

SOFTWOOD LUMBER FROM CANADA

Determination of the Commission in
Investigation No. 701-TA-312
(Final) Under Section 703(a) of the
Tariff Act of 1930, Together With
the Information Obtained in the
Investigation



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JULY 1992

**United States International Trade Commission
Washington, DC 20436**

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Don E. Newquist, Chairman
Peter S. Watson, Vice Chairman
David B. Rohr
Anne E. Brunsdale
Carol T. Crawford
Janet A. Nuzum

Robert Rogowsky
Director of Operations

Staff assigned:

Jim McClure, Investigator
Fred Ruggles, Commodity-Industry Analyst
Joseph Baremore, Economist
John Ascienzo, Accountant/Financial Analyst
Judith Czako, Attorney

Robert Eninger, Supervisory Investigator

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

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Note.--Information that would reveal business proprietary operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks (***) .



UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 701-TA-312 (Final)

SOFTWOOD LUMBER FROM CANADA

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines,² pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Canada of softwood lumber,³ provided for in subheadings 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Canada.

Background

The Commission instituted this investigation, effective March 6, 1992, following a preliminary determination by the Department of Commerce that imports of softwood lumber from Canada were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Commissioners Brunsdale and Nuzum dissenting.

³ For purposes of this investigation, "softwood lumber" means coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm, provided for in subheading 4407.10.00 of the HTS; and coniferous wood siding, flooring and other goods (except coniferous wood moldings and wood dowel rods; but including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated [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, provided for in HTS subheadings 4409.10.10, 4409.10.20 and 4409.10.90.

held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 26, 1992 (57 F.R. 10498). The hearing was held in Washington, DC, on May 28, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF CHAIRMAN NEWQUIST, VICE CHAIRMAN WATSON
COMMISSIONER ROHR, AND COMMISSIONER CRAWFORD

Based on the record in this final investigation, we determine that an industry in the United States is materially injured by reason of imports of softwood lumber from Canada that the Department of Commerce has determined are subsidized.

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

A. Statutory Criteria and Background

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "domestic industry." Section 771(4)(A) of the Tariff Act of 1930 defines the relevant domestic industry as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product" ^{1/} In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to investigation" ^{2/}

^{1/} 19 U.S.C. § 1677(4)(A).

^{2/} 19 U.S.C. § 1677(10). The Commission's decision regarding the appropriate domestic product or products like the imported articles subject to investigation is essentially a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. Asociacion Colombiana de Exportadores de Flores, et al. v. United States, 693 F. Supp. 1165, 1169 (Ct. Int'l Trade 1988)(hereinafter Asocoflores). The like product factors considered by the Commission have included: (1) physical characteristics and end uses, (2) interchangeability of the products, (3) channels of distribution, (4) producer and customer perceptions, (5) common manufacturing facilities, production processes and production employees and, (6) where appropriate, price. Calabrian Corp. v. United States, Slip Op. 92-69 (Ct. Int'l Trade, May 13, 1992); Torrington Co. v. United States, 767 F. Supp. 744 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (1991); Asocoflores, 693 F. Supp. at 1168 n.4,

(continued...)

A. Background and Product Description

The Department of Commerce (Commerce) has defined the class or kind of merchandise subject to investigation as:

certain softwood lumber products. These 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, rabbitted, 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, rabbitted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed; 4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbitted, 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/

In the preliminary, the Commission determined that the domestic product like the imports subject to investigation was all softwood lumber. 4/ Late in the preliminary investigation, the issue of whether "remanufactured lumber"

2/(...continued)

1180 n.7. No single factor is dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. Gray Portland Cement and Cement Clinker from Venezuela, Inv. No. 303-TA-21 and 731-TA-519 (Preliminary), USITC Pub. 2400 (July 1991) at 12. Generally, the Commission disregards minor variations between the articles subject to an investigation and looks for clear dividing lines between possible like products. S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979). "It is up to [the Commission] to determine objectively what is a minor difference." Asocoflores, 693 F. Supp. at 1169.

3/ Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 Fed. Reg. 22570 (May 28, 1992), Report at Appendix A (hereinafter Commerce Final Notice).

4/ Softwood Lumber from Canada, Inv. No. 701-312 (Preliminary), USITC Pub. 2468 (December 1991)(hereinafter Lumber Preliminary) at 6-7. Vice Chairman Watson and Commissioner Crawford did not participate in the preliminary investigation.

was a separate like product was raised. 5/ In the final investigation, producers of "bed frame components" 6/ argued that bed frame components, a remanufactured lumber product, constitute a separate like product. 7/ Thus, the like product question in this investigation concerns whether all softwood lumber is a single like product, or whether certain remanufactured lumber products, and in particular bed frame components, should be considered separate like products.

B. Like Product Analysis

In terms of physical characteristics, all softwood lumber, whether or not remanufactured, is wood from coniferous trees sawn to specified dimensions. 8/ Producers of lumber classify it into seven major categories - studs, dimension lumber, stress grades, timbers, boards, selects, and shop. 9/ In most of the seven categories, the lumber may be derived from different species of trees, green or dried, of differing dimensions, and of different

5/ There was no independent information concerning remanufactured lumber or the producers of remanufactured lumber in the record of the preliminary investigation. The Commission indicated that it would explore the issue in any final investigation. Lumber Preliminary at 6-7. Accordingly, the Commission staff sought information concerning remanufactured lumber in the domestic producer questionnaires in the final. The Commission is unaware of any public sources of information on remanufactured lumber or producers of remanufactured lumber. No information concerning such producers separate from other softwood lumber producers was made available to staff, despite the fact that the parties raised the issue. Five softwood lumber producers indicated that they produce remanufactured lumber products, but that separate information concerning those articles does not exist. Report at A-37 n.61.

6/ "Bed frame components" are the wood used in the construction of a box spring. They do not include any visible wood parts of a bed.

7/ Pre-hearing Brief of Leggett & Platt, Incorporated and the International Sleep Products Association at 2-19; Pre-hearing Brief of National Frame Company at 12-21. The Commission has received some information concerning manufacturers of bed frame components, which appears at Appendix E to the Report.

8/ Report at A-6 - A-8.

9/ Id. at A-7 (definitions of categories).

grades. 10/ Remanufactured lumber is largely indistinguishable from other lumber in its physical characteristics, although it may consist of two pieces of wood joined together, may be a higher grade, and may be sawn to different specifications. 11/ Remanufactured lumber products range from pieces cut to size and shape from high-grade lumber, intended as stock for furniture manufacture, to pieces of standard dimension size finger-jointed from smaller pieces of low grade lumber which would otherwise be scrapped. 12/ However, there is no agreement among producers as to what constitutes remanufactured lumber. 13/ All softwood lumber is readily workable, has a high strength-to-weight ratio, and is moderately durable.

Although lumber is, as discussed below, essentially a commodity product, not all softwood lumber is suitable for all uses. However, for most uses, a variety of lumber is suitable. For instance, 2 x 4s cut from different species of tree are equally suitable for the same use. 14/ Once a log has

10/ Id. at A-7 - A-9.

11/ Id. at A-11 and Appendix E. The Independent Lumber Remanufacturers Association of Canada (hereinafter ILRA), in arguing that remanufactured lumber is a separate class or kind of merchandise, provided Commerce with a list of remanufactured lumber products. ILRA Post-hearing Submission at Exhibit 1. In rebuttal, Fred Tebb & Sons, Inc. (hereinafter Tebb) argued that the ILRA exaggerated the differences among its members' products and all other lumber products. Tebb Post-hearing Brief, Exhibit A at 3-4, Exhibit B at 2-3, 5-8.

12/ ILRA Post-hearing Submission at Tab 1, pages 1-4. Tebb Post-hearing Brief, Exhibit 1 at 4. Commerce's scope includes remanufactured lumber, but does not include table-tops, chair rails, mill work (i.e., turned or lathed wood). Some of the remanufactured products identified by the ILRA are the stock from which furniture manufactures and mills manufacture these specialty items.

13/ Report at A-11, n.27. Even the bed frame components submitted by National Frame Company as exhibits at the Commission's hearing are simply short pieces of 1 x 3 dried wood, with one or both edges rounded. To a non-expert eye, they are indistinguishable from any other short 1 x 3 piece of wood which might, for instance, be window framing stock.

14/ There are regional preferences for lumber from certain species of tree for certain uses. For instance, West coast builders have a preference for

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been sawn to specific dimensions, the range of uses to which the resulting lumber is suited has been limited. However, there are few inherent limitations on the specific dimensions of the lumber to be produced at the outset of the sawmill operation. Most remanufacturing operations produce specific sizes and shapes of lumber from either roughly sawn lumber or timber for a particular use, i.e., to be further processed into furniture, millwork, ladders, etc. 15/

Lumber is distributed through a variety of channels. Lumber producers may sell directly to manufacturers, directly to retailers, through stocking wholesalers, through brokers, to buying groups (similar to cooperatives), or through their own distribution systems. 16/ Generally, the more specialized the product, the fewer the levels of distribution - that is, it is more likely to be sold directly to retailers or manufacturers than through wholesalers. However, both domestic and Canadian producers of softwood lumber sell through all these channels. Remanufactured lumber, as a more specialized product, is more commonly sold directly from the mill to the manufacturer, although it is also sold to wholesalers who deal in all other lumber products. 17/

14/(...continued)

Douglas fir and Ponderosa pine for framing houses, while northern and southern builders tend to prefer SPF (spruce-pine-fir - a grouping of species for production and marketing purposes). Report at A-9. These user preferences do not limit the inherent suitability of different species for the same use. Moreover, a change in the price differential between the price of Douglas fir 2 x 4s and SPF 2 x 4s, or southern yellow pine 2 x 4s, will cause some users to switch among species despite such preferences. Report at A-22 n.57, A-72 n.73.

15/ Id. at A-11 & n.28. These latter articles are not within the scope of the investigation.

16/ See id. at A-22 - A-23 for a description of the various channels of distribution.

17/ Id. at A-22, Appendix E at B-83 - B-84. Tebb Post-hearing Brief, Exhibit B at 6. Bed frame components are most commonly sold directly to bedding manufacturers.

Customer and producer perceptions of softwood lumber depend largely on the particular end use for which the article is intended. However, end user preferences based on specific needs alone, for particular dimensions, species, or degrees of finishing, are in this case insufficient to differentiate softwood lumber articles as separate like products. 18/ Wholesalers and retailers of lumber generally purchase and supply a full range of lumber products to serve the spectrum of end user needs.

The information on the record indicates that many, if not all, of the items that could be considered "remanufactured lumber" are produced in the same establishments as all other softwood lumber products, on common production lines, by common employees. 19/ While it is true that not all producers manufacture or remanufacture the entire range of lumber products available, there do not appear to be any clear distinctions which can be drawn. 20/ Nor does it appear that manufacturers of other softwood lumber products could not, should they so choose, also manufacture bed frame components using their existing equipment and personnel. While remanufacturing operations, including cutting bed frame components, may require that equipment be adjusted to the specific dimensions necessary, that

18/ See Asocoflores, 693 F. Supp. at 1168 ("If one has to choose a single basis upon which to make a like product determination, consumer preference would seem to be a poor choice.").

19/ Report at A-11, A-21, Appendix E at B-83 - B-84. Coalition Pre-hearing Brief at 120-121, Coalition Post-hearing Brief at A-36; Tebb Post-hearing Brief, Exhibit B at 2-4.

20/ The Commission was unable to obtain a list of "remanufacturers" separate from other producers of softwood lumber. National Frame Company provided a list of 17 manufacturers of bed frame components. However, it does not appear that these companies' operations are all limited exclusively to manufacture of bed frame components. Report, Appendix E at B-83 - B-84.

equipment consists primarily of saws, feeds, and planers, which can also be used to produce other lumber products. 21/

The prices of various softwood lumber articles, including remanufactured lumber, vary widely. Factors that determine price include the species of tree from which the lumber is derived, the grade, the dimensions of the specific piece, whether it is kiln-dried or green, whether it is unfinished or planed or sanded, whether it is edged, finger-jointed, etc. 22/ While it is true that some remanufacturing results in higher value products, for instance because the article is high grade lumber cut to specified dimensions, dried, finished, and edged, other remanufacturing results in articles indistinguishable from the dimension lumber (i.e., finger-jointed 2 x 4s) which makes up the bulk of softwood lumber, both domestic and imported. The latter operations tend to use wood that, without remanufacturing, would not be suitable for the specific end use, but that cannot be sold after remanufacturing at a significantly different price from comparable non-remanufactured lumber suitable for that same use. 23/

The range of dimensions and edges in which lumber is generally available, green or dried, rough, planed or sanded, cut from timber or from rough sawn lumber, finger-jointed, glued or otherwise remanufactured, does not allow for the establishment of any clear dividing lines between various lumber articles, including remanufactured lumber, bed frame components, and other

21/ Report at A-11. Tebb Post-hearing Brief, Exhibit B at 3-4.

22/ See Report at A-72.

23/ Transcript of the Hearing (Tr.) at 134 (Ms. Elliot) ("A finger jointed 2 x 4 or finger jointed 2 x 6 in the use and construction it is still considered a 2 x 4-12 foot even though it came from a reman operation. And it is competitive with a solid piece of 2 x 4-12 foot. So it's, it is a remanned product but it is used in the same application."). Coalition Post-hearing Brief at A-36; Tebb Post-hearing Brief, Exhibit B at 4-5.

softwood lumber. 24/ Reliance on different physical sizes or shapes, interchangeability in use, or pricing as determinative factors in distinguishing like products in this case would effectively require the Commission to determine that every specific dimension of lumber, and some specific species, constitute separate like products. Congress has expressed the view that:

The requirement that a product be "like" the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not "like" each other, nor should the definition of "like product" be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under investigation. 25/

There are no clear dividing lines along which we can distinguish remanufactured lumber or any subset thereof from all other softwood lumber within the scope of Commerce's investigation. 26/ The definition of a multitude of like products in this investigation would fragment the Commission's analysis of the industry. 27/ We therefore determine that the like product is all softwood lumber, including all remanufactured lumber

24/ There is both domestic production and imports of the full range of available lumber products, with the exception of southern yellow pine, which does not grow in Canada. However, southern yellow pine is sold in a wide variety of dimensions corresponding to those of lumber from other trees. No party in this investigation argued that southern yellow pine is a separate like product.

25/ S. Rep. No. 249 at 90-91.

26/ Commerce reached the same conclusion in finding that there was a single class or kind of merchandise subject to this investigation. Commerce Final Notice, 57 Fed. Reg. at 22571-72.

27/ Moreover, the record does not contain information segregated to the level of different species, sizes, etc. We do not believe such information could be obtained in any case. The Commission was unable to obtain information concerning remanufactured lumber as a general matter; producers who reported remanufacturing operations also indicated that the information requested does not exist separately for such operations.

products within the scope of Commerce's investigation (including bed frame components).

C. The Domestic Industry

We determine that there is one domestic industry producing the like product, consisting of mill operators, including remanufacturers and manufacturers of bed frame components. 28/

D. Related Parties

The related parties provision states that when a producer is related to the importer or foreign manufacturer of a product, or is itself an importer of the allegedly dumped or subsidized imports, the Commission may exclude such a producer from the domestic industry in "appropriate" circumstances. 29/

Application of the related parties provision is within the Commission's discretion based upon the facts presented in each case. 30/

28/ This is also the conclusion reached in the preliminary investigation, Lumber Preliminary at 7, and in previous lumber investigations. Softwood Lumber from Canada, Inv. No. 701-TA-197 (Preliminary), USITC Pub. 1320 (Nov. 1982) at 5; Softwood Lumber from Canada, Inv. No. 701-TA-274 (Preliminary) USITC Pub. 1874 (July 1986) at 7.

29/ 19 U.S.C. § 1677(4)(B) provides:

When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term "industry" may be applied in appropriate circumstances by excluding such producers from those included in that industry.

30/ The Commission generally has applied a two-step analysis in determining whether to exclude a domestic producer from the domestic industry under the related parties provision. The Commission has considered first whether the company qualifies as a related party under section 771(4)(B), and second whether in view of the producer's related status there are "appropriate circumstances" for excluding the company in question from the definition of the domestic industry. The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reasons the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits

(continued...)

The rationale for the related parties provision is the concern that domestic producers who are related parties may be in a position that shields them from any injury that might be caused by the subsidized imports. The related parties provision may be employed to minimize distortion in the aggregate data bearing on the condition of the domestic industry that would result from including related parties whose operations are shielded from the effects of the subject imports. Thus, including these parties within the domestic industry would cause the industry to appear healthier than it in fact is.

As in the preliminary investigation, we believe it appropriate to consider the related parties issue despite the fact that no party has argued that any producer should be excluded as a related party. 31/ In this investigation, seven domestic producers reported importing softwood lumber from Canada, mostly from their Canadian affiliates. Those producers accounted for more than 15 percent of U.S. softwood lumber production in 1991. 32/

30/(...continued)

from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and

(3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

In addition, the Commission has considered other factors, such as the ratio of import shipments to U.S. production for each producer and the length of time that the producer has been engaged in domestic production. The Commission has also considered whether each company's books are kept separately from its "relations" and whether the primary interests of the related producers lie in domestic production or in importation. Torrington v. United States, Slip Op. 92-49 at 10, (Ct. Int'l Trade, April 3, 1992); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987).

31/ Lumber Preliminary at 9. The Commission determined not to exclude any producers in the preliminary. The Commission determined that nothing in the record indicated that the importing producers are in any different position from other producers in the domestic industry, or that they are importing in order to benefit from the alleged subsidization of Canadian lumber. Id.

32/ Report at A-71.

The nature of the relations between domestic producers and exporters or importers of lumber varies from company to company. 33/ Some domestic producers own lumber production facilities in Canada, which sell lumber in the U.S. market to both related U.S. producers or distributors, and to independent purchasers. Some domestic companies own both production and retailing operations where the retailing operations sell lumber from the production operation and in addition purchase lumber imported from Canada. Some domestic producers themselves own wholesale or retail lumber sellers, or distribution centers, which purchase imported lumber from Canada, generally through arms-length transactions and in competition with the domestic product. 34/ Many Canadian lumber producers act as the importer of record in lumber sales to U.S. markets. 35/ Thus, the extent to which these "related parties" may be in a position to shield themselves from the effects of subsidized imports, or take advantage of them, varies, and in light of the competitive nature of the lumber market, appears limited. Nothing in the record indicates that the importing producers, or producers who purchase imports from either related or independent importers, are in any different position from other producers in the domestic industry, or that they are able to benefit from the subsidized imports of Canadian lumber. 36/ We therefore do not exclude any producers from the domestic industry.

33/ See id. at A-21; Coalition Post-hearing Brief at A-32 - A-34.

34/ Coalition Post-hearing Brief at A-32 - A-34.

35/ The Commission recently determined that the term "importer" in the context of the related parties provision includes more than just an importer of record. Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. Nos. 731-TA-520-521 (Final), USITC Pub. 2527 (June 1992) at 10-12.

36/ The Commission gathered information specifically reflecting only the domestic production operations of softwood lumber producers, and not importing operations.

II. CONDITION OF THE INDUSTRY

In assessing whether there is material injury to a domestic industry by reason of subsidized imports, the Commission is instructed to consider "all relevant economic factors which have a bearing on the state of the industry in the United States" 37/ In undertaking that assessment, we consider, among other relevant factors, U.S. consumption, production, shipments, capacity utilization, employment, wages, financial performance, capital investment, and research and development expenses. 38/ The Commission may consider other factors it deems relevant, and must explain their relevance to the determination. 39/ In each investigation, the Commission considers the relevant economic factors that have a bearing on the state of the industry in the "context of the business cycle and conditions of competition that are distinctive to the affected industry." 40/

The U.S. lumber industry is comprised of thousands of mostly small producers, and some large corporations with high volumes of production. 41/ Production is concentrated in the West, where old growth forests and large

37/ 19 U.S.C. § 1677(7)(C)(iii).

38/ See 19 U.S.C. § 1677(7)(C)(iii).

39/ 19 U.S.C. § 1677(7)(B).

40/ 19 U.S.C. § 1677(7)(C)(iii). See H.R. Rep. No. 317, 96th Cong., 1st Sess. 36 (1979); S. Rep. No. 249 at 88.

41/ Report at A-18. Commerce data indicate that 5,680 establishments produced softwood lumber in the United States in 1991. Id. at A-17. In this investigation, the Commission sent questionnaires to more than 100 producers who accounted for more than 75 percent of U.S. production in 1991. Fifty producers, accounting for nearly 49 percent of 1991 production responded to the Commission's questionnaires. Id. at A-18. In addition to the information gathered in questionnaires, a great deal of public information about the softwood lumber industry is available from various government sources and industry organizations. Id. at A-16 n.54. Where possible, we have considered the public information, as it generally covers more of the industry than the information gathered in questionnaires, and extends back to 1986, the last full year before the Memorandum of Understanding on Softwood Lumber went into effect.

tracts of high quality timber are found, and in the South, where plantations of southern yellow pine (SYP) are at merchantable size. 42/ Most producers of lumber purchase timber from sources outside their operations. Approximately 10 percent of the consumed timber comes from forest industry land. 43/ Particularly in the West, lumber producers are heavily dependent on timber from federal and state lands - approximately one-half of all timber land in the West is publicly owned and managed. 44/

In the past few years, mills in the West have faced sharply reduced access to timber supplies because of environmental regulations and wildlife preservation programs that prohibit logging on large tracts of U.S. Forest Service and Bureau of Land Management lands, as well as some state and private lands. 45/ Uncut timber supplies under contract on National Forest lands in the West declined precipitously from 20.2 billion board feet at the end of 1986 to approximately 5.5 billion board feet at the end of 1991. 46/ As a result of restricted timber supplies, the price of logs, the principal cost in lumber production 47/, has risen in all regions of the United States. 48/

At the same time timber costs have been rising, demand for lumber in the United States has declined. Softwood lumber is used in primarily commercial

42/ Id. at A-16, A-17. The West accounted for 58.3 percent of U.S. softwood lumber production in 1991, while the South accounted for 37 percent. Id. at A-17.

43/ Id. at A-21.

44/ Memorandum EC-P-039 at 9.

45/ Report at A-16.

46/ Memorandum EC-P-039 at 9.

47/ Direct materials costs, primarily log costs, increased from 74.3 percent to 77.7 percent of total costs of U.S. lumber producers during the period of investigation. Report at A-55, Table 24.

48/ Timber supplies are not significantly constrained in the South, where the majority of timber land is privately owned. Nonetheless, timber costs have also risen in the South, albeit less than in the West. Report at A-43, A-45, Tables 15 and 16.

and residential construction and repair and remodeling. 49/ Housing starts nearly always consume the greatest portion of softwood lumber, and changes in overall consumption generally track those starts. 50/ Housing starts have declined significantly during the period of investigation. 1991 housing starts of 1.0 million units were down 43.8 percent from 1986 levels, and 31.8 percent from 1988 levels. 51/ Moreover, the cost of lumber makes up only a small portion of the selling price of a house, and there appear to be few substitutes for lumber in most residential construction applications. 52/ Thus, the amount of lumber demanded is unlikely to change substantially in response to a change in price.

An additional condition of competition distinctive to the lumber industry during the period of investigation was the Memorandum of Understanding on Softwood Lumber (MOU) between the United States and Canada, executed on December 30, 1986. 53/ Under the MOU, the Government of Canada agreed to impose a 15 percent export charge on softwood lumber products exported to the United States. The MOU provided that the charge could be reduced or eliminated with respect to imports from provinces that instituted

49/ Approximately 80 percent or more of apparent U.S. consumption of softwood lumber was used for those purposes from 1986 through 1991. Report at A-9.

50/ Although consumption and housing starts followed divergent paths from 1986 to 1987, from that year through 1991 they exhibited a close correlation. Report at A-23.

51/ Report at A-23.

52/ Memorandum EC-P-039 at 21-22.

53/ Based on a petition filed by the domestic industry, on June 5, 1986, Commerce had initiated a countervailing duty investigation of softwood lumber products from Canada. On October 22, 1986, following an affirmative preliminary injury determination by the Commission, Commerce issued a preliminary determination that subsidies of 15% ad valorem were being provided to Canadian producers of certain softwood lumber products.

qualifying replacement measures. 54/ In return, the domestic industry withdrew its petition and Commerce terminated its investigation. We note that Canadian market share decreased following the execution of the MOU. Canadian imports as a percentage of apparent U.S. consumption declined from 29.5 percent in 1986 to 28.9 percent in 1987 measured by quantity and from 30.0 percent to 26.9 percent measured by value. 55/

On September 3, 1991, the Government of Canada announced its intention to terminate the MOU effective October 4, 1991, pursuant to Paragraph 9 of the agreement. 56/ Accordingly, the United States Trade Representative initiated an investigation under section 302 of the Trade Act of 1974 and determined that certain policies and acts of the Government of Canada regarding the exportation of softwood lumber to the United States were unreasonable and burden or restrict U.S. commerce. 57/ To maintain the status quo ante in the interim period between the termination of the MOU and any preliminary subsidy determination by Commerce, USTR directed the Secretary of Treasury to impose bonding requirements for those products that were not covered by the replacement measures instituted by the provincial governments. 58/ The vast

54/ Subsequent to the execution of the MOU, the Governments of the Provinces of British Columbia and Quebec instituted replacement measures increasing the fee charged on the harvest of timber or other costs borne by timber harvesters, resulting in the elimination of the export charge on imports from British Columbia as of December 1, 1987, and a reduction in the export charge on imports from Quebec to 8 percent as of April 1, 1988, and a further reduction to 6.2 percent in 1990. British Columbia and Quebec accounted for 73 percent of total imports of softwood lumber from Canada in 1991.

55/ Report at A-24, Table 2.

56/ After that date, the Government of Canada ceased collecting the export charge.

57/ Initiation of Section 302 Investigation and Request for Public Comment on Determinations Involving Expeditious Action: Canadian Exports of Softwood Lumber, 56 Fed. Reg. 50738 (1991).

58/ Id. at 50739. For softwood lumber products originating in the province of Quebec, a 6.2 percent rate was established for entries filed before

(continued...)

majority of exports to the United States were, however, still subject to those replacement measures.

Finally, on March 12, 1992, Commerce made a preliminary determination estimating a net subsidy rate of 14.48 percent, 59/ which amount was reduced on May 28, 1992 when Commerce published its final determination. In its final determination, Commerce found that notwithstanding the replacement measures in effect during the period of Commerce's investigation, Canadian softwood lumber was still being subsidized at a country-wide rate of 6.51 percent. 60/

These conditions establish the framework within which the U.S. industry was operating during the period of investigation. U.S. producers' capacity to produce softwood lumber increased by 12.0 percent from 1986 to 1991, to a level of 39.5 billion board feet. 61/ Most of that increase occurred from 1986 to 1988 - capacity has increased only slightly since 1988. Domestic production of lumber increased from 1986 to 1987, and has declined consistently since then, to 34 billion board feet in 1991, less than the level

58/(...continued)

November 1, 1991, and a 3.1 percent rate for entries after that date. For products originating in British Columbia, a zero rate was set. For all other provinces, except Nova Scotia, Newfoundland, New Brunswick, and Prince Edward Island (the Maritime Provinces), the rate was 15 percent. In self-initiating the investigation, Commerce had specifically exempted imports from the Maritime Provinces, noting that the "special circumstances" leading to the self-initiation of this investigation did not apply with respect to those provinces. The Maritime Provinces were exempt from payment of export charges under the MOU, and consequently Commerce concluded that the "special circumstances" underlying the initiation, Canada's termination of the MOU, did not exist as to them. Self-Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada, 56 Fed. Reg. 56055, 56057-58 (Oct. 31, 1991).

59/ Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 Fed. Reg. 8800 (March 12, 1992).

60/ Commerce Final Notice at 22623. Commerce's period of investigation was the Government of Canada's fiscal year, April 1, 1990 through March 31, 1991. The replacement measures of both British Columbia and Quebec were in effect throughout that period.

61/ Report at A-32.

of production in 1986. 62/ The value of domestic production followed a similar trend, although because of increases in unit value, the value of domestic shipments in 1991 remained well above the value of production in 1986. 63/

In general, shipments of lumber vary only slightly from production, and follow essentially the same trends. Complete data on industry-wide shipments are not available. Information on shipments from the West and the South, the two major lumber producing areas in the United States are, however, available. Shipments by producers in the West increased from 1986 to 1987, then declined thereafter by 17.6 percent, to 19.7 billion board feet in 1991. 64/ Shipments by producers in the South increased from 1986 to 1988, then declined irregularly by 1.3 percent, to 12.5 billion board feet in 1991. 65/ Shipments by U.S. producers responding to the Commission's questionnaire declined by 6 percent from 1988 to 1991, from 14.8 billion board feet to 13.9 billion board feet. 66/ Information gathered in Commission questionnaires indicates that U.S. producers' inventories of softwood lumber remained fairly steady from 1988 through 1991, and decreased as a share of shipments from 8.2 percent in 1988 to 7.2 percent in 1991. 67/

The number of production and related workers decreased steadily and significantly, by 14.8 percent during the period, from 32,280 workers in 1988 to 27,492 workers in 1991. 68/ Twenty firms reported permanent layoffs of at least 50 workers or 5 percent of their workforce during the period of

62/ Report at A-29, A-24, Table 2.

63/ Id. at A-24, Table 2.

64/ Id. at A-35 and Table 9.

65/ Id. at A-35 and Table 10.

66/ Id. at A-35, A-37, Table 11.

67/ Id. at A-37 and Table 11.

68/ Id. at A-39 and Table 13.

investigation. Total hours worked increased from 1988 to 1989, but declined significantly thereafter, to 60.7 million hours in 1991, 12.4 percent below the 1988 level. Hourly wages increased less than 2 percent annually, or 7.8 percent total during the period of investigation. Unit labor costs increased from 1988 to 1989 and declined thereafter, to \$50.18 per thousand board feet, marginally above the level reported in 1988. Productivity, measured in output per hour, increased 8.2 percent during the period of investigation, to 271.6 board feet per hour.

U.S. producers' net sales increased from \$4.3 billion in 1988 to \$4.6 billion in 1989, remained flat in 1990, then declined to \$4.4 billion in 1991, a level only 1.1 percent above that in 1988. ^{69/} Cost of goods sold increased more rapidly than sales from 1988 to 1990, from \$3.8 billion in 1988 to \$4.4 billion in 1990, before declining somewhat in 1991 to \$4.1 billion dollars, 7.3 percent above the 1988 level. ^{70/} The ratio of cost of goods sold to net sales increased from 87.6 percent in 1988 to 95.8 percent in 1990, before declining somewhat to 92.9 percent in 1991. As a result of barely increased net sales in conjunction with significantly increased costs, operating and net income levels declined substantially from 1988 through 1990. Operating income of \$331 million in 1988 became an operating loss of \$31 million in 1990, before improving in 1991 to \$107 million, a level well below the 1988 operating income reported on about the same volume and value of sales.

^{69/} Id. at A-53, Table 23.

^{70/} Cost of goods sold increased from \$228 per thousand board feet in 1988 to \$250 per thousand board feet in 1990, before declining to \$243 per thousand board feet in 1991. Report at A-66, Table 23. The value of net sales increased from \$260 per thousand board feet in 1988 to \$267 per thousand board feet in 1989, declined to \$260 per thousand board feet in 1990, and increased slightly in 1991 to \$262 per thousand board feet in 1991. Thus, while cost of goods sold per thousand board feet increased 6.5 percent over the period of investigation, sales value increased only 0.5 percent per thousand board feet.

U.S. producers' operating income as a ratio to net sales declined from 7.6 percent in 1988 to negative 0.7 percent in 1990, before improving in 1991 to 2.4 percent. Operating returns on assets followed the same trends, declining significantly from 1988 to 1990, before improving somewhat in 1991. 71/ Capital expenditures increased from \$199 million in 1988 to \$304 million in 1989, then fell to \$185 million in 1991, well below the 1988 level. 72/ Research and development expenditures declined throughout the period. 73/

The improvement in the profit performance of U.S. producers in 1991 was due in significant part to increases in by-product revenues. 74/ The number of producers reporting net losses increased from 1988 to 1990. In 1990, nearly half of the producers responding to the Commission's questionnaires reported losses. Close to half the producers reported operating and net losses in 1991, and one producer in five reported losses at the gross profit level.

In response to arguments made by the parties, the Commission gathered financial information on a regional basis for the West Coastal region, the

71/ Report at A-59, Table 28.

72/ Id. at A-60, Table 29.

73/ Id., Table 30.

74/ The production of softwood lumber leads to production of by-products such as wood chips, sawdust, bark, and woodshavings. The revenue from these by-products is substantial, averaging about 15 percent of the net sales value of softwood lumber alone. Report at A-55. In order to present the operating performance of producers consistently, the Commission treated by-product revenue as a reduction in costs for all producers, although some reported it as an increase in revenue. Either method, if applied consistently, will result in the same operating and net incomes. Since we are concerned here with the performance of the industry producing softwood lumber, the domestic industry at issue, and not the production of by-products, we note that, absent the substantial by-product revenues, the operating results of the domestic industry would have been poorer throughout the period of investigation.

West Inland region, the South, and the North, 75/ and separately compiled the financial information reported by small, medium, and large producers. 76/ Consideration of the financial results reported by these categories of producers indicates no significant differences in performance by region or size of producer. 77/ 78/

III. MATERIAL INJURY BY REASON OF SUBSIDIZED IMPORTS

A. Legal Standard

In making a final determination in a countervailing duty investigation, the Commission is to determine whether an industry in the United States is materially injured by reason of the imports under investigation. 79/ When making that determination, the statute provides that the Commission consider in each case:

(I) the volume of imports of the merchandise which is the subject of the investigation,

(II) the effect of imports of that merchandise on prices in the United States for like products, and

75/ Report at A-42 n.65 (definitions of regions).

76/ Id. at A-56 - A-58 and Tables 25, 26, and 27.

77/ Id. at A-56 - A-58 and Tables 25, 26, and 27, A-47 and Table 17, A-48 and Table 19, A-42 - A-44 and Table 15. However, we note that small producers did not do as well as large and medium sized producers, particularly in 1991. SG&A expenses were higher for the small producers, resulting in relatively lower operating and net incomes, while larger companies may have an advantage with respect to such expenses due to economies of scale. Since most the producers in the industry are small, and we did not obtain financial information for the vast majority of small producers, it is likely that the industry's overall performance was actually poorer than is reflected in the data reported.

78/ Based on the information discussed above, Chairman Newquist and Commissioner Rohr determine that the domestic industry is currently experiencing material injury. Material injury is "harm which is not inconsequential, immaterial or unimportant." 19 U.S.C. § 1677(7)(A).

79/ 19 U.S.C. § 1671d(b)(1).

(III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations in the United States. 80/

In evaluating the volume of imports of merchandise, the statute directs that the Commission "shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant." 81/ In evaluating the price effect of subject imports, the statute states that the Commission:

shall consider whether -

(I) there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

In examining the impact of imports on the domestic producers of like products, the statute states:

[t]he Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to -

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices,

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.

80/ 19 U.S.C. § 1677(7)(B)(i).

81/ 19 U.S.C. § 1677(7)(C)(i).

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry. 82/

Chairman Newquist and Commissioner Rohr note that the Commission need not determine that subsidized imports are the principal or a substantial cause of material injury, 83/ only whether subsidized imports are a cause of injury. 84/ Vice Chairman Watson and Commissioner Crawford interpret the statute's causation requirement in a different manner. 85/ 86/ The Commission

82/ 19 U.S.C. § 1677(7)(C)(iii).

83/ See S. Rep. No. 249 at 57 ("Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; such industries are often the most vulnerable to subsidized imports.")

84/ E.g., Granges Metallverken AB v. United States, 716 F.Supp. 17, 25 (Ct. Int'l Trade 1989).

85/ Vice Chairman Watson notes that the courts have interpreted the statutory requirement that the Commission consider whether there is material injury "by reason of" the subject imports in a number of different ways. Compare, e.g., United Engineering & Forging v. United States, 779 F. Supp. 1375, 1391 (Ct. Int'l Trade 1991) ("rather it must determine whether unfairly-traded imports are contributing to such injury to the domestic industry. Such imports, therefore need not be the only cause of harm to the domestic industry." (citations omitted)) with Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989) (affirming a determination by two Commissioners that "the imports were a cause of material injury") and USX Corporation v. United States, 682 F. Supp. 60, 67 (Ct. Int'l Trade 1988) ("any causation analysis must have at its core, the issue of whether the imports at issue cause, in a non de minimis manner, the material injury to the industry. . .") and Maine Potato Council v. United States, 613 F. Supp. 1237, 1243 (Ct. Int'l Trade 1985) (in which the Court declined to issue a further remand even though the ITC determination refers to whether or not imports were a "material cause" of the domestic industry's injury).

Accordingly, Vice Chairman Watson has decided to adhere to the standard articulated by Congress in the legislative history of the pertinent provisions, which states that the Commission must satisfy itself that, in light of all the information presented, there is a "sufficient causal link between the subsidization and the requisite injury." S. Rep. No. 249 at 58.

86/ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the subsidized imports. Many, if not most domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently is causing material injury to the

(continued...)

may consider alternative causes of injury, but it is not to weigh causes. 87/
 It may also consider whether factors other than the subsidized imports have made the industry more susceptible to the effects of the subsidized imports. 88/

The MOU, and the replacement measures instituted as a result, operated to shield the U.S. softwood lumber industry to some degree from the effects of subsidized Canadian imports during the period of investigation. The MOU, however, was a negotiated compromise between two governments. As a result, not only was Commerce's investigation terminated, but Commerce's 1986 preliminary finding of a 15 percent net subsidy was erased. We note that,

86/(...continued)

domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than the subsidized imports." S. Rep. No. 249 at 58. However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 57; H.R. Rep. No. 317 at 47. The Commission is not to determine if the subsidized imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249 at 57. Rather, it is to determine whether any injury "by reason of" the subsidized imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987).

87/ E.g., Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following: the volume and prices of nonsubsidized imports, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249 at 57. Similar language is contained in the House Report. H.R. Rep. No. 317 at 47.

88/ United Engineering & Forging, 779 F. Supp. at 1392; Iwatsu Electric Co. Ltd. v. United States, 758 F. Supp. 1506, 1512 (Ct. Int'l Trade 1991) ("the woes of the domestic industry were exacerbated by LTFV imports.") (emphasis deleted).

upon termination of the MOU, the replacement measures could be unilaterally altered at the discretion of provincial authorities. 89/

The MOU per se does not form the basis for our determination. Although we decline to consider what the impact of the imports on the domestic industry might have been absent the MOU, we note that the existence of the MOU created a unique set of circumstances that affected competition.

As a share of apparent U.S. consumption, Canadian imports have retained a significant share of a declining U.S. market throughout the period of investigation. 90/ Imports of Canadian softwood lumber increased from 14.1 billion board feet in 1986 to 14.6 billion board feet in 1987, and then declined to 11.7 billion board feet in 1991. 91/ We note that in 1987, the year following the execution of the MOU, the Canadian share of apparent U.S. consumption of softwood lumber declined measured by both quantity and value as compared to 1986. From 1987 to 1991, Canadian market share measured in terms of quantity decreased from 28.9 percent to 27.5 percent. 92/ During that same

89/ Paragraph 9 of the MOU provides: "Either Government may terminate this Understanding at any time upon thirty (30) days written notice." In fact, despite arguments to the contrary, the U.S. lumber industry had no guarantee that the MOU would not be terminated and replacement measures rolled back with little warning. When the MOU was terminated by the Government of Canada, thirty days notice was given. We note that Canadian excess capacity increased substantially from 1986 to 1991. Report at A-64.

90/ To the extent imports from the Maritime Provinces are included in our data, imports from Canada and related ratios are marginally overstated. We note that we include imports from Quebec in our analysis. Commerce did not make a separate subsidy determination with respect to Quebec. In determining, inter alia, that Quebec is not a "country under the Agreement," Commerce rejected the very arguments Quebec raised before the Commission in requesting a separate injury determination. Commerce Final Notice, 57 Fed. Reg. at 22578-80. Commerce also denied a request that the final determination be amended to exclude, inter alia, Quebec. There is no basis for a separate injury analysis with respect to imports from the Province of Quebec in this investigation.

91/ Report at A-70 and Table 35.

92/ Id. at A-24, Table 2.

period, however, Canadian market share measured in terms of value increased from 26.9 percent to 28.3 percent. 93/ Thus, Canadian imports were significant in terms of both absolute volume and market share throughout the period of investigation. 94/

In light of the nature of and demand for the subject merchandise, the volume and market share of the subsidized Canadian imports have a significant impact on U.S. lumber prices and sales by the U.S. industry. 95/ Generally, the impact of imports on domestic sales and prices is greater when, first, they are available in significant volumes (absolute or relative to total consumption), second, consumers are unwilling to purchase significantly more of the product even if the prices go down (demand is inelastic), and third, consumers view the imported and like product as close substitutes. The Commission has noted that, for fungible, price sensitive commodity products, "the impact of seemingly small import volumes and penetrations is magnified in

93/ Id.

94/ Neither increased imports nor increased market share are required for an affirmative determination. Under the statute:

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise or any increase in the volume, either in absolute terms or relative to production or consumption in the United States, is significant.

19 U.S.C. § 1677(7)(C)(i) (emphasis added). Thus, it is the significance of the volume or market share of imports for the particular industry that is critical. USX Corp. v. United States, 655 F. Supp. 487, 490 (Ct. Int'l Trade 1987); Iwatsu Electric Co. Ltd., 758 F. Supp. at 1513-14.

95/ Congress has indicated that we are to take into account the nature of the product when assessing injury:

For one type of product, price may be the key factor in making a decision as to which product to purchase and a small price differential resulting from the amount of subsidy or the margin of dumping can be decisive. . . .

S. Rep. No. 249 at 46.

the marketplace." 96/ This is particularly true when, as here, demand is inelastic and there is negligible third-country import competition. 97/

Consideration of the price effects of subsidized imports of lumber is complex. On the whole, lumber is a commodity product, with a significant proportion of all lumber, both domestic and imported, competing head-to-head on the basis of price. 98/ This is clearly the case within species groups, and the record indicates that there is a significant degree of head-to-head competition among species. Both U.S. and Canadian building codes treat softwood lumber species as almost entirely substitutable for common applications. 99/ The U.S. Forest Service, in its TAMM model used in forest management, considers the principal Canadian species to be fully substitutable with U.S. species, including southern yellow pine. 100/

Among species, prices tend to move together, maintaining fairly consistent price differentials. 101/ Variations in the price differentials among species will cause purchasers to switch, despite long held preferences

96/ Certain Carbon Steel Products from Spain, Inv. Nos. 701-TA-155, 157-160 & 162 (Final), USITC Pub. 1311 (Dec. 1982) at 17. USX Corp. v. United States, 655 F. Supp. at 490 (inherent product fungibility and price sensitivity "make small quantities of imports particularly significant in the U.S. market."); Shop Towels from Bangladesh, Inv. No. 731-TA-514 (Final), USITC Pub. 2487 (March 1992) at 20 (price very important despite quality differences).

97/ See Certain Light-Walled Rectangular Pipes and Tubes from Argentina, Inv. No. 731-TA-409 (Final), USITC Pub. 2187 (May 1989) at 11-12.

98/ The Commission has found that lumber is a substitutable commodity product in previous investigations. Lumber Preliminary at 19-20; Softwood Lumber from Canada, Inv. No. 701-TA-274 (Preliminary), USITC Pub. 1874 (July 1986) at 5-6; Conditions Relating to the importation of Softwood Lumber, Inv. No. 332-TA-210, USITC Pub. 1765 (Dec. 1985) at 5; Softwood Lumber from Canada, Inv. No. 701-TA-197 (Preliminary), USITC Pub. 1320 (Nov. 1982).

99/ Coalition Post-hearing Brief at 3-4 & n.9.

100/ Coalition Post-hearing Brief at Exhibit 10.

101/ Coalition Pre-hearing Brief, Exhibit A at Figure 13. RISI price projections for the period 1991 through 1996 show extremely high correlation among species. Coalition Post-hearing Brief, Exhibit 2 at Table 2.

for certain species or sources. 102/ Furthermore, the lumber market is characterized by the almost instantaneous spread of pricing information among both purchasers and consumers, resulting in rapid price equilibration at market clearing levels. 103/ Even small differences in price are quickly known and affect purchasing decisions. Thus, the effects of even small price changes are rapidly spread throughout the market, and sales are sensitive to relatively small price movements.

In this final investigation, following extensive consultations with industry representatives, both U.S. and Canadian, the Commission gathered carefully specified pricing information for seven products, both domestic and imported, sold in six different market areas on specific days during the period January 1990 through March 1992. 104/ In addition, we obtained and considered published prices from Random Lengths, and price indices of the Bureau of Labor Statistics.

102/ Report at A-89 n.73. The Commission has found in the past that the existence of a price premium does not mean that there is an absence of competition between two products. Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 & 428 (Final), USITC Pub. 2237 (Nov. 1989) at 49-50, aff'd sub. nom. Iwatsu Electric Co. Ltd. v. United States, 758 F. Supp. 1506. In that case, the Commission found that the premium price was "the equilibrium price at which most purchasers would be relatively indifferent in choosing the premium product over the generic product." Id.

103/ There are numerous public sources of pricing information in the lumber industry, which report prices for a variety of lumber articles on a weekly basis. The reported prices in these publications frequently serve as a basis for price negotiations. In addition, both purchasers and producers reported that price quotes from different suppliers are used in order to negotiate prices.

104/ Following the hearing, Commission staff performed on-site verifications of pricing information provided by two U.S. and three importers of Canadian lumber. In addition, staff contacted all other domestic producers and importers to ensure that the information was reported in the manner requested in the questionnaires. Report at A-110 n.90.

While we are satisfied that our pricing information is accurate and reflects pricing trends in the market, its usefulness for reflecting comparative prices of domestic and imported lumber is limited. 105/ The information reported in questionnaire responses is simply not sufficient to ensure that anomalies resulting from the volatility of the market are dampened so as to allow us to make a reasoned judgment concerning under- or over-selling. Nor is publicly available price information suitable for purposes of assessing comparative prices. Prices are published in Random Lengths for purposes of reporting general trends and price levels for the information of producers and purchasers. Consequently, they are not reported with the degree of specificity and consistency necessary to enable us to rely on them for developing price comparisons. Similarly, while price indices inform us about trends in prices, they are not suitable for comparing price levels.

Softwood lumber is sold as a commodity and prices change daily, and even hourly. Producers quote prices to purchasers on a spot basis, relying on internal price lists or industry sources such as Random Lengths as a guide. The day-to-day volatility of the market, combined with the relative difficulty of obtaining specific price information from producers, importers, and purchasers, complicates the gathering and interpretation of price information. Moreover, while U.S. producers often quote prices on an f.o.b. mill basis, the practice in Canada has changed in the past few years, and Canadian mills now generally quote prices on a delivered basis. 106/ The different bases used

105/ The information available from Commission questionnaires tracks the price trends in published sources.

106/ Most producers and importers estimated that transportation cost account for between 5 and 20 percent of the total delivered cost of the softwood lumber that they sell. Report at A-76.

for quoting prices by Canadian and U.S. producers makes developing price comparisons particularly difficult.

Prices for spruce-pine-fir (SPF) are a bellwether in the market, serving as a reference point for pricing. 107/ The Canadian share of apparent U.S. consumption of SPF ranged upwards of 75 percent from 1986 through 1991. 108/ The substantial volume of imported Canadian lumber in this important segment of the market limits potential increases in prices not only of U.S. produced SPF, but other species as well. Species common to both countries constitute approximately 43 to 46 percent of U.S. production, and over 95 percent of Canadian production. 109/ Although prices of softwood lumber, both imported and domestic, generally increased during the period under investigation 110/, rising domestic costs far outstripped those increases, resulting in dramatically poorer financial results for the domestic industry, including

107/ Widman Management Limited, Vancouver, BC, Canada's Forest Industry; Markets 87-90 at 43 (1987) ("The bellwether of forest industry health in North America is the price level of SPF random length 2x4. . . . this product is the most widely traded commodity within Canada and the U.S. and serves as an accurate measure of overall lumber prices.") The importance of SPF prices is apparent from other information in the record as well. Not only are SPF prices reported as the key first price in Random Lengths, but they constitute 20 percent of Random Lengths' composite price for 2 x 4s, which is an important guide to pricing in the market. In addition, futures contracts for lumber have, since the early 1980's routinely been fulfilled with deliveries of SPF. Report at A-76. In its 1985 investigation of the lumber industry, the Commission identified British Columbia mills as appearing to lead prices on widely used lumber products such as 2 x 4s. Conditions Relating to the Importation of Softwood Lumber Into the United States, Inv. No. 332-210, USITC Pub. 1765 (October 1985) at 130 (footnote omitted). The bulk of British Columbia production is SPF. See Report at A-65, A-66, Table 33.

108/ The vast majority of Canadian lumber exports to the United States, more than 75 percent, are of SPF. Report at A-68. We calculated apparent U.S. consumption of SPF by adding U.S. production of Eastern and Western SPF to 75 percent of total Canadian imports, and calculated the Canadian import share of that figure for each year 1986 through 1991. See Report at A-31, Table 6, and A-70, Table 35.

109/ Id. at A-8.

110/ Report at A-76 - A-86.

severe losses during 1990. Recently, in certain areas of the West, harvest from publicly-owned and private timberlands has been restricted by the removal of key timberlands from availability for harvest for environmental reasons, primarily the spotted owl. The removal of these timberlands has significantly increased the price of logs in the West and has had some effect on the value of logs harvested from areas not directly affected by these restrictions. This has caused the input price of logs for lumber to increase throughout the industry. 111/ The inability of the industry to raise prices, commensurate with rapidly increasing costs, demonstrates significant price suppression.

We note that Canadian producers' log costs did not increase during the period of investigation as steeply as log costs did in the United States. 112/ While different factors affect log costs in the two countries, one obvious and relevant factor affecting Canadian log costs is the subsidy Commerce determined is received by Canadian lumber producers despite replacement measures enacted under the MOU. 113/ As we noted above, the lumber market is extremely competitive, with full information disseminated rapidly among both

111/ We note that lumber firms relying on public timberlands in the West are directly affected by the removal of harvestable acreage and are at the greatest cost disadvantage. The West accounted for 58 percent of total U.S. softwood lumber production in 1991, and approximately one-half of all timber land in the West is publicly owned and managed. Memorandum EC-P-039 at 9. Owners of private timberlands may actually experience a net benefit from the removal of public timberlands from harvest because it increases the value of these holdings without increasing the cost owners must pay for logs. We recognize that the effects of removing acreage from harvest may have disproportionate impacts on lumber producers depending on the location of the lumber company and the relative dependency of the company on public timberlands.

112/ Coalition Pre-hearing Brief at 54 and Appendix A, Figures 15, 16, & 17.

113/ Commissioner Rohr notes that the effect of the subsidy on Canadian log costs is not a relevant inquiry in his analysis. The question for him is whether the imports which Commerce has determined are subsidized are a cause of injury to the domestic industry. Whether and how the subsidy affects log costs in Canada and thus benefits the production of lumber is an element of Commerce's determination, which he will not revisit.

purchasers and producers, and purchasing decisions are sensitive to relatively small changes in price. The significant volume of subsidized Canadian lumber sold in the U.S. market has contributed to the inability of U.S. producers to increase lumber prices in the face of significant cost increases, resulting in material injury to the industry.

The evidence of price suppression caused by the subject imports demonstrates that the recession and timber supply constraints are not the sole causes of material injury to the domestic industry. A comparison of the performance of U.S. producers on their softwood lumber operations and their operations producing other wood products and building materials confirms that conclusion. We find the comparison between the two sectors to be particularly relevant to our analysis because softwood lumber and wood products and building materials are similarly marketed and financed and are commonly manufactured by the same companies. 114/ Moreover, the same macroeconomic factors, particularly increased timber costs, the recession, and the downturn in housing starts, affected the softwood lumber industry and the wood products and building materials industry during the period of investigation. However, the wood products and building materials industry is insulated to a degree from the effects of subsidized imports. 115/

From 1988 to 1991 U.S. producers' net sales of wood products and building materials (not including softwood lumber) increased substantially, while during that period, those same producers' net sales of softwood lumber

114/ See Report at A-40.

115/ See Coalition Pre-hearing Brief at 77. Plywood production constitutes a significant portion of production of wood products and building materials other than softwood lumber. There is a significant tariff on imports of plywood.

remained flat. 116/ Moreover, from 1988 to 1991, U.S. producers' operating income as a ratio to net sales on wood products and building material operations was higher than the ratio for softwood lumber operations in all periods, and significantly so from 1989 through 1991. 117/ Particularly revealing is that in 1990 producers reported operating losses of more than \$30 million on softwood lumber sales of \$4.6 billion, while reporting operating income of \$394 million on sales of \$5.1 billion of wood products and building materials. 118/

In summary, Canadian lumber imports consistently accounted for a very large share of apparent U.S. consumption during the period of investigation, and increased when measured by value. Lumber is a highly substitutable, commodity product, sales of which are sensitive to relatively small price movements. In addition, the quantity of lumber demanded (primarily in the construction industry) generally does not change significantly in response to changes in price. The major species group represented in Canadian import volumes, SPF, has a significant influence on price movements in the U.S. market. In these circumstances, it is clear that U.S. producers' inability to

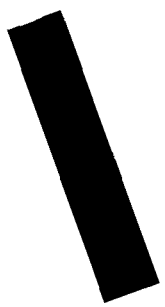
116/ Report at A-41, Table 14, A-53, Table 23. In making this comparison, we subtracted the data in table 23 from the data in table 14 to derive information concerning the operations of U.S. producers on wood products and building materials not including softwood lumber, and recalculated the value and ratio to net sales data.

117/ While U.S. producers' operating income on their softwood lumber operations as a ratio to net sales declined from 7.6 percent to a negative 0.7 percent in 1990, before improving somewhat to 2.4 percent in 1991, the ratio on their wood products and building materials operations increased from 8.4 percent in 1988 to 11.1 percent in 1989, before declining to 7.7 percent in 1990 and 5.8 percent in 1991. Id.

118/ Id. The data reveal that the value of net sales of softwood lumber followed generally the same trends as the value of net sales of wood products and building materials, increasing from 1988 to 1989 and declining thereafter. However, while the value of net sales of lumber in 1991 was only 1.1 percent above 1988 levels, the value of net sales of wood products and building materials was 11 percent higher in 1991 than in 1988.

raise prices commensurate with rising costs is attributable, at least in part, to sales of imported subsidized Canadian lumber. Accordingly, we find that the domestic industry producing softwood lumber is materially injured by reason of subsidized imports of softwood lumber from Canada. 119/

119/ Having determined that the domestic industry is materially injured, Chairman Newquist and Commissioner Rohr determine that the subsidized imports from Canada are a cause of that injury.



DISSENTING VIEWS OF COMMISSIONER ANNE E. BRUNSDALE
Softwood Lumber from Canada

Inv. No. 701-TA-312 (Final)

In this hard fought, difficult case, a majority of my colleagues have concluded that imports of subsidized softwood lumber from Canada are materially injuring a U.S. industry. I disagree. I am well aware, however, of the seeming inevitability of binational panel review of our decision. I am therefore taking the opportunity a dissent provides to outline not just my usual microeconomic analysis as it applies to the record in this case, but the more general approach I take in deciding a case like this.

I. Domestic Like Product

I agree with my colleagues that the domestic like product in this case is all softwood lumber. However, because I analyze like-product questions somewhat differently than they do, I arrived at that conclusion by a different path. As I discussed at greater length in Polyethylene Terephthalate Film etc. from Japan and Korea, Inv. Nos. 731-TA-458 and 459 (Final), USITC Pub. 2383, I think that instead of using its traditional multipart test (which is repeated at note 2, above), the Commission should focus on whether a change in price allowed by the unfair trade practice would induce significant substitution between two or more potential like products by either producers or consumers.

At first glance, it might seem absurd to contend that all softwood lumber products are "like" one another. Lumber takes scores, perhaps hundreds, of different forms. It varies by

species, grade, length, strength, color, and probably a dozen other qualities that matter to consumers. These differences are naturally reflected in an incredible range of prices that demonstrate that not all lumber is alike.

Nevertheless, there are several reasons that compel us to regard all softwood lumber, even if remanufactured, as one like product. First and foremost is the amount of production substitutability. Given the right timber, lumber manufacturers can switch production at very low cost among a vast array of products. See op. at 8. Even some first mills are quite capable of making the same products as remanufacturers do, using the same production processes and employees that they use to make first milled lumber. Op. at 8. Moreover, some remanufacturers simply repair or finish somewhat defective first milled wood to make it saleable. Op. at 9. Consumers of such lumber products would find them ready substitutes. There are thus some instances of both producer and consumer substitutability that I regard as preconditions for a finding that products are "like".

That degree of substitutability notwithstanding, the record does not reveal that all softwood lumber products are readily interchangeable one with another on either the production or consumption side. It is unlikely that they are. I would therefore be inclined to find more than one like product. Our investigation, however, was unable to disentangle the web of production in this industry to reveal any information on producer and consumer substitutability of different lumber products.

Moreover, disaggregating the statistics of such a complicated industry to the necessary level of detail proved quite impossible. Under 19 USC Section 1677(4)(D), I am required to assess the effect of the dumped imports on "the narrowest group or range of products, which includes a like product, for which the necessary information can be provided." In this investigation, that means all softwood lumber, including remanufactured softwood lumber.¹

II. Material Injury by Reason of Subsidized Imports

Those who follow Commission proceedings are aware that my analysis of causation in title VII cases differs from that of my colleagues. In determining whether or not a domestic industry is materially injured by reason of subsidized imports, I consider, as the statute directs, the volume and prices of the subject imports, the effects of these imports on the price in the United States of the like product, and the effects on the domestic industry producing the like product. See 19 U.S.C. Section 1677(7)(B). As is obvious from these statutory factors, and as I have stated so often in the past,² a coherent and transparent

¹ I concur in my colleagues' discussion of the domestic industry and related parties.

² See, e.g., Chrome-Plated Lug Nuts from China and Taiwan, Invs. Nos. 731-TA-474-475 (Final), USITC Pub. No. 2427, at 24-29 (Sept. 1991) (Concurring Views of Acting Chairman Anne E. Brunsdale); Sparklers from China, Inv. No. 731-TA-464 (Final), USITC Pub. 2387, at 19-20 (June 1991) (Concurring Views of Acting Chairman Anne E. Brunsdale); Residential Door Locks and Parts Thereof From Taiwan, Inv. No. 731-TA-433 (Final), USITC Pub. 2253, at 33-36 (continued...)

analysis of the kind demanded by the statute requires me to assess the domestic market and understand the role of the subject imports within that market. I cannot tell what effect dumped or subsidized imports have on a domestic industry simply by looking at the trends in volume and price, whether in absolute or relative terms. I need to know, in almost all cases, something about the unfair trade practice, the substitutability of the products, and the conditions of supply and demand in the affected industry.

Without some idea of these other factors, it is impossible to analyze in any rational way the volume effect, the price effect, and the overall impact of the subsidized imports on the domestic industry as the law specifically and unambiguously requires. 19 U.S.C. Section 1677(7)(B).

(A) The Volume of the Imports. I start by noting that Canadian imports hold slightly over a 28 percent share of the U.S. market by value. Table 2, A-24. This percentage has not noticeably changed in the last few years. Compared to other investigations, it is a substantial, though not enormous, share.

(B) The Effect of the Imports on Domestic Prices. To estimate the effect of the Canadian subsidization on domestic softwood prices and volumes, I also need to know about both the

²(...continued)

(January 1990) (Additional Views of Chairman Anne E. Brunsdale); and Electrical Conductor Aluminum Redraw Rod from Venezuela, Inv. Nos. 701-TA-287 (Final) and 731-TA-378 (Final), USITC Pub. 2103, at 42-46 (August 1988) (Dissenting Views of Chairman Anne E. Brunsdale).

rate and the nature of that subsidy. Except in very unusual circumstances, the U.S. industry will feel the effects of the subsidization through the volume and prices of the imports. In this case, the subsidy rate is low, amounting to only 6.51 percent. This means, as an upper limit, that the fair price of Canadian softwood lumber would have been 6.51 percent higher than it is in the absence of the subsidization. In this case, I believe the effect of the subsidization to be much less.

First, the subsidy rate is calculated on the value of the lumber as it leaves the first mill. Transportation costs are not trivial in this industry, amounting to between 5 and 20 percent of the total delivered cost of the lumber. A-76. Moreover, because the rate is calculated on the value after first milling, additional value added by Canadian remanufacturers is not reflected in the final number. Third, the part of the subsidy represented by too low a stumpage rate must logically inure at least in part to timber producers rather than be passed through entirely to mill owners. And, finally, we should not forget that neither of the subsidies present here is an export subsidy, much less a subsidy only on exports to the United States. Because a substantial fraction of Canadian lumber goes to consumption in Canada and third countries, see table 34, A-67, the actual difference between the price of Canadian lumber to U.S. buyers as it is and as it would have been if unsubsidized is probably even less than 6.51 percent.

The effect of subsidization on the U.S. market is not deter-

mined by the volume of subsidized imports and the subsidy margin alone. One must place the imports and the prices at which they are sold in the context of the domestic market in which they compete. This requires an examination of the decrease in the quantity of softwood lumber that would be sold if the price of the product rose -- the elasticity of demand -- and the degree of substitutability -- the elasticity of substitution -- between subsidized and domestic softwood lumber.

The staff estimates that demand for softwood lumber is fairly inelastic, probably falling in a range of between 0.3 and 0.9. Economic Memorandum, EC-P-039 at 21. The reason for this is that the cost of lumber is a small fraction of the cost of a new home, amounting to perhaps 7 or 8 percent of the final selling price, and new construction is a major use for lumber. This makes it unlikely that consumers would buy much more lumber if its price fell, or much less if its price rose. I do not mean to imply that the demand for lumber is completely inelastic: the cost of lumber can be a more significant fraction of the cost of remodeling, which is another major use for lumber, and for some uses of lumber there are substitutes. Id. at 22. On the whole, however, I conclude that the elasticity of demand is more likely to fall toward the bottom of the range suggested by staff.³

³ To the extent the subsidization of Canadian lumber has any effect on the U.S. industry, it is probably on the quantity the U.S. industry could otherwise sell, rather than on the price at which it could sell it. The reason is that the domestic supply of softwood lumber is moderately elastic, due to the decline in capacity utilization in the last few years, and the competitive
(continued...)

In contrast, the elasticity of substitution between U.S. and Canadian softwood lumber is probably at least moderately high. The staff estimates that it falls within the range of 3 to 5. Economic Mem., supra, at 18. Many of the factors that affect substitutability show no great differences between the imports and domestic like product. On the whole, lumber from both countries is put to the same end uses, and has comparable quality. However, many consumers have marked preferences for particular species and lumber is usually sold relatively near where it is milled. Southern yellow pine, for example, absorbs chemicals better, and so is preferred for outdoor uses. Other species are preferred for superiority in molding and millwork. Id. at 19. Since the mix of species between the Canadian and U.S. industries is so wide, the Coalition's claims that this is an almost perfectly fungible commodity ring somewhat hollow. I conclude that the elasticity of substitution is probably somewhere in the middle of the range calculated by the staff.

Were it not for the low rate of subsidization and what I believe to be a still lower effective rate of subsidization, I would probably have made an affirmative determination. However,

³(...continued)

nature of the industry (which consists of thousands of producers). The environmental restrictions on logging in the Pacific Northwest have, of course, reduced the ability of mills in that area to increase output. However, their inability is counterbalanced by the ease of adding new capacity in this industry (a matter of months in some cases), and the comparatively unconstrained ability of Southern mills (which depend primarily on privately held timber) to expand output. Economic Mem. supra, at 11-12.

Canadian lumber is not a perfect substitute for U.S. lumber; the demand for lumber is not perfectly inelastic; and the U.S. industry does account for 70 percent of the market. Even if the price of Canadian softwood lumber were 6.51 percent higher, Canadian lumber holds only 29 percent of the market, and the U.S. industry would not benefit materially. I therefore conclude that the unfair subsidization of softwood lumber from Canada, acting through softwood lumber imports to this country, is not materially injuring, or threatening to injure,⁴ a domestic industry.⁵

III. Effects of the Unfair Practice on All Imports

Left unanswered by my specific analysis is the underlying

⁴ My negative threat determination is based on the absence of evidence in the record of any "real and imminent" threat that the subsidies as found by the Commerce Department will increase in the near future. Such changes would require changes in the domestic law or administrative practice of the provinces involved. The only evidence on the record of the intent of those provinces is that they do not plan any changes. See Staff Cfce. Tr. at 98, 102; BC Posthearing Br. at 10-13; Que. Posthearing Br. at 31; Alb. and Ont. Posthearing Br. at 10-15. Since I find no present material injury, and no prospect for change in the near future, my determination of no threat of material injury follows as a matter of course.

⁵ An interesting check on my conclusion (or at least its consistency with my conclusions in other cases) can be seen by comparing my analysis in this case with Chrome-Plated Lug Nuts. In that case, in which I did find a domestic industry materially injured by reason of unfair imports, the imports' market share was more than 40 percent. The dumping margin was about the same as it is in this case, but I found the elasticity of substitution to be about twice as high. Chrome-Plated Lug Nuts, supra n.2, at 28. That was a case I considered "close". Id. This case, involving less substitutable products, a lower market share, and a subsidization rate that is very unlikely to be passed through fully to the U.S. market, is not.

question, as yet unanswered by a binational panel, of whether my focus on the effects of the unfair trade practice -- in this case, the subsidization of the Canadian softwood lumber industry -- is permissible or even required. Given the severe time constraints under which the Commission operates, it is unsurprising that my colleagues and I rarely state explicitly the underlying assumptions and methods of analysis that we use.

Some describe this question, which has been one of the major faultlines at the Commission over the last few years, as the "dumping or subsidization" versus "imports" debate. This is really a mischaracterization. All Commissioners look at the effects on a domestic industry of the subject imports. Except in very unusual circumstances (e.g., a foreign subsidy contingent on relocating an American factory abroad), the only way an unfair trade practice can injure a U.S. industry is by increasing the volume or reducing the price of the subject imports that compete with the domestic like product.⁶

The debate is also sometimes mischaracterized as one about whether the Commission is required in every case to consider the dumping or subsidy margin, with many practitioners regarding the question as one left up to the discretion of individual

⁶ This unusual situation appears to be what the CIT meant by "direct causal relationship" when it said "[t]his language does not mean that when a direct causal relationship between the bounty or grant and the injury to the domestic industry is not shown to exist then no causation between the subsidization (the subsidized imports) and the injury can be found and no final affirmative injury determination may issue." Alberta Pork Producers' Mktg. Bd. v. United States, 669 F. Supp. 445, 466 (CIT 1987). Indirect causes may still be legal causes.

commissioners. The rough consensus, at least among judges on the Court of International Trade, was expressed in Hyundai Pipe Co. v. ITC, 670 F. Supp. 357, 360 (CIT 1987): "[T]he Court holds that the Commission is not barred from examining margins in carrying out its duties under the 1979 Trade Act. But neither must the Commission always examine margins in making determinations"

This characterization also misses the point. The key question is whether we must (or may) gauge the effect of the unfair trade practice, or of the presence of the imports, on a domestic industry. In some cases, particularly those where the margins of dumping or subsidization are extremely high or the volume of subject imports extremely low, the distinction between these approaches makes no difference. As one CIT judge put it:

[P]laintiffs raised at oral argument the "horrible example" of a particular company with only one or two percent of its sales at LTFV. . . . If, despite its statutory design, Congress did not intend the statute to be interpreted or applied to impose duties where dumping could not be the cause of injury, one might argue that ITC should consider evidence of an extremely low percentage of sales at LTFV This, however, is not a case of a few LTFV sales but of LTFV sales as a substantial percentage of all sales. It is also a case of substantial margins. Under these circumstances, the court need not resolve these issues

Algoma Steel Corp. v. United States, 688 F. Supp. 639, 645 (CIT 1988).⁷

⁷ As the quotation shows, the plaintiffs in Algoma were arguing that the ITC must consider not only the effect of the dumping, but only the effect of individual sales found to be dumped. The
(continued...)

I recognize, of course, that our reviewers (whether courts or binational panels) give all commissioners broad deference. But both binational panelists and federal judges have stressed that this deference is not unbounded. There are three of these bounds of special importance here. The first, applicable to all administrative agencies and reviewing courts, are general principles of statutory construction (we are bound to act "in accordance with law," 19 USC § 1516a(b)(1)(B)). The second, of particular importance to us as an agency involved in international trade, is that "the Tariff Act should, where possible, be construed in a manner consistent with the General Agreement on Tariff and Trade" Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada, USA-89-1904-03 (Mar. 7, 1990) at 18.⁸

⁷(...continued)

subsequent Federal Circuit opinion stressed that the "sole issue in the appeal" was the question of whether individual sales of the subject imports at more than fair value had to be excluded in the Commission's injury analysis. Algoma Steel Corp. v. United States, 865 F.2d 240, 241 (Fed. Cir. 1989). Since the effect of excluding more than fair value sales would necessarily have been the upward revision of the margin on the remaining sales, see Algoma, 688 F. Supp. at 645 n.7, its consequence for an analysis like mine would have been nugatory. (Even as in this case the exclusion of Quebec's exports would be nugatory, since their exclusion would compel an upward revision of the subsidy margin on the rest of the subject imports.)

⁸ As the Panel in Bituminous Paving also stressed, construction of U.S. law consistent with GATT is particularly important when a Binational Panel is reviewing a determination. "In its preamble, the FTA states that one of the significant reasons why the governments of Canada and the United States reached the agreement was 'to build on their mutual rights and obligations under the [GATT]' We believe that these provisions in the FTA compel Binational Panels to be as consistent with the GATT as
(continued...)

The third bound is a more general one of rationality when an administrative agency makes its decisions, as we must, on the basis of either express or implied microeconomic assumptions. As Judge Wald of the D.C. Circuit wrote in a landmark article:

[W]hatever their differences over the soundness of particular policies, economists substantially agree on certain fundamentals of microeconomic theory. In the long run, supply must equal demand; in a competitive market, an efficient operator will earn a reasonable return on invested capital but no more; investors will seek to maximize profits; and so on. If, after careful factual inquiry . . . a judge determines that the agency's analysis is inconsistent with basic microeconomics and that the agency has not explained (perhaps because it has not noticed) the discrepancy, the judge may properly conclude that the agency action is arbitrary and capricious. This is not to say that an agency cannot reject the prevailing economic wisdom, but courts can properly insist that the agency do so consciously and explain why it chose to rely on an unorthodox theory.

Wald, Judicial Review of Economic Analyses, 1 Yale J. on Reg. 43, 51-52 (1983).

This bound was repeated more recently in the context of binational panel review by Prof. Whalley:

I have interpreted the mandate of FTA panels as being not only to ask whether or not ITC determinations are supported by substantial evidence on the record in the sense of determining the accuracy of the record itself. I also ask myself whether the logical chains of connection which link the record to the final determination are reasonable and can be supported on the basis of best professional practice.

⁹(...continued)
possible when construing either U.S. or Canadian . . . law." Bituminous Paving at 19. Concur, Fresh, Chilled, and Frozen Pork, USA-89-1904-06 (Sept. 28, 1990) at 39.

Pork, USA-89-1904-11 (Aug. 24, 1990), Additional Views of J. Whalley at 1-2.

The question of whether the Commission should focus on the effects of the unfair trade practice is one whose answer lies in the text of the statute, in its legislative history, and in the relevant provisions of the GATT. Little of this analysis is completely novel, and most is reflected in my past opinions or the academic literature. I will only sketch the broad outlines here, always keeping in mind the three boundaries I have already described.⁹

(A) The Statute. The key phrase in the statute is "by reason of imports . . . of the merchandise with respect to which the administering authority has made an affirmative determination." 19 USC § 1671D(b)(1) (similar language may be found in the sections governing antidumping and preliminary countervailing investigations). Viewed in isolation, this language is ambiguous. The language describing the imports could, for example, be describing those additional imports that entered the country as a result of the subsidy, or those imports specifically found by the Commerce Department to receive the benefits of the subsidy, or those imports over which the Commerce

⁹ The most complete analysis of the position I take, the most thorough justification for it, and most of the arguments I make below, may be found in Knoll, "An Economic Approach to the Determination of Injury under United States Antidumping and Countervailing Duty Law," 22 NYUJ of Int'l L. and Pol. 37 (1989).

Department calculates the rate of subsidy.¹⁰

"By reason of" is also unclear. It could refer to the effect of the presence of the imports (however defined); or to the effect the unfair subsidization has in increasing the quantity of the imports shipped into the U.S. market or reducing their price or both.

Both other language in the statute and the statute's structure, however, support my view that it is the effects of the subsidization rather than the mere presence of the imports in the market that I should examine. I will just mention two. First, the statute itself provides the remedy not of excluding the imports, but of charging a duty to offset the advantage received by the foreign producer. 19 USC § 1671e. Second, Congress has expressly required us to consider the "nature of the subsidy" and "its likely effects" in making threat determinations. 19 USC § 1677(7)(F)(i)(I). If the relevant causal factor is not the unfair trade practice, it is unclear why the likely effects of the subsidy would be relevant for a determination. The statutory provision allowing suspension agreements is similarly predicated on the idea that an increase in the imports' price, rather than the elimination of the imports from the market, suffices to eliminate the injurious effect. At the very least, one is entitled to expect from Congress a clearer expression of its intent if it wishes us to construe a statute other than in accord

¹⁰ This was the point of contention in Algoma Steel, discussed above.

with its purpose. Accord, Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 488-489 (1977) (construing "by reason of anything forbidden in the antitrust laws" to mean "by reason of" that which made the acquisitions unlawful).

My position is further supported by the way we review cases under Section 1675. That section allows us to review an affirmative determination and, in doing so, we ask how the elimination of an outstanding antidumping or countervailing duty would affect the prices and quantities of the subject imports. See American Permac, Inc. v. United States, 656 F. Supp. 1228, 1231 (CIT 1986); Salmon Gill Fish Netting of Manmade Fibers from Japan, Inv. No. 751-TA-11, USITC Pub. No. 1921 (Dec. 1986) at 17. This approach would only be consistent with consideration of the impact of the unfair trade practice at the outset of a case, lest the Commission be in the anomalous position of being able to make, on the same set of facts, an affirmative determination in both a final investigation and a revocation proceeding.

(B) Legislative History. The legislative history on the 1979 Act is voluminous and, to be sure, there was a great deal of shifting back and forth (even as there is in our opinions) between phrases such as "subsidization", "the unfairly subsidized goods", "the subject imports" and so on. See Knoll, supra n.9, at 83-85. But there are a few places where a more considered discussion breaks through. For example, the Senate Report specifically instructed that "for one type of product, price may be the key factor in making a decision as to which product to

purchase and a small price differential resulting from the amount of the subsidy or the margin of dumping can be decisive; for others, the size of the differential may be of lesser significance." S. Rep. No. 249, 96th Cong., 1st Sess. 88 (1979). See also, e.g., id. at 58 ("the Commission must satisfy itself that, in light of all the information presented, there is a sufficient causal link between the subsidization and the requisite injury").

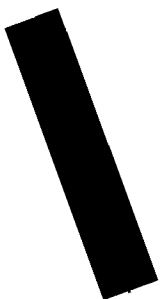
The Statements of Administrative Action describing how the proposed legislation was to be administered made the same point: "The petitioner must demonstrate, and the Commission must satisfy itself that, in light of all the information presented, there is the requisite causal link between the subsidization or dumping and material injury." HR Doc. No. 153, 96th Cong., 1st Sess., pt. 2 at 434-35, quoted in Knoll, supra note 9, at 84. Congress has specifically ratified this Statement in 19 USC Section 2503(a).¹¹

(C) GATT. The consideration of the effects of the subsidization is required as well by Article VI of the GATT: "No contracting party shall levy an antidumping or countervailing duty on the importations of any product . . . unless it

¹¹ Section 2504 states that no trade agreement approved by Congress that conflicts "with any statute of the United States" shall be given effect. 19 USC § 2504(a). I do not think we should construe this statute to mean more than it says. If there are two possible interpretations of a statute and one interpretation would conflict with a trade agreement approved by Congress, that should be the one adopted even if, under ordinary principles of judicial review, both interpretations would otherwise be reasonable.

determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury" The Codes are similar, with the Subsidies Code, for example, stating that "[i]t must be demonstrated that the subsidized imports are, through the effects of the subsidy, causing injury" Art. VI, para. 4. All the factors I look at to gauge the impact of an unfair trade practice -- the market share of the imports, the margin of dumping or subsidization, the estimates of the relevant elasticities -- are precisely the "basic microeconomics" noted by Judge Wald that one must, I think, use to forge the "logical chains of connection" between the subsidization and any harm it might cause an American industry.

In this case, that chain is too weak to support an affirmative determination.



DISSENTING VIEWS OF COMMISSIONER JANET A. NUZUM

On the basis of the record developed in this final investigation, I determine that the industry producing softwood lumber in the United States is neither materially injured nor threatened with material injury by reason of subsidized imports of softwood lumber from Canada.¹ I join my colleagues in their determinations on "like product" and "industry," and therefore will not repeat that discussion here.² Instead, I will focus on my analysis of the record, which led me to make a negative determination in this investigation.

I. LEGAL STANDARD

Under section 705(b) of the Tariff Act of 1930, as amended ("the Act"), the Commission is to make a final determination of whether "an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded" by reason of imports of the merchandise found by the Department of Commerce ("Commerce") to be subsidized.³ Section 771(7)(A) of the Act defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."⁴

In making this determination, the Commission is required to consider the volume of imports, the effect of imports on prices in the United States, and the impact of the imports on domestic producers of like products.⁵ The

¹ Material retardation of the establishment of an industry is not an issue in this investigation.

² See Views of Chairman Newquist, Vice Chairman Watson, Commissioner Rohr, and Commissioner Crawford at 3-13.

³ 19 U.S.C. § 1671d(b).

⁴ 19 U.S.C. § 1677(7)(A).

⁵ 19 U.S.C. § 1677(7)(B). In considering the impact of the imports on domestic producers, the Commission is directed to consider this factor only in the context of production operations within the United States. This caveat, however, is not

Commission is to consider all relevant economic factors; "the presence or absence of any factor which the Commission is required to evaluate . . . shall not necessarily give decisive guidance" with respect to our determination.⁶

A final determination under section 705(b) must be based on positive evidence in the record; it may not be based on speculation or supposition. In evaluating all the evidence in the record, the Commission may weigh the evidence and selectively rely on certain evidence as more credible; however, the Commission's determination in the final analysis must be supported by substantial evidence on the record.⁷

In this investigation, the record contains extensive data. Most of the data focus on the four-year period 1988-91; however, industry data were available for prior years, and certain pricing data were available through March 1992. For purposes of my determination, I generally relied on data covering the period 1988-91; reliance on other data is noted as appropriate.

II. BACKDROP: CONDITIONS OF COMPETITION IN THE SOFTWOOD LUMBER INDUSTRY

In evaluating the impact of dumped or subsidized imports on a domestic industry, the Commission is required to "evaluate all relevant economic factors . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁸ I find that a discussion of these particular conditions of competition, including a general understanding of the market forces at work in this industry, provides a useful starting point for an analysis of the impact of unfair imports on a domestic industry.

at issue in this investigation.

⁶ 19 U.S.C. § 1677(7)(E)(ii).

⁷ 19 U.S.C. § 1516A(b)(1).

⁸ 19 U.S.C. § 1677(7)(C)(iii).

In the United States, the overwhelming majority -- 84 percent -- of softwood lumber is consumed in the construction sector (both residential and nonresidential, new construction and repair/remodeling).⁹ The demand for lumber by the construction sector is relatively price-insensitive, both because the cost of lumber accounts for a relatively small share of the overall cost of the end product (e.g., a house), and because lumber is relatively less expensive, and more functional, than most alternative or substitute materials.¹⁰ Thus, the actual quantity of lumber demanded in the marketplace depends overwhelmingly on the level of activity of the industries that use it. In contrast, the effect of changes in overall price levels on the quantity demanded is minimal.

Trends in housing starts -- the primary measure of new residential construction activity -- and in overall consumption of softwood lumber showed a relatively close correlation during the period.¹¹ New housing starts fell steadily during the period of investigation, from 1.5 million units in 1988 to 1.4 million in 1989 (a 7.5-percent decline), then to 1.2 million in 1990 (down 13.3 percent), and bottomed out¹² at 1.0 million units in 1991 (a further 14.9-percent drop from the 1990 level and fully 31.8 percent down from that in 1988).¹³ Overall consumption of softwood lumber declined somewhat less

⁹ Report of the Commission ("Report") at A-11 and id., n.28. Other uses of softwood lumber within the manufacturing sector include shipping materials and furniture.

¹⁰ Memorandum EC-P-039 at 21-23. I note, however, that particular substitute products are often more economical for particular end uses, and steel and aluminum are being increasingly used in commercial construction. Report at A-9, n.24, and A-74.

¹¹ Report at A-23.

¹² Annual housing starts in 1991 were at their lowest level since 1946. Report at A-25, n.58, citing the National Association of Home Builders ("NAHB") posthearing brief at 2.

¹³ Report at A-25. Calculated from unrounded data.

dramatically because use in repair/remodeling and in the manufacturing sector declined less overall than did use in new home construction.¹⁴ Apparent U.S. consumption of softwood lumber totalled 48.7 billion board feet in 1988, 47.7 billion board feet in 1989, 45.0 billion board feet in 1990, and 42.5 billion board feet in 1991 -- representing annual declines of 2.1, 5.7, and 5.5 percent, respectively, and an overall decrease of 12.7 percent.¹⁵ The generally price-insensitive nature of demand suggests that declines in consumption, even of this magnitude, may not have had a substantial price-depressing effect. In the face of declining demand, however, suppliers could not easily pass on cost increases in the form of higher prices.

An important condition affecting U.S. supply of softwood lumber is the removal from harvesting of large tracts of federal timber in Washington, Oregon, and California.¹⁶ These actions reduce the availability of the raw material for softwood lumber -- namely softwood logs. Respondents suggest that reductions in U.S. timber supply are significant in terms of their volume effects: "The timber isn't there to buy."¹⁷ I note, however, that the differences between decreases in production of softwood lumber in the western United States (by 16.5 percent) and in either decreases in total U.S. production of softwood lumber (11.2 percent) or decreases in U.S. consumption

¹⁴ Calculated from data presented in the Report at A-9 and A-24, Table 2. "In years of low housing starts, the share of softwood lumber consumed by new housing construction may drop somewhat, with the share accounted for by repair and remodeling increasing slightly." Report at A-9.

¹⁵ Report at A-24, Table 2.

¹⁶ Report at A-16 and *id.*, n.52. "[A]s much as one-half of the commercial timber supply in the West is publicly owned. Some producers in the West are 100 percent dependent on public timber for their raw material supply." Report at A-16.

¹⁷ Transcript of the Hearing ("Tr.") at 208.

(12.7 percent) are not substantial.¹⁸ Rather, the overwhelming effect of the timber supply constraints appears to have been to drive up prices. The reduced supply of logs resulted in substantial price increases for this raw material.¹⁹ The vast majority of softwood lumber producers, especially in the West, do not own their own timberland²⁰ and were forced either to pay prevailing prices for softwood logs or to shut down.²¹

Another significant condition of competition affecting the U.S. softwood lumber market during this period was the U.S.-Canada Memorandum of Understanding on Softwood Lumber ("MOU"). Under the terms of the MOU, entered into in December 1986, the Government of Canada imposed a 15-percent ad valorem charge on certain softwood lumber products exported to the United States. This charge was subsequently reduced with respect to exports from certain provinces by "replacement measures" (including increases in stumpage fees) that shifted the costs of Canadian timberland maintenance to the Canadian lumber industry.²² As described by a representative of the Government of Canada:

¹⁸ Report at A-30, Table 5, and A-24, Table 2. The western, southern, and northern regions of the United States are shown in the Report at A-19, Fig. 2.

¹⁹ Industry representatives have suggested that the system of bidding on federal timber "can create a systematic upward bias in auction prices." NAHB posthearing brief at 6. Softwood log prices increased substantially more than did softwood lumber prices. Report at A-76 - A-77. Log prices went up not only in the West but nationwide. Report at A-44, A-46, and A-64. Thus, it appears that prices of logs were affected greatly by factors other than actual supply levels.

²⁰ Report at A-21.

²¹ "The majority of producers with mills in the West who responded to the Commission questionnaire indicated that their western operations had been affected by the reduction of available timber for harvest. The effects manifested themselves in the form of both temporary and permanent mill shutdowns as well as some instances of increased log costs." Report at A-16, n.53.

²² See, e.g., Letter to Judith Czako from M. Jean Anderson on behalf of the Government of Canada, dated June 23, 1992 at 1-2 ("the [replacement] measures implemented by the provinces had the effect of transferring significant costs and obligations from the provincial governments to stumpage holders").

The modifications undertaken by British Columbia were accepted in December 1987 by the Department of Commerce and the U.S. industry as fully replacing the 15 percent export tax which was imposed by Canada under the MOU. With respect to Quebec, the Commerce Department and the U.S. industry had agreed by 1990 that the changes implemented by Quebec under its 1986 Forest Act had replaced all but 3.1 percent of the export tax. Significant changes made by Alberta and Ontario also had the effect of placing greater burdens and higher costs on their industries.²³

Upon termination of the MOU by the Government of Canada in October 1991, the U.S. Trade Representative instructed the Secretary of the Treasury to impose bonding requirements on imports of Canadian softwood lumber. The bond rates were set to equal the export charges that had been terminated, on a province-specific basis.²⁴ Bonding rates imposed on the subject imports were adjusted as of March 1992 to reflect Commerce's preliminary subsidy determination of 14.48 percent for all provinces except the Maritimes.²⁵ The bond was reduced to 6.51 percent following Commerce's final determination in May 1992.²⁶ Thus, both prior to and during the period of this proceeding, Canadian subsidies were reduced or offset to a greater or lesser extent by

²³ Id.

²⁴ Report at A-5. Bonding requirements for softwood lumber originating in the province of Quebec were 6.2 percent of the entered value prior to Nov. 1, 1992, and 3.1 percent thereafter. No bonding requirements were imposed on the products of British Columbia or the Maritime Provinces, and a 15-percent bond was imposed on all other Canadian softwood lumber. The Commission staff estimated the countrywide bond rate at 3.7 percent, weighted on the basis of shares of Canadian production. Memorandum EC-P-041 at 2. This figure is not, however, equivalent to the actual bond rate applied to Canadian exports because provincial shares of production do not equal provincial shares of exports. E.g., Compare Report at A-20, Fig. 3, with Report at A-70.

²⁵ 57 Fed. Reg. 8800, Mar. 12, 1992. The Maritime Provinces include New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island. Softwood lumber produced in these provinces from timber harvested there is not subject to this investigation. 57 Fed. Reg. 22623, May 28, 1992. To the extent that data on imports of softwood lumber from Canada include products from the Maritimes, they are slightly overstated. Because, however, imports from the Maritimes represent a very small portion of total imports from Canada, their inclusion has a minimal effect on import and import penetration data. Report at A-69, n.70.

²⁶ 57 Fed. Reg. 22570, May 28, 1992.

either Canadian export charges or U.S. bonding requirements.

The Coalition for Fair Lumber Imports (Coalition), appearing in support of the imposition of countervailing duties, has suggested that the Commission should consider the impact of the MOU on the U.S. industry and reach an affirmative determination on the basis that, but for the MOU, the condition of the industry would have been substantially worse.²⁷ I reject this approach. Such an approach is analogous to the analysis the Commission generally applies in a determination following the violation of a suspension agreement.²⁸ In the instant investigation, however, the MOU was not a suspension agreement, and the termination of the MOU was not a violation of the agreement -- indeed, termination was explicitly authorized under the agreement. The statutory authority governing procedures and standards to be applied with respect to suspension agreements and their violation is very specific. Hence, I do not believe that authority may be used to treat the MOU and its termination as if they were a suspension agreement and subsequent violation.

This does not mean that I do not believe the MOU and its termination are not to be taken into account. Indeed, I have taken both the existence of the MOU and its termination into account in my analysis. It would be unrealistic and inconsistent with Congressional intent to ignore a condition of competition that affected the terms of trade in this industry as directly as the MOU did. The relevant focus, however, is to consider the economic effect of the MOU, the legal and economic effects of the termination of the MOU, and the economic effects of the replacement measures.

The economic impact of the MOU during the time it was in effect was to

²⁷ Coalition prehearing brief at 98-105.

²⁸ See section 704(j) of the Act, 19 U.S.C. § 1671c(j).

increase prices of Canadian lumber in the U.S. market, and to offset, roughly, the subsidy alleged to have been provided to Canadian producers.²⁹ The question then becomes: What happens when the MOU is not in effect?

The legal effect of the termination of the MOU is to remove the obligation on the part of the Canadian government to impose any export charge on its softwood lumber exports to the United States. Thus, as a purely legal matter, any subsidy provided to Canadian producers would not be required to be offset by an export charge. The more germane concern, however, is whether this change in legal obligation translates into a change in economic conditions, so as to support a finding of material injury or threat thereof. In other words, what are the economic effects of the termination of the MOU?

The economic impact of the termination of the MOU must be analyzed along with the economic effect of the replacement measures. Although the replacement measures are not, as a matter of law, dependent on the existence of the MOU,³⁰ the purpose of the replacement measures was to shift some of the costs of stumpage systems to the Canadian lumber industry in order to avoid the need for an export charge or other countervailing measure. To the extent that these replacement measures offset the subsidy element of provincial programs thereby replacing the conditions justifying the export charge, and continue to do so despite the termination of the MOU, there is no economic effect to the termination of the MOU. If, on the other hand, the replacement measures are eliminated or altered in a manner which provides a cost advantage

²⁹ The 15 percent export charge was based on a preliminary (not final) determination of subsidy margin by the Department of Commerce in its 1986 countervailing duty investigation.

³⁰ See Letter to Judith Czako from M. Jean Anderson dated June 23, 1992 ("the measures undertaken by the provinces are embedded in provincial policy, law, and practice, and do not depend in any way upon the existence of the MOU").

to the Canadian lumber industry, and such cost advantage is passed on to Canadian exports to the U.S. market, then there is likely to be an adverse economic impact on the U.S. lumber industry. Such adverse economic impact would likely be visible through lower Canadian prices and/or higher Canadian penetration of the U.S. market. These events have not yet occurred, however.

III. VOLUME OF THE SUBJECT IMPORTS

The Commission is required to consider the volume of the subject imports, and whether "the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to domestic production or consumption in the United States, is significant" (emphasis added).³¹ In absolute terms, U.S. imports of softwood lumber from Canada, on both a quantity and value basis, did not increase but rather decreased during the period of investigation. On a quantity basis, imports declined steadily from 13.7 billion board feet in 1988 to 13.5 billion board feet in 1989 (a 1.7-percent decline), then to 12.1 billion board feet in 1990 (a further 10.1-percent drop), and to 11.7 billion board feet in 1991 (an additional 3.6-percent annual decline) -- an overall reduction in volume of 14.9 percent.³² On a value basis, imports also declined, although at a more moderate rate (4.6 percent overall), as a reflection of the fact that the unit value of the Canadian product increased steadily.³³

Relative to domestic consumption, imports of Canadian softwood lumber on a quantity basis accounted for between 26.9 percent and 28.1 percent of the

³¹ 19 U.S.C. § 1677(7)(C)(i).

³² Report at A-70, Table 35.

³³ The unit value of the subject imports increased from \$215.67 per thousand board feet (mbf) in 1988, to \$234.52 per mbf in 1989, to \$237.31 per mbf in 1990, and peaked at \$241.62 per mbf in 1991 (an overall 12-percent increase). Report at A-70, Table 35.

U.S. market during the period of investigation. I do not dispute that, if viewed in isolation, such market shares may be "significant" in their size. However, I believe that in this case, in which absolute import volumes are decreasing and U.S. consumption is declining, the more probative concern with respect to market share is the increase, if any, in market share.

The Canadian share of U.S. consumption, based on quantity, however, actually declined over the period of investigation.³⁴ If we further examine the changes in market share on an annual basis, we find that Canadian market share declined in one period (from 1989 to 1990, Canadian market share fell from 28.2 percent to 26.9 percent -- or 1.3 percentage points) and increased in two periods (from 1988 to 1989, Canadian market share increased from 28.1 percent to 28.2 percent -- a meager 0.1 percentage point increase; from 1990 to 1991, Canadian market share increased from 26.9 percent to 27.5 percent -- an increase of merely 0.6 percentage points). In other words, changes in Canadian market share were minimal; Canadian market share was relatively steady during the period of investigation.³⁵ I note that the Canadian share of the U.S. market on the basis of value (as opposed to quantity) did increase from 26.8 percent in 1988 to 28.3 percent in 1991; but this relatively small increase is fundamentally a reflection of the increase in unit value of the

³⁴ The share of domestic consumption accounted for by the Canadian imports fluctuated from 28.1 percent in 1988, to 28.2 percent in 1989, to 26.9 percent in 1990, to 27.5 percent in 1991 -- an overall decrease of less than one percent market share. Report at A-24, Table 2.

³⁵ I further note that softwood lumber imports from Canada have held a similar market share for nearly two decades. The U.S. market share held by Canadian softwood lumber increased irregularly from 24.3 percent by volume in 1977 to a peak of 31.6 percent in 1985. Softwood Lumber from Canada, Inv. No. 701-TA-274 (Preliminary), USITC Pub. 1874 at A-12, Table 2 (July 1986). That share then declined irregularly through 1991. The 1991 Canadian market share of 27.5 percent nearly equalled the 1981 share of 27.3 percent.

subject imports relative to the unit value of apparent consumption.³⁶

I therefore find neither the volume nor the changes in volume accounted for by the subject imports to be significant.³⁷

IV. PRICE EFFECTS OF THE SUBJECT IMPORTS

The Commission is also required to consider the effect of the subject imports on prices in the United States for the like product. In evaluating this effect, the Commission must consider whether there has been significant price underselling by the subject imports, and whether the subject imports either depress prices to a significant degree, or prevent price increases which otherwise would have occurred to a significant degree.³⁸

The evaluation of data relating to pricing in this investigation has been very difficult. Despite the best efforts of the Commission staff³⁹ and the cooperation of the parties,⁴⁰ the evidence of record presents a mixed picture of both underselling and overselling, and does not clearly establish price depression or suppression by the subsidized imports. In certain previous investigations, the Commission has found that the available pricing data did not support a finding of either underselling, lack thereof, or price

³⁶ Report at A-24, Table 2. In 1988, the unit value of imports from Canada (\$215.67) was less than the unit value of apparent consumption (\$226.88) by \$11.21. In 1989, that disparity shrank to \$2.28. The 1990 unit value of the Canadian product was \$9.97 greater than that of total apparent consumption, and in 1991 the surplus was \$7.08. Id.

³⁷ "Congress, this court, and ITC itself have repeatedly recognized that it is the significance of a quantity of imports, and not absolute volume alone, that must guide ITC's analysis under section 1677(7)." USX Corp. v. United States, 655 F. Supp. 487, 490 (Ct. Int'l Trade 1987) (USX) (emphasis in the original.)

³⁸ 19 U.S.C. § 1677(7)(C)(ii).

³⁹ I note the extraordinary effort undertaken by the Commission staff to ensure the maximum usability of the pricing data, including extensive consultations with counsel for both the Coalition and respondents, meetings with industry participants, and on-site verification of both producer and importer pricing information. See Tr. at 82-88.

⁴⁰ See Tr. at 90 and 217-218.

depression or suppression.⁴¹ In some investigations where actual transaction prices for products were not reliable or unavailable, the Commission has examined other factors indicative of pricing practices.⁴²

Prices for softwood lumber fluctuate considerably from day to day, and even from hour to hour. Price fluctuations for a specific species or species group,⁴³ grade, and dimension may be caused by, among other factors, access to timber supplies, prices of competitive species within a region, weather, market forecasts, published prices, inventory levels, the size of an order, and export demand.⁴⁴ Thus, isolated prices for even the same product within the same market may differ substantially.

The Coalition has argued that softwood lumber is a commodity product, that U.S. and Canadian lumber are highly substitutable, and that the substantial volume of subsidized imports has a price-suppressive effect.⁴⁵ Respondents have essentially countered by emphasizing that the data belie the Coalition's arguments, and point to product differentiation within the overall

⁴¹ See, e.g., Nepheline Syenite at 23 (majority views) and 37 (my additional views); Certain Granite from Italy and Spain, Invs. Nos. 701-TA-289 and 731-TA-381 and 382 (Final), USITC Pub. 2110 (1988) at 25 (Granite); and Fabricated Structural Steel from Canada, Inv. No. 731-TA-387 (Preliminary), USITC Pub. 2062 (1988) at 14.

⁴² See, e.g., Granite at 25-26 (consideration of unit values for purposes of underselling analysis); and Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Invs. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 at 48 and 53 (consideration of installed system prices, of which only about 50 percent represented the prices of the subject or like product, for purposes of price depression analysis).

⁴³ Some species with similar characteristics are grouped for production and marketing purposes. See Report at A-8, n.19; Report at A-8, n.20; and Report at A-8, n.21.

⁴⁴ Report at A-72.

⁴⁵ The Coalition goes so far as to assert that: "The injurious impact of the subsidized lumber is dramatic in its own right, and it is readily isolated from [other injury-causing] factors." Coalition prehearing brief at 2. I obviously disagree.

like product and alternative causes by way of explanation.⁴⁶

The record confirms a certain degree of product differentiation in this industry. Within the overall like product are items that can be rough or remanufactured; as large as timbers or as small as precut framing materials; shop or select grade; green or dried; stress grades or pressure-treated.⁴⁷ Specialty items compete in relatively distinct, small-volume markets. There remains, however, a substantial portion of the market characterized by U.S. and Canadian competition in commodity-type products, specifically studs, boards, and dimension lumber.⁴⁸

All coniferous species are included within the like product, although several species groups account for the bulk of commercial production. Canadian and U.S. softwood lumber do not represent the same mix of species; the spruce-pine-fir species group ("SPF") accounts for the bulk of Canadian production⁴⁹ but only a small portion of U.S. production.⁵⁰ The primary domestic species group is Southern Yellow Pine ("SYP"), whose member species are not grown in Canada.

Some purchasers have a strong preference for one or more species, based on the end use of the material and on personal familiarity.⁵¹ There is a strong regional pattern to purchasers' preferences, reflecting local building codes and traditional use or availability of a particular species in a

⁴⁶ See, e.g., Canadian Forest Industries Council et al. (CFIC) posthearing brief at 1-10 and Government of Canada posthearing brief at 11-15.

⁴⁷ Report at A-6 - A-8.

⁴⁸ Report at A-7, A-24, and A-75. These were the products for which pricing data were gathered and presented.

⁴⁹ Report at A-66, Table 33.

⁵⁰ Report at A-31 and id., Table 6.

⁵¹ Report at A-9; A-22, n.57; and A-72 - A-73. See also Tr. at 291 and NHBA posthearing brief at app. II.

geographic area.⁵² For certain purchasers, preference for a particular species can translate into a price premium -- the amount of which does not appear to have changed substantially during the period of investigation.⁵³ Other purchasers are either unwilling or less inclined to pay a premium for a specific species.⁵⁴ Overall, I find that there is substantial price competition between various species and between various species groups. I further conclude that a substantial portion of the U.S. market consists of species, both U.S. and Canadian, that do compete with each other on the basis of price. In analyzing the pricing data, however, I have examined more closely comparisons of products within the same species or species group.

Underselling. The Coalition relies on official and public data to substantiate their assertions of underselling.⁵⁵ Respondents, in turn, cite questionnaire data, which show a pattern of overselling.⁵⁶ The courts have recognized that the Commission has the discretion to determine which, among differing or conflicting data, are the most reliable.⁵⁷ Specifically, "Congress chose to give the ITC broad discretion in analyzing and assessing

⁵² See, e.g., Report at A-12 and A-88; Tr. at 291.

⁵³ "... for most jobs requiring dimension lumber, SYP is chosen over SPF only when it is priced considerably below SPF, most likely by a margin of \$20-\$25 per mbf." Report at A-89, n. 73. See also Report at A-29, n. 57; Transcript at 291; and Coalition's Prehearing Brief, Exhibit A, Figures 22 and 24 (nonindexed graphs).

⁵⁴ Reported results of a survey of 30 builders suggest a general reluctance by end users to switch species, but a willingness to do so if given a certain economic incentive. Individual builder comments ranged from "Always use [SYP and spruce], regardless of price increases" to "Always investigating other species to stop price increases." See NAHB post-hearing brief at app. II.

⁵⁵ Coalition prehearing brief at 61.

⁵⁶ CFIC prehearing brief at 15-18.

⁵⁷ See, e.g., Torrington Co. v. United States, Slip Op. 92-49 at 13, 15 (Ct. Int'l Trade, April 3, 1992).

the significance of the evidence on price [underselling].⁵⁸

Comparisons of f.o.b. mill prices, as reported by Random Lengths Publications,⁵⁹ reveal consistent patterns of underselling.⁶⁰ I do not find these comparisons, however, to be particularly meaningful. First of all, price comparisons within species were not possible and, as noted above, I believe such price comparisons are more relevant. Second, Canadian producers generally quote on a delivered price basis.⁶¹ Random Lengths Publications derives the Canadian f.o.b. prices it reports based on delivered prices and published freight rates. Published rates do not include contract rates, rebates, or prepayment and other discounts,⁶² all of which are likely to lower actual freight costs; thus, the constructed Canadian f.o.b. prices may be understated and the margins of underselling overstated.⁶³ Third, due to the substantial component of the delivered value of softwood lumber that is accounted for by transportation costs, f.o.b. mill prices do not appear to be an accurate measure of how the product is priced to the end user.⁶⁴ Fourth, the margins of underselling are larger than one would expect for a commodity-

⁵⁸ Copperweld Corp. v. United States, 682 F. Supp. at 565 (Ct. Int'l Trade 1988). Also specifically with regard to pricing data, "[a]s a trier of fact, ITC must assess the quality of the evidence and give such weight to the evidence as it believes is justified." Iwatsu Electric Co. Ltd. v. United States, 758 F. Supp. 1506, 1509 (Ct. Int'l Trade 1991).

⁵⁹ Random Lengths Publications, Inc., Eugene, OR, publishes reports on prices of a wide range of forest products in the North American market. Prices are gathered through weekly pricing surveys of buyers and sellers located throughout the United States. Report at A-72, n.71. See also How to Read Random Lengths: Your Guide to Understanding Wood Products Markets and Prices, reproduced in the CFIC posthearing brief at exh. 2.

⁶⁰ Report at A-81, Table 38.

⁶¹ Report at A-73 - A-74.

⁶² Report at A-77 and A-80, citing Random Lengths, Lumber Price Guide at 3-5 (May 22, 1992).

⁶³ I further note that the Commission has not generally relied on comparisons based on constructed prices.

⁶⁴ See Report at A-80.

type product.⁶⁵ Finally, other data in the record show exactly the opposite -- that is, overselling.⁶⁶ For these reasons, I do not find the evidence of underselling based on comparisons between actual U.S. and constructed Canadian f.o.b. prices for different species to be persuasive in supporting an affirmative determination.⁶⁷

In its questionnaires, the Commission collected data on delivered prices for specified products sold in specified geographic markets.⁶⁸ This data collection was designed to measure actual prices paid (delivered prices rather than f.o.b. mill), and to eliminate price differences based upon regional preferences (for example, prices for SPF in Chicago were not commingled with prices for SPF in Los Angeles). Unfortunately, certain questionnaire respondents had difficulty complying with the Commission's request and therefore coverage of the industry was limited.⁶⁹

Available comparisons between different species generally showed a pattern of overselling; however, for reasons stated above, I have put very little weight on comparisons between different species. Comparisons within a species or within a species group (e.g., Douglas fir in Boston and Los Angeles; SPF in Boston, Chicago, Baltimore, and Atlanta; hem-fir in Boston;

⁶⁵ I note the observation of the Commission in its preliminary determination (in which I did not participate): "in a market for a commodity product such as lumber, we would not expect to see a consistent pattern of under- or overselling." Softwood Lumber from Canada, Inv. No. 701-TA-312 (Preliminary), USITC Pub. 2458 at 19 (December 1991).

⁶⁶ See Report at A-83 - A-117, Tables 39-51.

⁶⁷ It is for many of these same reasons that I also put relatively little weight on the evidence of overselling shown by comparing weighted-average composite U.S. and Canadian net delivered prices (Report at A-84, Table 39). I note, however, that the margins of overselling are closer to what one might expect for this type of product.

⁶⁸ Report at A-82 - A-83.

⁶⁹ Report at A-83. I note, however, that there is no reason to suspect this data is inaccurate, just limited in quantity.

and Englemann spruce/lodgepole pine in Dallas) showed a preponderance of overselling.⁷⁰ Because the data reported do not appear to present a representative picture of industry pricing, however, I have also put very little weight on the size of the margins.

Overall, after weighing the evidence on price comparisons, I find that there is not convincing evidence of any significant price underselling.

Price depression and suppression. The pricing data were somewhat more useful for purposes of considering price trends. Most of the pricing data in the record covered the period January 1990 through March 1992. I have concentrated my analysis of price trends on data for the period January 1990 through October 1991.⁷¹

The record reveals that prices trended up overall during the period of investigation; however, they fluctuated downward from mid-1989 to December 1990, and again from June to October 1991.⁷² From December 1990 to June 1991, in contrast, prices increased. Based on publicly available data, price trends for four U.S. products from January to December 1990 declined by an average of 7.8 percent.⁷³ Prices for five Canadian products over the same period, in comparison, declined by an average of 7.3 percent. From June to October 1991, the U.S. prices fell by an average 21.5 percent while Canadian prices fell by 20.8 percent. Similarly, weighted-average composite net delivered price

⁷⁰ Report at A-86 - A-117, Tables 40 - 51. I note that, for a number of products, price comparisons for January-March 1992 showed underselling.

⁷¹ I have placed relatively little weight on pricing data presented for November 1991 through March 1992, because this investigation likely affected prices. See Report at A-86 and *id.*, n.89, citing Random Lengths, Yardstick at 1 (March 1992). See also Coalition prehearing brief, exhibit C at 8-10.

The Commission may give little weight to data that are distorted as a result of the initiation of a countervailing duty or antidumping investigation. See, e.g., USX, 655 F. Supp. 487, 492 (Ct. Int'l Trade 1987).

⁷² Report at A-78, Figure 5; A-85, Figure 6; and A-86.

⁷³ Report at A-79, Table 37.

trends based on questionnaire data show that U.S. prices fell by 10.8 percent over 1990, compared with 7.9 percent for the Canadian product.⁷⁴ The June to October 1991 declines were 10.5 percent and 9.8 percent, respectively. These trends do not support a conclusion of price depression by reason of the subject imports.

During both periods of price declines, costs (consisting primarily of softwood log prices) increased.⁷⁵ However, cost of goods sold as a percent of net sales declined from 1990 to 1991,⁷⁶ indicating that price increases overtook cost increases. The Canadian lumber composite price hit a low point for the period in November 1990 whereas the domestic lumber composite price reached a low in February 1991.⁷⁷ Thus, Canadian prices started to rebound before U.S. prices did.⁷⁸ Prices for four U.S. products increased by an average of 36.3 percent from December 1990 through June 1991, while prices for five Canadian products increased 37.5 percent.⁷⁹

Rather than evidencing price leadership by Canadian products, "in all market areas for which prices were collected, price movements most often appear to be caused by changes in seasonal demand for lumber products. At times, [U.S.] government policies or weather-related factors may also affect

⁷⁴ Report at A-84, Table 39, and A-85, Figure 6. The overall U.S. and Canadian trends were also similar to the framing lumber composite f.o.b. price trend reported by Random Lengths Publications. Report at A-83.

⁷⁵ Report at A-78, Fig. 5.

⁷⁶ Report at A-53, Table 23.

⁷⁷ Report at A-83.

⁷⁸ I note that, following the initiation of the preliminary investigation by Commerce, prices of softwood lumber products began a strong rise. The U.S. producer price index for all softwood lumber products climbed 20.4 percent from November 1991 through March 1992, substantially more than did the producer price index for softwood logs (14.5 percent between December 1991 and March 1992), despite the fact that Canadian prices did not climb as much as did U.S. prices. Report at A-76 - A-77 and A-84, Table 39.

⁷⁹ Report at A-79, Table 37.

prices. For example, lumber prices increased following the U.S. Government's spring 1990 decision to withhold logging permits for some federal lands in the Pacific Northwest as a means of preserving the habitat of the Northern Spotted Owl."⁸⁰

The record, therefore, does not support a finding of price suppression by reason of the subject imports.⁸¹ Nevertheless, given the relative closeness of U.S. and Canadian price movements, I considered other price-related indicators before drawing my conclusions on either price depression or suppression. For example, I noted that the unit values of imports from Canada increased steadily during the period of investigation, by a total of 12.0 percent overall.⁸² In comparison, the data on unit values of domestic shipments by U.S. producers responding to the questionnaire show an overall increase of only one-tenth that of the subject imports -- 1.3 percent.⁸³ Furthermore, compared with the unit values of apparent consumption, the unit values of the subject imports rose, while those of domestic production declined.⁸⁴

⁸⁰ Report at A-86.

⁸¹ I note that even the Western Wood Products Association, a member of the Coalition, in a March 11, 1992 press release, attributed the lack of sustained price increases to nonimport factors:

Two primary reasons account for there having been no serious or lasting spike in prices before now. One has been the lower-than-normal demand because of lower 1990 and 1991 housing starts. The other has been what was once a several-year backlog of federal timber the lumber industry has had in its inventory."

CFIC prehearing brief at exh. 56.

⁸² Report at A-70, Table 35. Annual increases were 8.7 percent from 1988 to 1989, 1.2 percent from 1989 to 1990, and 1.8 percent from 1990 to 1991. *Id.*

⁸³ Report at A-37, Table 11. Unit values increased by 0.3 percent from 1988 to 1989, then decreased by 1.9 percent from 1989 to 1990, and increased by 2.9 percent from 1990 to 1991. *Id.* Fifty companies, including many of the largest domestic producers, responded to the Commission's producer questionnaire.

⁸⁴ Report at A-24, Table 2. Unit values for domestic shipments were calculated from quantity and value data for U.S. production and exports.

Thus, based on the record, I am not persuaded that there is either significant price depression or significant price suppression by reason of the subject imports. What evidence exists of price depression or price suppression is more than fully explained by declining demand and rising costs.⁸⁵

V. IMPACT OF SUBJECT IMPORTS ON THE CONDITION OF THE DOMESTIC SOFTWOOD LUMBER INDUSTRY

An analysis of the impact of the subject imports on the condition of the domestic industry is to be based on all relevant economic factors which have a bearing on the state of the industry, including certain specified factors enumerated in the statute.⁸⁶ Furthermore, this analysis should focus on the particular nature and structure of the industry involved, in the context of the business cycle and conditions of competition that are distinctive to the affected industry.⁸⁷

During the period of investigation, the number of domestic firms producing softwood and hardwood lumber in the United States declined from 5,777 to 5,680, or by 1.7 percent.⁸⁸ Cited among the reasons for mill

⁸⁵ The Commission has found that "prices are expected to soften during the downturn in the business cycle, not increase. Moreover, domestic producers are not likely to be able to pass on increased costs to their customers in a price-sensitive market." Coated Groundwood Paper from Belgium, Finland, France, Germany, and the United Kingdom, Invs. Nos. 731-TA-487-490 and 494 (Final), USITC Pub. 2467 at 21-22 (December 1991). I note that softwood lumber customers, however, are relatively price insensitive. See also Medium-Voltage Underground Distribution Cable from Canada, Inv. No. 731-TA-545 (Preliminary), USITC Pub. 2489) at 9 ("the decline in housing starts due to the current economic recession [had] an unequivocal negative effect on the demand for URD") and 16 ("the decline in demand [played] a role in depressing the price of URD") (March 1992) (URD). See also n.81 *supra*.

⁸⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁷ *Id.*

⁸⁸ Report at A-16, citing Commerce data. These data exclude mills accounting for less than 5 percent of U.S. production. *Id.*, n.50.

closures were declining demand for wood products and timber shortages in the West.⁸⁹ Industry data show that, despite these conditions, productive capacity actually increased by 0.8 percent during the same period.⁹⁰ Production during this period decreased overall by 11.2 percent, which was the primary reason for a decrease in capacity utilization from 97.2 percent in 1988 to 85.6 percent in 1991.⁹¹ The percentage decline in production, however, was less than the overall percentage decline in apparent consumption.⁹²

Volume trends for total shipments generally tracked those for production. Estimated⁹³ total shipments for the industry declined steadily, from 38.1 billion board feet in 1988 to 37.5 billion board feet in 1989 (or by 1.5 percent), then to 35.8 billion board feet in 1990 (a further 4.7-percent decline), and to 33.9 billion board feet in 1990 (an additional annual decline of 5.4 percent) -- an overall decrease of 11.2 percent. Questionnaire data for the quantity, value, and unit value of domestic shipments showed a smaller

⁸⁹ Report at A-16 - A-17. As I noted above, however, it is my view that timber shortages had more of a price effect on the industry than a volume effect. To the extent that mill closings resulted from timber shortages, it is more likely that those mills were unable to purchase logs at competitive prices rather than that they were unable to obtain this raw material at any price.

⁹⁰ Report at A-32, Table 7, citing National Forest Products Association (NFPA) data. Data gathered in response to Commission questionnaires show a 3.4-percent decline during the same period. Report at A-33, Table 8.

⁹¹ Report at A-32, Table 7. Questionnaire data show a decline in production of 4.9 percent, and a decline in capacity utilization from 93.5 percent to 92.1 percent. Report at A-33, Table 8.

Most producers reported capacity based on two shifts per day for 50 weeks a year. Report at A-33. The fact that capacity utilization remained relatively high at this level of operations and in the face of increasing capacity suggests that the industry did not suffer substantial operational inefficiencies due to declining production.

⁹² Compare Report at A-32, Table 7, with Report at A-24, Table 2.

⁹³ I arrived at these figures by adding total shipments reported for producers in the West and South (Report at A-35, Table 9, and A-36, Table 10) with production reported by producers in the North (Report at A-28, Table 4).

overall decline in volume (6.0 percent), a 4.9-percent decline in value, and a 1.3 percent rise in unit values.⁹⁴

Reported end-of-year inventories declined by 14.8 percent overall.⁹⁵ As a percent of annual shipments, they declined steadily, from 8.2 percent in 1988 to 7.2 percent in 1991.⁹⁶

Because apparent consumption decreased more than domestic shipments did, the share of the U.S. market held by the domestic industry,⁹⁷ which was substantial throughout the period of investigation, actually increased slightly overall. U.S. producers' market share was 71.6 percent (on a quantity basis) in 1988, 71.5 percent in 1989, 72.9 percent in 1990, and 72.3 percent in 1991. The unit value of domestic production (minus exports) fell relative to the unit value of apparent consumption during the period of investigation;⁹⁸ this resulted in a decline in U.S. market share in terms of value.

Employment in the U.S. industry declined steadily as mills shut down.⁹⁹ Overall, the number of workers fell by 14.8 percent; hours worked by 12.4 percent; and total compensation paid by 5.1 percent.¹⁰⁰ Hourly total compensation increased over the period by 8.3 percent; productivity by 8.2 percent; and unit labor costs by 0.1 percent.¹⁰¹

The Coalition has argued that the U.S. industry reacted to unfair import

⁹⁴ Report at A-37, Table 11.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Calculated from data presented in the Report at A-24, Table 2.

⁹⁸ Id.

⁹⁹ "The most commonly cited reason for the layoffs was timber supply problems, with the majority of layoffs occurring among producers operating in the West." Report at A-39.

¹⁰⁰ Report at A-39, Table 13.

¹⁰¹ Id.

competition by accepting lower prices, which negatively affected financial performance.¹⁰² Indeed, the U.S. industry's financial performance did deteriorate significantly during the period of investigation. Net sales of softwood lumber increased both in volume and in value from 1988 to 1989; however, these increases failed to keep up with increases in cost of goods sold.¹⁰³ As a result, operating and net income levels decreased and the number of producers reporting losses increased. Sales volume increased again in 1990 but sales value remained flat; as a result, a \$300 million increase in cost of goods sold translated into operating and net losses, and about one-half of the responding producers incurred losses. The situation improved measurably in 1991, with gross profits increasing by more than 50 percent from 1990 levels, and operating and net losses turning to profits. Despite these improvements, the 1991 financial performance of the U.S. softwood lumber industry remained well below either 1988 or 1989 levels.

The industry was, indeed, caught in a squeeze between rising costs and prices that did not keep up with those costs.¹⁰⁴ Cost of goods sold as a share of net sales increased from 87.6 percent in 1988 to 88.9 percent in 1989, peaked at 95.8 percent in 1990, and then declined to 92.9 percent in 1991. Since selling, general, and administrative expenses remained relatively

¹⁰² Coalition prehearing brief at 47. The Coalition has also argued that the Commission's data overstate the "health" of the industry because questionnaire responses were weighted more towards larger, more efficient, "healthier" producers. Coalition prehearing brief at 13-14. Small producers did perform more poorly than did large and medium producers; however, trends for each group were similar. Report at A-54.

¹⁰³ Report at A-52.

¹⁰⁴ See Georgia-Pacific's 1991 Annual Report at 17, Potlatch's 1991 Annual Report at 21, International Paper's 1991 Annual Report at 63, Temple-Inland's 1991 Annual Report at 15, Boise Cascade's 1991 Annual Report at 11 and 13, Champion International's 1990 Annual Report at 30, and Weyerhaeuser's 1991 Annual Report at 9-10.

stable as a percent of net sales, the increase in cost of goods sold as a percent of net sales accounts for the decline in operating income and was the primary factor in the decline in net income. The largest (and an increasing) portion of costs was the cost of direct materials, i.e. softwood logs.

The Coalition has suggested that the causal nexus between the subsidized imports and the condition of the softwood lumber industry may be discerned by comparing the lumber industry with similar industries facing the decline in housing starts.¹⁰⁵ The Coalition specifically suggested that the Commission consider trends for the plywood industry. Operating income as a percent of net sales for the plywood industry during fiscal 1988/89-90/91 showed a less steep, but similarly declining trend as does operating income as a percent of net sales for the softwood lumber industry.¹⁰⁶

In a determination of whether or not an industry is materially injured by reason of subsidized imports, the Commission may consider alternative causes of injury, but is not to weigh causes.¹⁰⁷ Furthermore, the Commission need not determine that the unfair imports are "the principal, a substantial, or a significant cause of material injury."¹⁰⁸ Congress clearly indicated that "[a]ny such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of

¹⁰⁵ I note that the Commission recently considered the condition of the URD market, which is also strongly affected by residential building. That industry suffered a stronger decline in return on investment than did the lumber industry. URD at A-22. In that investigation, the Commission reached a negative determination.

¹⁰⁶ Report at A-61. I note that an additional condition of competition in the plywood market is a 20-percent tariff rate; the tariff rate for most of the subject imports is zero.

¹⁰⁷ E.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. at 1101 (Ct. Int'l Trade 1988). Alternative causes may include, among others, "contraction in demand." S. Rep. No. 96-249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in H.R. Rep. 96-317, 96th Cong., 1st Sess. 47 (1979).

¹⁰⁸ S. Rep. No. 96-249, 57 and 74 (1979).

sources, industries that are often the most vulnerable" to unfair imports.¹⁰⁹ Rather, a finding that the subject imports are a cause of material injury is sufficient.¹¹⁰

I find no evidence that the volume of imports had any significant adverse impact on the domestic industry. Both the absolute levels and market share of the subject imports actually decreased during the period of investigation. Although the Canadian market share by quantity of the U.S. market rose fractionally from 1990 to 1991, the condition of the industry improved significantly during that same time.

I also find no evidence of any significant adverse price effect by the subject imports. The record does not show significant underselling by the subject imports, nor does it support conclusions of either significant price depression or suppression by reason of the imports. Because the pricing data were very difficult to analyze, I also looked to data on unit values and shares of the market by value. Again, none of these data suggests a significant pattern of underselling, price depression, or price suppression by reason of the imports. Finally, I compared trends in certain unit values. The only discernible pattern is that the condition of the domestic industry declined when depressed demand kept market prices from meeting cost increases.

The causation standard under title VII of the Act is admittedly a low one, but it does, nevertheless, require more than the mere presence of imports. The critical issue is whether the subject imports contribute in more than a de minimis manner to whatever material injury is being experienced by

¹⁰⁹ Id. at 74-75.

¹¹⁰ See, e.g., Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

the domestic industry.¹¹¹ Looked at another way, if causes other than the subject imports wholly account for any material injury, then the material injury cannot be "by reason of" the subject imports.

In this case, it is a remote possibility that the effect of the softwood lumber imports from Canada was so overwhelmed by other forces (e.g., the lowest level of housing starts in the United States in almost 50 year, and timber supply constraints and the resulting run-up of raw material costs) that its contribution to the difficulties facing the domestic industry was masked. However, a determination on present injury by reason of imports must be based on positive evidence in the record. It may not be based any more on supposition than a determination on threat of material injury. As such, I determine that the industry producing softwood lumber in the United States is not materially injured by reason of softwood lumber imports from Canada.

VI. THREAT OF MATERIAL INJURY

Section 771(7)(F) of the Act directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." The statute specifically states, "Such a determination may not be made on the basis of mere conjecture or supposition."¹¹² The Commission considers as many of the ten statutory factors as are relevant to the facts of the particular investigation before it, as well as any other relevant economic factors.¹¹³ Our reviewing court

¹¹¹ See, e.g., Maine Potato Council v. United States, 613 F. Supp. 1237, 1244 (Ct. Int'l Trade 1985).

¹¹² 19 U.S.C. § 1677(7)(F)(ii). See Metallwerken B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990).

¹¹³ Factor VIII, regarding product shifting, and Factor IX, regarding raw agricultural products, are not relevant to the fact of this investigation.

has recently stated that the ten statutory factors primarily serve as guidelines for the Commission's analysis of the likely impact of future imports.¹¹⁴ I discuss each of the factors relevant to the facts of this investigation below.¹¹⁵

Nature of the subsidy. In its final determination,¹¹⁶ Commerce found two domestic subsidies -- stumpage programs¹¹⁷ and log export restrictions -- which together account for a country-wide subsidy margin of 6.51 percent (2.91 percent for stumpage and 3.60 percent for log export restrictions).

Commerce found that stumpage is being provided at preferential rates in the four provinces which account for virtually all Canadian production and exports of softwood lumber -- British Columbia, Quebec, Ontario and Alberta.

Commerce also found that log export restrictions in British Columbia constitute an indirect domestic subsidy -- an indirect rather than direct subsidy in light of the fact that British Columbia does not maintain direct control over the log prices through the imposition of its export restrictions. Commerce determined that the export restrictions artificially depress Canadian log prices in British Columbia; absent these restrictions, the volume of log exports would increase which, in turn, would increase the prices of Canadian logs -- the major input of lumber -- in Canada.

I note that these practices are domestic rather than export subsidies. Furthermore, since some of the Canadian production is consumed in the home

¹¹⁴ Calabrian Corp. v. United States, Slip Op. 92-69 at 23 (Ct. Int'l Trade), May 13, 1992).

¹¹⁵ For purposes of my threat analysis, I have considered evidence for 1986 and 1987, as well as for 1988 through the date of my vote, June 25, 1992

¹¹⁶ 57 Fed. Reg. 22570 (May 28, 1992).

¹¹⁷ Stumpage programs are government programs through which individuals and companies acquire the rights to cut and remove standing timber from provincial forest lands.

market and some is exported to markets other than the United States, the effects of these domestic subsidy practices are likely to be spread over products destined for Canadian consumption and foreign consumption, as well as U.S. consumption.

Foreign capacity and unused capacity. Canadian productive capacity did increase from 1986 to 1988 but remained relatively stable during 1988-91.¹¹⁸ There is no evidence in the record to suggest that Canadian capacity is likely to increase in the near future. Capacity utilization, which peaked for the period of 1986-91 at 90.8 percent in 1987, has declined since 1987, and was only 76.6 percent in 1991.¹¹⁹ I note that the United States is the largest market for Canadian softwood lumber, accounting for more than one-half of Canadian production.¹²⁰ If demand in the U.S. housing market picks up, then the existing unused capacity in Canada is likely to be used to satisfy at least part of that demand. Whether this would result in a "significant" increase in U.S. imports would depend in large part on the strength of the housing market demand.

Increases in market penetration. There has been no "rapid increase" in market penetration; rather, Canada's share of the U.S. market declined steadily during 1986-90, and rose by only a 0.6-percent share in 1991.¹²¹ This trend does not establish a likelihood of increased market penetration. Certain other factors, however, suggest that imports from Canada are likely to

¹¹⁸ Report at A-64, Table 31.

¹¹⁹ Id.

¹²⁰ Compare Report at A-66 with Report at A-68. I note that the percentage of Canadian production that was exported to the United States dropped significantly from 1986 (62.4 percent) to 1988 (54.5 percent), and remained relatively stable during 1988-91, fluctuating between a low of 53.2 percent (1989) and a high of 54.9 percent (1990). Report at A-67, Table 34.

¹²¹ Report at A-32, Table 2.

increase their share of the U.S. market.

In June 1992, a U.S. District Court ruled that the U.S. Forest Service's plan to protect the Northern Spotted Owl was inadequate.¹²² Since measures to date to protect this threatened bird have included withdrawal of federal lands from logging operations, the additional measures necessary to comply with the court's ruling may involve further constraints on timber supplies. Such constraints would likely have an adverse effect on U.S. softwood log supplies and prices. Canada, as the only significant foreign supplier of softwood lumber to the United States, would then be in a position to increase its penetration of the U.S. market, and could easily do so, given its unutilized production capacity. Whether or not such an increase is likely to occur, and whether penetration is likely to increase to an injurious level, depends on various other factors, however, which are not clearly established in this record.¹²³

Price depression/suppression. Although the record does not show a pattern of significant price depression or suppression by reason of the subject imports, several factors suggest that at least price suppression could occur in the future. Because the MOU called for a 15-percent ad valorem charge on Canadian exports to the United States, it is likely that, as least initially, it had a buoying effect on overall price levels in the United States. By the end of 1991, the actual charge on Canadian exports to the United States had been reduced to an estimated weighted-average 3.7 percent. The balance of the 15 percent charge was offset with replacement measures.

¹²² Report at A-16, n.52.

¹²³ For example, additional measures to protect the Northern Spotted Owl could focus on breeding programs, reinforced protection within existing reserves, or other measures that would not further reduce timber supplies.

The termination of the MOU (and of the subsequent bonding requirements) creates the opportunity for the Canadian products to be sold in the U.S. market by an average of 3.7 percent less. On the other hand, the Canadian exporters could choose to benefit from the lifting of the export charge by increasing their own profits.

Increases in U.S. inventories. Usable information on U.S. importers' inventories was not provided in response to the Commission's questionnaires. I am therefore unable to draw any conclusions about the role of such inventories with respect to a threat determination.

Impact on development and production efforts. Considering that R&D expenditures by the industry were substantially less than 0.1 percent of the dollar value of total sales,¹²⁴ the actual and potential negative effects of unfair imports on U.S. industry development efforts is relatively unimportant as a threat factor. Any such effect on production efforts was likely difficult to document given generally depressed market conditions. I note, however, that some producers have been forced to delay expansion and modernization plans.

Any other demonstrable adverse trends. I find no other demonstrable adverse trend that indicates the probability that imports of Canadian lumber will be the cause of actual injury.

Other relevant economic factors: the impact of the MOU, its termination, and replacement measures. Finally, other relevant economic factors in this investigation are the impact of the MOU, the termination of the MOU in October 1991, and the role of the replacement measures administered by government officials in Canada. During the period of the MOU, several of

¹²⁴ Report at A-60.

the lumber-exporting Canadian provinces instituted measures which shifted the burden of timberland maintenance to the lumber producers. To the extent that such measures were accepted by Commerce and the U.S. industry as having "replaced" any part of the export charge agreed upon under the MOU, the export charge was reduced. In the case of British Columbia, by far the largest producer and exporter of softwood lumber among the Canadian provinces, the export charge was entirely eliminated. The charge for Quebec was scheduled to be reduced to 3.1 percent in November 1991. With the termination of the MOU, these two provinces are able to rescind replacement measures without the threat of an export charge being applied to their exports. Were either British Columbia or Quebec¹²⁵ to cancel or otherwise not maintain its replacement measures, costs to its producers would decrease and their products could become more competitive in the U.S. market. Exports from Canada could increase their penetration of the U.S. market and they could have a suppressing effect on U.S. prices.

I have examined the underlying legal authority for the administration of the stumpage programs by the provincial governments. I have grave concerns about the substantial amount of discretion which provincial governments have, even under the replacement measures, to influence stumpage fees and lower the effective costs of production for Canadian softwood lumber producers. Given the recessionary pressures and unemployment problems in Canada, Canadian officials appear to be under considerable pressure to take actions which save jobs and stimulate the economy. Such actions might very well serve to increase Canadian softwood lumber exports to the U.S. market at prices that

¹²⁵ Other provinces either accounted for a much smaller share of total Canadian exports or had not instituted replacement measures accepted as offsetting the export charge.

would cause material injury to the U.S. industry. The legal authority and opportunity to do so are certainly present.

But, my determination on threat must be based on more than mere authority and opportunity. It must be based on positive evidence that demonstrates the likelihood that material injury will occur; that the threat is real and actual injury is imminent. Evidence in the record now before us does not meet this standard.

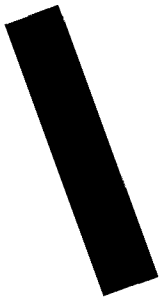
Statements submitted by representatives of the Government of Canada include assurances that "the measures undertaken by the provinces are embedded in provincial policy, law, and practice, and do not depend in any way upon the existence of the MOU."¹²⁶ Further, they pledge not to alter the stumpage programs so as to lower the effective costs of softwood lumber production for their industry: "the provincial governments have no intention of changing their stumpage systems in order to reduce costs to Canadian industry. The provinces have made no such changes since the termination of the MOU and none are contemplated."¹²⁷ Absent credible evidence to the contrary, I must take those statements at face value.

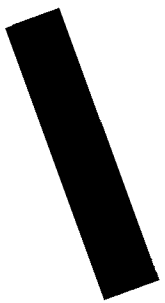
My negative determination on threat today rests heavily on the validity of these assurances and the expectation that the Government of Canada, at both the federal and provincial levels, will not act in a manner contrary to its intentions as stated in the record of this investigation. If future developments are not consistent with these expectations, then, given another opportunity with another record, I might well find sufficient evidence for an affirmative determination. Based on this record now before the Commission,

¹²⁶ Letter to Judith Czako from M. Jean Anderson dated June 23, 1992.

¹²⁷ Id.

... I am compelled to make a negative determination.





INFORMATION OBTAINED IN THE INVESTIGATION



INTRODUCTION

On March 6, 1992, the U.S. Department of Commerce (Commerce) advised the U.S. International Trade Commission (Commission) of its preliminary determination that certain benefits which constitute subsidies within the meaning of section 703 of the Tariff Act of 1930 (19 U.S.C. § 1671b) (the Act) are being provided to manufacturers, producers, or exporters in Canada of softwood lumber.^{1 2} Accordingly, effective March 6, 1992, the Commission instituted countervailing duty investigation No. 701-TA-312 (Final) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Canada of softwood lumber.

Notice of the institution of this investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 26, 1992 (57 F.R. 10498).³ The public hearing was held in Washington, DC, on May 28, 1992.⁴ The Commission voted in this investigation on June 25, 1992, and transmitted its determination to Commerce on July 6, 1992.

This investigation commenced on October 31, 1991, when Commerce published notice in the Federal Register⁵ that it was self-initiating a countervailing duty investigation to determine whether subsidies are being provided, or are likely to be provided, to manufacturers, producers, or exporters of softwood lumber products in Canada. Commerce announced its final subsidy determination on May 16, 1992.

¹ For purposes of this investigation, "softwood lumber" means coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm, provided for in subheading 4407.10.00 of the Harmonized Tariff Schedule of the United States (HTS); and coniferous wood siding, flooring and other goods (except coniferous wood moldings and wood dowel rods; but including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated [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, provided for in HTS subheadings 4409.10.10, 4409.10.20 and 4409.10.90.

² Letter from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, Import Administration, Department of Commerce, to Don E. Newquist, Chairman, U.S. International Trade Commission, Mar. 6, 1992.

³ Copies of the Commission's and Commerce's Federal Register notices relevant to this investigation appear in app. A.

⁴ A list of witnesses who appeared at the Commission's hearing is presented in app. B.

⁵ 56 F.R. 56055, Oct. 31, 1991.

INVESTIGATIONS CONCERNING SOFTWOOD LUMBER

In May of 1986, the Coalition for Fair Lumber Imports, a group of U.S. softwood lumber manufacturers and associations representing U.S. softwood lumber manufacturers,⁶ filed a countervailing duty petition with the Commission and Commerce alleging that an industry in the United States was materially injured or threatened with material injury by reason of allegedly subsidized imports from Canada of softwood lumber. Consequently, the Commission instituted a preliminary countervailing duty investigation and determined, in July 1986, there was a reasonable indication that an industry in the United States was materially injured by reason of the allegedly subsidized imports of softwood lumber from Canada.⁷

In October 1986, Commerce made its preliminary determination⁸ that imports of softwood lumber from Canada were receiving certain benefits which constituted subsidies within the meaning of the countervailing duty law. Commerce found that subsidies of 15 percent ad valorem were being provided to Canadian producers of softwood lumber products. The primary subsidy was the selective provision of a government resource, provincially-owned timber, at administratively-set prices which were determined to be at preferential rates within the meaning of subsection 771(5)(A)(ii) of the Act. As a result of Commerce's affirmative determination, the Commission instituted investigation No. 701-TA-274 (Final), in October 1986, to determine whether an industry in the United States was materially injured or was threatened with material injury, or whether the establishment of an industry in the United States was materially retarded, by reason of subsidized imports from Canada of softwood lumber.

On December 30, 1986, before Commerce's final determination in the investigation, the Governments of the United States and Canada arrived at a settlement of the dispute regarding the existence and level of subsidies, and entered into a Memorandum of Understanding on Softwood Lumber (MOU). Under the MOU, the Government of Canada agreed to impose a 15 percent export charge on certain softwood lumber products. The charge could be reduced or eliminated for exports from those provinces that instituted replacement measures increasing the fee charged on the harvest of timber or other replacement measures (e.g., silvicultural work).⁹ In exchange for Canada's

⁶ The Coalition's members included the National Forest Products Association, the Northeastern Lumber Manufacturers Association, the Northwest Independent Forest Manufacturers, the Western Wood Products Association, the Western Forest Industries Association, and the Southeastern Lumber Manufacturers Association. These associations represented companies accounting for more than 70 percent of U.S. softwood lumber production in 1985. Additionally, the following state associations were also members of the Coalition: the Alabama Forestry Association, the Arkansas Forestry Association, and the Lumber Manufacturers' Association of Virginia.

⁷ Softwood Lumber from Canada: Determination of the Commission in Investigation No. 701-TA-274 (Preliminary) Under Section 703(a) of the Tariff Act of 1930, USITC Publication 1874, July 1986.

⁸ 51 F.R. 37453.

⁹ Softwood lumber produced in the Maritime Provinces (New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island) from timber harvested in
(continued...)

agreement to collect an export charge under the MOU, the U.S. lumber industry withdrew its petition and Commerce and the Commission terminated their investigations.¹⁰ As a result, Commerce never made a final subsidy determination which, if affirmative, would have resulted in the offset of subsidies on imports through the imposition of countervailing duties in the event the Commission had subsequently found material injury or threat thereof to an industry in the United States.

On September 3, 1991, the Government of Canada announced its intention to terminate the MOU, effective October 4, 1991. Since that date, the Government of Canada has not been collecting the export charges agreed to under the MOU.

On October 4, 1991, the U.S. Government, via the United States Trade Representative (USTR), announced that Commerce would be self-initiating a countervailing duty investigation to determine whether Canadian softwood lumber is subsidized and whether subsidized lumber imports are causing, or threatening, material injury to an industry in the United States.¹¹

At the same time, USTR announced that it would initiate an investigation under section 302 of the Trade Act of 1974 with respect to certain acts, policies, and practices of the Government of Canada affecting exports to the United States of softwood lumber.¹² As a part of that action, USTR announced that the United States had determined that it was appropriate, as of October 4, 1991, to withhold or extend liquidation of entries of imports of softwood lumber products originating in certain ~~Provinces and territories~~ of Canada, until the completion of Commerce's countervailing duty investigation. In order to maintain the status quo, it was determined that imports of softwood lumber products originating in certain Provinces and territories of Canada would be subject to contingent, temporary duties of up to 15 percent ad valorem.¹³ The imposition of such duties is contingent upon affirmative final subsidy and injury determinations in the countervailing duty investigation.

⁹ (...continued)

the Maritime Provinces was exempted from the MOU and is similarly exempted from the instant investigation.

¹⁰ 52 F.R. 315, Jan. 5, 1987, and 52 F.R. 1535, Jan. 14, 1987, respectively.

¹¹ On Oct. 31, 1991, Commerce self-initiated the investigation (56 F.R. 56055, Oct. 31, 1991).

¹² Initiation of Section 302 Investigation and Request for Public Comment on Determinations Involving Expeditious Action: Canadian Exports of Softwood Lumber (56 F.R. 50738, Oct. 8, 1991).

¹³ The Secretary of the Treasury was instructed to impose the following bonding requirements: For softwood lumber originating from the province of Quebec, a single entry bond in the amount of 6.2 percent of the entered value of entries filed before Nov. 1, 1991, and 3.1 percent of the entered value of entries filed on or after Nov. 1, 1991; for such products originating in other listed Provinces, except British Columbia, a single entry bond in the amount of 15 percent of the entered value; and for such products originating in the province of British Columbia, zero rate of duty. (56 F.R. 50738, Oct. 8, 1991). No bonding requirement was imposed on imports from the Maritime Provinces.

Prior to the 1986 and present investigations, softwood lumber was the subject of investigations at the Commission under sections 332 and 703 of the Act. In December 1981, in response to a request from the Committee on Finance of the U.S. Senate and the Chairman of the Ways and Means Subcommittee on Trade of the U.S. House of Representatives, the Commission instituted investigation No. 332-134, concerning conditions relating to the importation of softwood lumber into the United States.¹⁴ In March 1985, at the request of USTR, the Commission instituted investigation No. 332-210 to update that earlier study. The Commission's report in the latter investigation was issued in October 1985.¹⁵

In October 1982, the Commission and Commerce received a petition from the U.S. Coalition for Fair Canadian Lumber Imports, a group of eight trade associations and more than 350 firms, alleging that ". . . the federal and provincial governments in Canada subsidize, directly and indirectly, the Canadian forest products industry, including softwood lumber, through a broad variety of programs and practices." In November 1982, the Commission determined that there was a reasonable indication that an industry in the United States was materially injured by reason of the allegedly subsidized imports of softwood lumber from Canada (47 F.R. 54183).¹⁶ However, in May 1983, Commerce issued a final negative countervailing duty determination and the investigation was terminated (48 F.R. 24159). In its determination, Commerce found that Canadian stumpage programs did not confer a subsidy within the meaning of the Act because they were not provided to a specific enterprise or industry or group of enterprises or industries and because they did not confer domestic subsidies under the terms of the Act.

THE PRODUCTS

Description and Uses

The term "softwood lumber" relates to a wide variety of products--such as boards, planks, timbers, framing materials, flooring, or siding--produced from coniferous species of trees.¹⁷ For purposes of this investigation, the term "softwood lumber" refers to those products classified for tariff purposes under subheadings 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the HTS.

According to the extent or stage of manufacture, such lumber (a product derived from a log by lengthwise sawing which, in its original sawed condition, has at least 2 approximately parallel flat longitudinal-sawed surfaces, and which may be rough, dressed, or worked) is further defined in the HTS as noted on the following page:

¹⁴ Conditions Relating to the Importation of Softwood Lumber Into the United States, USITC Publication 1241, April 1982.

¹⁵ Conditions Relating to the Importation of Softwood Lumber Into the United States, USITC Publication 1765, October 1985.

¹⁶ Softwood Lumber from Canada: Determination of the Commission in Investigation No. 701-TA-197 (Preliminary) Under Section 703(a) of the Tariff Act of 1930, USITC Publication 1320, November 1982.

¹⁷ Hardwood lumber is produced from deciduous trees.

4407.10.00--Coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 millimeters (mm);

4409.10.10--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;

4409.10.20 (pt.)--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; and

4409.10.90--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, whether or not planed, sanded or finger-jointed.

Producers of most softwood lumber (both domestic and imported) classify it into seven major categories:

1. Studs--lumber used in framing building walls with little or no trimming before they are set in place.
2. Dimension--lumber that is from 2 to 5 inches thick, and is 2 inches or more in width.
3. Stress grades--lumber having assigned working stress and modulus of elasticity values in accordance with accepted basic principles of strength grading and meeting the provisions of the American Lumber Standards for Softwood Lumber.¹⁸
4. Timbers--lumber that is at least 5 inches in least dimension.
5. Boards--lumber less than 2 inches in nominal thickness and 1 inch or more in width.
6. Selects--high quality lumber graded for appearance.
7. Shop--lumber that is graded for the number and sizes of cuttings that can be used for the manufacture of other products.

Of the aforementioned categories, studs and dimension lumber represent the largest competing categories of U.S. and Canadian softwood lumber.

¹⁸ These standards are published by the U.S. Department of Commerce in cooperation with manufacturers, distributors, and users.

The major softwood species groups in descending order of consumption are spruce-pine-fir (SPF),¹⁹ southern yellow pine (SYP),²⁰ Douglas fir, hem-fir,²¹ and ponderosa pine. Of these, the major competing species groups produced in both the United States and Canada are SPF, Douglas fir, and hem-fir; SYP is not produced in Canada. During 1986-91, species common to both countries accounted for approximately 43 to 46 percent of U.S. production and from just over 95 percent to nearly 98 percent of Canadian production.

Lumber is classified according to its moisture content as green or dried.²² Often, more than half the weight of green lumber is moisture. Some lumber is used green (e.g., Douglas fir), because various characteristics of the wood make such use easier or more economical. However, to prevent warping, most lumber is seasoned by being dried before retail sale.

Although the HTS uses metric units, softwood lumber is measured and sold in the North American market by the board foot, a three-dimensional unit described as--

The quantity of lumber contained in, or derived (by drying, dressing, or working, or any combination of these processes) from, a piece of rough green lumber 1 inch in thickness, 12 inches in width, and 12 inches in length, or the equivalent of such piece in other dimensions.²³

In addition, the American Lumber Standards for Softwood Lumber sets forth minimum measurements for dressed lumber. For example, a rough 2"x4" piece of lumber can be a minimum of 1-1/2"x3-1/2" when dressed.

Softwood lumber is graded at the sawmill on characteristics that affect its strength, durability, utility, and/or appearance. Some common defects that lower the grade are knots, splits, shake (separation of annual rings), wane (bark or lack of wood on corner or edge), and pitch pockets. Standard rules for grading lumber are published by regional lumber manufacturing or marketing organizations; they vary with geographic regions and species of lumber.

¹⁹ A species combination with similar characteristics that have been grouped for production and marketing. The principal species in the Western SPF (W-SPF) group are: White spruce, Engelman spruce, Lodgepole pine, and Alpine fir; and in the Eastern SPF (E-SPF) group: Red spruce, Black spruce, Jack pine, and Balsam fir.

²⁰ A species combination composed primarily of Loblolly, Longleaf, Shortleaf, and Slash pines. Various subspecies are also included in the group.

²¹ A species combination used by grading agencies to designate any of various species having common characteristics. Included in this group are California red fir, grand fir, noble fir, Pacific silver fir, Shasta fir, white fir, and western hemlock.

²² Generally, lumber with a moisture content of 19 percent or less is considered dried.

²³ In this report, units are generally specified in tables and tabular presentations in mbf (thousand board feet) and mmbf (million board feet). Discussion will be in terms of billion board feet.

Softwood lumber is readily workable, has a high strength-to-weight ratio, and is moderately durable; hence, it is widely used in the construction, shipping, and manufacturing industries.²⁴ In 1991, 68 percent of the U.S. consumption of softwood lumber was used in new residential construction (new housing) and repair and remodeling, as shown in the following tabulation:²⁵

<u>End use</u>	<u>Percentage distribution of U.S. consumption</u>					
	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
Construction:						
New residential (new housing)	39	36	36	34	33	33
Repair and remodeling	28	30	31	31	34	35
Nonresidential	14	13	14	15	16	16
All other	<u>18</u>	<u>21</u>	<u>19</u>	<u>20</u>	<u>18</u>	<u>16</u>
Total	100	100	100	100	100	100

Note.--Totals may not add due to rounding.

In years of low housing starts, the share of softwood lumber consumed by new housing construction may drop somewhat, with the share accounted for by repair and remodeling increasing slightly.

For a given end use, softwood lumber of different species or from different regions is generally interchangeable. However, for some uses, a specific species is frequently preferred because of its particular characteristics--e.g., redwood and western red cedar for home exterior siding, SYP for treated wood applications, and white pine for moldings. With respect to dimension lumber for new house framing, species preference is somewhat regional. West coast builders have a preference for Douglas fir and ponderosa pine; however, northeastern and southern builders often purchase SPF for framing and millwork, because it accepts paint and stain better and is easier to work with. SYP is preferred for trusses and load bearing construction because of its high-strength qualities.

The Sawmilling Process

Figure 1 shows a flow chart for a typical sawmill. The process begins in the storage yard, where the logs are sorted by species and size prior to entering the mill. At the log deck the bark is removed (debarking) and logs are cut or bucked to their most appropriate lengths. The logs are then transferred to the first sawing center within the mill, the primary breakdown area, where they are sawn into rough sizes known as cants or slabs. These primary products are then transferred to the secondary breakdown area. Here the cants and slabs are re-sawn into the most suitable thicknesses, widths,

²⁴ Hardwood lumber, building boards (e.g., plywood and oriented strand board), certain paperboard products, and nonwood products (e.g., brick, concrete blocks, aluminum, and plastic products) compete with softwood lumber in many uses. These competitive products are often more economical for particular uses, or they furnish unique performance or appearance.

²⁵ Based on estimates supplied by the Western Wood Products Association.

FIGURE 1

The Sawmilling Process

Log Storage
and
Deck Arm

Primary
Breakdown

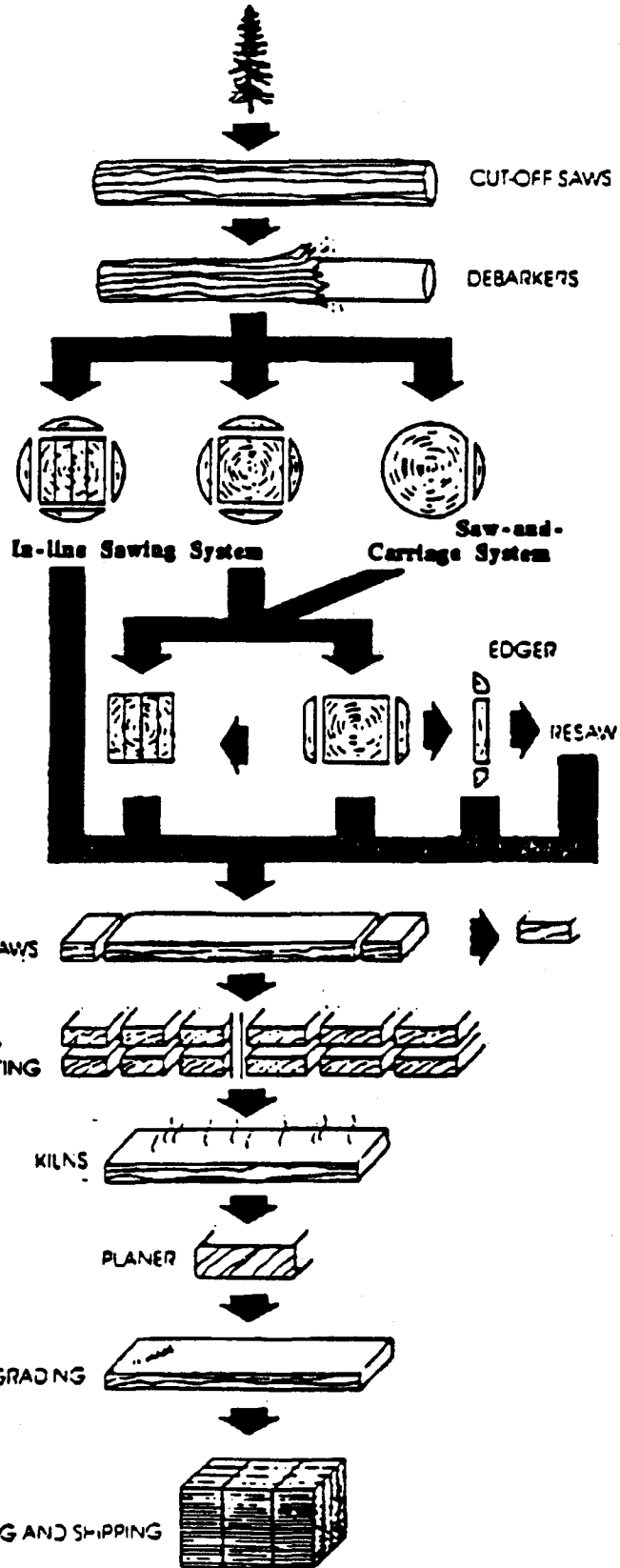
Secondary
Breakdown

Sorting

Kilns

Planer

STORING AND SHIPPING



Source: The Forest Sector Advisory Council

and lengths. The lumber is then sorted by thickness, width, and length in preparation for drying in the kilns. After drying, the lumber is planed to ensure a smooth surface. Finally, planed material is packaged into loads for shipment to wholesalers, retailers, and consumers.²⁶ Softwood lumber is generally used in construction (84 percent in 1991), or remanufactured. Remanufacturing may require further re-sawing of lumber to specified sizes and edge profiles, joining two or more pieces of lumber by finger-jointing or glue-lamming, or further planing or sanding. Remanufactured lumber²⁷ is used for a variety of purposes, from construction to manufacturing furniture.²⁸

U.S. Tariff Treatment

With the exception of HTS subheading 4409.10.20, which has a duty rate of 3.2 percent ad valorem, all of the goods covered in this investigation have rates of duty of "free" in column 1-general (most-favored-nation). Approximately 99 percent of the softwood lumber from Canada enters the United States unconditionally free of duty. As a result, the U.S.-Canada FTA had essentially no duty impact as to such imports. Rates of duty for most softwood lumber entered under column 2 (from countries under Communist domination or control) range from 2.2¢ per cubic meter to \$1.70 per cubic meter; wood flooring enters at 33.3 percent ad valorem. The amount of softwood lumber imported at the column 2 rates is negligible. Most lumber entering the United States is subject to inspection for wood-boring insects; such insects have not been found in most products for which entry has been sought.

²⁶ It should be noted that not all lumber is planed at the first mill. Some is sold "rough" for use in certain construction where appearance is not a driving factor, and remanufacturing--a process of converting rough lumber to a more specialized or higher grade lumber by further manufacturing.

²⁷ There is no widespread agreement on an exact definition of "remanufactured" lumber. For further discussion of this matter, see apps. A and E.

²⁸ Remanufactured lumber products are made from lower grade to higher grade lumber (e.g., utility grade to shop grade). Remanufactured products include bed frame material (box spring components), shipping materials, flooring and siding, ladder stock, dimension lumber, and stock for furniture manufacturing.

NATURE AND EXTENT OF SUBSIDIES

In its final subsidy determination, Commerce found two countervailable practices: stumpage and log export restrictions. Together these programs were found to convey a country-wide subsidy of 6.51 percent (2.91 percent for stumpage and 3.60 percent for log export restrictions) to manufacturers, producers, or exporters in Canada of softwood lumber. Accordingly, Commerce directed Customs to continue the suspension of liquidation of all entries of the subject merchandise from Canada²⁹ that had been in place since March 12, 1992, as a result of its preliminary determination in this investigation. Additionally, effective May 28, 1992, Customs was instructed to require a cash deposit or bond for all entries of same equal to 6.51 percent ad valorem.^{30 31}

Insofar as stumpage is concerned, Commerce determined that programs in the Provinces of Alberta, British Columbia (BC), Manitoba, Ontario, Quebec, and Saskatchewan, as well as the Northwest Territories and the Yukon Territory were countervailable. Stumpage programs are government programs through which individuals and companies acquire the rights to cut and remove standing timber from provincial forest lands. In its memorandum entitled Basis for Self-Initiating the Countervailing Duty Investigation on Certain Softwood Lumber Products (Commerce memorandum), Commerce stated that in Alberta, BC, Manitoba, Ontario, Quebec, and Saskatchewan, over 90 percent of the forest land is owned by the provincial governments.³² In arriving at its final weighted country-wide rates, Commerce calculated the stumpage subsidies according to different methods using different benchmarks for the four Provinces it examined (Alberta, BC, Ontario, and Quebec).³³

For Alberta, Commerce compared the negotiated price paid for pulp logs with the administratively-set prices charged for timber used in other types of production.³⁴ In the case of BC, the price of administratively-set stumpage³⁵ was compared with that of competitively-bid stumpage.^{36 37} In Ontario, Commerce compared the two basic rates charged for equivalent stumpage harvested from Provincial lands: the integrated and nonintegrated rates. Generally, the integrated rate is paid by pulp producers, while the latter, lower rate, is paid by lumber producers.³⁸ With respect to Quebec,³⁹ no

²⁹ Except for entries from the Maritime Provinces.

³⁰ 57 F.R. 22623, May 28, 1992.

³¹ From March 12, 1992, to May 28, 1992, Customs required a cash deposit or bond for all entries of the subject merchandise equal to 14.48 percent ad valorem (the preliminary subsidy rate).

³² Commerce memorandum, p. 12.

³³ In its final determination, Commerce noted that these four Provinces "account for over 98 percent of exports and over 98 percent of total softwood lumber shipments in Canada. Thus, an analysis of these four Provinces covers virtually all exports to the United States." 57 F.R. 22604, May 28, 1992.

³⁴ 57 F.R. 22603, May 28, 1992.

³⁵ During Commerce's period of investigation (Apr. 1, 1990, through Mar. 31, 1991), stumpage sold at these prices accounted for approximately 90 percent of the softwood sawlog harvest. 57 F.R. 8806, Mar. 12, 1992.

³⁶ Such stumpage is sold only through the Small Business Forest Enterprise Program. 57 F.R. 8805, Mar. 12, 1992.

³⁷ 57 F.R. 22602, May 28, 1992.

³⁸ Ibid.

distinction is made between sawlogs and pulplogs in the establishment of stumpage rates on Provincial lands. Consequently, Commerce used the prices for private stumpage as the benchmark for comparison purposes.⁴⁰

Given that the four Provinces examined account for virtually all Canadian production and exports of softwood lumber, Commerce, in its final determination, chose not to examine stumpage programs in Manitoba, Saskatchewan, and the Territories. In taking this action, Commerce noted that:

"A full investigation of the additional programs in Manitoba, Saskatchewan, and the Territories, which would have provided for only marginal incremental coverage, is unnecessary and would have resulted in an inefficient use of scarce resources at the expense of more significant aspects of this investigation. However, these Provinces and territories cannot be excluded from the investigation simply because they are so small. The fact that their production of softwood lumber products is small relative to that of the other Provinces simply means that their impact on the country-wide rate is insignificant, it does not mean that their production and exports are not, or should not be covered by the investigation."⁴¹

For its final determination, Commerce applied a zero rate in its calculations for these jurisdictions. However, Commerce went on to note that because the investigation was on softwood lumber products from Canada, and because Manitoba, Saskatchewan, and the Territories produce and export to the United States softwood lumber products, their export values of said products were included in the calculation of the country-wide rate.⁴²

To calculate the country-wide rate, Commerce divided the benefit for each province's program by the value of its lumber shipments plus the value of all by-product shipments produced during the lumber production process. Then, it weight averaged each rate by the province's share of exports to the United States of the subject merchandise to arrive at a rate of 2.91 percent ad valorem.

In addition to stumpage, Commerce reaffirmed its preliminary determination that log export restrictions in BC constitute a domestic subsidy within the meaning of the Act provided indirectly to lumber producers.

³⁹ (...continued)

³⁹ Counsel for the Gouvernement du Quebec has requested that the Commission make a separate injury determination with respect to softwood lumber imports from Quebec. Information and data relevant to that request are presented in app. C.

⁴⁰ 57 F.R. 22601, May 28, 1992.

⁴¹ 57 F.R. 22604, May 28, 1992. In its preliminary determination, Commerce had determined that because they represent such a small volume of exports (approximately 1 percent of exports during Commerce's period of investigation), the benefits from their respective stumpage programs would have a de minimis effect on the country-wide rate to be applied to all exports to the United States, and, therefore, assigned them the preliminary country-wide rate of 6.25 percent for stumpage. 57 F.R. 8810, Mar. 12, 1992.

⁴² 57 F.R. 22604, May 28, 1992.

Commerce also reaffirmed its earlier determination that log export restrictions in Alberta, Ontario, and Quebec do not provide a subsidy to lumber producers.⁴³ Commerce described (in part) the log export controls of BC as follows:

"In addition to the federal laws that restrict the export of logs from BC lands, the BC government has had its own restrictions on the export of logs since 1906. Shipments of logs from lands under provincial jurisdiction constituted approximately 87 percent of total exports during the POI. Currently, the exportation of logs from BC is controlled by the 1979 Forest Act. The provincial Forest Act requires that all timber harvested in BC must be used or manufactured in the province, unless exempted. This provision applies to all lands under provincial jurisdiction. The BC Lieutenant Governor in Council may grant an exemption from the requirement to process logs in BC. The primary basis for receiving an exemption is whether the logs are deemed 'surplus' to demand.

The procedures for determining if the logs are surplus to provincial needs are similar to those described in the federal 'Notice to Exporters,'⁴⁴ discussed above. After logs have passed the 'surplus' test and an exemption for export has been granted, the exporter must apply for a provincial export permit. A fee-in-lieu-of-manufacture (i.e., an export tax) amounting to 100 percent of the difference is granted. Exports from lands under federal jurisdiction are not subject to the fee-in-lieu-of-manufacture."⁴⁵

Commerce went on to note that although BC had the most pervasive regulatory impediments to log exports of the four Provinces examined, it exported 1 percent of its total softwood harvest (667,000 cubic meters), or 100 times more than the other three Provinces combined during the period of Commerce's investigation. From this, Commerce concluded:

"In conclusion, our analysis of both the legal and commercial factors affecting the export of softwood logs from Alberta, BC, Ontario, and Quebec indicates that two separate phenomena appear to exist. First, notwithstanding the restrictiveness of BC's legal impediments to export, which cover federal, provincial, and

⁴³ Ibid.

⁴⁴ Under the federal "Notice to Exporters," persons wishing to export logs harvested from land under federal jurisdiction located in British Columbia must first receive a BC log export permit. To obtain same, the exporter must first receive an exemption from the BC domestic-processing requirements. Application is made to the BC Ministry of Forests, who then notifies potential domestic purchasers that the logs are available for domestic sale. If no offers are received within 14 days, the logs are deemed "surplus to domestic needs," and the exporter may then apply for a BC export permit. If an offer is received and deemed "reasonable," the exemption is denied and no export permit can be granted. However, there is no requirement that the potential purchaser who makes a reasonable offer actually purchase the logs.

⁴⁵ 57 F.R. 8811, Mar. 12, 1992.

private lands, a considerable market for BC logs exists outside of the province. In spite of these tight restrictions, BC still manages to export 100 times more than the three other Provinces. This, among the other factors we examined, shows that the restrictive net in BC acts to stifle what would otherwise be a significant flow of log shipments abroad, resulting in a domestic supply of logs in BC that is artificially high. In contrast, despite the lack of restrictions on private lands in Alberta, Ontario and Quebec, as well as other factors we examined, private land exports from those three Provinces are insignificant, indicating that exports are not suppressed, resulting in no effect on the domestic supply of logs in those three Provinces."⁴⁶

The effect of these export restrictions, in Commerce's view, is a near total embargo on the export of logs from BC. Citing to "generally accepted principles of economics," Commerce stated that as the domestic supply is increased, as occurs in the case of BC logs, there will be a concomitant decrease in the price or value of logs on the domestic market, regardless of whether lumber producers purchase logs on the open market or harvest and mill logs themselves.⁴⁷ Further, Commerce went on to say that if the export restriction on logs were lifted and the domestic price of logs rose, integrated producers would likely sell more logs relative to lumber, either in the export or domestic market, thereby leading to a decrease in the BC supply of logs with a corresponding increase in the BC price of logs--the major input of lumber.⁴⁸

Because the export restrictions on logs in BC affect all users of logs and are not contingent upon export performance, Commerce concluded they do not constitute an export subsidy. Rather, they concluded the restrictions benefit the production of all lumber produced, whether sold domestically or exported, thereby conferring an indirect domestic subsidy to the primary timber processing industries.⁴⁹

To calculate the benefit from the subsidy, Commerce examined the difference between the current domestic (BC) log price and the price that would exist if the restrictions were not in place, by calculating a weight-averaged domestic log price "based on price information from the Vancouver log market for the coast, observed log prices in the tidewater interior, and 1989 Statistics Canada log valuation data, adjusted for inflation, for the border interior" and an export log price based on verified Statistics Canada volume and value figures.

To calculate the country-wide subsidy rate for log export controls, Commerce divided the benefit by the total value of BC's lumber shipments plus the total value of all coproduct shipments produced during the lumber manufacturing process. Commerce then weight-averaged that rate by the percentage of BC's exports to the United States of the subject merchandise with respect to the exports from the rest of Canada, with the exception of the Maritimes, and arrived at a country-wide rate of 3.60 percent ad valorem.

⁴⁶ 57 F.R. 8813, Mar. 12, 1992.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

THE U.S. MARKET

U.S. Producers

Commerce data indicate that 5,680 establishments produced softwood and hardwood lumber in the United States in 1991;⁵⁰ of these, 1,707 (30 percent) had more than 20 employees. From 1986 to 1988, the number of mills increased as companies anticipated greater construction demand. Thereafter, the number of mills decreased each year owing to a variety of factors, prominent among which are a decline in demand for wood products by the housing industry⁵¹ and a lack of available timber, particularly in the West, due to environmentally related timber harvesting restrictions. In the past few years, large tracts of Federal timber administered primarily by the U.S. Forest Service have been removed from harvesting due to various environmental concerns, the most well-known being preservation of the northern spotted owl.^{52 53} While many large companies in the West own extensive timber acreage in that area, as much as one-half of the commercial timber supply in the West is publicly owned. Some producers in the West are 100 percent dependent on public timber for their raw material supply.

The number of establishments producing both hardwood and softwood lumber during 1986-91⁵⁴ is shown in the tabulation on the following page.

⁵⁰ There are numerous mills, some of which are portable, that Commerce does not include in its data. These have been estimated to number as many as 20,000 and account for less than 5 percent of U.S. production.

⁵¹ In the preliminary investigation, counsel for the Canadian Forest Industries Council (CFIC) and the Government of Canada argued that the "appropriate legal standard for determining material injury in this case is whether the domestic lumber industry is performing worse than expected given the conditions of competition in the softwood lumber industry and the downturn in the business cycle." Postconference brief on behalf of CFIC and the Government of Canada (CFIC brief), p. 29.

⁵² On July 23, 1990, the U.S. Fish and Wildlife Service (USFWS) formally listed the northern spotted owl as a threatened species entitled to the full protection of the Endangered Species Act. As a result, the USFWS, the U.S. Forest Service (USFS), and the Bureau of Land Management (BLM) were required to develop a permanent recovery plan designed to re-establish the spotted owl. As a part of the plan, 8.4 million acres have been withdrawn from harvesting; 3.2 million are in Oregon, 3.2 million in Washington, and 2.0 million are in California. Included in this acreage are 2.7 million acres of National Forest land and 300,000 acres of BLM holdings that had been open to logging. In June 1992, U.S. District Judge William L. Dwyer, in Seattle, issued a temporary injunction banning logging on the affected acreage. This decision came one day after he ruled the USFS plan to protect the northern spotted owl was inadequate and in violation of environmental laws.

⁵³ The majority of producers with mills in the West who responded to Commission questionnaires indicated that their western operations had been affected by the reduction of available timber for harvest. The effects manifested themselves in the form of both temporary and permanent mill shutdowns as well as some instances of increased log costs.

⁵⁴ There is a substantial amount of public data available on the softwood lumber industry. Consequently, whenever possible in this report, data from

(continued...)

<u>Period</u>	<u>Establishments</u>
1986	5,326
1987	5,662
1988	5,777
1989	5,710
1990	5,690
1991	5,680

These establishments are located throughout the United States, although the majority of production is concentrated in the West and the South. The distribution of mills in 1991, by regions and selected States, is shown in the following tabulation:⁵⁵

<u>Region and State</u>	<u>Establishments</u>
North ¹	1,470
Maine	176
South ²	2,760
North Carolina and South Carolina	635
Georgia, Alabama, and Mississippi	1,033
Texas and Arkansas	272
West ³	1,450
Oregon	486
California	288
Washington	271
Idaho and Montana	280

¹ Connecticut, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Wisconsin, and Vermont.

² Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

³ Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, South Dakota, Utah, Washington, and Wyoming.

U.S. production of softwood lumber is concentrated in the West, where the remaining old-growth and large tracts of high-quality timber are located, and in the South, where plantations of SYP are at merchantable size. These regions accounted for 58.3 percent and 37.0 percent, respectively, of U.S. softwood lumber production in 1991. The highest concentrations of large mills are also in these regions; in 1991, 311 mills in the West each produced 25 mmbf or more, compared with 195 mills in the South, and 11 mills in the

⁵⁴ (...continued)

1986 forward are presented. This period covers the last full year prior to the MOU, as well as the entire period during which the MOU was in effect.

⁵⁵ Annual Lumber Review and Buyers Guide, Forest Industries, Miller Freeman Publications, San Francisco, July 1991, and 1991 annual mill counts for the Western Wood Products Association (WWPA) and Southern Forest Products Association (SFPA).

North. Figure 2 shows the three major softwood lumber producing geographic regions in the United States and figure 3 shows the major Canadian producing areas.

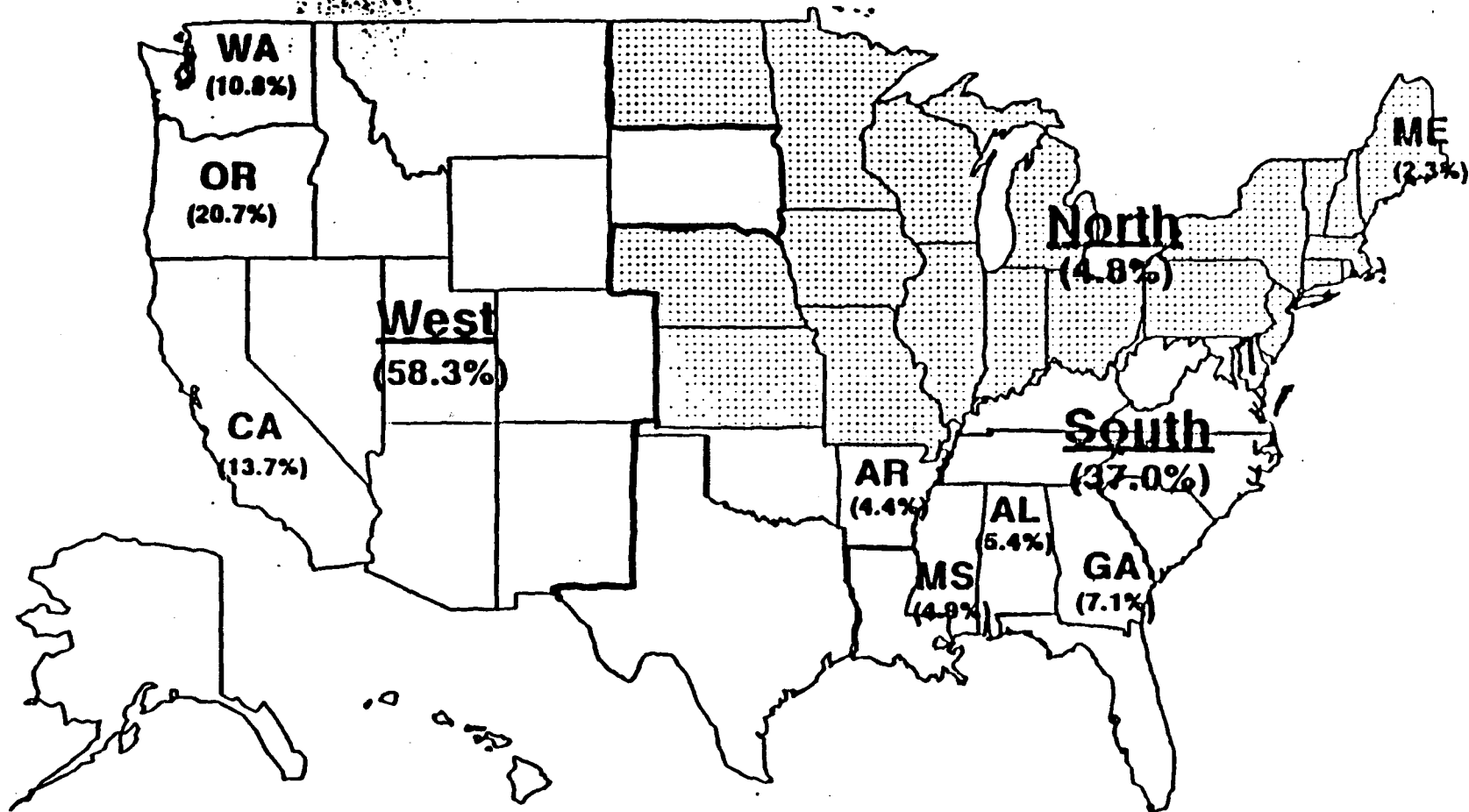
Although there are large corporations with high volumes of production, most of the softwood lumber producers are small firms. In 1990, the 5 largest producers accounted for 26.0 percent of U.S. softwood lumber production, and the 50 largest firms accounted for 67.1 percent (table 1). It is estimated that there are more than 500 mills with annual production exceeding 25 mmbf, and over 625 mills with annual production greater than 10 mmbf. For this investigation, the Commission sent questionnaires to more than 100 producers who accounted for more than 75 percent of U.S. production in 1991. Fifty producers provided responses for this report; these producers accounted for nearly 48.9 percent of 1991 production. A large number of the top 20 producers were among respondents.

Table 1
Softwood lumber: U.S. and Canadian production, 1986-90

Country and year	Total production Mmbf	<u>5 largest producers</u>		<u>50 largest producers</u>	
		Quantity Mmbf	Percent of total production	Quantity Mmbf	Percent of total production
United States:					
1986....	35,462	8,554	24.1	21,885	61.7
1987....	38,235	9,358	24.5	24,474	64.0
1988....	38,134	9,233	24.2	24,211	63.5
1989....	37,546	9,560	25.5	24,742	65.9
1990....	35,790	9,315	26.0	24,011	67.1
Canada:					
1986....	22,630	3,961	17.5	15,354	67.8
1987....	25,870	4,705	18.2	18,143	70.1
1988....	25,166	5,889	23.4	18,286	72.7
1989....	24,538	6,675	27.2	18,489	75.3
1990....	22,755	5,093	22.4	16,601	73.0

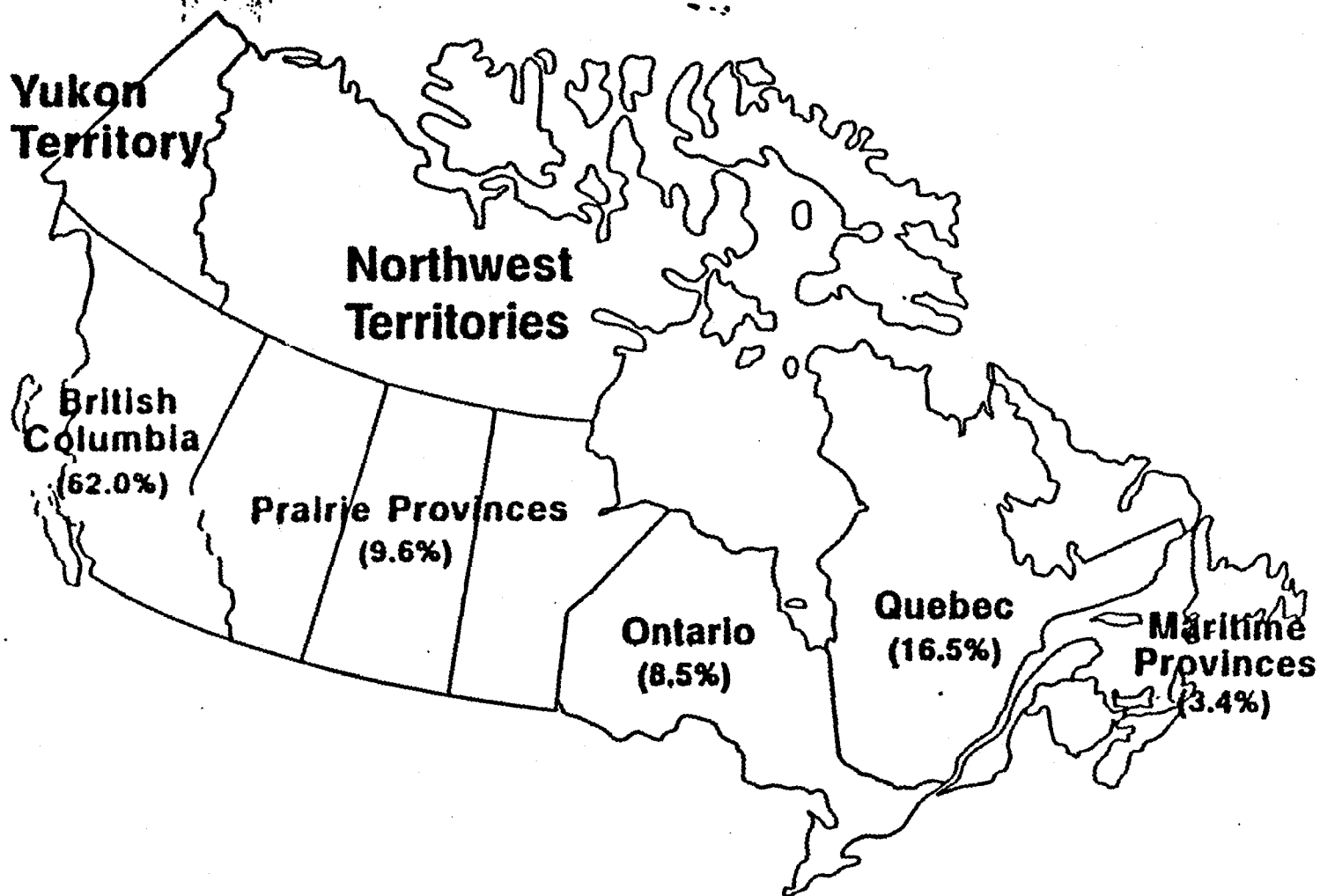
Source: Forest Industries North American Fact Book, 1986-90.

Figure 2--Softwood Lumber: U.S. Production by Region and Major Producing States, 1991



Source: U.S. Department of Commerce

Figure 3--Softwood Lumber: Canadian Production by Principal Provinces and Regions, 1991



Most producers of lumber products, whether rough or remanufactured, purchase raw materials (e.g., timber, lumber) from sources outside their operations; over 90 percent of these are smaller producers (annual production of less than 100 mmbf). Although some operations produce both hardwood and softwood products, and in some cases lumber, flooring, and siding, the majority produce only one product such as softwood lumber. Approximately 10 percent of the consumed timber comes from forest industry land. The majority of this timber is controlled by enterprises that are also large paper manufacturers. These enterprises are usually large, integrated corporations that produce a wide variety of forest products (e.g., lumber, paper, plywood). These corporations are both privately held and publicly traded, and generally U.S. owned, although there is some cross ownership with Canadian mills. In addition, some U.S. producers are also major producers in Canada and Southeast Asia. The U.S. producers of lumber are closely linked with Canadian producers in supplying the North American market; more than one-quarter of U.S. consumption is produced in Canada.

U.S. Importers

Importers of softwood lumber from Canada include wholesale and retail lumber distributors, e.g., ***, domestic producers, e.g., ***, and traders/wholesalers, e.g., ***, as well as certain Canadian producers, ***, etc., and number in the hundreds. Some of the importing U.S. producers bring product in from their own operations in Canada. Some importers are manufacturers and/or remanufacturers with kiln operations. Because of this, they may have their operations near the border and utilize rough, green lumber only.

Some U.S. firms, such as mobile-home-building and cash-and-carry outlets, while not necessarily the importer of record, are supplied by distributors that purchase their imported stock from large shipments which generally go through reload centers⁵⁶ located near the U.S.-Canadian border in Canada or throughout the United States for disbursement to their final destinations.

Given the large number and variety of importers in this industry and the knowledge that official import statistics would supply import quantity and value data, the importer and purchaser questionnaires were used primarily in an effort to secure the necessary import pricing and purchasing data. Many of the questionnaires were targeted to importers, distributors, retailers, and traders who were believed to serve the six geographic areas for which price data were sought. In addition, producers were asked to complete a questionnaire if they had imported any product from Canada.

⁵⁶ Originally, reload centers were all independently owned, providing a service for a fee to lumber manufacturers and transporters. More recently, it has become common for lumber wholesalers, and in some cases manufacturers, to own/control reloads.

Channels of Distribution

In general, the more specialized the product, the fewer the levels in the distribution chain. On the other hand, commodity oriented products such as SPF dimension lumber and boards tend to have longer channels of distribution. Softwood lumber producers, both U.S. and Canadian, distribute through a variety of market channels. A number of factors such as market location, transportation costs, and general building practices/preferences⁵⁷ can play a role in the particular market channel used.

Among the market channels commonly used are sales direct to manufacturers, sales direct to retailers, sales through stocking wholesalers, sales through brokers or office wholesalers, sales to buying groups, and sales through wholly owned distributors. A description of these market channels follows.

Sales Direct to Manufacturers: Industrial Accounts

These manufacturers (e.g. pre-manufactured housing) and remanufacturers (e.g., pallets, crates, furniture, and bed frame components) are typically buying mill direct. Where manufacturers have large volume requirements, they then have the advantage of the efficiencies of buying mill direct. For some remanufacturers with smaller volume requirements, buying mill direct offers them greater flexibility in developing product specifications to meet their needs.

Sales Direct to Retailers

This channel is used by mills of all sizes. Small mills typically stock local retail lumber yards in this manner. Similarly, large producers can ship directly to large buyers such as home center and building supply chains such as ***. These same mills may also sell a portion of their lumber through wholesalers as well, presenting the possibility of selling against some of their own customers.

Sales Through Stocking Wholesalers

In this instance, mills will sell to wholesalers who actually take title and possession of the lumber e.g., ***. Many of these wholesalers operate on a regional or national basis.

⁵⁷ For certain products (e.g., siding and decks), the use of particular species such as redwood, cedar, and treated SYP is common. Preferences are normally a result of continuation of uses of wood that was traditionally used. It should be noted that when a certain level of price is broached (as further explained in the pricing section), these practices/preferences are not necessarily adhered to.

Sales Through Brokers or Office Wholesalers

In this case, the mills sell to brokers or office wholesalers who operate strictly as intermediaries between the mill and the buyer. They arrange "back-to-back" sales, which are also done occasionally by stocking wholesalers, whereby the lumber is shipped directly from the producer to the customer. The broker/wholesaler does take possession on paper but never actually sees the material.

Sales to Buying Groups

Although these buying groups act as large wholesalers, a number of them differ in some significant ways. First, their customers are actually part owners somewhat in the sense of a co-operative. True Value and Trustworthy Hardware are two buying groups readily recognized by consumers. In addition to lumber, buying groups such as these purchase a full range of retail store products for their owners, running the gamut from wood products to plumbing supplies. Other buying groups, however, such as ***, deal only in the buying and selling of solid wood products. While buying groups do not buy as much lumber as mainstream lumber wholesalers, their volume is significant in the industry.

Sales Through Wholly Owned Distribution Systems

A number of the integrated forest products manufacturers operate their own distribution systems. These systems operate in two ways. Some, ***, sell a full range of their own forest products as well as product from other producers through their regional distribution centers. Others, ***, also operate distribution centers, basically selling their own products.

Apparent U.S. Consumption

In 1991, U.S. consumption of softwood lumber was 42.5 billion board feet, 15.8 percent down from consumption of 50.5 billion board feet in 1987 and off 6.2 percent from 1990 consumption (table 2).

U.S. housing starts nearly always consume the greatest portion of softwood lumber, with changes in overall consumption generally tracking those starts. Although consumption and housing starts followed divergent paths from 1986 to 1987, from that year through 1991 they exhibited a relatively close correlation that is as strong as or stronger than it was during the period examined in the 1986 lumber case. Consumption in the repair and remodeling segment increased during 1986-91 and has partially offset the downturn in new residential construction-related consumption. This shift in consumption patterns was mentioned by a number of respondents to Commission questionnaires as a noteworthy change in the market for softwood lumber in recent years.

Softwood lumber consumption and housing starts are shown in the tabulation and figure 4 on page A-25. 1991 housing starts were down 43.8 percent from 1986 levels and down 31.8 percent from 1988 levels. In comparison, softwood lumber consumption declined 11.1 percent from 1986 to 1991, and 12.7 percent from 1988 to 1991.

Table 2

Softwood lumber: U.S. production, exports of domestic merchandise, imports from Canada,¹ total imports for consumption, and apparent consumption, 1986-91

Period	Produc- tion	Exports	Total imports	Imports from Canada	Apparent consump- tion	Ratio (percent) of--		
						Imports to con- sump- tion	Canadian to con- sumption	Exports to pro- duction
Quantity (mmbf)								
1986.....	35,462	1,890	14,249	14,119	47,821	29.8	29.5	5.3
1987.....	38,235	2,469	14,695	14,577	50,461	29.1	28.9	6.5
1988.....	38,134	3,261	13,811	13,705	48,685	28.4	28.1	8.6
1989.....	37,546	3,445	13,582	13,470	47,684	28.5	28.2	9.2
1990.....	35,790	2,994	12,182	12,108	44,978	27.1	26.9	8.4
1991.....	33,856	3,121	11,762	11,669	42,496	27.7	27.5	9.2
Value ² (million dollars)								
1986.....	7,675	644	3,071	3,035	10,101	30.4	30.0	8.4
1987.....	9,242	855	3,143	3,105	11,530	27.3	26.9	9.3
1988.....	9,182	1,139	3,003	2,956	11,046	27.2	26.8	12.4
1989.....	9,517	1,424	3,198	3,159	11,292	28.3	28.0	15.0
1990.....	8,657	1,347	2,916	2,873	10,225	28.5	28.1	15.6
1991.....	8,454	1,370	2,884	2,819	9,967	28.9	28.3	16.2
Unit value (dollars per mbf)								
1986.....	216.43	340.90	215.49	214.95	211.23	102.0	101.8	157.5
1987.....	241.72	346.51	213.90	213.01	228.49	93.6	93.2	142.4
1988.....	240.79	349.46	217.41	215.67	226.88	95.8	95.1	145.1
1989.....	253.48	413.38	235.47	234.52	236.80	99.4	99.0	163.1
1990.....	241.88	450.10	239.38	237.31	227.34	105.3	104.4	186.1
1991.....	249.70	439.02	245.18	241.62	234.54	104.5	103.0	175.8

¹ To the extent that import data contain imports from the Maritime Provinces, the ratios of subject imports to apparent consumption are slightly overstated. Imports from the Maritime Provinces represent a very small portion of total imports from Canada and, therefore, have a minimal effect on import penetration ratios.

² CIF value.

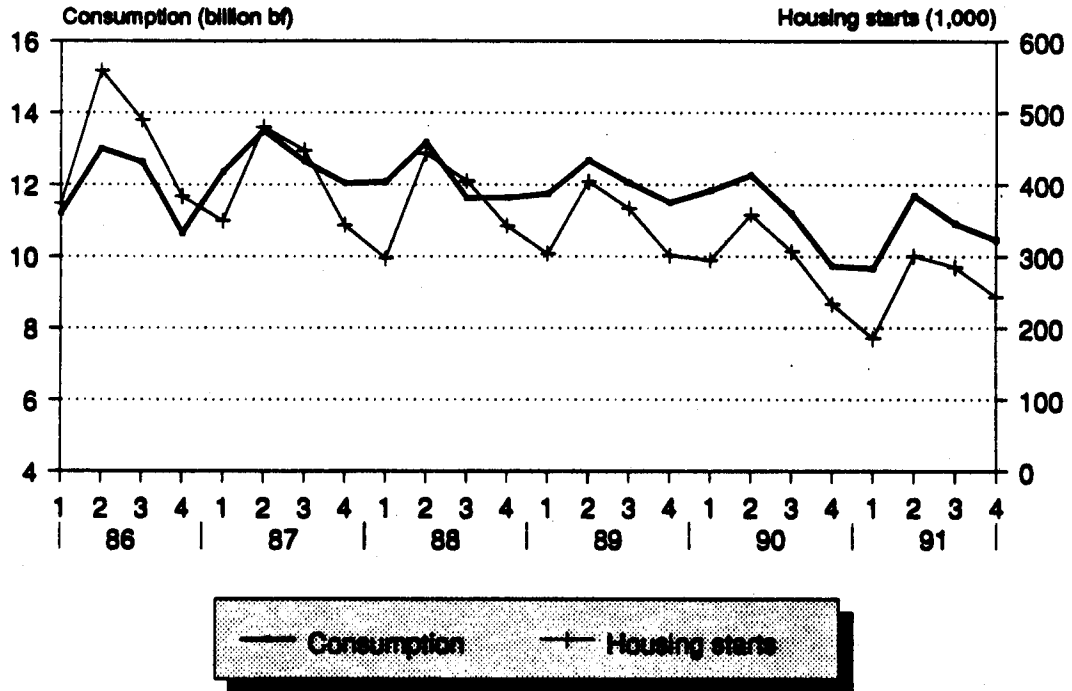
Note.--1989 import quantity data are based on staff estimates derived from official statistics of the U.S. Department of Commerce.

Source: Compiled from official statistics of the U.S. Department of Commerce, the Western Wood Products Association, and the National Forest Products Association.

Annual housing starts in 1991 were at the lowest level since 1946.⁵⁸

<u>Period</u>	<u>Lumber consumption (billion board feet)</u>	<u>Housing starts (million units)</u>
1986.....	47.8	1.8
1987.....	50.5	1.6
1988.....	48.7	1.5
1989.....	47.7	1.4
1990.....	45.0	1.2
1991.....	42.5	1.0

Figure 4.--U.S. consumption of softwood lumber and private U.S. housing starts, by quarters, 1986-91



⁵⁸ Post-hearing statement of the the National Association of Home Builders (NAHB statement), p. 2. The NAHB expects total housing starts in 1992 to be nearly 1.3 million units.

As indicated in table 3, private U.S. housing starts have shown both regional and unit type variation since 1986. During 1986-91, the South was the leading area for housing construction, with single family units being the predominant type of structure built. However, actual housing starts in the South, as well as the North and West, fell steadily during 1986-91; they fell by 43.4 percent in the South, 41.3 percent in the North, and 47.4 percent in the West. During this period, the share of total U.S. housing starts occurring in each region, although fluctuating a bit, remained relatively constant.

U.S. lumber consumption also varies by region (table 4). Consumption in the various areas is shown in the following tabulation, derived from table 4 (in percent):

<u>Period</u>	<u>Share of U.S. softwood lumber consumption in the--</u>			
	<u>North</u>	<u>South</u>	<u>West</u>	<u>Total</u>
1986.....	32	38	30	100
1987.....	36	35	29	100
1988.....	34	34	32	100
1989.....	32	35	33	100
1990.....	33	35	32	100
1991.....	34	35	31	100

On a regional basis, there are wide variations in the ratio of imports to consumption. The North generally has the highest share of consumption accounted for by imports and also obtains a large share of its softwood lumber from the other two U.S. regions. During 1986-91 the ratio of imports to consumption in the North rose irregularly from 41.0 percent to 42.7 percent. With the exception of 1986, the North was the leading market for imports of softwood lumber during 1986-91. The North received 52.0 percent (6.1 billion board feet) of all imports in 1991.

In the South, imports as a share of softwood lumber consumption dropped irregularly from 36.5 percent in 1986 to 29.9 percent in 1991. In 1991, the South received 38.2 percent of all imports of softwood lumber.

For 1986-91, the West had the smallest share of softwood lumber consumption accounted for by imports. The ratio of imports to consumption in the West dropped irregularly from 9.7 percent to 8.8 percent during that period.

Table 3

Housing starts: U.S. housing starts, privately owned and total, by types of structure and by regions, 1986-91¹

Period and region	Privately owned							Total, privately owned housing starts	Share of total privately owned hous- ing starts	Total of all U.S. housing starts 1,000 units	
	Single unit			Multi-unit							
	Town- house ¹	De- tached	Total	2 to 4 units ²	Townhouse apartment	Conven- tional apartment	Total				
-----Thousands of units-----											
Percent											
1986:											
North.....	79	335	414	33	23	119	142	175	589	33	N/A
South.....	66	438	504	28	11	190	201	229	733	41	N/A
West.....	21	240	261	23	17	182	199	222	483	27	N/A
Total....	166	1,013	1,179	84	51	491	542	626	1,805	100	1,810
1987:											
North.....	72	335	407	29	18	114	132	161	568	35	N/A
South.....	55	429	484	20	8	121	129	149	633	39	N/A
West.....	15	240	255	17	8	138	147	164	419	26	N/A
Total....	142	1,004	1,146	66	35	373	408	474	1,620	100	1,627
1988:											
North.....	57	318	375	26	13	99	112	138	513	34	N/A
South.....	43	400	443	17	7	107	114	131	574	39	N/A
West.....	13	251	264	15	10	112	122	137	401	27	N/A
Total....	113	969	1,082	58	30	318	348	406	1,488	100	1,493
1989:											
North.....	36	286	322	22	8	94	102	124	446	32	N/A
South.....	40	369	409	18	12	97	109	127	536	39	N/A
West.....	11	261	272	15	10	97	107	122	394	29	N/A
Total....	87	916	1,003	55	30	288	318	373	1,376	100	1,380
1990:											
North.....	25	272	297	16	8	64	72	88	385	32	N/A
South.....	29	342	371	9	5	95	100	109	480	40	N/A
West.....	9	217	226	12	6	84	90	102	328	28	N/A
Total....	63	831	894	37	19	243	252	299	1,193	100	1,198
1991:											
North.....	23	268	291	15	5	35	40	55	346	34	N/A
South.....	22	331	353	11	4	47	51	62	415	41	N/A
West.....	6	191	197	10	3	44	47	57	254	25	N/A
Total....	51	790	841	36	12	126	138	174	1,015	100	1,018

¹ Includes units in semidetached (semiattached) structures.² Design information for structures with 2 to 4 units is not available.

Note: Because of rounding, figures may not add to totals shown.

Source: U.S. Department of Commerce (Series G-20).

Table 4

Softwood lumber: U.S. production, exports of domestic merchandise, imports for consumption, and apparent consumption, by regions, 1986-91

Period and region	Pro- duc- tion	Exports	Shipments	Imports	Shipments	Apparent consump- tion	Ratio of--	
			to other U.S. regions ¹	from foreign sources ²	from other U.S. regions		Imports to con- sumption	Exports to pro- duction
			Mmbf			Percent		
1986 North....	1,680	196	0	6,222	7,462	15,168	41.0	11.7
South....	11,867	180	3,257	6,610	3,072	18,112	36.5	1.5
West....	21,915	1,514	7,277	1,417	0	14,541	9.7	6.9
Total..	35,462	1,890	10,534	14,249	10,534	47,821	29.8	5.3
1987 North....	1,820	203	0	6,952	9,569	18,138	38.3	11.1
South....	12,473	248	3,611	6,295	2,720	17,628	35.7	2.0
West....	23,942	2,018	8,678	1,448	0	14,694	9.9	8.4
Total..	38,235	2,469	12,289	14,695	12,289	50,461	29.1	6.5
1988 North....	1,816	250	0	6,816	8,204	16,586	41.1	13.8
South....	12,680	492	3,007	5,256	2,265	16,702	31.5	3.9
West....	23,638	2,519	7,461	1,739	0	15,397	11.3	10.7
Total..	38,134	3,261	10,468	13,811	10,468	48,685	28.4	8.6
1989 North....	1,789	266	0	6,561	7,240	15,324	42.8	14.9
South....	12,545	442	2,849	5,353	1,992	16,599	32.2	3.5
West....	23,212	2,737	6,383	1,668	0	15,761	10.6	11.8
Total..	37,546	3,445	9,232	13,582	9,232	47,684	28.5	9.2
1990 North....	1,705	306	0	6,045	7,274	14,717	41.1	17.9
South....	12,910	466	3,343	4,783	1,891	15,776	30.3	3.6
West....	21,175	2,222	5,822	1,354	0	14,485	9.3	10.5
Total..	35,790	2,994	9,165	12,182	9,165	44,978	27.1	8.4
1991 North....	1,611	319	0	6,115	6,908	14,314	42.7	19.8
South....	12,510	485	3,292	4,492	1,786	15,011	29.9	3.9
West....	19,735	2,317	5,402	1,155	0	13,171	8.8	11.7
Total..	33,856	3,121	8,693	11,762	8,693	42,496	27.7	9.2

¹ Based upon the premise that northern U.S. production was not exported to other regions of the United States.

² Regional imports are estimated by the staff of the U.S. International Trade Commission.

Source: Compiled from data supplied by the Western Wood Products Association, Southern Forest Products Association, the Council of Forest Industries of British Columbia (COFI), and the U.S. Department of Commerce.

**CONSIDERATION OF ALLEGED MATERIAL INJURY
TO AN INDUSTRY IN THE UNITED STATES⁵⁹**

As noted earlier, there is a fairly substantial amount of public data available on the softwood lumber industry.⁶⁰ In this section, information from public data sources is presented concerning production, capacity, capacity utilization, and shipments, in addition to the information received from respondents to the Commission's producer questionnaires.⁶¹ Also, as noted previously, whenever possible the public data cover the period from 1986 forward.⁶²

U.S. Production, Capacity, and Capacity Utilization

U.S. production of softwood lumber in 1986-91 peaked at 38.2 billion board feet in 1987, then dropped each year thereafter to 33.9 billion board feet in 1991, 4.5 percent lower than production in 1986 (table 5). The West produced 19.7 billion board feet, or 58.3 percent of U.S. softwood lumber production, in 1991. The South produced 12.5 billion board feet, or 37.0 percent of U.S. production; and the North produced the smallest share, 1.6 billion board feet, or 4.8 percent of U.S. production. Production in the West and North reached high points in 1987, while production in the South attained its highest level in 1990. The share of production (in percent) accounted for by each region is shown in the tabulation on page A-31.

⁵⁹ Summary data concerning the U.S. market for softwood lumber in 1988-91 are presented in app. D.

⁶⁰ Counsel for the Clemson Corporation (d/b/a National Frame Company) has asked that the Commission consider that bed frame components are a separate like product from softwood lumber and not a cause of material injury to any domestic industry in the United States. Information and data relevant to that request are presented in app. E.

⁶¹ In addition to the information concerning softwood lumber operations, the Commission asked producers if they convert any of the principal softwood lumber product produced in their mills into a more specialized or higher grade product by further remanufacturing. If they answered affirmatively, they were asked to provide trade, employment, and financial data with respect to those remanufacturing operations. Five producers, ***, answered affirmatively; however, each indicated that these operations are very minor in nature and separate data on same are not available.

⁶² Counsel for the U.S. Coalition for Fair Lumber Imports (the Coalition) has argued that 1986 is an "inappropriate" year for industry comparisons due to a lengthy (4 month) strike of BC sawmill workers, with its impact on BC production, and the pendency of the 1986 countervailing duty investigation and its effects on the softwood lumber market. Prehearing brief on behalf of the Coalition at app. C, p. 12.

While much of BC's productive capacity was idled for up to one-third of the year, BC production in 1986 was down only 4.8 percent from 1985 levels, as BC producers worked hard to make up for time lost once the strikes were settled. Overall Canadian production increased by 3.8 percent over the same period as producers in other Provinces stepped in to fill the void created by the BC strikes.

Table 5

Softwood lumber: U.S. production, by geographic regions and by specified States, 1986-91

Period	West					Share of total United States Percent	South		
	Cali- fornia	Oregon	Wash- ington	All other	Total		Alabama	Arkansas	Georgia
	Mmbf						Mmbf		
1986.....	4,691	8,022	4,336	4,866	21,915	61.8	1,767	1,140	2,133
1987.....	5,408	8,846	4,645	5,043	23,942	62.6	1,765	1,235	2,302
1988.....	5,617	8,601	4,408	5,012	23,638	62.0	1,731	1,227	2,481
1989.....	5,320	8,512	4,274	5,106	23,212	61.8	1,685	1,211	2,448
1990.....	4,981	7,511	3,919	4,764	21,175	59.2	1,876	1,537	2,481
1991.....	4,642	7,000	3,652	4,441	19,735	58.3	1,818	1,489	2,404

Period	South--continued			Share of total United States Percent	North			Share of total United States Percent	Total United States Mmbf
	Missis- sippi	All other	Total		Maine	All other	Total		
	Mmbf				Mmbf				
1986.....	1,564	5,263	11,867	33.5	659	1,021	1,680	4.7	35,462
1987.....	1,726	5,445	12,473	32.6	797	1,023	1,820	4.8	38,235
1988.....	1,721	5,520	12,680	33.3	827	989	1,816	4.8	38,134
1989.....	1,800	5,401	12,545	33.4	786	1,003	1,789	4.8	37,546
1990.....	1,711	5,305	12,910	36.1	830	875	1,705	4.8	35,790
1991.....	1,658	5,141	12,510	37.0	784	827	1,611	4.8	33,856

Source: U.S. Department of Commerce, Bureau of the Census, Current Industrial Reports, the Western Wood Products Association, and data supplied by the National Forest Products Association.

<u>Region</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
West:						
Coastal....	32	33	32	32	30	30
Inland.....	30	30	30	30	29	29
Subtotal.	62	63	62	62	59	58
South.....	33	33	33	33	36	37
North.....	5	5	5	5	5	5
Total....	100	100	100	100	100	100

The leading species, or species groups, of softwood lumber produced in the United States are, in order of quantity produced, SYP, Douglas fir, hem-fir, and ponderosa pine (table 6). In 1991, the shares of domestic output accounted for by these species were 37.0 percent, 25.3 percent, 11.4 percent, and 10.6 percent, respectively. The remaining 15.7 percent was accounted for by SPF (Eastern and Western), redwood, cedars, other pines, and various other species (principally from the East and West).

Table 6
Softwood lumber: U.S. production, by species and species groups, 1986-91

(In mmbf)						
<u>Species</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
SYP	11,867	12,473	12,680	12,545	12,910	12,510
Douglas fir ¹ . .	9,669	10,681	10,376	10,237	9,061	8,571
Hem-fir	3,915	4,411	4,474	4,559	4,065	3,845
Ponderosa pine .	4,019	4,081	4,145	4,017	3,799	3,594
W-SPF	1,294	1,360	1,374	1,308	1,176	1,112
Redwood	1,018	1,113	1,160	1,056	1,073	1,015
Western cedar ² .	960	1,006	1,015	996	932	882
Western pines ³ .	491	566	548	702	481	455
Eastern softwoods ⁴	1,680	1,820	1,816	1,789	1,705	1,613
Other softwoods .	549	724	546	337	588	259
Total	35,462	38,235	38,134	37,546	35,790	33,856
Pressure-treated lumber ⁵ .	4,800	6,000	6,100	5,900	6,000	6,000

¹ Includes a small amount of inland larch.

² Includes western red cedar and incense cedar.

³ Includes western white (Idaho) pine and sugar pine.

⁴ Includes those softwood species native to the forests east of the Mississippi River and not included in the SYP species group.

⁵ More than 80 percent SYP.

Source: Compiled from official statistics of the U.S. Department of Commerce, the Western Wood Products Association, and the National Forest Products Association.

In the lumber industry, the practical capacity of a mill is measured by the greatest level of operations that the mill can achieve within a realistic work pattern. For most mills, capacity is based on one or two 8-hour shifts, 5 days per week, 252 days per year. It is acknowledged that many variations exist, including 9-hour shifts, three 8-hour shifts, 6 or 7 days per week, and 240 to 270 days per year.

The National Forest Products Association (NFPA) figures U.S. capacity utilization for each year by taking the best month's production in the previous 5 years (e.g., the best January, February, etc., in the past 5 years), then adding them up to determine practical annual capacity. Table 7 shows U.S. production, capacity, and capacity utilization for 1986-91 based on NFPA's methodology.

U.S. producers' capacity to produce softwood lumber increased by 12.0 percent from 1986 to 1991 to a level of 39.5 billion board feet, with most of that growth occurring from 1986 to 1988. Utilization of productive capacity in the production of softwood lumber dropped from a record high of 100.5 percent in 1986 to 97.2 percent in 1988 and 85.6 percent in 1991.

Table 7
Softwood lumber: U.S. production, capacity, and capacity utilization,
1986-91

Item	1986	1987	1988	1989	1990	1991
Production (mmbf).....	35,462	38,235	38,134	37,546	35,790	33,856
Capacity (mmbf).....	35,299	38,347	39,242	39,527	39,545	39,545
Capacity utilization (percent).....	100.5	99.7	97.2	95.0	90.5	85.6

Source: Compiled from official statistics of the U.S. Department of Commerce and the NFPA.

The 50 companies providing trade data in response to the Commission's questionnaires accounted for nearly 48.9 percent of U.S. softwood lumber production in 1991.⁶³ For 1991, 9 questionnaire respondents reported production of 500 mmbf or more, 17 reported production from 100 to 499, and 24 respondents showed production of less than 100 mmbf. From a production standpoint, the nine largest respondents accounted for 31.2 percent of total U.S. production in 1991, with the other two groupings accounting for 13.8 percent and 3.9 percent, respectively. As a portion of the data base developed from questionnaires, the nine largest companies accounted for 64.1 percent of 1991 production, while the middle and smaller producers accounted for shares of 28.1 percent and 7.8 percent, respectively.

Production, capacity, and capacity utilization in 1988-91 for questionnaire respondents are shown in table 8. From 1988 to 1989, capacity increased by 5.8 percent. Thereafter, it declined each year to a 1991 level that was 8.7 percent off of the 1989 capacity level. Most producers reported they operated 2 shifts per day for 50 weeks a year. Ten producers reported 20 mill closures from 1988 to 1991, and 22 producers reported temporary shutdowns of varying lengths during the same period. A number of reasons were given for the closures and shutdowns. Among them were lack of timber (log supply), generally poor economic conditions, unfavorable relationships between log and lumber prices, and subsidized Canadian lumber. Log supply and poor market conditions were the most frequently stated reasons, with the former being mentioned primarily by producers in the West. Production followed the same trends as capacity, increasing from 1988 to 1989, then dropping in 1990 and 1991. Production in 1991 was off 6.2 percent from that in 1989 and down 4.9 percent from 1988. Capacity utilization dropped irregularly from 1988 to 1991, declining from 1988 to 1989 then increasing over the next 2 years to a level of 92.1 percent in 1991.

Table 8
Softwood lumber: U.S. capacity, production, and capacity utilization, 1988-91

Item	1988	1989	1990	1991
Production (mmbf)	17,383	17,627	17,460	16,539
Capacity (mmbf)	18,591	19,663	19,376	17,950
Capacity utilization (percent) .	93.5	89.6	90.1	92.1

Note.--Capacity utilization is calculated from unrounded figures, using data of firms providing both capacity and production information.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

⁶³ Of the 50 companies, 40 indicated they were in support of the petition; 2, ***, were in opposition; 6, ***, did not wish to take a position; and, 2, ***, made no declaration at all.

U.S. Producers' Shipments, Inventories, and Exports

In general, shipments of softwood lumber vary only slightly from production, and follow essentially the same trends. Complete data on industry-wide shipments are not available, although the Western Wood Products Association and Southern Forest Products Association publish data on shipments originating in the West and South, the destination of those shipments, and the methods of transportation. Those data are presented in tables 9 and 10, respectively.

Shipments by producers in the West increased by 9.2 percent from 21.9 billion board feet in 1986 to 23.9 billion board feet in 1987, then dropped each year thereafter to 19.7 billion board feet in 1991, 17.6 percent off from 1987 shipment levels.

Shipments by producers in the South rose by 6.9 percent from 11.9 billion board feet in 1986 to 12.7 billion board feet in 1988, then declined irregularly by 1.3 percent from 1988 to 1991. Shipments in 1990 of 12.9 billion board feet represented the high point for sales during the 1986-91 period.

Data regarding domestic and export shipments as well as inventories held by the 50 companies responding to the Commission's questionnaires are contained in table 11. From 1988 to 1991, domestic shipments dropped irregularly by 6.0 percent. The unit value of producers' domestic shipments dropped irregularly by 1.6 percent from 1988 to 1990, to a level of \$260.61 per mbf, then rose 2.9 percent in 1991 to \$268.19 per mbf. Inventories as a share of total shipments declined from 1988 through 1991, going from 8.2 percent to 7.2 percent of shipments.

Total U.S. export shipments grew steadily from 1986 to 1989, increasing by 82.3 percent to a 1989 level of 3.4 billion board feet (table 12). Exports dipped 13.1 percent to 3.0 billion board feet in 1990, then rose in 1991 to 3.1 billion board feet. U.S. producers responding to Commission questionnaires accounted for 24.0 percent of the quantity and 24.3 percent of the value of export shipments in 1991.

Japan has consistently been the largest market for U.S. exports, followed by Canada, Mexico, Italy, and Australia. Other than the United States, Japan is also the largest export market for Canadian lumber, with Australia also being an important market. As noted in table 2, exports accounted for a growing portion of U.S. production, reaching peaks of 9.2 percent in 1989 and 1991.

Six U.S. producers responding to Commission questionnaires reported having exported logs during 1988-91. Log exports amounted to the equivalent of 33 mmbf, 31 mmbf, 30 mmbf, and 25 mmbf of softwood lumber in 1988, 1989, 1990, and 1991, respectively. Of the six firms reporting log exports, *** was far and away the largest exporter.

Table 9

Softwood lumber: Shipments from the Western United States to U.S. destinations, by areas and by methods of transportation, 1986-91¹

Period and destination	Method of transportation			Total	Share of
	Rail	Truck	Water		western
	Mmbf				shipments
					Percent
1986:					
North.....	3,216.8	968.7	19.6	4,205.1	19
South.....	1,868.0	1,203.5	0.0	3,071.5	14
West.....	4,555.6	8,631.7	1,451.1	14,638.4	67
Total.....	9,640.4	10,803.9	1,470.7	21,915.0	100
1987:					
North.....	4,903.8	1,045.9	8.7	5,958.4	25
South.....	2,168.7	551.2	0.0	2,719.9	11
West.....	4,252.3	10,302.8	708.6	15,263.7	64
Total.....	11,324.8	11,899.9	717.3	23,942.0	100
1988:					
North.....	4,157.0	1,035.4	4.1	5,196.5	22
South.....	1,687.1	577.6	0.0	2,264.7	10
West.....	3,937.2	11,297.7	941.9	16,176.8	68
Total.....	9,781.3	12,910.7	946.0	23,638.0	100
1989:					
North.....	3,407.2	983.7	0.0	4,390.9	19
South.....	1,409.6	582.6	0.1	1,992.3	9
West.....	3,998.6	11,683.6	1,146.6	16,828.8	73
Total.....	8,815.4	13,249.9	1,146.7	23,212.0	100
1990:					
North.....	2,947.8	982.7	0.0	3,930.5	19
South.....	1,316.7	574.5	0.0	1,891.2	9
West.....	3,182.3	11,346.5	824.5	15,353.3	73
Total.....	7,446.8	12,903.7	824.5	21,175.0	100
1991:					
North.....	2,703.2	912.9	0.0	3,616.1	18
South.....	1,222.7	563.1	0.0	1,785.7	9
West.....	2,944.2	10,770.6	618.3	14,333.1	73
Total.....	6,870.0	12,246.6	618.3	19,735.0	100

¹ Exports are included in the West destinations.

Source: Western Wood Products Association, Destination of shipments, 1986-91.

Table 10

Softwood lumber: Shipments from the Southern United States to U.S. destinations, by areas and by methods of transportation, 1986-91^{1 2}

Period and destination	Method of transportation			Total	Share of southern shipments Percent
	Rail	Truck	Water		
1986:					
North.....	1,112.0	2,145.0	-	3,257.0	27
South.....	1,309.0	7,301.0	-	8,610.0	73
West.....	0.0	0.0	-	0.0	0
Total.....	2,421.0	9,446.0	-	11,867.0	100
1987:					
North.....	1,352.0	2,259.0	-	3,611.0	29
South.....	1,273.0	7,589.0	-	8,862.0	71
West.....	0.0	0.0	-	0.0	0
Total.....	2,625.0	9,848.0	-	12,473.0	100
1988:					
North.....	791.0	2,216.0	-	3,007.0	24
South.....	1,861.0	7,812.0	-	9,673.0	76
West.....	0.0	0.0	-	0.0	0
Total.....	2,652.0	10,028.0	-	12,680.0	100
1989:					
North.....	580.0	2,269.0	-	2,849.0	23
South.....	1,534.0	8,162.0	-	9,696.0	77
West.....	0.0	0.0	-	0.0	0
Total.....	2,114.0	10,431.0	-	12,545.0	100
1990:					
North.....	1,568.0	1,775.0	-	3,343.0	26
South.....	1,717.0	7,850.0	-	9,567.0	74
West.....	0.0	0.0	-	0.0	0
Total.....	3,285.0	9,625.0	-	12,910.0	100
1991:					
North.....	1,490.3	1,801.3	-	3,291.6	26
South.....	1,696.2	7,522.2	-	9,218.3	74
West.....	0.0	0.0	-	0.0	0
Total.....	3,186.5	9,323.4	-	12,510.0	100

¹ Exports are included in South destinations.

² Estimated by the staff of the U.S. International Trade Commission from data supplied by the Southern Forest Products Association.

Source: Southern Forest Products Association, Destination of shipments, 1986-91.

Table 11
Softwood lumber: Shipments by U.S. producers, by types, 1988-91

Item	1988	1989	1990	1991
Domestic shipments:				
Quantity (mmbf)	14,778	14,967	14,619	13,885
Value (million dollars)	3,914	3,976	3,810	3,724
Unit value (per mbf)	\$264.78	\$265.65	\$260.61	\$268.19
Export shipments:				
Quantity (mmbf)	755	828	796	748
Value (million dollars)	311	374	350	333
Unit value (per mbf)	\$412.29	\$451.36	\$439.39	\$444.57
Company transfers (mmbf)	1,816	1,837	2,083	2,066
Total shipments (mmbf)	17,349	17,633	17,498	16,700
End-of period inventories				
(mmbf)	1,414	1,421	1,385	1,205
Ratio of inventories to				
total shipments (percent)	8.2	8.1	7.9	7.2

Note.--Because of rounding, figures may not add to the totals shown. Unit values are calculated from the unrounded figures, using data of firms supplying both quantity and value information.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 12
Softwood lumber: U.S. exports, by markets, 1986-91

Item	1986	1987	1988	1989	1990	1991
Quantity (mmbf)						
Australia.....	125	170	234	223	173	185
Canada.....	358	443	503	506	450	390
Italy.....	94	111	141	133	123	126
Japan.....	814	1,073	1,278	1,487	1,172	1,108
Mexico.....	129	170	287	280	372	606
Spain.....	42	70	142	115	95	97
Other sources.....	328	432	676	701	609	609
Total.....	1,890	2,469	3,261	3,445	2,994	3,121
Value (million dollars)						
Australia.....	41	57	104	100	85	91
Canada.....	91	115	150	177	176	167
Italy.....	60	79	86	101	108	111
Japan.....	265	358	434	568	509	499
Mexico.....	32	40	69	100	123	165
Spain.....	25	36	60	62	63	61
Other sources.....	130	170	236	316	283	276
Total.....	644	855	1,139	1,424	1,347	1,370
Unit value (per mbf)						
Australia.....	\$325.76	\$338.21	\$443.08	\$447.42	\$489.12	\$491.19
Canada.....	255.35	259.80	297.74	349.22	391.94	427.67
Italy.....	638.15	712.17	607.98	757.82	878.79	880.52
Japan.....	326.23	333.34	339.73	381.94	434.02	450.52
Mexico.....	251.45	236.90	242.40	357.66	330.37	272.32
Spain.....	589.56	519.10	427.11	537.71	658.73	625.09
Other sources.....	394.47	392.53	349.02	452.04	467.03	453.94
Average.....	340.90	346.51	349.46	413.38	450.10	439.02

Note.--Because of rounding, figures may not add to the totals shown; unit values are calculated from unrounded figures.

Source: Compiled from official statistics of the U.S. Department of Commerce.

U.S. Producers' Employment, Wages, and Productivity

U.S. producers providing employment and wage information in response to the Commission's questionnaires accounted for 48.9 percent of 1991 production of softwood lumber (table 13). For those firms, the average number of production and related workers engaged in the manufacture of softwood lumber steadily decreased, by 14.8 percent, from 1988 to 1991. Twenty firms reported permanent layoffs of at least 50 workers or 5 percent of their workforce during the period of investigation. The most commonly cited reason for the layoffs was timber supply problems, with the majority of layoffs occurring among producers operating in the West. What union representation there is in this industry is centered primarily in mills located in the West. Among the unions representing the workers are the Western Council of Industrial Workers, the International Woodworkers of America, the United Brotherhood of Carpenters and Joiners, and the United Paperworkers International Union.

The productivity of workers engaged in producing softwood lumber, as measured in output per hour worked by production and related workers, grew from 251.1 board feet per hour in 1988 to 271.6 board feet per hour in 1991, an increase of 8.2 percent. Unit labor costs in producing softwood lumber exhibited an irregular, albeit very small, increase from \$50.15 per mbf to \$50.18 per mbf from 1988 to 1991.

Table 13

Average number of U.S. production and related workers producing softwood lumber, hours worked,¹ wages and total compensation paid to such employees, and hourly wages and total compensation, productivity, and unit labor costs,² 1988-91

Item	1988	1989	1990	1991
Production and related workers (PRWs)	32,280	31,734	30,533	27,492
Hours worked by PRWs (1,000 hours)	69,234	70,154	66,333	60,675
Wages paid to PRWs (1,000 dollars)	711,886	749,007	717,166	670,556
Total compensation paid to PRWs (1,000 dollars)	871,781	919,914	899,881	827,019
Hourly wages paid to PRWs	\$10.28	\$10.68	\$10.81	\$11.05
Hourly total compensation paid to PRWs	\$12.59	\$13.11	\$13.57	\$13.63
Productivity (board feet per hour)	251.1	251.3	262.2	271.6
Unit labor costs (per mbf)	\$50.15	\$52.19	\$51.72	\$50.18

¹ Includes hours worked plus hours of paid leave time.

² On the basis of total compensation paid.

Note.--Ratios are calculated using data of firms supplying both numerator and denominator information.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Financial Experience of U.S. Producers

Fifty U.S. producers of softwood lumber, including most of the major ones, supplied financial data. These companies, which ranged in size from international corporations with annual softwood lumber sales well in excess of \$600 million to small regional companies with sales of less than \$10 million, accounted for just less than half of 1991 U.S. softwood lumber production.

The data supplied by two U.S. producers-- *** --were verified by Commission staff. As a result of the verification, minor modifications were made to the useable data. In addition, the pricing data of three Canadian importers-- *** --were also verified. Minor data modifications were required.

Wood Products/Building Materials Operations

Data on the wood products/building materials operations of the U.S. producers are presented in table 14. Total net sales, operating profit, and net profit all showed marked improvement from 1988 to 1989, despite the fact that the number of companies with operating and net losses doubled. Although net sales decreased only modestly in 1990, operating profits declined by over one-half, the result of a relative increase in the cost of sales. As a result, net income decreased by about two-thirds, and the number of companies with operating and net losses again doubled. The situation was somewhat better in 1991. Despite a slight decline in net sales, operating and net profit both increased; however, they were both well below 1988-89 levels.

In terms of net sales, softwood lumber operations (about \$4.5 billion annually) accounted for somewhat less than half of wood products and building material operations. However, most of this difference is due to the operations of a few of the larger producers--for most of the producers, softwood lumber operations and wood products/building material operations were the same.

Table 14

Income-and-loss experience of U.S. producers on the wood products and building materials operations of their U.S. establishments, fiscal years 1988-91¹

Item	1988	1989	1990	1991
	Value (1,000 dollars)			
Net sales	8,904,368	10,068,126	9,655,491	9,451,170
Cost of goods sold	7,818,984	8,777,341	8,906,654	8,668,159
Gross profit	1,085,384	1,290,785	748,837	783,011
SG&A expenses ²	368,111	389,590	385,482	381,923
Operating income	717,273	901,195	363,355	401,088
Startup or shutdown expense . .	6,035	11,509	8,256	7,533
Interest expense	131,409	159,294	154,242	138,124
Other income, net	54,130	73,546	59,988	57,729
Net income before income taxes	633,959	803,938	260,845	313,160
Depreciation and amortization	417,127	423,084	447,224	461,722
Cash flow ³	1,051,086	1,227,022	708,069	774,882
	Ratio to net sales (percent)			
Cost of goods sold	87.8	87.2	92.2	91.7
Gross profit	12.2	12.8	7.8	8.3
SG&A expenses	4.1	3.9	4.0	4.0
Operating income	8.1	9.0	3.8	4.2
Net income before income taxes	7.1	8.0	2.7	3.3
	Number of firms reporting			
Operating losses	4	8	18	19
Net losses	4	9	20	17
Data	47	49	48	48

¹ All companies except *** reported data for wood products and building materials operations.

² Selling, general, and administrative expenses.

³ Cash flow is defined as net income or loss plus depreciation and amortization.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Softwood Lumber Operations

In response to a request by counsel for CFIC, the Commission asked producers to report softwood lumber financial performance data on a somewhat disaggregated basis⁶⁴ as well as the traditional aggregated basis. Hence, financial data were gathered on a regional (Southern, West Coastal, West Inland, and Northern) basis.⁶⁵ Data on operations in these regions are shown in tables 15 through 22, and aggregate data are shown in tables 23 and 24.

Southern Region softwood lumber operations

The Southern Region accounted for about 38 percent of all softwood lumber sales in 1988-91. As shown in table 15, the value of Southern Region net sales decreased about 4 percent from 1988 to 1989, primarily the result of

⁶⁴ In its request, CFIC contended that the domestic industry's injury case rests on the argument that it is caught in a cost-price squeeze which is an industry-wide predicament. CFIC, on the other hand, argued that "... available information indicates that costs have been significantly greater for certain Western producers due to a number of factors, including environmental constraints. Thus, any cost-price squeeze appears to be due to a unique situation faced by certain Western producers and has nothing to do with Canadian lumber." Hence, CFIC asked the Commission to collect financial information in a manner that would provide the data to "evaluate fully this fundamental causation issue." Letter from Susan G. Esserman, Counsel for CFIC, to James McClure, Investigator, U.S. International Trade Commission, Mar. 13, 1992.

⁶⁵ The West was subdivided into the Coastal and Inland regions. Most of the acreage removed from timber harvest due to the northern spotted owl is located in the Coastal Region. The boundaries of the regions are as follows:

North--Connecticut, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin.

South--Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

West: Coastal--Alaska, California, Hawaii, and the area west of the Cascade Mountains in Oregon and Washington.

Inland--Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, South Dakota, Utah, Wyoming, and the area east of the Cascade Mountains in Oregon and Washington.

Table 15
Income-and-loss experience of Southern Region producers on their operations
producing softwood lumber, fiscal years 1988-91

Item	1988	1989	1990	1991
<u>Quantity (mbf)</u>				
Net sales	7,489,417	7,384,897	7,746,640	7,778,444
<u>Value (1,000 dollars)</u>				
Net sales	1,696,742	1,621,326	1,720,199	1,706,767
Cost of goods sold	1,468,554	1,503,335	1,643,081	1,620,764
Gross profit	228,188	117,991	77,118	86,003
SG&A expenses	98,772	100,511	102,717	97,390
Operating income or (loss)	129,416	17,480	(25,599)	(11,387)
Startup or shutdown expense	0	0	26	1,000
Interest expense	8,165	8,070	8,156	8,495
Other income, net	4,675	10,133	3,557	6,168
Net income or (loss) before income taxes	125,926	19,543	(30,224)	(14,714)
Depreciation and amortiza- tion	75,645	77,424	88,473	87,582
Cash flow	201,571	96,967	58,249	72,868
<u>Value (per mbf)</u>				
Net sales	\$226.55	\$219.55	\$222.06	\$219.42
Cost of goods sold	196.08	203.57	212.10	208.37
Gross profit	30.47	15.98	9.96	11.06
SG&A expenses	13.19	13.61	13.26	12.52
Operating income or (loss)	17.28	2.37	(3.30)	(1.46)
<u>Ratio to net sales (percent)</u>				
Cost of goods sold	86.6	92.7	95.5	95.0
Gross profit	13.4	7.3	4.5	5.0
SG&A expenses	5.8	6.2	6.0	5.7
Operating income or (loss)	7.6	1.1	(1.5)	(0.7)
Net income or (loss) before income taxes	7.4	1.2	(1.8)	(0.9)
<u>Number of firms reporting</u>				
Operating losses	2	9	17	13
Net losses	3	11	16	15
Data	29	29	28	28

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

a \$7/mbf decrease in the average per-unit sales value. At the same time, the per-unit cost of goods sold increased by about \$7.50/mbf, resulting in a 48-percent decrease in the per-unit gross profit. Operating and net incomes were in turn down sharply, as about one-third of the producers reported losses for the year.

In 1990, net sales value increased about 6 percent as sales volume and average per-unit value both increased modestly. Per-unit cost of goods sold increased by another \$8/mbf, however, further shrinking the producers' aggregate gross profit and leading to operating and net losses. This downturn was generally across the board, as well over half of the producers reported losses for the year.

The producers reported marginally better results in 1991. Sales quantities and value were virtually unchanged while the magnitude of the operating and net losses decreased. Although the number of producers reporting operating losses decreased, the number was still far in excess of 1988 levels; the 1991 average per-unit sales value was about \$7/mbf lower and the 1991 per-unit cost of goods sold was about \$12/mbf higher than corresponding 1988 figures.

These trends were generally across the board. About two-thirds of the producers had 1991 per-unit sales values less than 1988 values, and virtually all had 1991 per-unit cost of sales values higher than 1988 values. As a result, gross profit margins and the absolute level of gross profits decreased to about one-third of their 1988 levels. Since selling, general, and administrative (SG&A) expenses held steady, the 1988 operating and net incomes became 1991 operating and net losses.

The production of softwood lumber leads to the production of by-products associated with timber, such as wood chips, sawdust, bark, and woodshavings. The revenue from these by-products is substantial, averaging about 15 percent of the net sales value of softwood lumber alone. While some producers treated such revenue as softwood lumber revenue, most treated it as a reduction in cost of sales.

Although treating by-product revenue as either a reduction in the cost of sales or an increase in softwood lumber revenue will result in the same operating and net incomes, the former method will result in lower per-unit sales and cost of sales values. In order to present the data from all producers on a consistent basis, by-product revenue was treated as a reduction in the cost of sales. Table 16 presents U.S. producers' manufacturing costs for their Southern Region softwood lumber operations. Within the manufacturing costs, there were slow but steady increases in almost every cost component, but principally direct materials (logs), from 1988 through 1991. Most producers, regardless of their size, experienced the same general trends.

Table 16
 Southern Region producers'¹ per-unit manufacturing costs on their operations
 producing softwood lumber, fiscal years 1988-91

Item	1988	1989	1990	1991
<u>Quantity (mbf)</u>				
Production.....	5,604,920	5,489,116	5,901,674	5,925,373
<u>Value (per mbf)</u>				
Direct materials...	\$169.27	\$174.41	\$180.00	\$180.28
Direct labor.....	34.12	35.83	35.82	36.74
Factory overhead...	44.68	46.59	46.88	47.29
sub-total.....	248.08	256.82	263.58	264.31
Less: By-product revenue....	(51.26)	(51.76)	(51.76)	(53.11)
Total costs.....	196.81	205.05	211.83	211.20
<u>Ratio to total costs (percent)</u>				
Direct materials...	86.0	85.0	85.4	85.3
Direct labor.....	17.3	17.5	16.9	17.4
Factory overhead...	22.7	22.7	22.1	22.4
sub-total.....	126.0	125.2	124.4	125.1
Less: By-product revenue....	(26.0)	(25.2)	(24.4)	(25.1)
Total costs.....	100.0	100.0	100.0	100.0

¹ Not all producers provided useable data.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

West Coastal Region softwood lumber operations

The largest region in terms of 1988-91 net sales, with about 39 percent of the total, is the West Coastal Region. Net sales (table 17) increased 9 percent from 1988 to 1989 as sales quantities improved moderately and per-unit sales values increased about \$19/mbf. As a result, operating and net incomes improved substantially, and almost all producers reported profits.

Things were different in 1990. Net sales decreased to their 1988 levels, the result of decreases in sales volume and per-unit value. Worse yet, the per-unit cost of goods sold increased about \$18/mbf, and the gross profit shrank to about one-third of its 1989 level. Operating income was barely 1 percent of sales, and the number of producers reporting operating and net losses more than tripled.

The producers reported mixed financial results for 1991. The per-unit net sales value increased about \$6/mbf while the per-unit cost of goods sold decreased about \$6/mbf, resulting in gross profit margins approaching 1988 levels. Operating and net income levels were up sharply, although still well below 1989 levels. However, sales volumes and value were both down by about 8 to 10 percent from 1990, and were below 1988 levels. More than one in three producers reported losses, the same level as in 1990.

Table 18 presents manufacturing costs for the West Coastal Region. Relatively large increases in direct materials (logs) in 1989 and 1990 were the main reason for the overall increase in cost. Cost increases leveled off in 1991, at least in part because producers were using more of their own lower cost timber (as opposed to open market purchases) and because some were shifting to production of lower-cost species.

Table 17
Income-and-loss experience of West Coastal Region producers on their operations producing softwood lumber, fiscal years 1988-91¹

Item	1988	1989	1990	1991
	Quantity (mbf)			
Net sales	5,722,709	5,887,400	5,631,083	5,048,215
	Value (1,000 dollars)			
Net sales	1,746,536	1,903,861	1,772,137	1,621,090
Cost of goods sold	1,535,122	1,630,146	1,672,965	1,469,894
Gross profit	211,414	273,715	99,172	151,196
SG&A expenses	74,852	77,701	79,536	68,110
Operating income	136,562	196,014	19,636	83,086
Startup or shutdown expense . .	5,060	10,428	4,472	574
Interest expense	8,029	10,642	12,115	9,669
Other income or (expense), net	(4,039)	8,776	9,822	7,401
Net income before income taxes	119,434	183,720	12,871	80,244
Depreciation and amortiza- tion	76,928	69,352	65,029	65,684
Cash flow	196,362	253,072	77,900	145,928
	Value (per mbf)			
Net sales	\$296.84	\$316.09	\$304.99	\$311.45
Cost of goods sold	261.59	270.07	287.83	281.42
Gross profit	35.25	46.02	17.17	30.03
SG&A expenses	12.63	12.82	13.71	13.08
Operating income	22.62	33.20	3.46	16.95
	Ratio to net sales (percent)			
Cost of goods sold	87.9	85.6	94.4	90.7
Gross profit	12.1	14.4	5.6	9.3
SG&A expenses	4.3	4.1	4.5	4.2
Operating income	7.8	10.3	1.1	5.1
Net income before income taxes	6.8	9.6	0.7	5.0
	Number of firms reporting			
Operating losses	3	2	7	7
Net losses	4	2	7	7
Data	18	19	19	19

¹ All producers except *** were able to report sales quantities.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 18
West Coastal Region producers¹ per-unit manufacturing costs on their
operations producing softwood lumber, fiscal years 1988-91

Item	1988	1989	1990	1991
<u>Quantity (mbf)</u>				
Production.....	3,935,177	4,258,416	4,159,758	3,671,064
<u>Value (per mbf)</u>				
Direct materials...	\$184.20	\$200.33	\$217.89	\$217.11
Direct labor.....	55.56	57.66	58.23	55.51
Factory overhead...	37.79	38.51	37.88	43.81
sub-total.....	277.55	296.50	314.01	316.44
Less: By-product revenue....	(15.31)	(24.67)	(25.93)	(26.92)
Total costs.....	262.24	271.82	288.08	289.52
<u>Ratio to total costs (percent)</u>				
Direct materials...	70.2	73.7	75.6	75.0
Direct labor.....	21.2	21.2	20.2	19.2
Factory overhead...	14.4	14.2	13.1	15.1
sub-total.....	105.8	109.1	109.0	109.3
Less: By-product revenue....	(5.8)	(9.1)	(9.0)	(9.3)
Total costs.....	100.0	100.0	100.0	100.0

¹ Not all producers provided useable data.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

West Inland Region softwood lumber operations

The West Inland Region represented about 22 percent of 1988-91 softwood lumber net sales. As shown in table 19, a large increase in sales volume was the primary reason net sales increased materially from 1988 to 1989. These elevated sales levels led to increased profits at all levels, even though the number of producers reporting losses increased.

Results worsened sharply in 1990. A \$10/mbf decrease in the per-unit sales value coupled with a \$18/mbf increase in the per-unit cost of goods sold caused the gross profit margin to virtually disappear. Operating and net income levels plunged approximately \$100 million and \$105 million under their respective 1989 levels, and over half of the producers operated in the red.

The producers rebounded somewhat in 1991. While the quantity and value of net sales decreased further, the gross profit margin and operating income rebounded to about two-thirds of their 1988 levels. The 1991 average per-unit net sales value was higher than at any other time during the period of investigation.

Table 19
Income-and-loss experience of West Inland Region producers on their operations
producing softwood lumber, fiscal years 1988-91

Item	1988	1989	1990	1991
<u>Quantity (mbf)</u>				
Net sales	3,065,048	3,611,671	3,703,962	3,384,178
<u>Value (1,000 dollars)</u>				
Net sales	852,367	1,029,153	1,019,911	980,063
Cost of goods sold	759,083	916,119	1,007,664	910,966
Gross profit	93,284	113,034	12,247	69,097
SG&A expenses	31,969	34,331	33,321	32,183
Operating income or (loss)	61,315	78,703	(21,074)	36,914
Interest expense	10,842	15,012	19,086	17,685
Other income or (expense), net	4,334	3,044	1,735	(1,972)
Net income or (loss) before income taxes	54,807	66,735	(38,425)	17,257
Depreciation and amortiza- tion	37,603	46,244	54,823	48,016
Cash flow	92,410	112,979	16,398	65,273
<u>Value (per mbf)</u>				
Net sales	\$278.05	\$284.95	\$275.36	\$289.60
Cost of goods sold	247.62	253.66	272.05	269.18
Gross profit	30.43	31.30	3.31	20.42
SG&A expenses	10.43	9.51	9.00	9.51
Operating income or (loss)	20.00	21.79	(5.69)	10.91
<u>Ratio to net sales (percent)</u>				
Cost of goods sold	89.1	89.0	98.8	92.9
Gross profit	10.9	11.0	1.2	7.1
SG&A expenses	3.8	3.3	3.3	3.3
Operating income or (loss)	7.2	7.6	(2.1)	3.8
Net income or (loss) before income taxes	6.4	6.5	(3.8)	1.8
<u>Number of firms reporting</u>				
Operating losses	1	2	6	4
Net losses	2	3	8	4
Data	11	12	12	12

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission

Table 20 presents manufacturing costs for the West Inland Region. The reason for the relatively large difference between costs in this table and costs in table 19 is that some large, low-cost producers were unable to supply manufacturing cost data. As with the West Coastal Region, increases in direct materials were the primary reason for increased costs.

Table 20
West Inland Region producers'¹ per-unit manufacturing costs on their operations producing softwood lumber, fiscal years 1988-91

Item	1988	1989	1990	1991
<u>Quantity (mbf)</u>				
Production.....	2,061,396	2,564,442	2,666,532	2,345,813
<u>Value (per mbf)</u>				
Direct materials...	\$162.10	\$177.19	\$186.26	\$203.60
Direct labor.....	56.92	56.58	59.16	59.62
Factory overhead...	62.32	68.31	71.93	75.53
sub-total.....	281.34	302.08	317.34	338.75
Less: By-product revenue....	(13.84)	(27.83)	(24.43)	(32.48)
Total costs.....	267.50	274.26	292.91	306.26
<u>Ratio to total costs (percent)</u>				
Direct materials...	60.6	64.6	63.6	66.5
Direct labor.....	21.3	20.6	20.2	19.5
Factory overhead...	23.3	24.9	24.6	24.7
sub-total.....	105.2	110.1	108.3	110.6
Less: By-product revenue....	(5.2)	(10.1)	(8.3)	(10.6)
Total costs.....	100.0	100.0	100.0	100.0

¹ Not all producers provided useable data.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Northern Region softwood lumber operations

As shown in table 21, net sales values reported for Northern Region softwood lumber operations were fairly small. Net sales improved substantially from 1988 to 1991, primarily a function of increased volume. Despite the large increase, the 1991 gross profit level was less than the 1988 level, and operating and net incomes had deteriorated to losses. About half of the producers suffered losses, as the \$29/mbf increase from 1988 to 1991 in the per-unit cost of goods sold easily overshadowed the \$5/mbf increase in the per-unit sales value.

Table 22 presents manufacturing costs for the Northern Region. Again, increases in direct materials were the primary reason for increased costs, although direct labor also had measurable increases.

Table 21
Income-and-loss experience of Northern Region producers on their operations
producing softwood lumber, fiscal years 1988-91

Item	1988	1989	1990	1991
<u>Quantity (mbf)</u>				
Net sales	195,950	197,490	248,810	363,102
<u>Value (1,000 dollars)</u>				
Net sales	40,766	41,500	54,574	77,520
Cost of goods sold	33,887	35,569	53,072	73,287
Gross profit	6,879	5,931	1,502	4,233
SG&A expenses	3,009	3,069	5,102	5,649
Operating income or (loss)	3,870	2,862	(3,600)	(1,416)
Interest expense	98	254	391	785
Other income, net	651	799	698	1,116
Net income or (loss) before income taxes	4,423	3,407	(3,293)	(1,085)
Depreciation and amortiza- tion	1,066	1,171	2,617	3,124
Cash flow	5,489	4,578	(676)	2,039
<u>Value (per mbf)</u>				
Net sales	\$208.04	\$210.14	\$219.34	\$213.49
Cost of goods sold	172.94	180.11	213.30	201.84
Gross profit	35.11	30.03	6.04	11.66
SG&A expenses	15.36	15.54	20.51	15.56
Operating income or (loss)	19.75	14.49	(14.47)	(3.90)
<u>Ratio to net sales (percent)</u>				
Cost of goods sold	83.1	85.7	97.2	94.5
Gross profit	16.9	14.3	2.8	5.5
SG&A expenses	7.4	7.4	9.3	7.3
Operating income or (loss)	9.5	6.9	(6.6)	(1.8)
Net income or (loss) before income taxes	10.8	8.2	(6.0)	(1.4)
<u>Number of firms reporting</u>				
Operating losses	2	2	4	3
Net losses	2	2	4	4
Data	5	5	6	6

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 22
Northern Region producers' per-unit manufacturing costs on their operations
producing softwood lumber, fiscal years 1988-91

Item	1988	1989	1990	1991
<u>Quantity (mbf)</u>				
Production.....	199,251	193,239	260,312	363,938
<u>Value (per mbf)</u>				
Direct materials...	\$147.76	\$155.41	\$176.48	\$178.51
Direct labor.....	30.81	38.51	42.89	41.88
Factory overhead...	53.53	52.00	53.15	45.02
sub-total.....	232.10	245.92	272.52	265.42
Less: By-product revenue....	(60.03)	(63.67)	(61.85)	(63.52)
Total costs.....	172.07	182.25	210.67	201.92
<u>Ratio to total costs (percent)</u>				
Direct materials...	85.9	85.3	83.8	88.4
Direct labor.....	17.9	21.1	20.4	20.7
Factory overhead...	31.1	28.5	25.2	22.3
sub-total.....	134.9	134.9	129.4	131.5
Less: By-product revenue....	(34.9)	(34.9)	(29.4)	(31.5)
Total costs.....	100.0	100.0	100.0	100.0

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Overall softwood lumber operations

The overall softwood lumber operations of the U.S. producers (the aggregate of the four previously discussed regions), are shown in table 23. While net sales value and volume increased from 1988 to 1989, they failed to keep pace with the increase in the cost of goods sold. As a result, operating and net income levels decreased, and the number of producers reporting losses increased. Even though sales volume increased again in 1990, sales value remained flat. As a result, the approximately \$300 million increase in cost of goods sold flowed straight through to reduce operating and net incomes, and about half of the producers had losses.

Although the situation improved measurably in 1991, the results were still unimpressive. Sales volumes and value were down from 1990 levels, and approximated 1988 levels. Gross profit was somewhat more than half the 1988 level, and operating and net income were about one-third and one-quarter of their respective 1988 totals. About one producer in five reported losses at the gross profit level, and close to half had net losses.

Table 23

Income-and-loss experience of U.S. producers on their operations producing softwood lumber, fiscal years 1988-91¹

Item	1988	1989	1990	1991
	<u>Quantity (mbf)</u>			
Net sales	16,473,564	17,081,458	17,330,495	16,573,939
	<u>Value (1,000 dollars)</u>			
Net sales	4,336,411	4,595,840	4,566,822	4,385,440
Cost of goods sold	3,796,646	4,085,168	4,376,783	4,074,910
Gross profit	539,765	510,672	190,039	310,530
SG&A expenses	208,602	215,613	220,676	203,332
Operating income or (loss)	331,163	295,059	(30,637)	107,198
Startup or shutdown expense	5,060	10,428	4,498	1,574
Interest expense	27,134	33,978	39,748	36,634
Other income, net	5,620	22,752	15,812	12,712
Net income or (loss) before income taxes	304,589	273,405	(59,071)	81,702
Depreciation and amortization	191,242	194,191	210,942	204,407
Cash flow	495,831	467,596	151,871	286,109
	<u>Value (per mbf)</u>			
Net sales	\$260.33	\$266.54	\$260.36	\$261.65
Cost of goods sold	228.16	236.81	249.54	242.89
Gross profit	32.18	29.73	10.82	18.76
SG&A expenses	12.51	12.49	12.60	12.14
Operating income or (loss)	19.67	17.24	(1.78)	6.62
	<u>Ratio to net sales (percent)</u>			
Cost of goods sold	87.6	88.9	95.8	92.9
Gross profit	12.4	11.1	4.2	7.1
SG&A expenses	4.8	4.7	4.8	4.6
Operating income or (loss)	7.6	6.4	(0.7)	2.4
Net income or (loss) before income taxes	7.0	5.9	(1.3)	1.9
	<u>Number of firms reporting</u>			
Operating losses	5	12	23	20
Net losses	9	13	25	23
Data	48	50	49	49

¹ All producers except *** were able to report sales quantities.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 24 presents manufacturing costs for overall softwood lumber operations. There were slow but steady increases in direct materials and overall cost of goods sold from 1988 to 1990, followed by small decreases in 1991. Cost of goods sold data in table 23 mirrored the rise and fall in manufacturing costs.

Tables 25, 26, and 27 present selected profit-and-loss data for large, medium, and small producers (based on production criteria, as defined on page A-33). The following tabulation shows the extent and location of the softwood lumber operations of the different producers--

<u>Producer size</u>	<u>Number of companies with softwood lumber operations in the following regions--</u>			
	<u>North</u>	<u>South</u>	<u>West Coastal</u>	<u>West Inland</u>
Large.....	4	7	5	5
Medium.....	1	7	6	7
Small.....	1	15	7	1

While all 24 of the small producers and 14 of the 17 medium producers had softwood lumber operations in only 1 region, 7 of the 9 large producers had operations in 2 or more regions.

Comparing the results of the different sized producers, it is clear that all three groups had the same general trends--results tailed off a bit from 1988 to 1989, got much worse in 1990, and then rebounded a bit in 1991. However, it appears that the small producers did not do as well as the large or medium size producers, particularly in 1991. The data indicate that the gross profit percentage of all three groups was very similar, suggesting operating efficiencies were also very similar. However, SG&A expenses were proportionately higher for the small producers, resulting in relatively lower operating and net incomes. All else being the same, the larger companies may have an advantage with respect to such expenses due to economies of scale.

Table 24

U.S. producers'¹ per-unit manufacturing costs on their operations producing softwood lumber, fiscal years 1988-91

Item	1988	1989	1990	1991
Quantity (mbf)				
Production.....	13,827,376	14,381,189	14,928,049	14,206,889
Value (per mbf)				
Direct materials...	\$174.03	\$187.11	\$195.46	\$195.31
Direct labor.....	51.26	53.67	53.23	51.07
Factory overhead...	42.76	45.54	46.35	48.21
sub-total.....	268.05	286.32	295.05	294.59
Less: By-product revenue....	(33.85)	(39.85)	(39.76)	(43.35)
Total costs.....	234.20	246.47	255.28	251.24
Ratio to total costs (percent)				
Direct materials...	74.3	75.9	76.6	77.7
Direct labor.....	21.9	21.8	20.9	20.3
Factory overhead...	18.3	18.5	18.2	19.2
sub-total.....	114.5	116.2	115.6	117.3
Less: By-product revenue....	(14.5)	(16.2)	(15.6)	(17.3)
Total costs.....	100.0	100.0	100.0	100.0

¹ Some producers that could not provide data on a region-by-region basis were able to present overall data.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 25

Income-and-loss experience of large¹ U.S. producers on their operations producing softwood lumber, fiscal years 1988-91²

Item	1988	1989	1990	1991
	Value (1,000 dollars)			
Net sales	2,859,725	2,987,659	2,956,835	2,776,769
Percent of total	65.9	65.0	64.7	63.3
Operating income	231,141	203,222	5,179	70,858
Percent of total	69.8	68.9	³	66.1
Net income or (loss) before income taxes	224,892	202,646	(11,730)	52,543
Percent of total	73.8	74.1	19.9 ⁴	64.3
Cash flow	340,829	320,214	115,682	172,169
Percent of total	68.7	68.5	76.2	60.2
	Ratio to net sales (percent)			
Cost of goods sold	87.3	88.7	95.1	93.0
Gross profit	12.7	11.3	4.9	7.0
Selling, general, and administrative expenses	4.6	4.5	4.7	4.5
Operating income	8.1	6.8	0.2	2.6
Net income or (loss) before income taxes	7.9	6.8	(0.4)	1.9
	Number of firms reporting			
Operating losses	0	1	4	3
Net losses	0	2	5	4
Data	9	9	9	9

¹ Defined as producers which had 1991 production in excess of 500 mmbf.

² Percent of total refers to percentage of aggregate totals as presented in table 23.

³ Not applicable--aggregate total was a net loss.

⁴ Percent of the total loss.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 26

Income-and-loss experience of medium¹ U.S. producers on their producing softwood lumber, fiscal years 1988-91²

Item	1988	1989	1990	1991
	<u>Value (1,000 dollars)</u>			
Net sales	1,091,436	1,241,755	1,295,599	1,268,480
Percent of total	25.2	27.0	28.4	28.9
Operating income or (loss) . .	76,242	82,013	(24,598)	35,576
Percent of total	23.0	27.8	68.7 ³	33.2
Net income or (loss) before income taxes	59,562	62,123	(33,668)	29,604
Percent of total	19.6	22.7	57.0 ³	36.0
Cash flow	120,912	124,563	34,960	99,306
Percent of total	24.4	26.6	23.0	34.7
	<u>Ratio to net sales (percent)</u>			
Cost of goods sold	88.3	88.9	97.5	92.9
Gross profit	11.7	11.1	2.5	7.1
Selling, general, and administrative expenses . . .	4.7	4.5	4.4	4.3
Operating income or (loss) . .	7.0	6.6	(1.9)	2.8
Net income or (loss) before income taxes	5.5	5.0	(2.6)	2.3
	<u>Number of firms reporting</u>			
Operating losses	1	3	7	7
Net losses	3	3	9	8
Data	15	17	17	17

¹ Defined as producers with 1991 production of between 100 and 500 mmbf.

² Percent of total refers to percentage of aggregate totals as presented in table 23.

³ Percent of the total loss.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 27

Income-and-loss experience of small¹ U.S. producers on their operations producing softwood lumber, fiscal years 1988-91²

Item	1988	1989	1990	1991
	<u>Value (1,000 dollars)</u>			
Net sales	385,250	366,426	314,388	340,191
Percent of total	8.9	8.0	6.9	7.8
Operating income or (loss)	23,780	9,824	(11,218)	764
Percent of total	7.2	3.3	31.3 ³	0.7
Net income or (loss) before income taxes	20,135	8,636	(13,673)	(445)
Percent of total	6.6	3.2	23.1 ³	4
Cash flow	34,090	22,819	1,229	14,634
Percent of total	6.9	4.9	0.8	5.1
	<u>Ratio to net sales (percent)</u>			
Cost of goods sold	87.4	90.7	96.2	92.7
Gross profit	12.6	9.3	3.8	7.3
Selling, general, and administrative expenses	6.5	6.6	7.4	7.1
Operating income or (loss)	6.2	2.7	(3.6)	0.2
Net income or (loss) before income taxes	5.2	2.4	(4.3)	(0.1)
	<u>Number of firms reporting</u>			
Operating losses	4	8	12	10
Net losses	6	8	11	11
Data	24	24	23	23

¹ Defined as producers with 1991 production of less than 100 mmbf.

² Percent of total refers to percentage of aggregate totals as presented in table 23.

³ Percent of the total loss.

⁴ Not applicable--aggregate total was positive net income.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Investment in Productive Facilities and Return on Assets

Data on investment in productive facilities and return on assets are shown in table 28.

Table 28

Value of assets and return on assets of U.S. producers' establishments wherein softwood lumber is produced, fiscal years 1988-91

Item	1988	1989	1990	1991
<u>Value (1,000 dollars)</u>				
All products:				
Fixed assets:				
Original cost	4,624,090	5,157,308	5,549,522	5,693,439
Book value	2,068,483	2,425,792	2,615,672	2,575,887
Total assets ¹	6,861,141	7,608,397	8,221,391	8,414,744
Softwood lumber:				
Fixed assets:				
Original cost	2,273,702	2,546,963	2,656,489	2,682,519
Book value	970,931	1,179,938	1,203,725	1,206,781
Total assets ²	3,386,205	3,827,424	3,963,769	4,167,765
<u>Return on book value of fixed assets (percent)³</u>				
All products:				
Operating return ⁴	31.5	34.9	12.6	14.5
Net return ⁵	27.3	30.5	8.5	11.0
Softwood lumber:				
Operating return ⁴	26.8	19.9	(5.6)	6.0
Net return ⁵	24.1	17.5	(8.2)	3.8
<u>Return on total assets (percent)³</u>				
All products:				
Operating return ⁴	9.5	11.1	4.0	4.4
Net return ⁵	8.2	9.7	2.7	3.4
Softwood lumber:				
Operating return ⁴	7.7	6.1	(1.7)	1.7
Net return ⁵	6.9	5.4	(2.5)	1.1

¹ Defined as book value of fixed assets plus current and noncurrent assets.

² Total establishment assets are apportioned, by firm, to product groups on the basis of the ratios of the respective book values of fixed assets.

³ Computed using data from only those firms supplying both asset and income-and-loss information, and, as such, may not be derivable from data presented.

⁴ Defined as operating income or loss divided by asset value.

⁵ Defined as net income or loss divided by asset value.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Capital Expenditures

The capital expenditures of the producers are shown in table 29.

Table 29

Capital expenditures by U.S. producers of softwood lumber, by products, fiscal years 1988-91

(In thousands of dollars)

Item	1988	1989	1990	1991
All products:				
Land and land improvements	33,400	26,133	21,637	41,402
Building and leasehold improvements	17,168	20,257	44,984	17,625
Machinery, equipment, and fixtures	<u>406,366</u>	<u>549,728</u>	<u>577,275</u>	<u>317,246</u>
Total	456,934	596,118	643,896	376,273
Softwood lumber:				
Land and land improvements	8,560	7,551	4,835	4,983
Building and leasehold improvements	9,403	10,174	13,165	9,149
Machinery, equipment, and fixtures	<u>181,403</u>	<u>286,944</u>	<u>244,275</u>	<u>171,355</u>
Total	199,366	304,669	262,275	185,487

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Research And Development Expenses

The research and development (R&D) expenditures of the responding producers are shown in table 30. Expressed as a share of the quantity of net sales reported by the firms that reported financial data (table 23), R&D expenditures amounted to 18 cents per mbf in 1988, 17 cents per mbf in 1989, 9 cents per mbf in 1990, and 8 cents per mbf in 1991 (or substantially less than 0.1 percent of the dollar value of sales during each period).

Table 30

Research and development expenses of U.S. producers of softwood lumber, by products, fiscal years 1988-91

(In thousands of dollars)

Item	1988	1989	1990	1991
All products	3,070	3,016	1,720	1,474
Softwood lumber	2,978	2,902	1,581	1,296

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Capital and Investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of softwood lumber from Canada on their firms' growth, investment, ability to raise capital, and/or development and production efforts. Their responses are shown in appendix F.

Relative Financial Condition of the Softwood Lumber Industry

The following tabulation compares operating income as a percent of net sales for industry types tied closely to construction demand with the data for softwood lumber as contained in table 23.

<u>Industry type</u>	<u>6/30/87 to 3/31/88</u>	<u>6/30/88 to 3/31/89</u>	<u>6/30/89 to 3/31/90</u>	<u>4/1/90 to 3/31/91</u>
Softwood lumber ¹	(²)	7.6	6.4	(0.7)
Logging.....	(²)	2.5	3.5	3.4
Sawmills and planing mills.....	6.4	6.3	4.7	2.9
Hardwood flooring....	(²)	6.1	3.5	4.9
Hardwood veneer and plywood.....	6.0	4.6	3.7	3.3
Brick and structural clay....	10.0	9.4	6.5	6.9
Concrete block and brick.....	5.6	6.1	4.4	4.5

¹ Data for fiscal years 1988, 1989, and 1990 are presented in order to be comparable to the data obtained from the source, the 1991 edition of Robert Morris Associates Annual Statements Studies.

² Not available.

CONSIDERATION OF THE QUESTION OF
THREAT OF MATERIAL INJURY

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors⁶⁶--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

⁶⁶ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.⁶⁷

The available information on the nature of the subsidies examined by the Department of Commerce (item (I) above) is presented in the section of this report entitled "Nature and Extent of Subsidies;" information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship between Imports of the Subject Merchandise and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of Alleged Material Injury to an Industry in the United States." Available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), (VIII) and (IX) above); and any other threat indicators (item (VII) above), if applicable, follows.

Inventories of U.S. Importers

Hardly any of the respondents to the Commission's importer questionnaires were able to provide useable information with respect to inventories of softwood lumber imported from Canada. Virtually all of them

⁶⁷ Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

indicated that they do not segregate inventories by country of origin. Staff is unaware of any public source for inventory data and is, therefore, unable to provide importer inventory information.

**Ability of Foreign Producers to Generate Exports
and the Availability of Export Markets Other
Than the United States**

The Industry in Canada

From 1986 to 1987, Canadian production of softwood lumber rose 14.3 percent to a peak of 25.9 billion board feet, generally reflecting increased demand in export and domestic markets. However, in each succeeding year, Canadian production, exports, and apparent consumption of softwood lumber have dropped from their highwater marks of 1987. Production in 1991 of 21.5 billion board feet was off 17.0 percent from the 1987 production level (table 31). Exports to the United States, having reached a peak of 14.6 billion board feet in 1987, declined each year thereafter to 11.7 billion board feet in 1991. From 1987 to 1991, such exports fell by 19.9 percent

Table 31

Softwood lumber: Canadian production, capacity, and capacity utilization, 1986-91

Item	1986	1987	1988	1989	1990	1991
Production (mmbf) .	22,630	25,870	25,166	24,538	22,755	21,463
Capacity (mmbf) . .	27,800	28,500	28,700	28,400	28,400	28,000
Capacity utilization (percent)	81.4	90.8	87.7	86.4	80.1	76.7

Source: Statistics Canada and Resource Information Systems, Inc., (RISI) May 1992.

Note.--Capacity figures come from RISI data and were provided by counsel for CFIC. Counsel for CFIC believes that the real constraining factor on lumber industry production is availability of timber supply. They believe that the RISI capacity numbers, which are based on a theoretical productive capacity of Canadian sawmills, overstate the actual production potential of the Canadian industry. Further, they are concerned that the historical relationships upon which RISI capacity utilization figures are based "do not adequately reflect ongoing fundamental structural changes in the industry." Staff and counsel for CFIC are unaware of any other source for Canadian capacity data.

Canadian production of softwood lumber is rather dependent upon U.S. construction activity. As noted earlier, Canadian softwood lumber production rose 14.3 percent from 1986 to 1987 when U.S. housing starts stood at 1.6 million units and U.S. lumber consumption reached a record level of more than 50 billion board feet. However, as the level of U.S. construction activity slumped, Canadian production fell to a 1991 level below production

activity in 1986. From 1986 to 1987, Canadian softwood lumber capacity increased from 27.8 billion board feet to 28.5 billion board feet; it then remained essentially level through 1991. Capacity utilization rates rose from 1986 to 1987 and dropped each year thereafter to a rate of 76.7 percent in 1991.

BC is the leading region of softwood lumber production in Canada. In 1991, it accounted for 62.0 percent of total production, up from a share of 58.9 percent in 1986. Softwood lumber production in BC rose from 13.3 billion board feet in 1986 to a record 15.9 billion board feet in 1987 (table 32). Thereafter, it declined each year to 13.3 billion board feet in 1991. BC's lower production and share figures for 1986 are largely due to strikes, some of which lasted up to 4 months. Quebec and Ontario together accounted for 25.0 percent of production in 1991, down from a 29.9 percent share in 1986.

Canadian production, by species, is presented in table 33. In 1991, as in earlier years, about three-fourths of Canadian softwood lumber production was SPF, with hem-fir, red cedar, and Douglas fir composing the bulk of the remaining production.

Table 32
Softwood lumber: Canadian production, by Provinces, 1986-91

Period	British Columbia			Quebec	Ontario	Maritime Provinces	Prairie Provinces	Total
	Coast	Interior	Total					
Quantity (mmbf)								
1986.....	3,753	9,582	13,335	4,512	2,256	909	1,618	22,630
1987.....	4,675	11,212	15,887	5,100	2,147	938	1,798	25,870
1988.....	4,583	10,989	15,572	4,470	2,266	941	1,917	25,166
1989.....	4,140	11,094	15,234	4,279	2,178	845	2,002	24,538
1990.....	3,798	10,400	14,198	3,799	1,926	861	1,971	22,755
1991.....	3,465	9,843	13,308	3,542	1,822	738	2,053	21,463
Share (percent) of total production								
1986.....	16.6	42.3	58.9	19.9	10.0	4.0	7.1	100
1987.....	18.1	43.3	61.4	19.7	8.3	3.6	7.0	100
1988.....	18.2	43.7	61.9	17.8	9.0	3.7	7.6	100
1989.....	16.9	45.2	62.1	17.4	8.9	3.4	8.2	100
1990.....	16.7	45.7	62.4	16.7	8.5	3.8	8.7	100
1991.....	16.1	45.9	62.0	16.5	8.5	3.4	9.6	100

Source: Statistics Canada.

Table 33
Softwood lumber: Canadian production, by species, 1986-91

(In mmbf)						
Species	1986	1987	1988	1989	1990	1991
SPF ¹	17,359	19,374	18,747	18,466	16,946	16,676
Hem-fir ²	2,346	2,946	2,873	2,648	2,485	2,189
Red cedar	1,151	1,457	1,246	1,237	1,070	1,086
Douglas fir	1,218	1,426	1,540	1,351	1,197	1,055
Other	556	667	760	836	1,057	457
Total	22,630	25,870	25,166	24,538	22,755	21,463

¹ Includes white spruce, Engelman spruce, lodgepole pine, and alpine fir.

² A species combination used by grading agencies to designate any of various species having common characteristics. Included in this group are California red fir, grand fir, noble fir, Pacific silver fir, Shasta fir, white fir, and western hemlock.

Source: Statistics Canada.

Canadian exports

Canadian exports⁶⁸ of softwood lumber amounted to 15.2 billion board feet in 1991, representing a decrease of 12.9 percent from the record 17.5 billion board feet exported in 1987 (table 34). Exports as a share of Canadian production declined in 1987 followed by an increase in ratios back to the 1986 level.

From 1986 to 1987, Canadian exports to the United States rose to a record 14.6 billion board feet; they then dropped each year thereafter to 11.7 billion board feet in 1991. Exports to the United States as a share of production declined irregularly from 1986 to 1991, falling from 62.4 percent to 54.4 percent. Canadian exports to the United States as a share of U.S. consumption are shown in the following tabulation:

<u>Period</u>	<u>Canadian exports to the United States (mmbf)</u>	<u>As a share of U.S. consumption (percent)</u>
1986.....	14,119	29.5
1987.....	14,577	28.9
1988.....	13,705	28.1
1989.....	13,470	28.2
1990.....	12,108	26.9
1991.....	11,669	27.5

⁶⁸ Official Canadian export and import statistics may vary somewhat from comparable U.S. statistics because of differences in shipment recordings, timing, classification, etc.

Table 34

Softwood lumber: Canadian production, imports, exports to the United States, total exports, apparent consumption, and ratios of total exports to production, U.S. exports to production, and imports to consumption, 1986-91

Period	Pro- duc- tion	Imports	Exports to U.S.	Total exports	Apparent consumption	Ratio of--		
						Total exports to production	U.S. exports to production	Imports to con- sumption
Quantity (mmbf)								
1986.....	22,630	327	14,119	16,104	6,853	71.2	62.4	4.8
1987.....	25,870	304	14,577	17,500	8,674	67.6	56.3	3.5
1988.....	25,166	363	13,705	17,179	8,350	68.3	54.5	4.3
1989.....	24,538	439	13,470	16,950	8,027	69.1	54.9	5.5
1990.....	22,755	423	12,108	15,687	7,491	68.9	53.2	5.6
1991.....	21,463	373	11,669	15,248	6,588	71.0	54.4	5.7
Value (million dollars)								
1986.....	5,981	135	3,035	4,889	1,227	81.7	50.7	11.0
1987.....	7,026	132	3,105	5,739	1,419	81.7	44.2	9.3
1988.....	6,944	194	2,956	5,242	1,896	75.5	42.6	10.2
1989.....	6,851	221	3,159	5,378	1,694	78.5	46.1	13.0
1990.....	6,208	193	2,873	5,234	1,167	84.3	46.3	16.5
1991.....	5,743	172	2,819	4,768	1,147	83.0	49.1	15.0
Unit value (per mbf)								
1986.....	\$264.31	\$412.84	\$214.95	\$303.59	\$179.05	230.6	169.6	120.3
1987.....	271.59	434.21	213.01	327.94	163.59	265.4	200.5	130.4
1988.....	275.93	534.44	215.67	305.14	227.07	235.4	134.4	95.1
1989.....	279.20	503.42	234.52	317.29	211.04	238.5	150.3	111.1
1990.....	272.82	456.26	237.31	333.65	155.79	292.9	214.2	148.4
1991.....	267.59	461.13	241.62	312.70	174.14	264.8	179.6	138.7

Source: Statistics Canada and U.S. Department of Commerce.

The vast majority, more than 75 percent, of Canadian softwood lumber exports to the United States occurred in the SPF group.

Canada's exports to the United States are mostly marketed in areas of high housing activity east of the Rocky Mountains, with California being a primary market in the western United States. Of Canada's total 1991 exports of softwood lumber to the United States, 60.8 percent were supplied by BC.

These exports accounted for 53.4 percent of BC production in 1991. The following tabulation, developed from data of the BC Ministry of Forests, shows BC exports to the United States, the share of BC production accounted for by these exports, and the share of U.S. consumption accounted for by these exports during 1986-91.

<u>Period</u>	<u>Exports to the United States (billion board feet)</u>	<u>Share of British Columbia production (percent)</u>	<u>Share of U.S. consumption (percent)</u>
1986.....	7.8	58.6	16.4
1987.....	9.2	57.9	18.2
1988.....	9.2	59.0	18.9
1989.....	8.9	58.6	18.7
1990.....	7.4	52.1	16.5
1991.....	7.1	53.4	16.7

BC's exports and the share of BC production of softwood lumber exported to the United States were relatively stable from 1987 through 1989, then dropped in 1990 and 1991 to the lowest levels during 1986-91.

As noted earlier in this report, Japan is Canada's next largest export market after the United States. The portion of Canada's total exports, on a quantity basis, going to Japan has grown from slightly under 6 percent in 1986 to more than 10 percent in 1989 and 1990. On a value basis, the growth is from slightly under 10 percent in 1986 to more than 18 percent in 1989 and 1990. Canada's other important export markets include the United Kingdom, France, and Australia.⁶⁹

Canadian imports

Canadian imports of softwood lumber increased irregularly from 327 mmbf in 1986 to 439 mmbf in 1989, then dropped to 373 mmbf in 1991 (table 34). The latter number gave imports a 5.7 percent share (quantity basis) of Canadian apparent consumption in 1991. The imported lumber, which comes primarily from the United States, is generally consumed in close proximity to the U.S./Canadian border, and often consists of higher grades of lumber than are commonly produced in Canada. This is because the United States has a greater proportion, and larger supply, of higher grade Douglas fir and ponderosa pine logs than does Canada.

⁶⁹ Derived from Statistics Canada data.

Canadian consumption

Apparent Canadian consumption of softwood lumber stood at 6.6 billion board feet in 1991, down from a peak of 8.7 billion board feet in 1987. Canadian softwood lumber consumption and Canadian housing starts are shown in the following tabulation:

<u>Period</u>	<u>Softwood lumber consumption (billion board feet)</u>	<u>Housing starts (1,000 units)</u>
1986.....	6.9	200
1987.....	8.7	246
1988.....	8.4	221
1989.....	8.0	215
1990.....	7.5	182
1991.....	6.6	156

The following tabulation shows the estimated share of softwood lumber consumed in Canada, by end use, in 1991 (in percent):

<u>End use</u>	<u>Percentage distribution of Canadian consumption</u>
Construction:	
New residential (new housing).....	26.1
Repair and remodeling.....	41.0
New nonresidential construction...	6.8
Industrial.....	<u>26.1</u>
Total.....	100.0

**CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF
THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY**

U.S. Imports and Market Penetration

As shown in table 35, virtually all U.S. imports of softwood lumber come from Canada. From 1986 to 1991, imports from Canada followed an irregular downward pattern. After increasing from 14.1 billion board feet in 1986 to 14.6 billion board feet in 1987, imports then declined each year thereafter to 11.7 billion board feet in 1991, down 19.9 percent from 1987.

As noted in table 2, the ratio of imports from Canada to apparent consumption in the United States dropped during 1986-90, falling from 29.5 percent in 1986 to 26.9 percent in 1990. In 1991, imports from Canada accounted for 27.5 percent of apparent consumption.⁷⁰

⁷⁰ To the extent that import data contain imports from the Maritime Provinces, the ratios of subject imports to apparent consumption are slightly overstated. Imports from the Maritime Provinces represent a very small portion of total imports from Canada and, therefore, have a minimal effect on import penetration ratios.

Table 35
Softwood lumber: U.S. imports, by sources, 1986-91

Item	1986	1987	1988	1989	1990	1991
<u>Quantity (mmbf)</u>						
Canada.....	14,119	14,577	13,705	13,470	12,108	11,669
Other sources.....	130	118	106	112	74	93
Total.....	14,249	14,695	13,811	13,582	12,182	11,762
<u>Value (million dollars)</u>						
Canada.....	3,035	3,105	2,956	3,159	2,873	2,819
Other sources.....	36	38	47	39	43	64
Total.....	3,071	3,143	3,003	3,198	2,916	2,884
<u>Unit value (per mbf)</u>						
Canada.....	\$214.95	\$213.01	\$215.67	\$234.52	\$237.31	\$241.62
Other sources.....	276.92	322.03	443.40	349.64	581.08	691.61
Average.....	215.49	213.90	217.41	235.47	239.38	245.18

Note.--Because of rounding, figures may not add to the totals shown; unit values are calculated from unrounded figures.

Note.--1989 import quantity data are based on staff estimates derived from official statistics of the U.S. Department of Commerce.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Imports by Domestic Producers

Seven domestic producers of softwood lumber reported they had imported softwood lumber from Canada during 1988-91. In the case of ***, the firm indicated that it imports anywhere from *** to *** feet annually from its ***. Imports by the four producers who provided both quantity and value information are shown in table 36. As a share of total imports from Canada, imports by these four U.S. producers, ***, ranged from *** percent to *** percent during 1988-91. Six of the seven producers reporting imports, ***, are among the larger U.S. producers. ***. Together, the seven producers accounted for more than 15 percent of U.S. softwood lumber production in 1991.

Table 36

Softwood lumber: U.S. imports from Canada by domestic producers responding to the Commission's questionnaires, 1988-91

Item	1988	1989	1990	1991
Imports from Canada:				
Quantity.....mmbf..				
Value.....million.dollars..				
Unit value.....per mbf..				
	*	*	*	*
Imports by domestic pro- ducers as a share of the total quantity of imports from Canada percent..				

¹ None of the domestic producers reported imports from countries other than Canada.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

In addition to ***, three other U.S. producers, ***, have Canadian production facilities. Together, these four firms accounted for 10.6 percent of U.S. production in 1991.

Prices

Market Characteristics

Softwood lumber prices can fluctuate considerably from day to day, and even from hour to hour, depending on a number of factors, including the overall access to timber supplies, competition among different species within a particular region, weather, and expected future market conditions. Domestic mills and importers of Canadian softwood lumber most often negotiate selling prices with customers based on these factors, as well as on prices published in Random Lengths,⁷¹ inventory levels, the size of a particular order, and demand in export markets. Softwood lumber prices also differ substantially depending on the species, grades, and dimensions involved.

The majority of softwood lumber imported from Canada is SPF, while the primary U.S. species are Douglas fir, hem-fir, and SPF in the Northeast, North Central, and Northwestern States, and SYP in the Southern States. The principal end uses for both domestic and Canadian softwood lumber include residential construction, repair and remodeling, industrial remanufacturing, and industrial applications such as wood pallets and crates.

Virtually all of the 20 purchasers responding to Commission questionnaires reported that U.S.-produced and Canadian softwood lumber can be used interchangeably for most end uses; most often the particular species purchased depends on factors such as the available supply and local building codes in a particular region. A number of purchasers did indicate, however, that certain species are preferred for some end uses. For example, SYP is frequently chemically treated because it absorbs chemicals more easily than other species and is, therefore, preferred for use in outdoor applications such as decks and siding.⁷² Several producers and importers also indicated that preferences for certain species exist. For example, some producers reported that SYP has superior nail-holding ability and is stronger than most other softwood lumber species, which makes it preferable for use in trusses and other stress-bearing applications. Hem-fir, Douglas fir, and SPF are considered by other producers to be superior for framing construction because they do not warp and twist, and are lighter weight, easier to nail and saw, and have superior knot structure compared with SYP.⁷³ Ponderosa pine and Idaho white pine are reportedly preferable for use in molding and millwork.

⁷¹ Random Lengths is put out by Random Lengths Publications, Inc., located in Eugene, OR, which publishes weekly and annual price reports for a wide range of forest products in the North American market. Prices are gathered through weekly pricing surveys of buyers and sellers located throughout the United States.

⁷² One producer estimated that 50 to 55 percent of SYP is pressure treated. See discussion of preferences in the section of this report entitled, "Description and Uses".

⁷³ *** commented that while SYP also has great nail-holding ability, it is difficult "to get a nail into it." He estimated that for most jobs requiring dimension lumber, SYP is chosen over SPF only when it is priced considerably below SPF, most likely by a margin of \$20-\$25 per mbf. Conversation with ***, Oct. 25, 1991.

Most purchasers reported that domestic and Canadian softwood lumber are generally comparable in quality and they generally do not have a preference for the product from one country over the comparable product from the other. The four purchasers that reported preferences for U.S.-produced lumber indicated that it is generally higher in quality than the Canadian product. Most of the seven purchasers that indicated a preference for the Canadian product reported that it is generally higher in quality than the domestic product. One purchaser, ***, reported that only Canadian mills are able to ship the sizes they need (primarily 1x2, 1x3, and 1x4 material). Another purchaser, ***, reported that Canadian softwood lumber is more consistently available and is packaged better than the domestic product. Attributes that purchasers reported to be important in assessing the quality of a product include grade, size, distribution of knots, wane, warp, quality of the machining, consistency of drying, packaging, heartwood content, and general appearance. Several respondents reported that lumber meeting guidelines published by groups such as the Western Wood Products Association (WWPA) or the American Lumber Standards Committee (ALSC) is considered to be acceptable.

Purchasers reported that price, quality, and product availability are generally the three most important factors that they consider when deciding from whom to purchase softwood lumber. Other factors reported to be important include relationships with suppliers, the range of the supplier's product line, the terms of sale, consistency of the product, and the tallies⁷⁴ traditionally shipped on a random-length order.

Most purchasers did not differentiate between domestic and Canadian suppliers with respect to their sales service, return provisions, sales techniques, or any other factors. Among the five purchasers that did report differences between domestic and Canadian suppliers, responses were mixed. One purchaser reported that Canadian suppliers are generally more dependable and make shipments in a more timely manner than domestic mills. Canadian suppliers were also identified as being more customer oriented and having larger sales staffs and better merchandising programs. One purchaser indicated that in the Southern United States, the proximity of SYP mills to their markets gives them an advantage in lead times and freight costs.

Lumber is classified into seven major categories, including studs, dimension, stress grades, timbers, boards, selects, and shop.⁷⁵ Studs and dimension lumber are the primary categories in which U.S. and Canadian lumber compete. Dimension lumber is sold either as random or specified lengths. In general, within a particular species random-length lumber is priced lower than lumber sold at specified lengths.

Producers and importers both reported selling the majority of their softwood lumber in the U.S. market on a spot basis. Contract sales are not uncommon, but these sales usually account for only 1 to 5 percent of total sales. U.S. producers reported quoting prices on both a delivered and an f.o.b. mill basis, with neither type of sales arrangement predominant; a number of domestic mills reported that they often respond to customer specifications at the time of the order and will sell in whatever manner the

⁷⁴ A tally represents the number of boards of each length of dimension lumber shipped in a random-length load.

⁷⁵ See pp. A-7-8 for a further discussion of these categories.

purchaser requests. Importers also reported selling on both a delivered and an f.o.b. basis, but responses were more heavily weighted toward delivered sales. One importer, ***, reported that none of the Canadian lumber that it imports can be purchased f.o.b. mill.

The majority of domestic mills indicated that they show freight separately as a component of the total delivered cost on the sales invoice when the product is sold on a delivered basis. Responses among importers were mixed; approximately half reported showing separate shipping charges for sales on a delivered basis, while the remainder reported that they do not.

Geographic market areas for both U.S. producers and importers of Canadian lumber varied. Individual domestic mills and importers generally concentrate their sales within certain regions of the United States (e.g., Northeast, Southeast, or Upper Midwest), or in certain market areas or local markets (e.g., New York/New Jersey, Northern Alabama, or Houston, TX). A domestic mill's or importer's market area is determined primarily by the competition from other suppliers in a particular market (both within and across species) and the freight costs associated with delivering an order to the customer's location. Due to the relative ease of substitution among different softwood lumber species, high transportation costs can cause a mill's product to be uncompetitive in a particular market area. Consumer preferences for a particular species or for a particular mill's production can also define a supplier's market area.

Domestic producers and importers both reported selling to a number of different types of customers including wholesalers, distributors, retailers, mass merchants, building contractors, wood products manufacturers, and chemical pressure treaters. Prices to these customers are determined primarily by the size of a particular order, and most producers and importers do not set different prices depending on the type of customer (e.g., wholesaler or retailer) involved.⁷⁶

Questionnaire respondents identified a number of different products that can be substituted for softwood lumber in certain applications. These include concrete, steel, aluminum, vinyl, composite materials, laminated veneer lumber products, hardwood lumber, and plastic. However, most of these products are not commonly substituted for softwood lumber in residential construction, primarily because of the higher material and labor costs associated with their installation and use. Several producers and importers did report that steel and aluminum are being used increasingly in commercial construction because of the strength of these products. One producer estimated that softwood lumber maintains a 90 percent share of the market for construction materials due to its relatively low cost and wide availability.⁷⁷

⁷⁶ For example, *** stated that for shipments from the mill, his company does not charge different prices based on the types of customers involved. Negotiations on price usually depend on factors such as the volume of a particular shipment. Because of the competition in the marketplace and the commodity nature of the softwood lumber, price markups for sales to different types of customers are not possible. Conversation on June 8, 1992.

⁷⁷ Questionnaire response of ***.

Domestic producers and importers reported that demand for softwood lumber has decreased since 1989, primarily because of the recession in the United States and the effect that the recession has had on the number of new housing starts, especially during 1990 and 1991. Producers and importers attribute a shift from new home construction activity to increased activity in the do-it-yourself (DIY) and repair/remodeling market to the effects of the recession.⁷⁸

Approximately half of the responding domestic mills reported that since 1989 they have altered the range of softwood lumber products that they offer. One common change reported includes a shift from the production of commodity-type studs and dimension lumber towards more specialty and higher value-added products to be used in areas such as wood products manufacturing, DIY remodeling, and custom construction. Several other domestic producers reported that they have increased the amount of lumber for export markets in recent years. ***. Most of the responding importers reported that they have not changed the mix of products offered in the U.S. market since 1989. The few that did report changes stated that they have added more premium products to address the growing demand in the DIY market; one importer added a red cedar decking grade for sale in the U.S. market.

Ten domestic producers reported that during certain periods between January 1989 and March 1992 they were not able to meet all of their customers' demands for softwood lumber in a timely manner at prevailing market prices. Most producers reported that the supply shortages were for short periods of time during peak demand seasons, and usually involved specialty items that are not typically maintained in inventories. Other reasons given for supply shortages over this period included timber shortages related to wildlife preservation programs, strikes, weather- and forest fire-related shortages, rail car shortages, and mill curtailments. Three importers also reported supply shortages over the same period and identified similar factors such as shortages of certain higher grades and sizes, and rail car shortages. *** reported that shortages have occurred on certain high quality "visual" grades that have been sold in recent years to export markets such as Japan, where these products command higher prices.

Random-length lumber futures are traded on the Chicago Mercantile Exchange. A trading unit is 160,000 board feet (160 mbf) and prices are quoted in dollars per mbf. The softwood lumber traded is nominal 2x4's of random lengths from 8 to 20 feet, kiln dried, graded as "construction and standard," "standard and better," or #1 and #2, with #2 not able to exceed 50 percent of the delivery unit. Species eligible for delivery include Alpine fir, Engelmann spruce, hem-fir, Lodgepole pine, and/or SPF.⁷⁹ The lumber originates in California, Idaho, Montana, Nevada, Oregon, Washington, and Wyoming in the United States, and the Provinces of British Columbia and Alberta in Canada. For deliveries from both U.S. and Canadian mills, the

⁷⁸ Some regional increases in demand occurred during 1988-91, although these were generally not sustained increases. For example, there was an increase in demand in the Southeast following Hurricane Hugo in September 1989. See the section of this report titled "Apparent U.S. Consumption", for a further discussion of the impact of housing starts on the softwood lumber market.

⁷⁹ SYP and Douglas fir are not listed as eligible species.

buyer is charged the lowest published freight rate from Prince George, BC, under the assumption that U.S. mills will be better able to compete with Canadian mills on delivery, just as they do in the cash market.⁸⁰ ***.⁸¹

Transportation Costs

Transportation costs account for a significant percentage of the final delivered price of softwood lumber; most producers and importers estimated that transportation costs account for between 5 and 20 percent of the total delivered cost of the softwood lumber that they sell. Shipments are made predominantly by truck and rail, and in some instances, by barge.⁸² The mode of transportation usually depends on the distance from the mill or importer's distribution center to the purchaser; shipments over longer distances are often made by rail, while shipments over shorter distances are more commonly made by truck. Most producers and importers reported that the majority of sales are to customers located further than 100 miles from their mills or storage facilities, and a substantial proportion of these sales are to customers located more than 500 miles away. Some of the smaller domestic producers and importers reported a larger share of total shipments within a closer proximity to the mill or storage facility.

Without differentiating by the mode of shipment, producers and importers provided estimates on the average cost of freight within specified distances from their mills or storage facilities. More producers than importers were able to estimate freight charges, but estimates for both were in the range from \$5 to \$20 per mbf for shipments within a 100-mile radius, \$15 to \$35 per mbf for shipments within a 100-500 mile radius, and \$30 to \$100 per mbf for shipments farther than 500 miles from a supplier's mill or storage facility.

Published Prices

Softwood lumber prices are published in a number of different sources, including Random Lengths, Crow's, Madison's, and the Southern Pine Bulletin. Producers and importers report prices most frequently to Random Lengths, which develops its price series based on weekly surveys of activity in the U.S. lumber market. Price data are collected and a weighted average is calculated using factors such as the size of the firm and quality of its product as weights. Canadian and U.S. prices are reported separately, with U.S. mill prices reported on an f.o.b. mill basis and most Canadian prices reported on a delivered basis. As noted, a number of producers and importers reported using prices in Random Lengths as guides when negotiating prices, although a representative of the organization described the publication as one that reports past pricing activity, and does not attempt to forecast what prices will do in the future.⁸³

The Department of Labor's Bureau of Labor Statistics (BLS) develops indexes of producer prices for all softwood lumber products, as well as for

⁸⁰ Random Length Lumber: Facts, Chicago Mercantile Exchange.

⁸¹ Affidavit of ***, Coalition postconference brief, Attachment D.

⁸² Green softwood lumber is commonly shipped by barge because the weight of the product can make shipment by rail or truck prohibitively expensive.

⁸³ Conversation with ***, Random Lengths, Oct. 16, 1991.

softwood logs (including bolts and timbers), and softwood plywood (figure 5). The monthly producer price index for all softwood lumber products increased by 28.4 percent from January 1988 to March 1992; most of this increase occurred from November 1991 through March 1992, during which time the index increased by 20.4 percent. Rather sharp increases in price occurred in June and July 1991, when the index increased by approximately 10 percent.

The index for softwood logs, the primary input into the production of softwood lumber, increased somewhat steadily from January 1988 to mid-1990 before declining slightly through the end of 1990 and then increasing through March 1992. Overall, the index for softwood logs was up 44.8 percent from January 1988 to March 1992; a substantial portion of this increase occurred between December 1991 and March 1992, when the index increased by 14.5 percent.

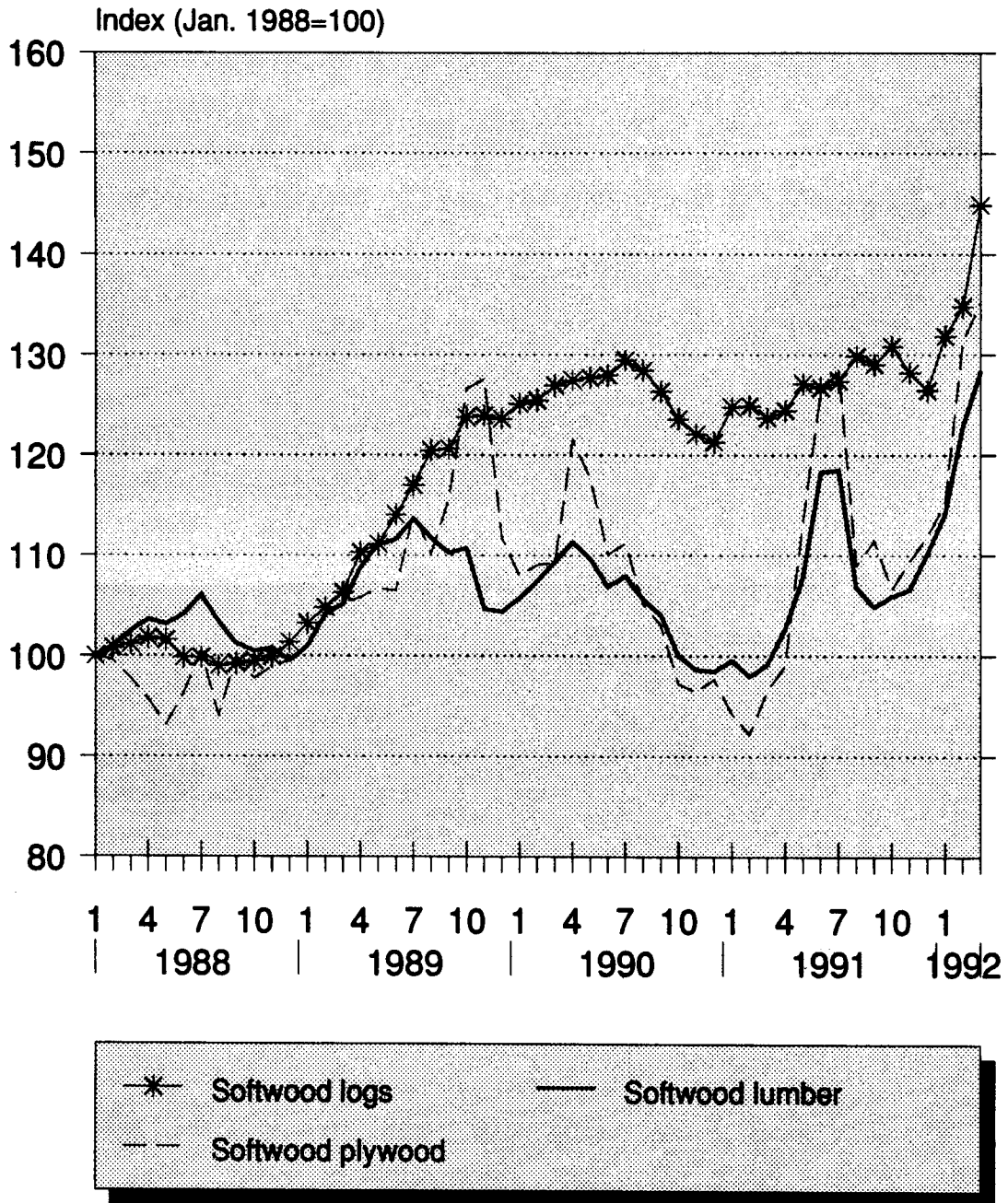
The PPI for softwood plywood fluctuated between January 1988 and March 1992, increasing overall by 35.2 percent. Sharp increases in price occurred during the Spring of 1990 and the summer months of 1989 and 1991. The index for softwood plywood also increased substantially, by 26.8 percent, from October 1991 to March 1992.

Random Lengths price trends and price comparisons on selected products

The publication, Random Lengths, contains either f.o.b. or delivered pricing information for most of the products for which Commission pricing data were collected in its questionnaires. The available price series for these products were taken from the Random Lengths 1991 Yearbook, and are presented in table 37. In this publication, the majority of the pricing for domestic softwood lumber is reported on a net f.o.b. mill basis, while the majority of the pricing for Canadian softwood lumber is reported on a net delivered basis to selected cities or regions in the United States. According to ***. The one exception is Western SPF from Canada in both studs and random lengths, for which a base f.o.b. price for rail shipments is derived from delivered prices using published freight rates. These base prices, however, do not include mills' returns on underweight shipments, contract freight rates, freight rebates, or prepaid freight.⁸⁴ The specific domestic products for which price trends are reported are as follows: (1) Engelmann spruce/lodgepole pine (ESLP), kiln-dried, studs, 2x4-8', precision end-trimmed, stud grade, net f.o.b. mill; (2) hem-fir (costal), kiln-dried, 2x4, standard and better, random lengths, net f.o.b. mill; (3) Douglas fir, green, 2x4, standard and better, random lengths, net f.o.b. Portland area, and (4) SYP, kiln-dried, 2x4, standard and better, random lengths, net f.o.b. mill. The specific Canadian products for which price trends are shown are as follows: (1) SPF (Western Canada), kiln-dried, studs, 2x4-8', precision end-trimmed, stud grade, net f.o.b. mill; (2) SPF (Eastern Canada), kiln-dried, studs, 2x4-8', precision end-trimmed, stud grade, net delivered Boston, MA; (3) Douglas fir, green (B.C. mills), 2x4, standard and better, random lengths, net delivered, Northeast United States; (4) SPF (Western Canada), kiln dried, 2x4, standard and better, random lengths, net f.o.b. mill; and (5) SPF (Eastern Canada), kiln-dried, 2x4, standard and better, random lengths, net delivered, Boston, MA.

⁸⁴ Random Lengths. Weekly Lumber Price Guide, p. 3, May 22, 1992.

Figure 5.--Producer price indexes for softwood lumber, logs, and plywood, by months, January 1988-March 1982



Source: Bureau of Labor Statistics.

Table 37

Average f.o.b. mill prices for domestic ESLP studs, green Douglas fir, hem-fir, and SYP random lengths; average f.o.b. mill prices for Canadian SPF studs and SPF random lengths; delivered prices for Canadian SPF (Eastern) studs and SPF (Eastern) random lengths sold in the Boston, MA market; and delivered prices for Canadian green Douglas fir random lengths delivered to the Northeastern United States, by months, January 1990-March 1992

Date	(Per mbf)								
	U.S. ESLP stud k.d., net f.o.b. mill	Canada, SPF-W stud, k.d. net f.o.b. mill	Canada SPF-E stud k.d., net delivered Boston	Canada Doug. fir green, RL net deliv. Northeast	U.S. Doug. fir green, RL net f.o.b. Portland	U.S. hem- fir, k.d. RL, net f.o.b. mill	Canada SPF-W k.d., net f.o.b. mill	Canada SPF-E, k.d. RL, net delivered Boston	U.S. SYP Central net f.o.b. mill
1990:									
January ..	\$207	\$168	\$245	\$289	\$230	\$221	\$187	\$257	\$226
February..	214	177	252	298	246	228	197	264	243
March.....	219	182	257	304	246	230	191	265	246
April.....	224	184	256	320	274	241	193	266	278
May.....	219	182	253	299	224	232	191	271	267
June.....	223	182	252	298	226	225	198	275	248
July.....	222	182	254	297	220	230	196	280	242
August....	214	174	245	286	210	224	190	271	215
September.	213	178	240	281	202	218	192	263	204
October...	195	162	233	273	185	199	173	258	204
November..	192	150	222	280	194	189	163	243	206
December..	190	152	227	286	226	192	162	243	208
1991:									
January...	194	157	227	289	226	202	161	241	206
February..	199	160	226	290	222	204	162	230	205
March.....	214	179	246	292	202	214	174	242	216
April.....	236	197	272	296	216	222	182	259	222
May.....	249	206	283	313	249	238	196	273	229
June.....	274	234	320	342	286	272	237	308	276
July.....	251	214	291	310	226	244	206	282	250
August....	229	186	247	286	200	218	185	246	236
September.	220	182	264	290	208	220	184	249	238
October...	210	174	256	291	208	214	183	244	237
November..	222	186	270	304	215	216	189	266	247
December..	232	196	262	309	218	222	183	260	247
1992:									
January...	253	214	278	325	236	235	206	270	263
February..	298	252	316	350	263	264	235	292	294
March.....	334	291	362	368	270	281	257	318	302

Source: Compiled from Random Lengths 1991 yearbook and Random Lengths, Yardstick, January-March, 1992.

Petitioners, at the hearing, and in their hearing briefs argued that public data as presented in Random Lengths should be used by the Commission in lieu of the pricing reported in questionnaire responses as a means of comparing prices for domestic and Canadian softwood lumber sold in the U.S. market. Because of the manner in which prices are reported, delivered price comparisons between domestic and Canadian softwood lumber using Random Lengths published data are not possible. As noted in the delivered price guide of the Random Lengths Lumber Price Guide, delivered prices provide approximate delivered costs at each destination for the most commonly used carriers, routings, and types of loadings. The reported prices do not make allowances for contract rates, special discounts, and other routings for which there can be substantial variances from the prices shown. Moreover, specific sales, because of variations in stock quality and tallies, frequently result in prices that are higher or lower than those published.⁸⁵

While U.S./Canadian softwood lumber price comparisons on an f.o.b. basis are, indeed, possible for some of the products listed above, a number of problems exist with the use of this information. First, as noted above, the "base price" reported for Canadian Western SPF is a calculated value and not a true f.o.b. price. Actual delivery charges may differ substantially from the estimated charges that are netted out of the delivered value, which would lead to inaccurate margins of over- or underselling.

Second, because of the substantial component of the delivered value of softwood lumber that is accounted for by transportation costs, f.o.b. mill prices are not an accurate measure of the way each product is priced in various markets in the United States. Depending on the market in which a product is sold and the means by which it is transported, delivered price comparisons for the same products can differ significantly from comparisons made on an f.o.b. basis. For example, a product shipped into a market by barge could be priced below a competing product shipped to the same market by truck or rail.

Another limitation on the use of f.o.b. price comparisons occurs because of the differences in regional demand for certain products. For example, Los Angeles, CA, is a strong market for green Douglas fir because of building codes and general purchaser preferences, and relatively small volumes of a product such as kiln-dried, Canadian Western SPF are shipped into this market. Price comparisons between these two products in Los Angeles could, therefore, show very different margins than for the two products in the Chicago market, where considerably more dry Canadian Western SPF is shipped. F.o.b. price comparisons do not account for these circumstances and the margins reported should not be considered conclusive.

The Random Lengths f.o.b. mill price comparisons that were possible include domestic ESLP studs with Canadian SPF (Western) studs; domestic green Douglas fir, random lengths, standard and better, with Canadian SPF (Western), random lengths, standard and better; domestic costal hem-fir, random lengths, standard and better, with Canadian SPF (Western), random lengths, standard and better; and domestic SYP random lengths, standard and better, with Canadian SPF (Western), random lengths, standard and better (table 38).

⁸⁵ Random Lengths. Lumber Price Guide, pp. 4-5, May 22, 1992.

Table 38
 Margins of underselling, by months, January 1990-March 1992

(In percent)

Date	US ESLP studs/ Canada SPF-W studs	U.S. green Doug. fir, RL/Canada SPF-W, RL	U.S. hem-fir, costal, RL/ Canada SPF-W, RL	US SYP, central/ Canada SPF-W, RL
1990:				
January	18.9	18.7	15.4	17.3
February.....	17.3	19.9	13.6	18.9
March.....	16.9	22.4	17.0	22.4
April.....	17.9	29.6	19.9	30.6
May.....	16.9	14.7	17.7	28.5
June.....	18.4	12.4	12.0	20.2
July.....	18.0	10.9	14.8	19.0
August.....	18.7	9.5	15.2	11.6
September...	16.4	5.0	11.9	5.9
October.....	16.9	6.5	13.1	15.2
November....	21.9	16.0	13.8	20.9
December....	20.0	28.3	15.6	22.1
1991:				
January.....	19.1	28.8	20.3	21.8
February....	19.6	27.0	20.6	21.0
March.....	16.4	13.9	18.7	19.4
April.....	16.5	15.7	18.0	18.0
May.....	17.3	21.3	17.7	14.4
June.....	14.6	17.1	12.9	14.1
July.....	14.7	8.9	15.6	17.6
August.....	18.8	7.5	15.1	21.6
September...	17.3	11.5	16.4	22.7
October.....	17.1	12.0	14.5	22.8
November....	16.2	12.1	12.5	23.5
December....	15.5	16.1	17.6	25.9
1992:				
January.....	15.4	12.7	12.4	21.7
February....	15.4	10.7	11.0	20.1
March.....	12.9	4.8	8.5	14.9

Source: Compiled from Random Lengths 1991 Yearbook and Jan.-Mar., 1992 Random Lengths Yardstick.

Questionnaire Prices

Producers and importers were requested to report the total quantity, in thousands of board feet, and the total net delivered value, in U.S. dollars, for sales of seven different softwood lumber products in six different U.S. market areas on specific days during the period from January 1990 through March 1992.⁸⁶ Total value and total shipment quantities were requested on specific days in an attempt to facilitate price collection and increase response rates from producers and importers that reported that they would have to access their records manually. Many producers, importers, and purchasers indicated that because of the competitive nature of the industry, and the responsiveness of both domestic and Canadian prices to prevailing market conditions, daily prices would provide an adequate representation of the U.S. market. Products for which prices were requested are as follows:

Product 1: SPF, 2x4, standard & better, kiln dried, random lengths.

Product 2: Douglas fir, 2x4, standard & better, green, random lengths.

Product 3: Hem-fir, 2x4, standard & better, kiln dried, random lengths.

Product 4: SYP, 2x4, standard & better, kiln dried, random lengths.

Product 5: Engelmann spruce-Lodgepole pine (ESLP), 2x4, standard & better, kiln dried, random lengths.

Product 6: SPF studs, stud grade, 8-foot lengths and/or precision end-trimmed from 8-foot stock.

Product 7: ESLP studs, stud grade, 8-foot lengths and/or precision end-trimmed from 8-foot stock.

Price data were requested for sales in separate market areas because of the substantial delivery costs associated with sales of softwood lumber. These relatively high delivery costs can result in sales of the same product at considerably different prices in different market areas. Therefore, price comparisons are relevant only within particular regions or market areas. The market areas in which price data were requested are Atlanta, GA; Baltimore, MD; Boston, MA; Chicago, IL; Los Angeles, CA; and Dallas, TX. These market areas are geographically diverse and are served by a variety of domestic and imported softwood lumber products, and are believed to represent an accurate picture of the softwood lumber market in the United States.

⁸⁶ Pricing data were collected for all sales on the second Tuesday of each month between January 1990 and March 1992. The second Tuesday of each month was selected to avoid holidays and because there is some indication that sales volumes early in the week are larger than volumes later in the week. If sales were not made on the specific date requested, questionnaire respondents were asked to provide pricing for the first day immediately following the specified date on which sales were made.

A considerable number of producers, importers, and purchasers expressed difficulty in responding to the pricing section of the Commission questionnaire. Many reported that they do not maintain price and quantity information by species or by market areas in which sales are made, and a number of purchasers reported that they do not maintain records on the country of origin of a particular purchase. Thus, coverage of the industry is limited, and for sales and purchases of a product in any given market area, especially for domestic producers, it is often the case that prices are reported by a single purchaser or supplier.

Ten domestic producers, 12 importers, and 9 purchasers reported usable delivered price data for softwood lumber sales and purchases during January 1990 through March 1992. None of the questionnaire respondents provided pricing for all products in all market areas and instead tended to report prices for one or two species of softwood lumber sold or purchased in one or two market areas. As noted earlier, pricing was requested on specific dates during January 1990 and March 1992. If questionnaire respondents did not have sales or purchases on the specified date, they were requested to provide price data for the first day immediately following this day on which sales or purchases were made. Because of the variable nature of prices in the softwood lumber industry, prices for producers and importers are only included if the subsequent date does not exceed 7 days from the date specified. For purchaser price trends and price comparisons, all reported prices were used. With very limited purchaser data, this information was included to maximize the number of possible price comparisons.

Producer/importer composite price trends and price comparisons

A single weighted-average composite price was calculated for U.S.-produced and Canadian softwood lumber using reported net delivered prices for the seven domestic and six Canadian products sold in the six U.S. market areas between January 1990 and March 1992 (table 39, figure 6).

Composite price trends for domestic and Canadian softwood lumber were generally similar to one another over this period. Both trends were also similar to the framing lumber composite price as reported on an f.o.b. basis in Random Lengths.⁸⁷ The Canadian lumber composite price reached a low point in November 1990, while domestic lumber reached a low in February 1991. Both price series then increased substantially through June 1991, before declining in the third quarter of 1991, and increasing sharply beginning in the fourth quarter 1991 to series peaks in March 1992.

⁸⁷ The framing lumber composite price is a weighted average of 9 key framing lumber prices, chosen from major producing areas and species. Products included are standard and better 2x4's of kiln dried SYP, kiln dried western SPF, and green Douglas fir (Portland); #2 and better 2x10's of kiln dried fir and larch, kiln dried SYP, and green Douglas fir; and studs of kiln dried SYP, kiln dried western SPF, and green Douglas fir. Random Lengths, 1991 Yearbook, p. 200; Random Lengths, Yardstick, p. 19, March 1992.

Table 39

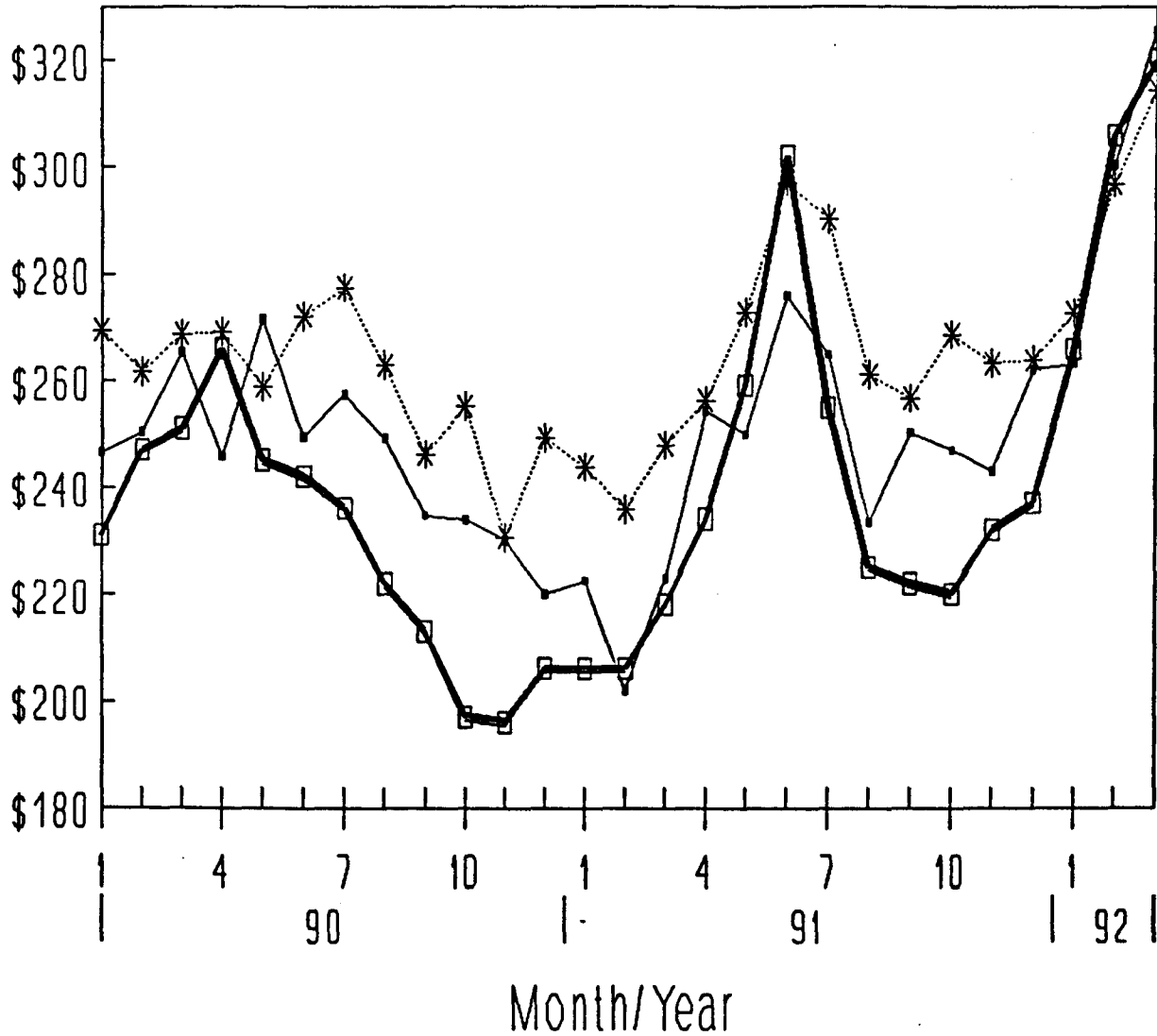
U.S. and Canadian softwood lumber: Framing lumber composite f.o.b. prices as reported in Random Lengths, by months, January 1990-March 1992, and weighted-average composite delivered prices for sales of seven U.S. and six Canadian products in six U.S. market areas, by specified dates, January 1990-March 1992

Date	<u>Random</u>	United States composite delivered price	Canada composite delivered price	Margin
	<u>Lengths</u> composite f.o.b. price			
	<u>Per mbf</u>	<u>Per mbf</u>	<u>Per mbf</u>	<u>Percent</u>
1990:				
January 9.....	\$231.00	\$246.60	\$269.36	(9.2)
February 13.....	247.00	250.49	261.55	(4.4)
March 13.....	251.00	265.23	267.87	(1.0)
April 10.....	266.00	245.79	268.43	(9.2)
May 8.....	245.00	271.52	258.42	4.8
June 12.....	242.00	249.54	270.80	(8.5)
July 10.....	236.00	257.36	276.54	(7.5)
August 14.....	222.00	249.29	261.83	(5.0)
September 11.....	213.00	234.71	246.12	(4.9)
October 9.....	197.00	233.92	254.82	(8.9)
November 13.....	196.00	229.99	228.07	0.8
December 11.....	206.00	219.98	248.20	(12.8)
1991:				
January 8.....	206.00	222.50	242.96	(9.2)
February 12.....	206.00	201.95	234.41	(16.1)
March 12.....	218.00	222.89	247.33	(11.0)
April 9.....	234.00	254.29	255.06	(0.3)
May 14.....	259.00	249.89	271.46	(8.6)
June 11.....	302.00	275.96	296.58	(7.5)
July 9.....	255.00	264.99	288.46	(8.9)
August 13.....	225.00	233.35	260.51	(11.6)
September 10....	222.00	250.30	256.23	(2.4)
October 8.....	220.00	246.99	267.53	(8.3)
November 12.....	232.00	243.04	261.64	(7.7)
December 10....	237.00	262.07	262.94	(0.3)
1992:				
January 14.....	266.00	263.25	272.86	(3.7)
February 11.....	306.00	300.53	297.08	1.1
March 10.....	320.00	325.55	316.02	2.9

Source: Compiled from Random Lengths and data submitted in response to questionnaires of the U.S. International Trade Commission.

The Canadian composite price was higher than the domestic composite price on 23 of the 27 days for which pricing information was collected. Margins by which the Canadian price exceeded the domestic price ranged from 0.3 percent on April 9 and December 10, 1991, to 16.1 percent on February 12, 1991. In the four instances in which the Canadian composite price was below the domestic composite price, margins were between 0.8 and 4.8 percent.

Figure 6
 Softwood Lumber: Composite U.S. and Canadian net delivered prices for all products in all market areas, and composite price for framing lumber as reported in Random Lengths, January 1990 - March 1992



Source: Compiled from Random Lengths and data submitted in response to questionnaires of the U.S. International Trade Commission.

Delivered price trends

Prices for softwood lumber usually follow seasonal trends, reaching their highest levels during peak building months beginning in the late spring and continuing through the summer. In all market areas for which prices were collected, price movements most often appear to be caused by changes in seasonal demand for lumber products. At times, government policies or weather-related factors may also affect prices. For example, lumber prices increased following the U.S. Government's spring 1990 decision to withhold logging permits for some federal lands in the Pacific Northwest as a means of preserving the habitat of the Northern Spotted Owl.

Reported prices for the domestic and Canadian products sold in each market area followed similar trends between January 1990 and March 1992. All products for which adequate data were available showed some increase in price over this period, and prices for a number of products increased substantially, by 25 to 40 percent. Although not always the case, prices for a considerable number of domestic and Canadian products reached a minimum point sometime between the fourth quarter of 1990 and the first quarter of 1991, and then increased thereafter. The sharp price increases that occurred during May-June 1991 were reportedly due to factors such as reduced output, low inventories, and log supply constraints in the West and South.⁸⁸ Prices for most products showed their largest increase between the fourth quarter of 1991 and the first quarter of 1992; the majority of products with adequate data showed peak prices for the series during these 6 months. U.S.-produced and Canadian lumber price increases during the fourth quarter of 1991 and the first quarter of 1992 were reportedly due to the countervailing duty investigation initiated on October 31, 1991, preliminary countervailing duty margins of 14.48 percent against Canadian softwood lumber announced by Commerce on March 6, 1992,⁸⁹ an increase in demand fueled by an increase in new housing starts, and concerns over the availability of timber supplies on U.S. Forest Service land. Other high and low points between January 1990 and March 1992 appear to be related to seasonal demand in the construction industry.

Producer/importer delivered price comparisons⁹⁰

Price comparisons shown in this section are discussed separately for each market area and are based on weighted-average net delivered prices per

⁸⁸ Random Lengths, 1991 Yearbook, p. 199.

⁸⁹ "Quotes jumped in the days immediately following the U.S. Commerce Department's decision as Canadian producers started pricing their lumber 'duty in.' U.S. mills also reacted to the duty decision by reaching for higher prices on items that compete with Canadian lumber." Random Lengths, Yardstick, p. 1, March 1992.

⁹⁰ Since the prehearing report, Commission staff have performed on-site verifications of the pricing reported by two domestic producers and three importers. Staff also contacted by telephone all of the other producers and importers whose pricing was used in the prehearing report to ensure that the pricing information was reported in exactly the manner in which it was requested in the Commission's questionnaires. Any discrepancies noted in these verifications have been resolved in this final report.

mbf of softwood lumber, as reported by producers and importers in their questionnaire responses. Because purchasers responded that they often compare softwood lumber across species when purchasing, and since only a limited number of price comparisons within species are possible in any given market area, prices in this section are compared across several different species for which pricing data were collected. It should be noted, however, that the degree of competition across species differs somewhat, depending on the end use, and may also differ depending on the particular market area.⁹¹

As much as possible, price comparisons were made between U.S.-produced and Canadian softwood lumber of the same species; the number of comparisons within species varied among the six market areas depending on the level of coverage for each domestic and Canadian product. A number of price comparisons across species were also performed. SPF, the predominant softwood lumber species imported from Canada, was compared with each domestic species in each market area for which U.S.-Canadian price comparisons within species were not possible. Studs were compared only with other studs and not with random-length lumber.

It should be noted that in some of the market areas examined in this section, price comparisons show substantial differences between certain Canadian and domestic softwood lumber products. These price differences may be due to a number of factors, including regional preferences for certain species and preferences for a certain mill's product, as well as differences in order size, shipping method, shipping time, mill location, and lumber rating or quality within the grade requested. Moreover, prices were requested for sales on single days and it is conceivable that market adjustments on one day may be present in one supplier's prices and not in another's.

Baltimore, MD.--Domestic producers reported pricing for sales of Douglas fir, hem-fir, and SYP in the Baltimore market area; importers reported sales of Canadian SPF, Douglas fir, hem-fir, and SPF studs (table 40, figure 7).

Within-species price comparisons between domestic and Canadian Douglas fir were possible on a total of 16 different days between February 1990 and March 1992. On 13 of these 16 days, Canadian Douglas fir was priced above domestic Douglas fir by margins ranging from 1.2 to 34.0 percent. On December 10, 1991, February 11, 1992, and March 10, 1992, Canadian Douglas fir was priced below the domestic product by margins of 2.0 percent, 7.0 percent, and 1.9 percent, respectively.

In the one possible price comparison between domestic and Canadian hem-fir on April 9, 1991, the Canadian product was priced 16.1 percent below the domestic product.

⁹¹ In the 1986 investigation Commission staff also compared prices across species, but noted that, "in some applications one or more of these wood species may be more desirable than the others," thus prices may not be "strictly comparable." Public version of the prehearing report to the Commission on Inv. No. 701-TA-274 (Final), Softwood Lumber from Canada, Dec. 23, 1986, p. A-69.

Table 40
 U.S. and Canadian softwood lumber sold in the Baltimore, MD, market area: Weighted-average net delivered selling prices and quantities of U.S.-produced Douglas fir, hem-fir, and SYP, and Canadian SPF, Douglas fir, hem-fir, and SPF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	United States						Canada							
	Douglas fir		Hem-fir		SYP		SPF		Douglas fir		Hem-fir		SPF Studs	
	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity
	Per mbf	Mbf	Per mbf	Mbf	Per mbf	Mbf	Per mbf	mbf	Per mbf	mbf	Per mbf	mbf	Per mbf	Mbf
1990:														
January 9.....														
February 13.....														
March 13.....														
April 10.....														
May 8.....														
June 12.....														
July 10.....														
August 14.....														
September 11.....														
October 9.....														
November 13.....														
December 11.....														
1991:														
January 8.....														
February 12.....														
March 12.....														
April 9.....														
May 14.....														
June 11.....														
July 9.....														
August 13.....														
September 10.....														
October 8.....														
November 12.....														
December 10.....														
1992:														
January 14.....														
February 11.....														
March 10.....														

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Table 40--Continued

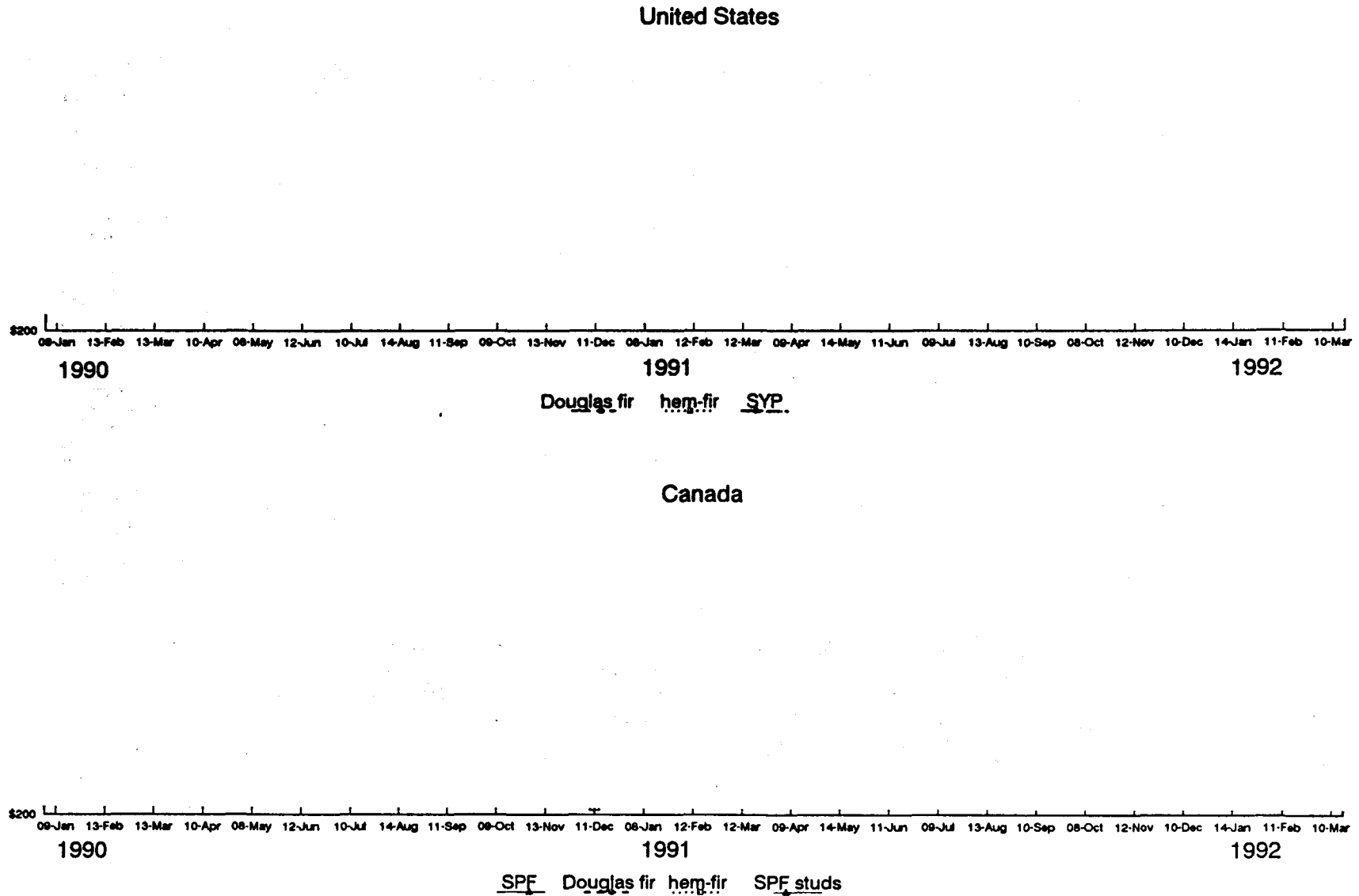
U.S. and Canadian softwood lumber sold in the Baltimore, MD, market area: Weighted-average net delivered selling prices and quantities of U.S.-produced Douglas fir, hem-fir, and SYP, and Canadian SPF, Douglas fir, hem-fir, and SPF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	U.S./Canada	U.S./Canada	U.S. hem fir/	U.S. SYP/
	Douglas fir	hem-fir	Canada SPF	Canada SPF
	margin	margin	margin	margin
	-----Percent-----			
1990:				
January 9.....				
February 12.....				
March 13.....				
April 10.....				
May 8.....				
June 12.....				
July 10.....				
August 14.....				
September 11.....				
October 9.....				
November 13.....				
December 11.....				
1991:				
January 8.....	*	*	*	*
February 12.....				
March 12.....				
April 9.....				
May 14.....				
June 11.....				
July 9.....				
August 13.....				
September 10.....				
October 8.....				
November 12.....				
December 10.....				
1992:				
January 14.....				
February 11.....				
March 10.....				

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Figure 7

Softwood Lumber sold in the Baltimore, MD market area: Weighted-average net delivered prices for U.S.-produced Douglas fir, hem-fir and SYP, and Canadian SPF, Douglas fir, hem-fir, and SPF studs, by specific date, January 1990 - March 1992



Source: Compiled from data submitted in response to questionnaires of the U. S. International Trade Commission.

Price comparisons between domestic hem-fir and Canadian SPF in the Baltimore market showed the Canadian product priced below the domestic product on 22 of a possible 24 days between January 1990 and March 1992; margins of Canadian underselling ranged from 0.4 to 20.4 percent. On November 13, 1990, Canadian SPF was priced 5.9 percent higher than domestic hem-fir, and on December 11, 1990, the domestic and Canadian products were sold for essentially the same price.

A comparison of prices for domestic SYP and Canadian SPF in the Baltimore market showed the Canadian product priced higher than the domestic product on 16 of a possible 27 days between January 1990 and March 1992. Margins of overselling were in a range from 0.1 to 25.1 percent. In the remaining 11 comparisons, Canadian SPF was priced below domestic SYP by margins ranging from 0.4 to 19.7 percent.

Boston, MA.--In the Boston market area, price comparisons were possible within species for domestic and Canadian SPF, Douglas fir and SPF studs sold during January 1990-February 1992 (table 41, figure 8). In 19 price comparisons between domestic and Canadian SPF, the Canadian product was priced higher than the domestic product on 17 days with margins of overselling ranging from 2.2 percent on April 10, 1990, to 31.4 percent on February 12, 1991. On November 13, 1990, and May 14, 1991, Canadian SPF was priced, respectively, 2.7 percent and 0.3 percent below the domestic product.

Canadian Douglas fir was priced above the domestic product in 13 of 21 comparisons in the Boston market, with margins of overselling ranging from 0.8 to 21.1 percent. In the remaining eight comparisons, Canadian Douglas fir was priced below the domestic product, by margins between 0.8 and 12.4 percent.

In the one possible price comparison between domestic and Canadian SPF studs, the Canadian product was priced 26.7 percent higher than the domestic product on January 14, 1992.

Price comparisons were also possible across species for Canadian SPF with domestic hem-fir and domestic SYP. In a possible eight price comparisons between domestic hem-fir and Canadian SPF, the Canadian product was priced higher than the domestic product on 3 days by margins between 25.5 and 29.0 percent. In the five remaining daily price comparisons, the Canadian product was priced between 2.7 and 16.3 percent below the domestic product.

Canadian SPF was priced above domestic SYP in one of a possible three comparisons with a 4.3 percent margin of overselling on February 13, 1990. On the remaining two days, March 13, 1990, and November 12, 1991, Canadian SPF undersold domestic SYP by margins of 2.1 and 21.5 percent, respectively.

Table 41
 U.S. and Canadian softwood lumber sold in the Boston, MA, market area: Weighted-average net delivered selling prices and quantities of U.S.-produced SPF, Douglas fir, hem-fir, SYP, and SPF studs, and Canadian SPF, Douglas fir, and SPF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	United States								Canada							
	SPF		Douglas fir		Hem-fir		SYP		SPF Studs		SPF		Douglas fir		SPF Studs	
	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity
Per mbf	mbf	Per mbf	mbf	Per mbf	mbf	Per mbf	mbf	Per mbf	mbf	Per mbf	mbf	Per mbf	mbf	Per mbf	mbf	
1990:																
January 9.....																
February 13.....																
March 13.....																
April 10.....																
May 8.....																
June 12.....																
July 10.....																
August 14.....																
September 11.....																
October 9.....																
November 13.....																
December 11.....																
1991:					*	*	*	*	*	*	*					
January 8.....																
February 12.....																
March 12.....																
April 9.....																
May 14.....																
June 11.....																
July 9.....																
August 13.....																
September 10.....																
October 8.....																
November 12.....																
December 10.....																
1992:																
January 14.....																
February 11.....																
March 10.....																

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Table 41--Continued

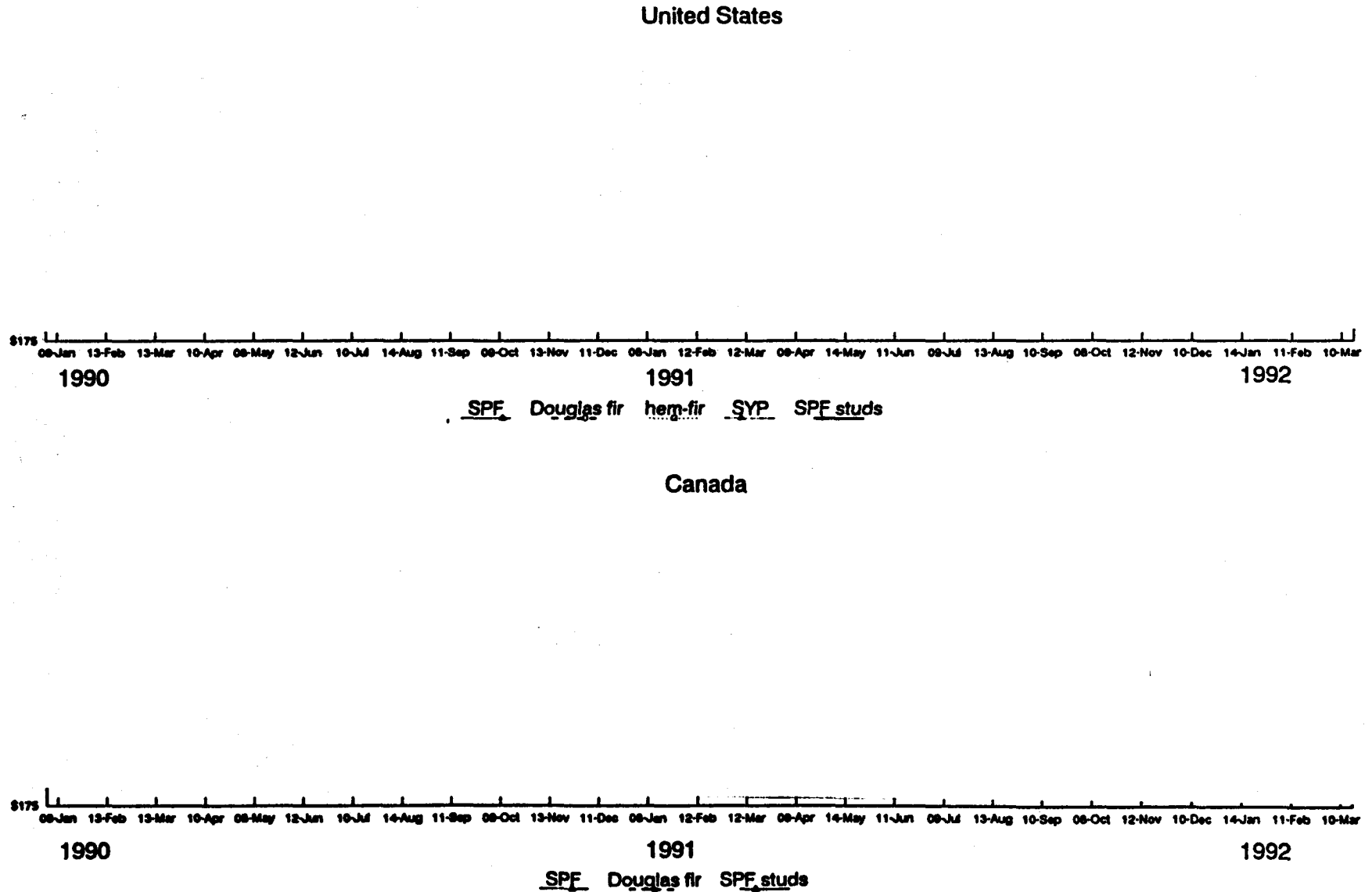
U.S. and Canadian softwood lumber sold in the Boston, MA, market area: Weighted-average net delivered selling prices and quantities of U.S.-produced SPF, Douglas fir, hem-fir, SYP, and SPF studs, and Canadian SPF, Douglas fir, and SPF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	U.S./Canada	U.S./Canada	U.S./Canada	U.S. Hem-fir/	U.S. SYP/
	SPF	Douglas fir	SPF Studs	Canada SPF	Canada SPF
	margin	margin	margin	margin	margin
	-----Percent-----				
1990:					
January 9.....					
February 13.....					
March 13.....					
April 10.....					
May 8.....					
June 12.....					
July 10.....					
August 14.....					
September 11.....					
October 9.....					
November 13.....					
December 11.....					
1991:					
January 8.....					
February 12.....					
March 12.....					
April 9.....					
May 14.....					
June 11.....					
July 9.....					
August 13.....					
September 10.....					
October 8.....					
November 12.....					
December 10.....					
1992:					
January 14.....					
February 11.....					
March 10.....					

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Figure 8

Softwood Lumber sold in the Boston, MA market area: Weighted-average net delivered prices for U.S.-produced SPF, Douglas fir, hem-fir, SYP, and SPF studs, and Canadian SPF, Douglas fir, and SPF studs, by specific date, January 1990 -March 1992



A-94

Source: Compiled from data submitted in response to questionnaires of the U. S. International Trade Commission.

Chicago, IL. --U.S. producers reported prices for sales in the Chicago market area of five different products: Douglas fir, hem-fir, SYP, SPF studs, and ESLP studs; importers reported pricing for two Canadian products: SPF and SPF studs (table 42, figure 9).

In 10 of 11 daily price comparisons between domestic and Canadian SPF studs between May 1991 and March 1992, the Canadian product was priced higher than the domestic product with margins of overselling ranging from 0.6 to 32.2 percent. On September 10, 1991, the one reported instance of Canadian underselling, Canadian SPF studs were priced 4.1 percent below U.S.-produced SPF studs.

In five price comparisons between domestic Douglas fir and Canadian SPF during the period from May through October 1990, the Canadian product was priced higher than the domestic product on four days, with margins of overselling ranging between 2.6 and 11.7 percent. In the one instance of underselling on May 8, 1990, Canadian SPF was priced 6.0 percent below domestic Douglas fir.

Canadian SPF was priced higher than domestic hem-fir in 4 of a possible 13 price comparisons between January 1990 and February 1992, with margins of overselling in a range from 7.1 to 22.4 percent. In the remaining nine comparisons, Canadian SPF was priced below domestic hem-fir by margins ranging from 3.1 percent to 14.4 percent.

Finally, Canadian SPF was priced higher than domestic SYP in 8 of a possible 16 comparisons between January 1990 and March 1992. Margins of overselling for Canadian SPF ranged from 4.5 percent on February 11, 1992 to 32.1 percent on June 12, 1990. In the remaining eight daily price comparisons, Canadian SPF was priced below domestic SYP by margins ranging from 0.3 percent to 35.1 percent.

Table 42

U.S. and Canadian softwood lumber sold in the Chicago, IL, market area: Weighted-average net delivered selling prices and quantities of U.S.-produced Douglas fir, hem-fir, SYP, SPF studs, and ESLP studs, and Canadian SPF and SYP studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	United States									
	Douglas fir		Hem-fir		SYP		SPF Studs		ESLP Studs	
	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity
	Per mbf	Mbf	Per mbf	Mbf	Per mbf	Mbf	Per mbf	Mbf	Per mbf	Mbf
1990:										
January 9.....										
February 13.....										
March 13.....										
April 10.....										
May 8.....										
June 12.....										
July 10.....										
August 14.....										
September 11.....										
October 9.....										
November 13.....										
December 11.....										
1991:										
January 8.....										
February 12.....										
March 12.....										
April 9.....										
May 14.....										
June 11.....										
July 9.....										
August 13.....										
September 10.....										
October 8.....										
November 12.....										
December 10.....										
1992:										
January 14.....										
February 11.....										
March 10.....										

Table continued on following page.

Table 42--Continued

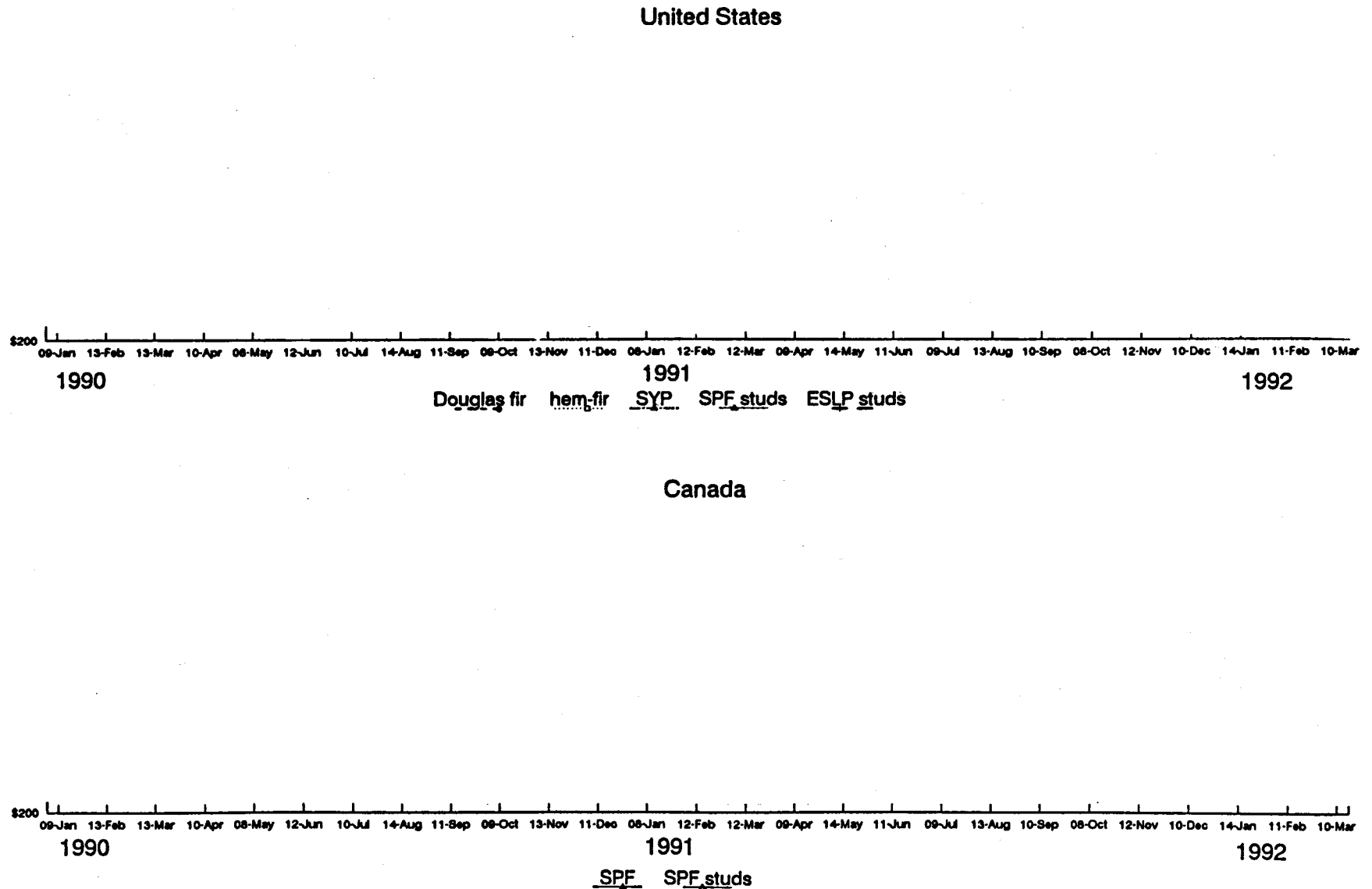
U.S. and Canadian softwood lumber sold in the Chicago, IL, market area: Weighted-average net delivered selling prices and quantities of U.S.-produced Douglas fir, hem-fir, SYP, SPF studs, and ESLP studs, and Canadian SPF and SFF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	Canada				Margins			
	SPF		SFF Studs		U.S./Can.	U.S. D.F./	U.S. hem-fir/	U.S. SYP/
	Price	Quantity	Price	Quantity	SPF studs	Canada SFF	Canada SPF	Can. SFF
	Per mbf	Mbf	Per mbf	Mbf	Percent			
1990:								
January 9.....								
February 13.....								
March 13.....								
April 10.....								
May 8.....								
June 12.....								
July 10.....								
August 14.....								
September 11.....								
October 9.....								
November 13.....								
December 11.....								
1991:					*	*	*	*
January 8.....								
February 12.....								
March 12.....								
April 9.....								
May 14.....								
June 11.....								
July 9.....								
August 13.....								
September 10.....								
October 8.....								
November 12.....								
December 10.....								
1992:								
January 14.....								
February 11.....								
March 10.....								

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Figure 9

Softwood Lumber sold in the Chicago, IL market area: Weighted-average net delivered prices for U.S.-produced Douglas fir, hem-fir, SYP, SPF studs, and ESLP studs, and Canadian SPF, and SPF studs, by specific date, January 1990 - March 1992



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Source: Compiled from data submitted in response to questionnaires of the U. S. International Trade Commission.

Los Angeles, CA.--Domestic producers reported pricing for sales of Douglas fir, hem-fir, SPF studs, and ESLP studs in the Los Angeles, CA, market area; importers reported only sales of Canadian Douglas fir in the Los Angeles market (table 43, figure 10).

Price comparisons between domestic and Canadian Douglas fir in the Los Angeles market were possible on 4 days between January 1990 and June 1991. On January 9, 1990 and June 11, 1991, Canadian Douglas fir was priced above the domestic product by margins of 8.2 percent and 6.2 percent, respectively. On the remaining 2 days, May 8, and September 11, 1990 Canadian Douglas fir was priced 3.5, and 0.7 percent, respectively, below the domestic product.

Atlanta, GA.--Prices were reported by domestic producers for sales in the Atlanta market area of hem-fir, SYP, ESLP, and ESLP studs, while importers reported prices for Canadian SPF and SPF studs (table 44, figure 11).

No direct price comparisons were possible within species in the Atlanta market. However, in one daily price comparison between domestic hem-fir and Canadian SPF, the Canadian product was priced 5.7 percent higher than the domestic product on October 8, 1991.

In 27 price comparisons between domestic SYP and Canadian SPF, the Canadian product was priced above the domestic product on 23 days with margins of overselling ranging from 0.2 percent to 21.7 percent. On 4 days between November 1991 and March 1992, Canadian SPF was priced between 0.5 percent and 18.0 percent below domestic SYP.

Price comparisons between domestic ESLP and Canadian SPF in the Atlanta market showed the Canadian product priced below the domestic product in all of the nine possible comparisons between January and September 1990. Margins of Canadian underselling ranged from 1.8 percent to 11.7 percent.

Finally, prices for domestic ESLP studs were compared with Canadian SPF studs in the Atlanta market. In 15 of a possible 20 price comparisons between July 1990 and March 1992, the Canadian product was priced above the domestic product with margins of overselling ranging from 0.2 to 12.4 percent. On the remaining 5 days, Canadian SPF studs were priced below domestic ESLP studs by margins ranging from 4.0 to 10.6 percent.

Table 43

U.S. and Canadian softwood lumber sold in the Los Angeles, CA, market area: Weighted-average net delivered selling prices and quantities of U.S.-produced Douglas fir, hem-fir, SPF studs, and ESLP studs, and Canadian Douglas fir, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	United States							
	Douglas fir		Hem-fir		SPF Studs		ESLP Studs	
	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity
	Per mbf	Mbf	Per mbf	Mbf	Per mbf	Mbf	Per mbf	Mbf
1990:								
January 9.....								
February 13.....								
March 13.....								
April 10.....								
May 8.....								
June 12.....								
July 10.....								
August 14.....								
September 11.....								
October 9.....								
November 13.....								
December 11.....								
1991:			*	*	*	*	*	*
January 8.....								
February 12.....								
March 12.....								
April 9.....								
May 14.....								
June 11.....								
July 9.....								
August 13.....								
September 10.....								
October 8.....								
November 12.....								
December 10.....								
1992:								
January 14.....								
February 11.....								
March 10.....								

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Table 43--Continued

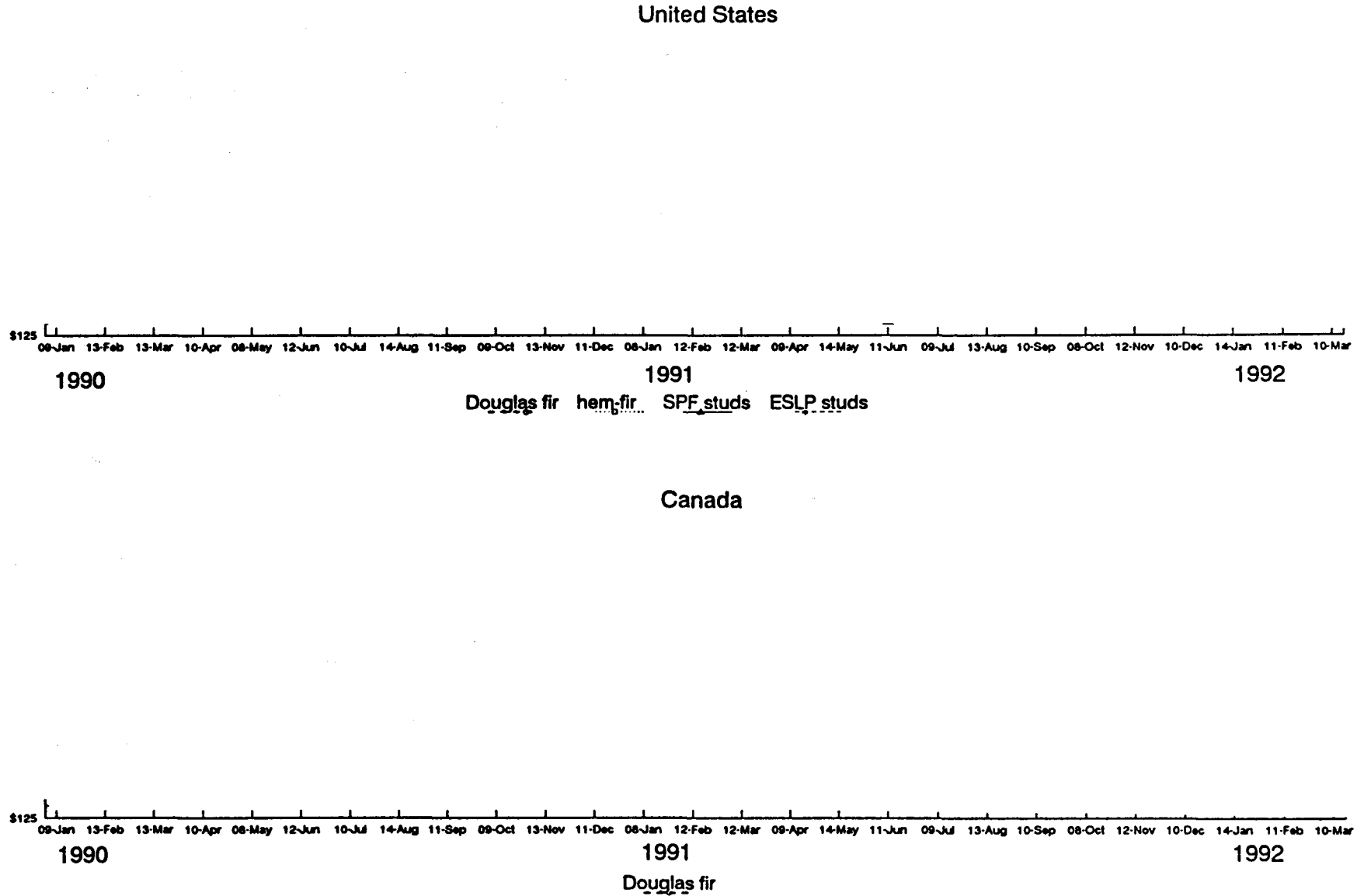
U.S. and Canadian softwood lumber sold in the Los Angeles, CA, market area:
 Weighted-average net delivered selling prices and quantities of U.S.-produced
 Douglas fir, hem-fir, SPF studs, and ESLP studs, and Canadian Douglas fir, and
 margins of underselling (overselling), by species and by specified date,
 January 1990-March 1992

Period	Canada		Margins	
	Douglas fir Price	Quantity Per mbf	U.S./Canada Douglas fir mbf	Percent
1990:				
January 9.....				
February 13.....				
March 13.....				
April 10.....				
May 8.....				
June 12.....				
July 10.....				
August 14.....				
September 11.....				
October 9.....				
November 13.....				
December 11.....				
1991:	*	*	*	*
January 8.....				
February 12.....				
March 12.....				
April 9.....				
May 14.....				
June 11.....				
July 9.....				
August 13.....				
September 10.....				
October 8.....				
November 12.....				
December 10.....				
1992:				
January 14.....				
February 11.....				
March 10.....				

Source: Compiled from data submitted in response to questionnaires of the
 U.S. International Trade Commission.

Figure 10

Softwood Lumber sold in the Los Angeles, CA market area: Weighted average net delivered prices for U.S.-produced Douglas fir, hem-fir, SPF studs and ESLP studs, and Candian Douglas fir, by specific date, January 1990 - March 1992



Source: Compiled from data submitted in response to questionnaires of the U. S. International Trade Commission.

Table 44

U.S. and Canadian softwood lumber sold in the Atlanta, GA, market area: Weighted-average net delivered selling prices and quantities of U.S.-produced hem-fir, SYP, ESLP, and ESLP studs, and Canadian SPF and SPF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	United States								Canada			
	Hem-fir		SYP		ESLP		ESLP Studs		SPF		SPF Studs	
	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity
	Per	Mbf	Per	Mbf	Per	Mbf	Per	Mbf	Per	Mbf	Per	Mbf
1990:												
January 9.....												
February 13....												
March 13.....												
April 10.....												
May 8.....												
June 12.....												
July 10.....												
August 14.....												
September 11...												
October 9.....												
November 13....												
December 11....												
1991:					*	*	*	*	*	*	*	*
January 8.....												
February 12....												
March 12.....												
April 9.....												
May 14.....												
June 11.....												
July 9.....												
August 13.....												
September 10...												
October 8.....												
November 12....												
December 10....												
1992:												
January 14.....												
February 11....												
March 10.....												

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Table 44--Continued

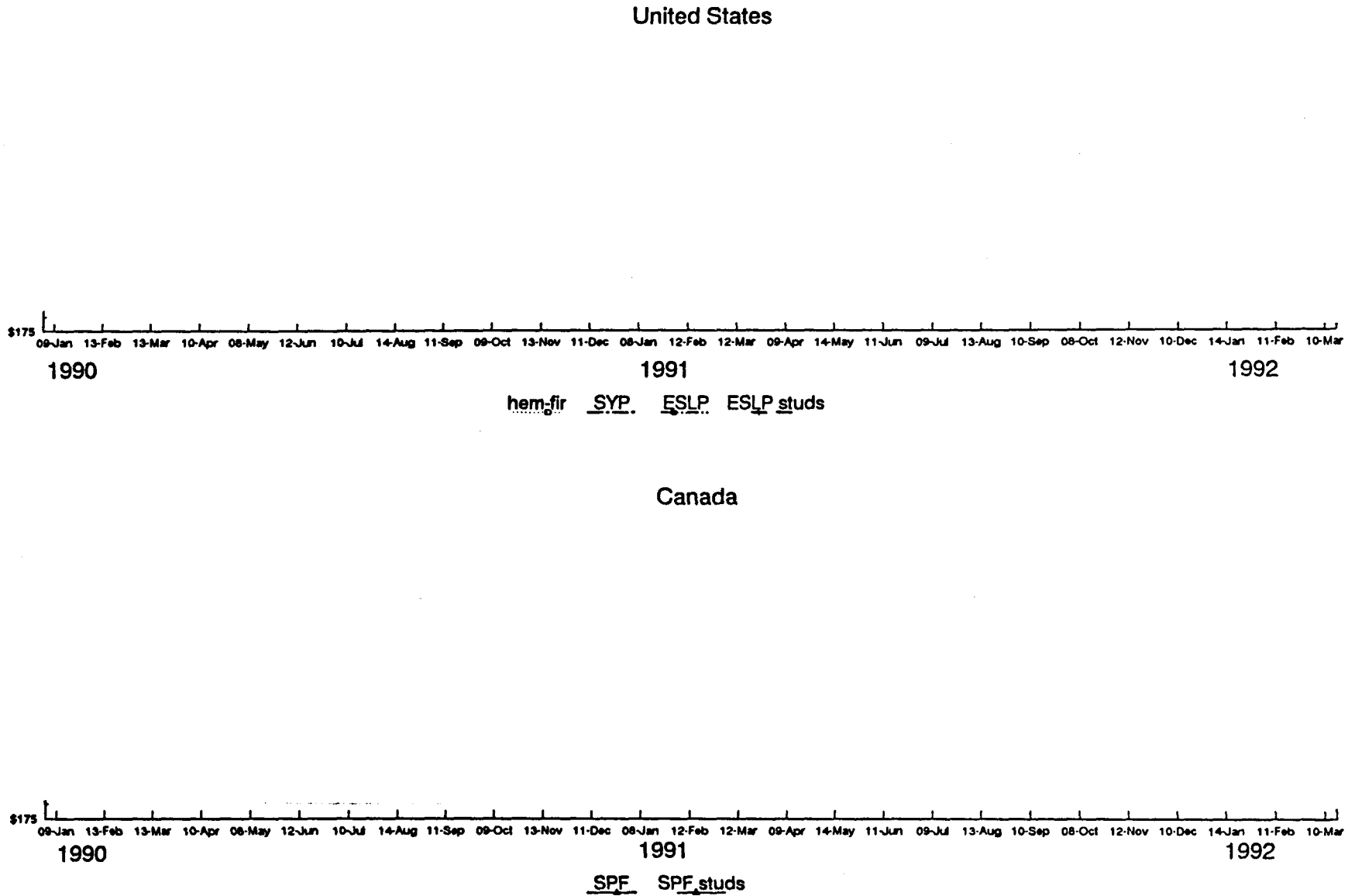
U.S. and Canadian softwood lumber sold in the Atlanta, GA market area: Weighted-average net delivered selling prices and quantities of U.S.-produced hem-fir, SYP, ESLP, and ESLP studs, and Canadian SPF and SPF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	U.S. hem-fir/ Canada SPF	U.S. SYP/ Canada SPF	U.S. ESLP/ Canada SPF	U.S. ESLP-S/ Canada SPF-S
	margin	margin	margin	margin
	-----Percent-----			
1990:				
January 9.....				
February 13.....				
March 13.....				
April 10.....				
May 8.....				
June 12.....				
July 10.....				
August 14.....				
September 11.....				
October 9.....				
November 13.....				
December 11.....				
1991:	*	*	*	*
January 8.....				
February 12.....				
March 12.....				
April 9.....				
May 14.....				
June 11.....				
July 9.....				
August 13.....				
September 10.....				
October 8.....				
November 12.....				
December 10.....				
1992:				
January 14.....				
February 11.....				
March 10.....				

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Figure 11

Softwood Lumber sold in the Atlanta, GA market area: Weighted-average net delivered prices for U.S.-produced hem-fir, SYP, ESLP, and ESLP studs, and Canadian SPF, and SPF studs, by specific date, January 1990 - March 1992



Source: Compiled from data submitted in response to questionnaires of the U. S. International Trade Commission.

Dallas, TX.--Domestic producers reported pricing for sales of hem-fir, SYP, and ESLP studs in the Dallas, TX market area; importers reported pricing for Canadian SPF, Douglas fir, and SPF studs (table 45, figure 12).

Comparing prices for domestic SYP with Canadian SPF in the Dallas market showed the Canadian product priced above the domestic product in 13 of 25 instances between January 1990 and March 1992. Margins of overselling for Canadian SPF ranged from 0.3 percent on April 9, 1991, to 30.6 percent on February 11, 1992. On 11 days, Canadian SPF was priced below domestic SYP with margins of underselling in the range from 0.3 to 13.3 percent. Finally, on one day, November 13, 1990, the domestic and Canadian products were priced nearly the same in the U.S. market, differing only by \$0.04.

In all five price comparisons between domestic hem-fir and Canadian SPF during October 1990 to March 1992, Canadian SPF was priced above domestic hem-fir by margins ranging from 5.8 percent on November 13, 1990, to 14.3 percent on October 9, 1990.

Finally, 19 price comparisons were possible in the Dallas market between domestic ESLP studs and Canadian SPF studs. In 11 of these 19 comparisons, the Canadian product was priced higher than the domestic product with margins of overselling in a range from 2.7 percent to 28.1 percent. In the remaining eight daily price comparisons, Canadian SPF studs were priced below domestic ESLP studs by margins ranging from 1.7 percent to 21.3 percent.

Table 45

U.S. and Canadian softwood lumber sold in the Dallas, TX, market area: Weighted-average net delivered selling prices and quantities of U.S.-produced hem-fir, SYP, and ESLP studs, and Canadian SPF, Douglas fir, and SPF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	United States						Canada					
	Hem-fir		SYP		ESLP Studs		SPF		Douglas Fir		SPF Studs	
	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity
	Per mbf	Mbf	Per mbf	Mbf	Per mbf	Mbf	Per mbf	Mbf	Per mbf	Mbf	Per mbf	Mbf
1990:												
January 9.....												
February 13.....												
March 13.....												
April 10.....												
May 8.....												
June 12.....												
July 10.....												
August 14.....												
September 11.....												
October 9.....												
November 13.....												
December 11.....												
1991:					*	*	*	*	*	*	*	*
January 8.....												
February 12.....												
March 12.....												
April 9.....												
May 14.....												
June 11.....												
July 9.....												
August 13.....												
September 10.....												
October 8.....												
November 12.....												
December 10.....												
1992:												
January 14.....												
February 11.....												
March 10.....												

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Table 45--Continued

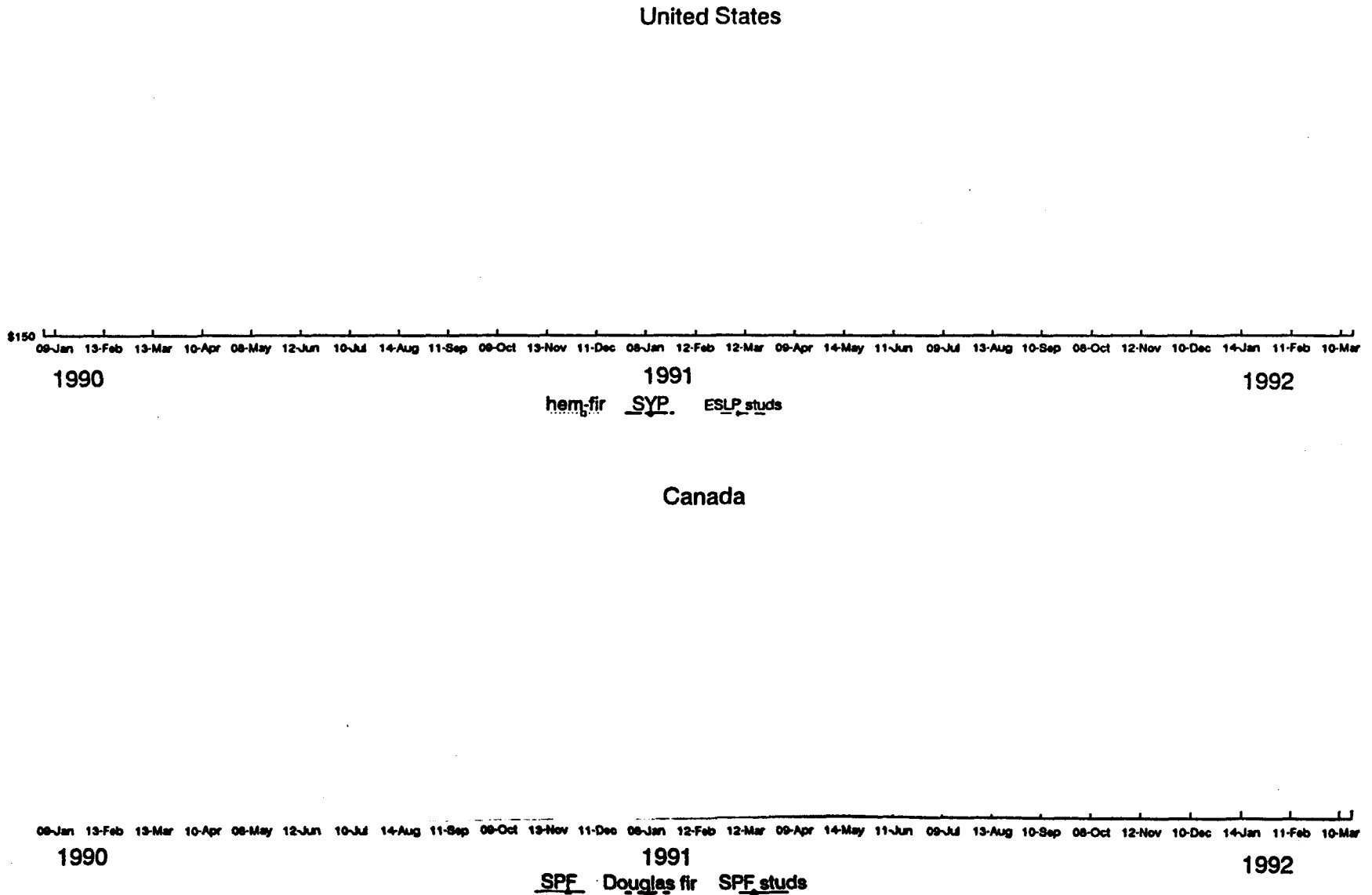
U.S. and Canadian softwood lumber sold in the Dallas, TX, market area: Weighted-average net delivered selling prices and quantities of U.S.-produced hem-fir, SYP, and ESLP studs, and Canadian SPF, Douglas fir, and SPF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	U.S. SYP/ Canada SPF margin	U.S. hem-fir/ Canada SPF margin	U.S. ESLP stud/ Canada SPF stud margin
	Percent		
1990:			
January 9.....			
February 13.....			
March 13.....			
April 10.....			
May 8.....			
June 12.....			
July 10.....			
August 14.....			
September 11.....			
October 9.....			
November 13.....			
December 11.....			
1991:			
January 8.....	*	*	*
February 12.....	*	*	*
March 12.....	*	*	*
April 9.....	*	*	*
May 14.....	*	*	*
June 11.....	*	*	*
July 9.....	*	*	*
August 13.....	*	*	*
September 10.....	*	*	*
October 8.....	*	*	*
November 12.....	*	*	*
December 10.....	*	*	*
1992:			
January 14.....			
February 11.....			
March 10.....			

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Figure 12

Softwood Lumber sold in the Dallas, TX market: Weighted-average net delivered prices for U.S.-produced hem-fir, SYP, and ESLP studs, and Canadian SPF, Douglas fir, and SPF studs, by specific date, January 1990 - March 1992



A-109

Source: Compiled from data submitted in response to questionnaires of the U. S. International Trade Commission.

Purchaser delivered price comparisons

A total of nine purchasers provided some pricing information for their purchases of softwood lumber in the six specified market areas of the United States. Responses were limited, however, with most purchasers providing pricing for one or two of the seven products in one or two of the six U.S. market areas. As a result, a minimal number of price comparisons both within and across species were possible in each market area.⁹² Purchase price trends for those products with full price series reported generally followed the trends for sales by producers and importers in each market. Consequently, only the price comparisons are discussed in this section.

Baltimore, MD.--In the Baltimore market, purchase prices were reported for domestic SYP and SPF studs and Canadian SPF and SPF studs.⁹³ Price comparisons were possible within species for SPF studs and across species between domestic SYP and Canadian SPF (table 46).

In three of the seven possible comparisons between domestic and Canadian SPF studs, the Canadian product was priced higher than the domestic product by margins ranging from 1.9 to 24.8 percent. In four additional price comparisons, Canadian SPF studs were priced below domestic SPF studs, with margins of underselling ranging from 1.5 to 20.7 percent.

In 7 of 10 domestic SYP vs. Canadian SPF purchase price comparisons between September 1990 and September 1991, the Canadian product was priced higher than the domestic product, with margins of overselling ranging from 2.3 to 12.7 percent. In the remaining three comparisons, Canadian SPF was priced below domestic SYP by margins ranging from 1.9 percent to 12.7 percent.

Boston, MA.--Purchasers reported prices in the Boston market for both domestic and Canadian SPF, Douglas fir, and SPF studs (table 47).

Comparing prices for domestic and Canadian SPF showed the Canadian product priced higher than the domestic product on 5 of 10 days between April 1990 and March 1992, with margins of overselling in a range from 1.6 percent to 17.6 percent. On the remaining 5 days, Canadian SPF was priced below the domestic product by margins ranging from 0.6 percent to 16.5 percent.

In all three comparisons during 1990 between domestic and Canadian Douglas fir purchased in the Boston market, the Canadian product was priced from 4.3 percent to 18.5 percent below the domestic product.

Finally, Canadian SPF studs were priced higher in the Boston market than domestic SPF studs in 10 of a possible 11 comparisons between January and December 1990. Margins of overselling ranged from 0.7 percent on April 10, 1990, to 24.2 percent on February 13, 1990. On 1 day, September 11, 1990, Canadian SPF studs were priced 1.5 percent below the domestic product.

⁹² Because no purchases of Canadian softwood lumber were reported in the Chicago and Los Angeles market areas, no purchase price comparisons were possible.

⁹³ Pricing for purchases on 1 day each was also reported for ESLP and ESLP studs.

Table 46

U.S. and Canadian softwood lumber purchased in the Baltimore, MD, market area: Weighted-average net delivered purchase prices and quantities of U.S.-produced SYP, ESLP, SPF studs, and ESLP studs, and Canadian SPF and SPF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	United States								Canada				Margins		
	SYP		ESLP		SPF studs		ELSP studs		SPF		SPF Studs		U.S./Can.	U.S. SYP/	
	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	SPF stud	Can. SPF	
	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	MBF	-----Percent-----
1990:															
January 9.....															
February 13.....															
March 13.....															
April 10.....															
May 8.....															
June 12.....															
July 10.....															
August 14.....															
September 11.....															
October 9.....															
November 13.....															
December 11.....															
1991:					*	*	*	*	*	*	*	*			
January 8.....															
February 12.....															
March 12.....															
April 9.....															
May 14.....															
June 11.....															
July 9.....															
August 13.....															
September 10.....															
October 8.....															
November 12.....															
December 10.....															
1992:															
January 14.....															
February 11.....															
March 10.....															

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 47
 U.S. and Canadian softwood lumber purchased in the Boston, MA, market area: Weighted-average net delivered purchase prices and quantities of U.S.-produced SPF, Douglas fir, and SPF studs, and Canadian SPF, Douglas fir, and SPF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	United States						Canada						Margins				
	SPF		Douglas fir		SPF Studs		SPF		Douglas fir		SPF Studs		U.S./Can.	U.S./Can.	U.S./Can.		
	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	SPF	DF	SPF-S		
Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Percent			
1990:																	
January 9.....																	
February 13.....																	
March 13.....																	
April 10.....																	
May 8.....																	
June 12.....																	
July 10.....																	
August 14.....																	
September 11.....																	
October 9.....																	
November 13.....																	
December 11.....																	
1991:					*	*	*	*	*	*	*						
January 8.....																	
February 12.....																	
March 12.....																	
April 9.....																	
May 14.....																	
June 11.....																	
July 9.....																	
August 13.....																	
September 10.....																	
October 8.....																	
November 12.....																	
December 10.....																	
1992:																	
January 14.....																	
February 11.....																	
March 10.....																	

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Chicago, IL.--A limited number of prices were reported for domestic SPF, SPF studs, and ESLP studs in the Chicago market (table 48). No Canadian prices were reported in this market; price comparisons were, therefore, not possible.

Los Angeles, CA.--Purchases of only one domestic product, green Douglas fir, were reported in the Los Angeles market (table 49). No pricing for any Canadian softwood lumber products was reported so price comparisons were not possible in the Los Angeles, CA market.

Atlanta, GA.--Purchases were reported in the Atlanta market for domestic SPF, SYP, SPF studs, and ESLP studs, and Canadian SPF and SPF studs (table 50).

Three price comparisons were possible in 1991 between domestic and Canadian SPF in the Atlanta market. The Canadian product was priced 2.4 percent higher than the domestic product on August 13, and 0.7 and 3.1 percent lower than the domestic product on March 12, and May 14, respectively.

In four comparisons between domestic and Canadian SPF studs during June 1991 and February 1992, the Canadian product was priced higher than the domestic product on two days by margins of 5.2 percent and 7.6 percent, and lower than the domestic product on two days by margins of 11.3 and 5.4 percent.

Finally, in the single price comparison between domestic SYP and Canadian SPF on September 11, 1990, the Canadian product was priced 20.2 percent higher than the domestic product.

Dallas, TX.--Purchases were reported in the Dallas market for domestic Douglas fir, SYP, and ESLP studs; and Canadian SPF, SPF studs, and ESLP studs (table 51).

In the two daily comparisons between domestic and Canadian ESLP studs, the Canadian product was priced 19.9 percent and 5.0 percent, respectively, above the domestic product on March 13, and August 14, 1990.

Two cross-species comparisons were also possible between domestic Douglas fir and Canadian SPF. In both of these comparisons on October 9, 1990, and February 11, 1992, Canadian SPF was priced below domestic Douglas fir, by margins of 12.7 percent and 2.1 percent, respectively.

Nine daily price comparisons were possible between domestic SYP and Canadian SPF purchased in the Dallas market between August 1990 and September 1991. In eight of these nine comparisons, the Canadian product was priced above the domestic product by margins ranging from 7.6 percent to 20.0 percent. In the one instance of Canadian underselling on December 11, 1990, Canadian SPF was priced 9.2 percent below domestic SYP.

Finally, comparison of domestic ESLP studs and Canadian SPF studs showed the Canadian product priced above the domestic product in two instances, January and December 1990, by margins of 8.5 percent and 25.8 percent respectively. In the remaining three price comparisons between these two products, Canadian SPF studs undersold domestic ESLP studs by margins ranging from 2.6 percent to 18.8 percent between December 1991 and March 1992.

Table 48
 U.S. softwood lumber purchased in the Chicago, IL, market area: Weighted-average net delivered purchase prices and quantities of U.S.-produced SPF, SPF studs, and ESLP studs, by species and by specified date, January 1990-March 1992

Period	United States					
	SPF		SPF Studs		ESLP Studs	
	Price	Quantity	Price	Quantity	Price	Quantity
	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf
1990:						
January 9.....						
February 13.....						
March 13.....						
April 10.....						
May 8.....						
June 12.....						
July 10.....						
August 14.....						
September 11.....						
October 9.....						
November 13.....						
December 11.....						
1991:	*	*	*	*	*	*
January 8.....						
February 12.....						
March 12.....						
April 9.....						
May 14.....						
June 11.....						
July 9.....						
August 13.....						
September 10.....						
October 8.....						
November 12.....						
December 10.....						
1992:						
January 14.....						
February 11.....						
March 10.....						

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 49
 U.S. softwood lumber purchased in the Los Angeles, CA market area: Weighted-average net delivered purchase prices and quantities of U.S.-produced Douglas fir, by specified date, January 1990-March 1992

Period	United States							Quantity Mbf
	Douglas fir							
	Price Per Mbf							
1990:								
January 9.....								
February 13.....								
March 13.....								
April 10.....								
May 8.....								
June 12.....								
July 10.....								
August 14.....								
September 11.....								
October 9.....								
November 13.....								
December 11.....								
1991:	*	*	*	*	*	*	*	
January 8.....								
February 12.....								
March 12.....								
April 9.....								
May 14.....								
June 11.....								
July 9.....								
August 13.....								
September 10.....								
October 8.....								
November 12.....								
December 10.....								
1992:								
January 14.....								
February 11.....								
March 10.....								

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 50

U.S. and Canadian softwood lumber purchased in the Atlanta, GA, market area: Weighted-average net delivered purchase prices and quantities of U.S.-produced SPF, SYP, SPF studs, and ESLP studs, and Canadian SPF and SPF studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	United States								Canada				Margins		
	SPF		SYP		SPF Studs		ESLP Studs		SPF		SPF Studs		U.S./	U.S./	U.S. SYP
	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Canada	Canada	vs. Canada
	Per		Per		Per		Per		Per		Per		SPF	SPF-s	SPF
	Mbf	Mbf	Mbf	Mbf	Mbf	Mbf	Mbf	Mbf	Mbf	Mbf	Mbf	Mbf	-----Percent-----		
1990:															
January 9.....															
February 13....															
March 13.....															
April 10.....															
May 8.....															
June 12.....															
July 10.....															
August 14.....															
September 11...															
October 9.....															
November 13....															
December 11....															
1991:					*	*	*	*	*	*	*				
January 8.....															
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1992:															
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February 11....															
March 10.....															

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 51

U.S. and Canadian softwood lumber purchased in the Dallas, TX, market area: Weighted-average net delivered purchase prices and quantities of U.S.-produced Douglas fir, SYP, and ESLP studs, and Canadian SFF, SFF studs, and ESLP studs, and margins of underselling (overselling), by species and by specified date, January 1990-March 1992

Period	United States						Canada						Margins				
	Douglas Fir		SYP		ESLP studs		SFF		SFF studs		ESLP studs		U.S./	U.S. DF/	U.S. SYP/	U.S.ESLP-	
	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	ESLP-S	SFF	Canada	S/Canada	
Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	Per Mbf	Mbf	-----Percent-----			
1990:																	
January 9.....																	
February 13....																	
March 13.....																	
April 10.....																	
May 8.....																	
June 12.....																	
July 10.....																	
August 14.....																	
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November 13....																	
December 11....																	
1991:					*	*	*	*	*	*	*	*					
January 8.....																	
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June 11.....																	
July 9.....																	
August 13.....																	
September 10...																	
October 8.....																	
November 12....																	
December 10....																	
1992:																	
January 14.....																	
February 11....																	
March 10.....																	

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Lost Sales and Lost Revenues

Most domestic producers reported that since 1988, they have lost sales and/or revenues due to competition from Canada. However, most of these mills reported that because of the large number of daily transactions and the way in which records are maintained, they could not identify specific instances of lost sales and lost revenues.

When specific information was provided, 1 domestic producer alleged 11 instances of lost revenues involving 4 different customers, and another domestic producer alleged 1 lost sale during the period from January 1988 to December 1992. The lost revenue allegations totalled \$28.6 million, and the single reported lost sale amounted to \$35 million. Staff was able to contact 3 of the 4 purchasers named in lost revenue allegations and the one purchaser involved in the single lost sale allegation. Two of the purchasers named by 1 domestic producer, and accounting for 9 of the 11 lost revenue allegations, were divisions of ***. The representative from one of these divisions was reached but declined to comment on his company's purchasing practices. The representative from the other division could not be reached.

*** alleged lost revenues of *** on January 17, 1990 involving *** mbf of ESLP studs sold to ***. The initial quote of *** per mbf was reportedly lowered to *** per mbf because of a competing offer from a Canadian mill. *** was not able to confirm the specific allegation, but stated that it may be true since most mills, regardless of where they are located, frequently try to outbid their competition with lower prices for competing products. He also noted that sales are commonly lost in the softwood lumber industry for reasons other than price. For example the quality of the cut is important in some end uses, and some customers prefer specific random-length tallies that are more readily available from certain mills. According to ***, most larger customers that purchase softwood lumber on a regular basis prefer to stay with a particular species and sometimes even request the product from a particular mill.

*** also alleged lost revenues on August 31, 1989, totaling ***. An original offer of *** per mbf was reportedly lowered to *** per mbf because of a lower quote for a competing product from a Canadian mill. *** was not able to respond to the specific allegation but stated that this information could be correct. He noted that his firm receives numerous quotes daily from both domestic and Canadian suppliers offering lower prices in order to make sales, but he does not see offers from Canadian mills that are consistently higher or lower than offers from domestic mills.

*** alleged a lost sale of 60 mbf of 6x12 hem-fir in February 1992. A quote by this mill valued at *** per mbf was reportedly lost to a lower quote of *** per mbf from a Canadian mill. *** was the customer involved in this allegation. He was not able to recall the specific purchase, but stated that because the company purchases large quantities of both U.S.-produced and Canadian softwood lumber, it is possible that they could have purchased the Canadian product in this instance. According to ***, price is not the most important factor he considers when purchasing softwood lumber. He would prefer to give all of his business on this particular product to one domestic mill because of its superior manufacturing, its use of old-growth timber, and its ability to cut the 40-foot lengths needed by ***'s customers. However, since only about five mills in the United States produce this uncommon 6x12

dimension, it is often necessary to purchase rush orders from other domestic and Canadian mills that have supplies available or are able to fill the order in a short time. *** also noted that domestic and Canadian softwood lumber products are nearly always priced competitively in his market, with no mill from either country consistently underselling any other mills.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January-March 1988 through January-March 1992 the nominal value of the Canadian dollar fluctuated, appreciating 7.7 percent overall relative to the U.S. dollar (table 52).⁹⁴ Adjusted for movements in producer price indexes in the United States and Canada, the real value of the Canadian currency depreciated by less than 1 percent overall between January-March 1988 and the first quarter of 1992.

⁹⁴ International Financial Statistics, May 1992.

Table 52

Exchange rates:¹ Indexes of nominal and real exchange rates of the Canadian dollar and indexes of producer prices in the United States and Canada,² by quarters, January 1988-March 1992

Period	U.S. producer price index	Canadian producer price index	Nominal exchange rate index	Real exchange rate index ³
1988:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	101.6	100.9	103.1	102.4
July-September.....	103.1	102.1	103.9	102.9
October-December....	103.5	102.7	105.1	104.2
1989:				
January-March.....	105.8	103.7	106.3	104.2
April-June.....	107.7	103.9	106.2	102.5
July-September.....	107.3	103.6	107.2	103.5
October-December....	107.7	102.9	108.5	103.7
1990:				
January-March.....	109.3	103.3	107.2	101.3
April-June.....	109.1	103.5	108.3	102.7
July-September.....	111.0	103.6	109.9	102.5
October-December....	114.4	104.9	109.2	100.1
1991:				
January-March.....	112.0	104.5	109.7	102.3
April-June.....	110.9	102.9	110.3	102.3
July-September.....	110.7	102.1	110.8	102.2
October-December....	110.9	101.5	111.7	102.2
1992:				
January-March.....	110.6	102.0 ⁴	107.7	99.2 ⁴

¹ Exchange rates expressed in U.S. dollars per Canadian dollar.

² Producer price indexes--intended to measure final product prices--are based on period-average quarterly indexes presented in line 63 of the International Financial Statistics.

³ The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and Canada.

⁴ Derived from Canadian price data reported for January-February only.

Note.--January-March 1988 = 100.

Source: International Monetary Fund, International Financial Statistics, May 1992.

APPENDIX A
FEDERAL REGISTER NOTICES



INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-312 (Final)]

Softwood Lumber From Canada

AGENCY: United States International Trade Commission

ACTION: Institution and scheduling of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-312 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of softwood lumber,¹ provided for in subheadings 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTS).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: March 8, 1992.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-205-3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background: This investigation is being instituted as a result of an affirmative preliminary determination

by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Canada of softwood lumber. The investigation was self-initiated on October 31, 1991, by the U.S. Department of Commerce.

Participation in the investigation and Public service list: Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the *Federal Register*. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list: Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report: The prehearing staff report in this investigation will be placed in the nonpublic record on May 11, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing: The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on May 28, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 15, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 20, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions: Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is May 21, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs in June 5, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 5, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: March 20, 1992.

Stephen McLaughlin,

Acting Secretary.

[FR Doc. 92-8945 Filed 3-25-92; 8:45 a.m.]

BILLING CODE 7020-02-M

¹ For purposes of this investigation, "softwood lumber" means coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm, provided for in subheading 4407.10.00 of the HTS; and coniferous wood siding, flooring and other goods (except coniferous wood moldings and wood dowel rods; but including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated [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, provided for in HTS subheadings 4409.10.10, 4409.10.20 and 4409.10.90.

(Investigation No. 701-TA-312
(Preliminary))

Softwood Lumber From Canada

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines,² pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of softwood lumber,³ provided for in subheadings 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be subsidized by the Government of Canada.

Background

On October 31, 1991, the U.S. Department of Commerce published in the *Federal Register*⁴ a notice that it was self initiating a countervailing duty investigation to determine whether subsidies are being provided, or are likely to be provided, to manufacturers, producers, or exporters of certain softwood lumber products in Canada. Accordingly, effective October 31, 1991, the Commission instituted countervailing duty investigation No. 701-TA-312 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioners Lodwick, Crawford, and Nuzum did not participate.

³ For purposes of this investigation, "softwood lumber" means coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm, provided for in subheading 4407.10.00 of the HTS, and coniferous wood siding, flooring and other goods (except coniferous wood moldings and wood dowel rods; but including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated (rabbeted), chamfered, V-jointed, beaded, moided, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed, provided for in HTS subheadings 4409.10.10, 4409.10.20 and 4409.10.90.

⁴ 56 FR 56053, Oct. 31, 1991.

Federal Register of November 6, 1991 (56 FR 56661). The conference was held in Washington, DC, on November 21, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 16, 1991. The views of the Commission are contained in USITC Publication 2488 (December 1991), entitled "Softwood Lumber from Canada: Determination of the Commission in Investigation No. 701-TA-312 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: December 20, 1991.

By order of the Commission.

Kenneth R. Mason.

Secretary.

[FR Doc. 91-30880 Filed 12-26-91; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-816]

Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada

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

EFFECTIVE DATE: May 28, 1992.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided on the manufacture, production, or exportation of certain softwood lumber products from Canada, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 6.51 percent *ad valorem*.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2786.

FINAL DETERMINATION:**Case History**

Since the publication of the Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products From Canada (Preliminary Determination), 57 FR 8800 (March 12, 1992) in the *Federal Register*, the following events have occurred. On March 18, 1992, we issued a supplemental/deficiency questionnaire to the Government of Canada (GOC) regarding the province of Saskatchewan, and the Yukon Territory and Northwest Territories (the Territories). At the request of the GOC, we extended the due date for these responses until April 3, 1992.

We issued a questionnaire seeking clarifications on certain issues pertaining to two companies requesting exclusion on March 13, 1992. We received responses to this questionnaire on March 27, 1992.

We conducted verification of the responses submitted by the GOC on its own behalf, and on behalf of the provinces of Alberta, British Columbia (BC), Ontario, and Quebec (hereinafter referred to as Respondents), from March 16 through March 27, 1992. In addition, from March 16 through March 18, 1992, we verified certain companies that requested exclusion from this investigation. Between April 13 and April 21, 1992, we issued verification

reports to Respondents, and other interested parties which requested copies of verification reports in their application for administrative protective order, and the Coalition for Fair Lumber Imports (the Coalition), representing the U.S. industry.

We received timely requests for a public hearing from five interested parties. We received case and rebuttal briefs from interested parties on April 21 and 23, 1992, and April 27, 1992, respectively.

In response to a request by Respondents, we postponed the public hearing (see 57 FR 13077 (April 15, 1992)). A 22-hour public hearing was held at the Department of Commerce on April 29 and 30, 1992.

Scope of Investigation

The products covered by this investigation are certain softwood lumber products. These 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, rabbitted, 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, rabbitted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed; (4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbitted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed. Such products are currently provided for under subheadings 4407.1000, 4409.1010, 4409.1090, 4409.1020, respectively, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Scope Issues

Respondents and a number of other interested parties submitted a variety of arguments that certain types of softwood lumber products should be excluded from our final determination, and the order, if one is issued. These parties are the Independent Lumber

Remanufacturers' Association (ILRA); the Clemson Corporation (doing business as the National Frame Company); Green Forest Lumber Products (Green Forest); the International Sleep Products Association (ISPA); and Leggett and Platt, Incorporated.

Scope Exclusion Requests—Specialty Products

The Respondents requested that the Department exclude from the scope of the investigation the following: Products manufactured from Western Red Cedar, Yellow Cypress, Eastern White Cedar, Eastern White and Red Pine, and clear and shop grades of lumber (collectively referred to as specialty products). Respondents stated that softwood lumber produced from these six species and grades has characteristics that distinguishes it from lumber produced from more commonly available coniferous species. These characteristics include, among others: Appearance; resistance to certain insects, disease and fungi; and strength. According to Respondents, the proof of the desirability of these characteristics lies in the higher prices that lumber produced from these species commands.

The scope of the investigation covers lumber products produced from all types of coniferous wood. Each of the specialty species can be used to produce the same or similar lumber products as any other coniferous species commonly harvested in Canada and the United States. While the different strengths and weaknesses of these species may be part of the definition of a particular type of lumber, the speciation and quality of the timber input into a particular product are only two of the various criteria by which softwood lumber products can vary. See, e.g., *Softwood Lumber from Canada*, United States International Trade Commission (ITC) Inv. No. 701-TA-312 (December 1991) (preliminary). In addition, no information was provided during the course of the investigation indicating that these species and grades of timber were sold according to the same stumpage systems other than those found to be applicable to other species and grades.

Furthermore, no specific product information was provided for the record, with the exception of the listing of several end products manufactured from these species (which are not, by and large, within the scope of this investigation in any case). Therefore, there is no basis for determining whether products manufactured from these grades and species should either

be excluded from the scope of the investigation or be included in a separate class or kind of merchandise.

With respect to the contention that lumber manufactured from these specialty products commands a higher price, we note that there is a wide range of prices paid for softwood lumber products manufactured from all coniferous species. While a higher price paid may somehow indirectly indicate the expectations of the final consumer, it is not in and of itself a basis for the exclusion of a product from the scope of an investigation.

Remanufactured Softwood Lumber Products

We received comments from Respondents and the ILRA requesting that the Department exclude remanufactured softwood lumber products (remans) from the scope of the investigation. The Department also received comments from National Frame Company requesting that the Department exclude a particular type of softwood reman, bed frame components, from the scope of the investigation. Finally, ISPA and Leggett and Platt, Inc., submitted comments requesting that the Department exclude bed frame components in general, and those bed frame components imported into the United States by Leggett and Platt in particular, from the scope of the investigation. These parties argue that remans should be excluded from the scope of the investigation because: (1) They do not belong to the same class or kind of merchandise as rough sawn dimension lumber; (2) they do not benefit from the alleged subsidies under investigation; and (3) they are not made by enterprises included within the specificity finding in the preliminary determination.

The Coalition and Fred Tebb and Sons, Inc. (Tebb) submitted comments in opposition to the exclusion of remans from the scope of the investigation, and to any finding that remans represent a separate class or kind of merchandise. The Coalition applied the Department's five class or kind criteria to remans and concluded that they should not represent a separate class or kind of merchandise. Tebb disputed Respondents' and interested parties' descriptions of remans, claiming that their explanations described "artlike" products, which exaggerated the differences between remans and dimension lumber, and which essentially contended that every cut made to a piece of lumber greatly increases the value of the product at the same time it establishes a new class or kind of merchandise. Tebb noted that

Respondents and other interested parties incorrectly applied their artlike descriptions to all remans, even though remanufacturers sell a wide variety of softwood lumber products, which are usually only minimally processed. The arguments presented by Respondents and other interested parties with respect to remans are addressed in the following three sections.

Class or Kind of Merchandise

By applying the five criteria the Department uses to determine whether merchandise is within the class or kind of merchandise covered by the investigation, Respondents and other Canadian interested parties concluded that remans are not the same class or kind of merchandise as dimension lumber or rough sawn lumber. They further cite the U.S.-Canada Memorandum of Understanding on Softwood Lumber (MOU) as evidence that certain remans were identified and accorded different treatment than other softwood lumber products, confirming that they are a different class or kind of merchandise. Citing the results of their class or kind analysis and the MOU treatment of remans, they contend that the Department should exclude these products from the scope of the investigation because of their significant differences from dimension lumber. Respondents allege that the focus of the investigation is on rough sawn or dimension lumber, and that the Department and the U.S. domestic industry really are not interested in remans.

The scope of this investigation, however, clearly includes both so-called dimension lumber as well as other softwood lumber products, including remans. The Preliminary Determination stated:

Since the scope of our investigation includes those products covered by the U.S.-Canada Memorandum of Understanding on Softwood Lumber, which includes not only dimension lumber but a wide variety of other lumber products, all of these products are considered to fall within the scope of this investigation. (Emphasis added.)

Therefore, there is no basis for excluding remans from the scope of the investigation just because they are different from other lumber, which is also included within the scope. Furthermore, the domestic industry did argue both in its direct and rebuttal briefs against excluding remans from the scope of the investigation.

Nor is there any basis for determining that remans as a group are a separate class or kind of merchandise. There is no widespread agreement on an exact definition of "remans," which

essentially is a term of convenience that indicates that at least some additional processing has been performed on rough sawn lumber. The descriptions of remans on the record are laced with generalities too broad for the Department to conclude that even a subset of remans constitutes a separate class or kind of merchandise. While the Department does not dispute that certain remans are produced from highly sophisticated processing techniques, no attempt was made to enumerate which processes, when applied to softwood lumber, changed the physical characteristics, ultimate use, expectations of the final consumer, advertising, and channels of trade sufficiently to create a separate class or kind of merchandise. The comments received did not present a coherent set of criteria by which the Department could create or delineate a class or kind of merchandise from among the welter of softwood lumber products.

The evidence on the record does not demonstrate that all remans constitute a separate class or kind. To the contrary, the evidence presented regarding why remans should be a separate class or kind is contradictory.

For example, the ILRA stated that among the remans made by member companies of the ILRA are "decorative paneling, window casings, flooring, moulding, furniture components, ladder stock, finger-jointed and end-matched merchandise." See Exhibit 8 of the ILRA Brief, p. 3. The ILRA asserts that these "reman products are distinguishable, because of fabrication and finishing, from common sawmill lumber used primarily in the construction, repair and remodeling of residential and nonresidential buildings." *Id.* Decorative paneling, window casings, flooring and moulding, however, while not common sawmill lumber, are nevertheless "used primarily in the construction, repair and remodeling of residential and nonresidential buildings." In its rebuttal brief, the ILRA argues that the distinction is not really whether remans are used in the construction, repair and remodeling of houses; it is that they may be used for nonstructural interior purposes. The list of remans provided by ILRA, however, contains siding, gutters, fence boards, door stock, window sash cuttings, furring and roofing strips used across structural members of walls and ceilings to serve as a base for the attachment of wall, ceiling and roof materials, and tongue and groove roof and floor decking which provides a structural deck. See ILRA brief at Exhibit B. These remans do not necessarily fit the description of non-

structural interior purposes. In addition, all of these products, some of which may be advertised separately, are also frequently available in lumber yards.

Throughout this proceeding, the term "reman" was routinely applied to a wide variety of lumber products, some of which would clearly be within the scope of the proceeding even if it were limited just to dimension lumber. For example, Green Forest and Tebb indicated that their remanufacturing businesses consist of nothing more elaborate than cutting the lumber into customer-specified sizes. They remanufacture 2X4s and 2X6s out of 2X10s. The ILRA, on the other hand, argues that remans should be a separate class or kind because the amount of remanufacturing is so substantial. It argues that sawmill lumber, as opposed to remans, is generally sold to the construction industry in an "as-is" condition, ready for use as the structural component of a building. The same is true, however, for the remanufactured 2X4s and 2X6s to which we referred above.

Some of the descriptions of what might constitute a reman presented for the record were mutually exclusive. For instance, the ILRA indicated that only the best quality lumber can be used for remans, resulting in remans always being of a superior quality wood than standard dimension lumber. However, the ISPA and Leggett and Platt stated that its reman product of interest, bed frame components, is produced using wood from the undesirable outer portion of a log, which is often used for the manufacture of wood chips, and therefore is, at least in some respects, unlike the more expensive prime dimension lumber which they argue is the focus of the investigation. (See ISPA and Leggett and Platt brief, p. 14.) Finally, comments received were hyperbolic in nature, with Canadian interested parties insisting that their descriptions of the most highly processed remans made from only the most valuable lumber applied to all remans, while the Coalition contended that the consumer's expectations for remans and standard dimension lumber were the same because the consumer demands of both products the best quality for the lowest price.

Likewise, there was conflicting evidence regarding the amount of value-added to the lumber product by the remanufacturing. ILRA and Leggett and Platt argue that there is substantial value added, while Tebb and Green Forest Products state that this is not necessarily the case. Neither side presented any reasonable, objective criteria by which the Department could

distinguish among the numerous softwood lumber products.

Respondents point to the MOU, and appendices B and E of the MOU in particular, as evidence that the Department has at least implicitly recognized the unique nature of remans as a group, and that the Department has experience identifying individual reman products and administering separate provisions for remans.

The list of products included in appendices B and E of the MOU were derived from the scope of the 1986 investigation, and only served to clarify product coverage for purposes of administering the MOU (*i.e.*, the basis on which the export tax would be collected.) The lists themselves, however, and the products specifically enumerated and defined in them, resulted from the series of negotiations conducted in connection with the MOU. As such, the lists and the products they include are not indicative of the results of an examination of factual evidence presented to the Department and analyzed according to the five class or kind criteria. While the lists contain enough information to describe fairly what had been agreed upon during negotiations, they do not provide sufficient information for us to analyze properly each product according to our criteria. Therefore, the Department cannot rely on these lists as evidence that remans represent an individual class or kind of merchandise within the meaning of the Trade and Tariff Act of 1930, as amended, (the Act) or as a basis for establishing a separate class or kind.

Pass-through of Subsidy to Remans

Respondents and other Canadian interested parties contend that because remanufacturers purchase softwood lumber as an input at arm's-length prices, the Department has not found that remans receive a countervailable subsidy. Some Respondents also argue that the focus of the investigation is the primary product targeted by the subsidy program which was the subject of the investigation. Leggett and Platt and the ISPA argue that the Department cannot include bed frame components within the scope of the investigation because the Department has not found that Canadian producers of bed-frame components themselves have received countervailable subsidies.

As pointed out above, remans are included within the scope of the investigation, and the Department did investigate whether remans benefitted from the subsidies investigated. The Department determined that remans do benefit from subsidies. As the ILRA noted, not all remans are manufactured

by independent producers; some reman producers are integrated companies which purchase stumpage and manufacture both dimension lumber and remans. See ILRA rebuttal brief p. 4. Therefore, some producers of remans do benefit directly from stumpage. A comparison of the reman products included in appendices B and E of the MOU with the products listed in the results of Respondents' surveys of end products produced by stumpage holders demonstrates that there are many remans that are produced by tenure holders, and which, therefore, benefit directly from stumpage subsidies. Specifically, several products, such as lath, siding, flooring, and treated softwood lumber were listed in both the MOU appendices and in the results of the end product surveys. While bed frame components, and not bed frames (which appear on the end products survey), are included on the MOU reman list, it is nevertheless clear that the stumpage-holding companies which produce the bed frames must first make the constituent bed frame components. Therefore, the subsidized stumpage holders who produce bed frames also manufacture remans, at least at one point in their production process. Similarly, results of the end products surveys indicate that stumpage holders produce doors, pallets, and fences, while door stock, pallet stock, and fence boards all appear on the MOU appendices. While we were not completely satisfied that the end product surveys were accurate and complete, it is apparent that stumpage holders do produce remans (see the "Specificity" section of this notice).

Since it is clear that several of the products listed in MOU appendices B and E produced by independent reman producers are the same products that are produced by stumpage holders that benefit from the subsidies found to exist, the issue then becomes determining which individual companies produce remans as part of a continuous process starting with the felling of subsidized timber, and which produce remans from lumber purchased at arm's length. The Department's procedures for accomplishing this are either through company exclusion requests or through the investigation and promulgation of company-specific rates. However, because the number of exclusion requests exceeded 300 and the number of timber processing companies is even greater, these analyses would have been so large as to be impracticable, and arguably impossible, within the confines of this countervailing duty investigation. For a fuller explanation of our rationales

for these exclusion and company-specific rate decisions, please refer to the "General Calculation Issues," and "Company Exclusion" sections of this notice.

Upstream Subsidy Issue

Respondents argue that the Department cannot include remans, including bed frame components, within the scope of the investigation because the Department has not found that the subsidies provided to Canadian softwood lumber producers are provided to independent reman producers. As such, countervailing duties on imports of remans may not be imposed absent an affirmative upstream subsidy determination with respect to the imported merchandise.

Section 701(e) of the Act provides that whenever the Department has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A(a), is being paid or bestowed, the administering authority shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 771A(c). Section 771A(a) defines an upstream subsidy as any subsidy that is bestowed on an input product used in the manufacture of the merchandise subject to the investigation, if there is a competitive benefit bestowed on the subject merchandise that has a significant effect on the cost of manufacturing of the subject merchandise. There is a competitive benefit if the price for the input product is lower than an unsubsidized, arm's-length price.

The scope of this investigation covers certain softwood lumber products, and includes both dimension lumber and remans, the former being the input to the latter. Both dimension lumber and remans are produced by stumpage holders which receive stumpage at preferential prices. Reman producers that purchase lumber from stumpage holders at arm's-length prices argue that the Department cannot impose a countervailing duty order on their lumber products without conducting an upstream subsidy investigation to demonstrate that the remans are receiving a countervailable benefit. As we discussed above, the Department has found that some producers of remans are found to be receiving countervailable benefits. The Department is not obligated to investigate every producer of the subject merchandise if some producers are found to be receiving subsidies. Exclusion investigations, which were impracticable in this investigation, are

the appropriate avenue to determine if there are specific companies that do not receive countervailable benefits. The Coalition, on the other hand, contends that section 771A is irrelevant because forestry products are within the scope of the agriculture provision under section 771B.

We disagree with the Coalition that an analysis based on section 771B of the Act is applicable in this case. Section 771B, which deals with certain processed agricultural products, mandates that " * * * subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product," if the demand for the raw agricultural product is substantially dependent on the demand for the latter-stage product, and the processing adds limited value to the raw product. Remans are not processed agricultural products for the purposes of this provision. The Act and its legislative history indicate that this provision was intended for agricultural food products with minimal processing between the raw agricultural product and the processed product, not a manufactured product such as remans (which are produced from another manufactured product, lumber). Specifically, section 771(4)(E)(iv) defines "raw agricultural product" as "any farm or fishery product."

Moreover, assuming, *arguendo*, that lumber were an agricultural product intended to be covered by Congress under section 771B, there is no evidence on the record indicating that demand for remans is substantially dependent on demand for logs, the raw product in this case, nor is there substantial evidence showing only "limited" value added either when processing logs into lumber or lumber into many remans.

GATT Issues

Some Respondents argue that the General Agreement on Tariffs and Trade (GATT) precludes the levy of countervailing duties in excess of the amount of subsidy found to exist. They conclude that because subsidies were not found to exist on remans, countervailing duties cannot be applied to them. This investigation does not result in the levy of countervailing duties. Actual duties will not be levied unless an order is issued, and even then not until a section 751 review is completed or not requested. Further, because this is an aggregate case, it is necessary for the Department to calculate and assess duty deposits on the average subsidy found for all of the merchandise subject to the

investigation. We do not believe that these procedures violate the GATT or the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (GATT Subsidies Code). Because we cannot calculate the average subsidy on all merchandise (as Statistics Canada could not provide the relevant total value of all shipments of the subject merchandise), we will instruct Customs to collect cash deposits on a first mill basis. As such, we will not collect more in deposits, on average, than the amount of subsidy found. With respect to actual duty assessment, this issue will be addressed during the first administrative review if an order is issued and if such review is requested.

Collection of Duties for Remanufactured Softwood Lumber Products on First Mill Basis

Respondents argue that if the Department does not accept their contentions that remans represent a separate class or kind of merchandise, which should be excluded from the order (if an order is issued), at a minimum, the Department should, be consistent with its instructions to Customs made following the Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 51 FR 37435 (October 22, 1986) (Lumber II), that the countervailing duty be imposed on the first mill value of the lumber input.

Tebb opposes duty assessment on this basis, citing the alleged imprecision resulting from the fluidity of potential methods for the accounting of first mill values, and the inherent difficulty in enforcing such a provision.

The Department is requiring the posting of a bond or cash deposit on the first mill value for the purposes of this investigation. However, to the extent that any of Tebb's concerns regarding incorrect postings are borne out, the matter should be presented directly to the Customs Service. For a fuller discussion of our rationale for the use of first mill values, see the relevant portion of the "General Calculations Issues" and the "Suspension of Liquidation" sections of this notice.

Company Exclusion Requests

In the Preliminary Determination, we preliminarily determined that six companies out of the 334 companies that requested exclusion would qualify for exclusion from any eventual countervailing duty order. The Department had previously determined that investigating 334 company-specific

exclusion requests was not practicable within the meaning of 19 CFR 355.14(c). (See Decision Memorandum, Company Exclusions, January 17, 1992, in the public file, Room 8099, of the Department of Commerce.) (All relevant case documents referenced in this notice are available in the public file at this location.) Although we determined that we could not investigate 334 exclusion requests, we did accept exclusion requests from companies that used exclusively or primarily U.S.-origin logs in their lumber production.

For purposes of this final determination, the Department considered all 24 exclusion questionnaire responses which the GOC submitted on January 31, 1992. We also took into account all timely information submitted on behalf of these companies after January 31, 1992.

Based on our review of the responses, certifications received, and verification, we have determined to exclude 15 companies from any countervailing duty order issued as a result of this investigation. In determining which companies to exclude, we first identified those companies that exported to the United States during the period of investigation (POI). Six companies did not export to the United States during the POI and, therefore, have not been excluded pursuant to 19 CFR 355.14. Next, we checked to see if all companies purchased the subject merchandise during the POI. One company did not purchase any U.S.-origin logs and did not provide data on its purchases of non-US.-origin logs and, therefore, was not excluded.

The next stage was to identify those companies which used only U.S.-origin logs in their lumber production during the POI. There were three such companies. We then identified those companies which purchased both U.S.-origin logs as well as non-U.S.-origin logs and lumber. For these companies we applied the province-specific per cubic meter benefit to the volume of each company's purchases of private logs, Crown logs, and Crown lumber, and a zero rate to the value of each company's purchases of U.S.-origin logs. If, after calculating the benefit and dividing by total shipment value, a company had an overall *de minimis* subsidy rate, it was excluded. Only one company was found to have a rate above *de minimis*, and, therefore, was not excluded. Where necessary, we have applied the weighted-average exchange rate for the period of investigation to convert values reported in U.S. dollars to Canadian dollars.

Respondents have argued that the Department should exclude all

companies located in the southern border region of Quebec based on a Forestry Canada study of this region that found that 70 percent of the lumber made in the region was from U.S.-origin logs. Respondents argue that at a minimum, the Department should only apply the benefit to the estimated 30 percent of lumber that comes from non-U.S.-origin logs.

The Department's regulations provide only for company exclusions, not geographic or regional exclusion requests. If the Department were to exclude all companies from Quebec's border region without having examined them on a case-by-case basis, the Department may inadvertently exclude companies in the region that, according to our regulations, would be ineligible for exclusion (see 19 CFR 355.14). For example, companies that did not export to the United States during the POI are ineligible for exclusion.

However, the Department has allowed company-specific exclusion requests in this investigation under 19 CFR 355.14. All companies from Quebec's border region with the United States that believed they were eligible for exclusion should have applied for exclusion, as a number of companies have done.

In addition, Respondents argue that all arm's-length lumber purchases should be excluded from the Department's benefit calculation for the exclusion companies. We disagree with Respondents with respect to this issue. According to 19 CFR 355.14(b)(3), if the exporter is not the producer of the merchandise, the person must certify that the suppliers or producers of the merchandise receive no subsidies. When a wholesaler, trader, or other type of seller purchases a product and performs no value-added manufacturing, the Department assumes that the subsidy on the product passes forward to the selling stage. (See Final Affirmative Countervailing Duty Determination and Countervailing Order: Certain Steel Wire Nails from Thailand, 52 FR 36967 (October 2, 1987)). On this basis, the benefit was applied to all purchases of lumber, whether or not they were at arm's length.

Moreover, Respondents argue that the Department should use a company's province-specific rate for purposes of the exclusion calculation. The Department agrees with Respondents and has used the province-specific per cubic meter benefit in order to calculate the subsidy rate for exclusion companies.

Finally, for those companies not found to have *de minimis* benefits, Respondents argue the Department should calculate company-specific rates.

According to 19 CFR 355.20(d), the Department will calculate individual rates only to the extent practicable. The Department has determined, as previously stated above in regard to requests for exclusion, that because of the large number of companies involved in this investigation it is not practicable to calculate company-specific rates.

The names of the excluded companies are listed in the "Suspension of Liquidation" section of this notice. We have adjusted our country-wide rate calculation to remove the effect of the companies we have excluded.

Analysis of Programs

For purposes of this determination, the period for which we are measuring subsidies (the POI) is the GOC's fiscal year, April 1, 1990, through March 31, 1991.

Unless otherwise specified, all values referred to are denominated in Canadian dollars.

General Calculation Issues

Use of Aggregate Data

We have relied on aggregate information (*i.e.*, data for the manufacturers, producers and exporters in all provinces and territories subject to investigation) provided by the GOC and the provincial governments for this determination because of the large number of producers of softwood lumber products covered by this investigation. Although we received a number of requests for company-specific rates, we determined not to issue any company-specific rates in this investigation.

Shipment Values Used in Denominator of the Subsidy Calculation

The shipment data contained in the denominator of the benefit calculation are vital for two reasons. First, it has an important impact on the benefit calculation and hence must be as accurate as possible. Second, the product composition incorporated in the shipment value has important implications for how U.S. Customs should collect the duty. That is, if the value of all remans within the scope of this investigation is included in the denominator of the benefit calculation, then U.S. Customs must collect the duty on the value at the mill of final manufacturing (*i.e.*, final mill). On the other hand, if the value of remans is excluded from the denominator of the benefit calculation, then U.S. Customs must collect the duty on the value exiting the first mill of manufacturing (*i.e.*, first mill). Both the accuracy and composition of the shipment value used

in the Preliminary Determination have been questioned by the Coalition.

The Coalition argues that the denominator includes a certain amount of double counting, which occurred as a result of including the value of some remans and the lumber inputs from which they came. It maintains that therefore the denominator should be reduced by a minimum of five percent (the estimate of double counting by Statistics Canada officials). The Coalition further insists that, since the shipment value includes remanufactured lumber, the Department should collect the duty on a final mill basis in order to capture the entire value of the remans entering the United States. Even if remans can be purged from the shipment value, the Coalition insists that collecting the duty on a first mill basis would be difficult, if not impossible, to enforce. Lastly, the Coalition maintains that even if U.S. Customs treats remans differently, these exceptions should only be made in the case of arm's-length transactions and for companies which produce remans exclusively from lumber.

Respondents counter that the small degree of double counting in the shipment data only serves to understate the amount of the denominator, *i.e.*, it is to their detriment. They also maintain that since the shipment value expressly excludes siding, flooring, and other remanufactured millwork, the duty should be assessed on a first mill basis. They contend that this is administratively feasible and precisely what U.S. Customs did after Lumber II.

In order to explain this issue, it is important to describe how the shipment data were calculated. At verification, it was established that data on total shipment values of all subject merchandise were not directly available to the GOC. Therefore, Statistics Canada calculated shipment values from its existing data. Statistics Canada collects the relevant data primarily on a first mill basis and has no system for collecting final mill data. The Department verified both the data and the calculations.

As discussed in detail in the Federal Government Verification Report, there were two general components of the shipment values—the calculated, per unit shipment values and the actual shipment volumes. Statistics Canada multiplied these two figures to obtain total shipment values for each province. The shipment volumes explicitly exclude double counting, while the calculated, per unit values may contain a small amount (*i.e.*, estimated to be five percent by Statistics Canada officials) of remanufactured shipment values.

Based on verification, the Department finds the shipment data free from double counting. First, as stated above, the shipment volumes are carefully scrutinized by Statistics Canada for double counting. Secondly, while the calculated, per unit shipment values may contain some remanufactured shipment values, their inclusion in the per unit value renders an average per unit value which, in all likelihood, is insignificantly different from a purely lumber per unit value.

The Coalition's statement that the shipment data are overestimated by five percent stems from a misunderstanding of the data. Statistics Canada officials explained during verification that among the various per unit prices comprising the average per unit value, five percent were from remans. They did not state that the per unit values were five percent higher as a result of including the remanufactured per unit values.

On the other hand, Respondents' assertion that the inclusion of some per unit prices for remans slightly lowers the shipment value is only partially true; it is true for the example they provide. However, the shipment value also includes some remanufactured per unit values which will tend to overstate the figure. This is explained below.

There are two general types of remanufactured per unit values included in the per unit shipment values and they tend to offset one another. One group, lumber that is sold from the first mill rough and then planed in the second mill, will include per unit prices which tend to understate the total, calculated, per unit value. This is true since U.S. Customs will collect duty on a FOB first mill basis only insofar as the lumber is at least to the planed stage. That is, when lumber is not planed in the first mill, the planing mill is then considered to be the first mill.¹ The second group, lumber that is sold in standard dimensions from one mill to a second mill which cuts the lumber into custom dimensions, will include per unit values which tend to overstate the total, calculated, per unit value. Hence the effect of the remanufactured per unit prices on the total, calculated, per unit prices, while impossible to determine with precision, is most certainly quite small and not to the clear advantage of either party.

While the Department's clear preference is to use final mill values in

calculating benefits (which we requested in the questionnaire), the fact that such data were not available and could not be accurately estimated or calculated, and the fact that Statistics Canada made every effort to isolate and accurately calculate first mill shipment values, have rendered a situation in which using first mill is applicable. Therefore, in calculating the subsidy rate from the programs that the Department is finding countervailable, the Department is using as the denominator the shipment values provided by Statistics Canada, which represent to the best possible extent, the value of softwood lumber products at the first mill. As such, the Department will also instruct U.S. Customs to collect the duty on the FOB first mill value.

Inclusion of By-Products in the Denominator

To calculate the *ad valorem* subsidy from stumpage programs, the Department has divided the total benefit by the value of certain softwood lumber products (at the first mill/planing mill stage) plus the value of by-products that are produced during the lumber production process and sold by lumber producers.

To calculate the benefit used in the numerator of the calculation, we have multiplied the per cubic meter differential between the preferential and nonpreferential stumpage prices by the volume of subsidized logs harvested from provincial lands that entered sawmills during the period of investigation, to the extent that we had verified data for this calculation. The Department did not include in the calculation the volume of logs harvested from private, federal or native lands, or the volume of logs harvested from provincial lands that were provided at nonpreferential prices. As discussed below, we did not exclude sales of subsidized logs by major tenureholders to unrelated companies that were harvested from provincial land because data isolating such sales from all trade in logs were not provided.

In the denominator of the subsidy calculation, the Department included the total value of all softwood lumber shipped in each province (at the first mill/planing mill stage) plus the shipment value of by-products that are produced during the lumber production process. The total value of softwood lumber includes lumber produced from both subsidized and nonsubsidized stumpage. By using this total value in the denominator, we ensure that we do not countervail more than the average subsidy attributable on an aggregate

¹ An April 20, 1992 letter from Ms. Barbara Tillman, Office Director, Office of Countervailing Compliance, to Mr. Carlton L. Brainard, Director, Office of Trade Operations, U.S. Customs Service states "[p]lease note that further processing does not include the planing process from rough-cut to planed lumber."

level to the products under investigation.

Numerator Issues

Respondents assert that the Department should exclude from the numerator the proportion of logs sent to sawmills but attributable to the production of products other than softwood lumber products. Conversely, Respondents argue that the Department should include in the numerator of the calculation only the volume of the logs harvested based on the proportion of wood fiber from Crown timber entering sawmills that emerges as softwood lumber. Neither of these proposals is methodologically correct.

Stumpage is provided at preferential rates to producers of certain softwood lumber products. Because the stumpage holders themselves are lumber producers, the stumpage benefit is like a grant to the company. As discussed in the "Specificity" section above, we have determined that the stumpage benefit is not tied solely to the production of softwood lumber. As a result, all products produced during the lumber production process receive the benefit. When stumpage holders purchase the softwood timber, they are not purchasing just that portion of the timber that can be used to produce lumber, nor are they purchasing the timber in its constituent parts. Moreover, it is the whole log that must be processed to produce lumber, not just certain parts of the log or a certain volume of the log.

Because the stumpage benefit that we are calculating is that which is received by lumber producers which purchase subsidized stumpage, and not a benefit received by log producers, the subsidy is properly attributed to the value of the lumber products produced from that preferentially provided input. Despite Respondents' arguments, it is irrelevant whether products that are produced during the lumber production process are at different stages of production than finished lumber. The stumpage subsidy benefits sales of all products produced during the lumber production process.

Further, Respondents are not on point when they argue that the subsidy on the stumpage should be diluted by apportioning between the volume of the log that ends up as lumber and the volume that ends up as other products. That argument pertains to pass-through issues and is not relevant in this case because the producers that receive the benefit from the program are also the producers of the certain softwood lumber products subject to investigation. Thus, this is not a pass-through issue as

in Final Affirmative Countervailing Duty Determination: Fresh, Chilled and Frozen Pork from Canada, 54 FR 30774 (1989) (Pork), where the producers of swine were different than the producers of pork products.

The only conceivable volume-based analysis that could be considered relevant is not what portion or percentage of the log ends up as lumber, but rather how many cubic meters of a log are required to produce one cubic meter of lumber. As such, the proper analysis would be to apply the inverse of Respondents' volume argument so that the subsidy that benefits shipments of certain softwood lumber products is not diluted. Under such an analysis, one would calculate how many cubic meters of logs (e.g., 3) are required to produce one cubic meter of lumber, and then multiply the per cubic meter benefit by this yield factor. The result would then be multiplied by the total cubic meters of lumber shipments and that amount would be the total benefit used in the numerator.

However, such a calculation of lumber yield is unnecessary because when we multiply the per cubic meter stumpage benefit by the total cubic meters of logs harvested under subsidized tenures that enter sawmills, we have calculated the total benefit received by all lumber producers in the aggregate. Indeed, such a calculation would be uncalled for inasmuch as we consider that the subsidy being provided is not tied specifically to sales of softwood lumber but rather to sales of all products produced during the lumber production process. If we were to use a lumber yield factor adjustment (which is the only volume-based allocation of the benefit that could arguably be appropriate), there is no way to attribute any amount of the subsidy to chips or other by-products because there is no comparable volume yield factor. Since the subsidy on stumpage (i.e., the log) is not tied to specific products produced during the lumber production process, the only appropriate way to allocate the benefit is to divide by shipment values of all products produced during the lumber production process. Thus, the only remaining issue is to determine the relevant sales values over which the benefit should be allocated.

Denominator Issues

We have recognized that there are certain products of commercial value that result from the lumber production process, (i.e., chips and sawdust) that are separate and distinct from the lumber produced. Accordingly, we have included the value of these products in our denominator in order to calculate

the *ad valorem* subsidy rate, consistent with the Department's practice described in section 355.47(c)(1) of its Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations).

Respondents agree that the Department was correct in allocating the benefit over not just lumber but also the commercial products produced by mills other than lumber, including chips, sawdust, and shavings. This is inconsistent, however, with the remainder of their argument. Respondents' own calculation, as provided in their case brief, does not include the value of products other than lumber, i.e., chips, sawdust, and shavings. They argue that these products should not be included because they are at different stages of processing than finished lumber, and that by including products at different stages of the production process, we are causing distortion. We disagree with Respondents that we are causing distortion by attributing the subsidy to products that are at different stages of the production process. Chips, sawdust, and lumber were all produced during the same milling process. We assume that as a result of the milling operation, all products that are produced and sold benefit from an untied subsidy. While we recognize that lumber may have more value added when compared to woodchips and sawdust, it is the Department's intent to capture the amount of the subsidy based on the total value of all products sold regardless of whether one product has more value than another.

As discussed above, we have included the values of chips and sawdust in the denominator of our calculation. This is consistent with the Department's practice, described in its Proposed Regulations, § 355.47(c)(1). This section provides that where the Department determines that a countervailable benefit is not tied to the product or sale of a particular product or products, the Department will allocate the benefit over all products produced by a firm, in the case of a domestic program.

The Coalition maintains that the Department erroneously allocated the subsidies to lumber mills over both the primary product and the by-products that result from the production of lumber. The Coalition argues that the woodchips, sawdust, and shavings that are residues from the production of softwood lumber are properly categorized as by-products (i.e., they are produced as the necessary result of the production of a much more valuable

good). The Coalition cites three determinations involving Lamb Meat from New Zealand 46 FR 58128 (1981), 54 FR 1402 (1989), and 54 FR 19590, (collectively, Lamb Meat) and Pork where the Department has allocated the subsidy exclusively to primary products. Despite Respondents' arguments, the Coalition maintains that the ruling of the U.S.-Canada Binational Panel in Fresh, Chilled, and Frozen Pork does not require the Department to overturn its prior controlling precedents.

The Coalition further argues that provincial stumpage programs are targeted, if not explicitly "tied," to softwood lumber production. They argue that there can be little doubt that the basic effect of the subsidized provincial stumpage programs is to aid and benefit sawmills so as to promote softwood lumber production, not the production of chips. Furthermore, the Coalition argues that the intent behind the program is normally an important consideration when the Department must make an allocation.

We disagree with the Coalition with respect to these issues. As discussed above, the Department has determined that the stumpage subsidy is not provided specifically to the producers of softwood lumber, or tied specifically to the production of softwood lumber. Thus, any products that are produced during the lumber production process, and sold by lumber producers purchasing subsidized stumpage, benefit from the stumpage subsidy. Therefore, pursuant to the Department's regulations, we are allocating the benefit over the total value of shipments (at the first mill/planing mill stage) of all products produced during the lumber production process.

The Coalition's references to Lamb Meat and Pork are inapposite. In the most recent administrative review of Lamb Meat, 56 FR 38423 (August 13, 1991), subsidy benefits were for lamb meat production, and thus were allocated over the shipment value of lamb meat. The Coalition's argues that (1) the methodology used by the Department to allocate the benefit in the Redetermination on Remand in Pork is inapplicable here, (2) the Panel decision does not have precedential value for future cases, and (3) the circumstances involved in allocating the benefit to pork producers are unique to that case. However, we find these points to be in contradiction when, in response to Respondents' volume arguments, the Coalition cited to the Department's position in the Redetermination on Remand where the preferred methodology for "achieving an equitable

allocation would be to divide the total benefits received by hog farmers by the total value of products derived from their hogs."

Finally, the Coalition further argues that an additional subsidy is conferred upon sawmills by reason of the requirements in BC and Quebec that pulpmills buy chips from sawmills before chipping logs since these requirements artificially increase purchases of chips from sawmills, inflate the prices paid for the chips, and thus enhance the apparent value of chips relative to lumber. According to the Coalition, if the Department believes that softwood lumber and chips are joint products to which lumber mill subsidies should be allocated, then any benefit to produce additional chips is necessarily a benefit to produce additional lumber, and must offset the lumber subsidy resulting from the chip purchasing requirement.

For these reasons, the Coalition maintains that the artificial increase in the price of chips caused by the chip purchasing requirements must be discounted by 25 percent to account for the extent to which chip purchasing requirements artificially increase chip prices.

Although sawmill operators in British Columbia and Quebec may be required to sell their chips resulting from the lumber production process to pulpmill operators, this practice 'is not being investigated as a subsidy in this case. Furthermore, we have no reason to believe that a sawmill operator will alter his lumber production in order to increase chip production and corresponding sales to offset the costs of producing lumber. Because chips are not covered by the scope of this investigation, and because these procurement requirements are not being investigated, we have made no attempt to ascertain or quantify the effect that chip purchasing policies may have upon the price of chips or the production of lumber.

Based on the above discussion, we determine that no changes are necessary in the methodology used in the Preliminary Determination to calculate the total benefit used in the numerator (after the per cubic meter benefit has been determined), or to calculate the denominator used in the calculation of the *ad valorem* subsidy rate.

Pulplog/Sawtimber Adjustment (Alberta, Quebec, and Ontario)

The Coalition argues that because pulpwood is an inferior good (*i.e.*, smaller, bent, or of poorer quality), the price of pulpwood cannot be used as a benchmark for the price of sawtimber

without adjustment. Further, the Coalition argues that since Canadian pulpwood prices are equivalent to prices for similar stands of pulpwood in the United States, the Department need only increase Canadian pulpwood prices by the ratio of U.S. sawtimber to pulpwood prices to obtain an undistorted market price benchmark for sawtimber. As support for its contention that pulpwood is an inferior, lower-priced good, the Coalition presented the Department with information from foreign markets that show sawtimber prices to be significantly greater than pulpwood prices.

As explained below, the Department has determined that regardless of whether pulpwood is considered to be inferior to sawtimber, we do not consider it appropriate in this case to compare Canadian stumpage prices for pulpwood and sawtimber with United States prices. Differences in definitions across borders for pulpwood and sawtimber preclude accurate comparisons. In general, the provinces selling stumpage define the timber by end use (*i.e.*, pulpwood is what it processed by a pulpmill and sawtimber is what is processed by a sawmill) and not by the size and other physical characteristics of the wood. In other countries, sawtimber and pulpwood may be more commonly defined by size rather than end use. Wide variations in species, size, quality, and accessibility provide additional barriers to crossborder or international comparisons.

We found no evidence that in selling stumpage the governments define by size, species, or grade which logs will be charged the pulp rate and which logs will be charged the sawmill rate. The information on the record indicates that because of technological advances that enable sawmills to obtain lumber from small diameter logs, which comprise the large majority of the harvests of Alberta, Ontario, and Quebec, there is little difference in the timber consumed by pulpmills and sawmills in Canada. In Ontario, sawmills can use roundwood with a diameter as small as four inches. For the vast majority of roundwood consumed by sawmills and pulpmills there is little if any difference in quality, though there may be differences at the extremes (*e.g.*, some roundwood is too large to be sent through a chipper and some roundwood is too small and bent to be sent through a sawmill).

The Coalition argues that, in the case of Alberta, if the Department does not use cross-border information to adjust pulp prices, the Department should use the difference in sawtimber and

pulpwood prices found in the Commercial Timber Permit sales because in those sales sawtimber prices are higher. We have declined to apply this difference, however, as the volume of stumpage sold under the relevant Commercial Timber Permits was so small (450 cubic meters, which is less than one hundredth of one percent of the total Crown softwood harvest) that we do not consider it an appropriate measure of the value of pulpwood in comparison with sawtimber.

In sum, any attempt to make a distinction between sawtimber and pulpwood is becoming increasingly artificial. Moreover, in selling the stumpage the provinces make no distinction in the timber except based on its end use. Our use of pulp prices as benchmarks in certain provinces is possible because these provinces do not distinguish between pulpwood and sawtimber based on physical characteristics. However, the reason we are using the price paid for pulpwood as a benchmark is not that it is higher than the sawtimber rate. Rather, the basis for our determination that these pulp prices can be used as a benchmark is that they are nonpreferential prices charged for the same good within the relevant jurisdiction. As such, the Coalition's argument that an upward adjustment should be made to these benchmark pulpwood prices by applying the rate of sawtimber to pulpwood prices found in the United States would be inappropriate.

Pass Through For Logs

Respondents argue that when logs are traded at arm's length between unrelated companies, no subsidy is passed through to the production of softwood lumber products. Therefore, the Department must remove the volume of all arm's-length log purchases from the harvest multiplier used to calculate the stumpage benefit.

The Department, before making any adjustment for arm's length log purchases, must be able to quantify the total net trade in logs that are harvested solely from subsidized provincial stumpage between unrelated companies. As discussed below, in none of the provinces where the issue was raised was the Department able to quantify accurately this arm's-length log trade between unrelated parties. Accordingly, the Department has made no adjustment.

In Alberta, the provincial government sampled those companies accounting for the top 60 percent by volume of forest area controlled by provincial stumpage holders. These companies provided figures for their total logs purchased

from unrelated companies. Most of these purchases involved trade in roundwood between integrated companies. However, the Department was unable to quantify Alberta's surveyed figure for two reasons. First, the Alberta survey did not report the end use of the traded logs (*i.e.*, pulp and paper or lumber production). Second, the survey results did not indicate from which tenures the logs were harvested (*i.e.*, Crown, federal, private, or Native Indian bands). The Department has already excluded logs processed in pulp mills from its calculation of the benefit. Therefore, any adjustment based on data which include pulplogs would be overstated. Moreover, we have also excluded from the benefit calculation the volume of logs harvested from nonsubsidized sources of timber (private, federal, Native Indian bands).

During verification, BC authorities provided information as to their estimate of the total trade of roundwood between companies (24 percent). As in Alberta, however, BC provided no information isolating the trade in logs used in sawmills that are harvested from provincial lands only. As such, the Department could verify neither the end use nor the origin (*i.e.*, Crown, federal, SBFEP competitive, private, or Native Indian bands) of the estimated quantity of traded logs. Also, as in Alberta, the Department has excluded logs processed in pulp mills and the volume of logs harvested from nonsubsidized sources of timber (*i.e.*, Crown, federal, SBFEP competitive, private, or Native Indian bands) from its calculation of the benefit. Therefore, any adjustment based on such data would be overstated.

Ontario submitted lists of over 150 independent loggers that harvest provincial timber but do not own or operate any type of mill. To arrive at the total volume harvested by independent loggers, Ontario used the company-specific license data provided in its response and isolated those companies that did not own or operate some type of mill. At verification, Ontario stated that it did not know if these independent loggers were related to a mill, as defined by its stumpage dues system and Ontario tax law. At verification, the Department selected 12 independent logging companies that accounted for almost 26 percent of total volume harvested by independent loggers and checked to see if these companies owned or operated a mill. We examined the original license documents for these 12 companies and found that four of the 12 selected companies were not independent loggers but actually owned or operated a mill. The four companies that were not independent loggers

accounted for almost 21 percent of the sample volume. (See Ontario Verification Report pp. 18-19.)

Because of the inability of Alberta and BC to disaggregate their arm's-length log trade data into sales of logs harvested solely from subsidized Crown timber destined for sawmills, and because of the discrepancies associated with the verification of the selected companies in Ontario, the Department has determined that there is no basis for making this adjustment in any of the three provinces where this issue was raised.

Application of Country-Wide Rate

The Province of Quebec argues that the Department should apply province-specific, as opposed to country-wide, rates in this investigation. In support of its argument, Quebec makes the following points: (1) U.S. law recognizes provinces as "countries" for countervailing duty purposes; (2) Canadian provinces have exclusive jurisdiction over timber within their borders; (3) there are no federal programs or joint federal/provincial programs that contribute to the countervailing duty rate; (4) one province cannot control the softwood lumber programs in another province; (5) application of a country-wide rate to a province whose individually calculated subsidy rate is lower than the country-wide rate violates U.S. law because the Department must assess a countervailing duty equal to the amount of the net subsidy; (6) the Department can never apply a true country-wide rate in this investigation because the provinces of Prince Edward Island, Nova Scotia, New Brunswick, and Newfoundland (the Maritime Provinces) were excluded from the initiation; (7) the provinces were individually responsible for the export charge under the MOU and for instituting replacement measures; and (8) if the Department does not issue province-specific rates it should apply the "significant differential" test used for companies under 19 CFR 355.20(d) (see the Province of Quebec's April 21, 1992 case brief). We note that neither the GOC nor any province under investigation other than Quebec made a request for province-specific rates.

Section 701 of the Act provides, in relevant part, that if the Department determines that a "country under the Agreement" is providing a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported, or sold for importation, into the United States (and the ITC determines that such imports

are causing injury to the domestic industry), the Department shall impose a countervailing duty on the merchandise equal to the amount of the net subsidy.

As pointed out by Quebec, section 771(3) of the Act and 19 CFR 355.2(d) indicate that the term "country" includes a political subdivision, in this case, a province. Obviously, however, the meaning of "country" depends on the context. For example, if "country" always meant province, imports from Quebec would not receive the benefit of an injury test under section 701(a) of the Act, because Quebec is not a "country under the Agreement" within the meaning of section 701(b) of the Act. Similarly, 19 CFR 355.11(a), which implements article 3(l) of the GATT Subsidies Code, uses "country" in its ordinary sense. The question then is what Congress meant by "country" when it added section 706(a)(2) to the Act in the Trade and Tariff Act of 1984.

Section 706(a)(2) was one of several amendments proposed by the Executive Branch. In the case of section 706(a)(2), the purpose of the proposal was to codify and clarify existing Department practice, which was generally to calculate a single nation-wide subsidy rate, except in certain instances in which the Department would calculate separate subsidy rates for individual firms. At the time, the Department never had calculated a province-specific rate, and, to our knowledge, the issue never had arisen or been addressed. Therefore, in 1984, Congress only had before it two options available under Department practice at the time: a single nation-wide rate or individual company rates. In light of this, we believe Congress intended that the word "country," as used in section 706(a)(2), possess its normal meaning. In other words, in 19 CFR 355.20(d), which implements section 706(a)(2), "country-wide" means "nationwide."

Quebec also contends that applying a country-wide rate to a province whose subsidy rate is lower than the country-wide rate violates U.S. law because the Department must assess a countervailing duty equal to the amount of the net subsidy. The purpose of a country-wide rate is to determine whether, on average, imports from a country under the Agreement are subsidized. This average rate is applied to all merchandise from the country regardless of whether the program is a provincial, regional, or state program (see *IPSCO, Inc. v. United States* 899 F.2d. 1192 (Fed. Cir. 1990)) (*IPSCO*). Quebec's assertion that the Department is in violation of U.S. law every time it assesses a country-wide rate is

erroneous. A weighted-average countrywide rate will almost always result in individual firms being subject to a rate which is higher or lower than their own individual rate. The "net subsidies" found to exist equates to the average subsidy rate applicable to the merchandise subject to the investigation (see *IPSCO*).

Quebec further contends that the Department must assess province-specific rates because a country-wide rate can never be applied due to the exclusion of the Maritime Provinces from this investigation. While Quebec is correct in saying that the country-wide rate will not be applied to the Maritime Provinces, the Maritime Provinces were excluded not because the self-initiation covered the subsidy programs in some provinces but not other provinces, but for the reasons explained below. The self-initiation was an initiation of an investigation of certain softwood lumber products from Canada, not from any particular province.

As addressed fully in the Self-Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products From Canada, 56 FR 56055 (October 31, 1991) (Notice of Self-Initiation), this investigation was self-initiated by the Department in response to the GOC's unilateral termination of the MOU. We determined that the GOC's termination of this agreement constituted special circumstances in accordance with Article 2 of the GATT Subsidies Code. Because the Maritime Provinces were exempted from the export tax collected under the MOU, the "special circumstances" required for the self-initiation did not apply to these provinces. As a result, we exempted the Maritime Provinces from this investigation.

We fail to see how province-specific rates are warranted by reason of the provinces having individually assumed responsibility for the export charge and for instituting replacement measures under the MOU. We do not deny that the provinces had the responsibility for implementing the export charge; however, the provinces only implemented the export charge as directed by the GOC, because it was required under the MOU. Revenue Canada, a federal agency, was solely responsible for collecting the export charges and disbursing the collected funds to the individual provinces. The MOU was an agreement between the United States and Canada, not an agreement between the United States and the individual provinces.

As discussed above, section 706(2) of the Act creates a presumption in favor

of country-wide rates, with specific exceptions established only for state-owned enterprises and companies with "significantly different" rates. Except for state-owned enterprises and companies with significantly different rates, we have consistently followed this country-wide rate presumption. Quebec's contention that we should consider provinces as "firms" is not supported by the statute or by the Department's regulations. We have consistently treated the provinces as the government providing the subsidy, not as a company receiving a subsidy. Also, because all of the information was collected on an aggregate basis within each province, and all calculations are done on an aggregate basis, we are unable to apply the company-specific significant differential test outlined in 19 CFR 355.20(d).

In addition to the precedential and legal implications of applying province-specific rates, the issue of province-specific rates raises a number of practical administrative considerations. Most of these concern the ability of the U.S. Customs Service to enforce province-specific rates.

Customs may face extreme administrative difficulties in enforcing any countervailing duty order if the Department issues province-specific rates. Unlike standard importations into the United States, where Customs can generally determine the country of origin with relative ease, provincial origin is not readily discernible from standard customs documents or invoices. Under present circumstances, only by physically examining a lumber shipment can Customs accurately determine provincial origin.

The manner in which lumber is sold and shipped to the United States presents an added complication. Importers file approximately 240,000 Canadian softwood lumber entries each year, roughly 1,000 entries per business day. A large proportion of Canadian softwood lumber is sold through distributors or reload centers located along the U.S.-Canadian border, in provinces other than the original province of milling. These distributors ship according to their customers' demands and often mix bundles of lumber from several mills and several provinces on each truckload. Customs, therefore, cannot reliably determine provincial origin without physically examining each bundle of lumber.

Quebec has cited the application of province-specific export taxes under the MOU as proof that province-specific rates are administratively feasible. However, under the MOU, the GOC was

responsible for determining provincial origin and applying the export charge. The export charge was collected by Revenue Canada through monthly tax returns filed directly with Revenue Canada by each mill. Verification was performed by Revenue Canada through audits with individual mills, not at the border, an option that does not exist for the U.S. Customs Service.

Documentation provided at the border included specific shipment information but did not reflect certified GOC export charge collections.

Quebec also claims that Customs can easily determine province of origin from the mill markings on the lumber. However, large amounts of lumber are not grade stamped and not all markings are province-specific.

While Customs is currently applying these procedures on lumber shipments from the Maritime Provinces as it did when collecting bonds during the interim period (*i.e.*, October 4, 1991 through March 12, 1992), the volume of shipments from the Maritime Provinces is minuscule compared with those from the rest of Canada, and collecting bonds with estimated province-specific rates for purposes of implementing the five-month long interim measures is not the same as assessing final countervailing duties accurately, thereby ensuring adequate enforcement of the determination, and if the ITC determination is affirmative, the order. Moreover, during the interim period, the GOC maintained the procedures established under the MOU to document province of origin. These procedures were terminated upon issuance of our Preliminary Determination.

Given the special role the national government plays in a countervailing duty investigation, and the fact that we have not received a request for province-specific rates from the GOC or any other province, we determine that, for the reasons outlined above, we will continue our long-standing practice of applying a country-wide rate.

Based upon our analysis of the responses to our questionnaires, verification, and written comments from interested parties, we determine the following:

Programs Determined to Confer Subsidies

We determine that subsidies are being provided on the manufacture, production, or exportation of certain softwood lumber products from Canada under the following programs:

Stumpage Programs

Softwood timber is the primary input into the production of certain softwood

lumber products. For purposes of our analysis, we are using the term "stumpage" to refer to standing softwood timber. Stumpage on government-owned land is provided to companies by the provincial and federal governments under various tenure arrangements. These arrangements are described in detail in the public responses.

We determine that the governmental provision of stumpage is limited to a specific group of industries and is provided at preferential rates in accordance with section 771(5) of the Act.

Specificity

In our Preliminary Determination, we found that stumpage was provided to a specific group of industries, the primary timber processing industries, within the meaning of section 771(5)(A)(ii) and section 771(5)(B) of the Act. Respondents have claimed that the Department's preliminary ruling on specificity "is based on multiple legal errors." (Hearing Transcript, p. 111). Respondents' arguments are essentially as follows: (1) The Department analyzed the legislative history of the 1988 Act incorrectly, and the existence of "purposeful government action" continues to be a prerequisite for a finding of specificity; and (2) the manner in which the Department counted the users of stumpage is incorrect. Based on our analysis of the facts and arguments on the record, we continue to find that stumpage programs are specific.

Legal Requirements

With respect to Respondents' first argument, in 1983 the Department found that stumpage programs were not specific because stumpage programs are available within Canada on similar terms regardless of the industry or enterprise of the recipient. The only limitations as to the types of industries that use stumpage reflect the inherent characteristics of this natural resource and the current level of technology. As technological advances have increased the potential users of standing timber, stumpage has been made available to the new users. Any current limitations on use are not due to activities of the Canadian governments.

Final Negative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada 48 FR 24159, 24167 (May 31, 1983) (Lumber I).

Respondents suggest that if the Department reviews the legislative history of the 1988 Act again, it will agree that Congress did not intend to overturn the so-called "inherent characteristics test" established in 1983. We have done as Respondents

suggested, but we do not agree with their conclusion. Therefore, the Department stands by its analysis set forth in the Preliminary Determination.

Nevertheless, assuming *arguendo* that Respondents are correct that Congress did not overturn the inherent characteristics test in the 1988 Act, the Department would still have the discretion to overturn it in an administrative proceeding, provided it had a reasonable basis for so doing and articulated these reasons. In our view, the inherent characteristics test is not required by the statute, either in its pre-1988 or post-1988 incarnations. Moreover, again assuming *arguendo* that Respondents' analysis of the 1988 Act is correct, even if Congress did not overturn the inherent characteristics test, it certainly cannot be said to have codified it.

Respondents attempt to discern from the language of the statute, the Department's Proposed Regulations on specificity, and from certain words used in prior judicial decisions and Departmental determinations, a requirement that a finding of specificity cannot exist without a showing of "purposeful government action." Significantly, Respondents do not cite a holding in a single judicial or administrative decision, other than the Department's 1983 determination on softwood lumber and related determinations, that supports this proposition.

Turning first to the statute, we note that the statute provides the following definition:

(5) Subsidy.—

(A) In general.—The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303, and includes, but is not limited to, the following:

(ii) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(B) Special rule.—In applying subparagraph (A), the administering authority, in each investigation, shall determine whether the bounty, grant, or subsidy in law or in fact is provided to a specific enterprise or industry, or group of enterprises or industries. Nominal general availability, under the terms of the law, regulation, program, or rule establishing a bounty, grant, or subsidy, of the benefits thereunder is not a basis for determining that the bounty, grant, or subsidy is not, or has not been, in fact provided to a specific enterprise or industry, or group thereof.

19 U.S.C. 1677(5).

Nowhere in paragraph (5) do the terms "purposeful government action" or "inherent characteristics" appear.

Respondents argue that a requirement of "purposeful government action" can be found in the phrase "provided or required by Government action to a specific enterprise or industry, or group of enterprises or industries." See, e.g., Joint Case Brief Concerning Specificity, Vol. II, pp. 11-12-13 (April 21, 1992) (Specificity Brief). Respondents claim that what this phrase really means is restricted or limited by government action to a specific enterprise, etc. See Hearing Transcript, p. 381. We find this interpretation strained. A more natural reading of the phrase "provided or required by government action" is that in the case of a particular benefit, the benefit must be provided by the government or at the government's direction. If, as Respondents claim, Congress intended that the phrase "provided or required" actually means "restricted or limited," one would think that Congress would have spoken more clearly and chosen the latter phrase.

In addition, Respondents claim that the Department's use of the term "selective treatment" in its Proposed Regulations indicates that "purposeful government action" is a prerequisite for specificity. See, e.g., Specificity Brief, pp. II-11-12. However, the Department never intended that the term "selective treatment" mean what Respondents claim it means. The Department chose this term merely as a drafting device in order to link the two different prerequisites for domestic and export subsidies that, when combined with a countervailable benefit, form the basis of an actionable subsidy: (1) In the case of domestic subsidies, specificity; or (2) in the case of export subsidies, a tie to actual or anticipated exportation or export earnings.

In a similar vein, Respondents make much of the fact that in several decisions the courts and the Department have used variations on the word "target." See, e.g., Specificity Brief, pp. II-13-17. According to Respondents, this indicates that the courts and the Department have read into the statute a requirement of "purposeful government action." With respect to this argument, we must heed the following advice of the U.S. Supreme Court:

As the court below noted, "[i]t is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used." 84 C.C.P.A., at 134, 562 F.2d, at 1213, quoting *Cohens v. Virginia*, 6 Wheat. 264, 399, 5 L.Ed. 257 (1821).

Zenith Radio Corp. v. United States, 437 U.S. 443, 462 (1978) (*Zenith*).

To the Department's knowledge, no one in the cases cited by Respondents argued, and none of the court decisions cited held, that the absence of "purposeful government action" rendered such programs nonspecific or that the existence of "purposeful government action" was the dispositive factor for finding specificity. To paraphrase the Court in *Zenith*, the isolated statements in the cases relied upon by Respondents cannot be dispositive here. *Id.*

Next, Respondents cite *PPG Indus., Inc. v. United States*, 928 F.2d 1568, 1577 (Fed. Cir. 1991) (*PPG*), for the proposition that "[s]ome independent characteristic must define the 'specific' group that government [*sic*] has targeted." Specificity Brief, p. II-18. Respondents misinterpret the statement in *PPG*, that "Nothing in the statute mandates * * * that specificity is met merely if recipients of a domestic subsidy are *identifiable*." 928 F.2d at 1577 (emphasis in original). The notion of "identifiable recipients" as the test for specificity goes back to *Cabot Corp. v. United States*, 620 F. Supp. 722 (Ct. Int'l Trade 1985), dismissed as unappealable, 788 F.2d 1539 (Fed. Cir. 1986), vacated as moot Order dated Nov. 20, 1986 (*Cabot*). As we indicated in the Preliminary Determination, *Cabot* spawned multiple interpretations as to exactly what the court meant in that decision. As in the Preliminary Determination, we will not go through the saga of *Cabot*, except to say that the "identifiable recipients" test seemed to represent an initial attempt by the Court of International Trade (CIT) at distinguishing government actions that benefit society generally, such as roads, bridges, schools, etc., from government actions that benefit particular enterprises or industries. The former would be noncountervailable; the latter would be countervailable. Under this scenario, in other words, if a firm received a check from the government with its name on it, the program pursuant to which the firm received the check would be countervailable, notwithstanding the fact that every other firm in the country also received a check under the program.

If this is in fact what the CIT had in mind in *Cabot*, it abandoned this test quickly, and in *PPG* the Federal Circuit ruled that such a test was not required by the statute. The Department agrees with what the Federal Circuit said about the "identifiable recipients" test, but we fail to see how we have applied that test here. We do not find stumpage programs to be specific merely because we can

identify the users of stumpage. Rather, we find stumpage programs to be specific because the industries using them are too few to be nonspecific.

Finally, Respondents refer to *Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986) (*Georgetown*), and its discussion of "market distortion" and the discussion in the underlying determinations of the Department. Specificity Brief, pp. II-18-21. Although we have read this portion of Respondents' argument several times, the relevance of this discussion to the specificity of stumpage has not been demonstrated to us. We agree with Respondents that it is not enough that a program is specifically provided in order for there to be a countervailable subsidy. There must also be a countervailable benefit. It appears to us that Respondents' market distortion argument is more related to this second element, and we have addressed the argument fully in the "Preferentiality" section below. We note that Respondents themselves point out that "[m]arket distortion is not strictly part of the specificity test * * *." Respondents' Memorandum on Specificity, p. 18 (Feb. 19, 1992).

In conclusion, while a consideration of "inherent characteristics" or "purposeful government action" may not be precluded by the statute, such consideration is not required by the statute. Certainly, in 1983, the Department believed that an inherent characteristics test and, conversely, the lack of purposeful government action, were dispositive considerations in making a finding of nonspecificity. With the amendments in the 1988 Act, however, these considerations, at a minimum, became nondispositive.

Respondents have argued that in the absence of an inherent characteristics test, any program involving the provision of a good or service that is not universally used is, *per se*, countervailable. See Hearing Transcript, p. 117. This assertion is inaccurate on at least two counts. First, specificity is not the only requirement for a countervailable subsidy. In Department parlance, there also must be a "countervailable benefit." See Proposed Regulations, § 355.42. Second, there are numerous instances where the Department has not found specificity in so-called "natural resource cases." See, e.g., Portland Hydraulic Cement and Cement Clinker from Mexico, 51 FR 44500 (1986).

However, more important than the inaccuracy of Respondents' assertion is the fact that Respondents, themselves, propose a test which would result in a

per se finding of noncountervailability. As discussed in the Preliminary Determination, Congress endorsed the Department's finding in Carbon Black from Mexico, 51 FR 30385 (1986) (Carbon Black), that the provision of carbon black feedstock (CBFS) to two firms was specific. Thus, Respondents have not, and cannot, dispute that if Carbon Black were decided today on the same facts, the Department, in order to carry out Congress' intent, would have to find the provision of CBFS to be specific. Yet, if "purposeful government action" were a prerequisite for a finding of specificity, one would have to find the provision of CBFS to be nonspecific, and, therefore, noncountervailable. Because both natural gas and CBFS were provided by the Government of Mexico, through PEMEX, without limitation, there would be no basis for finding the provision of natural gas nonspecific and the provision of CBFS specific. In neither instance was there "purposeful government action." In effect, if the Department applied the test urged by Respondents, natural resource input subsidies would be beyond the reach of the countervailing duty law, because, except in rare cases, they always would be found to be nonspecific. This would be true notwithstanding the fact, that in the 1988 Act Congress made the negotiation of improved rules on these types of subsidies a principal negotiating objective of the United States. Omnibus Trade and Competitiveness Act, Public Law 100-418, Section 1101(b)(8)(A), 102 Stat. 1122 (1988).

Thus, we conclude that the Department's use of the "inherent characteristics" test in Lumber I was ill-advised, and we decline to follow it. This leaves the question, again assuming *arguendo* that Respondents' interpretation of the 1988 Act is correct, of whether the Department may apply a revised interpretation of the statutory provisions on specificity, *i.e.*, one that does not include the inherent characteristics test, to the current investigation.²

Respondents have not seriously questioned the Department's authority to change its interpretation of the statute and its administrative practice. Respondents merely have argued that the Department must explain its reasons for changing and provide an adequate

² If our conclusion that Congress overturned the inherent characteristics test in the 1988 Act is correct, the following discussion is moot, because that Act made the revised provision on specificity effective with respect to investigations initiated after August 23, 1988. Omnibus Trade and Competitiveness Act, Public Law 100-418, section 1137(b)(1), 102 Stat. 1211 (1988).

rationale for its new position. As we have explained, regardless of the interpretation of the 1988 statutory changes, our rationale is that the inherent characteristics test, as proposed by Respondents, leads to an absurd result: An automatic finding of nonspecificity for all natural resource subsidies.

The final question is whether the Department may apply a revised interpretation of the statute to the instant investigation. The federal courts have established a multifactor test to resolve questions concerning the retroactive application of changes in administrative practice. The factors the courts consider are: (1) Whether the particular case is one of first impression; (2) whether the new rule represents an abrupt departure from well-established practice or merely an attempt to fill a void in an unsettled area of law; (3) the extent to which the party against whom the new rule is applied relied on the former rule; (4) the degree of burden which a retroactive order imposes on a party; and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard. See, *e.g.*, *District Lodge 64, Int'l Ass'n of Machinists and Aerospace Workers, AFL-CIO v. NLRB*, 949 F.2d 441 (9th Cir. 1991).

Applying these factors to this investigation, factor (1) might call for prospective application, because this is not a case of first impression. With respect to factor (2), however, this determination does not constitute an abrupt departure from well-established practice, because the application of the specificity test has been unsettled in general, and in the case of natural resource input subsidies, has been particularly controversial. In particular, the review of Carbon Black clearly indicated that the 1983 finding on specificity might not be followed. With respect to factor (3), we are aware of no evidence in the record of this case which would indicate that the Canadian federal or provincial governments, Canadian lumber producers and exporters, or U.S. importers relied on our 1983 finding concerning specificity as a basis for making decisions on whether to sell or buy stumpage rights, or to produce, export, or import lumber. With respect to factor (4), we likewise are unaware of any undue burden imposed on any of the parties, other than the normal consequences brought about by an affirmative determination of subsidization. Finally, with respect to factor (5), we do not find it particularly relevant given the fact that there is no evidence of reliance on the inherent

characteristics test since 1986. On balance, we believe that the Department is justified in abandoning the inherent characteristics test in this case.

Application of Specificity Factors

As stated in the Preliminary Determination, neither in the Trade Agreements Act of 1979 nor in the 1988 Act did Congress attempt to define precisely the key phrase "specific enterprise or industry, or group of enterprises or industries." Instead, Congress has delegated to the administering authority, currently the Department, the authority to establish the parameters of the phrase. In this regard, the Department, in 1989, promulgated the Proposed Regulations, Section 355.43(b)(2) of the Proposed Regulations summarized Department practice by stating that:

In determining whether benefits are specific [to an enterprise or industry, or group of enterprises or industries], the Secretary will consider, among other things, the following factors:

- (i) The extent to which a government acts to limit the availability of a program;
- (ii) The number of enterprises, industries, or groups thereof that actually use a program;
- (iii) Whether there are dominant users of a program, or whether certain enterprises, industries, or groups thereof receive disproportionately large benefits under a program; and
- (iv) The extent to which a government exercises discretion in conferring benefits under a program.

Respondents claim that the Department committed legal error and violated its Proposed Regulations by failing to consider fully each of the four factors and by dismissing three of the four factors as irrelevant to its determination of specificity.³

The four specificity criteria are guidelines only. The Proposed Regulations state that we will consider these factors, among other things. We agree with Respondents that no one factor is necessarily dispositive. However, we note that it is also not

³ We note that Respondents also argue, with respect to the preferentiality benchmarks outlined in the Proposed Regulations, that such hierarchy was not intended to "prescribe an immutable formula by which all future cases should be decided." Further, respondents argue that because the Proposed Regulations have never been promulgated in final form, the Department must give careful consideration to other potential benchmarks that may be appropriate in particular cases (see Volume III-A of Respondents' Case Brief). On the one hand, Respondents argue that the Proposed Regulations should be followed for purposes of the specificity test, but that for purposes of preferentiality, the Proposed Regulations have no legal force and, therefore, the Department should not follow them in every case without an appropriate explanation.

necessary to show all four. (See, e.g., Carbon Black at 13269.)

Respondents then point to the preamble of the Proposed Regulations, which states that the specificity test cannot be reduced to a precise mathematical formula. Respondents misconstrue the thrust of that statement. All the Department meant was that it cannot provide an exact numerical dividing line between specificity and nonspecificity. For example, the Department cannot state as an absolute proposition that specificity will not exist when, say, 300 industries use a subsidy, because within this universe of users there may be dominant users or enterprises or industries that receive disproportionate benefits. On the other hand, the Department did not mean by its reference to the lack of a mathematical formula that in the absence of dominant users, disproportionate use, or the exercise of discretion, a finding of specificity would be precluded if, in the Department's analysis, the number of users (either enterprises or industries) were too few. Also, as discussed fully in the Preliminary Determination, other factors, such as discretion, dominance, and disproportionality, were not considered in Carbon Black (which was later endorsed by Congress), where the Department found the provision of CBFS specific to the only two enterprises that could use CBFS.

This discussion does not mean that we have abandoned the specificity criteria in the Proposed Regulations, or that we have ignored them in this case. On the contrary, we have considered all of them, and determine that one of them—the limited number of users—requires a finding of specificity.

Group of Industries

As previously stated, we have determined that stumpage programs are in fact limited to a group of industries, the primary timber processing industries. In our Preliminary Determination, we defined the primary timber processing group as comprised of two basic manufacturing industries: Solid wood products (which includes logs) and pulp and paper products. See the Preliminary Determination for the definitions cited in support of this conclusion. At verification, we received a British Columbia Ministry of Forests policy paper regarding section 16.1 of the Small Business Forest Enterprise Program (see Exhibit S-11 of the BC Verification Report). This report defines primary manufacturing as manufacturing which produces: (1) Logs; (2) timbers, defined as softwood lumber that measures at least five inches in its

least dimension (also called cants, beams, stringers, and girders); (3) dimension lumber between two and five inches thick (also called framing, joists, planks, rafters, etc.); (4) boards, which are less than two inches in thickness; (5) shakes and shingles; and (6) pulp and paper, which includes kraft pulp, newsprint, linerboard, kraft paper, CTM pulp, refiner mechanical pulp, sulfite pulp, and uncoated groundwood specialty paper. This definition further supports our conclusion that the primary timber products group of industries is essentially two industries: The solid wood products industry and the pulp and paper products industry.

Respondents argue that for the Department to establish that benefits have been targeted to a specific group, it is not enough that participants of a program constitute an "identifiable" group merely by virtue of their being participants. Rather, some independent characteristics must define the "specific" group.

In the Preliminary Determination, we placed excessive emphasis on what the two industries had in common, i.e., the milling operation. In fact, we have consistently held that for a small number of industries (in this case two) to be considered a group of industries for purposes of the countervailing duty law, there is no requirement for commonality between the industries. Therefore, even though the two industries which make up the group of industries in this case may have many common features, such as the same input, timber; and many of the same manufacturing processes, these common features in no way are determinative of whether the two industries may be considered a group of industries within the meaning of the Act. (See, e.g., Structural Shapes and Cold-Rolled Carbon Steel Flat-Rolled Products from Korea, 49 FR 47284 (December 3, 1984).)

In the Preliminary Determination, although we combined two industries into one group, we could just as well have called the beneficiaries of stumpage two industries, the solid wood products industry and the pulp and paper products industry, and we would still have found stumpage to be specific. However, given the wording of section 771(5)(A)(ii) of the Act " * * * if provided to a specific enterprise or industry, or group of enterprises or industries * * *," anything more than a single industry constitutes a "group." Therefore, if, hypothetically, a program were available to only the chemical industry, the steel industry, and the dairy industry, these three industries would constitute a "group," within the

meaning of the Act, even though the three clearly have nothing in common.

However, in this case, we have identified a group of industries that have many elements in common. The solid wood products industry (including logs) is an industry because it uses the same input, timber, and produces it into a solid wood product such as lumber, plywood, veneer, poles and posts, and shakes and shingles. The pulp and paper products industry also uses the same input, timber, and uses one of two methods to produce pulp: (1) The mechanical process; and (2) the chemical process, (see, the BC Verification Report, p. 5).

Respondents also argue that the Department has not justified its definition of a "group of industries" and must apply the accepted definition of the word "industry" which, according to Respondents, is generally described under U.S. trade law in terms of products. They state that a product-based analysis is consistent with Article 6 of the GATT Subsidies Code, which provides that the relevant inquiry in an injury investigation is into the volume of subsidized imports and their effect on prices in the domestic market of the like product.

We agree that an important aspect of our industry groupings for purposes of defining standing is the identification of the industry that produces the "like product" in the United States. That is, we are concerned with the competing U.S. industry when defining the foreign industry. In this case, the Coalition is predominantly made up of lumber mills. These lumber mills in the United States may also produce the number and variety of products produced by stumpage holders in Canada, such as tissue paper and cardboard boxes, but the like product, and the product that the ITC is investigating as a potential cause of material injury, is lumber, not tissue paper or cardboard boxes. As explained below, however, this aspect of industry grouping is not determinative of the way "industries" are identified for purposes of specificity.

Respondents argue that, in defining the industry, the Department inappropriately focused on the raw material rather than the actual number and variety of products made by the industries that hold stumpage rights. They contend that companies and divisions of companies holding stumpage rights produce a variety of downstream products, other than what they consider to be "primary timber" products, and that these products fall into several "groups of industries" according to the Canadian and United

States Standard Industrial Classification (SIC) codes and, therefore, are beyond the Department's definition of the primary timber products group of industries.

In support of this contention, Respondents conducted a survey for purposes of this investigation in which companies were asked to indicate which products they produce, excluding products produced by subsidiaries, affiliates, and joint-ventures, (see the BC, Alberta, and Quebec Verification Reports). In Ontario, Respondents conducted a survey of tenure holders to determine, what products, other than lumber, tenure holders produce (see Ontario Verification Report, p. 14).

Our emphasis on the raw material used is relevant insofar as the program under investigation is the provision of a raw material to users of that raw material. Our focus remains the two industries which receive the good provided by the government (stumpage).

Regarding the use of an "accepted" definition of the term "industry," we believe that there is a realm of acceptable definitions of the term "industry." We agree that the definition cited by Respondents ("The term 'industry' means the domestic producers as a whole of a like product . . .") is relevant to, for example, an analysis of whether the U.S. industry is injured by subsidized imports or whether the U.S. industry has standing to bring a petition. It is not relevant to our analysis of what constitutes an industry or a group of industries. For example, in *Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands*, USITC, Pub. 1956, Inv. Nos. 701-TA-275 to -278 (March 1987) (final), the ITC found that each of the seven different types of flowers (carnations, chrysanthemums, etc.) constituted a separate like product and thus a separate industry. Using Respondents' logic, the Department should find that, because there were seven domestic industries identified by the ITC in its like product analysis, flowers constitute more than a group of industries. Such an analysis would lead to absurd results, at odds with years of Department precedents and several court rulings (see below). See also, *Anti-Friction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom*, USITC, Pub. 2185, Inv. Nos. 303-TA-19 and 20, 731-TA-391 to -399 (May 1989) (final).

The Department, in its application of the specificity test, has viewed the term "industry" in much broader terms. In the

Final Affirmative Countervailing Duty Determination: *Certain Fresh Cut Flowers from the Netherlands* 52 FR 3301, 3312 (February 3, 1987), we explicitly rejected the argument that benefits provided to the horticulture and greenhouse industries were too broad to be considered specific because they were provided to over 60 different categories of products. In that case we stated:

Although the horticulture and greenhouse industries contain many separable categories of products, the Department considers these industries to be a specific subset of all agriculture and not so broad as to consider them more than a specific enterprise or industry.

Moreover, in many countervailing duty investigations and administrative reviews, where we have found programs to be nonspecific because they were available to a wide variety of industries, we have used the term "industry" as broader industrial categories such as "food, steel, non-ferrous metals, machinery, wood products, textiles, rubber, chemical and paper industries," taken together, to describe the nonspecific universe of industries receiving benefits (Final Affirmative Countervailing Duty Determination: *Carbon Steel Wire Rod from Malaysia* 53 FR 13303, 13305 (April 22, 1988)). The nonspecific universe is not defined by the number of products produced by each of these industrial categories.

With respect to Respondents' product-based argument, the alleged end products produced by the Canadian companies and divisions of these companies are merely the downstream products that can be made from the base products, *i.e.*, solid wood and pulp (we note that paper cannot be produced until after pulp is produced). The same situation exists for other groups of basic industries as well. For example, if a steel company produces flat-rolled sheet as well as other downstream products made from the sheet, such as machine parts, and this company receives a benefit that is also provided to all steel producers, the fact that this and other steel producers produce a number of downstream steel products would not negate the fact that the benefit was provided to encourage the production of steel. Therefore, the program would be specific to the steel industry.

Furthermore, with respect to the end product surveys used as support for this argument, we found at verification that many of the "end products" listed by the companies were not products actually made by that company or divisions of that company. For example, as explained in the Verification Report of

Canadian Forest Products, Ltd. (CANFOR) in BC, the invoices showed that the company sold logs and lumber to unrelated companies for the intended manufacture of a certain end product. The company indicated on its survey response that it made products that it actually did not make, *e.g.*, the company indicated that it produced flooring (hence Respondents' contention that the "flooring industry" should be considered a separate industry benefitting from stumpage). However, a review of the sales invoice showed that the company produced dimension lumber, not flooring. Likewise, West Fraser, another BC company, indicated that it produced certain end products such as "appearance framing." Appearance framing is lumber of a particular size and quality, and is included in the scope of this investigation. Furthermore, officials from both companies stated that all of the end products "produced" by their companies are made from either a solid wood product such as logs, lumber, or plywood, or from pulp and paper products. (See, *e.g.*, pp. 14 and 15 of the BC Public Verification Report.)

Our review of the end product survey in Alberta produced similar results. One survey response indicated that the stumpage holder produced chicken coops. However, at verification, we found that the producer did not sell chicken coops. (See p. 33 of the Alberta Verification Report.) In Quebec, the end product survey showed that the overwhelming majority of stumpage holders produced either traditional paper products or traditional sawmill products. We found only two companies out of the 124 that produced other types of products. Further, we were not able to trace some of the items Respondents claimed were produced by stumpage holders to any of the individual end product responses.

Therefore, even if we agreed (which, for the reasons stated above, we do not), with Respondents' argument that downstream products produced by companies holding stumpage leads to the inevitable conclusion that there are groups of industries that are not included in the Department's definition of a group of industries, based on the facts on the record, Respondents have not demonstrated that companies which hold stumpage rights actually produce the wide variety of products indicated in the survey responses.

Respondents also contend that because some stumpage holders only produce logs, which according to Respondents are not processed at all, these producers do not fit into the Department's definition of a group of

industries. First, we do not agree that logs are not processed. The only timber that is not processed at all is standing timber. Once the standing timber is harvested, the processing of that standing timber has begun. Furthermore, as previously stated, we placed excessive emphasis in the Preliminary Determination on the common features necessary to find the solid wood products industry and pulp and paper products industry to be a single group of industries. One of those common features we referred to is the milling process. It is absurd to suggest that a log producer does not benefit from stumpage.

Respondents also argue that the Department should use the definition of groups of industries as set forth in the SIC, a product-based classification system, as the Department did in Lumber I. Further, they contend that all of the end products "produced" by stumpage holders fall into, at a minimum, 27 groups of industries at the four-digit level, according to both the Canadian and U.S. SIC. Respondents cite the Final Negative Countervailing Duty Determination: Certain Granite Products from Italy 53 FR 27197 (July 19, 1988) (Granite), in support of their assertion that the Department "generally respects and applies" a country's own classification system in classifying and counting industries.

In Granite, we found a loan program not countervailable because it was used by virtually every productive sector in the country, and we listed these productive sectors according to Italy's own statistical categories. Nowhere does this case imply that the Department generally uses a country's own classification system for purposes of applying the specificity test. In fact, the Department has frequently used other means besides SIC classifications to define a group of industries (or an industry). For example, we stated "SIC classification was not dispositive of the question of whether software design was in the service industry or the manufacturing industry" in Certain Computer Aided Software Engineering Products from Singapore, 55 FR 12248 (April 2, 1990).

As stated in our Preliminary Determination, the use of the word "group" in the United States and Canadian SIC does not interfere with the meaning of "group of industries" as used in the Act. Moreover, there is no evidence that Congress intended the term "group," as used in section 771(5), to equate to SIC terminology.

We note, however, that the International SIC (ISIC) codes classifies the wood products industry as one

industry at the four-digit level, which includes wooden railway sleepers, coniferous sawn wood, veneer sheets, plywood, and particle board. The ISIC also classifies the pulp and paper products industry as one industry at the four-digit level. This classification includes products such as mechanical wood pulp, pulp of fibers other than wood, newsprint, other printing and writing paper, kraft paper and kraft paperboard, cigarette papers, and fiberboard. The ISIC's use of the term industry underscores the fact that the term "industry" can be used in a variety of ways even within the different SIC regimes.

We also note that the U.S. SIC codes classify the steel industry into separate major groups that are in no way related to the manner in which we have defined the steel industry in previous cases. Further, the ISIC classifies the steel industry as one industry, which includes products such as pig iron, wire rod, plates, and sheets.

We maintain that SIC codes were not intended by Congress to be the dispositive definition of industry for purposes of administering the countervailing duty law any more than our tariff classifications are dispositive in defining the scope of a countervailing duty proceeding. As pointed out, even within the different SIC regimes, the classifications of products differ.

Respondents also contend that economic integration or interdependence should not affect the Department's analysis of industries, and that a company producing both a solid wood product and a pulp and paper product does not preclude that company's participation in more than one industry. We agree with Respondents that the level of integration is not dispositive with regard to the number of industries represented by the integrated firm. Just as we do not hold that two industries found to be a group of industries must have common features, they also need not be integrated.

Respondents argue that in nine years the Department has come up with three different definitions describing the industries which use stumpage. They allege that the industry has not changed in that time, only the Department's definition has changed in order to reach a finding a specificity.

In Lumber I, we found that stumpage programs were not specific because: (1) Any limitation on use was not a result of government action, but rather was due to the inherent nature of the products under investigation, and (2) stumpage was used by several specifically-named groups of industries (the lumber and

wood products industries, the pulp and paper industries, and the furniture industries). Although we found that nonstumpage benefits provided to the forests products industries were specific, in the case of stumpage, we reasoned that a finding of no specificity was warranted because the universe of users of stumpage was limited by the inherent characteristics and uses of raw timber.

We agree with Respondents that the users of stumpage have not changed dramatically in the past nine years. However, we note that our definition of the group of industries which use stumpage has not changed as radically as Respondents suggest in each of the three Canadian lumber investigations. For example, the industries in Lumber I were broken down into lumber and wood products industries (solid wood products), pulp and paper industries, and furniture manufacturing industries. In Lumber II, we stated that we no longer believed that furniture manufacturers should be included in our analysis of the group of industries because such manufacturers held negligible stumpage rights. We also called into question the earlier conclusion that stumpage rights were not in fact limited to one group of industries. Furthermore, we pointed out in Lumber II that our reference in Lumber I to SIC codes was misplaced. We still consider there to be two industries that use stumpage: the solid wood products and the pulp and paper products industries. The only thing that has changed during the past nine years is our consideration of inherent characteristics and how that consideration affects our specificity determination.

With respect to Lumber I, the users of stumpage did not undergo some transformation that reduced them from three groups of industries when cutting stumpage to one group when borrowing money. The use of two different descriptions of exactly the same users of stumpage in that notice, leading to a finding of specificity for nonstumpage programs and a finding of no specificity for stumpage programs, was inconsistent on its face and underscores the fact that, in 1983, the Department was entering into uncharted legal waters.

The Courts have recognized that the "application of the *de facto* aspect of the specificity test requires a 'case-by-case' analysis to determine whether 'there has been a bestowal upon a specific class.'" Cabot I, as quoted in PPG (emphasis added). The critical focus of a determination of specificity must be an

analysis of whether a benefit "has been bestowed on a discrete class of grantees despite nominal availability, program grouping, or the absolute number of grantee companies or industries." *Roses, Inc., California Floral Trade Council and Floral Trade Council v. United States*, 743 F. Supp. 870 (1990) (emphasis added).

In this investigation, stumpage is clearly provided to a specific class of beneficiaries: the pulp and paper products and solid wood products industries. While the statute uses the terms "enterprises or industries or groups of enterprises or industries," the courts have made clear that these terms are not to be applied in a narrow manner. The concept of a "discrete class of beneficiaries," as used by the court in *Cabot I and Roses, Inc.*, is broader than any of the narrow, forced definitions that the Respondents would have us use, and the concept is consistent with the Department's long-standing practice in implementing the specificity test. (See also, *Final Affirmative Countervailing Duty Determination Certain Fresh Atlantic Groundfish from Canada 51 FR 10041 (March 24, 1986) (Groundfish)* and *Netherlands Flowers*.)

In addition, Respondents argue that because the forestry sector in Ontario and BC is larger than the agriculture sector in each of those provinces, and because the Department has determined that it will not regard a program as being specific solely because the program is limited to agriculture, it is absurd to find that a program available to all of a sector that is larger than agriculture is specifically provided.

We disagree. A program is not necessarily specific if it is limited to agriculture because all of agriculture cannot be considered a discrete class and is certainly more than several groups (see, e.g., *Final Negative Countervailing Duty Determination; Fresh Asparagus from Mexico 48 FR 21618 (May 13, 1983)*). In agriculture, there are a large number of distinct industries producing a vast number of products from many raw materials, growing methods, production and distribution techniques. In response to a comment in *Groundfish*, the Department stated that fisheries programs were bestowed to "two specific industries, the salt water fishing industry and the seafood products industry, as such, these programs were available to no more than a group of industries." Although the saltwater fishing industry and the seafood products industry produce a large number of products (arguably at least as large as the pulp and paper and solid wood products

industries), the Department rejected the argument that the fisheries sector is like agriculture, so broad as to not constitute "a specific group of industries."

Similarly, regardless of the size of its economic contribution in a particular political jurisdiction, forestry is not like agriculture as a sector, because all forestry products come from one basic raw material, timber. The number and diversity of products produced in the forest industries are simply not comparable to those produced in agriculture. Therefore, the Department does not regard a program as nonspecific if it is available throughout the forestry sector.

In fact, agriculture is defined as "The production of plants and animals useful to human beings, including the cultivation of soil, management of crops, and the feeding, breeding, and managing of livestock." * Arguably, therefore, forestry could be considered part of the agricultural sector. If stumpage programs were analyzed in terms of whether a specific group of industries within agriculture had received benefits, the Department would most certainly consider the program specific. Thus, regardless of whether forestry is considered as part of agriculture, even if a program is available throughout the forestry sector it is still specific. Because we have found stumpage programs limited to a group of industries, we find them specifically provided within the meaning of the Act.

Having determined that the stumpage programs administered by Alberta, BC, Manitoba, Ontario, Quebec, Saskatchewan, and the Territories are provided to the primary timber processing industries group, the next section addresses whether stumpage is provided at preferential rates.

Preferentiality

Having determined that the stumpage programs administered by Alberta, BC, Manitoba, Ontario, Quebec, Saskatchewan, and the Territories are specific within the meaning of the statute, the Department must next determine whether stumpage is provided under these programs at preferential rates pursuant to section 771(A) (ii) (II) of the Act. The standard employed by the Department for making this determination is set forth in § 355.44(f) of the Proposed Regulations, which itself reflects an approach first articulated in detail by the Department in its *Preferentiality Appendix (Preferentiality Appendix to the Department's Preliminary Determination in the*

Administrative Review of Carbon Black from Mexico, 51 FR 13271 (1986)). Section 355.44(f) reads as follows:

(1) *Provision of goods or services at preferential rates.* The provision by a government of a good or service pursuant to a domestic program confers a countervailable benefit to the extent the Secretary determines that the price charged by the government for the good or service is less than the benchmark price, which normally will be the nonselective prices the government charges to the same or other users of the good or service within the same political jurisdiction.

(2) Where the Secretary determines that there is no benchmark price under paragraph (f) (1) which is not selective within the meaning of § 355.43, the Secretary will determine the existence of a countervailable benefit based upon, in order of preference, the following alternative benchmarks:

(i) The price, adjusted for any cost differences, the government charges for a good or service which is similar or related to the good or service in question, provided that the similar or related good or service and its price is [sic] not selective within the meaning of section 355.43;

(ii) The price charged by other sellers to buyers within the same political jurisdiction for an identical good or service;

(iii) The government's cost of providing the good or service; or

(iv) The price paid for the identical good or service outside of the political jurisdiction in question.

In the *Preliminary Determination*, the Department relied on the traditional measure of preference—price discrimination—to determine preliminarily that stumpage was being provided at preferential rates to softwood lumber producers in the provinces of BC, Ontario and Alberta. In Quebec, the Department found preliminarily that stumpage was being preferentially provided to softwood lumber producers on the basis of a comparison with prices charged by private sellers of stumpage within Quebec, as there was not an adequate basis to make a determination based on the provincial government's sales of an identical or similar good. Finally, with respect to the stumpage programs of Manitoba, Saskatchewan and the Territories, the Department did not reach the question of preferentiality because the small amount of exports from these provinces and territories meant that use of even the highest estimates of subsidization on the record would have led to no more than a *de minimis* effect on the country-wide rate.

In this final determination, the Department confirms its preliminary finding that stumpage is being provided to softwood lumber producers in the provinces of Alberta, BC, Ontario and

* McGraw-Hill Encyclopedia of Science and Technology, McGraw-Hill Book Company, p. 143.

Quebec at preferential rates. Furthermore, the Department has determined that the benchmarks it applied in the Preliminary Determination for purposes of identifying and measuring preferentiality remain the appropriate determinants of whether preference and, hence, a countervailable benefit exists in these circumstances (although, as explained below, refinements have been made in our comparisons on the basis of the results of verification and our analysis of parties' comments).

However, before turning to our explanation of the specific bases for finding preferentiality in the context of each provincial experience, we note that the parties to this proceeding have made several arguments of a more fundamental and cross-cutting nature than whether a particular benchmark of the proposed § 355.44(f) (1) has been correctly selected or applied. These arguments call into question the very standard followed by the Department in determining preference and (even more fundamentally) whether stumpage programs administered in the manner which Canadian provincial governments currently administer them can ever be found to confer countervailable subsidies, irrespective of whether preference has been exercised. Because these arguments go to the very heart of whether and/or how the provision of a natural resource good can constitute a subsidy, and because our acceptance of any of these arguments would have radically altered the manner in which we addressed the preferentiality issue, we address these arguments first.

Legal Analysis

Respondents argue that the provision of stumpage by the Canadian provinces does not constitute a countervailable subsidy because there is no market distortion in this case. Although Respondents' economic argument is described in more detail below, Respondents essentially rely on an analysis submitted by Prof. William D. Nordhaus to support the proposition that stumpage charges are in the nature of economic rents. Because of this fact, they argue, stumpage charges cannot result in increased production (*i.e.*, a market distortion) unless the provinces confer net harvest-related benefits on tenureholders. They then claim that there has been no showing in this case that stumpage charges confer such net benefits. Respondents then cite the Department's determination in Carbon Steel Wire Rod from Poland, 49 FR 19374 (1984), and its companion cases, and Georgetown, which affirmed Wire Rod, for the proposition that the Department

cannot determine that a countervailable subsidy exists where it has been established that no market distortion exists. In Respondents' own words:

A government only confers a countervailable subsidy when it acts in such a way as to create a market distortion, that is, when its action results in greater production by the recipient than would be the case in the absence of governmental action, or in a lowering of prices by the recipient in competition with American producers.

Respondents' Joint Case Brief Concerning Alleged Stumpage Subsidies and Preferentiality, Vol. III-A, p. 111-24 (Apr. 21, 1992).

The first issue raised by Respondents' argument is whether the Department must conduct what has become known in this case as a "market distortion test" in applying the countervailing duty law to imports from market economy countries; *i.e.*, that a countervailable subsidy cannot be found where there is a demonstration that the subsidy in question does not affect production or price. Respondents rely heavily on statements made by the Department in Wire Rod, in which the Department determined that the countervailing duty law did not apply to imports from nonmarket economy countries. In particular, Respondents cited the following statement from Wire Rod:

We believe that a subsidy (or bounty or grant) is definitionally any action that distorts or subverts the market process and results in misallocation of resources, encouraging inefficient production and lessening world wealth.

49 FR at 19375. Respondents also rely heavily on the following statement made by the Department in the background section of its Proposed Regulations:

Conceptually, the regulations are based upon the economic model articulated by the Department in its final determinations in Carbon Steel Wire Rod from Czechoslovakia and Carbon Steel Wire Rod from Poland . . . and sustained by the court in *Georgetown Steel Corp. v. United States* . . . This model, which generally defines a subsidy as a distortion of the market process for allocating an economy's resources, underlies the Department's entire CVD methodology.

54 FR 23366, 23367 (1989) (citations omitted). From these statements, Respondents conclude that a market distortion test is required as a matter of law.

We do not agree with Respondents' contention that the countervailing duty law requires a market distortion test. First, by relying on selected statements from Wire Rod, Respondents have misrepresented the nature of the issue involved in Wire Rod and the thrust of the Department's statements therein.

The issue in Wire Rod was whether Congress intended that the countervailing duty law apply to imports from nonmarket economy countries. The Department, starting from the premise that subsidies are a distortion of the market process, reasoned that "[s]ubsidies have no meaning outside the context of a market economy", 49 FR at 19375, and that a market benchmark is needed to identify a subsidy:

To identify subsidies in this pure market economy, we would look to the treatment a firm or sector would receive absent government action. In the absence of the bounty or grant, the firm would experience market-determined costs for its inputs and receive a market-determined price for its output. *The subsidy received by the firm would be the difference between the special treatment and the market treatment.* Thus, the market provides the necessary reference point for identifying and calculating the amount of the bounty or grant. (Emphasis added.)

Id. As this statement indicates, the Department never suggested in Wire Rod that a market distortion test, as proposed by Respondents, would necessarily form part of the Department's analysis in a countervailing duty case involving imports from a market economy country. To the contrary, to the extent that one can read anything into this statement, it is that in a market economy case, the Department's analysis would be based on a comparison of a market-based benchmark and a government-provided price and that the existence of what Respondents call a market distortion would normally be presumed. Likewise, when the Department referred to Wire Rod and Georgetown in its Proposed Regulations, it meant only that its countervailing duty methodology was based on the use of market benchmarks to determine the existence and value of a subsidy. This reference certainly was not intended to mean that it would be necessary to conduct the sort of market distortion test proposed by Respondents.

Amongst all of their quotes and citations, Respondents conveniently ignore what was the key statement in Wire Rod. After describing the manner in which nonmarket economies operate, the Department stated:

In such a situation, we could not disaggregate government actions in such a way as to identify the exceptional action that is a subsidy. Because the notion of a subsidy is, by definition, a market phenomenon, it does not apply in a nonmarket setting. To impose that concept where it has no meaning would force us to identify every government action as a subsidy (or a tax). We are not prepared to do this—we will not impose the

market-based concept of a subsidy on a system where it has no meaning and cannot be identified or fairly quantified.

49 FR at 19376. In short, all the Department meant in Wire Rod was that it was meaningless to talk of subsidies in the context of nonmarket economies. Thus, neither the Department nor the Court addressed the question of whether a market distortion test would be required in a market economy countervailing duty investigation.

Thus, we do not agree with Respondents that Wire Rod and Georgetown establish a precedent for the type of market distortion test they envision. Nevertheless, there remains the question as to whether the Department is free to incorporate such a test into its countervailing duty methodology, or whether Congress precluded the adoption of such a test. While we agree with Respondents that one of the reasons for having a countervailing duty law in the first place is to combat the market distortions that subsidies may bring about, we do not believe that Congress intended that the finding of a countervailable subsidy had to be based on the actual application of a "market distortion" analysis in individual cases.

The best evidence of this lies in the legislative history of the Trade Agreements Act of 1979 and the discussion therein of the practice of the U.S. Department of the Treasury concerning regional subsidies and offsets. Prior to the enactment of the 1979 Act and the transfer of responsibility for administration of the countervailing duty law to the Department, Treasury had a practice of taking into account the effects of government subsidies on the competitive positions of firms receiving such subsidies. For example, if a firm received a \$100 million grant in order to build a factory in a disadvantaged region, but also incurred \$50 million in additional costs as a result of locating in the disadvantaged region, Treasury reduced the subsidy by \$50 million. In theory, if the amount of the additional costs equalled or exceeded the amount of the subsidy, Treasury would find no subsidy at all. Although this practice did not amount to a determination of market distortion, it did reflect the view that it was appropriate in certain circumstances to look behind the existence of a subsidy in an attempt to identify the net economic effect on the subsidy recipient. Respondents have urged the Department to undertake just such a practice in relying on Nordhaus' arguments that there is no net economic benefit or effect from stumpage

programs. Congress was dissatisfied with Treasury's practice, and in enacting section 771(6) of the Act, 19 U.S.C. section 1677(6), the "offset" provision, it clearly indicated that the administering authority was not to engage in this type of analysis.

Commentators who have critiqued the Department's countervailing duty methodology, whether speaking of "market distortion" or "entitlement", have often cited this example as a situation where the Department imposes countervailing duties in the absence of any showing that a foreign producer's marginal cost has been affected. See, e.g., R. Diamond, *Economic Foundations of Countervailing Duty Law*, 29 Va. J. Int'l L. 767, 788 (1989). Yet at the same time, these commentators generally agree that the Department must find that a subsidy exists in this type of situation. See, e.g., *id.*, note 59; and Cass, *Trade Subsidy Law: Can a Foolish Inconsistency Be Good Enough for Government Work?* 21 L. & Pol'y Int'l Bus. 609, 641-42 (1990).

Respondents have essentially contended that the legislative history does not preclude the Department from making its determination of the existence of a gross subsidy based on the same factors which Congress indicated could not be taken into account for purposes of determining the existence of a net subsidy. Modifying the example set forth above, if the additional costs incurred by the firm for locating in the disadvantaged region were \$100 million, Respondents would presumably argue that the Department properly could determine that no gross subsidy exists. However, this leads to an anomalous situation. If, as Respondents postulate, Congress intended that the amount of subsidy be equated to the net economic effect on the subsidy recipient in a particular case, then the amount of subsidy existing in the first example would be only \$50 million. Yet the statute is clear, and Respondents do not contest, that under the law the Department would have no alternative but to find a subsidy of \$100 million.

Congress could not have intended such an anomalous result from the enactment of the offset provision. Given that this is the only instance cited in the legislative history which discusses the type of analysis suggested by Respondents, we cannot accept the notion that Congress would endorse or condone our engaging in any market distortion analysis in circumstances where the subsidy is otherwise capable of being identified and measured

following established statutory or regulatory principles.

Moreover, other than their references to Wire Rod and Georgetown and a few other cases taken out of context, Respondents cite to no other cases supporting the proposition that the Department must apply a market distortion test. They also do not cite to the countervailing duty laws of other countries or determinations thereunder which would support the application of a market distortion test. There is nothing in the current GATT Subsidies Code which mandates such a test. Finally, nothing in the draft subsidies agreement, MTN.TNC/W/FA, Part I, prepared as part of the Uruguay Round of multilateral trade negotiations, supports a market distortion test. Indeed, that document describes a countervailing duty methodology which is quite similar to existing Department practice.

In conclusion, therefore, we do not believe that the Department's precedents support the application of a market distortion test in the circumstances before us here. Accordingly, we determine that the Department is precluded from measuring the benefit conferred by stumpage programs on the basis of a market distortion analysis, such as the effect of stumpage prices on output. However, we do consider it appropriate to comment on the information and argumentation placed on the record by Respondents in connection with Dr. Nordhaus' study, if only because Respondents have used these analyses in an effort to show that it is impossible for the Department to find that the provincial governments are subsidizing Canadian softwood lumber producers through the provision of stumpage at administratively-set rates.

Comments on Dr. Nordhaus' Analysis

As an initial comment, it bears mentioning that although Respondents assert that Dr. Nordhaus' theoretical views concerning the economics of stumpage markets are well accepted, they nonetheless fail to provide any independent support for this claim. See Respondents' April 21, 1992 brief, Vol. III-B, Attachment III-2, p. 12. The Department, therefore, has no basis in the record to accept the validity of Dr. Nordhaus' analyses at face value, particularly insofar as other economists with at least as reputable a name in the field of forestry economics appear to espouse somewhat conflicting points of view. See Coalition's April 21, 1992 brief, Appendices 60 and 61.

As to the substance of Dr. Nordhaus' views, under his theory of economic rent, he contends that the harvest of

stumpage from the provincial stumpage programs now in effect cannot exceed that of a competitive market.

Furthermore, Dr. Nordhaus contends that the price of stumpage under these provincial programs will be higher than what would prevail in a system where stumpage prices were set competitively.

Dr. Nordhaus' analysis begins with stumpage harvest, where he notes that under provincial stumpage programs, timber harvest is set on a sustained yield basis so that harvests can be maintained at that level into the future. At the same time, he assumes that since a private market will seek to maximize value, the harvest under these provincial stumpage programs must be less than under a competitive situation because the provincial stumpage programs are constrained to follow sustained yield policies.

Dr. Nordhaus then goes on to describe stumpage prices and harvests under three scenarios: Net benefits, excessive stumpage, and normal stumpage. "Net benefits" would exist when the stumpage charges are less than the commercial benefits that the government is actually providing to the tenure holder. The effect, therefore, would be to confer a subsidy on the tenure holder and to increase the harvest of timber. In his next scenario, "excessive stumpage," stumpage charges are so high that they raise the cost of harvesting the timber above the market price for stumpage, thereby resulting in a decrease in stumpage harvested. Finally, under "normal stumpage," stumpage charges are positive, but not so high as to turn profits negative within the normal range. Dr. Nordhaus thus contends that normal stumpage has no effect on harvest.

First, we take issue with Dr. Nordhaus' contention that stumpage charges under the provincial stumpage programs will necessarily be higher than those in a competitive market. Under provincial stumpage programs, each purchaser is given the right to harvest timber upon payment of the administered stumpage charge. In a competitive market, although the seller of stumpage may set a minimum price below which stumpage will not be sold, potential buyers will still bid against each other for the right to harvest the stumpage. Any price determined in this fashion will almost always be higher than an administered stumpage charge.

Second, we are unconvinced by Dr. Nordhaus' conclusion that the stumpage harvest under the provincial stumpage programs will always be lower than the harvest under a competitive market. Depending on the objectives of either a provincial stumpage program or a

private owner, a forest can be managed to provide a high or low level of sustained harvest. For example, provincial stumpage programs managed under a policy of sustained yield tend to use biological criteria for choosing rotation lengths, which is the time period between the establishment and the harvesting of a timber stand. The use of such criteria tends to give a higher level of timber harvest than the economic criteria which many private forest owners use to set rotation lengths. In addition to rotation length, there are other factors which can affect the level of sustained harvest, such as the selection of tree species to plant, the number of trees to plant per acre, and whether to clear-cut or use a single tree method of harvesting. Varying the level of these and other factors will determine whether the level of sustained harvest is high or low.

Finally, with regard to the "residual value" or "economic rent" approach used by Dr. Nordhaus to arrive at his conclusions, we note the following remark by G. Robinson Gregory, in his book "Resource Economics for Foresters," concerning the application of the notion of economic rent to stumpage:

Neither rent theory nor the related appraisal procedure involve consideration of stumpage production costs or the possibility of a reservation price on the part of forest owners. It is implicitly assumed that the supply of all productive factors other than timber is perfectly elastic, that the supply of timber offered is perfectly inelastic with respect to price, and that the forest owner is in a position to extract the rent. With these assumptions, the rent-based appraisal model of stumpage pricing provides little assistance for analyzing the effect of changing timber supplies and/or production costs on either stumpage prices or on product prices.

See Coalition's April 21, 1992, brief, Attachment 61, p. 215.

The phrase "the supply of timber offered is perfectly inelastic with respect to price" means that the supply of timber does not vary with price; the reference to "perfectly elastic" means that the price of a productive factor does not vary with the quantity consumed. Finally, the "reservation price" is the price necessary to persuade an owner to sell stumpage.

The validity of the economic rent model proposed by Dr. Nordhaus depends on whether the supply of stumpage varies with price. In this regard, Dr. Nordhaus has not taken account of the existence of intensive and extensive margins in timber harvesting. The extensive margin means that, at any particular stumpage price, only certain categories of stands can be profitably harvested. As the price of

stumpage drops, more and more stands become economically accessible, which allows the supply of stumpage to increase. The intensive margin concept applies to trees within a stand that is currently economically accessible. It recognizes that, within each stand, there are certain categories of trees that cannot be profitably harvested at a given stumpage price. If stumpage prices are lowered, the intensive margin is expanded so that the formerly unutilizable trees within a particular stand can be profitably harvested, thereby increasing the supply of timber. Consequently, Dr. Nordhaus' assumption that the supply of timber does not vary with price appears to be at odds with the very way in which stumpage markets behave.

Dr. Nordhaus states that his theory of the economic rent of stumpage is a static analysis. That is, the analysis considers only one period in time. (See Respondents' April 27, 1992 Brief, section 3, Attachment A at 9.) Indeed, Gregory agrees with Nordhaus when he states that rent theory is applicable only in a stable, short-run analysis, which essentially implies a static, single period analysis. (See Coalition's April 21, 1992 brief, appendix 61 at 215.) Nordhaus provides a two-period model to demonstrate that his theory can be extended to include dynamic aspects (changes over time), but his example is really nothing more than a simple extension of a theory which is essentially static in nature. The Department believes that a theory of stumpage supply which is based on dynamic analysis, as opposed to a static analysis, and one in which stumpage is not fixed in supply, provides a more realistic representation of stumpage harvest from provincial stumpage programs. As such, the Department finds the economic rent theory of stumpage advanced by Dr. Nordhaus to be flawed in several respects. By no means does it show that provincial stumpage programs are not countervailable subsidies.

In conjunction with their market distortion analysis, Respondents argue that, because Canadian forest products companies have lower rates of return relative to other Canadian companies, provincial tenure holders are not receiving net benefits as defined by Dr. Nordhaus under provincial stumpage programs. As such, according to Dr. Nordhaus' and Dr. Litan's analysis, if no net benefit is being provided, no subsidy is being conferred. Further, Respondents argue that if Canadian firms were receiving preferential treatment, presumably these firms would have supra-normal profits.

First, we do not consider a comparison of rates of return between industries to be relevant in determining whether a particular industry or group of industries has received a countervailable benefit. Indeed, using such an analysis to prove whether a subsidy exists turns our subsidy practice on its head. For example, many failing companies or industries with low or negative rates of return have received massive amounts of government equity infusions, grants, and loans and still experienced negative rates of return (see, e.g., Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, From Canada, 54 FR 31991 (August 3, 1989)). Following Respondents' reasoning, there would be no net benefits because the company or industry had a lower rate of return than the rest of the industries in the country. Moreover, it is not unusual for different industries to have different rates of return regardless of whether the government has intervened.

Second, we also note that in Dr. Litan's analysis comparing forest product companies' rate of return to other companies in Canada, the 13 forest product companies listed include many vertically and horizontally integrated producers of both lumber and pulp and paper; and that the remaining companies include financial service companies which are inappropriate to use as a basis of comparison for manufacturing companies. Accordingly, we determine that comparing rates of return is not a valid method for determining whether a subsidy is being conferred by stumpage programs.

In addition, Respondents argue that the results of their TSPIRS analysis shows that the government is providing no net benefits to softwood lumber producers in accordance with Dr. Nordhaus' theory. First, as explained above, the Department does not measure the net benefits provided to a subsidy recipient. Second, as explained below, the Department considers that Respondents have failed to demonstrate that their modified TSPIRS analysis would accurately reflect the government's cost of providing the good in this investigation.

Preferentiality Hierarchy

Respondents next contend that, to the extent that the Department decides to ignore the question of whether market distortion has occurred in determining whether stumpage programs provide countervailable subsidies, it still cannot be blindly wedded to the particular methodological formulation or sequence set forth in the 1986 Preferentiality Appendix. Respondents charge that, in

its Preliminary Determination, the Department engaged in a "rote application" of its preferentiality benchmarks without regard or explanation as to whether the preferentiality benchmarks that it selected were appropriate to use in this case.

While Congress specified that the provision of goods or services at preferential rates is one example of a countervailable domestic subsidy, it did not specify the manner in which preferentiality was to be determined. Although the Proposed Regulations are intended to codify the methodology which the Department has used in particular cases to determine when goods or services have been provided at preferential rates, Respondents stress that these remain only proposed rules and were never intended to prescribe an "immutable formula" for all future cases. Citing *IPSCO, Inc. v. United States*, 687 F. Supp. 614 (Ct. Int'l Trade 1988), *Saudi Iron and Steel Co. v. United States*, 686 F. Supp. 914 (Ct. Int'l Trade 1988), *dism'd on other grounds*, 698 F. Supp. 912 (Ct. Int'l Trade 1988), and other countervailing duty and administrative law cases, Respondents assert that the preferentiality hierarchy in the Proposed Regulations cannot provide a stand-alone rationale for finding provincial stumpage fees to constitute the preferential provision of a good or service. Rather, the Department must provide a reasoned explanation as to why any particular benchmark is "appropriate in light of the facts of *this* case and the economic principles applicable to those facts" (emphasis in the original).

It is, of course, incontestable that the Department is obliged to make a reasoned decision reflecting the facts of the case and to provide a complete explanation of the basis for reaching that decision. This principle was fully respected in the Department's Preliminary Determination, just as it is now being respected in this final determination. However, to ensure that the facts of a case are being considered in a manner which is fair and understandable to all of the parties concerned, our analysis cannot be conducted in a methodological vacuum which ignores past practice or the agency's regulatory guidelines, be they "proposed" or final. To do so would constitute little more than benchmark-shopping which, presumably, the Respondents would agree could result in an arbitrary outcome.

As the Respondents correctly point out, the Department's methodological framework for valuing countervailable

benefits conferred through the provision of goods or services is grounded in the statute: whether goods or services are provided or required to be provided by government action to a specific enterprise or industry or group of enterprises or industries at "preferential rates." On this statutory foundation, the Department built a hierarchical methodology for determining and measuring when goods or services are being provided at preferential rates in the interest of maximizing administrative certainty and predictability in an area where (as Respondents again correctly note) the statute did not provide considerable interpretative guidance. The fact that the Department indicated at the time that it put forth both its Preferentiality Appendix and, later, its Proposed Regulations that these tests or rankings may not always yield the most appropriate means of measurement in every case does not detract from their usefulness or applicability as our primary methodological tool in such circumstances.

The ranking of the preferentiality hierarchy should not strike parties as unfamiliar or illogical as it reflects the fundamental standard of measurement established by Congress in section 771(5)(A)(ii)(II)—*i.e.*, preference. Thus, the most common test which the Department has applied in determining preferentiality is whether the government (or government-directed supplier) is providing a good or service at a price that is lower than the prices the government charges to the same or other users of that product within the same political jurisdiction. Insofar as the exercising of price discrimination by the same seller for the same product provides the clearest possible manifestation of whether preference exists, there is little need to justify in each case why such a standard would be appropriate to determining whether goods or services are being provided at preferential rates.

However, even in those cases where comparisons based on price discrimination within the jurisdiction cannot reliably be made, the Department's sequential alternatives nonetheless flow naturally from the preferred test following certain fundamental principles: (1) That preference is most commonly manifested through the behavior of the provider of the good or service; (2) that domestic subsidies should be determined on the basis of comparisons within the same political jurisdiction; and (3) that prices offer the most reasonable basis for making a

comparison. While the first principle relates directly to the standard of measurement articulated in the statute, the other two principles are identifiable philosophical threads which run through the entirety of our countervailing duty practice.

As a result, what the preferentiality hierarchy presents is not a "mandatory roadmap" but rather a series of conceptual guideposts for evaluating the facts of a specific case in the context of Congressional intent and Departmental practice. The hierarchy of benchmarks constitutes a preferred sequence insofar as, in most cases, it will faithfully reflect both the meaning of the term "preferential" and the historical application of the countervailing duty law. This does not mean that the ranking is "immutable"; it does mean that the Department will follow the ranking unless presented with facts or arguments demonstrating that it is inappropriate, which was not the case here. We note also that Respondents, themselves, expressed no objection to the ranking of the benchmarks as a general rule.

Having determined that a demonstration of "market distortion" is not a prerequisite for the identification of a countervailing domestic subsidy, and having found that provincial stumpage programs are specific within the meaning of the statute, the Department has applied its preferentiality hierarchy in the order described in the Proposed Regulations. In examining the provincial stumpage programs under investigation, we have determined that the facts and information on the record permit a finding of preferentiality which accommodates the law's and the Department's general predisposition towards a comparison of actual prices within the relevant jurisdiction, without having to resort to other benchmarks which the Department has generally recognized to be less consistent with the fundamental principles underlying the preferentiality standard.

This brings us to the next of Respondents' methodological arguments with respect to the identification and valuation of stumpage subsidies—*viz.*, that the cost benchmark is the only appropriate measure on the preferentiality hierarchy for determining whether stumpage confers a subsidy.

Respondents, particularly BC, argue that the third alternative benchmark, the government's cost of providing the good or service, is the preferred means for determining whether provincial stumpage programs confer a subsidy. They contend that a cost-based comparison, when properly calculated,

results in a finding of no preferentiality. As proof, they have submitted a modified TSPIRS analysis (Timber Sales Program Information Reporting System—a three-part reporting system designed by the U.S. Department of Agriculture Forest Service (Forest Service) to measure whether national forest timber is being sold at "below-cost" prices) purportedly demonstrating that revenues exceed costs on a provincial basis in Alberta, British Columbia, Ontario and Quebec. BC, in particular, argues that the facts in this case do not support a price-based comparison for that province, and that the Department's current abandonment of the 1986 benchmark (*i.e.*, cost) in favor of a comparison to competitive SBFEP prices is a results-oriented contrivance designed to subvert the replacement costs instituted by BC under the MOU in order to obtain a subsidy.

Respondents argue that a TSPIRS-type, cost-based analysis is the most appropriate methodology for determining whether subsidies exist. This methodology, they contend, was designed by the Forest Service and the General Accounting Office to determine whether "below-cost" sales of timber were occurring on national park sales. It has been officially adopted in the United States as a measurement tool since 1989. To apply a different standard in this case than that used by the Forest Service, Respondents claim, would be arbitrary and capricious. They further contend that if, as was indicated in an April 20, 1992 memorandum from Marie Parker, Director, Office of Accounting, the Department had questions regarding Canada's application of TSPIRS or concerns regarding certain data, these questions should have been raised in the Department's questionnaire or at verification.

As explained above, the Department follows its hierarchy of benchmarks unless presented with facts or arguments demonstrating that its application of this hierarchy is inappropriate. As the provincial preferentiality sections show, appropriate price-based benchmarks exist in each of the provinces. Furthermore, the Department has long acknowledged that cost-based analyses pose exceptional problems when they are attempted to be used to measure preferentiality in the provision of a natural resource. See Preferentiality Appendix.

Even though endorsing the presentation of arguments regarding cost issues in the joint case brief, Alberta, Ontario and Quebec have all raised concerns regarding the use of a

cost-based benchmark in their respective provinces. At the hearing, Ontario stated that, " * * * in the context of Ontario, a [cost] benchmark would not be an appropriate measure." See Hearing Transcript, Volume II, p. 93. Ontario further stated that " * * * there's so much difficulty in Ontario on sorting out what kind of expenditures are undertaken for what purpose that it simply is not possible to come up with a result that isn't arbitrary." (Emphasis added.) See Hearing Transcript, Volume II, p. 96. Alberta states that, " * * * it is clear that the Department need not, and under the Department's preferentiality hierarchy *should not*, analyze the sale of timber harvesting rights in Alberta using any of its other less favored alternative preferentiality benchmarks [*i.e.*, private prices within Alberta, *cost*, and cross border]." (Emphasis added.) See Alberta Case Brief, p. VI-31. Finally, Quebec, in its case brief on cost issues states,

Private stumpage prices in Quebec served as the benchmark in the Department's preliminary determination. Quebec endorses that approach and has demonstrated that private market prices in Quebec are the appropriate benchmark to use to determine whether public stumpage prices in Quebec are preferential, if a preferentiality analysis is employed. The Department's verification confirmed this benchmark as the *only one appropriate in the final determination, consistent with the Department's established preferentiality hierarchy.* (Emphasis added.)

See Quebec Case Brief on Cost Issues, Tab 2, p. 2.

With regard to BC's argument that Lumber II and the MOU established cost as the appropriate benchmark for measuring stumpage preferentiality, we note that the Department's use of a cost benchmark in the 1986 Preliminary Determination was predicated upon the lack of appropriate price-based benchmarks and/or the lack of information regarding the adjustments necessary to the price-based benchmarks. As outlined in each of the provincial preferentiality sections, price-based nonpreferential benchmarks are now available in each of the provinces, as is the information necessary for making all appropriate adjustments to the benchmarks. The MOU export tax rates and the provisions regarding replacement measures were the result of negotiations. The fact that cost-based replacement measures for static negotiated export rates were allowed under the MOU is immaterial to the Department's subsidy analysis in a countervailing duty investigation.

Even assuming *arguendo* that cost were the appropriate measure of

preferentiality in this case, the Department does not believe that the modified TSPIRS approach used by the Respondents is the appropriate methodology for determining whether provincial stumpage programs are providing timber to the softwood lumber industry at preferential prices.

First, and foremost, TSPIRS was not developed to determine whether a government was providing a subsidy to users of timber. TSPIRS was developed in response to growing public and Congressional concern over the economics of timber sales and timber management in the national forests, in particular, so-called "below-cost" sales of timber from national forest land. See Timber Sale Program Information Reporting System: Final Report to Congress, U.S. Department of Agriculture, Forest Service, p. 5 (*TSPIRS Final Report*). However, while the term "below-cost sales" is found in both TSPIRS methodology and the unfair trade laws, its meaning in the two contexts is not synonymous. In fact, as admitted in the Final Report to Congress regarding TSPIRS, "[t]here is no consensus on the definition of a "below-cost" timber sale." See *TSPIRS Final Report*, p. 5. Furthermore, TSPIRS, as applied by the Forest Service, requires a three-part analysis involving the consideration of a number of factors in order to determine whether the goals of the Forest Service regarding national forest sales are being met. In fact, both the GAO and Congress have stated that an examination of any one of the reports outside the context of the other two is inappropriate. See *TSPIRS Final Report*. The *ad hoc* TSPIRS analysis conducted by the Respondents does not include all three parts.

Second, TSPIRS was designed to be applied strictly on a national forest basis. The Respondents' use of one section of this reporting system on a province-wide basis represents a significant methodological modification of TSPIRS.

Third, several modifications and estimations made by Respondents when applying TSPIRS raise serious concern as to the results of Respondents' TSPIRS analysis. Those of primary concern relate to in-kind services, so-called stewardship activities and backlog silviculture.

All in-kind services are recognized as revenue in the current year even though the "benefit" provided by these services may occur over an extended period of time. The provinces excluded all stewardship activities from their cost pools. However, activities paid for or performed by tenure holders that are considered by the provinces to be

stewardship activities were recognized as revenues. Backlog silviculture responsibilities were also not included in the provinces' TSPIRS cost pools. These backlog responsibilities arose out of the failure of the provinces to perform certain silviculture activities necessary to maintaining the government's policy of sustained yield and represent significant liabilities that would be included in a Forest Service TSPIRS analysis.

Finally, Respondents contention that the Department should have addressed its TSPIRS concerns in the questionnaires or at verification misses the point. The Department did not request any TSPIRS information from Canada, BC or any other province. This information was voluntarily submitted by Respondents. TSPIRS information was examined at verification at the behest of Respondents, not at the Department's initiative. Respondents knew at the time of the Preliminary Determination that the Department was focusing on price-based benchmarks to measure preferentiality. Irrespective of whether the Department solicited additional information concerning the Respondents' proposed cost-based methodology the fact remains that, for the reasons outlined in this discussion, they failed to demonstrate both that cost is the most appropriate benchmark for stumpage and that their modified TSPIRS approach would accurately reflect the government's cost of providing the good in this instance.

Lastly, in contrast to the methodological direction which Respondents advocate, the Coalition argues that a cross-border comparison of adjacent U.S. and Canadian timber offers the preferred means for determining whether provincial stumpage programs confer subsidies because a cross-border comparison is the only methodology which uses an undistorted benchmark that most accurately reflects true commercial considerations. The Coalition contends that the other benchmarks provided for in the preferentiality hierarchy are distorted in this case by reason of the log export restrictions and the large amount of timber owned and administered by the provinces. In support of its position, the Coalition cites *Leather from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 55 FR 40212 (October 2, 1990) (*Leather*), as an example of a case in which the Department chose to rely on an external benchmark to identify and measure a domestic subsidy.

The Coalition's reliance on *Leather* is misplaced. While the Department did

resort to an external benchmark for measuring the effect of the hide embargo in that case, it did not do so within the context of the Preferentiality Appendix since we did not consider the embargo to be the government provision of a good or service. However, for the type of subsidy being conferred as a result of the hide embargo, we considered that use of an external benchmark was not only appropriate, it was the only method available to use for valuing the subsidy benefit.

As stated earlier, it has been the Department's longstanding practice and preference to measure subsidies provided by a government within the jurisdiction of that government. Thus, in the absence of clear and persuasive evidence that comparisons made within the same jurisdiction would somehow yield skewed results, the Department will not stray from its methodological preference. We do not find that the Coalition has presented such clear and persuasive evidence. Moreover, insofar as we have sufficient and reliable nonpreferential price data in this case with which to compare stumpage prices within the relevant provincial jurisdictions, we find that other factors which could adversely affect the comparability of adjacent U.S. and Canadian timber (e.g. exchange rate fluctuations) merely underscore the appropriateness of remaining within the relevant jurisdictions. Consequently, we have based our preferentiality determinations on actual price comparisons within each province, as explained in greater detail below.

British Columbia

Pursuant to section 771(5)(A)(ii)(II) of the Act, the Department must examine whether the BC's provision of stumpage to producers of certain softwood lumber products is at a preferential rate. As explained above, the Department's preferred test for determining whether a good or service is provided at a preferential rate is to examine whether the government provides the same good or service at a price that is lower than the price the government charges to the same or other users within the same political jurisdiction, *i.e.*, whether there is price discrimination by the government.

In our Preliminary Determination, we found that the Government of BC was providing stumpage at preferential rates. We based this determination on our traditional measure of preference—price discrimination. A comparison of administratively-set stumpage prices (primarily for major tenures) to competitively-bid stumpage prices in the

section 16 Small Business Forest Enterprise Program (SBFEP) indicated that administratively-set prices, even after accounting for differences in forest management and other obligations, are, on average, lower than the competitively-bid prices that the Government of BC charges other timber harvesters. The Department considered that, since the SBFEP section 16 sales are based on competitive market forces, these competitively-bid prices are nonpreferential, and as such, an appropriate benchmark.

In their April 21, 1992 briefs, Respondents argue that the issue in this case involves the provision of neither a good nor a service, but rather a set of rights and obligations:

Under the preferentiality benchmarks in the Proposed Regulations, any price comparison used by the Department to determine preferentiality must involve either "identical" goods or goods that are sufficiently "similar or related" that adjustments for "cost differences" will make comparisons meaningful. Application of the Department's price comparison benchmarks in this case, however, is complicated by the fact that what is at issue here is not really a "good" or a "service," but rather a bundle of long-term rights and obligations relating to access to timber. (See Respondents April 21, 1992 briefs, pp. 111-44, 45.)

We find that we did in fact use our preferred benchmark appropriately. That is, just as in antidumping investigations, where the Department may examine sales of the same goods but adjusts for differences in the terms and conditions of sale, in this instance we examined the same good, *i.e.*, softwood timber, and made adjustments which relate to the terms and conditions of the sale.

Respondents argue that the benchmark which the Department used in the Preliminary Determination (*i.e.*, SBFEP section 16 sales) is an inappropriate benchmark for this investigation. In their briefs they raise four main objections to the use of the SBFEP benchmark.

Comparability of Rights and Obligations

Respondents argue that the Department compared significantly different sets of rights and obligations. They contend that the adjustments necessary to make the rights and obligations incorporated in major and SBFEP tenures comparable are very complex and must take account of all factors relating to: (1) Timber quality; (2) the obligations of the tenureholders; and, (3) the rights of the tenureholders. They maintain that the Department examined only the first two factors and that:

It is improper for the Department to conclude that the difference between the average stumpage charges paid by the SBFEP licensees and those paid by long-term tenureholders (after making adjustments for differences in timber quality and obligations) constitutes a countervailable subsidy. The difference could as readily be attributable to differences in how the relative benefits and risks of the stumpage rights being compared are valued by the market. As Dr. Nordhaus points out, the prices for long-term and spot contracts frequently diverge by substantial amounts. Moreover, unlike adjustments for differences in timber quality or tenureholder obligations, it is exceedingly difficult—perhaps impossible—to quantify properly the adjustments needed to reflect differences in the term, scope, and riskiness of timber rights. (See Respondents' April 21, 1992 briefs, pp. III-46, 47.)

They maintain that adjusting for differences in the first two factors may allow for rational price comparisons between similar or related goods, but that when the comparison is between different sets of rights and obligations, such adjustments alone will not make them comparable.

Respondents focus their arguments regarding the differing rights between SBFEP and major tenures on temporal distinctions. It is their contention that: "[s]pot prices such as those occurring under the SBFEP and the prices of long-term contracts such as those represented by major tenures, will often differ for sound economic reasons by substantial amounts." (See Respondents' April 21, 1992 brief, p. VIII-B-33.)

First, the Department does not consider SBFEP stumpage rates to be spot prices. Spot markets (such as for commodities or currencies) are characterized by prices which are subject to change over time, but which may be fixed at the time of the spot sale for delivery within a relatively short period of time. (See Hearing Transcripts, April 29, 1992, pp. 235-240 for Dr. Nordhaus' discussion of spot markets.) While SBFEP licensees may indeed elect to lock in the bid rate at the time of bid, the upset rate (*i.e.*, the minimum bid which consists of the appraised value plus any developmental silviculture levies) fluctuates each quarter in accordance with the Comparative Value Pricing System (CVPS), which BC uses in establishing essentially all stumpage prices. The interval from bid to harvest completion of SBFEP sales may be up to three years, which could incorporate 12 price changes. Furthermore, while Dr. Nordhaus argues that the Department erred in comparing spot and long-term prices, Dr. Nordhaus' testimony clearly does not establish that SBFEP sales are spot sales: "I'm not making a factual assertion here that [SBFEP sales] were

spot sales * * * " (See Hearings Transcript for April 29, 1992, pp. 237-38.)

Second, stumpage rates assessed on major tenures are not fixed for the duration of the tenure; precisely like the SBFEP, they change every quarter according to the CVPS. In that sense, they cannot be considered long-term prices.

Third, even taking into account the fact that the SBFEP tenures are shorter in duration, there is no clear relative over- or undervaluation of either the competitive benchmark or the administratively-set price, since short-term and long-term prices do not, even in instances when one might expect them to, exhibit constant relative relationships. For example, U.S. Treasury notes are sold in durations ranging from 3 months to 30 years. One would expect that an investor who was willing to commit money over a longer period of time would demand a higher yield (*i.e.*, the price of money) in order to be compensated for the greater risk from inflation and interest rate fluctuations. However, an inverted yield curve is not uncommon during a credit crunch.

Lastly, Quebec has urged the Department specifically to compare the prices of public and private timber in that province (which the Department in fact has done). The public stumpage rates in Quebec are under long-term tenures (25 years) while the private sales cover two seasons at most. (See Hearings Transcript for April 30, 1992, 162-64.) In addition, in an attachment to Respondents' April 21, 1992 brief, Dr. Nordhaus critiques the methodologies implemented in the Preliminary Determination but directs no criticisms towards the fact that the Department compared short-term and long-term sales in Quebec. (See Respondents' April 21, 1992 brief, Attachment 111-1, p. 4.) Thus, it is difficult to fathom how short-term private sales in Quebec can be an appropriate benchmark, but short-term competitively-bid sales in BC cannot.

Representativeness of SBFEP Prices

Respondents' second major contention is that SBFEP prices are not representative of the market. They insist that SBFEP licensees sell marginal supplies to major tenure holders. Because these marginal supplies fulfill the incremental needs of major tenure holders at particular points of time, major tenure holders are willing to pay more for them than they would normally pay for timber. Therefore, Respondents believe that the SBFEP section 16 prices are not a reasonable proxy for market prices, and presented MOF officials as

well as industry participants to support this assertion at verification.

Notwithstanding the anecdotal information submitted by Respondents on this point, no studies or analyses were supplied to confirm such allegations. The Department cannot rely solely on such statements as a basis for discounting the validity of an observable market price. Absent documented evidence to the contrary, the Department considers that the competitively-bid SBFEP price is a representative market price.

The MOF did supply information, which the Department verified, indicating that the value of softwood timber on SBFEP stands is, across the entire province, essentially of identical value to all other Crown timber. Consequently, the Department considers that the timber sold on both the SBFEP and major tenure holders' stands are the same and hence comparable.

Moreover, economic theory indicates that it is precisely the marginal valuation that determines the equilibrium price for an input in a competitive market. The latter point, that the Canadian softwood lumber industry can be characterized as a competitive market, is supported by Dr. Nordhaus' analysis: "Because of the low level of concentration of the lumber industry, and given its high reliance on international trade, the industry is best characterized as a competitive industry." (See Respondents' February 19, 1992 submission, Appendix A, p. 22.) Therefore, at each price for logs (*i.e.*, the cost of logs to lumber producers), lumber producers will purchase logs up to the point where their marginal value product from the last additional log (*i.e.*, their marginal revenue) just equals their purchase price (*i.e.*, cost) of the log. Moreover, even if one concedes Respondents' claim that, due to the high costs associated with mill closures, major tenure holders actually purchase logs beyond the point where their marginal value product and cost of logs equate (*i.e.*, beyond the point of profit maximization), the analysis still holds. The equilibrium price will still be a reflection of marginal valuation. Therefore, the Department considers the SBFEP an appropriate market price.

Competitiveness of Major Tenures

Respondents' third major contention is that major tenures are also competitive since applicants for major tenures may include bonus offers in their application package or may commit themselves to additional obligations.

During verification, the Department found that (1) the MOF was, in fact,

unaware if any major tenure holders made bonus offers during the POI and (2) any additional obligations undertaken by major tenure holders, such as a commitment to perform incremental silviculture, were quite rare, and for which the Department is adjusting in its final determination in any case. (See BC Verification Report, pp. 11 and 25.) Therefore, the Department lacks sufficient evidence to conclude that the major tenures are competitive.

Nonpreferential Price Benchmarks

Respondents' final point of contention is that the Department's Preliminary Determination implicitly views only auction prices as competitive. They argue that auctions are often not the best or the only way to establish competitive prices, and that relatively few prices in the United States are established through auction bidding. They also maintain that the GOC considers the auction system incompatible with its preferred long-term system of forest management.

In choosing a benchmark for determining and measuring price discrimination, the Department uses prices charged by the government which are nonpreferential. The Department may find that prices which are not established by competitive auction bidding are nonpreferential, but in the case of BC, auction prices were the only nonpreferential price available to the Department. While the Department maintains that competitively bid prices are, by definition, nonpreferential, that does not mean that the Department could not have utilized a different benchmark had one been available. For example, in this investigation, we did not use auction prices for either the Quebec or Ontario benchmarks. In addition, the Department could utilize a nonpreferential auction price as the benchmark and still find no subsidy if other prices were equivalent. Therefore, while the Department has no all-encompassing definition for what constitutes a competitive price, in this case we find that the SBFEP auction prices are competitive and nonpreferential.

Furthermore, we consider that the Department can adjust for those factors which we consider relevant to the calculation, thereby reasonably comparing the administratively-set prices to the SBFEP section 16 benchmark price. We also find the SBFEP benchmark price to be reflective of an appropriate market price, that the available evidence does not permit consideration of major tenures as competitive, and that auction prices are

neither a mandatory nor general test for preferentiality, but are appropriate in this case.

Measurement of the Benefit

Both Respondents and the Coalition have raised a number of issues relating to the benefit calculation under a SBFEP benchmark.

The SBFEP Price

Respondents argue that the Department should have used all SBFEP sales (*i.e.*, sections 16, 16.1, and 18) in calculating the competitive benchmark, rather than limiting the benchmark to section 16 sales only. However, only section 16 sales are based solely on the highest bid. Therefore, by isolating section 16 SBFEP sales, the Department has ensured that the benchmark reflects stumpage rates that are essentially market-determined. Including sections 16.1 and 18 sales would inject nonmarket factors in a competitive benchmark, precisely what the Department wants to avoid. Section 16.1 sales are only partially competitive; they are conferred on the bidder who submits the highest combination of bid and potential value added. Since a private timber seller would be indifferent as to the ultimate final product of the timber, including section 16.1 sales in the benchmark would undermine the nonpreferentiality of the competitive prices. Section 18 sales are conferred without competition (*i.e.*, are administratively set) and, as such, are inappropriate to use in the benchmark. Therefore, the Department limited its benchmark stumpage rate to section 16 competitively-bid SBFEP sales in this final determination.

Log Grades

Respondents also argue that the Department erred in the Preliminary Determination in making a grade-based distinction between sawlogs and pulplogs. They argue that grade is a poor indicator of the ultimate destination of a softwood log. They state that pulplogs are often sawn and that sawlogs are sometimes chipped. They also maintain that in the Interior very little pulpwood is sorted at the point of harvest, and that sawmills typically attempt to mill all logs delivered to the mill. Those that are sorted out are usually logs which will be traded to another sawmill, but whose species or size are inappropriate for the sawmill in question.

During verification, we found no evidence that either the government or companies distinguish log destination (sawmill or pulpmill) solely by grade. (See Verification Exhibit P-16.) In

addition, examination of a log yard during company verifications provided yet further evidence that sawmills do not distinguish between sawlogs and pulplogs, *i.e.*, they attempt to saw all logs. Accordingly, we are using the stumpage rate for all softwood logs, for both the administratively-set price and the competitive benchmark, in the benefit calculation.

Method of Adjustments

Respondents maintain that, in comparing the SBFEP section 16 benchmark and the administratively-set stumpage rate, the Department incorrectly adjusted the administratively-set stumpage rate upward by the costs of the major tenure holders' obligations, rather than adjusting the SBFEP benchmark downward by the expenses incurred by the MOF on the SBFEP stands.

Respondents claim that the latter method is more accurate since it reduces the SBFEP benchmark by the value of services which SBFEP licensees receive from the MOF. In addition, they state that the MOF costs are the appropriate ones since they best represent what the SBFEP costs would be for performing the same obligations on the same exact stands. They also insist that the MOF should not be considered to be less efficient in performing these obligations, since they use the same contractors as the major tenure holders. Alternatively, Respondents suggest using a simple average of the MOF's and major tenure holders' costs.

In measuring subsidies, the Department's practice is to measure the benefit to the recipient. In this case, the benefit to the recipient (*i.e.*, the softwood lumber products producer) is the difference in price (price includes stumpage plus the costs of all obligations) between administratively-set stumpage and the competitive benchmark. Although Respondents maintain that the obligations the MOF fulfills on SBFEP stands is a service provided to the SBFEP licensee, that is clearly not the case for some obligations. For example, when the MOF performs silviculture work on Crown stands that are part of the SBFEP, the MOF is performing work which increases the value of a Crown asset; it is by no means performing a service for SBFEP licensees. Conversely, when major tenure holders perform silviculture obligations on Crown lands, they are in fact providing a service to the MOF.

Lastly, MOF officials argued and presented data which indicated that the major tenure holders' and SBFEP stands are, on average, almost of identical

value. The Department verified and accepted those data. Given that stand accessibility, location, and terrain all affect value, and that these same factors also would account for cost differentials relating to many obligations, the Department finds these facts incompatible with MOF costs which, for some activities, are significantly higher than those of the major tenure holders.⁶

Based on these factors, the Department considers that in making the adjustments, we should examine the total costs incurred by both the major tenure holders and the SBFEP licensees as the most accurate method to determine the benefit.

Application of Adjustments

Road Building and Road Maintenance

The Coalition argues that the Department should amortize road building costs since industry practice and accepted accounting principles regarding capital expenditures justify such treatment. Furthermore, it maintains that major tenure holders and SBFEP licensees did not face different road building costs prior to October 1987; therefore, only road building costs incurred since that time should be included in the amortized portion for the POI. Lastly, the Coalition states that if the Department decides not to amortize road building costs, it should base the per unit costs on the actual harvest volume, rather than the harvest made accessible by the roads.

The Department disagrees with the Coalition's first two points. First, we do not consider that it is always necessary to amortize capital expenditures. For example, if one amortizes a recurring cost over a given number of years, by the last year of that amortization schedule, expenses and amortized costs will be equivalent. For example, if a company amortizes, using a straight-line depreciation schedule, a \$1,000,000 cost every year for 10 years, in the tenth year the amortization will equal \$1,000,000 (*i.e.*, \$100,000 times 10 years). Secondly, prior to October 1987, SBFEP tenure holders and major tenure holders did not face the same road building obligations. Section 88 road building credits apparently accounted for only a small proportion of total road building costs—perhaps 10 percent of off-block roads. (See BC Verification Report,

⁶ For example, MOF costs for site preparation and planting and seedlings are 100 and 84 percent higher, respectively, than MTH costs for the same activities. In addition, MOF administration costs are 272 percent higher than administration costs borne by MTH (\$1.34 for the MOF and \$0.34 for MTH). (See December 13, 1991 BC response, pp. H-1 and H-4.)

p. 26.) Therefore, the Department concludes that road building costs are essentially in a "steady state" and that amortization is not necessary.⁶ Lastly, given that the major tenure holders do not own the roads that they build or use, one would not necessarily consider these roads to be assets to major tenure holders. For these reasons, the Department considers the amortization of road building costs to be inappropriate and will expense such costs.

The Department agrees with the Coalition that the proper denominator in the per cubic meter road building cost calculation is the actual volume harvested as opposed to the volume made accessible by the roads. The latter figure would, by its very nature, be an estimate, while the former is an actual verified number. In addition, the Department consistently used the volume harvested in calculating all per unit values. To deviate in this instance would be to skew the cost calculation for road building relative to all other factors.

Silviculture

Both Respondents and the Coalition argue that the Department erred in using silviculture expenses as an adjustment to the major tenure holders' price in the Preliminary Determination. Both parties argue that silviculture liabilities are the correct adjustment because they more accurately reflect the expenses associated with the current harvest. However, the parties disagree on exactly what the value of those silviculture liabilities should be.

This disagreement explains in part the Department's decision to use silviculture expenses. Liabilities by their very nature are, at least in part, speculative, while expenses are actual costs which can be verified. In addition, regarding the amortization of roads, Respondents state in their April 21, 1992 brief (p.7-14) that "amortization adds needless complexity." The same can be said of silviculture liabilities. Lastly, as MOF officials demonstrated during verification, this issue is only relevant for the Interior, since silviculture expenses and liabilities are essentially identical on the Coast given the shorter growing cycle.⁷ (See BC Verification

⁶ The Department did make a 15 percent downward adjustment of road building costs to account for potential overlap of obligations between MTH and SBFEP licensees.

⁷ During the POI, silviculture expenses on the Coast were \$1.60 while silviculture liabilities were \$1.63 (See December 13, 1991 BC response, p. H-4.)

Report, p. 29.) Given these facts, the Department considers that the silviculture adjustment should employ current expenses rather than future liabilities.

Miscellaneous Expenses

Respondents argue that the Department should allow, with the exception of scaling fees, the remaining miscellaneous expenses which it did not allow in the Preliminary Determination, *i.e.*, engineering and layout, scaling, cruising, head office forestry and engineering, and regional office forestry and engineering. They state that, at most, engineering and layout and scaling should be reduced by five and ten percent, respectively, to account for overlapping costs incurred by SBFEP licensees.

During verification the Department posed numerous questions to MOF officials, as well as to major tenure holders and SBFEP licensees, and received a great deal of information regarding miscellaneous expenses. (See BC Verification Report, pp. 27-28 and 33-35.) We also verified the actual amounts incurred by the major tenure holders for these activities. We now consider that major tenure holders do in fact bear a substantial administrative burden which is reflected by these costs and that SBFEP licensees do not bear a comparable administrative burden. Therefore, the Department has included all miscellaneous expenses, with the exception of scaling fees which are clearly borne by both major tenure holders and SBFEP licensees, in the benefit calculation. We also have made the estimated five and ten percent downward adjustments noted above for engineering and layout and scaling to account for the small degree of these expenses which are common to major tenure holders and SBFEP licensees.

G&A Expenses

Respondents argue that all G&A expenses reported in the Price Waterhouse survey for the Coast should be included in the G&A per unit costs, including those which the MOF does not allow for appraisal purposes. They insist that such expenses (*e.g.*, charitable contributions, company communications, and taxes) are valid business expenses and should, therefore, be included in G&A expenses. We agree and as such have included these expenses in the Department's benefit calculation.

Other Adjustments

The Coalition contends that the Department erred in omitting a tenure security adjustment in the Preliminary

Determination. They state that there should be an adjustment which takes into account the assured supply of timber which major tenure holders have relative to SBFEP licensees.

The Department does not consider that the long-term right (and obligation as well, given minimum cut requirements) to cut timber is necessarily a benefit. This is consistent with the Department's position, *vis-a-vis* Respondents', that a long-term tenure does not necessarily imply greater risks.

A secure administered supply, in and of itself, implies nothing without consideration of the price or other requirements necessary to procure that supply. Furthermore, given that the price of administered timber, as well as the concomitant obligations, can, and does, change, it is not evident that a secure supply is always advantageous. In fact, the Coalition admitted as much during the hearings: "Isn't it possible the [sic] through intervention in the market, the Government requires [major tenure holders] to harvest timber that [they] otherwise would not * * *" (See Hearings Transcript for April 29, 1992, p. 266.) In light of these uncertainties, the Department does not consider that a tenure security adjustment is warranted.

Respondents raised the following factors which they maintain must be adjusted for when using the SBFEP benchmark:

- Some SBFEP licensees may be subject to lower tax rates than major tenure holders;
- Major tenure holders have greater costs related to safety and first aid compliance measures, union wage rates, waste charges, and employee withholding requirements;
- SBFEP have lower operating costs resulting from a lack of capital assets and the associated financial carrying costs;
- SBFEP can lock in prices at the time of the bid;
- Certainty regarding their contingent liabilities make SBFEP tenures more valuable; and
- SBFEP licensees have the ability to make short-term and incremental sales.

First, whether SBFEP tax rates may be lower is not relevant since the Department does not consider the indirect effect of taxes on subsidy calculations. (See § 355.46 of the Proposed Regulations.) The Department only considers taxes in a countervailing duty proceeding when the tax itself is the source of the subsidy. Second, the Department does not consider capital carrying costs relevant to this analysis since we are expensing all costs. Third, some of those expenses listed by Respondents were in fact incorporated

in our analysis (*e.g.*, waste charges) and for others it is not clear from the record that such costs are only borne by major tenure holders and hence may be irrelevant. Fourth, even assuming *arguendo* that SBFEP tenure holders lock in prices (see above), major tenure holders have the option to reduce or increase their harvest by 50 percent in any one year to take advantage of end product market prices. Fifth, it may be true that the contingent liabilities of major tenure holders could be increased; however, they can be reduced as well. For example, the MOF eliminated interest payments for late stumpage payments to major tenure holders in a portion of the Interior for a period of five months in 1990-91. (See December 13, 1991 BC response, pp. IV-61-62.) Lastly, as stated above, the Department does not consider short-term sales inherently advantageous *vis-a-vis* long-term sales. Given these facts, the Department does not consider that any of these adjustments are appropriate for its benefit calculation.

Calculation of the Benefit

In calculating the benefit in this final determination, the Department based the calculation on verified data and followed the same methodology as used in the Preliminary Determination. However, some of the adjustments were modified as explained above.

One of the modifications which is not discussed above relates to the volume of logs entering sawmills, *i.e.*, the volume of logs which are inputs to the subject merchandise. In the Preliminary Determination we based this distinction on log grades. That is, we assumed that particular grades of logs were likely to be sawn, while other grades were likely to be chipped for pulp. However, during verification, both the BC and federal governments presented data concerning the percentage of all softwood logs which enter sawmills in each region (*i.e.*, Coast and Interior) for 1985, 1986, 1988, and 1989. Given that the Department verified such data, and that these data provide a more accurate figure for the volume of softwood logs entering sawmills, the Department is applying the percentage of softwood logs entering sawmills in 1989 to the total volume of the Crown softwood harvest subject to administratively-set stumpage rates, in order to calculate the volume of stumpage entering sawmills which benefits from the stumpage subsidy.

To calculate the benefit, we multiplied the volume of the softwood sawlogs (which are not competitively-priced and which originate from Crown lands) entering sawmills by the per cubic meter

difference between the adjusted administratively-set price and the SBFEP benchmark to arrive at the total stumpage program benefit. The calculation of the country-wide rate is discussed in the "Country-Wide Calculation" section of this notice.

Quebec

According to the questionnaire responses, and as verified by the Department, over 95 percent of the stumpage harvested on provincial lands in Quebec is harvested under Timber Supply Forest Management Agreements (TSFMAs). For purposes of setting stumpage rates under TSFMAs, Quebec is divided into 28 tariffing zones, the boundaries of which, according to Respondents, were set so as to ensure that for each zone, the factors that influence the market value of standing timber (average tree size, type of soil, topography, transportation distances, etc.) were as homogeneous as possible. At verification the Department learned that the tariffing zones were originally set up by a consultant hired by Quebec to establish the zones according to biophysical and geomorphological homogeneity, and that private as well as provincial lands were considered when examining the biophysical characteristics.

Quebec calculates a different stumpage rate by species for each tariffing zone and that rate applies uniformly throughout the zone. The stumpage rate for each tariffing zone is set based on a "parity technique", which uses information on stumpage rates from private forest to calculate the market value of standing timber (MVST) of the provincial forest land in each tariffing zone. The stumpage rate charged in a tariffing zone is equivalent to the MVST for that zone. In setting the stumpage rates, Quebec makes no distinction between sawlogs and pulplogs.

In order to obtain private stumpage rates, the government conducts a "full census" of the private market once every three years and a survey in the intervening years. The first and only "full census" was conducted in 1988, and was used to set stumpage rates during the POI without any adjustments. At verification the Department examined all of the raw data collected in the various surveys and confirmed the accuracy of the results.

Preferentiality Benchmark

Respondents argue that the parity technique employed by Quebec to set provincial stumpage rates matches public to private prices and, therefore, systematically excludes preference, and precludes any need for a traditional

preferentiality analysis. They state that if we decide to do a preference analysis, the Department should apply, on the basis of verified information, the Department's preferred measure of preferentiality by comparing stumpage prices for standing timber sold to lumber mills to the stumpage price for standing timber sold to pulp and paper mills. Respondents further argue that should the Department chose not to rely on this measure of preferentiality, it can resort to two other viable benchmarks: (1) Private forest stumpage prices; or (2) the relationship of Quebec's cost of providing stumpage to the revenues it receives from stumpage.

The Coalition argues that a cross-border comparison with the United States remains the most accurate measure of Quebec subsidies, and that sawtimber stumpage prices in Maine, which according to the Coalition are the appropriate benchmark, are considerably higher than sawtimber stumpage prices in Quebec.

Concerning the Coalition's proposed use of a cross-border comparison, see the general "Preferentiality" section above for a discussion of why the Department is not using this potential benchmark.

In order to examine government sales of identical goods to different purchasers in determining preferentiality, as Respondents have suggested, the sales used for comparison must be nonspecific or, if they are specific, must be demonstrated through other means to be nonpreferential. While it is true that Quebec does not distinguish between sawlogs and pulplogs in setting provincial stumpage rates, sales to pulp producers are specific (see "Specificity" section above). In addition, simply because a government sells the same good to two end users for the same price does not preclude a finding of preferentiality for those sales. According to information contained on the record, the only possible benchmark which could be used to demonstrate the nonpreferentiality of the stumpage charged to pulp mills, private stumpage rates, indicated that pulp mill stumpage rates as well as sawmill stumpage rates were preferential. Thus, the preferred test (price discrimination) is not possible.

Respondents state the Department's first alternative benchmark, government prices for similar goods, is nonexistent in Quebec. The next alternative benchmark is prices charged by private sellers for the same good. Respondents note that the Department established at verification the viability of Quebec's private forest as a legitimate

benchmark. Respondents cite the Verification Report, stating the Department verified that the total log harvest from private lands equals 23 percent of the total log harvest in Quebec and 17 percent of the softwood log harvest in Quebec.

Note—About 10 percent of the total Quebec softwood harvest by sawmills is from private forests.

As a result of verification and an examination of all relevant information on the record, the Department is satisfied that the private market surveys (done in connection with the parity technique) accurately reflect the prevailing private stumpage prices in Quebec. Therefore, we determine that the private prices provide a reliable benchmark for comparison purposes.

The Coalition argues that the second alternative benchmark in the hierarchy—prices charged by another seller within the same jurisdiction—is not ideal, but would be a more accurate measure of subsidization only if the Department used the Quebec sawlog prices collected by a private company for the New Brunswick Government. According to the Coalition, the Quebec survey relied upon by the Department as a measure of private prices suffered from numerous infirmities, whereas the data collected for New Brunswick is much less likely to be afflicted by the same infirmities. The survey performed for New Brunswick, according to the Coalition, revealed much higher private stumpage prices in Quebec than the Quebec survey did. In large part this may be because this survey examined only sawtimber, whereas the Quebec rates were based on a survey of all timber—pulpwood and sawtimber. Respondents counter that the private stumpage survey conducted for New Brunswick was not only unverified but, as stated in a letter from the company that performed the survey submitted by Respondents, only the border zone between Quebec and New Brunswick was included in the survey. Respondents also point out that there were only five Respondents in the New Brunswick survey in contrast to Quebec survey of private forests, which included 149 Respondents throughout Quebec.

The Coalition contends the entire provincial stumpage system in Quebec is not "market-based" because private prices in Quebec are distorted and depressed by decades of artificially cheap provincial stumpage, and these prices are used to set public stumpage.

Citing a study published in 1988 of the "20 quality zones" in Quebec done by the Aktrin Research Institute of Ontario.

the Coalition asserts the "cost adjustments" which Quebec uses to make public and private timber comparable are utterly fanciful and lead to anomalous results. Respondents point out that the Aktrin study cited by the Coalition is completely outdated and irrelevant since it examined a system that was replaced in 1989 by Quebec's current system of 28 "biophysically and geologically homogeneous tariffing zones."

We agree with Respondents that private prices in Quebec collected under Quebec's own contracted out surveys, which we examined in depth at verification, are a viable benchmark. The evidence cited by the Coalition is either outdated and irrelevant or anecdotal. As for the private forest stumpage prices collected by New Brunswick, the study is far less comprehensive than the private stumpage survey conducted for Quebec in connection with the parity technique.

We calculated the private stumpage benchmark by weight-averaging the private stumpage rates collected in the provincial government private market surveys in the calendar years 1990 and 1991, to reflect Quebec's fiscal year. In instances where a cost or obligation was borne by both those harvesting on private lands and on provincial lands, we have adjusted the provincial stumpage rate by the difference between the two costs or obligations, as discussed below. If it is unclear from the facts on the record as to the difference between private and provincial lands, no adjustment was made to either the private stumpage rate or the provincial stumpage rate.

Adjustments to Noncompetitive Provincial Rate

We determined the noncompetitive stumpage rate by dividing the actual total stumpage fees paid by sawmills and lath producers during the POI (most laths are within the scope of this investigation) by the actual amount of stumpage used by sawmills/lath producers during the POI reported in the questionnaire responses.

In order to make an equitable comparison, we have had to account for the fact that TSFMA holders are required to fulfill certain forest management and timber-harvesting obligations that may not be required of those harvesting from private lands. In addition, the distribution of private and provincial lands within the province results in additional costs incurred by provincial tenure holders in the North. Therefore, to determine whether provincial stumpage is provided at a preferential rate, we have made

adjustments for all of the obligations and expenses, on a per cubic meter basis, that are incurred by TSFMA holders but are not borne by those harvesting privately-owned timber. These adjustments (on a per cubic meter basis) are as follows:

Harvesting Costs

Respondents have claimed an adjustment to account for the differential in harvesting costs between provincial lands and private lands. Respondents claim that since most provincial lands are located in the northern portion of Quebec where conditions are harsh, harvesting costs are much higher than for private lands, which, according to Respondents, are located in the milder and more developed southern portion of Quebec.

We note that according to the questionnaire response, close to fifty percent of the total softwood harvest under TSFMAs are in the tariffing zones which also contain the private forests surveyed by Quebec for use in the parity technique. In addition, as discussed in the Verification Report, when setting up the tariffing zones, the consultant hired by Quebec considered all lands, both provincial and private, in determining "biophysical and geomorphological homogeneity." In fact, the original 28 tariffing zones were later checked by an independent research foundation (also noted in the Verification Report), which had a mandate from Quebec to examine the tariffing zone limits and revise them whenever justifiable. This research foundation reaffirmed the tariffing zone boundaries as they were originally set up.

Based on these facts, we see no basis for a claim that harvesting costs on provincial lands would differ significantly from the comparable costs on private lands in those tariffing zones with private and public forests. However, we do agree that a harvesting cost differential exist between private lands in the mostly southern zones and the public land in the northern zones. Therefore, we only applied this adjustment to those zones in northern Quebec with no private forests. Before making this adjustment, we first adjusted for inflation since the cost data upon which Respondents made the claim were from periods prior to the POI. The data submitted by Respondents on costs in the private forests was collected in 1988 and the costs in the public forests was for FY 1989/90. We adjusted both of these figures to 1990 using the Statistics Canada Industrial Product Price index and then derived the differential.

To account for the fact that we are only allowing the adjustment in the northern zones, we multiplied this inflation adjusted differential by the spruce-pine-fir harvest under TSFMAs in those tariffing zones which lack significant private forests. We then divided this number by the total spruce-pine-fir harvest under TSFMAs to derive the appropriate per cubic meter adjustment for the province-wide calculation.

Road Construction and Maintenance

Respondents contend that, as with harvesting costs, there are significant differences in road construction and maintenance costs incurred by TSFMA holders harvesting in the public forests. According to Respondents, the information that was necessary to make this adjustment was missing at the time of the Preliminary Determination but was submitted prior to verification and is now part of the verified record. Therefore, they claim the Department should make an adjustment for the additional costs in road building and maintenance costs incurred by TSFMA holders.

Respondents state that the additional road building and maintenance costs imposed on TSFMA holders are primarily attributable to the costs of building and maintaining primary roads, although silviculture requirements unique to TSFMA holders also require more secondary and tertiary road building and maintenance than is needed in the private forests. Because Quebec's private forests are concentrated in the more heavily populated and developed southern portions of the province, a preexisting network of primary roads connects the private forests to Quebec's commercial centers. Consequently, Respondents allege road building and maintenance in the private forest, when required, is limited to secondary and tertiary roads.

By contrast, according to Respondents, access to Quebec's remote public forests requires the construction and maintenance of primary roads to connect the public forests to commercial centers, as well as secondary and tertiary roads that connect the primary roads to the actual harvesting sites. Primary roads built and maintained by TSFMA holders must comply with primary road specifications established by Quebec because those primary roads, as well as any secondary and tertiary roads, become part of Quebec's public road system and are open to public use. By contrast, secondary and tertiary roads built in private forests are the property of the landowner and need

only satisfy the requirements of the landowner.

Respondents further argue that, regarding secondary and tertiary roads, the conditions that exist in the public forests impose far higher operating costs than do the conditions prevailing in the private forests. The verified record of this investigation, according to Respondents, now contains a detailed break-out of the different road construction and maintenance costs imposed on TSFMA holders in contrast to harvesters operating in the private forests. Since the information the Department deemed missing from the record at the time of the Preliminary Determination has been provided and verified, Respondents argue that the Department should adjust the TSFMA rate by an the incremental cost of primary, secondary, and tertiary road construction and maintenance imposed on TSFMA holders.

The Coalition argues that like private harvesters, Quebec tenure holders pay for secondary roads and that responsibility for main roads has recently been passed to the tenure holders. Citing the Quebec Supplemental Questionnaire Response (page 61), the Coalition asserts that since the responsibility for road building was passed to TSFMA holders, Quebec no longer requires that the roads meet any building or maintenance standards, thereby reducing any possible road costs. Further, the Coalition argues, again citing the Supplemental Response, even so, and even assuming that licensees in Quebec incur significant costs on primary roads, road building expenditures are used for roads that will be used for many harvests. According to the Coalition, any cost of primary road building must be amortized over the harvests likely to be associated with a given road. In addition, the Coalition states that no adjustment should be made for the costs of maintaining tertiary and secondary roads because these are borne by all harvesters regardless of land ownership.

At verification, it became clear to the Department that in conducting the survey of private forests for use in the Parity Technique, Quebec merely assumed that primary roads were not built on private lands and never explicitly requested specific information on these costs. In fact, footnote one of Verification Exhibit No. 3 states: "Primary roads in private forests are absorbed into the Quebec road network because the private forests are located in populated areas. Consequently, there are no private costs for their construction and maintenance."

However, Respondents have noted in their questionnaire response dated January 8, 1992, that primary roads built by TSFMA holders also become the property of Quebec. In addition, these roads themselves do not need to meet any standards except those of the individual TSFMA holders.

At verification, the Department visited tariffing zone 14 in northern Quebec which has a significant amount of private forests and saw nothing to suggest that the primary road requirements for private forests in this zone would be any different than for provincial lands. Because of the lack of information pertaining to private land primary road costs and because the reasoning used by Respondents for not reporting these costs could equally be applied to primary roads built in provincial forests, we have made no adjustment for primary road costs.

We have, however, made an adjustment for the differential between the costs associated with secondary and tertiary roads on private and public lands since we consider the data provided by Respondents to be reasonable. This data was carefully examined at verification as were maps showing the geographic position of the private and public forests relative to conditions that affect timber harvesting. As was done for the claimed harvesting cost differential, we adjusted the data for inflation and the fact that we are allowing no cost differential in zones that contain significant amounts of both private and public forests in a similar fashion. To avoid double-counting, we deducted the amount of the per cubic meter silviculture road maintenance adjustment (described below) from the provincial secondary and tertiary road cost before calculating the differential.

Silviculture

Under the TSFMA tenure arrangements, companies must perform all silviculture treatments in order to achieve sustained yield. Most of the cost of this silviculture is credited toward a company's stumpage fees, but some costs, such as planning and transportation of seedlings are not credited. The responses report the total noncredited silviculture expenses under all TSFMAs. The Respondents reported the following "non-credited silviculture" costs for TSFMA holders: transportation of seedlings, silviculture roads, and control and planning costs. We have accepted Respondents' claimed adjustments.

The Coalition's comments concerning silviculture focus primarily on credited silviculture costs. The Coalition states that Quebec's claim at verification that

with respect to silviculture credits towards TSFMA stumpage fees, it "significantly undercompensates" tenure holders is unsupported and that it seems likely Quebec overreimburses for silviculture treatments. The Coalition cites four reasons in support of its claim. First, Quebec's assertion that it undercompensates TSFMA holders for silviculture is based on the Mallette report which was widely discredited during the 1990 MOU renegotiations. For example, individual cost estimates were found to be far above actual costs incurred in the United States. Second, Quebec sets most of its silviculture reimbursement levels based on the cost to the government. Work ordinarily is performed at a lower cost by private sector firms because of, *inter alia*, lower costs and increased efficiency. Third, the incentives in tenure systems such as the TSFMAs are to treat "mandatory silviculture expenditures on Crown land as operating costs to be minimized." Fourth, for treatments not yet performed by the government, Quebec estimates the cost based on "available data." The Coalition states that "available data," as the Department found at verification, essentially include anything the Ministry chooses to use and whatever arbitrary adjustments to the data the Ministry adopts.

We disagree with the Coalition's assertions concerning overcompensation of silviculture. At verification, the Department thoroughly examined all aspects of the Mallette Report and was satisfied with its results. There is nothing on the administrative record of this investigation to suggest that the Mallette Report was "widely discredited." At verification, the Department learned that like Quebec, most TSFMA holders contract out for silviculture work. In addition, at verification, we carefully examined contracts between Quebec and a private silviculture contractor and compared the costs listed in the contracts to the Mallette Report results and saw no major discrepancies. Finally, we compared the silviculture reimbursement amounts under Quebec's Private Forest Development Program (PFDP) to the silviculture credits for TSFMA holders and found that the TSFMA silviculture credits were significantly less than the PFDP reimbursements.

With regard to the Coalition's comments on Quebec's estimation of silviculture costs for treatments not yet performed by the government, we note that these treatments account for an insignificant amount of the silviculture performed by tenure holders. In

addition, as noted in the verification report, Quebec's calculation of the cost of the examined treatment was far below that of a contractor that performs the noted treatment for TSFMA holders.

For non-credited silviculture treatments we have made the following adjustments:

Transportation of Seedlings

Replanting is a silviculture requirement of TSFMA holders and although seedlings are provided to TSFMA holders by Quebec, tenure holders are required to transport them from government nurseries to harvest sites. Since private forest harvesters are not required by Quebec to replant, we have adjusted the TSFMA stumpage rate to reflect the cost for transportation for seedlings borne by TSFMA holders.

Road Maintenance

TSFMA holders, in addition to building roads to facilitate the harvest of standing timber, must maintain and repair those roads so as to permit mandatory silviculture to be performed. In order to calculate the appropriate adjustment, we divided the total cost for this activity, which was checked at verification, by the total harvest under TSFMAs to get a per cubic meter adjustment. Because this maintenance expense is included in the Provincial Secondary and Tertiary Road cost as reported by CERFO, the per cubic meter amount of this cost was deducted from that cost when calculating the Secondary and Tertiary Road Cost Differential adjustment described above to eliminate double counting. We have made the silviculture road cost adjustment based on the total TSFMA harvest because silviculture obligations for TSFMA holders apply throughout the province.

Control and Planning

Silviculture credits for TSFMA holders are calculated by Quebec based on the execution costs of certain silviculture treatments. Control and planning costs associated with silviculture treatments performed by TSFMA holders are not credited towards stumpage fees under the TSFMAs. Therefore, to make the adjustment we divided the total cost incurred by TSFMA holders by the total harvest under the TSFMAs to derive the per unit adjustment.

Fire Protection and Extinction

According to Quebec's Forest Act, TSFMA holders are required to prevent and extinguish forest fires within timber limits. In order to fulfill this requirement, each TSFMA holder must belong to a

forest protection agency. The government assumes 50 percent of the cost of fire protection and extinction while the forest protection agency assumes the other 50 percent. At verification, we learned that certain private land owners (i.e., those owning 800 or more hectares) are also obligated by the government to belong to the same forest protection agencies that TSFMA holders belong and to assume similar financial obligations. Therefore, to make the appropriate adjustment, we divided the total amount of the cost of the fire protection and extinction incurred by TSFMA holders through the forest protection agency by total harvest under TSFMAs and subtracted from this figure the total amount of the cost of fire protection and extinction incurred by private land owners divided by the total private forest harvest during the POL.

Insect and Disease Protection

TSFMA holders are also required to belong to an organization for the protection of the forest against insects and diseases (SOPFIM). As with fire protection, the government assumes 50 percent of the cost. At verification, we learned that private land owners belong to SOPFIM on a strictly voluntary basis. Therefore, we did not adjust what TSFMA holders paid by costs for private forest owners. To calculate the adjustment we divided the total amount of the cost of the insect and disease protection incurred by TSFMA holders through SOPFIM by the total harvest under TSFMAs.

Adjustments Claimed by Respondents but Not Allowed

Environmental Compliance

Respondents claim that environmental compliance generally increases costs for TSFMA holders because restrictions in cutting require more territory to be harvested to obtain the same number of trees than would be possible if harvesting were more indiscriminate. Work on more territory requires more roads, bridges, and transportation costs. Respondents admit that there has been no systematic quantification of these costs since environmental rules became stricter under the Forest Act.

Respondents claim the Department has received and verified detailed environmental compliance cost data provided by the largest TSFMA holder in Quebec, showing the expenses directly attributable to complying with environmental standards imposed on TSFMA holders under the Forest Act. In addition, Respondents claim the Department's verifiers received and reviewed information explaining the

environmental obligations imposed on TSFMA holders, contrasting the obligations imposed on TSFMA holders with those imposed on harvesters operating in the private forests.

As noted in the Verification Report, Respondents calculated their reported cost for environmental compliance by multiplying the per unit costs of a single company by the total harvest under TSFMAs. In checking the calculation for this company at verification, the Department was unable to verify a major component of the company's reported cost for environmental compliance, road costs. It also became clear at verification that there are certain environmental obligations, either at the provincial or municipal level, associated with harvesting in private forests, which Respondents did not systematically quantify across private forests province wide. Therefore, we did not make the claimed adjustment for environmental compliance.

Control of Utilization

The Coalition states that no adjustment should be made for "control of utilization" costs as was done in the Preliminary Determination since these apparently are scaling costs. They further argue that there is no indication that the responsibilities of non-TSFMA holders differ from those of TSFMA holders.

We agree with the Coalition. Respondents did not make clear in any of its questionnaire responses that its reported "control of utilization" costs for TSFMA holders were in fact simply scaling costs. The Department discovered this fact at verification. Respondents did not systematically quantify scaling costs for private forests nor did they quantify how scaling costs for TSFMA holders differ from scaling costs for timber harvesters on private lands. Therefore, although we adjusted for this expense in the Preliminary Determination, we are not making this adjustment in our final calculation.

Forest Camps

Respondents claim that an adjustment should be made to the provincial stumpage rate for forest camps in provincial forests. Respondents claim there are no similar costs in private forests because they are close to population centers. As noted in the Verification report, when collecting data on private forests for use in the parity technique, Quebec merely assumed there were no logging camps built on private lands.

At verification, the Department saw no evidence that Quebec actually

attempted to quantify the logging camp costs on private lands on a province wide basis. Furthermore, despite their claim that logging camps do not exist on private forest land in the southern zones due to the close proximity of population centers, Respondents report logging camp costs for provincial forests in exactly the same zones. Anecdotal evidence to the contrary, it is clear that Respondents' absolute dismissal of private logging camp costs based on zoning location is without merit. Therefore, given their failure to provide the private logging camp cost needed for a cost differential calculation, we have made no adjustment for logging camp costs to the administratively set stumpage rate.

Subsidy Calculation

We added the adjustments described above in the section entitled "Adjustments to Noncompetitive Provincial Rate" to the administratively-set stumpage rate to obtain the total, per unit rate paid by TSFMA holders harvesting softwood sawlogs. To calculate the benefit, we subtracted the administratively-set per unit rate from the private per unit benchmark rate. We multiplied the differential between the benchmark rate and the administratively-set rate by the total softwood sawlog harvest during the POI to obtain the aggregate benefit from the administratively-set stumpage program. The calculation of the country-wide *ad valorem* subsidy rate is discussed in the "Country-Wide Rate Calculation" section of this notice.

Ontario

According to the questionnaire responses verified by the Department, the Government of Ontario charges two rates for stumpage harvested from provincial lands: the integrated rate and the nonintegrated rate. Both of these rates are administratively set. Generally, the integrated rate is paid by pulp producers, and the nonintegrated rate is paid by lumber producers. The integrated rate is charged to integrated licensees which, under Regulation 234 of the Crown Timber Act, are defined as companies that own or operate a pulp mill. Pulp is manufactured either from whole logs or from the chips produced as a by-product of lumber.

However, if the stumpage harvested by an integrated licensee is destined for a sawmill, the nonintegrated rate is charged. The nonintegrated rate is also charged to nonintegrated licensees (*i.e.*, licensees which do not own or operate a sawmill). Over 99 percent of the Crown softwood stumpage harvested in Ontario

is paid for on the basis of one or the other of these rates.

The nonintegrated rate is lower than the integrated rate. In setting these rates, however, the Government of Ontario has not made a distinction in physical characteristics (*e.g.*, grade, species, or size) between the log charged the integrated rate and the log charged the nonintegrated rate. A pulplog is simply defined as the log that enters a sawmill, and a sawlog is defined as the log that enters a sawmill. Because of technological advances that enable sawmills to obtain lumber from smaller diameter logs, which comprise the overwhelming majority of the Ontario harvest, there is little difference in the timber consumed by sawmills and sawmills. Thus, the sole factor affecting the price that a licensee will pay is whether the log is processed in a sawmill or in another type of mill (*e.g.*, a sawmill). Since the government provides stumpage to some companies (*i.e.*, nonintegrated licensees, or, most commonly, sawmills) at a price that is lower than the price the government charges to other companies (*i.e.*, integrated licensees), we determine that the Government of Ontario is providing stumpage to lumber producers at a preferential rate.

Having determined that stumpage is provided to a specific group of industries that includes pulp mills, we must examine whether the higher integrated rate paid by pulp producers for stumpage is itself nonpreferential. The Government of Ontario provided survey information on private prices for stumpage in Ontario. Although the survey information is not comprehensive, and is not used by the Government of Ontario to establish stumpage rates, these private prices do provide us with an indication that the rate paid by integrated licensees for pulp is nonpreferential. Comparing private stumpage prices from the survey with the provincial integrated stumpage price, we have observed that the integrated rate is on average higher. Therefore, we determine that the integrated rate is nonpreferential and have used it as the benchmark price.

The Coalition argues that the Department should make an upward adjustment to the integrated rate because pulpwood is an inferior good. We have declined to make an adjustment for the reasons discussed above in the "General Calculation Issues" section of this notice.

Adjustments

Respondents, for their part, argue that the Department must make an adjustment for all logs purchased at

arm's length. We have declined to make an adjustment for the reasons discussed in the "General Calculation Issues" section of this notice.

The integrated and nonintegrated stumpage rates are a combination of Crown dues, area charges, and bonus charges. Crown dues are the major portion of the integrated and nonintegrated stumpage rates and are administratively set every quarter. To calculate the Crown dues rate for the POI we took a simple average of the different quarterly Crown dues rates because the Government of Ontario did not provide the appropriate volume information to calculate the weighted average. Different Crown dues apply for integrated and nonintegrated companies, with the administratively-set base rate being adjusted according to pulp and paper and lumber indices. Both the integrated and nonintegrated stumpage rates are double-indexed to make the rate especially sensitive to price fluctuations in the indices. The base rate, however, was originally set to meet revenue goals of Ontario and bears no relation to the market value of stumpage.

An area charge is a yearly charge based on the total area of a tenure arrangement. To calculate the area charge on the unharvested and harvested area of all tenure arrangements for all tenure holders, we allocated the area charge paid during the POI to the total volume of timber purchased by sawmills and sawmills.

The bonus charge was calculated for integrated and nonintegrated companies from the Timber Scaling and Billing System. The bonus charge varies with the harvest in a given year, and is supposed to reflect the desirability of a tenure tract (*e.g.*, accessibility).

It is not necessary to make any adjustments to the integrated and nonintegrated stumpage rates because licensees paying the integrated rate and licensees paying the nonintegrated rate share the same obligations (such as road building and silviculture) on their respective tenure arrangements.

Ontario collects information on stumpage through two systems: the Timber Scaling and Billing System (TSBS) and through mill license returns. Ontario bills purchasers of stumpage through the TSBS. The TSBS is on the fiscal year and contains harvest information on Crown land and the rates charged for stumpage. Mill license returns provide actual roundwood consumption by mills and are on the calendar year.

Calculation of the Benefit

To calculate the benefit, Respondents argue that the Department should use mill license return data, which provide the amount of timber used by Ontario sawmills, and then adjust that number for roundwood for which the integrated or a competitively-bid or salvage rate has been paid, which would be provided from the TSBS. Ontario mill license return data are for the calendar year 1990, and not the POI. As such, the figure for the POI would have to be estimated. Instead of using estimated figures to calculate the benefit, as Respondents suggest, the Department has used the actual figures for stumpage purchased by sawmills at the nonintegrated rate during the POI. These figures were verified from the TSBS.

To calculate the benefit, we have deducted the per cubic meter nonintegrated stumpage rate from the per cubic meter integrated stumpage rate and multiplied the difference by the volume of stumpage sold at the nonintegrated rate to sawmills. The calculation of the country-wide *ad valorem* subsidy rate is discussed in the "Country-Wide Rate Calculation" section of this notice.

Alberta

The Alberta Forest Service provides stumpage under three types of tenure arrangements: (1) Forest Management Agreements (FMAs); (2) Timber Quota Certificates (quotas); and (3) Commercial Timber Permits (CTPs). FMAs are provided to companies that require a long-term tenure; as a result, FMAs last 20 years and are renewable. In addition to paying stumpage fees, or "Crown dues," FMA holders are responsible for a number of in-kind services including construction and maintenance of roads, reforestation of all areas harvested, and other forest management obligations required by the Forest Service, such as operational planning and forest inventory. The Crown dues paid by FMA holders are either administratively set by the Alberta Forest Service in its schedule of General Rates of Crown Dues, or they are negotiated between the Forest Service and the FMA holder.

Quotas are also long-term tenure arrangements. Quota holders obtain the right to harvest a percentage of the annual allowable cut established by the Forest Service for a particular forest management unit. Like FMA holders, quota holders are responsible for road construction and maintenance, reforestation of all areas harvested, and certain other obligations. While some quotas are sold by a competitive bid, all

quota holders pay an administratively-set stumpage fee. Together, FMA and quota holders accounted for approximately 94 percent of the softwood sawlog harvest on provincial forest lands in fiscal year 1990/91.

The third form of tenure arrangement, CTPs, provides for a fixed volume of timber to be harvested on a short-term basis, usually for two to three years. The CTP holder pays a reforestation levy to the Alberta Forest Service, which then carries out the majority of reforestation activities. The CTP holder is responsible, however, for the construction and maintenance of certain roads. While some holders purchase CTPs through a competitive bid, other CTP holders pay an administratively-set stumpage fee.

For purposes of the Preliminary Determination, we compared the indexed, negotiated rate paid under pulplog FMAs to a weighted-average rate for the remaining tenure arrangements, which we had preliminarily determined were administratively set. Based on our verification and on certain arguments presented in case and rebuttal briefs, we have revised our calculation methodology for purposes of this final determination.

• FMAs

We confirmed at verification that under pulplog FMAs, prices charged for timber used in pulp production are higher than the prices charged for timber used for other types of production. At verification, we reviewed documentation indicating that the distinction between pulplogs and sawlogs relates exclusively to their ultimate mill destination, and not to differences in qualities or other physical properties of the logs.

In the FMAs for pulplogs, the stumpage price for pulplogs is negotiated between the tenure holder and the Forest Service. We confirmed at our verification of a pulplog FMA holder that the pulplog rate is, in fact, negotiated, and that the negotiated rate is then indexed. Under these pulplog FMAs, there is a provision that the negotiated pulp price will be adjusted annually according to a price published in *Pulp & Paper Week*, an independent trade journal.

The prices paid for stumpage other than pulplogs are the rate of Crown dues established in the schedule of General Rate of Crown Dues. This stumpage rate is paid by sawlog FMA holders and by pulplog FMA holders, on those logs not destined for pulpmills. The prices paid for both pulplogs and sawlogs under sawlog FMAs are also established by

the schedule of General Rates of Crown Dues. The rates established by the schedule are not indexed by any market price.

Respondents argue that the Department's verification results indicate that every clause in an FMA, including the sawlog rate, is the result of a competitive negotiation. However, we note that the sawlog rate included in every FMA is set according to the General Rates of Crown Dues and is not indexed. Further, at verification, we received no indication that the separate sawlog provision, which is at the same rate in every FMA, is the subject of negotiation. For these reasons, we conclude that the price paid for sawlogs in FMAs is administratively set and, therefore, does not represent a nonpreferential price.

Because the price paid by pulplog FMA holders for pulplogs is originally negotiated and subsequently indexed based on published pulp and paper prices rather than set administratively, we determine that the pulplog price is nonpreferential and, therefore, can be used as a benchmark for sawlog prices. Because no physical distinction is made by Alberta between pulplogs and sawlogs in selling stumpage, we do not need to make any adjustments for differences in the grade, species, size, or quality of the timber.

For these reasons, we determine that stumpage is provided at preferential rates to softwood lumber producers because the Government of Alberta provides softwood sawlogs under FMAs at a price that is lower than the nonpreferential price the government charges to certain other FMA holders.

Quotas

No quota holder can access coniferous timber without having a coniferous timber license, the rates for which are administratively set, plus an appraisal factor. At verification we determined that some quota holders receive their quotas through a competitive bid, while other quotas were granted, for various reasons, on an administratively-set basis. Those quota holders who bid, pay a one-time competitive bonus bid at the time of acquiring the quota, which is amortized over varying lengths of time.

We do not consider all of the quotas claimed by Alberta as competitive to be *bona fide* competitive bids. Alberta claims that all quotas for which a bidding process was held are "competitive," including those sold originally as far back as 1966, or earlier, and renewed in 1986 without additional payment. However, because Alberta provided information on the quantities

sold and amounts bid only for those quotas auctioned in 1982 and after, we are unable to evaluate their claims regarding whether the pre-1982 bids were actually competitive. Accordingly, for purposes of this final determination, we have not considered the quotas sold before 1982 to be competitively sold and, therefore, non-preferential. Because we were unable to evaluate the competitiveness of the quotas bid before 1982, we cannot reach the issue of whether or not quota sales conducted by the Alberta Forest Service beginning in 1966 through 1982, and renewed in 1986 without additional payment, constitute *bona fide* competitive bids.

At verification, we examined and reviewed several examples of competitive bids conducted for quotas. In addition, we received a document listing, for quotas sold starting in 1982, the amounts bid and the annual allowable cut for which the bid was held. We therefore accept Alberta's claim that at least those quotas bid in and after 1982 represent *bona fide* competitive bids, and are, therefore, non-preferential.

In these circumstances, where a government provides a good at both an administratively-set price and a competitively-bid price, we determine the administratively-set price is preferential to the extent that it is less than the competitively-bid price.

CTPs

Some CTP holders bid competitively for their tenure, while others receive their tenure on terms which are administratively-set. In our Preliminary Determination, we indicated that because we lacked the necessary information, we were unable to determine the extent to which CTPs were competitively bid. Alberta had previously indicated, however, that a certain volume of CTPs have been granted on an administratively-set basis. At verification, we examined and reviewed several examples of competitive bids conducted for CTPs. As a result, we determine that certain CTPs in effect during the period of investigation were in fact competitively-bid, and therefore, nonpreferential. In these circumstances, where a government provides a good at both an administratively-set price and a competitively-bid price, we determine that the administratively-set price is preferential to the extent that it is less than the competitively-bid price.

Calculation of the Benefit

Respondents contend that contrary to our Preliminary Determination, the pulplog FMA rate should not be used as

a benchmark rate against all other tenure arrangements because: (1) Significant forest management responsibilities are incurred by FMA holders, as opposed to other tenures, thereby rendering an analysis based on only one element of the FMA invalid; (2) quotas and CTPs cannot be considered administratively-set because they are allocated according to competitive bid in most instances; and (3) in any case, CTPs, because they are short-term tenures, should not be compared to FMAs at all.

Because we were able to gather sufficient information at verification, we have conducted a tenure-by-tenure analysis for the purposes of the final determination. Because we could make comparisons within each tenure, with identical obligations being incurred, no adjustments for differing obligations were necessary. Based on the comparisons detailed below, we determine that stumpage is being provided to lumber producers at preferential rates.

To calculate the benefit for FMAs, we multiplied the difference between the negotiated stumpage dues paid on a cubic meter basis by FMA holders who harvest pulplogs and the administratively-set per cubic meter sawlog rate by the volume of softwood sawlogs harvested.

For quotas, based on the information provided at verification, we calculated the sum of the competitive quota bonus bids for which we had sufficient information, and the per cubic meter stumpage dues paid by those competitive quota holders. We allocated the bonus bids over the number of years for which we had information, and converted them to a per cubic meter amount. From this total, we subtracted the per cubic meter stumpage dues paid by quota holders who pay only the administratively-set rate for sawlogs. We then multiplied this difference by the softwood sawlog harvest volume for quota holders who paid only the administratively-set stumpage rate to arrive at the final benefit for quotas.

For CTP holders, we subtracted an adjusted amount paid for administratively-set CTPs from the amount paid for competitively bid CTPs. We multiplied this difference by the softwood sawlog volume harvested under the administratively-set CTPs to arrive at the benefit. We then summed each of the individual benefits calculated for FMAs, quotas, and CTPs to arrive at a total benefit.

Respondents contend that the Department should base its calculation of the benefits on the amount of sawlogs going to sawmills, rather than on the

volume of the sawlog harvest. To support their position, they reiterate their explanation that "sawlog," as a catch-all term, of necessity includes logs used for purposes other than the production of lumber in a sawmill. They propose a methodology by which the Department could estimate the volume of sawlogs entering sawmills.

We cannot accept Respondents' proposed methodology to estimate the volume of sawlogs entering sawmills. It is based on the use of two variables, a nominal volume to actual volume conversion factor, and a logs to lumber recovery rate. The methodology assumes that the nominal to actual recovery factor calculated for 2x6s is applicable across all the dimensions of lumber. However, Respondents did not justify why the 2x6 nominal to actual recovery factor value should be considered as representative. Because Alberta did not provide an adequate explanation for its use of the 2x6 value, and because the Department has no other information on the record regarding this issue, we did not make their proposed adjustment.

Although Respondents argued that in calculating the subsidy rate, the Department should increase the figure it used for coproducts/by-products in the Preliminary Determination to account for firms which did not participate in its survey, because attributing a value to coproducts according to Respondents' methodology would assume that coproducts are produced and sold by the non-participating companies in the same ratios as those that responded to the survey, and because the values reported in the survey were on an actual dollar amount rather than on a per cubic meter basis, we did not adjust the verified value of coproducts we used in the Preliminary Determination. The calculation of the country-wide *ad valorem* subsidy rate is discussed in the "Country-Wide Rate Calculation" section below.

Manitoba, Saskatchewan, the Northwest Territories, and the Yukon Territory

In the Preliminary Determination, the Department noted that, although it considers stumpage in Manitoba, Saskatchewan, and the Territories to be specifically provided, it did not reach the issue of preferentiality because the softwood lumber export volumes from these jurisdictions to the United States are so small that, even when the highest potential subsidy rates found in the record are applied to them, the effect on the country-wide rate would be *de minimis*.

We received a comment from Respondents indicating that they agreed with the Department's characterization of the scale and effect of potential subsidies from these jurisdictions. Respondents then concluded that the continued inclusion of these jurisdictions clearly served no purpose, and requested that they be excluded from the investigation.

The Coalition contended that the Department's treatment of these jurisdictions in the Preliminary Determination serves to encourage foreign governments to "subsidize a little a lot." (See Coalition Brief at II-62.) In addition, the Coalition contends that the Department does not have the authority to ignore subsidies, and that the Department's action was contrary to its own Antidumping and Countervailing Duties: De Minimis Dumping Margins and De Minimis Subsidies, 52 FR 30660 (August 17, 1987), which indicates that the countervailing duty *de minimis* rule applies only to aggregate net subsidies, not to those programs that are examined in the calculation of the aggregate net subsidy. (See Coalition Brief at II-60-61.) Finally, the Coalition states that if the Department were to continue to disregard the subsidies in these jurisdictions, it should at a minimum remove the value of lumber and co-products for these jurisdictions from the denominator.

The Department is investigating the government provision of stumpage in Canada. Our investigation covers exports of certain softwood lumber products from Canada. However, stumpage is provided by different jurisdictions within Canada. The four largest jurisdictions, Alberta, British Columbia, Ontario, and Quebec account for over 98 percent of exports and over 98 percent of total softwood lumber shipments in Canada. Thus, an analysis of these four provinces covers virtually all exports to the United States.

A full investigation of the additional programs in Manitoba, Saskatchewan, and the Territories, which would have provided for only marginal incremental coverage, is unnecessary and would have resulted in an inefficient use of scarce resources at the expense of more significant aspects of this investigation. However, these provinces and territories cannot be excluded from the investigation simply because they are so small. The fact that their production of softwood lumber products is small relative to that of the other provinces simply means that their impact on the country-wide rate is insignificant, it does not mean that their production and

exports are not, or should not be, covered by the investigation.

Although the Coalition noted that the Department referred to the *de minimis* provision in its regulations for the Preliminary Determination, we are not relying on the *de minimis* rule in the final determination. Because the calculation we conducted at the Preliminary Determination demonstrated that had an exhaustive preferentiality analysis been performed, the resulting benefit, using even the most adverse assumptions, would still be insignificant when compared to the total benefit calculated for the remaining programs. Moreover, because these jurisdictions cooperated in the investigation, there is no basis for the Department to apply adverse assumptions to them.

We therefore applied a zero rate in our calculation for these jurisdictions. However, because this investigation was on certain softwood lumber products from Canada (with the exception of the Maritime Provinces), and because Manitoba, Saskatchewan, and the Territories produce and export to the United States certain softwood lumber products, their export values of softwood lumber products, have been included in our calculation of the country-wide rate.

Calculation of the Country-Wide Rate for Stumpage Programs

To calculate the country-wide rate, we divided the benefit for each province's program by the value of its lumber shipments plus the value of all by-product shipments produced during the lumber production process. We weight averaged each rate by the province's share of exports to the United States of the subject merchandise to calculate a rate of 2.91 percent *ad valorem*.

Respondents argue that the Department, when calculating the country-wide rate, must weight the various provincial rates by lumber production. Further, Respondents argue that weighting by a province's percentage of exports to the United States of the subject merchandise ignores the benefit to lumber production not exported.

It is the Department's normal practice to weight the subsidy by the relevant share of exports to the United States. (See Preliminary Results of Countervailing Duty Administrative Review: Live Swine from Canada, 56 FR 29224 (June 26, 1991). If the Department were to weight by total production, it would not collect the appropriate countervailing duties on the exports of the subsidized subject merchandise from Canada. Since duties are collected only

on exported merchandise, a duty that does not take into account the relative weight of the different levels of exports would not accurately capture the subsidies that exports of softwood lumber products from Canada enjoy.

Log Export Restrictions

In the Preliminary Determination, we found that the log export restrictions in BC conferred a countervailable benefit. We also found that the log export restrictions in Alberta, Ontario, and Quebec did not confer a benefit. We have evaluated all information regarding these export restrictions submitted in the context of this investigation and confirm our preliminary finding. We determine that only the log export restrictions in BC are countervailable and that the log export restrictions in Alberta, Ontario and Quebec do not provide a subsidy to lumber producers.

British Columbia

Market Distortion

As discussed earlier in the "Preferentiality" section, we have established that proof of market distortion is not, as a matter of law, a prerequisite to a finding of a subsidy. Nor can market distortion, defined by respondents as an increase in output or a decrease in price, be the measure of a subsidy. Nonetheless, we have relied upon a supply-and-demand analysis for purposes of the log export restriction issue, because this analysis is the only method by which we could determine whether BC softwood lumber manufacturers receive countervailable benefits as a result of BC's log export restrictions. To examine the concept of market distortion, *i.e.*, price changes, within the context of the log export restrictions, it is useful to summarize some of our earlier analysis.

According to our reading of Respondents' arguments, the issue at hand is whether the Department is required to show a correlation between the subsidy and the net economic effect⁶ on the firm, as reflected in the firm's output or prices. If such an effect can be shown, there is the additional issue of whether the Department must calculate the benefit on the basis of this net economic effect. We maintain that we are not required to show such a correlation and that, even if we could, we are not permitted to measure the subsidy on the basis of such a

⁶ Throughout this discussion, we are using the term "net economic effect" to mean a change in output or price, which could be achieved by a change in a firm's marginal costs in the short run, or a change in the firm's fixed costs in the long run.

correlation. Moreover, we maintain that none of the Department's pronouncements in the past contradicts these assertions. Despite Respondents' claims to the contrary, a careful reading of *Wire Rod, supra.* shows that the Department did not imply that it was required to show conclusively an increase in supply or a decrease in price in order to find a subsidy, or that it was required to measure the subsidy on the basis of the precise relationship between the subsidy and the theoretically "corresponding" increase in supply or decrease in price.

Based on our analysis of the legislative history to the 1979 Act, *supra.* we conclude that Congress forbade the Department from calculating subsidies on the basis of the net economic effect on the subsidy recipient, except in carefully prescribed circumstances (*viz.* 19 U.S.C. 1677(6), the "offset" provision). Yet this conclusion does not in any way imply that Congress did not recognize that subsidies, as a general matter, do have a net economic effect on a firm. For example, the statutory definition of "domestic subsidy" clearly describes examples of government programs that lower a producer's marginal costs (*e.g.*, the provision of goods at preferential rates or the assumption of any costs of manufacture, as provided for in 19 U.S.C. 1677(5)(A)). Therefore, Congress did not forbid the Department from identifying countervailable subsidies on the basis of the effect of the subsidy on the producer's marginal costs, and the resulting effect on the producer's output or prices. Instead, we conclude that Congress forbade the Department from measuring the subsidy on the basis of the effect of the subsidy on the producer's marginal costs, or on the basis of any other net economic effect on the firm. A corollary to this conclusion is that Congress could not have intended that the Department be precluded from countervailing a subsidy as a matter of law, simply because there has been no demonstration of the net economic effect of the subsidy on the firm.

From a practical perspective, Respondents' thesis would push the Department into a complex causation analysis in every case and for every type of countervailable subsidy, including all the usual direct subsidies that the Department analyzes. The following hypothetical example illustrates this point. Suppose a widget firm receives a \$1 million grant from the government. According to Respondents' theory, in order to find a subsidy, the Department would have to show that the firm either increased its production

of widgets or lowered its price of widgets. Yet, it would be difficult to show a causal link between the grant and the additional number of widgets produced or the exact amount by which the price of widgets decreased. Absent such a conclusive showing, according to Respondents' argument, the Department would be compelled to find the grant not countervailable. As another example, if the widget producer received a tax break, Respondents' thesis would arguably mean that the Department would have to determine the amount of the decreased tax that was passed through to the consumer in the form of lower prices. If the Department could not prove any pass-through, according to Respondents' theory, it would be forced to find the tax break not countervailable.

Yet few would argue, given the statute, legislative history, the Department's regulations, and its longstanding practice, that either the grant or the tax break is not a subsidy. Further, there is little doubt that the Department would be justified in finding both to be countervailable if given exclusively to this firm or a limited number of firms or industries.

In conclusion, while we determine that the Department is precluded from measuring benefits on the basis of the net economic effect on the subsidy recipient (whether defined in terms of market distortion, an increase in output, a decrease in price, or a change in marginal or fixed costs), the Department is not precluded from identifying and analyzing a subsidy in terms of market distortion (*i.e.*, marginal cost and price changes).

This discussion is of equal relevance to both stumpage and log export restrictions. The preferential provision of stumpage lowers a firm's marginal costs by decreasing the price of the major raw material input used in the production of lumber. Likewise, and as discussed in greater detail below, log export restrictions in British Columbia also lower the lumber producer's marginal costs by decreasing the price of the same raw material input. Although in the first instance, the effect on the producer's marginal costs can be shown through a normal comparison of preferential prices to a competitive benchmark price, in the second instance, the effect on the firm's marginal costs can only be shown through a market distortion analysis (*i.e.*, supply-and-demand). However, our calculation of the amount of the benefit from the log export restrictions is in no way related to the net economic effect, or change in marginal costs, or increase in output, or

decrease in price, experienced by individual lumber producers as a result of the restrictions. Nor does the calculation in any way attempt to measure the subsidy on the basis of the precise causal link between the effect of the log export restrictions and the actual, observed incidence of increased output, or decreased prices, of lumber producers. Even if the Department had considered attempting to calculate the subsidy in this way, it would have been legally precluded from doing so.

Having defined what the benefit of the BC log export restrictions is on lumber producers, the Department is statutorily required only to show that the BC government program falls within the ambit of the countervailing duty law. To make this showing, the Department must demonstrate that the government program in question constitutes a "domestic subsidy" within the meaning of the Act, determine that any benefit received is specifically provided, and calculate the benefit.

As shown below, we have concluded that the BC log export restrictions constitute a "domestic subsidy" within the meaning of the Act. Furthermore, we determine that the restrictions, which provide a measurable benefit, are *de jure* specific. To calculate the benefit, we have employed a methodology that is consistent with that used for other types of programs: we have calculated what the domestic BC price of logs would have been absent the restrictions and made all appropriate adjustments to that price in order to ensure a fair, apples-to-apples comparison with the current domestic BC log price. We multiplied the differential by the total sawlog volume consumed by lumber producers in the affected areas of British Columbia and allocated the benefit over the total lumber production in those areas.

Legal Requirements

Countervailable Government Programs

Citing to, *inter alia*, the Act, legislative history, and administrative precedent, as well as to the GATT, the GATT Subsidies Code, and the U.S.-Canada Free-Trade Agreement (FTA), Respondents contend that the export restrictions covering logs imposed by the provinces of BC, Ontario, Alberta, and Quebec do not constitute countervailable subsidies as a matter of law. The Coalition, on the other hand, contends that these export restrictions are countervailable, advancing the position that any foreign government action (1) which is "specific" within the meaning of the Act, and (2) which

produces a measurable effect on prices of outputs or inputs, constitutes a countervailable domestic subsidy. The Coalition also contends that the Department erred in the Preliminary Determination by not finding the export restrictions imposed by the Provinces of Ontario, Alberta, and Quebec to be countervailable.

For the reasons set forth below, the Department reaffirms the Preliminary Determination with respect to the log export restriction issue. Specifically, the Department determines that the export restrictions maintained by the Province of BC constitute a countervailable domestic subsidy, but that the export restrictions imposed by the other provinces do not confer countervailable benefits upon Canadian manufacturers or exporters.⁹

Before the Department had issued its final determination in *Leather*, the long-standing and consistent administrative practice of both the U.S. Department of Treasury (Treasury), the previous administrator of the U.S. countervailing duty law, and the Department was that border measures, such as export restrictions, generally did not constitute countervailable subsidies as a matter of law.¹⁰ Administrative agencies, however, are authorized to depart from a long-standing and consistent practice—provided that they (1) offer a reasonable and rational explanation for doing so, and (2) demonstrate that the new practice is not inconsistent with the applicable statute.¹¹

⁹ Because our analysis demonstrates that the export restrictions maintained by the other provinces do not confer any countervailable benefits, our legal analysis is limited to the BC log export restrictions. (For a discussion of our analysis with respect to the export restrictions maintained by the other provinces, see below.)

¹⁰ See, e.g., *Litharge from Mexico*, 67 *Treas. Dec.* 142 (1967) (export tax imposed upon major input of finished product under investigation not countervailable); *Anhydrous and Aqua Ammonia from Mexico*, 48 *FR* 28,522, 28,524–28,525 (1983) (export tax on input not countervailable because “not provided to a specific enterprise,” no evidence that “government caused the domestic price of the input . . . to drop through the use of the export tax,” and “proposition that such government action necessarily confers bounties or grants is untenable on its face, and unsupported by the Act and its legislative history.”); *Non-Rubber Footwear from Argentina*, 49 *FR* 9,922 (1984) (same); *Galvanized Steel Sheet from Australia*, 49 *FR* 8,657 (1984) (import restrictions *per se* not countervailable pursuant to U.S. law). One notable exception to this general proposition is the excessive rebate of an indirect tax, which is *per se* countervailable pursuant to the Tariff Act and the GATT Subsidies Code. See 19 U.S.C. 1677(5)(A)(i); GATT Subsidies Code, Illustrative List, Item (g).

¹¹ See *Secretary of Agriculture v. U.S.*, 347 U.S. 645, 653 (1954); *Alhambra Foundry v. U.S.*, 685 F. Supp. 1252 (Cl. Int'l. Trade 1988); *Mitchell Energy Corp. v. FERC*, 580 F.2d 763, 765 (5th Cir. 1978), cert. denied, 456 U.S. 974 (1982); *Katanich v. Donovan*, 599 F. Supp. 985 (CIT 1984). This proposition follows

This principle applies with particular force and effect where, as here, the statute does not define the terms at issue—namely, “subsidy” and “bounty or grant.” See *id.* The U.S. Supreme Court has held that an agency has wide latitude to define such statutory terms so long as its construction is reasonable within the meaning of the applicable statute and is supported by substantial evidence. (See *K Mart Corp. v. Cartier Inc., et al.*, 486 U.S. 281, 286 (1988); *PPG*, at 1568.)

After a careful re-examination of the relevant statutory language, legislative history, and judicial decisions, as well as the underlying purpose of the U.S. countervailing duty law,¹² the Department concludes that, had Congress ever squarely addressed the question of whether export restrictions fall within the ambit of the U.S. countervailing duty law, Congress would have answered this question in the affirmative. This conclusion, moreover, is consistent with the GATT and the GATT Subsidies Code.

Based upon this analysis, the Department further concludes that the pre-*Leather* administrative determinations finding border measures in general to be *per se* noncountervailable pursuant to U.S. law were wrongly decided as contrary to Congressional intent.¹³ Therefore, the Department declines to follow these determinations and, instead, is following its recent determination in *Leather*.

In *Leather*, the Department determined that an embargo imposed on the export of raw hides, the primary input used in the manufacture of the finished product under investigation (*i.e.*, leather), constituted a countervailable domestic subsidy. The rationale underlying that determination was that (1) the embargo on raw hides “applie[d] only to [raw] cattle hides,

from the well-established tenet that there is no rule of administrative *stare decisis*. See *NLRB v. J. Weingarten, Inc.*, 420 U.S. 151 (1975).

¹² The purpose of the U.S. countervailing duty law is to offset any countervailable benefits conferred upon foreign manufacturers or exporters by their governments. *Zenith Radio Corp. v. United States*, 437 U.S. 443, 456 (1978).

¹³ We also emphasize that the pre-*Leather* determinations employ tautological reasoning; these determinations assume as a premise the very conclusion they are seeking to prove—that is, border measures in general, including export restrictions, *per se* are not countervailable pursuant to U.S. law. See, e.g., *Galvanized Sheet from Australia*, 49 *FR* 8,656 (“the absurdity of such a proposition [*i.e.*, that border measures are countervailable] is *self-evident* and necessarily beyond the intent of the Congress in enacting the CVD law.”) (emphasis added); *Anhydrous and Aqua Ammonia from Mexico*, 48 *FR* 28,525 (“The proposition that such governmental actions necessarily confer bounties or grants is untenable on its face . . .”) (emphasis added).

which are sold primarily, if not exclusively to leather tanners [and, therefore,] . . . [was] limited to a specific industry,” and (2) the export embargo “caused hide prices to be lower than they would have been absent the embargo” and, thereby, enabled the leather tanners to sell the finished product, leather, at a lower price. 55 *FR* at 40,213–214 (“the embargo had a direct and discernible effect on hide prices in Argentina”) (emphasis added).

In following *Leather* in the current countervailing duty investigation involving softwood lumber from Canada, the Department acknowledges that the U.S. Customs Court correctly overturned Treasury’s determination in *Litharge from Mexico*—a determination in which the agency had found that a Mexican export-tax scheme, which had the effect of reducing the price of the major input of the finished product under investigation, did not constitute a countervailable subsidy. See *Hammond Lead Products, Inc. v. United States*, 306 F. Supp. 460 (Cust. Ct. 1969), rev’d on procedural grounds, 440 F.2d 1024 (C.C.P.A. 1971), cert. denied, 404 U.S. 1005 (1971) (*Hammond Lead*). Although the U.S. Court of Customs and Patent Appeals (CCPA) reversed the lower court’s decision on jurisdictional grounds, holding that the statute in existence at the time precluded challenges to negative countervailing duty determinations, 440 F.2d at 1024, this reversal, contrary to Respondents’ contention, did not “nullif[y]” the Customs Court’s ruling.¹⁴

This conclusion follows from the well-settled rule “that a judgment of reversal is not necessarily an adjudication by the appellate court of any other than the questions in terms discussed and decided.” *Mutual Life Insurance Co. v. Hill*, 193 U.S. 551, 553–554 (1904). More important, in legislatively overturning the CCPA’s jurisdictional ruling in *Hammond Lead* by providing U.S. petitioners with the right to challenge negative final countervailing duty determinations in the Trade Act of 1974,¹⁵ Congress did not either approve or disapprove the Customs Court’s decision on the merits.¹⁶

¹⁴ Government of Canada Memorandum Concerning The Non-Countervailability Of Canadian Log Export Regulations 9 (Mar. 2, 1992).

¹⁵ See Pub. L. 93-618, 88 Stat. 2041 (1975), as codified at 19 U.S.C. 1518; see also H.R. 15794, 92d Cong., 2d Sess. section (e) (1972).

¹⁶ See H.R. 15794, 92d Cong., 2d Sess. section (e) (1972); S. Rep. No. 9684, 92d Cong., 2d Sess. section (e) (1972); 118 Cong. Rec. 23,983 (1972) (statement of sponsor Rep. Fulton); 118 Cong. Rec. 29,898 (1972) (statement of Sen. Fannin, introducing a bill to overturn the procedural ruling in *Hammond Lead*).

Rather, Congress addressed only the procedural jurisdictional question and refrained from confronting the substantive question of whether the Mexican export tax regime in Hammond Lead constituted a countervailable subsidy pursuant to U.S. law. See *id.* Congress's actions concerning the substantive issue are nothing more than, in the words of the Federal Circuit in *Smith-Corona Group v. United States*, "a legislative 'no comment.'" 713 F.2d 1568, 1576 (Fed. Cir. 1983) (where Congress did not provide clear guidance on the meaning of the phrase "circumstance of sale"). Hence, any attempt to divine Congress's intent concerning the substantive issue presented here from the Hammond Lead controversy is highly questionable.

Because Congress never has squarely addressed the question of whether export restrictions may constitute a countervailable subsidy within the meaning of the U.S. countervailing duty law, our task is "to discern dispositive legislative intent by 'projecting as well as it could how the legislature would have dealt with the concrete situation if it had spoken.'" *Georgetown Steel*, 801 F.2d at 1314 quoting *Asahi Chemical Industry Co. Ltd. v. United States*, 548 F. Supp. 1261, 4 CIT 120, 124 (1982)) (quoting *District of Columbia v. Orleans*, 406 F.2d 957, 958 (D.C. Cir. 1968)). In other words, we must determine whether, had Congress directly confronted this question when enacting or amending the U.S. countervailing law, it would have applied the countervailing duty law as a matter of law to border measures, such as the export restrictions at issue.

To make this determination in this investigation, we must ascertain whether BC export restrictions confer a countervailable benefit or subsidy upon BC manufacturers of softwood lumber within the meaning of the U.S. countervailing law. *United States v. Zenith Radio Corp.*, 562 F.2d 1209 (C.C.P.A. 1977), *aff'd sub nom.*, *Zenith Radio Corp. v. United States*, 437 U.S. 443 (1978). To resolve this question, we must undertake a two-tier inquiry: (1) Whether these export restrictions provide a benefit to such manufacturers; and, if so, (2) whether the BC Government provides the benefit to a "specific" group of industries (see Proposed Regulations.)

The logical starting point of our analysis is the statutory language. *United States v. Esso Standard Oil Co.*, 42 CCPA 144, 151 C.A.D. 587 (1955). At the outset, we emphasize that there is no single, universally accepted definition of the term "subsidy" in U.S. law.

Nonetheless, it is well settled that not all foreign government actions that confer a benefit to particular products or industries constitute actionable subsidies pursuant to the Act. *Zenith*, 562 F.2d at 1209, *aff'd*, 437 U.S. at 443. In other words, there is a distinction between what a layperson might regard as a subsidy and a subsidy which is countervailable pursuant to U.S. law.

Both the Act and the GATT provide examples of foreign government actions that can be considered subsidies. The Illustrative List of Export Subsidies of the GATT Subsidies Code, incorporated by reference into U.S. law, provides a nonexhaustive list of countervailable export subsidies. 19 U.S.C. § 1677(5)(A)(i). Similarly, the U.S. countervailing duty law provides a non-exhaustive list of countervailable domestic subsidies. 19 U.S.C. 1677(5)(A)(ii)(I)-(IV).

Because the BC log export restrictions affect BC users of logs and are not contingent upon exportation or export performance, these restrictions cannot constitute an export subsidy within the meaning of the Act. See 19 U.S.C. 1677(5)(A)(i). Rather, these restrictions affect the production of all softwood lumber, whether sold in the BC domestic market or export markets, and, therefore, fall within the purview of the domestic subsidy provisions. See 19 U.S.C. 1677(5)(A)(ii). Accordingly, the Department must undertake its analysis pursuant to section 771(5)(A) of the Act.

Section 771(5)(A) provides in relevant part:

(A) In General.—The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303 [of the Act],¹⁷ and includes, but is not limited to, the following:

(ii) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned and whether paid or bestowed directly or indirectly on the manufacture, production or export of any class or kind of merchandise:

(I) The provision of capital, loans or loan guarantees on terms inconsistent with commercial considerations.

(II) The provision of goods or services at preferential rates.

(III) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

¹⁷ Section 303 of the Act, 19 U.S.C. 1303, was the exclusive U.S. countervailing duty law before passage of the Trade Agreements Act of 1979. Section 303 continues to apply today to imports from, *inter alia*, nearly every country that has not signed the GATT Subsidies Code.

(IV) The assumption of any costs or expenses of manufacture, production or distribution.

19 U.S.C. 1677(5)(A)(1991) (emphasis added).

Section 303 of the Act, in turn, refers to the term "bounty or grant" in the following manner:

[W]henver any country . . . shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise produced in such country, then upon the importation of such article or merchandise into the United States, there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant . . .

19 U.S.C. 1303 (1991) (emphasis added).

Although the Act does not define the operative terms "subsidy" and "bounty or grant," the legislative history of the Trade Agreements Act of 1979 demonstrates that Congress intended to incorporate into the definition of a "subsidy" under section 771(5)(A) the administrative and judicial precedents construing the term "bounty or grant" under section 303. See S. Rep. No. 249, 98th Cong., 1st Sess. 84 (1979) ("The definition of 'subsidy' is intended to clarify that the term has the same meaning which administrative practice and the courts have ascribed to the term 'bounty or grant' under section 303 of the Tariff Act of 1930, unless that practice or interpretation is inconsistent with the bill.") (emphasis added).

As discussed above, the Customs Court overturned Treasury's determination in *Litharge*—a determination in which the agency had refused to countervail a Mexican export-tax scheme that had the effect of reducing the price of the major input product (*i.e.*, refined lead) used in the manufacture of the final product under investigation (*i.e.*, *Litharge*). *Hammond Lead*, *supra*. Although the CCPA reversed the Customs Court's decision on purely procedural grounds, *supra*, the United States Congress legislatively overturned the CCPA's procedural ruling when passing the Trade Act of 1974.

In reporting out of committee an amended bill¹⁸ designed to overturn the

¹⁸ Although the House-Senate conferees accepted the amended bill, the "bill was not brought to a vote in the House as an accommodation to the Secretary of the Treasury, with the understanding that the matter would be given attention in the context of trade legislation in the next Congress." *ASG Industries, Inc. v. United States*, 467 F. Supp. 1200, 1229 (Cust. Ct. 1979) (citing H.R. Rep. 92-1583, 92d Cong., 2d Sess. (1972); S. Rep. 92-1296, 92d Cong., 2d Sess. (1972); 110 Cong. Rec. 37,086 (1972)). "While the Executive Branch's trade legislation proposal of April 1973 contained no provision for judicial review of negative countervailing duty determinations, Congress provided one in the Trade

CCPA's procedural ruling in Hammond Lead, the Senate Finance Committee stated in pertinent part:

The Committee believes that American producers as well as importers should be permitted to have the right to judicial review in countervailing duty cases as a matter of basic equity and fairness, and as a means to secure administration of the law in keeping with the intent of Congress reflected in the broad, explicit and mandatory terms [i.e., "bounty or grant"] used in section 303.

S. Rep. No. 92-1221, 92d Cong., 2d Sess. 8 (1972) (emphasis added).

The CCPA echoed essentially the same view in *Zenith* when discussing the parameters of the statutory terms "bounty or grant":

Congress' intent to provide a wide latitude within which the [Secretary] may determine the existence or nonexistence of a bounty or grant is clear from the statute itself, and from the congressional refusal to define the words 'bounty,' [or] 'grant' . . . in the statute or anywhere else, for almost 80 years.

562 F.2d at 1216, *aff'd*, 437 U.S. at 443.

Shortly after the *Zenith* decision—in fact, only three months before Congress had issued the House and Senate Reports to accompany the Trade Agreements Act of 1979 and nine months before the effective date of the 1979 statute—the Customs Court overturned another negative countervailing duty determination issued by Treasury, *ASG Industries, Inc. v. United States*, 487 F. Supp. 1200 (Cust. Ct. 1979). In concluding that regional development programs administered by the Government of Italy, including, *inter alia*, investment grants and low-interest rate financing, constituted countervailable subsidies, the Customs Court declared in relevant part:

Unquestionably, the effect of these programs has been to reduce [the respondent's] cost of producing float glass. And whether the reduction in cost is occasioned by direct cash payments, or by an act of government reducing labor cost, capital cost, or the cost of any other factor of production is of no consequence. For if a benefit or advantage is received in connection with the production of the merchandise, that benefit or advantage is a bounty or grant on production. And to the extent that such bountied [sic] merchandise is exported to the United States, it comes squarely within our countervailing duty law—section 303.

467 F. Supp. at 1213 (emphasis supplied in original).

This historical background demonstrates that, by the time Congress was drafting the subsidy provisions of the Trade Agreements Act of 1979, (1) Congress itself already had ascribed a somewhat broad meaning to the

statutory terms "bounty or grant," (2) the Customs Court had struck down one Treasury determination that refused to countervail an export-tax scheme, and (3) the same court had concluded that foreign government programs that indirectly reduce a foreign manufacturer's production costs constitute countervailable subsidies.

A reasonable reading of this historical background, in conjunction with the legislative history of the 1979 trade legislation, further demonstrates that Congress intended to incorporate these principles into the term "domestic subsid[y]," as appearing in section 771(5)(A)(ii) of the Act. See H.R. No. 96-317, 96th Cong., 1st Sess. (1979) ("In deciding whether any other practice is a [domestic] subsidy, the standard remains that presently used with regard to a 'bounty or grant' under section 303.").

Therefore, contrary to Respondents' fundamental contention, Congress did not intend to constrict the definition of the term "domestic subsid[y]" by codifying the four illustrative examples of domestic subsidies (e.g., direct or indirect provision of goods or services at preferential rates),¹⁹ as set forth in section 771(A)(5)(ii). The House Report to the 1979 legislation cannot be any more explicit in this regard:

The Committee does not intend for this to be a comprehensive, exclusive enumeration of domestic practices which will be considered subsidies. It is a *minimum* list, an identification, for purposes of clarification, of those practices which are definitely subsidies.

Id. (emphasis added).²⁰

Accordingly, that a domestic practice is not expressly described in the statutory list of illustrative examples of domestic subsidies does not entail that the foreign government practice is not countervailable; indeed, the statute does not even purport to provide an exhaustive list. Furthermore, the Department routinely countervails certain domestic practices that are not included on the list, such as domestic grants and domestic tax subsidies. See e.g., Proposed Regulations, at 23,366,

¹⁹ The other three examples include (1) the direct or indirect provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations, (2) the direct or indirect grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry, and (3) the direct or indirect assumption of any costs or expenses of manufacture, production, or distribution. See 19 U.S.C. 1677(5)(A)(ii)(I), (III), (IV).

²⁰ The Senate Report contains similar language: The reference to specific subsidies in the definition is not all inclusive, but rather is illustrative of practices which are subsidies within the meaning of the word as used in the bill.

S. Rep. 96-249, 96th Cong., 1st Sess. (1979).

23,380, 23,382; Carbon Steel Wire Rod From Spain, 51 FR 36,579 (Oct. 14, 1986) ("The grants were provided to the firms in the Basque region . . ."); Industrial Phosphoric Acid From Israel, 52 FR 25,447 (July 7, 1987) (domestic grants); Stainless Steel Cooking Ware from Korea, 51 FR 42,867 (Nov. 26, 1988) ("[e]xemption from acquisition tax on purchase of land, buildings, and capital equipment for firms establishing factories in rural areas . . .").

The historical background provided above, in combination with the relevant legislative history and the statutory language, can also reinforce the conclusion that Congress intended that the Department treat foreign government schemes that have even an indirect effect upon a manufacturer's production costs as a "domestic subsid[y]." In this regard, the legislative history provides that when the Department is contemplating any expansion of the illustrative list of domestic subsidies, that expansion must be "consistent with the basic definition" of a domestic subsidy contained in the list. S. Rep. No. 249, 96th Cong., 1st Sess. 85 (1979).

In other words, "to the extent [that] the [four illustrative] enumerations [of a domestic subsidy] under this provision might provide a basis for expanding the present standard," such expansion of the list must be "consistent with the underlying principles implicit in these enumerations," and only "then [can] the standard . . . be so altered." H.R. Rep. No. 317, 96th Cong., 1st Sess. 74 (1979). These Congressional statements are nothing more than an express directive that, when the Department interprets the U.S. countervailing law, the agency must apply the well-established maxim of statutory construction of *ejusdem generis*.

This maxim of statutory construction provides that where general words or terms of a statute precede specific terms or phrases in a statute, the "general words are construed to embrace only objects similar in nature to those objects enumerated by the . . . specific words." Sutherland Statutory Construction, § 47.17 (5th ed. 1992). Application of this maxim to the general terms "subsidy" and "bounty or grant," when combined with the Congressional directives set forth above, demands the conclusion that, in order for a domestic practice not expressly identified in the statute to be countervailable, the practice in question must be similar in nature to, or like, the four illustrative categories of domestic subsidies. See *id.*

These four categories of illustrative countervailable domestic subsidies share certain common characteristics:

Act of 1974." *Id.* (citing H.R. Rep. 93-571, 93d Cong. 1st Sess. 78 (1973); S. Rep. 93-1298, 93d Cong., 2d Sess. 183 (1974)).

(1) The direct transfer of tangible resources with a tangible value from a foreign government to a particular beneficiary or recipient (e.g., direct provision of capital); (2) the indirect bestowal of tangible resources with a measurable value from a foreign government to a recipient (e.g., indirect provision of goods or services at preferential rates), and (3) the indirect bestowal of intangible but, nonetheless, measurable benefits from a government to a specified class of recipients (e.g., indirect assumption of any production costs).

By considering the indirect provision of goods or services at preferential rates, as well as the indirect assumption of production costs, to constitute a "domestic subsid[y]," the United States Congress unambiguously intended that the general statutory term "domestic subsid[y]" include other indirect government schemes that are similar to, or like, these two illustrative examples—that is, programs the indirect effect of which is to reduce a foreign manufacturer's production costs. Thus, Congress was concerned not so much with the manner (*i.e.*, direct or indirect) by which a foreign recipient obtained a benefit, but with the substance of the benefit (*viz.*, that, by the end of the day, the recipient, in fact, had procured a cognizable and measurable benefit).²¹

A passage from the Customs Court's decision in *Hammond Lead*, supports this conclusion. Quoting the Court of Appeals in *Nicholas & Co. v. United States*, the Customs Court explained in *Hammond Lead*:

There is nothing obscure, abstruse, mystic, or even ambiguous about [the term "grant" or "bounty" which has been, as to the particular words, a part of all our tariff acts from 1807 to and including the present act. Its plain, explicit, and unequivocal purpose is: Whenever a foreign power or dependency or any political subdivision of a government shall give any aid or advantage to exporters of goods imported into this country therefrom whereby they may be sold

²¹ For this reason, the Department has countervailed indirect benefits or subsidies on a variety of occasions. See, e.g., Final Determination and Countervailing Duty Order: Certain Steel Products from the Federal Republic of Germany, 47 FR 39,353 (September 7, 1982) (indirect domestic subsidies potentially countervailable); Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Korea, 49 FR 46,776 (November 28, 1984) (indirect government intervention in the commercial banking system, countervailable; pool of loans available to manufacturer that otherwise would not have been available in absence of government intervention); Final Affirmative Countervailing Duty Determinations on Stainless Steel Sheet, Strip, and Plate from the United Kingdom, 48 FR 19,052 (April 27, 1983) (subsidies used to close redundant facilities or to purchase idle assets constitute indirect countervailable benefits).

for less in competition with our domestic goods, to that extent by this paragraph the duties fixed in the schedule of the act are increased. It was a result Congress was seeking to equalize regardless of whatever name or in whatever manner or form or for whatever purpose it was done.

306 F. Supp. at 467-68 (quoting 7 Ct. Cust. Appls. 97, 106-107 (1916), *aff'd*, 249 U.S. at 249 (emphasis supplied in original)).

Because BC does not maintain direct control over the log prices through the imposition of its export restrictions, the Department determines that the BC export-restriction scheme constitutes indirect, rather than direct, government action. Nonetheless, this indirect scheme, as demonstrated below, has the effect of reducing the production costs of BC softwood lumber manufacturers.

Based upon the maxim of *ejusdem generis*, in combination with the express Congressional directives in the legislative history, BC's export restrictions covering logs are similar to, or like, the illustrative examples and, therefore, fall within the ambit of the statutory term "domestic subsid[y]." In fact, the net result of the BC log export restrictions is no different in substance from what it would be if BC simply had granted these manufacturers a refund upon sale. Furthermore, nothing in the legislative history suggests that Congress intended to support the narrow interpretation of a "domestic subsid[y]" espoused by Respondents.

Accordingly, we disagree with the Respondents' contention that, because BC, according to Respondents, has not made some kind of "financial contribution" or foregone some government revenue, the BC export restrictions are not countervailable. First, such a construction of the statutory scheme conflicts with the maxim of *ejusdem generis*. Second, Respondents' interpretation impermissibly reads out of the statute the term "indirectly" and the phrase "but not limited to," as appearing in section 771(5)(A) of the Act. Third, because, as explained more fully below, neither the GATT nor the GATT Subsidies Code *per se* requires a showing of government financial contribution to trigger the imposition of countervailing duties, it follows that the U.S. countervailing duty law does not require such a showing either.²²

²² See Potassium Chloride from Spain, 49 FR 36,424-25 (1984) ("While there is no direct outlay of government funds, the benefits conferred on the companies are the result of a government-mandated program to promote exports."). Furthermore, to determine whether a program is countervailable, the Department examines the benefit to the recipient and not the cost to the donor. See Certain Textile Mill Products from Mexico: Final results of

Having established that the BC export restrictions can be considered a "domestic subsid[y]" practice within the meaning of the Act, our next task is to determine whether there is a proximate causal relationship or correlation (*i.e.*, regression analysis) between the BC export restrictions and the domestic price of BC logs. See *Hammond Lead*, 306 F. Supp. at 470. In other words, we must ascertain whether these restrictions have a "direct and discernible effect" within the meaning of *Leather*²³ upon the price of BC logs. 55 FR at 40,213.

In particular, the Margolick and Uhler study²⁴ submitted on the record demonstrates that the BC log export restrictions have a "direct and discernible effect" upon the domestic price of BC logs.²⁵ By reducing the demand for BC logs that otherwise would exist in the absence of the BC export restrictions, the BC border measures have the effect of reducing the price of logs sold in the BC domestic market.²⁶

Even the BC Select Standing Committee on Forests and Lands has acknowledged that "[t]he reduced overall demand for logs resulting from arbitrarily restricting log exports provides the domestic processing sector with a lower log price." (See "Forest

Countervailing Duty Administrative Review, 54 FR 36,841, 36,843 (1989).

²³ The standard that we used in *Leather*—the "direct and discernible effect" standard—attempted to determine whether the border measure in that case, an export embargo, had a direct effect on the price of the input product, raw hides, even though we recognized that the effect upon the processed product under investigation was indirect. 55 FR at 40,213-214. More precisely, we sought to determine whether there was a correlation through the use of circumstantial evidence between the export embargo and changes to raw hide prices. *Id.* To measure the benefit in *Leather*, we compared Argentine hide prices over a period of approximately 30 years in relation to a benchmark based upon U.S. prices over the same period. *Id.* We determined, based upon probability theory and correlation analysis, that domestic prices for hides were directly linked to the hide embargo; we analyzed hide prices during periods in which the embargo was, and was not, in effect. *Id.*

²⁴ Margolick and Uhler, *The Economic Impact of Removing Log Export Restrictions in British Columbia* (April 1988) (Margolick).

²⁵ See also, H. Keppler, *Commodity Export Taxes as a Means of Promoting International Processing Industries—A General Equilibrium Model*, in J. Weinblatt, ed., *The Economics of Export Restrictions 66* (1986); cf. *Galvanized Steel From Australia*, 49 FR at 8,668 ("... It may be true in an abstract economic sense that such import restrictions, in lessening competition in the domestic marketplace, do provide some benefits of at least a temporary nature to the domestic producers of the product...") (emphasis supplied). For a discussion and explanation of Margolick, see *infra*.

²⁶ For a discussion and explanation of Margolick, see *infra*.

Act-Part 12 (Log Exports) and the Vancouver Log Market," Second Report of the British Columbia Select Standing Committee on Forests and Lands, 4th Sess., 34th Parl., Legislative Assembly of British Columbia 15 (1991).) Therefore, because logs constitute the major input of softwood lumber, BC softwood lumber manufacturers enjoy a benefit in the form of lower input or production costs. See *id.*

Respondents contend that the Department's "direct and discernible effect" analysis is flawed. Specifically, Respondents contend that this analysis is not based upon any empirical evidence or data that conclusively proves that, "but for" the BC export restrictions, there would be no, or only a slight, difference between export prices and BC domestic prices.

Respondents' contention, if accepted, would preclude the Department from ever finding a "direct and discernible effect" in any case. Contrary to Respondents' characterization of the issue, no social science study, including econometric studies, can prove conclusively that one factor or variable is the sole "cause" of another factor or variable. See generally Lapin, *Statistics For Modern Business Decisions* 95-146, 311-396 (3d ed. 1982). Rather, social science studies are based upon probability theory or correlation analysis (*i.e.*, regression analysis); the stronger or higher the correlation, the more likely or probable that one factor or variable is the "cause" of the other. *Id.*

The Margolick study is precisely grounded upon this generally accepted social science method of analysis. Based upon this study, we determine that there is a relatively high or strong correlation between the BC log export restraints and the significant price differential between exported and domestically consumed logs. Stated otherwise, it is highly probable that the BC export restrictions are primarily responsible for, or a "cause" of, this price differential.²⁷ Significantly, Respondents have failed to place on the record any probative evidence of their own that reasonably explains why this price gap exists in the first place.

²⁷ The analysis here is entirely consistent with that of *Leather*. There, the Department's relied upon circumstantial evidence to show that there was a correlation between the Argentine export embargo and changes in the price of raw hides. 55 FR at 40,213-214. Similar to our approach here, we did not have or use any empirical data in *Leather* that conclusively proved that the Argentine embargo was, in Respondents' words, the "but for" cause of raw hide price changes. In contrast to our approach here, we did not use econometric studies in *Leather*. *Id.*

The major flaw that Respondents find with the Margolick study is that it is based upon aggregate data. In making this attack, Respondents ignore the reason why Margolick based his study upon aggregate data: to avoid studying separately several different markets for a relatively large number of species and grades of timber. See Margolick at 6. Such an approach is sufficiently reasonable to satisfy the substantial evidence requirement pursuant to the Act.

Respondents also contend that, based upon the unique facts of this case, the Department cannot satisfy the "direct and discernible" standard. This contention follows from the fact that, in contrast to *Leather*, where the Argentine embargo was in place intermittently, the BC export restraints have been in place continuously since 1906. We find this line of argumentation to be unpersuasive, because it produces an absurd result—namely, if a foreign government subsidizes continuously, it may be immune from countervailing duty liability; if, however, that same government subsidizes intermittently, it may be subject to such liability.

Having established that the BC log export restraints can be considered a "domestic subsid[y]" practice within the meaning of the Act, and having established that such restraints have a "direct and discernible effect" upon the BC domestic price of logs and, thereby, confer a benefit upon BC softwood lumber manufacturers, we now must determine whether this benefit is "specific" within the meaning of the Act. See PPG, at 1566 (Fed. Cir. 1991) (domestic subsidies that provide benefits countervailable only if provided to "specific" class of recipients).

Specificity Test

To make this determination, we must ascertain whether BC provided this domestic benefit "to a specific enterprise or industry, or group of enterprises or industries" within the meaning of the Act. 19 U.S.C. 1677(5)(A)(ii). In the Preliminary Determination, we found that BC log export restrictions were "specific" to a group of industries within the meaning of section 701(5) (A) and (B) of the Act. Specifically, we determined that the compilation of laws and regulations governing log exports in BC *de jure* conferred domestic benefits upon the primary timber processing industries.

Respondents argue that because the Department did not separately analyze the effects and the specificity of the BC log export restrictions, the agency did not substantiate its conclusion that the

BC log export restrictions are specific to the primary timber processing industries. First, although the Department did not undertake a separate specificity analysis for the log export issue in the Preliminary Determination, we now reaffirm our earlier finding that the BC log export restrictions are "specific" to essentially two industries: the solid wood products industry and the pulp and paper products industry.

Second, Respondents' contention that some other group of industries (other than those producing products possibly made by stumpage holders, as discussed more fully above,) may derive a benefit from the BC log export restrictions is unsupported by the facts of this case. The BC log export restrictions, on their face, benefit only BC users of logs (*i.e.*, the solid wood products industry and the pulp and paper products industry). See Part 12, section 135, 136, and 137 of the BC Forest Act. Accordingly, the domestic benefits conferred by these export restraints are *de jure* limited to a specific group of industries. See *Leather* at 40,213 ("The embargo applies only to cattle hides, which are sold primarily, if not exclusively, to leather tanners [and, therefore,] is limited to a specific industry.")

Respondents also contend that the Department should take into account the differential impact that the log export regulations would have based upon different geographical locations and log quality. This argument has no persuasive relationship to a determination of specificity. If anything, this argument would seem to reduce the number of users of the program, making the program even more specific.

Because the BC log export restrictions constitute a "domestic subsid[y]" that, as demonstrated below, provides a measurable benefit to "a specific enterprise or industry, or group of enterprises or industries" within the meaning of the Act, the Department determines that these export restrictions constitute a countervailable domestic subsidy. See *Hammond Lead*, 306 F. Supp. at 469 (quoting *Nicholas*, 7 Ct. Cust. Appls. at 106 T.D. 36426 (1916)), *aff'd*, 249 U.S. at 34.

GATT and GATT Subsidies Code

The Department's determination that the BC export restraints covering logs constitute a countervailable domestic subsidy pursuant to U.S. law conforms with the GATT and the GATT Subsidies Code as well.²⁸ Similar to the Act,

²⁸ We find Respondents' FTA arguments unpersuasive. First, nothing in the FTA precludes

neither the GATT nor the GATT Subsidies Code provides a universally accepted definition of the term "subsidy." Nonetheless, a careful reading of the GATT text demonstrates that border measures, such as export taxes or restrictions, can constitute a "subsidy" within the meaning of Articles VI or XVI of the GATT, as implemented by the GATT Subsidies Code. Just as the doctrine of *ejusdem generis* applies as an aid to interpret a U.S. statute, so this doctrine is equally applicable when interpreting an international agreement, such as the GATT or the GATT Subsidies Code. In this regard, Article 11(3) of the GATT Subsidies Code sets forth a non-exhaustive list of illustrative domestic subsidies that includes, among other domestic practices, fiscal incentives. GATT Subsidies Code, art. 11, para. 3.

The BC export restraints covering logs are based *in part* upon a complex fiscal tax system (*i.e.*, 100 percent export tax) that taxes logs destined for the export market, but exempts from the tax logs sold in the BC home market. The net result of this fiscal regime, as demonstrated above, is a partial reduction in the production costs of the BC softwood lumber manufacturers.

Because the BC export restraint is based *in part* upon a fiscal tax regime, this measure is similar in nature or analogous to one of the illustrative examples of an internationally recognized domestic subsidy.³⁰ Application of the maxim of *ejusdem generis*, therefore, warrants that the United States treat BC log export restrictions as another kind of illustrative "domestic subsidy" pursuant to the GATT Subsidies Code.

That BC confers this domestic subsidy indirectly does not take this practice outside the purview of the GATT either. Both Article VI of the GATT and Article 1 of the GATT Subsidies Code expressly provide that the term "countervailing duty" include "a special duty levied for the purpose of off-setting any bounty or

subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise . . ." GATT Subsidies Code, art. 1, n. 4. (emphasis added).

Furthermore, Respondents' "financial contribution" argument is overstated. Neither the GATT text nor the GATT Subsidies Code text, as currently drafted, *per se* requires a signatory country to make an affirmative showing of "financial contribution" before finding a countervailable subsidy. Although Respondents cite to Item (I) of the Illustrative List—"[a]ny other charge on the public account"—to support their "financial contribution" theory, no GATT panel or Working Group has issued a decision or report that reads a "financial contribution" requirement into the GATT or the Subsidies Code.³⁰ Moreover, the so-called "Dunkel text" appears to eliminate any potential doubt in this regard: If, as Respondents suggest, the GATT or the Subsidies Code currently contained such a *per se* requirement, then the "Dunkel text" would not be attempting to perform the redundant exercise of creating a standard that already was in existence.

Respondents next marshal the argument that the Department's attempt to countervail BC's log export restrictions is GATT illegal, because border measures, such as export restrictions, fall within the exclusive domain of the bilateral and multilateral consultative mechanism of Article XI of the GATT. This argument ignores the express language of Article VI of the GATT and Article 19(I), footnote 38, of the GATT Subsidies Code.

Article VI, paragraph 3, of the GATT provides in relevant part:

The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise.

GATT, art. VI, para. 3 (emphasis supplied).

The express terms of this definition do not in any manner carve out an exception for subsidy practices described elsewhere in the GATT. To the contrary, the unambiguous language quoted above covers without

qualification "any bounty or subsidy bestowed," regardless of whether that subsidy practice falls within the purview of another article of the GATT.

More important, footnote 38 to Article 19, paragraph 1, of the GATT Subsidies Code expressly provides that paragraph 1 of Article 19 (*i.e.*, "No specific action against a subsidy of another signatory can be taken except in accordance with the provisions of the General Agreement, as interpreted by [the GATT Subsidies Code]") "is not intended to preclude action under other relevant provisions of the General Agreement, where appropriate." GATT Subsidies Code, art. 19, para. 1, n.38. Thus, the GATT Subsidies Code—the agreement that constitutes the agreed interpretation of Article VI of the GATT—specifically envisions that signatory countries may invoke Articles VI and XVI of the GATT in addition to "other relevant provisions of the General Agreement" to address a specific unfair trade practice. *Id.*

This analysis reinforces the general GATT precept that the coverage of a particular practice under one GATT article does not necessarily supplant or preempt a proceeding against that practice under another, equally applicable article. See GATT, arts. VI, XVI (contracting party may invoke either article to remedy actionable subsidy). In fact, there is only one instance in which the GATT drafters created an exclusive remedy for an unfair trade practice. In this regard, Article VI, paragraph 5, of the GATT provides:

No product of the territory of any contracting party imported into the territory of another contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

GATT, art. VI, para. 5.

This requirement demonstrates that the GATT drafters knew how to impose a restriction on the availability of the countervailing duty remedy and, therefore, could have provided such a restriction for measures covered by Article XI. The striking absence of such a requirement in Article XI, coupled with the existence of such a requirement in Article VI, paragraph 5, is additional evidence that the GATT drafters did not intend to limit the availability of the countervailing duty as a remedy when Article XI measures were involved.

Hence, contrary to Respondents' contentions, treating export restrictions as a subsidy would not result in Articles VI and XVI subsuming the entire GATT or rendering Article XI mere surplusage. If export restrictions conferred

the Department from applying the U.S. countervailing duty law against a countervailable program. FTA, art. 1902, para. 1. U.S. countervailing duty law for FTA purposes includes the Department's interpretation of the "relevant statutes, legislative history, regulations, administrative practice, [including Leather,] and judicial precedents." *Id.* Second, the Department's determination to countervail BC's log export restrictions does not prohibit BC from continuing to implement and enforce these restrictions; the Department is merely imposing a countervailing duty to offset the countervailable benefit enjoyed by the BC softwood lumber producers.

³⁰ *Cf. Hammond Lead*, 308 F. Supp. at 470, *rev'd on procedural grounds*, 440 F.2d at 1024 (complex fiscal regime that taxed input product upon exportation, but exempted input from taxation when sold domestically, deemed countervailable).

³⁰ In fact, a 1961 Report on Subsidies by a Group of GATT Experts expressly recognizes, contrary to Respondents' contention, that a subsidy does not require a "financial contribution" so long as a benefit is provided by the foreign government. In discussing the question of levy and subsidy schemes, the Group expressly recognized that although such schemes are not countervailable when purely "voluntary," such schemes are subject to the strictures of Article XVI of the GATT when they are "dependent for their enforcement on some form of government action." *Review Pursuant to Article XVI:5, GATT*, 9th Supp. BISD 192 (1961).

countervailable benefits, then a contracting party would have the option of seeking relief pursuant to either Article VI of the GATT or Article XI, or both. Article VI of the GATT would provide the legal mechanism to impose countervailing duties to offset the countervailable benefits conferred by the restrictions. Article XI, on the other hand, could result in the other contracting party having to dismantle its export restrictions.

If, however, the export restrictions in question did not confer countervailable benefits, then the contracting party could not impose any countervailing duties; the contracting party under such circumstances could seek relief only pursuant to Article XI of the GATT. Such a construction of the GATT frustrates not one article of the Agreement, but rather gives force and effect to all of its provisions, "so that no part will be inoperative or superfluous, void, or insignificant." Sutherland Stat. Const. § 48.06 (4th ed. 1984).

Because the GATT specifically envisions that contracting parties may invoke multiple articles to remedy a single unfair trade practice, there is no reason for creating a conflict between Articles VI and XI. In fact, it is a well-settled canon of treaty interpretation to construe a treaty or an international agreement to avoid such a conflict. See *Corfu Channel, I.C.J. Reports (1949) 1, 23-24, 26 (1949)*.

For the reasons set forth above, the Department's determination to countervail BC's log export restraints pursuant to the U.S. countervailing duty law is consistent with the GATT and the GATT Subsidies Code. BC's export restrictions are similar in nature to one of the Subsidies Code's illustrative examples of a domestic subsidy. Furthermore, that these restrictions fall within the purview of Article XI of the GATT does not preclude the United States from countervailing this measure pursuant to Articles VI and XVI of the GATT, as implemented by the GATT Subsidies Code.

Accordingly, we determine, based upon the Act, legislative history, prior judicial and administrative precedent, as well as the GATT and the GATT Subsidies Code, that the BC export restrictions covering logs constitute a countervailable domestic subsidy. In so doing, we decline to follow our *Leather* precedent and, instead, embrace the holding of *Leather*. For these reasons, we determine to countervail the BC export restrictions in the amount of the measurable benefit as calculated and explained in a subsequent subsection of this notice.

Measurement of Benefit

Areas of Consideration

In order to understand much of the following discussion, as well as the calculation, it is important to start with a brief discussion of the administrative geography of BC, as defined by the BC MOF.

For administrative purposes, the MOF has divided the province into two principal areas, the administrative coast region (which includes the Vancouver forest region plus the North Coast forest district of the Prince Rupert forest region), referred to in this notice as the coast, and the administrative interior region, which we will refer to as the interior. During verification, Respondents described three areas within the interior. The first, the tidewater interior, refers to that portion of the interior with access to tidewater ports. This area includes the Kispiox, North Kalum, South Kalum, and Cassiar forest districts of the Prince Rupert forest region as defined by the MOF.³¹ The second area is the border interior, which includes those forest districts approximately within 100 miles of the U.S.-Canadian border, exclusive of the coast and tidewater interior. These forest districts are Cranbrook, Invermere, Arrow, Boundary, and Kootenay in the Kamloops forest region, and Vernon, Penticton, and Lillooet in the Nelson forest region, again as defined by the MOF. The final area, the north/central interior, is defined as the interior area less the tidewater interior and the border interior.

In the Preliminary Determination, the Department stated that "[d]uring the POI, 52 percent of total exports were from the coast and 48 percent were from the interior." We based these percentages on information submitted by Respondents in their questionnaire responses.

At verification and in their briefs, Respondents stated that 99.24 percent of exports originate from the coast and that 0.76 percent originate from the interior. In this instance, they dismiss any administrative mapping of the province and delineate the coast as the administrative coast plus the tidewater interior; they define the remainder of the province as the interior. This delineation, however, leads to confusing and misrepresentative results in

³¹ The harvest in the Cassiar forest district is quite small relative to the other forest districts in the tidewater interior, and the majority of the harvest in Cassiar is concentrated in the extreme southern portion. As was shown during verification, only this area in the extreme southern portion of Cassiar is considered part of the tidewater interior region.

Respondents' analysis due to the different definitions of the coast.

Rather than rely on Respondents' redefinition, we have defined the regional breakdown of the province within the framework of the MOF's own administrative mapping. We do not agree with Respondents' new delineation of the coast and interior because it is essentially an arbitrary reclassification of areas designed for purposes of this investigation. The coast and the interior are statutorily defined areas with different appraisal systems, different scaling systems, different grading systems, different stumpage rates, different species types and, as Respondents have continually pointed out, different timber quality.

Although Respondents claim that a reclassification is necessary in order to account for the transportation costs in the tidewater interior (which has coastal access), we determine that export transportation costs are not cause to redefine administrative regions. Export transportation costs are an adjustment that the Department has accounted for in its calculation (see below).

Based on our analysis, we determine that BC's log export restrictions artificially depress the domestic log prices on the coast and in the tidewater and border interior areas of BC. Based on information on the record and as described in the following sections of this notice, we find that, absent these restrictions, tenure holders from these areas would respond to the demand present in the Pacific Rim market for BC logs by increasing the volume of BC logs sold on the Pacific Rim market. The result of the increased exports would be to increase the current domestic log prices in the domestic market caused by the restrictions in the first place. However, we find that the north/central interior of BC would experience no such price effect. Because of its geographic characteristics and the costs of transporting logs from this area, both under current market conditions and under conditions that would prevail absent the restrictions, we determine that the north/central interior would not exhibit any significant level of exports even without the restrictions. Therefore, the domestic price of logs in the north/central interior would not be subject to the same type of upward price pressure if the restrictions were lifted.

Export/Domestic Differential

While Respondents argue that any difference between the current export and domestic prices is due to differences in quality and costs, the Department agrees with the Coalition's assessment

that "[b]y placing a tax on the differential between export and domestic prices, British Columbia implicitly concedes that, for identical species and grades, export prices are higher than domestic prices" (see Coalition Case Brief).

Given the minuscule volume of BC logs exported, under present market conditions, BC is a price-taker in the Pacific Rim market for logs (see discussion below). What is taxed is the differential between the world market price and the domestic log price in BC. Respondents claim that the differential between the prices is equal to the costs of exporting and any species/quality differences. According to Respondents, when comparing identical species and quality, as the province does when computing a tax, the differential it calculates is due only to export costs. Essentially, then, BC is claiming that it taxes exporters on their export costs, an assertion that is nonsensical.

Respondents have placed on the record a study by Dr. Kalt that uses the change in the fee-in-lieu of manufacturing in BC to test whether changes in the export volumes have affected the price for domestic logs relative to the price for export logs. Kalt uses a regression analysis purportedly to show that the changes in the export volumes as a result of changes in the fee had no effect on the ratio of export to domestic log prices.

A fundamental error in Kalt's analysis is his misuse of the fee-in-lieu of manufacturing. During the 1980s, this fee was raised in steps from 15 percent to 100 percent. However, as Respondents themselves have stated, the 100 percent fee covered less than 35 percent of the logs exported from BC during the POI. Blanket exemptions under various orders-in-council (OICs), along the Mid- and North Coast, bear a maximum fee-in-lieu of manufacturing of 15 percent, not 100 percent. These exports accounted for more than 65 percent of the log exports from BC during the POI, as was shown during verification. Kalt, however, assumed that all of the exports were subject to the 100 percent fee, an incorrect assumption. Since Kalt did not apply the fee-in-lieu of manufacturing correctly in his analysis, his study is invalid.

Furthermore, the Kalt analysis implicitly assumes that the change in the fee-in-lieu of manufacturing policy would have an impact on the export price of logs from BC. That is, explaining the export/domestic log price ratio using the change in the fee-in-lieu of manufacturing policy assumes a causal relationship between export log price and the change in the fee policy. Given

the very small volume of BC logs on the export market (owing to the very effective export restrictions), BC, under present conditions, is a price-taker in the Pacific Rim market for export logs (i.e., it is highly improbable that the current tiny volume of BC exports could have any significant effect on Pacific Rim log market prices). As such, even assuming *arguendo* that the change in the fee policy in BC did not cause a change in the domestic/export differential one way or the other, such a conclusion says nothing about the potential effect of the lifting of BC's restrictions *in toto*. Therefore, Kalt's thesis cannot prove or disprove the Department's contention that the lifting of the BC restrictions, *in toto*, would have a significant effect on the BC domestic price of logs.

Respondents have also placed on the record a study by Dr. Finan. The objective of this study is to evaluate whether there was a causal relationship between BC log exports and the differential between export log prices and BC domestic log prices. Finan claims that the Department has incorrectly theorized that, as export levels rise (or the ratio of export to domestic sales increases), the differential between export prices and domestic prices should decrease. His study uses a regression analysis to demonstrate a lack of evidence to support the Department's hypothesis. Finan concludes that no such causal relationship exists.

We agree with Finan's hypothesis that there is a correlation relationship between the volume of BC's log exports and BC domestic log prices. However, we disagree that Finan has disproved such a causal relationship. Finan bases his conclusion on a showing that minuscule changes in the current level of log exports have no significant effect on the differential between BC domestic and export prices. As noted above, this conclusion is unfounded, given the current tiny volume of export sales in comparison with the high Pacific Rim log demand. BC, under present market conditions, holds no sway over Pacific Rim log prices. Additionally, while Kalt applied the fee-in-lieu of manufacturing incorrectly, Finan completely disregarded it, taking no account of the possibility that the fee might have had a significant impact on the incentive to export and, therefore, on export volumes. Given the weaknesses, we conclude that Finan's study falls short of disproving a causal relationship between export volumes and domestic prices.

Benefit on the Coast and Tidewater Interior

Respondents allege that BC's log export restrictions do not distort the market and, therefore, do not confer a benefit on the province's lumber producers, either on the coast or in the interior. Respondents maintain that the coast and the tidewater interior are differentiated from the border and north/central interior of the province and the other provinces in Canada by their access to tidewater ports and the distortions introduced by Japanese and U.S. trade policies. On the coast and in the tidewater interior, Respondents assert that the log export restrictions merely serve to offset the distortive effects of Japanese and U.S. trade policies. By counteracting these policies, Respondents claim that the restrictions allow for the same allocation of resources that would prevail in an undistorted market, i.e., a market absent Japanese and U.S. trade distortive policies.³² Therefore, Respondents assert that, in order to determine whether the log export restrictions actually distort the market and lead to a misallocation of resources, the Department must net out the distortive effects of the Japanese and U.S. policies, rather than hold them constant as the Department did in the Preliminary Determination.

Respondents' arguments with respect to the trade distortive effects of Japanese trade policies, and U.S. trade distortive activities for that matter, are relevant only to the extent that world market conditions may have been different in 1983, the year in which Margolick based his study, and 1990, the POI. Kalt implicitly recognizes this potential measurement problem in stating that one of the reasons the Margolick study cannot be used is that U.S. restrictions on log exports have increased since 1983. To account for this possibility, we have relied on the Newport submission, which uses 1990 pricing data to update the Margolick study.

Margolick relied on U.S. export prices as the Pacific Rim log market price

³² We note that, on the one hand, Respondents have argued that there really is no price differential between export and domestic logs, that any apparent differential is due to export costs and species/quality differences. On the other hand, they imply that there is a price differential because the government has stepped in to control the market. This is done by restricting exports which then depresses the domestic price. Consequently, Respondents admit that the domestic prices would rise absent the restrictions, given the current market conditions, and that a price differential actually exists between the export price and the depressed domestic price.

because the United States supplies the overwhelming majority of softwood logs to that market. That the United States maintains its own export restrictions, or that Japan has high import barriers to lumber products, does not make the U.S. export price any less the appropriate Pacific Rim log market price. It may not be the perfectly competitive price that would exist in a perfectly competitive world with no national boundaries or national trade policies, but, during the POI it was the market price that reflected world market conditions at that time, including Japanese trade barriers and U.S. trade policies. In fact, as a Pacific Rim market price, it is supposed to reflect these conditions; if it did not, it would be distorted.

The countervailing duty law is aimed at particular government programs that provide subsidies to specific industries. Our analysis and line of inquiry focus on the effects of those government programs within the relevant jurisdiction, which is the country of exportation. We do not seek to determine what prices, interest rates, or exchange rates would be in a completely free world without borders and political entities. Nor do we examine the reasons that governments put particular programs into place. We are interested only in the effects of those programs on industries that export to the United States. In this case, we have measured what would happen to BC domestic log prices if the restrictions were lifted—all other things being equal. If world market conditions change, such as by Japan's lifting its import barriers, the export demand for logs would drop, and the Margolick factor would likely fall. There are many other factors that could affect world market demand for logs, such as a change in deductible mortgage interest policy in the United States. As these changes occur, export market prices will automatically reflect them, and the Margolick factor, or some other similar factor, would rise or fall depending on the change.

Benefit in the North/Central and Border Interior

Respondents then argue that log export restrictions have no significant effect in the north/central and border interior areas of BC. They contend that these interior areas share the same geographic and economic characteristics as those provinces in the interior of Canada with respect to which the Department determined that no benefit is conferred on lumber producers from log export restrictions (see Alberta, Ontario, and Quebec section below). Therefore, they allege that the same factors that led the Department to

conclude that log export restrictions in the other investigated provinces do not confer a subsidy should be applied to the BC interior, with similar results. The tidewater interior is affected by none of the geographic and economic constraints that Respondents attribute to the rest of the administrative interior, nor do Respondents make such an assertion. Therefore, the following contentions do not relate to the tidewater interior.

Respondents argue that, like Alberta, the timber harvested in the interior is of low quality, and the principal harvesting areas are more than 150 miles from any export location. They note that average haul distances range from 41 to no more than 66.5 miles in the interior, and that it is cost-prohibitive to transport these low-quality logs longer distances for export. Respondents refer to Kalt, and explain:

Professor Kalt noted that, due to those factors, the Northern and Central Interior—which account for 68 percent of the B.C. harvest—are, as a consequence, beyond the range that would make logs harvested there exportable. Professor Kalt indicated that 'for very simple and powerful reasons, the logs harvested there are also milled there.' Indeed, Professor Kalt stated that, given the economic constraints that transportation costs impose on moving logs in the interior, an 'outer limit of 100 miles can be used to conservatively define the likely area' of any potential exports from the interior. (see Respondents Case Brief, p.54).

We accept that it would be inefficient and prohibitively expensive, both under current market conditions and under conditions that would prevail absent the log export restrictions, to export from the north/central interior. We have determined that the 100-mile limit recommended by Respondents, arguing in the alternative, accurately describes the area of potential exports from the border of the interior.

Next, Respondents allege that, like Ontario, the low level of exports and the unfilled export quotas in the interior indicate that BC's log export restrictions have no impact there. They explain that only 0.78 percent of total exports during the POI originated from the interior, and virtually all of these were within 25 miles of the U.S. border; all other exports originated from the coast and the interior tidewater. Respondents also allege that the province routinely grants export exemptions in the interior that often go unfilled or result in no exports.

We note that there are significant differences between the Ontario log export quotas and the procedures through which logs are exported from the BC interior. The export quotas in Ontario place no restrictions

whatsoever on the export of logs other than a general quantitative ceiling. In Ontario, exporters apply for export permits in writing, and these are routinely granted as long as the overall quota is unfilled. Despite this, the log export quotas have never been filled.

By contrast, many of the exemptions for export granted from the border interior were for economic or utilization reasons. These types of exemptions are highly restrictive in scope relative to the quotas of Ontario. For example, they apply only to particular stands of timber deemed by the province to be sufficiently unprofitable if harvested for domestic sale. The exporter must submit detailed analyses of harvesting costs relative to expected domestic return. Furthermore, the exemption process is lengthy, entailing a significant amount of paperwork. In addition, by their very nature, economic or utilization exemptions cover stands that are expensive to harvest, increasing the likelihood that, even in an unrestricted market, logs from these stands would not be exported.

There were also several exemptions for export granted from the border interior based on the surplus criterion. Under such an exemption, the exporter must pay a 100 percent fee-in-lieu of manufacturing on the differential between the export and domestic log price. Unlike the coast (see below), the domestic price used in this fee calculation in the interior is based on a survey of potential purchasers in the area and reflects the current market value of the domestic log. Therefore, all surplus exemptions are subject to the full 100 percent fee. Consequently, there is no incentive for sellers to export logs from the border interior, as evidenced by the low volume of exports.

Respondents note that, in determining that Quebec's log export policies have no significant economic effect, the Department relied on the fact that Quebec imported far more logs than it exported. Respondents state that the balance of trade in logs in Quebec is not as much of a distinguishing factor between BC (including the interior region) and Quebec as the Department believes. Respondents further argue that in the Preliminary Determination, the Department overlooked the fact that the United States bans the export of logs from public lands in the Western half of the United States, but imposes no similar ban on exports from public land in the east. Thus, according to Respondents, the limited volume of imports relative to exports in BC reflects the effect of the U.S. log ban as much as any other factor.

We disagree with Respondents' assertion regarding the similarities between the Quebec's and BC's respective log trade balances. First, a significant amount of the timber harvested in Quebec (about 22 percent) is from privately owned forests and is statutorily unencumbered by any log export restrictions. Despite the significant amount of unrestricted land, Quebec's log exports are still only a fraction of its imports. Concerning U.S. log export restrictions, we note that in Washington, Montana, and Idaho, all of which border BC, almost two-thirds of the 1990 timber harvest was from private lands, whose logs are free to be exported. In addition, timber from significant portions of public land is eligible for exportation.

In conclusion, we determine that, because of the cost of transportation and the subsequent unlikelihood of exports from the north/central area even if the restrictions were lifted, there was no benefit accruing to lumber producers in the north/central region of BC during the POI. The border region of the interior, however, does not experience from such prohibitive costs, due to the proximity to export markets in the United States. Consequently, tenure holders in the border interior would likely export logs if there were no export restrictions. Also, we do not find the current low level of exports or the balance of trade situation to be indications that there is no effect from the log export restrictions in the border region of the interior.

Flow of Exports

Respondents maintain that the export restrictions do not hinder the exportation of logs and that certain procedural aspects of the log export regulations demonstrate the slackness of the restrictions and the resulting price equilibration between export and domestic log prices.

Respondents assert that the logic applied by the Department in the Preliminary Determination regarding BC's log export restrictions is flawed, insisting that the Department stated that "a significant amount of logs are exported despite a *de facto* embargo on exports" (see Respondents Case Brief, p.IV-82). They claim that the Department's reasoning is illogical and that "a substantial volume of exports can hardly be deemed evidence that the restraints are restrictive." They conclude that "the restrictions do permit a significant flow of exports and that the price equilibration the Department claims would take place in the absence of Provincial controls has, to a great

extent, already taken place" (see Respondents Case Brief, p. IV-82).

We disagree with Respondents. The various procedural features they cite as an illustration of the porousness of the restrictions do not, in fact, demonstrate such a porousness nor any resulting price equilibration. First, Respondents assert that various blanket OIC exemptions, which account for over 65 percent of all log exports, provide for the "virtually unfettered" export of logs. This is a mischaracterization. The parameters of blanket OICs are defined by the province. Since most have a maximum volume of allowable exports and a specified expiration date, they do not all provide for "virtually unfettered" exportation. Indeed, at verification, Respondents pointed out the existence of only one OIC that allowed for unlimited exports. This OIC was granted for economic and utilization reasons (see BC Verification Report). Also, because we were not able to trace from approved exemption applications to permits granted to actual exports, we have no basis for evaluating Respondents' assertions as to the actual volume of exports resulting from the OIC exemptions.

Respondents claim that in the Preliminary Determination the Department overstated the impact of the 100 percent fee-in-lieu of manufacturing. At verification, provincial officials explained that the fee was based on the differential between the export and domestic log prices. However, they explained that the domestic price is generally based on a three-month weighted-average market value calculated by the MOF for the Vancouver log market (VLM). Therefore, the domestic value subject to the fee could actually overstate or understate the real domestic value of the particular export boom (see BC Verification Report). Respondents claim that any potential differential is a potential source of profit offering exporters the incentive to ship.

We recognize that the fee-in-lieu is applied on a weighted-average basis. Nonetheless, the "potential differential" between the actual value and the calculated VLM value is unpredictable, both in terms of time and magnitude. Respondents infer that sellers, therefore, would engage in arbitrage between the two markets in an attempt to capture the highest profit margin. If the VLM value is below the real domestic price, the seller would choose not to export. Respondents provided no information on the incidence of sales in the export market due to such arbitrage. Indeed, we conclude that, because of the

extremely low level of exports under the harvested surplus exemption subject to the 100 percent fee, sellers do not often capture a positive differential, and, hence, do not export.

Finally, Respondents contend that, in the Preliminary Determination, the Department ignores the nature of the minimum processing requirements of logs as a means of circumventing the export restrictions (e.g., cants come under the definition of "processed wood product," not logs). However, because Respondents have not submitted any verifiable data regarding the extent of this alleged circumvention, the Department has no means to evaluate this assertion and its relevance to the issue at hand.

For all of these foregoing reasons, we reaffirm our preliminary finding that the complex web of restrictions in BC, in effect, bans what would otherwise be a significant flow of log exports abroad, resulting in a domestic supply of logs in BC that is artificially high.

Calculation

As in the Preliminary Determination, in order to measure the benefit to lumber producers during the POI, we examined the difference between the current domestic log price and the price that would exist if the restrictions were not in place. However, for the final determination, we have changed some of the adjustments, as described below.

Both the Coalition and Respondents objected to the Department's basic methodology for measuring the subsidy from the log export restrictions. The Coalition's preferred analysis is a cross-border comparison that captures the benefit from both the stumpage programs and the log export restrictions. The Coalition states that, although not its preferred methodology, the "price-to-price" analysis used by the Department is also a fundamentally sound manner in which to measure the subsidy. It claims, however, that in applying the methodology, the Department overestimated the requisite adjustments and generally used too conservative an approach.

Respondents raise numerous objections to the Department's methodology. They state that the Department has not demonstrated that the log export restrictions have a direct and discernible effect on actual log prices; that the Department failed to take all relevant costs into account in the calculation; and that the methodology is corrupted by the use of imperfect surrogates for actual prices, leading to unacceptably flawed results. They summarize their objections by

stating that the calculation is a "teetering compound of weighted averages" and that the "measurement potentially amounts to nothing more than the margin of error attributable to the Department's methodology."

As we stated in the "Stumpage Preferentiality" section, we are reluctant to resort to a cross-border price analysis when intra-provincial information is available. Rather, determining what the price of logs in BC would be absent the restrictions is the preferred method to use for examining the benefit from this program. This methodology follows our normal line of inquiry for most of our subsidy calculations. For example, in calculating the benefit from a grant, we determine what a firm would have had to pay for a commercial loan in the same amount: for a tax credit, what a firm would have paid under normal corporate tax schedules.

Respondents have exaggerated the lack of observed data in our analysis. The "derived values" to which Respondents refer are, in fact, observed export prices gathered by Statistics Canada, as explained in the export price section below. In the Preliminary Determination, we constructed a value for the interior domestic price because we did not have any actual prices. However, at verification, we were able to obtain interior log values from Statistics Canada and actual log prices for the tidewater interior, and have used these data in our final calculations.

Domestic Price

We have calculated a domestic log price based on price information from the Vancouver log market for the coast, observed log prices in the tidewater interior, and 1989 Statistics Canada log valuation data, adjusted for inflation, for the border interior. The Vancouver log market price information is based on observed log prices for the coast. We obtained actual log prices from a company located in the tidewater interior at verification. As these data are the only observed prices on the record from the tidewater interior, they are the most accurate domestic log prices for that area. We also obtained the Statistics Canada domestic log volume and value data for the interior at verification, and we have used these data for the border interior. Although we could not isolate border interior prices from these data, the Statistics Canada average interior prices are the only data available on the record for that region.

Respondents, however, find fault with the Statistics Canada data, stating that it is based on a survey of costs, not prices, and, therefore, cannot be used to demonstrate a direct and discernible

effect on domestic prices. Nonetheless, we believe that these data accurately represent the market value of logs to the manufacturers in the survey. We were able to compare the Statistics Canada data from the coast with the Vancouver log market prices for the coast and found that the values were very close. Therefore, it is reasonable to assume that the Statistics Canada data for the interior are a reasonable reflection of actual prices.

Respondents object to the Department's weighting of the coast and interior domestic log prices according to the total BC log harvest in calculating the domestic log price. They contend that such weighting results in a grossly understated domestic log price that artificially creates a subsidy. Given the virtual absence of exports from the interior, they argue that the Department should eliminate the interior from the calculation or weight the interior harvest by the percentage of total exports from the interior.

As we explained above, we have included only those areas of the interior in our calculation that would be affected by the lifting of the export restrictions. The BC domestic log price used in our calculation should be based on, and weighted according to, the harvest from the areas under consideration, not the exports used from those areas. To weight according to the current level of minuscule exports from those areas would imply that we are calculating the effect of the restrictions only on the tiny volume of logs currently exported. Instead, we must calculate the effect of the restrictions on all of the logs potentially affected by the lifting of the restrictions.

We weight-averaged the price/value data according to the percentage of harvest from each area included in the calculation of the benefit: Approximately 64 percent of the harvest under consideration occurs in the coast, 10 percent occurs in the tidewater interior, and 26 percent occurs in the border interior.

Species/Grade Adjustment

In the Preliminary Determination, we adjusted the weighted-average domestic log price for the different species/grade distributions between the export and domestic markets so that the domestic price would be comparable to the export price and a fair comparison could be made. The species/grade adjustment reflected differences in the value of log prices on the coast based on the domestic and export species and grade distribution by volume. Because we lacked any data describing the domestic species/grade profile for the two interior

areas under consideration, we applied the coastal species/grade adjustment to the interior as the best information available. Both Respondents and the Coalition object to this application.

Respondents claim that exported logs from the tidewater interior are of the same quality as exported logs from the coast, but that logs sold in the domestic market from the interior are inferior to coastal logs sold in the domestic market. Therefore, they assert that the species/grade adjustment for the tidewater interior should be larger than that for the coast. Conversely, the Coalition believes that the exports from the tidewater interior are of lower quality than those from the coast and, therefore, the adjustment should be smaller for the tidewater interior.

We must make a species/grade adjustment for the tidewater and border interior areas because we have included these areas in our overall calculation. We recognize that quality differences do exist between logs from the coast and those from the interior. These differences apply to both export and domestic logs. However, Respondents have placed no information on the record indicating that the interior species/grade adjustment should be lower or higher than that calculated for the coast. On the one hand, since interior species and grades are generally of lower quality than those on the coast, it would seem that the potential interior adjustment should be lower than that for the coast. On the other hand, given the lower quality of interior logs, export prices would also be lower. On balance, based on the information we have, there is no reason to conclude that the potential interior adjustment should be any different than the coastal adjustment. Therefore, we have applied the species/grade adjustment for the coast to interior logs as well.

Export Price

Respondents object to the use of the export unit value used in the Department's calculation on the grounds that it was "derived" from Statistics Canada volume and value figures provided by the Coalition. Respondents assert that since the Department lacked actual empirical evidence on which to base its export price benchmark, it cannot produce any evidence of a "direct and discernible effect" on actual prices, as required by the Department's decision in *Leather from Argentina*.

We disagree with Respondents' assertion. The Department verified that the Statistics Canada data are based on empirically observed prices taken from Customs records (see Federal

Government Verification Report). In its questionnaire responses, BC reported the same volume and value data from Statistics Canada as we used in our calculation, only on an aggregate basis. Also, the information on log exports published by Statistics Canada is the only complete information available concerning BC log export prices. The export unit values calculated from the Statistics Canada information are not "derived" values, but rather originate from actual transactions and, thus, can be used to demonstrate a direct and discernible effect.

Respondents then assert that the Statistics Canada volume and value figures reflect export prices for logs harvested and marketed on the coast alone. They contend that the export data do not accurately reflect a mix of coast and interior export prices, as the Department claimed in the Preliminary Determination. Respondents argue that because no export prices for the interior region are included in the Statistics Canada data, the interior should not be included in the Department's calculation of the average export log price or, at a minimum, the Department should use actual export prices for the interior that reflect the lower quality of interior logs. The Coalition suggests that, if the Department decides to perform a separate analysis for the coast and interior, a weighted-average delivered log price from the Eastern Washington and Northern Idaho region should be used as the interior export price.

We determine that the use of cross-border information would be inappropriate when intra-provincial information is available (see the "Stumpage Preferentiality" section of this notice). In addition, we believe that Respondents have mischaracterized the origin of the log exports. The Statistics Canada data represent log exports that originate primarily from the tidewater interior and the coast, not simply the coast. A small portion of exports also originates from the border interior (see BC Verification Report). As discussed above, we used the coast, the tidewater interior and the border interior in our calculations; we did not include the north/central interior. We used the BC unit value for log exports from Statistics Canada as an export price for the coast, the tidewater interior and the border interior. Moreover, it is the only information on the record regarding export prices.

Economic Adjustment

In the Preliminary Determination, the Department adjusted the export price downward by a price equilibrium factor to account for the decrease in the BC

export price that would result from lifting the log export restrictions.

Respondents object to the Department's analysis. They suggest that "the Department substituted various assumptions purporting to be generally accepted principles of economics," rather than perform an actual empirical analysis of the effects of BC's restrictions as required by the Department's determination in Leather.

As we stated in the Preliminary Determination, the factual circumstances in this case are more complicated than those in Leather and, as such, the measurement surrounding BC log export restrictions and Argentine hide restrictions are dissimilar. The Argentine hide restrictions were in place sporadically, allowing for an analysis of the on-and-off effects. The BC log export restrictions have been in place in some form or another since 1908, thereby forcing the Department to use economic models as a measurement tool.

Respondents seem to be suggesting that, because the facts in this case are different from those in Leather, the Department is precluded from using a more appropriate methodology and therefore precluded from following the Leather precedent. This suggestion is impermissible. The Department must examine the relevant facts in each case and choose an appropriate methodology to deal with those facts.

We maintain that if the log export restrictions are lifted, the supply of logs available in the Pacific Rim market (the market for 99 percent of BC exports) would increase and the price of exported logs would decrease. The Margolick study analyzed the effects on the BC coastal economy of the complete removal of the restrictions on the quantity of logs exported. It attributes a 22 percent decrease in the BC export price for logs to the removal of the log export restrictions.

The Coalition contends that the Margolick study provides an accurate representation of the impact of log export restrictions. (see Coalition Case Brief, Vol 1, Section 3 at 62.) In support of its assertion, it placed on the record a study by Newport which reviews the Margolick study and updates the Margolick factor ("Margolick/Newport factor").

Conversely, Respondents have numerous objections to the Department's use of the Margolick study. They state that the study "significantly understates the steep drop from export prices to the domestic price level, in the event of any difference between such prices" (see Respondents Rebuttal Brief).

Respondents challenge the Department's use of the Margolick study by questioning the model's external and internal validity. Respondents then contest the study's application to the facts in BC.

First, with respect to the model's external validity, Respondents claim that the Margolick study does not take into account the multiple factors that influence supply and demand in the BC coastal log market. These factors include the "feedback effects" postulated by Kalt, Japanese trade policies and resulting demand elasticities, U.S. trade policies, the potential for increased supply of logs from the Commonwealth of Independent States (CIS), and associated misapplication of elasticities. They state that these multiple factors can only be accounted for in a general equilibrium model. The Margolick study, on the other hand, is, according to Kalt, based on a partial equilibrium analysis.

We maintain that most, if not all, econometric studies are, by their very nature, based on a partial equilibrium analysis. That is, only an econometric model in which the market in question is represented entirely by behavioral relationships, and in which no assumptions external to the model are necessary, can truly be considered a general equilibrium analysis. Due to their prohibitive cost, general equilibrium models are rarely, if ever, constructed. As a practical matter, external assumptions are required to construct econometric models, as was true in the case of the Margolick study. The application of such assumptions does not render the partial equilibrium model invalid. As such, we do not agree with Respondents' contention that the Department should reject the Margolick study simply because it is a partial equilibrium analysis.

Second, Respondents dispute the internal validity of the Margolick study. We note that their first challenge, that the Margolick study fails to establish an equilibrium price that adequately reflects the likely decline in export prices that would result from lifting the restrictions, rests simply on a mathematical error; Respondents failed to note that the Margolick study measured the percentage increase or decrease in the prices, not the percentage increase or decrease on the difference between the prices, as Respondents incorrectly contend.

The other major contentions, raised by Respondents with respect to the internal validity of the Margolick study, are the statistical reliability of the results, incorrect appropriation of

independently-derived elasticities into the model, and the use of out-of-date information.

All of these objections state that improvements in the Margolick model can be made, but we note that this is also the case for all econometric studies. The Margolick study had been reviewed before it was published, presumably by the BC government officials who provided partial funding for this study. We also note that Respondents did not submit any post-publication unfavorable critiques suggesting that the model was invalid, that is, until the Department used the study in its Preliminary Determination.

With respect to Respondents' criticism regarding statistical validity, we note that this concept is related to what economic modelers call "model validation." Model validation encompasses how well the model performs in relation to theory and whether the predictions appear reasonable and are statistically significant. As noted above, we believe that the Margolick study conforms to accepted economic theory. As to the model's prediction of the effect of lifting BC's log export restrictions, we believe that the Margolick study passes the test of reasonableness. Although we agree with Respondents that it would have been preferable to have a measure of the statistical significance of the predictions, we note that the lack of such a test does not invalidate the results of the Margolick study.

Respondents contend that the Margolick study cannot be used in the Department's calculation because the study is based on 1983 data, which is outside of the period of investigation. In arguing against the Margolick factor, Respondents have asserted that the study does not take into account changes that have occurred in the Pacific Rim market since 1983. The Department acknowledges that to the extent that world market conditions were different in 1983 than in 1990, the Margolick factor, which was 22 percent in the Preliminary Determination, is inaccurate and could lead to an overstatement or understatement of the benefit.

As noted above, the Coalition has placed on the record a study by Newport, which updates the Margolick study using 1990 data. The results of the Newport update indicate that the BC market price, after removal of the export restrictions, would be 27 percent higher, and the corresponding Pacific Rim market price 18 percent lower. We have used information from the Newport update, the Margolick/Newport factor, in the calculation of the benefit.

Finally, Respondents contend that the Margolick study does not examine the effects of price equilibration in the interior. We do not agree with Respondents that our application of the Margolick factor in the Preliminary Determination was "wholly unreasonable." In their own analysis, even Respondents infer that the study applies to both to the coast and tidewater interior,²² although it was based only on prices from the coast. While it may not be ideal to apply the Margolick factor across the entire province, we do not find such an application unreasonable. We have simply added the border interior region, another geographic area that would be directly affected by the removal of the restrictions. Therefore, for purposes of this final determination, we consider it appropriate to apply the price equilibrium factor to the tidewater interior and border interior.

We judge this in no way to be an adverse adjustment towards Respondents. Indeed, if the Department did not decrease the interior export price, as was proposed by the Coalition, the differential between the interior export and domestic prices would be significantly greater, thereby raising the benefit.

Finally, many of the above criticisms are not unique to the Margolick study, but apply to many econometric models published in peer-reviewed journals. The standards that Respondents have argued the Department should hold the Margolick model to far exceed any standards applied to econometric models by academic, government, and industry researchers who construct, apply, and review such models.

Export Costs

In the Preliminary Determination, we adjusted the average log export price for the incremental sort costs involved in dry land sorting and lost volume, and for export transportation costs.

Respondents assert that they have established the basis for the costs they claimed, that the Department has verified the information, and that the Coalition's experts have conceded that the costs are reasonable. Respondents conclude, therefore, that the province's costs are the only information available

to the Department and must form the basis of the Department's determination. The Coalition disagrees and charges that Respondents have mischaracterized the position of the Coalition's expert regarding these costs. While the Coalition's expert agrees with the general description of the costs, he does not agree with Respondents' characterization that all the costs, particularly falldown sort costs, are costs of exporting logs.

Contrary to Respondents' claim, we did not verify all of the cost data. Rather, what we "verified" consisted largely of individual testimonials and hypothetical examples illustrative of potential costs. We did examine several random invoices, chosen by Respondents, pertaining to some of the costs. Respondents were unable to demonstrate the representativeness of such invoices, and we were unable to trace most claimed costs to any background documentation. Therefore, we have made cost adjustments based upon the reasonableness of the testimonials and invoices vis-a-vis other information on the record, not upon definitively verified costs.

Respondents assert that sellers incur incremental sort costs (dry land sort and volume lost costs) when exporting logs. They claim that these costs, as reported in the questionnaire responses, are representative of the vast majority of export sales from the province. They maintain that the Department correctly adjusted for these costs in the Preliminary Determination by using the costs that Respondents reported in the questionnaire responses. They add that, at verification, they provided testimony of an industry expert documenting these costs, which they state were subsequently confirmed by other industry representatives.

The Coalition asserts that the adjustments the Department applied in the Preliminary Determination for incremental costs were overestimated. For a tidewater interior plus coast analysis, it proposes reducing the dry land sort adjustment based on revised estimates of the difference between the weighted average dry land sorting costs associated with export logs and the weighted average dry land sorting costs associated with domestic logs. The Coalition recommends not making any dry land sort cost adjustment for the rest of the interior. The Coalition alleges that the costs of the volume lost claimed by Respondents were exaggerated and proposes that the costs be reduced. It claims that a significant amount of the costs of the volume lost is recoverable through the sale of the discarded volume

²² Respondents lack of clarity on what constitutes the coast and what constitutes the interior is further demonstrated when they state " . . . the only reasonable conclusion is that, due to the interior's geographic isolation from tidewater ports, there would be no price effects in the interior." As noted above, and as explained to the Department during verification, the tidewater interior is one of three areas in the interior, and, as defined, has access to tidewater ports. See Respondents' Joint Case Brief, April 21, 1992, Vol IV-A at 98.

on the open market, as is true in the United States.

We disagree that such costs are recoverable. At verification, we interviewed the manager of a dry land sorting operation who indicated that most of the volume lost is burned as waste and not sold on the open market. However, we did correct the volume lost claimed by Respondents for the coast. We discovered at verification that this cost was based on the same hypothetical example discussed above in the "Export Costs" section that Respondents did not substantiate. Nonetheless, we have accepted this hypothetical as an adjustment to the export price for the coast because this is the only information on the record. However, rather than allocating the cost of volume lost to the export sort as Respondents did, we have reallocated the cost of volume lost to the original sort, from which the volume lost originated.

At verification, we also obtained cost information on volume lost from a company located in the tidewater interior. We used this figure as the average volume lost for the tidewater interior. We weight-averaged, according to the percent of exports from the tidewater interior and the coast, the cost of volume lost in order to calculate a cost for volume lost for the entire area under consideration. We have no evidence indicating that the volume lost in export sorts is different from domestic sorting costs in the border interior. Therefore, we did not adjust for any volume lost cost in that area.

Based on information obtained at verification, we corrected the dry land sort costs claimed by Respondents. The claimed dry land sort costs used were based upon the reported incremental sorting costs between domestic and export sorts, \$5.00 and \$13.50, respectively, for the Vancouver area. At verification, we learned that the sorting costs, as well as all of the claimed export costs, were based upon a hypothetical example (see BC Verification Report). We obtained cost information from a private company while visiting a dry land sort location in the Vancouver area. We determine that this new, actual information is preferable to the hypothetical information submitted by Respondents and have, therefore, based the dry land sort adjustment on that private company's costs.

We also obtained sort cost information for the tidewater interior at verification. We weight-averaged, according to the percent of exports from the tidewater interior and the coast, the incremental sort costs in order to

calculate an incremental dry land sort cost for the entire area under consideration. We have no information indicating that export sorting costs are different from domestic sorting costs for the border area. Therefore, we did not adjust for any incremental sorting costs for the border area.

Additional export transportation costs (towing, storage, and yarding) on the coast occur when log exports are sold on a free-along-side (FAS) basis. Respondents maintain, based on their hypothetical example, that vendors on the coast sell logs approximately 25 percent of the time on an FAS basis (75 percent of the time logs are sold on a F.O.B. raft basis, the same terms used in domestic sales). The Coalition claims that, compared with those in the United States, not only are the FAS costs exaggerated, but the frequency of FAS sales is also excessive. Therefore, according to the Coalition, the export transportation costs for the coast should be reduced.

We used the export transportation costs for the coast provided by Respondents because there is no other information on the record regarding transportation costs on the coast. At verification, we obtained export transportation costs for the tidewater interior.

For the interior, Respondents assert that the Department failed to incorporate export transportation costs associated with any potential log exports. They claim that, had the Department calculated an average transportation cost from the central interior to either tidewater ports or the U.S. border, the entire alleged subsidy would be eliminated. The Coalition argues that no export transportation adjustment is needed in the interior. It claims that logs transported to the United States from the BC interior are likely to be treated and transported in exactly the same manner as logs sold domestically. Therefore, the Coalition contends that no adjustment for export transportation costs should be made for log exports from the interior.

We have determined that an export transportation cost adjustment is appropriate for log exports from the border interior. During verification, BC provided evidence of log hauling costs and distances for the interior from the Ministry of Forests Interior Logging Cost Survey. This survey indicated that the average haul distances for the Kamloops and Nelson regions, the regions included in the border area, were 79 and 95 kilometers respectively (52 miles on average). Using Kalt's 100-mile limit, described above, to define the border interior, we calculated the average

shipping distance from the border region to be approximately 110 miles based on our delineation of the border area and the general location of U.S. mills at approximately 60 miles from the border. The incremental export distance is therefore approximately 60 miles. We multiplied the incremental export distance by the haul rate for the area that we examined at verification to calculate the incremental export transportation cost for the border region.

We weight-averaged, according to the percent of exports from the coast, the tidewater interior, and the border interior, the cost of export transportation in order to calculate a total export transportation cost adjustment for the entire area under consideration.

Respondents assert that falldown sort costs should be deducted from the export value. They maintain that falldown sort costs are the costs associated with disposing of those logs that remain after the high grade and high within-grade logs have been removed for exportation. Respondents claim that "the reduction in value attributable to the falldown boom is a part of the cost of obtaining the potential extra returns that come from exporting the better quality logs" (see Respondents' Case Brief). They contend that such costs are not duplicative of the Department's species/grade adjustment, as the Department claimed in the Preliminary Determination. Respondents further assert that the Vancouver log market prices on which the species/grade adjustment was based included only prices reported for the first arm's-length sale of logs. They claim that most falldown sorts are second sales and that prices charged for falldown sorts, therefore, are not included in the average Vancouver log market price. As a result, Respondents claim that the species/grade adjustment fails to take into account the important reductions in value associated with such falldown sorts.

The Coalition argues that while the falldown sort that remains after export logs have been removed from a domestic sort is worth less than an average domestic sort, this does not represent a true cost of exporting, nor does the creation of a falldown sort affect export prices in any manner. The Coalition contends that falldown sort costs are not real expenses borne in order to prepare logs for export.

We reaffirm our Preliminary Determination not to adjust the export value for the alleged falldown sort costs. We find Respondents' falldown sort claim both confused and misplaced. We

do not dispute that a falldown sort may result when an export sort is removed from a camp-run sort (*i.e.*, the collection of total logs in the boom representing the entire harvest of a forest stand). The camp-run sort is the sum of the "export sort" (created by removing exportable logs from the "true" domestic sort), the falldown sort (the sort that remains after the exportable logs are removed) and the volume lost (*see infra*). We dispute that the falldown sort is a cost of exporting.

We disagree with the method Respondents use to measure the potential effects of the falldown sort. As we understand Respondents' argument, because higher quality logs are exported, leaving lower quality logs (the falldown sort), the price of those export logs (comprising the higher quality logs of the grade) cannot be compared directly with the price of the domestic logs. However, the value of falldown sorts and the quantification of within-grade variations are separate issues.

We agree with the Coalition that the creation of a falldown sort is not a cost of exporting, especially when the falldown sort is sold for its market value, as we found at verification. Indeed, if it were correct that "the reduction in value attributable to the falldown boom is a part of the cost of obtaining the potential extra returns that come from exporting the better quality logs" (see Respondents' Case Brief), as Respondents claim, then the increase in the value is a benefit of exporting logs.

The exporter does not suffer from the creation of a falldown sort. He would have had to sell these logs in the domestic market anyway. We recognize that the overall value of the true domestic sort is lower without the exportable logs, since the "cream" has been skimmed off the top, so to speak (creating the falldown sort). Nonetheless, this "loss" is more than compensated for by the much higher price received for the top quality logs in the export market than would have been received if those same top quality logs were sold in the domestic market. Viewed in this way, we would add the benefit from increasing the value of the export logs to the cost of exporting logs and arrive at an even higher overall subsidy. Obviously, this is not Respondents' intent.

Therefore, we have not made an allowance for the falldown sort cost. We have accounted for these differences in the species/grade adjustment.³⁴ Also,

³⁴ Using the hypothetical example provided to the Department during verification (see BC Verification Report), we identify the incremental gain of the export sort ($(\$120/m^3 - \$70/m^3) \cdot 385 m^3 = \$22,250$)

we were told, but were presented no supporting evidence at verification, that falldown sorts are generally second-stage sales and therefore not included in the calculation of the average VLM domestic log price. Indeed, if this were true, the inclusion of the price of a falldown sort in the VLM average should reduce the VLM average domestic log price and increase the differential between the export and domestic values (thereby increasing the overall subsidy).

During verification, Respondents began arguing falldown sort costs from another perspective, that is, that a falldown adjustment is really a within-grade adjustment. Respondents attempted to measure a within-grade variation between export and true domestic sorts using the difference in value between a falldown sort and a true domestic sort. As for this variation between export and domestic sorts, we do not contest that a quality range can exist within statutory log grades. However, we were presented no evidence that only the high quality logs within a grade were exported. Because we have no evidence of a within-grade average difference between exported and domestic logs, we cannot accept that such an adjustment is in order, much less quantify the difference or make an adjustment to the export value. More important, we have no reason to believe that the species/grade adjustment we made does not account for within-grade differences.

Application of Benefit

Respondents contend that the effect, if any, of the log export restrictions would be limited to firms purchasing logs in arm's-length transactions. In addition, Respondents state that the Department's analysis incorrectly focuses on the logs that an integrated firm does not (or would not) process into lumber, instead of examining the effect on logs processed into lumber. Respondents argue that the Department's extension of the benefits of log export restrictions to integrated firms is based solely on assertion, speculation, and one vague

where $\$120/m^3$ is the export price, $\$70/m^3$ is the camp-run price, and $385 m^3$ is the export volume. The incremental loss of the falldown is $(\$70/m^3 - \$54.60/m^3) \cdot 395 m^3 = \$6,063$ where $\$54.60$ is the value of the falldown and $395 m^3$ is the falldown volume. This yields a difference of $\$23,167$, which, when carried on the original camp run volume of $1000 m^3$, yields an incremental gain of $\$23.17 m^3$.

That this replaces the species and quality adjustment is evident from the fact that all camp-run logs are all sorted into export or falldown sorts, and the dry land sort is a sort by grade and species. The Department also notes how similar in magnitude the $\$23.17$ is to the species and quality adjustment used in this determination.

reference to "generally accepted economic principles." Finally, Respondents state that the Department made no effort to measure the cash-flow effects on integrated firms arising from log export restrictions.

In contrast, the Coalition argues that the Department's methodology correctly applies the benefit to all logs, including those harvested for use by integrated firms. It notes that integrated firms will assign the same market value to internally and externally sourced logs, indicating that the "decline in the market price of logs that is caused by the export restrictions rebounds substantially to the benefit of the integrated producers' lumber divisions." (See Coalition brief at III-125.)

The clear intention of a restriction on the exportation of logs is to encourage the conduct of value-added processing within a jurisdiction, in this case BC, rather than in another area. The very fact that BC, while pursuing its employment, development, and other goals, feels compelled to enact (and strengthen as recently as 1990) laws and regulations severely restricting the export of logs is the most eloquent argument possible for the proposition that absent the restrictions, the rational, profit-maximizing firm would choose to export at least some of its harvest. To the extent that an integrated firm is prohibited from following its first, best use of a resource, which undoubtedly in certain instances would likely be the exportation of logs, it would then turn to the next best use. In this case, the next best use would be additional lumber production. In fact, the Percy study demonstrates that an increase in log exports would have the effect of reducing the export competitiveness of the B.C. wood products industry by increasing costs. (See Percy study at page 49-50.) It is precisely this outcome which the maintenance and strengthening of the B.C. government's log export restrictions, in place for nearly 90 years, seeks to avoid.

Country-Wide Rate Calculation for BC Log Export Restrictions

To calculate the country-wide rate, we divided the benefit for the program by the value of BC's lumber shipments plus the value of its by-product shipments produced during the lumber production process. We then weight averaged this rate by BC's share of exports to the United States of the subject merchandise to calculate a country-wide rate of 3.60 percent *ad valorem*. See "Calculation of the Country-Wide Rate for Stumpage Programs" section.

Alberta, Ontario, and Quebec

The Coalition has made a number of arguments against the Department's Preliminary Determination that the log export restrictions in Alberta, Ontario, and Quebec do not provide a benefit to lumber producers. These comments focus on the restrictiveness of the laws and log import and export levels. Concerning the restrictiveness of the laws, the Coalition states that even though the laws in these provinces do not cover private and federal lands, the Federal controls under the Export and Import Permits Act (EIPA) sufficiently restrict log exports from these lands. In addition, the Coalition states that, based on the verification reports, these provinces explicitly restrict exports as a matter of policy and employ such means as a "surplus to domestic needs" test. The Coalition states that the low level of exports is in and of itself evidence of the restrictiveness of the laws and that even in provinces like Quebec, where there is a significant amount of unrestricted private land, log exports are kept low by the Federal law rather than a lack of export demand. It states that a high level of log imports into Ontario and Quebec does not indicate that exports would not increase following a lifting of the restrictions and that the restrictions themselves are what cause log imports to predominate over exports.

The Coalition provides nothing beyond anecdotal evidence to support its claim that Federal laws effectively restrict exports from the three provinces or that there is a large export demand for logs from the three provinces. At verification, we found that the Federal Government grants export permits routinely and quickly. We found no evidence of a meaningful "surplus to domestic needs" test in Ontario, Quebec, or Alberta.

The few U.S. mills that expressed interest in buying logs from these provinces can hardly be said to constitute huge pent-up export demand. In the case of Alberta, transportation costs alone preclude most of the timber harvested there from being sold in the United States.

Finally, export restrictions, according to the Coalition's own argument, depress domestic prices relative to the export market. The Coalition fails to provide a credible reason why mills in Quebec and Ontario, which supposedly benefit from significantly underpriced domestic logs, would bother to buy such a significant volume of expensive U.S. logs.

In spite of these observations, we agree with the Coalition that there are some procedural impediments to the

exportation of logs from Alberta, Ontario, and Quebec. For example, only one request to export logs from Alberta was received during the POI. The intended destination was Japan. The request for export was eventually withdrawn; because, according to the applicant, the government took too long to make a decision. In Quebec, the only request to export logs during the POI took six months to be approved. In Ontario, written requests to export under the quota were processed quickly. However, at verification we learned that there were many more telephone inquiries about export procedures than actual written requests and that after speaking with Ontario officials, few of the callers bothered to submit a formal request to export.

Although these procedural impediments may have a minor effect on log exports, we determine that log export restrictions in Alberta, Ontario, and Quebec do not have any significant impact in those provinces. As discussed in the Preliminary Determination, in contrast to BC, where the preponderance of evidence points towards a virtual *de facto* ban on the export of logs, and where we can show that this *de facto* ban has a significant downward effect on the price of BC domestic logs, the preponderance of evidence in the other three provinces does not point to any such *de facto* ban. Therefore, we determine that the log export restrictions in Alberta, Ontario, and Quebec are not countervailable.

Revisions To Factual Information From Preliminary Determination

In the Preliminary Determination, we described the log export restriction laws, regulations, and policies of the Federal government, BC, Alberta, Ontario, and Quebec. Our description was accurate except for the following:

Federal Government Log Export Controls

In the Preliminary Determination, we implied that the "Notice to Exporters" issued by the Federal Government applies only to BC, when in fact it is intended to describe generally how the export permit system under the Federal EIPA works and to bring to the attention of exporters the requirements for obtaining an export permit. These notices have a special section with respect to BC describing the procedure for exporters wishing to obtain a Federal export permit for logs harvested on lands in BC under Federal jurisdiction. We also implied in the Preliminary Determination that this "Notice to Exporters" amounts to a Federal regulation when, in fact, it does

not. However, even though these notices have no regulatory effect, the Federal Government does not issue an export permit for any logs harvested in BC unless the exporter has first obtained a BC export permit (see Federal Government Verification Report).

British Columbia Log Export Controls

We learned at verification that there are two possible ways of obtaining an exemption to the provincial log export restrictions according to section 136 of the Forest Act: An OIC granted by the Lieutenant Governor in Council, and a Ministerial order granted by the MOF. A ministerial exemption is basically an administrative procedure, requiring approval only at the MOF. By contrast an OIC requires approval by the entire cabinet, as represented by the Lieutenant Governor in Council. One or the other of these exemptions is necessary before logs can be exported.

The Lieutenant Governor in Council or Minister must be satisfied that the timber or wood residue is surplus to the needs of the domestic industry, cannot be processed economically in the vicinity from which it is cut, or that an exemption would prevent the waste, or improve the utilization, of the timber cut from Crown lands. The procedure for evaluating economic or utilization reasons are similar, involving a cost analysis and export valuation. In the case of a ministerial order, the timber must be harvested, and the volume cannot exceed 15,000 cubic meters for each export application. All standing timber applications must be approved by an OIC.

In the Preliminary Determination we implied that the harvested surplus logs constituted the majority of exported logs during the POI. This is not the case. At verification we learned that only about 35 percent of total logs exported were "surplus to domestic needs," about 48 percent originated in Kalum/Cassiar under a blanket OIC, and the remainder was from areas covered by miscellaneous blanket OICs or from stands exempted for economic or utilization reasons (see BC Verification Report).

Programs Determined Not To Be Used

During the course of the investigation, two private silviculture reimbursement programs were discovered. After further examination and verification of these programs, we determine that subsidies are not being provided on the manufacture, production, or exportation of the subject merchandise under either of these programs:

Private Forest Development Programs in Quebec and Ontario

In our Preliminary Determination, we determined that the reimbursement of silviculture expenses under the Private Forest Development Program (PFDP) in Quebec provided a countervailable benefit to softwood lumber. We discovered the existence of this program through Quebec's initial questionnaire response.

Quebec's PFDP, which has been in existence since the early 1970s, is a program established by Quebec to help private woodlot owners improve their woodlots. Under the program, "woodlot owners who have been recognized as forest producers" are eligible to receive reimbursement amounts for silviculture that are calculated to cover 90 percent of the estimated costs for certain silviculture treatments. According to the PFDP, to be recognized as a forest producer, a private woodlot owner must own at least four hectares of woodland forming a single block, and earn income from this land primarily through the production of wood, maple sugar, or Christmas trees. Private land owners who do not qualify for recognition as forest producers may receive seedlings for the reforestation of their land under the PFDP but are not eligible for other PFDP reimbursements.

At verification, however, the Department found no information showing that producers of the merchandise subject to this investigation receive payments or reimbursements under the PFDP. Therefore, we determine that this program does not confer a subsidy to producers of the subject merchandise. Respondents have made a number of comments on the Department's Preliminary Determination with respect to these programs focusing on specificity, the time period for receipt of benefits, and the noncountervailability of the program. Since the Department has determined that this program was not used by producers of the subject merchandise, these comments need not be addressed.

During the verification of the Ontario responses, we found that the Government of Ontario pays for silviculture on private land. Most of the expenditures incurred relate to silviculture activities undertaken on poor agricultural lands. The provincial government will pay for site preparation, scaling, uneven-aged management, and other silviculture activities. The program is designed to develop forest land on depleted farmland (Christmas tree production is not covered). High value trees, such as

white pine, are often planted. (See Ontario Verification Report p. 12.)

As with the PFDP in Quebec, the Department found no information showing that producers of the merchandise subject to this investigation receive payments or reimbursements under Ontario's silviculture expenditures for private lands. Therefore, we determine that this program was not used by producers of the subject merchandise.

Comments

All issues and comments not discussed in the above sections are addressed in this section.

Comment 1: In the joint case brief the GOC requested that all of the provinces subject to this investigation be excluded from the investigation based on their claim that the investigated programs are nonspecific and nonpreferential.

DOC Position: We disagree. Our determination with respect to these claims is found in the "Stumpage" and "Log Export Restrictions" sections of this notice.

Comment 2: Quebec asserts that it should be exempt from this investigation because (1) it was essentially exempt from the export tax under the MOU due to its replacement measures, and (2) its parity technique for setting provincial stumpage rates mirrors that of the excluded Maritime Provinces, in particular New Brunswick's system.

The Coalition disputes the basis for Quebec's request for exemption, in particular Quebec's assertion that its system for setting public stumpage prices is "indisputably identical" to New Brunswick's.

DOC Position: We disagree with Respondents. The export tax rates under the MOU were negotiated rates not related to any final determination of subsidization. They did not necessarily reflect the actual rate of subsidization in 1986, much less now. The offset of these static rates through provincial replacement measures was also the result of negotiation and in no way addressed the issue of current subsidization. Moreover, Quebec did not fully replace its export tax rate under the MOU. Quebec's rate at the time of Canada's unilateral termination of the MOU was 6.2 percent and was scheduled to fall to 3.1 percent in November 1991.

The Maritime Provinces were exempt from this investigation solely because of the "special circumstances" requirement for self-initiation under GATT. The special circumstance for self-initiation of this investigation was the GOC's unilateral termination of the MOU. The Maritime Provinces were exempt from

the MOU, therefore, the special circumstances necessary for self-initiation did not exist for the Maritime Provinces, and the Department was precluded from self-initiating against these provinces. Quebec was not exempt from the MOU. For Quebec, the prerequisite special circumstances existed. Moreover, the Department had sufficient evidence concerning Quebec's stumpage programs to include them in the self-initiation of a countervailing duty case covering softwood lumber imports from Canada.

Comment 3: BC states that it was the only province to adopt full replacement measures under the MOU and that the United States accepted those measures and amended the MOU to exclude BC from the export tax. BC further argues that its situation is exactly like that of the Maritime provinces which were exempt from this case because they were exempt from the export charge. Therefore, BC contends that, like the Maritime Provinces, it should be exempt from this investigation because the Department failed to meet the special circumstances or sufficient evidence requirement of Article 2.1 of the GATT Subsidies Code.

The Coalition states that public stumpage prices in BC are not set by the market since, and as this whole case has demonstrated, BC administered stumpage has lagged well below the competitive SBFEP rate and "in no essential manner is market-based."

DOC Position: We disagree with Respondents. Although the export tax for BC under the MOU was reduced to zero, BC was not exempt from the MOU. Despite the zero rate, BC's operation of replacement measures was still subject to consultations with the United States and monitoring by both governments. Although BC's export tax rate was zero, a decrease in its replacement measures would have resulted in the reimposition of some or all of the 15 percent export tax. This was not the case for the Maritime Provinces. The Maritime Provinces were exempt from the export charge; no reimposition of the export charge was possible during the lifetime of the MOU.

In addition, as discussed above in the response to Comment 2, the Maritime Provinces were exempt from investigation solely because of the special circumstances requirement for self-initiation under GATT. The Maritime Provinces were exempt from the MOU; BC was not. As in Quebec, and every other province and territory not exempt under the MOU, the prerequisite special circumstances existed for BC, and as demonstrated in

our notice of self initiation, the Department found sufficient evidence to self-initiate an investigation against BC.

Comment 4: Respondents argue that the Department must provide a mechanism to identify imports of products that cannot benefit from the alleged subsidies under investigation. Furthermore, the Department must exclude lumber made from U.S.-origin logs and logs from the Maritime Provinces.

DOC Position: The Department cannot exempt products that we have determined are within the scope of the investigation. (See "Scope Exclusion Requests" section of the notice.) The appropriate avenue for exclusion is through the company exclusion process and, in fact, we have excluded 15 companies that used solely or principally U.S.-origin logs. It is virtually impossible to identify the origin of the timber used in the manufacture of any given shipment of softwood lumber when that shipment arrives at the border. Furthermore, in contrast to the examples provided by Respondents, the large number of lumber shipments makes it impracticable if not impossible to identify the origin of timber used to manufacture lumber on an individual lumber shipment basis.

Comment 5: The Coalition contends that the Department excluded the federal administered stumpage programs from the Preliminary Determination without comment. The Coalition notes that it submitted information on the record contending that federal stumpage programs provide countervailable subsidies, and that the Department's failure to consider these programs in its preliminary analysis is contrary to law.

DOC Position: Underlying the Coalition's comment is the assumption that the Department self-initiated and pursued the investigation of federal stumpage programs during the course of this investigation. Neither the Notice of Self-Initiation, nor the questionnaire, directly refer to federal stumpage programs.

We note that our cover letter accompanying the questionnaire to the GOC requested that it collect data regarding the provision of stumpage from "the provincial governments of Alberta, British Columbia, Manitoba, Ontario, Quebec, Saskatchewan, and the federal government on behalf of the Northwest Territories and the Yukon Territory * * *" (See cover letter to countervailing duty questionnaire, November 8, 1991, page 1, emphasis added.) In addition, section 2 of the questionnaire, labelled "Questionnaire for the Government of Canada," does

not include a request for information on federal stumpage programs. We expressed no intention to examine federal programs in either our initiation memo, our initiation notice, or in our questionnaire. We note that federal stumpage represents a minuscule amount of total stumpage harvested from government-owned lands in Canada. Such a small amount, even if investigated, would have virtually no impact on the country-wide subsidy rate.

The Coalition indicates in its comment that it identified the amount of potential subsidies arising from federal stumpage programs in its January 30, 1992 preferentiality submission. Even if the Coalition were to have argued that its submission represented an allegation that the provision of federal stumpage was a subsidy discovered during the course of an investigation within the meaning of section 775 of the Act and § 355.39 of our regulations, which it did not do, the allegation would have been untimely because it was submitted before the 40 days allowed for in § 355.31(c)(1)(i) of our regulations. It would have been questionable even if it had been timely, once the exceedingly small amount of the possible additional subsidy and the complexity of performing any analysis regarding these stumpage programs were considered. However, we note that the Coalition's allegation of the benefits from federal stumpage program amounts has virtually no impact when taken over the total value of shipments the Department used in its calculation of the country-wide subsidy rate. This insignificant effect is itself significant because only the preamble to our regulations states that in "considering whether 'sufficient time remains' to investigate an additional subsidy practice, the Department would take into account the potential significance of the additional subsidy to the outcome of the investigation * * *" (See Countervailing Duties; Final Rule, 53 FR 52306, 52344.) For these reasons, we did not investigate federal stumpage programs in our final determination.

Verification

In accordance with section 776(b) of the Act, unless otherwise noted, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting internal documents and ledgers, tracing information in the responses to source documents, accounting ledgers and financial statements, examination of original source documents, and collecting additional information that

we deemed necessary for making our final determination. Our verification results are outlined in the public versions of the verification reports.

Suspension of Liquidation

In accordance with section 705(c) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Canada, except for the provinces of Prince Edward Island, Nova Scotia, New Brunswick, and Newfoundland (the Maritime Provinces), which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*, and to require a cash deposit or bond for all entries of this merchandise equal to 6.51 percent *ad valorem* for each entry of this merchandise. Because exports to the United States of certain softwood lumber products produced in the Maritime Provinces were exempt from payment of the export charge under the MOU, the Maritime Provinces are exempt from this investigation. This exemption does not apply to lumber manufactured in the Maritime Provinces from provincially-owned timber harvested in other provinces.

The following companies are excluded from the suspension of liquidation and all cash deposit and/or bonding requirements:

1. J.A. Fontaine et Fils, Inc.
2. J.D. Irving, Ltd.
3. Marcel Lauzon, Inc.
4. Les Produits Forestiers D&G, Limited.
5. Francois Giguere, Inc.
6. Real Grondin, Inc.
7. Bois Daquaam.
8. Rene Bernard, Inc.
9. Wilfrid Paquet & Fils, Ltee.
10. Grondin Industries.
11. Carrier & Begin, Inc.
12. Clermond Hammel, Ltee.
13. Paul Vallee, Inc.
14. Scierie Tessier Lachance, Inc.
15. Scierie La Patrie, Inc.

As explained above (see "Shipment Values Used in Denominator of the Subsidy Calculation" section of this notice), because the final mill data upon which the Department preferred to calculate its subsidy rate did not exist and could not reasonably be calculated, and because the Department determined that Statistics Canada data used in the subsidy calculation accurately reflected first mill data, the Department is directing Customs to apply the cash deposit and/or bonding requirements on a first mill basis in the following situations if provided with the appropriate documentation

demonstrating the first mill's F.O.B. price: (1) When a Canadian mill sells direct to a U.S. customer; (2) when a mill sells to a U.S. customer but the product is further processed by a second mill prior to shipment to the United States; and (3) when the second mill sells as well as remanufactures the product prior to shipment to the United States. With regard to (2) and (3) above, in addition to documentation necessary to demonstrate the first mill's F.O.B. price, appropriate documentation must be presented to Customs demonstrating that the transaction between the first mill and the second mill was made at arm's length. It should be noted that further processing in this context does not include the planing process from rough-cut to planed lumber.

The Department is also directing Customs to deduct inland transportation costs between the mill and the wholesaler or reload/distribution center

if provided with appropriate documentation regarding the actual inland freight expenses associated with the entry. These instructions apply whether or not the sale to the U.S. customer took place before being sent to the reload/distribution center as long as the sale took place prior to shipment to the United States. These instructions also apply when the original shipper to the reload center was a wholesaler rather than a mill as long as satisfactory freight documentation is provided to Customs.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business

proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration. This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)) and 19 CFR 355.20.

Dated: May 15, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-12225 Filed 5-27-92; 8:45 am]
BILLING CODE 3440-05-0



APPENDIX B
CALENDAR OF THE PUBLIC HEARING



CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the International Trade Commission's hearing:

Subject : SOFTWOOD LUMBER FROM CANADA

Inv. No. : 701-TA-312 (Final)

Date and Time : May 28, 1992 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main hearing room 101 of the United States International Trade Commission, 500 E Street, S.W., Washington, D.C.

**In Support of Imposition of
Countervailing duties:**

**Dewey Ballantine
Washington, D.C.
on behalf of**

Coalition for Fair Lumber Imports

**C.T. "Kip" Howlett, Jr., Chairman,
Coalition for Fair Lumber Imports**

**Dick Bennett, President, Bennett Lumber
Company**

**Brenda Elliott, Marketing Manager, Solid
Wood, Temple-Inland Forest Products
Corporation**

**Daniel Klett, Vice President, Capital Trade
Incorporated**

William Ross, Fu Associates

William Noellert, Economist, Dewey Ballantine

Michael H. Stein)
)--OF COUNSEL
John Ragosta)

-MORE-

**In opposition to the imposition of
Countervailing duties:**

JOINT PRESENTATION:

**Step toe and Johnson
Washington, D.C.
on behalf of**

Canadian Forest Industries Council

**Dr. Robert Litan, Senior Fellow,
Brookings Institution**

**Dr. William Nordhaus, the A. Whitney
Griswold Professor of Economics,
Yale University**

**Michael Flannery, Vice President,
of Pope and Talbot's Wood Products
Group**

**Paul Ehinger, President of
Paul F. Ehinger and Associates**

**Jon Marshall, Vice President for Sales
and Marketing of Champion
International Corporation**

**Bill Finan, Law and Economic
Consulting Group**

**Pieter Van Leeuwen, Law and
Economic Consulting Group**

**Charlene Barshefsky)
Susan G. Esserman)--OF COUNSEL
Gracia M. Berg)**

**Weil, Gotshal and Manges
Washington, D.C.
on behalf of**

The Government of Canada

M. Jean Anderson--OF COUNSEL

In opposition to the imposition of
Countervailing

JOINT PRESENTATION CONT'D:

Arnold and Porter
Washington, D.C.
on behalf of

Government of Province of Alberta

Michael T. Shor--OF COUNSEL

Miller and Chevalier
Washington, D.C.
on behalf of

Government of British Columbia

Stuart E. Benson)
)--OF COUNSEL
Grant D. Aldonas)

Hogan and Hartson
Washington, D.C.
on behalf of

Government of the Province of Ontario

Mark S. McConnell)--OF COUNSEL

Howrey and Simon
Washington, D.C.
on behalf of

Gouvernement du Quebec

Elliot J. Feldman--)
)--OF COUNSEL
Michael Hertzberg)

APPENDIX C

**INFORMATION WITH REGARD TO THE REQUEST OF
THE GOUVERNEMENT DU QUEBEC
THAT THE COMMISSION EXCLUDE QUEBEC
FROM ITS DETERMINATION IN INV. NO. 701-TA-312 (FINAL),
SOFTWOOD LUMBER FROM CANADA**



Quebec's Arguments for Province-Specific Treatment at Commerce

Throughout the course of Commerce's final subsidy investigation, the Province of Quebec argued that Commerce should apply province-specific, as opposed to country-wide, rates in this investigation. In support of that argument, Quebec made the following points:

"(1) U.S. law recognizes provinces as "countries" for countervailing duty purposes; (2) Canadian provinces have exclusive jurisdiction over timber within their borders; (3) there are no federal programs or joint federal/provincial programs that contribute to the countervailing duty rate; (4) one province cannot control the softwood lumber programs in another province; (5) application of a country-wide rate to a province whose individually calculated subsidy rate is lower than the country-wide rate violates U.S. law because the Department must assess a countervailing equal to the amount of the net subsidy; (6) the Department can never apply a true country-wide rate in this investigation because the provinces of Prince Edward Island, Nova Scotia, New Brunswick (the Maritime Provinces) were excluded from the initiation; (7) the provinces were individually responsible for the export charge under the MOU and for instituting replacement measures; and (8) if the Department does not issue province-specific rates it should apply the "significant differential" test used for companies under 19 CFR 355.20(d)."¹

Commerce rejected Quebec's arguments for province-specific rates. Among other things, Commerce stated that while the term "country" includes political subdivisions such as provinces, the meaning of the term depended on the context. For instance, Commerce noted if "country" always meant province, imports from Quebec would not receive the benefit of an injury test under section 701(a) of the Act, because Quebec is not a "country under the Agreement" within section 701(b) of the Act.² Additionally, Commerce went on to state its belief that the intent of Congress in section 706(a)(2) of the Trade and Tariff Act of 1984 was that the word "country," as used in that section, possesses its normal meaning. In other words, "country-wide" means "nationwide."³

With respect to Quebec's contention that application of a country-wide rate to a province with a lower subsidy rate violates U.S. law, Commerce notes that the "purpose of a country-wide rate is to determine whether, on average, imports from a country under the Agreement are subsidized." Such a rate is applied "to all merchandise from the country regardless of whether the program is a provincial, regional, or state program."⁴ Hence, Commerce goes on to say that the assertion that it is in violation of U.S. law by assessing a country-wide rate is erroneous, as a weighted-average country-wide rate will "almost always result in individual firms being subject to a rate which is higher or lower than their own individual rate."⁵

As regards Quebec's argument that province-specific rates must be assessed since the exclusion of the Maritime Provinces precludes a true country-wide rate, Commerce noted that while the Maritime Provinces were

¹ 57 F.R. 22578, May 28, 1992.

² 57 F.R. 22579, May 28, 1992.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

excluded, it was not because the self-initiation covered the subsidy programs in some provinces but not other provinces. Rather, it was because the Maritime Provinces had been exempted from the export tax collected under the MOU and, therefore, the 'special circumstances' required for Commerce's self-initiation did not apply to these provinces. Additionally, Commerce found that province-specific rates were not warranted by reason of the provinces having individually assumed responsibility for the export charge and for instituting replacement measures under the MOU. While these responsibilities were assumed, it was only as directed by the Government of Canada, because it was required under the MOU.

Finally, Commerce rejected Quebec's arguments that it consider provinces as "firms" and apply a company-specific "significant differential" test, stating that it had consistently treated the provinces as the government providing the subsidy, not as a company receiving a subsidy.⁶ In addition to the precedential and legal reasons cited in rejecting Quebec's arguments for province-specific rates, Commerce noted two other factors that played a part in its decision. One was the number of practical administrative concerns raised by such an approach, particularly with respect to the difficulty the U.S. Customs Service would have in enforcing province-specific rates. The other factor of which Commerce took note was the fact that it had not received a request for province-specific rates from the Government of Canada.⁷

Subsequent to Commerce's public announcement of its final subsidy determination (May 16, 1992), counsel for the Government of Canada requested that Commerce "amend its final determination determination to exclude the Provinces of Manitoba, Quebec, and Saskatchewan, and the Northwest Territories and the Yukon Territory" from this investigation.⁸ Counsel for the Government of Canada noted that, as to Quebec, Commerce "has determined that Quebec's system of selling access to Crown timber does not provide a countervailable subsidy to producers of softwood lumber."⁹ With respect to Manitoba, Saskatchewan, and the Territories, counsel goes on to note that Commerce made no finding that producers of softwood lumber products in those provinces and territories receive any countervailable subsidy. Further, counsel noted that Commerce made no preferentiality finding applicable to the stumpage systems in these provinces and territories.¹⁰ By letter, dated June 10, 1992, Commerce advised counsel for the Government of Canada that it would not reconsider its final determination in this investigation.¹¹

Quebec's Request for Province-Specific Treatment by the Commission

In its prehearing and posthearing briefs, as well as in testimony at the Commission's hearing in this investigation, counsel for the Government of

⁶ Ibid.

⁷ 57 F.R. 22580, May 28, 1992.

⁸ Letter from M. Jean Anderson, Counsel to the Government of Canada, to the Honorable Barbara H. Franklin, Secretary of Commerce (Anderson letter), May 26, 1992.

⁹ In the "Country-Wide Rate Calculation" document, a public document provided by Commerce at its disclosure conferences on May 21 and May 22, 1992, the margin calculated for stumpage programs in Quebec was 0.01 percent. Attachment to Anderson letter.

¹⁰ Anderson letter and 57 F.R. 22604, May 28, 1992.

¹¹ Letter from Joseph Spetrini, Deputy Assistant Secretary, Office of Compliance, Department of Commerce, to M. Jean Anderson, Counsel to the Government of Canada.

Quebec, using some of the arguments it made before Commerce, argued that the Commission should determine that softwood lumber imports from Quebec do not materially injure or threaten to injure the United States softwood lumber industry. In making this argument, counsel for Quebec states:

"There are at least six reasons why the Commission should conduct a distinct injury analysis of softwood lumber imports and find no injury or threat of injury from Quebec's imports. First, the U.S. Department of Commerce ('Commerce' or 'ITA' or the 'Department') specifically found that Quebec does not subsidize softwood lumber. Second, Commerce actually utilized the specific Quebec provincial subsidy rate in making its company exclusion analysis. Third, all parties acknowledge that only provincial programs are at issue in this case and the Government of Canada has expressly asked the United States to exclude the provinces and territories for which no subsidies have been found. Fourth, Commerce issued its final determination, at least in part, under the mistaken belief that the Government of Canada did not request that imports from Quebec be excluded, and acted erroneously in failing to honor Canada's and Quebec's requests that Quebec imports be excluded. Fifth, whereas Commerce purportedly calculated a 'country-wide' rate and did not exclude all Quebec imports from its determination, Commerce did not in fact issue a 'country-wide' rate: the four Atlantic Provinces were not included either in the investigation or in the determination. Thus, Commerce, in its own determination, utilized alternative 'country' definitions, one for Canada without the Atlantic Provinces, one for each province and territory, and one for Quebec.

Finally, the Commission has its own inherent authority to determine the definition of 'country' for the purposes of its injury analysis under Title VII, and the Commission is not constrained by any definition use by Commerce. The Commission has the inherent authority to treat Quebec as a country under 19 U.S.C. § 1677(3)."¹²

Information with regard to U.S. production, imports from Quebec, imports from the rest of Canada and their respective shares of apparent U.S. consumption are presented in table C-1. During 1986-91, Quebec's share of total imports of softwood lumber from Canada reached its highwater mark at 13.5 percent in 1987. The following year Quebec's share fell to its low point at 12.3 percent, then steadily increased to a 13.0 percent share in 1991. As a share of apparent U.S. consumption during the same period, Quebec's share experienced its high point in 1987 at 3.9 percent, then dropped each year to 3.3 percent in 1990 before climbing to a 3.6 percent share in 1991.

¹² Posthearing brief of the Gouvernement du Quebec at pp. 2-3.

Table C-1

Softwood lumber: U.S. production, exports of domestic merchandise, imports from Canada,¹ total imports for consumption, apparent consumption, and imports from Quebec, 1986-91

Period	Pro- duction	Exports	Total imports	Imports from Canada	Apparent consump- tion	Ratio (percent) of--			Ratio (percent) of--			
						Imports to con- sump- tion	Canadian imports to con- sump- tion	Exports to pro- duction	Imports from Quebec	Canadian imports to con- sumption without Quebec	Quebec imports to con- sump- tion	Quebec share of imports from Canada
Quantity (mmbf)												
1986...	35,462	1,890	14,249	14,119	47,821	29.8	29.5	5.3	1,836	25.7	3.8	13.0
1987...	38,235	2,469	14,695	14,577	50,461	29.1	28.9	6.5	1,968	25.0	3.9	13.5
1988...	38,134	3,261	13,811	13,705	48,685	28.4	28.1	8.6	1,686	24.7	3.5	12.3
1989...	37,546	3,445	13,582	13,470	47,684	28.5	28.2	9.2	1,670	24.7	3.5	12.4
1990...	35,790	2,994	12,182	12,108	44,978	27.1	26.9	8.4	1,501	23.6	3.3	12.4
1991...	33,856	3,121	11,762	11,669	42,496	27.7	27.5	9.2	1,517	23.9	3.6	13.0
Value ² (million dollars)												
1986...	7,675	644	3,071	3,035	10,101	30.4	30.0	8.4	390	26.2	3.9	12.8
1987...	9,242	855	3,143	3,105	11,530	27.3	26.9	9.3	425	23.2	3.7	13.7
1988...	9,182	1,139	3,003	2,956	11,046	27.2	26.8	12.4	351	23.6	3.2	11.9
1989...	9,517	1,424	3,198	3,159	11,292	28.3	28.0	15.0	371	24.7	3.3	11.7
1990...	8,657	1,347	2,916	2,873	10,225	28.5	28.1	15.6	334	24.8	3.3	11.6
1991...	8,454	1,370	2,884	2,819	9,967	28.9	28.3	16.2	351	24.8	3.5	12.5
Unit value (dollars per mbf)												
1986...	216.43	340.90	215.49	214.95	211.23	102.0	101.8	157.5	212.36	101.9	100.5	98.8
1987...	241.72	346.51	213.90	213.01	228.49	93.6	93.2	143.4	216.12	93.0	94.6	101.5
1988...	240.79	349.46	217.41	215.67	226.88	95.8	95.1	145.1	208.43	95.5	91.9	96.6
1989...	253.48	413.38	235.47	234.52	236.80	99.4	99.0	163.1	221.96	99.8	93.7	94.6
1990...	241.88	450.10	239.38	237.31	227.34	105.3	104.4	186.1	222.19	105.3	97.7	93.6
1991...	249.70	439.02	245.18	241.62	234.54	104.5	103.0	175.8	231.52	103.7	98.7	95.8

¹ To the extent imports from the Maritime Provinces are included, imports from Canada and related ratios are slightly overstated.

² CIF value.

Note.--1989 import quantity data are based on staff estimates derived from official statistics of the U.S. Department of Commerce.

Source: Compiled from official statistics of the U.S. Department of Commerce, the Western Wood Products Association, and the National Forest Products Association.

Table C-2 (same as table 25 in main body of the report) presents Canadian production by province. For each year from 1986 through 1991, Quebec was the second leading producer of softwood lumber after BC. Quebec's portion of overall Canadian production dropped steadily during that period from 19.9 percent in 1986 to 16.5 percent in 1991.

As shown in the following tabulation, the share of Quebec's production being exported to the United States dropped from 1986 to 1988, then steadily climbed through 1991. Nearly all of Quebec's exports to the United States occur in the SPF group.

<u>Period</u>	<u>Exports to the United States (billion board feet)</u>	<u>Share of Quebec production (percent)</u>
1986.....	1.8	40.7
1987.....	2.0	38.5
1988.....	1.7	37.7
1989.....	1.7	39.0
1990.....	1.5	39.5
1991.....	1.5	42.8

After the United States, France is believed to be Quebec's largest export market.

Table C-2
Softwood lumber: Canadian production, by Provinces, 1986-91

Period	British Columbia			Quebec	Ontario	Maritime Provinces	Prairie Provinces	Total
	Coast	Interior	Total					
<u>Quantity (mmbf)</u>								
1986.....	3,753	9,582	13,335	4,512	2,256	909	1,618	22,630
1987.....	4,675	11,212	15,887	5,100	2,147	938	1,798	25,870
1988.....	4,583	10,989	15,572	4,470	2,266	941	1,917	25,166
1989.....	4,140	11,094	15,234	4,279	2,178	845	2,002	24,538
1990.....	3,798	10,400	14,198	3,799	1,926	861	1,971	22,755
1991.....	3,465	9,843	13,308	3,542	1,822	738	2,053	21,463
<u>Share (percent) of total production</u>								
1986.....	16.6	42.3	58.9	19.9	10.0	4.0	7.1	100
1987.....	18.1	43.3	61.4	19.7	8.3	3.6	7.0	100
1988.....	18.2	43.7	61.9	17.8	9.0	3.7	7.6	100
1989.....	16.9	45.2	62.1	17.4	8.9	3.4	8.2	100
1990.....	16.7	45.7	62.4	16.7	8.5	3.8	8.7	100
1991.....	16.1	45.9	62.0	16.5	8.5	3.4	9.6	100

Source: Statistics Canada.

APPENDIX D

**SOFTWOOD LUMBER:
SUMMARY DATA CONCERNING THE U.S. MARKET**



Table D-1
Softwood lumber: Summary data concerning the U.S. market, 1988-91

Item	Reported data				Percentage change
	1988	1989	1990	1991	1988-91
U.S. consumption ¹	48,685	47,684	44,978	42,496	-12.7
U.S. imports:					
Subject imports:					
Quantity ¹	13,705	13,470	12,108	11,669	-14.9
Share of consumption ²	28.1	28.2	26.9	27.5	-0.6 ³
Value ⁴	2,956	3,159	2,873	2,819	-4.6
Share of consumption ²	26.8	28.0	28.1	28.3	1.5 ³
Unit value ⁵	\$215.67	\$234.52	\$237.31	\$241.62	12.0
Ending inventories ¹	(6)	(6)	(6)	(6)	
Total imports:					
Quantity ¹	13,811	13,582	12,182	11,762	-14.8
Share of consumption ²	28.4	28.5	27.1	27.7	-0.7 ³
Value ⁴	3,003	3,198	2,916	2,884	-4.0
Share of consumption ²	27.2	28.3	28.5	28.9	1.7 ³
Unit value ⁵	\$217.41	\$235.47	\$239.38	\$245.18	12.8
U.S. producers ⁷⁻⁸ :					
Average capacity ¹	39,242	39,527	39,545	39,545	0.8
Production ¹	38,134	37,546	35,790	33,856	-11.2
Capacity utilization ²	97.2	95.0	90.5	85.6	-11.6 ³
U.S. producers ⁷⁻⁸ :					
Average capacity ¹	18,591	19,663	19,376	17,950	-3.4
Production ¹	17,383	17,627	17,460	16,539	-4.9
Capacity utilization ²	93.5	89.6	90.1	92.1	-1.4 ³
U.S. shipments: ⁸					
Quantity ¹	14,778	14,967	14,619	13,885	-6.0
Value ⁴	3,911	3,974	3,808	3,722	-4.8
Unit value ⁵	\$264.78	\$265.65	\$260.61	\$268.19	1.3
Export shipments:					
Quantity ¹	755	828	796	748	-0.9
Value ⁴	311	374	350	333	7.1
Unit value ⁵	\$412.29	\$451.36	\$439.39	\$444.57	7.8
Export/shipment ratio ²	4.4	4.7	4.5	4.5	0.1 ³
Ending inventories ¹	1,414	1,421	1,385	1,205	-14.8
Inventory/shipment ratio ²	8.2	8.1	7.9	7.2	-1.0 ³
Production workers	32,280	31,734	30,533	27,492	-14.8
Hours worked (1,000s)	69,234	70,154	66,333	60,675	-12.4
Total wages paid ⁹	711,886	748,917	717,166	670,556	-5.8
Hourly wages paid	\$10.28	\$10.68	\$10.81	\$11.05	7.5
Productivity ¹⁰	251.1	251.3	262.2	271.6	8.2
Unit labor costs ⁵	\$50.15	\$52.19	\$51.74	\$50.18	(¹¹)
Net sales ⁴	4,336	4,596	4,567	4,385	1.1
COGS/sales ratio ²	87.6	88.9	95.8	92.9	5.3 ³
Operating income (loss) ⁴	331	295	(31)	107	-67.7
Op. income/sales ratio ²	7.6	6.4	(0.7)	2.4	-5.2 ³

¹ In million board feet.

² In percent.

³ Percentage point change.

⁴ In million dollars.

⁵ Per 1,000 board feet.

⁶ Not available.

⁷ From public data sources.

⁸ From respondents to U.S. producer questionnaires.

⁹ In 1,000 dollars.

¹⁰ Board feet per hour.

¹¹ Less than 0.05 percent.

Source: Compiled from data presented in the body of this report.



APPENDIX E
INFORMATION
CONCERNING BED FRAME COMPONENTS



At the public hearing in this investigation, as well as in its pre-and post-hearing briefs, National Frame Company (National),¹ Leggett and Platt, Inc., (Leggett and Platt), and the International Sleep Products Association (ISPA)² argued that bed frame components constitute a separate like product and that imports of said remanufactured softwood lumber products are not a cause of injury to the U.S. bed frame component industry or the U.S. softwood lumber industry as a whole.

Prior to its presentations to the Commission, National, Leggett and Platt, and the ISPA had requested that Commerce specifically exclude bed frame components from the scope of Commerce's investigation. Parties in opposition to that request at Commerce as well as the request before the Commission were the Coalition and Fred Tebb and Sons, Inc. (Tebb), a U.S. remanufacturer of softwood lumber.³ Commerce rejected National's request as well as a much broader request for exclusion of remanufactured softwood lumber products (remans).

In turning down the request for exclusion of remans, Commerce rejected arguments by various parties that such products are not the same class or kind of merchandise as dimension or rough sawn lumber and, therefore, not covered by the investigation. Commerce held to its view initially articulated in its preliminary determination:

"Since the scope of our investigation includes those products covered by the U.S.-Canada Memorandum of Understanding on Softwood Lumber, which includes not only dimension lumber but a wide variety of other lumber products, all of these products are considered to fall within the scope of this investigation." (Emphasis added by Commerce).⁴

From this, Commerce concluded there was no basis for excluding remans from the scope of the investigation just because they are different from other lumber (e.g., dimension or rough sawn). Further, Commerce went on to say there was no basis for determining that remans as a group are a separate class or kind of merchandise. In this regard, Commerce noted that there is no widespread agreement on an exact definition of remans, which "essentially is a term of convenience that indicates that at least some additional processing has been performed on rough sawn lumber."⁵ Additionally, Commerce said that the descriptions of remans on the record were "laced with generalities too broad to conclude that even a subset of remans constitutes a separate class or kind of merchandise."⁶ In discussing the difficulties in describing what might constitute a reman, Commerce noted that some of the descriptions were mutually exclusive. For instance:

¹ Clemson Corporation d/b/a National Frame Company.

² ISPA is an association of companies that includes manufacturers and suppliers of mattresses and box-springs, and components thereof. Among ISPA's members are importers and producers of wood bed frame components, which are used in the production of box-springs. ***.

³ These parties opposed not only the request for exclusion of bed frame components, but a broader request for a general exclusion of remanufactured softwood lumber from the scope of investigation.

⁴ 57 F.R. 22571, May 28, 1992.

⁵ Ibid.

⁶ Ibid.

"... the ILRA⁷ indicated that only the best quality lumber can be used for remans, resulting in remans always being of a superior quality wood than standard dimension lumber. However, ISPA and Leggett and Platt stated that its reman product of interest, bed frame components, is produced using wood from the undesirable outer portion of a log, which is often used for the manufacture of wood chips, and therefore is, at least in some respects, unlike the more expensive prime dimension lumber which they argue is the focus of the investigation."⁸

Yet another problem Commerce encountered in trying to distinguish among remans was "conflicting evidence" regarding the amount of value-added to the lumber product by the remanufacturing. For instance, ILRA and Leggett and Platt argued that there is substantial value added, while Tebb and others indicated that such was not necessarily the case, noting that their businesses consisted of nothing more elaborate than cutting the lumber into customer-specified sizes.⁹

Another argument rejected by Commerce was the contention by various parties that because remanufacturers purchase softwood lumber as an input at arm's-length prices, Commerce had not found that remans receive a countervailable subsidy. As this applied to bed frame components, Leggett and Platt and the IPSA argued that Commerce could not include such merchandise within the scope of the investigation because it had not found that Canadian producers of bed frame components themselves had received countervailable subsidies. In rejecting this argument, Commerce noted that it had investigated whether remans benefitted from the subsidies investigated and had determined that they, indeed, do. Commerce went on to note that not all remans are manufactured by independent producers; some reman producers are integrated companies which purchase stumpage and manufacture both dimension lumber and remans.¹⁰

Finally, among the exclusion arguments at Commerce, was the position that Commerce could not include remans, including bed frame components, within the scope of the investigation because it had not found that the subsidies provided to Canadian softwood lumber producers are provided to independent reman producers. As such, countervailing duties on imports of remans could

⁷ In the Commission's investigation, Counsel for the Independent Lumber Remanufacturers Association (ILRA) entered a notice of appearance, and indicated that the ILRA intended to appear at the hearing. However, after issuance of Commerce's final determination, which provided for assessment of any countervailing duty on the first-mill valuation, the ILRA withdrew its notice of intent to appear at the hearing.

Assessment of countervailing duties on the first-mill valuation exempts the value added in remanufacture from the duty. As noted in the text, the ILRA had argued to Commerce that Commerce should find remanufactured lumber to constitute a separate class or kind of merchandise, and exclude it from the scope of any order. In the alternative, the ILRA argued that any duty should be assessed on the first-mill valuation. Apparently, the ILRA was satisfied with the success of its second argument before Commerce, and determined not to expend the resources to address this issue before the Commission.

⁸ 57 F.R. 22572, May 28, 1992.

⁹ Ibid.

¹⁰ Ibid.

not be imposed absent an affirmative upstream subsidy¹¹ determination with respect to the imported merchandise. Commerce rejected this argument, noting:

"The scope of this investigation covers certain softwood lumber products, and includes both dimension lumber and remans, the former being the input to the latter. Both dimension lumber and remans are produced by stumpage holders which receive stumpage at preferential prices. Reman producers that purchase lumber from stumpage holders at arm's-length prices argue that the Department cannot impose a countervailing duty order on their lumber products without conducting an upstream subsidy investigation to demonstrate that the remans are receiving a countervailable benefits. As we discussed above, the Department found that some producers of remans are found to be receiving countervailable benefits. The Department is not obligated to investigate every producer of the subject merchandise if some producers are found to be receiving subsidies."¹²

With respect to bed frame components as a "like product," in terms of physical characteristics, such merchandise is, like all softwood lumber, whether or not remanufactured, wood from coniferous trees sawn to specified dimensions. Bed frame components are the internal structural elements of box springs.¹³ They are generally 1 inch thick and usually range in length from 37 to 79 inches and may have curved "radius cut" corners or square cut corners depending on customer needs.¹⁴ Like much of the wood used in remans, sales to remanufacturers producing bed frame components take place in smaller lots (truck loads as opposed to rail car loads) and are generally purchased on a mill-direct basis rather than through a middleman.

Softwood lumber used to produce bed frame components is generally taken from the less desirable cuts from logs (e.g., the thinner outer slabs produced at the head-rig). These cuts are used in a variety of products in addition to bed frame components, such as pallets, skids, shipping materials, and other utility lumber.¹⁵ Additionally, these cuts are sometimes sent to be chipped for uses in pulp mills and the production of composite building boards. According to National, Leggett & Platt, and the ISPA, "Canadian spruce"¹⁶ is generally the softwood "species of choice"¹⁷ among bed frame component producers. Spruce is generally preferred over other species because it is lighter in weight and that which is used for bed frame components is low in value. While National and Leggett and Platt use imported softwood lumber for their bed frame components, other smaller producers purchase from domestic

¹¹ Section 771A(a) defines an upstream subsidy as any subsidy that is bestowed on an input product used in the manufacture of the merchandise subject to investigation, if there is competitive benefit bestowed on the subject merchandise that has a significant effect on the cost of manufacturing of the subject merchandise.

¹² 57 F.R. 22573, May 28, 1992.

¹³ Bed frame components are provided for under HTS subheading 4407.10.00, under which most softwood lumber is imported into the United States.

¹⁴ Prehearing Brief of Leggett and Platt and ISPA (ISPA brief), p. 8.

¹⁵ Utility lumber is a grade of softwood lumber used when a combination of strength and economy is desired. It is suitable for many uses in construction, but lacks the strength of Standard, the next highest grade in light framing, and is not allowed in some applications.

¹⁶ This is an industry term for Canadian SPF. SPF is also grown in the United States.

¹⁷ Posthearing brief of National Frame Company (National brief), p. 3.

producers. In the latter instance, the mills are generally in close proximity to the remanufacturer.

With respect to data concerning this industry, the only information provided concerns the financial performance of *** and a submission from the ISPA containing the results of a very general survey of its membership as to the nature of their operations. ***'s financial information is provided in the following tabulation (in dollars):

	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
Sales.....	***	***	***	***
Cost of sales.....	<u>***</u>	<u>***</u>	<u>***</u>	<u>***</u>
Gross profit.....	***	***	***	***
Income before taxes.....	***	***	***	***

* * * * *

APPENDIX F

**COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE
IMPACT OF IMPORTS OF SOFTWOOD LUMBER
FROM CANADA
ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL,
AND/OR EXISTING DEVELOPMENT
AND PRODUCTION EFFORTS**



COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF
IMPORTS OF SOFTWOOD LUMBER FROM CANADA
ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND/OR
EXISTING DEVELOPMENT AND PRODUCTION EFFORTS

The Commission requested U.S. producers to describe any actual or anticipated negative effects of imports of softwood lumber from Canada on their existing development and production efforts, growth, investment, and/or ability to raise capital. Five companies--***--did not supply any comments. Ten companies--***--indicated they suffered no negative effects. The responses of the 35 producers which supplied comments are as follows (not all companies had a response for each question):

Response of U.S. producers to the following questions:

1. Since January 1, 1988, has your firm experienced any actual negative effects on its growth, investment, ability to raise capital, or existing development and production efforts as a result of imports of softwood lumber from Canada?

* * * * *

2. Does your firm anticipate any negative impact of imports of softwood lumber from Canada?

* * * * *

3. Has the scale of capital investments undertaken been influenced by the presence of imports of softwood lumber from Canada?

* * * * *

