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Expedited Reviews/Round 1/Round 2
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MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for AD/CVD Enforcement II

RE: Countervailing Duty Expedited Reviews of Certain Softwood Lumber Products from Canada

SUBJECT: Issues and Decision Memorandum: Final Results of Expedited Review of Companies Covered by the May 8, 2003 Notice of Preliminary Results and Partial Rescission of Countervailing Duty Expedited Reviews

I. SUMMARY AND BACKGROUND

On May 8, 2003, the Department of Commerce (the Department) published in the Federal Register the Preliminary Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada, 68 FR 24717 (Preliminary Results) covering 28 respondents. In addition, the expedited reviews of 12 respondents were rescinded. Immediately following the issuance of the Preliminary Results, Cando Contracting Ltd. (Cando), Goldwood Industries Ltd. (Goldwood), Williamsburg Wood and Garden (Williamsburg), and Power Wood Corp. (Power Wood) submitted comments on the Preliminary Results. On May 28, 2003, petitioners¹ responded to Cando's submission.²

In June, the Department verified the information provided by five respondents: Boccam, Inc. (Boccam), Indian River Lumber (Indian River), Les Sceries Jocelyn Lavoie Ltd. (Lavoie), Sechoirs de Beauce, Inc. (Sechoirs de Beauce), and Westcan Rail Ltd. (Westcan). On July 21, 2003, the Department issued verification reports for Boccam, Indian River, Lavoie, Sechoirs de Beauce, and

¹ Petitioners are the Coalition for Fair Lumber Imports Executive Committee.

² See Cando's May 8, 2003 submission. See Goldwood's May 12, 2003 submission. See Williamsburg's May 21, 2003 submission. See Power Wood's May 22, 2003 submission.

Westcan.³

On July 23, 2003, the Department extended the due date for the case briefs for Round 1 and Round 2 companies. On June 5 and 6, 2003, petitioners submitted comments regarding certain companies verified during this segment of the proceeding. On August 14, 2003, petitioners and the Ontario Forest Association (OFIA) and the Ontario Lumber Manufacturers Association (OLMA) filed case briefs. On August 18, 2003, the Department extended the due date for the submission of rebuttal briefs. On August 20, 2003, Westcan and Hudson Mitchell & Sons (HMS) submitted rebuttal briefs. On August 25, 2003, Sechoirs de Beauce, the Government of Canada (GOC), and the OFIA/OLMA filed rebuttal briefs. In addition, American Bayridge Corporation, Aspen Planers Ltd., Downie Timber Ltd., Federated Co-operatives Limited, Gorman Bros. Lumber Ltd., Haida Forest Products Ltd., Kenora Forest Products Ltd., Liskeard Lumber Limited, Mid America Lumber, Mill & Timber Products Ltd., North Enderby Timber Ltd., R. Fryer Forest Products Limited, Selkirk Specialty Wood Ltd., and Tembec Inc. (collectively, the Lumber Companies Group) filed rebuttal briefs on August 25, 2003. This memorandum addresses these comments.

We recommend that you approve the positions we have developed in the “Analysis of Comments” section below. If approved, we intend to issue the final results of expedited review for the respondents based on these positions. Below is the complete list of the issues in this review for which we received comments from the parties:

- Comment 1: Adjustment of Country-Wide Rate to Account for Individual Cash Deposit Rates
- Comment 2: Whether the Same Stumpage Benefit Should Apply to Logs and Lumber
- Comment 3: The Number of Companies Verified During the Expedited Review Process
- Comment 4: Inclusion of Certain Non-Scope Items in the Denominator of the Subsidy Calculations
- Comment 5: Decision to Rescind the Expedited Review of Cando
- Comment 6: Whether to Rescind the Expedited Review of Westcan on the Grounds that it is a Pure Reseller of Railroad Ties
- Comment 7: Power Wood’s Benefit Calculation
- Comment 8: Goldwood’s Benefit Calculation
- Comment 9: Williamsburg’s Benefit Calculation
- Comment 10: Derivation of Boccam’s Sales Denominator

³ See July 21, 2003 memorandums from the Team to Eric B. Greynolds, Program Manager, Office of AD/CVD Enforcement VI, Verification of Boccam, Inc. in the Countervailing Duty Expedited Review of Certain Softwood Lumber Products from Canada (Boccam Verification Report), Verification of Indian River Lumber in the Countervailing Duty Expedited Review of Certain Softwood Lumber Products from Canada (Indian River Verification Report), Verification of Les Sceries Jocelyn Lavoie Ltd. in the Countervailing Duty Expedited Review of Certain Softwood Lumber Products from Canada (Lavoie Verification Report), Verification of Les Sechoirs de Beauce in the Countervailing Duty Expedited Review of Certain Softwood Lumber Products from Canada (Sechoirs de Beauce Verification Report), and Verification of Westcan Rail Ltd. in the Countervailing Duty Expedited Review of Certain Softwood Lumber Products from Canada (Westcan Verification Report), of which the public versions are on file in room B-099 of the Central Records Unit (CRU) of the main Commerce Building.

Comment 11: Derivation of Sechoirs de Beauce's Sales Denominator

Comment 12: Lavoie's Cord to Cubic Meter Conversion Factor

II. METHODOLOGY

A. Stumpage Programs

These final results include: (a) companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and/or Canadian companies excluded from the order, and (b) companies that source less than a majority of their wood from these sources and do not have tenure. We calculated company-specific rates based on the methodology described in the Preliminary Results. To obtain the company-specific stumpage benefit, we multiplied the quantity of Crown logs and the quantity of lumber inputs (except for those specified below) by the province-specific stumpage benefit calculated in the underlying investigation, *i.e.*, the average per-unit differential between the calculated adjusted stumpage fee for the relevant province and the appropriate benchmark for that province. For those provinces, such as British Columbia and Ontario, for which we calculated more than one per-unit benefit in the investigation, we calculated one province-wide per-unit benefit by weight-averaging the previously calculated values by the corresponding volumes of harvested softwood. *See, e.g.*, the Preliminary Results and the November 5, 2002, Issues and Decision Memorandum: Final Results of Expedited Reviews of 13 Companies Covered By the August 14, 2002 Notice of Preliminary Results, under the Countervailing Duty Order on Certain Softwood Lumber from Canada (November Final Results), which accompanied the Final Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada, 67 FR 67388 (November 5, 2002). As indicated in the Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products From Canada, 67 FR 46955 at 46957 (July 17, 2002) (Notice of Initiation/Round 1), we have not attributed a benefit to (1) logs or lumber acquired from the Maritime Provinces, (2) logs or lumber of U.S. origin, (3) lumber produced by mills excluded in the investigation, and (4) logs from Canadian private land. Furthermore, we are not including in our subsidy rate calculations logs which the companies demonstrate that they acquired and resold without any processing. In addition, we are also not including in the subsidy calculations lumber purchased and resold without any further production or manufacturing because companies making such sales failed to submit information regarding their suppliers as originally requested in our expedited review application. We divided the stumpage benefit by the appropriate value of the company's sales (scope and non-scope softwood lumber products and softwood lumber by-products, net of resales) to determine the company's estimated subsidy rate from stumpage and then added any benefit from other programs to obtain the cash deposit rate for the company.

Several companies reported that they are cross-owned with other companies that produce and/or manufacture subject merchandise. Specifically, Fraser Pacific Forest Products Inc., Frontier Mills Inc., and Landmark Truss & Lumber Inc. (Landmark Companies) stated that they were cross-owned. Similarly, West Bay Forest Products & Manufacturing Ltd. indicated that it is cross-owned

with two companies that produce and/or manufacture subject merchandise, Gold Mountain and Cedarshed (West Bay Companies). With respect to the Landmark Companies and the West Bay Companies, in accordance with 351.525(b)(6) of the Department’s Regulations, we first calculated the benefits for each of the cross-owned companies using the approach described above. We then summed the benefits attributable to the consolidated, cross-owned entity and divided the total by the entity’s consolidated sales (scope and non-scope softwood lumber products and softwood lumber by-products, net of resales).

As explained in the “Methodology” section of the Preliminary Results, companies with reselling activities were instructed in the Expedited Review Application to provide information pertaining to their suppliers. However, the Group 1 companies with resale and production activities failed to provide such information. Therefore, the Department is not in a position to calculate the benefit on the portion of their sales attributable to resales. Accordingly, for each Group 1 company included in these final results that produces its own lumber products and performs resale activities, we have calculated a company-specific rate which applies only to the lumber produced by that company; lumber resold without any further manufacturing will be subject to the country-wide rate.

For the period April 1, 2000 to March 31, 2001, we determine the net subsidy rate for the stumpage program to be as follows for Group 1 companies in Round 1:

Net Subsidies - Producer/Exporter	Net Subsidy Rate %
Alexandre Cote Ltee.	9.07
Boccam Inc.	0.41
Byrnexco Inc.	8.40
Davron Forest Products Ltd.	10.94
Fraser Pacific Forest Products Inc.	8.58
Frontier Mills Inc.	8.58
Haida Forest Products Ltd.	2.45
Landmark Truss & Lumber Inc.	8.58
Les Bois S&P Grondin Inc.	4.62
Les Industries P.F. Inc.	8.03
Sechoirs de Beauce Inc.	0.60
Tyee Timber Products Ltd.	4.10
West Bay Forest Products and Manufacturing Ltd.	5.34

For the period April 1, 2000 to March 31, 2001, we determine the net subsidy rate for the stumpage program to be as follows for Group 1 companies in Round 2:

Net Subsidies - Producer/Exporter	Net Subsidy Rate %
Central Cedar Ltd.	4.91
Forstex Industries Inc.	4.51
Goldwood Industries Ltd.	3.22
Hudson Mitchell & Sons Lumber Inc.	4.31
Indian River Lumber	0.00
Les Scieries Jocelyn Lavoie Inc.	1.52
Leslie Forest Products Ltd.	13.62
Lyle Forest Products Ltd.	3.37
Power Wood Corp.	4.47
Precision Moulding Products	1.41
Ram Co. Lumber Ltd.	8.92
Rielly Industrial Lumber Inc.	5.15
Sylvanex Lumber Products Inc.	7.09
United Wood Frames Inc.	10.69
Williamsburg Woods & Garden	11.95

B. Other Programs

In the underlying investigation, the Department determined that the provinces of British Columbia and Quebec provided countervailable benefits under certain programs. British Columbia provided countervailable benefits under the Forest Renewal Program and Quebec provided countervailable benefits under the Private Forest Development Program (PFDP). In addition, the Department examined loans issued by Investment Quebec, lending under Article 28 of the Society for the Industrial Development of Quebec (SDI) and loans issued by the Society for the Recuperation and Development of Quebec Forests (Rexfor). Based upon our decision in the underlying investigation, the Department requested information from companies regarding the use of these programs. Four companies from British Columbia reported using the Forest Renewal Program. These were the only companies in these final results that reported using previously investigated non-stumpage programs during the POR. Consistent with our approach in the underlying investigation, we are treating benefits received under the Forest Renewal Program as countervailable grants. In accordance with section 351.524(2), we have allocated all of the benefits provided under this program to the year of receipt because the total amount approved under the subsidy program is less than 0.5 percent of the company's relevant sales (i.e., total sales of softwood lumber products, net of resales). To calculate the net subsidy rate received under this program, we divided the benefit by the companies' total sales of softwood lumber products, net of resales.

For the period April 1, 2000 to March 31, 2001, we determine the net subsidy rate to be as follows for Group 1 companies in Round 1:

Net Subsidies - Producer/Exporter	Net Subsidy Rate %
Fraser Pacific Forest Products Inc.	0.03
Frontier Mills Inc.	0.03
Landmark Truss and Lumber Inc.	0.03
West Bay Forest Products and Manufacturing	0.16

For the period April 1, 2000 to March 31, 2001, we determine the net subsidy rate to be as follows for Group 1 companies in Round 2:

Net Subsidies - Producer/Exporter	Net Subsidy Rate %
Central Cedar Ltd.	0.05
Leslie Forest Products Ltd.	0.10

III. ANALYSIS OF COMMENTS

Comment 1: Adjustment of Country-Wide Rate to Account for Individual Cash Deposit Rates

Petitioners argue that the Department has not complied with its statutory obligation to offset the net countervailable subsidy by recalculating the country-wide cash deposit rate in light of the expedited reviews. Petitioners state that the Department has agreed with the notion that the country-wide rate must be adjusted to account for the expedited reviews. See Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada, 67 FR 52945 at 52950 (August 14, 2002) (August Preliminary Results). Petitioners argue that, in spite of its statements in the August Preliminary Results, the Department has since issued two sets of final results in which company-specific rates were reduced without making the required adjustments to the country-wide rate. See Final Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada, 67 FR 67388 (November 5, 2002) (November Final Results) and Final Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada, 68 FR 24436 (May 7, 2003) (May Final Results). Petitioners allege that the Department's failure to adjust the country-wide rate is contrary to law, which mandates that the duty offset equal the rate of subsidization that is found. Petitioners contend that the Department is failing to observe a clear legal stricture every day that it fails to make the requisite adjustment.

Expounding on the case briefs filed in Round 1 of these expedited reviews on September 6, 2002 and September 18, 2003, the GOC reiterates that there is no authority, or reason, to recalculate the country-wide cash deposit rate. However, should the Department make a change, the GOC asserts that the Department should only make it when the expedited reviews are completed.

The Lumber Companies Group disagrees with petitioners that the Department has an obligation to recalculate the country-wide rate each time it finalizes lower rates for individual companies through the expedited review process. Citing the GOC's September 6, 2002, expedited review case brief, the Lumber Companies Group states that there is no regulation that requires the Department to recalculate the country-wide cash deposit rate as a result of the completion of each expedited review. The Lumber Companies Group argues that the Department has already stated that it would issue the recalculation at the conclusion of the entire expedited review process. It further contends that repeated revisions of the country-wide rate would impose an unreasonable administrative burden on the Department and the Customs Service. Therefore, the Lumber Companies Group argues that the Department should not recalculate the country-wide cash deposit rates until the completion of all the expedited reviews for Group 1 and Group 2.

Department's Position: The Department has determined that it is not practical or appropriate to adjust the country-wide rate in these final results of expedited reviews. We note, as we have noted before, that it would be both administratively burdensome and inequitable to make multiple adjustments to the country-wide rate. Indeed, petitioners have indicated that multiple revisions to the country-wide rate could create enforcement problems. See Section II, Comment 2 of the November Final Results. Consequently, we do not intend to address the country-wide rate until we have issued final results for all of the ongoing expedited reviews.

Comment 2: Whether the Same Stumpage Benefit Should Apply to Logs and Lumber

Petitioners argue that the Department has incorrectly treated lumber inputs as being subsidized with the same intensity as log inputs. Petitioners claim that when lumber is used as an input in lumber production, the Department must account for the extent to which it is more intensively subsidized than provincial timber. They argue that failure to do so runs counter to 19 USC 1671(a), which states that a countervailing duty must be equal to the amount of the net countervailable subsidy.

Petitioners offer a way to estimate the subsidy benefit that a company enjoys from the use of lumber inputs, by multiplying the country-wide subsidy rate times the value of lumber that the company has used as inputs into its lumber production.

Petitioners also argue against the notion that time constraints applicable to the expedited reviews justify the methodology used thus far in the expedited reviews. Petitioners maintain that applying an accurate methodology is no more time consuming than applying the one the Department has used.

Petitioners also take issue with the idea that changing the benefit calculation at this stage in the expedited review process would be prejudicial to parties for which final results have already been issued. On this point, petitioners maintain that respondents should never have a right to the application

of an irrational methodology (*i.e.*, a methodology that applies the same unit benefit to logs and lumber).

Citing to the case briefs filed in Round 1 of these expedited reviews on September 6, 2002, and September 18, 2003, the GOC argues that there is no basis for applying a higher subsidy rate to downstream lumber products that are used as inputs than to logs.

The Lumber Companies Group also disagrees with petitioners that the Department should attribute a greater unit benefit to lumber than to logs. Citing petitioners' case brief, the Lumber Companies Group argues that petitioners advance an alternative methodology of calculating a subsidy, in which the further downstream a product is from the subsidized input, the greater the subsidy. According to the Lumber Companies Group, such a methodology would overestimate the net subsidy rate for remanufactured lumber by attributing subsidies on fiber used to produce non-subject merchandise to fiber used in lumber production.

The Lumber Companies Group further argues that the Department has rejected the benefit calculation methodology proposed by petitioners in past expedited reviews. *See, e.g.*, Section III, Comment 4 of the Issues and Decision Memorandum that accompanied the November Final Results. Therefore, the Lumber Companies Group argues that the Department cannot attribute the subsidy on the portion of logs utilized to make non-subject merchandise to the portion of logs used to make subject merchandise.

Department's Position: During the expedited review process, petitioners have repeatedly claimed that the Department erred in the manner in which it calculated the unit benefit attributable to countervailable lumber inputs. We continue to disagree with petitioners' assertions on this point. Thus, we continue to find that the calculation methodology used by the Department throughout the expedited review process is appropriate for all of the reasons previously cited. *See, e.g.*, Comment 2 of the Preliminary Results and Section III, Comment 4 of the Issues and Decision Memorandum that accompanied the November Final Results.

Comment 3: The Number of Companies Verified During the Expedited Review Process

Petitioners argue that the Department should expand its verification of Canadian lumber producers and include the largest producers; at a minimum, it should verify those companies that have provided conflicting evidence.

The Lumber Companies Group disagrees with petitioners that all major producers and exporters of subject merchandise should be verified during this review given the Department's limited resources. According to the Lumber Companies Group, the Department will have ample opportunity to verify any other companies it may deem appropriate in the context of an administrative review. The Lumber Companies Group contends that the Department has, thus far, conducted verifications in a reasonable and appropriate manner.

Department's Position: As the Department has previously stated, given the applicable resource constraints as well as the fact that we are calculating a cash deposit rate, not an assessment rate, we find that there is not "good cause" for verification of every single company subject to these expedited

reviews. See, e.g., Section I, Comment 2 of the Issues and Decision Memorandum that accompanied the November Final Results. Rather, we have decided to verify companies on a case-by-case basis, which for this particular tranche of companies was limited to those companies with zero or de minimis cash deposit rates. No comments by interested parties or new information have been submitted to warrant reconsideration of this approach.

Comment 4: Inclusion of Certain Non-Scope Items in the Denominator of the Subsidy Calculations

Petitioners allege that respondents have inflated their sales information by including sales data on merchandise other than softwood lumber and softwood by-products in response to the Department's request for sales values of "softwood lumber products not covered by the scope of the order." In support of this contention, petitioners cite to public data provided by several respondents covered by these final results.

Petitioners contend that few, if any, items produced by sawmills fall within the normal industry ambit of the term "softwood lumber" that are not within the scope of the order. They further contend that softwood lumber products are not the same as softwood products. For example, they claim that lumber products emerge from the sawmilling process and do not encompass such products as doors, windows, pallets, trusses, shingles, picture frames, plywood, ornamental mouldings, or other wood products that may be manufactured from softwood fiber. They further argue that producers, such as Boccam, have used the category of "softwood lumber products not covered by the scope of the order" to report all non-subject sales, including sales of locks, hinges, and other non-wood items.

Petitioners argue that the Department specifically listed the non-scope softwood lumber products that were exempt from the order. They contend that this list is definitive and that no other products reasonably can be described as falling into the category. Petitioners further contend that, while the scope language from the underlying investigation goes on to clarify that other products potentially made from softwood are outside the scope of the order, these products are non-subject merchandise that may be made from softwood species, which they claim differentiates them from "lumber products." Based on these arguments, petitioners assert that the Department must ensure that the company-specific denominator contains the sales values of only softwood lumber and softwood by-products (*i.e.*, chips and sawdust).

The GOC claims that petitioners' arguments on this issue are nonsensical and have no basis in fact. The GOC contends that adopting petitioners' arguments on this issue would be inconsistent with the Department's mandate to match the numerator with the denominator as the Department has done to date in the expedited review proceeding. The GOC further asserts that altering the manner in which the denominator is derived would result in arbitrary and differing treatment for the remainder of the companies in Round 1, as well as those currently involved in Round 2 expedited reviews.

In addition, the GOC argues that because the numerator is the alleged per-cubic-3meter benefit to whole softwood logs and lumber, the Department should continue to use the total output from those logs or lumber as the denominator. The GOC argues that the denominator therefore includes a variety of products, both scope and non-scope, that are produced from the allegedly subsidized logs entering

sawmill establishments. The GOC argues that this approach is consistent with the November Final Results where the Department stated that, “with regard to the denominator, the Department, . . . properly includes all the sales of all the downstream products derived from the subsidized input.” See Section III, Comment 8, “Whether the Department Should Calculate Mill-Specific Rates,” of the Issues and Decision Memorandum that accompanied the November Final Results.

The GOC claims that petitioners’ arguments on this issue constitute a new standard for defining the denominator that is based on an arbitrary selection of certain products, both in and out of scope, that they find are within their definition of the “normal industry ambit” of softwood “lumber” products. The GOC further argues that if petitioners are advocating that the denominator must include only products that directly emerge from the lumber production process, then all remanufacturing and all value-added production must be excluded from the order. On the other hand, the GOC asserts that if petitioners agree that some remanufactured products are to be included in the denominator, then all downstream softwood products must be included in the denominator as, according to the GOC, the Department has explained in the expedited reviews.

The GOC also asserts that petitioners have not provided a valid basis for including some remanufactured products in the denominator and not others. For example, the GOC claims that petitioners would have the Department include radius-cut-box-spring-frame kits but not windows, even though both products are further manufactured from lumber inputs that emerged from the sawmilling process.

Responding to petitioners’ comments on this issue, HMS claims that it excluded all sales of non-subject merchandise from the sales denominator that it reported to the Department.

Department’s Position: The Department addressed this issue in the November Final Results. In that segment of the proceeding, petitioners argued that the Department had departed from the calculation methodology used for individual companies in the underlying investigation. Petitioners specifically maintained that the Department erroneously included in the denominator products such as shingles that were not the result of the lumber manufacturing process. They further argued that the volume of logs used to produce such non-sawmill products were not represented in the numerator. Thus, petitioners asserted that, in order to prevent a mismatch of the numerator and the denominator, the Department should not include such alleged non-sawmill sales in the denominator. See Section III, Comment 3 of the Issues and Decision Memorandum that accompanied the November Final Results.

In response to petitioners’ arguments, we explained that the approach undertaken in that review was no different from the one adopted during the company exclusion process in the underlying investigation. During the investigation, the Department calculated the numerator using the total quantity of logs and lumber that entered the sawmill during the period of investigation. Accordingly, the Department divided the benefit by a denominator containing all sales of the products derived from those inputs. *Id.* On this basis, we included such products as shingles in the denominator of the company-specific calculations.

Based on the arguments made here by interested parties, we find no compelling reason to alter the approach adopted in the November Final Results. For example, in this segment of the proceeding, petitioners contend that several respondents are producing “softwood products,” as opposed to what

they deem to be “softwood lumber products.” Thus, they argue that only softwood lumber products should be included in the denominator and that expanding the denominator to include other items, such as “softwood products,” unfairly dilutes the denominator in respondents’ favor. However, regardless of whether one categorizes the output of a firm as a softwood lumber product or a softwood product, it is clear that we have included all logs and lumber inputs used to make those products in the numerator.

We do, however, agree with petitioners’ objection to Boccam’s inclusion of such non-wood items as locks, hinges, and other metal products in the sales of non-subject lumber products category. Record evidence indicates that these metal products have separate accounting codes and are sold separately from the company’s other wood products. See page 3 of Boccam Verification Report. Thus, we have removed the value of these metal products from Boccam’s total sales non-subject lumber products. Boccam’s revised net subsidy rate is listed in Section II above.

Regarding the comment of HMS, we have calculated HMS’s company-specific cash deposit rate for the stumpage program by including in the denominator in-scope softwood lumber products, non-scope softwood lumber products, and by-products, net of resales. We note, the cash deposit rate for HMS remains unchanged in these final results.

Comment 5: Decision to Rescind the Expedited Review of Cando

Cando, argues that the Department should reconsider its decision in the Preliminary Results to rescind Cando’s expedited review. Cando maintains that the Department unfairly alleged in the Preliminary Results that Cando did not fully disclose its resale activities in the application. Cando asserts that it purchases abandoned railway lines and removes the railway ties from the track before its sells them. The company maintains that in the June 19, 2002 application, as well as in the March 25, 2003 supplemental questionnaire response, it fully disclosed the information regarding the manner in which it handled its railway ties and that during the expedited review it has been very transparent with respect to its unique situation as a seller of used railroad ties.

Cando further contends that the “Request for Expedited Review” did not solicit “information from all the resellers’ suppliers in order to calculate the net subsidy rate for the reseller,” as stated in the Preliminary Results. Cando maintains that the Import Administration web page for the “Request for Expedited Review” under the “Other Requirements” sections states:

If the requester is not a producer of subject merchandise, a complete application form must be submitted for all producers of softwood lumber products which have supplied the requester during the period April 1, 2000, through March 31, 2001.

Cando argues that the request, as posted on the Import Administration web page, differs from what the Department described in the Preliminary Results. Thus, according to Cando, the “Request for Expedited Review” from the web page assumes that only producers and resellers of softwood products purchased from or supplied by producers would be applying. Because the used railway ties reclaimed by Cando and exported to the United States are approximately 30 to 60 years old, Cando maintains that none of the ties purchased were manufactured by the supplier, therefore, they cannot provide any

type of supplier certificate as requested in the application for expedited review. However, with respect to the underlying investigation on softwood lumber from Canada, when the company applied to be excluded from the investigation, it provided “Lumber Supplier Certification of Zero or De Minimis benefit” information.

Cando further argues that in its case, no producer of softwood lumber products supplied it with the softwood lumber products that Cando subsequently sold to the United States. Moreover, Cando asserts that it was not sure about how to categorize itself in the application process given that the application presumes that all requesters would be producers or resellers of softwood products received from producers.

Cando also argues that it did not harvest trees and did not purchase logs from sources that conduct harvest activities. Rather, Cando states that it purchases abandoned railway lines from either the Canadian National Railway (CNR) or the Canadian Pacific Railway (CPR) from which it reclaims railway ties. Cando disagrees with the Department that it did no processing of the railway ties. Cando maintains that it was required to remove ties from the tracks, sort them and grade them. Cando argues that these activities qualify as processing. Cando further argues that it does not receive any benefits from any subsidies covered by these proceedings.

Cando also takes issue with the Department’s claim in the Preliminary Results that it was only through analysis of sales information supplied in the supplemental questionnaire response that the Department was able to ascertain that Cando was a pure reseller.⁴ Cando argues that in its application and supplemental response, it clearly stated that all of the firm’s softwood lumber products originated from the CNR and CPR. According to Cando, in its August 30, 2001 scope exclusion request in the underlying investigation, the firm also tried to clarify that it was a reseller of materials obtained from a supplier that was not a producer. Therefore, Cando argues these facts demonstrate that the firm has always been complete and forthright about its situation and at no time has attempted to mislead the Department in any of its submissions. On the basis of these arguments, Cando contends that there is no technical or substantive reason to rescind the firm’s expedited review and, therefore, the Department should reinstate its expedited review.

Petitioners argue that regardless of Cando’s cooperation with the Department, the facts support that Cando is solely a reseller of softwood lumber products, the company performs no further processing or manufacturing on the purchased softwood lumber before resale, and that the firm cannot provide certification from producers of the subject merchandise to substantiate that the purchased softwood lumber is non-subsidized.

Petitioners also contend that Cando is trying to obtain in these expedited reviews a result that it could not obtain during the underlying investigation – exclusion from the countervailing duty order. According to petitioners, Cando sought exclusion from the underlying investigation based on the contention that the railway ties it purchased did not benefit from stumpage fees and that these ties were old. Petitioners assert that Cando is making this same argument in these expedited reviews. Petitioners maintain that, as the Department rejected this argument in the underlying investigation, it should reach

⁴ Use of the term pure reseller in this memorandum refers to entities that purchase lumber and resell it without performing any further production or manufacturing of their own.

the same conclusion in the expedited reviews.

Petitioners further contend that Cando cannot provide the information and certifications required by the Department in the expedited review on the grounds that Cando is unable to trace the origins of its inputs and because it is a pure reseller.

In rebuttal, Cando disagrees with petitioners' position that Cando's cooperation in this segment of the proceeding is irrelevant. Cando cites to the statute regarding "adverse inferences" and maintains that it demonstrates that a company's conduct during the proceeding is significant to the determination in the expedited review with respect to the company. Therefore, Cando argues that the Department must consider that Cando made a good faith effort to comply with all requests for information in this segment of the proceeding.

Cando further argues that the Department did not give Cando the opportunity to remedy or explain any alleged deficiency as is provided under section 782(d) of the Tariff Act of 1930 (the Act) with respect to deficient submissions. Cando contends that it had no knowledge that the information that it had submitted was not sufficient until the issuance of the Preliminary Results. Furthermore, according to Cando, the company was not provided with any opportunity to rectify or explain alleged deficiencies in information.

Cando also contends that, although petitioners are correct that the Department rejected Cando's exclusion request in the underlying investigation, that exclusion request was with respect to the scope of the investigation. According to Cando, the Department denied their exclusion request not on substantive issues but rather on the fact that Cando's product in question, used railway ties, was covered by the scope of the investigation. Cando contends that the scope exclusion determination did not focus on the substantive issue of whether or not the company received any alleged countervailable subsidy. Therefore, Cando argues that the Department did not abide by section 782(d) of the Act when it abruptly rescinded Cando's expedited review.

Cando disagrees with petitioners' characterization of the company as a pure reseller. Cando argues that it consulted with Department officials as to how it should be classified prior to applying for the expedited review. Cando further contends that its information indicates that it is a small company and that the Department should have taken this fact into account when considering whether to rescind its expedited review.

With respect to petitioners' argument that Cando could not provide the information necessary to participate in the expedited review, Cando argues that it has provided specific information about the origin of the ties and that no one has contested it. According to Cando, the railway ties in question are so old that there is absolutely no information or record that the company is aware of that would indicate that Cando has benefitted from any subsidy. Cando further protests that there is no evidence to indicate that, when Cando purchased the railway assets on the open market, the price was reduced because of earlier alleged subsidies received by the company's suppliers.

Cando contends that the Department breached international legal standards for fair and equitable treatment when it unfairly and publicly characterized Cando as not having provided the information that was requested of the company. Moreover, Cando argues that these standards will be further breached if the company's case is not now fairly considered based on its merits or if no consideration is given to the company's consistent position throughout this process. Cando contends

that the Department must fairly and objectively consider the merits of its case as to whether it has been proven that Cando's products benefitted from subsidies. According to Cando, under international law, the burden is placed on the Department to demonstrate that pursuant to a fair process, a countervailable subsidy is justifiable. Cando argues that imposing a large duty on the company, absent proof that it was a beneficiary of any subsidy, is against international agreements.

Department's Position: We have determined not to revise our decision in the Preliminary Results to rescind Cando's expedited review. While Cando was forthright about its operations, the information provided does show that Cando is a reseller of softwood lumber products. Cando did not and, by its own admission, cannot provide certification from producers of the subject merchandise to substantiate that the purchased softwood lumber is non-subsidized. Given that this information is a condition for conducting the expedited review, we continue to find that there is no basis for the Department to complete one for Cando. Thus, we are not revising our decision to rescind Cando's expedited review.

We note that in the current North American Free Trade Agreement (NAFTA) Panel proceeding on the underlying investigation, in the remand determination recently filed by the Department, we stated that railroad ties, aged ten or more years, should be excluded from the order of this proceeding. See the "Products Exclusion" section of the January 12, 2004 Remand Determination RE: In the Matter of Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination; Secretariat File No. USA-CDA-2002-1904-03 Remand Determination (Remand Determination). Should the NAFTA Panel affirm our finding on this matter, we will change the scope language such that railroad ties aged ten or more years are not subject to the order.

Comment 6: Whether to Rescind the Expedited Review of Westcan on the Grounds That it Is a Pure Reseller of Railroad Ties

Petitioners request that the Department rescind the expedited review of Westcan. According to petitioners, Westcan is a pure reseller of subject merchandise rather than a producer or re-manufacturer of subject merchandise. In addition, petitioners contend that, in its application for an expedited review, Westcan failed to provide a completed application with information concerning its input suppliers. Petitioners point out that Westcan's business operations are similar to Cando's, a railway operations and maintenance company that resells used railway ties. Petitioners assert that the Department properly rescinded Cando's expedited review in the Preliminary Results because it was strictly a reseller of softwood lumber and performed no processing operations. Therefore, for purposes of these final results, the Department should also rescind Westcan's expedited review because it failed to provide a complete application and because, as a pure reseller, it performs no processing of subject merchandise.

Westcan contends that they are not pure resellers. According to Westcan, they further process the used railway ties when they remove the metal ties and spikes from the wood prior to its sale.

Department's Position: We have determined to rescind the expedited review of Westcan on the

grounds that the company is a pure reseller of used railway ties that failed to submit information regarding its railway tie suppliers, for the reasons described in the “Partial Rescission” section of the Preliminary Results as well as those cited in Comment 5 above. As stated above, should the NAFTA Secretariat affirm our finding in the Remand Determination, we will exclude railroad ties, aged ten or more years, from the scope of the order.

Comment 7: Power Wood’s Benefit Calculation

Power Wood claims that the Department made a ministerial error in calculating the preliminary cash deposit rate. According to Power Wood, there is a discrepancy in one of the formulas with respect to its calculations and this has a significant effect on the ad valorem rate. Power Wood asserts that the Department incorrectly included resold lumber in the company’s total “BC Lumber Volume” figure. Power Wood argues that this error served to overstate the benefit attributable to the company. According to Power Wood, the corrected “BC Lumber Volume,” when multiplied by the “BC Unit Benefit,” would produce a lower revised total stumpage benefit. According to Power Wood, since the company has no other benefits from any other programs, the use of the corrected benefit amount results in a revised total rate of 4.47 percent ad valorem.

Petitioners did not comment on this issue.

Department’s Position: We agree with Power Wood that we made a ministerial error when we calculated the company’s net subsidy rate in the Preliminary Results. Specifically, we inadvertently failed to remove the volume of Power Wood’s resales from the total volume of lumber that was multiplied by the unit benefit. As a result, we overstated Power Wood’s net subsidy rate. We have corrected this error in the final results. Power Wood’s revised net subsidy rate is listed in Section IV below.

Comment 8: Goldwood’s Benefit Calculation

Goldwood argues that the Department erred in calculating its net subsidy rate in the Preliminary Results. First, Goldwood asserts that its firm is located in British Columbia; however, the Department calculated its rate as if it were an Ontario company. Second, Goldwood points out that in its February 24, 2003 questionnaire response, it stated that it was not involved in wholesaling/reselling activities, as defined by the Department. According to Goldwood, all lumber their firm sells is produced in the company’s sawmill from processed raw logs. Thus, Goldwood claims that its resale value of softwood lumber products figure should be zero, as opposed to the positive figure utilized by the Department in the Preliminary Results. Goldwood contends that the use of the incorrect resale value of softwood lumber products overstates its net subsidy rate. Goldwood argues that in the final results the Department should adjust the calculations for Goldwood to reflect the fact that the company had no resales of softwood lumber products.

Petitioners did not comment on this issue.

Department's Position: We agree with Goldwood that the Department's decision in the Preliminary Results to rescind the company's expedited review was based on calculations containing ministerial errors. Specifically, we inadvertently entered an incorrect value for Goldwood's total resales. This error caused Goldwood to be classified as a pure reseller. As Goldwood did not supply information regarding its suppliers, we rescinded the company's expedited review for the reasons cited in the "Partial Rescission" section of the Preliminary Results.

To correct this error, we have entered the correct value of Goldwood's total resales into our subsidy calculations. With the correct sales value in place, Goldwood is no longer classified as a pure reseller. In addition, we have used the correct unit benefit applicable to inputs originating in British Columbia. Accordingly, using the calculation methodology described above, we have calculated company-specific net subsidy rate for Goldwood. Goldwood's revised net subsidy rate is listed in Section IV below.

Comment 9: Williamsburg's Benefit Calculation

Williamsburg claims that the Department erred in the calculation of its individual cash deposit rate because the Department considered all the lumber purchased by the firm as lumber originating from Crown land. Williamsburg claims this error overstates the net subsidy rate attributable to the company. Williamsburg contends that all of its lumber inputs originate from private land. Specifically, Williamsburg asserts that its rough sawn lumber suppliers are local farmers operating as sole proprietors. Williamsburg argues that its suppliers confirm that the logs used to produce lumber for Williamsburg come from private woodlots or have been purchased from local private landowners near Williamsburg. Williamsburg also argues that all of its suppliers have confirmed that they do not have any Ontario Crown land allocation and that they have not received logs from Crown lands. Therefore, Williamsburg requests that, in the calculations of the final results, the Department change the classification of Williamsburg's lumber inputs such that they are designated as lumber inputs from private land.

Petitioners did not comment on this issue.

Department's Position: We disagree with Williamsburg that the Department erred when it applied the unit benefit to the company's purchases of lumber from private sources in Ontario. This same issue was addressed in Section III, Comment 6 of the Issues and Decision Memorandum that accompanied the November Final Results in which the Department stated the following:

With regard to the lumber produced from private-land timber, we considered this issue in the investigation when we devised the methodology to apply in the exclusion process. In the

Exclusion Memorandum,⁵ the Department stated: “[W]e will also apply the province-specific rate to all purchases of Canadian lumber made by the applicants, since, as a practical matter, it is impossible to distinguish lumber produced from private-land logs and lumber produced from Crown timber, once it is processed in potentially subsidized mills.” Therefore, while we agree theoretically with Domtar on the requirements of the attribution regulations, we will continue to apply the same benefit to all lumber because we do not see a practical way to segregate private forest lumber from Crown lumber. The best that the Department can do, and is doing, is to exclude all lumber produced by excluded companies, because in that case there is no intermingling of unsubsidized with subsidized products.

Thus, in accordance with our practice on this calculation issue, we are continuing to multiply the unit benefit by Williamsburg’s total lumber volume, net of the volume of any lumber acquired from the United States, the Maritimes, or companies that were excluded from the order of this investigation.

Comment 10: Derivation of Boccam’s Sales Denominator

Petitioners state that during verification, the Department found that Boccam had included such items as interior doors, french doors, louver doors, hinges, locks, and other relevant metal products in its sales of non-subject lumber products. See Boccam Verification Report at 3. Petitioners argue that classifying such products as “non-subject lumber” for purposes of the sales denominator is incorrect as they are not lumber products nor, in some cases, even wood products. Petitioners argue that the value of sales of such products should not be included in the sales denominator used to calculate the net subsidy rate attributable to Boccam.

Department’s Position: As stated above in Comment 4, we have removed such non-wood products as hinges, locks, and other relevant metal products from Boccam’s sales of non-subject lumber products category using information contained in Exhibit 12 of the Boccam Verification Report. Thus, we have not included these items in the sales denominator used to calculate Boccam’s net subsidy rate. However, as we have explained above, we are continuing to include the wood products produced by Boccam in the denominator because the inputs used to make such wood products have been included in the numerator. Boccam’s revised net subsidy rate is listed in Section IV below.

Comment 11: Derivation of Sechoirs de Beauce’s Sales Denominator

Petitioners claim that the Department learned at verification that Sechoirs de Beauce is a producer of ornamental mouldings that are neither subject merchandise nor a softwood lumber product subject to the order. See Sechoirs de Beauce Verification Report at page 3. Thus, petitioners argue that it is essential that the Department verify that any reported sales of mouldings are not included in the

⁵ See the March 20, 2002 memorandum from Bernard T. Carreau, Deputy Assistant Secretary, for Import Administration, to Faryar Shirzad, Assistant Secretary, for Import Administration.

sales denominator under the category of “sales of softwood lumber products not subject to the order.” They argue that if the Department is not able to verify conclusively the invoices and sales journals related to the products and sales to be included in the denominator, the Department must collect more information or rescind the expedited review of Sechoirs de Beauce.

Sechoirs de Beauce rebuts petitioners’ assertion that the Department should reduce the denominator applicable to Sechoirs de Beauce’s countervailing duty rate calculation by the value of any reported sales of non-subject lumber products, namely moulding. Sechoirs de Beauce argues that moulding is a non-subject lumber product derived from the sawmilling process and must be included in the denominator as part of the company’s total sales for purposes of calculating the net subsidy rate. Sechoirs de Beauce argues that it has been the Department’s practice to include downstream non-lumber product sales in the denominator and that the Department may not deviate from this practice without a compelling reason and explanation.

Department’s Position: We agree with Sechoirs de Beauce’s contention that the Department should continue to include the sales value of ornamental mouldings as well as the sales values of other non-subject lumber products produced by the company in the denominator of the net subsidy calculations. As explained above in Comment 4, in these expedited reviews, we have included in the numerator the inputs processed in the companies’ sawmill. The ornamental mouldings are produced by Sechoirs de Beauce from those inputs. Thus, for the denominator to match, we have included all of the downstream products produced by that mill in the denominator. In the case of Sechoirs de Beauce, the inputs used to make such items as ornamental mouldings were included in the company’s numerator. Therefore, in order for the denominator to match, it must also be comprised of the value of any such ornamental mouldings.

Comment 12: Lavoie’s Cord to Cubic Meter Conversion Factor

Petitioners claim that the Lavoie Verification Report indicates that the company converted its logs volume from cords into cubic meters solely for the purposes of responding to the Department’s questionnaires. They further claim that Lavoie failed to provide and the Department failed to follow up on the basis for the conversion factor used by the company. Petitioners argue that the Department cannot consider the information reported by Lavoie to be accurately verified until the Department obtains more information about the factors used for the conversion of cords.

Department’s Position: We disagree with petitioners’ contention that the Department cannot consider the information reported by Lavoie to be accurately verified until the Department obtains more information about the factors used for the conversion of cords. We verified the volume of lumber in board feet that Lavoie obtained from its Canadian suppliers. See the “Minor Corrections,” “Acquisition of Lumber” sections as well as Exhibit 17 of the Lavoie Verification Report. Moreover, using Lavoie’s books and records, we were able to confirm that, during the period of investigation (POI), the company obtained its logs entirely from private sources. As we are not including privately sourced logs in the benefit calculation, the measurement system that Lavoie uses to record its logs

purchases is moot.

The same, however, can not be said regarding Lavoie's lumber purchases. We note that Lavoie initially did not report using any lumber inputs during the POI. See Lavoie's June 18, 2002 application and its January 29, 2003 questionnaire response. In fact, it was not until verification that Lavoie divulged that it acquired lumber inputs during the POI. See, e.g., the "Minor Corrections" section of the Lavoie Verification Report. Regarding these lumber acquisitions, while Lavoie demonstrates how it converted its lumber from board feet into cords, it failed to demonstrate how it converts its lumber inputs into cubic meters, which is the form of measurement required in the subsidy rate calculations. Thus, given that the Department did not learn of Lavoie's acquisition of the lumber inputs until verification and due to the fact that Lavoie failed to provide the necessary conversion information for the lumber inputs, we are resorting to the use facts available, pursuant to section 776(a)(2)(B) of the Act, to convert the company's lumber from board feet to cubic meters.

Lacking conversion information from Lavoie, we have used information reported by the Ministry of Natural Resources (MRN) of the Government of Quebec. The MRN reports a thousand board feet to cubic meters conversion factor of 2.36 for lumber. See, e.g., page 33 of Exhibit 14 of the Boccam Verification Report. Thus, in the absence of company-specific information, which as explained in the November Final Results is the preferred source of conversion information, we have resorted to the use of facts available and converted Lavoie's lumber volume from board feet to cubic meters using a conversion factor of 2.36. Lavoie's revised net subsidy rate is listed in Section IV below.

IV. TOTAL AD VALOREM RATES

In accordance with 19 C.F.R. 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to these expedited reviews. For the period April 1, 2000 to March 31, 2001, we determine the net subsidy to be as follows:

Round 1 Companies:

Net Subsidies - Producer/Exporter	Net Subsidy Rate %
Alexandre Cote Ltee.	9.07
Boccam Inc.	0.41
Byrnexco Inc.	8.40
Davron Forest Products Ltd.	10.94
Fraser Pacific Forest Products Inc.	8.61
Frontier Mills Inc.	8.61
Haida Forest Products Ltd.	2.45
Landmark Truss & Lumber Inc.	8.61
Les Bois S&P Grondin Inc.	4.62
Les Industries P.F. Inc.	8.03
Sechoirs de Beauce Inc.	0.60
Tyee Timber Products Ltd.	4.10
West Bay Forest Products and Manufacturing Ltd.	5.50

Round 2 Companies:

Net Subsidies - Producer/Exporter	Net Subsidy Rate %
Central Cedar Ltd.	4.96
Forstex Industries Inc.	4.51
Goldwood Industries Ltd.	3.22
Hudson Mitchell & Sons Lumber Inc.	4.31
Indian River Lumber	0.00
Les Scieries Jocelyn Lavoie Inc.	1.52
Leslie Forest Products Ltd.	13.72
Lyle Forest Products Ltd.	3.37
Power Wood Corp.	4.47
Precision Moulding Products	1.41
Ram Co. Lumber Ltd.	8.92
Rielly Industrial Lumber Inc.	5.15
Sylvanex Lumber Products Inc.	7.09
United Wood Frames Inc.	10.69

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related cash deposit requirements accordingly. If these recommendations are accepted, we will publish the final results of the review.

Agree

Disagree

James J. Jochum
Assistant Secretary
for Import Administration

Date