5, 2001 letter to the Department). Accordingly, we are initiating this changed circumstances administrative review. Furthermore, because petitioners have expressed a lack of interest, we determine expedited action is warranted, and we preliminarily determine that continued application of the order with respect to the specific stainless steel strip product at issue is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results.

Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order with respect to imports of the specialty magnet stainless steel strip product from Germany, currently supplied as SemiVac 90, meeting the specifications outlined above.

If the final revocation in part occurs, we intend to instruct the U.S. Customs Service to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain stainless steel strip products meeting the specifications indicated above, not subject to final results of administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review, in accordance with 19 CFR 351.222(g)(4). We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Tariff Act. The current requirement for a cash deposit of estimated antidumping duties on certain stainless steel strip products meeting the above specifications will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (i) a statement of the issue, and (ii) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication of this notice. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department intends to publish in the **Federal Register** the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments, no later than 45 days after the date of publication of this notice. *See* 19 CFR 351.216(e).

This notice is published in accordance with section 751(b)(1) of the Tariff Act and 19 CFR 351.216 and 351.222.

Dated: August 10, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–20836 Filed 8–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–122–839)

Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada

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

ACTION: Notice of preliminary affirmative countervailing duty determination and preliminary affirmative critical circumstances determination.

SUMMARY: *Preliminary Determination:* The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain softwood lumber products (subject merchandise) from Canada. For information on the estimated countervailing duty rate, please see the ''Suspension of Liquidation'' section of this notice. For information on critical circumstances, see the ''Critical Circumstances'' section of this notice.

EFFECTIVE DATE: August 17, 2001.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds at (202) 482–6071 or Stephanie Moore (202) 482–3692, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by the Coalition for Fair Lumber Imports Executive Committee, the United Brotherhood of Carpenters and Joiners, and the Paper, Allied-Industrial, Chemical and Energy Workers International Union. The Coalition for Fair Lumber Imports Executive Committee is comprised of Hood Industries, International Paper Company, Moose River Lumber Company, New South Incorporated, Plum Creek Timber Company, Polatch Corporation, Seneca Sawmill Company, Shearer Lumber Products, Shuqualak Lumber Company, Sierra Pacific Industries, Swift Lumber Incorporated, Temple-Inland Forest Products, and Tolleson Lumber Company, Incorporated. On April 20, 2001, the petition was amended to include the following four companies individually as petitioners: Moose River Lumber Co., Shearer Lumber Products, Shuqualak Lumber Co. and Tolleson Lumber Co., Inc. These parties are collectively referred to as the petitioners.

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada*, 66 FR 21332 (April 30, 2001) (*Initiation Notice*)), the following events have occurred: On May 1, 2001, we issued countervailing duty questionnaires to the Government of Canada (GOC).[1] On June 28, 2001, we received questionnaire responses from the GOC and from the Provincial Governments of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan. We also received responses from the Northwest Territories and the Yukon Territory. On July 23, 2001, we issued supplemental questionnaires to the GOC and to the provincial governments. On August 6, 2001, we received supplemental

[1] Upon the issuance of the questionnaire, we informed the Government of Canada that it was the government's responsibility to forward the questionnaires to each of the provinces and territories.

questionnaire responses from the GOC and the provincial governments.

On May 10, 2001, the Natural Resources Defense Council, the Defenders of Wildlife, the Northwest Ecosystem Alliance, along with the Grand Council of the Cree and the Interior Alliance, submitted new subsidy allegations. Supplementary information on these allegations was filed on June 1, 2001, and on June 15, 2001, the Nishnawbe Aski Nation submitted an additional subsidy allegation.[2] Based upon the information on the record, we have decided not to initiate investigations of these allegations. See August 9, 2001, Memorandum to Melissa G. Skinner from Team on New Subsidy Allegations, which is on public file in the Central Records Unit (CRU), Room B–099, of the Department of Commerce.

On June 5, 2001, petitioners also submitted additional subsidy allegations. Based upon the information on the record, we have decided to initiate investigations on only certain of the new subsidy allegations made by petitioners. *See id.*

On June 5, 2001, we issued a partial extension of the due date for this preliminary determination from June 27, 2001 to July 27, 2001. *See Certain Softwood Lumber Products From Canada: Extension of Time Limit for Preliminary Determination in Countervailing Duty Investigation*, (*Extension Notice*) 66 FR 31617 (June 12, 2001).

On July 23, 2001, we extended the due date of this preliminary determination by an additional 13 days to August 9, 2001. *See Certain Softwood Lumber Products From Canada: Extension of Time Limit for Preliminary Determination in Countervailing Duty Investigation*, 66 FR 39146 (July 27, 2001).

On July 27, 2001, we amended our *Initiation Notice,* to exempt certain softwood lumber products from the Provinces of New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland (the Maritime Provinces) from this investigation. This exemption does not apply to softwood lumber products produced in the Maritime Provinces from Crown timber harvested in any other Province. *See Amendment to the Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada*, 66 FR 40228 (August 2, 2001).

[2] None of these parties qualify as an interested party pursuant to section 771(9) of the Act. However, the Natural Resources Defense Council, Defenders of Wildlife, and the Northwest Ecosystem Alliance can be considered consumer organizations under section 777(h) of the Act. The Grand Council of the Cree, the Interior Alliance, and the Nishnawbe Aski Nation do not qualify as consumer organizations under section 777(h) of the Act.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the CVD regulations are to the regulations codified at 19 CFR part 351 (2001).

Scope of the Investigation

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

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

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

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood 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.

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

Scope Issues

In the *Initiation Notice,* we invited all interested parties to raise issues and comment regarding the product coverage under the scope of this investigation. We received numerous comments, including scope clarification requests, scope exclusion requests, and requests for determinations of separate classes or kinds. The requests covered approximately 50 products, ranging from species, like Western red cedar and Douglas fir, to fencing products, bed frame components, pallet stock, and joinery and carpentry products.

In our review of the comments, we found that certain products, raised by several respondents, are acknowledged by petitioners as being outside the scope of the investigation. Those products fall into the following two groups:

A. Products made of lumber, but in which the lumber has been processed into another product, and are classified as such in the HTSUS:

1. Trusses;
2. I–Joist beams;
3. Pallets;
4. Fence pickets;
5. Bed frames;
6. Garage doors;
7. Large edge-glued lumber panels, used in furniture or door manufacturing, classified under HTSUS item 4421;
8. Properly classified complete door frames;
9. Properly classified complete window frames;
10. Properly classified furniture.

B. Products that are outside the scope, but only if they meet certain requirements:

1. *Truss kits:* If they constitute a full package of the exact number of pieces necessary to create a truss of a specified length and height. The kit must contain all of the pieces of the truss, cut with the appropriate angles, as well as all the necessary metal and wood scabs, so that the only thing that is needed is actual assembly. Such kits will also be packaged together and conform to a particular design or plan

2. *Unassembled pallet kits:* If they include the exact number of pieces for a complete pallet, bundled together. A kit will not include any pieces over 48″ in length, the decking will be 1″ or less in nominal thickness, and the three pieces of dimension lumber used for runner or ''stringers'' (which are 2″ in nominal thickness) must already have the large notches which are used by a fork lift to lift a pallet (each notch is 1½″ deep by 8″ wide).

3. *''Stringers''* (pallet components used for runners) if they are no longer than 48″ and have precut notches for the fork lift, each notch is 1½″ deep and 8″ wide.

4. *Bed frame kits:* If all the pieces required to make the bed frame are packaged together and no further processing is required, with none of the

components exceeding 1″ in nominal thickness or 83″ in length.

5. *Radius-cut bed frame components,* not exceeding 1″ in nominal thickness or 83″ in length.

6. *Dog-eared fence pickets,* no more than 1″ thick (nor more than 4″ wide), 6 feet or less in length. The dog-ear cut measures at least ¾″.

We have preliminarily determined that the products listed in groups (A) and (B) above are outside the scope of this investigation. With regard to all other products, we have determined that, because of the large number of requests, the even larger number of products, and, in some instances, deficiencies in the information currently on the record, it is not practicable for the Department to complete the analysis of each request by the issuance of the notice of preliminary determination. Therefore, we have requested additional information. (*See* August 9, 2001, Memorandum to Bernard T. Carreau from Maria MacKay on Requests for Scope Exclusions in the Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada, which is on public file in the CRU.)

Exclusions

In our notice of initiation, we asked for comments on a system to process the expected large number of exclusion requests. This request had the purpose of ensuring that the Department had the opportunity to process the highest number of requests, but did not in any way imply that companies could not submit a request for exclusion in accordance with the CVD Regulations, at any time prior to the preliminary determination.

We received comments from respondents and petitioners. The GOC proposed a system of streamlined procedures. Under this system, applications for exclusion would be pre-approved by the GOC and submitted to the Department grouped into categories with identical relevant facts, accompanied by a set of government certifications. The Department could then consider the criteria and the process for categorizing the companies to determine whether the group as a whole should be excluded. On the other side, petitioners argued that the Department does not have the authority under the URAA to grant exclusions in an aggregate case. The petitioners also emphasized that, should the Department decide to entertain company exclusion requests, (1) the required certifications must categorically indicate freedom from subsidization of the requester, its affiliates, and, if the requester is not a lumber producer, its lumber suppliers; and (2) the Department must have verified that the excluded company's output is free from subsidization. In addition, petitioners argued that the production/sales of any excluded company must be removed from the denominator before calculating a country-wide rate. Respondents argued to the contrary that the statute requires the country-wide rate to be based on ''industry-wide'' data.

On July 27, 2001, the Department amended its initiation and exempted the Maritimes from investigation, a decision which affected hundreds of Canadian lumber producers. *See* 66 FR 40228, August 2, 2001. After exempting the Maritime Provinces from the investigation, the Department notified the GOC that its proposal with respect to non-Maritime Provinces would somewhat facilitate the task of reviewing numerous company-specific exclusion requests, but requested that the applications include all certifications required in section 351.204 of the CVD Regulations. The deadline for the submission of the requests for consideration in the final determination is August 31, 2001; however, the Department also provided a deadline for submission of applications which the Department would make every effort to consider before the issuance of its preliminary determination (*see* August 1, 2001, Memorandum to Bernard T. Carreau from Melissa G. Skinner on Requests for Exclusion of Individual Companies from the Countervailing Duty Investigation on Softwood Lumber from Canada and Letter from Bernard T. Carreau to Paul Bailey, Embassy of Canada, re: Countervailing Duty Investigation: Certain Softwood Lumber from Canada, which are on public file in the CRU.)

On August 8, 2001, the GOC submitted 95 company-specific applications for exclusion. The applications are grouped under six headings: two cover 78 independent re-manufacturers, three cover 13 lumber producers, purchasing logs at arm's length, from private lands, or from U.S. suppliers, and the last group covers 4 companies asking for exclusion based on receipt of *de minimis* subsidies.

While the original intent of the GOC was to make it possible for the Department to review the criteria on a group-wide basis, rather than by individual applications, we found that this approach would not allow for a thorough analysis of this submission primarily for two reasons: (1) Within the groups there were underlying issues requiring specific information that was not provided (for instance, a number of companies within all groups indicated that they had affiliates, and yet certifications were not provided in most instances for those companies); and (2) we found inaccuracies in the documentation submitted (for instance, company certifications that did not cover the entire period of investigation and government certifications not covering all the programs under investigation). Therefore, the analysis required an examination of each individual request.

Because of the time constraints, we focused on the groups that were the most manageable. We looked at the applications of the lumber mills that purchased logs in arm's-length transactions, from private lands, and that used U.S. origin logs only. We found only one company, Frontier Lumber, that meets the requirements for exclusion. For all other applications, either the requester had affiliated companies for which proper certification was not provided, or the requester did not specifically indicate whether or not it had operated as a non-producing exporter during the period of investigation, or the company certification was incomplete. A complete analysis of the requests is provided in the August 9, 2001 Memorandum to Bernard T. Carreau from Maria MacKay and Gayle Longest on Company Exclusion Requests in the Countervailing Duty Investigation on Softwood Lumber from Canada, which is on public file in the CRU.

Those companies included in the August 8, 2001, request that were not preliminarily excluded from the investigation as a result of today's preliminary determination, as well as any additional companies that will have submitted proper exclusion requests before the August 31, 2001, deadline will be given the opportunity to address deficiencies in their request to determine whether they should be excluded in the final determination. We intend to continue working closely with both the individual requesters and the GOC on this issue as the investigation proceeds.

Injury Test

Because Canada is a ''Subsidies Agreement country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Canada materially injure or threaten material injury to a U.S. industry. On May 23, 2001, the ITC's preliminary determination finding that there is a reasonable indication that an industry in the United States is being threatened with material injury by reason of

imports from Canada of subject merchandise was published in the **Federal Register**. *See* 66 FR 28541.

Alignment With Final Antidumping Duty Determination

On August 8, 2001, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the antidumping duty investigation of certain softwood lumber products from Canada.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is April 1, 2000, through March 31, 2001, which is the most recently completed fiscal year of the GOC.

Critical Circumstances

The petition contains allegations of critical circumstances, as defined by section 703(e) of the Act, with respect to imports of certain softwood lumber products from Canada. *See* Petitions for Antidumping and Countervailing Duties: Certain Softwood Lumber Products from Canada, Case Nos. A–122–838 & C–122–839 at Vol. IA I–50 to I–57 (April 2, 2001).[3] On June 28, 2001, July 17, 2001, and August 7, 2001, the petitioners provided the Department with additional submissions supporting those allegations. *See* Letters from Dewey Ballantine LLP to the Secretary dated June 28, 2001, July 17, 2001, and August 7, 2001.

In a submission dated July 27, 2001, respondents argued that the statutory prerequisites for the Department to make a critical circumstances determination are not present. The respondents contend, among other things, that: (i) There are no subsidies inconsistent with the Subsidies Agreement; (ii) the alleged Ontario program was terminated in 1995; (iii) the alleged programs are not specific; (iv) any benefit that could be calculated for the alleged Quebec programs would be *de minimis;* and (v) there has been no surge in imports. *See* Letter from Weil Gotshal Manges LLP to the Secretary dated July 27, 2001.[4]

In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.

Section 703(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that:

(A) The alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and

(B) There have been massive imports of the subject merchandise over a relatively short period.

The purpose of the critical circumstances provisions is to ensure that massive imports following the filing of a petition do not ''undermine seriously the remedial effect of the countervailing duty order to be issued * * *'' *See* section 705(b)(4)(A)(i) of the Act; *see also,* Statement of Administrative Action (SAA) at 877 (''Critical circumstances determinations focus on whether an order's effectiveness is undermined by increasing shipments prior to the effective date of the order''). Thus, where critical circumstances exist, to preserve the remedial effect of the order, the statute provides for the extension of the provisional measures period to cover imports prior to the preliminary determination.

The purpose of the Department's preliminary critical circumstances determination is to preserve the possibility of this retroactive relief where there is reasonable cause to believe or suspect that such relief may be warranted by taking the limited step of suspending liquidation of entries during the period ninety days prior to the preliminary determination. Section 703(e)(2) of the Act and 19 CFR 351.206(a). The Department's analysis is limited to the two factors set forth in section 703(e)(1). For purposes of a final determination whether retroactive relief is warranted, other factors are considered by the ITC in its final determination. *See* section 705(b)(4)(A)(ii) of the Act.

We note that the focus of the first statutory criterion is the nature of the alleged countervailable subsidy, *i.e.,* whether the alleged countervailable subsidy is one that is inconsistent with the Subsidies Agreement. This investigation includes two programs alleged to be prohibited export subsidies: (1) The Development Corporations of the Government of Ontario Export Support Loan; and (2) Export Assistance from Investissement Quebec (previously Export Assistance from the Societe de Developpement Industriel du Quebec). *See Notice of Initiation*, 66 FR at 21333–34.[5] As discussed below in the analysis of the subsidy programs, the Department has preliminarily determined that Export Assistance from Investissement Quebec is a countervailable export subsidy. There is no question that export subsidies are inconsistent with the Agreement. Therefore, this prong of the statute is satisfied.

Although respondents do not contest that export subsidies are inconsistent with the Agreement, they argue that an affirmative preliminary determination of critical circumstances requires that the benefit from such programs be above *de minimis.* We note, however, that section 703(e)(A) refers only to an alleged countervailable subsidy inconsistent with the Subsidies Agreement. Section 771(5) of the Act defines a ''countervailable subsidy'' as a financial contribution by the government that confers a benefit and is specific. The level of the benefit provided is not part of that definition. Moreover, even if the benefit to the subject merchandise from a particular subsidy program is *de minimis,* that benefit is countervailed if the overall subsidy rate is above *de minimis.* Thus, whether a particular program meets the definition of countervailable subsidy and the level of the benefit provided are two separate issues, only the first of which must be addressed in the preliminary determination on critical circumstances. Therefore, under a plain reading of the statute, a preliminary determination that an alleged subsidy inconsistent with the Agreement has provided a *de minimis*

[3] For the scope of the products covered by this investigation, *see Initiation Notice* 66 FR 21332; *Amendment to the Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products From Canada,* 66 FR 40228 (August 2, 2001).

[4] On July 26, 2001, West Frazier Mills Ltd. requested that the Department make a company-specific critical circumstances determination. As stated the *Initiation Notice,* we are conducting this investigation on an aggregate basis in accordance with section 777A(e)(2)(B) of the Act and thus, did not request company specific information relating to critical circumstances. Our critical circumstances determination is based upon aggregate data. As it is not practicable for the Department to investigate every lumber company in Canada, it is not practicable for the Department to make company-specific critical circumstance determinations.

[5] Although originally listed as two separate programs, evidence placed on the record indicates that these two programs have been combined into a single export subsidy program administered through Investissement Quebec. *See* GOC Questionnaire Response, SDI/IQ Narrative at 5 (June 28, 2001).

benefit to the subject merchandise does not preclude an affirmative preliminary determination of critical circumstances.

The Department has examined critical circumstances in only two other preliminary CVD determinations under the current Act.[6] In both cases, the overall preliminary determination was negative; therefore, there was no basis to impose any provisional measures. *See Preliminary Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring From Canada*, 61 FR 59079, 59085 (November 20, 1996); *Preliminary Negative Countervailing Duty Determination: Elastic Rubber from India*, 63 FR 67457, 67458 (December 7, 1998).

The cases relied upon by respondents pre-date the URAA, which amended the critical circumstances provisions and included, for the first time, the definition of a countervailable subsidy discussed above. The Department believes that the approach taken in the pre-URAA cases would represent an inappropriate interpretation of the current statute. To follow the approach taken in that line of cases, we would have to go beyond the definition of countervailable subsidy and read into the current preliminary critical circumstances provisions a requirement that could frustrate the purpose of preserving the possibility of retroactive relief through the limited step of suspending liquidation pending the outcome of the full investigation.

In accordance with the statute and regulations, subsequent to the issuance of our preliminary determination, we will have an opportunity to verify the information concerning these subsidy programs and the parties will have an opportunity to present written briefs and have a public hearing to further examine the issue of critical circumstances. However, at this preliminary stage, based upon the available information, the Department has a reasonable basis to believe or suspect that there are alleged countervailable subsidies inconsistent with the Subsidies Agreement. Therefore, the first prong of section 703(e)(1) of the Act is satisfied.

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 703(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.*, the base period) with the three months following the filing of the petition (*i.e.*, the comparison period).

Section 351.206(h)(1) of the CVD regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. As noted above, the Department's analysis is limited to whether there were massive imports. Some factors that respondents urge the Department to consider are not relevant to that inquiry and, therefore, have not been factored into this analysis. Whether those factors may be relevant to the ITC's final inquiry is, of course, a matter for the ITC to determine.

In addition, § 351.206(h)(2) of the CVD regulations provides that an increase in imports of 15 percent or more during the ''relatively short period'' of time may be considered ''massive.'' Section 351.206(i) of the CVD regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.

Based upon U.S. Census import data and an examination of the information on the record of the investigation, we find that there is a seasonal element that affects imports of lumber from Canada. *See* Critical Circumstances Preliminary Determination Memorandum from Bernard T. Carreau to Faryar Shirzad for a detailed discussion of this issue. Furthermore, both petitioners and respondents acknowledge that lumber is a product for which demand is subject to seasonal shifts, and, therefore, it is appropriate to use a seasonal methodology to examine whether massive imports occurred with respect to lumber imports from Canada. Accordingly, to address any distortions caused by seasonal trade fluctuations in our analysis of import increases, we constructed and then applied a seasonal adjustment factor. We selected the standard seasonal adjustment program used by significant statistical agencies, including the Bureau of Census, the Bureau of Labor Statistics and Statistics Canada, and calculated a seasonal adjustment factor of 12.00 percent. This factor is based on the six-year time period 1995 through 2000. *See* Critical Circumstances Preliminary Determination Memorandum, which is on the public file in the CRU.

As discussed above, on July 27, 2001, the Department amended its notice of initiation of the CVD investigation to exempt the Maritime Provinces (New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland) from this investigation. We compared the import volume during the period January through March 2001 (the base period) with the seasonally adjusted import volume during the period April 2001 through June 2001 (the comparison period), and found that, relative to the first quarter, lumber imports from Canada, net of the Maritime Provinces, increased by 23.34 percent in the comparison period.

Therefore, pursuant to section 703(e) of the Act and §§ 351.206(h) and (i) of the CVD Regulations, we preliminarily determine that there have been massive imports of lumber from Canada over a relatively short period of time. Therefore, we find that the second prong of the statute has been satisfied.

As a result of this analysis, we find that both prongs of the statute regarding critical circumstances have been met. Therefore, we preliminarily determine that critical circumstances exist.

We will make a final determination concerning critical circumstances when we make our final determination of countervailable subsidies.

Subsidies Valuation Information

Aggregation

In the *Initiation Notice*, we stated that due to the extraordinarily large number of Canadian producers, we anticipated that we would conduct this investigation on an aggregate basis consistent with section 777A(e)(2)(B) of the Act. No one objected. We did receive a request from Canfor Corporation (Canfor) for a company-specific rate. Canfor requested a company-specific questionnaire be issued or, in the alternative, that it be allowed to respond to the questionnaire provided to the GOC. We did not issue a company-specific questionnaire, nor did Canfor submit a voluntary response. Thus for the purposes of this preliminary determination, we have aggregated the subsidy information on an industry-wide basis. Specifically, we used the information provided by the GOC and the provincial governments and calculated one subsidy rate for the Canadian softwood lumber industry for

[6] Although the Department initiated critical circumstances investigations with respect to Venezuela and Thailand in *Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, Indonesia, Thailand and Venezuela*, 64 FR 34204 (June 25, 1999), the cases were terminated because the ITC found that the subject imports from those countries were negligible. *See Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Turkey, and Venezuela*, 64 FR 41458 (July 30, 1999).

exports of softwood lumber to the United States.

Allocation Period

Under § 351.524(d)(2) of the CVD Regulations, we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, the Department is considering non-recurring subsidies. Regarding non-recurring subsidies, we have allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over the AUL listed in the IRS tables for the softwood lumber industry. Therefore, in accordance with § 351.524(d)(2) of the CVD Regulations, the Department is using an allocation period of 10 years. No interested party has challenged the 10 year AUL derived from the IRS tables.

Benchmarks for Loans and Discount Rate

Because this investigation is conducted on an aggregated basis (except as otherwise discussed below), for those programs requiring a Canadian dollar-denominated discount rate or the application of a Canadian dollar-denominated, long-term benchmark interest rate, we used for our preliminary determination the national-average interest rates on commercial long-term, Canadian dollar-denominated loans as reported by the GOC. The information reported by the GOC was for fixed-rate long-term debt.

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

Recurring and Non-Recurring Benefits

The major subsidy allegations in this investigation are the timber management systems maintained by the provinces. Petitioners have alleged that the stumpage fees paid to harvest and cut timber by softwood lumber producers, which are set by the provincial governments, confer a countervailable benefit on the production and exportation of the subject merchandise. This type of subsidy constitutes the provision of a good or a service under section 771(5)(D)(iii) of the Act. Under § 351.524(c)(1) of the CVD Regulations, subsidies conferred by the government provision of a good or service provide recurring benefits. Therefore, any benefits conferred by the provinces' administered stumpage programs have been expensed in the year of receipt.

The Department is also investigating a number of other programs which provide grants to producers and exporters of softwood lumber. Under § 351.524 of the CVD Regulations, benefits from grants can either be classified as providing recurring or non-recurring benefits. Recurring benefits are expensed in the year of receipt, while grants providing non-recurring benefits are allocated over time corresponding to the AUL of the industry under investigation. However, under § 351.524(b) of the CVD Regulations, grants which provide non-recurring benefits will also be expensed in the year of receipt if the amount of the grant under the investigated program is less than 0.5 percent of relevant sales during the year in which the grant was approved (referred to as the 0.5 percent test). Except where specifically noted in this preliminary determination, the grants provided under the investigated programs were less than 0.5 percent of the relevant sales of softwood lumber, and, thus, were expensed in the year of receipt.

Subsidy Rate Calculation

In this preliminary determination, we are investigating programs administered both by the GOC as well as by the individual provinces. For the programs administered by the GOC, we divided the aggregate benefit conferred by each of the federal programs by the total value of Canadian softwood lumber sales. For programs administered by the relevant provinces, we calculated the program subsidy rate by dividing the aggregate benefit conferred by each specific provincial program by the total sales of softwood lumber from that province (or total export sales of softwood lumber if the provincial program was an export subsidy). We did not, as requested by respondents, calculate province-specific rates. To calculate the overall subsidy conferred on the subject merchandise from all investigated countervailable subsidy programs, we weight-averaged each provincial subsidy program by the provinces' relative shares of total U.S. exports of the investigated subject merchandise, which, as explained above, does not include exports from the Maritime Provinces.

As noted above, one company, Frontier Lumber, qualified for a company exclusion. Our normal practice would be to deduct that company's sales from our sales denominator in calculating the Canada-wide subsidy rate. However, given the size of the company's sales, we have not made an adjustment because any adjustment would have no effect on the calculated subsidy rate for any of the investigated programs.

I. Provincial Stumpage Programs Preliminarily Determined To Confer Subsidies

Petitioners have alleged that the stumpage programs administered by the provinces of British Columbia, Quebec, Ontario, Alberta, Manitoba, and Saskatchewan provide Canadian softwood lumber producers with countervailable benefits.[7] Petitioners allege that, through the provincially-administered stumpage systems, the provinces provide softwood lumber producers with wood fiber for less than adequate remuneration through the selling of rights to harvest timber on government-owned (or Crown) forest lands.

Petitioners have also made the same allegation with respect to the Yukon Territory, Northwest Territories, and timber sold on federal land. However, we have not examined these stumpage programs in this determination because the amount of exports from the two Territories and from federal land is insignificant. Thus, these programs would have no measurable effect on any subsidy rate calculated for this investigation. We will revisit this issue for the final determination.

In order to confer a countervailable benefit, a program must be provided to a specific enterprise or industry or group of enterprises or industries, it

[7] Petitioners have also alleged that a ban on the export of logs provides a benefit to softwood lumber producers. However, we have not addressed this allegation in this determination because any conceivable benefit provided through a log ban would already be included in the calculation of the stumpage benefit based upon our selected market-based benchmark prices for stumpage.

must provide a financial contribution, and it must confer a benefit. We address each criterion below.

Specificity

Subsidies contingent upon export performance or the use of domestic goods over imported goods are by definition deemed to be specific in accordance with section 771(5A) of the Act. For other subsidies, in accordance with section 771(5A)(D)(i) of the Act, if the law enacting the program expressly limits the subsidy program to an enterprise or industry, the program is *de jure* specific. However, when the law enacting the program does not expressly limit the subsidy program to an enterprise or industry, then the Department applies the criteria listed under section 771(5A)(D)(iii) of the Act to determine whether the program is specific based upon the actual manner in which the program is used. The examination of specificity under section 771(5A)(D)(iii), referred to as a *de facto* specificity analysis, provides for the following:

> Where there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of the following factors exists:
>
> (I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.
>
> (II) An enterprise or industry is a predominant user of the subsidy.
>
> (III) An enterprise or industry receives a disproportionately large amount of the subsidy.
>
> (IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

The statute states that any reference under section 771(5A)(D) to an enterprise or industry includes a group of enterprises or industries. In accordance with § 351.502(a) of the CVD Regulations, the Department, in analyzing whether a subsidy is *de facto* specific, will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially. In addition, § 351.502(a) provides that, if a single factor warrants a finding of specificity, the Department will not undertake further analysis.

Congress, in the SAA explained how the Department's specificity analysis should be conducted. *See Statement of Administrative Action* accompanying H.R. 5110, H.R. Doc. No. 316, Vol. 1, 103d Congr., 2d Sess. 911–955 (1994). The SAA states that the specificity test should be applied ''in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those subsidies which truly are broadly available and widely used throughout an economy.'' *See* SAA at 929. The SAA also provides that, because the weight accorded to the individual *de facto* specificity factor is likely to differ from case to case, clause (iii) of section 771(5A)(D) ''makes clear that the Department will find de facto specificity if one or more of the factors exists.'' *Id.* at 931. With respect to the type of subsidy program at issue in this investigation, the SAA states that ''where a government confers a subsidy through the provision of a good or service, the fact that the use of the subsidy may be limited due to the inherent characteristics of the good or service in question would be irrelevant for the purposes of a *de facto* specificity analysis.'' *Id.* at 932.

To determine whether the provincial stumpage programs are specific under the law, we examined the programs based upon the criteria set forth under section 771(5A)(D)(iii) of the Act. Information on the programs is contained in the provincial government responses.

A review of the responses from the provincial governments shows that there are two different types of companies which benefit from the investigated stumpage programs: (1) Sawmills and (2) pulp and paper mills.[8] Therefore, there are two types of users (or beneficiaries) of the provincial stumpage programs. Almost all of the softwood timber harvested on Crown land in each of the investigated provinces is harvested by, or on behalf of, sawmills and pulp mills. In addition, the substantial majority of harvested timber in each of these provinces is cut for sawmills producing the subject merchandise.

Because there are only two industries, sawmills and pulp mills, that use provincial stumpage programs, we preliminarily determine that the provincial stumpage programs are specific under section 771(5A)(D)(iii)(I) of the Act.

Financial Contribution

In addition to being specific, a countervailable subsidy program must provide a financial contribution. Section 771(5)(D)(iii) of the Act states that the provision of a good or service (other than general infrastructure) by a government constitutes a financial contribution under the statute. We preliminarily determine that the provision of stumpage by the provincial governments constitutes the provision of a good or service under section 771(5)(D)(iii) of the Act. Thus, we preliminarily determine that the provincial governments have provided a financial contribution as defined under section 771(5)(D) of the Act to Canadian softwood lumber producers.

Benefit

After determining that the provincial stumpage programs are specific under section 771(5A)(D)(iii) of the Act, and that these programs provide a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act, we must then determine whether this specific financial contribution provides a benefit.

Under section 771(5)(E)(iv) of the Act, a benefit is conferred by a government when the government provides the good or service for less than adequate remuneration. Section 771(5)(E) further states that the adequacy of remuneration

> shall be determined in relation to prevailing market conditions for the good or service being provided * * * in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of * * * sale.

The word ''remuneration'' is defined as ''[payment] for goods provided, services rendered, or losses incurred.'' American Heritage Dictionary. The question presented is what constitutes ''adequate'' payment for a good or service. To discern the meaning of the word ''adequate,'' we must look to the wording of this particular provision of the statute, the corresponding provision in the WTO Subsidies Agreement upon which the statute is based, and the larger context in which this provision appears.

In interpreting the phrase ''less than adequate'' remuneration, we must also bear in mind the purpose of section 771(5)(E). The purpose is to determine whether the recipient of the financial contribution—in this case a good or service—has received a benefit. A benefit is something that is favorable or advantageous. A review of section 771(5)(E) shows that the term ''benefit'' is used to mean something better than the recipient could otherwise obtain in the market, e.g., a government interest rate lower than the commercial rate for a comparable loan. Section 771(5)(E)(iii). Therefore, we also

[8] In *Lumber III (Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada,* 57 FR 22570; 22580 (May 28, 1992), we referred to the specific class of stumpage beneficiaries as the pulp and paper products and solid wood products industries, which was defined as the primary timber processing group (*i.e.*, sawmills and pulp and paper mills).

interpret ''adequate'' remuneration to be remuneration that is market-based.

This interpretation of the term ''adequate remuneration'' is further consistent with the larger context in which this provision appears both in the statute and the Subsidies Agreement. In addition to the case where goods or services are provided for less than adequate remuneration, section 771(5)(E) of the Act refers to three other instances of a countervailable benefit and provides guidance on how to measure those benefits. In the case of an equity infusion, paragraph (i) provides that a benefit exists ''* * * if the investment decision is inconsistent with the usual investment practice of private investors, * * *, in the country in which the equity infusion is made.'' In the case of a loan, paragraph (ii) provides that a benefit exists ''* * * if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' In the case of a loan guarantee, paragraph (iii) provides that a benefit exists ''* * * if there is a difference, * * *, between the amount the recipient of the guarantee pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no guarantee by the authority.'' These provisions reflect almost verbatim the language of paragraphs (a), (b), and (c) of Article 14 of the Subsidies Agreement.

The point of comparison for measuring the benefit from these types of subsidies is the marketplace free of government interference. References in the statute and the Subsidies Agreement to the ''usual investment practice of private investors,'' ''commercial loans'' that can actually be obtained ''on the market,'' and a ''comparable commercial loan if there were no guarantee by the authority'' support this conclusion. It follows from this central principle—common to all the other provisions under the benefit section, both in the statute and the Subsidies Agreement—that the adequacy of remuneration must be measured by reference to the marketplace free of government interference.

Additional support for this conclusion is found in the chapeaus of section 771(5)(E) and Article 14 of the Subsidies Agreement. The introduction to the benefit section in the statute states that ''A benefit shall normally be treated as conferred where there is a benefit to the recipient [.]'' Similarly, the title of Article 14 is ''Calculation of the Amount of a Subsidy in Terms of the Benefit to the Recipient.'' From the perspective of the recipient of a subsidy, the true measure of the benefit derived from any government largesse is by reference to what the recipient would have had to pay for the physical or financial good or service in the marketplace, absent any government involvement. Thus, while one could argue that, from the government's perspective, remuneration could be considered ''adequate'' as long as it covers the costs to the government of providing the good or service, the cost-to-government standard is wholly inappropriate from the perspective of the private recipient. This is because the cost to the government does not necessarily measure the price at which the private recipient could have obtained the good or service in the marketplace free of government interference.

The concept of benefit in the statute derives from the Subsidies Agreement. A recent WTO dispute settlement panel stated that:

> benefit clearly encompasses ''some form of advantage''; (the authority must) ''* * * determine whether the financial contribution places the recipient in a more advantageous position than would have been the case but for the financial contribution * * * the only logical basis for determining the position the recipient would have been in absent the financial contribution is the market.''

Canada—Measures affecting the Export of Civilian Aircraft, (WT/DS70/R, para 9.112).

The WTO Appellate Body stated:

> * * * the *marketplace* provides an appropriate basis for comparison in determining whether a ''benefit'' has been ''conferred'' because the trade-distorting potential of a ''financial contribution'' can be identified by determining whether the recipient has received a ''financial contribution'' on terms more favorable than those available to the recipient in the market.

Id. (WT/DS70/AB/R, para 157) (emphasis added).

Section 771(5)(E)(iv) ensures that, whatever standard is used to assess the adequacy of the remuneration required by the government, that standard must be reasonable and must take into account the market factors in the country under investigation that could affect the measurement of the adequacy of the remuneration. For example, the commercial benchmark must be derived from comparable sales, *i.e.,* sales where the prevailing conditions of sale are comparable to the sales by the government, or sales that can be adjusted to achieve comparability.

It is not necessary that the benchmark come from sales of the good or service within the country under investigation, as respondents argue. The statute requires that the analysis be made ''in relation to'' prevailing market conditions in the country under investigation, not ''in'' the country under investigation. Thus, we find no basis in the statute for the restrictive reading proposed by respondents. Moreover, such a restrictive reading would place beyond the reach of the countervailing duty law any government supplier that dominates the market for a particular input and then provides that input to producers at beneficial prices. Under such a reading, subsidy disciplines would only be available to remedy situations where the government has subsidized only an incidental part of the market for a particular input. We may not interpret the statute in a manner that would frustrate its very purpose. *See Goodman Manufacturing* v. *United States,* 69 F.3d 505 (Fed. Cir.1995) (''Statutory interpretation is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because * * * only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.'' (citation omitted)).

In sum, the key elements of a methodology to determine whether a government has provided a good or service at less than adequate remuneration as required by section 771(5)(E) are: (1) The comparability of prevailing market conditions; and (2) a market-based standard. These elements are reflected in the methodologies established in the Department's Regulations.

Section 351.511(a)(2) of the CVD regulations sets forth three methodologies for determining whether a government good or service is provided for less than adequate remuneration. These methodologies are listed in hierarchical order: (1) Market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country of exportation; or (3) an assessment of whether the government price is consistent with market principles.

This hierarchy is based on a logical preference for achieving the objectives of the statute. The simplest means of determining whether the government required adequate remuneration is by comparison with private transactions for a comparable good or service in the country. Thus, the first methodology in the hierarchy calls for a comparison with an actual market-determined price from a private supplier either within the

country under investigation, or from outside the country in the form of an actual import. Both transactions constitute market prices in the country. This methodology is first in the hierarchy because observed prices from actual transactions in the country are the most direct and reliable indicator of a market-determined price that is available to the producer in question. The second methodology calls for world market prices that would be available to the producer in question. This approach is also market-based, but it potentially introduces additional variables with respect to availability, comparability, and the market-determined nature of the prices. Nevertheless, world market prices still constitute a reasonable approach because they can reflect market-based prices for a comparable good or service that would be available in the country. The third methodology, which requires an assessment of whether the government's price is consistent with market principles, is used only where an appropriate benchmark is unavailable either in-country or abroad for comparison purposes.

The first preference, specified under § 351.511(a)(2)(i), is to compare the government price with a market-determined price resulting from actual transactions in the country in question. Such a price could include prices stemming from actual transactions between private parties, actual imports, or in certain circumstances, actual sales from competitively-run government auctions. In considering such transactions or sales, the Department will take into account product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability.

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

The Preamble also states that the Department normally will not adjust such market-determined prices under this methodology to account for government distortion of the market because such distortion will normally be minimal as long as the government involvement in the market is not substantial. If the government provider constitutes a majority, or a substantial portion of the market, then such prices in the country will no longer be considered market-based and will not be an appropriate basis of comparison for determining whether there is a benefit.

The second approach in the regulatory hierarchy is the use of world market prices that *would be available* to purchasers in the country of exportation (emphasis in the Preamble). The Preamble states that, where it is reasonable to conclude that actual prices within the country under investigation are significantly distorted as a result of the government's involvement in the market, the Department will resort to world market prices. For example, in *Live Cattle from Canada,* we stated: ''* * * when confronted with an adequate remuneration issue, the Department will normally seek to measure the adequacy of remuneration by comparing the government price to market-determined prices within the country. However, in certain situations, market prices may not exist in the country or it may be difficult to find a 'market' price that is independent of market distortions caused by government actions.'' *See Final Negative Countervailing Duty Determination; Live Cattle From Canada,* 64 FR 57040, 57056 (October 22, 1999).

The regulation also states that, where there is more than one commercially available world market price, the Department will average such prices to the extent practicable, making due allowance for factors affecting comparability. Such averaging would only be called for where we conclude that more than one world market price, i.e., prices from more than one foreign source, would be commercially available to purchasers in the country of exportation.

It is important to note that, if the private prices within the country subject to investigation were in fact market-based, they would necessarily reflect the world market price available in the country of exportation. Therefore, there should be no difference between the private prices in the country of exportation and world market prices, except for import taxes. To the extent there are any differences, this just underscores the distorted nature of the private prices where the government dominates a particular sector of the economy.

In selecting a world market price, the Department will examine the circumstances in the case to determine if a purchaser in the country could obtain the good or service on the world market. Normally, such a world market price is a market-based price at which the good or service could be imported. Thus, it should also indicate the price of that good or service that we would find in the exporting country if that price were market-based. As discussed in the Preamble, the Department will:

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

This approach is reasonable and consistent with the intent of the statute since it furthers the statutory directive that subsidization be measured on a market basis and in relation to prevailing market conditions.

To determine whether the provincial governments have provided a countervailable benefit to Canadian softwood lumber producers, we must examine whether stumpage was provided to softwood lumber producers for less than adequate remuneration. As we have noted above, the Department must first determine whether there are market prices within Canada which can be used to measure whether the provincial stumpage programs provide a good or service for less than adequate remuneration.

The Provinces of Alberta, Ontario and Quebec have provided private stumpage prices charged within their respective provinces. British Columbia provided stumpage prices set by government auction. As a starting point, these prices reported by all four Provinces would be considered prices based upon actual transactions within the country under investigation, as described in our regulations. However, an examination of the information on the record demonstrates that the private stumpage prices reported by the Provinces do not constitute market-determined prices within the meaning of § 351.511(a)(2)(i) of the CVD Regulations.

In each of the Provinces, the stumpage market is driven by the provincial governments' ownership and control of

forest land and the governments' practice of setting stumpage fees administratively. The fees are often set with a view towards traditional government economic policy goals, such as job creation, rather than with a view toward obtaining a market price. The provincial governments own a substantial majority of harvestable forest land. These Crown lands account for between approximately 57 and 97 percent of all forest land within each of the Provinces. Specifically, provincial, federal, and private ownership of forest resources, by province are:

- British Columbia—94 percent provincial, 1 percent federal, and 5 percent private;
- Quebec—89 percent provincial and 11 percent private;
- Ontario—83 percent provincial, 1 percent federal, and 17 percent private;
- Alberta—57.4 percent provincial, 10.8 percent federal, and 28.5 percent private;
- Manitoba—94 percent provincial, 1 percent federal, and 5 percent private; and
- Saskatchewan—97 percent provincial, 2 percent federal, and 1 percent private.

In addition, the softwood harvest from Crown lands accounts for approximately 70 to 90 percent of the stumpage sold within each of the Provinces. Therefore, between 70 and 90 percent of the good or service within each of the provinces is provided by the government. Further, the apparent minimum cut requirements on public lands have the potential to distort timber supplies and depress prices. Since stumpage fees on public lands are the price driver for the stumpage market in those Provinces, we conclude that the stumpage fees on private lands are largely derivative of the public land prices and are therefore distorted.

We considered additional information on the record with respect to each of the Provinces examined for this preliminary determination. For example, Quebec provided a private price that was obtained via a survey of 81 companies that had purchased private stumpage during the POI. However, as even acknowledged by the Quebec Ministry of Natural Resources, private stumpage prices in Quebec are affected by the administratively-set price for public stumpage.[9] Ontario commissioned a study of private stumpage sales in that Province. However, information in the survey indicates that many private landowners do not actively market their standing timber and that many sales were not actually contested or open to competition. None of the respondents to the survey indicated relying on auctions or a forester consultant to assess the value of the timber. In fact, only 21 percent of the landowners state that the price for stumpage was market-determined.

Neither Manitoba nor Saskatchewan reported prices on private stumpage sales within the provinces.

British Columbia did not provide private stumpage prices. Instead, the Province provided prices from the auctions the government runs under the Small Business Forest Enterprise Program (SBFEP). As the name of the program indicates, the SBFEP auction is only open to small businesses that are registered as small business forest enterprises. Thus, the overwhelming majority of the purchasers of this government good or service is explicitly excluded from this auction. Moreover, only a small percentage of stumpage in British Columbia is sold via SBFEP auction. Therefore, the SBFEP auction prices submitted by British Columbia cannot be used as benchmark prices under § 351.511(a)(2)(i) of the CVD Regulations.

A large government presence in the market will tend to make much smaller private suppliers price-takers. While it is not unusual for small suppliers to be price-takers even in a market with no government involvement, the government-dominated market will distort the market as a whole if the government does not sell at market-determined prices. In such a situation, true market prices may not exist in the country, or it may be difficult to a find a ''market'' price that is independent of the distortions caused by the government's action. In fact, where the market for a particular good or service is so dominated by the presence of a government monopoly or near monopoly, the remaining private prices in the country in question cannot be considered to be market-based. Such circumstances are present in this investigation. Because of the provincial governments' control of the market through a system of administratively-set prices and other market distorting measures, there is no market-determined price for stumpage within Canada that is independent of the distortion caused by the governments' interference in the market. Therefore, we preliminarily determine that we cannot use the private transaction prices provided by the provincial governments.

Information on the record of this investigation indicates that there are prices from the world market for comparable goods which can be used to determine whether the provincial stumpage programs provide a good or service to softwood lumber producers for less than adequate remuneration. For the reasons detailed below, we preliminarily determine that stumpage prices from the United States qualify as commercially available world market prices because it is reasonable to conclude that U.S. stumpage would be available to softwood lumber producers in Canada at the same prices available to U.S. lumber producers.[10] Furthermore, as demonstrated below, information on the record indicates that stumpage in the United States along the border with Canada is comparable to Canadian stumpage. Therefore, for purposes of this preliminary determination, we have measured the adequacy of remuneration of the provincial stumpage programs by comparing the stumpage fees charged by the provincial governments with market-determined prices for stumpage available in the United States. As explained in more detail in the benefit sections of each province, as a calculation matter, we only compared stumpage prices in each Canadian province with stumpage prices in states bordering that province. For example, we compared British Columbia prices with prices available in Washington and Idaho, and we compared prices in Quebec with prices available in Maine.

There are no restrictions on obtaining stumpage on private and state lands in the United States. Furthermore, timber harvested in the United States is imported into Canada, and imports from the United States account for almost 100 percent of all Canadian timber imports. Such imports represent a decision made by Canadian mills to purchase U.S. stumpage instead of Canadian stumpage. Finally, we note that some of the largest softwood lumber producers in Canada have operations in both Canada and in the United States and obtain stumpage in both countries.

The United States, like Canada, is one of the world's largest softwood timber producers, and the North American softwood timber region is geographically separated from other softwood timber markets throughout the world. Thus, given the costs of transporting timber across the ocean, it is unlikely that Canadian softwood lumber producers would obtain stumpage from a country other than the United States. For these reasons, we preliminarily determine that it is reasonable to conclude that the world

[9] *See* Petition at page 119.

[10] We note, however, that Canadian stumpage generally is not available to U.S. lumber producers because of restrictions on log exports.

market prices of stumpage in the United States would be available to softwood lumber producers in Canada, and that it is neither necessary nor desirable to include any other world market prices in the benchmark price.

We also conclude that the price for stumpage in the United States is a market-determined price. The majority of softwood-producing forest land in the United States is held by private concerns. Furthermore, stumpage for harvestable timber, whether sold from private parties or from state land, is sold through an open competitive process available to all buyers. Thus, the stumpage prices in the United States, unlike those in Canada, are set by market forces.

The cross-border stumpage prices that we have used are based on sales from state lands. While our preferred benchmark would be a weighted average of both state and private prices in the United States, we have been unable at this time to locate adequate private sales data, except for sales in Maine. Therefore, for purposes of this preliminary determination, we have used sales data from only state lands.

Public land stumpage fees, such as those available on state lands, accurately reflect market-based prices because they are determined by public auctions available to all comers. These sales involve competitive bidding where most purchasers have the choice of buying public or private stumpage. Moreover, it is reasonable to conclude, for purposes of this preliminary determination, that stumpage fees from public lands are a suitable benchmark because the total volume of timber cut from public land constitutes a minority of the amount of total timber sold in the United States, making private timber sales the primary driver of stumpage fees in the timber market overall. Although we maintain that stumpage rates from state lands are an appropriate benchmark under these circumstances, we intend to continue examining sources for timber prices from private lands in the United States for use in the final determination.

We have received numerous comments on whether cross-border prices can serve as a benchmark to measure the benefit conferred from the provincial stumpage programs. The petitioners support the use of cross-border prices, while respondents oppose it.

In addressing this issue, it is useful to start with the different legal frameworks governing this investigation as compared with *Lumber III*. The final determination in *Lumber III* was made in 1992, before the amendments to the Act as a result of the URAA. At the time of *Lumber III*, the provision of a good or service was a benefit if it was provided at preferential rates. The methodology used by the Department to determine whether the good was provided at preferential rates was set forth in the ''Preferentiality Appendix'' and in section 355.44(f) of the then Proposed CVD Regulations.[11] According to this methodology, the Department would measure whether the government provided a good or service at a preferential rate based upon, in order of preference, the following benchmarks: (1) The price the government charges to other parties for the identical or similar good; (2) the price charged by other sellers within the same political jurisdiction (*i.e*, country under investigation); (3) the government's cost of providing the good or service; or (4) the price paid for that good outside the country under investigation.

There are several important differences between the discarded preferentiality standard and the current adequate remuneration standard. Preferentiality is a measure of price discrimination, *i.e.*, whether a government is favoring some buyers over others with lower prices. Indeed, the first choice under the preferentiality methodology was to use another government price as a benchmark to determine whether the investigated program provides a benefit. This was the benchmark used by the Department in *Lumber III*, and it provided a measure of price discrimination, or preferentiality. It cannot be said to measure adequate remuneration.

With the changes in the CVD law as a result of the URAA, and the Subsidies Agreement upon which the URAA is based, the price discrimination test was dropped in favor of adequate remuneration. Under this standard, the government price must be compared with a market-determined price. It is no longer sufficient to say that the government does not discriminate among buyers. Rather, as discussed above, we must determine whether the government is receiving adequate remuneration, *i.e.*, a market-based price.

As noted above, under the adequate remuneration methodology, if there is no market-determined price within the country under investigation, the Department seeks a price on the world market (if one is available). However, under the preferentiality methodology, the use of a price on the world market was the last alternative. The preferentiality methodology required the Department to measure the benefit from the government's provision of a good or service by comparing the government's price for that good to its cost of providing that good before using a world market price. Therefore, under the preferentiality methodology, the Department was effectively precluded from using a price from the world market in most cases.

Many comments made by respondents criticize the use of a cross-border price by reference to contrary statements made by the Department in *Lumber III* and prior lumber cases. However, contrary statements in the past by the Department with respect to cross-border prices were made in the context of a different legal framework. Furthermore, those statements reflected a preferentiality hierarchy that put world market prices last, in many instances effectively precluding the use of world market prices, for the simple reason that world market prices are the least appropriate measure of price discrimination by the government of the exporting country.

Respondents further point out that there is no unified North American market for stumpage because each individual stand of timber is unique due to a variety of factors such as species combination, density, quality, size, age, accessibility, terrain and climate. While we agree in part with this statement, the differences in individual stands of timber are just as applicable to comparisons within Canada as they are with cross-border comparisons. For example, private lands in Quebec tend to be located in the southern portion of the province, whereas Crown lands tend to be located north of the St. Lawrence. All parties agree that the topography, climate, and biological characteristics of trees in northern and southern Quebec are very different. In fact, information on the record indicates that the terrain, climate, and mix of species in southern Quebec are much more similar to those in Maine than they are to those in the northern part of the province.

Further, despite statements that the Department may have made in earlier lumber cases, the fact that individual stands may be to some extent unique does not mean that all stands are so dissimilar as to render any stumpage price comparisons meaningless and unreasonable. Rather, information on the record indicates that, despite minor differences, many softwood lumber stands in Canada and the United States are in fact sufficiently similar to allow appropriate comparisons of stumpage prices across borders.

As a general matter, there is nothing about the border between the United

[11] These Proposed CVD Regulations were never adopted by the Department.

States and Canada that would affect the comparability of trees grown on either side. Except for the Great Lakes, there is no significant body of water or mountain range that defines the border between the two countries. For the most part, the border is an artificial line drawn as a result of a series of political compromises reached throughout the two countries' histories.

While there may be some information on the record that is conflicting, based on an analysis of all of the facts on the record, we preliminarily determine that the timber in Canada is comparable to that in the northern border states of the United States with respect to quality, species, terrain, availability, and marketability. This is why we have chosen stumpage prices from states which border Canada as appropriate benchmark prices. We have also, where possible, made comparisons on a species-specific basis, and we have accounted for numerous other adjustments claimed by the Provinces, as explained below in the narrative descriptions of the individual provincial stumpage programs. We welcome comments from the parties as to whether additional adjustments are warranted.

Respondents also argue that stumpage in the United States is not available to purchasers in Canada and that therefore the Department may not consider the price of stumpage in the United States to be an appropriate benchmark. These arguments are clearly at odds with the language of the statute and the CVD Regulations, and they are at odds with the factual findings discussed above. The location of the good is not the relevant point of the regulation, it is the availability of the price for that good. Furthermore, as discussed above, we have concluded that U.S. stumpage is in fact available to Canadian lumber producers. For instance, Canadian border mills routinely obtain U.S. stumpage, underscoring the fact that U.S. stumpage prices are actually paid by Canadian producers.

In fact, U.S. prices are very much an ''in-country'' price from the perspective of many Canadian mills, including some of the largest mills. U.S. prices are a routine part of the business calculations of many Canadian mills, particularly the border mills in Quebec, mills located in the Maritimes, and the large multinational mills in the Pacific northwest. Regardless of where the Canadian purchaser is located, the purchaser has access to U.S. stumpage and can offer bids at any U.S. public auctions. Indeed, we have already received, and we anticipate receiving still more, exclusion requests from companies located near the U.S. border that routinely use both U.S. and Canadian stumpage. Thus, U.S. prices are clearly part of the prevailing market conditions in Canada.

The Department notes, as the above analysis makes clear, that there is little difference between actual import transactions under the first tier and world market prices under the second tier of the adequate remuneration hierarchy. While the regulation draws a distinction between an actual, observable import transaction and a world market price that would be available to producers in the country, the fact is that world market prices are also based on actual transactions equally available in Canada. For this reason, we maintain that there is no practical distinction between a market stumpage price in Canada (if such a price existed) and a market stumpage price in the United States that is available to Canadian producers. Because there is no meaningful commercial distinction between the two, any effort to draw a legal distinction between them represents a hypertechnical reading of the statute that elevates form over substance.

Respondents also object to using prices of imported logs. Presently, there is inadequate information on the record of this investigation regarding U.S. logs imported into Canada. Thus, we did not consider imported log prices as a benchmark for this preliminary determination. However, we note that the CVD Regulations provide for the use of import prices, and we will continue to examine information related to actual log imports into Canada. We note that, when a Canadian producer imports logs from the United States, that producer has paid for U.S. stumpage. If the costs of harvesting, transportation, and profit, are deducted from the price of the logs, whether the U.S. logs are purchased in Canada or in the United States, the price of the U.S. stumpage is derived. Therefore, we believe there is a reason to consider there to be no difference between the purchase of stumpage in the United States and the purchase of logs imported into Canada from the United States.

Thus, after considering the information on the record, we preliminarily determine that cross-border stumpage prices are the appropriate comparison prices to measure whether the provincial governments have provided a good or service to softwood lumber producers at less than adequate remuneration. For each of the provincial stumpage programs, we have compared the administratively-set stumpage price charged to softwood lumber producers with the cross-border stumpage benchmark prices. Using this methodology, we preliminarily determine that each of the provincial stumpage programs provides a benefit to Canadian softwood lumber producers by providing stumpage for less than adequate remuneration.

In conclusion, we preliminarily determine that the provincial stumpage programs are countervailable because they are specific under section 771(5A)(D) of the Act, they provide a financial contribution under section 771(5)(D)(iii) of the Act, and they confer a benefit under section 771(5)(E)(iv) of the Act.

Below, we describe the stumpage programs for each of the investigated provinces and provide the calculated *ad valorem* subsidy rate for these programs.

1. Province of Quebec

The Government of Quebec (GOQ) makes standing timber on Crown land available to those parties that have purchased harvesting rights. These rights, often referred to as stumpage rights, apply to a particular area of Crown land and entitle the purchaser to harvest standing timber at a price that is set by the GOQ's Ministry of Natural Resources (MRN), the agency responsible for administering the sale of standing timber on Crown lands. The price that the MRN charges for stumpage rights varies depending on where the timber stand is located. In previous years, the MRN divided the Crown lands into 28 zones and charged different prices for each zone. According to the GOQ, these zones, or tariffing zones, delineated areas that were similar in terms of climate, tree size, topography, species mix, etc. Until 1999, the tariffing zones contained both Crown and private lands. However, in 1999 the GOQ amended the Forestry Act, the legislation that governs the sale of standing timber on Crown land. Pursuant to this amendment, the GOQ expanded the number of tariffing zones in April of 2000 to 161 in order to ensure maximum homogeneity in each zone. Further, as a result of the amendment, privately-owned forests were no longer located within any of the tariffing zones.

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

TSFMA licences account for virtually all standing timber harvested on Crown lands. During the POI, TSFMAs

accounted for 95 percent of the softwood Crown timber harvested. A TSFMA allows the holder to obtain an annual management permit to supply a wood processing plant or mill. A TSFMA also authorizes the volume at which particular species can be harvested. In order to obtain a TSFMA, the applicant must own a wood processing mill. In return for the stumpage rights, the holder of the TSFMA must carry out certain types of silviculture treatments, as specified in the agreement with the MRN, required to achieve a pre-established annual yield. The GOQ credits a portion of these silviculture costs towards the payment of the stumpage fees owned under the TSFMA. In addition, the MRN mandates the holder of the TSFMA to build and maintain the roads leading to and through the logging sites, and submit five-year and annual forest plans for required silviculture activities. TSFMA holders are also required to contribute to the forest fire protection agency Société de protection des forêts contre le feu (SOPFEU), the insect and disease protection agency Société de protection des forêts contre le insectes et les maladies (SOPFIM), and the Forestry Fund. The overall term of the TSFMA is 25 years. However, every five years from the effective date of the agreement, the term of a TSFMA can be renewed for an additional 25 years, provided that the holder of the TSFMA has fulfilled its obligations under the agreement.

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

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

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

Aside from managing the sale of standing timber on Crown lands, the MRN collects information on the price of standing timber in private forests. Private market prices for standing timber are obtained through a survey of companies that purchase standing timber from private forests. The Quebec Institute of Statistics (the Institute), under the aegise of the MRN, conducts a census of all purchases of privately-held timber every 3 years. Between each census, the MRN conducts a survey of private purchasers using randomly selected respondents. These surveys are based on actual transactions of private purchasers and mainly cover the purchase of trees in the spruce, pine, and fir species group. The most recent analysis of private stumpage prices in Quebec took place in 2000. Of the 190 major companies trading standing timber, 81 responded to the survey. All companies included in the survey have traded at least 4,000 cubic meters of standing timber in the last four years. The GOQ states that the survey covered the private forest in its entirety as well as all 15 territories managed by private wood producers' syndicates and marketing boards.[12]

Once the survey is complete, the Institute compiles a value for each private forest territory covered by a syndicate or wood producer's marketing board. The Institute then weights these values by the volume of timber purchased by each respondent. The GOQ explains that the purpose of this step is to improve the statistical accuracy in the calculation of the average market value of standing timber in private forests. The Institute then obtains a single, province-wide average of the survey respondents, referred to as the Market Value of Standing Timber (MVST), by attributing a weight corresponding to the total trading volume for each wood producers' association territory.

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

The MRN employs the parity technique by gauging the operating costs for each of the 161 tariffing zones, the private forest (where costs are lowest), and at the northernmost limit of demand (where costs are highest). These operating costs include harvest costs, road construction and maintenance costs, transportation costs to mill and market, logging camp costs, and specific tenure costs. The GOQ states that the operating costs are derived from cost indices that quantify the average biophysical characteristics of each zone (*i.e.*, average tree volume, topographical and soil conditions, average transportation distances, etc.). The MRN then calculates the difference between the costs at the northernmost limit of demand and each tariffing zone's operating costs, as well as the difference between costs at the northernmost limit of demand and costs in the private forest. The ratio of the former to the latter represents the operating cost adjustment for each tariffing zone. The MRN then calculates a base MVST for the northernmost limit of demand. With this data, the MRN determines the MVST (*i.e.*, the stumpage price) for each tariffing zone by multiplying the operating cost adjustment by the difference between the private and northern limit MVSTs and adding that product to the MVST at the northernmost limit of demand. The resulting stumpage prices cannot exceed the average market value of standing timber in private forests, nor can they fall below a minimum stumpage rate (discussed below).

In addition to making an adjustment for relative operating costs, the characteristics of wood from each tariffing zone are compared with those of wood from the private forest to determine their impact on processing costs and the value of the products they are able to produce. According to the GOQ, this quality adjustment, introduced in 1999, takes into account the impact of average diameter, species distribution, rot percentages, and log taper on log processing costs and sawn product value. The GOQ states that consideration of these characteristics, which are quantified into a public quality and private quality index, allow the value of wood in each tariffing zone to be adjusted according to the

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

differences between the quality of standing timber in both types of forests. The GOQ states that quality adjustments can alter the MVST as much as plus or minus C$5 per cubic meter.

Upon establishing the operating and quality adjustments, the MRN calculates a minimum stumpage rate. The GOQ states that for the fir-spruce-jack pine-larch species group, the minimum stumpage rate is comprised of the average cost of silviculture treatments in the common areas forming the northernmost demand limit. A basic rate of C$1 per cubic meter ($1996), indexed annually pro-rata to changes in the market value of private forest standing timber, is included in the minimum stumpage rate. The GOQ states that during the POI, the minimum stumpage unit rate was C$3.53 per cubic meter.

Lastly, the MRN indexes the MVSTs that are charged in each of the tariffing zones on the first of each quarter in order to account for any price changes in the private forest market price that may have occurred since the most recently completed census or survey of private market prices.

As explained above, the MRN calculates an administered stumpage price for each tariffing zone. According to the MRN, there is no distinction between sawlogs and pulplogs when setting the stumpage price. Thus, to arrive at the administered stumpage rates used in our stumpage calculations, we divided the total softwood stumpage fees paid by TSFMA permit holders during the POI for each species by the total softwood stumpage harvested under TSFMAs during the POI for each species. In this manner, we obtained a weighted-average stumpage price per species that was paid by TSFMA permit holders during the POI. According to information submitted by the GOQ, the softwood stumpage harvested under TSFMAs is equal to the total timber harvested for lumber processing plants (*i.e.*, processing plants that produce the subject merchandise). Therefore, we have not incorporated the stumpage fees paid by FMC permit holders into the Province-wide administered stumpage rate.

Under TSFMAs, each TSFMA holder must become a member of SOPFEU and pay the corresponding dues. The Department granted this adjustment in *Lumber III* and we have granted it in this preliminary determination. *See* 57 FR 22570 at 22600. To make the adjustment, we divided the total dues incurred by TSFMA holders during the POI by the total harvest under TSFMAs during the POI.

In addition, TSFMA holders must belong to SOPFIM and pay its membership fees. The Department granted this adjustment in *Lumber III* and we have granted it in this preliminary determination. *See* 57 FR 22570 at 22600. We adjusted for this obligation by dividing the sum of all membership fees paid by TSFMA permit holders during the POI by the total harvest under TSFMAs during the POI.

Prior to fiscal year 1996–1997, the cost of the forestry fund was borne entirely by the MRN. However, beginning in fiscal year 1997–1998, the MRN required TSFMA holders to contribute to the Forestry Fund. The Fund provides financial support for seedling production, inventory data, and forestry research activities. Because this is a cost imposed on TSFMA holders by the GOQ, we have made an adjustment for the Fund by dividing the TSFMA holders' total contributions during the POI by the total harvest under TSFMAs during the POI.

TSFMA holders construct and maintain primary, secondary, and tertiary roads for their logging operations. Because those roads are available for public use, they must meet government standards. We granted this adjustment in *Lumber III. See* 57 FR 22570 at 22598. We have granted a similar adjustment in this preliminary determination. The GOQ provided the cost per cubic meter of primary, secondary, and tertiary road construction and maintenance, and we have made an adjustment based on those costs. In *Lumber III*, the Department did not grant an adjustment for primary road construction and maintenance. *See* 57 FR 22570 at 22599. However, for purposes of this preliminary determination, we have included primary road construction and road costs in the road adjustment because the GOQ was unable to provide a breakout of its primary and secondary costs. During verification, we will further examine the differences in infrastructure and a breakout of primary and secondary road construction and maintenance costs.

We note that for purposes of this preliminary determination, we have not made an adjustment for haulage roads. According to the GOQ, haulage roads are final branches of a road network the surface of which is composed entirely of natural materials. The GOQ further explains that haulage roads are generally used for one year or less. At this time, we preliminarily determine that haulage roads must be constructed and maintained each time a timber stand is harvested, as opposed to more permanent primary, secondary, and tertiary roads, and, thus, are costs that are borne by all timber harvesters regardless of the level of development of the roads that are within the area in which the standing timber is located and regardless of whether the standing timber was purchased from public or private sources.

We further note that prior to the issuance of our final determination, we will examine whether purchasers of stumpage in private forests in Maine incur road construction and maintenance costs and, if so, the amount of those costs and the extent to which they should offset the road construction and maintenance adjustment granted to producers in Quebec.

Under the TSFMA tenure arrangement, companies must perform silviculture treatments in order to achieve a sustained yield. The GOQ indicates that it credits most of the silviculture costs towards the stumpage dues paid by TSFMA permit holders. However, the GOQ also states that it does not credit certain costs. Specifically, these expenses pertain to control and planning costs associated with silviculture activities and to costs associated with the transportation of seedlings.

Regarding the control and planning costs, the GOQ submitted a study conducted on behalf of the MRN by Del Degan, Massé et Associés inc. that covered fiscal year 1997–1998. This study analyzed the supply costs of harvesting softwood species and poplars found on Quebec's Crown land.[13] In particular, the study indicates the unit cost difference between the amount of silviculture costs borne by TSFMA permit holders and the amount of silviculture costs credited by the GOQ. In *Lumber III*, 57 FR 22570 at 22600, we granted such control and planning adjustments. For purposes of this preliminary determination, we have granted the difference between silviculture costs incurred and silviculture credits received by TSFMA permit holders as an adjustment. To make this adjustment, we converted the costs from the 1997–1998 MRN fiscal year study into POI-dollars using the Canadian Industrial Product Price Index for Wood Industries as reported by Statistics Canada.

In *Lumber III*, we determined that replanting is a silviculture requirement of TSFMA holders and although seedlings were provided to TSFMA holders by the GOQ, tenure holders were required to transport them from

[13] This study was included as part of the public version of Quebec's August 6, 2001 supplemental questionnaire response.

government nurseries to harvest sites. *See Lumber III*, 57 FR 22570 at 22600. The GOQ has stated that it did not credit costs associated with the transportation of seedlings during the POI. Consistent with our approach in *Lumber III*, we have adjusted the administered stumpage price to reflect the cost for transportation of seedlings. The GOQ states that it does not monitor seedling transportation costs because they are not compensated by dues credits. However, the GOQ supplied the seedling transportation cost that was used in *Lumber III*. For purposes of the preliminary determination, we have used the seedling transportation cost from *Lumber III*. We have converted this unit cost figure, which was originally reported in the Quebec Calculation Memorandum from the final determination of *Lumber III*, into POI-dollars using the Canadian Industrial Product Price Index for Wood Industries as reported by Statistics Canada.

As explained above, we have preliminarily determined that stumpage prices in the United States provide the most accurate benchmark. In the case of Quebec, it is bordered by four states: New York, Vermont, New Hampshire and Maine. While data on stumpage prices are available for all four states, our preliminary analysis of the data available to us at this time indicates that the data for Maine are the most comprehensive. For example, New York, Vermont, and New Hampshire are based on a limited number of survey respondents while the stumpage prices collected by the Maine Forest Service (MFS) are based on approximately 3,000 landowner reports received by the MFS that reported stumpage sales in 2000. In addition, among the four states, Maine has the longest border with Canada. Prior to our issuance of the final determination we will further examine our decision to use Maine data as the benchmark stumpage price as well as our decision not to use the data from New York, Vermont, and New Hampshire.

The MFS report provided weighted-average prices for each species in Maine in U.S. dollars per thousand board feet (MBF). We converted these U.S. prices into Canadian dollars using the average exchange rate for calendar year 2000 as reported by the Central Bank of Canada. Next, we converted these figures from MBF into cubic meters using the conversion factor of 5.66. We note that this is the same conversion factor that was used by the ITC. See Conditions Relating to the Importation of Softwood Lumber into the United States, USITC Publication 1241, April 1982, which was placed on the record of this investigation on August 9, 2001. We then calculated the difference (unadjusted) between provincial and Maine stumpage prices for each softwood species harvested in provincial forests. To arrive at a weighted price difference, we weighted each species' price difference in proportion to its share of the TSFMA harvest for fiscal year 2000–2001. We then reduced this weighted price difference by the amount of each adjustment described above to arrive at the adjusted price difference.

To calculate the benefit under Quebec's stumpage system, we first multiplied the adjusted price difference described above by the total softwood harvested by TSFMAs during the POI. Next, we calculated the provincial benefit by dividing the product of the adjusted price difference and the total softwood harvested by TSFMAs during the POI by the total value of softwood lumber shipments plus the total value of by-products for the POI. This methodology of calculating the benefit is similar to the one used in *Lumber III*. *See* 57 FR 22570 at 22577. During verification, we will further examine the figures used in the denominator of the provincial benefit calculation. Next, as explained in the ''Subsidy Rate Calculation'' section of this notice, we weight-averaged the benefit from this provincial subsidy program by the province's relative share of total U.S exports. The preliminary countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section, below.

2. Province of British Columbia

Although there are 11 forms of agreements that authorize the granting of rights to harvest Crown timber in British Columbia (eight are in the form of licences and three provide harvesting rights in the form of permits), there are three main types: (1) Tree Farm Licenses, (2) Forest Licenses, and (3) Timber Sale Licenses.

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

Forest Licenses are volume-based tenures in that they confer the right to harvest a certain amount of timber each year within a given Timber Supply Area without designating a specific area of land. A Forest License has a maximum duration of 20 years. Approval to harvest specific timber under a Forest License is accomplished though the issuance of Cutting Permits. The licensees are responsible for costs associated with planning, road building, harvesting, basic silviculture, and payment of stumpage and annual rent.

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

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

The MPS, established in January, 1999, uses results of the SBFEP section 20 auction sales to set the ''upset'' stumpage rate for upcoming ''competitive'' timber sales under sections 20 and 21. MPS estimates the

site-specific value of standing timber directly from recent auction sales. The resulting estimate is then discounted to set the upset (minimum) price, and the winning bidder typically adds a bonus bid to determine the total stumpage charge. In addition, section 21 is not only awarded to the highest bidder; other factors such as employment, new capital investment, existing plant, proximity of the plant to the timber supply, and the value added through the manufacturing process are taken into account. Based on volume, sections 20 and 21 represented approximately 11 percent of the total softwood harvested during the POI. Further, all individuals and companies under the SBFEP combine to hold approximately 13 percent of B.C.''s Allowable Annual Cut (AAC). There is no estimate of the volume of softwood harvested under the ''Coast Hemlock Strategy'' during the POI. However, because it is an MPS ''pilot'' project that is currently being evaluated to determine whether it will be expanded, contracted or canceled, the volume should be a relatively small amount. Also, during the POI, the province sold 6.4 percent of the total log harvest through Section 20. Therefore, the CVP system appears to be the method used to determine the vast majority of administratively-set stumpage rates.

Since the government provides stumpage at administratively-set prices that, even after accounting for differences in forest management and harvesting obligations (as described below), are generally lower than the benchmark stumpage prices that the government obtains from other companies, we preliminarily determine that the B.C. provincial government is providing stumpage for less than adequate remuneration.

We used as our volume information for British Columbia softwood logs (including sawlogs and veneer, and excluding pulplogs) harvested by the major tenure holders in the province during the POI. We also did not include timber harvested on private or federal lands, both of which, represent small percentages of softwood sawlogs harvested in B.C. (approximately 10 percent and less than one percent by volume, respectively, province-wide). We included in our administratively-set prices stumpage sold through the SBFEP.

Although the price-determining factors are different between administratively-set stumpage sales in B.C. and market-driven stumpage sales in Washington state, an examination of stumpage prices alone is not sufficient to determine whether timber is provided for less than adequate remuneration. Tenure holders in B.C. are required to fulfill certain forest management and timber-harvesting obligations, including silviculture and other forest management activities. Therefore, it is necessary to factor in certain cost adjustments to the administered prices in B.C. to reflect the costs of certain mandatory activities that are not factored into the administered price.

For the following adjustments made by the Department, with the exception of reported annual rents, we relied on cost data submitted by respondents, and taken from surveys conducted by the Ministry of Forests (MOF) for Coastal B.C., summarized and reviewed by Pricewaterhouse Coopers (PwC), and a survey developed and conducted directly by PwC for Interior B.C. The PwC report represents data from calendar year 2000. PwC was engaged by the MOF to collect and review certain cost data from major license holders specifically for purposes of this investigation. We did not include any cost adjustments associated specifically with the SBFEP. For all adjustments, we relied on costs borne by major tenure holders, since respondents provided cost data based on survey responses of major tenure holders.

For the Coastal survey, PwC summarized and reviewed survey responses conducted by the MOF. Major licensee cost data was summarized for the Head Office, Forestry, and Engineering Component (*i.e.*, General and Administrative, Engineering and Forest Management Costs) from licensees whose calendar year 2000 volume equaled approximately 50 percent of the total volume during the period. With regard to the Logging Operations Component (*i.e.*, Road Construction and Routine Road Maintenance), PwC reviewed responses from licensees whose calendar year 2000 harvest volume totaled approximately 21 percent of the entire harvest volume for the year.

For the Interior, since a calendar year 2000 survey has not yet been completed by the MOF, an independent survey was developed and conducted by PwC. Responses were compiled from major licensees whose calendar year 2000 harvest volume equaled approximately 63 percent of the total harvest volume.

In responding to the surveys, no licensees reported any operations on private lands for the Interior. However, Coastal data includes costs incurred on Crown and any private lands a licensee may own, but this is limited to holders of Tree Farm Licenses. Respondents point out that costs per cubic meter with regard to forest management responsibilities, including silviculture and road construction and maintenance, would generally be the same for both private and Crown land within a Tree Farm Area, since the licensee responsibilities mandate the same activities in the same areas (*i.e.,* private land within a Tree Farm Area is subject to the same standards as Crown land within a Tree Farm Area). Therefore, consistent with our determination in *Lumber III,* we have not accounted separately for the fact that a small percentage of private cost data is included in the Coastal B.C. survey information reported by respondents.

Based on the cost data submitted by respondents, we made the following adjustments to the administered prices in order to obtain an appropriate comparison with the benchmark prices:

(1) Annual ground rents, reported on a per cubic meter basis, were included as an adjustment because they are charges for reserving the use of the resource under license, and are imposed whether or not timber is harvested.

(2) Major tenure holders are required to perform certain activities pertaining to the reforestation of their timber stands. These activities, referred to as silviculture, are broken down into two types—basic and incremental. Major tenure holders must perform basic silviculture, which includes surveying, site preparation, planting, brushing, weeding, spacing and seedling. Incremental silviculture activities, which are not required by law, take place after the establishment of a free growing crop of trees. These activities are not the responsibility of tenure holders. In limited instances, a licensee may perform incremental silviculture on a voluntary basis. We added basic silviculture costs incurred by major tenure holders to the administered rate since major licensees are required to perform these activities, whereas private harvesters in Washington state are not required to do so. For Coastal B.C., we took the reported basic silviculture costs and divided by the reported production volume to arrive at a per cubic meter cost. We applied the same calculation for the Interior, based on reported cost and volume information contained in the PwC survey results. We included an adjustment for reported field overhead and general and administrative expenses associated with these activities. We made no adjustment for costs related to incremental silviculture activities for either the Coast or Interior because major tenure holders are not required to perform these activities.

(3) Major tenure holders are required to perform forest protection activities on Crown lands, including fire prevention

and suppression, and pest management activities. Initial fire suppression, maintaining specified equipment levels and fire readiness plans are obligations of licensees. Major licensees are also required to combat and extinguish all fires in their operating areas. If the fires are not successfully controlled by the licensees, tenure holders are billed by the Ministry for the costs of any additional measures that need to be taken. As for insect and disease protection measures, these are generally carried out by licensees. As a result, we have included adjustments for these additional costs for both Coastal B.C. and Interior B.C., as well as adjustments for the allocation of general and administrative activities associated with these activities. To arrive at per cubic meter costs for these activities, we have taken the reported costs from survey respondents and divided by the reported production volume for those respondents.

(4) There are certain general classifications of roads associated with logging in B.C. Primary (mainline) roads are intended for regular and ongoing traffic. These are roads that require extensive engineering, excavation and construction. Secondary, or operational, roads are generally intended for a lower volume of traffic, and built on a less permanent basis than a mainline road. Cutblock, or on-block, roads enable harvesting to take place on a single cutblock, and are often only sufficient for the movement of crews and equipment. These are temporary roads (typically used for a single season) that require little, if any, maintenance.

Respondents report that major tenure holders are responsible for building and maintaining mainline, operational and cutblock roads. All Crown lands are generally for public use, except where safety concerns may prevent their use. Respondents provided information on road and bridge building and maintenance costs for major licensees, indicating that maintenance of all forest roads is the responsibility of the industrial user, and that roads used by major tenure holders require ongoing maintenance.

Private harvesters in Washington state often must factor in costs for construction and maintenance associated with all roads not considered to be primary roads. Therefore, we included as an adjustment only that portion of the reported costs for road and bridge building, road and bridge maintenance, deactivation (the removal of the road surface and sub-surface, including culverts, to return the roaded area to its original natural state), field overhead and general and administrative expenses that relate to mainline roads only. Since the Government of British Columbia (GBC) did not provide a full breakdown for mainline and operational road costs for both the Coast and Interior, we relied on cost information provided in the Coastal survey response of the PwC report to determine the applicable road cost adjustments to make to the Coastal and Interior administratively-set stumpage prices.

In the Coastal survey response, major licensees reported a majority of their road expenses broken down by mainline, operational and major bridge construction. Based on this reported data, we added the mainline and major bridge construction costs and divided our sum by the total road costs of Coastal survey respondents to arrive at a percentage of the total road costs for which Coastal B.C. major licensees are responsible for but which private harvesters are not. Without having a complete itemization of mainline and operational road costs, we then applied this percentage to the total reported road costs, per cubic meter, to arrive at the applicable adjustment to include for Coastal B.C. Next, we applied this calculated percentage to the submitted per cubic meter road costs of Interior B.C. survey respondents, as well, since road construction and maintenance costs were not reported separately by road type (primary/mainline, secondary/operational, etc.). We used this percentage to determine applicable adjustments for road and bridge building, road and bridge maintenance, deactivation, field overhead and general and administrative expenses.

Cost data reported by respondents does not include any construction or maintenance costs incurred on cutblock, or onblock, roads. We will further examine. We note that we will examine closely at road construction and maintenance cost data.

(5) We have included costs reported as ''Sustainable Forest Management'' costs, as submitted by respondents. These costs include preparation of forest development plans, management plans, silviculture prescriptions and cutting permits. Interior costs include post-logging treatments, including mistletoe eradication, as well as landing/roadside burning and rehabilitation. Respondents state that these costs are assumed by industry without reimbursement, credit against stumpage or other offset. We note that while private harvesters bear certain costs relating to operational planning and land treatment, the mandatory costs borne by major tenure holders are, in large part, unique to those licensees. Based on these factors, we have preliminarily granted adjustments for forest resource management activities and an allocation of the general and administrative expenses have been added to include the costs of these activities.

We have not included any adjustments to administratively-set prices for costs related to timber sales, such as scaling, residue and waste management and cruising, engineering and layout. While the GBC reported that major licensees bear the costs of planning, engineering and layout, cruising, scaling (including the cost of operating scale sites) and residue and waste surveys, we see no reason to believe that private harvesters would not bear many of these same costs. Indeed, there are several costs related to auction sales that are borne by private harvesters, including costs of evaluating the timber offered for sale. Therefore, we have not included these adjustments for either the Coast or Interior. We will examine this at verification.

To obtain benchmark prices that can be compared to administratively-set B.C. prices, we used data from the Washington State Department of Natural Resources (WDNR), as compiled in the *Stumpage Price Report* (March 31, 2001), published by the Timber Data Company. The WDNR data is derived from stumpage sold by public auction or a sealed bidding procedure. There are no restrictions concerning who may place a bid, including any foreign entity.

In order to determine our benchmark prices to compare to stumpage prices in Coastal B.C. and Interior B.C., we first calculated weighted-average prices, by volume sold during the POI, for each of the major species in Washington, separately for Western and Eastern Washington. For Western Washington, which is comparable to the B.C. Coast, we looked at Douglas fir, true fir/hemlock and red cedar/cypress. For Eastern Washington, which is comparable to the B.C. Interior, we examined Douglas fir/larch, hemlock/true fir, ponderosa pine, lodgepole/spruce and red cedar.

Certain species volume and price data was reported for Coastal and Interior B.C. for which we did not have Washington state volume and price data in the *Stumpage Price Report.* These species made up only a very small percentage of the volume harvested. For the Coast, cypress accounted for approximately 4.3 percent of the Coastal sawlog harvest, while spruce accounted for 2.8 percent. We conferred with a forestry official who explained that, of the Western Washington species for which we have data, cypress is most similar in its uses and characteristics to

red cedar (*see* ''Calculation of Stumpage Subsidy in British Columbia'' Memo to the File from Team, dated August 8, 2001). Therefore, for purposes of this preliminary determination, we have used the Western Washington red cedar price data to compare to Coastal B.C.''s price data for cypress. In the case of spruce, we compared the prices we had for Coastal B.C. spruce to Eastern Washington price data contained in the *Stumpage Price Report* for purposes of the preliminary determination. Similarly, red cedar made up 2.8 percent of the sawlog harvest for Interior B.C., yet we did not have price data for red cedar in Eastern Washington. Therefore, for purposes of the preliminary determination, we used as a proxy Western Washington red cedar prices to compare to red cedar in Interior B.C. We will attempt to gather more precise information regarding these species comparisons prior to the final determination.

We compared B.C. and WDNR data separately for the Coast and Interior. We compared the stumpage prices reported for the species in B.C. to the prices reported in Washington state, weight-averaged by volume sold during the POI. We then converted the prices for each species from U.S. dollars per thousand board feet to Canadian dollars per cubic meter using monthly exchange rates from the Bank of Canada for the POI and the conversion factor described above (*see* discussion of Quebec's stumpage system and calculations). We compared the prices for each species or species group in both the Coast and the Interior to arrive at price differences for those species or species groups. Next, we weight-averaged the price differences of all included species or species groups by the harvested volumes of individual species or species groups in British Columbia. On this basis, we arrived at per-unit price differences for Coastal and Interior B.C.

In order to determine the *ad valorem* subsidy rate for B.C. stumpage, we first took our calculated per-unit price differences for both areas, and factored in all necessary adjustments, which are detailed above. We next multiplied the total provincial harvest of softwood logs for the POI by the reported percentage of the harvest going to sawmills to arrive at a total sawmill harvest for the POI. We multiplied the resulting figure by the per-unit price differences, factoring in adjustments, to arrive at the total benefits for Coast and Interior. We then added the benefits together for the Coast and Interior and divided the sum by the combined total value of softwood lumber and by-product shipments within B.C. Next, as explained in the ''Subsidy Rate Calculation'' section of this notice, we weight-averaged the benefit from this provincial subsidy program by the province's relative share of total U.S exports. The preliminary countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section, below.

3. Province of Ontario

The Government of Ontario (GOO) makes standing timber on Crown land available to those parties who have purchased harvesting rights. These rights, often referred to as stumpage rights, apply to a particular area of Crown land and entitle the purchaser to harvest standing timber at a price that is set by the GOO's Ministry of Natural Resources (OMNR), the agency responsible for administering the sale of standing timber on Crown lands. The GOO maintains two main types of tenure arrangements under the Crown Forest Sustainability Act (CFSA): (1) Section 26 Sustainable Forest Licenses (SFLs) and (2) Section 27 Forest Resource Licenses (FRLs). Section 26 SFLs are set for an original 20-year term, which are extendable indefinitely and are not transferable. Four percent of Section 27 FRL holders and 41 percent of Section 26 SFL holders are integrated.

Generally, an SFL covers all forest land in a management unit. The GOO reported that SFLs cover 90 percent of the Crown timber land designated as management units. According to the GOO, SFL holders are responsible for forest planning, information gathering, monitoring, basic silviculture, and road building costs. However, the GOO reimburses many silviculture costs. Section 27 FRLs are set for terms up to 5 years, can be extended for 1 year, and are not transferable. Typically, a FRL covers only part of a management unit, and timber amounts and species are specified. The areas of some FRLs overlap with SFL areas, but, in such instances, different stands are covered.

To get either license, one must own a resource processing facility or must have access to a market (*i.e.,* an established arrangement with a facility to supply wood). Under the CFSA, mills can also gain timber under non-tenure arrangements, through Section 25 Supply Agreements and Supply Commitment Letters. According to the available information on the record, very little standing timber is harvested under Section 25 Supply Agreements or Supply Commitment letters.

In Ontario, lumber producers obtain the forest products they need in five ways: (1) They pay the Government of Ontario stumpage dues and harvest timber directly from their tenures on Crown lands; (2) they purchase logs at arm's-length from a company that harvested it from Crown lands; (3) they pay stumpage dues and harvest timber from private timber owners; (4) they purchase logs from a company that harvested timber from private lands; and (5) they import logs from the United States.

The GOO stated that it does not distinguish between saw logs and pulp logs; therefore, in its response to the questionnaire it reported timber harvest data based on whether the log was destined for a saw mill or a pulp and paper mill. The value data reported does not include ''in-kind'' services provided by tenure holders, however, the GOO has provided certain estimates of the total value of services that tenure holders are obligated to provide. The GOO reported that 30 percent of the softwood timber harvested from Crown lands is resold by the tenure holders to third parties.

The GOO reported that integrated and non-integrated firms pay the same price for stumpage, which is different than what the Department found in the *Lumber III* investigation. Stumpage fees are charged after measurement has occurred, which can occur at the logging site, but usually occurs at the destination mill. Ministry or company officials conduct the actual scaling (measurement). The licensee pays the scaling costs. Measurement can occur quickly or may be delayed for months due to the weather.

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

The minimum charge is set administratively every year depending on the species and the destination of the harvested timber, i.e., whether it is destined for a saw mill or a pulp and paper mill. The GOO states that the primary reason for this charge is to generate a secure source of revenue regardless of market conditions. During the POI, the minimum charge for 97 percent of Crown timber was set at C$3.28 per cubic meter, and the

minimum charge for three percent of Crown timber was set at C$0.59 per cubic meter. According to the GOO questionnaire response, the Annual Area Charge that the Department found in Lumber III was combined with this charge in 1997.

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

The third component of the overall provincial stumpage price is the forestry futures charge, which is the same for all management units and species within the province and is set annually. Money collected from this charge is paid into the Forestry Futures Trust Fund and is to be used for costs relating to pest control, fire, natural disaster, stand management, and the silviculture expenses of insolvent licensees. During the POI, the charge was C$0.48 per cubic meter. In response to questions in the Department's supplemental questionnaire, the GOO indicated that this charge has not changed since the Fund was established in 1995.

The fourth component of the stumpage charge is the residual value charge, which is assessed when the price of end-forest products produced with timber reaches a certain level determined by the OMNR. For softwood lumber, the RV charge is assessed when the estimated price a softwood mill receives for lumber exceeds C$351.97 per thousand board feet. This charge is determined on a monthly basis according to a formula.

The GOO reports that basic silviculture, not incremental silviculture, is required to be performed on all harvested Crown land requiring renewal in order to achieve a sustained yield. The GOO reports that the aims of basic silviculture are to ensure the stand regenerates quickly, the desired species regenerates in the area, the trees in the stand reach the appropriate size, and the stand regenerates with optimum tree density. Basic silviculture may include, among other things, site preparation, direct seedling and planting, tree improvement, vegetation management, and thinning.

The GOO claims that all harvesters of Crown timber are required to pay the full cost of basic silviculture. Section 26 and 27 tenure holders pay this through the portion of stumpage (*i.e.*, the forest renewal charge) deposited into the Forest Renewal Trust Fund; the forest renewal charges on Crown lands still in transition from OMNR management to a SFL tenure holder are paid into the Special Purpose Account. After performing silviculture activities, the tenure holders submit bills to the Ministry of Natural Resources and are reimbursed in full for their eligible silviculture costs. According to the GOO, basic silviculture expenditures eligible for reimbursement include: Cone collection, seed extraction, tree improvement, stock purchase/delivery, tree planting, seedling, scarification, site preparation (including mechanical and chemical burn), tending, tree marking, modified harvest cutting, and silvicultural surveys. Tenure holders also can charge the province an additional 10 percent overhead for silviculture management.

Because Ontario tenure holders are reimbursed for 100 percent of the costs of basic silviculture from the Forest Renewal Trust Fund, we made an adjustment by subtracting the total value of the forest renewal charges collected during the POI. In addition, we made a further adjustment to the administered stumpage price to account for reimbursement of silviculture overhead costs. We made this adjustment for the reimbursement of silviculture overhead by deducting 10 percent of the value of the forest renewal charges collected during the POI. During verification, we will further examine the silviculture costs required by the OMNR and reimbursements made.

Ontario claims that license holders make in-kind payments to the province because of the following requirements: (1) Road construction and maintenance; (2) forest management planning; (3) forest protection (fire and insect protection costs); and (4) First Nations relations. Total in-kind payments are estimated by the GOO on a per unit basis of C$2.33 per cubic meter for the POI. The GOO claims that SFL holders and FRL holders have similar obligations on tenures, claiming that FRL holders have them indirectly through harvesting arrangements with overlapping SFL holders.

As explained above, the administered stumpage price for each management unit is based on a mixture of general charges and charges specific to a particular management unit, species, and destination mill. To arrive at a single province-wide administered stumpage rate for use in our stumpage calculations, we divided the total softwood stumpage fees paid by both SFL and FRL tenure holders during the POI by the total softwood harvested during the POI. We then added to this administered stumpage rate adjustments (on a per cubic meter basis) for public stumpage obligations that would not be incurred, according to our preliminary analysis, by private harvesters in the United States.

The GOO considers expenses regarding road construction and maintenance requirements as ''in-kind'' contributions. The GOO categorizes primary roads as permanent roads, which are constructed, maintained and used as the main all-weather access system for the management unit. Secondary roads are categorized as branches of main roads which are designed to provide 5 to 15 years of all-weather access for the public. Tertiary roads are temporary access roads, which are used for several years and then abandoned.

The GOO reported that primary and secondary roads are identified in 20-year management plans submitted with Section 26 SFL licenses. Section 26 SFL license holders are required to build and maintain roads, while Section 27 FRL license holders are responsible for all new forest roads. SFL holders construct and maintain primary, secondary, and tertiary roads for their logging operations. Since those roads are available for public use, they must meet government standards. In a study by KPMG, the GOO provided data on the cost per cubic meter of road construction and maintenance, according to the following formula: 100 percent of primary road construction, 50 percent of secondary road construction and none for tertiary road construction costs. We have made an upward adjustment to the administered stumpage price based on those reported costs. During verification, we will further examine the differences in infrastructure and of primary and secondary road costs.

The GOO stated that the cost of forest management planning is included in the industry obligations in Canada. The CFSA requires that forest management plans be prepared and approved following the Forest Management Planning Manual (FMPM). The FMPM requires, among other things, an environmental, social, and economic description of the management unit, long-range sustainability planning for a 20-year period, designation of areas of operation, and a description of the program for monitoring forest management operations. We have made an upward adjustment for the Forest Management Planning costs by dividing the total estimated value of forest management planning costs during the

POI by the total softwood harvest. During verification, we will further examine the forest management planning obligations.

Other requirements on tenure holders established by the OMNR include assistance with fire suppression (*i.e.,* assisting the OMNR in the prevention and initial fighting of forest fires). According to the GOO's June 28, 2000 questionnaire response, the amount of costs incurred for fire pertain to both SFL and FRL holders. We have made an upward adjustment for the fire protection costs by dividing the total estimated value of fire and insect protection costs during the POI by the total softwood harvest volume during the POI.

The GOO reports that tenure holders provide training and education for First Nation individuals, and provide financial support for activities such as the maintenance of native heritage sites. According to the GOO's June 28, 2000 questionnaire response, the amount of costs incurred for First Nation relations includes both SFL and FRL holders. We have made an upward adjustment for this cost by dividing the total estimated value of these costs during the POI by the total softwood harvest during the POI.

We preliminarily determine that stumpage prices in the United States provide the most accurate benchmark. Although data on stumpage prices are available for other states, we preliminarily determine that the data we collected for Michigan and Minnesota are the most suitable for comparison purposes. Michigan and Minnesota are the states in closest proximity to Ontario, and the data we used reflected actual sales, appraisals and volumes harvested. Prior to our issuance of the final determination, we will further examine our decision to use this Michigan and Minnesota data for comparison purposes.

In order to calculate our cross-border benchmark, we used the *Minnesota 2000 Corrected Public Stumpage Price Review and Price Index* (*Minnesota Price Review*) published by the Division of Forestry, Minnesota Department of Natural Resources. The *Minnesota Price Review* lists average prices and volumes for all timber sold on state and federal public lands within Minnesota as well as 10 counties in Minnesota, as provided by the Minnesota Department of Natural Resources, from January 2000 through December 2000. We also used a report from the Michigan Department of Natural Resources, Forest Management Division (Michigan Stumpage Price Report) which lists average stumpage prices for all sales from state lands from April 1, 2000 to March 31, 2001. As each source reported average prices for each species in U.S. dollars per thousand board feet, where possible we calculated a weighted-average of the prices for softwood sawlogs for each of the species categories reported by Ontario. We then converted these prices from US$/MBF to C$/m^3 using a conversion factor of 5.66 cubic meters to thousand board feet, and the average exchange rate for the POI as reported by the Bank of Canada.

We calculated the benefit conferred under Ontario's stumpage program by first taking the difference between the U.S. benchmark stumpage price and the adjusted administered stumpage price on a per cubic meter basis. We then multiplied per unit benefit by Ontario's total softwood sawtimber harvest volume in cubic meters to derive the total benefit from Ontario's stumpage program.

In *Lumber III*, the Department calculated the program rate by dividing ''the total benefit by the value of certain softwood lumber products (at the first mill/planing mill stage) plus the value of by-products that are produced during the lumber production process and sold by lumber producers.'' *See Lumber III*, 57 FR 22570 at 22576. Similarly, to calculate the program rate, we divided the total benefit by the total value of Ontario's softwood lumber production plus the total value of Ontario's softwood lumber by-products for the POI. Next, as explained in the ''Subsidy Rate Calculation'' section of this notice, we weight-averaged the benefit from this provincial subsidy program by the province's relative share of total U.S. exports. The preliminary countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section, below.

4. Province of Alberta

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

An FMA is a long-term (20 years and renewable) agreement between the Government of Alberta (GOA) and a company. The terms and conditions are fully negotiated and approved by the Provincial Cabinet. FMA holders gain the right to harvest timber with the approval of an annual operating plan. An FMA includes the obligation to manage, on a sustained yield basis, the timber within the Agreement Area.

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

A quota certificate is a long-term (up to 20 years and renewable) right to harvest a share of the annual allowable cut (AAC) as established by the ASRD. A timber license is required for a quota holder to harvest the timber. Quota holders are responsible for road construction and maintenance, reforestation of all areas harvested, and operational planning. Quotas are sold by public tender or at an auction to the highest bidder. The charge for competitively sold quotas includes the timber dues as set out in the TMR, holding and protection charges, and a bonus price. The quota gives the holder license to harvest specific species and maintain utilization standards. For each year that a quota is granted, the holder must prepare and submit, for ASRD approval, an annual operating plan. There were no quotas sold during the POI; however, there were outstanding quotas. Together, FMA and quota holders accounted for approximately 92 percent of the softwood sawlog harvest on provincial forest lands in fiscal year 2000–2001.

CTPs are short-term (averaging 2–3 years) tenure arrangements used to allocate smaller volumes of timber. CTPs are sold either directly or at a public auction. Non-competitively-sold CTPs must pay the timber dues as set out in the TMR. There are two types of competitively-sold CTPs. The first type includes a bid price on top of the upset price, which is the lowest price a seller will accept, as well as other costs related to in-kind services. The second type of competitively-sold CTPs includes a bid price on top of the

minimum auction price, other costs related to in-kind services, and the TMR rate for timber dues. A CTP holder must also pay annual holding and protection charges. If the CTP holder does not also hold another major tenure (*i.e.*, an FMA or a quota), the CTP holder must pay a reforestation levy. In addition, a CTP holder must provide an annual operating plan, which includes harvesting and road construction and maintenance. Three hundred eighty-four coniferous CTPs were sold during the POI.

The administered price for non-negotiated FMAs and quota tenure holders is set by using the TMR timber dues and in-kind cost adjustments. Timber dues, as established in Schedule 3 of the TMR, describe the method of calculation of the rates of dues payable for coniferous timber used to make lumber products in a given month based on an average price for lumber in that month. This average is calculated by taking the weekly price for 1000 board feet of kiln-dried, 2x4, Standard and Better, Western Spruce-Pine-Fur for the last week ending in the month preceding the payment month and for the three immediately preceding weeks, as shown in the publication *Random Lengths Lumber Report.* These four weekly prices are converted to Canadian funds and then averaged. This amount is found in Schedule 3, Table Part A and Part B, Column 1.[14] Schedule 3 provides the general rate of timber dues for coniferous timber used to make lumber, pulp, or roundwood timber products. The figures provided in Schedule 3 are the same for pulpwood and sawlogs.[15] Column 1 provides a range of C$/1000 board feet; the averaged amount as noted in Column 1 has a corresponding cubic meter value in Column 2. Column 2 represents the timber dues that an FMA tenure holder pays for billed volume of softwood timber. The timber dues are determined after the product has been produced. In addition, Schedule 6 covers the timber dues for timber used to make veneer.

To derive Alberta's administratively-set stumpage rate that we used in our calculations, we divided the total timber dues charged to FMA, quota, and CTP tenure holders during the POI for each species by the total softwood stumpage billed under each tenure during the POI for each species. In this manner, we obtained a weighted-average stumpage price per species that was paid by tenure holders during the POI. To this number, we added per unit adjustment costs.

Although the price-determining factors are different between administratively-set stumpage sales in Alberta and market-driven stumpage sales in Montana state (*see Cross-border Benchmark Stumpage Price* section below), an examination of stumpage prices alone is not sufficient to determine whether timber is provided for less than adequate remuneration. Major tenure holders in Alberta are required to fulfill certain forest management and timber-harvesting obligations, including silviculture and forest management activities. Therefore, we preliminarily determine that it is necessary to factor in certain cost adjustments to the administered prices in Alberta to reflect the costs of certain mandatory activities that are not factored into the administered price.

For the following adjustments made by the Department, we relied on cost data submitted by respondents. For adjustments, we relied on costs borne by tenure holders, since respondents provided cost data based on an independent consultant's report provided to the province by tenure holders. During verification, we will further examine all of the adjustments.

As explained below, we have made adjustments for road construction and maintenance, basic reforestation, forest management planning, fire, insect and disease costs, environmental protection costs, and holding and protection charges.

Respondents report that major tenure holders are responsible for all costs associated with building and maintaining roads. Respondents stated that access for timber harvesting and extraction is completed at the expense of the stumpage holder and that the province does not build or maintain any access for the harvesting of timber.

We have no information on costs that private harvesters in Montana must pay for construction and maintenance associated with roads. Therefore, we included as an adjustment the entire cost of road building and maintenance as reported by respondents.

Major tenure holders are required to perform certain activities pertaining to the reforestation of their timber stands. These activities, referred to as silviculture, are broken down into two types—basic and intensive. As stated in the TMR and the GOA's August 6, 2001 supplemental questionnaire response, major tenure holders must perform basic silviculture, which includes regeneration or reforestation surveying, site preparation, planting, brushing, weeding, spacing and seedling trees, and stand cleaning. Intensive reforestation activities, which are not required by the GOA, include pruning, fertilizing, pre-commercial thinning, spacing, weeding, and genetics. A licensee may perform intensive silviculture on a voluntary basis.

We added basic reforestation costs incurred by major tenure holders to the administered rate since major licensees are required to perform these activities, whereas private harvesters in Montana are not required to do so. We made no adjustment for costs related to incremental silviculture activities because major tenure holders are not required to perform these activities.

Reforestation levies are charged to CTP tenure holders if the tenure holder does not concurrently hold an FMA or a quota. If a CTP licensee also holds an FMA, then all reforestation activities are the responsibility of the FMA holder. If a CTP is held by a quota holder, then it depends on the type of quota whether or not the CTP holder will be responsible for paying a levy or will be responsible for completing reforestation activities. If a CTP holder is obligated to pay a levy, he will pay this levy to the Forest Resource Improvement Association of Alberta (FRIAA), who will carry out the reforestation work. We took the total value of the reforestation levies paid during the POI and added it to the other adjustments.

Forest management planning, as noted in the FMA Regulations at 10(1), states that a company must submit for the Minister's approval a preliminary forest management plan (FMP) within twelve months. This includes a description of the managing method used for the timber harvesting. After 36 months, the company must submit a detailed FMP for a one full rotation and it must identify a sustainable AAC. The FMP includes reforestation and management practices, harvesting schedule and road developments.

Major tenure holders are required to perform forest protection activities on Crown lands, including fire prevention and suppression, and pest management activities. Initial fire suppression, maintaining specified equipment levels and fire readiness plans are obligations of licensees. Major licensees are also required to combat and extinguish all fires in their operating areas. As for

[14] Table Part A covers the first 107,296 m^3 of roundwood, while Part B covers excess over 107,296 m^3 of roundwood.

[15] We note that under FMAs, prices charged for timber used in pulp production are the same as timber dues charged for roundwood and chips. The GOA has indicated that sawlogs and pulplogs are indistinguishable prior to processing; the distinction in name relates exclusively to their ultimate mill destination. In this investigation, subject merchandise does not include pulpwood. Normally, we would make an adjustment to exclude pulpwood; however, since the GOA does not differentiate between pulplogs and sawlogs, we are not making such an adjustment.

insect and disease protection measures, such as spraying or surveys to measure the level and extent of infestation by a particular insect or disease, these are generally carried out by licensees. As a result, we have included adjustments for these additional costs for all tenure holders as well as adjustments for the allocation of general and administrative activities associated with these activities.

Environmental costs include those expenses paid by the tenure holder in order to coordinate and comply with federal and provincial environmental regulations.

According to the GOA's supplemental questionnaire response, holding and protection charges are an additional form of cash payment paid by tenure holders. The charge is for holding the timber stumpage rights and for a portion of the costs of protecting the land base. Moreover, the rates for holding and protection charges for CTPs and quotas are prescribed by the TMR, while the holding and protection charges for FMAs are specified in the FMA agreement.

For the reasons stated below, we did not make adjustments for intensive reforestation, Geographic Information System (GIS) costs, forest care, overlapping tenure costs, scaling, inventory, and land use administration.

We did not include intensive reforestation because this level of reforestation is not mandated by the GOA for tenure holders. GIS is a computer system capable of assembling, storing, manipulating, and displaying geographically referenced information. Respondents stated that GIS is used in forestry to manage forests for timber and non-timber purposes. We preliminarily determine that costs related to GIS are not mandatory and are not borne exclusively by tenure holders in Alberta.

Respondents stated in their supplemental questionnaire response that Forest Care is a certification program developed by member companies of the Alberta Forest Products Association as part of their commitment to protect the environment and sustain the public forest. Based on the information provided by respondents, we preliminarily determine that costs related to Forest Care are not mandatory and are not borne exclusively by tenure holders in Alberta.

Respondents stated in their supplemental questionnaire response that in Alberta one tenure may overlap with another and that the costs of managing this overlap would normally be borne by the landowners. However, based on the information provided by respondents, we preliminarily determine that costs related to overlapping tenures are not mandatory and are not borne exclusively by tenure holders in Alberta.

Based on the information provided by respondents, we preliminarily determine that costs related to scaling are not mandatory and are not borne exclusively by tenure holders in Alberta.

Moreover, we did not make an adjustment for costs related to inventory because we preliminarily determine that these costs are not mandatory and are not borne exclusively by tenure holders in Alberta.

Due to insufficient information on the record, we have preliminarily determined not to adjust for land use administration costs. We note that this and all other adjustments, both allowed and not allowed, will be examined at verification.

In Table 19, Exhibit AB–S–43, of the GOA's June 28, 2001 questionnaire response, we discovered that some softwood lumber was harvested from deciduous dispositions without paying stumpage. We calculated the benefit for these free trees by multiplying the benchmark stumpage rate by the amount harvested for free, and we added this benefit into the calculation of our total benefit.

As explained above, we have preliminarily determined that stumpage prices in the United States provide the most accurate benchmark. In the case of Alberta, we are using data from the state of Montana, which borders Alberta, to calculate our cross-border benchmark. We obtained this data from the *Stumpage Price Report* (March 31, 2001), published by the Timber Data Company. From the *Stumpage Price Report* we obtained the total weighted-average price for all species of timber in Montana, as provided by the United States Forest Service (USFS) and the Montana Department of Natural Resources and Conservation (DNRC), from April 2000 through March 31, 2001. We converted these figures from MBF to cubic meters using the conversion factor of 5.66. We also converted the data from U.S. dollars to Canadian dollars, using monthly average exchange rates from the Bank of Canada in effect during the POI, in order to derive our basic stumpage rate in C$/$m^3$ for each species.

In order to compare the species mix in Alberta and Montana, we calculated the difference between provincial and Montana stumpage rates for each softwood species harvested in provincial forests. We took the difference for each species category and multiplied it by Alberta's billed timber volume for each species category to arrive at the weighted benefit. We multiplied this amount by the portion of Alberta's species mix to derive a weighted-average benefit amount per species category.

To calculate the benefit under Alberta's stumpage system, we first multiplied the adjusted price difference described above by the total softwood harvest billed by tenure holders during the POI. Next, we calculated the provincial benefit. We note that in *Lumber III,* we calculated the provincial benefit by dividing ''the total benefit by the value of certain softwood lumber products (at the first mill/planing mill stage) plus the value of by-products that are produced during the lumber production process and sold by lumber producers.'' *See Lumber III,* 57 FR 22570 at 22576. Consistent with that approach, we calculated a stumpage benefit amount and added the free trees from hardwood stands benefit in order to derive the total benefit. We took the total benefit and divided by the value of softwood lumber products plus the value of by-products to derive the provincial benefit rate. Next, as explained in the ''Subsidy Rate Calculation'' section of this notice, we weight-averaged the benefit from this provincial subsidy program by the province's relative share of total U.S. exports. The preliminary countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section, below.

5. Province of Manitoba

The Government of Manitoba (GOM) states that the province owns 94 percent of the forest lands and the federal government owns one percent. Private woodlot owners own the remaining 5 percent of forests.

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

In Manitoba, there are three ways to acquire timber cutting rights: (1) A Forest Management License (FML); (2) a Timber Sales Agreement (TSA); or (3) a Timber Permit (TP). An FML is a long-term (up to 20 years) license, which may be renewed every five years, to harvest a stated volume of timber in a particular area. Licensees must manage their area

to ensure the (i) sustained yield, (ii) achievement of the maximum growth potential, (iii) a mandated standard of environmental quality, and (iv) and public right of access for recreational and other uses of the forest. The licensee must submit an annual operating plan and additional harvesting reports to the Forestry Branch. Stumpage must be paid within 30 days of the end of each quarter in which the timber is cut and scaled.

The TSA is a short-term (up to five years) right to harvest a stated volume of timber in a specific area generally issued to small and medium sized operators. There were 204 such agreements in effect during the POI. Licensees with TSAs harvest both hardwood and softwood. Similar to the FMLs, the TSA holders must have an annual operating plan. Like FML holders, the stumpage must be paid within 30 days of the end of each quarter in which the timber is cut and scaled.

The TPs are short-term (up to one year) licenses where license holders can only harvest a very small amount of timber. TP holders generally use the license to harvest firewood (softwood and hardwood) for their own use. Stumpage must be paid when the permit is issued. There were 2,617 permits in effect during the POI.

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

Tenure holders pay stumpage fees at either the standard provincial rate or a rate negotiated with the province. The Forestry Service has divided the province into eight different forest regions. The standard provincial rate varies depending on which of the forest regions the timber is harvested from and whether the wood type is Aspen/Poplar or all wood other than Aspen/Poplar. Otherwise, the rates do not vary by species or grade. The GOM used a base rate set by administrative determination for calculating the stumpage price for TS holders and TP licensees. The base rates were then adjusted according to changes in a weighted average of two Statistics Canada industrial product price indices to derive an annual rate.

The GOM reports the per unit stumpage amounts by dividing the total value of stumpage collected by the total quantity on a tenure and species-specific basis. These values include a Fire Protection Charge (FPC) for holders of TSAs and FMLs. TSAs and TPs also pay a Forest Renewal Charge (FRC) to the province. The values do not include the un-reimbursed costs that FMLs incur for renewal activity (*i.e.,* basic silviculture).

In the case of Manitoba, we are using data from the state of Minnesota, which borders Manitoba, to calculate our cross-border benchmark. We based the Minnesota stumpage prices on the *Minnesota 2000 Corrected Public Stumpage Price Review and Price Index (Minnesota Price Review*) published by the Division of Forestry, Minnesota Department of Natural Resources. The *Minnesota Price Review* lists average prices and volumes for all timber sold on state and federal public lands within Minnesota as well as 10 counties in Minnesota, as provided by the Minnesota Department of Natural Resources, from January 2000 through December 2000.

We preliminarily determine that there are certain costs that Crown timber harvesters absorb that Minnesota harvesters do not; therefore, we are adding in certain adjustments to the derived basic stumpage rate for Manitoba. In terms of adjustments, the GOM provided details about the un-reimbursed costs of basic silviculture activities performed by Tolko, the only FML that harvests softwood sawtimber. The GOM said data from Tolko's Annual Operating Report. We weighted the un-reimbursed per unit costs reported for Tolko by the percentage of total volume that the FML softwood harvest represents and added this amount to the administered stumpage price.

The GOM states that the TSA and TP holders pay the province fees related to basic silviculture; however, such fees are already included in the stumpage. An upward adjustment to the administered stumpage price would be double-counting.

We are including the following costs in the adjustment: (1) General silviculture; (2) site preparation; (3) scarification; (4) tree planting; (5) seedling purchase; (6) regeneration surveys; (7) silviculture projects; (8) cost of developing the annual report; and (9) forestry administration. Although the GOM reported the total amounts that Tolko incurred for expenses related to tree improvement and herbicide release, we did not include these expenses because the amounts were so small that their inclusion would not have any impact on the calculation. In fact, the GOM did not calculate a per unit amount for these because the amounts were insignificant.

We did not include expenses related inventory because it is an industry-wide cost and is borne by benchmark harvesters. We did not include the expenses of a Geographic Information System and dwarf mistletoe control because these expenses were not required by the tenure arrangement. We did not include the expenses incurred by the government for renewal of areas outside of FMLs because it is an expense incurred by the government; not an unreimbursed expense incurred by the licensee.

The GOM states that FML and TSA tenure holders bore the expenses for additional in-kind costs that for which the GOM does not reimburse the tenure holders. Although the tenure holders incur substantial in-kind costs, the GOM was unable to report the costs of these activities because tenure holders are required to report their commercial forest activities, but not the cost of those activities. We will examine this issue further at verification.

Manitoba reports the stumpage volume and value by tenure type and species. The GOM states that the species harvested in Manitoba are white and black spruce and jack pine (collectively ''spruce/pine''). However, Manitoba also includes an ''other'' category. We will examine the species-makeup of this category at verification.

To calculate the benefit, we derived a species-specific (*i.e.,* ''spruce/pine'' and ''other'') per unit stumpage cost in Manitoba by summing the species value over volume. Next, we calculated an average ''spruce/pine'' price, weighted by the percentage of spruce and pine volume. The GOM reported the per unit costs incurred by Tolko as a ratio of its costs over its sawlog harvest. In order to apply this adjustment, we weighted the per unit cost by the percentage of the total harvest that the FML harvest represents to account for the fact that the TSA and TP holders do not incur this cost. We added these revised adjustments to the ''spruce/pine'' stumpage price and the ''other'' price.

As a benchmark for the ''spruce/pine'' rate, we calculated a weighted average price of species identical (*i.e.* white and black spruce, and jack pine) to the species in Manitoba. We then took the difference between the benchmark and the administratively-set stumpage rate. We classified the remaining species found in the *Minnesota Price Review* in an ''other'' category which we used as a benchmark for the ''other'' category found in Manitoba. Again, we took the difference between the administratively-set stumpage rate and the benchmark stumpage rate. We weight-averaged the two differences by the volumes of ''spruce/pine'' and ''other'' found in Manitoba. Next, we multiplied this rate by the softwood sawlog harvest to

derive the total benefit. We then divided the benefit by the value of Manitoba's total softwood lumber shipments (including the by-products). During verification, we will further examine the figures used in the denominator of the provincial benefit calculation. Next, as explained in the ''Subsidy Rate Calculation'' section of this notice, we weight-averaged the benefit from this provincial subsidy program by the province's relative share of total U.S. exports. The preliminary countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section, below.

6. Province of Saskatchewan

In Saskatchewan, the northern half of the province is designated as Forest Crown land. According to the Government of Saskatchewan (GOS), only the lower third of this land contains harvestable timber. This harvestable area where commercial forestry activities occur is referred to as the Commercial Forest Zone (CFZ). The CFZ comprises approximately 12 million hectares. Of this amount, the GOS states that 55 percent contains productive or harvestable land. The GOS states that there are no private lands within the CFZ. In Saskatchewan, all private lands are generally located south of the CFZ. According to information submitted by the GOS, Crown lands accounted for approximately 89 percent of the softwood sawlogs harvested in Saskatchewan during the POI. Private and Federal lands accounted for 9 and 1 percent of the softwood sawlog harvest, respectively.

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

FMAs grant the licensee the right to harvest Crown timber for a term not exceeding 20 years. At every fifth year of the FMA, the term may be extended for an additional 5 years. According to the GOS, the FMAs set out the rights and responsibilities of the licensee which, in particular, focus on the long-term sustainable use of Crown land covered by the agreement. The GOS negotiates the terms of FMAs with each license. Thus, no standard terms or conditions apply to FMAs.

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

Four FMAs were in effect during the POI: the Mistik Management FMA, the L&M Wood Products FMA, the Weyerhaeuser FMA, and the Pasquia-Porcupine FMA, which is also a FMA of Weyerhaeuser. All four of these FMA licensees own their own mills. According to information submitted by the GOS, these four FMAs accounted for approximately 86 percent of the softwood sawlog harvest in the CFZ. The GOS states that its policy is to grant FMAs to large mills requiring large volumes of timber and that it requires FMA licensees to operate their facilities on a regular basis. Failure to do so could result in the termination of the FMA and the loss of the licensee's tenure. The GOS states that the requirement relates to the province's responsibilities as a landowner as well as to good forest management practices.

FPPs are the second type of stumpage license issued by the GOS. FPPs are annual licenses that confer the right to harvest specified forest products. Each FPP expires on either the date specified on the permit or at the end of the GOC's fiscal year, whichever comes first. FPPs cannot be renewed. Approximately 700 FPPs were issued during the POI. During the POI, FPPs accounted for 14 percent of the province's softwood sawlog harvest. The terms and conditions of FPPs vary in accordance with the type of forest product harvested. The GOS states that it allows FPP licensees to operate in FMA areas. In those instances, the FPPs must pay forest management fees to the FMA licensee. The rates charged to the FPPs are equal to those charged to the FMAs by the GOS. The FMAs then forward these fees to the GOS. FPPs operating on lands not covered by a FMA are required to pay forest management fees directly to the province.

TSLs are similar to FMAs, but have a term of 10 years. As is the case with FMAs, TSLs must pay processing facility and forest management fees. There was only one TSL in effect during the POI, Green Lake Metis Wood Products of Green Lake. The GOS states that this facility was destroyed by a fire during the POI, and thus, only operated on a limited basis during this period. The GOS states that the amount of fees paid by this TSL licensee during the POI was negligible.

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

Payments of stumpage dues vary according to license. FMA licensees submit their base dues on a monthly basis. Incremental dues are paid either monthly or quarterly in accordance with the terms of the particular FMA. FPP licensees have three payment options. FFP licensees may pay stumpage dues: (1) When the permit is issued, (2) in equalized payments for a maximum of three equalized payments throughout the year, or (3) monthly, based on the timber scaled during that period. Up-front payment and equalized payment options are calculated based on the total volume of timber included in the FPP. The amount of dues payable is determined through scaling the amount of timber harvested. The GOS states that scaling is conducted by licensed scalers.

To derive Saskatchewan's administratively-set stumpage rate, we divided the total value of softwood sawlogs, by species, by the total volume harvested, by species, to derive the per unit price per species. We categorized the species in two sets: (1) A Douglass/Larch/Tamarack (DLT) mix; and (2) a Spruce-Pine-Fir (SPF) mix, which includes white spruce, jack pine, black

spruce, and balsam. Additionally, we included the total volume of veneer logs harvested in our calculation of the per unit stumpage price. To arrive at a per unit stumpage price for veneer logs, we weight-averaged the per unit prices by volume. We then included the per unit amounts for veneer logs in the per unit stumpage price for SPF.

We obtained a weighted-average stumpage rate per species category by taking the stumpage price for DLT and SPF, which included veneer logs, mixes and divided by total volume harvested as attributable to category mix. To this stumpage rate we added per unit adjustment costs, in order to derive Saskatchewan's administratively-set stumpage rate.

Tenure holders in Saskatchewan are required to fulfill and/or pay for certain forest management and timber-harvesting obligations, including silviculture and forest management activities. Therefore, we preliminarily determine that it is necessary to factor in certain cost adjustments to the administered prices in Saskatchewan to reflect the costs of certain mandatory activities that are not factored into the administered price.

For the following adjustments, we relied on cost data submitted by respondents. For all adjustments, we relied on costs borne by the tenure holders, since respondents provided cost data based on the responses of the tenure holders.

We have made adjustments for forest management planning and basic silviculture. For the calculation of the total forest management fee, we multiplied the per-unit forest management fee, for FMAs and FPPs, and the total volume of sawlogs and veneer logs harvested during the POI. We then added the basic silviculture costs incurred by FMA tenure holders, as reported by the GOS, to the total forest management fees paid during the POI to arrive at the total value of adjustments during the POI.

In addition to the fees paid by FMA and FFP license holders, described above, the GOS stated that FMA and FPP licensees must also pay as a condition of their license several in-kind costs related to forest management. These include, but are not limited to, long-term operation, planning, environment plans, periodic independent audits of forest management activities and scaling-related costs, including payments for scaling services, scaler training, and scaling plans. In addition, the GOS states that FPPs are also required to pay road user fees as determined by local governments within the province. We did not make an adjustment because there is not enough information on the record that would allow us to quantify these in-kind costs. We will further examine this issue during verification.

As explained above, we have preliminarily determined to use stumpage prices in the United States for our benchmark. In the case of Saskatchewan, we are using data from the state of Montana, which borders Saskatchewan, to calculate our benchmark. We obtained this data from the *Stumpage Price Report.* Specifically, we used the weighted-average prices for each species in Montana, as provided by the United States Forest Service (USFS) and the Montana Department of Natural Resources and Conservation (DNRC), from April, 2000 through March, 2001. We converted these figures from thousand board feet to cubic meters using the conversion factor of 5.66. We also converted the prices from U.S. dollars to Canadian dollars, using monthly average exchange rates from the Bank of Canada in effect during the POI, in order to derive our basic stumpage rate in C$/$m^3$ for each species.

We then calculated the difference between provincial and Montana stumpage rates for each species harvested in provincial forests. To arrive at a weighted average price differential, we weighted each species mix's price differential in proportion to its share of Saskatchewan's harvested volume for the POI to arrive at an overall per-unit price differential.

In order to calculate the benefit under Saskatchewan's stumpage system, we first took our calculated per unit price differential and factored in necessary adjustments, which are detailed above. We next multiplied the per unit price differential by the harvested volume to arrive at the total benefit. We calculated the provincial rate by dividing the total benefit by the value of softwood lumber shipments, including the value of by-product shipments. Next, as explained in the ''Subsidy Rate Calculation'' section of this notice, we weight averaged the benefit from this provincial subsidy program by the province's relative share of total U.S. exports. The preliminary countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section, below.

Country-Wide Rate for Stumpage

The preliminary countervailable subsidy rate for the provincial stumpage programs is 19.21 percent ad valorem.

II. Other Programs Preliminarily Determined To Confer Subsidies

Programs Administered by the Government of Canada

1. Non-Payable Grants and Conditionally Repayable Contributions From the Department of Western Economic Diversification

According to the response of the GOC, the Western Diversification Program (WDP) was introduced in 1987, and is administered by the Department of Western Economic Diversification, a department of the GOC. The WDP supports projects that promote or enhance economic development or diversification in Western Canada, including the initiation, promotion or expansion of enterprises, the establishment of new businesses, research and development activities, and the development of business infrastructure. As part of its mandate to assist in the development of Western Canada, the WDP provides non-repayable contributions (grants) to companies located in Western Canada.

According to the GOC, seven companies in the softwood lumber industry have received grants in the last ten years, the period corresponding to the AUL of the softwood lumber industry.

We preliminary determine that this program is specific under section 771(5A)(D)(iv) of the Act because assistance under this program is limited to designated regions in Canada. In addition, the provision of grants by the GOC constitutes a financial contribution as provided within the meaning of section 771(5)(D)(i) of the Act.

Both recurring and non-recurring grants were provided under this program. In accordance with § 351.524 (a) and (b)(2) of the CVD Regulations, all grants provided under this type of program are expensed in the year of receipt. Therefore, to calculate the benefit during the POI, we summed the amount of grants provided to all producers/exporters of softwood lumber during the POI and divided that amount by the f.o.b. value of total sales of softwood lumber for the POI. Using this methodology, we preliminarily determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem.*

2. Federal Economic Development Initiative in Northern Ontario (FedNor)

FedNor is an agency of Industry Canada, a department of the GOC, which encourages investment, innovation, and trade in Northern Ontario. Specifically, FedNor's mandate

is to promote economic growth, diversification, job creation and sustainable, self-reliant communities in Northern Ontario. According to the response of the GOC, FedNor has historically provided assistance to not-for-profit entities and to small businesses. In March 1996, FedNor was re-engineered so that nearly all direct funding to commercial businesses was eliminated. According to the GOC, most of FedNor's assistance is provided to Community Futures Development Corporations (CFDCs). CFDCs are not-for-profit community organizations.

CFDCs undertake strategic community planning activities, provide small business counseling and advisory services, and offer commercial loans to small and medium-sized businesses. Besides contributing to the operating costs of the CFDCs, FedNor also provides investment funds to the CFDCs in Northern Ontario that are used by the CFDCs to provide loans to small and medium-sized businesses in the region. According to the response of the GOC, once FedNor provides funds to the CFDCs, FedNor has no involvement in any lending decisions made by the CFDCs. FedNor usually will only require that the interest rate charged by the CFDCs on its loans be at least the prime rate plus two percent.

The GOC stated in its response that during the ten year period corresponding to the AUL, FedNor provided direct assistance, in the form of grants, to entities in the softwood lumber industry on six occasions. In addition, according to the response of the GOC, the CFDCs had 40 loans outstanding during the POI to companies that are producers of softwood lumber.

Because this program is limited to certain regions in Ontario, we preliminarily determine that assistance provided under FedNor is specific within the meaning of section 771(5A)(D)(iv) of the Act. With respect to the loans provided under this program by the CFDCs, we preliminary determine that no benefit is provided within the meaning of section 771(5)(E)(ii) of the Act because the reported interest rates charged on each of these loans is equal to or higher than the interest rate charged on comparable commercial loans, as noted in the ''Benchmark for Loans and Discount Rate'' section, above. However, with respect to the grants provided by FedNor, we preliminarily determine that a financial contribution within the meaning of section 771(5)(D)(i) of the Act has been provided to the softwood lumber industry.

In accordance with § 351.524 of the CVD Regulations, all grants provided under this program are expensed in the year of receipt. Therefore, to calculate the benefit provided under this program, we summed the amount of grants provided to all producers/exporters of softwood lumber during the POI and divided that amount by the f.o.b. value of total sales of softwood lumber for the POI. Using this methodology, we preliminarily determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem.*

Programs Administered by the Province of British Columbia

1. Forest Renewal B.C.

In June 1994, the GBC enacted the Forest Renewal Act to renew the forest economy of British Columbia by, among other things, improving forest management of Crown lands, supporting training for displaced forestry workers, and promoting enhanced community and First Nations involvement in the forestry sector. To achieve these goals, the Forest Renewal Act created Forest Renewal B.C., a Crown corporation. The corporation's strategic objectives are implemented through three business units: the Forests and Environment Business Unit, the Value-Added Business Unit, and the Communities and Workforce Business Unit. While much of the activities of Forest Renewal BC are unrelated to the provision of assistance to softwood lumber producers, petitioners allege that this agency provided both grants and loans to producers of softwood lumber.

According to the GBC's response, Forest Renewal B.C. generally does not make direct loans to individual softwood lumber companies. Instead it provides funds to community groups and independent financial institutions, which may provide loans to companies involved in softwood lumber production. Forest Renewal B.C. has made direct loans and provided loan guarantees directly to softwood lumber producers on four occasions. In each of these instances, the loan assistance was provided in conjunction with the Job Protection Commission. *See* ''Job Protection Commission'' section, below. With respect to the loans provided by Forest Renewal B.C. (through intermediaries or direct), we preliminarily determine that no benefit is provided within the meaning of section 771(5)(E)(ii) because the reported interest rates charged on each of these loans is equal to or higher than the interest rate charged on comparable commercial loans, noted in the ''Benchmark for Loans and Discount Rate'' section, above.

According to the GBC's response, Forest Renewal B.C. has provided grants directly to softwood lumber producers. These grants have been provided to softwood lumber producers in two ways: (1) As part of *ad hoc* arrangements between Forest Renewal B.C. and softwood lumber companies, and (2) as part of established grant programs to support activities such as business development, industry infrastructure, training, and marketing. Because direct grant assistance is provided only to support the forest products industry, we preliminarily determine that these grants are specific under section 771(5A)(D)(iv) of the Act. The provision of these grants constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act.

As noted in the ''Recurring and Non-recurring Benefits'' section of this notice, all grants provided under this program are expensed in the year of receipt. Certain marketing grants were provided for programs supporting exports to Asian markets. In accordance with § 351.525(a)(4) of the CVD Regulations, we did not include marketing grants tied to Asian markets in our benefit calculations because they were tied to particular markets and thus, only benefitted sales to those markets. To calculate the benefit provided under this program, we summed the amount of grants provided to all producers/exporters of softwood lumber during the POI (other than those tied to Asian markets) and divided that amount by the f.o.b. value of total sales of softwood lumber for the POI for the Province of British Columbia. Next, as explained in the ''Subsidy Rate Calculation'' section of this notice, we weight-averaged the benefit from this provincial subsidy program by the province's relative share of total U.S. exports. Using this methodology, we preliminarily determine the countervailable subsidy from this program to be 0.09 percent *ad valorem.*

2. Subsidies to Skeena Cellulose Inc. (Skeena)

Petitioners alleged that the Province of British Columbia provided Skeena with millions of dollars in aid in an attempt to save the company from bankruptcy. According to the response of the government, the agency responsible for administering the province's assistance to Skeena was the British Columbia Ministry of Employment and Investment (MEI). Skeena is primarily a pulp company but it does operate sawmills which produce

subject merchandise. The assistance provided to Skeena by the MEI was in the form of grants for road building, equity investment, payments made in connection with wage concessions by the company's pulp mill workers, and general stumpage reductions affecting low-grade hemlock used in pulp production. In addition, MEI provided certain loans, and guaranteed certain loans from Skeena's creditors, most of which were provided for the company's pulp operations.

According to the GBC's response, the province's involvement in Skeena was not in accordance with any specific provincial government program. Because the assistance provided to Skeena by MEI was not provided under a general government program, but was instead provided under an *ad hoc* assistance plan tailored specifically for Skeena, we preliminarily determine MEI's assistance to the company to be specific under section 771(5A)(D) of the Act. We also preliminarily determine that through the direct transfers of funds, the Province of British Columbia provided a financial contribution to Skeena under section 771(5)(D)(i) of the Act.

As noted in the ''Recurring and Non-recurring Benefits'' section of this notice, all grants were expensed in the year of receipt. With respect to the provision of grants, the only grants provided to Skeena during the POI were made with respect to road building. Because Skeena is primarily a pulp and paper company, to determine the benefit conferred upon subject merchandise, we first pro-rated the amount of the grant by the percentage of softwood lumber sales to Skeena's total sales for the POI.[16] After determining the percentage of the grant attributable to Skeena's softwood lumber production, we divided that amount by the f.o.b. value of total sales of softwood lumber for the POI for the Province of British Columbia. Next, as explained in the ''Subsidy Rate Calculation'' section of this notice, we weight-averaged the benefit from this provincial subsidy program by the province's relative share of total U.S. exports. Using this methodology, we preliminarily determine the countervailable subsidy from the grants provided by MEI to be less than 0.005 percent *ad valorem.*

With respect to the equity investment by MEI, we preliminarily determine that no countervailable benefit was provided to Skeena because MEI purchased the already-existing Skeena shares from third parties. Thus, no additional equity funds were actually invested in Skeena, and there is no financial contribution. We also preliminarily determine that the payments made in connection with wage concessions by the company's pulp mill workers and general stumpage reductions affecting low-grade hemlock used in pulp production did not provide a benefit to softwood lumber production because this assistance was tied to non-subject merchandise.

Finally, as noted above, loans and loan guarantees were also provided to Skeena by MEI. Two of the loans provided to Skeena under this program were tied to Skeena's pulp mills, and thus, did not provide a benefit to softwood lumber under § 351.525 of the CVD Regulations.

In addition, MEI purchased two of Skeena's loans from the Royal Bank. MEI purchased the loans held by the Royal Bank for approximately 40 cents on the dollar. These loans were not tied to specific operations of Skeena, and thus, benefitted all of the company's sales, including softwood lumber. When MEI purchased these two loans from the Royal Bank, Skeena was obligated to make payment on the loans to the province rather than to the Royal Bank. According to the response from the GBC, Skeena now makes payments on these loans to the province pursuant to the same commercial terms as applied when the Royal Bank held these loans. However, although interest was paid on these loans at commercial interest rates, the repayment of principal on these two purchased loans is based upon Skeena's cash flow. For purposes of this preliminary determination, we find that these two loans did not provide a countervailable benefit. However, we will examine the purchase of these two loans during verification to determine whether a countervailable benefit was provided to Skeena during this transaction.

With respect to the four loan guarantees provided to Skeena by MEI, one of the guarantees was provided specifically to the company's pulp operations, and thus, did not provide a benefit to the subject merchandise pursuant to § 351.525 of the CVD Regulations. Regarding the other three loans, the guarantees resulted in a lower interest rate charged to Skeena by the commercial bank, and guarantee fees payable to the government. However, we preliminarily determine that no benefit is provided within the meaning of section 771(5)(E)(ii) because the reported interest rates charged on each of these loans is equal to or higher than the interest rate charged on comparable commercial loans. *See* ''Benchmark for Loans and Discount Rate'' section, above.

Programs Administered by the Province of Quebec

1. Private Forest Development Program

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

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

Because assistance under this program is limited to private woodlot owners, we preliminarily determine that assistance provided under this program is specific under section 771(5A)(D) of the Act. In addition, payments by PFDP constitute a financial contribution under section 771(5)(D)(i) of the Act. The amount of the benefit conferred under this program to softwood lumber producers is equal to the grant of funds provided to the producers under the PFDP during the POI.

Respondents argue that no benefit is provided under this program to sawmill operators because they are required to make contributions to PFDP for lumber harvested on private land. Respondents state that the sawmill operators' contributions were greater than the amount of silviculture reimbursements the mills received under this program during the POI. However, every holder of a wood processing plant operating permit must pay the fee of C$1.45 for every cubic meter of timber acquired from a private forest, regardless of whether or not that mill owns private

[16] Under our standard methodology, we do not pro-rate subsidies received by investigated companies by subject and non-subject merchandise. However, we have had to depart from this standard practice in this investigation because this investigation is conducted on an aggregate basis.

forest land. The sawmill operators that received assistance under the PFDP received assistance not because they used timber from private forest lands but because they owned private forest land. Therefore, we preliminarily determine that the fees paid to harvest timber from private land do not qualify as an appropriate offset to the grants received under the PFDP pursuant to section 771(6) of the Act. Section 771(6) of the Act specifically enumerates the only adjustments that can be made to the benefit conferred by a countervailable subsidy and such fees do not qualify as an offset.

According to the GOQ's response, there were approximately 50 softwood lumber producers that received assistance under this program during the POI. However, the response only provides the amount of grants received by the 35 largest producers. Therefore, to estimate the amount of the grants received by the other 15 producers, we assumed that they received the average grant amount received by the other 35 softwood producers. We will examine this closely at verification. We combined our estimate with the amount reported in the response to obtain a total amount of grants provided to softwood lumber producers during the POI. As explained in the ''Recurring and Non-recurring Benefits'' section of this notice, these grants were expensed in the year of receipt.

To calculate the benefit provided under this program, we summed the amount of grants provided to all producers/exporters of softwood lumber during the POI and divided that amount by the f.o.b. value of total sales of softwood lumber for the POI for the Province of Quebec. Next, as explained in the ''Subsidy Rate Calculation'' section of this notice, we weight-averaged the benefit from this provincial subsidy program by the province's relative share of total U.S. exports. Using this methodology, we preliminarily determine the countervailable subsidy from this program to be 0.01 percent *ad valorem.*

2. Export Assistance Under the Societe de Developpement Industrial du Quebec/Investissement Quebec (SDI)

The SDI export assistance program was established in 1994 and expired in 1998, when it was replaced by export assistance under Investissement Quebec (IQ). The objective of SDI, as established in its founding legislation, was to promote the ''economic development of Quebec, particularly by encouraging the development of businesses, the growth of exports, [and] research and development of new techniques.'' During its existence, SDI worked mainly with businesses whose growth was dependent on technological innovation and exports.

IQ was also established, in part, to facilitate export activities. IQ works with private financial institutions by assuming risks to support projects that might otherwise be cancelled or postponed. IQ assistance is geared mainly to companies whose operations create a significant impact in terms of innovation and exports. Export assistance is provided by IQ's small-and medium-sized businesses (SMB) program which is fundamentally similar to the SDI export assistance program. During the POI, there were three outstanding long-term loan guarantees provided to softwood lumber producers in Quebec.

Because this program provides assistance to exporters, we preliminarily determine it to constitute an export subsidy under section 771(5A)(B) of the Act. To determine whether the loan guarantees provided a benefit, in accordance with section 771(5)(E)(iii) of the Act, we first calculated the amount of interest charged, plus the guarantee fees paid. Because information on the record indicates that the SDI/IQ program provides export guarantees for projects considered too risky for private financial institutions, we have preliminarily determined that the national average benchmark described in the ''Benchmarks for Loans and Discount Rates'' section of this notice, is an inappropriate benchmark for this program. In order to approximate the interest rate that would have been charged the loan guarantee recipients under this program, we have constructed a benchmark interest rate based on default rates for companies at various levels of risk. Using this benchmark, we preliminarily determine that the amount of interest and fees paid under the guaranteed loans is less than the amount of interest that would have been paid under a commercial interest rate. Therefore, this program confers a benefit. We divided the benefit amount by the value of total exports of softwood lumber for the POI for the Province of Quebec. We then weighted this provincial rate by Quebec's share of softwood lumber to the United States during the POI. Using this methodology, we preliminarily determine a benefit of less than 0.005 percent.

III. Programs Preliminarily Determined to be Not Countervailable

1. Funds for Job Creation by the Province of Quebec

Quebec's Ministere des Ressources Naturelles administers this program but entrusts the program's operation to Rexforet Inc., a subsidiary of SGF Rexfor, and to Quebec's Conference of Forest Cooperatives (known by the French abbreviation, CCFQ). CCFQ is an umbrella organization of 41 forest cooperatives. These cooperatives are private, non-profit, community-based entities organized to pool the resources of land owners and forest operators and to provide support for forestry operations. This program was created in 1994 to train and develop manpower and respond to the anticipated shortage of qualified forest management workers by training unemployed individuals and fostering their integration into regular work teams.

Eligibility for training under this program is limited to unemployed individuals. Eligibility to provide training is limited to forest cooperatives and nonprofit organizations having the ability to provide the necessary level of training. Training assistance under this program is limited to unemployed individuals, and does not relieve companies of training costs that they normally would be obligated to pay. In accordance with § 351.513 of the CVD Regulations, we preliminarily determine that this program does not provide a countervailable benefit.

2. Sales Tax Exemption for Seedlings by the Province of Ontario

The Retail Sales Tax Act (RSTA) provides the legal authority for the Province of Ontario to collect taxes on sales and certain services in Ontario. The Retail Sales Tax Branch of the Ontario Ministry of Finance is responsible for the administration of the RSTA. Article 2 of RSTA establishes that sales of tangible personal property and certain services are subject to an eight percent tax to be borne by the purchaser. However, exemptions to the sales tax are provided under Article 7 of the RSTA, that lists exemptions of the sales tax for numerous categories of goods and services.

Paragraph 64 of Article 7 provides that the sales of cones, cuttings, seeds and seedlings for planting in a Crown forest by a forest resource license holder are included in this list of exemptions. This exemption became effective on May 3, 2000. Prior to May 3, 2000, the forest license holders were required to pay sales tax on seedling purchases in connection with their reforestation

obligations. However, under the Crown Forest Sustainability Act, Ontario reimburses license holders for reforestation expenses. Therefore, prior to the tax exemption, the license holders would pay the sales tax on seedlings and get reimbursed for the sales tax as part of their reimbursement of reforestation expenses. The reimbursement of reforestation expenses to forest license holders under the Crown Forest Sustainability Act is accounted for in our calculation of the benefit conferred by Ontario's stumpage program.

The tax exemption for seedlings is part of the Province of Ontario's general provision for sales tax and sales tax exemptions under the RSTA. Therefore, to determine whether the sales tax exemption on seedlings is specific, the Department is required under section 771(5A)(D) of the Act to examine this exemption in connection with the sales tax exemptions provided under the RSTA. An examination of the items exempted from the sales tax under the RSTA shows that eligible exemptions are numerous and cover hundreds of items across a wide-range and multitude of industries. Further, an examination of the RSTA shows that the actual recipients of the sales tax exemptions are not limited in number, nor limited by enterprise or industry. In addition, the recipients of the sales tax exemption on seedlings have not received a predominant or disproportionate share of tax exemptions under the RSTA. Therefore, we preliminarily determine that this sales tax exemption program is not specific under section 771(5A)(D) of the Act. Thus, we preliminarily determine that this program is not countervailable.

IV. Programs Preliminarily Determined Not To Confer A Benefit

1. Assistance Under Article 7 of the SDI

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

During the POI, softwood lumber companies had outstanding loans under Article 7. There were no outstanding loans under Article 28. No other assistance was provided to softwood lumber companies under Article 7. To determine whether these loans provided a benefit to the softwood lumber industry, in accordance with section 771(5)(E)(ii) of the Act, we compared the interest rates charged on the Article 7 loans to the benchmark interest rate charged on comparable commercial loans as described in the ''Benchmarks for Loans and Discount Rates'' section of this notice. Using this methodology, we preliminarily determine that no benefit was provided by these loans because the interest rates charged under this program were equal to or higher than the interest rates charged on comparable commercial loans. Because we preliminarily determine that no benefit is provided under this program during the POI, there is no need to address the issue of specificity.

2. Redemption of Preferred Stock Held by SDI

Petitioners alleged that in 1994, Tembec Inc. (Tembec) redeemed preferred stock with a face value of C$80 million held by SDI in exchange for only C$20 million of Tembec's Class A voting shares. Petitioners alleged that through this transaction, the Province of Quebec, acting through SDI, a government-owned corporation, provided Tembec with a financial contribution of C$60 million, which represents the difference between the value of the redeemed preferred stock and the Class A voting shares of Tembec. Petitioners alleged that a benefit is provided to the subject merchandise because Tembec is a softwood lumber producer.

According to the government response, Temboard and Company Limited Partnership (Temboard Partnership) was formed in April 1988, for the purpose of constructing and operating a paperboard mill. Tembec was one of the two limited partners of Temboard Partnership. Tembec Inc. produces a number of forest products including softwood lumber. In November 1988, a credit agreement was signed between Temboard Partnership and SDI. The SDI loans provided under this credit arrangement were for the construction and start-up of the new paperboard mill of Temboard Partnership. Interest on the SDI loans was capitalized until the outstanding debt of the SDI loans to Temboard Partnership reached C$80 million. As a result of adverse conditions affecting the operations of Temboard Partnerships, one of the partners withdrew from the partnership and wrote off its investment in May 1991. Tembec decided to continue providing support to the paperboard mill company, and, therefore, became the sole owner of Temboard Partnership.

In September 1991, Temboard was incorporated and assumed all of the assets and liabilities of the Temboard Partnership. Temboard Inc. then incorporated a wholly-owned entity, Temfin Inc. (Temfin) for the sole purpose of refinancing Temboard's debt, primarily through the issuance of ''Distressed Preferred Shares'' to its commercial bank creditors and to SDI. In subsequent years, the financial condition of Temboard Inc. continued to deteriorate, which required another restructuring of the troubled paperboard mill company. In 1994, because of the financial condition of Temboard Inc., SDI exchanged its Distressed Preferred Shares, which held a nominal value of C$80 million, for two million publicly listed Tembec Class A common shares. This exchange required Tembec Inc. to issue capital of C$20 million.

As noted above, we are conducting this investigation on an aggregate basis. Therefore, we must examine and determine whether there is any benefit conferred on production and exportation of subject merchandise from Canada from this company-specific subsidy allegation. These complex financial transactions between Tembec, its subsidiaries and SDI are tied to loans made by SDI to Temboard, a paperboard company, and to the conversion of that long-term debt into shares issued to SDI. Because this subsidy allegation is tied to non-subject merchandise, under § 351.525 of the CVD Regulations, we preliminarily determine that this alleged subsidy does not provide a benefit to subject merchandise.

3. Assistance from the Societe de Recuperation d'Exploitation et de Developpement Forestiers du Quebec (Rexfor)

Petitioners alleged that SGF Rexfor, Inc. (Rexfor) acts as a conduit for passing funds to the lumber industry. They further alleged that Rexfor itself is a producer of subject merchandise and, thus, it is likely that Rexfor has received, and is currently receiving and issuing below-market loans to lumber producers.

According to the GOQ's response, Rexfor is a corporation all of whose

shares are owned by the Societe Generale de Financement du Quebec (SGF). SGF is an industrial and financial holding company that finances economic development projects in cooperation with industrial partners. The former Societe de Recuperation d'Exploitation et de Developpement Forestiers du Quebec was created in 1969, and Rexfor was created in 1998, when the former company was merged with three other Crown corporations into SGF. Rexfor is SGF's vehicle for investment in the forest products industry.

According to the GOQ's response, Rexfor receives and analyzes investment opportunities and determines whether to become an investor either through equity or participative subordinated debentures. Debentures are used as an investment vehicle when Rexfor determines that a project is worthwhile, but is not large enough to necessitate more complex equity arrangements. Rexfor has invested in companies involved in paper production, panel production, hardwood and softwood sawmills, newsprint, bio-pesticides, composites, engineered wood products, electronic measuring equipment, and forestry equipment.

According to the GOQ's response, Rexfor has no outstanding loans and advances provided by the GOQ. During the POI, Rexfor had two long-term loans (debentures) outstanding to softwood lumber producers. We are not investigating equity investments made in softwood lumber producers by Rexfor because (i) there was no such allegation, and (ii) there is not any information on the record to suggest that Rexfor's investment decisions were inconsistent with the usual investment practice of private investors as required under section 771(5)(E)(i) of the Act.

Because assistance from Rexfor is limited to companies in the forest products industry, we preliminarily determine that this program is specific under section 771(5A)(D) of the Act. With respect to the long-term loans provided by Rexfor, these loans qualify as financial contributions under section 771(5)(D) of the Act. To determine whether these loans provided a benefit to the softwood lumber industry in accordance with section 771(5)(E)(ii) of the Act, we compared the interest rates charged on the Rexfor loans to the benchmark interest rates charged on commercial loans as described in the ''Benchmarks for Loans and Discount Rates'' section of this notice. Using this methodology, we preliminarily determine that no benefit was provided by these loans because the interest rates charged under this program were equal to or higher than the interest rates charged on comparable commercial loans.

One of the loans provided by Rexfor was provided to a company which subsequently entered bankruptcy negotiations with Rexfor and other creditors. However, the settlement with the creditors was subsequent to the POI. Thus, there is no need to examine whether a benefit was provided to that softwood lumber producer by Rexfor as a result of the creditor settlement.

V. Programs Preliminarily Determined Not To Be Used

1. Canadian Forest Service Industry, Trade and Economics Program

2. Loan Guarantees To Attract New Mills From the Province of Alberta

VI. Program Which Has Been Terminated

1. Export Support Loan Program From the Province of Ontario

VII. Program for Which Additional Information Is Needed

1. Job Protection Commission

The British Columbia Job Protection Commission (the Commission) was created in 1991, pursuant to The Job Protection Act, to minimize job loss, particularly in one-industry communities, and to reduce the negative effect on regional and local communities when companies encounter financial difficulties. According to the GBC response, the Commission acts as a facilitator between debt holders, other B.C. government agencies, and private financial institutions, and the troubled companies and their employees. The Commission assists in designing a work-out plan that will allow the companies to continue as going concerns and improve their financial conditions. According to the GBC response, the Commission may make recommendations to the various parties and debt-holders, but each debt-holder makes its own decision as to its role in any company work-out or restructuring. Several companies involved in the production of softwood lumber participated in restructuring plans under this program. In addition, two other softwood lumber producers received loans under programs administered by the Commission.

We determine that additional information is needed before we can determine whether countervailable benefits are provided by the Job Protection Commission.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

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

Producer/exporter	Net subsidy rate
All Producers/Exporters.	19.31% *ad valorem.*

In accordance with section 703(e)(2), the Department has issued a preliminary affirmative countervailing duty determination, and a preliminary affirmative critical circumstances determination on certain softwood lumber products from Canada. We are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Canada, that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or bond for such entries of the subject merchandise in the amount indicated above. This suspension will remain in effect until further notice.

As indicated above, the Department exempted softwood lumber products from the Maritime Provinces from this investigation. This exemption, however, does not apply to softwood lumber products produced in the Maritime Provinces from Crown timber harvested in any other province. Additionally, as explained above in the ''Exclusions'' section of the notice, we are excluding one company, Frontier Lumber. Therefore, we are directing the U.S. Customs Service to exempt from the suspension of liquidation only entries of softwood lumber products from Canada which are accompanied by an original Certificate of Origin issued by the Maritime Lumber Bureau (MLB), and those of Frontier Lumber. The MLB certificate will specifically state that the corresponding entries cover softwood lumber products produced in the Maritime Provinces from logs originating in Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, or the state of Maine.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our

determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Any requested hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The time, date, and place of the hearing will be announced after the Department has conducted its verification of the questionnaire responses. However, any party that wants to participate in a hearing *must* submit a written request within the time period specified above.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, ten copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary. The date for submission of the case briefs will be scheduled when the Department announces the date of the hearing. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Ten copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than seven days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above. Please note that an interested party may still submit case and/or rebuttal briefs even though the party is not going to participate in the hearing.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 9, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–20674 Filed 8–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Comment Period for the Draft Environment Impact Statement and Draft Management Plan for the Proposed San Francisco Bay National Estuarine Research Reserve in California

AGENCY: The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Public hearing notice; extension of public comment period.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will extend the public comment period for the purpose of receiving comments on the Draft Environmental Impact Statement and Draft Management Plan (DEIS/DMP) prepared on the proposed designation of the San Francisco Bay National Estuarine Research Reserve in California. The DEIS/DMP addresses research, monitoring, education and resource protection needs for the proposed reserve.

DATES: The comment period for the DEIS/DMP which published on June 29, 2001 (66 FR 34618) will be extended to August 31, 2001. All written comments received by this deadline will be considered in the preparation of the FEIS.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie McGilvray (301) 713–3155 extension 158, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East-West Highway, N/ORM5, Silver Spring, MD 20910. Copies of the Draft Environmental Impact Statement/Draft Management Plan are available upon request to the Estuarine Reserves Division.

(Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves)

Gary C. Matlock,

Acting Director for the National Centers for Coastal Ocean Science.

[FR Doc. 01–20690 Filed 8–16–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071901A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that BP Exploration (Alaska), Inc. Anchorage, AK (BPXA) has requested a renewal of its letter of authorization (LOA) to take a small number of marine mammals incidental to operation of an offshore oil and gas facility at the Northstar development in the Beaufort Sea off Alaska.

DATES: Comments and information must be received no later than September 17, 2001. Comments will not be accepted if submitted via e-mail or the Internet.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, and a list of references used in this document may be obtained by writing to this address or by telephoning one of