

SECTION I - SUBSIDY RATE CALCULATION ISSUES

I. THE DEPARTMENT PROPERLY CALCULATED THE AD VALOREM SUBSIDY RATES FOR ALL PROGRAMS INVESTIGATED

In calculating the *ad valorem* subsidy rates of the programs investigated, the Department acted in accordance with the statute, the regulations and its practice. Specifically, when calculating the *ad valorem* subsidy rate, the Department divides the total benefit (the numerator) by the value of the sales of the producers who received that benefit (the denominator).¹ This methodology ensures that the numerator and denominator match:

It is imperative that both the numerator (the benefit) and denominator (the universe of sales to which the benefit applies) used in our calculation of a subsidy reflect the same universe of goods. Otherwise the rate calculated will either over- or understate the subsidy attributable to the subject merchandise.

Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review, 62 Fed. Reg. 32297, 32302 (June 13, 1997).

For the stumpage programs, the Department properly determined that the benefit (the numerator) should be calculated based on the volume of timber harvested from Crown lands that entered sawmills.² Accordingly, to ensure that the numerator and denominator matched, the Department included in its calculation of the denominator all products resulting from the lumber production process.³

When the GOC urged the inclusion in the calculation of the denominator a category of products, the so-called “residual products,” which included products that did not result from the

¹ See 19 C.F.R. § 351.525(a).

² See Issues and Decision Memorandum, at 19-21.

³ See id. at 21-23.

production of lumber, the Department properly rejected this contention. In any event, the GOC failed to provide evidence that would have allowed the Department to include those products in the residual products category in the denominator.

In addition, the Department properly rejected the GOC's request that the denominator be based on "first mill" data. The *ad valorem* subsidy rate calculation must be based on all relevant sales.⁴ In this investigation, relevant sales included certain remanufactured products within the scope of the investigation. Because the "first mill" data did not include a value for the remanufactured products, the Department could not use that data as the sole basis for its subsidy rate calculation. Rather, the Department used record evidence to calculate a reasonable estimate of the remanufactured data. The Department properly rejected an estimate made by the GOC which the Department found to be inaccurate.

Finally, in accordance with the regulations, the Department allocated the benefit of the non-stumpage programs over all of the sales that the Department found benefitted from those programs. The Department's calculations were supported by substantial evidence, and in accordance with law. The Panel should therefore affirm the Department's calculations.

A. THE DEPARTMENT CALCULATES AN AD VALOREM SUBSIDY RATE BY ALLOCATING THE ENTIRE AMOUNT OF THE BENEFIT PROVIDED OVER ALL RELEVANT SALES

Commerce properly followed its regulations by calculating the benefit of the stumpage programs based on the volume of logs harvested from Crown lands that entered sawmills during the POI.⁵ The GOC argues that because the processing of the logs can result in both subject and

⁴ 19 C.F.R. § 351.525(a).

⁵ See Issues and Decision Memorandum, at 19-21.

non-subject merchandise, the portion of the logs attributable to the production of non-subject merchandise should be excluded from the calculation of the benefit. As demonstrated below, the regulations address the situation where the subsidy is used for both subject and non-subject merchandise. The regulations call for the inclusion of the entire benefit in the numerator (i.e. the entire log), and including the sales of all products resulting from that benefit in the denominator. By basing the calculation of the benefit on the entire log that entered the sawmill, the Department acted consistently with its regulations, and should be affirmed.

When Commerce determines that a countervailable subsidy is provided “with respect to the manufacture, production, or export of a class or kind of merchandise,” and the ITC determines that an industry has been materially injured, or is threatened with material injury, by the subsidy, the statute requires that “there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy.”⁶ The only specific guidance the statute gives Commerce in calculating the net countervailable subsidy is to authorize certain subtractions from the gross countervailable subsidy.⁷ Congress, however, did not explicitly instruct Commerce on how to calculate the gross

⁶ 19 U.S.C. § 1671.

⁷ 19 U.S.C. §1677(6) provides:

For the purposes of determining the net countervailable subsidy, the administering authority may subtract from the gross countervailable subsidy the amount of –

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,

(B) any loss in the value of the countervailable subsidy resulting

countervailable subsidy. Therefore, by leaving this gap in the statute, Congress vested the Department with the discretion to determine the appropriate methodology for calculating the countervailing duty rate.⁸

The Department's CVD regulations provide the method through which the Department calculates the countervailing duty rate:

The Secretary will calculate an *ad valorem* subsidy rate by dividing the amount of the benefit allocated to the period of investigation by the sales value during the same period of the product or products to which the Secretary attributes the subsidy under paragraph (b) of this section.

19 C.F.R. § 351.525(a). Accordingly, Commerce divides the total benefit (the numerator) by the value of the sales to which the benefit applies (the denominator).⁹ This methodology ensures that the numerator and denominator match.¹⁰

Section 351.525(b) of the CVD regulations sets forth the rules for allocating the benefit. For example, if a subsidy is an export subsidy, the regulations provide that the Department must allocate the subsidy over solely the respondent's export sales.¹¹ If a subsidy is a domestic subsidy, the Department must allocate that subsidy over all of the respondent's sales, including

from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

⁸ See Chevron, 467 U.S. at 844.

⁹ See Inland Steel Indus. v. United States, 188 F.3d 1349, 1357 (Fed. Cir. 1999); Iron-Metal Castings From India, 62 Fed. Reg. at 32302.

¹⁰ Iron-Metal Castings from India, 62 Fed. Reg. at 32302.

¹¹ 19 C.F.R. § 351.525(b)(2).

export sales.¹² If a subsidy is tied to a specific product, the Commerce will allocate the subsidy over sales of just that product.¹³

To put it more concretely, if the benefit were tied solely to the production of lumber, then Commerce would divide the amount of the benefit by the total value of sales of only lumber.¹⁴ However, if the benefit were not tied solely to lumber, Commerce would divide the total benefit by the value of all of the sales to which the benefit applied. Because this methodology is an interpretation of a gap left in the statute, and Commerce codified this methodology by regulation after notice-and-comment rulemaking, it is entitled to full Chevron deference.¹⁵

In some instances, a subsidy program may benefit more than just the merchandise subject to the investigation. The Department's regulations address this situation by allocating the total subsidy over all products to which that subsidy applies, including both subject and non-subject merchandise.¹⁶ In mathematical terms, Commerce includes the entire amount of the benefit in the numerator, and then allocates that benefit over all sales of both subject and non-subject merchandise to which the benefit is applicable by including the value of the both the subject and non-subject merchandise in the denominator.¹⁷

¹² 19 C.F.R. § 351.525(b)(3).

¹³ 19 C.F.R. § 351.525(b)(5).

¹⁴ See 19 C.F.R. § 351.525(b)(5).

¹⁵ See Koyo Seiko Co. v. United States, 258 F.3d 1340, 1347 (Fed. Cir. 2001) (“Commerce’s methodology was adopted after notice-and-comment rulemaking, and thus is entitled to maximum deference.”).

¹⁶ See 19 C.F.R. § 351.525(b)(3).

¹⁷ See 19 C.F.R. § 351.525(b).

As Commerce noted in the Issues and Decision Memorandum, the stumpage benefit is not tied solely to the production of softwood lumber, and therefore the benefit cannot be limited solely to subject merchandise.¹⁸ Rather, the subsidy that the government provides through the stumpage program is the entire log:

When stumpage holders purchase the softwood timber, they are not purchasing just that portion of the timber that can be used to produce lumber, nor are they purchasing the timber in its constituent parts. Moreover, it is the whole log that must be processed to produce lumber, not just certain parts of the log or a certain volume of the log.¹⁹

Because the entire volume of subsidized softwood timber that entered the sawmills was required in order to produce softwood lumber, the Department properly based its calculation of the numerator on the entire log, not just a portion of the log. Nonetheless, the fact that the processing of the logs also resulted in non-subject merchandise was accounted for in the subsidy rate calculation because Commerce allocated the benefit over the sales of both the subject merchandise, lumber, and the non-subject merchandise, lumber by-products, produced from the subsidized timber.²⁰

The respondents argue that the Department should have accounted for the fact that the timber provided through the stumpage programs was used to produce both subject and non-subject merchandise by excluding that portion of the log which resulted in non-subject merchandise from the calculation of the numerator. The respondents' argument, however, contradicts the methodology Commerce adopted through its practice, and by regulation. The

¹⁸ Issues and Decision Memorandum, at 20.

¹⁹ Id. (quoting Lumber III, 57 Fed. Reg. at 22576).

²⁰ See id. at 21-23.

Department's regulations instruct Commerce to account for the use of the subsidy for both subject and non-subject merchandise by adjusting the denominator, not the numerator.²¹ Specifically, the Department must include in the numerator the entire value of the logs provided, and include in the denominator the entire value of all sales, both subject and non-subject merchandise, for which those logs were used. This was the methodology the Department used in Lumber III.²²

The sawmills' primary activity is the production of lumber. Sawmills must process the entire log in order to produce lumber.²³ When the timber is cut and processed, some additional by-products may happen to result from the lumber production. But, the main purpose of the logs that enter sawmills is to produce lumber. Therefore, even if a percentage of the wood fiber happens to result in these by-products, the entire log is being provided mainly to produce lumber. This is the benefit that the Department must include in the numerator.

To support its argument, the GOC cites to Kajaria Iron Castings, Inc. v. United States, 156 F.3d 1163 (Fed. Cir. 1998). This case, however, is inapposite. In Kajaria, the respondents challenged Commerce's inclusion in the numerator of the benefits attributable to income tax deductions which were specifically tied to non-subject merchandise.²⁴ The court agreed that the tax deductions were tied to non-subject merchandise, and ordered Commerce to eliminate this

²¹ See 19 C.F.R. § 351.525(b).

²² 57 Fed. Reg. at 22576.

²³ Id. at 20.

²⁴ 156 F.3d at 1775.

amount from the calculation of the countervailable subsidy.²⁵

However, in this case, the benefit provided by the stumpage programs was the entire log. The provision of the log was not tied either to subject merchandise or non-subject merchandise. In processing the log to produce lumber, other products were created. Because the provision of logs through the stumpage programs is an untied benefit, Kajaria has no application to this case.

Commerce properly based its calculation of the benefit provided by the stumpage programs on the volume of the entire log. In doing so, Commerce complied with the regulations, which instruct that the total amount of the subsidy must be divided by the total value of the sales to which Commerce attributes the subsidy.²⁶ That is, under the Department's regulations, the value of the entire log must be divided by the value of all sales which result from the processing of the log. The Department's methodology, as required by the regulations, is a reasonable interpretation of the statute and must be affirmed by this Panel.

B. COMMERCE PROPERLY CALCULATED THE BENEFIT (NUMERATOR) AS A FUNCTION OF ALL SALES OF TIMBER HARVESTED FROM CROWN LANDS WHICH ENTERED SAWMILLS

The Department properly based the calculation of the numerator of the *ad valorem* subsidy rate of the stumpage programs on the volume of all timber harvested on Crown lands which entered sawmills.²⁷ These subsidies benefitted all of the production of these mills.

The GOC argues that the Department should have excluded from the numerator of the *ad valorem* subsidy rate calculation the logs harvested on Crown lands which were then sold to

²⁵ Id. at 1175-76.

²⁶ 19 C.F.R. §351.525(a).

²⁷ See Issues and Decision Memorandum, at 19-21.

lumber producers in allegedly arm's-length transactions. The record shows, however, that there were virtually no arm's-length transactions of logs harvested on Crown lands, as explained in greater detail in the section of this brief concerning upstream subsidies. Therefore, it would have been improper to exclude any logs purchased from Crown lands in the calculation of the total benefit included in the numerator.

C. COMMERCE ALLOCATED THE BENEFIT OF THE STUMPAGE PROGRAMS OVER ALL RELEVANT SALES

Based on the evidence presented during the investigation, Commerce properly allocated the benefit from the stumpage programs over all of the sales of products resulting from the lumber production process.²⁸ In mathematical terms, the Department included in the denominator of the subsidy rate calculation the value of all of the sales of lumber and lumber by-products.²⁹

As stated above, the regulations instruct Commerce to divide the entire benefit provided, by the value of all products to which the benefit is attributable.³⁰ Commerce has stated that the reason for this methodology is to ensure that the numerator and denominator match; “[o]therwise the rate calculated will either over- or understate the subsidy attributable to the subject

²⁸ Issues and Decision Memorandum, at 22.

²⁹ For the value of lumber shipments in all provinces, Commerce used information collected by Statistics Canada, an agency of the Canadian Government. In their brief before this Panel, the GBC and the British Columbia Lumber Trade Council argue that Statistics Canada underestimated the softwood lumber production on the Coast of British Columbia. In the Issues and Decision Memorandum, Commerce addressed this issue, stating that the Statistics Canada data contains detailed product-specific information, and is collected in a uniform manner across all provinces. Issues and Decision Memorandum, at 93. Therefore, the Department used the Statistics Canada data for all provinces. Id.

³⁰ See 19 C.F.R. § 351.525(a).

merchandise.”³¹ The numerator here is based on the volume of the timber from Crown lands that entered sawmills.³² The benefit from this timber, therefore, must be allocated over the sales of all merchandise that results from the processing of the timber to produce lumber. To be included in the denominator of the subsidy rate calculation, therefore, the evidence must show that the merchandise resulted from the processing of subsidized logs.³³

1. The GOC Failed to Show that the “Residual” Products Resulted from the Production of Lumber

The GOC contends that the Department erred by not including the value of “residual” products in the denominator. The Department, however, properly determined that the additional merchandise which Canada sought to include in the denominator, the so-called “residual” products, were not products of timber entering sawmills.

Statistics Canada (“StatCan”), an agency of the Canadian Government, provided information concerning the total lumber shipments in Canada. StatCan officials divided their totals of lumber shipments into four categories: (1) softwood lumber; (2) hardwood lumber; (3) co-products; and (4) residual products. “With respect to the residual products category, [StatCan] said that this category included all products that did not fit into the softwood, hardwood, or co-products category.”³⁴ Moreover, “StatCan officials stated that residual products corresponded to out of scope softwood products while co-products pertained to softwood

³¹ Iron-Metal Castings from India, 62 Fed. Reg. at 32302.

³² See Issues and Decision Memorandum, at 19-21.

³³ See id. at 22.

³⁴ P. R. 732, GOC Verification Report, p. 8.

chips.”³⁵

The Department inquired into the what types of products were included in the category of residual products when it conducted the verification of StatCan:

During verification, we examined the types of items that were included in the residual category. Our review indicated that this category included several items that are not the result of the production process for lumber. For example, the residual category included such items as logs, pulpwood harvested by sawmills and sold to other manufacturers, and particle and wafer board.³⁶

The Department concluded that because the residual products category included products that were not the result of the lumber production process, “to include these products in the [denominator] would run afoul of the principle, which is advocated by both petitioners and respondents, that the numerator should match the denominator.”³⁷

Substantial evidence on the record demonstrates that many of the items contained in the residual products category were never processed by the sawmills (e.g., particle board and spruce logs).³⁸ Accordingly, the exclusion of these products from the denominator was in accordance with law.

2. The GOC Failed to Provide Evidence That Would Have Allowed the Department to Include Residual Products Resulting from Lumber Production in the Denominator

The GOC argues, alternatively, that Commerce should not have excluded the entire amount of the residual products category from the denominator, because the broad category

³⁵ P. R. 732, p. 10, n. 4.

³⁶ Issues and Decision Memorandum, at 22 (citing P. R. 732, Exhibit 13).

³⁷ Id.

³⁸ Id.

included some products that did result from the production of lumber. The GOC, however, failed to provide record evidence that would have allowed Commerce to separate the residual products that did result from the production of lumber from those residual products that did not result from the production of lumber:

We further note that respondents did not provide a breakout of the residual product figure they provided. [Exhibit 7 of the February 15, 2002 Statistics Canada Verification Report]. Thus, even if there were products that fell under the residual products category that resulted from the lumber production process, we would have no way of separating such products out from the aggregate amount reported for residual products.

Issues and Decision Memorandum, at 22.

The burden of production of relevant information is on the party with knowledge and control of that information.³⁹ The residual products category clearly included products that did not result from the production of lumber.⁴⁰ The GOC has possession and control of the information necessary to demonstrate what portion of the residual product category actually involved merchandise produced as a result of the production of lumber. The GOC, however, failed to provide this information.⁴¹ Accordingly, Commerce's exclusion of the residual products category from the denominator was appropriate under the law.

³⁹ See Creswell Trading Co. v. United States, 15 F.3d 1054, 1060 (Fed. Cir. 1994); Zenith Elecs. Corp. v. United States, 988 F.2d 1573, 1583 (Fed. Cir. 1993); Industrial Fasteners Group v. United States, 710 F.2d 1576, 1582 (Fed. Cir. 1983).

⁴⁰ See Issues and Decision Memorandum, at 22.

⁴¹ See id. at 22.

D. COMMERCE PROPERLY EXCLUDED FROM THE DENOMINATOR THE VALUE OF LUMBER PRODUCED BY EXCLUDED COMPANIES AND OTHERWISE EXEMPT FROM THIS INVESTIGATION

Commerce properly excluded from the denominator the value of lumber produced by companies excluded from the investigation, and lumber otherwise exempt from this investigation, certain products produced in the Maritime Provinces.⁴² The Department's exclusion of those values from the denominator is consistent with the unambiguous language of the statute.

The statute provides that "the administering authority shall determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise."⁴³ The statute creates an exception for situations in which the countervailable subsidy rate may be calculated on a country-wide basis:

If the administering authority determines that it is not practicable to determine individual countervailable subsidy rates under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may . . .

(B) determine a single country-wide subsidy rate to be applied to all exporters and producers.⁴⁴

If Commerce chooses to calculate a single country-wide rate, the statute further provides, "The estimated country-wide rate . . . shall be based on industry-wide data *regarding the use of*

⁴² The exemption did not cover lumber products produced in the Maritime Provinces from Crown timber harvested in other provinces. Amendment to the Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products From Canada, 66 Fed. Reg. 40228, 40229 (August 2, 2001).

⁴³ 19 U.S.C. § 1677f-1(e)(1).

⁴⁴ 19 U.S.C. § 1677f-1(e)(2).

subsidies determined to be countervailable.”⁴⁵ Thus, pursuant to the statute, the country-wide rate must be based on an aggregate basis, incorporating only data from those exporters or producers who used the subsidies determined to be countervailable.

Companies were excluded from the investigation only if they were determined to have received a zero or *de minimis* benefit during the POI.⁴⁶ Because these companies did not benefit from the countervailable subsidies,⁴⁷ they were properly excluded from the calculation of the country-wide rate. Similarly, certain exports from New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (the Maritime Provinces) were exempted from the investigation, as the petitioners made no allegations that subsidies were received by producers in these provinces.⁴⁸ Because the producers of the exempted products in these provinces were never part of the investigation, there are no subsidies from these provinces in the numerator. Accordingly,

⁴⁵ 19 U.S.C. § 1671d(c)(5)(B) (emphasis added).

⁴⁶ Issues and Decision Memorandum, at 5. See also company exclusions section of this brief.

⁴⁷ The Department considered requests for an exclusion from the investigation from companies who sourced their logs primarily from the United States, the Maritime Provinces, and private Canadian lands (*i.e.* Canadian lands not involved in subsidy programs). P. R. 750, Company Exclusion Decision Memorandum, pp. 3-4. To determine whether the companies received a zero or *de minimis* benefit, the Department subtracted the quantity of logs sourced from the United States, the Maritime Province, and private Canadian sources from the total quantity of logs purchased during the POI, and multiplied the remainder by the provincial stumpage subsidy benefit. The Department also determined whether the companies benefitted from any other program found to be countervailable. See P. R. 826, Company Exclusion Verification Report, pp. 2-3. The Department excluded from this investigation those companies who consequently received a zero or *de minimis* benefit during the POI. See Issues and Decision Memorandum, at 5. See also company exclusions section of this brief.

⁴⁸ Amendment to the Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products From Canada, 66 Fed. Reg. 40228, 40229 (August 2, 2001).

because the Department's goal is to have the numerator and denominator match,⁴⁹ the sales by these producers were properly excluded from the denominator of the country-wide rate.

The GOC cites to a number of cases supporting its allegation that Commerce must include in the denominator of the country-wide rate all companies within the country, including companies excluded from the investigation. The cases the GOC cites involve the calculation of the country-wide rate under the pre-URAA law. Because the statute governing the calculation of a country-wide rate was changed with the passage of the URAA, these cases are irrelevant to this proceeding.

The passage of the URAA resulted in a shift in the manner in which Commerce calculates a countervailable subsidy rate. Prior to the URAA, the statute contained a preference that Commerce calculate a country-wide subsidy rate, as opposed to individual company rates, unless a significant differential existed between companies receiving the benefit.⁵⁰ The URAA contains a preference that Commerce calculate individual countervailable subsidy rates, unless individual rates are not practicable.⁵¹

Under the pre-URAA law, Commerce's methodology for calculating a country-wide rate was to calculate a weighted-average of the company-specific rates.⁵² However, under the post-URAA statute, "[u]nlike the pre-URAA country-wide rate, the calculation of a country-wide

⁴⁹ Iron-Metal Castings from India, 62 Fed. Reg. at 32302.

⁵⁰ See 19 U.S.C. § 1671e(a)(2) (1993); SAA at 941.

⁵¹ See 19 U.S.C. § 1677f-1(e).

⁵² See IPSCO v. United States, 899 F.2d 1192, 1196 (Fed. Cir. 1990).

rate . . . is based on an allocation of the aggregate amount of the subsidy information”⁵³

Because the current statute creates a methodology for calculating the country-wide rate which differs from the pre-URAA methodology, the cases cited by the GOC, which involve pre-URAA law, are simply not applicable.

The current country-wide methodology enshrined in the statute does not involve a weighted-average of the company-specific rates, but only involves a calculation based on the aggregate use of the subsidies. Therefore, the change in the statute specifically changed the country-wide rate methodology so that companies that did not receive a subsidy would not be included in the country-wide rate calculation.

The GOC also contends that because the Department stated that “country-wide” means “nation-wide” when it refused to issue province-specific rates, it must define “country-wide” consistently and include data from the Maritime Provinces in its calculation of the country-wide subsidy rate. However, in stating that “country-wide” means “nation-wide,” Commerce was merely explaining the definition of “country” in 19 U.S.C. § 1677(3), and stating that it does not have the authority under the statute to maintain an investigation against a province within a sovereign nation.⁵⁴ The definition of “country” in the statute does not alter the fact that the statute requires the calculation of a country-wide rate based solely on the use of the subsidy.⁵⁵ Accordingly, even though certain products from the Maritime Provinces were excluded from the calculation of the *ad valorem* subsidy rate, this does not mean that Commerce acted

⁵³ Issues and Decision Memorandum, at 11.

⁵⁴ Issues and Decision Memorandum, at 17. See also province-specific section of this brief.

⁵⁵ See 19 U.S.C. § 1671d(c)(5)(B).

inconsistently. Rather, in both instances, Commerce followed the mandate of the statute.

E. THE DEPARTMENT CALCULATED A REASONABLE ESTIMATE OF THE REMANUFACTURED PRODUCTS INCLUDED WITHIN THE SCOPE OF THE INVESTIGATION, AND PROPERLY USED THIS ESTIMATE IN CALCULATING THE DENOMINATOR OF THE AD VALOREM SUBSIDY RATE

In calculating the denominator used to determine the *ad valorem* subsidy rate, Commerce properly included a value for the remanufactured products that were within the scope of the investigation. The Department rejected the GOC's request to base the calculation of the subsidy rate solely on the "first mill" data because that data did not include the value of the remanufactured products. The Department was able to calculate a reasonable estimate of the remanufactured products based on evidence submitted by the GOC. Through this evidence, the Department could determine the value of remanufactured products in two provinces, Alberta and British Columbia, from 1997 data. The Department used this data to calculate a ratio of remanufactured shipments to total shipments of softwood products, and applied this ratio to shipments from all provinces.

The Department examined an alternative estimate provided by the GOC, and determined that this alternative was plagued with inaccuracies and grossly overstated the value of remanufactured products. The Department, therefore, properly rejected the GOC's alternative.

The information on the record did not allow the Department to avoid the double-counting of lumber used to produce the remanufactured products (and those products). However, to the extent that the denominator did include a double-counting of the lumber used in the remanufactured products, this would only result in a larger denominator, and thereby a smaller overall subsidy rate.

Because the Department's based its calculation of an estimate for the remanufactured products on a ratio, there was no need to adjust the values used to calculate the ratio for inflation. In calculating its estimate of the value of remanufactured products, therefore, the Department's determination was supported by substantial evidence, and in accordance with law.

1. Commerce Refused to Base the Denominator Solely on Canada's "First Mill" Data Because, as Canada Admitted, the Data Was Incomplete

In calculating the *ad valorem* subsidy rate, Commerce must allocate the benefit over all sales to which the subsidy is attributed.⁵⁶ Indeed, the statute requires Commerce to use "industry-wide data regarding the use of subsidies determined to be countervailable" when calculating a country-wide subsidy rate.⁵⁷ This means that the denominator in the subsidy rate calculation must include all products resulting from the lumber production process.⁵⁸

The scope of this investigation included both lumber and certain remanufactured products.⁵⁹ To produce lumber, a "first mill" processes timber. With respect to the remanufactured products, either the same "first mill" or a second mill further processes the lumber.⁶⁰ The denominator, therefore, must include not only lumber from the "first mills," but also the in-scope remanufactured lumber products, whether processed at the "first mill" or some other mill. As the GOC acknowledges, the Department announced in Lumber III that its "*clear*

⁵⁶ 19 C.F.R. §351.525(a).

⁵⁷ 19 U.S.C. § 1671d(c)(5)(B).

⁵⁸ Issues and Decision Memorandum, at 22.

⁵⁹ See id. at 1-2.

⁶⁰ P. R. 436, August 31, 2001 Deposit Rate Decision Memorandum, p. 1, n. 2.

*preference is to use final mill values in calculating benefits*⁶¹

Commerce properly rejected the use of “first mill” data in this case, because, as the GOC admitted, that data was incomplete. As the Department explained in its Issues and Decision Memorandum, “first mill” data contains only the value of softwood lumber produced at sawmills, and not the remanufactured lumber products that were within the scope of the investigation.⁶² Therefore, to ensure that all in-scope products were accounted for in the calculation of the *ad valorem* subsidy rate, the Department had to ensure that calculation of the denominator included a value for the in scope remanufactured products. In doing so, Commerce acted consistently with the statute, the regulations, and its practice.

Moreover, the GOC’s argument ignores the manner in which countervailing duties are assessed. The U.S. Customs Services collects the cash deposit for countervailing duties by applying the *ad valorem* subsidy rate to the entered value of the subject merchandise. The GOC

⁶¹ 57 Fed. Reg. at 22575 (emphasis added). The Department used first mill values in Lumber III to calculate the denominator of the subsidy rate calculation. However, the Department noted that, during that investigation and despite its preference for final mill data, “such data were not available and could not be accurately estimated.” 57 Fed. Reg. at 22575. This was a clear departure from the Department’s normal practice, based solely on the fact that the required information was not on the record of Lumber III. The Department attempted to avoid this situation, both in the first review of Lumber III, and in this investigation:

In a clear effort to avoid this problem in the first administrative review of Lumber III, the Department specifically requested that the GOC provide data inclusive of the remanufacturers in its questionnaire to the GOC. In the current investigation, we explicitly made the same request.

P. R. 436, August 31, 2001 Deposit Rate Decision Memorandum, p. 3. Therefore, contrary to the GOC’s representation, Lumber III does not represent a practice on the part of the Department to accept first mill data. Rather, as the Department specifically stated in Lumber III, its preference is to calculate the denominator based on final mill data. 57 Fed. Reg. at 22575.

⁶² Issues and Decision Memorandum, at 23.

would have the countervailing duty assessed not based on the entered value of the subject merchandise, but on the value of the lumber after being processed by only the “first mill.” Not only would this method of assessing countervailing duties ignore the added value of the in-scope remanufactured products, it would depart from the Department’s practice of assessing the countervailing duty based the entered value.⁶³

2. The Department Acted Consistently with Its Preference for Basing the Calculation of the Denominator on Final Mill Data by Repeatedly Requesting Information from the GOC on the Value of Remanufactured Shipments

Consistent with its preference, the Department instructed the GOC to report the “[t]otal volume and f.o.b. value of all sales of softwood lumber.”⁶⁴ Moreover, the Department instructed the GOC to “indicate the exact calculation used, and explain each assumption made in the calculation; *further, be certain to include this information for remanufactured products which fall within the scope of the investigation, as appropriate.*”⁶⁵

The GOC submitted data obtained by StatCan, through three different methods. StatCan collected information on lumber shipments in Canada through: (1) an Annual Survey of Manufacturers (“ASM”); (2) a Monthly Survey of Manufacturers (“MSM”); and (3) a Monthly Survey of Sawmills and Planing Mills (“MSS”).⁶⁶

In its June 28th Questionnaire Response, the GOC reported the volume of lumber

⁶³ P. R. 436, August 31, 2001 Deposit Rate Decision Memorandum, pp. 2-3. See also Lumber III, 57 Fed. Reg. at 22575.

⁶⁴ P. R. 69, GOC Questionnaire, p. II-1 (emphasis in original).

⁶⁵ Id. (emphasis added).

⁶⁶ P.R. 732, GOC Verification Report, pp. 2-6.

shipments based on information from the MSS. The GOC explained that the MSS “is a survey of ‘first mills.’” Therefore, remanufacturers were not included in this survey.⁶⁷ The GOC based its value information, however, on estimates from the MSM. This survey reported shipments in accordance with the North American Industry Classification System (“NAICS”). StatCan based its estimates on a survey of the sawmills industry, NAICS code 32111. In its Questionnaire Response, the GOC reported, “Because the MSM does not collect commodity data, *it was not possible to exclude ‘re-manufacturers’ from its results.*”⁶⁸ Therefore, although the GOC stated that the reported volume from the MSS did not include remanufacturers, the GOC’s explanation concerning the reported value from the MSM gave the impression that the value of lumber shipments did include a value for remanufactured products.

Based on the GOC’s response concerning the MSM data, the Department believed that the GOC had complied with the request to include the value of remanufactured products in the total value of lumber shipments.⁶⁹ On August 21, 2001, for the first time, the GOC asserted that

⁶⁷ Prop. R. No. 9, GOC Questionnaire Response, Exhibit GOC-GEN-2, p. 1.

⁶⁸ *Id.* at 2 (emphasis added).

⁶⁹ P.R. 436, August 31, 2001 Deposit Rate Decision Memorandum, p. 2. The GOC’s assertion that the GOC “explicitly recognized that shipment data were ‘first mill’ data” is simply incorrect. See GOC Joint Brief, p. H-36. In support of this assertion, the GOC cites a portion of the Department’s Preliminary Determination that addressed the subsidy rate calculation for Ontario:

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/planning 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, 22576. Similarly, to calculate the program rate, we divided the total benefit by the total value of Ontario’s softwood lumber production plus the value of Ontario’s softwood lumber by-products for the POI.

the value data (the MSM data) did not include shipment values for remanufacturers.⁷⁰ The Department, therefore, continued to request from the GOC the value of shipments from the remanufacturers.⁷¹

In an October 9, 2001 Supplemental Questionnaire response, the GOC asserted that the StatCan data did not allow for a reasonable estimate of remanufactured shipments.⁷² The Department, however, continued to ask for the value of remanufactured shipments, and indicated that it would consider the GOC's best estimate of this figure.⁷³ The Department requested that the GOC provide information, on a province-specific basis, on softwood shipments from sawmills, and on softwood lumber shipments from non-sawmills.⁷⁴

66 Fed. Reg. at 43250. In this excerpt, the Department explains its methodology for calculating the *ad valorem* subsidy rate, which is to divide the benefit by the total amount of sales to which the benefit applies. The mention of "first mill" data in this excerpt concerns only how the Department calculated the subsidy rate in Lumber III. There is no indication in this excerpt that the Department understood the value information submitted by the GOC in this investigation included only first mill data.

⁷⁰ P. R. 417, p. 2. In a letter dated August 15, 2001, the GOC requested that the Department send the U.S. Customs Service clarification instructions, informing Customs that the subsidy rate should be applied to the first mill value of the entered merchandise rather than the entered value. P. R. 390, p. 2. In a memorandum explaining that the when the Department issued its Preliminary Determination it believed that the GOC had submitted shipment values that included a value for remanufactured products, the Department stated that it would instruct Customs to collect cash deposits based on the entered value, in accordance with the record, and its normal practice. P. R. 436, August 31, 2001 Deposit Rate Decision Memorandum.

⁷¹ P.R. 480, September 26, 2001 Supplemental Questionnaire, p. 1; P. R. 573, November 26, 2001 Supplemental Questionnaire, p. 2.

⁷² P. R. 510, October 9, 2001 GOC Supplemental Response, pp. 3-4.

⁷³ P. R. 573, p. 2.

⁷⁴ Specifically, the Department's November 26, 2001 Supplemental Questionnaire requested:

In a December 17, 2001 submission, the GOC complied, in part, with this request, submitting information from British Columbia and Alberta. The GOC alleged that confidentiality restrictions prohibited it from disclosing the data from other provinces.⁷⁵

Specifically, in Exhibit 36 of the December 17, 2001 Supplemental Response, the GOC provided information from the 1997 ASM, which was the most recent ASM completed. In the ASM,⁷⁶ industry group 25 included all producers of wood products within Canada. A

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2. Please provide breakdowns of these province-specific figures into two categories:
 - (i) softwood lumber from sawmill establishments, i.e., establishments in NAICS category 32111;
 - and (ii) softwood lumber shipments from non-sawmill establishments, i.e., establishments other than those in NAICS category 3211.Please explain the methodology for these breakdowns, and provide supporting documentation.
 3. With respect to your response to 2(ii), please explain the process by which you exclude softwood lumber input costs from the remanufactured shipment values (so as to prevent double-counting of production). Please supplement your response with any supporting documentation.
 4. If precise figures are unavailable for 2(ii), please provide your best verifiable estimates, with supporting documentation and the underlying methodology used (e.g., projecting forward 1997 ASM values with provincial or Canada-wide price indexes).

P. R. 573, p. 2.

⁷⁵ Prop. R. 40, December 17, 2001 GOC Supplemental Response, Exhibit GOC-GEN36.

⁷⁶ Prior to 1998, StatCan based their surveys on Canada's Standard Industrial Classification ("SIC"). P. R. 510, October 9, 2001 GOC Supplemental Response, p. 2. In 1998, the NAICS was implemented in Canada. Id. The groups and subgroup classifications from the 1997 ASM, therefore, are based on the SIC, not the NAICS.

subcategory of group 25, category 2512, included only sawmill shipments.⁷⁷ In Exhibit 36, the GOC deducted products sold by companies classified in group 2512 from the products sold by companies in group 25.⁷⁸

On January 7, 2002, the GOC submitted a study from the Pacific Forestry Center (“PFC”), allegedly estimating a total value of remanufactured lumber shipments in British Columbia.⁷⁹ Based on this information, the GOC provided an estimate for all remanufactured shipments in Canada.

The Department uncovered serious flaws with the PFC information at verification, and rejected this data in its Issues and Decision Memorandum, at 26. The Department used the information from Exhibit 36 to calculate an estimate of the value of remanufactured shipments, and included that value in the calculation of the denominator of the *ad valorem* subsidy rate. As demonstrated below, the Department’s decision to use the information from Exhibit 36 and not the information from the PFC study was supported by substantial evidence, and in accordance with law.

3. The Department’s Calculation of the Value of Remanufactured Products Based on Exhibit 36 Was Supported by Substantial Evidence, and Consistent with Law

Although the GOC did not provide the shipment values of the remanufactured products directly, information was available on the record that allowed the Department to make a reasonable estimate of the value of those products. Specifically, the information contained in

⁷⁷ P. R. 732, GOC Verification Report, p. 3.

⁷⁸ Id. at 11.

⁷⁹ P. R. 642, January 7, 2002 GOC Remanufacturers Response, Attachment 1.

Exhibit 36 of Canada's December 17, 2001 questionnaire response gave Commerce enough information to extrapolate a reasonable estimate of the remanufactured products. The Department calculated the ratios of the remanufactured shipments to total lumber shipments in Alberta and British Columbia, then calculated a weighted-average of those two ratios, and multiplied the resulting ratio by the total value of softwood lumber shipments for each province, obtained from the 1997 ASM data and adjusted for inflation.

As stated above, the GOC relied on information collected by StatsCan through surveys of the lumber industry. In Exhibit 36 of its December 17, 2001 Supplemental Response, the GOC provided information from the 1997 ASM, which included all sales from group 25 (all producers of wood products in Canada), and all sales from a subcategory of group 25, group 2512 (sawmills). From this information it was possible to obtain the value of the remanufactured products by excluding the value of the merchandise from category 2512 (the sawmill shipments) from the value of all merchandise in group 25. Commerce stated that Exhibit 36 was "precisely the category of products that the Department has repeatedly sought from respondents during the course of this investigation."⁸⁰

However, Exhibit 36 included the values from only British Columbia and Alberta. StatsCan cited confidentiality restrictions for its inability to provide the data for the rest of the provinces.⁸¹ Commerce, therefore, extrapolated the value of remanufactured products from the other provinces from this data by calculating a ratio:

Based on this information, we determined the percentage relationship between the

⁸⁰ Issues and Decision Memorandum, at 25.

⁸¹ P. R. 732, GOC Verification Report, p. 11.

total value of remanufactured products and the total value of first-mill shipments for the 1997 ASM and applied this percentage to the reported total value of softwood lumber shipments. In this process, we were able to reasonably estimate the total value of in-scope remanufactured products shipped.⁸²

By using actual numbers contained in the record for the remanufactured products from two provinces, Commerce was able to derive a formula to calculate a reasonable estimate of the remanufactured products from the remaining provinces. Commerce explained that because the ratios it calculated applied specifically to British Columbia and Alberta, the Department simply applied those ratios to those provinces.⁸³ “For the other provinces, we applied a weighted-average of the Alberta and B.C. rates.”⁸⁴

The Department’s use of a ratio, based on record evidence, was a reasonable estimate of the value of the remanufactured products. It was supported by substantial evidence, and in accordance with law. The Department’s use of Exhibit 36 to calculate this estimate, therefore, should be affirmed by this Panel.

4. The Department’s Rejection of the PFC Study was Supported by Substantial Evidence, and in Accordance with Law

Commerce properly rejected the use of the Pacific Forestry Center (“PFC”) study as an estimate for the value of the remanufactured products. When a party has submitted information within its control that is necessary for the investigation, Commerce may reject that information if there is record evidence demonstrating that the information is inaccurate.⁸⁵ Commerce noted that

⁸² Issues and Decision Memorandum, at 25.

⁸³ P. R. 903, Ministerial Error Decision Memorandum, pp. 5-6.

⁸⁴ Id. at 6.

⁸⁵ See Creswell Trading Co. v. United States, 15 F.3d 1054, 1061 (Fed. Cir. 1994).

serious problems plagued the PFC study:

During the PFC verification, we found that the study was flawed in several important respects. Most importantly, the study significantly overstated the value of remanufactured lumber shipments by including sales of out-of-scope products and kiln drying fees in the remanufactured products figure.

Issues and Decision Memorandum, at 26.

First, Commerce found that the total value of shipments identified by PFC as remanufactured shipments was overstated. In calculating this value, PFC included the total value of shipments reported by companies identified as producing remanufactured products.⁸⁶ These were companies that reported over fifty percent of their shipments as being remanufactured products. However, Commerce observed at verification “the PFC officials had included the total values of sales for each company even though many of these companies produced both in scope and out of scope merchandise, the percentage of which was known.”⁸⁷ Thus, this total included merchandise that was not within the scope of the investigation. Furthermore, because the percentage of in scope versus out of scope merchandise was known, the merchandise not subject to the investigation could have been excluded by PFC. By choosing to include this out of scope merchandise in the total value, PFC overstated the amount.

Second, PFC included in the total value of shipments a value for kiln drying. “PFC officials explained that some facilities take wood from other producers and kiln dry it on a ‘fee for service’ basis”⁸⁸ This category, however, did not “include the sale of kiln dried lumber

⁸⁶ P. R. 730, PFC Verification Report, pp. 5-6.

⁸⁷ Id.

⁸⁸ Id. at 6.

by the responding company.”⁸⁹ Kiln drying, then, is a service, not a product. PFC included in its total value of shipments the value of this service. It did not include the value of the lumber itself. Accordingly, because the PFC report included the value of the kiln drying service it overstates the total value of remanufactured shipments.

Third, PFC increased the total value of shipments by including the value of sales of softwood flooring and treated lumber companies that did not fall into the remanufactured products category. Those companies reporting less than fifty percent of shipments were remanufactured products. Nonetheless, despite the fact that the majority of these companies’ shipments were out of scope merchandise, PFC included the entire value of their shipments in its calculation.⁹⁰ By doing so, PFC vastly overstated the amount of in scope remanufactured products.

Fourth, the total value of remanufactured shipments was increased by including the shipment of other companies who produced in scope merchandise, but did not fall into the remanufactured products category. By definition, these were companies whose shipments of in scope merchandise amounted to less than fifty percent of their total shipments.⁹¹ Nonetheless, PFC included the entire amount of their shipments, including the shipments of out of scope merchandise, in the calculations. Again, this acted to vastly overstate the value of in scope remanufactured products.

Therefore, because the PFC report included in its calculation a large amount of shipments

⁸⁹ Id.

⁹⁰ P. R. 730, PFC Verification Report, p. 6.

⁹¹ Id. at 6-7.

of out-of-scope merchandise, as well as the value of a service, the Department determined that the report overstates the value of the in scope remanufactured merchandise.

Finally, aside from the problem of identifying the overstatement of the value of in scope remanufactured products, other flaws existed inhibiting the evaluation of the reasonableness of the study:

In reviewing the 1999 study I noted at this time, in contrast to the 1990 study, that 1999 study did not contain an estimate of the total value of remanufactured products. PFC officials provided no explanation for the derivation of this figure, nor why it was not published. One possible factor in this may be the amount of missing revenue data in the underlying questionnaire responses (see Revenue Survey Responses above.) Based on these factors, it is difficult to evaluate the reasonableness of the projections.⁹²

Other problems included the differences in definitions used in the 1990 study and the 1999 study. “Because the 1990 study was actually done by someone other than PFC officials, there is no way of determining what editorial process was undertaken for it, nor how possible differences would affect comparability.” Id. Thus, the flaws in the report rendered it impossible for Commerce to establish the reasonableness of the methodology used.

Accordingly, because of the problem in overstating the value of the shipments of in scope remanufactured products, and because of the flaws inhibiting Commerce’s ability to evaluate the study’s methodology, Commerce properly rejected the use of the PFC study as an estimate of the remanufactured products to be used in the denominator.

Commerce’s calculation of an estimate of the value of the remanufactured products was a reasonable exercise of administrative discretion, and not, as Canada contends, an application of adverse facts available. In this situation, Commerce was not attempting to choose data which

⁹² Id. at 7.

contained an adverse inference. Rather, Commerce was given a choice between two sets of data to use for the estimate of the remanufactured products. As discussed above, the PFC study vastly overstated the value of shipments of the remanufactured products. To use this data would have resulted in an overstatement of the denominator, and thus, an understatement of the amount of the countervailable subsidy. By contrast, the data contained in Exhibit 36 offered a reasonable estimate of the value of remanufactured products in Alberta and British Columbia. Commerce could use this data to extrapolate a value of remanufactured products in the rest of the Provinces. Accordingly, because Commerce made a choice between competing data, based on the strengths and weaknesses of each set of data, Commerce's choice was reasonable and supported by substantial evidence.

5. The Evidence Did Not Allow for the Elimination of Double-Counting With Respect to the Lumber Used in the Remanufactured Products

The petitioners charge that the Department should not have double-counted the value of lumber used to produce the remanufactured products. That is, the petitioners claim that the Department should have deducted the value of the wood used to make the remanufactured products from the denominator.

The petitioners' argument fails to appreciate the quality of the evidence that the Department had on the record to address the remanufactured products issue. In essence, the Department had two choices. It could have used the information from Exhibit 36 to extrapolate a value for the remanufactured products, or it could have used the PFC data. As stated above, the PFC data had serious flaws that vastly overstated the value of the remanufactured sales. The data from Exhibit 36 was a more reasonable choice for the Department. However, the data on the record simply did not allow Commerce to calculate a value for the lumber used to produce

the remanufactured products. Because this was an impossible task based on the record evidence, Commerce made the most appropriate choice it could.

6. Because the 1997 ASM Data Was Used to Create a Ratio, the Department Did Not Need to Adjust the Data for Inflation

Finally, the petitioners contend that the Department should have adjusted the value of the remanufactured products for inflation. The petitioners' argument misconstrues how the Department used the data to calculate a value for the remanufactured products.

To estimate the value of shipments of remanufactured products, the Department "calculated the ratio of shipments of remanufactured products by non-sawmills to total shipments of subject merchandise for the sawmills."⁹³ That is, the data from the 1997 ASM contained a value for NAICS group 25 (shipments of all wood products), and a value for a subcategory, group 2512 (shipments from sawmills). To calculate the ratio, the Department subtracted the value for subgroup 2512 from the value for group 25, and divided that number by the total value for group 25. After calculating a ratio of remanufactured products to total lumber, the Department multiplied this ratio by the value for total lumber shipments from sawmills to arrive at a reasonable estimation of the value of the remanufactured products.⁹⁴ For the shipments from sawmills, the Department used data from the 1997 ASM adjusted for inflation.

Because the Department used a ratio to calculate an estimate for the remanufactured

⁹³ P. R. 903, Ministerial Error Decision Memorandum, p. 5.

⁹⁴ Because the data contained in Exhibit 36 of the GOC's December 17, 2001 Supplemental Response (and consequently in Exhibit 15 of the Department's StatCan Verification Report) applied specifically to British Columbia and Alberta, the Department simply applied those ratios to those provinces. P. R. 903, Ministerial Error Decision Memorandum, at 5-6. "For the other provinces, we applied a weighted-average of the Alberta and B.C. rates." *Id.* at 6.

products, there was no need to adjust the values used in that ratio for inflation. In fact, even if the Department had adjusted the values used in calculating the ratio, that would have had no effect on the final ratio itself. That is because the Department would have to adjust both the numerator and denominator in the ratio by the same percentage to account for inflation. By the laws of mathematics, this would simply cancel out the inflation adjustment.⁹⁵ Because the calculation of the remanufactured shipments involved a ratio, there was no need to adjust any value used to calculate the ratio for inflation.⁹⁶

F. COMMERCE PROPERLY INCLUDED IN THE DENOMINATOR FOR THE NON-STUMPAGE PROGRAMS THE VALUE OF SUBJECT MERCHANDISE

The Department's investigation involved not only the stumpage programs, but also other subsidy programs administered by the Federal and Provincial Governments. In calculating the *ad valorem* subsidy rate for these programs, the Department must allocate the total benefit provided over all of the relevant sales.⁹⁷ When the Department calculated the subsidy rates for

⁹⁵ If, for example, the Panel assumes that the total value of shipments of softwood products in 1997 was \$100, and the value of shipments from sawmills accounted for \$70, the Department would have calculated the ratio by subtracting \$70 from \$100 to reach a value of \$30 for remanufactured shipments. The Department would have divided the \$30 value for remanufactured shipments by \$100. The result would be a ratio of 0.3. If the Panel assumes an inflation rate of 5%, the value for total softwood shipments would then be \$105, and the value for shipments from sawmills would be \$73.50. The value for the remanufactured shipments would then be \$31.50. If the Department divides \$31.50 by \$105.00, the resulting ratio would still be 0.3.

⁹⁶ In the final calculations, the Department originally used the actual 1997 ASM values for the remanufactured products from Exhibit 15 of the StatCan Verification Report for Alberta and British Columbia, instead of using the ratios to calculate a value for the POI. The Department acknowledged this clerical error, and corrected it by applying the ratios it had intended to use. P. R. 903, Ministerial Error Decision Memorandum, at 5-6.

⁹⁷ 19 C.F.R. § 351.525(a).

these programs, it included in its calculation of the denominator an appropriate value for all subject merchandise.

With respect to the British Columbia Forest Renewal Program, the GBC properly stated the Department's practice for calculating the *ad valorem* subsidy rate when the Department conducts an aggregate investigation. In its June 28, 2001 Questionnaire Response to the Department's May 1, 2001 Questionnaire, the GBC stated, "In this case, because the Department is conducting an aggregate analysis, consistent with the methodologies followed in Live Swine and Cattle, the relevant sales are total B.C. sales of subject merchandise during the applicable period."⁹⁸ In this same submission, the GBC provided the total sales of subject merchandise related to the British Columbia Forest Renewal Program in Exhibit BC-FRBC-21. In comparing the number the GBC provided to the number used in the Final Calculation Memorandum for the total lumber shipments used as the denominator for the B.C. Forest Renewal Program, there is a difference of only C\$9.00.⁹⁹ This difference is attributable to the fact that the GBC rounded up of the total sales figure. With the exception of this rounding, therefore, the Department used the total sales figure of subject merchandise that the GBC provided. The Department's calculation of the subsidy rate for the British Columbia Forest Renewal Program, therefore, was supported by substantial evidence, and in accordance with law.

For the rest of the non-stumpage programs, when a program is tied to a specific product, 19 C.F.R. § 351.525(b)(4) requires the Department to allocate the benefit of that program over

⁹⁸ Prop. R. 9, GBC Questionnaire Response, Vol. 17, p. BC-FRBC-36.

⁹⁹ Prop. R. 9, GBC Questionnaire Response, Exhibit BC-FRBC-21; Prop. Doc. No. 76, p. 3.

only sales of that product. The Department determined that the rest of the non-stumpage programs were tied to lumber because they were given specifically to lumber producers.¹⁰⁰ Accordingly, the Department properly allocated the benefit of those programs over the sales of only lumber.

¹⁰⁰ See Amended Final, 67 Fed. Reg. at 36073. See also 19 C.F.R. § 351.525(b).