds, Program Manager, from Margaret Ward, Import Compliance Specialist, "Verification of the Questionnaire Responses Submitted by the Government of Canada and Statistics Canada," (STATCAN Verification Report). STATCAN officials stated that they have sought discretionary releases in the past. See *Id.* at 2, discussing STATCAN's attempt to obtain company-specific data from Canadian petroleum companies. We asked STATCAN officials whether they attempted to obtain permission for a discretionary release of the denominator data we requested. In particular, we asked whether they sought a discretionary release for the softwood lumber shipment data for Saskatchewan and the softwood co-product information for Saskatchewan and Manitoba. The GOC indicated that it made no effort to seek a waiver of disclosure from any softwood lumber producers, including those in Saskatchewan and Manitoba, even though that option was available to the GOC as detailed in the Canadian Statistics Act at 17 (2)(b). See page 2 and Exhibit 2 of the STATCAN Verification Report.

At the same time that it was refusing to provide the denominator information repeatedly requested by the Department, the GOC, working in conjunction with STATCAN and Canadian Customs, filed a three volume submission on March 15, 2004, containing confidential information from over 45 producers and importers of subject merchandise. During verification, officials from Canadian Customs described how, in the course of a ten to fifteen day period, they managed to contact and receive written consent to disclose confidential information from approximately 50 companies. See page 4 of the June 2, 2004, Memorandum to Eric B. Greynolds, Program Manager, from

<sup>4</sup> In the subsequent supplemental questionnaires issued to the GOC regarding denominator issues, we instructed the GOC to follow the filing requirements outlined in the Department's September 12, 2003, initial questionnaire.



Margaret Ward, Import Compliance Specialist, "Verification of the Log Import Data Submitted by the Government of Canada, Statistics Canada, and Canada Border Services Agency" (STATCAN and Customs Verification Report), of which a public version is on file in room B099 of the CRU. The GOC's March 15, 2004, filing was a voluntary submission filed on the final day of the new factual deadline purportedly to establish that log import data from STATCAN and Canadian Customs were inaccurate and, therefore, unuseable for benchmark purposes.

Furthermore, we note that the GOC released the log import data included in its March 15, 2004, submission pursuant to Canadian Customs' disclosure law. The law governing the release of Canadian Custom's data is similar to the Canadian Statistics Act in that both allow for the disclosure of confidential information when consent is received from the person or organization that provided the information. See section 107(9)(c) of the Canadian Customs Act provided at Log Import Exhibit 2 of the Log Import Verification report and section 17(2) of the Canadian Statistics Act, which is included in Exhibit 2 of the STATCAN Verification Report.

Section 776(a) of the Act requires the use of facts available when necessary information is not available on the record, an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. There can be no doubt but that the GOC, as the respondent in this aggregate review, is aware that full and complete lumber shipment value data for each province is required so that the Department can calculate the denominator. With respect to the lumber shipment value for Saskatchewan (*i.e.*, lumber shipments from sawmill establishments), we preliminarily determine that the GOC, in spite of the Department's explicit and repeated requests, withheld information requested by the Department. We similarly determine that, with respect to softwood co-products shipments for Manitoba and Saskatchewan (*i.e.*, softwood co-products produced during the softwood lumber manufacturing process by sawmill establishments), the GOC withheld information requested by the Department. The GOC has acknowledged that it is withholding the requested information under a claim of confidentiality and, instead, has provided the Department with estimates for the shipment values. Consistent with section 776(a) of the Act, in the absence of the requisite information on the

record, we are resorting to the use of facts otherwise available to determine the shipment values of these products from Saskatchewan and Manitoba.

Section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department has found that the GOC has failed to cooperate to the best of its ability by failing to make any effort to seek waivers from the small number of affected companies in Manitoba and Saskatchewan and that an adverse inference is warranted. The Federal Circuit recently addressed the issue of adverse facts available in *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1379–84 (Fed. Cir. 2003) (Nippon Steel). In interpreting section 776(b) of the Act, the Federal Circuit held that "the statutory mandate that a respondent act to 'the best of its ability' requires the respondent to do the maximum it is able to do." 337 F.3d at 1382.

As noted above, there can be no doubt but that respondents are aware that full and accurate lumber value shipment data and co-products data are necessary for the Department's subsidy calculation. Indeed, obtaining accurate data to calculate the denominator is central to the Department's subsidy rate calculation and was an issue throughout the underlying investigation and the Department's subsequent remand redetermination.

We base our preliminary finding that the GOC failed to act to the best of its ability on the fact that the GOC failed to put forth its maximum efforts to obtain the requested information. Notably, the GOC expended considerably more effort to obtain information when it apparently viewed the information as favorable. Specifically, with respect to the STATCAN import data the GOC was able to contact approximately 50 firms and obtain confidentiality waivers from a majority of those firms within a period of ten to fifteen days. Despite the Department's repeated requests, however, the GOC made no effort to contact the very small number of companies in Manitoba or Saskatchewan to seek similar waivers. See page 2 of the STATCAN Verification Report.

Given the GOC's apparent ability to contact and obtain confidential import data from so many individual companies in such a short time frame, we reject the GOC's assertion that the Department's request for STATCAN to contact a limited number of companies for permission to release an aggregate

value for confidential lumber and co-product shipment information was unreasonable because it would require months, not weeks, to collect such data, as well as a lengthy extension of any outstanding questionnaire responses.<sup>5</sup> The GOC's failure to make any effort to seek such waivers evidences its failure to put forth its maximum effort to obtain the requested information when juxtaposed with its effort to obtain waivers to submit confidential import data to the Department, *i.e.*, information that it deemed helpful to itself. Given the similarities in the confidentiality provisions of the Canadian Customs' disclosure law and the Canadian Statistics Act both of which permit the GOC to seek waivers permitting disclosure of confidential information, we reject the GOC's claim that the Canadian Statistics Act prohibited in all instances the release of the shipment value data requested by the Department. We therefore conclude that the GOC could have sought, at the very least, a confidentiality waiver from the major sawmills in the two provinces without undertaking any undue administrative burden or requiring any lengthy extension to respond to the Department's questionnaires. Moreover, during verification, we asked GOC officials to specify their rationale for labeling as confidential the lumber shipment data from Saskatchewan and the lumber and co-product shipment information from Manitoba (*e.g.*, whether the release of aggregate figures would effectively identify a dominant producer's production levels in a given province). They failed to provide a rationale, claiming that the rationale was itself confidential. See page 2 and 3 of the STATCAN Verification Report.

When employing an adverse inference in an administrative review, the statute indicates that the Department may rely upon information derived from (1) a final determination in a countervailing duty or an antidumping investigation; (2) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (3) any other information placed on the record. See section 776(b) of the Act; 19 CFR 351.308(c).

<sup>5</sup> Our initial request for the shipment values was made in our September 12, 2003, initial questionnaire and was reiterated repeatedly until the issuance of our March 24, 2004, questionnaire. Thus, the GOC had considerably more time to gather the actual POR shipment data, particularly the lumber and co-product shipment data for Saskatchewan and Manitoba, than the 10 to 15 day period it spent soliciting and collecting the company-specific log import data included in its March 15, 2004, voluntary filing.



As adverse facts available, we have relied upon information supplied by the GOC in its questionnaire responses. To determine the POR lumber shipment value for Saskatchewan, we are using the softwood lumber unit price for Manitoba during the POR. This is the lowest unit price reported in the Prairie Provinces<sup>6</sup> during the POR. See GOC-GEN-36 Table 7. We multiplied Manitoba's POR softwood lumber unit price, 137.52 C\$/cubic meter, by Saskatchewan's actual POR lumber shipment volume, as found in Exhibit 45 Table 2 of the GOC's March 15, 2004, submission, to arrive at a POR softwood lumber shipment value for Saskatchewan of C\$141,233,040.<sup>7</sup>

To determine the Saskatchewan POR co-products value, we are using the 2001 ASM proportion of softwood co-products to softwood lumber value, 10.28 percent. We note that the 10.28 percent reported for Saskatchewan represents the lowest ratio calculated for any of the provinces. We then applied this softwood co-product unit ratio to the revised POR softwood lumber shipment value for Saskatchewan, C\$141,233,040, to arrive at a POR co-products value for Saskatchewan of C\$14,518,756.51.

Similarly, to determine the Manitoba POR co-products value, we are using the 2001 ASM proportion of softwood co-products to softwood lumber value from Saskatchewan, 10.28 percent. We then multiplied the softwood co-product unit ratio by softwood lumber shipment value for Manitoba, C\$95,883,000, to arrive at a POR co-products shipment value for Manitoba of C\$9,856,772.4. We have found the use of Saskatchewan's 2001 ASM proportion of softwood co-products to softwood lumber value to be reasonable, given that Manitoba is a neighboring province of Saskatchewan.

The GOC has also requested that the Department include shakes and shingles in the denominator as residual products.

The Department would have included softwood shakes and shingles in the denominator, given that they appear to have resulted from the softwood lumber manufacturing process, however, at verification, we learned from GOC officials that shakes and shingles are often treated with chemicals. See page 9 of the STATCAN Verification Report in which officials indicate that shakes and shingles are commonly chemically treated. Although untreated shakes and shingles result from the softwood manufacturing process, chemically treated shakes and shingles do not. At verification we learned that the GOC submitted shake and shingle data at the 5-digit level, in which the data consisted of a single sub-heading that contained both treated and untreated shakes and shingles. Thus, the manner in which the GOC presented the shakes and shingles data left no way of separating the chemically treated shakes and shingles values from those that were untreated. See *Id.* at page 9 where we confirmed that the ASM questionnaire from which the GOC derived the shake and shingle data does not solicit information for the category beyond the 5-digit level, making it impossible to run data queries that would separate chemically treated and untreated shakes and shingles. As we have no way separately to determine the values of treated and untreated shakes and shingles in the residual products category, the Department has not included any shakes and shingles products in the denominator of the subsidy rate calculations.

In this review, the GOC argues that the denominator used by the Department should be expanded to include "other softwood products" produced by non-sawmill wood product producers using inputs obtained from sawmills. As explained above, the Department's denominator methodology was designed to include only those products that directly result from the softwood lumber manufacturing process, and not everything that simply uses lumber as an input. We have determined that the products listed by the GOC in the "other softwood products" category should not be included in the denominator because the products are outputs of non-sawmill wood product manufacturers that may use lumber as an input, but are not the direct result of the softwood lumber manufacturing process. Inclusion of such products is inappropriate because it is inconsistent with the methodology used to calculate the numerator. As noted above, allocation of the total subsidy requires that the numerator and

denominator be calculated on a consistent basis.

Concerning softwood co-products produced by non-sawmill establishments, 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 establishments in the non-sawmill 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 produced by 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.

## Analysis of Programs

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

#### A. Provincial Stumpage Programs

In Canada, the vast majority of standing timber that is sold originates from lands owned by the Crown. Each of the reviewed Canadian provinces, *i.e.*, Alberta, B.C., Manitoba, Ontario, Quebec and Saskatchewan,<sup>8</sup> has established programs through which they charge certain license holders "stumpage" fees for standing timber harvested from these Crown lands. These programs, the sole purpose of which is to provide lumber producers with timber, are described in detail in the province-specific sections of these preliminary results.

#### 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

<sup>6</sup> The Prairie Provinces are defined as Alberta, Manitoba, and Saskatchewan.

<sup>7</sup> During verification, STATCAN officials presented a packet containing the minor corrections they found in the course of preparing for verification. Officials explained that they discovered that the softwood lumber production and shipment volume information originally reported in Exhibit 45, table 2 of the GOC's March 15, 2004, submission contained confidential data regarding Saskatchewan, Prince Edward Island, and the Yukon Territories. STATCAN submitted a corrected version of the submission in which it redacted the volume information for the territory and provinces. See Exhibit 1 of the STATCAN Verification Report. We note that, prior to verification, the volume figures in question were already in the public domain, as the GOC had included the figures as part of a submission that was placed on the public file of the Central Records Unit and served to all interested parties on the public service list by the GOC.

<sup>8</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.

Department's determinations from *Lumber IV* that the provincial stumpage programs constitute financial contributions provided by the provincial governments and that they are specific. However, there is new information on the record of this review that was not on the record in the underlying investigation that has resulted in our preliminary decision to use different benchmarks against which to measure the adequacy of remuneration, *i.e.*, to measure the benefit conferred.

#### Financial Contribution and Specificity

In *Lumber IV*, the Department determined, consistent with section 771(5)(B)(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 noted that the ordinary meaning of "goods" is broad, encompassing all "property or possessions" and "saleable commodities." See Issues and Decision Memorandum at 29. 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. See Issues and Decision Memorandum, at 29–30. 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 *Lumber IV*, we continue to have found that the stumpage programs constitute a financial contribution provided to lumber producers within the meaning of section 771(5)(B)(iii) of the Act.

In *Lumber IV*, 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 saw mills and remanufacturers that produce the subject merchandise. Issues and Decision Memorandum, at 51–52. This is true in each of the reviewed provinces. No information in the record of this review warrants a change in this determination and, thus, the Department continues to have found that the 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 section 351.511(a) of the CVD Regulations 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.

Section 351.511(a)(2) of the CVD Regulations sets forth the hierarchy for selecting a benchmark price to determine whether a government good or service is provided for less than adequate remuneration. 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 stemming 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 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. See 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>9</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 *Lumber IV*, the Department determined that there were no useable in-country market-determined prices to use to assess the adequacy of remuneration under tier one of the regulatory hierarchy. See Issues and Decision Memorandum at 36–40. Hence, the Department resorted to the second tier in the hierarchy, *i.e.*, world market prices. Under the second tier, the Department compared Crown stumpage prices to timber prices in certain United States border states. *Id.* at 40–45.

For the reasons discussed below, the Department has determined that there are no private market prices in the provinces under review that can serve as benchmarks. Unlike the investigation, however, in this review we have

<sup>9</sup> Preamble, 63 FR 65377–78 (emphasis added); see also *Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 20259.

additional information on private timber prices in Canada. Specifically, we have private stumpage prices from New Brunswick and Nova Scotia (the Maritimes). We preliminarily have determined that those prices are an appropriate benchmark, consistent with the first tier of our regulatory hierarchy. Consequently, for the reasons discussed below, we have used the private Maritimes' timber prices to measure the benefit conferred on softwood lumber producers from Crown stumpage programs.<sup>10</sup>

#### There Are No Useable First-Tier Benchmarks Other Than the Maritimes

In this administrative review Manitoba and Saskatchewan have not reported prices for private stumpage sales; B.C., Alberta, and Ontario provided no usable prices for private stumpage sales; Quebec provided private stumpage prices charged in its province. However, as discussed in detail below, although the private prices reported in Quebec are based upon actual transactions in Canada, record evidence demonstrates that these prices are not suitable for use as a benchmark within the meaning of section 351.511(a)(2)(i) of the CVD Regulations.

#### Provinces of Manitoba and Saskatchewan

With respect to Manitoba and Saskatchewan, there is no province-specific data upon which to base a first tier benchmark arising from those provinces.

#### Province of British Columbia

As noted above, B.C. did not provide private stumpage prices for the record of this proceeding. Instead, the Province provided prices from auctions the government administers under the Small Business Forest Enterprise Program (SBFEP). The Preamble to the CVD Regulations notes that actual sales prices from government-run competitive bidding would be appropriate where the government sells a significant portion of the goods or services through competitive bid procedures that are open to everyone, that protect confidentiality, and that are based solely on price. See Preamble at 65377. The

SBFEP auction is only open to small businesses that are registered as small business forest enterprises.<sup>11</sup> As noted above, prices from a government auction are an appropriate benchmark only if the government sells a significant portion of the good or service through competitive bid procedures that are open to everyone. In *Lumber IV*, following the guidelines laid out in section 351.511 of our regulations, we did not rely on these prices as we found that they were not competitively run because they were not open to all bidders.

#### Province of Alberta

The private market prices that the GOA submitted cannot serve as an adequate benchmark. In accordance with section 351.511(a)(2)(i), we examined Alberta's private price data and government competitive bid data reported in Alberta's Timber Damage Assessment (TDA) 2003 update. See GOA's November 12, 2003, response at Exhibit AB-S-69. Based on the evidence on the record, Alberta's private timber market prices are in fact administratively set and do not reflect market determined prices as required by the CVD Regulations. Thus, we are unable to use these transactions as benchmark prices.

The TDA prices proffered by Alberta are guidelines established by the government for the purpose of determining the compensation due to tenure holders that have had portions of their allocated public forest felled due to the infrastructure development activities of energy and mining companies. To compensate for timber which has been felled as a result of such activities, the energy and mining companies are required to pay TDA to the tenure holders. The TDA is administratively set compensation that does not represent a price paid by a harvester for standing timber. This timber is not harvested for commercial purposes. In fact, the trees that are cleared by these energy and mining companies are often left on the ground where they were cut.

Additionally, energy and mining companies have no means to negotiate this price, which is administratively set by the GOA, on a transaction-specific basis,<sup>12</sup> nor are they in the business of

harvesting trees for use as a raw material in lumber production and many of these trees are not put to any kind of economic use. See GOA's November 12, 2003, response at Exhibit AB-S-5 and Alberta Verification Report at page 18. Thus, we determine that the TDA prices do not reflect a market price for timber in Alberta.

Moreover, prices derived from an analysis of Commercial Timber Permit (CTP) and Timber Quota Certificates (CTQ) prices cannot serve as benchmark prices. Here, the CTP and CTQ benchmark prices are not prices between private parties, but are prices for Crown timber administratively set by the GOA. We verified that most CTPs are sold directly by the government to a small select group of operators or local loggers rather than through open auctions to any potential buyer. *Id.*, at page 2. Thus, the price of CTPs reflect no real competition for the right to harvest timber. Although CTQs, which also confer the right to harvest, are sold by auction, the actual stumpage fee levied on the harvested timber is set through adherence to the Timber Management Regulations (TMR). In addition, the GOA has acknowledged that it has not allocated any quotas on a competitive basis since October 1995. See GOA's November 12, 2003, response, Volume 4, Table 25, at Exhibit AB-S-50. Thus, neither CTPs or CTQs are market-based.

Based on all of this information, we reject private market prices in Alberta for use as a benchmark in the preliminary results for this administrative review. Our decision not to use private prices in Alberta is guided by the Preamble, our regulations, and a reasonable analysis of the facts on the record.

#### Province of Ontario

In its November 12, 2003, submission, Ontario provided a survey of private prices prepared by Demers Gobeil Mercier & Accociés Inc. (DGM). This pricing data was prepared for the sole purpose of responding to the Department's questionnaire in this administrative review which highlights the need to verify the reliability of the data. Moreover, in Ontario, the private market constitutes only 7 percent of the overall harvest, with Crown timber accounting for the remaining 93 percent of the harvest. Where the government dominates the market for a good it is likely that the government's prices can

(compensation) which this damage assessment fee is based on was negotiated by the parties involved. However, once the system was set in place, no further negotiations have taken place on the topic of price.

<sup>10</sup> In the current review, petitioners allege that a ban on the export of logs also provides a countervailable benefit. We did not address this allegation in the underlying investigation, or in this review, because any benefit provided through an export log ban would already be included in the calculation of the stumpage benefit based upon our selected market-based benchmark prices for stumpage. See the "Provincial Stumpage Programs Determined to Confer Subsidies" section of the Issues and Decision Memorandum, at page 26, footnote 5.

<sup>11</sup> Timber harvested under section 20 of the SBFEP accounts for 8.7 percent of the total provincial softwood harvest and 8.3 percent of the provincial Annual Allowable Cut (AAC) during POR.

<sup>12</sup> The damage assessment fee was developed through meetings between tenure holders, the energy and mining companies, and the GOA. During these meetings, the timber price (*i.e.*,

affect private prices for those goods. For these reasons, it is important for the Department to examine closely whether the private prices submitted by the province are, in fact, market-determined prices in accordance with the CVD Regulations. Examining potential benchmark prices, the Department attempts to ensure the reliability of such information including the independence of the data and the methodology used to compile it.

At verification, we attempted to examine the survey methodology, including the pool and nature of the survey respondents. Ontario, however, was unable to provide certain underlying data requested by the Department that goes directly to the independence and reliability of the survey. See Ontario Verification Report at page 10. Because the Department was unable to verify the private pricing data to determine its reliability and accuracy, the data cannot serve to establish a market benchmark.

#### Province of Quebec

Throughout the conduct of this proceeding respondents have argued that the private provincial standing timber market in Quebec is a competitive market unaffected by the prices charged on Crown lands and, therefore, can serve as an appropriate benchmark under the first tier of the adequate remuneration hierarchy. However, based on the Department's analysis in this administrative review, we have found that private prices for standing timber in Quebec are unsuitable for use as a benchmark because the incentives that tenure holders face vis-a-vis the private market are distorted by a combination of the Government of Quebec's (GOQ's) administered stumpage system, the relative size of public and private markets, feed back effects between the private and public markets, and a non-binding annual allowable cut (AAC).

In this administrative review, the GOQ reported that there were 818 mills (*i.e.*, 78.5 percent of the mills in Quebec) in the "exclusively private" category during the POR.<sup>13</sup> In isolation, this statistic seems significant; however, as discussed in detail below, there are two related facts that limit its significance. First, sawmills without access to Crown timber account for a small volume of the total harvest from private forests. Second, sawmills with access to Crown timber also dominate the private market.

#### Sawmills Without Access to Crown Timber Account for Small Harvest Volume in the Private Forest

The 818 mills that source exclusively from private lands accounted for only 13.87 percent of the total softwood stumpage sourced from private wood lots and 1.73 percent of the total softwood processed during the POR. Although there are a large number of mills in this category, these mills process relatively minuscule volumes and make up a limited percentage of the total softwood lumber market in Quebec. On an individual mill basis, each of the 818 mills, on average, sourced only 705.5 cubic meters (M<sup>3</sup>) of softwood stumpage from private forests during the POR. Therefore, on average, each of the 818 mills from the "exclusively private" category accounted for only 0.50 percent of the total average softwood stumpage harvested by a single mill in the "exclusively public" category (*i.e.*, 140,370 M<sup>3</sup>) during the POR.

#### Sawmills With Access to Crown Timber Dominate the Private Market

Apart from the 818 mills, there are 172 mills that source stumpage from public, private, and "other" sources.<sup>14</sup> These 172 mills have tenure and harvest from provincial Crown lands, but they also source a portion of their stumpage from private, federal, and "other" lands. These 172 mills sourced 86.13 percent of the total private stumpage harvested in Quebec during the POR. Therefore, 86.13 percent of the total private stumpage harvested in Quebec during the POR was sourced by mills that also source stumpage from public and/or "other" sources.

At the same time, the 94 mills from the "public/private" category and the 78 mills from the "public/private/other" category, obtained only a small percentage of their total harvest during the POR from private lands. Specifically, the 94 mills from the "public/private" category harvested 87.78 percent of their stumpage from public sources and 11.70 percent of their stumpage from private sources. The 78 mills from the "public/private/other" category harvested 42.55 percent of their stumpage from public sources, 39.10 percent of their stumpage from "other" sources, and 18.35 percent of their stumpage from private sources. Thus, the remaining 172 mills in

Quebec's private stumpage market made up the majority of the private stumpage purchases during the POR (*i.e.*, 86.13 percent), but, more importantly, these purchases of private stumpage represent less than 19 percent of their total stumpage sourcing during the POR. The data, therefore, indicate that the public stumpage market is a much more important sourcing component of mills in the "public/private" and "public/private/other" categories, and, not surprisingly, the market on which these mills focus the majority of their interests and operations.

The ratios above indicate that, on a sawmill-specific basis, the mills in the "public/private" and "public/private/other" categories even though they source only a small percentage of their total harvest from the private market, that they dominate this market. This dominance is pronounced when analyzed on both a corporate and a regional basis.

At a corporate level, we obtained information from the GOQ regarding the volume of logs that each sawmill in Quebec is authorized to consume.<sup>15</sup> Next, using information obtained from the GOQ, we grouped the sawmills according to their corporate parent. We found that the GOQ has authorized six corporations, Compagnie Abitibi-Consolidated du Canada (Abitibi), Tembec Industries Inc. (Tembec), Domtar Inc. (Domtar), Kruger Inc. (Kruger), Bowater Produits forestiers du Canada Inc. (Bowater), and Uniforet Scierie-Pate Inc. (Uniforet), to consume approximately 60 percent of all standing timber in Quebec in 2002. All of these corporations operate tenure holding sawmills, many of which are in the "public/private" and "public/private/other" categories. Further, five out of six of these corporations operate at least one of the ten largest sawmills that were authorized to process standing timber from public and private lands. See, *e.g.*,

<sup>15</sup> As explained above, we requested actual consumption volume data for each of the mills that source stumpage exclusively from the private forest, but the GOQ claimed it was not able to provide data for every mill. Instead, the GOQ provided the largest mills from each of the four sourcing categories. However we also have actual consumption data on those sawmills sourcing from public and private forests. See GOQ's November 12, 2003, response at Exhibit 102 (Exhibit 102). Therefore, in sections of these preliminary results, we are either using authorized consumption as a proxy for each sawmill/corporation's or its actual consumption during the POR if the data was included in Exhibit 102. For purposes of illustrating the dominant role certain sawmills/corporations play in Quebec, we find that the use of authorized consumption data, where necessary, is a conservative proxy.

<sup>13</sup> See *Quebec Private Price Documentation Memo* illustrating the data worksheets used to derive these ratios.

<sup>14</sup> These 172 mills come from two different categories: (1) 94 mills that source stumpage from public and private forests in Quebec; and (2) 78 mills that source stumpage from public, private, and "other" forests. "Other" equals sourcing from provinces outside of Québec. See Exhibit 119 for further discussion.

GOQ's November 12, 2003 response at Exhibit 48.

At the regional level, even the limited information the GOQ provided concerning actual consumption by individual sawmills indicates that within each administrative region, the majority of private stumpage is processed by one to four tenure holding corporations. For example, in region 2, Abitibi harvests more private standing timber than all of the top five sawmills from the "exclusively private" category combined. See also, Exhibit 102 and 171 of the GOQ's questionnaire responses and *Quebec Private Price Documentation Memo*.

### The Feed Back Affect

As we have explained in our description of the GOQ's administered stumpage system, the GOQ's parity technique<sup>16</sup> is a partial function of the prices paid by private forest contractors for standing timber on private lands within the province. Under this system, the MRNFP conducts surveys regarding the private prices paid by these forest contractors to derive what it refers to as the Market Value of Standing Timber (MVST) in the private forest. The GOQ then plugs the MVST into the parity technique formula to determine the stumpage price for softwood harvested on Crown lands. Thus, under this arrangement, the lower the price paid for private stumpage in Québec by the forest contractors, the lower the rate charged for public stumpage.

According to the GOQ, the private forest contractors included in the MVST survey are individuals that harvest and take title of private standing timber.<sup>17</sup> GOQ officials further stated that the forest contractors do not necessarily own sawmills. At verification we found that any prices directly paid for private stumpage by tenure holding sawmills are not captured in the MVST survey and are therefore not included in the parity system directly.

Although not directly included in MVST survey data, the GOQ's administered pricing system does have a significant impact on the private market. The survey data is based on the prices that private forest contractors pay to the landowners, which, in turn, reflect the price that the contractors' customers are willing to pay. Because of the dominant role that tenure holders in

Quebec play in harvesting timber on private lands, it is reasonable to conclude that tenure holders exert a disproportionate influence on the price that contractors pay land owners. This conclusion is consistent with statements on the record from private wood-lot owners protesting the GOQ's administration of the public forests. In statements made by the Federation of Wood Producers of Québec (FPBQ), an association of private forest landowners in Québec, in a presentation before Québec's National Assembly, the FPBQ criticized many aspects of the GOQ's stumpage technique and its negative impact on private land owners that sell standing timber. Among the FPBQ's complaints was the manner in which the GOQ conducted its survey of private prices. In addition to complaining about the sample size used in the survey, the FPBQ urged the GOQ to include other forms of transactions in the survey, such as "significant volumes of timber auctioned on public land."<sup>18</sup> Regarding its call for public auctions, the FPBQ stated that it:

\* \* \* will make it possible to reduce a prejudice caused by the current system to private forest producers. Indeed, the forest industry has an interest in maintaining a low value of standing trees in private forests, as the determination of this value provides the basis for calculating forest user fees.

Thus, as pointed out by the FPBQ, the market dominance of the small number of tenure corporations in the "public/private" and "public/private/other" categories ultimately has an indirect effect on the prices charged in the public forest.<sup>19</sup> What the FPBQ's

<sup>18</sup> See Quebec Verification Report at Exhibit 16, p. 163.

<sup>19</sup> The evidence, which supports the argument that the GOQ's administration of the public forests negatively affect those who work in Québec's private stumpage markets due to the MRNFP's system for administering the stumpage programs on Crown lands, includes excerpts from a transcript of a meeting that took place before the *Commission Permanente de L'economie et de Travail* (the Commission) in the National Assembly of Québec on September 2000. This transcript records the parliamentary proceeding between the FPBQ and the Commission. Specifically, representatives of the FPBQ were presenting an August 2000, Brief on Bill 136, and Act amending the Forest Act and other legislative provisions (*i.e.*, White Paper—see Quebec Verification Report at Exhibit 16, pages 8–45 and 158–193). The proceedings and White Paper are the result of petitions which were circulated among those who are part of the private forests in Québec and had nearly 5,000 signatures. The petitions indicated that there were complaints regarding the concept of residual supply limits, the parity technique, mill to market adjustments, the access that private forest owners have to their markets, etc. While one of the petitions addressed the concerns of those who deal primarily with hardwood markets, the other petition did not distinguish between hard or softwood markets. Moreover, the sections of the parliamentary proceedings (*i.e.*, hearing transcripts) and the White

petition highlights is the fact that, from the private timber market's perspective, the MRNFP's system for administering the public forests adversely affects its ability to do business. The Crown presence in the market negatively impacts the price at which private wood-lot owners can expect to sell their stumpage and the White Paper is their attempt to address and mitigate these issues. It also illustrates the non-market driven priorities which the GOQ's system propagates. In particular, it is interesting to note that one of the members of the commission actually directly states that without the GOQ's intervention, the northern mills' commercial existence would be in jeopardy. The GOQ's system for administering the public forests places a high priority on its typical concerns of job creation, retention of communities, etc. rather than letting the market determine what forest resources in the province are commercially viable. Thus, the GOQ's administered pricing system effectively determines the market price for private standing timber.

### Sawmills With Access to Crown Timber Can Avoid Sourcing in the Private Forest

Further distorting the incentives that Tenure holders face vis-a-vis the private timber market is the fact that AAC on public lands is not binding. Thus, tenure holders do not enter the private market primarily motivated by the need to secure timber supplies. The AAC is not binding for the following three reasons:

1. Tenure holders can rollover unused AAC allocation to the next year;
2. Tenure holders are allowed to exceed their AAC allocation in a given year; and
3. Tenure holders can shift unused portions of their AAC allocations to other sawmills within the same corporate family.

Data from the GOQ indicates that tenure holding sawmills, on average, are allotted more public stumpage than they can process in a given year. For example, for fiscal years 2000–2001

Paper on the record focus on the MRNFP's administration of the public forests, the topic of residual volume, the parity technique, and mill to market adjustments. These areas of concern are common to both hardwood and softwood markets. Additionally, with respect to these broad bureaucratic and government run aspects of the MRNFP's administration of the public forests there is no difference between how the MRNFP manages the public's hard and softwood stumpage markets (*i.e.*, the parity technique uses the same methodology for both hard- and soft-wood species). Also, a number of the signatories of the petition are organizations that we know have interests in the softwood markets (see Quebec Verification Report at Exhibit 16, pages 3–5).

<sup>16</sup> The parity technique system is the process by which the Ministère des Ressources naturelles de la Faune et des Parcs (MRNFP) determines what it will charge for stumpage harvested on Québec's Crown lands—See the Department's June 2, 2004, Quebec Verification Report (Quebec Verification Report) at p. 4.

<sup>17</sup> See Quebec Verification Report at p. 5–6.

through 2002–2003, TSFMA's in Quebec harvested, on a weight-average basis, 95.95, 87.34, and 92.46 percent, respectively, of the stumpage allotted under the tenure agreements. This trend is also reflected at the mill level. During verification, we collected information concerning specific mills consumption from public, private, and other sources of supply. The information we reviewed indicated that there were several years in which mills did not process all of the Crown stumpage they were allocated. See, e.g., Quebec Verification Report at Exhibit 20, pages 10, 40, 48, 54, and 84.<sup>20</sup>

The softwood stumpage volume that is assigned to mills in the “public/private” and “public/private/other” categories is not sequential nor is it mandatory. This means that these mills are not required by law to purchase stumpage from the private market at any time during the year. In reality, the system relies on the theory that the MRNFP will be able to accurately estimate a mill's actual needs, production capacity, and business strategy for purposes of estimating a mill's residual volume (*i.e.*, AAC). Thus, hypothetically, if the MRNFP estimates correctly and a mill chooses to only use its public stumpage allocation (*i.e.*, residual volume/AAC) for a particular year, the mill will not have enough stumpage supply to meet its production needs for the year and will have to shut down once it had used up its public stumpage supply.

Record evidence indicates that even if the MRNFP were to correctly estimate a company's allocated tenure/AAC in a given year, there are aspects of Quebec's tenure system that lessens a mill's need to harvest from private lands. For example, during verification GOQ officials stated that if an individual mill did not use all of its allocated tenure in a given year it could “rollover” any unused volume to the next year (see Quebec Verification Report). Moreover, if a corporate family of mills did not use up or wanted to shift the annual amount of residual volume/AAC allocated to them for a given year or any other period of time, the mills have the ability to “roll-over” any unused public stumpage for use during the next year or, if applicable, assign it to another mill within its corporate family should they choose to do so (see Quebec Verification Report). During verification, we reviewed documents which showed that sawmills within the same corporation could and did shift unused tenure allocation amounts to mills with large

production capacities that were in need of additional standing timber. See, e.g., see verification exhibit 20 at pages 34A, 68A, 69A, 70A, 72A, 73A, 74A, 77A, and 79A).

Another important factor to consider with regard to the MRNFP's system for allocating AAC is the fact that a mill with tenure can request revisions to its allocated volume based on numerous factors that could arise between the regular 5 year review periods. Based on the statements of GOQ officials and documents we collected during verification, the MRNFP's non-periodic review of a mill's residual volume often involves a mill's request for increasing its residual volume (see Quebec Verification Report). An example of the type of change that the MRNFP would consider include a mill's addition of more, improved, or new technology, additional shifts, etc. This change, according to GOQ officials, is typically effected through correspondence between the MRNFP and the mill management (see Quebec Verification Report at Verification Exhibit 20, pages 59A, 61A, 68A, 69A, 70A, 72A, 73A, 76A, 77A and 79A). While a number of the documents included in verification exhibit 20 discuss tenure allocation amounts on a corporate level, they all illustrate the MRNFP's ability to adjust residual volume allocations when requests and/or evidence is provided to effect these changes. Thus, if a mill is able to present the appropriate argument, it will be able to persuade the MRNFP to change to its AAC allocation prior to the typical allocation review period which occurs every 5 years.

#### **Benchmark Characteristics and Price Setting in a Normal Functioning Market**

A true benchmark price for stumpage should reflect bidding by sawmills that are motivated primarily by the need to secure long-term timber supplies. When this is the case, sawmills have an incentive to bid up prices to competitive levels. However, given the timber market structure and pricing situation in Quebec described above, tenure holders with sawmills have no such incentive. The desire to secure timber suppliers is not what primarily motivates them to bid on private timber because they have access to more timber than they want on public lands. In fact, because of the GOQ's administration of the parity technique system and the indirect market feed-back effect described above, bidding up the price for private timber actually hurts tenure holders by increasing the price they pay for timber on public lands, timber that accounts for the vast majority of their total input and therefore of their total timber costs. As

we stated above, the 172 mills from the “public/private” and the “public/private/other” categories in Québec's private stumpage market made up the majority of the private stumpage purchases during the POR (*i.e.*, 86.13 percent), but, more importantly, these purchases of private stumpage represent less than 19 percent of their total stumpage sourcing during the POR. Therefore, tenure holders not only have no incentive to bid up prices for timber on private lands, the GOQ has given them a clear incentive to bid down those prices to reduce the price they pay for timber on public lands. This incentive structure, which results from a combination of the GOQ's administration of the parity technique system, the relative size of public and private timber markets, the non-binding AAC, and the pricing formula used to calculate stumpage for provincial timber, undermines the private market price as a benchmark.

We must emphasize that our conclusion is independent of the relative price of public and private timber. In the POR, the private price happened to be slightly higher than the public price, which could mean that tenure holders bid down prices to the reservation levels of timber stand owners. But downward price pressure on private timber prices could also force them below prices on public lands. In any event, a combination of the indirect market feed-back effect and the relative size of the public and private timber markets combine to create a strong incentive for tenure holders to bid down private timber prices as far as they can, and where public and private timber prices end up relative to each other is not material. The strong inter-relationship between the government and private prices, with the government pricing system creating downward pressure on private prices, makes the private prices an inappropriate benchmark because they would not capture the full amount of any benefit from the Crown stumpage system.

Based on all of this information, we preliminarily have found that prices of private standing timber are effectively determined by the Crown prices and are not suitable for use as benchmarks in determining whether the GOQ sells Crown stumpage for less than adequate remuneration.

#### **Private Stumpage Prices in New Brunswick and Nova Scotia**

Private stumpage prices for New Brunswick and Nova Scotia (together, the Maritimes) were submitted on the record of this review by the Government of New Brunswick and petitioners,

<sup>20</sup> The details concerning these exhibits contain business proprietary information.

respectively. These prices are contained in separate price surveys prepared by AGFOR, Inc. Consulting for each of the Maritimes' governments. See Exhibit 2 New Brunswick's February 28, 2004, submission (New Brunswick Report) and Exhibit 135, Volume 8 of petitioners' March 5, 2004, submission (Nova Scotia Report).

Private prices from the Maritime Provinces were not on the record during the investigation. Therefore, these prices were not considered by the Department in assessing the adequacy of remuneration from the provincial stumpage programs in that segment of the proceeding. See Issues and Decision Memorandum at 38–39. Because private price data for the Maritimes are on the record of this administrative review, we have closely examined these prices to determine whether they constitute market-determined in-country prices under the first tier of our adequate remuneration hierarchy. See section 351.511(a)(2)(i) of the CVD Regulations.

#### Determination of Whether Maritimes' Prices are Market-Determined Prices

In determining whether the Maritimes' price data are usable in our benefit analysis, we examined the price data reports that contained these prices. As an initial matter, these reports were prepared by AGFOR Inc. Consulting on behalf of the Maritimes' governments to establish the bases for their administered stumpage rates and not to respond to any allegations raised in this proceeding. Record evidence indicates 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. This private supply constitutes a significant portion of the overall market in the Maritimes, accounting for 49.7 percent of the total harvest in New Brunswick and over 91 percent in Nova Scotia. See New Brunswick questionnaire response, NB Volume 1 at page 4. See also, Nova Scotia supplemental questionnaire response dated April 5, 2004, at page 4.

The New Brunswick Report contains price data for the period July 1, 2002, to November 30, 2002, which coincides with the period covered by this review. While the Nova Scotia Report contains price data from 1999, we preliminarily determine that this data can be indexed to the POR using a lumber-specific index reported for the Atlantic Region by Statistics Canada. See Benchmark Calculation Memorandum dated June 2, 2004, at page 2. Moreover, the survey data appear to be representative of the

private timber markets in the respective provinces. Both provinces require that Crown stumpage rates be based on the "fair market value" of standing timber, which is determined by a survey of agreements reflecting stumpage prices on private forest lands. A new survey is conducted every five years, and in each of the intervening years the price survey data is adjusted using forest products industrial indices. The consultants that collected the prices in these provinces conducted a wide range of interviews with organizations and individuals with direct and indirect involvement with the forest sector to ensure broad coverage of the entire province. For the Nova Scotia Report, this included interviews with contractors, landowners, group ventures, and mills with and without Crown tenure allocations. In addition, the consultants held meetings with the Regional and Provincial Nova Scotia Department of Natural Resources to gain a broad perspective of the stumpage situation in the province. The data contained in the New Brunswick Report—"Assessment of Market Stumpage Values on Private Lands"—was also collected by consultant interviews as well as a review of stumpage sale agreements. See New Brunswick Report. In particular, data is collected from each of the forest products marketing boards in the province, as well as individual contractors and woodlot owners. Nothing contained in either the Nova Scotia or New Brunswick Reports indicates that the private price data survey were not representative of those prices within the respective provinces, or that the data do not reflect private, market-determined prices.<sup>21</sup>

Petitioners claim that the private stumpage prices in the Maritimes are not suitable benchmark prices to assess the adequacy of remuneration from the provincial stumpage programs examined in this administrative review. See petitioners' March 15, 2004, submission. First, petitioners argue that because the price data contained in the Nova Scotia Report are from 1999, which is not contemporaneous with the POR, they cannot be used to measure the benefit from the provincial stumpage programs. Petitioners also argue that the prices contained in the New Brunswick Report are not market-determined prices, because, similar to

the situation in Quebec, these prices are tied to, and distorted by public timber sales in that province. Finally, petitioners assert that log export restraints operate to suppress log prices in the Maritime Provinces. For the reasons detailed below, we disagree with each of petitioners' arguments.

With respect to the Nova Scotia price data, we have already noted above that this data can be indexed to the POR. When comparing data from different periods, the Department often has had to index data, and we have preliminarily determined that it is appropriate to do so here. Petitioner advances no other bases for objecting to the private prices in Nova Scotia.

Second, petitioners' argument that the private prices contained in the New Brunswick Report are not market-determined prices because they are distorted by public timber sales is based on mere assertions and is not substantiated by record evidence. Petitioners assert that the Crown lands constitute the majority of forest tenures in New Brunswick and therefore play a significant role in setting the private timber price. See petitioners' March 15, 2004, at pages 36–37. Nothing in the record cited by petitioners supports such a conclusion. First, the forest in New Brunswick is essentially evenly split between private hands and the Crown. Thus, unlike the situation in Quebec where 83 percent of the timber is Crown-owned, the evidence does not indicate that Crown timber necessarily dominates the market, as petitioners asserts.

The record evidence indicates that the administered stumpage prices in New Brunswick are based upon private stumpage prices that are market-determined. See New Brunswick Report. Petitioners argue that a few large industrial users in New Brunswick, which lease 97.3 percent of Crown land in New Brunswick, negatively influence private woodlot owners' ability to charge market prices because they also control about 27 percent of the private timber harvested in the province. *Id.* at page 37. Although petitioners imply that the situation in the Maritimes is like that in Quebec, the record does not support such a conclusion. As discussed above, as a result of certain aspects of the provincial tenure system in Quebec, the private timber prices are effectively determined by the government system, and statements by private timber owners in Quebec support that conclusion. See *Quebec Private Prices*, above. The facts concerning the Maritimes differ in key respects from those in Quebec and there is no evidence to support petitioners' allegations. Based on the record facts,

<sup>21</sup> Information on the record indicates that the Nova Scotia and New Brunswick Reports stand in sharp contrast to the DGM Survey submitted by Ontario. As discussed above, the DGM Survey was prepared solely for the purpose of this proceeding, could not be verified, and does not reflect market-determined prices in Ontario. See the section above, discussing Ontario's private prices.



therefore, we find petitioners' assertions do not provide a sufficient basis to reject private prices in the Maritimes as a benchmark.

With respect to petitioners' log export allegations, they have not specified any log export restraints on Maritimes' log sales nor is there any record evidence that would support such an allegation.

For the reasons described above, 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. 19 CFR 351.511(a)(2)(i).

#### Application of Maritimes Prices

Having preliminarily found that these prices are in-country, market-determined prices, we next considered how to apply these prices in our benefit calculations. As an initial matter, we noted that harvesters of private timber in Nova Scotia are required to pay C\$3.00 per m3 into a Forest Sustainability Fund. Therefore, we added this cost to the indexed stumpage prices to obtain the average stumpage price for SPF sawlogs from Nova Scotia. See June 2, 2004, Memorandum to The File through James Terpstra, Program Manager, concerning Benchmark Calculation Memorandum (Benchmark Calculation Memorandum).

Alberta, Manitoba, Ontario, Quebec, and Saskatchewan

The Nova Scotia and New Brunswick Reports contain prices for the general timber species category of eastern SPF.<sup>22</sup> The species included in eastern SPF are also the primary and most commercially significant species reported in the SPF groupings for Quebec, Ontario, Manitoba, Saskatchewan and a portion of Alberta, accounting for over 90 percent of the entire timber harvest across these provinces.<sup>23</sup> Although there is some minor variation of the relative concentration of individual species across provinces, these do not affect comparability for benchmark purposes. The provinces themselves do not generally differentiate between these species; rather, they tend to group all eastern SPF species into one category for data collection and pricing, e.g., Quebec charges one stumpage price for "SPF." For these reasons, we have

preliminarily determined that the Maritimes' prices for eastern SPF are comparable to Crown stumpage prices for the SPF species groupings in Quebec, Ontario, Manitoba, Saskatchewan and a portion of Alberta. Accordingly, in our benefit calculations we have compared these prices to the Crown stumpage prices in each of the provinces to determine whether the Crown prices were for less than adequate remuneration. Where appropriate, we also compared prices of certain non-SPF species for which price data is available in the Maritimes. The actual calculations are discussed in the province-specific sections, below.

#### British Columbia and Western Alberta

With respect to British Columbia and a small portion of western Alberta, the most important commercial timber species is western SPF, where it accounts for more than 68 percent of the harvest in B.C. Two other commercially significant softwood species groups in B.C. are douglas fir-larch (fir-larch) and hemlock-amabilis fir (hem-fir), which account for 22 percent of the B.C. harvest.<sup>24</sup> In assessing the comparability of these species to those contained in the Maritimes' Reports, we note that the majority of all Canadian lumber production is marketed and sold as one generally recognized and commercially interchangeable product, "SPF". Indeed, in the antidumping duty investigation on softwood lumber from Canada a major Canadian lumber company, Abitibi-Consolidated, Inc., told the Department:

While the precise species mix of a stand of SPF timber in say British Columbia can vary from that in Quebec (different species do predominate in the different provinces), it is equally true that species mix may vary in different parts of B.C. and different parts of Quebec. The point is that because SPF is defined and recognized as a mix of any of the above-named species, there is no physical difference between Eastern and Western SPF. A customer ordering SPF from our Western mills might on one day receive all Alpine Fir, as might a customer from our Eastern mills. The next day, the same customer in the West might get a mix of red spruce and lodgepole pine, while in the East it might be alpine fir and jack pine. The precise mix will always vary, both in the East and in the West since SPF is sold as a combination of species.<sup>25</sup>

<sup>24</sup> Western SPF generally includes lodgepole pine, subalpine fir (true fir), and englemann spruce. November 12, 2003, GBC Questionnaire Response (Exhibit 1). SPF volume data for Alberta is based on Verification Exhibit GOA-3. Included in these species categories are pine, spruce, and spruce and pine.

<sup>25</sup> Letter from Arnold & Porter LLP to Department of Commerce, No. A-122-838, B-8 (July 23, 2001), app. to Letter from Dewey Ballantine LLP to Department of Commerce, No. C-122-839 (July 27, 2001), Att. 4.

Commercial interchangeability is thus an important factor in assessing the comparability of our benchmark prices to those Crown stumpage prices that account for the predominant species located in B.C. and western Alberta. On this basis, we have preliminarily determined that a comparison of the Maritimes' prices to those in B.C. and Western Alberta is appropriate for benchmark purposes. However, record evidence also indicates that there are differences in values between eastern and western SPF because trees in the West are generally larger, and yield more and better quality lumber. Therefore, we have adjusted the benchmark prices to account for the higher value trees in B.C. and western Alberta.<sup>26</sup>

Specifically, to account for these differences, we derived ratios estimating the value differences between eastern SPF and the predominant western timber, i.e., western SPF, fir-larch and hem-fir. Lacking market-determined prices for these commercially significant species, we accounted for these value differences by using a ratio of market-determined stumpage prices in the United States of eastern SPF and the predominant western timber.<sup>27</sup> Stumpage is the best measure of this difference because it reflects both the relative value of the wood and the relative harvesting cost; thus, to the extent that there are different values and harvesting conditions and costs between harvesting regions for eastern and western timber, they would be reflected in market-determined stumpage prices.

Additional record evidence reflects the same general magnitude of this difference between the value of eastern and western timber species. Specifically, we examined the ratio of stumpage charges for eastern SPF in Quebec and charges for western SPF in B.C. as well as the ratio between Maritimes' eastern SPF stumpage prices and those charged under the B.C. small business auction program.<sup>28</sup> Each of these ratios are detailed in the Benchmark Calculation Memorandum, which is in the public file in the CRU.<sup>29</sup>

#### Description of Provincial Stumpage Programs

Below, we describe the stumpage programs for each of the provinces and

<sup>26</sup> In addition to this cited record evidence, there are various measures of the greater diameter of western trees. See Calculation Memorandum for B.C. at Appendix 2.

<sup>27</sup> See Benchmark Calculation Memorandum, which contains the actual ratios applied to the benchmark prices.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>22</sup> This category includes, among other species, white spruce, black spruce, red spruce, jack pine, and balsam fir which represents the vast majority of the species harvested in the Maritimes.

<sup>23</sup> 98% for Quebec, 95% for Ontario, 99% for Saskatchewan, 99% for Manitoba, and 80% for Alberta (see separate discussion of Alberta western SPF harvest.)

provide the calculated preliminary *ad valorem* subsidy rate for these programs.

#### 1. Province of Alberta

The province of Alberta provides stumpage under three main tenure arrangements: (1) Forest Management Agreements (FMAs), (2) Timber Quota Certificates (quotas), and (3) Commercial Timber Permits (CTPs). FMAs are mainly used by integrated and larger timber companies, quotas are mainly used by medium-sized companies, and CTPs are primarily used by smaller companies.

An FMA is a long-term (20 years and renewable) agreement between the Government of Alberta (GOA) and a company. The terms and conditions are fully negotiated and approved by the provincial cabinet. FMA holders gain the right to harvest timber with the approval of an annual operating plan. An FMA is an area-based agreement which includes the obligation to manage, on a sustained yield basis, the timber within the agreement area. There were no new FMAs issued during the POR. Existing FMAs accounted for 62 percent of the billed volume in Alberta during the POR.

FMAs are provided to companies that require the security of a long-term tenure. In addition to paying stumpage fees, FMA holders are responsible for a number of in-kind services, including construction and maintenance of roads, reforestation of all areas harvested, management and planning, holding and protection, environmental protection, inventory costs, and any other obligations required by the Department of Alberta Sustainable Resource Development (ASRD). Under the FMA tenure arrangement, negotiations have led to an agreement to use regulation rates on many FMAs (*i.e.*, the rates set out in the Timber Management Regulation (the TMR)). Since 1994, dues for coniferous timber harvested under the authority of an FMA and consumed in sawmills usually are paid at the general rates of timber dues as set out in the TMR. FMAs generally have agreed to pay regulation rates for pulpwood as well. The timber dues paid by FMA holders can also be negotiated between the ASRD and the FMA holder.

A quota certificate is a long-term (up to 20 years and renewable) right to harvest a share of the annual allowable cut (AAC) as established by the ASRD. A timber license is required for a quota holder to harvest the timber. Quota holders are responsible for road construction and maintenance, reforestation (basic and levy), environmental protection costs, and operational planning. In addition, quota

holders are responsible for preparing General Development Plans (GDPs) and Annual Operating Plans (AOPs) for ASRD approval, including road layout and reforestation plans. Quotas are sold by public tender or at an auction to the highest bidder. The charge for competitively sold quotas includes the timber dues as set out in the TMR, holding and protection charges, and a bonus price. The quota provides the allocation of timber to be harvested and the underlying coniferous timber license (CTL) provides the actual cutting authority for the quota. The quota gives the holder license to harvest specific species and maintain utilization standards. There were 9 quotas issued during the POR. The next renewal of quotas will occur during 2006 based on the 20 year cycle. Quotas accounted for 26 percent of the billed volume for the POR.

A CTP is a short-term (averaging 2–3 years) tenure arrangement used to allocate smaller volumes of timber. CTPs are sold either directly or at a public auction. Non-competitively sold CTPs must pay the timber dues as set out in the TMR. There are two types of competitively sold CTPs. The first type includes a bid price on top of the upset price, which is the lowest price a seller will accept, as well as other costs related to in-kind services. The second type of competitively-sold CTP includes a bid price on top of the minimum auction price, other costs related to in-kind services, and the TMR rate for timber dues. A CTP holder must also pay annual holding and protection charges. If the CTP holder does not also hold another major tenure (*i.e.*, an FMA or a quota), the CTP holder must pay a reforestation levy. In addition, a CTP holder must provide an annual operating plan, which includes harvesting and road construction and maintenance. There were 410 CTPs issued during the POR, of which 141 CTPs were sold competitively.

The administered price for non-negotiated FMAs and quota tenure holders is set by using the TMR timber dues and in-kind cost adjustments. Timber dues, as established in Schedule 3 of the TMR, describe the method of calculation of the rates of dues payable for coniferous timber used to make lumber products in a given month based on an average price for lumber in that month. This average is calculated by taking the weekly price for 1,000 board feet of kiln-dried, 2x4, Standard and Better, western SPF for the last week ending in the month preceding the payment month and for the three immediately preceding weeks, as shown in the publication *Random Lengths*

*Lumber Report*. These four weekly prices are converted to Canadian funds and then averaged. This amount is found in Schedule 3, Table Part A and Part B, Column 1.<sup>30</sup> Schedule 3 provides the general rate of timber dues for coniferous timber used to make lumber, pulp, or roundwood timber products. The figures provided in Schedule 3 are the same for pulpwood and sawlogs.<sup>31</sup> Column 1 provides a range of C\$/1,000 board feet; the averaged amount as noted in Column 1 has a corresponding cubic meter value in Column 2. Column 2 represents the timber dues that an FMA tenure holder pays for billed volume of softwood timber. The timber dues are determined after the product has been produced. In addition, Schedule 6 covers the timber dues for timber used to make veneer.

To derive Alberta's administratively-set stumpage rate that we used in our calculations, we divided the total timber dues charged to FMA, quota, CTP, DTA (Deciduous Timber Agreement), and DTP (Deciduous Timber Permit) 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.

#### Fees and Associated Charges, Silviculture and Adjustments

The provinces reported certain fees and associated charges with their tenures (*e.g.*, process facility license fees and ground rent), where applicable. As the ultimate price paid for the harvested timber reflects these fees and associated charges, we are including them in the provincial stumpage price, where appropriate.

#### Silviculture

As discussed above, the Maritimes' benchmark is inclusive of silviculture charges. Therefore, we consider it appropriate to compare a provincial price inclusive of silviculture costs and charges, where applicable.

#### Adjustments

Based on information in the New Brunswick and Nova Scotia reports, we determined that there are certain

<sup>30</sup> Table Part A covers the first 107,296 m<sup>3</sup> of roundwood, while Part B covers excess over 107,296 m<sup>3</sup> of roundwood. Roundwood products include posts and poles.

<sup>31</sup> We note that under FMAs, prices charged for timber used in pulp production are the same as timber dues charged for roundwood and chips. The GOA has indicated that sawlogs and pulplogs are indistinguishable prior to processing; the distinction in name relates exclusively to their ultimate mill destination.

obligatory costs associated with Crown tenures that are above or beyond those incurred by the private Maritime stumpage harvesters that comprise our benchmark (e.g., certain planning and primary road building activities).<sup>32</sup> For these preliminary results, we have granted certain adjustments to provincial stumpage prices for those activities that evidence on the record indicates: (1) Were not incurred by Maritime private stumpage holders; and (2) were legally obligated costs associated with the tenure in the comparison province.

We preliminarily have found that certain adjustments to the derived basic stumpage rate for Alberta are appropriate. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by TSFMA holders during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in Alberta for basic reforestation, forest management planning, holding and protection charges, environmental protection costs, forest inventory costs, reforestation levy, and primary road construction and maintenance cost.

#### Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, see the "Private Stumpage Prices in New Brunswick and Nova Scotia" section of these preliminary results. Because the benchmark prices were higher than the administered prices in Alberta during the POR, we preliminarily have determined that the sale of timber in Alberta was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price

the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in Alberta during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. 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 the "Denominator" section of these preliminary results. As explained in the "Aggregate Subsidy Rate Calculation" section of these preliminary results, 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 the "Country-Wide Rate for Stumpage" section of these preliminary results.

#### 2. Province of British Columbia

In B.C., the provincial government owns 94 percent of the land, in contrast to the 5 percent that is privately owned. The GBC's administrative system that authorizes the granting of rights to harvest Crown timber in B.C. is set forth in the Forest Act. Under the Forest Act, access to Crown timber is provided in exchange for paying stumpage dues and performing certain forestry obligations through the 11 forms of agreements (eight are in the form of licences and three provide harvesting rights in the form of permits). There are three main types: (1) Tree Farm Licenses, (2) Forest Licenses, and (3) Timber Sale Licenses. These three licenses accounted for 68 percent of the Crown timber harvested during the POR.

Tree Farm Licenses (TFLs) are area-based tenures. Licensees occupy and continuously manage forests in a specific area. Each TFL specifies a term of 25 years and describes the Crown and private lands included within the license. The licensees are responsible for costs associated with planning and inventories. These would include forest development plans, management plans, various resource inventories and assessments, as well as other costs including road building, harvesting, basic silviculture, stumpage, and annual rent.

Forest Licenses are volume-based tenures in that they confer the right to harvest a certain amount of timber each year within a given Timber Supply

Area, without designating a specific area of land. A Forest License has a maximum duration of 20 years.

Approval to harvest specific timber under a Forest License is accomplished through the issuance of Cutting Permits. The licensees are responsible for costs associated with planning, road building, harvesting, basic silviculture, payment of stumpage, and annual rent.

Timber Sale Licenses grant the right to harvest timber within a specific Timber Supply Area or TFL Area. Timber Sale Licences have a maximum term of 10 years. Section 20 and 23 sales typically have a one-year term; Section 21 sales have terms averaging 4 or 5 years. Section 20 and 21 are under the Small Business Forest Enterprise Program (SBFEP). Section 20, auction sales, licenses are awarded to the bidder with the highest bonus bid, which is the amount the bidder is willing to pay on top of the upset rate (minimum rate). Section 21 bidders compete on the basis of a set of criteria which includes bonus bids, employment, new capital investment, existing plant, proximity of the plant to the timber supply, the value added through the manufacturing process, and similar criteria. Section 23 sales involve very small volumes harvested for salvage purposes.

The timber pricing system for all tenures is generally determined by two appraisal systems, the Comparative Value Pricing (CVP) system and the Market Pricing System (MPS). The CVP system is used to set stumpage for all tenures except (1) competitive Timber Sale Licenses issued under sections 20 and 21 of the SBFEP, and (2) those qualifying under the "Coast Hemlock Pilot." Under these exceptions, the MPS is used. The CVP is a means of charging specific stumpage rates according to the relative value of each stand of timber being sold. Comparative value prices are established so that the average rate charged will equal a pre-set target rate per cubic meter, given certain assumptions. The relative value of each stand depends upon estimates of the selling price and the cost of producing the end products. Two base rates are established for the province, one for the Coast average market value zone (the Coast), and the other for the remainder of the province (the Interior).

The MPS, established in January, 1999, is a site-specific econometric model that uses results of the SBFEP section 20 auction sales of timber to calculate the "upset" (minimum) stumpage rate for upcoming "competitive" timber sales under sections 20 and 21. The resulting estimate is then discounted to set the upset price, and the winning bidder

<sup>32</sup> Final Report: Review and Recommendations on the Valuation, Allocation and Sale of Crown Timber Resources in Nova Scotia, AGFOR Inc., December 7, 2000, pp. 24–25. Also, Final Report: Assessment of Market Stumpage Values on Private Lands, AGFOR Inc., February 28, 2003, p. 5.

typically adds a bonus bid to determine the total stumpage charge. In addition, section 21 is not only awarded to the highest bidder; other factors such as employment, new capital investment, existing plant, proximity of the plant to the timber supply, and the value added through the manufacturing process are taken into account.

Because the government provides stumpage at administratively-set prices that, even after accounting for differences in forest management and harvesting obligations (as described below), are lower than the benchmark stumpage prices, we preliminarily have determined that the GBC is providing stumpage for less than adequate remuneration.

#### Fees and Associated Charges Silviculture and Adjustments

As discussed above in the "Province of Alberta" section of this notice, we preliminarily have found that there are certain costs incurred by Crown tenure holders that are appropriate to add to the provincial stumpage price. Therefore, we are making certain adjustments to the derived basic stumpage rate for B.C. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by B.C. major tenure holders during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in B.C. for ground rent, primary road and bridge building and maintenance costs, deactivation of primary road costs, basic silviculture, and sustainable forest management costs.

#### Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, see the "Private Stumpage Prices in New Brunswick and Nova Scotia" section of these preliminary results. Because the benchmark prices were higher than the administered prices in B.C. during the POR, we preliminarily have determined that the sale of timber in B.C. was provided for

less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in B.C. during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. To calculate the province-specific subsidy rate, we divided the total stumpage benefit for B.C. by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see the "Denominator" section of these preliminary results. As explained in the "Aggregate Subsidy Rate Calculation" section of these preliminary results, we weight-averaged the benefit from this provincial subsidy program by B.C.'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 of these preliminary results.

#### 3. Province of Manitoba

The Government of Manitoba (GOM) states that the province owns 94 percent of the forest lands and the federal government owns one percent. The remaining 5 percent is private.

The GOM makes standing timber available to those parties that have purchased harvesting rights. These rights entitle the purchaser to acquire timber at a price set by the Forestry Branch of the Department of Conservation, the agency responsible for administering the sale of standing timber of Crown lands.

In Manitoba, there are three ways to acquire timber cutting rights: (1) A Forest Management License (FML); (2) a Timber Sales Agreement (TSA); or (3) a Timber Permit (TP). An FML is a long-term (up to 20 years) license, which may be renewed every five years, to harvest a stated volume of timber in a particular area. Licensees must manage their area to ensure the sustained yield, the achievement of the maximum growth potential, a mandated standard of environmental quality, and the public right of access for recreational and other uses of the forest. The licensee must submit an annual operating plan and additional harvesting reports to the Forestry Branch.

The TSA is a short-term (up to five years) right to harvest a stated volume of timber in a specific area generally issued to small and medium sized operators. There were 185 such agreements in effect during the POR. Similar to the FMLs, the TSA holders must have an annual operating plan, and the stumpage must be paid within 30 days of the end of each quarter in which the timber is cut and scaled.

The TPs are short-term (up to one year) licenses where license holders can only harvest a very small amount of timber. Stumpage must be paid when the permit is issued. There were 2,902 permits in effect during the POR.

Manitoba also has a quota system. The quota is a five-year renewable fixed allocation of timber, whereas a TSA or TP provides direct access to the timber. The GOM states that all but a few quota holders also have timber sale agreements.

Tenure holders pay stumpage fees at either the standard provincial rate or a rate negotiated with the province. The Forestry Service has divided the province into eight different forest regions. The standard provincial rate varies depending on which of the forest regions the timber is harvested from and whether the wood type is Aspen/Poplar or all wood other than Aspen/Poplar. Otherwise, the rates do not vary by species or grade. The GOM used an administratively-set base rate for calculating the stumpage price for TSA holders and TP licensees.

#### Fees and Associated Charges, Silviculture and Adjustments

As discussed above in the "Province of Alberta" section of this notice, we preliminarily have found that there are certain costs incurred by Crown tenure holders that are appropriate to add to the provincial stumpage price. Therefore, we are making certain adjustments to the derived basic stumpage rate for Manitoba. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by major tenure holders in Manitoba during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in Manitoba for forest renewal charges, primary road costs, and obligated silviculture costs that were not credited.

### Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, see the "Private Stumpage Prices in New Brunswick and Nova Scotia" section of these preliminary results, above. Because the benchmark prices were higher than the administered prices in Manitoba during the POR, we preliminarily have determined that the sale of timber in Manitoba was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in Manitoba during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. 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 the "Denominator" section of these preliminary results. As explained in the "Aggregate Subsidy Rate Calculation" section of these preliminary results, 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 the "Country-Wide Rate for Stumpage" section of these preliminary results.

### 4. Province of Ontario

The Government of Ontario (GOO) reported 93 percent of the softwood harvest comes from Crown lands in Ontario, with 7 percent of softwood harvest coming from privately owned lands.

In Ontario, lumber producers obtain wood for use in their mills in five ways: (1) They pay the Government of Ontario

stumpage dues and harvest timber directly from their tenure areas on Crown lands; (2) they obtain logs from a company that harvested the timber from its tenure area on Crown lands; (3) they pay stumpage dues and harvest timber from private timber owners; (4) they purchase logs from a company that harvested timber from private lands; and (5) they import logs from the United States.

The Crown forest area, which the GOO refers to as the Area of the Undertaking, is divided into 54 management units. The GOO makes standing timber on Crown land available to parties that purchase harvesting rights. These rights, often referred to as stumpage rights, apply to a particular area of Crown land and entitle the purchaser to harvest standing timber at prices set by the GOO's Ministry of Natural Resources (OMNR), the agency responsible for administering the sale of standing timber on Crown lands.

Under the Crown Forest Sustainability Act (CFSA), the GOO allocates timber harvesting rights in these management units through two main types of tenure arrangements: (1) Section 26 Sustainable Forest Licenses (SFLs) and (2) Section 27 Forest Resource Licenses (FRLs). A section 26 SFL typically covers all of the Crown forest area in a management unit and conveys the right to harvest all species of trees found in the tenure area. A section 26 SFL is set for an original 20-year term, and is extendable indefinitely every five years. Section 27 FRLs are issued for terms up to five years and can be extended for one year. The GOO reported that section 26 SFL or section 27 FRL does not convey a right of ownership in land or standing timber, a right to a secure price for harvested timber, or the right to sell or unilaterally transfer the license.

The GOO reported that of the 49 section 26 SFLs, 34 are held by single entity companies and 15 are held by entities comprised of multiple shareholders, e.g., a combination of timber harvesters and mill owners. The single entity company or shareholder arrangement which holds a section 26 SFL is obligated to conduct forest management planning, information gathering, monitoring, road building, and the basic silviculture cost (many of which the GOO reimburses) in the management unit.

The GOO reported that, a section 26 SFL typically covers the whole management unit and the timber amounts and species to be harvested are determined through the development of a five-year plan, whereas a section 27

FRL covers only part of the area of a management unit and timber amounts and species are specified. Usually, the coverage area of a section 27 FRL "overlaps" with the area covered by section 26 SFL, and each license holder has the right to harvest particular stands and/or species. The GOO reported that, of the 919 section 27 FRLs in Ontario, 878 are of the "overlapping" variety. The remaining 41 section 27 FRLs are issued for harvesting the timber located in the few management units for which the GOO has not issued section 26 SFLs, but rather maintains the forest management responsibilities.

The GOO stated that it does not distinguish between saw logs and pulp logs. Therefore, the timber harvest data it reported is based on whether the harvested timber was destined for saw mills or for pulp and paper mills. The value data reported does not include "in-kind" services provided by tenure holders, however, the GOO has provided certain estimates of the total value of services that tenure holders are obligated to provide.

The GOO reported that integrated and non-integrated firms pay the same price for stumpage. Stumpage fees are charged after measurement has occurred, which can occur at the logging site or, most often, at the destination mill. The mills conduct the actual scaling (measurement), OMNR conducts scaling audits to ensure accuracy, and the licensee pays the scaling costs.

The GOO reported that the overall provincial price for stumpage on Crown lands that it charges is calculated according to four component charges: (1) The minimum charge, (2) the forest renewal charge, (3) the forest futures charge, and (4) the residual value charge. Ontario reports that some of these component charges differ depending on end product market prices. Ontario contends that prices paid for stumpage represent only a portion of the value received by the province from tenure holders, with the additional value coming from "in-kind" payments, which are discussed in the Ontario adjustments section below.

The minimum charge is set administratively every year depending on the species and the destination of the harvested timber, i.e., whether it is destined for a saw mill or a pulp and paper mill. The GOO states that the primary reason for this charge is to generate a secure source of revenue regardless of market conditions. During the POR, the minimum charge for 97 percent of Crown timber was set at C\$3.44 per cubic meter, and the minimum charge for three percent of

Crown timber was set at C\$0.59 per cubic meter.

The GOO reported that the forest renewal charge generates funds necessary to cover costs of renewing harvest area. This charge covers silviculture costs, and, since 1997, has been determined annually for each management unit and each species within the unit. According to GOO, the monies collected from each management unit go into the Forest Renewal Trust Fund for use for forest renewal costs within that specific management unit.

The third component of the overall provincial stumpage price is the forestry futures charge, which is the same for all management units and species within the province and is set annually. Money collected from this charge is paid into the Forestry Futures Trust Fund and is to be used for costs relating to pest control, fire, natural disaster, stand management, and the silviculture expenses of insolvent licensees. During the POR, the charge was C\$0.48 per cubic meter.

The fourth component of the stumpage charge is the residual value charge, which is assessed when the price of end-forest products produced with timber reaches a certain level determined by the OMNR. For softwood lumber, the RV charge is assessed when the estimated price a softwood mill receives for lumber exceeds C\$364.85 per thousand board feet. This charge is determined on a monthly basis according to a formula.

#### Fees and Associated Charges, Silviculture and Adjustments

As discussed above in the "Province of Alberta" section of this notice, we preliminarily have found that there are certain costs incurred by Crown tenure holders that are appropriate to add to the provincial stumpage price. Therefore, we are making certain adjustments to the derived basic stumpage rate for Ontario. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by major tenure holders in Ontario during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in Ontario for road construction and maintenance costs and forest management planning.

#### Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, see the "Private Stumpage Prices in New Brunswick and Nova Scotia" section of these preliminary results, above. Because the benchmark prices were higher than the administered prices in Ontario during the POR, we preliminarily have determined that the sale of timber in Ontario was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in Ontario during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. 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 the "Denominator" section of these preliminary results. As explained in the "Aggregate Subsidy Rate Calculation" section of these preliminary results, 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 the "Country-Wide Rate for Stumpage" section of these preliminary results.

#### 5. Province of Quebec

In Quebec, the provincial government owns approximately 86 percent of accessible productive forest land, in contrast to private woodlot owners who own 13 percent of accessible productive forest land. Crown lands (e.g., government-owned lands) account for approximately 75.5 percent of the total volume of the softwood timber harvest while private forests account for

approximately 14 percent. The remaining amount of the timber harvest is primarily obtained from lands outside of Quebec. An additional amount, less than one percent, is procured from Federal lands located within the Province.

The GOQ's administrative system for granting rights to harvest stumpage from Crown lands is defined under the legal framework of the Forest Act, enacted in 1996. Under the Forest Act, access to Crown timber is provided in exchange for paying stumpage dues and performing silviculture and other obligations through five types of licenses, as explained below. The Ministère des Ressources naturelles de la Faune et des Parcs (MRNFP) is the provincial agency responsible for administering Quebec's stumpage program and allocating volumes of timber to be harvested from public lands to tenureholders.

Once the MRNFP has determined the amount of stumpage available for harvest by a TSFMA holder, the next step is for the MRNFP to calculate the amount of stumpage dues owed by a TSFMA holder. The price that the MRNFP charges for stumpage rights varies depending on where the timber stand is located. In previous years, the MRNFP divided the Crown lands into 28 zones and charged different prices for each zone. According to the GOQ, these zones, or tariffing zones, delineated areas that were similar in terms of climate, tree size, topography, species mix, etc. Until 1999, the tariffing zones contained both Crown and private lands. However, in 1999 the GOQ amended the Forestry Act, the legislation that governs the sale of standing timber on Crown land. Pursuant to this amendment, in April 2000, the GOQ expanded the number of tariffing zones to 161 to ensure maximum homogeneity in each zone. Further, as a result of the amendment, privately-owned forests were no longer located within any of the tariffing zones.

In Quebec, there are five ways through which the MRNFP sells stumpage rights: Timber Supply Forest Management Agreements (TSFMAs), Forest Management Contracts (FMCs), Forest Management Agreements (FMA), Annual Forest Management Permits (AFMPs), and public auctions.

TSFMA licences account for virtually all standing timber harvested on Crown lands. During the POR, TSFMAs accounted for 98 percent of the softwood Crown timber harvested. As provided by section 42 of the Forestry Act, a TSFMA allows the holder to obtain an annual management permit to supply a wood processing plant or mill.

A TSFMA also authorizes the volume at which particular species can be harvested. To obtain a TSFMA, the applicant must own a wood processing mill. In return for the stumpage rights, the holder of the TSFMA must carry out certain types of silviculture treatments, as specified in the agreement with the MRNFP, and as mandated by section 42 of the Forest Act, required to achieve a pre-established annual yield. The GOQ credits a portion of these silviculture costs towards the payment of the stumpage fees owned under the TSFMA. In addition, the Forest Act mandates the holder of the TSFMA to submit five-year and annual forest plans for required silviculture activities. TSFMA holders are also required to contribute to the forest fire protection agency *Société de protection des forêts contre le feu* (SOPFEU), the insect and disease protection agency *Société de protection des forêts contre les insectes et les maladies* (SOPFIM), and the Forestry Fund. The overall term of the TSFMA is 25 years. However, every five years from the effective date of the agreement, the term of a TSFMA can be renewed for an additional 25 years provided that the holder of the TSFMA has fulfilled its obligations under the agreement. During the POR, the GOQ reported 237 TSFMA holders with rights to access softwood timber.

FMCs are similar to TSFMAs in that they are also subject to the stumpage prices charged by the MRNFP. In addition, holders of FMCs are responsible for the same types of silviculture activities as those covered by TSFMAs. The MRNFP usually enters into FMCs with non-profit organizations or municipalities. FMCs normally cover relatively small forest areas. During the POR, FMCs accounted for less than one percent of the softwood Crown timber harvest.

The FMA type of tenure was introduced in June 2001. Under this type of agreement, the MRNFP may enter into a contract with any legal entity that does not hold a wood processing plant operating permit and that is not related to the holder of such permit. Criteria for an FMA is that forest production is significant in the area under the FMA and the MRNFP deems the granting of the FMA to be in the public's interest. The FMA holder is granted the right to harvest timber but is required to sell the timber to a sawmill. FMA holders have similar obligations like the TSFMA holder; however, the FMA term is only ten years. Both FMCs and FMAs are required to sell the timber harvested under their tenure arrangements to companies with wood processing

operating permits or to apply for authorization to ship the timber outside of Quebec.

Standing timber on Crown lands is also available through AFMPs. Pursuant to sections 79, 93, 94, 95, and 208 of the Forest Act, AFMPs permit the harvest of less desirable forms of timber, often referred to as slash and cull, for use in energy production and metallurgical purposes. The MRNFP issues AFMPs provided that it deems the production of the applicant sufficient and that the slash and cull harvest promotes the growth of stands in a particular forest area. Very little standing timber is harvested under the AFMPs.

The fifth method involves the sale of standing timber on public reserves through public auctions. Public reserves are forest areas in which no timber supply and forest management agreement is in force. However, while these public auctions are permissible under GOQ law, the MRNFP has yet to sell any publicly-owned timber under this method.<sup>33</sup>

Aside from managing the sale of standing timber on Crown lands, the MRNFP collects information on the price of standing timber in private forests. Private market prices for standing timber are obtained through a survey of forest contractors<sup>34</sup> that purchase standing timber from private forests. The MRNFP contracts with three forest consultants, who conduct a census of all purchases of privately-held timber every three years. Between censuses, the MRNFP conducts a sample from private purchasers, selected at random representing about 75 percent of the total population. These surveys are based on actual transactions of timber from private forest lands of forest contractors and mainly cover the purchase of trees in the spruce, pine, and fir species group. The most recent analysis of private stumpage prices in Quebec took place in 2000. Of the 175 companies that purchase standing timber from private lands, 116 responded to the survey. At verification, we learned that to be eligible as a survey respondent, a forest contractor had to have purchased a total of 4000 m<sup>3</sup> in the last four years and have purchased at

least 1000 m<sup>3</sup> in the year prior to the survey being conducted.

The GOQ states that the survey used to derive administered stumpage prices during the POR covered the private forest in its entirety as well as all 15 territories managed by private wood producers' syndicates and marketing boards.<sup>35</sup> Once the survey is complete, the Institute Statistique Quebec compiles a value for each private forest territory covered by a syndicate or wood producer's marketing board. The Institute Statistique Quebec then weights these values by the volume of timber purchased by each respondent. The GOQ explains that the purpose of this step is to improve the statistical accuracy in the calculation of the average market value of standing timber in private forests. The Institute then obtains a single, province-wide average of the survey respondents, referred to as the Market Value of Standing Timber (MVST), by attributing a weight corresponding to the total volume for each wood producers' association territory.

The GOQ, as required by the Forestry Act, uses a system called the parity technique to determine the stumpage value the MRNFP charges to TSFMA and FMC licences. Under the parity technique, the MRNFP employs a complex formula which adjusts the private MVST to account for relative differences that exist between the private MVST and the tariffing zone to be appraised. The MRNFP then calculates an individual stumpage rate that will be charged in each tariffing zone.

As explained above, the MRNFP calculates an administered stumpage price for each tariffing zone. To arrive at the unadjusted administered stumpage rates used in our stumpage calculations, we divided the total softwood stumpage fees paid by TSFMA permit holders during the POR, which accounts for virtually all of the Crown timber harvest in Quebec, for each species by the total softwood stumpage harvested under TSFMAs during the POR for each species. In this manner, we obtained an unadjusted weighted-average stumpage price per species that was paid by TSFMA permit holders during the POR. According to information submitted by the GOQ, the softwood stumpage harvested under

<sup>33</sup> The GOQ states that timber sales by auction has never been used in Quebec although authorized by section 96 of the Forest Act. See Government of Quebec's November 12, 2003, submission at QC-24.

<sup>34</sup> A forest contractor is an enterprise that regularly harvests on private lands and sells the harvested timber to sawmills. These enterprises specialize in harvesting operations and usually are not sawmills. Although a sawmill could technically respond to the survey, respondents have almost entirely been forestry contractors, joint management organizations, a forestry consultant and two hardwood sawmills.

<sup>35</sup> There are 15 wood producers' syndicates and marketing boards in Quebec. Membership is voluntary. Their task is to represent their members in dealings with Federal and local governments on matters related to silviculture, forest management, forest policies, laws, environmental certification, registration of forest producers, resource sustainability, and tax issues.



TSFMAs is equal to the total timber harvested for tenure holding lumber processing plants (*i.e.*, processing plants that produce the subject merchandise). Therefore, we have not incorporated the stumpage fees paid by FMC permit holders into the province-wide administered stumpage rate.

#### Fees and Associated Charges, Silviculture and Adjustments

As discussed above in the "Province of Alberta" section of this notice, we preliminarily have found that there are certain costs incurred by Crown tenure holders that are appropriate to add to the provincial stumpage price. Therefore, we are making certain adjustments to the derived basic stumpage rate for Quebec. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by TSFMA holders during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in Quebec for contributions to the Forestry Fund, administrative forest planning costs, and obligated silviculture costs that were not credited. We also made a negative adjustment for silviculture credits that were for voluntary activities.

#### Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, *see* the "Private Stumpage Prices in New Brunswick and Nova Scotia" section of these preliminary results, above. Because the benchmark prices were higher than the administered prices in Quebec during the POR, we preliminarily have determined that the sale of timber in Quebec was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit

by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in Quebec during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. 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* the "Denominator" section of these preliminary results. As explained in the "Aggregate Subsidy Rate Calculation" section of these preliminary results, we weight-averaged the benefit from this provincial subsidy program by Quebec'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 of these preliminary results.

#### 6. Province of Saskatchewan

In Saskatchewan, the northern half of the province is designated as Forest Crown land. According to the Government of Saskatchewan (GOS), only the lower third of this land contains harvestable timber. This harvestable area where commercial forestry activities occur is referred to as the Commercial Forest Zone (CFZ). The CFZ comprises approximately 11.7 million hectares. Of this amount, the GOS states that 52 percent is considered productive or harvestable land. The GOS states that there are no private lands within the CFZ. In Saskatchewan, all private lands are generally located south of the CFZ. According to information submitted by the GOS, Crown lands accounted for approximately 94 percent of the softwood sawlogs harvested in Saskatchewan during the POR. Private and federal lands accounted for five and one percent of the softwood sawlog harvest, respectively.

The right to harvest timber on Crown lands, or stumpage, can only be acquired by a license pursuant to Saskatchewan's Forest Resources Management Act. These licenses come in three forms: Forest Management Areas (FMAs), Forest Product Permits (FPPs), and Term Supply Licenses (TSLs). The Saskatchewan Environment and Resource Management Department (SERM) is the government agency responsible for the administration of provincial timber programs, which includes setting the price of stumpage in the province.

FMAs grant the licensee the right to harvest Crown timber for a term not exceeding 20 years. At every fifth year of the FMA, the term may be extended for an additional five years. According to the GOS, the FMAs set out the rights and responsibilities of the licensee which, in particular, focus on the long-term sustainable use of Crown land covered by the agreement. The GOS negotiates the terms of FMAs with each licensee. Thus, no standard terms or conditions apply to FMAs.

All FMAs, however, must pay certain charges. FMA licensees are charged forest management fees. These fees vary across the province in relation to the preponderance of timber types within the FMA and the costs associated with reforestation of the species that exist there. Forest management fees, also referred to as forest renewal fees, are used to conduct the province's basic silviculture programs, which include surveys, site preparation, mechanical brushing, cone collection, chemical brushing, planting, fertilizer, spacing, administrative costs, seedlings, and other miscellaneous costs.

Four FMAs were in effect during the POR: The Mistik Management FMA, the L&M Wood Products FMA, the Weyerhaeuser Prince Albert FMA, and the Weyerhaeuser Pasquia-Porcupine. The four FMA licensees operate five different sawmill establishments. Of the four FMAs in Saskatchewan, the GOS indicates that only one has a facility that includes both a sawmill establishment and another type of processing plant at the same location. Specifically, L&M Wood Products FMA at Glaslyn includes both a sawmill and a treatment plant. According to information submitted by the GOS, these four FMAs accounted for approximately 93 percent of the Crown logs that were harvested during the POR. The GOS states that its policy is to grant FMAs to large mills requiring large volumes of timber and that it requires FMA licensees to operate their facilities on a regular basis. Failure to do so could result in the termination of the FMA and the loss of the licensee's tenure. The GOS states that the requirement relates to the province's responsibilities as a landowner as well as to good forest management practices.

FPPs are the second type of stumpage license issued by the GOS. FPPs are annual licenses that confer the right to harvest specified forest products. Each FPP expires on either the date specified on the permit or at the end of the GOC's fiscal year, whichever comes first. FPPs cannot be renewed. The GOS stated that during the POR, 795 FPPs were issued with a total volume of 909,691 m<sup>3</sup>. During the POR, FPPs accounted for

approximately five percent of the province's softwood sawlog harvest. The terms and conditions of FPPs vary in accordance with the type of forest product harvested. The GOS states that it allows FPP licensees to operate in FMA areas. In those instances, the FPPs must pay forest management fees to the FMA licensee. The rates charged to the FPPs are equal to those charged to the FMAs by the GOS. The FMAs then forward these fees to the GOS. FPPs operating on lands not covered by a FMA are required to pay forest management fees directly to the province.

TSLs are similar to FMAs, but have a term of 10 years. TSLs may be area or volume based. As is the case with FMAs, TSLs must pay processing facility and forest management fees. According to the GOS, only one TSL was issued during the POR but there was no harvest under the authority of the TSL. The only TSL in effect during the POR was North West Communities.

The SERM also charges licensees stumpage dues on harvested trees. There are two steps to the SERM's method of setting stumpage rates. These steps apply to all tenure arrangements. The first part is a base rate of dues which applies to each cubic meter harvested during the year. The second part is an incremental rate which applies to a percentage of product value above a threshold trigger price. Information from the GOS indicates that the incremental rates for softwood sawlogs are a partial function of lumber prices as reported in *Random Lengths Lumber Report*, an industry trade publication. With respect to the stumpage dues paid by FMAs, the GOS states that while each FMA uses the same basic structure, each FMA has individually negotiated its base and incremental stumpage rates with the province. These negotiated dues vary among FMAs according to tree size and species. The GOS states that these negotiated rates reflect the relative value of the timber included in the FMA license and that the licenses are negotiated in an arm's-length transaction.

Payments of stumpage dues vary according to license. FMA licensees submit their base dues on a monthly basis. Incremental dues are paid either monthly or quarterly in accordance with the terms of the particular FMA. FPP licensees have three payment options. FPP licensees may pay stumpage dues: (1) When the permit is issued, (2) in equalized payments for a maximum of three equalized payments throughout the year, or (3) monthly, based on the timber scaled during that period. Up-front payment and equalized payment

options are calculated based on the total volume of timber included in the FPP. The amount of dues payable is determined through scaling the amount of timber harvested. The GOS states that scaling is conducted by licensed scalers.

To derive Saskatchewan's administratively-set stumpage rate, we divided the species-specific stumpage value by the volume harvested to derive the specie-specific per unit stumpage price. To this stumpage price we added per unit adjustment costs, in order to derive Saskatchewan's administratively-set stumpage rate (the total tenure-related expenses).

#### Fees and Associated Charges, Silviculture and Adjustments

As discussed above in the "Province of Alberta" section of this notice, we preliminarily have found that there are certain costs incurred by Crown tenure holders that are appropriate to add to the provincial stumpage price. Therefore, we are making certain adjustments to the derived basic stumpage rate for Saskatchewan. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by tenure holders in Saskatchewan during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in Saskatchewan for road costs, processing facilities license fees, FBP application fees, and forest management.

#### Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, see the "Private Stumpage Prices in New Brunswick and Nova Scotia" section of these preliminary results. Because the benchmark prices were higher than the administered prices in Saskatchewan during the POR, we preliminarily have determined that the sale of timber in Saskatchewan was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in Saskatchewan during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. 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 the "Denominator" section of these preliminary results. As explained in the "Aggregate Subsidy Rate Calculation" section of these preliminary results, we weight-averaged the benefit from this provincial subsidy program by Saskatchewan'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 of these preliminary results.

#### Country-Wide Rate for Stumpage

The preliminary countervailable country-wide subsidy rate for the provincial stumpage programs is 8.86 percent *ad valorem*.

## II. Other Programs Determined to Confer Subsidies

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

##### 1. 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).

In *Lumber IV*, the Department found that the loans provided by the CFDCs were made on commercial terms and, therefore, did not provide a countervailable benefit. However, the Department found that FEDNOR grants provided directly to certain entities

during the AUL period provided a countervailable subsidy to the softwood lumber industry. Those grants were all expensed in the year of receipt. *See*, Issues and Decision Memorandum. In this review, the GOC reports additional loans given since the investigation and outstanding during the POR, as well as one new grant disbursed during the POR.

Consistent with *Lumber IV*, we preliminarily have determined that the FEDNOR program is specific within the meaning of section 771(5A)(D)(iv) of the Act, because assistance under this program is limited to certain regions in Ontario. Furthermore, we preliminarily have found that FEDNOR provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act, and confers a countervailable benefit as set forth under 19 CFR 351.504, through a grant provided directly to a softwood lumber producer.

With regard to the CFDC loans given since the POI in *Lumber IV*, we preliminarily have determined that two loans were given at interest rates below the benchmark rate and, therefore, confer a benefit within the meaning of section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a). Our benchmark interest rates are described in the "Benchmarks for Loans & Discount Rates" section of this notice.

Consistent with our treatment of FEDNOR grants in *Lumber IV*, 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 summed the amount of the grant disbursed during the POR and the interest savings on the loans, and divided the combined amount by the f.o.b. value of total sales of softwood lumber for Ontario during the POR. 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 determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

## 2. Western Economic Diversification Program Grants and Conditionally Repayable Contributions (WDP)

Introduced in 1987, the 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 *Lumber IV*, the Department found recurring and non-recurring grants provided to softwood lumber producers under the WDP to be countervailable subsidies and, because of the small amounts involved, expensed each grant to the year of receipt.

During the current POR, the WDP provided grants to softwood lumber producers or associations under two "sub-programs." Under the International Trade Personnel Program (ITPP), companies were reimbursed for certain salary expenses. According to the GOC, certain portions of these grants were expressly dedicated to export promotion in Asian markets; therefore, the GOC excluded those portions from the reported disbursement amounts, consistent with *Lumber IV*. Under the heading of "Other WDP Projects," the GOC responded that no additional disbursements were made during the current POR for certain non-recurring grants examined in *Lumber IV*. However, one new grant was made to a softwood lumber producer or association during the POR.

Consistent with *Lumber IV*, we preliminarily have determined that the WDP is specific under section 771(5A)(D)(iv) of the Act, because assistance under the program is limited to designated regions in Canada. The provision of grants constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confers a benefit as set forth under 19 CFR 351.504.

In accordance with 19 CFR 351.524(c), we are treating the ITTPP grants as recurring benefits. Because the GOC expressly excluded grants supporting exports to non-U.S. markets, we have attributed the reported grants to U.S. exports of softwood lumber from the regions eligible for assistance under this program, *i.e.*, B.C., Alberta, Saskatchewan and Manitoba.

Consistent with our treatment of "Other WDP Projects" in the investigation, we are treating this grant as non-recurring. In accordance with 19 CFR 351.524(b)(2), we have determined that this grant is less than 0.5 percent of total sales of softwood lumber from the regions eligible for assistance under this program. Therefore, we are expensing the benefit from this grant in the year of receipt.

To calculate the countervailable subsidy rate for this program, we have summed the rates for the ITTPP and other WDP sub-projects. Next, as explained in the "Aggregate Subsidy Rate Calculation" section of this notice, we multiplied this amount by the four provinces' relative share of total exports to the United States. Using this methodology, we determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

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

In May 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 under the administration of NRCAN, a part of the Canadian Forest Service.

Funding in the amount of C\$29.7 million was allocated to the Canada Wood Export Program (Canada Wood), a five-year effort to promote Canadian wood exports to offshore markets other than the United States. Another C\$15 million was allocated to the Value to Wood Program (VWP), 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, during the POR, NRCAN entered into research contribution agreements with Forintek Canada Corp. (Forintek) to do research in better resource use, manufacturing process improvements, product development, and product access improvement. The GOC reports that only a portion of the funds allocated for VWP was disbursed during the POR and the funds were used solely for research relating to value-added wood products, not softwood lumber.

Finally, C\$30 million was allocated to the National Research Institutes Initiative (NRII), a two-year program to provide salary support to three national research institutes: Forintek, the Forest Engineering Research Institute of Canada (FERIC) and the Pulp & Paper Research Institute of Canada (PAPRICAN). The GOC reports that neither PAPRICAN nor FERIC conducts research regarding softwood lumber production.

Based on our review of the information provided in the responses, we preliminarily have determined that any assistance provided under the Canada Wood program would be tied to export markets other than the United

States. Therefore, in accordance with 19 CFR 351.525(b)(4), we preliminarily have determined that the Canada Wood program does not confer a countervailable subsidy.

With regard to VWP, we have reviewed the projects funded during the POR and have found that certain of them appear to be related to softwood lumber. We preliminarily have determined that the grants provided under the VWP constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confer a benefit as set forth under 19 CFR 351.504. Because the VWP grants were limited to Forintek, which conducted research related to softwood lumber and manufactured wood products, we preliminarily have determined that they are specific within the meaning of section 771(5A)(D)(i) of the Act. Therefore, we preliminarily have determined that the VWP provided a countervailable subsidy to the softwood lumber industry.

With regard to the NRII, because PAPRICAN's work is limited to pulp and paper, we preliminarily have determined that none of the funding PAPRICAN received conferred a countervailable subsidy on the softwood lumber industry. However, based on our review of the record, we preliminarily have determined that research undertaken by FERIC benefits commercial users of Canada's forests. Specifically, FERIC's research covers harvesting, processing and transportation of forest products, silviculture operations, and small-scale operations. Thus, government-funded R&D by FERIC benefits, *inter alia*, producers of softwood lumber. Similarly, we have found that Forintek's NRII operations, which pertain to resource utilization, tree and wood quality, and wood physics, also benefit, *inter alia*, softwood lumber.

We preliminarily have determined that NRII grants to FERIC and Forintek constitute financial contributions within the meaning of section 771(5)(D)(i) of the Act and provide benefits as set forth under 19 CFR 351.504. We also preliminarily have determined that the grants are specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited to FERIC and Forintek, which conduct research related to the forestry and logging industry, the wood products manufacturing industry, and the paper manufacturing industry. Therefore, we preliminarily have determined that FERIC's and Forintek's NRII funding provided a countervailable subsidy to the softwood lumber industry.

To calculate the countervailable subsidy rate for this program, we first examined whether these non-recurring grants should be expensed to the year of receipt. *See*, 19 CFR 351.524(b)(2). We summed the funding approved for Forintek during the POR under the VWP and NRII components, and divided this sum by the total sales of the wood products manufacturing industry during the POR. We also divided the funding approved for FERIC during the POR by the total sales of the wood products manufacturing and paper industries during the POR. Combining these two amounts, we preliminarily have determined that the benefit under the NRCAN softwood marketing subsidies program should be expensed in the year of receipt.

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 components by the total sales of the wood products manufacturing industry during the POR. We also divided the funding received by FERIC during the POR by the total sales of the wood products manufacturing and paper industries during the POR. Combining these two amounts, we preliminarily have determined the countervailable subsidy from the NRCAN softwood marketing subsidies program to be 0.01 percent *ad valorem*.

#### 4. Payments to the Canadian Lumber Trade Alliance (CLTA) & Independent Lumber Remanufacturers Association (ILRA)

In March 2003, the GOC Department of Foreign Affairs and International Trade (DFAIT) approved a total of C\$15 million in grants under separate agreements with the CLTA and ILRA to underwrite the administrative and communications costs incurred by these forest products industry associations as a result of the Canada-U.S. softwood lumber dispute. The GOC reports that the CLTA is composed of companies located in Alberta, B.C., Ontario and Quebec, which produce not only lumber but all types of forest products, while the membership of the ILRA is made up entirely of value-added wood product manufacturers in B.C. Of the approved sums, the DFAIT disbursed C\$14.85 million to the CLTA and C\$75,000 to the ILRA during the POR.

We preliminarily have determined that this program provided a financial contribution in the form of a grant within the meaning of section 771(5)(D)(i) of the Act and conferred a benefit as set forth under 19 CFR 351.504. Because the program provided grants to two associations, CLTA and

ILRA, we preliminarily have determined that it is specific within the meaning of section 771(5A)(D)(i) of the Act. Therefore, we preliminarily have determined that the GOC grants to CLTA and ILRA provide a countervailable subsidy to the softwood lumber industry.

To calculate the countervailable subsidy rate for this program, we first examined whether this non-recurring grant should be expensed to the year of receipt. *See*, 19 CFR 351.524(b)(2). Because these grants underwrote these associations' costs related to the softwood lumber dispute, we preliminarily have determined that the benefit is tied to anticipated exports to the United States. *See*, 19 CFR 351.514(a). Therefore, we divided the amount approved by total exports of softwood lumber to the United States during the POR. *See*, 19 CFR 351.525(b)(4). Because the resulting amount was less than 0.5 percent, the benefit is being expensed in the year of receipt.

We then calculated the countervailable subsidy rate during the POR by dividing the amount received by CLTA and ILRA during the POR by total exports of softwood lumber to the United States during the POR. On this basis, we preliminarily have determined the countervailable subsidy from this program to be 0.23 percent *ad valorem*.

#### *Programs Administered by the Province of British Columbia*

##### 1. Forest Renewal B.C. Program

The Forest Renewal program was enacted by the GBC in the Forest Renewal Act in June 1994 to renew the forest economy of B.C. 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.

This program provided grants directly to softwood lumber producers in two ways: (1) as part of *ad hoc* arrangements between Forest Renewal B.C. and softwood lumber companies, and (2) as part of established grant programs to support activities such as business development, industry infrastructure, training, and marketing. Because direct grant assistance is provided only to

support the forest products industry, in *Lumber IV*, the Department determined that these grants are specific under section 771(5A)(D) of the Act. The Department also determined that provision of these grants constituted a financial contribution within the meaning of section 771(5)(D)(i) of the Act. *See* Issues and Decision Memorandum. No new information or evidence has been submitted in this review to cause us to reconsider these findings.

The Forest Renewal B.C. program also provided funds to community groups and independent financial institutions, which may in turn provide loans and loan guarantees to companies involved in softwood lumber production. In *Lumber IV*, the Department found that the lumber producers received no benefit, within the meaning of section 771(5)(E)(ii), from the loans without guarantees and the guaranteed loans during the POI because the reported interest rates charged on those loans were equal to or higher than the interest rate charged on comparable commercial loans. *See* Issues and Decision Memorandum.

Effective March 31, 2002, the B.C. legislature terminated the Forest Renewal B.C. program. In the winding-up of operations of the Value-Added Business Unit under the Forest Renewal B.C. program, certain disbursements and other "true-up" value-added commitments were made during the POR. These disbursements were made pursuant to Contribution Agreements that had been entered into prior to the termination of the program.

As noted in the "Recurring and Non-recurring Benefits" section of this notice, all grants provided under this program are expensed in the year of receipt. To calculate the benefit provided under this program, we summed the amount of grants provided to all producers/exporters of softwood lumber during the POR and divided that amount by the f.o.b. value of total sales of B.C. softwood lumber for the POR. Next, as explained in the "Subsidy Rate Calculation" section of this notice, we weight-averaged the benefit from this provincial subsidy program by the province's relative share of total U.S. exports. Using this methodology, we preliminarily have determined the countervailable subsidy from this program to be 0.01 percent *ad valorem*.

During the POR, there were Forest Renewal B.C. directed loans and loan guarantees to softwood lumber producers outstanding under this program. With respect to these loans and loan guarantees, we preliminarily have determined that no benefit is

provided within the meaning of section 771(5)(E)(ii) and 771(5)(E)(iii) of the Act because the reported interest rates charged on each of these loans is equal to or higher than the interest rate charged on comparable commercial loans, described in the "Benchmark for Loans and Discount Rate" section, above.

Many of the land-based activities under the Forest and Environment Business Unit of the Forest Renewal B.C. program have been continued by the Forest Investment Account (FIA), which came into effect on April 1, 2002. For further discussion, *see* the "Land Base Investment Program" section below. As part of the winding-up operations under the Forest Renewal B.C. program, in March 2002, the GBC allocated Cn\$35 million to establish the Coast Sustainability Trust. The purpose of the Trust is to mitigate the adverse effects of government land use planning decisions that have reduced the annual harvest in the Central Coast, North Coast, and Queen Charlotte Islands regions. Thus, the Department will continue to review this program.

## 2. 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, 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 its response, the GBC reports funding it provided to support product development and international marketing projects connected with the subject merchandise. The GBC claims that other spending under these sub-programs did not relate to softwood lumber or to exports to the United States.

We preliminarily have determined that the FII grants provided to support product development and international marketing are countervailable subsidies. The FII grants constitute financial contributions within the meaning of section 771(5)(D)(i) of the Act and provide benefits as set forth in 19 CFR 351.504. The grants are specific because they are limited to institutions and associations conducting projects related to wood products generally and softwood lumber, in particular. *See*, section 771(5A)(D)(i).

Regarding the research sub-program, the GBC reports that it funded approximately 141 research projects during the POR. The GBC claims that this research is not specific to softwood lumber and, moreover, that it involves the government purchase of services.

According to information submitted in the response, investments made through the research program "are expected to provide a positive contribution to the government goal of having a leading edge forest industry that is globally recognized for its productivity, environmental stewardship and sustainable forest management practices." Given the focus of this research, we preliminarily have determined that this research benefits commercial users of B.C.'s forests and, *inter alia*, producers of softwood lumber.

Therefore, we preliminarily have determined that the FII grants provided to support research are countervailable subsidies. These FII grants constitute financial contributions within the meaning of 771(5)(D)(i) of the Act and provide benefits as set forth in 19 CFR 351.504. 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 research related to the forestry and logging industry, the wood products manufacturing industry, and the paper manufacturing industry.

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 for softwood lumber, we divided the amounts approved by total sales of softwood lumber for B.C. during the POR. For grants to support international marketing, we divided the grants approved by exports of softwood lumber from B.C. to the United States during the POR. (As explained above, the GBC did not report grants tied to other export markets.) *See* 19 CFR 351.525(b)(4). For research grants, we divided the grants approved by total sales of the wood products manufacturing and paper industries from B.C. during the POR. Combining these three amounts, we preliminarily have determined that the FII benefit should be expensed in the POR.

We then calculated the countervailable subsidy rate during the POR by dividing the amounts disbursed during the POR. For grants given to support product development for softwood lumber, we divided the amounts disbursed by total sales of softwood lumber for B.C. during the

POR. For grants to support international marketing, we divided the amounts disbursed by exports of softwood lumber from B.C. to the United States during the POR. For research grants, we divided the amounts disbursed by total sales of the wood products manufacturing and paper industries for B.C. during the POR. We combined these three amounts and, as explained in the "Aggregate Subsidy Rate Calculation" section of his notice, we multiplied this total by B.C.'s relative share of total exports to the United States. On this basis, we preliminarily have determined the countervailable subsidy from the FIIP to be 0.13 percent *ad valorem*.

*Programs Administered by the Province of Quebec*

1. Private Forest Development Program

The Private Forest Development Program (PFDP) promotes the development of private forest resources in Quebec. Specifically, the PFDP provides silviculture support to private woodlot owners through payments, either made directly to forest engineers or via reimbursement to the woodlot owner, for silviculture treatments executed on private land. This program is funded by both the provincial government through the MRNFP and by sawmill operators. The majority of the program funds come from the MRNFP. However, under the authority of the MRNFP, wood processing plant operators are charged a fee of C\$1.45 for each cubic meter of timber acquired from private land. This fee provides partial funding for the PFDP.

According to the GOQ's response, there are approximately 13,000 registered forest landowners that receive financial assistance each year under the PFDP. The average financial assistance received by a producer is less than C\$3,000 in any given year. According to the GOQ response, there are approximately 50 sawmills that receive assistance from the program every year.

In *Lumber IV*, we found that this program conferred a countervailable subsidy within the meaning of section 771(5) of the Act. Consistent with *Lumber IV*, we preliminarily have 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. In addition, we preliminarily have determined that payments by PFDP constitute a financial contribution under section 771(5)(D)(i) of the Act, providing benefits as set forth in 19 CFR 351.504.

The GOQ argues that no benefit is provided under this program to sawmill operators because they are required to make contributions to PFDP for lumber harvested on private land. The GOQ states that the sawmill operators' contributions were greater than the amount of silviculture reimbursements the mills received under this program during the POR.

We have not accepted this claim. 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, consistent with *Lumber IV*, we preliminarily have 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. 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.

Consistent with *Lumber IV*, we have treated these payment as recurring. See, 19 CFR 351.524(c). Thus, to calculate the countervailable subsidy provided under this program, we summed the reported amount of grants provided to producers of softwood lumber during the POR and divided that amount by total sales of softwood lumber from Quebec for the POR. Next, as explained in the "Aggregate Subsidy Rate Calculation" section of this notice, we multiplied this amount by Quebec's relative share of exports to the United States. On this basis, we preliminarily have determined the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

**III. Programs Determined To Be Not Countervailable**

*Program Administered by the Government of Canada*

1. Human Resources & Skills Development Worker Assistance Programs (HRSD)

Pursuant to Canada's Employment Insurance Act (EIA), the GOC provides "Part I" unemployment compensation to workers and "Part II" retraining and rehiring assistance to workers, employers and third parties. This support is administered by HRSD

(formerly Human Resources Development Canada), which delegates the delivery of Part II assistance to the regional authorities. The EIA account is funded by contributions from workers and employers. The GOC reports that, although it is authorized to cover any shortfalls in the program, the EIA account is currently enjoying a surplus.

In April 2002, in recognition of the increased number of unemployed workers there, HRSD budgeted C\$13 million for the British Columbia-Yukon Region (BC-Yukon). The GOC states that no funds went to any employers as a result of this. Instead, these funds were to assist unemployed workers find new work, *i.e.*, to provide Part II assistance. According to the GOC, Part II assistance is available to all unemployed workers across Canada. Moreover, the C\$13 million did not represent new funds; these funds were from the EIA account.

In October 2002, the GOC announced that it would provide C\$71 million to assist communities and workers affected by the economic downturn caused by the U.S. imposition of duties on softwood lumber. This aid package had three components: the Work Sharing While Learning Initiative (WSWLI), the Increased Referrals to Training Initiative (IRTI), and the Older Workers Pilot Projects Initiative (OWPPI). Both WSWLI and IRTI provide Part I payments in regions with at least 10% unemployment. WSWLI is available for workers scheduled for lay-off but retained by firms under a restructuring plan. IRTI allows workers to quit in advance of a scheduled lay-off, and still receive unemployment compensation if they enroll in retraining programs. OWPPI, which provides assistance for retraining older unemployed workers, is a pre-existing program that was slated to end in March 2003. Under the October 2002 package, it was extended through March 2004.

The GOC reports that no WSWLI funding was actually provided during the POR, because the only applicant was determined to be ineligible. Regarding IRTI, the GOC reports that 168 workers were referred for training, but that only two workers in Nova Scotia were approved to leave their jobs prior to their layoff dates in order to pursue retraining. With regard to OWPPI, the GOC indicates that there were several projects during the POR, but reported only one that possibly related to softwood lumber. This project involved 18 older logging industry workers in Newfoundland.

In the investigation, the Department exempted softwood lumber products from the Maritime Provinces of New Brunswick, Nova Scotia, Prince Edward

Island, and Newfoundland. *See Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR at 36071 (May 22, 2002) (CVD Order). Accordingly, any benefits provided to softwood lumber producers located in those provinces are not subject to this review. Therefore, we have made no finding of countervailability with respect to the benefits provided to the two workers in Nova Scotia and the OWPPI project in Newfoundland.

With respect to the retraining assistance provided in the April 2002 package and any retraining assistance that was funded by the October 2002 package, the petitioners have alleged that this retraining relieved softwood lumber producers of obligations to retrain workers that were being laid off. The GOC responds that employers in Canada face no statutory or regulatory requirements to provide retraining for workers whose employment is being terminated. Such obligations, if any, would exist in the contracts negotiated between the companies and their employees, though it is not customary to include such retraining obligations in these contracts.

For purposes of these preliminary results, we have accepted the GOC's statement that it is not customary for companies to include mandatory retraining for laid off employees as an element of their labor contracts. Therefore, we preliminarily have determined that softwood lumber producers do not have an obligation to retrain laid off workers and, consequently, that softwood lumber producers have not been relieved of an obligation by virtue of the GOC's retraining programs.

For the final results, we intend to seek further information to confirm the GOC's claim regarding the retraining obligations that softwood lumber producers have assumed.

## 2. Litigation-Related Payments to Forest Products Association of Canada (FPAC)

In May 2002, the DFAIT allocated C\$17 million in grant money to FPAC in support of FPAC's Canada-U.S. Awareness Campaign (CUSAC). CUSAC was a public relations campaign in the United States regarding the softwood lumber dispute between the two nations. The program was expanded in November 2002 to include advocacy activities such as lobbying of U.S. legislators. Of the allotted sum, a total of C\$14 million was disbursed during the POR.

We preliminarily have determined that this program does not confer a countervailable subsidy on the production, sale or exportation of softwood lumber from Canada. The nature of the public relations campaign was to influence decision makers in the United States government, not to advertise Canadian lumber or promote sales of Canadian lumber in the United States. This campaign was an extension of the advocacy activities undertaken by the GOC on behalf of the industry.

We preliminarily have determined that this type of action does not confer a benefit on the production or exportation of the subject merchandise and, therefore, does not result in a countervailable subsidy.

## Program Administered by the Province of Alberta

### 1. Timber Damage Compensation for Forest Management Agreement (FMA) Holders

The petitioners allege that the GOA grants FMA holders the right to compensation from any person who causes loss or damage to any of the timber or any improvements created by the holder. The petitioners explain that energy companies damage large quantities of timber while drilling oil wells, engaging in exploration, or building pipelines on an FMA territory, and are then required by law to compensate the FMA holder for the value of the timber damaged. The petitioners argue that FMA holders do not pay the GOA for the property rights to the standing timber and, therefore, the compensation is a grant that the GOA has entrusted or directed the energy companies and others to pay to FMA holders.

The GOA states that FMA holders are required to pay for all wood cut within their designated FMA area. This requirement exists even if the timber is destroyed by industrial operators such as mining or oil and gas operations. Therefore, according to the GOA, FMA holders are entitled to compensation from industrial operators that damage the FMA holders' timber because the FMA holders must pay the GOA for that timber.

The record evidence indicates that an FMA holder is required to pay the GOA for the timber within the FMA holder's area regardless of whether the FMA holder harvests the timber itself or the timber is damaged or destroyed by a third party. Specifically, section 91(1) of the Timber Management Regulation states that "the holder of a forest management agreement is liable to pay timber dues in respect of timber for

which the holder is, under the terms of the forest management agreement, entitled to compensation from persons other than the Crown." *See* GOA's November 12, 2003, submission at Exhibit 12, page 26. Moreover, the Surface Rights Act establishes that industrial operators are to pay compensation for damage they cause. Finally, there is no evidence to indicate that industrial operators have been entrusted or directed to provide a financial contribution to FMA holders.

Therefore, we preliminarily have found that this program does not provide a financial contribution within the meaning of section 771(5)(D) of the Act and, thus, is not countervailable.

## Programs Administered by the Province of British Columbia

### 1. Job Protection Commission

The B.C. Job Protection Commission (the Commission) was created in 1991, pursuant to The Job Protection Act (JPA), to minimize job loss, particularly in one-industry communities, and to reduce the negative effect on regional and local communities when companies encounter financial difficulties.

In *Lumber IV*, the Department stated that although some benefits were provided under the Economic Plans during the POI, we were unable to quantify the benefits. We also stated that we would further consider this issue in the context of any administrative review. *See* Issues and Decision Memorandum.

Sections 1–19 of the JPA, were terminated by Order In Council of the GBC on May 2, 2002. However, Section 20 of the Act, which was not repealed, allows Sections 1–19 to remain in effect "to the extent necessary" to give any remaining Economic Plans force and effect after the repeal. The JPA "analyzed and coordinated" funding under the Credit Enhancement Emergency Fund (CEEFF), which was a temporary program, lasting from 1996 through 1998, through which several independent lending institutions made loans to companies that were adversely affected by the insolvency of Evans Forest Products and the restructuring of Skeena Cellulose Inc. During the POR, there were no outstanding loans under the CEEFF.

There were eight Economic Plans involving subject merchandise producers, which included commitments that continued after the repeal of the JPA. The GBC provided information regarding these Economic Plans, including copies of each such plan that contained outstanding government loans or loan guarantees



during the POR, but did not provide loan repayment information. The GBC states that it was unable to provide loan repayment information because these are individual loans that are handled directly by the lending institutions.

Consistent with section 777A(e)(2)(B) of the Act, we are conducting this review on an aggregate basis because of the extraordinarily large number of Canadian producers. Given the nature of this program, and the limited number of potential subsidy recipients (*i.e.*, eight companies), any benefits under this program are unlikely to have an impact on the overall rate. Therefore, we preliminarily have determined that it is not necessary to analyze this program in this aggregate review.

#### IV. Programs Determined Not To Confer a Benefit During the POR

##### *Program Administered by the Province of Manitoba*

##### 1. Timber Damage Compensation for Timber Licensees

The petitioners allege that the GOM, under the Manitoba Forest Act (MFA), provides its tenure holders (or licensees) with compensation for the value of all timber cut, damaged, or destroyed in making roads, or boring or operating any salt, oil, or gas wells, in working quarries or mines, or as a result, directly or indirectly, of any such operation or work. The petitioners claim that this extra revenue provided to timber-licensees is a benefit because the licensees do not pay for this right to compensation.

The GOM acknowledges that section 20(2) of The Forest Act authorizes compensation to be paid to timber licensees for damage to timber incurred as a consequence of boring or operating any salt, oil, or gas wells, or in working any quarries or mines. However, the GOM claims that no compensation has ever been paid for such damages to a timber licensee. Moreover, given the significant amount of the annual allowable cut that is uncommitted, no licensee in any area that might be damaged by industrial users would be unable to access its harvest volume.

Because there is no evidence that timber licensees in Manitoba receive compensation for damaged timber, we preliminarily have determined that this program did not confer a benefit, as defined in section 771(5)(E) of the Act, during the POR and, thus, provides no countervailable subsidy.

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

##### 1. 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 *Lumber IV*, 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 *Lumber IV*, 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 preliminarily have 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 the "Benchmarks for Loans and Discount Rates" section of this notice. *See*, 771(5)(E)(ii) of the Act. Using this methodology, we preliminarily have determined that no benefit was provided by this loan because the interest rates charged under this program were equal to or higher than the interest rates charged on comparable commercial loans.

In *Lumber IV*, the Department noted that one of the loans provided by Rexfor was to a company that subsequently entered bankruptcy negotiations with Rexfor and other creditors. As the settlement with the creditors was subsequent to the POI in *Lumber IV*, the

Department did not examine this issue and did not determine whether this debt elimination conferred a countervailable subsidy.

In order for the Department to make such a determination, it is our practice to analyze the subject country's bankruptcy law and procedures to determine if bankruptcy protection is available to all types of companies and if the company in question received special or differential treatment during the bankruptcy proceeding. *See, Final Affirmative Countervailing Duty Determination and Final 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 Comments 6 and 8. In this administrative review, the record contains no information on Canada's bankruptcy law or the specific bankruptcy proceeding involving the company in question. Therefore, we are not able to determine from the information on the record whether the process followed in eliminating this debt conferred a subsidy.

Lacking this information, we have also examined whether the debt forgiveness would confer a benefit during the POR. To do this, we divided the amount forgiven by the total sales of softwood lumber from Quebec during the POI. We used the POI denominator because it was the most contemporaneous with the time of the bankruptcy settlement, which was prior to the POR. Because the amount of the debt forgiveness was smaller than 0.5 percent of the value of sales of softwood lumber for Quebec in the POI, any benefit would be expensed prior to the POR. *See* 19 CFR 351.524(b)(2).

On this basis, we preliminarily have found that the debt forgiveness by Rexfor did not confer a benefit in the POR and, thus, provides no countervailable subsidy.

##### 2. Assistance Under Article 28 of Investissement Quebec

Assistance under Article 28 is administered by Investissement Quebec, a government corporation. In *Lumber IV*, 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.

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.

To determine whether this loan provided a benefit to the softwood lumber industry, in accordance with section 771(5)(E)(ii) of the Act, we compared the interest rates charged on the Article 28 loan to the benchmark interest rates described in the "Benchmarks for Loans and Discount Rates" section of this notice. Using this methodology, we preliminarily have determined that no benefit was provided by this loan because the interest rates and fees charged under this program were equal to or higher than the interest rates charged on comparable commercial loans.

## V. Other Programs

### *Program Administered by the Province of British Columbia*

#### 1. "Allowances" for Harvesting Beetle-Infested Timber

The petitioners allege that the GBC provides cash to, or offsets the costs of, Canadian lumber producers through "allowances" made for the harvesting of beetle-infested timber.

The GBC stated in its response that it does not maintain a separate program that provides countervailable subsidies to tenure-holders harvesting Crown timber in areas affected by the mountain pine bark beetle infestation. According to the GBC, the B.C. stumpage system merely accounts for certain additional costs incurred in logging beetle-infested stands. For those interior tenure-holders incurring such additional costs, as specified in Section 4.1.1 of the Interior Appraisal Manual, the Ministry of Forests, Revenue Branch, estimates the incremental costs and adds those to the standard (*i.e.*, industry average) cost estimates that otherwise apply.

In the Memorandum to Melissa G. Skinner, "New Subsidy Allegations," dated February 6, 2004 (on file in the CRU), we stated that during the course of this proceeding, we would investigate

whether this allegation should be examined as a separate program or whether it should be included in our analysis of the Provincial Governments' stumpage programs. Based on our analysis of the record, we preliminarily have determined that any "allowances" provided in regard to harvesting beetle-infested timber are included in the Department's stumpage subsidy rate calculations.

#### 2. Land Base Investment Program (LBIP)

In April 2002, the GBC enacted the Forest Investment Account (FIA) to develop a globally recognized and sustainable managed forest industry resource. To achieve this goal, the FIA created the LBIP, with the main purpose of promoting strategic investments to maintain and improve the B.C. forest resource. The LBIP's strategic objectives are implemented through projects undertaken in seven component areas: Strategic Resource Planning, Stand Establishment and Treatment, Infrastructure, Restoration and Rehabilitation, Information Gathering and Management, Gene Resource Management, and Training and Extension.

According to the GBC's response the LBIP is focused on land-base activities that are materially identical to the land-base activities of Forest Renewal B.C. The GBC further points out that the Department determined not to investigate the land-base activities of Forest Renewal BC in *Lumber IV*.

The Department confirmed at verification the GBC's claim regarding the similarity of the two programs. Therefore, we are not including the LBIP in this administrative review.

## VI. Programs Determined Not To Be Used

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

#### 1. Canadian Forest Service Industry, Trade & Economics Program (CFS-ITE)

### *Program Administered by the Province of British Columbia*

#### 1. Payments Associated With Tenure Reclamation Protected Area Forest Compensation Act

### *Program Administered by the Province of Quebec*

#### 1. Export Assistance Under the Societe de Developpement Industriel du Quebec/Investissement Quebec ("SDI")

#### Preliminary Results of Review

In accordance with 777A(e)(2)(B) of the Act, we have calculated a single country-wide subsidy rate to be applied

to all producers and exporters of the subject merchandise from Canada, other than those producers that have been excluded from this order. This rate is summarized in the table below:

Producer/exporter	Net subsidy rate
All Producers/Exporters .....	9.24% <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 9.24 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 (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: June 2, 2004.

**John J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-13072 Filed 6-10-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-122-838]

#### Notice of Preliminary Results of Antidumping Duty Administrative Review and Postponement of Final Results: Certain Softwood Lumber Products From Canada

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

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**EFFECTIVE DATE:** June 14, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Constance Handley or James Kemp, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0631 or (202) 482-5346, respectively.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on Certain Softwood Lumber Products from Canada for the period May 22, 2002, to April 30, 2003 (the POR). We preliminarily determine that sales of subject merchandise by Abitibi-Consolidated Company of Canada (Abitibi), Buchanan Lumber Sales Inc. (Buchanan), Canfor Corporation (Canfor), Slocan Forest Products Ltd. (Slocan), Tembec Inc. (Tembec), Tolko Industries Ltd. (Tolko), West Fraser

Mills Ltd. (West Fraser), and Weyerhaeuser Company (Weyerhaeuser), have been made below normal value (NV). In addition, based on the preliminary results for these respondents selected for individual review, we have preliminarily determined a weighted-average margin for those companies that requested, but were not selected for, individual review. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) and constructed export price (CEP), and the NV. Interested parties are invited to comment on these preliminary results.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 1, 2003, the Department of Commerce (the Department) published a notice of opportunity to request the first administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 23281 (May 1, 2003). On May 30, 2003, in accordance with 19 CFR 351.213(b), the petitioner<sup>1</sup> requested a review of producers/exporters of certain softwood lumber products. Also, between May 7, and June 2, 2003, Canadian producers requested a review on their own behalf or had a review of their company requested by a U.S. importer.

On July 1, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on certain softwood lumber products from Canada, covering the period May 22, 2002, through April 30, 2003. *See Notice of Initiation of Antidumping Duty Administrative Review*, 68 FR 39059 (July 1, 2003).

The Department received requests for review from more than 400 companies. Accordingly, on July 9, 2003, in advance of issuing antidumping questionnaires, the Department issued a letter to the largest 25 producers of softwood lumber from Canada, as identified in a survey of Canada's top 30 softwood lumber producers by volume in 2002.<sup>2</sup> This

<sup>1</sup> The petitioner in this case is the Coalition for Fair Lumber Imports Executive Committee. We note that during the review, submissions have been made interchangeably by the petitioner itself and by the Coalition for Fair Lumber Imports, a domestic interested party. For ease of reference, we will use the term "petitioner" to refer to submissions by either, although we recognize that the Coalition for Fair Lumber Imports is not the actual petitioner.

<sup>2</sup> See Canada's Top 30 Softwood Lumber Producers: 2002", a survey by R.E. Taylor & Associates of Canada. The information in this

letter requested export and production volume information from each company, including all affiliates. Companies were required to submit their responses to the Department by July 16, 2003. In addition, we received comments from interested parties on the respondent selection process, which included proposed methodologies.

Upon consideration of the information received with respect to respondent selection, on August 1, 2003, the Department selected as mandatory respondents the eight largest exporters/producers of subject merchandise during the POR: Abitibi, Buchanan, Canfor, Slocan, Tembec, Tolko, West Fraser, and Weyerhaeuser. *See Memorandum from Keith Nickerson and Amber Musser, International Trade Compliance Analysts, to Holly Kuga, Acting Deputy Assistant Secretary, regarding Selection of Respondents* (August 1, 2003). *See also Selection of Respondents* section below.

On this same date, August 1, 2003, the Department issued Section A of the antidumping duty questionnaire to the selected respondents. Sections B and C of the questionnaire were issued on September 5, 2003;<sup>3</sup> Sections D and E were issued on September 22, 2003.<sup>4</sup> Subsequently, the respondents submitted their initial responses to the antidumping questionnaire from September through December of 2003. After analyzing these responses, we issued supplemental questionnaires to the respondents to clarify or correct the

survey was summarized in Appendix 1 to the Memorandum from Keith Nickerson and Amber Musser, International Trade Compliance Analysts, to Holly Kuga, Acting Deputy Assistant Secretary, regarding Selection of Respondents (August 1, 2003). The largest 25 producers on this survey included one company which was not included in the initiation notice in this administrative review. Therefore, the letters requesting export information were sent to only 24 companies.

<sup>3</sup> We note that we limited the reporting requirements in this review to sales of dimension lumber of all species, (including sales of finger-jointed dimension lumber) and sales of all decking products. We also excluded sales of treated lumber. *See Memorandum from Amber Musser, International Trade Compliance Analyst, to Gary Taverman, Director, regarding Reporting Requirements for Sections B and C of the Questionnaire* (September 5, 2003).

<sup>4</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home-market sales, or, if the home-market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review. Section E requests information on the cost of further manufacture or assembly performed in the United States.