ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review made by the International Trade Administration, respecting Carbon and Certain Alloy Steel Wire Rod From Canada (Secretariat File No. USA–CDA–2004–1904–02).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the complainants, the panel review is terminated as of April 26, 2005. No panel has been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: April 26, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 05–8642 Filed 4–29–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada

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

SUMMARY: Consistent with section 129 of the Uruguay Round Agreements Act, which governs the Department of Commerce's (the Department's) actions following World Trade Organization (WTO) reports, the Department has calculated new rates with respect to the antidumping duty investigation on certain softwood lumber products from Canada, in order to implement the recommendations of the WTO Appellate Body. On April 27, 2005, the U.S. Trade Representative, after consulting with the Department and Congress, directed the Department to implement this determination. The new rates apply to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after April 27, 2005.

EFFECTIVE DATE: April 27, 2005.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Shane Subler, at (202) 482–0631 or (202) 482–0189, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2002, the Department published a final determination of sales at less than fair value (LTFV) in the antidumping duty investigation on certain softwood lumber from Canada. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002) (Final Determination) and accompanying Issues and Decision Memorandum. Following an affirmative injury determination issued by the United States International Trade Commission, the Department published an antidumping duty order on this product on May 22, 2002. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products From Canada, 67 FR 3606 (May 22, 2002).

Subsequently, the Canadian government requested the establishment of a WTO dispute resolution panel (the Panel) to consider various aspects of the Department's final determination in this case. The Panel circulated its report on April 13, 2004. See United States—Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/R (April 13, 2004).

On May 13, 2004, the United States and Canada appealed certain findings and conclusions in the Panel report. The WTO Appellate Body (the Appellate Body) issued its report on August 11, 2004. See United States—Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R (August 11, 2004) (Appellate Body Report). The Appellate Body Report and the Panel report, as modified by the Appellate Body Report, were adopted by the WTO Dispute Settlement Body (DSB) on August 31, 2004. See Minutes of the Meeting, Dispute Settlement Body, August 31, 2004, WT/DSB/M/175 (Sept. 24, 2004).

On September 27, 2004, the United States indicated to the DSB that it intended to implement a decision consistent with the recommendations and rulings of the DSB. *See* WTO News, *http://www.wto.org/english/news_e/news04_e/dsb_27sep04_e.htm.* On November 5, 2004, pursuant to section 129(b)(2) of the Uruguay Round Agreements Act (URAA), the United States Trade Representative requested that the Department issue a determination that would render the Department's actions in the investigation not inconsistent with the findings of the DSB.

On January 31, 2005, the Department issued its Preliminary 129 Determination.[1] On February 22, 2005, the Department received a joint brief filed by the British Columbia Lumber Trade Council and its constituent associations; the Ontario Forest Industries Association; the Ontario Lumber Manufacturers Association; the Quebec Lumber Manufacturers Association; Abitibi Group; Canfor Corporation; Slocan Forest Products Ltd.; Tembec Inc.; West Fraser Mills Ltd.; and Weyerhaeuser Company (collectively, the Canadian Parties).[2] On

[1] *See* Preliminary Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products from Canada (Preliminary 129 Determination), accessible at *http://ia.ita.doc.gov/download/section129/Canada-Lumber-129-Prelim-013105.pdf.* This document is also on file in the Central Records Unit, Room B–099 of the main Commerce Building.

[2] *See* letter from the Canadian Parties to the Department, dated February 22, 2005 (Canadian Parties' Brief).

March 7, 2005, the Department received rebuttal comments from the Coalition for Fair Lumber Imports (the Coalition), a domestic interested party.

On April 15, 2005, the Department issued its final Section 129 Determination. *See* Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products from Canada. On April 19, 2005, the Department forwarded its final determination to the U.S. Trade Representative. On April 25, 2005, the U.S. Trade Representative held consultations with the Department and the appropriate congressional committees with respect to this determination. On April 27, 2005, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, the U.S. Trade Representative directed the Department to implement this determination.

Section 129 of the URAA [3] governs the nature and effect of determinations issued by the Department to implement findings by WTO panels and the Appellate Body. Specifically, section 129(b)(2) provides that ''notwithstanding any provision of the Tariff Act of 1930 * * *,'' within 180 days of a written request from the U.S. Trade Representative, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body. *See* 19 U.S.C. 3538(b)(2). The Statement of Administrative Action, U.R.A.A., H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), variously refers to such a determination by the Department as a ''new,'' ''second,'' and ''different'' determination. *See* SAA at 1025, 1027. This determination is subject to judicial review separate and apart from judicial review of the Department's original determination. *See* 19 U.S.C. 1516a(a)(2)(B)(vii).

In addition, section 129(c)(1)(B) of the URAA expressly provides that a determination under section 129 applies only with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which the U.S. Trade Representative directs the Department to implement that determination. In other words, as the SAA clearly provides, ''such determinations have prospective effect only.'' SAA at 1026. Thus, ''relief available under subsection 129(c)(1) is distinguishable from relief in an action brought before a court or a {North American Free Trade Agreement}(NAFTA) binational panel, where* * * retroactive relief may be available.'' *Id.*

Appellate Body Findings and Conclusions

Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement) provides that there are three means of calculating a dumping margin ''during the investigation phase.'' The agreement states that ''normally'' a margin ''will be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions' or that it will be established ''by a comparison of normal value and export prices on a transaction-to-transaction basis.'' The third means of comparison, a comparison of ''a normal value on a weighted average basis with individual export transactions,'' is provided for when certain criteria exist.

In the investigation of softwood lumber from Canada, the Department calculated dumping margins for the investigated respondents using weighted-average-to-weighted-average comparisons. Specifically, the Department compared weighted-average export prices (EPs) or constructed export prices (CEPs) to weighted-average normal values (NV). When the EP or CEP was greater than the NV, the comparison showed no dumping. In these circumstances, the Department did not offset or reduce the amount of dumping found on other comparisons based on the amount by which the EP or CEP exceeded the normal value for distinct comparisons. When the EP or CEP was less than the normal value, the comparison was considered to have revealed dumping. In order to calculate the weighted-average dumping margin, the Department aggregated the amount of dumping found through these comparisons and divided it by the aggregate value of all U.S. sales (regardless of whether they were dumped) to ensure that the results took account of all comparisons and, thus, all U.S. sales, dumped and non-dumped.

In its report, the Appellate Body rejected the United States' arguments (1) that the text of Article 2.4.2 of the Antidumping Agreement did not address the methodology at issue in this investigation; (2) that certain WTO members, including the United States, did not offset their calculations for non-dumped comparisons in their investigation calculations before, during, and following the implementation of the Antidumping Agreement, and that absent language addressing this methodology in the Agreement, members did not negotiate and agree that this methodology should be considered impermissible, and (3) that under Article 17.6 (ii) of the Antidumping Agreement, the Appellate Body was required to find that WTO members which applied this methodology acted in conformity with Article 2.4.2 of the Agreement. *See* paragraphs 107–108 of the Appellate Body Report.

The Appellate Body concluded, at paragraph 108 of its decision, that ''based on the ordinary meaning of Article 2.4.2 read in its context,'' the Department's comparison methodology was ''prohibited when establishing the existence of margins of dumping under the weighted-average-to-weighted-average methodology.'' The Appellate Body did not address the other methodologies provided for in Article 2.4.2, namely * * * ''the transaction-to-transaction methodology'' or * * * ''the weighted-average-to-individual methodology.'' *See id.* at paragraph 63 and 104–105.

Implementation

In light of the Appellate Body's findings and recommendations, we have determined to apply the transaction-to-transaction methodology in this Section 129 Determination. Therefore, the Department is implementing the recommendations and rulings of the DSB as follows.

To determine the dumping margin for each respondent, we matched individual transactions in the U.S. sales database with individual transactions in the home market database. *See also* Comment 7. In seeking to determine which specific home-market transaction would be the most suitable match for a given U.S. transaction, we began our analysis with the model-match characteristics used in our Final Determination. Consistent with our Final Determination, we did not match across product type, species, or grade group.

Because lumber prices were extremely volatile and the market was in a constant state of flux during the period of investigation (POI), we first attempted to find an identical match at the same level of trade on the same day. If no identical match was found, we looked for an identical home-market sale the day before the U.S. sale, then the day after the U.S. sale, and so forth, up to seven days before or after the U.S. sale. We did not match U.S. sales to home market sales that occurred either more than seven days before or more than

[3] Citation to ''section 129'' refers to section 129 of the URAA, codified at 19 U.S.C. 3538.

seven days after the date of the U.S. sale. If no identical sale was found at the same level or trade, we looked for an identical match at a different level of trade. We then began to look for the most similar sale, based on product characteristics and level of trade, in the same manner.

When sales were equally similar based on product characteristics, we identified the sale with the smallest difference in the variable cost of manufacturing as being the most similar. We did not match sales whose difference in variable cost exceeded 20 percent of the total cost of manufacturing of the U.S. sale.

We limited the window to sales within a two-week time frame because we are looking for a specific sale that represents the best possible match. Given the high level of price volatility, we felt that a window period of any longer than seven days on either side of individual U.S. sales would result in these sales being matched to home market sales made under different market conditions. We note in cases where price volatility is not as important a consideration, it may be more appropriate to use another period, such as the 90/60-day window period used in administrative reviews.

Within these parameters, we found a significant number of instances in which more than one home market sale qualified as an equally appropriate match. In order to identify the most appropriate match among the equally qualified sales, we looked for the sale that was the most similar in quantity to the U.S. sale. Section 773(a)(6)(C)(i) of the Tariff Act of 1930, as amended (the Act), contemplates that the sale quantity may have an effect on price. While the parties did not claim a quantity adjustment in this case, to the extent that the quantity of merchandise sold may affect the price of an individual transaction, we have taken that factor into account by using it as our first ''tie-breaker.''

For all companies, if there was still more than one equally appropriate match, we took customer categories, as reported by the individual respondents, into account. In order to do so, we had to give the customer categories a numerical ranking, to reflect which categories would be considered the most similar. Wherever possible, we attempted to be consistent between companies. For example, we considered wholesalers to be more comparable to distributors than to retailers. Where there were still multiple equally comparable transactions, we looked for the transaction with the most comparable channel of distribution.

When there remained multiple equally comparable transactions, we attempted to distinguish the single most appropriate match based on total movement expenses. Movement is the most significant expense related to the sale of softwood lumber. The amount of movement expenses can be considered indicative of the distance between the customer and the mill, and of the logistical coordination necessary to comply with the delivery terms of the sale. One company, Slocan, reported commissions. Accordingly, for this company, as a ''tie-breaker,'' we also looked at whether or not a commission was paid. We did not consider the total amount of the commission because the commission was price dependent: considering the amount of the commission would result in a match to the sale with the most similar price, rather than one made under the most similar conditions.

The final criterion we used to distinguish among equally comparable transactions was the number of days between payment and shipment. We used the number of days that payment was outstanding rather than the code for terms of sale, because the former more accurately reflects exactly when the customer paid. We did not use indirect selling expenses as a tie-breaker because such expenses are strictly price-dependent. Just as in the case of commissions, relying on indirect selling expenses to define the most similar sale would result in selecting the sale with the closest price as the match, rather than the sale made under the most similar conditions. After we considered these criteria, a small number of U.S. sales still had more than one equally comparable home market match. In these cases, we programmed the computer to select the first observation on the short list of equally comparable sales.

We believe that there are particular benefits from this analysis which do not exist in the context of the weighted-average-to-weighted-average comparisons. It is beyond question that the prices for lumber during the POI in both the United States and Canadian markets were volatile. *See* Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber from Canada, 67 FR 15539 (April 2, 2002), and accompanying Issues and Decision Memorandum at Comment 4 (Softwood Lumber Decision Memo); *see also* Memorandum from Constance Handley, Program Manager, to the File, re: Price Volatility, dated January 28, 2005. To the extent that the sales volume of a particular product varies over time and between the markets, the weighted-average price of any particular product could be skewed toward a period of low prices in one market and toward a period of high prices in the other market. In such a case, the weighted-average margin calculated for that product would not reflect the dumping, or lack of dumping, that may have occurred on the individual sales incorporated into the average. In the transaction-to-transaction analysis, however, the matching of identical or similar merchandise within a narrow time frame allows us to judge more accurately whether dumping was occurring when sales were made under the same market conditions.

With respect to United States law on this issue, section 777A(d)(1)(A)(i) and (ii) of the Act provides that in antidumping investigations, the Department may calculate a dumping margin using either weighted-average-to-weighted-average comparisons or transaction-to-transaction comparisons, with no stated preference.

Congress, in the SAA, stated that ''normally'' the Department will measure dumping margins on the basis of weighted-average-to-weighted-average comparisons. *See* SAA at 842. The SAA states that a transaction-to-transaction analysis ''would be appropriate in situations where there are very few sales and the merchandise sold in each market is identical or very similar or is custom made. However, given past experience with this methodology and the difficulty in selecting appropriate comparison transactions, the Administration expects that the Department will use this methodology far less frequently than the average-to-average methodology. *Id.* at 842–43.

Section 19 CFR 351.414(c) of the Department's regulations, adopted shortly after the URAA came into force, adopted the SAA's preference for weighted-average-to-weighted-average comparisons in investigations, explaining that the Department will only use the transaction-to-transaction means of comparison ''in unusual situations.'' The language of the regulation directly tracks the language of the SAA, and the Department explained in the Preamble to its final regulations that this provision was implemented to reflect the language of the SAA. *See* Preamble, Antidumping and Countervailing Duty Final Rule, 62 FR 27295, 27373–7374 (May 19, 1997) (Preamble). The Department further explained in the Preamble that the reason for this preference was directly tied to difficulties the agency had in the past with regard to the transaction-to-

transaction methodology and concerns about the difficulty of guaranteeing that ''merchandise in both markets'' would be ''identical or very similar'' in order for such a comparison to work appropriately. *Id.* at 27374.

The language of the SAA and the regulations does not prohibit the application of the transaction-to-transaction analysis in this case. First, there are no statutory or regulatory hierarchical criteria which govern the selection of the comparison methodology. The preferences expressed in the SAA and regulations merely indicate that in ''normal'' cases, weighted-average comparisons will be applied. However, among other things, the volatility of prices of subject merchandise and of the product sold in Canada during the POI distinguishes this case from the norm.

Second, the SAA was drafted and implemented in 1994, and the regulations soon followed in 1997. Both of these sources explain that the preference for a weighted-average methodology was based upon past experiences and an expressed difficulty in selecting appropriate comparison transactions. The Department's computer resources have improved greatly in the last few years, and many resource and programming difficulties the Department faced in 1994, and even in 1997, for conducting transaction-to-transaction matching on large databases no longer exist.

Third, when the URAA was negotiated, the Department did not apply an offset for non-dumped sales in antidumping investigations. Consequently, when Congress expressed a preference for weighted-average comparisons and when the Department adopted its regulations, they did so in the context of the Department's long-standing approach of not applying such an offset when making such comparisons. Because the Department is precluded in this instance from not offsetting non-dumped sales after making weighted-average-to-weighted-average comparisons, it is not clear that the stated preferences at the time of the SAA and regulations should continue to apply.

Accordingly, for all of these reasons, we have calculated dumping margins using the transaction-to-transaction methodology. By applying the transaction-to-transaction analysis in this case, we are not intending to implement an approach that applies to all antidumping investigations. As discussed above, the use of this methodology is premised on the combination of facts and circumstances that have led to and support this determination. Moreover, because the Appellate Body Report requires the offset for non-dumped sales only for a weighted-average-to-weighted-average comparison, we have not applied the offset for non-dumped sales in our transaction-to-transaction comparison.

Interested Party Comments

Comment 1: Applicability of the Appellate Body Ruling to a Transaction-to-Transaction Methodology

The Canadian Parties contest the Department's decision in the Preliminary 129 Determination to continue to not make an offset for non-dumped sales under a change from a weighted-average-to-weighted-average dumping calculation methodology to a transaction-to-transaction methodology. According to the Canadian Parties, the Appellate Body's decision on ''zeroing'' is not limited to the weighted-average-to-weighted-average methodology, but extends equally to the transaction-to-transaction methodology. Therefore, the Canadian Parties argue that the Department's determination fails to bring the United States into compliance with its obligations under the Antidumping Agreement.

The Canadian Parties argue that the Department misrepresented the Appellate Body Report when it stated that the report required an offset for non-dumped sales only in the context of a weighted-average-to-weighted-average comparison. They argue that the Appellate Body concluded that ''margins of dumping,'' as used in Article 2.4.2 of the Antidumping Agreement, must take into account the product in question as a whole. The Canadian Parties assert that by employing ''zeroing'' under the transaction-to-transaction methodology, the Department treats dumped transactions differently from non-dumped transactions. Therefore, they maintain that this does not treat the product in question as a whole. In addition, the Canadian Parties contend that the transaction-to-transaction methodology exacerbates the Department's failure to account for the product as a whole by applying ''zeroing'' at the model (control number) level.

The Canadian Parties also maintain that the Panel in dicta already concluded that ''zeroing'' in the context of a transaction-to-transaction methodology would be inconsistent with Article 2.4.2 of the Antidumping Agreement. As they note, the Panel stated, ''We are of the view that the use of zeroing when determining a margin of dumping based on the transaction-to-transaction methodology would not be in conformity with Article 2.4.2 of the AD Agreement.'' [4] Citing the Appellate Body's ruling in EC—Bed Linen [5] and its discussion of ''zeroing'' in United States—Corrosion-Resistant Steel,[6] the Canadian Parties contend that the Appellate Body has concluded that ''zeroing'' denies a ''fair comparison'' between export price and normal value. They argue that the ''fair comparison'' requirement of Article 2.4 applies to both transaction-to-transaction comparisons and weighted-average comparisons.

In response to the Canadian Parties, the Coalition contends that the only issue before the Appellate Body concerned the use of ''zeroing'' under the weighted-average-to-weighted-average comparison methodology. According to the Coalition, the Appellate Body acknowledged that it was not addressing the issue of ''zeroing'' under a transaction-to-transaction methodology or average-to-individual methodology. The Coalition contends that Article 2.4.2 of the Antidumping Agreement prescribes the transaction-to-transaction methodology. Contesting the Canadian Parties' argument that the Appellate Body's interpretation of the Antidumping Agreement ''forbids zeroing,'' the Coalition argues that the Appellate Body's decision precludes the United States from using ''zeroing'' only in conjunction with the weighted-average methodology. Therefore, the Coalition argues that the Preliminary 129 Determination is consistent with the Appellate Body's decision.

The Coalition asserts that the Canadian Parties are attempting to broaden the scope of the Appellate Body's ruling in claiming that the Appellate Body's decision is instructive regarding the use of ''zeroing'' with a transaction-to-transaction methodology. The Coalition contends that the Panel noted that it was not instructing any party when it stated, ''We are mindful that we are not called upon to decide whether zeroing is allowed or disallowed under the transaction-to-transaction and weighted-average-normal-value to individual export

[4] *See* Panel Report, United States—Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/R, adopted as modified by the Appellate Body on 31 Aug. 2004, para. 7.219, n.361.

[5] *See* Report of the Appellate Body, European Communities—Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R, Adopted 12 Mar. 2001, para. 55 (EC—Bed Linen).

[6] *See* Report of the Appellate Body, United States—Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R, adopted 9 Jan. 2004, para. 135 (United States—Corrosion—Resistant Steel).

transaction methodologies.''[7] Further, the Coalition claims that the Canadian Parties ignore the portion of the Appellate Body's report that states, ''In this appeal, we are not required to, and do not address, the issue of whether zeroing can, or cannot, be used under the other methodologies prescribed in Article 2.4.2, namely, comparing normal value and export prices on a transaction-to-transaction basis (the ''transaction to transaction methodology'') * * *''[8] According to the Coalition, this demonstrates unambiguously that the Appellate Body declared ''zeroing'' in conjunction with the transaction-to-transaction methodology to be outside of the scope of its review.

Department's position: We disagree with the Canadian Parties. The Canadian Parties have interpreted incorrectly the scope of the determination of the Appellate Body. The Appellate Body identified clearly that ''the precise scope of the appeal'' before it was the Department's methodology ''as applied in the anti-dumping investigation at issue in this case.'' *See* Appellate Body Report at 63 (emphasis included). Furthermore, the Appellate Body stated, without qualification, the following:

> Canada's claim before the Panel was limited to the consistency of zeroing when used in calculating margins of dumping on the basis of a comparison of weighted average normal value with a weighted average of prices of all comparable export transactions (the ''weighted-average-to-weighted-average methodology'') under Article 2.4.2 of the Antidumping Agreement. Therefore, in this appeal, we are not required to, and do not address, the issue of whether zeroing can, or cannot, be used under the other methodologies prescribed in Article 2.4.2, namely, comparing normal value and export prices on a transaction-to-transaction basis (''the transaction-to-transaction methodology''), or comparing a normal value established on a weighted average basis to prices to prices of individual export transactions (the ''weighted-average-to-individual methodology'').

Id. Thus, once it had rendered its decision, the Appellate Body stated that ''we have concluded, based on the ordinary meaning of Article 2.4.2 (of the Antidumping Agreement) read in its context, that zeroing is prohibited when establishing the existence of margins of dumping under the weighted-average-to-weighted-average methodology.'' *See* Appellate Body Report at para. 108.

The Canadian Parties' argument that the Appellate Body's decision applies beyond the weighted-average-to-weighted-average comparison methodology is unpersuasive. Indeed, the Canadian Parties acknowledge that the Panel's statement in a footnote of its report regarding the transaction-to-transaction comparison methodology was only ''in dicta'' and that ''the Appellate Body did not expressly forbid zeroing specifically in conjunction with the transaction-to-transaction methodology.'' *See* Canadian Parties' Brief at 3, 7. Nonetheless, they argue that the Preliminary 129 Determination ''does not comply with the findings of the WTO Appellate Body'' and they state that the Appellate Body's analysis ''extends equally to a transaction-to-transaction comparison methodology that incorporates the practice of zeroing.'' *See* Canadian Parties' Brief at 2–3. The Appellate Body Report contained no such decision. As the Appellate Body clearly indicated, the matter before it was the consistency of the Department's methodology with the United States' obligations under the Antidumping Agreement, as applied in the weighted-average-to-weighted-average analysis in the Final Determination. The Department's Section 129 Determination does not involve ''zeroing'' in a weighted-average-to-weighted-average comparison methodology, in full compliance with the Appellate Body's determination. Thus, this Section 129 Determination renders the Department's analysis ''not inconsistent with the findings of the Appellate Body.'' *See* section 129(b)(2) of the URAA.

Comment 2: Change in Comparison Methodology

Citing the decision by the Court of International Trade (CIT) in Borden,[9] the Canadian Parties assert that the principle of finality in U.S. administrative law prevents the Department from changing the comparison methodology used in the LTFV investigation, which has not been challenged. They argue that section 129 actions are limited to bringing an agency determination into conformity with WTO obligations. Further, they argue that the language of section 129, which authorizes the Department to ''take action not inconsistent with the findings of the panel or the Appellate Body,'' mirrors the language that Congress used with respect to the Department's actions for NAFTA panel remands. This parallel language, the Canadian Parties contend, demonstrates that in section 129 actions the Department may not revisit issues ''not necessary for WTO compliance.'' *See* Canadian Parties'' Brief at 11. Because the Department can comply with the Appellate Body's ruling without changing its comparison methodology, the Canadian Parties' position is that it must do so.

The Coalition argues that the Appellate Body did not direct the Department to make its determination consistent with Article 2.4.2 in a specific manner. The Coalition asserts that Article 2.4.2 expressly authorizes a WTO member to apply the transaction-to-transaction method in an investigation. Therefore, contesting the Canadian Parties' conclusions, the Coalition asserts that the transaction-to-transaction method is permissible under Article 2.4.2 of the Antidumping Agreement, the Act, the SAA, and the Department's regulations.

In addition, the Coalition argues that the Department acted in accordance with the U.S. Court of Appeals for the Federal Circuit's (CAFC's) decision that ''zeroing'' is permissible under sections 771(35)(A) and (B) of the Act.[10]

Department's position: We disagree with the Canadian Parties. Not granting an offset for non-dumped sales has consistently been an integral part of the Department's weighted-average-to-weighted-average analysis. In fact, Canada's challenge to the methodology relied on the language of Article 2.4.2 regarding comparisons between weighted-average export prices and normal values. The Appellate Body Report also relied on language particular to the use of the weighted-average-to-weighted-average comparison methodology in finding an offset requirement. *See, e.g.*, Appellate Body Report at para. 63.

The Canadian Parties' argument that the Department cannot apply a different methodology to implement the findings of the Appellate Body Report is incorrect, because such a reading of the law would, in effect, seriously undermine the effectiveness of section 129(b)(2) of the URAA. As noted above, Congress intended for a determination pursuant to a section 129(b) decision to be a ''new,'' ''second'' or ''different'' determination. *See* SAA at 1025, 1027. Thus, the Department may modify its calculations or methodologies to effectuate its compliance with a WTO decision. Furthermore, the calculations or methodologies that are necessary to

[7] *See* Panel Report, United States—Final Dumping Determination on Softwood Lumber from Canada, at para. 7,219 n.361, WT/DS264/R (April 13, 2004).

[8] *See* Appellate Body Report at para. 63.

[9] See *Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1242 (Ct. Int'l Trade 1998) *reversed on other grounds Borden, Inc.* v. *United States*, 7 Fed. Appx. 938, 2001 WL 312232 (Fed. Cir. 2001) (Borden).

[10] See *Corus Staal* v. *United States*, 283 F. Supp.2d. 1357 (Fed. Cir. 2005).

implement this decision rest largely with the discretion of the Department, the United States Trade Representative and Congress. The Canadian Parties' interpretation of section 129 would remove discretion from the various governmental bodies in implementing a decision under section 129. Thus, we reject the Canadian Parties' claims that the Department may not modify its comparison methodology and employ a transaction-to-transaction analysis to bring its determination into compliance with the WTO Appellate Body Report.

With respect to the Canadian Parties' arguments involving Borden, we agree that finality is an important aspect of agency proceedings. However, the holding of Borden does not apply in this case. First, and most obviously, Borden involved a remand redetermination, while this case, of course, involves the implementation of a section 129 decision. These are entirely different proceedings, with the first involving implementation of a specific order to the agency from a domestic court. Implementation of a section 129 decision involves multiple governmental agencies that may implement a decision in any manner ''not inconsistent with the recommendation'' of the WTO. Second, in Borden, the Department's level of trade analysis was challenged, an issue that is distinct from the CEP calculations in general. *See* Borden at 1242. In this case, the Department's approach of not offsetting non-dumped sales, only as part of its weighted-average-to-weighted-average comparison methodology, was challenged, and the Department has modified its calculations to address the Appellate Body's concerns. As stated previously, the language of the Antidumping Agreement that provides for this comparison methodology was an integral part of the Appellate Body's basis for finding the ''zeroing'' methodology inconsistent with the Antidumping Agreement. Thus, the facts of Borden do not apply in this case.

Finally, the Canadian Parties argue that ''finality'' is important, and we agree, which is why the agency based its calculations entirely upon the facts of the record already before it. As the CIT explained in *Dupont Teijin Films USA, LP, et. al.* v. *United States*, Slip Op. 2004–70 (June 18, 2004), once a final determination has been made, the agency may only reopen the record and amend its decisions in limited circumstances, such as an ''express granting of relief by the court.'' *Id.* at 13. In this case, Commerce was able to modify its calculations without adding new factual information to the record. Thus, the agency respected the finality of the record in making its determination.

Accordingly, the Department has determined, pursuant to section 129(b)(2), that the transaction-to-transaction methodology is an appropriate methodology to apply in this case in order to bring its determination into conformity with the findings of the Appellate Body.

Comment 3: Requirements under U.S. Law for Use of Transaction-to-Transaction Methodology

Referring to the SAA and 19 CFR 351.414(c), the Canadian Parties contend that both establish a strong preference for the weighted-average-to-weighted-average methodology. The only exceptions established by the SAA and the Department's regulations, the Canadian Parties argue, are for unusual circumstances in which a respondent has very few sales and in which the merchandise in each market is identical, very similar, or custom-made. Contesting the Department's statement in the Preliminary 129 Determination that the transaction-to-transaction method was disfavored in 1997 because of computer programming difficulties, the Canadian Parties contend that the Department's regulations and the SAA do not expressly state this. Further, the Canadian Parties argue that the Department did not address the substantive reason for the preference for the weighted-average methodology. They assert that the transaction-to-transaction method, in contrast to the weighted-average method, creates a bias toward dumping, as the CIT explained in Borden. Furthermore, they contend that the Department's regulations are binding upon it until they are formally amended.

The Coalition contends that section 777A of the Act does not restrict the Department from comparing the normal values of individual transactions to individual export prices or constructed export prices of comparable merchandise. The Coalition also claims that even though the Department's regulations establish a preference for the weighted-average-to-weighted-average method, the regulations do not preclude the Department from applying the transaction-to-transaction method in investigations. Furthermore, the Coalition notes that the SAA states specifically that section 777A(d)(1)(A)(ii) permits the calculation of dumping margins on a transaction-to-transaction basis. Also, according to the Coalition, the SAA states that the URAA establishes a preference for use of a weighted-average or transaction-to-transaction methodology in the investigation phase of an antidumping proceeding.[11]

The Coalition maintains that the Department did not act arbitrarily or abuse its discretion by using the transaction-to-transaction method. In the Preliminary 129 Determination, the Coalition notes, the Department explained that employing the transaction-to-transaction methodology allows it to determine more accurately whether dumping occurred. Further, the Coalition contends that the Department provided a reasonable explanation of why the preference for employing the weighted-average-to-weighted-average method, as stated in the Department's regulations, may no longer apply.

Department's position: We disagree that the Department's application of the transaction-to-transaction methodology is ''contrary to U.S. law'' or that the agency is disregarding the SAA by applying this methodology. *See* Canadian Parties Brief at 12. Both of these statements, and the arguments which follow, are unsupported by the Department's analysis.

As we explain above, sections 777A(d)(1)(A)(i) and (ii) of the Act allow for either weighted-average-to-weighted-average comparisons or transaction-to-transaction comparisons, with no stated preference. Furthermore, the SAA reflects the understanding shared by the Administration and Congress in 1994 that the Department would ''normally'' apply weighted-average-to-weighted-average comparisons in investigations in light of ''past experience'' and difficulties in ''selecting appropriate comparison transactions.'' This position was drafted and implemented over ten years ago, when the Department did not offset for non-dumped sales in its weighted-average-to-weighted-average comparisons in antidumping investigations and when computer technology was inferior to the computer technology of 2005. *See* SAA at 842–43. Thus, the concerns about ''past experiences'' do not require the Department to simply use a ''modified'' weighted-average-to-weighted-average methodology championed by the Canadian Parties. Furthermore, earlier concerns about difficulties in selecting appropriate matching characteristics are addressed to a great extent through modern computer technology. Similarly, the Department's regulations, as reflected in 19 CFR 351.414(c), were drafted in 1996 and implemented in 1997, and mirror the same concerns expressed in the SAA. It should also be

[11] *See* SAA at 842–843 (emphasis added).

noted that the regulation uses the term ''normally'' in stating the preference for the weighted-average-to-weighted-average methodology, indicating that other methodologies may be used.

Despite the Canadian Parties' claims, the Department is not ''disregarding the SAA'' or its regulations in its Section 129 Determination. Instead, as the agency has explained above, the normal presumptions of the Department's methodologies, as stated in the SAA and the regulations, do not apply in this case.

The United States explained first to the Panel, and then to the Appellate Body, that the Department's methodology when the URAA was signed into law in 1994 was to not offset for non-dumped sales as part of the weighted-average-to-weighted-average methodology in investigations. The United States argued that because the Antidumping Agreement is silent on this issue, it did not believe that its methodology was inconsistent with its international obligations. The Appellate Body disagreed with this assessment of the United States' obligations. Nonetheless, this analysis is clearly relevant with respect to the claim under the SAA and the regulations that the Department ''normally'' will apply a particular methodology. What was ''normal'' in an antidumping investigation in the United States in 1994 is, under the Appellate Body's analysis, inconsistent with our WTO obligations, as applied in this case. However, absent the Department's ''normal'' analysis, neither the SAA, nor the regulations, direct the Department as to the appropriate alternative methodology.

Finally, to the extent that the Canadian Parties argue that the Preliminary 129 Determination, if finalized, would be inconsistent with other provisions of the Antidumping Agreement, we note that our analysis in this Section 129 Determination complies fully with United States law and regulations. Furthermore, the Act, the URAA, and the Department's regulations are consistent with United States obligations under the Antidumping Agreement and all other WTO Agreements. *See* SAA at 669 (speaking to the consistency of the URAA with United States international obligations). Accordingly, the Department has determined that no further analysis is warranted with respect to these arguments, and that this Section 129 Determination implements an analysis that is consistent with our domestic and international obligations, as well as with the Appellate Body Report.

Comment 4: Statutory Preference for Identical Matches

The Canadian Parties assert that section 771(16) of the Act requires the Department to apply methodologies that maximize the number of identical matches of merchandise for comparison. The Canadian Parties contend that the weighted-average methodology used in the LTFV investigation produced mostly identical matches of merchandise, but that the transaction-to-transaction methodology used in the Preliminary 129 Determination produced mostly non-identical comparisons. Further, they argue that there is no additional information on the record of the proceeding to justify such a change.

The Coalition did not address this point specifically, but argued, as discussed above, that the use of a transaction-to-transaction methodology is permissible under U.S. law, and within the Department's discretion.

Department's position: We disagree that the determination of which comparison methodology to use hinges on the number or percentage of identical matches obtained. While the Department has an established precedent for using price-to-price matches where possible,[12] the transaction-to-transaction methodology is consistent with our statutory obligation in that it exhausts all possible identical matches within the two-week window of contemporaneous sales before searching for similar matches, and exhausts all price-to-price matches based on comparisons to similar merchandise before going to constructed value. The Canadian Parties have not suggested that the time period for looking for identical matches be expanded; indeed, they have stated that even seven days on either side of the sale may be too long a period to address the volatility.

Although section 771(16) of the Act lists identical matches as the first choice among the options for selecting a match, it does not address the issue of the time period over which the search for identical matches should be conducted in a transaction-to-transaction methodology. Section 773(a)(1)(A) states that the price to be used for normal value must be ''at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price.'' We note that in administrative reviews individual U.S. sales are matched to home market sales within a time frame that is less than the whole review period. *See* 19 CFR 351.414 (e)(2). In addition, in cases where use of a limited time period was warranted by special circumstances in the market, such as high inflation, the Department has used averaging periods shorter than the full POI.[13] The same logic applies when doing transaction-to-transaction comparisons. Absent a specific statutory mandate on the time period to be used, the Department must exercise its discretion in determining the most appropriate period over which to search for an identical match. Depending on the market conditions for a given product, this time period could vary from case to case. For a discussion on the appropriate time period, see Comment 5 below.

Comment 5: Price Volatility

The Canadian Parties argue that there is no rational connection between the Department's price volatility finding and its conclusion that price volatility justifies a switch to the transaction-to-transaction comparison methodology. In fact, according to the Canadian Parties, the Department's price volatility findings support a weighted-average-to-weighted-average methodology because averaging smooths price volatility.

The Canadian Parties argue that the Department incorrectly presumed that pairing each U.S. sale with a home market transaction on or around the same date would correct for price volatility. This presumption, the Canadian Parties maintain, would only be correct if there was no or limited price volatility within the time periods where the transactions were matched. The Canadian Parties contend that there is no evidence the volatility does not exist or is limited during the periods. They have provided analyses from Abitibi, Canfor, Tembec, and Weyerhaeuser that demonstrate price volatility within various limited time frames.

The Canadian Parties argue that in past cases, such as Flowers from Colombia,[14] the Department recognized that price averaging, not transaction-to-transaction comparisons, is the best methodology for addressing issues posed by highly volatile prices. Moreover, according to the Canadian Parties, in Flowers from Colombia, the Department found that price-to-price comparisons were particularly inappropriate in conjunction with the

[12] See *Cemex S.A.* v. *United States,* 133 F.3d 897 (Fed.Cir.1998).

[13] *See, e.g.,* Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part 69 FR 64731 (November 8, 2004); Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14064 (March 29, 1996).

[14] See Final Determination of Sales at Less than Fair Value: Certain Fresh Cut Flowers from Colombia, 52 FR 6842,6843 (March 5, 1987).

treatment of non-dumped sales as having zero margins.

According to the Coalition, there is ample evidence on the record demonstrating that the volatility of net prices would be significantly reduced by pairing each U.S. sale with a home market sale on or around the same date of sale. First, the Coalition points out, the bi-weekly tests used by the Canadian Parties overstate the period in which the Department looked for a match, because the transactions selected as the most appropriate match could never be more than seven days from the U.S. date of sale.

Further, the Coalition argues that the Canadian Parties' use of standard deviations to measure the relative volatility of various price strings is misleading. The better statistical analysis for comparing the relative volatility of various different price series, the Coalition maintains, is the coefficient of variation, which takes into account the standard deviation as a percentage of the mean. Using this measure on high volume products for all six respondents, the Coalition concludes that daily prices have a lower coefficient of variation than weekly prices, which have a lower coefficient of variation than monthly or quarterly prices. Therefore, the Coalition concludes that using prices of transactions that occurred on the same date or, at most, not more than seven days from the U.S. sale, significantly reduces volatility.

Finally, the Coalition argues that the Canadian Parties' arguments regarding price volatility are flawed because they did not take into account all the factors the Department used in its transaction-to-transaction methodology. According to the Coalition, when all these factors are taken into account, price volatility among potential product matches is eliminated.

Department's position: We disagree with the Canadian Parties that use of a weighted-average-to-weighted-average comparison is the only way to account for price volatility in the lumber market. First, we find that the Canadian Parties' cite to Flowers from Colombia is inapposite. In Flowers from Colombia, the Department rejected a transaction-to-transaction analysis because of (i) the administrative burden and (ii) the perishable nature of the product in question, which meant that ''end of the day'' sales were made at distress prices. The Department stated that because it treated non-dumped sales as having zero margins, the distress sales would be given a disproportionate weight.

Unlike fresh cut flowers, lumber is not a highly perishable product that needs to be disposed of by the end of each business day regardless of price. Thus, there is no separate, identifiable class of sales that can be said a priori to give rise to a distortion in our dumping analysis, as was the case in Flowers from Colombia.

With regard to the Canadian Parties' demonstration that prices can vary widely in a single day, large price ranges on a single day may indicate that the companies are reacting to fluctuations in market prices, but it may also indicate that they are able to sell to different customers at different prices. The purpose of our dumping analysis is to look at an individual company's selling practices to determine whether it is engaging in unfair price discrimination. When faced with a situation where there were multiple sales of the same product on the same day, the criteria we have selected as tie-breakers allow us to determine which sales were made under the most similar circumstances.

With regard to the Canadian Parties' use of a standard deviation analysis, we agree with the Coalition that the coefficient of variation gives a clearer idea as to whether variability is reduced by limiting matches to a shorter time period. While the coefficient of variation analysis demonstrates that the greatest reduction in volatility can be achieved by matching sales made only on the same day, we have had to balance our desire to reduce the effect of price volatility with our statutory preference for price-to-price matches. Therefore, we have continued to look for matches within a seven-day period on either side of the U.S. sale.

Comment 6: Matching Hierarchy

The Canadian Parties contend that the Department has provided no factual basis for its matching criteria and hierarchy used to match individual U.S. sales to home market transactions, and that the record is insufficient to implement a transaction-to-transaction comparison methodology. According to the Canadian Parties, the Department deployed a methodology never used for an investigation and has not accorded the parties an opportunity to submit new factual information regarding the process. They state that, as a result, the following problems have developed: (1) The Department's use of a biweekly period to control price volatility is unsupported by record evidence and entirely ineffective; (2) using the date of sale to match transactions may be inappropriate because the actual pricing of the merchandise took place on a different date; (3) the Department's methodology ignores differences between spot sales, which stem from market conditions at the time, and contract sales, which are based on pricing formulas; and (4) the Department's approach fails to account for ''random length'' [15] sales, whose pricing effects are evened out in an averaging methodology but may inappropriately impact margins on a transaction-to-transaction basis.

The Coalition contends that at no point in the case did the respondents complain about the dates of sale being used, nor did they suggest that the Department should refrain from mixing and matching spot sales and contract sales, or refrain from matching mixed-length to single-length sales. According to the Coalition, all these issues were just as relevant when the Department was matching on a weighted-average-to-weighted-average basis. Because none of the Canadian respondents raised these issues during the investigation, the Coalition maintains that the Department should dismiss these claims.

Department's position: We disagree with the Canadian Parties that there was no factual basis for the matching criteria used in the transaction-to-transaction matching hierarchy. The issue of the two-week period is discussed in detail above. With regard to date of sale, the Department's policy on date of sale is well established. Section 351.401(i) states, ''In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.''

Section A of the Department's questionnaire asks numerous questions related to whether a date other than invoice date would better reflect the date on which the material terms of sale were established. After reviewing all of the responses, the Department stated in its preliminary determination, ''{W}e generally relied on the date of invoice as the date of sale. Consistent with the Department's practice, where the invoice was issued after the date of shipment, we relied on the date of shipment as the date of sale.'' [16] Date of

[15] For the purposes of this Section 129 Determination, we are defining a random length sale as any sale which contains multiple lengths, for which a blended (*i.e.*, average) price was reported.

[16] See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada, 66 FR 56062 (November 6, 2001).

sale was not an issue for the final determination.

Further, the Canadian Parties have suggested that it may have been more appropriate for the Department to establish the date of sale differently for different types of sales made by the same company. The Preamble states: ''{W}e have retained the preference for using a single date of sale for each respondent, rather than a different date of sale for each sale.'' [17] Nowhere in the Department's regulations does it imply that a different date of sale methodology should be employed when the Department uses a transaction-to-transaction methodology in calculating margins. Further, the Canadian Parties have suggested that the Department should consider only the date on which the price was set and not when all the material terms of sale were set. To do so would be contrary to our regulations and precedent.

Consistent with our regulations and precedent, our determination on date of sale for each respondent was based on its description of its selling practices overall. The respondents all reported the earlier of invoice or date of shipment as the date of sale. We found in reviewing the responses and at verification that, for the preponderance of sales, the invoice date most properly reflects when the material terms of sales (*i.e.*, price and quantity) are set. For example, the Abitibi Sales Verification Report states, ''Based on our examination of the company's records, we noted that, generally, terms of sale, such as quantity ordered, may change from the order date to the invoice date, especially with respect to direct sales. For this reason, the invoice date is generally found to be the most appropriate basis for the date of sale.'' [18] Consistent with the companies' responses, we used, and have continued to use, the earlier of invoice date or date of shipment as the date of sale.

With regard to the Canadian Parties' suggestion that it may have been appropriate to consider whether a sale was made using spot prices or a contract price, we note that typically contracts are written to reflect market prices. For example, in its Section A questionnaire response, Abitibi states that prices are set by agreed upon formulas and that the ''pricing formulas are based on a spread above a third party publication pricing series, usually, Random Lengths.'' [19] In other words, the contract prices are designed to move with the market. Although Abitibi mentions that some specialty products may have firm fixed-price contracts, information on the record indicates that reportable lumber products were not generally sold with firm fixed prices.[20] To the extent the contract sales are distinguished by customer category or channel of distribution, they were taken into account in distinguishing between equally similar matches.

Regarding sales made on a ''random length'' basis, we acknowledge that the sales are not identified in the database. During the investigation, the Department did not, with one exception, get data regarding these sales because the respondents did not keep any information which would allow them to identify the underlying length-specific prices. During the first administrative review of the order, we subsequently devised a methodology to deconstruct prices for at least some of the sales made on this basis. We asked the respondents for data to identify these sales, and they provided these data. We note that the respondents vociferously argued that we should be using the blended invoice price, despite the fact that, as here, we were matching individual U.S. transactions.[21] In light of the respondents' inconsistent positions on this issue and the time that would have been necessary to collect these additional data (as compared with the time available to complete this determination), we have continued to use the reported prices for random length sales.

In developing the transaction-to-transaction matching methodology, our goal was to reflect, as closely as possible, the Department's matching criteria used in the original investigation, using the information collected in the responses to our questionnaires. We note that a separate set of regulations does not exist for transaction-to-transaction methodologies. The regulations as written cover all calculation methodologies. Therefore, we began, as we do in all cases, by focusing on the physical characteristics of the products. When there was more than one appropriate match, we used information supplied in the responses to our questionnaires.

While we recognize that there may be many possible approaches to finding the most appropriate single match for a given sale, and that more information could result in different criteria being applied, it is not incumbent upon the Department to demonstrate that its methodology is the only possible methodology, only that it is a reasonable interpretation of its regulations and the statute. Substantial deference is owed to an agency's interpretation of the statute it is charged with administering, as long as such interpretation is reasonable. *See Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984). In addition, substantial deference is granted to an agency's interpretation of its own regulations.[22]

We believe that in following our original matching criteria to the extent possible, and then taking into account case-specific factors such as price volatility, we have conformed to our statutory obligations. Section 771(16)(A) of the Act requires that the Department take into account physical characteristics in determining which comparison market sales to match to a U.S. sale. We have done so. Section 773(a)(1)(B) of the Act requires that, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP transaction. Again, we have done so. Because the statute does not specifically address which match to choose when more then one comparison-market sale constitutes an equally similar match, we have used our discretion in determining which criteria should be used to determine the most appropriate match. Our reasons for choosing the criteria we did are outlined above, in the final determination section of this notice.

Comment 7 : Window Period

The Canadian Parties argue that the Department's methodology for making comparisons to individual U.S. transactions requires the use of home market sales made during the ''shoulder periods'' before and after the POI. The

[17] See the Preamble at 27348.

[18] *See* Memorandum from Magd Zalok and Amber Musser, Import Compliance Specialists to Gary Taverman, Director, Office 5 re: Verification of the Sales Response of Abitibi-Consolidated Inc. in the Antidumping Investigation of Certain Softwood Lumber Products from Canada dated January 31, 2002, at page 9. (Abitibi Sales Verification Report)

[19] See Abitibi Section A Questionnaire response, dated June 22, 2001, at page A–26.

[20] *See, e.g.*,Abitibi Section A Questionnaire Response at Annexes A–6 and A–7.

[21] *See* Softwood Lumber Decision Memo at Comment 5.

[22] *See, e.g.,Torrington Company* v. *United States*, 156 F.3d. 1361, 1363–64 (Fed. Cir.1998), citing *Thomas Jefferson Univ.* v. *Shalala*, 512 U.S. 504, 512, 129 L. Ed. 2d 405, 114 S. Ct. 2381 (1994) (''We must give substantial deference to an agency's interpretations of its own regulations. * * * The agency's interpretation must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation. * * * This broad deference is all the more warranted when, as here, the regulation concerns a complex and highly technical regulatory program, in which the identification and classification of relevant criteria necessarily require significant expertise and entail the exercise of judgment grounded in policy concerns.'' (citations and internal quotation marks omitted)).

Canadian Parties contend that since the Department is using a two-week matching period, it cannot fully implement its methodology without collecting data for home market sales made two weeks before and two weeks after the POI.

The Coalition points out that the home market transaction being matched to U.S. sales has to be within seven days of the U.S. sales; therefore, very little data, only one week on either side of the POI is actually missing.

Department's position: Because we do not have all possible matches for sales made during the first and last seven days of the POI, we have decided to disregard U.S. sales which took place in those weeks. In LTFV investigations, the Department is not required to examine all sales transactions. For this reason, our practice has been to disregard unusual transactions when they represent a small percentage (*i.e.*, typically less than five percent) of a respondent's total sales.[23] The sales at issue here represent significantly less than five percent of sales. While the sales are not unusual in that they are not different from other sales which occurred during the POI, they are unusual to the extent that we do not have the same pool of possible matches for them. Therefore, to address the Canadian Parties' concern in this regard, we have decided to disregard those sales.

Comment 8: Reopening the Record

The Canadian Parties argue that it is not necessary to reopen the record to collect missing data for use in this proceeding. Any missing data, according to the Canadian Parties, would only be relevant to the application of the transaction-to-transaction methodology. They contend that using this methodology is not necessary for bringing the Department's determination into conformity with the U.S. obligations under the WTO Antidumping Agreement, meaning that there is no need to reopen the record of this proceeding.

The Coalition agrees that the record should not be reopened. Moreover, the Coalition believes it is unnecessary because no data are missing.

Department's position: As discussed above, in Comment 7, we have been able to use the information gathered in the course of the investigation to implement a methodology which is consistent with both the statute and the Department's regulations, as well as not inconsistent with the Appellate Body Report. Therefore, we consider it unnecessary to reopen the record.

Comment 9: NAFTA Panel Determination

The Canadian Parties state that the mandatory respondents and industry associations successfully appealed various aspects of the Final Determination to a NAFTA binational panel. The Canadian Parties argue that the Department must revise the Preliminary 129 Determination to account for the ruling of the NAFTA panel, instead of repeating all of the prior legal errors.

The Coalition maintains that the ongoing NAFTA proceeding is irrelevant to this section 129 proceeding.

Department's position: We disagree with the Canadian Parties. At this time, the decisions of the NAFTA panel are not final and conclusive.[24] Absent a final and conclusive decision from the NAFTA panel, the Department has no obligation to incorporate decisions arising out of the ongoing proceeding.

Comment 10: Difmer Methodology

The Canadian Parties argue that the Department must use the programs from the NAFTA panel remand in calculating the margins for the Section 129 Determination, and that when it does, transaction-to-transaction comparisons will be incompatible with the manner in which the Department computed and applied difference in merchandise adjustments (''difmers'') for non-identical matches. According to the Canadian Parties, the Department calculated difmers based on a cost allocation that used the annual average net realizable value of different grades of merchandise being compared. The Canadian Parties argue that combining this difmer methodology with transaction-to-transaction comparisons distorts the margins because difmers are compensating for the variation between the annual average price on a given day, rather than for differences in the merchandise.

Department's position: As discussed above, we have not relied on the results of the NAFTA panel proceeding, which is not final. Since we are not using the difmer methodology applied in a remand determination in the NAFTA proceeding, this issue is moot.

Section 129 Determination Margins

As a result of the changes to the calculations, we have determine that the following antidumping margins exist:

Manufacturer/exporter	Weighted-average margin
Abitibi-Consolidated Inc. (and its affiliates Produits Forestiers Petit Paris Inc., Produits Forestiers La Tuque Inc., Scieries Saguenay Ltee., Societe En Commandite Scierie Opticwan)	13.22
Canfor Corporation (and its affiliates Lakeland Mills Ltd., The Pas Lumber Company Ltd., Howe Sound Pulp and Paper Limited Partnership)	9.27
Slocan Forest Products Ltd.	12.91
Tembec Inc. (and its affiliates Marks Lumber Ltd., Excel Forest Products)	12.96
West Fraser Timber Co. Ltd. (and its affiliates West Fraser Forest Products Inc., Seehta Forest Products Ltd.)	3.92
Weyerhaeuser Company (and its affiliates Monterra Lumber Mills Ltd., Weyerhaeuser Saskatchewan Ltd.)	16.35
All Others	11.54

Continuation of the Suspension of Liquidation

On April 27, 2005, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, the U.S. Trade Representative, after consulting with the Department and Congress, directed the Department to implement this determination. Therefore, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of softwood lumber from Canada that are entered, or withdrawn from warehouse, for consumption on or after April 27, 2005. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice.

Because we completed an administrative review of all of the individual companies subsequent to the

[23] *See, e.g.*, Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), Issues and Decision Memorandum at Comment 27; Final Determination of Sales at Less than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 27, 2001), Issues and Decision Memorandum at Comment 10; and Notice of Preliminary Determination of Sales at Less Than Fair Value Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan, 64 FR 8291, 8295 (February 19, 1999).

[24] See Rules 77(1), 78, 79 of the NAFTA Article 1904 Panel Rules (providing the process by which a Notice of Final Panel Action is implemented and/or appealed); see generally 28 U.S.C. 2645 (providing that CIT decisions are ''final and conclusive'' only after a certain amount of time, and that the filing of a notice of appeal with the CAFC means that the decision is not final until all appeals are exhausted).

issuance of the order in this proceeding, we will not issue a new cash deposit rate for them, pursuant to this Section 129 Determination. The Section 129 Determination ''all others'' rate will be the new cash deposit rate for all exporters of subject merchandise which did not participate in the first administrative review, with respect to entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 27, 2005, the date on which the U.S. Trade Representative directed the Department to implement this determination. These instructions will remain in effect until further notice.

This Section 129 Determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: April 27, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–8745 Filed 4–29–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 011206293–3182–02; I.D. 042605F]

Pacific Halibut Fishery; Guideline Harvest Levels for the Guided Recreational Halibut Fishery

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

ACTION: Notice of guideline harvest level.

SUMMARY: NMFS provides notice of the guideline harvest level (GHL) for the guided sport halibut fishery (charter fishery) in the International Pacific Halibut Commission (IPHC) regulatory area 2C of 1,432,000 pounds (649.5 mt), and a GHL in the IPHC regulatory area 3A of 3,650,000 pounds (1,655.6 mt). The GHLs are intended to serve as a benchmark for participants in the charter fishery.

DATES: The GHLs are effective beginning 1200 hrs, Alaska local time (A.l.t.), February 1, 2005, and will close at 2400 hours, A.l.t., December 31, 2005. This period is specified by the IPHC as the sport fishing season in all waters of Alaska.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907 586 7228, or email at *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS implemented a final rule to establish GHLs in IPHC regulatory areas 2C and 3A for the harvest of Pacific halibut (*Hippoglosses stenolepis*) by the charter fishery on August 8, 2003 (68 FR 47256). The GHLs are intended to serve as a benchmark for participants in the charter fishery.

This announcement is consistent with 50 CFR 300.65(i)(2), which requires that GHLs for IPHC regulatory areas 2C and 3A be specified by NMFS and announced by publication in the **Federal Register** no later than 30 days after receiving information from the IPHC which establishes the constant exploitation yield (CEY) for halibut in IPHC regulatory areas 2C and 3A for that year. Based on the regulations at § 300.65(i)(1), the CEY established by the IPHC in 2005 in regulatory area 2C results in a GHL of 1,432,000 pounds (649.5 mt), and, in regulatory area 3A, results in a GHL of 3,650,000 pounds (1,655.6 mt).

This notice is intended to serve as an announcement of the GHL's in Areas 2C and 3A for 2005. If a GHL is exceeded in 2005, based on information received from the Alaska Department of Fish and Game, NMFS will notify the North Pacific Fishery Management Council (Council) in writing within 30 days pursuant to regulations at § 300.65(i)(3). The Council is not required to take action, but may recommend additional management measures after receiving notification that a GHL has been exceeded.

Classification

This notice does not require any additional regulatory action by NMFS and does not impose any additional restrictions on harvests by the charter fishery. This process of notification is intended to provide the Council an indication of the level of harvests by the charter fishery in a given year and could be used to prompt future action.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 26, 2005.

Anne M. Lange

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–8696 Filed 4–29–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042605C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice; public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Recreational Fishing; Herring; Scallop; Joint Groundfish/Monkfish and Joint Red Crab, Skates and Whiting Advisory Panels in May 2005, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on May 16; May 19; May 23; May 25 and May 26, 2005. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Peabody, MA; Mansfield, MA; Portsmouth, NH and Fairhaven, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: Monday, May 16, 2005 at 9:30 a.m.—Recreational Fishing Advisory Panel Meeting.

Location: Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

Thursday, May 19, 2005 at 9:30 a.m.—Joint Red Crab, Skates and Whiting Fishing Advisory Panel Meeting.

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Monday, May 23, 2005 at 9:30 a.m.—Herring Fishing Advisory Panel Meeting.

Location: Best Western Wynwood Hotel, 580 U.S. Highway 1 Bypass, Portsmouth, NH 03801; telephone: (603) 436–7600.