UNITED STATES INTERNATIONAL TRADE COMMISSION

SOFTWOOD LUMBER FROM CANADA
Investigations Nos. 701-TA-414 and 731-TA-928 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3509, MAY 2002)

VIEWS OF THE COMMISSION

Based on the record in these investigations,[1] we determine that an industry in the United States is threatened with material injury by reason of imports of softwood lumber from Canada found to be subsidized and sold in the United States at less than fair value. ("LTFV").[2]

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[3] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[4] In turn, the Act defines "domestic 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 an investigation . . . ."[5]

The decision regarding the appropriate domestic like product(s) in an investigation is 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.[6] No single factor is dispositive, and the Commission

---

[1] For purposes of these determinations, we are disregarding the following new factual information, not included in the factual record, which was submitted in final comments of the Coalition for Fair Lumber Imports ("Coalition") of April 29, 2002: All references to an April 25, 2002 letter and its Exhibits, including relevant references in the text of the final comments on pages 2, 6, 13 and 15. *See* 19 U.S.C. § 1677m(g); 19 C.F.R. § 207.68(b).

[2] Commissioner Bragg did not participate in these investigations.

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(10).

[6] *See, e.g.*, NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See* Nippon Steel, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

may consider other factors it deems relevant based on the facts of a particular investigation.[7] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[8] Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[9]

B. Product Description

Commerce's final determinations defined the imported merchandise within the scope of these investigations as follows:

> softwood lumber, flooring and siding ("softwood lumber products"). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:
>
> > (1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;
> > (2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;
> > (3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood mouldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and
> > (4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

---

[7] *See, e.g.*, S. Rep. No. 96-249 at 90-91 (1979).

[8] Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; *see also* S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard 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 consideration.").

[9] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.[10] [11]

---

[10] Certain Softwood Lumber Products from Canada, 67 Fed. Reg. 15539 (Apr. 2, 2002) ("antidumping determination"); Certain Softwood Lumber Products from Canada, 67 Fed. Reg. 15545-46 (Apr. 2, 2002) ("countervailing duty determination").

[11] The following products are excluded from the scope of these investigations (Group A):

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

Commerce also excluded from the scope of these investigations the following products, but only if they meet certain requirements (Group B):

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.
(2) *Box-spring frame kits*: if they contain the following wooden pieces--two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.
(3) *Radius-cut box-spring-frame components*, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
(4) *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1" or less in actual thickness, up to 8" wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.
(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of the investigations if the following conditions are met: (a) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (b) if the importer establishes to Customs' satisfaction that the lumber is of U.S. origin.
(6) *Softwood lumber products contained in single family home packages or kits*, regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:
(A) The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet

(continued...)

C. Domestic Like Product Issues

The Commission must base its domestic like product determination on the record in these investigations, and it is not bound by prior determinations pertaining even to the same imported products.[12] We nonetheless acknowledge that in each of the three prior countervailing duty ("CVD") investigations of softwood lumber from Canada, the Commission found one domestic like product consisting of softwood

---

[11] (...continued)
produced to a specified plan, design or blueprint;
(B) The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;
(C) Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;
(D) The whole package must be imported under a single consolidated entry when permitted by the U.S. Customs Service, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;
(E) The following documentation must be included with the entry documents:
(1) A copy of the appropriate home design, plan, or blueprint matching the entry;
(2) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
(3) A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
(4) In the case of multiple shipments on the same contract, all items listed in E(3) which are included in the present shipment shall be identified as well.

. . . . Lumber products that Customs may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this investigation and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40 and 4421.90.98.40. On January 24, 2002, Customs informed the Department of certain changes in the 2002 HTSUS affecting these products. Specifically, subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively.

67 Fed. Reg. at 15546-7 and n.1 (Apr. 2, 2002) ("countervailing duty determination"). In the published antidumping determination, Commerce did not list product exclusions and referred to the "Issues and Decision Memorandum" for a "complete description of the scope of this investigation, including an itemized list of all product exclusions." 67 Fed. Reg. at 15539.

[12] Nippon Steel, 19 CIT at 455 (1995); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169, n.5 (Ct. Int'l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

lumber.[13]

In its preliminary determinations in these investigations, the Commission considered three domestic like product issues, specifically whether western red cedar ("WRC"), eastern white pine ("white pine"), or remanufactured products (and in particular wooden bed-frame components) were separate domestic like products.[14] The Commission found that there was a single domestic like product that was coextensive with the scope of investigation.[15] However, the Commission also indicated that in any final phase investigations, it intended to consider in more detail whether there were clear dividing lines between WRC and/or white pine and other species of softwood lumber, or if softwood lumber was more accurately characterized as a continuum of products without clear dividing lines.[16] [17]

Regarding the third issue, in its preliminary determinations the Commission found that neither remanufactured lumber nor wooden bed-frame components was a separate domestic like product. Instead each was part of a continuum of softwood lumber products.[18] Commerce subsequently excluded many, but not all, remanufactured products from the scope of investigations in its final determinations. However, a few parties have raised additional remanufactured product arguments in the final phase, specifically regarding flangestock and square-end bedframe components, and we also considered them as discussed below.[19]

---

[13] Softwood Lumber from Canada, Inv. No. 701-TA-197 (Prelim.), USITC Pub. 1320 at 4-5 (Nov. 1982) ("Softwood Lumber I"); Softwood Lumber from Canada, Inv. No. 701-TA-274 (Prelim.), USITC Pub. 1874 at 5-7 (July 1986)("Softwood Lumber II"); Softwood Lumber from Canada, Inv. No. 701-TA-312 (Final), USITC Pub. 2530 at 5-11 (July 1992)("Softwood Lumber III").

[14] Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Preliminary), USITC Pub. 3426 at 6-12 (May 2001) ("Preliminary Determination").

[15] USITC Pub. 3426 at 6.

[16] USITC Pub. 3426 at 8 and 9. In the final phase of these investigations, the Commission collected additional information regarding WRC and white pine for its domestic like product analysis as well as separate trade and financial data on domestic production and subject imports of WRC and white pine.

[17] Petitioners continued to argue that no "clear dividing line" exists among the overlapping and competitive species of lumber and that the domestic like product consists of softwood lumber, including WRC, white pine, and all remanufactured products. Petitioners' Prehearing Brief at 8-11 and Appendix A; Petitioners' Posthearing Brief at Appendices A-23-24, B-32-34, C-16-25, and D-27-39.

In the final phase, the U.S. Western Red Cedar Coalition ("WRC Coalition"), consisting of the Weyerhaeuser Company, the U.S. Red Cedar Manufacturers Association, the Western Red Cedar Lumber Association, and Enyeart Cedar Products, LLC, argued that softwood lumber made from western red cedar meets all the criteria for treatment as a separate domestic like product. WRC Coalition's Prehearing Brief at 4-37; WRC Coalition's Posthearing Brief at 1-14; Hearing Transcript ("Tr.") at 277-280. In addition, Tembec, Inc., the Ontario Forest Industries Association ("OFIA"), and the Ontario Lumber Manufacturers Association ("OLMA") (collectively, "White Pine Respondents") argued that white pine is a distinct product that enjoys a niche market and comprises a separate industry from other softwood lumber. Tembec's Prehearing Brief at 9-31; OFIA/OLMA's Prehearing Brief at 9-31; White Pine Respondents' Posthearing Brief at 4-7.

[18] USITC Pub. 3426 at 10-12.

[19] Tembec argued that flangestock, an engineered product, should be treated as a separate domestic

(continued...)

1. Whether WRC or White Pine is a Separate Domestic Like Product

The record indicates that there is some merit to the arguments that WRC and white pine have some unique characteristics. However, Congress has directed the Commission to look for "clear dividing lines among possible like products" and further stated that "[t]he 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 … ."[20] We therefore must consider whether and at what point differences in species (or groups of species) are sufficient to be a "clear dividing line" that warrants treating a particular species as a separate domestic like product. In this respect, we find that softwood lumber comprises a continuum of products. Thus, we find that there are not clear dividing lines between the numerous species that comprise the continuum of softwood lumber and do not define either WRC or white pine as a separate domestic like product.

a. WRC

WRC grows in the United States in the coastal and interior forests of Washington, Idaho, and Montana, as well as in parts of Alaska, Oregon, and California. In 2001, WRC accounted for 1.6 percent of total reported domestic softwood lumber production.[21] In the preliminary phase of these investigations, the Commission found that the record indicated some differences, but also some similarities, between WRC and other softwood lumber products in terms of physical characteristics and uses, interchangeability, channels of distribution, customer and producer perceptions, and price. Additionally, the record was inconclusive with respect to differences in manufacturing facilities, production processes, and employees.[22]

Physical characteristics and uses: WRC has several physical characteristics that may distinguish it from other softwood lumber products.[23] However, there are other softwood lumber products that have varying subsets of these characteristics. While many species of softwood lumber have a unique basket of

---

[19] (...continued)
like product. Tembec's Prehearing Brief at 35-45; White Pine Respondents' Posthearing Brief at 9-11. Abitibi-Consolidated ("Abitibi"), a Canadian producer of softwood lumber and wooden bed frame components, argued that all wooden bed-frame components, including square-end bed frame components, are a separate domestic like product distinct from other softwood lumber. Abitibi's Prehearing Brief at 1-4.

[20] S. Rep. No. 96-249 at 90-91 (1979).

[21] Calculated from Confidential Report ("CR")/Public Report ("PR") at Tables III-7 and III-8. The volume of WRC imports (entirely from Canada) was equivalent to about *** of total domestic WRC production and *** of U.S. apparent consumption of WRC in 2001. Calculated from CR/PR at Table IV-4.

[22] USITC Pub. 3426 at 6-8 (May 2001).

[23] These characteristics include: its coloring; fragrance; high heartwood to sapwood ratio (which enables it to withstand harsh weather conditions and insulate well); natural toxicity to decay-causing fungi; natural resistence to insect attack; hygroscopic nature (which gives it a low shrinkage factor, more dimensional stability, and lower likelihood of warping, twisting, checking, swelling, or cracking); high durability; and light weight. CR at I-24; PR at I-18; *see also* WRC Coalition's Prehearing Brief at 7-14; WRC Coalition's Posthearing Brief at 5-8 and Exhs. 4 and 9.

physical characteristics, any species-to-species comparison will reveal similarities in some particular characteristics and differences in others. WRC lumber is superior for a variety of non-structural uses[24] and generally is not used as a framing or structural lumber, which is the predominant end use for other softwood lumber products. The end uses for WRC lumber tend to be high-end exterior applications and specialty products.[25] Because WRC lumber generally is not used in applications requiring strength, the grading process for WRC is different than for other softwood lumber products, which are generally graded on characteristics such as strength, durability, utility, and/or appearance.[26] However, the evidence in the record demonstrates that other species of softwood lumber (including southern yellow pine ("SYP"), Port Orford cedar, yellow cedar, and redwood) are used in many of the same applications as WRC lumber, such as siding, poles/piles/posts, and decks.[27] While some other softwood lumber (*e.g.*, SYP) requires chemical treatment for such exterior uses, there is some evidence that WRC producers recommend that WRC also be treated with preservatives for such uses.[28]

Interchangeability: While most softwood lumber is used in structural applications, WRC is used predominantly and is preferred for exterior trim applications such as siding, fencing, and decking because of its higher price and its characteristics, such as durability, appearance, stability and resistance to the elements and decay.[29] While customer preferences may limit actual substitution, in applications such as decks, fencing, and siding, WRC is interchangeable with other softwood lumber products (such as SYP, Port Orford cedar, yellow cedar, and redwood).[30] Some purchasers may not substitute WRC for other softwood lumber (treated with chemicals such as arsenic) due to safety, appearance, or compliance with building codes or covenants.

Channels of distribution: While the percentages vary, the data indicate that wholesalers/distributors are the largest channel of distribution for both WRC and all softwood lumber. Information from Commission questionnaire responses indicates that 40 percent of shipments of U.S. produced softwood lumber was distributed through wholesaler/distributor channels in 2001 compared to 91

---

[24] These include shakes, shingles, siding, clapboards, paneling, shutters, fencing components, arbors, trellises, benches, planter boxes, bird houses, hot tub skirts, playground equipment, agricultural stakes, lawn furniture, gazebos, exterior trim, indoor paneling, specialty window treatments, and particularly applications where appearance is emphasized. CR at I-24, n.63; PR at I-18, n.63.

[25] WRC Coalition's Prehearing Brief at 11-12; Petitioners' Posthearing Brief at Appendix D-31.

[26] Compare WRC Coalition's Posthearing Brief at 6 and n. 22 to Petitioners' Prehearing Brief at Appendix A-9 and A-10.

[27] CR at I-24 and I-25, and Table II-5; PR at I-18, and Table II-5; Petitioners' Prehearing Brief at Exhs. 4 and 85.

[28] CR at I-24 and I-25; PR at I-18; Petitioners' Posthearing Brief at Appendix C-16-17.

[29] CR at II-5, n.12 and II-11, and Table II-5; PR at II-4, n.12 and II-8, and Table II-5.

[30] CR at II-12; PR at II-8 (***); Petitioners' Prehearing Brief at Appendix A-10 - A-15 and Exhs. 4 and 85; Petitioners' Posthearing Brief at Appendix D-28 - D-31 and D-33 - D-35; WRC Coalition's Prehearing Brief at 16-20; WRC Coalition's Posthearing Brief at 8-9 and Exhs. 4 and 9. The WRC Coalition's arguments in fact tend to support a finding of interchangeability in decking and fencing applications, with any limitations the result of differences in customer preferences. WRC Coalition's Posthearing Brief at 8-9 and Exhs. 4 and 9.

percent of domestically produced WRC lumber.[31] For both softwood lumber and WRC, the remanufacturers channel was the second most used channel of distribution, accounting for 21 percent of shipments of U.S. produced softwood lumber and 7 percent of U.S. produced WRC in 2001.[32]

Manufacturing facilities, production processes, and employees: The record in the final phase of these investigations demonstrates that the same or similar production facilities, equipment, and employees are used for softwood lumber and WRC lumber production.[33] Of the nine producers reporting that they produced WRC lumber, five produced both WRC lumber and other softwood lumber, and four produced only WRC lumber.[34] There is some evidence, however, that the production process for WRC lumber as well as other premium products is more labor-intensive than other softwood lumber as demonstrated by productivity rates.[35]

Customer and producer perceptions: There is some evidence to suggest that customers and producers distinguish WRC from most other softwood lumber products due to its appearance, physical characteristics, and higher price, and that WRC is graded differently than most other softwood lumber.[36] Customers and producers generally perceive WRC as a high-end specialty product.[37] However, the evidence also shows that there are other high-end specialty products, and that some other premium products, such as redwood and other types of cedar (including Atlantic White Cedar) are perceived as alternatives to WRC.[38] Moreover, treated SYP and spruce-pine-fir ("SPF") are also considered by many customers as non-premium alternatives to WRC for decking and fencing applications.[39]

Price: WRC lumber is sold at a premium and has somewhat different price trends than most other softwood lumber products.[40] However, other softwood lumber products (such as redwood, Eastern red cedar, yellow cedar, Port Orford cedar, bald cypress, Atlantic white cedar, and white pine) also sell at the

---

[31] CR/PR at Tables II-1.

[32] CR/PR at Table II-1.

[33] CR at I-26; PR at I-18 and I-19; *see also* Petitioners' Prehearing Brief at Appendix A-19 - A-22.

[34] CR at I-25 and I-26; PR at I-18 and I-19. One producer that produced both WRC and softwood lumber noted that the *** and another producer commented that the ***. *Id*.

[35] Compare CR/PR at Table C-1 to Tables C-2 and C-3. *See also* WRC Coalition's Posthearing Brief at 11-12; WRC Coalition's Prehearing Brief at 26-30; WRC Coalition's Posthearing Brief at 11-13 ("Where WRC mills do produce other species, it is not at the same time and adjustments to equipment are necessary.").

[36] WRC Coalition's Prehearing Brief at 30-33; WRC Coalition's Posthearing Brief at 13-14; Petitioners' Prehearing Brief at Appendix A-17-A-18.

[37] WRC Coalition's Prehearing Brief at 32-33; WRC Coalition's Posthearing Brief at 13-14; Petitioners' Prehearing Brief at Appendix A-17. Respondents contended that the difference in perception also explains why customers are willing to pay a significant premium for WRC compared to other softwoods.

[38] Petitioners' Prehearing Brief at Appendix A-17-A-18. Petitioners pointed out that Rainbow Play Systems ***. *Id*. at Appendix A-18, n. 74.

[39] *See, e.g.*, CR at II-12; PR at II-8.

[40] CR at I-26 and Figure V-4; PR at I-19 and Figure V-4. Average unit values of WRC lumber shipments reported in producer questionnaire responses were $660-690 per mbf compared with $340-420 per mbf for softwood lumber shipments. *Id*.

higher end of the price spectrum.[41]

In sum, there are both similarities and differences between WRC lumber and other softwood lumber in terms of physical characteristics and uses; similarities in terms of interchangeability, manufacturing facilities, production processes, and employees, and channels of distribution; and differences in customer and producer perceptions or preferences and price. We find that the differences do not provide a clear dividing line between WRC and other species of softwood lumber and do not outweigh the similarities. Thus, we define a single domestic like product for the continuum of species that comprise softwood lumber and includes WRC lumber.

b. White Pine

White pine production is primarily located in the northeastern United States. White pine accounts for 0.8 percent of total reported domestic softwood lumber production.[42] In the preliminary phase of these investigations, the Commission found that the record indicated some differences, but also some similarities, between white pine and other softwood lumber products in terms of physical characteristics and uses, interchangeability, channels of distribution, customer and producer perceptions, and price, and was inconclusive with respect to differences in manufacturing facilities, production processes, and employees.[43]

Physical characteristics and uses: White pine is a lightweight, straight-grained softwood lumber with relatively few knots that readily and uniformly seasons, is easy to work with, and when air-dried, has low shrinkage.[44] Due to its high quality, it is often used for its aesthetic purposes in the manufacture of furniture and other specialty products such as toys, carvings, and woodenware.[45] White pine must be treated with preservatives where conditions are favorable to decay.[46]

Because white pine is not generally used in strength applications, the grading process is different than for other softwood lumber products. While the cost and physical characteristics of white pine may make it unsuitable for the general construction uses (studs and dimension lumber) of other softwood lumber, it has overlapping end uses with such other softwood lumber as sugar pine, ponderosa pine, and

---

[41] CR/PR at Figure V-4; Petitioners' Prehearing Brief at Appendix A-22-23 and Exhs. 84 and 95.

[42] Calculated from CR/PR at Tables III-7 and III-9. The volume of white pine imports from Canada was equivalent to *** of total domestic white pine production and *** of U.S. apparent consumption of white pine in 2001. Calculated from CR/PR at Table IV-5.

[43] USITC Pub. 3426 at 8-9.

[44] The heartwood of white pine is moderately durable but very permeable (*i.e.*, it carries fluids easily through the wood); its permeability is nearly seven times higher than that of balsam fir and almost fourteen times higher than that of red spruce. CR at I-27 - I-28; PR at I-19 - I-20; Tembec's Prehearing Brief at 10-12; OFIA/OLMA's Prehearing Brief at 10-12; White Pine Respondent's Posthearing Brief at 5.

[45] *See, e.g.*, Petitioners' Posthearing Brief at Appendix D-31 and D-32; Tembec's Prehearing Brief at 13-14; OFIA/OLMA's Prehearing Brief at 13-14.

[46] Tembec's Prehearing Brief at 11; OFIA/OLMA's Prehearing Brief at 11. When treated, white pine's resistance to decay and its dimensional stability make it suited for exterior applications like siding, trim, doors, windows and fences. *Id*. at 14. However, the average service of an untreated white pine fence is six years compared to twenty-seven for eastern cedar. White Pine Respondents' Postconference Brief at 8.

Idaho pine.[47]

Interchangeability: While most softwood lumber is used in general construction/structural applications, white pine's qualities (such as its weakness, softness, fairly low resistance to impact, and appearance) make it suited for use as window sashes and frames, molding and millwork, doors, shelving, cabinetwork, and other items that require dimensional stability, but do not bear substantial loads.[48] The evidence demonstrates that softwood lumber products such as sugar pine, ponderosa pine, Idaho pine, and spruce are interchangeable with white pine in many applications.[49] Moreover, while there is a separate grading system for white pine, as discussed above regarding WRC, white pine is not the only species of softwood lumber for which the grading system is not based on strength.

Channels of distribution: The data from Commission questionnaire responses indicate that wholesalers/distributors are the largest channel of distribution for both white pine and all softwood lumber.[50]

Manufacturing facilities, production processes, and employees: The evidence in the final phase of these investigations demonstrates that the same or similar production facilities, equipment, and employees are or can be used for softwood lumber and white pine lumber production.[51] Of the eight producers reporting that they produced white pine lumber, four produced both white pine lumber and other softwood lumber, and four produced only white pine lumber.[52] There is some evidence, however, that the production process for white pine lumber as well as other premium products is more labor-intensive than other softwood lumber, as demonstrated by productivity rates.[53]

Customer and producer perceptions: There is some evidence to suggest that customers and

---

[47] Tembec's Prehearing Brief at 10, 13-15 ("That White Pine may have a minor overlap in uses with Ponderosa Pine, Sugar Pine and Idaho Pine (collectively the 'Western Pines') does not lead to the conclusion that it is a like product with softwood lumber." *Id*. at 10); OFIA/OLMA's Prehearing Brief at 10, 13-15; Petitioners' Prehearing Brief at Appendix A-26 and A-27 and Exhs. 4 and 85; Petitioners' Posthearing Brief at Appendix D-31 and D-32.

[48] CR/PR at Table II-5; Tembec's Prehearing Brief at 13-14; OFIA/OLMA's Prehearing Brief at 13-14.

[49] CR/PR at Table II-5; Petitioners' Prehearing Brief at A-28 - A-31 and Exh. 85; Petitioners' Posthearing Brief at Appendix D-32.

[50] Information from Commission questionnaire responses indicates that 40.3 percent of shipments of U.S. produced softwood lumber was distributed through wholesaler/distributor channels in 2001 compared to 73.2 percent of domestically produced white pine lumber. CR/PR at Table II-1. The retailers channel was the second most used channel of distribution for white pine, accounting for 18.9 percent of shipments of U.S. produced white pine lumber, and third ranked channel used for softwood lumber, accounting for 15.1 percent in 2001. *Id*.

[51] CR at I-28; PR at I-20; *see also* Petitioners' Prehearing Brief at Appendix A-34 and A-35; Petitioners' Posthearing Brief at Appendix A-23 and A-24.

[52] CR at I-28; PR at I-20. One producer that produced both white pine and softwood lumber stated that *** while another domestic producer of both products ***. In addition, a domestic producer of only white pine commented: ***. CR at I-28 - I-29; PR at I-20. White Pine Respondents charged that one of the domestic producers reported as producing white pine in fact "produces no Eastern White Pine, a distinct specie." Tembec's Prehearing Brief at 22-29; White Pine Respondent's Posthearing Brief at 5-7.

[53] Compare CR/PR at Table C-1 with Tables C-2 and C-3.

producers distinguish white pine from the other softwood lumber products. White pine is valued for its dimensional stability and beauty while southern yellow pine and SPF are valued for their strength and resistance to splitting.[54] White pine lumber, similar to WRC lumber but in contrast to most softwood lumber, is graded for appearance rather than strength.[55] However, the evidence also shows that other softwood lumber species such as ponderosa pine, sugar pine and Idaho pine are perceived as alternatives to white pine.[56]

Price: White pine lumber is sold at a premium and has somewhat different price trends than most other softwood lumber products.[57] However, other softwood lumber products (such as ponderosa pine, Idaho white pine, redwood, Eastern red cedar, yellow cedar, Port Orford cedar, bald cypress, Atlantic white cedar, and WRC) also sell at the higher end of the price spectrum.[58]

In sum, there are both similarities and differences between white pine lumber and other species of softwood lumber in terms of physical characteristics and uses; similarities in terms of interchangeability, manufacturing facilities, production processes, and employees, and channels of distribution; and differences in customer and producer perceptions or preferences and price. We find that the differences do not provide a clear dividing line between white pine and other species of softwood lumber and do not outweigh the similarities. Thus, we define a single domestic like product for the continuum of species that comprise softwood lumber and includes white pine lumber.

2. Whether Certain Remanufactured Products are Separate Domestic Like Products

In its preliminary determination, the Commission found that there was no widespread agreement on the exact definition of "remanufactured lumber" and found as it had in Softwood Lumber III that "remanufactured lumber" was part of a continuum of softwood lumber products.[59] Remanufactured products include a wide range of further processed lumber products such as wooden bed frame components (box spring components), shipping materials, flooring and siding, ladder stock, dimension lumber, and stock for furniture manufacturing.[60] Commerce excluded an extensive list of remanufactured products from the scope of investigation, such as stringers and I-joist beams, but did not exclude all remanufactured products, such as flooring and siding.[61] In particular, while Commerce excluded radius cut bed frame components and bed frame component kits, it did not exclude square-end bed frame components unless they are part of a kit. Consequently, in the final phase of these investigations, a few parties have raised

---

[54] Tembec's Prehearing Brief at 19; OFIA/OLMA's Prehearing Brief at 19.

[55] CR at I-27 - I-28; PR at I-19 - I-20.

[56] CR/PR at Table II-5; Petitioners' Prehearing Brief at Appendix A-33-A-34 and Exh. 85.

[57] CR at I-29 and Figure V-4; PR at I-20 and Figure V-4. Average unit values of white pine lumber shipments reported in producer questionnaire responses were $550-575 per mbf compared with $340-420 per mbf for softwood lumber shipments. *Id*.

[58] CR/PR at Figure V-4; Petitioners' Prehearing Brief at Appendix A-35-36 and Exh. 95.

[59] USITC Pub. 3426 at 10-12.

[60] USITC Pub. 3426 at 11

[61] *See, e.g.*, 67 Fed. Reg. at 15546.

additional remanufactured product arguments specifically regarding square-end bed frame components [62] and flangestock.[63] [64]

Square-end bed frame components and flangestock are essentially "niche products." Custom square-end bed frame components are used in the manufacture of bed box springs in conjunction with radius-end bed frame components. Commerce has specifically excluded radius-end, but not square-end, bed frame components from the scope of investigation.[65] According to Abitibi, both radius-end and square-end bed frame components are produced in the same specialty plant, manufactured to customized dimensions specified by individual bed frame manufacturers. Abitibi also argued that bed frame components are graded differently, are produced in different sizes than other softwood lumber, and are significantly higher priced than other softwood lumber.[66] Abitibi claimed that bed frame components are not produced on Abitibi's regular sawmills and that "bed frame manufacturers prefer, and generally insist, that bed frame components be manufactured from SPF lumber. . . ."[67]

While square-end bed frame components may have some distinctions in use, physical characteristics, and perceptions from softwood lumber as a whole, these distinctions are also apparent for other remanufactured or further processed lumber products. Moreover, there are some indications that square-end bed frame components may be more similar in characteristics to general construction purpose lumber than radius-cut bed frame components.[68]

---

[62] Abitibi, a Canadian producer of softwood lumber and wooden bed frame components, requested that all bed frame components, including square-end bed frame components, be defined as a separate domestic like product. Abitibi's Prehearing Brief at 1-5. Abitibi's proposal appeared to suggest that the Commission include products specifically excluded from Commerce's scope, *i.e.*, radius cut bed frame components, in the separate domestic like product defined as all bed frame components.

[63] Tembec contended that a remanufactured product, flangestock, is a distinct product that comprises a separate industry and should be defined as a separate domestic like product. Tembec's Prehearing Brief at 35-45; White Pine Respondents' Posthearing Brief at 9-11.

[64] Petitioners maintained that there is no way to adequately define the so-called "remanufactured" products, as the Commission has repeatedly found, because remanufacturing is not a product but a process. According to Petitioners, remanufactured products are simply products made from lumber rather than logs, but all of those products are also made by primary sawmills processing logs. Petitioners' Prehearing Brief at 4 and Appendix A-37-42.

[65] Radius-end components are the rounded-end components that produce the rounded corners on mattress box spring sets. Abitibi claimed that radius-end components account for roughly half the volume of bed frame components. Abitibi's Prehearing Brief at 1 and 6.

[66] Abitibi contended that bed frame components are manufactured and sold in the size of beds while other softwood lumber products are mainly used in home construction and produced in wall lengths and greater. They also claimed that in most cases square-end components are shipped with radius-end components, further facilitating ready identification of bed frame components, and are invoiced as bed frame components, not as generic lumber products. Abitibi indicated that bed frame components would not be excluded as bed frame "kits" because they do not individually package the components for an individual bed frame. Abitibi's Prehearing Brief at 3, n. 1.

[67] Abitibi's Prehearing Brief at 4.

[68] Abitibi also maintained that the only reason that square-end components have not been excluded is

(continued...)

Flangestock is an engineered, long-length specialty wood product, used exclusively by I-beam or I-joist manufacturers as a component of fabricated structural wood members, which are used primarily as floor joists.[69] Softwood lumber is a raw material used to make flangestock, which consists of individual pieces of machine stress rated lumber ("MSR") fingerjointed together. Flangestock is distributed directly and exclusively to I-joist manufacturers who insist that it meet their precise physical requirements.[70] Tembec claimed that the production process for flangestock is completely different from the process for softwood lumber because it is transformed from softwood lumber.[71] It contended that like other engineered wood products, flangestock is more expensive than softwood lumber.

Flangestock is a further processed softwood lumber product, which except possibly for its length, has very similar characteristics to other further processed products within the scope that are finger-jointed, including wood siding and flooring products.[72] While flangestock may have some distinctions in use, physical characteristics, and perceptions from softwood lumber as a whole, these distinctions are also apparent for other remanufactured or further processed lumber products.

The record indicates, and Abitibi and Tembec did not dispute, that there are practical difficulties in defining types of remanufactured lumber as distinct domestic like products.[73] [74] Five domestic producers indicated that they converted some of their softwood lumber into a more specialized or higher grade product through further remanufacturing, but none of these firms maintained separate trade and financial information relative to those operations, and there is no other information on the record on the domestic

---

[68] (...continued)
concern of evasion which can easily be addressed through supplier or customer end use certifications. Abitibi's Prehearing Brief at 6.

[69] Tembec's Prehearing Brief at 35-45; White Pine Respondents' Posthearing Brief at 9-11.

[70] In the production process, flangestock is subjected to a battery of tests that guarantees minimum performance values for flangestock and insures compliance with the I-beam manufacturer's pre-established structural requirements.

[71] Tembec claimed that the only supply of flangestock to the U.S. merchant market comes from Canada because U.S. production is consumed internally in the production of downstream product.

[72] For example, Commerce's scope of investigation specifically includes fingerjointed wood siding and flooring. *See, e.g.*, 67 Fed. Reg. 15539; 67 Fed. Reg. 15545-46.

[73] In the final phase, Abitibi explicitly acknowledged that "there are no significant U.S. producers, since bed frame manufacturers require the use of SPF species." Abitibi admitted that the domestic product most similar in characteristics and uses with bed frame components as to which the Commission has gathered data would be softwood lumber other than western red cedar and white pine. Abitibi's Prehearing Brief at 5-6.

[74] In response to questioning about separate trade and financial data for flangestock production, counsel for Tembec did not directly respond but rather essentially indicated that it was not relevant because "there is no merchant market production in the United States of flangestock. . . . [and that this] is a captive market question . . . ." Hearing Tr. at 311. Counsel for Tembec added that "where there is a domestic production, but it is captive, and therefore I believe as to this product there's no injury nor could there be injury to the domestic production of flangestock because it goes to a single purpose. . . . going into the I beams." *Id.*; *see also* White Pine Respondents' Posthearing Brief at Appendix A-1.

manufacturers of either the square-end bed frame component or flangestock industry.[75]

We find that there is no clear dividing line that separates such remanufactured products as square-end bed frame components or flangestock from other remanufactured lumber products within the scope of these investigations. Accordingly, we find that neither square-end bed frame components or flangestock are separate domestic like products but rather are part of a continuum of softwood lumber products defined as a single domestic like product.

D. Domestic Industry and Related Parties

Section 771(4) of the Act defines the relevant industry as "the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes the major proportion of that product."[76] In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[77] Based on our domestic like product determination, we determine that there is a single domestic industry consisting of all U.S. softwood lumber mill operators.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[78] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[79]

There are *** domestic producers that reported importing softwood lumber from Canada during 1999-2001. These producers are potentially subject to exclusion from the domestic industry as related parties pursuant to 19 U.S.C. § 1677(4)(B)(i). We consequently examine whether "appropriate

---

[75] CR at I-18; PR at I-15.

[76] 19 U.S.C. § 1677(4)(A).

[77] *See* United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

[78] 19 U.S.C. § 1677(4)(B).

[79] Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). 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 reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits 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. *See, e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g.*, Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14 n.81.

circumstances" exist that would support exclusion of any of these domestic producers. In addition, we examine *** other domestic producers that may meet the definition of a related party as either the owner of a Canadian producer/exporter or a major purchaser of subject imports. We note that while a number of these domestic producers appear to focus more on importation than on domestic production, no party to these investigations, including Petitioners, advocated exclusion of any domestic producers.[80] [81] Moreover, each producer generally accounts for a relatively small or minimal share of the fairly large and diverse domestic softwood lumber industry, and exclusion of the producers that focus more on importation than on domestic production would not significantly change the data considered by the Commission.

Domestic producer *** imported *** of softwood lumber from its *** in 2001.[82] Its imports accounted for *** of total imports from Canada and *** of apparent U.S. consumption in 2001.[83] ***[84] ***[85]

*** of softwood lumber in the United States in 2001 and accounted for *** of reported domestic production.[86] Finally, ***.[87]

We conclude that appropriate circumstances do not exist for the exclusion of *** pursuant to the related parties provision. While its financial results appear to be somewhat different from those of most other domestic producers that did not import subject merchandise,[88] its principal interest appears to be in domestic production. Its subject imports were equivalent to *** of its U.S. production in 2001.[89] Moreover, as noted above, no party, including Petitioners, advocated any exclusions of related parties.

---

[80] Petitioners acknowledged that certain producers fall within the definition of related parties in these investigations because they import subject merchandise or have major operations in Canada, but they "have never requested that parties be excluded because of their relatedness." Tr. at 73-74; *see also* Petition at I-15 to I-17, Exhs. IB-6 and IB-7. Instead, Petitioners and Canadian Lumber Trade Alliance ("CLTA") urged the Commission to consider the issue of related parties as a condition of competition rather than as an issue of whether appropriate circumstances exist to exclude any firm from the domestic industry. CLTA's Prehearing Brief at 30-32; Petitioners' Posthearing Brief at Appendix A-25.

[81] Commissioner Miller agrees that appropriate circumstances do not exist to exclude any related parties from the domestic industry. She finds that the record does not indicate that the related parties currently benefit significantly from their relationships or are substantially shielded from the effects of import competition. The financial and operating trends of the related parties are largely within the ranges of such trends for other domestic producers. Accordingly, inclusion of the related parties does not present a distorted picture of the condition of the domestic industry for the purpose of analyzing present material injury and threat of material injury by reason of the subject imports.

[82] CR at IV-3, n.5; PR at IV-2, n.5.

[83] CR at IV-3, n.5 and Tables IV-1 and IV-2; PR at IV-2, n.5 and Tables IV-1 and IV-2.

[84] *** Importer Questionnaire at 6.

[85] *** Importer Questionnaire at 6. *** *Id*. at 7.

[86] CR at IV-3, n.5 and Table III-5; PR at IV-2, n.5 and Table III-5.

[87] CR/PR at Table III-5.

[88] *** in 2001 compared to the domestic industry averages of 13.9 percent, 1.4 percent, and 1.2 percent in 1999, 2000, and 2001, respectively. CR/PR at Table VI-1 and staff financial worksheets.

[89] CR at IV-3, n.5; PR at IV-2, n.5.

Domestic producer *** imported *** of softwood lumber in 2001.[90] Its imports accounted for *** of total imports from Canada and *** of apparent consumption in 2001.[91] ***[92] *** of softwood lumber in the United States in 2001 and accounted for *** of reported domestic production.[93] Finally, *** indicated that it took no position on the petition.[94]

We conclude that appropriate circumstances do not exist for the exclusion of *** pursuant to the related parties provision. While its subject imports were equivalent to *** of its U.S. production in 2001,[95] its financial results appear to be *** those of most other domestic producers that did not import subject merchandise.[96] Thus, *** interests appear to be in both domestic production and importation, and it does not appear to benefit from its subject imports. Moreover, as noted above, no party, including Petitioners, advocated any exclusions of related parties.

Domestic producer *** imported *** of softwood lumber from *** in 2001.[97] Its imports accounted for *** of total imports from Canada and *** of apparent consumption in 2001.[98] ***[99] *** of softwood lumber in the United States in 2001 and accounted for *** of reported domestic production.[100] Finally, *** opposes the petition.[101]

We conclude that appropriate circumstances do not exist for the exclusion of *** pursuant to the related parties provision. *** interests appear to focus more on importation rather than domestic production. Its subject imports were equivalent to *** of its U.S. production in 2001.[102] However, its financial results appear to be *** those of most other domestic producers that did not import subject merchandise, and it therefore does not appear to benefit from its subject imports.[103] Moreover, as noted above, no party, including Petitioners, advocated any exclusions of related parties.

*** imported *** of softwood lumber in 2001.[104] Its imports accounted for *** of total imports

---

[90] CR at IV-3, n.5; PR at IV-2, n.5.

[91] CR at IV-3, n.5 and Tables IV-1 and IV-2; PR at IV-2, n.5 and Tables IV-1 and IV-2.

[92] *** Importer Questionnaire at 4.

[93] CR at IV-3, n.5 and Table III-5; PR at IV-2, n.5 and Table III-5.

[94] CR/PR at Table III-5.

[95] CR at IV-3, n.5; PR at IV-2, n.5.

[96] *** in 2001 compared to the domestic industry averages of 13.9 percent, 1.4 percent, and 1.2 percent in 1999, 2000, and 2001, respectively. CR/PR at Table VI-1 and staff financial worksheets.

[97] CR at IV-3, n.5; PR at IV-2, n.5.

[98] CR at IV-3, n.5 and Tables IV-1 and IV-2; PR at IV-2, n.5 and Tables IV-1 and IV-2.

[99] *** Importer Questionnaire at 4. *** *Id*.

[100] CR at IV-3, n.5 and Table III-5; PR at IV-2, n.5 and Table III-5.

[101] CR/PR at Table III-5.

[102] CR at IV-3, n.5; PR at IV-2, n.5.

[103] *** in 2001 compared to the domestic industry averages of 13.9 percent, 1.4 percent, and 1.2 percent in 1999, 2000, and 2001, respectively. CR/PR at Table VI-1 and staff financial worksheets.

[104] CR at IV-3, n.5; PR at IV-2, n.5.

from Canada and *** of apparent consumption in 2001.[105] ***[106] *** of softwood lumber in the United States in 2001 and accounted for *** of reported domestic production.[107] Finally, *** opposes the petition.[108]

We conclude that appropriate circumstances do not exist for the exclusion of *** pursuant to the related parties provision. *** interests appear to focus more on importation rather than domestic production. Its subject imports were equivalent to *** of its U.S. production in 2001.[109] Its financial results appear to be somewhat different from those of most other domestic producers that did not import subject merchandise.[110] However, as noted above, no party, including Petitioners, advocated any exclusions of related parties.

*** other domestic producers may meet the definition of a related party. While the evidence does not demonstrate whether domestic producer *** has direct or indirect control of ***, a Canadian producer/exporter, its 100 percent ownership would seem to support its definition as a related party.[111] Thus, we have examined whether appropriate circumstances exist for the exclusion of ***.

*** of softwood lumber in the United States in 2001 and accounted for *** of reported domestic production.[112] It subsidiary *** imported *** of softwood lumber in 2001, which accounted for *** of total subject imports from Canada and *** of apparent consumption in 2001.[113] Finally, ***[114]

We conclude that appropriate circumstances do not exist for the exclusion of *** pursuant to the related parties provision. *** interests appear to be primarily in domestic production. *** subject imports were equivalent to *** U.S. production in 2001.[115] Its financial results appear not to be appreciably different to those of most other domestic producers, and it therefore does not appear to benefit from its subject imports.[116]

Domestic producer *** was frequently listed as a major purchaser by importer questionnaire respondents.[117] *** reported purchases of softwood lumber from Canada in the amount of *** in 2001.[118] Its purchases of imports accounted for *** of total subject imports from Canada and *** of apparent

---

[105] CR at IV-3, n.5 and Tables IV-1 and IV-2; PR at IV-2, n.5 and Tables IV-1 and IV-2.

[106] *** Importer Questionnaire at 6. *** *Id*.

[107] CR at IV-3, n.5 and Table III-5; PR at IV-2, n.5 and Table III-5.

[108] CR/PR at Table III-5.

[109] CR at IV-3, n.5; PR at IV-2, n.5.

[110] *** in 2001 compared to the domestic industry averages of 13.9 percent, 1.4 percent, and 1.2 percent in 1999, 2000, and 2001, respectively. CR/PR at Table VI-1 and staff financial worksheets.

[111] CR/PR at IV-3 and CLTA's Prehearing Brief at Exhs. 32 and 33.

[112] Calculated from CR/PR at Tables III-5 and III-7.

[113] CR/PR at IV-3, n.6 and Tables IV-1 and IV-2. ***. *** Importer Questionnaire at 4.

[114] CR/PR at IV-3, n.6 and Table III-5.

[115] Calculated from CR/PR at IV-3, n.6 and Tables III-5 and III-7.

[116] *** in 2001 compared to the domestic industry averages of 13.9 percent, 1.4 percent, and 1.2 percent in 1999, 2000, and 2001, respectively. CR/PR at Table VI-1 and staff financial worksheets.

[117] CR/PR at IV-3.

[118] CR/PR at IV-3, n.7. *** *Id*.

consumption in 2001.[119] However, the record does not indicate that *** has the requisite control of the importer(s) from which it purchases to be deemed a related party. We therefore do not find *** to be a related party.

Accordingly, we define the domestic industry to include all producers of softwood lumber in the United States.

[119] Calculated from CR/PR at IV-3, n.7 and Tables IV-1 and IV-2.

II. USE OF PUBLICLY AVAILABLE INFORMATION IN THESE FINAL INVESTIGATIONS

The domestic softwood lumber industry is fairly large and dispersed. The U.S. Forest Service (USFS) data indicate that 779 establishments produced softwood lumber in the United States in 2001.[120] Although there are large corporations with high volumes of production, most of the softwood lumber producers are small firms.[121]

While the Commission followed its normal practice of collecting data through questionnaires from the domestic producers, importers, purchasers, and foreign producers, the Commission also has relied on publicly available data from secondary sources in these final investigations.[122] [123] The publicly available data provides a comprehensive series that supplements the questionnaire responses.[124] Thus, the Commission has reliable, comprehensive and complete information for these investigations when questionnaire responses are supplemented by publicly available data from secondary sources.[125] [126]

---

[120] CR/PR at III-1 and Tables III-2 and III-3.

[121] CR/PR at III-3. In 2000, the five largest producers accounted for about 32 percent of U.S. softwood lumber production, and the 20 largest firms accounted for more than 50 percent. *Id*. at III-3 and III-6, and Table III-4.

[122] The public sources include Commerce's Current Industrial Reports, Western Wood Products Association's Lumber Facts, Random Lengths, and official import statistics. CR/PR at I-4 and D-3.

[123] The statute directs the Commission to "use the facts otherwise available" if the necessary information is not available on the record. 19 U.S.C. § 1677e.

[124] The coverage for the questionnaire responses is 63.3 percent of U.S. production in 2001, 72.8 percent of imports of softwood lumber into the United States, 79.3 percent of Canadian production and 72.4 percent of Canadian exports to the United States. CR/PR at III-6, IV-1, and VII-2. The Commission forwarded questionnaires to 130 domestic producers believed to account for in excess of 80 percent of U.S. production in 2001. Seventy-six domestic producers provided responses. CR/PR at III-6.

[125] The Commission's use of secondary information has been upheld by the courts. *See, e.g.*, Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 16 (Feb. 1999), *aff'd*, Ranchers-Cattlemen Action Legal Fund, 74 F. Supp. 2d 1353, 1381 (Ct. Int'l Trade 1999); Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), *aff'd*, Alberta Pork Producers' Mktg. Bd. v. United States, 669 F. Supp. 445, 460 (Ct. Int'l Trade 1987). *See also* Chung Ling Co. v. U.S., 805 F. Supp. 45, 49-50 (Ct. Int'l Trade 1992).

[126] Parties were offered the opportunity to provide comments regarding the use of secondary data sources. CR/PR at Appendix D. Petitioners generally supported the use of the secondary sources with the single exception of certain value data. Petitioners' Posthearing Brief at Appendix D-40-41. While CLTA considered the responses to the various Commission questionnaires as the best data, it acknowledged that it is appropriate for the Commission to rely on such publicly available data as aggregate production and shipments, aggregate imports and exports, aggregate consumption, and housing starts. Regarding the pricing and capacity data, CLTA agreed that Random Lengths data was useful for assessing general price trends, but stated that they cannot be used to show under or over-selling or to make cross-species comparisons, and that the publicly available capacity data for the mid-to-late 1990s was adequate to evaluate general trends, but that the questionnaire responses was the best overall data on both size and

(continued...)

III. CONDITIONS OF COMPETITION

Several conditions of competition pertinent to the softwood lumber industry are relevant to our analysis.[127]

On May 29, 1996, the United States and Canada formally entered into the U.S./Canada Softwood Lumber Agreement ("SLA"), which remained in effect for five years, from April 1, 1996 until March 31, 2001. Under the SLA, in exchange for commitments from the United States not to initiate or otherwise take action under several U.S. trade statutes with respect to imports of softwood lumber from Canada, Canada agreed to place softwood lumber on its export control list and to collect a fee on issuance of a permit for export to the United States of softwood lumber first manufactured in the provinces of Ontario, Quebec, British Columbia, or Alberta ("the covered provinces"), for quantities above a negotiated baseline. Under the SLA, up to 14.7 billion board feet of softwood lumber could be exported to the United States from the covered provinces duty-free, a fee of US$50 per thousand board feet applied to annual exports between 14.7 and 15.35 billion board feet, and a fee of US$100 per thousand board feet applied to annual exports that exceeded 15.35 billion board feet.[128] The SLA was structured to spread out the volume of imports of softwood lumber from Canada over the course of each year.

In its preliminary determination, the Commission indicated that it did not consider the representations made by the domestic producers in side letters to the agreement as per se binding on the Commission's analysis, nor did it find the stated purpose of the SLA[129] as legally binding on the Commission's injury analysis in these investigations.[130] Rather, the Commission noted its obligation to investigate the facts and legal arguments in these investigations and recognized the SLA as a significant condition of competition during the period of investigation.[131] Consistent with prior Commission practice,[132] we continue to treat the SLA as a significant condition of competition in our injury analysis.

---

[126] (...continued)
direction of capacity changes over the period of investigation. CLTA's Posthearing Brief, Vol. 2, Tab C at 1, 3-4, and 6-11.

[127] 19 U.S.C. § 1677(7)(C)(iii).

[128] All fees were subject to adjustment for inflation. The SLA also contained a trigger price mechanism allowing for the duty-free export of 92 million additional board feet of softwood lumber first manufactured in the covered provinces over the four quarters following a calendar quarter in which prices exceeded a certain level. Until March 31, 1998, the trigger price was US$405 per thousand board feet for Spruce-Pine-Fir, Eastern, Kiln Dried, 2x4 random length, Standard & Better, Great Lakes delivered as published in Random Lengths. After March 31, 1998, the trigger price rose to $410.

[129] The language of the SLA stated that its purpose was to "ensure that there is no material injury or threat thereof to an industry in the United States from imports of softwood lumber from Canada."

[130] USITC Pub. 3426 at 13 (May 2001).

[131] While the parties continued to disagree in the final phase of these investigations about how the Commission should view the SLA, their arguments are focused more on what impact the SLA and its expiration has had on the conditions of competition than on the legal significance of the terms of the Agreement. Petitioners' Prehearing Brief at 45-49; Petitioners' Posthearing Brief at Appendix B-27; CLTA's Prehearing Brief at 32-34; CLTA's Posthearing Brief at 14 and nn. 10 and 11.

[132] As the Commission stated in its preliminary determination:

(continued...)

The SLA was in effect from April 1996 through March 2001 and the petitions in these investigations were filed on April 2, 2001. We recognize that softwood lumber imports from Canada have been subject to either the SLA, or the pendency of the petition,[133] during the entire period of these investigations. Under these circumstances, where appropriate to provide historical perspective for the 1999-2001 period covered by these investigations, we have examined public data for periods longer than the period of investigation, particularly that pertaining to the time under the SLA as well as prior to the SLA taking effect in 1996.

While the consumption of softwood lumber in the United States has remained relatively flat during the period of investigation, it is higher than it was during the preceding years.[134] During the period of investigation, apparent domestic consumption fluctuated between years and declined slightly (by 0.4 percent) from 54,095 mmbf in 1999 to 53,894 mmbf in 2001.[135] However, apparent domestic consumption increased every year between 1995 and 1999, from 47,641 mmbf in 1995 to a peak of 54,095 mmbf in 1999, an overall increase of 13.5 percent.[136] Thus, apparent domestic consumption was 13.1 percent higher in 2001 compared with 1995. Even with this rate of increase, apparent domestic consumption for softwood lumber did not keep pace with its primary end use, new residential construction, which increased by 18.3 percent from 1995 to 2001.[137]

---

[132] (...continued)
The Commission has uniformly not viewed various voluntary export arrangements and suspension agreements under the statute as being legally dispositive of the question of whether a domestic industry is materially injured or threatened with material injury by reason of subject imports.

USITC Pub. 3426 at 13, n.59. *See, e.g.*, Uranium from Kazakhstan, Inv. No. 731-TA-539A (Final), USITC Pub. 3213 at 12-13 (July 1999) (a suspension agreement entered pursuant to section 734(l) of the Act.); Honey from China and Argentina, Inv. No. 701-TA-402 and & 731-TA-892-893 (Final), USITC Pub. 3470 at 17 (Nov. 2001) (suspension agreement with China); Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 at I-12 n.70 (June 1994) (cross-licensing agreement that restricted import volumes); Certain Carbon Flat-Rolled Steel Products, Inv. Nos. 701-TA-319 et seq., 731-TA-573 et seq. (Final), USITC Pub. 2664, vol. I at 19 (Aug. 1993) (voluntary restraint agreements).

[133] 19 U.S.C. § 1677(7)(I) states that:

The Commission shall consider whether any changes in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation . . . is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States.

[134] CR/PR at Table IV-2.

[135] CR/PR at Table IV-2.

[136] CR/PR at Table IV-2.

[137] CR at IV-4 and Table IV-6; PR at IV-3 and Table IV-6. Housing starts reached a peak in 1999 at 1.66 million units, declining to 1.59 million units in 2000 and remaining relatively flat at 1.60 million units in 2001. Housing starts were 23.0 percent higher in 1999 and 18.3 percent higher in 2001 compared with (continued...)

[137] (...continued)
housing starts in 1995. *Id.*

Demand for softwood lumber is derived primarily from demand for construction uses, including new home construction, repairs and remodeling, and commercial construction (respectively accounting for 38 percent, 30 percent, and 14 percent of demand in 2000).[138] These end use demands for softwood lumber are determined by such factors as the general strength of the overall U.S. economy (measured by the growth of GDP), with residential construction also affected by the level of long-term and home mortgage interest rates.[139] During the period of investigation, domestic softwood lumber consumption remained relatively level, and housing starts declined overall but remained at historically high levels despite low mortgage rates and continued increases in real GDP.[140]

In response to Commission questionnaires, most producers and importers indicated that they believed overall demand would remain relatively unchanged until the second half of 2002 or the beginning of 2003, and then would begin to increase as the U.S. economy rebounded from recession.[141] Industry forecasts suggest slight growth in U.S. housing starts in 2002 and further increases in 2003.[142] Consequently, lumber consumption is forecast to either remain flat or increase slightly in 2002, followed by increases in 2003.[143]

Demand for softwood lumber also is impacted by other factors. A number of products, such as engineered wood products (EWPs), steel studs for framing, brick and block for exterior uses, and

---

[138] CR/PR at Table I-1.

[139] CR at II-4; CLTA's Prehearing Brief, Vol. 2 at 9. Demand for new residential housing depends on domestic income levels and the cost of housing. An important component in considering the cost of housing is the mortgage interest rate because interest costs during the typical full 30-year payment period can equal or exceed the initial purchase price. USITC Pub. 3426 at II-9 to II-10. Long-term interest rates also affect the cost of financing the construction. CLTA's Prehearing Brief, Vol. 2 at 9-10.

[140] CR at V-14 and Tables IV-2 and IV-6; Petitioners' Posthearing Brief, Appendix H at Exhibit 1; CLTA's Prehearing Brief, Vol. 2 at 10-11 and Table II-1. Domestic softwood lumber consumption, real GDP, and housing starts generally increased between 1996 and 1999, while mortgage interest rates generally declined. USITC Pub. 3426 at 14-15.

[141] CR at II-5; PR at II-3 - II-4. While U.S. housing starts increased in January and February of 2002 to the highest levels for single-family starts in over 20 years, they then fell by 7.8 percent in March 2002 to the lowest level in two years. *Id*. at n.10.

[142] CLTA's Posthearing Brief, Vol. 2, Tab R at 1-3. Industry analyst Clear Vision Associates forecasts U.S. housing starts to increase by 3 percent from 1.6 million units in 2001 to 1.65 million units in 2002, and then further increase by 6 percent to 1.75 million units in 2003. CLTA's Prehearing Brief, Vol. 3, Tab 1 at 1 and 2. Industry analyst RISI forecasts U.S. housing starts to increase by 4.3 percent from 1.61 million units in 2001 to 1.68 million units in 2002, and then further increase by 1.8 percent to 1.71 million units in 2003. Petitioners' Posthearing Brief, Vol. II, Appendix H, Exhibit 28 at 3 (Table 2); CLTA's Posthearing Brief, Vol. 2, Tab R at 1.

[143] CLTA's Posthearing Brief, Vol. 2, Tab R at 1-3. Industry analyst Clear Vision Associates forecasts U.S. demand for softwood lumber to increase by 3.7 percent from 53.6 mmbf in 2001 to 55.6 mmbf in 2002, and then further increase by 4.7 percent to 58.2 mmbf in 2003. CLTA's Prehearing Brief, Vol. 3, Tab 1 at 1 and 3. Industry analyst RISI forecasts U.S. demand for softwood lumber to increase by 1.0 percent from 53.2 mmbf in 2001 to 53.7 mmbf in 2002, and then further increase by 4.0 percent to 56 mmbf in 2003. Petitioners' Posthearing Brief, Vol. II, Appendix H, Exhibit 28 at 5 (Table 3); CLTA's Posthearing Brief, Vol. 2, Tab R at 2.

composites and plastic resins for decking and fencing, may substitute for softwood lumber.[144] While these substitute products have increased in importance over the last few years, they still account for a small share of the market traditionally utilizing softwood lumber.[145] Demand for softwood lumber also is somewhat seasonal, with the highest building activity generally occurring between March and September.[146] Softwood lumber accounts for a fairly small share of the total cost of its primary end-use, house construction.[147] Overall U.S. demand for softwood lumber is likely to experience small to moderate changes in response to changes in price.[148]

While the supply of softwood lumber available to the U.S. market declined during the period of investigation after reaching a peak in 1999, both domestic and Canadian producers increased production from 1995 to 2001 through improvements in capacity utilization and/or expansion of production capacity.[149] [150] Apparent domestic consumption exceeds domestic production capabilities. As a result some

---

[144] CR at II-5; PR at II-4.

[145] CR at II-5 - II-6; PR at II-4. Commission questionnaire respondents indicated that EWPs are perceived to have a fairly significant share of the market for structural framing applications. CLTA estimated that EWPs account for 5 percent of the U.S. market. *Id*. at II-6 and n.15. According to Petitioners, it is only in residential housing floor applications, which make up less than 6.5 percent of softwood lumber consumption, that substitute products hold anything more than a minimal share. They claimed that steel studs have failed to make significant inroads, making up less than 4 percent of all new construction for 2000. Petitioners' Prehearing Brief at 40-44; Petitioners' Posthearing Brief at Appendix A-28 - A-33. Questionnaire respondents indicated that use of substitute products is generally driven by price. CR at II-6. However, both Petitioners and questionnaire respondents indicated that the adoption of EWPs such as engineered wood I-joists has been driven by performance, not by price. *Id*. and Petitioners' Prehearing Brief at 42-43.

[146] CR at II-4; PR at II-3.

[147] CR at II-6 and II-15; PR at II-5 and II-10. Estimates of the total cost of house construction accounted for by softwood lumber ranged from ***. CR at II-6; PR at II-5. Moreover, a 20 percent change in the price of the lumber and panel components of a house is estimated to increase or decrease the price of the house by approximately $1,400. Conditions of Competition in the U.S. Forest Products Trade, Inv. No. 332-400, USITC Pub. 3246 (Oct. 1999) at 3-11 (citing Weekly Market Report of Lumber and Panel Products, The Value of Forest Products Then and Now (C.C. Crow's Pub.: Portland, OR, June 11, 1999) as the source for the data calculations). National Lumber and Building Material Dealers Association and the National Association of Home Builders ("Dealers/Builders") alleged that "a 32 percent tariff on Canadian lumber could add up to $1,500 to the cost of building a new home." Dealers/Builders' Posthearing Brief at 4.

[148] CR at II-4 and II-15; PR at II-3 and II-10.

[149] Public data indicate that domestic production of softwood lumber steadily declined from a peak level of 36,606 mmbf in 1999 to 34,996 mmbf in 2001, a level 8.6 percent higher than in 1995. Domestic capacity utilization peaked in 1999 at 92.0 percent, and was 89.7 percent in 2000 and 87.4 percent in 2001 compared with 86.1 percent in 1995. Domestic production capacity was fairly level during the period of investigation, following a small but steady increase between 1995 and 1999; the level in 2001 was 7.1 percent higher than in 1995. CR/PR at Table III-6. Domestic producers' questionnaire responses (covering approximately 63 percent of domestic production) indicated increases in production from 21,758

(continued...)

imports are required in the U.S. market to satisfy demand. Subject imports of softwood lumber from Canada accounted for 33.2 percent of apparent domestic consumption in 1999, 33.6 percent in 2000, and 34.3 percent in 2001.[151] While nonsubject imports were present in the U.S. market during the period of investigation, they never exceeded 3 percent of apparent domestic consumption.[152]

In the United States, the leading species, or species groups, of softwood lumber produced are SYP (45.2 percent in 2000),[153] Douglas fir (22.7 percent) and hem-fir (12.5 percent) lumber, as well as a variety of other lumber species, including ponderosa pine, SPF, WRC and redwood.[154] In Canada, SPF is the predominant species of softwood lumber (84.6 percent in 2001), followed next by hem-fir (6.6 percent) and Douglas fir (3.7 percent) lumber, and then by a variety of other lumber species.[155]

The parties disagreed regarding the level of substitutability between subject imports and the domestic like product, in particular whether there is species segmentation by application, region of the country, or builder preferences.[156] After carefully considering the record, we find on balance that subject imports of softwood lumber from Canada are at least moderately substitutable for domestically-produced

---

[149] (...continued)
mmbf in 1999 to 22,163 mmbf in 2001, and capacity from 22,847 mmbf in 1999 to 24,709 mmbf in 2001; reported capacity utilization was 92.8 percent in 1999, 88.5 percent in 2000, and 86.1 percent in 2001. CR/PR at Table III-7.

[150] Public data indicate that Canadian production, which was relatively flat from 1999 to 2000, declined from 29,041 mmbf in 1999 to 27,457 mmbf in 2001, a level 5.2 percent higher than 1995. Canadian producers' capacity increased from 32,100 mmbf in 1999 to 32,800 mmbf in 2001, following a steady increase from 1995 to 1999; the level in 2001 was 10.4 percent higher than in 1995. Canadian capacity utilization peaked in 1999 at 90.5 percent, and was 88.9 percent in 2000 and 83.7 percent in 2001. Canadian capacity utilization had been at a relatively stable level ranging from 87.3 percent to 87.8 percent from 1995 to 1999. CR/PR at Table VII-1. Canadian producers' questionnaire responses (covering nearly 80 percent of production in Canada) followed similar trends with production declining from 22,452 mmbf in 1999 to 21,770 mmbf in 2001. Reported capacity in Canada was 24,871 mmbf in 1999 and 25,804 mmbf in 2001, and reported capacity utilization was 90.3 percent in 1999, 88.8 percent in 2000, and 84.4 percent in 2001. CR/PR at Table VII-2.

[151] CR/PR at Table IV-2.

[152] The volume of nonsubject imports (from Brazil, Chile, New Zealand, Germany, Sweden, Austria and other countries) increased from 937 mmbf in 1999 to 1,378 mmbf in 2001; as a share of apparent domestic consumption, nonsubject imports increased from 1.7 percent in 1999 to 2.6 percent in 2001. Nonsubject imports accounted for 6.9 percent of total U.S. imports of softwood lumber in 2001. CR at II-10, n.23 and Tables IV-1 and C-1; PR at II-7, n.23 and Tables IV-1 and C-1.

[153] The evidence indicates that approximately one-half of domestically-produced southern yellow pine is pressure-treated. Petitioners' Posthearing Brief at 4, n.22; Petitioners' Final Comments at 11.

[154] CR/PR at Table III-11.

[155] CR/PR at Table VII-6.

[156] Petitioners' Prehearing Brief at 11-37 and Exhs. 4, 5 and 85; Petitioners' Posthearing Brief at 4-8, Appendix B-11, and Appendix C-12 - C-13; CLTA's Prehearing Brief at 9-17; CLTA's Posthearing Brief at 3-4; Dealers/Builders' Prehearing Brief at 1-43; Dealers/Builders' Posthearing Brief at 1-14; PAL/Millman's Prehearing Brief at 1-50; PAL/Millman's Posthearing Brief at 1-11.

softwood lumber.[157] As we have recognized in prior investigations, Canadian softwood lumber and the domestic like product generally are interchangeable, notwithstanding differences in species and preferences.[158] In particular, the evidence in these investigations demonstrates that subject imports and domestic species are used in the same applications. A majority of purchasers (36 of 51) responding to the Commission questionnaire reported that U.S. and Canadian softwood lumber can be used in the same general applications, recognizing that performance characteristics and customer preferences place some limitations on interchangeability among species.[159] Moreover, the Annual Builders Survey by the National Association of Home Builders Research Center (NAHBRC) provides clear evidence that SPF, SYP, and Douglas fir/hem fir are used in such same construction applications as lumber joists, light frame exterior walls, roof trusses, and roof rafters.[160] While regional preferences do exist – species are often used in close proximity to where they are milled – these preferences seem to reflect in large part availability of species, which is affected by transportation costs.[161] [162]

Softwood lumber prices can fluctuate considerably from year to year, day to day, and even from hour to hour.[163] Price changes depend on a number of factors, including seasonal demand patterns, access to timber supplies, weather, the strength of competition among various lumber species within a particular region, and expected future market conditions. Domestic producers and importers of softwood lumber from Canada negotiate selling prices with their customers based on these and other factors, including weekly market price reports such as Random Lengths, inventory levels, the size of an order, and demand in export markets. With a large number of suppliers and purchasers, and a multiplicity of daily transactions, the record in these investigations indicates that prices respond quickly to changes in

---

[157] *See* CR at II-6, II-7, and II-15; PR at II-5 and II-10.

[158] *See, e.g.*, Softwood Lumber III, USITC Pub. 2530 at 28-29, and 34, *aff'd in part*, In the Matter of Softwood Lumber from Canada, USA-92-1904-02, Decision of the Panel Reviewing the Final Determination of the U.S. International Trade Commission , at 25-28 (July 26, 1993)

[159] CR at II-8; PR at II-6. In Commission questionnaire responses, 32 of 57 purchasers indicated that they have switched between different species of softwood lumber for use in the same application, citing availability and price as factors in their substitution decisions and citing most frequently substitution between Douglas fir, hem-fir, and SPF. CR at II-12; PR at II-8. Purchasers' questionnaire responses indicated that all eight major species groups are used in residential and commercial construction and in construction of prefabricated components, such as joists and trusses. CR/PR at Table II-5; Petitioners' Prehearing Brief, Vol. II at Exhibit 85.

[160] Dealers/Builders' Posthearing Brief at Exhibit 3. This survey provides the following results for use of different species for certain construction applications in the United States in 2000, *** *Id*. at 5, 10, and 15.

[161] CR at II-10, V-2, V-3, and V-5; PR at II-7- II-8, and V-2 - V-4.

[162] Tr. at 185-190 and 204-209 (Florida: floor joists - SYP, wall/framing - SPF, headers - SYP, trusses - SYP, *Id*. at 185-190, 204; Texas: floor joists - SYP, wall/framing - SYP, headers - SYP, trusses - SYP, *Id*. at 205; Indiana and West: floor joists - SPF, wall/framing - SPF, headers - SPF, trusses - SPF, *Id*. at 205-207; Massachusetts: floor joists - SPF, wall/framing - SPF, headers - SYP, trusses - SYP, *Id*. at 206); CR at II-11 and II-12; PR at II-8 (*e.g.*, purchasers' comments on species preferences include: ***); and Dealers/Builders' Prehearing Brief at Exhs. 2, 3, 4, 6, 8, 9, 11, 13, 14 15, 16, 17, 21, and 23; Petitioners' Posthearing Brief at 5-6.

[163] CR at V-4 and V-5; PR at V-3 and V-4.

supply and demand and that individual producers generally are price-takers in this highly competitive market.

Softwood lumber prices generally differ substantially depending on grades and dimensions, and may differ by the species and applications involved, with better grades and wider dimensions usually carrying higher prices than lower grades and narrower dimensions.[164] Parties disagreed about the extent to which preferences may transcend differences in prices among the species.[165] However, the evidence in these investigations demonstrates that prices of different species have an effect on other species' prices.[166] The particular grades/species/dimensions of softwood lumber chosen by each builder or contractor are based on the building code requirements, uses, and regional/individual builder preferences for particular lumber species, as well as on relative prices of the softwood lumber products. As a result, price/performance considerations for softwood lumber can involve a number of factors in the downstream market, and may differ markedly across regions of the United States and from customer to customer within a single region. In response to Commission questionnaires, price and availability were cited second most frequently after quality as among the top three factors in purchasing decisions.[167]

Finally, we recognize that U.S. and Canadian producers have invested considerably in mills across the border from their parent operations and that there has been substantial and increasing integration in the North American lumber market.[168] Moreover, as discussed above, U.S. producers import or purchase a sizable volume of subject imports.[169]

IV. SEPARATE INJURY DETERMINATIONS AND CROSS-CUMULATION

In its preliminary determination, the Commission rejected arguments raised by several parties that the Commission should treat softwood lumber imports from the Canadian Maritime Provinces as fairly

---

[164] CR at V-5; PR at V-3 and V-4.

[165] *See, e.g.*, Petitioners' Prehearing Brief at 38-39; Petitioners' Posthearing Brief at 7-10, Appendix C-2 - C-12, and Appendix D-1 - D-10; Dealers/Builders' Prehearing Brief at 46-49; PAL/Millman's Prehearing Brief at 52-56; CLTA's Prehearing Brief at 17-19 and Appendix A; CLTA's Posthearing Brief at 3.

[166] *See, e.g.*, Petitioners' Posthearing Brief at Appendix C-5 and Appendix D-3; Petitioners' Prehearing Brief at Appendix C. The effect of the price and availability of one species on another is clearly evident in the reports in industry publications. *See, e.g.*, Random Lengths ("Prices took the biggest hits in Canadian SPF, and producers of Western species had to follow suit to stay competitive." Lumber Market Report at 4, Oct. 19, 2001; "Warmer weather, a drop in interest rates, and an abrupt rise in S-P-F prices all got credit for boosting buyer interest in Southern Pine." at 4, Apr. 20, 2001; "Western and Eastern S-P-F were the leaders, pulling other dry species along." at 4, Feb. 2, 2001; "In the South, truss and manufactured home builders substituted the narrows of Southern Pine for Spruce." at 4, Aug. 17, 2001); Wickes ("Pine mills experienced mixed results as some S-P-F truss buyers continued to switch to SYP and, except for 2x4 and 2x8, the pace of sales slowed from last week." Aug. 27, 2001; "Wide widths were in the highest demand especially in hem-fir where buyers looked for S-P-F substitutes." Dec. 17, 2001). Petitioners' Prehearing Brief at Appendix C.

[167] CR/PR at Table II-3.

[168] CR at III-11; PR at III-6.

[169] CR at IV-3; PR at IV-2.

traded and declined to treat the Maritime Provinces separately from the rest of Canada.[170] Since the Commission's preliminary determination, Commerce explicitly exempted imports of softwood lumber from the Maritime Provinces from its countervailing duty investigation and thus from its affirmative CVD determination.[171] However, there is no dispute that Commerce's affirmative final antidumping duty determination involves softwood lumber imports from Canada, including the Maritime Provinces.[172] We examine two issues that have been raised in the final phase of these investigations as a result of Commerce's determination: 1) whether the Commission should conduct a separate injury determination with respect to imports of softwood lumber from the Maritime Provinces; and 2) whether the Commission is precluded from cross-cumulating subsidized and dumped imports from the same country.

The Maritime Lumber Bureau, the Provinces of New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, and the softwood lumber producers located in those provinces (collectively, "the Maritime Respondents") renew their "request that the Commission separately consider the Maritimes consistent with the U.S. government's separate treatment of the Maritimes in prior softwood lumber matters" and on the ground that these Provinces satisfy the statutory definition of "country" under 19 U.S.C.§ 1677(3), and as such, they are entitled to a separate injury determination.[173] They "submit that the trade laws as administered by the Commission may take into account the legal position of the Maritimes," as evidenced by the "international agreements, which provide disparate treatment to the Maritime Provinces separate and apart from the rest of Canada. . . ."[174]

Respondents' arguments are based on the incorrect premise that the Commission can look behind Commerce's determination as to the scope of the subject merchandise sold at less than fair value. The antidumping statute directs the Commission to make its injury determination in the final phase of an investigation "by reason of imports . . . of the merchandise with respect to which the administering authority has made an affirmative determination."[175] Thus, the subject imports that the Commission considers in its injury analysis are defined by Commerce, and when Commerce made its final affirmative antidumping duty determination, it clearly identified the subject merchandise as softwood lumber from Canada, including the Maritime Provinces. The Commission's reviewing courts have repeatedly affirmed the Commission practice of not going behind Commerce's determinations to make its own independent

---

[170] USITC Pub. 3426 at 16, n.76 (May 2001).

[171] 67 Fed. Reg. 15545, 15547 (April 2, 2002) and 66 Fed. Reg. 40228 (Aug. 2, 2001) (amendment to notice of initiation). This exemption does not apply to softwood lumber products produced in the Maritime Provinces from Crown timber harvested in any other Province. *Id*.

[172] 67 Fed. Reg. 15539 (April 2, 2002).

[173] Maritime Respondents' Posthearing Brief at 4-6 and 10-12.

[174] Maritime Respondents' Posthearing Brief at 9-11 and n. 27. In relying on the Federal Circuit in Algoma Steel Corp. v. United States, Respondents fail to give the full quote in Algoma, which states: "This is not to say that a similar printout might not justify consideration if the raw data were supported by reasons specific to the particular case, why sales at MTFV were not relevant to the injury determination." Algoma, 865 F.2d at 242 (Fed. Cir. 1989). Thus, the statement in Algoma relates to the consideration of Commerce data for purposes of the Commission's analysis of whether there was material injury and not to looking behind Commerce's authority to determine the scope of imports subject to investigation.

[175] 19 U.S.C. § 1673d(b)(1).

assessments.[176] The Federal Circuit in Algoma explicitly stated: "one unique feature is the allocation of responsibility to two agencies otherwise independent of one another, the Commerce Department and the ITC, the requisite injury determination for the latter, and everything else for the former."[177] As the Court held in Algoma, the statute "seems to us to speak in plain language and to be unambiguous."[178]

While the Maritime Respondents also attempted in the final phase of these investigations to demonstrate that the Maritime Provinces are a "country under the Agreement" for purposes of application of the Commission's injury test, the statute does not authorize the Commission to determine that the Maritime Provinces are a "country" pursuant to 19 U.S.C. § 1677(3). We have previously found that the statute vests this authority in Commerce. Accordingly, consistent with the Commission's treatment of similar arguments raised in the Softwood III investigation by Quebec and affirmed by the panel,[179] we do not conduct a separate injury analysis of subject imports from the Maritime Provinces.

The Government of Canada raised another issue regarding whether the Commission is precluded from cross-cumulating subsidized and dumped imports from the same country.[180] The Government of Canada maintained that the "statute requires separate determinations with regard to subsidized imports and with regard to dumped imports" and alleged that "the Commission must conduct *separate* analyses and issue *separate* determinations with regard to injury through the effects of subsidies and through the effects of dumping."[181]

We conclude, as we have in prior cases, that we are legally required to cross-cumulate subsidized and dumped imports from the same country.[182] The Commission has relied on the Federal Circuit decision in Bingham & Taylor v. United States, which held that cross-cumulation of dumped and subsidized imports

---

[176] *See, e.g.*, Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), aff'd, 865 F.2d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989); Goss Graphics System, Inc. v. United States, 33 F. Supp.2d 1082, 1093 (Ct. Int'l Trade 1998). *See also* NEC Corp., 36 F. Supp.2d at 383 (Ct. Int'l Trade 1998)("the Commission must accept the determination of Commerce as to the scope of the imported merchandise sold at less than fair value. . . ."); Makita Corp. v. United States, 974 F. Supp. 770, 783 (Ct. Int'l Trade 1997).

[177] Algoma, 865 F.2d at 241 (Fed. Cir. 1989). The Maritime Respondents fail to take heed of all the language in Algoma, which they cite to, when they contend that it is "well established that Commerce and the Commission 'have separate and different, although related duties and responsibilities" and that this does not commit the determination of the meaning of "country" to Commerce alone. Maritime Respondents' Posthearing Brief at 11, n. 27.

[178] Algoma, 865 F.2d at 242 (Fed. Cir. 1989).

[179] In the Matter of Softwood Lumber from Canada, USA-92-1904-02, Decision of the Panel on Review of the Remand Determination of the U.S. International Trade Commission, (Jan. 28, 1994).

[180] Other Canadian Respondents including CLTA, and the Maritime Respondents indicated that they supported the Government of Canada's arguments on this issue. CLTA's Prehearing Brief at 6; Maritime Respondents' Posthearing Brief at 13.

[181] Government of Canada's Prehearing Brief at 4-5,7, and 12-14; Government of Canada's Posthearing Brief at 1-7.

[182] *See, e.g.*, Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 701-TA-368-371 (Final), USITC Pub. 3075 at 21-22 (Nov. 1997); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden and Taiwan, Inv. Nos. 701-TA-373 (Final) and 731-TA-769-75 (Final), USITC Pub. 3126 at 12 n.64 (Sept. 1998).

is mandatory whenever the statutory cumulation factors are otherwise satisfied.[183] Moreover, in Steel Wire Rod, the Commission rejected Quebec's assertion that Congress overruled Bingham & Taylor and expressly prohibited cross-cumulation in the Uruguay Round Agreements Act ("URAA").[184] As the Commission previously found, the current version of the U.S. statute, 19 U.S.C. §§ 1677(7)(G)(i), 1677(7)(H), clearly requires the Commission to cumulate imports from *all countries* with respect to which petitions are filed (or investigations self-initiated) *under sections 702 or 732* on the same day. Although the URAA does not expressly mention cross-cumulation, the new statutory language, like the language addressed by the Bingham & Taylor court, is broad enough to encompass cross-cumulation. Both the legislative history relied upon by the court in Bingham & Taylor (in particular, Congress's concern that the Commission address on a cumulated basis all unfairly traded imports that might be having a "hammering effect" on the domestic industry) and the parallel statutory scheme relied on by that court were not changed by the URAA. The only explicit reference to cross-cumulation in the legislative history of the URAA indicates Congress's intent to preserve prior practice,[185] and in any event, Congress cannot reasonably be understood to have prohibited something as important and controversial as cross-cumulation by means of a subtle wording change.[186] Accordingly, we find that the statute is better interpreted as consistent with mandatory cross-cumulation.[187]

Moreover, the Government of Canada's justification for separate determinations, *i.e.*, that the Commission must consider the effects of the dumping or subsidies rather than the impact of the dumped or subsidized imports, is contrary to the U.S. statute and well-established case law. The U.S. statutory provisions governing the Commission's final antidumping and countervailing duty determinations explicitly direct the Commission to make a final determination of whether an industry is materially injured or threatened with material injury "by reason of imports . . . of the merchandise with respect to which the administering authority has made an affirmative determination."[188] The statutory language clearly requires the Commission to consider the impact of the subject imports and not the effects of the dumping or

---

[183] 815 F.2d 1482 (Fed. Cir. 1987), aff'g 627 F. Supp. 793, 798 (Ct. Int'l Trade 1986). The court found that the statutory term "subject to investigation" contained in the former section 1677(7)(C)(iv) did not expressly require cross-cumulation, but was broad enough to encompass both dumped and subsidized imports. To support its finding, the court relied on legislative history indicating that Congress wanted to establish a uniform practice of cumulation covering the broad category of "simultaneous unfair imports from different countries." It also relied on the fact that the statutory standards for both cumulation and material injury are exactly the same in dumping and subsidy cases, indicating the complementary role of the determinations in the statutory scheme.

[184] USITC Pub. 3075 at 21 (Nov. 1997).

[185] Statement of Administrative Action ("SAA"), H.R. Rep. 103-316, vol. 1 at 847-850 and 944 (1994).

[186] *See* Sutherland Statutory Construction § 23.10 (5th ed. 1993).

[187] *Accord* USITC Pub. 3075 at 21 (Nov. 1997). In Steel Wire Rod, the Commission also disagreed with Quebec that U.S. adherence to the WTO Subsidies Agreement requires a different result. The Commission stated that: "[W]hile Quebec interprets Article 15 of the Agreement as precluding cross-cumulation, there is no binding decision of the WTO addressing the issue of cross-cumulation. Moreover, the URAA makes it clear that, in the event of a conflict between U.S. law and the Subsidies Agreement, the Commission is bound to follow U.S. law. 19 U.S.C. § 3512; SAA at 14." *Id.* at n. 105.

[188] 19 U.S.C. §§ 1671d(b)(1) and 1673d(b)(1).

subsidies. Moreover, the Commission's reviewing courts have explicitly upheld this

interpretation of the statute.[189] We conclude that U.S. law requires the Commission to engage in cross-cumulation and thus cross-cumulate dumped and subsidized imports of softwood lumber from Canada.[190]

V. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In the final phase of antidumping duty and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[191] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[192] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[193] In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[194] [195] No single factor is dispositive, and all relevant

---

[189] The CIT recently affirmed in Titanium Metal Corp. that:

> the statutory language does not 'require that ITC demonstrate that dumped imports, through the effects of particular margins of dumping, are causing injury. Rather, ITC must examine the effects of imports of a *class or kind* of merchandise which is found to be sold at LTFV and make its conclusion about causation accordingly.'

Titanium Metal Corp. v. United States, 155 F. Supp.2d 750, 757 (Ct. Int'l Trade 2001), *quoting*, Iwatsu Elec. Co. v. United States, 758 F. Supp. 1506, 1510 (Ct. Int'l Trade 1991). As the Titanium Metal court further stated: "the real question addressed to the ITC by the statute is what effect imports in a class of merchandise sold at LTFV have on the domestic industry producing the 'like' product." 155 F. Supp.2d at 758, *quoting*, Algoma Steel, 688 F. Supp. 639, 645 (Ct. Int'l Trade 1988).

[190] Furthermore, as the Commission noted in Steel Wire Rod, the URAA makes it clear that, in the event of a conflict between U.S. law and the Subsidies Agreement, the Commission is bound to follow U.S. law. 19 U.S.C. § 3512; SAA at 670.

[191] 19 U.S.C. §§ 1671d(b) and 1673d(b).

[192] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). *See also* Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[193] 19 U.S.C. § 1677(7)(A).

[194] 19 U.S.C. § 1677(7)(C)(iii).

[195] CLTA contended that the Commission "must separate and distinguish the injurious effects of the other factors from the injurious effects of dumped imports." CLTA's Prehearing Brief at 8; *see also* Government of Canada's Prehearing Brief at 4-11. This argument does not have a basis in the case law. Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int'l Trade 2002) ("Chilean Salmon") (affirmed that "[t]he Commission is not required to isolate the effects of subject imports from other factors contributing to injury" or make "bright line distinctions" between the effects of subject imports and other causes. *Id*.); Taiwan Semiconductor Industry Ass'n v.

(continued...)

factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[196]

For the reasons discussed below, we determine that the domestic softwood lumber industry is not materially injured by reason of subject imports from Canada found to be sold at LTFV, and to be subsidized, but it is threatened with material injury by reason of such imports.

A. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides 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."[197]

The volume of imports of softwood lumber from Canada increased during the period of investigation, while their total value declined.[198] The volume of subject imports by quantity was 2.8 percent higher in 2001 compared with 1999. The market share of imports of softwood lumber from Canada increased from 33.2 percent in 1999 to 34.3 percent in 2001.[199]

While the volume and market share of subject imports increased from 1999-2001, we recognize that subject imports have accounted for this level, and even slightly higher levels, of market share in the four years prior to these investigations.[200] Imports of softwood lumber from Canada held a substantial share of the domestic market with fluctuations within a range of 2.7 percentage points over the last seven years, and subject imports' 2001 market share (34.3 percent) was lower than that in 1995 prior to the SLA (35.7 percent).[201] Nonetheless, this large volume of subject imports both in absolute terms and relative to consumption in the United States is significant.

B. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

---

[195] (...continued)
USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) ("[T]he Commission need not isolate the injury caused by other factors from injury caused by unfair imports. . . . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports." *Id*. (emphasis in original)).

[196] 19 U.S.C. § 1677(7)(C)(iii).

[197] 19 U.S.C. § 1677(7)(C)(i).

[198] The volume of imports of softwood lumber from Canada increased from 17,983 mmbf in 1999 to 18,483 mmbf in 2001. The value of subject imports decreased from $7.1 billion in 1999 to $6.0 billion in 2001. CR/PR at Tables IV-1 and C-1.

[199] CR/PR at Tables IV-2 and C-1. While relatively small in volume, nonsubject imports also increased market share during the period of investigation from 1.7 percent in 1999 to 2.6 percent in 2001. Consequently, the market share of domestic producers declined from 65.0 percent in 1999 to 63.1 percent in 2001. *Id*.

[200] CR/PR at Table IV-2.

[201] CR/PR at Table IV-2.

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic 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.[202]

As discussed above, we find that there is at least a moderate degree of substitutability between subject imports of softwood lumber from Canada and the domestic like product. The record indicates that prices of a particular species will affect the prices of other species, particularly those that are used in the same or similar applications.[203] Nevertheless, because of the nature of this market, direct price comparisons between domestic products and subject imports are highly problematic whether based on questionnaire or public data. While the Commission collected pricing data for six specific softwood lumber products from purchasers, these data yielded a total of only two direct price comparisons.[204] Consequently, we place little weight on this information because the reported quantities of softwood lumber involved in the delivered price comparisons are very limited. Thus, we can not draw any conclusions regarding underselling from the questionnaire data in these investigations.[205] [206]

While there are a number of different sources of public pricing information regarding softwood lumber products (including Random Lengths, Crow's, Madison's, and the Southern Pine Bulletin),[207] these data series do not yield improved comparisons, despite their much broader coverage. Prices change frequently, as often as on an hourly basis, based on the grade and dimension, seasonal demand, access to timber supplies, weather, expected future market conditions, and the strength of competition among various softwood species within a particular region.[208] Moreover, although prices of one species affect those of others, absolute price levels differ, making direct cross-species comparisons inappropriate for purposes of our underselling analysis. Thus, despite our best efforts and those of parties to these investigations, we cannot determine, based on this record, whether there has been significant underselling by subject imports.

---

[202] 19 U.S.C. § 1677(7)(C)(ii).

[203] *See* note 166 *supra* and note 273 *infra*.

[204] CR at V-14 - V-15 and Tables V-3 - V-5; PR at V-11 - V-12 and Tables V-3 - V-5. The six products were chosen by Commission staff, with input from Petitioners and Respondents, as the most likely products to permit appropriate price comparisons.

[205] We have encountered similar problems obtaining useful pricing data for assessing underselling in prior Softwood Lumber cases. The parties agreed that, in this industry, accurate price comparisons are difficult to compile. See, e.g., Tr. at 93, 269-273; Dealers/Builders' Posthearing Brief at 12-14.

[206] Most domestic producers responding to the Commission's questionnaires were unable to document lost sales or lost revenue allegations, and the Commission was unable to confirm any of the nineteen lost sales or twenty-three lost revenue allegations contained in the petitions. CR at V-19 - V-24, and Tables V-6 and V-7; PR at V-13 - V-14, and Tables V-6 and V-7.

[207] CR at V-6; PR at V-4 and V-5.

[208] CR at V-4 and V-5; PR at V-3 and V-4.

However, both the questionnaire and public data on the record do permit an analysis of price trends. In particular, the pricing information for softwood lumber published in Random Lengths is the source the industry most cited throughout this investigation as a pricing guide.[209]

Random Lengths data indicate that prices of both the domestically-produced and imported Canadian softwood lumber products increased through the second or third quarters of 1999, before falling substantially through the third and fourth quarters of 2000 to their lowest point for the 1999-2001 period.[210] Prices during the first quarter of 2001 rose somewhat or remained near their levels in the fourth quarter of 2000, then significantly increased in mid-2001 before declining again in the third and fourth quarters of 2001.[211]

We recognize, and public sources generally confirm,[212] that the price declines, particularly in 2000, were the result of too much supply in a market with high, but relatively stable, demand.[213] [214] Despite near

---

[209] CR at V-6; PR at V-4 and V-5. Random Lengths, Inc. collects weekly price data from suppliers and purchasers and calculates weighted-average prices based on such factors as the size of the transaction and the quality of the lumber. Random Lengths publishes these data in its weekly and annual publications. *Id.*

[210] For example, the price of SYP fell 32.9 percent, from a peak of $434/mbf in the third quarter 1999 to a low of $291/mbf in the fourth quarter 2000. The price of WSPF (a product mostly imported from Canada) fell 39.3 percent, from a peak of $336/mbf in the second quarter 1999 to $204/mbf in the fourth quarter 2000. CR/PR at Tables V-1 and V-2.

[211] CR at V-13, Tables V-1 and V-2, and Figures V-3 - V-5; PR at V-11, Tables V-1 and V-2, and Figures V-3 - V-5. These trends are consistent with information reported in other public sources and questionnaire responses. Official Commerce statistics indicate that the average unit value of imports of softwood lumber from Canada decreased from $395.72 in 1999 to $347.89 in 2000 and $323.57 in 2001. CR/PR at Table C-1. The average unit value of U.S. shipments of softwood lumber decreased from $416.13 in 1999 to $361.07 in 2000, and $347.86 in 2001 according to questionnaire responses. *Id*. *See also* Petitioners' Posthearing Brief, Appendix G at Chart 13. The product-specific pricing data collected through questionnaires indicate similar trends for both domestic products and subject imports.

[212] *See, e.g.*, Random Lengths, at 2 (Mar. 31, 2000) ("The lumber bulls see the decline {in the Random Lengths Framing Lumber Composite Price to $375} as a buying opportunity. But the bears, while acknowledging that demand remains high, contend that there is just too much lumber chasing the available volume of orders. . . . recently released production data showing that mills in the Western U.S. made 12.5% more lumber through the first two months of 2000 than during a similar period of 1999. . . . And while no 2000 production figures are yet available from Canada, there is no indication that production there is slackening." (emphasis in original)); RISI Lumber Commentary, at 1 and 10 (June 2000) ("In the area of domestic supply. . . U.S. lumber production over the first four months of the year was up 6% and Canadian production in January-February (the only available data) was up 4% over year-earlier levels. With demand and supply moving in opposite directions, lumber inventories ballooned and prices tested cost floors for the industry."); Forest Products Monthly (December 2000) ("The lumber market's current malaise came from the supply side – too much production, both in the U.S. and in Canada – or at least too slow a reaction to the downturn in demand."). CLTA's Posthearing Brief, Vol. 2, Tab A at 7-10.

[213] While quarterly price fluctuations for domestically produced and subject imports of softwood lumber products also reflect in part cyclical and seasonal factors in U.S. demand and supply for softwood lumber, these factors cannot alone account for the magnitude of the price decline. CR at V-13; PR at V-

record consumption of softwood lumber,[215] prices generally fell through 2000.[216] The evidence indicates that both subject imports and the domestic producers contributed to the excess supply,[217] and thus the declining prices. We conclude that subject imports had *some* effect on prices for the domestic like product during the period of investigation, in particular due to their large share of the market. However, particularly in light of relatively stable market share maintained by subject imports over the period of investigation, we cannot conclude from this record that the subject imports had a *significant* price effect during the period of investigation.

---

[213] (...continued)
11.

[214] Petitioners' Posthearing Brief at 1-2, 11-13, and Appendix B-1 - B-11; Petitioners' Final Comments at 3-6; CLTA's Prehearing Brief, Vol. 1 at 26-30, and Vol. 3, Exh. 28 at 16-22; CLTA's Posthearing Brief, Vol. 1 at 4-6, and Vol. 2 at Tab A; Tr. at 125, 168, 258, and 328.

[215] While apparent consumption remained historically high, it fell 0.6 percent from 1999 to 2000. CR/PR at Table C-1. Similarly, privately owned housing starts remained at a high level, but fell 4.4 percent from 1999 to 2000. CR/PR at Table IV-6.

[216] In 2001, prices rose in the seasonally higher demand second quarter and following the lifting of the SLA and subsequent filing of the petitions in these investigations. Prices began to decline in the third quarter of 2001 and declined substantially in the fourth quarter. These declines, while not unexpected given typically lower seasonal demand in the fourth quarter, were generally sharper than in previous years.

[217] *See* notes 212 and 214 *supra*. *See also, e.g.*, CLTA's Prehearing Brief, Vol. 3, Exh. 28 at 19 and 20 ("However, despite strong demand, lumber prices declined due to an excess supply. Lumber production in both the Southern and Western United States during the first quarter of 2000 increased by over 5% compared to the same period in 1999." Plum Creek Timber Company, Inc. 2nd Quarter 2000 Quarterly Report; "Lumber prices deteriorated further during the third quarter due to a demand-supply imbalance. . . . North American lumber production during the first half of 2000 was 3% above production for the same period in the prior period and was at a ten-year record high. At the same time lumber demand was weakening, with housing starts 3% lower than the prior year." Plum Creek Timber Company, Inc. 3rd Quarter 2000 Quarterly Report.); CLTA's Posthearing Brief, Vol. 2, Tab A at 11 ("To supply growing new housing and record remodeling markets over the past several years, the industry ramped up production only to see both markets fall as a result of several interest rate increases by the Federal Reserve. The resulting oversupply has led to near-record low pricing for most lumber and panel products." Louisiana Pacific 2000 Annual Report.); Tr. at 126 ("We had so much lumber because we were geared up, and 200[0] came. . . ."); Petitioners' Posthearing Brief at 2 and Appendix H, Exh. 2 at 11 ("The U.S. industry was widely criticized in years passed for lumber overproduction . . . . This behavior has been curbed considerably here, but remains a problem in Canada, where Provincial forestry officials must also protect pulp mill employment, which is the lifeblood of many small towns. However, as the Canadian softwood lumber industry ships 65% of its output to the U.S., its general failure to manage production to new order volumes and its capacity growth in its eastern provinces have both undermined prices in recent years." Bank of America, "Wood & Building Products Quarterly," at 11 (Nov. 2001).).

C. Impact of the Subject Imports on the Domestic Industry

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[218] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[219] [220]

The record indicates deterioration in the domestic industry's overall condition, and in particular in its financial performance, over the period of investigation.[221] [222] While industry indicators are discussed more fully below, we note that the record reflects the fact that many performance indicators declined significantly from 1999 to 2000, and then declined slightly or stabilized from 2000 to 2001. Subject import volume and market share, however, increased by a greater amount in 2001 than in 2000. Over the period of investigation demand remained relatively stable, the domestic industry's market share fell only slightly, and subject import market share increased only slightly. Therefore, the deterioration in the condition of the domestic industry during the period of investigation is largely the result of substantial declines in price. In light of our finding that subject imports have not had a significant price effect, and the small increase in their market share, we conclude that subject imports did not have a significant impact on the domestic industry.[223]

---

[218] 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." *Id*. at 885.).

[219] 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

[220] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its amendments to its affirmative final antidumping determination, Commerce found a 12.44 percent dumping margin for Abitibi, a 5.96 percent dumping margin for Canfor, a 7.71 percent dumping margin for Slocan, a 10.21 percent dumping margin for Tembec, a 2.18 percent dumping margin for West Fraser, a 12.39 percent dumping margin for Weyerhaeuser, and a 8.43 percent dumping margin for all others. Letter to Chairman Koplan from Commerce Deputy Assistant Secretary Bernard T. Carreau regarding Correction of Ministerial Errors in the final determination of sales at less than fair value and attached memorandum at 18, dated April 25, 2002.

[221] CR/PR at Tables IV-1 and C-1.

[222] While we have considered the financial performance based on the standard Commission practice for examining full production costs, *i.e.*, transfers from related firms at cost, we note that our finding regarding the condition of the domestic industry would not have changed on the basis of consideration of the data with transfer costs at market value. *See* CR/PR at Tables VI-1 and F-1.

[223] Petitioners argued that the leveling off of declines in industry performance indicators in 2001 and the mid-2001 increases in prices were the result of the pendency of these investigations. In particular,

(continued...)

In sum, based on consideration of the volume, price effects and impact of subject imports on the domestic softwood lumber industry, we do not find present material injury by reason of subject imports.

VI. THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[224] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.[225] In making our determination, we considered all statutory factors that are relevant to these investigations.[226]

For the reasons discussed below, we determine that the domestic softwood lumber industry is threatened with material injury by reason of subject imports of softwood lumber from Canada that are subsidized and sold at less than fair value.[227]

As an initial matter, we find that the domestic industry producing softwood lumber is vulnerable to injury in light of declines in its performance over the period of investigation, particularly its financial performance. The public data indicate that domestic production of softwood lumber steadily declined from a peak level of 36,606 mmbf in 1999 to 34,996 mmbf in 2001, a decline of 4.4 percent.[228] Domestic capacity utilization peaked in 1999 at 92.0 percent, and was 89.7 percent in 2000 and 87.4 percent in

---

[223] (...continued)
Petitioners allege that "the three major price increases in 2001 . . . were all related to the present investigation." Petitioners' Posthearing Brief at Appendix B-16 - B-22. The statute directs us to consider any change in volume, price effects and impact of the subject imports after the filing of the petition. 19 U.S.C. § 1677(7)(I). The record indicates that prices did increase in the second quarter of 2001, coincident with the filing of the petition, and this price increase abated some of the domestic industry's declining performance indicators. CR at V-13; PR at V-11. For example, the declines in such indicators as operating income and net income displayed during 1999 and 2000 leveled off in 2001. However, as discussed earlier, the record does not indicate that subject imports had a significant price effect either prior to or following the filing of the petition.

[224] 19 U.S.C. § 1677(7)(F)(ii).

[225] 19 U.S.C. § 1677(7)(F)(ii).

[226] 19 U.S.C. § 1677(7)(F)(i). Factor VI regarding potential product-shifting was not addressed by parties and does not appear to be an issue in these investigations. Factor VII also is inapplicable because these investigations do not involve imports of both raw and processed agricultural products. In addition, we note that no dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise have been alleged or reported. 19 U.S.C. § 1677(7)(F)(iii)(I).

[227] 19 U.S.C. §§ 1671d(b) and 1673d(b).

[228] CR/PR at Tables III-6 and C-1 (public data). Domestic producers' questionnaire responses (covering approximately 63 percent of domestic production) indicated an increase of 1.9 percent in production from 21,758 mmbf in 1999 to 22,163 mmbf in 2001, although the industry coverage is not necessarily comparable to the public data. *Id*. at Tables III-7 and C-1.

2001.[229] Domestic production capacity was fairly level during the period of investigation, following a small but steady increase between 1995 and 1999, as apparent consumption increased.[230] Domestic producers' U.S. shipments by quantity declined by 3.2 percent and by value fell by 25.6 percent from 1999 to 2001.[231] Domestic producers' share of apparent domestic consumption decreased from 65.0 percent in 1999 to 64.4 percent in 2000 and to 63.1 percent in 2001.[232] The end-of-period inventories reported by the domestic industry fluctuated between years, but increased overall by 6.2 percent from 1999 to 2001.[233] The domestic industry's production workers, hours worked, and wages paid declined from 1999 to 2001, while productivity and hourly wages improved, and unit labor costs declined during the period of investigation.[234]

With respect to the domestic industry's financial performance, the record in these investigations also generally shows declines during the period of investigation, with a dramatic drop from 1999 to 2000 as prices declined.[235] The domestic industry's unit net sales value decreased from 1999 to 2001 with the largest decrease occurring from 1999 to 2000.[236] While unit cost of goods sold declined throughout the period of investigation,[237] unit net sales value fell by a greater amount, and the ratio of operating income to net sales fell from 14.3 percent in 1999 to 1.8 percent in 2000, and 1.3 percent in 2001.[238] Total operating income declined from $1.26 billion in 1999 to $93 million in 2001, and over $1 billion of that decline

---

[229] CR/PR at Tables III-6 and C-1 (public data). Domestic producers' questionnaire responses reported similar declines in capacity utilization rates: 92.8 percent in 1999, 88.5 percent in 2000, and 86.1 percent in 2001. *Id*. at Tables III-7 and C-1.

[230] CR/PR at Table III-6 and C-1 (public data). Domestic producers' questionnaire responses indicated increases in capacity from 22,847 mmbf in 1999 to 24,709 mmbf in 2001, although the industry coverage is not necessarily comparable to the public data. CR/PR at Table III-7 and C-1.

[231] CR/PR at Table C-1 (public data). Domestic producers' U.S. shipments steadily decreased from 35,175 mmbf in 1999 to 34,034 mmbf in 2001. Domestic producers' U.S. shipments by value decreased from $13.9 billion in 1999 to $10.4 billion in 2001. *Id*. According to questionnaire responses, domestic producers' U.S. shipments increased each year of the period of investigation from 21,504 mmbf in 1999 to 22,301 mmbf in 2001, and shipments by value fell from $8.9 billion in 1999 to $7.8 billion in 2001, a decline of 13.3 percent, although the industry coverage is not necessarily comparable to the public data. CR/PR at Tables III-13 and C-1.

[232] CR/PR at Table IV-2.

[233] CR/PR at Tables III-16 and C-1. The end-of-period inventories reported by the domestic industry rose from 1,382 mmbf in 1999 to 1,467 mmbf in 2001. Inventories as a share of U.S. shipments increased from 6.4 percent in 1999 to 7.1 percent in 2000, and declined to 6.6 percent in 2001. *Id*.

[234] CR/PR at Table III-19 and C-1.

[235] While we have considered the financial performance based on the standard Commission practice for examining full production costs, *i.e.*, transfers from related firms at cost, we note that our finding regarding the vulnerability of the domestic industry would not have changed on the basis of consideration of the data with transfer costs at market value. *See* CR/PR at Tables VI-1 and F-1.

[236] CR/PR at Tables VI-1 and C-1. The domestic industry's unit net sales value decreased from $416.48 in 1999 to $362.05 in 2000, and decreased again to $344.46 in 2001. *Id*.

[237] Unit cost of goods sold decreased from $342.39 in 1999 to $339.79 in 2000 and decreased again to $324.69 in 2001. CR/PR at Tables VI-I and C-1.

[238] CR/PR at Tables VI-1 and C-1.

occurred in one year, from 1999 to 2000.[239] Net income as a share of net sales followed a similar trend, decreasing from 13.7 percent in 1999 to 0.8 percent in 2000 and 0.1 percent in 2001.[240] Total net income declined from $1.21 billion in 1999 to $8 million in 2001.[241] The domestic industry's capital expenditures fluctuated between years but decreased from $327 million in 1999 to $253 million in 2001.[242]

Between 1999 and 2001, the number of domestic mills decreased from 795 to 779, down from 816 in 1995.[243] The parties disagreed about the extent to which the decline in the number of U.S. mills was attributable to mergers, permanent closure of older facilities, installation of new equipment, maintenance, or competition with subject imports in the U.S. market, but the record reflects that at least some of the mill closures were due to conditions in the U.S. market.[244]

In its final countervailing duty determination, Commerce determined there were 11 programs that conferred countervailable subsidies to Canadian producers and exporters of softwood lumber,[245] including: the Provincial Stumpage programs in the Provinces of Quebec, British Columbia, Ontario, Alberta, Manitoba, and Saskatchewan; two programs administered by the Government of Canada;[246] two programs administered by the Province of British Columbia;[247] and one program administered by the Province of Quebec.[248] [249]

Subject Import Volume/Canadian Capacity. We find that subject imports are likely to increase

---

[239] CR/PR at Tables VI-1 and C-1.

[240] CR/PR at Table VI-1.

[241] CR/PR at Tables VI-1 and C-1.

[242] CR/PR at Table VI-11.

[243] CR/PR at Table III-2.

[244] CR/PR at Tables II-3 and Appendix G; Petitioners' Prehearing Brief at 61-62, 87-89, and Exh. 38; Petitioners' Posthearing Brief at Appendix A-1 - A-5 and Appendix H, Exh. 3; CLTA's Posthearing Brief at Vol. 2, Tab D, Atttachment 1, and Vol. 3.

[245] We have considered CLTA's argument regarding the stumpage subsidy, but find that the economic theory presented by CLTA is not clearly applicable in this market. Ricardian rent theory relies on the assumption of fixed supply; however, there is evidence on the record in these investigations that lumber supply is not necessarily fixed. *See, e.g.*, Tr. at 41-45 and Petitioners' Posthearing Brief at Appendix D-24. Moreover, the record also contains several other studies that have reached different conclusions regarding the effects of stumpage fees on output. *See* Petitioners' Posthearing Brief at Appendix D-23.

[246] The subsidies include: Non-Payable Grants and Conditionally Repayable Contributions from the Department of Western Economic Diversification; and Federal Economic Development Initiative in Northern Ontario (FedNor).

[247] The subsidies include: Grants provided from Forest Renewal B.C.; and Job Protection Commission.

[248] Private Forest Development Program.

[249] Issues and Decision Memorandum from Bernard T. Carreau to Faryar Shirzad (Mar. 21, 2002) (appended to final Commerce CVD determination); *see also* 67 Fed. Reg. 15545, 15548 (April 2, 2002); Letter to Chairman Koplan from Commerce Deputy Assistant Secretary Bernard T. Carreau regarding Correction of Ministerial Errors in the final countervailing duty determination and attached memorandum, dated April 25, 2002. None of the subsidies identified by Commerce are subsidies described in Article 3 or 6.1 of the WTO Subsidies Agreement.

substantially based on several factors: Canadian producers' excess capacity and projected increases in capacity, capacity utilization, and production; the export orientation of Canadian producers to the U.S. market; the increase in subject imports over the period of investigation; the effects of expiration of the SLA; subject import trends during periods when there were no import restraints; and forecasts of strong and improving demand in the U.S. market.

Canadian producers' capacity increased from 32,100 mmbf in 1999 to 32,800 mmbf in 2001, following a steady increase from 1995 to 1999.[250] Canadian production capacity in 2001 was 10.4 percent higher than in 1995. Canadian production declined from 29,041 mmbf in 1999 to 27,457 mmbf in 2001.[251] Nevertheless, Canadian production in 2001 was 5.2 percent higher than that of 1995; Canadian capacity utilization peaked in 1999 at 90.5 percent, and was 88.9 percent in 2000 and decreased again to 83.7 percent in 2001.[252] In the three years prior to the period of investigation, also while under the SLA, Canadian capacity utilization had been at a relatively stable level ranging from 87.3 percent to 87.7 percent. In 2001, excess Canadian capacity was 5,343 mmbf, 10 percent of U.S. apparent consumption.[253] Furthermore, in their questionnaire responses, Canadian producers projected additional capacity increases, improvements in capacity utilization, and additional production in 2002 and 2003.[254] Thus, despite the excess capacity already available in 2001 as capacity utilization declined to 83.7 percent,[255] Canadian producers expect to further increase their ability to supply the U.S. softwood lumber markets.[256]

We also recognize that many Canadian provinces subject tenure holders (lumber producers) to requirements to harvest at or near their annual allowable cut ("AAC") or be subject to penalties/reductions in future AACs.[257] These mandatory cut requirements increase production even when demand is low and thus increase the incentive to export more softwood lumber to the U.S. market.

---

[250] CR/PR at Table VII-1. Canadian producers' questionnaire responses (covering nearly 80 percent of production in Canada) followed similar trends with production declining from 22,452 in 1999 to 21,770 mmbf in 2001. Reported capacity in Canada was 24,871 mmbf in 1999 and 25,804 mmbf in 2001, and reported capacity utilization was 90.3 percent in 1999, 88.8 percent in 2000, and 84.4 percent in 2001. CR/PR at Table VII-2.

[251] CR/PR at Table VII-1.

[252] CR/PR at Table VII-1.

[253] CR/PR at Tables VII-1 and C-1.

[254] CR/PR at Table VII-2. Canadian producers projected capacity increases to 26,206 mmbf, production increases to 23,698 mmbf, and capacity utilization increases to 90.4 percent in 2003. *Id.*

[255] The reported capacity utilization in questionnaire responses was similar at 84.4 percent. CR/PR at Table VII-2.

[256] CR/PR at Table VII-2.

[257] *See, e.g.*, Canadian Forest Act §§ 64 and 66-67 (British Columbia) (tenure holders are required to harvest within 10 percent of their AAC over five years and within 50 percent in any year, or face penalties for undercutting including loss of tenure in later years). Petition at Exh. IV B-3. The evidence also demonstrates that certain provincial governments also may require major forest tenure holders to operate specific timber processing facilities and prohibit or restrict closures and reductions in capacity. Petitioners' Prehearing Brief at 89-92; Petitioners' Posthearing Brief at Appendix B-23. However, we recognize that there is evidence that Quebec, Alberta, New Brunswick, and Nova Scotia do not have minimum cut requirements, and that U.S. timber harvest contracts often require full payment regardless of the amount of timber actually harvested. CLTA's Posthearing Brief at 12.

Canadian producers are predominantly export-oriented toward the U.S. market, with exports to the United States accounting for 68 percent of their production in 2001.[258] The volume of subject imports from Canada increased by 2.8 percent from 1999 to 2001.[259] As a share of apparent domestic consumption, subject imports from Canada increased from 33.2 percent in 1999 to 34.3 percent in 2001.[260]

Each year during the pendency of the SLA, Canadian producers used all of their fee-free quota, all of their $50 fee quota, and imported some softwood lumber with $100 fees, suggesting that in the absence of the SLA they would have shipped more, given the near prohibitive level of the $100 fee.[261] Even as demand leveled off during the period of investigation and prices declined substantially, subject imports continued to enter the U.S. market in quantities above the fee-free quota, incurring additional fees of $50 to $100 per mbf. But, the SLA appears to have restrained the volume of subject imports from Canada at least to some extent as subject imports only increased by 8.8 percent and market share remained relatively constant while apparent consumption increased by 13.1 percent from 1995 to 2001. Moreover, during the pendency of the SLA, shipments from non-covered provinces to the United States more than doubled.[262] Finally, anecdotal information reported to the Commission by importers of subject merchandise and Canadian producers regarding the effects of the SLA also supports a conclusion that it had some restraining effect on the volume of subject imports.[263]

---

[258] CR/PR at Table VII-7. Canadian exports to the United States as a share of Canadian production were about 63 percent in 1999 and 2000, but also had ranged from 64.9 to 67.4 percent for the four years preceding the period of investigation. *Id.* According to Canadian producers' questionnaire responses (covering nearly 80 percent of production in Canada), exports to the United States increased from 13,021 mmbf in 1999 to 13,041 mmbf in 2000, and to 13,546 mmbf in 2001, and are projected to increase to 13,660 mmbf in 2002 and 13,954 mmbf in 2003. As a share of total Canadian shipments, reported Canadian exports to the United States were 57.4 percent, 57.4 percent, and 60.9 percent in 1999, 2000, and 2001, respectively, with projections for 2002 and 2003 of 58.8 percent and 58.5 percent, respectively. CR/PR at Table VII-2.

[259] The volume of imports of softwood lumber from Canada increased from 17,983 mmbf in 1999 to 18,483 mmbf in 2001. The value of subject imports decreased from $7.1 billion in 1999 to $6.0 billion in 2001. CR/PR at Tables IV-1 and C-1.

[260] CR/PR at Table IV-2 and C-1.

[261] *See, e.g.*, CR/PR at Table IV-3 and Petitioners' Prehearing Brief at Exh. 62.

[262] *See, e.g.*, CR/PR at Table IV-3. For example, imports from the Maritime Provinces increased from 931 mmbf in 1996 to 2,130 mmbf in 2000, before declining to 1,841 mmbf in 2001. Thus, the subject imports from the Maritime Provinces increased by 129 percent from 1996 to 2000, and by 98 percent from 1996 to 2001. *Id. See also* CR/PR at Table VII-5 and Petition at Exh. I-B-62 (regarding production increases in Manitoba and Saskatchewan).

[263] CR/PR at Appendix E.

The evidence further demonstrates that imports of softwood lumber from Canada have increased during periods in which there were no restraints on their entry into the U.S. market, *i.e.*, prior to the SLA between 1994 and 1996,[264] and the period immediately after the SLA expired and before suspension of liquidation in these investigations. Subject imports from Canada held a 27.5 percent share of the U.S. softwood lumber market in 1991 when the Memorandum of Understanding (MOU) regarding softwood lumber from Canada that had been in effect since December 30, 1986 expired.[265] During the ensuing CVD investigation before the Commission and the appeals of the affirmative determination before the U.S.-Canada Free Trade Agreement ("CFTA") panels, subject imports market share continued to increase.[266] In August 1994, the appeals were terminated and imports of softwood lumber from Canada were not subject to any trade restraining measure until the SLA took effect in April 1996.[267] The evidence shows that subject import market share increased from 27.5 percent in 1991 to 35.9 percent in 1996.[268] With the SLA in effect, the market share for softwood lumber from Canada declined to 34.3 percent in 1997 and remained fairly stable within a range of 2.7 percentage points. Finally, subject imports increased during the period immediately after the SLA expired (April 2001) and before suspension of liquidation (August 2001). Subject imports of softwood lumber by volume for the period of April to August 2001 were higher than the comparable April-August period in each of the preceding three years (1998-2000) by a range of 9.2 percent to 12.3 percent.[269]

Demand for softwood lumber is forecast to remain relatively unchanged or increase slightly in 2002, followed by increases in 2003 as the U.S. economy rebounds from recession.[270] [271] Industry forecasts suggest slight growth in U.S. housing starts in 2002 and further increases in 2003.[272] Thus, the

---

[264] *See, e.g.*, Petitioners' Prehearing Brief at Exh. 65 and Petition at Exh. I-B-18.

[265] CR at I-9; PR at I-8; and Softwood Lumber III, USITC Pub. 2530 at Table 2.

[266] CR at I-9 - I-12; PR at I-7 - I-9; and Petition at Exh. I-B-18.

[267] CR at I-9 - I-12; PR at I-7 - I-9.

[268] CR at Table IV-2 and Softwood Lumber III, USITC Pub. 2530 at Table 2. The evidence also shows that during the seven quarters between August 1994 and April 1996, subject imports market share increased from 32.6 percent in 3rd quarter 1994 to 37.4 percent in 1st quarter 1996. Petitioners' Prehearing Brief at Exh. 65.

[269] Official monthly import statistics. Total subject imports of softwood lumber by volume for the period of April to August 2001 were 11.3 percent higher than the comparable April-August period in 2000, 9.2 percent higher than April-August 1999, and 12.3 percent higher than April-August 1998. The evidence also shows that the subject imports by volume for the period between April and August 2001 was higher in each month than the comparable month in 2000, with exception of June, by a range of 7.5 percent to 25.6 percent. *Id.*

[270] CR at II-5; PR at II-3 - II-4; CLTA's Posthearing Brief, Vol. 2, Tab R at 1 and 3; Petitioners' Posthearing Brief, Vol. II, Appendix H, Exhibit 28 at 5 (Table 3).

[271] CLTA argued that the domestic industry's financial performance will improve as lumber consumption increases in 2002 and 2003. CLTA's Prehearing Brief at 46-47. However, demand was at record levels in 1999 and remained relatively level in 2000 and 2001, while prices for softwood lumber declined substantially and the industry's condition worsened considerably.

[272] CLTA's Posthearing Brief, Vol. 2, Tab R at 1 and 2; Petitioners' Posthearing Brief, Vol. II, Appendix H, Exhibit 28 at 3 (Table 2).

United States will continue to be an important market for Canadian producers. Therefore, based on the factors discussed above, we find a likely substantial increase in subject imports.

Price. As discussed above, for purposes of our analysis of the likely price effects of subject imports from Canada in these investigations, we find at least a moderate degree of substitutability between subject imports of softwood lumber from Canada and the domestic like product and that prices of different species affect the prices of other species.[273] During the period of investigation, prices for softwood lumber declined substantially, particularly in 2000, due to excess supply in a price sensitive U.S. market with relatively level demand.[274]

Prices for softwood lumber increased in mid-2001, at a time of considerable uncertainty in the market due to the expiration of the SLA and the filing of these petitions.[275] Prices, however, began to decline in the third quarter of 2001 and fell substantially in the fourth quarter of 2001 to levels as low as those in 2000 while demand, considered on a seasonal basis, remained relatively stable. Strong demand over the period of investigation (demand remained relatively stable at historically high levels) did not prevent substantial declines in prices for softwood lumber. Demand for softwood lumber is forecast to remain relatively unchanged or increase slightly in 2002, followed by increases in 2003.[276]

Subject imports maintained a significant share of the U.S. market, accounting for at least one-third of apparent consumption in each year during the period of investigation. As discussed earlier, this substantial volume of subject imports has had some effect on prices, but the record does not lead us to find significant *present* price effects. However, additional subject imports will increase the excess supply in the market, putting further downward pressure on prices. Given our finding of likely significant increases in subject import volumes, and our finding of at least moderate substitutability between subject imports and

---

[273] *See, e.g.*, Random Lengths ("Competition from Canadian S-P-F prevented ES-LP narrows from rallying from $5 drops early in the week." at 9, Oct. 26, 2001; "Warmer weather, a drop in interest rates, and an abrupt rise in S-P-F prices all got credit for boosting buyer interest in Southern Pine." at 4, Apr. 20, 2001; "As SPF prices climbed and supplies tightened in Canada, more buyers turned to U.S. produced Hem-Fir and ES-LP." at 4, Apr. 13, 2001; "Western and Eastern S-P-F were the leaders, pulling other dry species along." at 4, Feb. 2, 2001); Wickes ("Species switching by many long-term purchasers of S-P-F forced most North of the border to finally return prices to a more realistic level as the need to move wood into the inventory pipeline because evident." Sept. 5, 2001; "Producers in the U.S. secured most of the available business from buyers who had no qualms in switching species to take advantage of the pricing discrepancies. Truss manufacturers started the charge as they switched from S-P-F MSR to alternative #2 grade SYP helping mills in the South post increases across the board." Aug. 21, 2001). Petitioners' Prehearing Brief at 13 and Appendix C.

[274] CR/PR at Tables V-1 and V-2, and Figures V-3 - V-5.

[275] *See, e.g.*, Random Lengths ("Canadian mills reiterated that they would continue to restrict shipments due to the anti-dumping case and the potential for retroactive duties. However, in this week's nervous climate, this stance backfired as many buyers figured that restricted shipments translated into growing inventories at Canadian mills." at 4, June 1, 2001; "Uncertainty surrounding Monday's likely announcement that the U.S. will conduct duty investigations prompted Canadian mills to limit offerings and price aggressively as a way of protecting themselves against potential duties. This funneled more business to U.S. producers, who could price their wood and quote without having to worry about duties." at 4, Apr. 20, 2001.) Petitioners' Posthearing Brief at Appendix B-18 - B-19, and Appendix H, Exh. 7.

[276] CR at II-5; PR at II-3 - II-4; CLTA's Posthearing Brief, Vol. 2, Tab R at 1-3; Petitioners' Posthearing Brief, Vol. II, Appendix H, Exhibit 28 at 3 (Table 2) and 5 (Table 3).

domestic product, we conclude that subject imports are likely to have a significant price depressing effect in the future. Therefore, we find that subject imports from Canada are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports.

Other Factors. While inventories generally are not substantial in the softwood lumber industry, Canadian producers' inventories as a share of production increased and were consistently higher than that reported by U.S. producers during the period of investigation.[277] Finally, a number of domestic producers reported actual and potential adverse effects on their development and production efforts, growth, investment, and ability to raise capital due to subject imports of softwood lumber from Canada.[278]

Conclusion. Based on the record in these investigations, we determine that further dumped and subsidized imports are imminent, that these imports are likely to exacerbate price pressure on domestic producers, and that material injury to the domestic industry would occur.

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is threatened with material injury by reason of imports of softwood lumber from Canada that are subsidized by the Government of Canada and sold in the United States at less than fair value.[279]

---

[277] CR/PR at Tables III-16 and VII-2. Canadian producers' reported inventories as a share of production were 9.6 percent in 1999, 10.6 percent in 2000, and 10.2 percent in 2001, compared to 6.4 percent, 7.0 percent, and 6.6 percent in the same years as reported by U.S. producers. *Id.*

[278] CR/PR at Appendix G.

[279] Based on the record of these investigations, we do not find that material injury by reason of subject merchandise that is subsidized and sold at less than fair value would have been found but for any suspension of liquidation of entries of such merchandise. 19 U.S.C. §§ 1671d(b)(4)(B) and 1673d(b)(4)(B).